COMMUNICATION TO THE HUMAN RIGHTS COMMITTEE

In the case of

ANNE POELINA; BARRY TRAILL; BRENDON DONOHUE;
CATHERINE [redacted]; JACK EGAN; LATISHAMARIE FRANCIS;
PAMELAROSE FRANCIS; MELISSA FISHER; SAMA YOUHANA;
RIKKI DANK,

Authors

v.

AUSTRALIA,

Respondent

Submitted under the First Optional Protocol to the International Covenant on Civil and Political Rights

20 June 2026

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The Authors and their legal representatives share this Communication with the United Nations Human Rights Committee from places where Aboriginal and Torres Strait Islander sovereignty was never ceded.

We acknowledge the Traditional Owners[1] and Custodians of Country[2] throughout Australia and their continuing connection to land, waters, sky, plants and animals, and community. We pay our respects to Elders past and present.

The Authors and their legal representatives also acknowledge and pay our respects to the Aboriginal Authors[3] of this Communication, Professor Anne Poelina, Ms Latishamarie Francis, Ms Pamelarose Francis, and Ms Rikki Dank.

1 SUMMARY OF COMMUNICATION

1. In the ancient gorges of the Kimberley in Western Australia, Professor Anne Poelina has seen floodwaters rise to historic highs. Anne, a Nyikina Warrwa and Warlungurru woman and Elder from Balginjirr, lives on and belongs to the Mardoowarra (Fitzroy) River. In 2023, the worst floods in the region's history caused widespread destruction, displacing Anne from her home and Country for almost three years. Anne and her community were unable to access or care for sacred sites or perform and share rituals passed down for millennia.

2. On the other side of Australia, on the southeastern shores of Rosedale, New South Wales, Jack Egan nearly died fighting to save his home from one of the deadliest bushfires[4] in Australian history—the 2019-2020 Black Summer Bushfires. The fires destroyed his home and possessions and killed three people in his local community. Fighting those same fires, Dr Barry Traill, an ecologist and volunteer firefighter, was nearly struck by a burning tree that fell on his fire truck. Barry has suffered emotional harm from his near-death incident, while Jack worries about his home and community on hot dry days when the risk of another fire looms.

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[1] "Traditional Owners" are Aboriginal or Torres Strait Islander people who, under the traditional laws and customs of their Nation, possess inherited rights, responsibilities, and obligations to care for and speak for particular Country. While the term is widely used across Australia, its legal recognition varies between jurisdictions and should not be assumed to be synonymous with native title holder status or other statutory definitions.

[2] "Country" is a term used by First Nations peoples to refer to the lands, waters, and skies to which they are connected through ancestral ties, community, culture, family origins, and spiritual connections. Gemma Pol, "What is Country," *Common Ground* (2026), https://www.commonground.org.au/article/what-is-country.

[3] Aboriginal and Torres Strait Islander people are the Indigenous peoples of the Australian continent and its surrounding islands. Professor Anne Poelina is a Nyikina Warrwa and Warlungurru woman, Ms Latishamarie Francis and Ms Pamelarose Francis are Narungga, Ngarrindjeri, and Kaurna women, and Ms Rikki Dank is a Gudanji and Wakaya woman. While belonging to different Nations, each of the aforementioned Authors are Aboriginal people and, where necessary, refer to themselves collectively as the "Aboriginal Authors" throughout this Communication. Many Aboriginal and Torres Strait Islander people, including the Aboriginal Authors, also identify as "First Nations" and/or "Indigenous" people and those terms are occasionally used throughout the Communication and in the Authors' statements.

[4] Also known as "wildfires."

3. Off the southern coast of Australia, sisters Latishamarie (Latisha) and Pamelarose (Pam) Francis, Narungga, Ngarrindjeri, and Kaurna women, are experiencing one of the largest algal blooms ever recorded. Toxic foul-smelling algae—driven in part by a marine heatwave—has damaged their Sea Country, killing sacred marine life that is integral for cultural purposes, destroying traditional food sources, and disrupting their lives and cultural practices.

4. Nearby, in the greater Adelaide region in South Australia, extreme heat days are increasing in frequency and severity. For Catherine (Cat) [redacted] and Melissa Fisher, the heat is intolerable; each has underlying health conditions and disabilities that make living in extreme heat dangerous and miserable.

5. These are the experiences of just some of the ten Authors across Australia. Each Author has suffered a violation of one or several rights protected under the International Covenant on Civil and Political Rights (**Covenant** or **ICCPR**), namely the right to life (Article 6), the right to privacy, family, and home life (Article 17), and the right to culture (Article 27).

6. A common thread links the harms suffered by the Authors: each harmful event was made substantially more likely and severe by anthropogenic climate change, to which Australia materially contributes through its production of fossil fuels for export.

1.1 The climate emergency is already causing devastating harm to the Authors, and the risks are escalating rapidly

7. The science is irrefutable: the world is already in a climate emergency. The International Court of Justice (**ICJ**) in its 2025 Advisory Opinion (**ICJ Advisory Opinion**) confirmed that 1.5°C of warming above pre-industrial levels is the primary temperature goal necessary to prevent dangerous anthropogenic interference with the climate system.[5] However, the world has already nearly crossed this threshold and, as the Human Rights Committee (**Committee**) has acknowledged, anthropogenic climate change is already driving catastrophic irreversible impacts.[6] At the current annual rate of global greenhouse gas emissions, there are less than two years remaining to ensure warming is limited to 1.5°C, and the risks of climate harms escalate with every additional fraction of global warming.[7]

8. The Authors have presented extensive expert evidence that the harms they have suffered are attributable to climate change.[8] Across Australia, climate change is driving more extreme and frequent heatwaves, droughts, bushfires, floods, and many other impacts that will intensify as warming continues.[9] Some of the Authors' lives are endangered. Others are experiencing harms to their health and wellbeing, damage to homes and infrastructure, and destruction of the environment and Country, which for

[5] *See* Section 4.1.
[6] *See* Sections 4.1 and 8.1.
[7] *See* Section 4.3.
[8] *See* Section 4.5.
[9] *See* Sections 4.5 and 8.

the Aboriginal Authors, is inextricably linked to their millennia-old cultural traditions and practices.[10]

1.2 Australia's fossil fuel production for export has been and will continue to be a material contribution to dangerous climate change

9. Australia must comply with its international climate obligations, which are necessary to respect and ensure the rights recognised under the ICCPR. These obligations require Australia to act with stringent due diligence to use all means at its disposal to prevent significant harm to the climate system, which includes aligning its actions with a global pathway that limits warming to 1.5°C.[11]

10. Australia has failed to comply with these obligations through its production of fossil fuels for export. Despite knowing about the deadly and foreseeable consequences of climate change for decades, Australia has failed to take the necessary action to prevent harm to the climate system. On the contrary, it has materially contributed to climate change as one of the world's leading historical and current producers of fossil fuels for export. As of 2024, Australia was the second largest exporter of coal in the world, and the third largest exporter of liquefied natural gas. Around 80% of Australia's total fossil fuel carbon dioxide footprint came from its fossil fuel exports as of 2022, constituting around 3.5% of annual global fossil fuel carbon dioxide emissions.[12]

11. Australia is not using all means at its disposal to prevent catastrophic climate harm. The Authors present expert evidence to demonstrate that Australia's current and projected fossil fuel exports are not even close to an emissions pathway that is consistent with limiting warming to 1.5°C, and that Australia has no deliberate policy to make the significant export reductions required to prevent dangerous anthropogenic interference with the climate system. Instead, government policy remains to maximise fossil fuel exports, and Australia continues to subsidise and approve fossil fuel projects that will export fossil fuels for decades to come, in some cases into the 2070s.[13]

12. International, regional, and domestic courts have clarified that Australia cannot shield itself from legal responsibility in this case because its exported fossil fuels are burned outside of its territory. Australia exercises regulatory control over fossil fuel production for export, including through licensing and enabling subsidies. The release of emissions from the combustion of fossil fuels—whether within or outside Australia's territory—is an inevitable and foreseeable consequence of that production. Australia well understands that its fossil fuel production for export is kickstarting a chain of events that will result in harm to the climate system. Under international law, Australia is responsible for its contribution of harm to the climate system and subsequent injury to individuals, even if other States also contribute to the harm.[14]

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[10] *See* Section 4.5.
[11] *See* Section 6.
[12] *See* Sections 5 and 7.
[13] *See* Sections 5 and 7.
[14] *See* Sections 6 and 7.

1.3 Australia's acts and omissions on fossil fuel exports are violating the Authors' ICCPR rights

13. By perpetuating and exacerbating climate change through its fossil fuel production for export, Australia has endangered and continues to endanger the lives and well-being of the Authors. Each excess emission adds more dangerous greenhouse gases to the atmosphere, locking in irreversible climate change and intensifying foreseeable risks to the Authors' human rights under the ICCPR, including their rights to life (Article 6), privacy, family, and home life (Article 17), and culture (Article 27). Australia is thus violating the Covenant.[15]

1.3.1 Article 6: Right to life

14. As this Committee has acknowledged, climate change is one of the most pressing and serious threats to the Article 6 right to life. Australia's contributions to the climate crisis through its production of fossil fuels for export have already caused life-threatening events—such as bushfires and extreme heatwaves—and these events will increase in likelihood and severity as climate change intensifies.[16]

15. Both Jack Egan and Dr Barry Traill were nearly killed during the 2019-2020 Black Summer Bushfires—Jack as he was defending his home and community, and Barry as a volunteer firefighter fleeing the burning tree that fell on his truck.

16. Brendon Donohue—who is legally blind—was trapped in his apartment for ten days during a flood, feared running out of food, and was unable to access the medication necessary to preserve his remaining eyesight and eye health.

17. It is also foreseeable that some of the Authors face a life without dignity as climate change intensifies. For example, Melissa Fisher has already been hospitalised during heatwaves due to heat-induced health conditions. More extreme and frequent heatwaves in the future could immobilise Melissa to the point where she cannot care for herself, leave her house, or move to seek the urgent medical attention that she requires.

1.3.2 Article 17: Right to privacy, family, and home life

18. Through its production of fossil fuels for export, Australia's contributions to the climate crisis are violating the Article 17 right to privacy, family, and home life. Climate change-driven events are harming the Authors' health, well-being, and quality of life, interfering with their homes, and putting them at further risk with every passing day.[17]

19. The Black Summer Bushfires destroyed Jack Egan's property and possessions, and forced Cat [redacted] to evacuate her home after enduring the health impacts of smoke inhalation.

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[15] *See* Section 8.
[16] *See* Section 8.1.
[17] *See* Section 8.2.

20. Climate change is also threatening the special relationship that the Aboriginal Authors have with their traditional Country. One of the largest toxic algal blooms ever recorded has disrupted the lives and cultural practices of sisters Latisha and Pam Francis, killing sacred marine life integral for cultural purposes and destroying traditional food sources.

21. Increasingly frequent and intense heatwaves across the Northern Territory have driven Rikki Dank and her family off their Country at times, when conditions become intolerable even when sheltering inside their home.

22. The worst flood in the history of the Kimberely region of Western Australia displaced Anne Poelina, an Aboriginal Elder, and her community for almost three years, and caused irreparable damage to her Country.

1.3.3 Article 27: Right to culture

23. Australia's contributions to the climate crisis through its production of fossil fuels for export are jeopardising the millennia-old cultural practices of the Aboriginal Authors by harming the ability of these Authors to connect with Country and ancestors, share stories and bond with their own People, and engage in activities that teach younger generations about their traditions and history.[18]

24. When floods displaced Anne Poelina from her home and Country for almost three years, she was separated from her traditional lands and elements of her territory that are integral to her way of life, causing immense grief and anxiety.

25. For Rikki Dank in the Northern Territory, and Latisha and Pam Francis in South Australia, intolerable heat and erratic fire weather has had similar impacts on their way of life: preventing them from spending time on Country and engaging in controlled cultural burning and other cultural knowledge activities with Elders.

26. The algal bloom has also broken the cycle of cultural learning in which Latisha, Pam, and their community would otherwise participate on their Sea Country, including learning from Elders about how to interact with and care for Country, and to hunt and cook in traditional ways.

1.4 Australian law does not provide adequate and effective domestic remedies to the Authors

27. The Authors have satisfied the requirements for admissibility. In accordance with the requirement under the First Optional Protocol to the International Covenant on Civil and Political Rights (**Optional Protocol**) for exhaustion of domestic remedies, the Authors present expert evidence to demonstrate that Australian law does not offer the Authors adequate and effective redress for the harms and rights at issue in this Communication.[19]

[18] *See* Section 8.3.
[19] *See* Section 9.2.

1.5 Request for relief

28. The Authors ask this Committee to uphold their Covenant rights in the face of the existential threat posed by climate change. The violation of the Authors' Covenant rights cannot be addressed through mitigation of emissions released within Australia or through climate adaptation measures alone, considering that exported emissions from Australia's fossil fuel developments are continuing to materially contribute to climate harms.

29. The Authors respectfully ask the Committee to grant the following relief, in summary:

    a. Declare that Australia's continuing acts and omissions, and those of its subnational governments for which it has responsibility under international law, related to the production of fossil fuels for export, and its failure to adequately regulate the activities of public and private operators within its jurisdiction or control related to the production of fossil fuels for export, are incompatible with its human rights obligations to prevent a global average temperature increase of 1.5°C above pre-industrial levels.

    b. Declare that by recklessly perpetuating life-threatening climate change through its fossil fuel production for export, Australia is violating the Authors' rights to life; privacy, family, and home life; and culture under the Covenant.

    c. Recommend that Australia establish a process to review the compatibility of its fossil fuel exports with pathways to limit warming to 1.5°C.

    d. Recommend that Australia urgently and rapidly implement a plan to phase out the production of fossil fuels for export to the extent necessary to ensure alignment with a 1.5°C pathway, including ceasing public subsidies (including any State-supported financial incentives) which effectively support or promote the export of fossil fuels.

    e. Recommend that Australia pause approvals for fossil fuel production projects for export, including pausing any permitting process for proposed and existing projects that would expand exported emissions, until it complies with recommendations (c) and (d) above.

2 THE AUTHORS

30. The Authors are ten citizens of the Commonwealth of Australia (**Australia**). Each of the Authors, as summarised below, has suffered harm and violation of their rights, and remains at particular risk of foreseeable future harm and violation of their rights, due to anthropogenic climate change.

31. **Professor Anne Poelina (69 years old)**[20] is a Nyikina Warrwa and Warlungurru woman, Traditional Owner, Elder, scientist, researcher, and public health professional from Balginjirr, in the Kimberley region of Western Australia. Anne lives on and belongs to the Fitzroy River, known to her People as Mardoowarra, which means the "River of Life." Her spirituality, identity, and cultural obligations are inseparable from the Mardoowarra and the surrounding landscape. She has witnessed intense flooding, extreme and pulsating heat, sea-level rise, and saltwater intrusion, causing grave, worsening, and irreversible damage to her home and cultural practices.

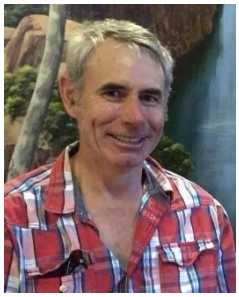
32. **Dr Barry Traill (63 years old)**[21] lives in the Sunshine Coast hinterland in Queensland and has spent more than four decades working on Australian landscapes, wildlife, and fire ecology as a wildlife ecologist and conservationist. Barry has been a volunteer firefighter for the past ten years. He was deployed to fight the 2019-2020 Black Summer Bushfires on the New South Wales south coast that were ripping through local communities. While responding, his fire truck was hit by a falling burning tree, and he narrowly avoided serious injury or death. Barry remains deeply affected by the trauma of fighting the Black Summer Bushfires which still impacts him today.

33. **Mr Brendon Donohue (32 years old)**[22] is a disability and climate advocate who lives in South Brisbane, Queensland. Brendon has legal blindness and Peters Plus Syndrome. In early 2022, heavy rains flooded Brendon's apartment building. He spent days trapped and terrified inside his home, unable to leave because he could not read the emergency exit signage and did not have access to support services. Brendon is seriously concerned about how extreme weather events will impact his quality of life in the future.

[20] *See* Statement of Anne Poelina, Annex 1.
[21] *See* Statement of Barry Traill, Annex 2.
[22] *See* Statement of Brendon Donohue, Annex 3.

34. **Ms Catherine (Cat) [redacted] (37 years old)**[23] lives in the greater Adelaide region in South Australia and is a trained equestrian anatomist. Cat has a range of health conditions and disabilities that put her at particular risk of the physiological impacts of extreme heat. She recently lived through a severe heatwave that hit South Australia in January 2026 and left her feeling so unwell that she felt like she was just trying to survive. During the summer months, she also faces an increasing and regular threat of bushfires to her home. She lives in daily fear that, if a bushfire were to threaten her home, she would not be able to get to safety due to her health conditions.

35. **Mr Jack Egan (66 years old)**[24] lives in Rosedale, New South Wales and is a high school teacher working with children with additional needs. Jack narrowly survived the 2019-2020 Black Summer Bushfires which destroyed his house, along with many others in his neighbourhood. Jack now lives with everyday anxiety about future bushfires and feels like he is constantly on alert.



36. **Ms Latishamarie (Latisha) Francis and Ms Pamelarose (Pam) Francis (25 and 24 years old)**[25] are Narungga, Ngarrindjeri, and Kaurna women from Salisbury in Tarndanya/Adelaide. They are sisters. Pam is a teacher working with young Aboriginal children, and Latisha is studying marine biology. Extreme heatwaves, bushfires, and an ongoing microalgal bloom event have upended their daily lives, routines, and ability to engage in cultural practices. Both Latisha and Pam have experienced significant mental distress as the algal bloom has intensified, killing off culturally significant totem species and preventing them from being by and in the ocean—the Sea Country that their ancestors have been taking care of for tens of thousands of years.

[23] *See* Statement of Cat [redacted], Annex 4.
[24] *See* Statement of Jack Egan, Annex 5.
[25] *See* Statement of Latisha Francis, Annex 6; Statement of Pam Francis, Annex 7.

37. **Ms Melissa Fisher (44 years old)**[26] lives in Elizabeth Vale near Adelaide, South Australia. Melissa undertakes volunteer and advocacy work, including with the Anti-Poverty Centre. Melissa has a severe auto-inflammatory skin condition called Hidradenitis Suppurativa which puts her at significant risk during extreme heat events. In January 2026, a severe heatwave swept through her community, with daily temperatures of 44°C lasting a week. Melissa's skin condition became so severe that she experienced extreme pain and fatigue. She was unable to move due to the pain and was terrified that she would overheat and die.

38. **Ms Sama Youhana (21 years old)**[27] is a university student and youth climate advocate living in Brisbane, Queensland. In February 2022, the Brisbane River flooded and inundated Sama's family home. Sama was unable to leave her home or go to school and lived without power for a week, waiting for the floodwaters to recede. This experience has changed Sama's entire worldview. She now experiences significant anxiety in the lead up to and during extreme weather events, and plans for the worst-case scenario.

39. **Ms Rikki Dank (40 years old)**[28] is a Gudanji and Wakaya woman and Traditional Owner from the Barkly Tableland in the Northern Territory, an environmental and First Nations advocate, and a registered nurse. Extreme heatwaves have disrupted Rikki's ability to engage in important cultural practices, making her feel like she is losing a huge piece of herself and her cultural identity. The increasing and more intense heat has also significantly limited her capacity to learn and practice her culture on Country and she worries that in the future, there will be no safe time for her to do this. Although Rikki currently resides in Dubai, she remains deeply connected to her Country and returns frequently.

[26] *See* Statement of Melissa Fisher, Annex 8.
[27] *See* Statement of Sama Youhana, Annex 9.
[28] *See* Statement of Rikki Dank, Annex 10.

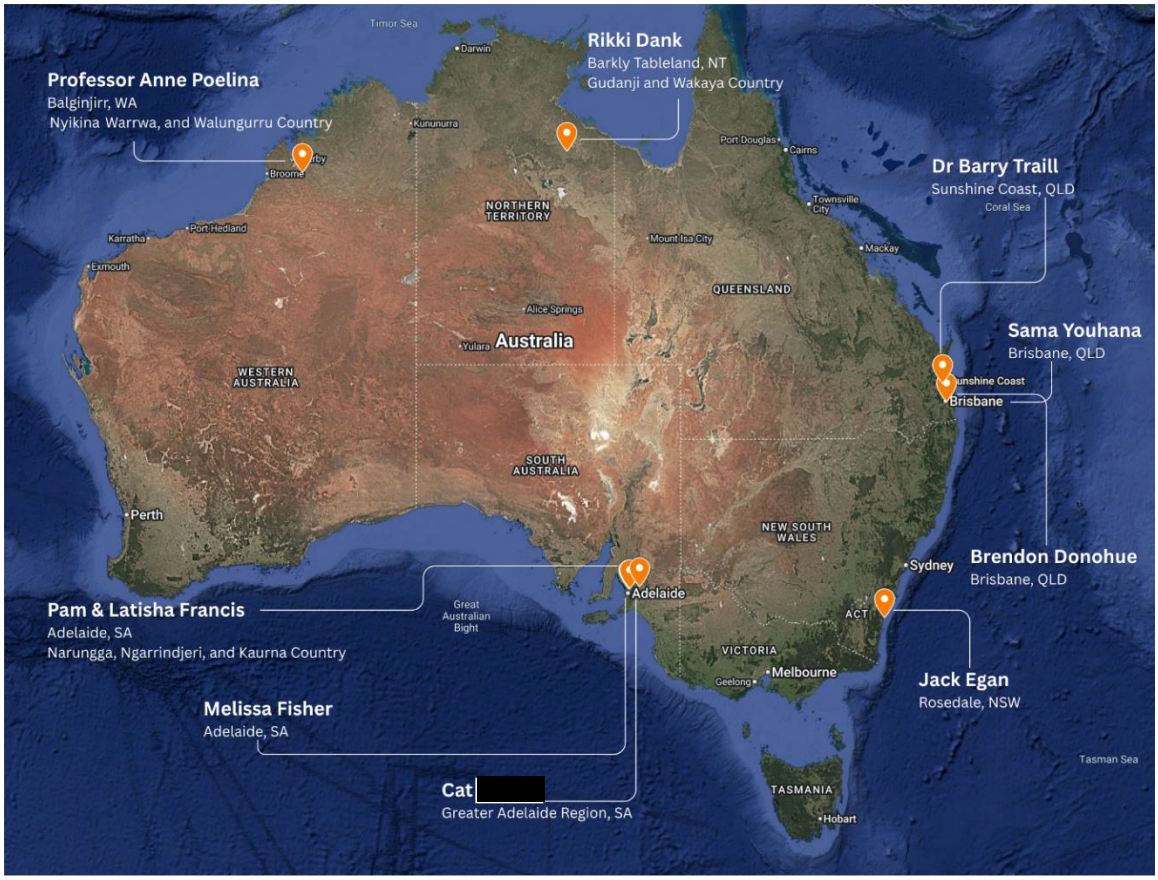


Figure 1 – Map of Australia showing the Authors' locations/Countries of the Aboriginal Authors.

40. The Authors are all Australian citizens and their alleged rights violations all relate to harms caused within the territory of Australia.[29]

41. Each of the Authors has prepared a witness statement setting out the facts relevant to this Communication. Those statements are provided at Annexes 1-10.

42. Pursuant to Rule 97(3) of the Rules of Procedure of the Committee, the Authors respectfully request that the Committee consider their Communication jointly because the alleged rights violations arise from common facts relating to Australia's contributions to climate harms.[30]

3 THE RESPONDENT

43. This Communication concerns the conduct of Australia.

[29] The admissibility of the Communication is addressed in Section 9.
[30] UN Human Rights Committee, *Rules of Procedure of the Human Rights Committee*, UN Doc. CCPR/C/3/Rev.12 (**Rules of Procedure**), Rule 97(3), https://docs.un.org/en/CCPR/C/3/Rev.12.

44. Australia ratified the Covenant on 13 August 1980. The Covenant entered into force for Australia on 13 November 1980.[31]

45. Australia acceded to the Optional Protocol on 25 September 1991, and it entered into force for Australia on 25 December 1991.[32] By doing so, Australia has accepted the jurisdiction of the Committee.

46. This Communication addresses the conduct of Australia after it ratified the ICCPR and acceded to the Optional Protocol. There is therefore no bar to the Committee's competence *ratione temporis*.

47. The remaining issues of admissibility of this Communication are addressed further in Section 9.

4 THE CLIMATE EMERGENCY HAS ALREADY HARMED THE AUTHORS AND THESE HARMS WILL INTENSIFY IN THE FUTURE

48. The science is irrefutable: global warming is caused by human activities that emit carbon dioxide (**CO_2**) and other greenhouse gases such as methane into the atmosphere of the planet which trap the sun's radiation around the Earth, leading to a "greenhouse warming effect."[33] There is now more CO_2 in the atmosphere than at any time in the past 800,000 years. The combustion of fossil fuels is the largest cause of global warming; it accounts for approximately 64% of global CO_2 emissions and is a major source of methane emissions.[34]

4.1 The climate emergency is causing catastrophic irreversible effects and the risks escalate with future additional warming

49. The ICJ Advisory Opinion affirms that 1.5°C of temperature rise above pre-industrial levels is the "agreed primary temperature goal for limiting the global average temperature increase" from pre-industrial times and for preventing "dangerous anthropogenic interference with the climate system."[35] The ICJ notes that this temperature goal is necessary to meet the object and purpose of the United Nations Framework Convention on Climate Change (**UNFCCC**), namely the "stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system."[36] The United Nations General Assembly in May 2026 adopted a resolution welcoming the ICJ Advisory

[31] *International Covenant on Civil and Political Rights*, opened for signature 19 December 1966, 999 UNTS 171 (entered into force 23 March 1976) (**ICCPR**).
[32] *Optional Protocol to the International Covenant on Civil and Political Rights*, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976) (**Optional Protocol**).
[33] International Court of Justice, *Obligations of States in Respect of Climate Change*, Advisory Opinion, 23 July 2025 (**ICJ Advisory Opinion**), paras. 72–87, https://www.icj-cij.org/case/187/advisory-opinions.
[34] ICJ Advisory Opinion, para. 81.
[35] ICJ Advisory Opinion, paras. 224, 225 (internal citation omitted), 246, 314.
[36] ICJ Advisory Opinion, para. 225 (quoting *United Nations Framework Convention on Climate Change*, opened for signature 20 June 1992, 1771 UNTS 107 (entered into force 21 March 1994) (**UNFCCC**), Article 2).

Opinion and urging States to comply with the obligations identified by the ICJ.[37] Australia voted in favour of the resolution, indicating its support for the ICJ's ruling.[38]

50. To be clear, we are already in a climate emergency. The world has already nearly exceeded 1.5°C of global average temperature increase, and if existing global policies continue, the world is currently on track for 2.8°C of warming by 2100.[39] As of 2018, the average global temperature was 1.1°C higher than pre-industrial times,[40] and since then, average global temperatures have continued to surge. The past three years—2023 to 2025—were the three warmest years in the 176-year observational record, with the consolidated three-year average 2023-2025 temperature reaching 1.48°C (with a margin of uncertainty of ±0.13°C) above pre-industrial temperatures.[41] Figure 2 below shows the increasing global average temperature.

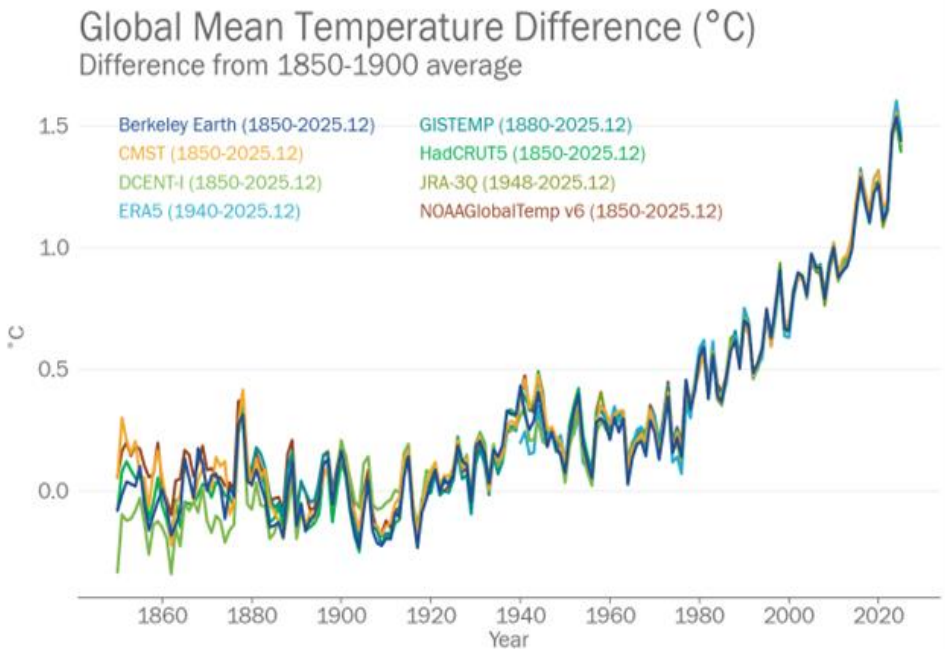


Figure 2 – Annual global mean temperature anomalies relative to the 1850-1900 average shown from 1850 to 2025 for eight datasets as shown in the legend.[42]

[37] United Nations General Assembly Resolution A/80/L.65, *Advisory Opinion of the International Court of Justice on the Obligations of States in Respect of Climate Change*, UN Doc. A/80/L.65, Adopted 13 May 2026, https://docs.un.org/en/A/80/L.65.

[38] *See* Stephen Dziedzic, "Australia backs landmark UN climate change ruling as others try to block it," *The Australian Broadcasting Corporation News*, 20 May 2026, https://www.abc.net.au/news/2026-05-21/australia-backs-united-nations-climate-change-ruling/106705694.

[39] United Nations Environment Programme, *Emissions Gap Report 2025* (2025), p. 37, https://wedocs.unep.org/rest/api/core/bitstreams/4830e1a8-14c0-44a5-a066-cdd2ba5b3e10/content.

[40] Intergovernmental Panel on Climate Change, *Climate Change 2023 Synthesis Report Summary for Policy Makers* (2023) (**IPCC 2023 Synthesis Report Summary for Policy Makers**), p.4, https://www.ipcc.ch/report/ar6/syr/downloads/report/IPCC_AR6_SYR_SPM.pdf.

[41] World Meteorological Organization, *Press Release: WMO confirms 2025 was one of warmest years on record* (2026), https://wmo.int/news/media-centre/wmo-confirms-2025-was-one-of-warmest-years-record.

[42] World Meteorological Organization, *Press Release: WMO confirms 2025 was one of warmest years on record* (2026), https://wmo.int/news/media-centre/wmo-confirms-2025-was-one-of-warmest-years-record, Figure 1.

51. Australia's climate has potentially surpassed the 1.5°C target, having warmed by an average of 1.51°C (± 0.23°C) since national records began in 1910.[43]

52. Although 1.5°C of warming has gained international consensus as the temperature target to prevent dangerous interference with the climate system, the reality is that 1.5°C of warming is not safe. As the Intergovernmental Panel on Climate Change (**IPCC**) stated in 2018, "[w]arming of 1.5°C is not considered 'safe' for most nations, communities, ecosystems and sectors, and poses significant risks to natural and human systems as compared to the current warming of 1°C (high confidence)."[44]

53. The IPCC has emphasised that "[r]isks and projected adverse impacts and related losses and damages from climate change will escalate with every increment of global warming."[45] As such, if temperatures rise to 2.0°C, the harms to communities and ecosystems will be substantially more than with 1.5°C of warming.[46] This includes more heavy precipitation events, heatwaves, ocean warming and acidification, and sea-level rise.[47]

54. The amount of warming that the world has experienced to date has already transformed the environment and caused significant damage to the planet. As the European Court of Human Rights (**ECtHR**) has noted,

> Aggregate levels of CO_2 give rise to global warming and climate change, which in turn cause incidents or periods of extreme weather; these in turn cause various harmful phenomena such as excessive heatwaves, droughts, excessive rainfall, strong winds and storms, which in turn give rise to disasters such as wildfires, floods, landslides and avalanches. The immediate danger to humans arises from those kinds of consequences in the given climate conditions.[48]

55. Australia has not been spared, having experienced some of the most severe, life-threatening impacts of climate change in recent years. For example, in Australia, climate change is driving more frequent and extreme land and marine heatwaves, increased extreme and deadly fire weather, more intense heavy short-term rainfall

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[43] Commonwealth Scientific and Industrial Research Organisation and the Australian Government Bureau of Meteorology, *State of the Climate 2024* (2024) (**State of the Climate 2024 Report**), p. 2, https://www.csiro.au/en/research/environmental-impacts/climate-change/state-of-the-climate.
[44] Intergovernmental Panel on Climate Change, *Special Report: Global Warming of 1.5ºC* (2018) (**IPCC Special Report on Global Warming of 1.5ºC**), Chapter 5, p. 454, Cross-Chapter Box 12, https://www.ipcc.ch/site/assets/uploads/sites/2/2022/06/SR15_Full_Report_LR.pdf.
[45] IPCC 2023 Synthesis Report Summary for Policy Makers, p. 15.
[46] *See* IPCC 2023 Synthesis Report Summary for Policy Makers, p. 15 (stating that "[risks and projected adverse impacts] are higher for global warming of 1.5°C than at present, and even higher at 2°C (high confidence)").
[47] *See* IPCC 2023 Synthesis Report Summary for Policy Makers, p. 12 (stating that "Every increment of global warming will intensify multiple and concurrent hazards"); *see also* IPCC 2023 Synthesis Report Summary for Policy Makers, p. 14, Figure SPM.2 (demonstrating that as warming increases temperatures, precipitation, and drought will intensify); *see also* IPCC 2023 Synthesis Report Summary for Policy Makers, p. 15 ("human influence has warmed the atmosphere, ocean and land").
[48] European Court of Human Rights, *Case of Verein Klimaseniorinnen Schweiz and Others v. Switzerland*, Application No. 53600/20, Judgment, 9 April 2024 (***Klimaseniorinnen v. Switzerland***), para. 417, https://hudoc.echr.coe.int/eng?i=001-233206.

events, and increased drought conditions, among other changes.[49] These events are harming people across Australia, including the Authors.

56. The choices and actions implemented in this and prior decades have impacts now and for thousands of years, and some impacts of climate change are irreversible. For example, the IPCC has stated that "sea level rise is unavoidable for centuries to millennia due to continuing deep ocean warming and ice sheet melt, and sea levels will remain elevated for thousands of years (high confidence)."[50] Nonetheless, the IPCC maintains that although "some future changes are unavoidable and/or irreversible [they] can be limited by deep, rapid, and sustained global greenhouse gas emissions reduction."[51]

57. Each incremental increase in temperature—each fraction or tenth of a degree Celsius—also increases the risk of triggering additional irreversible climate tipping points, and this risk rises exponentially if temperatures exceed 1.5°C of warming. Tipping points are "critical thresholds in a system that, when exceeded, can lead to a significant change in the state of the system, often with an understanding that the change is irreversible."[52] As the Inter-American Court of Human Rights (**IACtHR**) explained in its Advisory Opinion on the Climate Emergency and Human Rights, "[t]he feedback between these crucial points could increase the risk of triggering a global cascade in which other tipping points are exceeded, including the uncontrolled release of carbon from permafrost and the devastation of coral reefs."[53]

58. In 2025, over 160 experts from 23 countries and 87 institutions consolidated existing science on the tipping points at risk from climate change.[54] Their findings are alarming: "[s]everal systems (land permafrost, Greenland ice sheet, West Antarctic ice sheet and sub-polar gyre) likely have a tipping point around 1.5°C global warming," and several more "systems (mountain glaciers, boreal forests and [the Atlantic Meridional Overturning Circulation]) likely have a tipping point around 2.0°C global warming."[55] The experts warned that "[c]rossing these tipping points becomes more likely for each 0.1°C of global warming."[56]

59. Taken together, this underscores the urgency of the climate emergency: without decisive and urgent action now, catastrophic outcomes become increasingly likely.

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[49] *See*, *e.g.,* State of the Climate 2024 Report, p. 2.
[50] IPCC 2023 Synthesis Report Summary for Policy Makers, p. 18.
[51] IPCC 2023 Synthesis Report Summary for Policy Makers, p. 18.
[52] IPCC Special Report on Global Warming of 1.5ºC, Chapter 3, Section 3.5.5, p. 262.
[53] Inter-American Court of Human Rights, *Climate Emergency and Human Rights*, Advisory Opinion AO-32/25, 29 May 2025 (**IACtHR Advisory Opinion**), para. 197, https://www.corteidh.or.cr/docs/opiniones/seriea_32_en.pdf.
[54] Global Tipping Points, "Global Tipping Points | understanding risks & their potential impact" (2025), https://global-tipping-points.org/.
[55] Timothy Lenton et al., *Global Tipping Point Report 2025* (2025), p. 23, https://global-tipping-points.org/download/1418/.
[56] Timothy Lenton et al., *Global Tipping Point Report 2025* (2025), p. 23, https://global-tipping-points.org/download/1418/.

4.2 Australia has known about the deadly consequences of climate change for decades

60. Australia has long been aware of the threat posed by anthropogenic climate change. As early as 1988, the United Nations General Assembly adopted by consensus—including with Australia's support—a resolution on the "[p]rotection of global climate for present and future generations of mankind."[57] The resolution recognised that the "continued growth in atmospheric concentrations of 'greenhouse' gases could produce global warming," with consequences that "could be disastrous for mankind if timely steps are not taken at all levels."[58] The resolution further endorsed the establishment of the IPCC to provide authoritative scientific assessments of the causes and impacts of climate change.[59]

61. In 1989, Australia acknowledged the scale of the risks posed by global climate change. Then Prime Minister Bob Hawke stated that "by the year 2030 there could be an increase in temperature of between 1.5 and 4.5 degrees," which "could make some cities unbearably hot." Prime Minister Hawke warned that failure to mitigate global emissions would "guarantee[] for future generations, universal disaster."[60]

62. Since that time, Australia's knowledge of the causes and risks of climate change has deepened as the IPCC and leading scientists have left no doubt as to the severe and escalating threats posed by climate change. In over three decades of international agreements, including the Kyoto Protocol, the Paris Agreement, and their implementing decisions, Australia has repeatedly affirmed the urgency of the climate crisis.

4.3 To limit warming to 1.5°C, there is little remaining capacity in the atmosphere for additional greenhouse gas emissions

63. The rapid warming that has occurred to date also coincides with the narrowing of the remaining global carbon budget available to limit warming to 1.5°C. The carbon budget is "the total net amount of carbon dioxide (CO_2) that can still be emitted by human activities while limiting global warming to a specified level" like 1.5°C or 2°C relative to pre-industrial temperatures.[61]

64. The Authors attach a report which assesses emissions resulting from Australia's export of fossil fuels against the remaining carbon budget at Annex 11, prepared by Professor Kevin Anderson, Professor of Energy and Climate Change at the Universities of

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[57] *See* United Nations General Assembly Resolution 43/53, *Protection of global climate for present and future generations of mankind*, UN Doc. A/RES/43/53, Adopted 6 December 1988 (**UN General Assembly Resolution on Protection of Global Climate**), https://docs.un.org/en/a/res/43/53.
[58] UN General Assembly Resolution on Protection of Global Climate, preamble.
[59] UN General Assembly Resolution on Protection of Global Climate, para. 5.
[60] Australian Government Department of the Prime Minister and Cabinet, *Transcript of News Conference, Parliament House, 6 April 1989* (1989), p. 1, https://pmtranscripts.pmc.gov.au/sites/default/files/original/00007557.pdf.
[61] Intergovernmental Panel on Climate Change, *Climate Change 2021: The Physical Science Basis. Contribution of Working Group I to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change* (2021) (**IPCC 2021**), Chapter 5, p. 777, https://www.ipcc.ch/report/ar6/wg1/downloads/report/IPCC_AR6_WGI_Chapter05.pdf.

Manchester (UK), Uppsala (Sweden), and Bergen (Norway) and former director of the Tyndall Centre for Climate Change Research, and Dr Dan Calverley, an independent researcher on climate change and mitigation and former researcher at the Tyndall Centre (**Anderson and Calverley Report**).[62] Professor Anderson and Dr Calverley explain that "[c]arbon budgets are the essential tool through which the best available physical science of the climate system can be translated into actionable policies to limit further global warming."[63] Hence, remaining carbon budgets establish the amount of fossil fuel combustion and other greenhouse gas-emitting activities consistent with a particular likelihood of a particular temperature rise, such as a 50% chance of staying below 1.5°C of warming.

65. Anderson and Calverley explain that the IPCC's last estimate of carbon budgets was in its 2021 AR6 Working Group 1 report. When updated to the start of 2026, the remaining IPCC estimated budget is approximately 260 billion tonnes of CO_2 for a 50% chance of limiting warming to 1.5°C, and 660 billion tonnes (or 660 gigatonnes (**Gt**)) of CO_2 for an 83% chance of staying below 2°C.[64] By comparison, annual global emissions from fossil fuels, industrial processes, and deforestation are currently around 42 billion tonnes of CO_2, highlighting how rapidly the remaining budgets are being depleted.[65]

66. However, Anderson and Calverley clarify that in the time since the publication of AR6, better scientific understanding has led climate experts—many of whom are IPCC authors—to put forth substantially smaller carbon budgets.[66] Table 1 presents the remaining carbon budget as noted in the Anderson and Calverley Report based on the best available science.

Paris Agreement commitment	Remaining carbon budget	Months of current global emissions left
For a 50% chance of not exceeding 1.5°C	88 $GtCO_2$	25 *(~ 2 years)*
For an 83% chance of not exceeding 2°C	538 $GtCO_2$	153 *(under 13 years)*

Table 1 – Updated remaining carbon budgets from the start of 2026.[67]

[62] Professor Kevin Anderson and Dr Dan Calverley, *Australia's Export Emissions and the Paris Agreement Temperature Commitments* (2026) (**Anderson and Calverley Report**), Annex 11.
[63] Anderson and Calverley Report, Annex 11, p. 9.
[64] Anderson and Calverley Report, Annex 11, p. 9.
[65] Anderson and Calverley Report, Annex 11, p. 9 (emphasis added).
[66] Anderson and Calverley Report, Annex 11, p. 10.
[67] Anderson and Calverley Report, Annex 11, p. 11, Table 1 (citing P. M. Forster et al., "Indicators of Global Climate Change 2025: Annual Update of Key Indicators of the State of the Climate System and Human Influence," 18 *Earth System Science Data Discussions* 6 (11 June 2026), https://doi.org/10.5194/essd-18-3889-2026).

67. These numbers highlight the precariousness of the situation. Only *two years* remain based on current global emissions before these carbon budgets would be surpassed for a 50% chance of not exceeding 1.5°C of warming. Anderson and Calverley opine:

> Taken together with the recent temperature record – the last three years averaging above 1.5°C – **the remaining carbon budget for 1.5°C is so small as to be, for all practical purposes, exhausted**. Nevertheless, the dire significance of passing 1.5°C as a long-term average level of warming cannot be overstated, and mitigation efforts should be deployed with all the more urgency for the nearness of the threshold….[68]

4.4 If the world overshoots 1.5°C, it cannot rely on unproven carbon removal technologies to return to a safe climate

68. No State can justify its failure to act on climate change on the assumption that the world can "overshoot and return"—that is, exceed a particular temperature threshold (such as 1.5°C) and then use carbon removal technologies to return to that threshold.[69] Technologies to remove or sequester carbon, notably carbon, capture, and storage (**CCS**) and carbon dioxide removal (**CDR**), remain unproven; they have not been effective at removing CO_2 from the atmosphere and permanently sequestering it in sufficient quantities to bring about a meaningful reduction in global average temperature.

69. Anderson and Calverley discuss the potentially insurmountable challenges and huge risks entailed in attempting such a timely reduction and the extent to which these technologies remain unproven and untested.[70] For example, even a 0.1°C rise above 1.5°C would likely require sequestration of around 220 billion tonnes of CO_2, the equivalent of five years of current global CO_2 emissions; whereas current "engineered removals" have only sequestered less than 0.6 billion tonnes of CO_2 in secure geological storage.[71] Anderson and Calverley conclude that "at present there is no robust evidence that CO_2 removals could be achieved at anything approaching the requisite scale to make 'overshoot and return' timely and viable."[72]

70. Even under highly optimistic assumptions, scaling either CDR or CCS to billion tonne levels would take at least a decade, and likely considerably longer.[73] This fundamental mismatch in timescales means that neither CDR nor CCS can materially contribute to staying within the 1.5°C carbon budget.[74] Anderson and Calverley further explain that, "[b]y the time meaningful deployment could occur, the budget for a 50% chance of not

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[68] Anderson and Calverley Report, Annex 11, p. 12.
[69] *See* Anderson and Calverley Report, Annex 11, p. 14, Box 2.
[70] *See* Anderson and Calverley Report, Annex 11, p. 14, Box 2.
[71] Anderson and Calverley Report, Annex 11, p. 14, Box 2.
[72] Anderson and Calverley Report, Annex 11, p. 14, Box 2.
[73] Anderson and Calverley Report, Annex 11, p. 15. The Australian government has acknowledged that "successful deployment of CCS would be a multi-decade effort." Australian Government Department of Industry, Science and Resources, *Future Gas Strategy* (2024) (**Future Gas Strategy Report 2024**), p. 22, https://www.industry.gov.au/sites/default/files/2024-05/future-gas-strategy.pdf.
[74] Anderson and Calverley Report, Annex 11, p. 15.

exceeding 1.5°C will already have been exhausted," and that "[a]s time progresses and emissions continue to accumulate, this conclusion increasingly applies to the Paris Agreement's 2°C commitment as well (here taken as an 83% chance of not exceeding 2°C)."[75]

71. Delaying emissions reductions based on unproven and speculative mitigation technologies also has dangerous consequences for the climate system, since each fraction of a degree of warming heightens the risk of irreversible tipping points and feedback loops.[76]

4.5 Climate change is already exposing the Authors to life-threatening dangers, disrupting their ability to live a life of dignity, harming their health, and jeopardising their cultural traditions

72. Climate change is already harming the Authors, threatening and altering the regions where they live in many ways, such as through bushfires, extreme heat, severe storms and flooding, algal blooms, and more. These changes have threatened the Authors' lives, their homes, their livelihoods, their health and safety, and for Aboriginal Authors, their Country and culture. The excerpts below highlight some examples of how the Authors are experiencing, and are threatened by, climate change. Annexes 1-10 contain the full testimonies of climate impacts faced by each Author.

73. The Authors also attach several expert reports attributing the harms that they have experienced to the impacts of climate change on their regions. These expert reports include the reports by: Professor Dr Wim Thiery, Dr Marie Cavitte, and Amaury Laridon[77] on overall climate attribution, including heatwaves, bushfires, ocean warming, severe storms, drought, algal blooms, and sea-level rise at Annex 12 (**Thiery Report**); Dr Andrew Watkins[78] on flooding at Annex 13 (**Watkins Report**); Dr Perran Cook, Associate Professor Ruth Reef, Associate Professor Ailie Gallant, Dr Michael Barnes, and Dr Peter van Rensch[79] on toxic algal blooms at Annex 14 (**Cook Report**);

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[75] Anderson and Calverley Report, Annex 11, p. 15.
[76] *See* Section 4.1.
[77] Professor Dr Wim Thiery is a Full Professor at Vrije Universiteit Brussel and holds a PhD in Climate Science from KU Leuven, as well as Master's degrees in Geography and Philosophy from the same institution; he is a contributing author to the IPCC Special Report on Climate Change and Land (2019) and the Sixth Assessment Report (2021). Dr Marie Cavitte is a Valorisation Manager at the Vrije Universiteit Brussel and obtained a PhD in Glaciology from the University of Texas at Austin, and a Master of Science in Earth Science from the University of Cambridge. Amaury Laridon is a PhD student at the Vrije Universiteit Brussel and completed a Master's degree in Physical Sciences with a specialisation in climatology from the University of Louvain.
[78] Dr Andrew Watkins is an Adjunct Professor in the School of Earth, Atmosphere and Environment at Monash University, Australia. He obtained his PhD from the University of Melbourne in Climate Science. Dr Watkins was a Lead Author of Australia's first National Climate Risk Assessment, delivered in 2025.
[79] Dr Perran Cook is a Professor at the School of Chemistry at Monash University, Australia, where his research focuses on nutrient cycling in coastal environments. He holds a PhD in Biogeochemistry from the University of Tasmania. Associate Professor Ruth Reef leads the Coastal Research Group in the School of Earth, Atmosphere and Environment at Monash University, Australia. Associate Professor Ailie Gallant is at the School of Earth, Atmosphere and Environment at Monash University. Dr Michael Barnes is a research fellow with the Australian Research Council Centre of Excellence for 21st Century Weather at Monash University. Dr Peter van Rensch is a research fellow in the School of Earth, Atmosphere and Environment at Monash University.

and Dr George Crisp[80] on climate-related health impacts for Melissa Fisher and Cat [redacted] at Annex 15 (**Crisp Report for Melissa Fisher**) and Annex 16 **(Crisp Report for Cat [redacted]).**

4.5.1 Extreme heat

74. Extreme heat events in Australia have harmed several of the Authors and they will continue to be exposed to such harms as heatwaves worsen over time.

75. Peer-reviewed climate science has repeatedly established that climate change has had a substantial influence on recurring extreme heat events throughout Australia over the past decade.[81] In general, Thiery et al. observe that in 2025, on average, 18% of Australia's surface area is experiencing a heatwave annually, up from around 2% in the early historical period.[82] The Australian government's own State of the Climate Report notes that current levels of warming have led to an increase in the frequency of extreme heat events over land and in the oceans.[83] The report emphasised: "Warming is observed across Australia in all months with both day- and night-time temperatures increasing. This shift is accompanied by an increased number of extreme heat events across all months, including a greater frequency of very hot days in summer."[84]

76. For Brendon, who lives in Brisbane, Queensland, and for Anne and Rikki, whose Countries are in the Kimberley region of Western Australia and the Northern Territory respectively, multiple studies have observed that there have been significant increases in the intensity and frequency of hot extremes and a significant decrease in cold extremes.[85] In South Australia, where Cat, Pam, Latisha, and Melissa live, the same trends have been observed.[86]

77. Extreme heatwaves will only become more intense and frequent as global average temperatures continue to increase. If temperature increase is limited to 1.5°C, approximately 21% of Australia's surface area will be affected annually by heatwaves by 2050, compared to 2% in pre-industrial periods.[87] If temperatures increase by 2.0°C, this proportion increases to 28%, and with warming of 2.8°C (which corresponds to a scenario in which countries continue with their current climate policies) on average 30% of Australia is projected to be annually affected by an extreme heatwave by mid-century.[88] In the Northern Territory, where Rikki's Country is, by the middle of the

[80] Dr George Crisp is a General Practitioner at Shenton Park General Practice, in Shenton Park, Western Australia. He received his medical training at Westminster Hospital Medical School, in London, United Kingdom, where he earned his MBBS qualification. He is a Member of the Royal College of General Practitioners.
[81] *See* Professor Dr Wim Thiery et al., *Climate Change Australia Extreme Event Attribution, Future Projections, and Lifetime Exposure Expert Report* (2026) (**Thiery Report**), Annex 12.
[82] Thiery Report, Annex 12, p. 55.
[83] State of the Climate 2024 Report, p. 2.
[84] State of the Climate 2024 Report, p. 5.
[85] *See* Thiery Report, Annex 12, p. 19, Table 11.10.
[86] *See* Thiery Report, Annex 12, p. 19, Table 11.10.
[87] Thiery Report, Annex 12, pp. 55–56.
[88] Thiery Report, Annex 12, pp. 55–56.

century, the number of days a year over 35°C will at least double in many places and the number of days over 40°C will also increase considerably.[89]

78. People born near or after 1990 will face unprecedented exposure to heatwaves over their lifetime. For example, Authors Sama, Latisha, and Pam, who were born around the year 2000, can expect to experience 2.43 times more heatwaves over their lifetime under a 1.5°C scenario compared to pre-industrial times, and 3.18 times more heatwaves under a 2.0°C scenario.[90]

79. Exposure to extreme heat is associated with increased mortality and illness. Extreme heat events kill more Australians than all other natural disaster events combined and are associated with between 4.5% and 9.1% of all deaths in the hottest regions of Australia.[91] Heat extremes are also associated with increases in morbidity and illness, including cardiac and respiratory diseases,[92] mental health issues,[93] and adverse pregnancy and birth outcomes.[94] Extreme heat also results in increases in emergency room visits and hospital admittance.[95]

80. The risks of extreme heat are particularly severe for those with disabilities and pre-existing health conditions, such as Melissa and Cat.[96] A recent peer-reviewed study assessing the impact of extreme heat on health in Australia found strong evidence of increasing risks of heat-associated deaths and hospitalisations among individuals with

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[89] National Environmental Science Program Earth Systems and Climate Change Hub, *Climate Change in the Northern Territory: State of the Science and Climate Change Impacts* (2020), p.14, https://environment.nt.gov.au/media/docs/climate-change-response/state-of-the-science-and-climate-change-impacts-final-report.pdf.

[90] Thiery Report, p. 5, Table 2.

[91] Antonio Gasparrini et al., "Mortality Risk Attributable to High and Low Ambient Temperature: A Multi Country Observational Study," 386 *The Lancet* 9991 (July 2015), p. 369, https://doi.org/10.1016/S0140-6736(14)62114-0; Thomas Longden, "The Impact of Temperature on Mortality Across Different Climate Zones," 157 *Climatic Change* 2 (9 September 2019), pp. 221–242, https://doi.org/10.1007/s10584-019-02519-1; Thomas Longden et al., "Energy Insecurity During Temperature Extremes in Remote Australia," 7 *Nature Energy* (16 December 2021), p. 43, https://doi.org/10.1038/s41560-021-00942-2.

[92] *See* Jian Cheng et al., "Cardiorespiratory Effects of Heatwaves: A Systematic Review and Meta-analysis of Global Epidemiological Evidence," 177 *Environmental Research* 108610 (October 2019), p. 6, Figure 4, https://doi.org/10.1016/j.envres.2019.108610; Kristie Ebi et al., "Hot Weather and Heat Extremes: Health Risks," 398 *Lancet* 10301 (21 August 2021) (**Kristie Ebi et al. 2021**), pp. 698–699, https://doi.org/10.1016/s0140-6736(21)01208-3.

[93] Ross Thompson et al., "Associations Between High Ambient Temperatures and Heat Waves with Mental Health Outcomes: A Systematic Review," 161 *Public Health* (August 2018), pp. 171–191, https://doi.org/10.1016/j.puhe.2018.06.008; Kristie Ebi et al. 2021, pp. 698–699.

[94] Yunquan Zhang et al., "Temperature Exposure During Pregnancy and Birth Outcomes: An Updated Systematic Review of Epidemiological Evidence," 225 *Environmental Pollution* (June 2017), pp. 700–712, https://doi.org/10.1016/j.envpol.2017.02.066; Kristie Ebi et al. 2021, pp. 698–69.

[95] Alezander Liss and Elena Naumova, "Heatwaves and Hospitalizations due to Hyperthermia in Defined Climate Regions in the Conterminous USA," 191 *Environmental Monitoring and Assessment* (Suppl 2) (28 June 2019), p. 394, https://doi.org/10.1007/s10661-019-7412-5; Liu et al., "Degrees and Dollars: Health Costs Associated with Suboptimal Ambient Temperature Exposure," 678 *Science of The Total Environment* (August 2019), pp. 702–711, https://doi.org/10.1016/j.scitotenv.2019.04.398; Kristie Ebi et al. 2021, pp. 698–99.

[96] Kristie Ebi et al. 2021, p. 698.

cardiovascular diseases, diabetes, respiratory disease, and mental/behavioural disorders.[97]

81. In his expert opinions, Dr Crisp notes that exposure to extreme heat has been observed to exacerbate the health conditions with which both Melissa and Cat live.[98] Crisp predicts that more frequent and intense exposure to higher temperatures would result in more frequent and worsening symptoms for both Melissa and Cat's health conditions.[99] All of these impacts are expected to rise into the future as climate change drives increases in both the frequency and intensity of extreme heat events.[100]

82. In Adelaide, South Australia, Melissa has already been hospitalised on several occasions over the past three years after a series of extremely hot days aggravated her auto-inflammatory skin condition, stage 3 Hidradenitis Suppurativa. For example, in late January 2026, an unprecedented heatwave brought "furnace-like conditions" to most of southeastern Australia.[101]

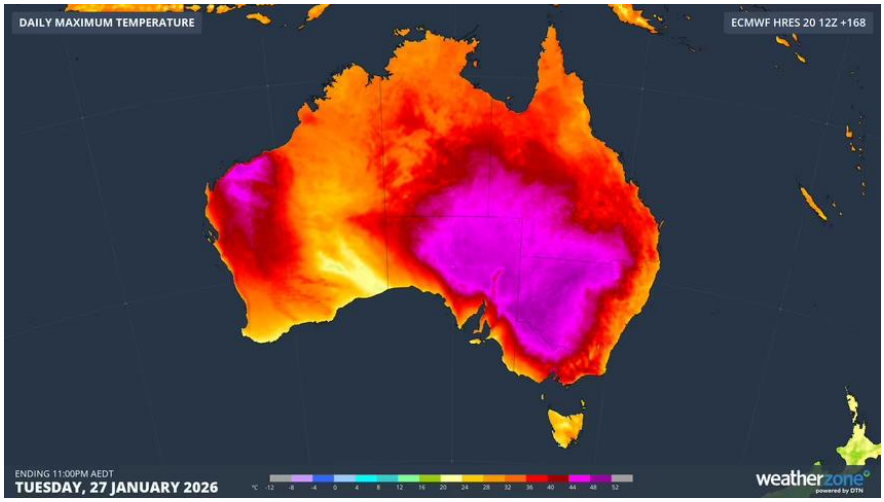

Figure 3 – Predicted temperature maximums for Tuesday, 27 January 2026, according to European Centre for Medium-Range Weather Forecasts.[102]

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[97] Patrick Amoatey et al., "Impact of Extreme Heat on Health in Australia: A Scoping Review," 25 *BMC Public Health* (7 February 2025), p. 1, https://doi.org/10.1186/s12889-025-21677-9.
[98] Dr George Crisp, *Expert Medical Opinion to Address Questions Relating to the Health Impacts from Extreme Heat for Melissa Fisher* (2026) (**Crisp Report for Melissa Fisher**), Annex 15, para. 10; Dr George Crisp, *Expert Medical Opinion to Address Questions Relating to the Health Impacts from Extreme Heat for Catherine* [redacted] (2026) (**Crisp Report for Cat** [redacted]), Annex 16, para. 17.
[99] Crisp Report for Melissa Fisher, Annex 15, paras. 10, 22; Crisp Report for Cat [redacted] Annex 16, paras. 14–17.
[100] Kristie Ebi et al. 2021, p. 698; Intergovernmental Panel on Climate Change, *Climate Change 2013: The Physical Science Basis. Contribution of Working Group I to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change* (2013), Chapter 12, Page 1031, https://www.ipcc.ch/site/assets/uploads/2018/02/WG1AR5_Chapter12_FINAL.pdf.
[101] Anthony Sharwood, "Extreme heat returning to southeastern Australia," *Weatherzone*, 20 January 2026, https://www.weatherzone.com.au/news/extreme-heat-returning-to-southeastern-australia/1891151; *see also* Tyne Logan, "Australia's heatwave smashes temperature records with some places nearing 50C," *The Australian Broadcasting Corporation News*, 27 January 2026, https://www.abc net.au/news/2026-01-28/australia-heatwave-smashes-temperature-records/106275472.
[102] Anthony Sharwood, "Extreme heat returning to southeastern Australia," *Weatherzone*, 20 January 2026, https://www.weatherzone.com.au/news/extreme-heat-returning-to-southeastern-australia/1891151.

83. Daily temperatures of up to 47°C caused a severe flare of Melissa's skin condition which left her unable to move and experiencing extreme fatigue, pain, dizziness, and shortness of breath. She shares:

> *I remember feeling myself getting so hot that I started to get dizzy and I felt unwell. I could feel the heat coming through the ceiling and I was so short of breath that it felt like I couldn't breathe. It was like my body was fighting for its next breath. I felt so much fear and panic because I was alone in the house that night. My brother normally stays two days a week to help me but he wasn't there that night. I remember thinking that I was going to die and my brother was going to find me dead.*[103]

84. During that same heatwave, the rolling heat exacerbated Cat's health conditions so intensely that she was in "crisis mode".[104] Cat suffers from Ehlers-Danlos Syndrome, a connective tissue disorder, and Postural Orthostatic Tachycardia Syndrome, a related chronic autonomic nervous system disorder. These conditions make extreme heat very dangerous for her, causing her symptoms to multiply and intensify, including an elevated heart rate of around 125 beats per minute, dizziness, lethargy, and confusion. She states that, "*[a]fter a period of extreme heat, it takes a week for my brain to feel less swollen ... There were two heatwaves here in January of this year which were so intense that I was often just trying to survive*."[105] For Cat, extreme heat puts great strain on her health and well-being, and prevents her from functioning or doing basic everyday tasks. She explains:

> *Even on a mild day, I will often get into max heart rate range just going outside. This gets worse when it is hot. When I am in my maximum [beats per minute] range I feel very unwell. Typically, when this happens my breathing becomes laboured, I get dizzy, I have trouble standing up from sitting without falling, and push myself into extremes of fatigue more rapidly (that I still may not feel the full impact of for days) yet may not realise I have hit my peak range until I feel chest pain or severe nausea – both of which can be even more severe after a minute or two standing still to rest (because my muscles are no longer moving blood around). Beyond those immediate impacts, my doctors have also told me that these episodes put great strain on my heart which puts me in danger of more severe cardiovascular problems in the medium and long term.*[106]

85. Increasingly hot days in Brisbane have meant that Brendon, who lives with legal blindness and has Glaucoma, faces mounting challenges to his quality of life. Hot days usually mean glare. As Brendon puts it:

> *Glaucoma means that I am sensitive to glare, and it makes it more difficult for me to navigate outside. ... I must rely on someone else to assist me more in*

[103] Statement of Melissa Fisher, Annex 8, para. 19.
[104] Statement of Cat [redacted], Annex 4, para. 15.
[105] Statement of Cat [redacted], Annex 4, para. 15.
[106] Statement of Cat [redacted], Annex 4, para. 13.

> *summer and when the glare is more. I am worried about how I will manage in the future with the increasingly hot days in Brisbane. It means I will have to increasingly rely on other people like support workers and spend less time walking and more time in cars. I will have to find other ways to connect with people because it will become harder and I will have to deal with the isolation.*[107]

86. For Latisha and Pam, the more frequent and intense heatwaves in South Australia like the ones in January 2026 prevent them from being outside on Country, practicing their cultural traditions, and learning from their Elders. Latisha shares that her ability to safely connect and experience Country has become "*dangerous ... due to risks of heat stress and dehydration*."[108] This means that she spends less time on Country learning stories from her Elders, which she describes as a "*big loss*".[109] Pam says that she "*can't be outside for more than 30 minutes or so without feeling sick from the heat*."[110]

87. In the Kimberley region of Western Australia, rising temperatures have created a dangerous combination of heat and humidity which makes it dangerous for Anne and other Elders in her community to go out and spend time on her Country. As an Elder, these extreme temperatures have meant that she has lost "*irreplaceable opportunities for cultural transmission*" to younger generations.[111] She states that "*[t]he stories we carry — the songlines, the First Law, the ecological knowledge — do not get shared unless they can be on Country, in the right place, doing the right practice*."[112]

88. The extreme heat has also limited Rikki's ability to spend time with her Elders out on her Country in the Barkly Tableland. This has prevented Elders from adequately passing down important cultural and spiritual knowledge to younger generations. She explains that:

> *[I]t is essential in my culture for knowledge to be passed down while on Country, because that is the place where they make sense. If our Elders cannot go out onto Country to our sacred places …, they cannot pass down their knowledge which means that me and my daughter do not receive that knowledge. This is happening more frequently over the past few years, as temperatures have risen and me, my family, and our Elders have had to spend less time on our Country and more time sheltering inside.*[113]

4.5.2 Bushfires (Wildfires)

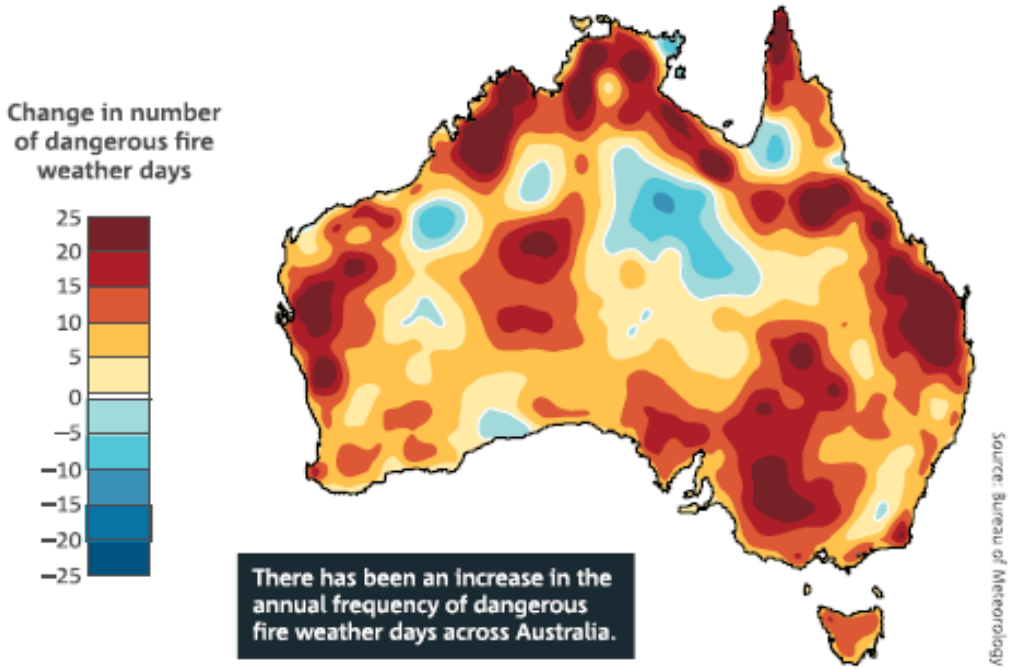
89. Several of the Authors have homes or Country in areas exposed to elevated bushfire risk. Climate change has significantly exacerbated the conditions that increase the risk of bushfires across Australia. The Australian government's State of the Climate Report

[107] Statement of Brendon Donohue, Annex 3, para. 5.
[108] Statement of Latisha Francis, Annex 6, para. 36.
[109] Statement of Latisha Francis, Annex 6, para. 36.
[110] Statement of Pam Francis, Annex 7, para. 37.
[111] Statement of Anne Poelina, Annex 1, para. 47.
[112] Statement of Anne Poelina, Annex 1, para. 47.
[113] Statement of Rikki Dank, Annex 10, para. 22.

explains that "[c]limate change is driving changes in temperature, rainfall, and relative humidity, all of which influence fuel availability, fuel dryness, fire weather, and ignition sources."[114]

90. Climate change has driven increased fire danger in various ways across the Australian continent. In southern and eastern Australia, increased prevalence of hot, dry, and windy weather is a significant contributor to heightened fire risk in forest fuel areas.[115] In northern and central regions, wetter conditions increase the abundance of grassy fuel loads, which is a key factor increasing fire risk in those regions.[116]

91. As a result of those factors, since the 1950s, extreme fire weather has increased and fire seasons have become longer and more intense across Australia.[117] That trend is shown through an increase in the frequency of dangerous fire weather days across Australia over the past 75 years as measured by the Forest Fire Danger Index.[118]



There has been an increase in the number of days with dangerous weather conditions for bushfires. The map shows the change in the number of days per year (July to June) that the FFDI exceeds its 90th percentile of conditions observed from 1950–2024, between 2 periods: July 1950 to June 1987 and July 1987 to June 2024. The FFDI is an indicator of dangerous fire weather conditions for a given location.

Figure 4 – Change in number of dangerous fire weather days from 1950-2024.[119]

[114] State of the Climate 2024 Report, p. 7.
[115] State of the Climate 2024 Report, p. 7.
[116] State of the Climate 2024 Report, p. 7.
[117] State of the Climate 2024 Report, p. 7.
[118] This index "is a measure of fire weather calculated from observations of temperature, rainfall, humidity, and wind speed." State of the Climate 2024 Report, p. 7.
[119] State of the Climate 2024 Report, p. 7.

92. Thiery et al. state that the increase in fire weather days observed over the past 75 years will continue into the future. Thiery et al. summarise the findings of the IPCC AR6 Working Group 1 report which found that "[f]ire weather indices are projected to increase in most of Australia (high confidence) ... , in particular with respect to extreme fire and induced pyroconvection."[120] Pyroconvection refers to the process by which the convection of fire causes the formation of pyro-cumulonimbus clouds which can be extremely violent and trigger extreme phenomena such as fire-whirls or the ignition of new fires from electrical discharges.[121] Thiery et al. further note that "[i]ncreasing mean temperature, cool season rainfall decline, and changes in tropical climate variability all contribute to a future increase in extreme fire risk in Australia."[122] The State of Climate report similarly predicts a "longer fire season for much of the south and east, and an increase in the number of dangerous fire weather days for many regions."[123]

93. One of the worst catastrophic fire seasons on record were the bushfires that burned throughout south-eastern Australia between 2019 to 2020, primarily in New South Wales, south-eastern Queensland, and Victoria. Those fires, known as the Black Summer Bushfires, burned more than 24 million hectares, destroying over 3,000 homes, killing 33 people directly, and contributing to an estimated 429 additional deaths from smoke inhalation.[124]

94. Scientists have found that climate change made the Black Summer Bushfires substantially more likely and that this heightened risk will worsen as climate change intensifies.[125] For example, one of the major contributing factors to the Black Summer Bushfires was a positive Indian Ocean Dipole (**pIOD**) event,[126] which results in lower rainfall and higher temperatures that exacerbate dry conditions and increase the fuel load leading into summer.[127] One recent study found that, due to anthropogenic climate change, the likelihood of pIOD-induced severe bushfires danger comparable to the Black Summer Bushfires has risen by 16%–32%.[128] Another study found that the

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[120] Thiery Report, Annex 12, p. 31 (quoting IPCC 2021, Chapter 12, p. 1809, https://www.ipcc.ch/report/ar6/wg1/downloads/report/IPCC_AR6_WGI_Chapter12.pdf).
[121] Cátia Campos et al., "Modelling Pryo-convection Phenomenon During a Mega-fire Event in Portugal," 290 *Atmospheric Research* (15 July 2023), p. 2, https://doi.org/10.1016/j.atmosres.2023.106776 (internal citations omitted).
122 Thiery Report, Annex 12, p. 31 (quoting IPCC 2021, Chapter 12, p. 1809, https://www.ipcc.ch/report/ar6/wg1/downloads/report/IPCC_AR6_WGI_Chapter12.pdf).
[123] State of the Climate 2024 Report, p. 29.
[124] Royal Commission into National Natural Disaster Arrangements, *Royal Commission into National Natural Disaster Arrangements Report* (2020), p. 5, https://oia.pmc.gov.au/sites/default/files/posts/2022/11/Royal%20Commission%20into%20National%20Natural%20Disaster%20Arrangements%20-%20Report%20%20%5Baccessible%5D.pdf; Gary Cook et al., "Australia's Black Summer of fire was not normal – and we can prove it," *Commonwealth Scientific and Industrial Research Organisation* (2021), https://www.csiro.au/en/news/All/Articles/2021/November/bushfires-linked-climate-change.
[125] *See* Joseph Canadell et al., "Multi-decadal Increase of Forest Burned Area in Australia is Linked to Climate Change," 12 *Nature Communications* (26 November 2021), p.8, https://doi.org/10.1038/s41467-021-27225-4.
[126] This encompasses a periodic shift in sea surface temperatures in opposite sides of the Indian Ocean.
[127] Wenju Cai et al., "Positive Indian Ocean Dipole Events Precondition Southeast Australia Bushfires," 36 *Geophysical Research Letters* 19 (9 October 2009), p. 1, https://doi.org/10.1029/2009GL039902.
[128] Shansan Wang et al., "Intensifying Climatic Effects of the Indian Ocean Dipole Exaggerates Australia Bushfires Risk," 130 *Journal of Geophysical Research: Atmospheres* 18 (18 September 2025), p. 1, https://doi.org/10.1029/2025JD043936.

probability of having high risk conditions similar to those leading to Black Summer Bushfires has increased by at least 30% since 1900 as a result of anthropogenic climate change.[129]

95. Several of the Authors have experienced extremely severe fire conditions, including surviving the Black Summer Bushfires. Jack Egan described his experience during the Black Summer Bushfires as including "*flames leaping taller than 30 metre high trees*" and "*[t]he hot air rising was causing a big suck from the east. It was a very chaotic wind situation – embers as big as my forearm were flying through the air.*"[130]

96. Barry Traill, a volunteer member of the Queensland Rural Fire Service, spent months battling the Black Summer Bushfires as a volunteer firefighter and barely escaped death when a burning tree fell next to him and nearly crushed him. The experience of fighting those fires over months and seeing their paths of destruction left Barry experiencing uncontrolled emotional breakdowns.[131]

97. As a firefighter, Barry was, and remains, at particular risk of injury and death because of heightened bushfire conditions caused by climate change. These risks are well-documented and include risks of acute physical injuries, particularly head injuries; smoke inhalation and associated respiratory illness; psychological and stress-related injuries; and exposure to chemical agents that materially contribute to the risks of developing cancers and other malignancies.[132]

98. In addition to being a volunteer firefighter, Barry is also one of Australia's leading fire ecologists and researchers. In his statement, he reflected on the increasing threat posed by bushfires:

> *[T]he scale, intensity, and frequency of … bushfires has changed so much in my lifetime. When I was growing up, we expected to face one major bushfire in our lifetime. In the last 25 years, there have been escalating catastrophic conditions.*
>
> *Not only are these bushfires happening now multiple times a decade, they are also bringing with them unprecedented amounts of trauma, loss, injury, and death.*[133]

99. In New South Wales alone, where Jack Egan lives, the Black Summer Bushfires destroyed around 5.5 million hectares of land and around 2,450 homes, and caused 26

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[129] *See, e.g.*, Thiery Report, Annex 1, p. 14 (citing Geert Jan van Oldenborgh et al., "Attribution of the Australian Bushfire Risk to Anthropogenic Climate Change," 21 *National Hazards and Earth Systems Science* 3 (11 March 2021), pp. 941–960, https://doi.org/10.5194/nhess-21-941-2021).
[130] Statement of Jack Egan, Annex 5, paras. 12–13.
[131] Statement of Barry Traill, Annex, 2, para. 22.
[132] Janneke Berecki-Gisolf et al., "First Responders' Occupational Injury and Disease Associated with Periods of Extreme Bushfires," 14 *Scientific Reports* (7 October 2024), pp. 1, 8, https://doi.org/10.1038/s41598-024-73886-8; *see* David Douglas, *Firefighter Chemical Review – ARP 1701* (2018), Executive Summary, p. 7, https://www.dva.gov.au/sites/default/files/2022-04/firefighter-chemical-review-minified.pdf.
[133] Statement of Barry Traill, Annex 2, paras. 27–28.

direct deaths, many in Jack's immediate region.[134] Jack desperately and unsuccessfully tried to save his own home from the blaze, during which he risked death and severe bodily harm. He described the experience in his statement:

> *During the fire I was in fight or flight mode. From the moment I felt the radiant heat when I was putting out the spot fires, I knew that I was in real peril. I thought: 'If I make a mistake here it will really hurt and then I will die'. It just felt like a fact – 'you will die if you make a poor decision'. … It felt like a loss of dignity – a loss of the ability to look after the people we care for, like our family and it wasn't in my power to do anything about it in the moment. We were so powerless.*[135]

100. Cat [redacted] regularly worries about the increased risk of bushfires at her rural property in South Australia. She previously had to both defend her home and evacuate during the Black Summer Bushfires when she was living in Victoria in 2020.

> *It was a stressful time for me. We experienced two direct threats to our home within three weeks, evacuating for the second threat. …*
>
> *[When] that first threat came, … I noticed burnt leaves falling in our garden, I climbed up on the roof of our house with a garden hose to be ready to spray water on flying embers.*[136]

101. Cat's mobility is severely limited because of her health conditions. She worries that her health conditions, which have become significantly more debilitating in the six years since the Black Summer Bushfires and which are exacerbated during hot weather, could mean that she is unable to evacuate to safety during the next bushfire emergency:

> *I spent a long time fearing the threat of bushfires [when I used to live] in Victoria, especially in the forest. But the threat of grassfires … has also increased so much, and my conditions have advanced to such an extent that now a large part of me isn't even scared anymore; rather, I am just resigned to our fate out here. My fire plan doesn't involve fleeing my home ... because I know that is probably not going to be possible for me. My plan is to go down to the field we let the horses eat bare each summer as our last resort, as far away from trees as possible and hold onto the horses and our bag of precious items and hope for survival.*[137]

102. Cat was also one of the millions of Australians who were impacted by the large smoke plumes from the Black Summer Bushfires. The Royal Commission that investigated these fires found that "… peer-reviewed research indicated that smoke, from 19 weeks of continuous fire activity, may have contributed up to 429 premature deaths, 3,320

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[134] Australian Institute for Disaster Resilience, *Black Summer Bushfires, NSW, 2019–20* (2020), https://knowledge.aidr.org.au/resources/black-summer-bushfires-nsw-2019-20.
[135] Statement of Jack Egan, Annex 5, para. 15.
[136] Statement of Cat [redacted], Annex 4, paras. 18–19.
[137] Statement of Cat [redacted], Annex 4, para. 36.

hospital admissions for cardiovascular and respiratory conditions and 1,523 presentations to emergency departments for asthma."[138] Cat experienced heavy smoke for over two months during the Black Summer Bushfires, recalling that "*Even on the milder days, the burning feeling in my throat and lungs rarely went away at rest, and the burning increased with any mild exertion, inhaler or not.*"[139]

103. Several of the Aboriginal Authors have also experienced bushfires and are worried by the continuing threat of bushfires on their Country. For example, Pam explains that "*the fires we're getting now … are burning so hot now that instead of facilitating rebirth, they just destroy our Country and threaten our way of life*."[140] Pam explains how damaging a potential bushfire could be to her culture and Country:

> *I worry about the impact of uncontrolled bushfires on our traditional places. There aren't too many places left for us that haven't been turned into suburbs or parts of the city. Point Pearce Aboriginal Mission and Raukkan Aboriginal Mission are the places where we often go on our Country and where a number of our Elders live. Some of our Elders never left those places from when they were missions. Still now, some of them never leave those places. But now I worry about the threat from fires because it is surrounded by bushland. If a fire came through there like the fires from Black Summer, where would they go?*[141]

104. Changing fire conditions have prevented, and will continue to prevent, the ability of Aboriginal Authors to safely engage in important cultural burning practices. Latisha explains the importance of fire for Aboriginal people in Australia:

> *Historically, fire has been an indispensable part of Aboriginal life and culture. Our people use cultural burning practices because fire helps rejuvenate our Country. Cultural burning is also connected to cooking bush foods and living on Country.*
>
> *However, climate change has created hotter and drier conditions that often make cultural burning too dangerous or illegal because of the risk of fires getting out of control. This prevents us from practicing cultural burning in the ways our people traditionally have.*[142]

105. Pam explains how bushfires have become so intense that they are destroying her Country and threatening her way of life. She describes the impact of increased and

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[138] Royal Commission into National Natural Disaster Arrangements, *Royal Commission into National Natural Disaster Arrangements Report* (2020), p. 5, https://oia.pmc.gov.au/sites/default/files/posts/2022/11/Royal%20Commission%20into%20National%20Natural%20Disaster%20Arrangements%20-%20Report%20%20%5Baccessible%5D.pdf, p. 313.
[139] Statement of Cat [redacted], Annex 4, para. 30.
[140] Statement of Pam Francis, Annex 7, para. 43.
[141] Statement of Pam Francis, Annex 7, para. 45.
[142] Statement of Latisha Francis, Annex 6, paras. 40–41.

more intense bushfires on the cultural burning practices of the Narungga, Ngarrindjeri, and Kaurna people:

> *For tens of thousands of years, our people have been carefully burning this country to facilitate a healthy cycle for plants and animals. We've always done that in sync with nature, but now everything has fallen out of sync because of climate change. … Fire conditions are also often so extreme here that the government has to put in place full fire bans which means we cannot do any cultural burning and fuel loads increase and increase until they are very unsafe.*[143]

106. These changes are also being experienced in the Northern Territory, with Rikki Dank saying the following in her statement:

> *… fire, which has been utilised by Gudanji and Wakaya people for millennia as a tool for hunting and management of Country, is now proving more difficult to use. We are forced to conduct traditional cultural burning practices in an increasingly unpredictable context as fires are becoming harder to control and their impacts less certain. Additionally, wildfires are becoming more common and their effects more devastating.*[144]

4.5.3 Flooding

107. Climate change has increased the risk of flooding events in many places in Australia. Recent disastrous floods include the 2022 floods in Queensland and New South Wales, the 2023 Kimberley floods in the northern part of Western Australia, and the 2026 floods in the Northern Territory. Brendon and Sama experienced firsthand the 2022 floods in Brisbane, one of the worst in the city's history, when approximately 800 millimetres of rain fell over 72 hours.[145] The record-breaking rainfall caused extensive flash flooding and many minor creeks and rivers burst their banks, including the Brisbane River.[146] In the Kimberley, extra-Tropical Cyclone Ellie moved into the region on 29 December 2022 and interacted with a strong monsoon flow, producing multiple days of heavy rainfall and flooding.[147] The rainfall caused the Mardoowarra River, which Anne's community lives by, to reach a metre higher than the previous floodwater record, forcing 600 residents to evacuate and destroying and damaging many homes.

108. Dr Andrew Watkins, lead author of the Australia's first National Climate Risk Assessment, describes in his report at Annex 13 how climate change has contributed to extreme flooding in Australia. He opines that it is "virtually impossible / exceptionally

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[143] Statement of Pam Francis, Annex 7, para. 44.
[144] Statement of Rikki Dank, Annex 10, para. 14.
[145] Colin Hutchins, "Why was Brisbane's 2022 flood different?" *Griffith University*, 23 May 2023, https://news.griffith.edu.au/2023/05/23/why-was-brisbanes-2022-flood-different/.
[146] Australian Government Bureau of Meteorology, *Special Climate Statement 76 – Extreme rainfall and flooding in south-eastern Queensland and eastern New South Wales 25 May 2022* (2022), p. 16, https://www.bom.gov.au/climate/current/statements/scs76.pdf.
[147] Australian Government Bureau of Meteorology, *Tropical Cyclone Ellie* (2023), p. 4, https://www.bom.gov.au/cyclone/history/pdf/Ellie_2022_report.pdf.

unlikely for [the Kimberley and Brisbane flood events] to have occurred as observed with no climate change influence."[148]

109. Based on a review of the best available science, Watkins describes several climate change-related factors that contribute to extreme flooding conditions. For example, Watkins shows that the increase in atmospheric moisture globally and over Australia as a direct result of anthropogenic warming means more moisture is available to fall as rain during extreme weather events.[149]

110. Higher ocean temperatures due to climate change are causing more frequent multi-year La Niña events, which are associated with wetter than average years across Australia. For example, the La Niña event in 2022 associated with the Brisbane floods was the third consecutive La Niña year, and only the third recorded triple year event, following 1998-2001 and 1973-1976.[150] The more frequent and consecutive nature of these events result in saturated soils and elevate the risk of flooding with each subsequent event.

111. Short-duration (sub-daily) extreme rainfall events are of increasing intensity due to climate change and are often associated with flash flooding.[151]

112. Although the total number of tropical cyclones in the Australian region has decreased, there has been an increase in the proportion of high intensity tropical cyclones, meaning that the tropical cyclones that do occur are generally more intense, with heavier rainfall and increased coastal, estuarine, and riverine flooding.[152]

113. Referring to the Brisbane and Kimberley regions, Watkins opines that "[a]nthropogenic climate change will continue to impact these same regions throughout the remainder of this century and beyond." He indicates that climate change means the flood events that do occur are "equally likely to increase in intensity, with greater wind speeds, storm surges, sub-daily and daily rainfall totals, and associated riverine, flash, coastal and estuarine flooding."[153]

114. The 2022 Brisbane and 2023 Kimberley floods caused great harm to some of the Authors. For instance, Brendon, who lives with disabilities including glaucoma and Peters Plus Syndrome that render him legally blind and impair his balance and agility, had a harrowing experience during the Brisbane floods. After the lobby of his building flooded, Brendon was trapped in his second-floor apartment for 10 days. During this time, he feared running out of food and ran out of the medication necessary to preserve his eyesight. He recalls: "*I spent the entire time by myself, which was very isolating and*

[148] Dr Andrew Watkins, *Expert Opinion on the 2022–2023 Brisbane and Kimberley Flood Events and their Relationship to Anthropogenic Climate Change* (2026) (**Watkins Report**), Annex 13, para. 3 (internal citation omitted).
[149] Watkins Report, Annex 13, paras. 34–40.
[150] Watkins Report, Annex 13, para. 31.
[151] Watkins Report, Annex 13, paras. 41–43.
[152] Watkins Report, Annex 13, paras. 48–52.
[153] Watkins Report, Annex 13, para. 4.

stressful. For me, at the time I did not feel safe, and did not have any independence or autonomy. Not knowing whether I could get out of the building was terrifying."[154]

115. Sama, who was 17 years old at the time of the Brisbane floods, suffered the complete inundation of the ground-floor garage of her family's apartment, which obstructed entry and exit from her home. The flood caused her great anxiety for her and her family's safety, and she worried that they would have to escape by swimming.[155]

116. The 2023 Mardoowarra River flood submerged Anne's traditional Country in the Kimberley, including her home, the community centre, sacred sites, gardens, and the graves of ancestors, beneath 1.5 metres of floodwater. Anne's entire community in Balginjirr had to relocate for almost three years and they are just starting to return now. The damage from the floods and the relocation has had a profound impact on Anne and her community, including their ability to practice the ceremonies, story-telling, hunting, and other traditions that are integral to preserving their culture and traditions through transmitting these practices to younger generations. Anne explains: "*The harm to my home, my family, and my cultural life from the 2023 flood has been profound, ongoing and — for some things — irreversible. Three years later this May 2026 we are finally beginning our flood recovery.*"[156]

4.5.4 Algal blooms

117. Since March 2025, South Australia has experienced one of the largest-scale algal bloom events ever recorded off the southeast coast of Australia. The toxic algae spread across many of Adelaide's metropolitan beaches, as well as areas in the Fleurieu Peninsula and the Spencer Gulf.[157] To date, the algal bloom has covered over 4,500 square kilometres across South Australia's coastal waters and has caused catastrophic marine mortality, impacting over 400 species of marine life, including fish, rays, sharks, sea dragons, cuttlefish, shellfish, seabirds, and dolphins.[158]

118. An Australian Senate Inquiry into the South Australian algal bloom reports significant and wide-ranging physical and mental health impacts following exposure to the bloom,[159] as well as widespread economic impacts on fisheries, aquaculture, and tourism.[160] Further, First Nations communities describe the impacts as a "cultural

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[154] Statement of Brendon Donohue, Annex 3, para. 16.
[155] *See* Statement of Sama Youhana, Annex 9, para. 13.
[156] Statement of Anne Poelina, Annex 1, para. 36.
[157] Petra Stock, "Stripped of life: the deadly South Australian algal bloom is still spreading one year on," *The Guardian*, 14 March 2026, https://www.theguardian.com/environment/ng-interactive/2026/mar/14/algal-bloom-south-australia-update-one-year-on.
[158] Reuters, "Toxic algae bloom off South Australia devastates marine life, tourism," 5 August 2025, https://www reuters.com/sustainability/climate-energy/toxic-algae-bloom-off-south-australia-devastates-marine-life-tourism-2025-07-22; Frances Baum et al., "Did Australian Policy Prepare for a Harmful Algal Bloom with Significant Human Health Impacts? Analysis and Lessons from South Australia," 41 *Health Promotion International* 1 (21 January 2026), p. 1, https://doi.org/10.1093/heapro/daaf240.
[159] *See* The Senate of Australia, Environment and Communications References Committee, *Algal Blooms in South Australia* (2025) (**Senate Report on Algal Blooms in South Australia**), pp. 139–146, https://parlinfo.aph.gov.au/parlInfo/download/committees/reportsen/RB000648/toc_pdf/AlgalbloomsinSouthAustralia.pdf.
[160] Senate Report on Algal Blooms in South Australia, p. 107.

emergency and crisis" and the Australian government has recognised that the "algal bloom may have contributed to cultural, spiritual, and economic losses to First Nations communities along impacted areas of the South Australian coastline."[161]

119. Dr Perran Cook et al. explain in their expert opinion at Annex 14 that one of the key contributing factors behind the March 2025 algal bloom was a strong marine heatwave that spiked sea surface temperatures in South Australia up to 4°C above the historical average.[162]

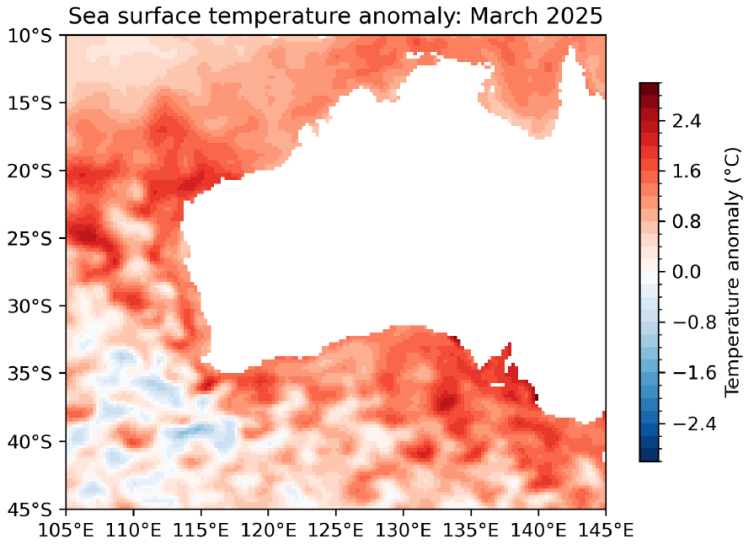

Figure 5 – Sea temperature anomaly off the coast of Australia, March 2025.[163]

120. Climate science has shown that these heatwaves have been driven by climate change. The Australian government's State of the Climate Report notes that the "[a]verage sea surface temperature in the Australian region has warmed by 1.08°C since 1900, with 9 of the 10 warmest years on record occurring since 2010."[164] The State of the Climate Report further acknowledges that "[w]arming of the ocean has contributed to longer and more frequent marine heatwaves," and that the "increasing frequency of marine heatwaves around Australia in recent years has contributed to permanent impacts on marine ecosystem health, marine habitats, and species."[165]

121. Because marine heatwaves will increase across Australia, Cook et al. note that "[c]limate change is therefore likely to increase the incidence of harmful algal blooms such as dinoflagellates in temperate coastal water such as those off southern

[161] Senate Report on Algal Blooms in South Australia, pp. 149, 150 (internal citation omitted).
[162] Professor Perran Cook et al., Expert Report on the Likely Causes of the South Australian Algal Bloom 2025 (2026) (**Cook Report**), Annex 14, p. 6 ("the South Australian algal bloom of 2025 was most strongly associated with a marine heatwave compared to other likely drivers."). A marine heatwave anomaly is a prolonged period of exceptionally warm daily sea surface temperatures. *See* United States National Oceanic and Atmospheric Administration, "Marine Heatwave Watch," *Coral Reef Watch* (2021), https://coralreefwatch.noaa.gov/product/marine_heatwave/.
[163] Cook Report, Annex 14, p. 3, Figure 2.
[164] State of the Climate 2024 Report, p. 14.
[165] State of the Climate 2024 Report, p. 14.

Australia."[166] The State of the Climate Report similarly concludes that future climate change harms include "[i]ncreased and longer-lasting marine heatwaves, which will further stress marine environments."[167] Climate modelers are now predicting that the algal bloom will continue into a "second wave", extending the cycle of harm.[168]

122. Pam and Latisha saw the algal bloom invade their Sea Country, bringing "*foam and death*" to the oceans that are a sacred part of their lives and cultural practices.[169] They describe feeling devastated as they watched their "*totems like black Swans and butterfish*"—which play a central role in their cultural practices—"*wash up dead on the beach*".[170]

123. The algal bloom prevented Pam and Latisha from spending time in or by the ocean because the "*ocean feels dead*", which is too upsetting to witness.[171] As Pam states, "*[w]e have lost a lot of connection with our culture by not being able to be in or by the ocean*" and *"[i]t felt like we were watching it die in front of our eyes which was very distressing for me and my family because of how important our sea Country is to us and our culture*."[172]

124. The devastation caused by the algal bloom has also disrupted Pam and Latisha's ability to engage in cultural practices and receive cultural knowledge from their Elders. Latisha shares that "*[t]he stories connected to the ocean are passed down while physically being next to the ocean. If we cannot go to those places, and if they are forever changed by the climate crisis, our stories and practices don't get passed down in the way they have for tens of thousands of years.*"[173]

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[166] Cook Report, Annex 14, p. 7.
[167] State of the Climate 2024 Report, p. 29.
[168] Emma Pedler et al., "'Second wave' of algal bloom forecast for SA's Spencer Gulf," *The Australian Broadcasting Corporation News*, 27 May 2026, https://www.abc net.au/news/2026-05-28/second-wave-of-algal-bloom-moving-through-spencer-gulf-sa/106725954; Petra Stock, "Second wave of South Australia's toxic algal bloom could be imminent, scientist warns," *The Guardian*, 29 May 2026, https://www.theguardian.com/environment/2026/may/30/toxic-algal-bloom-south-australia-second-wave-possible.
[169] Statement of Pam Francis, Annex 7, para. 15.
[170] Statement of Latisha Francis, Annex 6, para. 30.
[171] Statement of Latisha Francis, Annex 6, para. 27.
[172] Statement of Pam Francis, Annex 7, paras. 20, 17.
[173] Statement of Latisha Francis, Annex 6, para. 33.

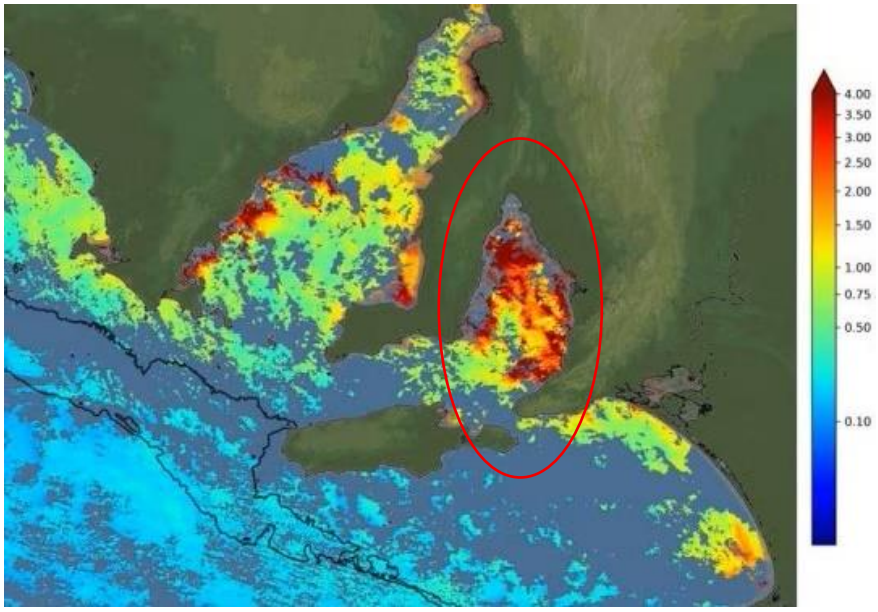

Figure 6 – Sea surface map of chlorophyll-a levels on the South Australian coast, which can indicate algae concentrations (the red oval on this Figure represents the location of Pam and Latisha's Sea Country), 16 July 2025.[174]

5 AUSTRALIA'S FOSSIL FUEL EXPORTS HAVE BEEN AND WILL CONTINUE TO BE A MATERIAL CONTRIBUTION TO GLOBAL CLIMATE CHANGE

5.1 Australia has been and is one of the leading global exporters of fossil fuels

125. Australia is one of the world's largest historical and current greenhouse gas emitters taking into account only its territorial emissions (*i.e.,* those emissions released within its borders; not including emissions released overseas resulting from its exports). Considering total territorial emissions alone, Australia was the world's 14th highest emitting country in 2024.[175] As at 2024, Australia had the 10th highest per capita emissions in the world, at around 16 tonnes of CO_2 per Australian citizen, over three times the global mean of 4.7 tonnes per person.[176] According to Anderson and Calverley, if the updated remaining carbon budget for 1.5°C were shared on an equal per capita basis globally, Australia would use up its share in just eight months on the basis of territorial emissions alone if it continued at its current rate of emissions.[177] It is clear from this snapshot alone that Australia bears considerable responsibility for causing climate change even without accounting for its export-related emissions.

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[174] Jessica Haynes, "What is happening with SA's algal bloom and why should the rest of Australia care?," *The Australian Broadcasting Corporation News*, 22 July 2025, https://www.abc net.au/news/2025-07-23/sa-toxic-algal-bloom-explained/105560008 (citing Department of Primary Industries and Regions SA) (red oval superimposed by Pam and Latisha Francis on cited map to indicate location of their Sea Country).
[175] European Commission, "GHG Emissions of All World Countries: 2025 Report," *Emissions Database for Global Atmospheric Research* (2025), https://edgar.jrc.ec.europa.eu/report_2025 (based on the dataset of total greenhouse gas emissions by country, excluding Land Use, Land-Use Change, and Forestry).
[176] *See* Anderson and Calverley Report, Annex 11, p. 24.
[177] *See* Anderson and Calverley Report, Annex 11, p. 24.

126. However, Australia's emissions footprint increases drastically when emissions from its fossil fuel exports are factored in. As Climate Analytics calculated, "**In 2022 Australia's total fossil fuel carbon dioxide footprint was around 4.5% of global fossil fuel CO_2 emissions. Only 1% was emitted within the country.** … [F]ar from being an inconsequential emitter, Australia is playing a major role in sustaining elevated global emissions. … **With approximately 80% of Australia's global fossil fuel carbon footprint occurring overseas, Australia's contribution to global warming can only be understood by considering Australia's fossil fuel exports in addition to its domestic emissions**."[178] This means that the exported CO_2 emissions from Australia's fossil fuel exports alone amounted to around 3.5% of annual global fossil fuel CO_2 emissions in 2022.

127. Australia's coal and liquefied natural gas (**LNG**) exports constitute a significant portion of total production: in 2023-24, Australia exported 85% of the black coal and 74% of the gas it produced (exported as LNG).[179] In 2024, Australia was the world's second largest coal exporter, after Indonesia,[180] a position it has held for many years.[181] Australia was also the world's third largest exporter of LNG in 2024, only slightly behind Qatar,[182] and accounted for approximately one-fifth of global LNG trade.[183] Australia's LNG exports have expanded rapidly over the past decade, with exports doubling over five years prior to 2020.[184] Since the 1992 United Nations Framework Convention on Climate Change, emissions from Australian exports of fossil fuels have more than tripled.[185]

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[178] Climate Analytics, *Australia's Global Fossil Fuel Carbon Footprint* (2024) (**Climate Analytics 2024**), Executive Summary, p. 35 (emphasis added), https://ca1-clm.edcdn.com/publications/Aust_fossilcarbon_footprint.pdf.
[179] Australian Government Department of Climate Change, Energy, the Environment and Water, *Australian Energy Statistics – Update Report 2025* (2025), p. 1, https://www.energy.gov.au/sites/default/files/2025-08/australian_energy_update_2025.pdf.
[180] International Energy Agency, *Coal 2025 Analysis and Forecast to 2030* (2025), p. 62, https://iea.blob.core.windows net/assets/113a8274-500c-4684-951f-947d25bef3c9/Coal2025.pdf.
[181] *See* International Energy Agency, "Coal Information: Overview Exports, https://www.iea.org/reports/coal-information-overview/exports; International Energy Agency, "Thermal Coal Exports from Selected Countries, 2012-2024" (2019), https://www.iea.org/data-and-statistics/charts/thermal-coal-exports-from-selected-countries-2012-2024; International Energy Agency, *Coal 2024 Analysis and Forecast to 2027* (2024), p. 58, https://iea.blob.core.windows net/assets/a1ee7b75-d555-49b6-b580-17d64ccc8365/Coal2024.pdf; International Energy Agency, *Coal 2023 Analysis and Forecast to 2026* (2023), p. 60, https://iea.blob.core.windows net/assets/a72a7ffa-c5f2-4ed8-a2bf-eb035931d95c/Coal_2023.pdf; International Energy Agency, *Coal 2022 Analysis and Forecast to 2025* (2022), p. 54, https://iea.blob.core.windows net/assets/91982b4e-26dc-41d5-88b1-4c47ea436882/Coal2022.pdf; International Energy Agency, *Coal 2021 Analysis and Forecast to 2024* (2021), p. 55, https://iea.blob.core.windows net/assets/f1d724d4-a753-4336-9f6e-64679fa23bbf/Coal2021.pdf.
[182] Energy Institute, *Statistical Review of World Energy* (2005) (74th edition), p. 43, https://www.energyinst.org/statistical-review.
[183] Nearly 90% of Australia's LNG exports are sent to Japan, China, South Korea, and Taiwan. *See* Future Gas Strategy Report 2024, p. 48.
[184] Climate Analytics 2024, pp. Executive Summary, 5.
[185] *See* Anderson and Calverley Report, Annex 11, p. 26.

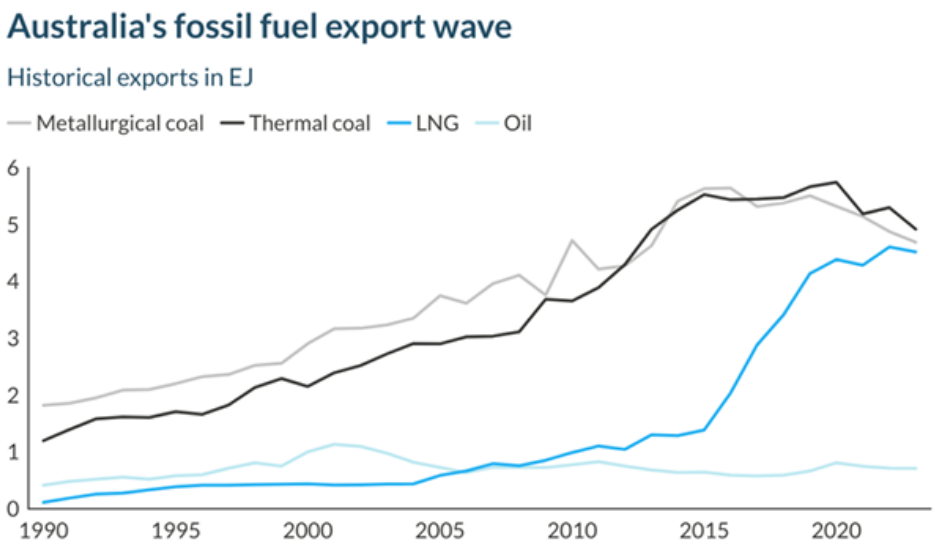

Figure 7 – Australia's historical fossil fuel exports in energy units (exajoules), 1990–2023.[186]

128. The Climate Change Authority, an independent statutory body established under federal legislation, stated in 2025 that Australia's fossil fuel exports "currently contribute more than one billion tonnes of CO_2 [annually] when used abroad."[187] Similarly, Climate Analytics, a global climate science and policy institute led by Bill Hare, an IPCC lead author, found that Australia's fossil fuel exports were responsible for 1.15 billion tonnes of CO_2 emissions in 2023, with an additional 46 million tonnes of CO_2 emitted within Australia in the extraction, processing, and distribution of those fossil fuels for export.[188] Climate Analytics concludes that, taken together, these domestic and overseas CO_2 emissions associated with Australia's fossil fuel exports were, as of 2023, almost four times higher than Australia's domestic emissions excluding land use, land-use change, and forestry.[189]

129. According to Climate Analytics, cumulative emissions from Australia's fossil fuel exports from 1961 to 2023 amount to 30 billion tonnes of CO_2, rising to 31 billion tonnes of CO_2 equivalent (**CO_2e**) when all greenhouse gas emissions are included.[190] Anderson and Calverley estimate that cumulative emissions from exports between 1990 and 2025 amount to 29.5 billion tonnes of CO_2.[191] When domestic emissions and all greenhouse gas emissions (not just CO_2) from export are included, Australia's

[186] Climate Analytics 2024, p. 2, Figure 1.
[187] The Climate Change Authority, *2035 Targets Advice* (2025), p. 104, https://www.climatechangeauthority.gov.au/sites/default/files/documents/2025-09/2035%20Targets%20Advice%20Report.pdf.
[188] Climate Analytics 2024, p. 16.
[189] *See* Climate Analytics 2024, p. 19, Table 2.
[190] This number includes exported emissions and domestic production emissions of 584 $MtCO_2$. Climate Analytics 2024, p. 16.
[191] *See* Anderson and Calverley Report, Annex 11, p. 26, Table 4.

cumulative greenhouse gas emissions footprint increases to approximately 57 billion tonnes of CO_2e between 1961 to 2023.[192]

130. In summary, Australia's fossil fuel production and exports constitute a substantial and ongoing contribution to climate change.

5.2 Australia's projected fossil fuel exports over the next decade are not aligned with limiting warming to 1.5°C

131. Having already significantly contributed to climate change through its production of fossil fuels for export, Australia has not changed course to ensure alignment with 1.5°C. Australia intends to continue its production of fossil fuels for export over the coming decade and has no plans to intentionally reduce or phase out such exports. If Australia continues with its planned fossil fuel exports over the next decade, it will be practically impossible for Australia to comply with its climate obligations and remain within the carbon budget for a 50% chance of limiting warming to 1.5°C. Referring to expert evidence, this section shows that, even using the most conservative model, Australia's continued export policy is incompatible with the global temperature goal.

5.2.1 Australia's various export projections demonstrate that it remains committed to maximising the production and export of fossil fuels

132. The various export projections from different Australian government departments all support the same conclusion: Australia will continue to pursue fossil fuel production for export to meet maximum demand for its product, without regulating or controlling its exported emissions to align with a 1.5°C pathway—or even a 2°C pathway.

133. Anderson and Calverley review several of Australia's own projections of its fossil fuel exports.[193] Estimates of future production and exports of each type of fossil fuel are published by the Australian Department of Industry, Science and Resources (**DISR**) for the years 2026 to 2031.[194] Looking beyond 2031, Anderson and Calverley identify two alternative export projections prepared by different bodies of the government, each of which presents distinctly different trajectories: (1) the Australian Department of Climate Change, Energy, Environment and Water's (**DCCEEW**) detailed statistical datasets, including the Quarterly Update of Australia's National Greenhouse Gas Inventory, which contains projections for coal and LNG output to 2040 (the **DCCEEW Scenario**); and (2) the Australian Treasury's high-level modelling and analysis

[192] Climate Analytics 2024, p. 17. Notably, most non-CO_2 emissions are from methane, a highly potent greenhouse gas. The International Energy Agency estimates that methane emissions from Australia's energy sector are likely 50% higher than reported in the official government inventory, suggesting that Australia's total greenhouse gas footprint is likely higher. *See* Climate Analytics 2024, p 16. *See also* Anderson and Calverley Report, Annex 11, pp. 21–22 (noting that methane is a far more potent greenhouse gas than CO_2, causing 83 times more warming than CO_2 on a tonne-per-tonne basis when integrated over 20 years and 26 times more when integrated over 100 years, and that methane's "high warming potential in the next twenty years is what counts, if tipping points in Earth systems feedbacks are not to be triggered above 1.5°C.").
[193] Anderson and Calvery Report, Annex 11, p. 31.
[194] *See* Anderson and Calvery Report, Annex 11, p. 27.

report, Australia's Net Zero Transformation (the **Treasury Scenario**), which describes a set of hypothetical pathways to bring Australia's territorial emissions to "net zero".[195]

134. While the two scenarios agree that the export of coal and LNG will decline over time, they differ significantly in their assessment of the rapidity with which the ensuing decline is expected to occur.

135. The DCCEEW Scenario projects: (a) a modest decline in thermal coal output; (b) output of metallurgical coal holding steady at current levels out to 2040; and (c) fluctuating but still relatively high output of LNG until the mid-2030s before it slowly declines. Although there are variations between the DISR long-term historical data for coal production and exports and the DCCEEW historical data, there is increasing convergence between the datasets during the last seven years, such that the DISR forecasts to 2031 fit well with the DCCEEW longer term output projections. The outcome in terms of the combustion emissions resulting from export of fossil fuels under the DCCEEW Scenario is plotted in Figure 8.

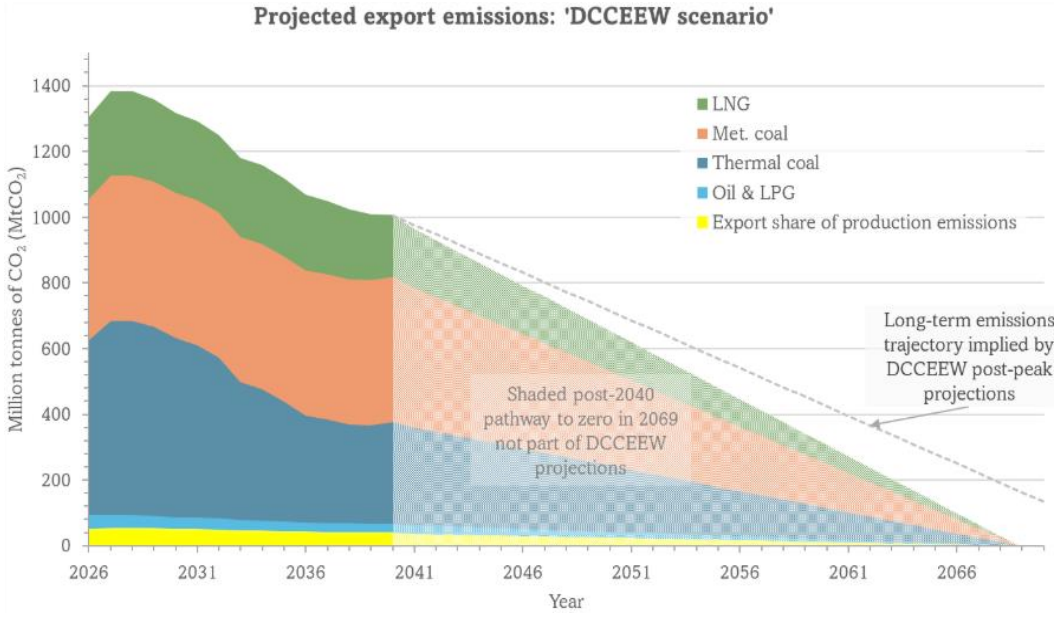

Figure 8 – Projected CO_2 emissions from Australian exports of fossil fuels by type, based on DISR forecasts and projections 2026 to 2031, then DCCEEW projections to 2040.[196]

136. Unlike the DCCEEW Scenario, the Treasury Scenario assumes that output of both fuels will decline markedly over the next decade. The Treasury Scenario contains three very broadly delineated trajectories for output of coal and LNG, based on the International Energy Agency's World Energy Outlook forecasts of global energy demand. Of these, the Treasury's central "baseline scenario" assumes that coal output

[195] *See* Anderson and Calverley, Annex 11, p. 27. Net zero essentially means reaching a state in which climate pollution going into the atmosphere is balanced by removal out of the atmosphere. *See* The Climate Council, "What Does Net Zero Emissions Mean?" (2025), https://www.climatecouncil.org.au/resources/what-does-net-zero-emissions-mean/.

[196] Anderson and Calverley, Annex 11, p. 29, Figure 4.

will reduce by 47% by 2035 (compared to 2025 levels, in each case), and by 72% by 2050. Similarly, it assumes that LNG output will reduce by 27% by 2035, and by 67% by 2050. The outcome in terms of the combustion emissions resulting from fossil fuel exports under the Treasury Scenario (Baseline) is plotted in Figure 9.

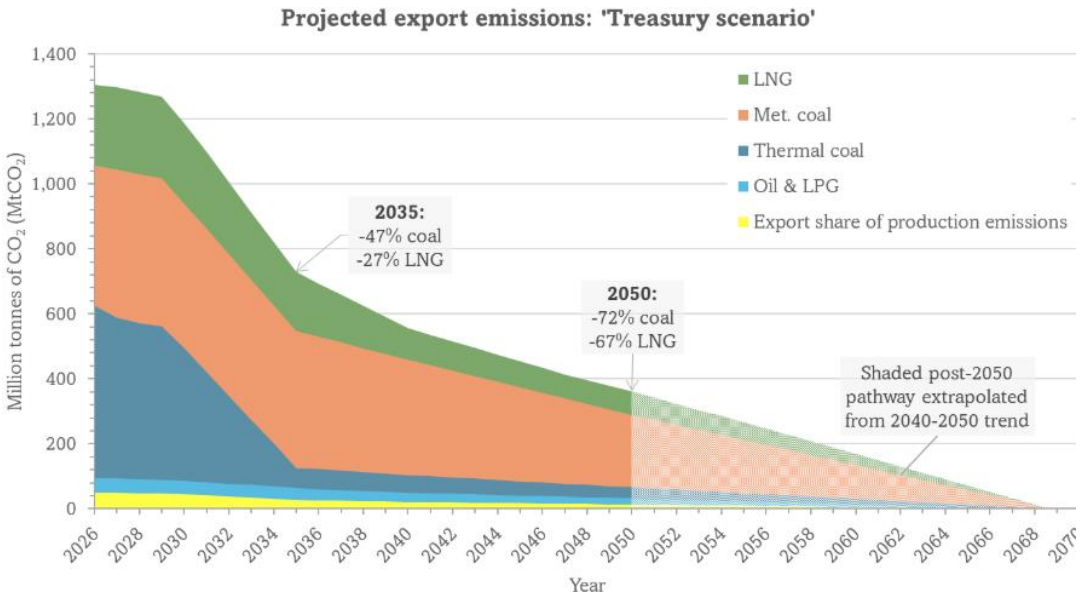

Figure 9 – Projected CO_2 emissions from Australian exports of fossil fuels by type, based on the Treasury's "Net Zero Transformation, Baseline Scenario," interpolated between 2026 to 2050. [197]

137. According to the DCCEEW, the divergence between its own projections and the Treasury's projections is due to the assumptions that the two scenarios make with respect to global climate action. The DCCEEW explains: "The Treasury scenarios show potential pathways for Australia to net zero by 2050 in the context of global action to limit warming to well below 2 degrees Celsius. Whereas these [DCCEEW] energy projections conservatively reflect current policies and measures in Australia and overseas."[198] That is, the Treasury Scenario's forecast of decreased demand for fossil fuels is premised on the assumption that actions *will be* taken globally to limit warming to well below 2°C, rather than extrapolating demand from current policy settings.

138. While the various government projections clearly come from very different assumptions of future demand for coal and gas, they are both passive with regard to addressing the urgent need to rapidly reduce all emissions in line with updated remaining carbon budgets for 1.5°C and 2°C.[199] Neither the Treasury nor DCCEEW

[197] Anderson and Calverley, Annex 11, p. 28, Figure 3.
[198] Australian Government Department of Climate Change, Energy, the Environment and Water, *Australia's Emissions Projections 2025* (2025), p. 58, https://www.dcceew.gov.au/sites/default/files/documents/australias-emissions-projections-2025.pdf.
[199] *See, e.g.,* Future Gas Strategy Report 2024, p. 58. Similarly, while the Resources Sector Plan —which is one of six sectoral emissions plans that supports Australia's Net Zero Plan—acknowledges the likely reduction in global coal and LNG demand, the plan indicates that Australia will continue its exports while demand remains, contemplating the export of gas and metallurgical coal to "2050, and beyond." *See* Australian Government Department of Industry, Science and Resources and Department of Climate Change, Energy, the Environment

assumptions about future export levels show any active hand on the part of Australia in regulating or controlling its exported emissions. The assumption in both cases is that exports will simply track global market demands, and it is only on this latter point that the projections differ.

139. In any event, Australian government policy remains firmly rooted in maximising the production and export of gas and coal. For example, the DISR's 2024 Future Gas Strategy emphasises the "need to capitalise on [Australia's] natural resource endowment"[200] and states that "Australia is, and will remain, a reliable trading partner for energy, including [LNG]. … LNG still has a clear role to play in 2050 and beyond."[201] One of the six key principles identified in the strategy is "[f]inding new sources of gas to meet demand", supported by action to encourage timely development of gas discoveries, including "new and continued investment to develop and sustain supply."[202]

5.2.2 Australia is continuing to approve fossil fuel projects for export, some of which would produce fossil fuels well beyond 2050

140. Australia's intention to continue its fossil fuel exports is most evident in its ongoing approvals of new and expanded fossil fuel exploration, production, and export projects with lifespans extending well into the next decade and beyond. The Climate Council has identified 36 new, expanded, or extended fossil fuel approvals granted since the current federal government assumed power in May 2022.[203]

141. In recent years, Australia has permitted multiple onshore and offshore gas projects and related export infrastructure projects with operating lives that span multiple decades.[204] The government states that recently approved projects, including Scarborough, the Jansz-lo Compression Project, Crux LNG, and Surat, will "sustain Australia's gas production and exports into the 2030s."[205]

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and Water, *Resources Sector Plan* (2025), p. 17, https://www.industry.gov.au/sites/default/files/2025-09/disr-resources-sector-plan.pdf.

[200] Future Gas Strategy Report 2024, p. 4.

[201] Future Gas Strategy Report 2024, p. 47.

[202] Future Gas Strategy Report 2024, p. 29.

[203] The Climate Council, *The Albanese Government's Fossil Fuel Approvals* (2026), https://www.climatecouncil.org.au/resources/albanese-governments-fossil-fuel-approvals/.

[204] *See, e.g.,* Australian Government Department of Climate Change, Energy, the Environment and Water, *Notification of approval – Towrie Gas Development (EPBC 2021/8979*) (2023), https://epbcpublicportal.environment.gov.au/all-referrals/project-referral-summary/project-decision/?id=c80de2d9-ad75-ed11-81ac-00224818ad6a (approving the Towrie Gas Development project, which includes 116 coal seam gas wells with an operational life of approximately 30 years and an approval in effect until 2077); *see also* National Offshore Petroleum Safety and Environmental Management Authority, *Acceptance of Barossa Production Operations Environment Plan (A1190197)* (2025), https://docs.nopsema.gov.au/A1224421 (approving the Barossa project in April 2025 for approximately 25 years of operation).

[205] Australian Government Department of Industry, Science and Resources, *Resources and Energy Major Projects Report* (2025) (**Resources and Energy Major Projects Report 2025**), p. 16, https://www.industry.gov.au/sites/default/files/2025-12/resources-and-energy-major-projects-2025.pdf.

142. Among the projects that Australia has approved are large, committed LNG developments which are due to release vast quantities of emissions over their lifetimes. In September 2025, Australia approved the extension of the North West Shelf gas plant until 2070.[206] As a result of Australia's approval, that project alone is expected to release nearly 4.4 billion tonnes of CO_2e, based on the proponent's own estimates, as cited in the approval decision.[207] To put that in perspective, lifetime emissions from that single project would consume approximately 5% of the remaining global carbon budget for limiting warming to 1.5°C.[208]

143. The Scarborough offshore gas project, approved in February 2025, is expected to operate for around 30 years, with total lifecycle emissions estimated to release 878 million tonnes of CO_2e. Put in context, that is double Australia's annual territorial greenhouse gas emissions in 2024.[209] Both the North West Shelf and Scarborough gas projects are in Western Australia, where 90% of the gas produced is exported as LNG (or used in converting the gas to LNG for export).[210]

144. Australia also continues to support the expansion of coal mining. Since the current federal government took office in May 2022, approximately 14 coal mining projects have also received approval to extend the mine footprint and/or operating life, and many of these approvals operate until the 2050s and 2060s.[211]

145. These approvals demonstrate a clear policy of expanding and locking in long-term fossil fuel production and export capacity.

146. The list of fossil fuel projects pending imminent approval is also significant. The federal government's most recent list of major resource projects identifies 50 oil and gas projects and 40 coal projects in the development pipeline as of 2025, including

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[206] Australian Government Department of Climate Change, Energy, the Environment and Water, *North West Shelf Project Extension, Carnarvon Basin, WA: Decision on Approval of Action* (11 September 2025), https://epbcpublicportal.environment.gov.au/all-referrals/project-referral-summary/project-decision/?id=2b892877-d51d-ed11-b83d-00224818af26.

[207] Australian Government Department of Climate Change, Energy, the Environment and Water, *North West Shelf Project Extension, Carnarvon Basin, WA: Statement of Reasons* (28 September 2025), https://epbcpublicportal.environment.gov.au/all-referrals/project-referral-summary/project-decision/?id=b2b05d5f-d79c-f011-bbd2-6045bdc274b1 (total "Scope 1, 2 and 3" CO_2e emissions, *i.e.* including downstream emissions released outside Australia).

[208] *See* Anderson and Calverley Report, Annex 11, p. 11, Table 1 (only 88 billion tonnes of CO_2 remain in the global carbon budget for a 50% chance of not exceeding 1.5°C, as at 2026).

[209] Environmental Defenders Office, "Court Upholds Scarborough Gas Project Approval" (2025), https://www.edo.org.au/2025/08/22/blow-to-health-and-environment-as-court-upholds-scarborough-gas-project-approval/.

[210] Mark Ogge, Rod Campbell and Matt Saunders, The Australia Institute, *Gas in WA: Exports* (August 2024), p. 19, https://australiainstitute.org.au/wp-content/uploads/2024/10/P1533-Gas-in-WA-Exports-Web.pdf.

[211] *See, e.g.,* Department of Climate Change, Energy, the Environment and Water, *Notification of approval – Narrabri Underground Mine Stage 3 Extension Project (EPBC 2019/8427*) (2024), https://epbcpublicportal.environment.gov.au/all-notices/project-decision/?id=e065f2de-add5-ec11-a7b5-00224818bc77 (approving the extension of the Narrabri coal mine, with effect until 2066). *See also* The Climate Council, *The Albanese Government's Fossil Fuel Approvals* (2026), https://www.climatecouncil.org.au/resources/albanese-governments-fossil-fuel-approvals/.

projects that are committed, publicly announced, or undergoing advanced feasibility assessment.[212]

147. Further, like the federal government, Australian state and territory governments remain committed to fossil fuel production and export. For example, in March 2026, the New South Wales government stated its commitment to "continue to supply high-quality thermal and metallurgical coal to our trading partners, ensuring that producers continue to honour their export commitments and retaining our role as a trusted and reliable supplier."[213] Similarly, the Queensland, Western Australian, and Northern Territory governments also remain committed to their fossil fuel production and export industries.[214]

5.2.3 Australia's projected exports of fossil fuels over the next decade are not aligned with maintaining global temperature rise to below 1.5°C, or even 2°C

148. Anderson and Calverley examine whether the two different Australian government projections of future fossil fuel exports discussed in Section 5.2.1 are consistent with the global carbon budget for limiting warming to 1.5°C. They conclude that the projected exports are not remotely close to aligning with a 1.5°C budget—and not even consistent with a 2°C budget.[215]

149. Figure 10 below, derived from Anderson and Calverley, shows total annual combustion emissions for fossil fuel exports on both the Treasury Scenario (baseline) and the

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[212] Resources and Energy Major Projects Report 2025, pp. 7–8, 16–17. Notable projects due for imminent approval include the Browse to North West Shelf project, which is projected to emit approximately 1.6 billion tonnes of CO_2 by 2068 and is expected to be approved in "late mid 2026"; and the Baralaba South Coal Project, which is projected to emit 99 million tonnes of CO_2e by 2050 and is due for an approval decision on 10 August 2026. *See* Department of Climate Change, Energy, the Environment and Water, *Minutes and Documents From Any Planning Days Regarding the Browse to North West Shelf Project* (2026), p. 19, https://www.dcceew.gov.au/sites/default/files/documents/82700.pdf; Department of Climate Change, Energy, the Environment and Water, *Baralaba South Coal Project, Bowen Basin, QLD: Notification of Extension to Time* (7 May 2026), https://epbcpublicportal.environment.gov.au/all-referrals/project-referral-summary/project-decision/?id=78b8caba-9d4a-f111-bec6-7ced8da0d272; State of Queensland, *EIS Assessment Report: Baralaba South Project* (2026), p. 42, https://www.qld.gov.au/__data/assets/pdf_file/0039/835779/baralaba-south-project-eis-assessment-report.pdf.

[213] New South Wales Government, *NSW Coal Industry 2026–50* (2026), p. 15, https://www nsw.gov.au/sites/default/files/2026-03/nsw-coal-industry-2026-50.pdf.

[214] *See, e.g.,* Queensland Government Department of Natural Resources and Mines, Manufacturing and Regional and Rural Development, "Coal: Powering Global Industry and Investment" (2025), https://www nrmmrrd.qld.gov.au/mining-exploration/investors/coal; Queensland Government Department of Natural Resources and Mines, Manufacturing and Regional and Rural Development, "Petroleum and Gas: Queensland is a Global Powerhouse" (2026), https://www nrmmrrd.qld.gov.au/mining-exploration/investors/petroleum-and-gas; Northern Territory Government, "Territory Gas" (2026), https://territorygas nt.gov.au/home; Northern Territory Government, "Expand Darwin's World Scale LNG Hub," *Territory Gas* (2025), https://territorygas.nt.gov.au/gas-plan/our-gas-led-growth-story/expand-darwins-world-scale-lng-hub; Northern Territory Government, "Beetaloo Sub-basin," *Territory Gas* (2026), https://territorygas nt.gov.au/onshore/beetaloo-sub-basin; Northern Territory Government, "Offshore," *Territory Gas* (2025), https://territorygas.nt.gov.au/offshore; Western Australian Government, "Premier Unveils Two-year LNG Work Plans to Maximise Local Jobs" (2020), https://www.wa.gov.au/government/media-statements/McGowan%20Labor%20Government/Premier-unveils-two-year-LNG-work-plans-to-maximise-local-jobs-20200311.

[215] Anderson and Calverley Report, Annex 11, pp. 32–33.

DCCEEW Scenario plotted as time series (the grey and blue dashed lines), compared with the trajectory that exports would have to take to comply with the mean global reduction pathway stipulated by the remaining carbon budget for 50% chance of not exceeding 1.5°C.[216] The shaded areas under the dashed lines represent the cumulative emissions entailed by the Australian government's export pathways.[217] Under both of Australia's export scenarios, projected cumulative export emissions far exceed Australia's indicative share of the remaining carbon budget.[218]

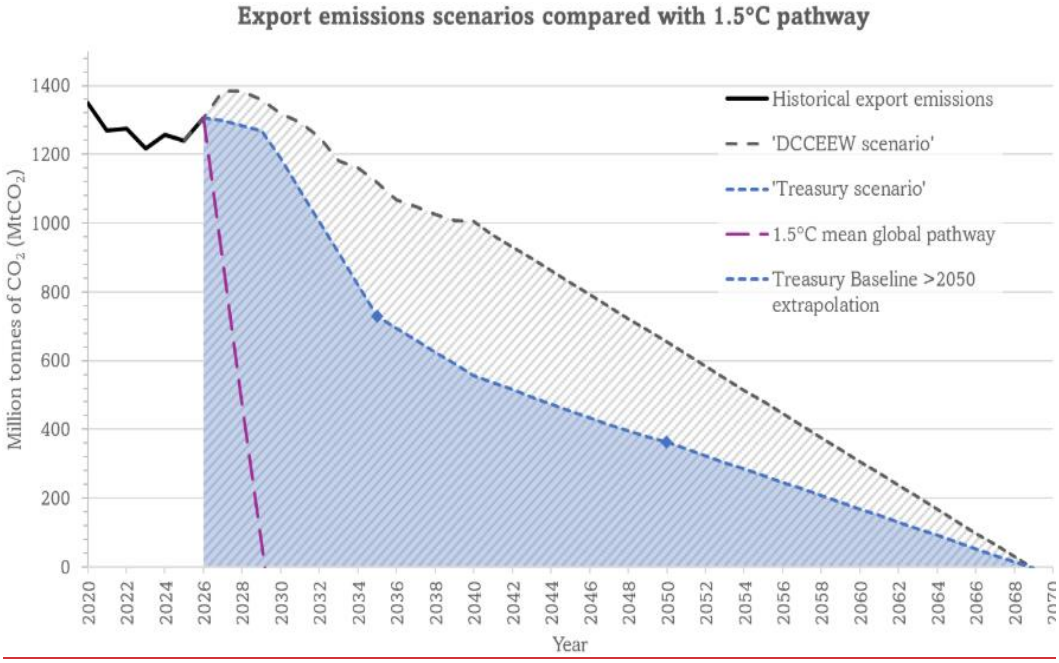

Figure 10 – CO_2 emissions from Australian exports of fossil fuels under the Treasury Scenario and DCCEEW Scenario, compared with the global average emission reduction pathway required to stay within the updated remaining carbon budget for 50% chance of 1.5°C.[219]

150. Anderson and Calverley explain that the exported emissions pathways plotted in Figure 10 assume that every single source of emissions in the world will follow the same rate of reduction from recorded 2025 levels to zero by the end of 2029, in order that the 88 billion tonnes of remaining carbon budget for 1.5°C be respected.[220] Notably, if proper account were taken of the central importance of the principle of common but differentiated responsibility or equity,[221] then the budget space available to Australian fossil fuel exports in relation to the 1.5°C budget would be considerably smaller. In

[216] Anderson and Calverley Report, Annex 11, p. 32 ("The 'mean global pathway' assumes that all sources of emissions in the world fall at the same average rate, so that the proportion of the 1.5°C remaining carbon budget allocated to Australian fossil fuel exports is the same as the proportion of current global emissions occupied by Australian fossil fuel exports. In other words, a proportion of the remaining carbon budget is 'grandfathered' to Australian fossil fuel exports based on their current levels." (internal citation omitted)).
[217] Anderson and Calverley Report, Annex 11, p. 32.
[218] Anderson and Calverley Report, Annex 11, p. 33.
[219] Anderson and Calverley, Annex 11, p. 32, Figure 4.
[220] Anderson and Calverley Report, Annex 11, p. 32.
[221] *See, e.g.,* UNFCCC, Preamble; *Paris Agreement*, opened for signature 22 April 2016, 3156 UNTS 79 (entered into force 4 November 2016), Preamble and Article 2(2).

other words, Australia's projected export pathways therefore fail a conservative compatibility test, constructed using assumptions that significantly favour Australia's position.[222]

151. Such a limited carbon budget permits absolutely no room for manoeuvre; it does not permit substitution between fossil fuels nor even for the very weakest interpretation of equity, which would require wealthy, high-emitting countries like Australia to cut their emissions faster than the global mean.[223]

152. Anderson and Calverley clarify:

> In these simple but logical terms, it is evident that whichever of the government export pathways is assumed makes no meaningful difference to staying at or below 1.5°C. Neither export scenario comes anywhere close to the level of reductions demanded by the remaining carbon budget for a 50% chance of 1.5°C.[224]

153. Anderson and Calverley also numerically present both government scenarios against the carbon budget for 1.5°C, shown in Table 2, demonstrating just how misaligned Australia's planned fossil fuel exports are with preventing climate harm.

	Cumulative emissions from Australia's fossil fuel exports ($MtCO_2$)[225]		
Period	**1.5°C mean global pathway**	**Treasury Scenario**	**DCCEEW Scenario**
2026–2030	2,717	6,333	6,751
2026–2035		10,956	12,754
2026–2040		14,200	17,909
2026–2067		21,638	30,986

Table 2 – Summary of cumulative CO_2 emissions from production and combustion of Australian fossil fuel exports following the reductions in the Treasury Scenario and the DCCEEW Scenario, compared with the cumulative emissions under the pathway required by the updated remaining carbon budget for 1.5°C.[226]

154. These numbers are stark. Even under the highly optimistic Treasury Scenario, Table 2 demonstrates that the emissions from Australia's fossil fuel exports in the remainder of the 2020s are more than double the emissions on the mean global pathway for 1.5°C

[222] *See* Anderson and Calverley Report, Annex 11, pp. 3–7.
[223] Anderson and Calverley Report, Annex 11, pp. 32–33.
[224] Anderson and Calverley Report, Annex 11, p. 33.
[225] $MtCO_2$ denotes million tonnes of carbon dioxide.
[226] Anderson and Calverley Report, Annex 11, p. 33, Table 5 ("Export emissions reach zero in 2067 following the post-2040 trend in the 'Treasury scenario', so the same constraint has been applied to DCCEEW scenario here").

and are higher still under the DCCEEW Scenario.[227] Table 2 also tabulates export emissions for subsequent time periods merely to highlight that both export scenarios continue to generate huge quantities of CO_2 emissions long after the remaining carbon budget for 1.5°C will have been extinguished by the end of 2029.[228]

155. Furthermore, Anderson and Calverley find that Australia's projected fossil fuel exports are not even aligned with meeting the remaining carbon budget for 2.0°C.[229] In particular, Anderson and Calverley find that emissions under the DCCEEW Scenario are far in excess of any plausible pathway for 2°C.[230] The results are summarised in Table 3 and the full discussion of their analysis can be found in Annex 11.[231]

	Cumulative emissions from Australia's fossil fuel exports ($MtCO_2$)		
Period	**2°C mean global pathways**	**Treasury Scenario**	**DCCEEW Scenario**
2026–2040	16,643	14,200	17,909
2026–2050		18,725	25,918
2026–2067		21,638	30,986

Table 3 – Summary of cumulative CO_2 emissions from production and combustion of Australian fossil fuel exports following reductions in the Treasury Scenario and the DCCEEW Scenario, compared with cumulative emissions under pathways required by the updated remaining carbon budget for 2°C.[232]

5.3 Australia has no regulations or policies requiring assessment of the climate impacts of its fossil fuel exports or restricting fossil fuel production and export in line with limiting warming to 1.5°C

156. Australia has no national legislative or policy framework requiring the assessment of the climate impacts of its production of fossil fuels for export in line with a 1.5°C temperature goal, or restricting fossil fuel exploration, production, infrastructure development, or export in line with that goal.[233] Instead, as discussed below, Australia's

[227] Anderson and Calverley Report, Annex 11, p. 33.
[228] Anderson and Calverley Report, Annex 11, p. 33.
[229] Anderson and Calverley Report, Annex 11, pp. 34–37.
[230] Anderson and Calverley Report, Annex 11, p. 36.
[231] *See* Anderson and Calverley Report, Annex 11, pp. 34–37.
[232] Anderson and Calverley Report, Annex 11, p. 37, Table 6 ("Export emissions reach zero in 2067 following the post-2040 trend in the 'Treasury scenario', so the same constraint has been applied to DCCEEW scenario here.").
[233] Professor Jacqueline Peel et al., *Joint Opinion* (**Peel Report**), Annex 17, paras. 4, 16; *see also* Stockholm Environment Institute et al., *The Production Gap Report 2023* (2023), p. 55, https://productiongap.org/wp-content/uploads/2023/11/PGR2023_web_rev.pdf. In addition, no national policy of that description was identified in the 2025 update to the Production Gap Report (*see* Stockholm Environment Institute et al., *The Production Gap Report 2025* (2025), p. 44, https://productiongap.org/wp-content/uploads/2025/09/PGR2025_full_web.pdf).

climate policy is focused on the regulation of greenhouse gas emissions occurring within Australia only.

157. There is a false premise at the heart of Australian climate policy: that Australia bears no responsibility for the greenhouse gas emissions associated with the downstream use of its fossil fuel exports and that these emissions are solely attributable to countries in which the exports are combusted.[234] This position informs both the limited scope of Australian regulation of greenhouse gas emissions and the interpretation and application of relevant legislation by government decision-makers.

158. The main legislation that is intended to implement Australia's commitments under the Paris Agreement is the *Climate Change Act 2022* (Cth).[235] This Act sets national emissions reduction targets;[236] however, while the Act does not preclude consideration of Australia's exported greenhouse gas emissions,[237] it has been applied and interpreted consistently with Australia's position that its climate obligations do not extend to exported emissions.

159. This position is reflected in Australia's Nationally Determined Contributions (**NDCs**) under the Paris Agreement framework. The NDCs communicated by Australia in 2022 and 2025 address emissions released within Australia only and do not address emissions from fossil fuel exports, let alone any proposal to align exports with a 1.5°C-consistent pathway.[238] The only reference to exported emissions in the 2025 NDC appears under the heading "Australia's transformation will contribute to emissions cuts beyond our borders," which states that Australia is positioned to "shift from being an exporter of emissions-intensive commodities to a key enabler of a decarbonised

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[234] In 2022, Australia's Prime Minister Anthony Albanese explained that "the UN … measure[s] emissions based upon where they occur, not where the product comes from. Japan doesn't have to account for its emissions if a Japanese car in Australia is emitting carbon dioxide". *See* Prime Minister of Australia, *Television Interview – ABC 7.30 (Transcript)* (26 July 2022), https://www.pm.gov.au/media/television-interview-abc-730.

[235] It has been generally accepted by Australian courts that international treaties are not directly incorporated into Australian domestic law by the international act of ratification or accession by Australia. Instead, they must be implemented by domestic legislation. *See, e.g.,* High Court of Australia, *New South Wales v Commonwealth* (1975) 135 CLR 337, pp. 450–451; High Court of Australia, *Simsek v MacPhee* (1982) 148 CLR 636, p. 641; High Court of Australia, *Koowarta v Bjelke-Petersen* (1982) 153 CLR 168, pp. 192–193, 211–212, 225, and 253; High Court of Australia, *Kioa v West* (1985) 159 CLR 550, pp. 570–571; High Court of Australia, *Dietrich v The Queen* (1992) 177 CLR 292, p. 305; Federal Court of Australia, *Minister for Foreign Affairs and Trade v Magno* (1992) 37 FCR 298, p. 303; High Court of Australia, *Minister for Immigration and Ethnic Affairs v Ah Hin Teoh* (1995) 183 CLR 273, p. 287.

[236] *Climate Change Act 2022* (Cth), s 10(1).

[237] The *Climate Change Act 2022* (Cth) does not define "greenhouse gas emissions" or "net greenhouse gas emissions" and does not explicitly limit this definition to emissions within Australia's borders (territorial emissions).

[238] *See* Commonwealth of Australia, *Australia's Nationally Determined Contribution: Communication 2022* (2022), https://unfccc.int/sites/default/files/NDC/2022-06/Australias%20NDC%20June%202022%20Update%20%283%29.pdf; Commonwealth of Australia, *Australia's 2035 Nationally Determined Contribution* (2025) (**Australia's Second NDC**), https://unfccc.int/sites/default/files/2025-09/Australias%20Second%20NDC.pdf.

world."[239] However, the 2025 NDC identifies no measures to achieve this, instead noting that global demand for fossil fuels is expected to decrease by 2050.[240]

160. The same approach appears in Australia's key emissions reduction legislation, schemes, and policies. For example, Australia's national framework for reporting and regulating greenhouse gas emissions from large industrial facilities—the Safeguard Mechanism and the *National Greenhouse and Energy Reporting Act 2007* (Cth)—does not address exported emissions.[241]

161. Similarly, neither of Australia's key emissions reduction strategies—the Long-Term Emissions Reduction Plan (2021)[242] and Net Zero Plan (2025)[243]—assess the potential impact of Australia's exported emissions nor contain measures to phase out or reduce fossil fuel exports. To the contrary, the Long-Term Emissions Reduction Plan states that Australia "will continue to export our traditional energy exports **for as long as our customers demand them**. … **Australia's coal and gas export industries will continue through to 2050 and beyond**…."[244] This position is repeated throughout Australia's policy relevant to fossil fuel production, export, and high-emitting industries.[245]

162. Accordingly, Australia's policy passively relies on global markets to reduce demand while maximising the production and export of fossil fuels to meet and support that demand. Australia's export projections are therefore contingent on external market

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[239] Australia's Second NDC, p. 11.
[240] Australia's Second NDC, p. 11.
[241] *See* Australian Government, Department of Climate Change, Energy, the Environment and Water, *Safeguard Mechanism* (2026), https://www.dcceew.gov.au/climate-change/emissions-reporting/national-greenhouse-energy-reporting-scheme/safeguard-mechanism; *Safeguard Mechanism Overview* (2025), https://www.dcceew.gov.au/climate-change/emissions-reporting/national-greenhouse-energy-reporting-scheme/safeguard-mechanism/overview#_202627-review-of-the-safeguard-mechanism. The Safeguard Mechanism is Australia's policy for reducing emissions at Australia's largest industrial facilities, and purports to assist Australia to meet its climate targets. It operates under the *National Greenhouse and Energy Reporting Act 2007* (Cth), which sets legislative limits (or "baselines") on Scope 1 greenhouse gas emissions from such facilities. The Safeguard Mechanism applies declining baselines to the emissions of covered facilities (known as a "designated large facilities") and expressly covers only Scope 1 (direct) emissions at sites emitting more than 100,000 /year. It does not regulate Scope 3 emissions from the downstream use of exported coal, oil or gas, nor does it limit export volumes.
[242] *See* Commonwealth of Australia, *Australia's Long-Term Emissions Reduction Plan: A Whole-of-Economy Plan to Achieve Net Zero Emissions by 2050* (2021) (**Long-Term Emissions Reduction Plan**), https://www.dcceew.gov.au/sites/default/files/documents/australias-long-term-emissions-reduction-plan.pdf (*see, e.g.,* the plan's emphasis on Australia's "natural endowments and comparative advantages" with respect to coal and gas exports at p. 18, and the explicit statement that the plan will not "reduce the competitiveness of our export industries" at p. 11).
[243] Commonwealth of Australia, *Australia's Net Zero Plan* (2025), https://www.dcceew.gov.au/sites/default/files/documents/net-zero-report.pdf (*see, e.g.*, the description of Australia's national emissions on p. 28, and also p. 120 which identifies only the domestic emissions of the resources sector and describes policies targeted at reducing Australia's domestic emissions associated with production of gas and coal).
[244] Long-Term Emissions Reduction Plan, pp. 19, 79 (emphasis added).
[245] *See, e.g.,* Australian Government Department of Industry, Science and Resources and Department of Climate Change, Energy, the Environment and Water, *Resources Sector Plan* (2025), https://www.industry.gov.au/sites/default/files/2025-09/disr-resources-sector-plan.pdf (which addresses the sector's domestic emissions, rather than its exported emissions).

developments, rather than based on policies to actively phase down or phase out exports in response to the climate emergency. Further, Australia uses its diplomatic capabilities to delay global efforts to limit fossil fuel production and consumption.[246]

163. Finally, Australian environmental legislation does not provide effective review or oversight of Australia's exported emissions. For example, Australia's primary federal environmental law—the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (**EPBC Act**)—does not explicitly require exported emissions to align with safe climate goals and Australia's international climate obligations. Although it allows for environmental review of individual projects, including fossil fuel production and export projects, the scope of available review of decision-making is limited and key provisions severely limit consideration of the impacts of greenhouse gas emissions from fossil fuel exports.[247] Further, the EPBC Act does not provide any mechanism to assess Australia's total contribution to climate change arising from its fossil fuel exports.[248]

164. Although Australian state and territory laws require environmental review of fossil fuel extraction and processing projects under their jurisdiction, they vary in the extent they require consideration of an individual project's scope 3 emissions—those indirect, downstream emissions including from the combustion of exported fossil fuels—and each project is considered separately.[249] As a result, Australian federal, state, and territory governments continue to approve new and expanded fossil fuel export projects without assessing the full climate impacts of Australia's exported emissions.

5.4 Australia provides significant financial and political support to its fossil fuel exports

165. Australia is actively sustaining and facilitating its production of fossil fuels for export by providing significant subsidies for fossil fuel production and promoting its fossil fuel exports overseas.

5.4.1 Subsidies for fossil fuel production

166. In 2025-2026, Australian federal, state, and territory governments provided AU$16.3 billion in subsidies to fossil fuel producers and major users.[250] These subsidies not only help lower the cost of extraction and production of fossil fuels in Australia, but also

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[246] *See* Section 5.4.2.
[247] *See* Peel Report, Annex 17, paras. 36–37. The list of "matters of environmental significance" that are required to be considered under the EPBC Act are limited to the following: World Heritage properties, National Heritage properties, wetlands of international importance listed under the Ramsar Convention, listed threatened species and communities, listed migratory species, Commonwealth marine areas, the Great Barrier Reef Marine Park, the protection of water resources from unconventional gas development and large coal mining development, and the protection of the environment from nuclear actions. *See Environment Protection and Biodiversity Conservation Act 1999* (Cth), Part 3.
[248] *See* Peel Report, Annex 17, paras. 34, 36.
[249] *See* Peel Report, Annex 17, para. 39.
[250] Matt Grudnoff and Rod Campbell, The Australia Institute, *Fossil Fuel Subsidies in Australia 2026* (2026) (**2026 Fossil Fuel Subsidies Report**), pp. 1, 4, 12, https://australiainstitute.org.au/wp-content/uploads/2026/03/P1916-Fossil-Fuel-Subsidies-2026-Web.pdf.

artificially depress market prices and stimulate demand for export internationally. This total encompasses, among other things:

a. Fiscal support for fossil fuel production through the Fuel Tax Credit Scheme, which subsidises fossil fuel use for energy intensive businesses.[251] This is the largest federal government fossil fuel subsidy, valued at AU$10.8 billion in 2025-2026, with around AU$1 billion per year of those tax credits accruing to the coal mining industry;[252]

b. Policies that provide capital expenditure for fossil fuel infrastructure, such as AU$1.9 billion in public funding for a new gas demand centre in the Northern Territory;[253] and

c. Additional tax concessions. For example, tax breaks on fuel excise and concessions, which reduce the amount payable by the oil and gas industry under the Petroleum Resource Rent Tax, accounted for AU$2.2 billion in 2025-2026.[254]

167. These subsidies have increased over time. Australia's 2025-26 subsidies represent a 9.4% increase on the AU$14.9 billion in subsidies recorded in 2024-2025,[255] which itself was a 3% increase on 2023-24 subsidies[256] and a continuation of growth from preceding years.[257]

168. Despite committing in 2010 to the G20 commitment to phase out fossil fuel subsidies,[258] Australia has not indicated any intention to reduce or eliminate these subsidies, but is instead budgeting for significant subsidies well into the future.[259] Australia also relies on a very narrow definition of "subsidy" to assert that its measures fall outside the scope of the G20 commitment.[260]

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[251] 2026 Fossil Fuel Subsidies Report, p. 19.
[252] 2026 Fossil Fuel Subsidies Report, pp. 1, 19–22; Rod Campbell et al., The Australia Institute, *Australia's Fuel Tax Credits and the Debate Over Fossil Fuel Subsidies* (2024), https://australiainstitute.org.au/wp-content/uploads/2024/05/P1481-Australias-Fuel-Tax-Credit-and-fossil-fuel-subsidies-Web.pdf.
[253] 2026 Fossil Fuel Subsidies Report, p. 45.
[254] 2026 Fossil Fuel Subsidies Report, p. 18.
[255] 2026 Fossil Fuel Subsidies Report, pp. 1, 14.
[256] Matt Grudnoff and Rod Campbell, The Australia Institute, *Fossil Fuel Subsidies in Australia 2025* (2025), p. 12 (**2025 Fossil Fuel Subsidies Report**), https://australiainstitute.org.au/wp-content/uploads/2025/03/P1669-Fossil-fuel-subsidies-2025-Web.pdf.
[257] 2025 Fossil Fuel Subsidies Report, pp. 4, 12–13.
[258] Richard Denniss and Allan Behm, "Double Game: How Australian Diplomacy Protects Fossil Fuels" 12 *Australian Foreign Affairs* 49 (2021) (**How Australian Diplomacy Protects Fossil Fuels**), p. 60.
[259] 2026 Fossil Fuel Subsidies Report, p. 13.
[260] Australian Government, The Treasury, *G20 Commitment on Fossil Fuel Subsidies: SOP and Australia's Response* (undated), p. 1, https://treasury.gov.au/sites/default/files/2019–03/Document-38-2.pdf ("Australia's position was based on defining a subsidy as a measure that reduces local prices below the market price (the price-gap approach)."); How Australian Diplomacy Protects Fossil Fuels, p. 60 ("[I]n 2010, Australia signed on to the G20 commitment to phase out fossil fuel subsidies. Then, it reported to the G20 that, because it had no such subsidies in place, it had nothing to phase out. Documents subsequently obtained under freedom of information laws showed that several Australian government departments had initially identified seventeen fossil fuel subsidies that would need to be removed, but this advice was ignored when crafting the response to the G20.").

5.4.2 Active promotion of fossil fuel exports

169. In addition to financial support, Australia actively promotes the development of fossil fuel exports. For over 25 years, Australia has used diplomatic forums to undermine ambitious climate action in multilateral agreements and to delay global efforts to limit fossil fuel production and consumption.[261] As Australian economist Richard Deniss and policy expert Allan Behm state, "In recent years, the task for Australian diplomats has been clear – to invest time, resources and diplomatic capital in slowing the rate at which global climate action harms Australia's fossil fuel exports."[262] Commonwealth Ministers for trade, resources, and climate change have actively promoted the continued and expanded use of Australian fossil fuels across the region,[263] and government policy clearly signals to other countries that Australia intends to continue supplying fossil fuel exports, in particular LNG, until at least 2050.[264]

170. Accordingly, Australia is taking active, positive financial and political actions to maintain demand for its fossil fuel exports.

171. By continuing to approve, subsidise, and seek investment in new fossil fuel projects and infrastructure, Australia is not merely passively meeting demand but driving economic and social incentives towards continued fossil fuel use. Experts have shown that the ongoing construction of new fossil fuel projects and related infrastructure lock societies into carbon-intensive emissions pathways that are difficult or costly to change, by creating economic and social incentives for continued reliance on fossil fuels.[265] This effect, known as "carbon lock-in", increases the cost of making emissions reductions and slows the capacity of global energy systems and markets to transition to clean energy on the necessary timetable to avoid harm to the climate system.[266]

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[261] How Australian Diplomacy Protects Fossil Fuels, pp. 58–62. Denniss and Behm point to examples such as negotiating the so-called "Australia clause" in the Kyoto Protocol, which allowed a broad definition of land-use emissions to be included in the total calculation of greenhouse gas emissions and brought enormous benefits to Australia in emissions accounting, as well as using its membership of the Asian Infrastructure Investment Bank to lobby against a focus on investments in renewable energy and instead put more emphasis on loans for coal and nuclear power stations.

[262] How Australian Diplomacy Protects Fossil Fuels, p. 62.

[263] *See, e.g.,* Commonwealth Minister for Trade and Tourism and Special Minister for State, Senator the Hon Don Farrell et al., *Australia-Japan Ministerial Economic Dialogue Joint Ministerial Statement* (8 October 2023), para. 4, https://www.trademinister.gov.au/minister/don-farrell/statements/australia-japan-ministerial-economic-dialogue-joint-ministerial-statement ("Australia has committed to remaining a reliable supplier of resources and energy to Japan and the region now and into the future. This applies to traditional energy commodities such as coal and [LNG] as well as new energy supply").

[264] Future Gas Strategy Report, pp. 47–52.

[265] *See* Karen C. Seto et al., "Carbon Lock-In: Types, Causes, and Policy Implications," 41 *Annual Review of Environment and Resources* 425 (2016), https://www.annualreviews.org/content/journals/10.1146/annurev-environ-110615-085934; Peter Erickson et al., Stockholm Environment Institute, *Carbon Lock-In from Fossil Fuel Supply Infrastructure: Discussion Brief* (2015), https://www.sei.org/mediamanager/documents/Publications/Climate/SEI-DB-2015-Carbon-lock-in-supply-side.pdf; Fergus Green et al., "No New Fossil Fuel Projects: The Norm We Need," 384 *Science* 6699 (2024), pp. 954-957, https://www.science.org/stoken/author-tokens/ST-1888/full.

[266] Karen C. Seto et al., "Carbon Lock-In: Types, Causes, and Policy Implications," 41 *Annual Review of Environment and Resources 425* (2016), p. 427,

172. In these ways, Australia is actively maintaining its fossil fuel production for export and failing to systematically reduce or phase out exports, instead relying only on possible but uncertain future changes in global markets to reduce demand. As such, Australia's fossil fuel exports continue to be a material driver of global climate change. The following sections describe how, by failing to align its fossil fuel export policy with 1.5°C pathways, Australia is failing to comply with its obligations under international law to protect the Authors' human rights.

6 TO RESPECT AND ENSURE THE PROTECTION OF RIGHTS UNDER THE COVENANT, AUSTRALIA MUST COMPLY WITH ITS INTERNATIONAL CLIMATE OBLIGATIONS

6.1 Compliance with international climate obligations is necessary to respect and ensure the protection of Covenant rights affected by climate change

173. Australia's compliance with its climate obligations is a necessary precondition for compliance with the Article 2(1) obligation to "respect and to ensure to all individuals within its territory and subject to its jurisdiction" the substantive rights enshrined in the Covenant.[267]

174. It is well established that environmental degradation, including climate change, can impair the effective enjoyment of a wide range of human rights. International courts and human rights bodies consistently recognise that climate-related harms engage, *inter alia*, the right to life,[268] the right to privacy, family and home,[269] the rights of Indigenous peoples,[270] and the right to a healthy environment.[271]

175. Accordingly, this Committee, like other international courts and bodies, recognises that international environmental law—including related to climate protection—can help to define the content of States' obligations under the Covenant. For example, in General Comment No. 36, the Committee affirms that States' obligations under international environmental law should "inform the content of article 6 of the Covenant," while the obligation to respect and ensure the right to life should correspondingly inform the interpretation and application of international environmental law obligations.[272] Similarly, in *Daniel Billy and Others v. Australia*, the Committee confirms that it is

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https://www.annualreviews.org/content/journals/10.1146/annurev-environ-110615-085934; Peter Erickson et al., Stockholm Environment Institute, *Carbon Lock-In from Fossil Fuel Supply Infrastructure: Discussion Brief* (2015), p. 1, https://www.sei.org/mediamanager/documents/Publications/Climate/SEI-DB-2015-Carbon-lock-in-supply-side.pdf.

[267] ICCPR, Article 2(1).

[268] ICJ Advisory Opinion, para. 377; IACtHR Advisory Opinion, paras. 274, 394.

[269] ICJ Advisory Opinion, para. 381; IACtHR Advisory Opinion, paras. 403–405.

[270] ICJ Advisory Opinion, para. 382 ("Climate change may also impair the enjoyment of the rights of women, children and indigenous peoples"); IACtHR Advisory Opinion, paras. 306, 427, 450.

[271] ICJ Advisory Opinion, para. 391; IACtHR Advisory Opinion, paras. 500, 502, 526.

[272] UN Human Rights Committee, *General Comment No. 36* (CCPR/C/GC/36) (**General Comment No. 36**), para. 62, https://docs.un.org/en/CCPR/C/GC/36.

appropriate to refer to international environmental law when interpreting claims arising under the Covenant.[273]

176. This integrated approach has been reaffirmed across jurisdictions. The ICJ in its 2025 Advisory Opinion emphasises that 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."[274] The ICJ affirms that:

> In order to guarantee the effective enjoyment of human rights, States must take measures to protect the climate system and other parts of the environment. These measures may include, *inter alia*, taking mitigation and adaptation measures, with due account given to the protection of human rights, the adoption of standards and legislation, and the regulation of the activities of private actors. Under international human rights law, States are **required to take necessary measures** in this regard.[275]

177. Similarly, the IACtHR in its Advisory Opinion on the Climate Emergency and Human Rights determines that, to satisfy the general obligation to guarantee rights under the American Convention on Human Rights, "States must take all necessary measures to reduce ... the risks derived ... from the degradation of the global climate system."[276]

178. Other regional and comparative jurisprudence points in the same direction. The ECtHR in *Klimaseniorinnen v. Switzerland* confirms that inadequate climate action can breach States' positive obligations under human rights law, including duties to adopt and effectively implement regulatory frameworks capable of mitigating climate risks.[277] Likewise, the United Nations Committee on the Rights of the Child in *Sacchi et al. v Argentina* recognises that States may bear responsibility for foreseeable climate-related harms to children, including in circumstances involving transboundary emissions.[278]

179. Notably, international environmental law does not displace or limit potentially more demanding obligations arising under international human rights law. The ICJ clarifies that, while the climate change treaties are the principal international instruments addressing climate change, they do not displace other rules and principles of international law.[279] The ICJ explicitly rejects the contention that the international

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[273] UN Human Rights Committee, *Daniel Billy and Others v. Australia* (CCPR/C/135/D3624/2019) (***Daniel Billy and Others v. Australia***), para. 5.6, https://docs.un.org/en/CCPR/C/135/D/3624/2019.
[274] ICJ Advisory Opinion, para. 404.
[275] ICJ Advisory Opinion, para. 403 (emphasis added).
[276] IACtHR Advisory Opinion, para. 227.
[277] *Klimaseniorinnen v. Switzerland*, para. 417.
[278] UN Committee on the Rights of the Child, *Chiara Sacchi et al. v. Argentina* (CRC/C/88/D/104/2019) (***Sacchi et al. v. Argentina***), para 10.6, https://docs.un.org/en/CRC/C/88/D/104/2019.
[279] ICJ Advisory Opinion, para. 169; Similarly, in its 2024 advisory opinion on climate change, the International Tribunal for the Law of the Sea concluded that state parties to the UN Convention on the Law of the Sea do not satisfy the obligation to prevent marine pollution from greenhouse gas emissions merely through compliance with the Paris Agreement. International Tribunal for the Law of the Sea, *Request for an Advisory Opinion Submitted by the Commission of Small Island States on Climate Change and International Law*, Advisory

climate regime (namely, the UNFCCC, Kyoto Protocol, and the Paris Agreement) operates as a *lex specialis* displacing human rights law, emphasising instead "that international human rights law, the climate change treaties and other relevant environmental treaties, as well as the relevant obligations under customary international law, inform each other."[280]

180. At the same time, compliance with the Paris Agreement is not necessarily sufficient to satisfy obligations arising under other international treaties, including the ICCPR. Compliance with human rights obligations may be more demanding. As the ICJ explains, the "necessary measures" to protect the climate system as required under international human rights law include obligations beyond those contained in the Paris Agreement—extending, for example, to the adoption of legislation and standards, and the regulation of the private sector.[281] Likewise, the ECtHR explains that the global aims reflected in the Paris Agreement "cannot of themselves suffice as a criterion for any assessment of [European Convention on Human Rights] compliance," indicating that human rights law may impose more stringent obligations than those under international environmental law.[282]

181. Taken together, this body of authority establishes that climate change is not external to the Covenant framework. Rather, it is central to it. Compliance with human rights obligations requires States such as Australia to take timely, adequate, and effective action to reduce emissions, protect communities from foreseeable climate harms, and regulate public and private conduct accordingly. A failure to do so undermines the minimum conditions necessary for the enjoyment of Covenant rights and is therefore incompatible with Article 2(1).

6.2 Under international law, Australia must act with due diligence to protect the climate and prevent climate harms, in line with limiting warming to 1.5°C

182. The ICJ and other international bodies recognise the irrefutable facts regarding climate change presented in Section 4 above. They are aware that all States know both the scale of the climate emergency and the urgent measures required to address it.[283] If existing policies continue, the world is currently on track for 2.8°C of warming by 2100.[284] The ICJ and other bodies therefore articulate stringent due diligence obligations for States to act urgently to protect the climate system and prevent significant and foreseeable harm, without exceeding 1.5ºC as the minimum threshold.

Opinion, 21 May 2024 (**ITLOS Advisory Opinion**), para. 223, https://www.itlos.org/fileadmin/itlos/documents/cases/31/Advisory_Opinion/C31_Adv_Op_21.05.2024_orig.pdf.

[280] ICJ Advisory Opinion, para. 404.

[281] ICJ Advisory Opinion, para. 403.

[282] *Klimaseniorinnen v. Switzerland*, para. 547.

[283] IACtHR Advisory Opinion, para. 183 ("This climate emergency can only be adequately addressed through urgent, effective, and coordinated actions, guided by human rights considerations and framed within the concept of resilience").

[284] United Nations Environment Programme, *Emissions Gap Report 2025* (2025), p. 37, https://wedocs.unep.org/rest/api/core/bitstreams/4830e1a8-14c0-44a5-a066-cdd2ba5b3e10/content, p. 37.

6.2.1 Australia must act with stringent due diligence to use all means at its disposal to prevent significant harm to the climate system

183. The ICJ recognises that States have a binding legal obligation under the UNFCCC, its subsequent protocols and agreements including the Paris Agreement, and customary international law, to prevent significant environmental harm arising from climate change. The obligation to prevent significant environmental harm requires "stringent" due diligence, considering that climate change "poses a quintessentially universal risk to all States"[285] and "because of the seriousness of the threat."[286]

184. The due diligence standard demands that States "**use all the means** at [their] disposal in order to avoid activities which take place in [their] territory, or in any area under its jurisdiction, causing significant damage to the environment of another State."[287] In relation to climate change, "such appropriate rules and measures 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**."[288]

185. The obligation to act with due diligence is tied to alignment with 1.5°C. As the ICJ acknowledges, 1.5°C of temperature rise above pre-industrial levels is the "agreed primary temperature goal for limiting the global average temperature increase"[289] and preventing "dangerous anthropogenic interference with the climate system;"[290] and that temperature goal is also the benchmark which informs the due diligence required under customary law to prevent significant environmental harm.[291]

186. The due diligence obligation to prevent significant environmental harm dovetails with the obligation to prevent human rights violations, which stems from States' obligations to guarantee human rights.[292] The duty of prevention is fundamental in the context of the climate emergency because "it seeks to prevent the creation of new risks of serious human rights violations or the exacerbation of existing risks resulting from the impacts of climate change."[293] Furthermore, the duty to prevent significant environmental harm applies "either where no harm has yet been caused but the risk of future significant harm exists, or where some harm has already been caused and there exists a risk of

[285] ICJ Advisory Opinion, para. 137.
[286] ICJ Advisory Opinion, paras. 138, 246.
[287] ICJ Advisory Opinion, para. 281 (citing International Court of Justice, *Case Concerning Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, Judgement, 20 April 2010, para. 101, https://www.icj-cij.org/sites/default/files/case-related/135/135-20100420-JUD-01-00-EN.pdf) (emphasis added).
[288] ICJ Advisory Opinion, para. 282 (emphasis added).
[289] ICJ Advisory Opinion, paras. 224, 246, 314.
[290] *See* Section 4.1; ICJ Advisory Opinion, para. 117 (internal citation omitted).
[291] ICJ Advisory Opinion, para. 314 ("compliance in full and in good faith by a State with the climate change treaties … suggests that this State substantially complies with the general customary duties to prevent significant environmental harm and to co-operate").
[292] *See*, *e.g.*, IACtHR Advisory Opinion, para. 233 ("the Court finds that States must act with enhanced due diligence to comply with the obligation of prevention arising from the obligation to guarantee the rights protected by the American Convention in the context of the climate emergency").
[293] IACtHR Advisory Opinion, para. 229.

further significant harm."[294] This interpretation aligns with States' positive obligations under human rights law to prevent foreseeable harms arising by their acts or omissions, including harm to the climate system.[295]

187. Other international bodies also recognise that a heightened standard of due diligence is required to prevent significant harm to the climate system. For example, the IACtHR states:

> Considering … the extreme gravity of climate impacts and … the urgency of effective measures to avoid irreparable harm to the individual … , the Court finds that States must act with **enhanced due diligence** to comply with the obligation of prevention arising from the obligation to guarantee the rights protected by the American Convention in the context of the climate emergency.[296]

188. Similarly, the International Tribunal for the Law of the Sea (**ITLOS**) states in its 2024 Advisory Opinion (**ITLOS Advisory Opinion**) on climate change: "The standard of due diligence under … the Convention [on the Law of the Sea] is stringent, given the high risks of serious and irreversible harm to the marine environment from such [greenhouse gas] emissions."[297]

6.2.2 Due diligence to prevent significant environmental harm must be informed by the precautionary principle

189. State compliance with due diligence obligations must be guided by the precautionary principle.[298] In particular, the ICJ emphasises that States must take appropriate measures to prevent significant harm where there is reliable scientific evidence of a risk of such harm.[299]

190. The ICJ explains, quoting the ITLOS Advisory Opinion:

> '[W]here there are plausible indications of potential risks', a State 'would not meet its obligation of due diligence if it disregarded those risks' and, in that sense, the 'precautionary approach is also an integral part of the general obligation of due diligence' under the duty to prevent significant harm to the environment.[300]

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[294] ICJ Advisory Opinion, para. 274.
[295] *See*, *e.g.*, UN Committee on the Elimination of Discrimination Against Women et al., *Joint Statement on Human Rights and Climate Change* (2019), para. 1, https://www.ohchr.org/en/statements-and-speeches/2019/09/five-un-human-rights-treaty-bodies-issue-joint-statement-human (recognising that "State parties have obligations, including extra-territorial obligations, to respect, protect and fulfill all human rights of all peoples" and that these obligations include a duty "to prevent foreseeable human rights harm caused by climate change, [and] to regulate activities contributing to such harm").
[296] IACtHR Advisory Opinion, para. 233 (emphasis added).
[297] ITLOS Advisory Opinion, para. 243.
[298] ICJ Advisory Opinion, para. 294.
[299] ICJ Advisory Opinion, para. 293.
[300] ICJ Advisory Opinion, para. 294 (citing ITLOS Advisory Opinion, para. 131).

191. The IACtHR similarly emphasises that the precautionary principle is essential for interpreting the scope of a State's obligation to prevent climate-related harm, including from third parties. The Court explains that "States are obligated to guarantee human rights when they are, or should be, aware of the possibility that the acts or omissions of their agents or of private individuals may create a risk of severe and irreversible damage, within or outside their territory, even when they lack absolute certainty".[301]

6.2.3 Due diligence requires Australia to regulate third parties within its jurisdiction and control

192. The ICJ clarifies that due diligence includes State responsibility for acts of third parties within the State's control. This means that States "must regulate the conduct of public and private operators within the States' jurisdiction or control and be accompanied by effective enforcement and monitoring mechanisms to ensure their implementation."[302]

193. Other international courts and bodies reach similar conclusions. For example, the IACtHR notes that "States should adopt legislative and other measures to prevent human rights violations committed by public and private enterprises and, when these occur, investigate them, punish them, and guarantee redress for their consequences."[303] Such measures include adopting "legislation that requires business enterprises to conduct human rights and environmental due diligence to identify and address human rights and environmental impacts, including climate change-related impacts, across the entire value chain."[304] Such legislation should acknowledge that "some businesses bear greater responsibility for their impacts on climate change due to the risk created by their activities" and "impose stricter obligations on those whose activities are major sources of [greenhouse gas] emissions."[305] Similarly, the ECtHR recognises that a State's responsibility for environmental harms "may arise from a failure to regulate private industry" where the State fails "to take reasonable and appropriate measures to secure the applicant's rights."[306]

6.2.4 Due diligence requires assessment of the cumulative effects of activities within Australia's jurisdiction or control

194. Importantly, the ICJ acknowledges that climate change is caused by the "cumulative effect of different acts undertaken by various States and by private actors subject to their respective jurisdiction or control, even if it is difficult in such situations to identify a specific share of responsibility of any particular State."[307] As such, States must assess the possible cumulative effects of their acts and the planned activities under their jurisdiction or control.[308] Quoting ITLOS, the ICJ explains that activities undertaken by

[301] IACtHR Advisory Opinion, para. 229.
[302] ICJ Advisory Opinion, para. 282.
[303] IACtHR Advisory Opinion, para. 345.
[304] IACtHR Advisory Opinion, para. 347.
[305] IACtHR Advisory Opinion, para. 350.
[306] European Court of Human Rights, *Case of Fadeyeva v. Russia,* Application No. 557323/00, 9 June 2005, para. 89, https://hudoc.echr.coe.int/rus?i=001-69315.
[307] ICJ Advisory Opinion, para. 276.
[308] ICJ Advisory Opinion, para. 276.

States or within a State's jurisdiction or control "may not be environmentally significant if taken in isolation, … [but] they may produce significant effects if evaluated in interaction with other activities."[309] Similarly, the ECtHR noted that Norway would breach its human rights obligations through "any assessment of [greenhouse gas] emissions, project by project, that would disregard the cumulative [greenhouse gas] emissions of all those [oil and gas] projects combined."[310]

195. As clarified below at Section 6.4, the due diligence obligation requires Australia to assess the cumulative climate impacts of its exports of fossil fuels.

6.2.5 Due diligence requires adopting mitigation measures that reflect best available science

196. The IACtHR notes that a State is "obliged to take into account the best available science" when deciding on appropriate mitigation measures. In particular, the Court notes that "measures associated with technologies whose effects have not been fully verified" would have difficulty "comply[ing] with the standard of enhanced due diligence."[311] Such measures should not include those that have not yet been proven feasible at scale and/or that pose new risks to human rights.[312] Section 4.4 above discusses unproven carbon removal technologies.

6.3 A State's failure to mitigate greenhouse gas emissions, consistent with due diligence, is conduct attributable to that State that may violate its human rights obligations

197. The ICJ explains that 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", or commits a violation in the case of human rights.[313] Indeed, as noted above, in order "to guarantee the effective enjoyment of human rights, States must take measures to protect the climate system and other parts of the environment."[314]

198. The ICJ emphasises that "responsibility is incurred if the State **fails to take all measures which were within its power** to prevent the significant harm."[315] In the context of climate change, the ECtHR has similarly stated that "what is important, and sufficient to engage the responsibility of the State, is that reasonable measures which the domestic authorities failed to take could have had a real prospect of altering the outcome or mitigating the harm."[316] Likewise, the IACtHR states that "in keeping with

[309] ICJ Advisory Opinion, para. 276 (citing ITLOS Advisory Opinion, para. 365).
[310] European Court of Human Rights, *Case of Greenpeace Nordic and Others v. Norway*, Application No. 34068/21, Judgment, 28 October 2025 (***Greenpeace Nordic and Others v. Norway***), para. 336, https://hudoc.echr.coe.int/eng?i=001-245561.
[311] IACtHR Advisory Opinion, para. 336.
[312] IACtHR Advisory Opinion, para. 229.
[313] ICJ Advisory Opinion, para. 409.
[314] ICJ Advisory Opinion, para. 403.
[315] ICJ Advisory Opinion, para. 409 (emphasis added).
[316] *Klimaseniorinnen v. Switzerland*, para. 444.

[the Court's] case law, the obligation of guarantee and, consequently, the obligation of prevention is one of means or conduct. Therefore, non-compliance is not demonstrated by the mere fact that a right has been violated, but rather, by the application of a standard of due diligence."[317]

199. With respect to climate change, the ICJ observes that a wide range of activities related to fossil fuel production and consumption, including licensing and the provision of fossil fuel subsidies, may constitute non-compliance with the stringent due diligence standard:

> Failure of a State to take appropriate action to protect the climate system from [greenhouse gas] emissions — including through **fossil fuel production,** fossil fuel consumption, **the granting of fossil fuel exploration licences or the provision of fossil fuel subsidies** — may constitute an **internationally wrongful act which is attributable to that State**.[318]

200. Attribution "in this context involves attaching to a State its own actions or omissions that constitute a failure to exercise regulatory due diligence."[319] As mentioned above, this includes the failure to limit the quantity of emissions caused by private actors under its jurisdiction.[320]

201. The ICJ rejects the notion that responsibility cannot be attributed to a specific State because climate-related emissions are "cumulative in nature, involving different States over a period of time, and involving a plurality of States."[321] The ICJ emphasises that multiple States can share responsibility for the same wrongful act when causing climate harm, noting:

> [E]ach injured State may separately invoke the responsibility of every State which has committed an internationally wrongful act resulting in damage to the climate system and other parts of the environment. And where several States are responsible for the same internationally wrongful act, the responsibility of each State may be invoked in relation to that act.[322]

202. This is consistent with the findings of other human rights bodies and courts. For example, the ECtHR states in relation to climate change that:

> [E]ach State has its own share of responsibilities to take measures to tackle climate change and … the taking of those measures is determined by the State's own capabilities rather than by any specific action (or omission) of any other State …. The Court considers that a respondent State should not evade

[317] IACtHR Advisory Opinion, para. 231.
[318] ICJ Advisory Opinion, para. 427 (emphasis added).
[319] ICJ Advisory Opinion, para. 428.
[320] ICJ Advisory Opinion, para. 428.
[321] ICJ Advisory Opinion, para. 429; *see also* paras. 430, 431.
[322] ICJ Advisory Opinion, para. 431.

its responsibility by pointing to the responsibility of other States, whether Contracting Parties to the Convention or not.[323]

203. Similarly, the Supreme Court of the Netherlands in *Urgenda Foundation v. The Netherlands* concludes that States are accountable for their individual contributions to climate change, regardless of their proportion of overall global emissions.[324] The Court further recalls that international law recognises "partial responsibility" where multiple States contribute to the same harm, leading the Court to determine that each State is liable for its own contribution to global climate change.[325] Importantly, the Court explicitly rejects the argument that a State's partial responsibility is absolved when its emissions represent only a small portion of the global total.[326] To the contrary, the Court emphasises that "no reduction [of emissions] is negligible," and that "each reduction of greenhouse gas emissions has a positive effect on combatting dangerous climate change."[327]

6.4 A State's failure to regulate its export of fossil fuels, consistent with due diligence, is also attributable conduct that may violate human rights obligations

204. A State cannot avoid legal responsibility merely because the fossil fuels it produces are exported and burned outside its borders. States may be responsible for breaching their human rights obligations to prevent climate harm through emissions resulting from fossil fuel exports. States exercise regulatory control over fossil fuel production, including those for export, and the release of emissions from the combustion of fossil fuels—whether within or outside their territory—are an inevitable consequence of that production. As discussed above, a State remains responsible for its contribution to climate harm and the effects of that harm on individuals, even if other States are also responsible for contributing to climate harm. Moreover, emissions associated with a State's production of fossil fuel for export are just as likely to harm individuals within its territory as emissions from domestic combustion.

205. The ICJ makes no distinction between fossil fuels produced for domestic consumption and those exported when it clarifies that fossil fuel production or the granting of fossil fuel exploration licences may constitute an internationally wrongful act attributable to that State.[328] It further notes that "possible specific climate-related effects must be assessed as part of environmental impact assessment at the level of proposed individual activities, e.g. for the purpose of **assessing their possible downstream effects**."[329]

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[323] *Klimaseniorinnen v. Switzerland*, para. 442.
[324] Supreme Court of the Netherlands, *Urgenda Foundation v. The Netherlands*, Number 19/00135, Judgment, 20 December 2019 (***Urgenda Foundation v. The Netherlands***), para. 5.7.5, https://uitspraken.rechtspraak nl/details?id=ECLI:NL:HR:2019:2007.
[325] *Urgenda Foundation v. The Netherlands*, paras. 5.7.5–5.7.6.
[326] *Urgenda Foundation v. The Netherlands*, para. 5.7.7.
[327] *Urgenda Foundation v. The Netherlands*, para. 5.7.8.
[328] ICJ Advisory Opinion, para. 427.
[329] ICJ Advisory Opinion, para. 298 (emphasis added).

206. Other courts explicitly recognise that States can breach their human rights obligations through the export of fossil fuels they produce. For example, in G*reenpeace Nordic and Others v. Norway*, the ECtHR holds that Norway's obligation to assess the compatibility of the climate impacts of its oil and gas production—95% of which is exported—with its human rights obligations must include the downstream emissions resulting from the combustion of those exports. The Court clarifies that "[i]n the context of petroleum production projects, the environmental impact assessment must include, at a minimum, a quantification of the [greenhouse gas] emissions anticipated to be produced (including the combustion emissions both within the country and abroad …)."[330] This includes assessing "whether the activity is compatible with [Norway's] obligations under national and international law to take effective measures against the adverse effects of climate change."[331]

207. In *Finch v Surrey County Council*, the Supreme Court of the United Kingdom overturned the authorisation for an oil production expansion after finding that the project proponent had failed to assess the full lifecycle emissions associated with the project, including downstream emissions.[332] The Court states that there "is no principle that, if environmental harm is exported, it may be ignored."[333] The Court further explains that there "is no need to know anything about where the oil will go after it is extracted or what the oil will be used for"[334] because "the extraction of the oil is not just a necessary condition of burning it as fuel; it is also sufficient to bring about that result because it is agreed that extracting the oil from the ground guarantees that it will be refined and burnt as fuel."[335] The Court clarifies:

> Climate change is a global problem precisely because there is no correlation between where [greenhouse gases] are released and where climate change is felt. Wherever [greenhouse gas] emissions occur, they contribute to global warming. This is also why the relevance of [greenhouse gas] emissions caused by a project does not depend on where the combustion takes place. If an activity is carried on which will inevitably result in significant [greenhouse gas] emissions, people who carry on the activity cannot be heard to say: 'These emissions are not effects of our activity because they are occurring far away among people of whom we know nothing.'[336]

208. The Court in *Finch* further notes that the inclusion of combustion emissions would substantially increase the project's carbon footprint, finding that "the figure for [greenhouse gas] emissions attributable to the project would have been nearly two

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[330] *Greenpeace Nordic and Others v. Norway*, para. 319.
[331] *Greenpeace Nordic and Others v. Norway*, para. 319.
[332] The Supreme Court of the United Kingdom, *Finch on behalf of the Weald Action Group v. Surrey County Council and Others,* Judgement, 20 June 2024 (***Finch v. Surrey County Council***), para. 2, https://supremecourt.uk/uploads/uksc_2022_0064_judgment_c3d44bb244.pdf.
[333] *Finch v. Surrey County Council*, para. 93.
[334] *Finch v. Surrey County Council*, para. 85.
[335] *Finch v. Surrey County Council*, para. 80.
[336] *Finch v. Surrey County Council*, para. 97.

orders of magnitude greater and could not have been dismissed as 'negligible' in that way."[337]

209. Relatedly, courts and regulatory frameworks recognise that States must account for embedded emissions in imports, even where those emissions are not directly produced within the State's territory. For example, in *Klimaseniorinnen v. Switzerland*, the ECtHR explains that "[i]t would … be difficult, if not impossible, to discuss Switzerland's responsibility for the effects of its [greenhouse gas] emissions on the applicants' rights without taking into account the emissions generated through the import of goods and their consumption."[338]

210. The European Union has likewise sought to address such emissions through the Carbon Border Adjustment Mechanism, which requires that a carbon price be effectively applied to the embedded emissions generated in the production of certain carbon-intensive goods imported into the European Union.[339]

211. Taken together, these authorities and regulations establish that States cannot evade their climate and human rights obligations by relying on the territorial location of emissions. Where a State exercises control over fossil fuel production, it bears responsibility for the foreseeable and inevitable downstream emissions arising from that production, including those occurring outside its territory. Accordingly, the failure to assess and regulate such emissions—particularly in the context of fossil fuel exports—may constitute a breach of both due diligence obligations and applicable human rights duties.

212. Moreover, States bear legal responsibility under international human rights law despite the UNFCCC's territorial-based accounting system.[340] Under the UNFCCC accounting system, it is the importing State that accounts for emissions from the combustion of any fossil fuels that it imports. However, these accounting rules do not determine legal responsibility for climate harm under international law. The UNFCCC accounting framework is an administrative framework that is an inventory and reporting system, not a comprehensive system for allocating legal responsibility for climate harm. Its purpose is to avoid double-counting of emissions to assess an accurate global inventory of emissions.

213. For the purposes of ascertaining liability for harm and damage resulting from a States's contribution of emissions, the ICJ Advisory Opinion indicates that an exporting State still shares responsibility for authorising, facilitating, or benefiting from the extraction

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[337] *Finch v Surrey County Council*, para. 82.
[338] *Klimaseniorinnen v. Switzerland,* para. 280.
[339] Directorate-General for Taxation and Customs Union, European Commission, "Carbon Border Adjustment Mechanism" (2026), https://taxation-customs.ec.europa.eu/carbon-border-adjustment-mechanism_en#why-cbam.
[340] *See* Intergovernmental Panel on Climate Change, *2006 IPCC Guidelines for National Greenhouse Gas Inventories* (2006), Volume 1, Chapter 1, Section 1.1, p. 1.4, https://www.ipcc-nggip.iges.or.jp/public/2006gl/pdf/1_Volume1/V1_1_Ch1_Introduction.pdf (under this system, emissions are generally attributed to the State in which they occur; "National inventories include greenhouse gas emissions and removals taking place within national territory and offshore areas over which the country has jurisdiction").

and export of those fuels.[341] In other words, territorial accounting rules do not determine questions of responsibility, liability, or causation under international human rights law. This approach is also consistent with the ICJ and other courts' determinations that the international climate regime does not operate as a *lex specialis* displacing human rights law and that compliance with the climate regime does not necessarily satisfy obligations arising under other human rights or other areas of law.[342]

6.5 There is a sufficient causal nexus between Australia's non-compliance with its human rights obligations and the specific harms experienced by the Authors

6.5.1 Courts have applied flexible causation standards for individual harm in the context of climate harms

214. As mentioned, the ICJ states that, "for a finding of State responsibility, what is required is an internationally wrongful act and its attribution to a State, whether the act causes harm or not."[343] However, for the purposes of determining reparations, including equitable relief, a causal link must be established between the State's breach and the specific injury suffered by individuals.[344]

215. Given the seriousness of the risks arising from climate impacts, this Committee should be guided by the *pro actione* principle in assessing State non-compliance with human rights obligations and specific harm on individuals.[345] The IACtHR articulates this principle in its Advisory Opinion on climate change, stating that:

> According to this principle, the interpretation or application of procedural rules must not unjustifiably prevent or hinder a court from hearing and ruling on the claims submitted to it in accordance with the law, and the interpretation most favorable to access to justice must always prevail. Consequently, judicial bodies must interpret and apply the relevant rules in such a way as to effectively guarantee access to substantive justice for those who require it in the context of the climate emergency.[346]

216. Other courts also recognise that standards for causation in climate cases must be more flexible than those applied in traditional environmental pollution cases, given the complex and cumulative nature of climate change. For example, the Dutch High Court in *Greenpeace Netherlands v. The Netherlands*, citing ECtHR jurisprudence, notes: "If the classic causality requirements were to be upheld in climate cases, the complexity of

[341] *See* ICJ Advisory Opinion, para. 427 (attributing potential state liability for "fossil fuel production, fossil fuel consumption, the granting of fossil fuel exploration licences or the provision of fossil fuel subsidies" without a carve out for exports).
[342] *See* Section 6.1.
[343] ICJ Advisory Opinion, para. 433.
[344] ICJ Advisory Opinion, para. 433.
[345] *See, e.g.,* IACtHR Advisory Opinion, para. 543.
[346] IACtHR Advisory Opinion, para. 543.

the problem … would mean that the rights of citizens … could not be effectively guaranteed."[347]

217. For these reasons, the IACtHR recommends a flexible standard in climate change cases that would presume causal links between emissions, climate system degradation, and resulting harm to individuals:

> [A]ccess to justice calls for the adoption of alternative probative standards that permit establishing the causal relationship based on the best available science, considering the generation or tolerance of significant risks owing to the omission of measures of prevention, and the real exposure of individuals or groups to such risks, without necessarily requiring proof of a direct causal link. In this regard, the Court draws attention to the possibility of presuming the causal link between [greenhouse gas] emissions and the degradation of the climate system, as well as the one that exists between this degradation and the resulting risks for natural systems and people.[348]

218. The Authors submit that this is the appropriate standard for determining causation between State actions and individual harm in cases alleging violations of human rights under the Covenant. This is most consistent with a human rights-based approach, which is focused on, among other things, providing access to justice in the climate emergency.

6.5.2 The Authors have also established a sufficiently direct and certain causal nexus under the ICJ's approach to causation when assessing injury

219. The ICJ adopts a different approach than that recommended by the IACtHR and does not provide that causal links in climate cases should be presumed.[349] Its existing standard requires the existence of "a sufficiently direct and certain causal nexus between the wrongful act … and the injury suffered by the Applicant."[350] However, the ICJ explains that this standard is nevertheless "flexible enough to address the challenges arising in respect of the phenomenon of climate change."[351] Even if the ICJ's less flexible approach to causation is applied, the standard is met in this case.

220. The ICJ identifies two elements necessary to satisfy its standard: "First, whether a given climatic event or trend can be attributed to anthropogenic climate change; and second, to what extent damage caused by climate change can be attributed to a particular State or group of States."[352]

221. The Authors have established that these two elements are met:

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[347] The Hague District Court, *Greenpeace Netherlands v. The State of the Netherlands*, Case Number C/09/659832/HA ZA 24–53, Judgment, 28 January 2026 (***Greenpeace Netherlands v. The Netherlands***), para. 10.16, https://uitspraken rechtspraak.nl/details?id=ECLI:NL:RBDHA:2026:1347 (citing *Klimaseniorinnen v. Switzerland*, paras. 439–440).
[348] IACtHR Advisory Opinion, para. 553 (internal citation omitted).
[349] ICJ Advisory Opinion, para. 435.
[350] ICJ Advisory Opinion, para. 436 (internal citation omitted).
[351] ICJ Advisory Opinion, para. 436.
[352] ICJ Advisory Opinion, para. 437.

a. **Whether a given climatic event or trend can be attributed to anthropogenic climate change**. The harms alleged in this Communication fall squarely within the category of injuries attributable to climate change. In Section 4 and Annexes 12-16, the Authors have presented ample evidence demonstrating that the observed changes in the global climate system that have harmed them—including rising temperatures, increased frequency and severity of extreme weather events, algal blooms, and bushfires—are attributable to climate change caused by anthropogenic greenhouse gas emissions.

b. **To what extent damage caused by climate change can be attributed to a particular State or group of States**. With respect to the second element, it is not necessary to require proof that Australia's emissions alone caused the specific harm to the Authors.[353] Rather, consistent with the flexible approach endorsed by international and regional bodies described above, it is sufficient to demonstrate that Australia's conduct has made a material contribution to the risk of harm and to the overall accumulation of greenhouse gas emissions driving climate change. Courts have "not required it to be shown that 'but for' a failing or omission of the authorities the harm would not have occurred,"[354] nor allowed States to shield themselves from liability because other States have contributed to climate change. For example, the ECtHR in *Klimaseniorinnen v. Switzerland* explains that "it need not be determined with certainty that matters would have turned out differently if the authorities had acted otherwise. The relevant test does not require it to be shown that 'but for' the failing or omission of the authorities the harm would not have occurred."[355]

222. In Sections 7 and 8 below, the Authors show that a sufficiently direct and certain causal nexus exists between Australia's intentionally wrongful acts and omissions and the injuries suffered by them.

7 THROUGH ITS PRODUCTION OF FOSSIL FUELS FOR EXPORT, AUSTRALIA IS NOT COMPLYING WITH ITS INTERNATIONAL CLIMATE OBLIGATIONS

7.1 Australia's fossil fuel exports are a material contribution to climate change and have caused, and will foreseeably cause, harm to the Authors

223. Australia exercises regulatory authority and control over production of fossil fuels for export that generate substantial greenhouse gas emissions.[356] As established above, such emissions are a foreseeable and inevitable consequence of fossil fuel production and contribute to the degradation of the global climate system irrespective of where

[353] *See* Sections 6.3 and 6.4.
[354] *Greenpeace Nordic and Others v. Norway*, para. 294; *see also Greenpeace Netherlands v. The Netherlands*, para. 10.16 ("If the classic causality requirements were to be upheld in climate cases … the rights of citizens enshrined in the ECHR could not be effectively guaranteed").
[355] *Klimaseniorinnen v. Switzerland*, para. 444.
[356] *See* Section 5.

they occur. Under international law, Australia is responsible for its contribution to climate-related harm and the resulting injury to individuals through its fossil fuel exports, even if those fossil fuels are burned within other States' territories.[357] The narrow UNFCCC accounting framework, based on the territorial location of emissions, does not preclude Australia's responsibility for its emissions under human rights law.[358]

224. Emissions from fossil fuels produced for export are in fact a major source of Australia's contribution to climate change. Australia is among the world's largest historical, current, and projected exporters of coal and LNG, as described above. The combustion of these exported fuels gives rise to significant downstream emissions, which, according to Australia's own Climate Change Authority, contributes to more than one billion tonnes of CO_2 annually when used abroad.[359]

225. Moreover, given the cumulative and transboundary nature of climate change,[360] the aggregate effect of Australia's emissions over time cannot be ignored. Since the UNFCCC was signed in 1992, emissions from Australian exports of fossil fuels have more than tripled; Australia has been among the world's largest exporters of coal for decades; and its LNG exports have expanded rapidly over the past decade, doubling over five years prior to 2020, and becoming the world's third largest LNG exporter as of 2024.[361] As of 2022, "close to 80% of Australia's total fossil fuel CO_2 footprint was due to exported carbon."[362] This is the reason that Climate Analytics has emphasised that "far from being an inconsequential emitter, Australia is playing a major role in sustaining elevated global emissions …."[363]

226. Australia's projected exports over the next decade and beyond are not aligned with maintaining global temperature rise to below 1.5°C, or even 2°C. For example, as Anderson and Calverley show, predicted future fossil fuel exports far surpass the emissions on the mean global pathway for 1.5°C and Australian fossil fuel exports will continue to generate huge quantities of greenhouse gas emissions long after the remaining carbon budget for 1.5°C will have been extinguished by the end of 2029.[364]

227. In summary, Australia's material contribution to global greenhouse gas emissions through its fossil fuels exports forms part of a cumulative process that has resulted in identifiable and scientifically attributable impacts to the climate system, which have caused harm to the Authors.[365] If Australia's fossil fuel exports continue as projected, it

[357] *See* Section 6.
[358] *See* Section 6.4.
[359] The Climate Change Authority, *2035 Targets Advice* (2025), p. 104, https://www.climatechangeauthority.gov.au/sites/default/files/documents/2025-09/2035%20Targets%20Advice%20Report.pdf; *see* Section 5.1.
[360] *See* Section 4.
[361] *See* Section 5.1.
[362] Climate Analytics 2024, p. 16.
[363] Climate Analytics 2024, p. 35.
[364] Anderson and Calverley Report, pp. 32–33. *See* Section 5.2.
[365] *See* the Authors' statements at Annexes 1-10, and the summary of climate impacts on the Authors in Section 4.5.

will continue to drive climate impacts and cause further foreseeable harms to the Authors.

7.2 By continuing to produce fossil fuels for export, Australia is not taking the necessary measures to prevent harm to the climate system

228. Australia has no national legislative or policy framework requiring the assessment of the climate impacts of the fossil fuels it produces for export in line with limiting global warming to 1.5°C, or restricting fossil fuel exploration, production, infrastructure development, or export in line with limiting global warming to 1.5°C.[366] To the contrary, despite clear and longstanding knowledge of the resulting climate risks, Australia is actively sustaining and facilitating its fossil fuel exports by approving new and expanded fossil fuel projects and infrastructure, providing significant subsidies for fossil fuel production, and promoting its fossil fuel exports overseas.[367]

229. As a result, there are many existing fossil fuel exploration, production, and export projects which would lock in substantial greenhouse gas emissions over the next several decades, as well as many such projects with extended lifespans in the approval pipeline. This includes 50 oil and gas projects and 40 coal projects in the development pipeline as of 2025, including projects that are committed, publicly announced, or undergoing advanced feasibility assessment.[368]

230. By failing to implement measures to constrain production, remove subsidies, and phase down exports—while actively promoting investment in and approving long-lived, emissions-intensive projects and supporting infrastructure—Australia is not using all means at its disposal to prevent catastrophic climate harm by ensuring that global warming is limited to 1.5°C. It is failing to make the deep, rapid, and sustained emissions reductions that are necessary for the prevention of significant harm to the climate system. This constitutes a breach of its due diligence obligations under international law.[369]

231. The following section describes how Australia's breach of its international climate obligations has caused and will continue to foreseeably cause direct, certain, and substantial harm to the Authors, amounting to a violation of the Authors' rights under the Covenant.

8 AUSTRALIA'S ACTIONS AND OMISSIONS ARE VIOLATING THE AUTHORS' RIGHTS

232. As set out comprehensively above, Australia has endangered and continues to endanger the lives and well-being of the Authors by perpetuating and exacerbating climate change through its production of fossil fuels for export. Each excess emission adds

[366] *See* Sections 5.3 and Section 5.4.
[367] *See* Sections 5.2.2 and Section 5.4.
[368] *See* Section 5.2.2.
[369] *See* Section 6.2.

more dangerous greenhouse gases to the atmosphere, helps lock in irreversible climate change, and exacerbates the foreseeable risks to the Authors' human rights. Any delay in meaningful and adequate emissions reductions will cause irreversible and high-risk consequences with which the Authors and future generations must contend. By recklessly causing and perpetuating excessive levels of carbon emissions through its production of fossil fuels for export, Australia is failing to prevent the deadly and harmful impacts of climate change and is violating the Authors' rights to life; privacy, family, and home life; and culture.

8.1 The right to life under Article 6 of the ICCPR

8.1.1 State obligations

233. Pursuant to Article 6 of the ICCPR, "[e]very human being has the inherent right to life."[370] This is the "supreme right" from which other rights flow.[371] States have a negative duty to "refrain from engaging in conduct resulting in arbitrary deprivation of life."[372] And because "the right to life cannot be properly understood if it is interpreted in a restrictive manner," States must also "adopt positive measures"[373] including to protect against threats attributable to "private persons and entities."[374]

234. As this Committee explains, State obligations to protect the right to life extend to "reasonably foreseeable threats and life-threatening situations that can result in loss of life."[375] States may violate Article 6 "even if such threats and situations do not result in loss of life."[376] Indeed, the scope of protection under Article 6 "goes beyond injury to bodily or mental integrity or a threat thereto."[377]

235. The ICJ clarifies that States' duties to protect the right to life encompass obligations to prevent climate harm. The Court explains that "[r]espect, protection and fulfilment of [the right to life] may depend on measures taken by States parties to [the ICCPR] to preserve the environment and protect it against the adverse effects of climate change caused by anthropogenic [greenhouse gas] emissions."[378]

236. International jurisprudence and this Committee's own findings confirm that "environmental degradation can adversely affect the effective enjoyment of the right to life."[379] Accordingly, "severe environmental degradation has given rise to findings of a

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[370] ICCPR, Article 6.
[371] General Comment No. 36, para. 2.
[372] General Comment No. 36, para. 7.
[373] *Daniel Billy and Others v. Australia*, para. 8.3.
[374] General Comment No. 36, paras. 7, 21.
[375] General Comment No. 36, para. 7.
[376] General Comment No. 36, para. 7; *see Daniel Billy and Others v. Australia*, para. 8.3.
[377] General Comment No. 36, para. 6.
[378] ICJ Advisory Opinion, para. 377.
[379] UN Human Rights Committee, *Portillo Cáceres et al. v. Paraguay* (CCPR/C/126/D/2751/2016) (***Portillo Cáceres et al. v. Paraguay***), para. 7.4, https://docs.un.org/CCPR/C/126/D/2751/2016 (citing Inter-American Court of Human Rights, *The Environment and Human Rights*, Advisory Opinion OC-23/17, 15 November 2017, paras. 47, 108–114, https://www.corteidh.or.cr/docs/opiniones/seriea_23_ing.pdf; Inter-American Court of

violation of the right to life" throughout the jurisprudence of this Committee and the ECtHR.[380] Domestic courts have applied the same reasoning, including the Hague Court of Appeal in the case concerning the Urgenda Foundation, which recognises that "[t]he interest protected by … the right to life … includes environment-related situations that affect or threaten to affect the right to life."[381]

237. Climate impacts constitute a reasonably foreseeably threat to the right to life. This Committee acknowledges that climate change is one "of the most pressing and serious threats to the ability of present and future generations to enjoy the right to life,"[382] and that "adverse climate change impacts" may constitute "such [reasonably foreseeable] threats" capable of triggering violations of Article 6.[383] The ICJ also affirms that "[t]he adverse effects of climate change may impair the enjoyment of the right to life."[384] The ECtHR similarly finds in *Greenpeace Nordic and Others v. Norway* that "there is a sufficiently close link between … [Norway's] procedure for the licensing of exploration [for oil and gas] and serious adverse effects of climate change on the lives, health, well-being and quality of life of individuals."[385]

238. Finally, this Committee notes that the right to life encompasses "the right of individuals to enjoy a life with dignity."[386] States have a duty to "take appropriate measures to address the general conditions in society that may give rise to direct threats to life or prevent individuals from enjoying their right to life with dignity."[387] These general conditions may include "degradation of the environment" and "deprivation of indigenous peoples' land, territories and resources."[388]

Human Rights, *Case of Kawas-Fernández v. Honduras*, Judgement, 3 April 2009, para. 148, https://www.corteidh.or.cr/docs/casos/articulos/seriec_196_ing.pdf; The African Commission on Human and Peoples' Rights, *Social and Economic Rights Action Centre & the Centre for Economic and Social Rights v. Nigeria*, 27 October 2001, https://achpr.au.int/en/decisions-communications/social-and-economic-rights-action-center-serac-and-center-economic-15596; and General Comment No. 36, para. 3).

[380] *Portillo Cáceres et al. v. Paraguay*, para 7.4 (citing European Court of Human Rights, *Case of M. Özel and Others v. Turkey*, Applications 14350/05, 15245/05, 16051/05, Judgement, 17 November 2015, paras. 170–171, 200, https://hudoc.echr.coe.int/eng?i=001-158803; European Court of Human Rights, *Case of Budayeva and Others v. Russia*, Applications 45339/02, 21166/02, 20058/02, 11673/02, 15343/02, Judgment, 20 March 2008, paras. 128–130, 133, 159, https://hudoc.echr.coe.int/fre?i=001-85436; European Court of Human Rights, *Case of Öneryildiz v. Turkey*, Application 48939/99, Judgment, 30 November 2004, paras. 71, 89–90, 118, https://hudoc.echr.coe.int/eng?i=001-67614).

[381] The Hague Court of Appeal, *The State of the Netherlands v. Urgenda Foundation*, Case Number 200.178.245/01, Ruling, 9 October 2018, para. 40, https://uitspraken.rechtspraak nl/details?id=ECLI:NL:GHDHA:2018:2610.

[382] General Comment No. 36, para. 62 (citations omitted).

[383] *Daniel Billy and Others v. Australia*, para. 8.3.

[384] ICJ Advisory Opinion, para. 377.

[385] *Greenpeace Nordic and Others v. Norway*, para. 299.

[386] *Daniel Billy and Others v. Australia*, para. 8.3 (citing *Portillo Cáceres et al. v. Paraguay*, para. 7.3).

[387] General Comment No. 36, para. 26.

[388] General Comment No. 36, para. 26 (citations omitted). The Inter-American Commission on Human Rights has also recognised that Indigenous peoples' "special relationship [to their territories] is fundamental … for the[ir] material subsistence," and that such subsistence is related to the right to life. Inter-American Commission on Human Rights, *Indigenous and Tribal Peoples' Rights Over Their Ancestral Lands and Natural Resources: Norms and Jurisprudence of the Inter-American Human Rights System* (2009), para. 56, https://www.oas.org/en/iachr/indigenous/docs/pdf/ancestrallands.pdf. The Inter-American Court of Human

239. The right to life with dignity "depends … on measures taken by States parties to preserve the environment and protect it against harm, pollution and climate change caused by public and private actors",[389] and, as the IACtHR recognises, "environmental protection [is] a condition for a decent life."[390] This Committee also suggests that "a situation of physical endangerment or extreme precarity" could threaten the right to a life with dignity.[391]

8.1.2 Australia is violating the right to life

240. Australia's export of fossil fuels has materially contributed to and will continue to perpetuate the climate emergency, violating some of the Authors' rights to life under Article 6. It is also foreseeable that many of the Authors face a life without dignity as climate change causes more extreme and frequent heatwaves, bushfires, and flooding.

Jack Egan

241. The 2019-2020 Black Summer Bushfires constitute precisely the type of harm that Article 6 prohibits—namely, "reasonably foreseeable threats and life-threatening situations."[392] On 30 December 2019, Jack Egan narrowly survived this unprecedented bushfire in his hometown of Rosedale, New South Wales. As the fire rapidly approached, Jack used a firehose to defend his home against 30-metre-high flames that propelled forearm-sized embers through erratically shifting winds. Upon feeling the radiating heat of the approaching fire, Jack understood that his life was in immediate danger. He recalls thinking "*I knew that I was in real peril*" and that *"[i]f I make a mistake here it will really hurt and then I will die*."[393] To save his life, Jack fled from his burning home. Although he survived, three members of his community did not.[394]

242. The 2019-2020 Black Summer Bushfires event, which represents one of the most deadly and devastating fire seasons on record in Australia, is precisely the type of "adverse climate change impact[]" that this Committee has reasoned violates the right to life.[395] There is no doubt that Australia, through its production of fossil fuels for

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Rights has found that Paraguay's failure to legally recognise and protect traditional lands of Indigenous peoples "has had a negative effect on the right of the … [Yakye Axa] Community to a decent life, because it has deprived them of the possibility of access to their traditional means of subsistence." Inter-American Court of Human Rights, *Case of the Yakye Axa Indigenous Community v. Paraguay*, Judgement, 17 June 2005, para. 168, https://www.corteidh.or.cr/docs/casos/articulos/seriec_125_ing.pdf.

[389] General Comment No. 36, para 62.

[390] Inter-American Court of Human Rights, *The Environment and Human Rights*, Advisory Opinion OC-23/17, 15 November 2017, para. 109, https://www.corteidh.or.cr/docs/opiniones/seriea_23_ing.pdf (internal citation omitted).

[391] *Daniel Billy and Others v. Australia*, para. 8.6.

[392] General Comment No. 36, para. 7; *see Daniel Billy and Others v. Australia*, para. 8.3 ("The Committee further recalls that the obligation of States parties to respect and ensure the right to life extends to reasonably foreseeable threats and life-threatening situations that can result in loss of life").

[393] Statement of Jack Egan, Annex 5, para. 15.

[394] Statement of Jack Egan, Annex 5, para. 22. At least 25 people died as a result of the Black Summer Bushfires 2019-2020 in the state of New South Wales. *See* New South Wales Government Department of Communities and Justice, *Inquests and Inquiries into the 2019/2020 NSW Bushfire Season* (27 March 2024), https://dcj.nsw.gov.au/legal-and-justice/laws-and-legislation/legal-assistance-and-applications/responses-to-coronial-recommendations/inquests-and-inquiries-into-the-2019-2020-nsw-bushfire-season.html.

[395] *Daniel Billy and Others v. Australia*, para. 8.3.

export, materially contributed to climate change which significantly exacerbated conditions that increase the risk of bushfires across Australia, such as the Black Summer Bushfires.

243. Climate change will continue to increase the risk of intense and catastrophic bushfires throughout many areas in Australia, including in New South Wales where Jack lives, and he will continue to be exposed to such life-threatening situations.[396]

Barry Traill

244. Barry Traill has faced extreme danger from fighting bushfires as a member of the Queensland Rural Fire Service. At the height of the Black Summer Bushfires in January 2020, Barry was deployed to defend the town of Wyndham in New South Wales. On the fourth day of this assignment, a large burning tree snapped at its base and collapsed, narrowly missing Barry before striking his fire truck. Barry recalls that he "*felt so lucky not to have been seriously injured or killed*."[397] Nonetheless, as a result of this near-death experience, Barry has suffered multiple "*uncontrolled emotional breakdowns*," which continue to the present, and for which he has received professional mental-health counselling.[398] Barry's firefighting duties have also exposed him to substantial smoke inhalation, placing him at continuing risk of serious long-term health consequences.[399]

245. Barry, who is called on to protect communities from bushfire threats, will continue to be deployed to combat increasingly frequent and intense climate change-driven bushfires that will present similar life-threatening risks.

Melissa Fisher

246. Extreme heat can be life-threatening, and people with serious health conditions, such as Melissa Fisher, are most vulnerable. Melissa suffers from stage 3 Hidradenitis Suppurativa, a severe auto-inflammatory skin condition that makes her highly vulnerable to extreme heat. In his expert opinion, Crisp notes that "exposure to higher ambient temperatures have been observed to increase [Hidradenitis Suppurativa] exacerbations, and it is therefore expected that more frequent and intense exposure to higher temperatures would result in more frequent symptoms and worsening of this condition."[400]

247. During heatwaves, Melissa suffers flares that cause her skin to swell and tear, and these tears can become infected and leave her in excruciating pain and frequently immobilised. Living in poverty exacerbates the harm that Melissa experiences. Melissa's condition prevents her from working, leaving her unable to afford adequate air conditioning or other means of escaping extreme heat, such as spending time in air-

[396] *See* Section 4.5.2.
[397] Statement of Barry Traill, Annex 2, para. 22.
[398] Statement of Barry Traill, Annex 2, para. 22.
[399] Statement of Barry Traill, Annex 2, para. 23.
[400] Crisp Report for Melissa Fisher, Annex 15, para. 10 (internal citation omitted).

conditioned public spaces during heatwaves.[401] Her condition has consistently worsened as extreme heatwaves across Australia have intensified; she recounts that "*I feel like I'm constantly afraid for my life in the summer.*"[402] Melissa was first hospitalised following an extreme-heat-induced flare in 2023.[403] She has since returned for emergency treatment seven or eight times.[404] During an extreme heatwave in January 2026, where temperatures in her house remained near 46°C for a week, Melissa recalls that her flares intensified to the extent that she felt dizzy, "*like [she] couldn't breathe*" and that *"[her] body was fighting for its next breath*;" Melissa recalls "*thinking that [she] was going to die*."[405]

248. The climate harm driven by Australia's fossil fuel exports violates Melissa's right to live a life with dignity. When Melissa is left immobilised during heatwaves due to flares of her auto-inflammatory disease, she is prevented from living with dignity. She cannot care for herself, leave her house, or move to seek the urgent medical attention that she requires. Instead, the extreme heat, in Melissa's words, "*leaves [her] stuck at home, boiling*."[406]

249. Crisp confirms that Melissa's condition has a direct and significant impact on her quality of life. This is worsened by heat-exposure flares which cause her significant pain, impairing her sleep and restricting her ability to work and engage in social activities.[407]

250. It is reasonably foreseeable that Melissa's right to life will continue to be violated into the future as climate change worsens. Indeed, extreme heatwaves will increase in Australia with each fraction of a degree of warming.[408] For example, absent significant mitigation measures, annual excess heatwave-induced deaths across Australia are projected to total 5,820 by the year 2100.[409] While Australia continues to produce fossil fuels for export in a manner inconsistent with a 1.5°C pathway, driving and exacerbating such climate impacts, it will continue to violate Melissa's right to life, and her right to life with dignity. Although some adaptation measures may lessen the harm she experiences, only the cessation of the violating conduct can provide a comprehensive and permanent remedy.

Brendon Donohue

251. Brendon Donohue's disabilities intensified the harm he experienced during the 2022 Brisbane floods. When Brendon was trapped in his second-floor apartment for 10 days,

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[401] Statement of Melissa Fisher, Annex 8, paras. 16, 26.
[402] Statement of Melissa Fisher, Annex 8, para. 21.
[403] Statement of Melissa Fisher, Annex 8, para. 8.
[404] Statement of Melissa Fisher, Annex 8, para. 8.
[405] Statement of Melissa Fisher, Annex 8, para. 19.
[406] Statement of Melissa Fisher, Annex 8, para. 15.
[407] Crisp Report for Melissa Fisher, Annex 15, pp. 3–4.
[408] *See* Section 4.5.1.
[409] Botian Chen et al, "Projected Heatwave-Related Excess Mortality Under Climate Change Scenarios Across 2288 Communities in Australia: A Nationwide Ecological Projection Modelling Study," 10 *The Lancet Planetary Health* 4 (21 April 2026), p. 5, https://doi.org/10.1016/j.lanplh.2026.101446.

he feared running out of food, and could not access the essential medication necessary to preserve his remaining eyesight and eye health.[410]

252. The fear he experienced not knowing if he would be able to evacuate his building if required was terrifying. He recounts:

> *For the entire time I was trapped in my unit, the prospect of evacuating made me very anxious. I was not confident I could get [] out of the building if we needed to evacuate, or if I needed to go outside. I knew that the street was flooded, and cars were underwater. If I needed to navigate through flood waters, it would be impossible for me, particularly if I was unassisted. … I was not sure if a support worker would be able to come and assist me or if I could call a taxi.*[411]

253. In addition, the increased extreme heat events that Brendon has experienced due to climate change and will continue to experience even more frequently threatens to strip him of his ability to live his life with dignity. Brendon's building is not well insulated and it can get unbearably hot during extreme heat events. Extreme heat already makes it difficult for Brendon to go outside because of the glare, and he feels like "*as climate change gets worse, things will only become even more challenging for me and my quality of life*."[412]

254. Brendon has a lot of fear about the future. He does not know how he would cope with another flood event or other climate-related emergency. He laments:

> *I do not feel confident that if another emergency occurs that I will be safe. I worry that during the summertime we might have a power outage which would prevent me from cooling my unit or using the lifts in my building to get outside. I am concerned that in the future I will get forgotten again; that I will be left on my own and I will not be able to navigate to safety in an emergency.*[413]

255. Brendon can barely afford to run his air conditioning unit, and if a day comes where running it will become unaffordable, he worries that he will have to move into a specialist disability accommodation house with other people in a shared housing situation. Brendon explains: "*I do not want to lose my independence; I want to continue to live my life*."[414]

256. As with Melissa, Australia's conduct will foreseeably continue to violate Brendon's right to life and right to life with dignity.

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[410] Statement of Brendon Donohue, Annex 3, para. 16; *see* Section 4.5.3.
[411] Statement of Brendon Donohue, Annex 3, para. 14.
[412] Statement of Brendon Donohue, Annex 3, para. 19.
[413] Statement of Brendon Donohue, Annex 3, para. 20.
[414] Statement of Brendon Donohue, Annex 3, para. 22.

Cat [redacted]

257. As the frequency and intensity of bushfires increase, so too does the risk that Cat will be gravely harmed because her health conditions would make it almost impossible to evacuate. Cat explains:

> *If a big wildfire comes through here while I am at home alone, I would be unable to get to safety in a hurry. We have had some fire threats here since 2024, and many nerve-wracking fire risk days. Luckily, my husband was home with me for some of the worst and we did not need to evacuate, but every summer has made me more aware of the increased risk as my capacity has deteriorated.*[415]

258. Increasingly regular periods of extreme heat also leave Cat in "*crisis mode*."[416] Based on Cat's testimony, Crisp opines that Cat is "at increased risk of developing heat-related illness due to her chronic illnesses" and that it is "likely" that she also has an "elevated [mortality] risk" due to her medical conditions.[417] Crisp also notes that as heat exposure and bushfires increase due to climate change, Cat is also at a higher risk for mental health illness due to her underlying chronic health conditions.[418]

259. In her testimony, Cat reflects on the impacts that heatwaves have had on her physical and mental health. Cat states:

> *Living safely and with dignity is a challenge for me every day of the year. In summer, it is much harder. In heatwaves, there is no dignity, only survival and increasing reliance on others in trying to do so.*
>
> *The impact on my mental health is very much one of moral injury and enduring the constant stress of managing my health conditions and keeping myself healthy enough to live my life.*[419]

260. In January 2026, she shares that the combined threat of an extreme heatwave and dangerous fire weather left her frightened but resigned to the fact that the threat was one that she could not outrun. She states:

> *Tuesday 27 January 2026 was the fifth consecutive day over 40° at our home. I woke up from the hottest day and night I have ever experienced, having been unable to sleep until 1am or later for the fourth consecutive night in a row. The entire community was again on edge for the incoming wind change. My husband worked from home for my safety because my support worker was away. I was too physically and mentally spent from the last four days to do anything but ensure the horses were in the shady yard by the house, curl up in*

[415] Statement of Cat [redacted], Annex 4, para. 31.
[416] Statement of Cat [redacted], Annex 4, para. 15.
[417] Crisp Report for Cat [redacted], Annex 16, paras. 30, 35–36.
[418] Crisp Report for Cat [redacted] Annex 16, para. 42.
[419] Statement of Cat [redacted] Annex 4, paras. 17–18.

front of the air-conditioner, and wonder, 'What if?' What if a fire cannonballs down our gully as quickly as the Natimuk grassfire in Western Victoria on 9 January 2026? What if it is upon us before we even register smoke? ... On a day like that, what would be left to save by the time help arrived? Would it be too late for me? Would I make it out alive?[420]

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261. In summary, by recklessly causing and perpetuating life-threatening climate change by continuing to produce fossil fuels for export in a manner inconsistent with a 1.5°C pathway, Australia has failed to undertake the necessary preventive and precautionary measures to respect and ensure the Article 6 right to life for Jack Egan, Barry Traill, Melissa Fisher, Brendon Donohue, and Cat [redacted]

8.2 The right to privacy, family, and home life under Article 17

8.2.1 State obligations

262. Article 17(1) provides that "[n]o one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation." States must also "adopt positive measures that are needed to ensure the effective exercise of this right, in the light of interference by the State authorities and physical or legal persons."[421]

263. For the purposes of Article 17, the term "family" is interpreted broadly, and is intended "to include all those comprising the family as understood in the society of the State party concerned."[422] Similarly, "home" indicates "the place where a person resides or carries out his usual occupation."[423]

264. A violation of Article 17 may result from environmental degradation. This Committee has previously found that Australia violated Article 17 by failing to protect the right to home, private life, and family of First Nations individuals from the negative impacts of climate change.[424] This Committee elsewhere holds that when pollution has "direct repercussions" on the right to privacy, family, and home life, such that the impact of pollution is "serious because of its intensity or duration and the physical or mental harm" caused, "the degradation of the environment may adversely affect the well-being of individuals" and violate their Article 17 rights.[425] In this context, the Committee has concluded that Paraguay violated Article 17 by failing to "place appropriate controls upon illegal activities that were creating pollution," specifically the use of agrochemicals in populated areas that impacted crops, livestock, and water resources.[426]

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[420] Statement of Cat [redacted] Annex 4, para. 34.
[421] *Portillo Cáceres et al. v. Paraguay*, para. 7.8; *see* UN Human Rights Committee, *General Comment No. 16* (CCPR/C/GC/16) (**General Comment No. 16**), para. 1, https://docs.un.org/en/ccpr/c/gc/16.
[422] General Comment No. 16, para. 5.
[423] General Comment No. 16, para. 5.
[424] *Daniel Billy and Others v. Australia*, para. 8.12.
[425] *Portillo Cáceres et al. v. Paraguay*, para. 7.8.
[426] *Portillo Cáceres et al. v. Paraguay*, para. 7.8.

Similarly, in 2024 the ECtHR stated that it "already held long ago that the scope of protection under Article 8" of the European Convention on Human Rights—which analogously protects private and family life and home—"extends to adverse effects on human health, well-being and quality of life arising from various sources of environmental harm and risk of harm."[427]

265. The adverse effects of and risks associated with climate change may result in violations of Article 17. In this regard, the ECtHR derives from Article 8 of the European Convention "a right for individuals to enjoy effective protection by the State authorities from serious adverse effects on their life, health, well-being and quality of life arising from the harmful effects and risks caused by climate change."[428] Importantly, in considering the effects of climate change on the enjoyment of rights under the European Convention, the ECtHR notes that:

> Article 8 [of the European Convention] is capable of being engaged because of adverse effects not only on individuals' health but on their well-being and quality of life … and not only because of actual adverse effects but also sufficiently severe risks of such effects on individuals….
>
> [T]he applicability of Article 8 … is triggered not only by actual damage to the health or well-being of an applicant but by the risk of such effects, where such risks present a sufficiently close link with the applicant's enjoyment of his or her rights under Article 8.[429]

266. Mitigation of greenhouse gas emissions is central to States' obligations to protect the right to privacy, family, and home life. Protection of this right requires States "to adopt, and to effectively apply in practice, regulations and measures capable of mitigating the existing and potentially irreversible, future effects of climate change."[430] Critically, the ECtHR clarifies that the "[f]ailure by the State to comply with [its duty to put in place and apply mitigation measures] would suffice for the Court to conclude that the State failed to comply with its positive obligations under [the right to respect for private and family life] without it being necessary to examine whether the ancillary adaptation measures were put in place."[431]

267. Finally, this Committee recognises an expansive interpretation of Article 17 as applied to Indigenous communities, considering the "special relationship" they enjoy with their territories. In this context, the meaning of "home" encompasses not only dwellings, but also more broadly the territories which "provide [Indigenous] communit[ies] with the necessary resources to preserve [their] cultural identity."[432] Accordingly, elements of

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[427] *Klimaseniorinnen v. Switzerland*, para. 544.
[428] *Klimaseniorinnen v. Switzerland*, para. 544.
[429] *Klimaseniorinnen v. Switzerland*, paras. 435, 437.
[430] *Klimaseniorinnen v. Switzerland*, para. 545.
[431] *Klimaseniorinnen v. Switzerland*, para. 555.
[432] UN Human Rights Committee, *Pereira and the other members of the Campo Agua'ẽ indigenous community v. Paraguay* (CCPR/C/132/D/2552/2015) (***Pereira and Others v. Paraguay***), para. 8.3, https://docs.un.org/en/CCPR/C/132/D/2552/2015 (recognising that the "home" of the Ava Guarani people extended beyond dwellings to the broader territories).

"territory" that are "part of the way of life" of Indigenous communities "can be considered to fall within the scope of protection of article 17 of the Covenant."[433] For example, this Committee recognises that crops, livestock, fruit trees, hunting, foraging, fishing, and water resources can benefit from Article 17 protection.[434]

8.2.2 Australia is violating the right to privacy, family, and home life

268. Through its export of fossil fuels in a manner inconsistent with a 1.5°C pathway, Australia has materially contributed to and will continue to perpetuate the climate emergency, violating many of the Authors' Article 17 right to be protected from unlawful interference with privacy, family, and home life. Climate change-driven events have adversely affected the Authors' health, well-being, and quality of life, and interfered with their "homes," putting them at further risk every passing day. For the Aboriginal Authors, climate change threatens the special relationship that they have with their traditional Country.

Jack Egan

269. Article 17 protects against interference with an individual's home. As described above, the Black Summer Bushfires incinerated the home of Jack Egan and his partner, Cath, in Rosedale, New South Wales. Jack describes the devastating loss:

> *We lost our home and almost all of our possessions that day. We remain both very sorry that there were things that we lost that were more than material – including Cath's only photos of her birth mother (she was a forced adoptee as a baby) and a lot of beloved First Nations art from the Ngukurr region. However, we were just so glad that we both survived.*[435]

270. Article 17 protections also extend beyond "actual damage" to privacy, family, and home life, and encompass "sufficiently severe risks" of such harm.[436] Jack and Cath took three years to rebuild their house on the same site, during which time they were displaced from their home. While Jack and Cath have rebuilt their house with strong fire-resistant features, Jack cannot help but worry about the future with the ever-increasing risk of bushfires due to climate change. Jack states that "*on hot dry days at school when a strong north-westerly wind is blowing, I find myself looking for smoke upwind to the distant forested hills. These are the sort of conditions that could easily bring another big uncontrollable fire [through] our communities."*[437]

Cat [redacted]

271. Cat's experience during several bushfires has had direct repercussions on her physical and mental well-being, infringing on her Article 17 rights. For example, during the

[433] *Pereira and Others v. Paraguay*, para. 8.3.
[434] *Pereira and Others v. Paraguay*, para. 8.3.
[435] Statement of Jack Egan, Annex 5, para. 23.
[436] *See Klimaseniorinnen v. Switzerland*, paras. 435, 437 (interpreting Article 8 of the ECHR, which is analogous to Article 17 of the ICCPR).
[437] Statement of Jack Egan, Annex 5, para. 33.

Black Summer Bushfires, the flames threatened her home twice in three weeks, causing her to evacuate on the second occasion. Cat described the events as "*a stressful time*" for her.[438] The smoke from the fires also took a toll on Cat, whose health conditions make her more susceptible to harm from smoke inhalation. She recalls:

> *I was very impacted by the smoke during the Black Summer Bushfires which was sometimes overwhelming.*
>
> *The first wall of smoke from the Black Summer fires arrived from the east on 21 November 2019, with a temperature well over 40°[C]. The smoke continued throughout December and January. Even on the milder days, the burning feeling in my throat and lungs rarely went away at rest, and the burning increased with any mild exertion, inhaler or not.*[439]

272. Like Jack, Cat explains that she fears the worst because her house is in a region that is prone to bushfires that are increasing in severity and frequency because of climate change.

273. Cat's home life is also substantially impacted by extreme heat. Her home "*is not connected to the municipal power grid or water system and we collect and store our water and run our own solar system and batteries. We usually have enough energy for the house (including our air conditioner) through the day but need to be conservative after sunset or in overcast weather to ensure the battery lasts the night.*"[440] Because of this, during the hottest parts of summer, Cat often struggles to be able to cool her house to a safe temperature. As she says in her statement:

> *During heatwaves of the kind we had this summer and last summer it is impossible for me to keep the internal temperature of my house at a level that is safe for me. For example, when it is above 35°C outside my air conditioner is only able to keep the house at around 27-29°C during the day.*[441]

274. Cat also shares that she is concerned that she may be unable to escape direct threats such as bushfires and associated heatwaves due to her health conditions. Crisp notes that this is "a reasonable concern given the severity of symptoms described that may affect [her] motility and the context of more frequent and intense heatwaves."[442] Crisp also notes that "as well as direct health risks, worsening of [Cat]'s condition during hot weather may impair ability to hydrate or prevent cooling through showering,"[443]

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[438] Statement of Cat [redacted] Annex 4, para. 23.
[439] Statement of Cat [redacted] Annex 4, paras. 29–30.
[440] Statement of Cat [redacted] Annex 4, para. 6.
[441] Statement of Cat [redacted] Annex 4, para. 14.
[442] Crisp Report for Cat [redacted] Annex 16, para. 38.
[443] Crisp Report for Cat [redacted] Annex 16, para. 37.

Melissa Fisher

275. Melissa Fisher's well-being in her home is threatened by heatwaves that infringe her Article 17 rights. These heatwaves will become even more intense and frequent as climate change worsens.

276. Melissa's condition of stage 3 Hidradenitis Suppurativa, an auto-inflammatory disease that is triggered by and prone to flare during heatwaves, leaves her immobilised and in agonising pain.[444] Crisp's expert opinion on Melissa's health condition explains that more frequent and intense exposure to higher temperatures would result in Melissa's symptoms becoming worse and more frequent.[445]

277. Melissa recounts that her intense physical suffering frequently extends for the duration of each extreme heatwave, until outdoor temperatures subside. Because of her condition, Melissa lives in fear of heatwaves, which affects her emotional well-being and quality of life. She recounts:

> *I know that heatstroke is a silent killer and I'm constantly thinking about what I am supposed to do if I'm by myself and can't get any help – especially if I'm in a flare and I can barely move from the pain. When I'm in flares, I also worry about the risk of infection and sepsis. I feel like I'm constantly afraid for my life in the summer.*[446]

278. Crisp confirms that psychological symptoms (distress, anxiety, depression and suicide) increase with higher temperatures.[447] He concludes that, in his professional opinion, "[Hidradenitis Suppurativa] has a direct and significant impact on Melissa's quality of life, and that her quality of life is worsened by flares of the condition related to heat exposure."[448]

279. When outdoor temperatures rise to levels that risk triggering her auto-inflammatory condition, Melissa is effectively confined indoors, which affects her well-being, health, and quality of life.[449] Crisp confirms that the types of symptoms Melissa experiences because of her Hidradenitis Suppurativa "can impair or prevent the ability to work, including volunteering work, restrict social activities and impair sleep," and that "[s]tudies have found a high risk of reduced mobility, self-care and impairment of usual activities in [Hidradenitis Suppurativa] sufferers."[450] Indeed, in a state of immense pain and exhaustion she is unable to work from her home, and when she is immobilised, she cannot leave her house to seek employment or visit places of usual occupation elsewhere.

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[444] *See* Section 4.5.1.
[445] Crisp Report for Melissa Fisher, Annex 15, para. 10.
[446] Statement of Melissa Fisher, Annex 8, para. 21.
[447] Crisp Report for Melissa Fisher, Annex 15, para. 25.
[448] Crisp Report for Melissa Fisher, Annex 15, para. 22.
[449] Statement of Melissa Fisher, Annex 8, paras. 15–17.
[450] Crisp Report for Melissa Fisher, Annex 15, para. 19 (internal citation omitted).

Brendon Donohue and Sama Youhana

280. The 2022 Brisbane floods that were fuelled by and made more likely by climate change violated the rights to privacy, family, and home life under Article 17 for both Brendon Donahue and Sama Youhana. The consequences experienced by both Brendon and Sama were serious given both their intensity and duration.

281. As described in Section 4.5.3, in 2022 Brendon was trapped for 10 days inside his apartment during the Brisbane floods. Brendon's vulnerability to the effects of the flood were compounded by his disabilities, which render him legally blind and with impaired balance and agility. During the event, Brendon was worried that he would run out of food and, after running out of the medication on which his limited eyesight depends, he had no way to access new medication. Brendon states: *"Without my medication, I was anxious that the health of my eyes would deteriorate further and I would not be able to get medical support*."[451]

282. Sama Youhana was likewise impacted by the 2022 Brisbane floods. Sama, who was 17 years old at the time of the event, suffered the complete inundation of the ground-floor garage of her family's apartment, which obstructed entry and exit from her home. She recounts that the flood caused her great anxiety:

> *We did not know how high the water would go. I was so afraid and all I could think about was my family's safety – I was worried about my brother in particular because he was only 10 at the time and he is not a strong swimmer. My parents also aren't very strong swimmers and flood waters are very dangerous.*
>
> *We don't have any family here so I was also worried about where we would go if the flood waters kept rising. I was also worried about us losing our possessions and the financial burden of that – we don't have a lot, and it is a small apartment.*[452]

283. Even after floodwaters receded approximately four days later, Sama's well-being continued to be impacted. The flooding cut electricity to Sama's house, and it was not restored for nearly a week. During this time, Sama's family lacked access to warm water and could not use the stove in their kitchen. The floods prevented Sama from entering and exiting her home and caused significant property damage.

284. Overall, the floods adversely affected Sama's well-being and caused her emotional distress, leaving a lasting impact. She explains:

> *Experiencing the floods made me very anxious about potentially facing other future extreme events. When you experience something like that for the first time, it completely changes how you prepare and process every extreme weather event that comes after that. I feel anxious every time another weather*

[451] Statement of Brendon Donohue, Annex 3, para. 16.
[452] Statement of Sama Youhana, Annex 9, 13–14.

> *extreme happens, and I'm always having to self-regulate how I feel, because sometimes it's too overwhelming.*[453]

285. Both Sama and Brendon remain concerned about their homes and well-being as climate change is predicted to make flooding events like the 2022 Brisbane floods more common.

Anne Poelina

286. Anne is a Nyikina Warrwa and Warlungurru woman whose home community is Balginjirr, situated along the lower reaches of the Mardoowarra/Fitzroy River in the Kimberley region of Western Australia. Anne's relationship with her Country extends far beyond Balginjirr, encompassing the broader Mardoowarra River System and its catchment area. Consistent with the scope of Article 17, Anne's "home" corresponds to the entirety of her Country. Anne explains:

> *Balginjirr is my home community. It sits on the lower Mardoowarra. When I stand at Balginjirr, I stand on the Country of my ancestors. I know the names of every waterhole, every sacred site, every tree that sings in the wind along this stretch of river. I know which plants are medicine. I know the songs for this Country. Balginjirr is not simply where I live. It is who I am.*[454]

287. By displacing Anne from her home and Country, and by depriving her of the elements of her Country that are part of the way of life of her community, Australia has violated Anne's Article 17 rights.

288. Anne explains that her home is not merely a building, but "*the place where I carry out my obligations under First Law—to stand and hold the land and living waters, for all human and non-human kin.*"[455]

289. In 2023, the Mardoowarra River flooded with unprecedented scale and intensity, submerging her home, the community centre, sacred sites, gardens, and the graves of ancestors beneath 1.5 metres of floodwater.[456] The flooding displaced Anne from residing in her community for three years. She recalls:

> *The flooding forced our displacement for close to 3 years and we are now finally relocating back to our Balginjirr community. My family which had lived on that stretch of the Mardoowarra for generations — who were born on that Country, who buried our parents and grandparents in that Country, we were displaced. It was very distressing and emotional to see our cemetery where we have our families are buried under the flood waters.*[457]

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[453] Statement of Sama Youhana, Annex 9, para. 19.
[454] Statement of Anne Poelina, Annex 1, para. 16.
[455] Statement of Anne Poelina, Annex 1, para. 37.
[456] *See* Section 4.5.3.
[457] Statement of Anne Poelina, Annex 1, para. 33.

290. By inundating her entire community, the 2023 floods described above displaced Anne from her traditional lands and separated her from all the local elements of her Country that are integral to her way of life. The flooding also triggered catastrophic biodiversity loss to the ecosystem, including to various species of plants and animals—elements of her Country that Anne affirms are necessary to preserve her cultural identity. Anne describes the loss she experienced:

> *For our people, you cannot simply relocate a community and expect the culture to survive. Our ceremonies can only be performed on our Country. Our stories only come alive in the specific landscape where they were born. Our Law is of a place. When we are removed from that place, we are cut from our identity, spirituality and Law of obligation to care for Country.*[458]

291. This has not just caused great harm to her culture and Country, it has threatened her well-being. Anne recounts:

> *I also carry an immense personal grief. It is the grief of watching Country suffer — of watching the flood destroy what generations of my family have built and cared for. That is not an abstract grief; I carry it in my body. I carry the anxiety of slowly building back to what we had, of not knowing if the sacred sites along the river have been permanently damaged, of not knowing if the songlines have been disrupted by the physical transformation of the landscape.*[459]

292. Other climate-change related events have adversely impacted elements of Anne's territory. Anne recounts that, in 2021, severe drought conditions prevented boab trees on her Country from flowering. These trees, which are a keystone species for her community, provide food and water, and mark the location of sacred spaces.[460] She also recalls that the increased extreme heat events have greatly harmed species of cultural significance, some of which have disappeared entirely from her Country.[461]

Latisha and Pam Francis

293. Latisha and Pam Francis are sisters and Narungga, Ngarrindjeri, and Kaurna women, residing on their Country in Tarndanya (Adelaide), South Australia. Their Country encompasses their traditional lands on Narungga, Ngarrindjeri, and Kaurna Country, which extend to the Yorke Peninsula and the surrounding ocean.

294. The impacts of climate change are damaging Latisha's and Pam's Country and obstructing access to it. The March 2025 algal bloom along the coastline of the Yorke Peninsula prevented the sisters from accessing their shoreline and ocean territories that provide resources necessary to preserve their cultural identity. Pam notes that the

[458] Statement of Anne Poelina, Annex 1, para. 33.
[459] Statement of Anne Poelina, Annex 1, para. 42.
[460] Statement of Anne Poelina, Annex 1, paras. 25–26.
[461] Statement of Anne Poelina, Annex 1, para. 48.

seawater, which used to be translucent, is now "*disgusting and green*;"[462] Latisha says that the water is covered in a thick foam that smells "*funky and off*."[463] The sisters can no longer swim in the ocean—regarded as a place of healing in their culture—because the water provokes rashes and stings their skin.[464] Pam laments that "*the algal bloom came and took away our coastal Country*."[465]

295. The impacts of climate change likewise deprive Latisha and Pam of elements of their Country that form "part of the way of life" of their community, and that therefore fall within the scope of protection of Article 17 of the Covenant. Latisha recounts, for example, that the climate-induced algal bloom has degraded the availability and quality of important seafood resources relied upon by her community for sustenance.[466] Noting the significance of this loss, Pam explains that "*the ocean is a major food source for our people*."[467] These algal blooms also devastate totems of the community that are integral for cultural practices, including butterfish and black swans, which have been found washed up deceased on the shoreline.[468]

Rikki Dank

296. Rikki Dank is a Gudanji and Wakaya woman, and a Traditional Owner from the Barkly Tableland in the Northern Territory of Australia. Rikki explains that her Country is more than a physical location. It is a fundamental component of her identity, and a land to which she belongs. Rikki recounts that:

> *Country is a part of us as Aboriginal people – we belong to the Country and return to it when we die. The only thing separating us from our ancestors is time. By protecting and preserving Country, we protect not only the memories and knowledge of our ancestors, but our ancestors themselves. Traditional Owners do not think of 'ownership' of Country in the Western sense of that term – it is more akin to a sense of a belonging to Country.*[469]

297. She further explains: "*The deep intuitive connection between us and Country means that when Country is out of balance, our souls cannot rest. Because of this connection, I will always fight to protect Country.*"[470]

298. The increasing frequency and intensity of heatwaves across the Northern Territory prevent Rikki from spending time on her Country. She explains that when she is present in the Barkly Tableland, extreme temperatures force her "*to spend less time on our Country and more time sheltering inside*."[471] During the buildup to the wet season and

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[462] Statement of Pam Francis, Annex 7, para. 19.
[463] Statement of Latisha Francis, Annex 6, para. 21.
[464] Statement of Pam Francis, Annex 7, paras. 14, 16.
[465] Statement of Pam Francis, Annex 7, para. 34.
[466] Statement of Latisha Francis, Annex 6, para. 32.
[467] Statement of Pam Francis, Annex 7, para. 13.
[468] Statement of Latisha Francis, Annex 6, para. 30.
[469] Statement of Rikki Dank, Annex 10, para. 3.
[470] Statement of Rikki Dank, Annex 10, para. 4
[471] Statement of Rikki Dank, Annex 10, para. 22.

wet season itself, the combination of extreme heat and humidity is such that Rikki "*cannot go out onto Country, because it is simply too hot*."[472]

299. Rikki explains that she worries that she and her family may not be able to stay on Country if the extreme heat worsens. She states:

> *At some points during the year it becomes so hot on Country that it is not even possible to live there – even if we are sheltering inside our homes. It can become too hot to live inside, too hot to live outside, which means that we have to leave our Country to go elsewhere. This has happened to my family. This poses an existential threat to me and my people, because our very being is inseparable from the Country we call our home.*[473]

300. Climate-induced extreme heatwaves in the Northern Territory also adversely impact the elements of Rikki's territory that are a part of her way of life. When on her Country during the dry season of 2025, she noted that the once abundant stingless bees, which indicate the presence of sugarbag honey used for subsistence, were no longer present.[474] She also notes that previously perennial waterholes used to irrigate crops have diminished in both availability and quality.[475] These elements of her Country are integral to Rikki's traditional way of life and are accordingly protected by her Article 17 rights.

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301. In summary, by recklessly causing and perpetuating life-threatening climate change by continuing to produce fossil fuels for export in a manner inconsistent with a 1.5°C pathway, Australia has failed to take the necessary preventive and precautionary measures to respect and ensure the Article 17 right to be protected from unlawful interference with privacy, family, and home life for Jack Egan, Cat [redacted] Melissa Fisher, Brendon Donohue, Sama Youhana, Anne Poelina, Latisha and Pam Francis, and Rikki Dank.

8.3 The right to culture under Article 27

8.3.1 State obligations

302. Article 27 of the Covenant guarantees ethnic minorities the right to enjoy their culture. The purpose of this right is to "ensure[] the survival and continued development of cultural identity."[476] In full, Article 27 reads: "In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied

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[472] Statement of Rikki Dank, Annex 10, para. 23.
[473] Statement of Rikki Dank, Annex 10, para. 25.
[474] *See*, *e.g.*, Scott Nacko et al., "Heat Stress Survival and Thermal Tolerance of Australian Stingless Bees," 117 *Journal of Thermal Biology* (October 2023), https://doi.org/10.1016/j.jtherbio.2023.103671 ("Results indicate that in some regions of Australia, meliponines already experience periodic heat events exceeding their thermal maxima").
[475] Statement of Rikki Dank, Annex 10, para. 33.
[476] *Daniel Billy and Others v. Australia*, para. 8.13.

the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language."[477]

303. Article 27 imposes both negative and positive obligations. States must refrain from denying minorities the right to enjoy and practice their culture.[478] At the same time, Article 27 entails a positive duty on States "to ensure that the existence and the exercise of this right are protected against their denial or violation."[479] States must ensure measures of protection against acts of the State as well as those of private individuals.[480]

304. Although the rights protected under Article 27 are individual in nature, they depend on the ability of a group to maintain its culture, language, or religion.[481] Accordingly, States may also have an additional positive duty "to protect the identity of a minority and the rights of its members to enjoy and develop their culture and language and to practise their religion, in community with the other members of the group."[482]

305. This Committee interprets Article 27 to protect cultural practices that are closely tied to land and natural resources. The Committee recognises that, particularly with respect to Indigenous peoples, "the enjoyment of culture may relate to a way of life which is closely associated with territory and the use of its resources, including such traditional activities as fishing or hunting."[483] The Committee interprets Article 27 "in the light of the United Nations Declaration on the Rights of Indigenous Peoples," which affirms Indigenous peoples' right to enjoy the territories and natural resources that they have traditionally used for subsistence and cultural identity.[484]

306. This Committee further acknowledges the importance of natural resources to the right to culture in *Bernard Ominayak and the Lubicon Lake Band v. Canada*. In that case, the authors alleged that the government of the province of Alberta had deprived the Band of their means of subsistence and their right to self-determination by selling oil and gas concessions on their lands.[485] This Committee characterises the claim as being based on the right to enjoy culture under Article 27 of the ICCPR. It finds that oil and gas exploitation, in conjunction with historic inequities, threatened the way of life and culture of the Band and that Canada had thus violated Article 27.[486]

307. Other international human rights bodies likewise recognise the special relationship that Indigenous peoples have with their land and resources, and its connection to their right

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[477] ICCPR, Article 27.
[478] ICCPR, Article 27 ("persons belonging to such minorities shall not be denied the right").
[479] UN Human Rights Committee, *General Comment No. 23* (CCPR/C/21/Rev.1/Add.5) (**General Comment No. 23**), para. 6.1, https://docs.un.org/CCPR/C/21/Rev.1/Add.5.
[480] General Comment No. 23, para. 6.1.
[481] *See* General Comment No. 23, para. 6.2.
[482] General Comment No. 23, para. 6.2.
[483] *Daniel Billy and Others v. Australia*, para. 8.13.
[484] *Daniel Billy and Others v. Australia*, para. 8.13.
[485] UN Human Rights Committee, *Ominayak (Lubicon Lake Band) v. Canada* (CCPR/C/38/D/167/1984) (***Ominayak (Lubicon Lake Band) v. Canada***), paras. 2.1, 2.3, https://juris.ohchr.org/casedetails/665/en-US.
[486] *Ominayak (Lubicon Lake Band) v. Canada*, para. 33.

to culture.[487] For example, the Inter-American system recognises that the right to culture has particular importance for Indigenous peoples because of the vital connection between their lands and natural resources and their cultural practices and traditions. In *Case of the Mayagna (Sumo) Awas Tingni Community*, the IACtHR states:

> [T]he close ties of indigenous people with the land must be recognized and understood as the fundamental basis of their cultures, their spiritual life, their integrity, and their economic survival. For indigenous communities, relations to the land are not merely a matter of possession and production but a material and spiritual element which they must fully enjoy, even to preserve their cultural legacy and transmit it to future generations.[488]

308. More specifically, in *Yakye Axa v. Paraguay*, the Court explains that for Indigenous peoples, "the land is closely linked to their oral expressions and traditions, their customs and languages, their arts and rituals, their knowledge and practices in connection with nature, culinary art, customary law, dress, philosophy, and values."[489] In *Sawhoyamaxa Indigenous Community v. Paraguay*, the Inter-American Court adds that the special relationship between Indigenous or tribal peoples and their lands can be seen in their "traditional use" of or "presence" on their land, "be it through spiritual or ceremonial ties; settlements or sporadic cultivation; seasonal or nomadic gathering, hunting and fishing; the use of natural resources associated with their customs and any other element characterizing their culture."[490]

309. This Committee has determined that climate impacts which reduce the viability of traditional lands and resources for the exercise of cultural practices represent a threat to the right protected under Article 27.[491] Under these circumstances, this Committee has previously found Australia in violation of Article 27 for failing to adequately address the impacts of climate change on the Indigenous people of the Torres Strait Islands.[492]

310. International jurisprudence likewise recognises that the impacts of climate change can threaten minorities' ability to practice their culture and affirms that States have an obligation to protect against such threats. Interpreting the European Convention on

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[487] *See, e.g.,* Inter-American Court of Human Rights, *Mayagna (Sumo) Awas Tingni Community v. Nicaragua*, Judgment, 31 August 2001, https://www.corteidh.or.cr/docs/casos/articulos/seriec_79_ing.pdf; Inter-American Court of Human Rights, *Saramaka People v. Suriname*, Judgment, 28 November 2007, https://www.corteidh.or.cr/docs/casos/articulos/seriec_172_ing.pdf; *see also* African Commission on Human and Peoples' Rights, *Centre for Minority Rights Development v. Kenya*, Case 276/2003, 25 November 2009, para. 156, https://achpr.au.int/en/decisions-communications/centre-minority-rights-development-kenya-and-minority-rights-group-27603 (citing the aforementioned cases and observing that Indigenous peoples' "culture, religion, and traditional way of life are intimately intertwined with their ancestral lands … and the surrounding area" and that "without access to their ancestral land, [they] are unable to fully exercise their cultural and religious rights, and feel disconnected from their land and ancestors").

[488] Inter-American Court of Human Rights, *Mayagna (Sumo) Awas Tingni Community v. Nicaragua*, Judgment, 31 August 2001, para. 149, https://www.corteidh.or.cr/docs/casos/articulos/seriec_79_ing.pdf.

[489] Inter-American Court of Human Rights, *Case of the Yakye Axa Indigenous Community v. Paraguay*, Judgment, 17 June 2005, para. 154, https://www.corteidh.or.cr/docs/casos/articulos/seriec_125_ing.pdf.

[490] Inter-American Court of Human Rights, *Case of the Sawhoyamaxa Indigenous Community v. Paraguay*, Judgment, 29 March 2006, para. 131, https://www.corteidh.or.cr/docs/casos/articulos/seriec_146_ing.pdf.

[491] *See Daniel Billy and Others v. Australia*, para. 8.14.

[492] *Daniel Billy and Others v. Australia*, para. 8.14.

Human Rights, the Hague District Court in *Greenpeace Netherlands v. The State of the Netherlands* notes that the Netherlands "has a legal obligation to protect the right of Bonaire's inhabitants to … the enjoyment of their own culture against the negative effects of climate change."[493]

8.3.2 Australia is violating the right to culture

311. Through its production of fossil fuels for export in a manner inconsistent with a 1.5°C pathway, Australia has materially contributed to and will continue to perpetuate the climate emergency, violating the Aboriginal Authors' Article 27 right to culture. Climate change has already jeopardised the ability of the Aboriginal Authors to engage in ancient cultural practices, such as sharing of stories, bonding with their own Peoples and connecting with ancestors, and engaging in activities to teach younger generations about their traditions and history, which they have passed on over millennia. It has prevented them from connecting with Country and the animals living in it, which directly relate to a specific way of being, seeing, and acting in the world, and form part of their cultural identity. These impacts will only intensify as climate change worsens.

Anne Poelina

312. The 2023 Mardoowarra floods described above inundated Anne's community, displaced Anne from her traditional lands, and separated her and her community from all the local elements of her Country that are integral to her cultural practices. The flooding also triggered catastrophic biodiversity loss to the ecosystem, including to various species of plants and animals—elements of her Country that Anne affirms are necessary to preserve her cultural identity.

313. As mentioned, Anne is a Nyikina Warrwa and Warlungurru woman whose relationship with her Country encompasses the broader Mardoowarra River System and its catchment area, one of the most biodiverse areas in the world. Anne explains the importance of Mardoowarra to her People:

> *The Mardoowarra was formed in the Bookarrarra — the beginning of time. 'Bookarrarra' is one of the most important words in my language. It means the past, the present and the future fused into this moment in time in which we as human beings need to be able to respond and act in the protection of Country. The Mardoowarra was created by my Nyikina ancestor Woonyoomboo, the first human being, who rode on the back of the Rainbow Serpent Yoongoorrookoo, carving the river valley as they twisted and turned, singing the Warloongarriy River Law song for Country.*[494]

314. Anne explains that Warloongarriy Law is the Law for the Mardoowarra, the First Law formed at the beginning of time, and that it connects all of the Indigenous Nations along the Mardoowarra/Fitzroy River Catchment—Nyikina Warrwa, Bunuba,

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[493] *Greenpeace Netherlands v. The Netherlands*, para. 11.50, https://uitspraken.rechtspraak nl/details?id=ECLI:NL:RBDHA:2026:1347.
[494] Statement of Anne Poelina, Annex 1, para. 13.

Ngarrinyin, Walmajarri, Mangala and Gooniyandi Peoples—as one society, through the song and ceremony of Warloongarriy Law. This law has been passed down through generations. Anne explains: "*It is a law of interdependence: between human and non-human beings, between people and the living waters, between the present generation and all those who came before and all those yet to come."*[495]

315. For Anne and her People, the Mardoowarra is closely connected with their identity and way of life. She recounts: "*As Indigenous people, we do not separate land, water and people — they are intrinsically and extrinsically entwined. I cannot speak of my life without speaking of the Mardoowarra. They are the same story.*"[496]

316. Climate change is a profound and irreversible threat to Anne's Country, and all the associated cultural practices and traditions closely connected to it. For example, Anne explains that the unprecedented 2023 Mardoowarra River floods that were fuelled in part by global warming caused profound, ongoing and—in some ways—irreversible harm to her home, family, and cultural life. The community and her People are still recovering three years on. She has been unable to "*perform the ceremonies, share the songs, read the signs, and care for the sacred sites that are [her] responsibility.*" She explains that this has caused a "*profound rupture in my Law, spirituality and my identity."*[497]

317. She recounts how the flood has interrupted the passing down of cultural knowledge and between generations:

> *The intergenerational transmission of knowledge is perhaps the deepest harm. My people share stories and knowledge in a practical way — we get stories about Country when we are on Country, doing the practices that those stories belong to. You learn the song for a place when you are standing in that place. You learn the Law for a ceremony when you are performing that ceremony. When we cannot be on Country — when we are displaced, or when the Country itself is damaged — those stories and that wisdom is not passed on or handed down. Many of those stories are not written down. They live only with our old people and emerge only during cultural practices. They are now at grave risk of being lost.*[498]

318. The 2023 floods also destroyed many of the plants and animals that are sacred to Anne's culture. She describes the catastrophic damage to the "*ecosystem known to some as the 'Badlands' — a stretch of the river with a canopy of extraordinary biodiversity, including spiderwebs spanning metres with spiders as big as your hand — was completely wiped out by the flood*." She explains that "*[n]obody was measuring the biodiversity loss: the plants, the animals, the multi-species communities that were simply erased. This loss is not only an environmental tragedy. It is a cultural tragedy.*

[495] Statement of Anne Poelina, Annex 1, para. 14.
[496] Statement of Anne Poelina, Annex 1, para. 23.
[497] Statement of Anne Poelina, Annex 1, para. 37.
[498] Statement of Anne Poelina, Annex 1, para. 39.

They are in our songlines, 'Warloongarriy ceremonies and Balginjirr songline' our custodial ethics to care, our stories."[499]

319. The increased and more intense heatwaves also threaten Anne's culture. The higher frequency of extreme heat days has made it dangerous for Anne to be out on Country because as an Elder she is more vulnerable to the health impacts of hot temperatures. These conditions directly affect the ability of Elders to transmit cultural knowledge and practices to younger generations. Anne explains:

> *[M]any of our Elders now cannot come out on Country during the warmer months because it is simply too dangerous to be exposed to those extreme temperatures. Because of this, we lose irreplaceable opportunities for cultural transmission. The stories we carry — the songlines, the First Law, the ecological knowledge — do not get shared unless they can be on Country, in the right place, doing the right practice.*[500]

320. The more frequent heatwaves also harm the non-human kin that are woven into Anne's People's Law and identity. She recounts that many of the sacred animals—the birds, reptiles, and mammals of her People's songlines—are struggling. As described above, severe drought conditions in 2021 also prevented the sacred boab trees on her Country from flowering. She explains: "*I have seen animals suffering in the heat. I have seen species that were abundant in my childhood become rare. Species that appear in our creation stories, in our ceremonies, in our obligations as custodians are disappearing or being pushed out of their Country by a warming climate. When those species suffer, we suffer. When they disappear, something in us disappears too.*"[501]

321. Rising sea levels have also caused saltwater intrusion into the freshwater systems and underground water tables of the Mardoowarra River. As Anne explains, this saltwater intrusion *"threatens our freshwater ecosystems—the drinking water, the freshwater fish, the water plants, and the habitats of the creatures who depend on fresh water. For a people whose culture is built around the living waters of the Mardoowarra, the intrusion of salt water into our freshwater River Country is a violation of something sacred."*[502]

Latisha and Pam Francis

322. As described above, the algal bloom that Latisha and Pam experienced in their Narungga, Ngarrindjeri, and Kaurna Country has disrupted their ability to engage in cultural practices and receive cultural knowledge from their Elders, greatly harming them and their community's Article 27 right to culture.

323. Latisha describes the importance of being outside on Country as the central means by which Elders pass down knowledge between generations. She explains: "*It is*

[499] Statement of Anne Poelina, Annex 1, para. 34.
[500] Statement of Anne Poelina, Annex 1, para. 47.
[501] Statement of Anne Poelina, Annex 1, para. 48.
[502] Statement of Anne Poelina, Annex 1, para. 51.

impossible to learn about Country and culture as an Aboriginal person without being on Country. Country cannot be learned through a textbook. You need to be on the land and in the water with Elders to be taught how to interact with and care for the Country."[503]

324. One of the most special and important places for Pam and Latisha to learn from their Elders is on the Sea Country. Pam describes the cultural significance of the ocean to her family and community:

> *It is a big part of our culture to be in the water and being in the ocean is how we learn many of our cultural ways. Kids learn how to swim in the same place they learn how to hunt fish. On hot days, kids, parents, and Elders all go down and swim together in the ocean. When I was growing up, it was the prettiest blue water with the nicest sand and there were always stingrays and big fish under the jetty. We consider these animals non-human kin and they play an important role in our cultural practices and stories.*[504]

325. The ocean also serves as an important means for Elders to pass down important subsistence traditions to younger generations, like hunting and gathering food. For example, one important event is the annual butterfish competition where Elders teach younger generations how to hunt and prepare food. Pam explains that hunting "*is an essential cultural practice for us and the ocean is a major food source for our people. Hunting is undertaken by the boys and men. When a young man is of the age to learn how to hunt, they learn from the older men*."[505] Pam and Latisha describe how during the competition the catch is then shared with their mothers or grandmothers who will then teach girls and young women how to cook the catch and provide food for the community. Pam explains that *"[d]uring this process, girls and women learn about how to cook the traditional ways. In this way, our cultural practices often form a cycle whereby all parts of the community have their role. When part of that cycle is broken, the impacts often flow on right throughout the community*."[506]

326. Because of the algal bloom, Pam, Latisha, and their community rarely go to the ocean because, as Pam explains, "*the water is disgusting and green and the sand is brown and just not right. A lot of the marine life is gone now. There is a lot of sea foam and a lot of dead sea life washing up on shore.*"[507]

327. Latisha recounts that she and her family avoid going to the ocean because it is too upsetting. She explains:

> *The ocean feels dead. The sea life is dying, the water is green and frothy, and it is not safe to eat the seafood. It breaks my heart. Members of my*

[503] Statement of Latisha Francis, Annex 6, para. 9.
[504] Statement of Pam Francis, Annex 7, para. 12.
[505] Statement of Pam Francis, Annex 7, para. 13.
[506] Statement of Pam Francis, Annex 7, para. 13.
[507] Statement of Pam Francis, Annex 7, para. 19.

> *Ngarrindjeri family have seen black swans (our totem) wash up dead on the shore. I cannot express how painful that is.*[508]

328. This in turn has interfered directly with Pam and Latisha's ability to practice and maintain their culture. For example, the community has not been able to hold their annual butterfish competition in the past year. Pam explains:

> *This meant that we had to cancel our competition this year. That not only meant that the boys couldn't go out and learn how to hunt; it also meant that me and my sister were not able to learn about cleaning, cooking and preparing the fish from our Elders. This is just one of the ways in which the cycle of cultural learning has been broken by the algal bloom.*[509]

329. Extreme heat and fire weather have also interfered with Pam and Latisha's ability to engage in cultural practices. Latisha recounts how extreme heatwaves have become unbearable and make it dangerous to spend time outdoors due to risks of heat stress and dehydration, especially for the Elders. She explains: "*That means we spend less time on Country learning stories with our old people during the summer months. This is a big loss for us.*"[510] Pam similarly recounts that "*[t]he increase in extreme heat is especially hard for our Elders, and it makes it harder, and sometimes impossible, for them to go outside and connect with Country.*"[511] Because of the algal bloom, Pam, Latisha, and their community are also unable to spend time at and in the ocean to escape the heat.[512]

330. For Pam and Latisha, fire has always been a very important part of their cultural practices. Pam explains that "*[f]or tens of thousands of years, our people have been carefully burning this country to facilitate a healthy cycle for plants and animals. We've always done that in sync with nature, but now everything has fallen out of sync because of climate change.*"[513] The increase in extreme fire weather has prevented their People from engaging in this ancient tradition because it has made cultural burning too dangerous. This has prevented the transmission of this cultural practice to younger generations. Latisha notes:

> *Because of our inability to practice cultural burning as often, we are losing important cultural knowledge connected to fire. Many Elders who held that knowledge were unable to pass it down over recent years because conditions became too dangerous to safely practice cultural burning. Some of those Elders have passed away which has meant that we have lost their knowledge forever. Because of this, we have had to rely on knowledge from other communities, which hurts deeply because we have not been able to inherit and practice our own fire knowledge in the same way.*[514]

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[508] Statement of Latisha Francis, Annex 6, para. 27.
[509] Statement of Pam Francis, Annex 7, para. 22.
[510] Statement of Latisha Francis, Annex 6, para. 36.
[511] Statement of Pam Francis, Annex 7, para. 39.
[512] Statement of Pam Francis, Annex 7, para. 38.
[513] Statement of Pam Francis, Annex 7, para. 44.
[514] Statement of Latisha Francis, Annex 6, para. 43.

Rikki Dank

331. Climate change has also caused great harm to Rikki's Country, and the associated cultural practices and traditions closely connected to it.

332. As recounted above, Rikki's Country is a core aspect of her and her community's identity. It is more than just a physical place—it is a living being. Rikki explains how her Country "*is something I belong to – an essential part of my identity, without which I cease to exist*."[515]

333. Rikki recounts how Elders pass down knowledge between generations:

> *Elders to pass down knowledge of our Country to me and for me to do the same to the next generation – including my daughter who is 16 years old. Culture is learned and shared through the retelling and following of songlines on Country and through travelling through and visiting these songlines. The best way that I can describe songlines is that they are lists of songs, a verbal map, a way of telling the Country, people and non-human kin that you are traveling through, where you are from, why you are there and where you intend to go.*[516]

334. Rikki notes that this transmission of knowledge happens in a practical way on Country. For example, she explains "*[a] story about a place will often only be told at that place; knowledge about a cultural practice will often only be handed down while engaging in that practice. In this way, our cultural practices and knowledge are inextricably connected with Country.*"[517]

335. Climate change is threatening all of this. For example, Rikki recounts how more extreme and intense climate change-driven heatwaves are reducing "*opportunities for intergeneration knowledge transfer – threatening the very survival of [her People's] culture*." [518] She explains that the extreme heat:

> *means that our Elders cannot travel the distances they used to travel before and it has become more difficult for them to impart their knowledge out on Country which makes it more difficult for us to learn about our songlines and cultural responsibilities. Traditionally, we would go out on Country to learn from our Elders. This often requires us to be of a certain age and for our Elders to walk out on Country with us to teach us.*[519]

336. For Rikki, the extreme heat has also put additional strain on her and her family. For example, she explains that "*it is getting too hot now, even during the more mild 'dry season', for me [to] be able to bring my grandmother out on Country, for her to impart*

[515] Statement of Rikki Dank, Annex 10, para. 4.
[516] Statement of Rikki Dank, Annex 10, para. 11.
[517] Statement of Rikki Dank, Annex 10, para. 12.
[518] Statement of Rikki Dank, Annex 10, para. 20.
[519] Statement of Rikki Dank, Annex 10, para. 20.

her knowledge." [520] The extreme heat causes health conditions that prevent Rikki from interfacing with her Country. For example, she recounts how in 2025 the heat caused debilitating leg swelling that prevented her from walking on Country.[521]

337. As mentioned above, the increasing heatwaves have also affected Rikki and her People's ability to collect sugarbag honey, a practice that Gudanji and Wakaya have been engaging in for millennia.[522] She recounts that when she travelled out on Country during the 2025 dry season, "*it was far hotter than usual and we could not find the bees where they used to be. This was very distressing for me and my cousin, as this is where our grandmother took us to teach us about sugarbag and where her grandmother had taken her before that*."[523] For Rikki, this is especially heartbreaking because "*finding sugarbag is one of the ways we remember our old people who have passed on, like my grandmother, and experience Country*."[524]

338. As described in Section 4.5.2, the increased unpredictability of erratic fire weather due to climate change has substantially reduced the ability of Rikki's People to engage in cultural burning practices. Rikki explains that the Gudanji and Wakaya People have been undertaking controlled cultural burning of their lands since time immemorial, and that those burning practices are also essential for the survival and rejuvenation of her Country.[525] These burning practices are also necessary to reduce fuel loads and minimise the risk of bushfires to her Country. Because of climate change, Rikki explains that "*[w]e now have to be very careful with our burns because the conditions are hotter and less predictable. Because of this, we do smaller sections of burning than our Elders did in the past because that is the only way to control the fire.*"[526]

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339. In summary, by recklessly causing and perpetuating life-threatening climate change through the production of fossil fuels for export in a manner inconsistent with a 1.5°C pathway, Australia has failed to take the necessary preventive and precautionary measures to respect and ensure the Article 27 right to culture for Anne Poelina, Pam and Latisha Francis, and Rikki Dank.

9 ADMISSIBILITY

340. This Communication meets the requirements for admissibility of an individual written communication to the Committee, considering Articles 1-5 of the Optional Protocol and the Committee's Rules of Procedure.

[520] Statement of Rikki Dank, Annex 10, para. 22.
[521] Statement of Rikki Dank, Annex 10, para. 31.
[522] Statement of Rikki Dank, Annex 10, para. 27.
[523] Statement of Rikki Dank, Annex 10, para. 29.
[524] Statement of Rikki Dank, Annex 10, para. 30.
[525] Statement of Rikki Dank, Annex 10, para. 15.
[526] Statement of Rikki Dank, Annex 10, para. 18.

9.1 Competence

341. Pursuant to Article 1 of the Optional Protocol, the Committee is competent to consider communications from individuals subject to the jurisdiction of a State Party to the Covenant and Optional Protocol, in relation to alleged violations by that State Party of Covenant rights.[527]

342. This Communication falls within the Committee's competence since it concerns the conduct of a State Party—namely, Australia—which occurred after that State had ratified the Covenant and acceded to the Optional Protocol, that is, after 1991.[528]

343. The Authors are all Australian citizens and subject to Australia's jurisdiction. All the Authors currently reside within the territory of Australia, except for one (Rikki Dank) who has spent most of her life in Australia, still frequently returns to her Country as a Traditional Owner, and intends to return home permanently.[529] Current residency within the State Party's territory is not a requirement; the Committee has confirmed that a State Party's rights obligations extend to "anyone within the power or effective control of that State Party, even if not situated within the territory of the State Party."[530] In Rikki's case, she has personally experienced climate-related impacts (such as heatwaves causing loss of cultural practices) during her time living in Australia as well as during her recent visits. Even when she is outside of Australia's territory, Rikki remains under the effective control of Australia, since her Country and cultural practices remain vulnerable to climate change impacts that Australia is failing to prevent.

344. All the Authors therefore meet the definition of "individuals subject to [the] jurisdiction" of a State Party to the Covenant and Optional Protocol, under Article 1 of the Optional Protocol and Rule 99(a) of the Committee's Rules of Procedure.

345. Pursuant to Article 2 of the Optional Protocol, the Authors are permitted to submit this Communication to the Committee as they are all individuals who claim violations of Covenant rights (namely, Articles 6, 17, and 27) which they have experienced directly and personally, and those claims are sufficiently substantiated in this Communication.[531] Pursuant to Article 3 of the Optional Protocol, none of the Authors are anonymous.[532]

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[527] *See also* Rule 99(a) of the Committee's Rules of Procedure.
[528] *See* Section 3. Australia ratified the ICCPR on 13 August 1980, and it entered into force for Australia on 13 November 1980; and Australia acceded to the Optional Protocol on 25 September 1991, and it entered into force for Australia on 25 December 1991. *See* ICCPR; Optional Protocol.
[529] *See* Statement of Rikki Dank, Annex 10, paras. 37–38.
[530] UN Human Rights Committee, *General Comment No. 31* (CCPR/C/21/Rev.1/Add. 13), para. 10, https://digitallibrary.un.org/record/533996?ln=en&v=pdf.
[531] *See also* Rules of Procedure, Rule 99(b).
[532] *See also* Rules of Procedure, Rule 99(a).

9.2 Exhaustion of domestic remedies

346. This Communication complies with the requirement of "exhaust[ing] all available domestic remedies" in Article 5(2)(b) of the Optional Protocol.[533] No effective domestic remedy is available to the Authors under Australian law capable of providing the relief sought.

347. The Authors sought the expert opinion of Australian legal academic, Professor Jaqueline Peel, and barristers Dr Laura Schuijers and Rohan Nanthakumar, on the exhaustion of remedies under Australian law (**Peel Report**), provided in Annex 17.[534]

348. Based on the Committee's jurisprudence, as summarised in the Peel Report, the requirement in Article 5(2)(b) is satisfied *unless*:

    a. There is a remedy which is de facto available to the Authors;

    b. The remedy is not only available, but also effective in practice;

    c. The avenue that can be pursued offers a reasonable prospect of redress;

    d. The avenue relates to the rights violation alleged and allows the substance of the relevant Covenant rights to be raised;

    e. The redress available is proportionate to the harm suffered;

    f. The Authors can achieve an outcome with binding effect (not a mere recommendation); and

    g. No specific information has been provided to show that domestic remedies are ineffective or unavailable (mere doubts about the effectiveness of remedies are insufficient).[535]

349. The Authors need not have pursued all domestic avenues to confirm that remedies are exhausted. There is no need to have exhausted domestic claims that are objectively without prospects of success, or where the highest domestic court has decided on the matter.[536]

350. Peel et al. show that there are no effective remedies available to the Authors to redress their alleged harms, as there are no effective judicial or administrative avenues to

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[533] *See also* Optional Protocol, Article 2; Rules of Procedure, Rule 99(f).
[534] Dr Jacqueline Peel is the Redmon Barry Distinguished Professor at the University of Melbourne, where she also serves as the Director of Melbourne Climate Futures, a multidisciplinary climate change research initiative. She holds a Doctor of Philosophy in Law from the University of Melbourne, and a Master of Laws in international and environmental law from New York University. Dr Laura Schuijers is a barrister at the Victorian Bar, and a lecturer at Sydney Law School. She holds a Doctor of Philosophy in Environment and Climate Law from Melbourne Law School. Rohan Nanthakumar is a barrister at the Victorian Bar, and holds a Master of Laws in international law from the University of Cambridge.
[535] These key principles are summarised and supported with references in the Peel Report, Annex 17, paras. 7–13.
[536] Peel Report, Annex 17, para. 9.

compel Australia to align its production of fossil fuels for export with pathways for limiting global warming to 1.5°C.

351. In summary, Peel et al. conclude that:

    a. An Australian court cannot compel the Australian government to align fossil fuel exports with a 1.5°C pathway;

    b. There is no constitutional or national-level statutory bill of rights that would enable the Authors to remedy their human rights violations;

    c. The existing statutory frameworks relating to human rights, climate and environmental law, and export controls, both at the federal and state/territory level, do not provide an effective remedy; and

    d. There is no common law duty of care owed by Australia to the Authors in relation to the alleged violations.[537]

352. Peel et al. reflect the Committee's own reasoning in *Daniel Billy and Others v. Australia*, decided in 2022, where Australian authors from the Torres Strait Islands alleged human rights violations arising from Australia's conduct, including its failure to mitigate the impacts of climate change.[538] In that case, the Committee found that the communication was admissible because no effective remedy was available to the Authors at that time. Since the *Daniel Billy and Others v. Australia* decision, the relevant changes to Australian law have only served to reduce further the avenues for seeking redress from Australia for climate-related harms, as discussed below.

9.2.1 No judicial order could compel the relief sought

353. There is no statutory or other power, function, or duty which the Authors could invoke in Australian courts to compel the Australian government to align its production of fossil fuels for export with 1.5°C pathways and thereby redress climate harms.[539] Any court order requiring the Australian government to address its fossil fuel exports in such a way would require subsequent legislative action or the exercise of executive discretion to implement that decision in practice.[540] Even if an Author established a cause of action and succeeded on the merits, injunctive relief is unlikely to be granted to compel alignment of Australia's exports for several reasons, such as practical difficulties for a court in identifying the steps required for compliance.[541]

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[537] Peel Report, Annex 17, para. 4. Although the *Pabai (No 2)* case referred to in the Peel Report is currently on appeal, even if the Torres Strait Islander complainants in that case succeed in the Full Court of the Federal Court of Australia, it would not be sufficient to establish a legal avenue that offers effective redress to the Authors of this Communication. The *Pabai (No 2)* case concerns a narrow duty of care to set emission reduction targets relating to territorial emissions, and does not consider limits on exported emissions. *See Pabai Pabai & Anor v Commonwealth of Australia* (No 2) [2025] FCA 796; Peel Report, Annex 17, para. 31.
[538] *Daniel Billy and Others v. Australia*. *See* Peel Report, Annex 17, para. 14.
[539] Peel Report, Annex 17, para. 16.
[540] Peel Report, Annex 17, para. 17.
[541] Peel Report, Annex 17, para. 18.

354. While the ICJ Advisory Opinion may inspire future climate litigation in Australia, the Authors cannot rely on it directly to procure effective remedies at the domestic level.[542] International legal obligations are not automatically incorporated into Australian law, but instead must be implemented via domestic legislation.[543]

9.2.2 Australia has no enforceable human rights framework

355. There is no legal avenue for the Authors to bring a human rights-based claim in relation to their alleged violations. First, Australia has no constitutional or federal statutory bill of rights. There is accordingly no national-level legal avenue for seeking a remedy for violations of rights.[544]

356. Secondly, even though three sub-national (state or territory) jurisdictions have enacted human rights legislation, these statutes do not offer any effective avenues to any of the Authors. Even for those three Authors who reside in jurisdictions with such human rights legislation, these statutes only apply at the relevant state or territory level and cannot reach the Australian government's conduct in regulating fossil fuel exports. Moreover, the relief available under those statutes is confined to declaratory relief that does not affect the validity or operation of any law.[545]

357. Finally, the Australian Human Rights Commission, a statutory body competent to inquire into acts inconsistent with human rights, is not a judicial organ, issues no binding decisions, and cannot order any government to take specific measures.[546] As this Committee has confirmed, a body whose decisions carry only recommendatory effect does not afford an effective remedy for the purposes of Article 5(2)(b).[547]

9.2.3 Environmental and export-related statutory frameworks afford no effective remedy

358. None of the existing statutory frameworks governing climate change, environmental approvals, or exports provide an effective remedy of the kind sought by the Authors.

359. First, Australia's climate change legislation requires the setting of national greenhouse gas emissions targets but provides no avenue for judicial review capable of yielding a mandatory order, does not expressly contemplate human rights grounds, does not give domestic legal effect to the goal of limiting warming to 1.5°C, and contains no mechanism for challenging fossil fuel projects inconsistent with that goal.[548]

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[542] Peel Report, Annex 17, para. 19.
[543] *See* Section 5.3, footnote 236.
[544] Peel Report, Annex 17, para. 23.
[545] Peel Report, Annex 17, paras. 25–27.
[546] Peel Report, Annex 17, para. 24.
[547] *See* Peel Report, Annex 17, para. 12 (citing UN Human Rights Committee, *Madaferi v. Australia* (CCPR/C/81/D/1011/2001), para 8.4, https://docs.un.org/en/CCPR/C/81/D/1011/2001; UN Human Rights Committee, *C v. Australia* (CCPR/C/76/D/900/1999), para. 7.3, https://docs.un.org/en/CCPR/C/76/D/900/1999).
[548] Peel Report, Annex 17, para. 35. Further, Australia's environmental laws do not explicitly require exported emissions to align with safe climate goals and Australia's international climate obligations, nor do they require

360. Secondly, Australia's federal environmental impact assessment statute, the EPBC Act, operates only at the project-specific level, allowing for judicial review to challenge individual project approvals.[549] However, it would be time-intensive, impractical, and ineffective to use this mechanism to challenge every environmental assessment and approval decision that would allow fossil fuel exports,[550] to make a meaningful change to Australia's exports and ensure alignment with 1.5°C. Further, even if a project-level challenge were successful, the most that could be achieved is declaratory relief, quashing an individual permitting decision, and/or an order to remake that decision according to law.[551] Piecemeal challenges to individual projects would not offer redress that is proportionate to the harm alleged by the Authors.

361. Finally, there are no other statutory provisions that offer an effective remedy to the Authors. The legislation governing emissions reporting is limited in scope and does not regulate exported emissions.[552] Laws governing the financing and control of exports confer discretionary powers that Australia could use to address the Authors' claims; however, a court cannot compel the exercise of such discretion in any particular manner.[553] The Authors could not rely on any of these laws or regulations to ground a claim with a reasonable prospect of obtaining an effective remedy.[554]

9.2.4 Australia does not owe a common law duty of care to the Authors

362. As Australian law currently stands, the Australian government does not owe a duty of care to citizens in respect of failing to regulate environmental harm, including in respect of greenhouse gas emissions.[555] Australian courts, including the highest court (the High Court of Australia), have indicated that such a duty of care would raise policy questions about the appropriateness of government action or inaction that could be unsuitable for judicial determination.[556]

363. For these reasons, and the reasons set out in the Peel Report at Annex 17, the Authors submit that there are no available and effective domestic remedies to be exhausted, and that the requirement in Article 5(2)(b) of the Optional Protocol does not bar the admissibility of this Communication.

9.3 Absence of parallel international proceedings

364. Pursuant to Article 5(2)(a) of the Optional Protocol and Rule 99(e) of the Committee, the subject matter of this Communication—namely, Australia's violations of the Authors' rights through its production of fossil fuels for export that are exacerbating

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the assessment of total climate impacts from fossil fuel exports. *See* Section 5.3; Peel Report, Annex 17, paras. 35-37.

[549] *See* Section 5.3.

[550] Peel Report, Annex 17, para. 22.

[551] Peel Report, Annex 17, paras. 36–37.

[552] Peel Report, Annex 17, paras. 38–39.

[553] Peel Report, Annex 17, paras. 40–44.

[554] Peel Report, Annex 17, para. 44.

[555] Peel Report, Annex 17, para. 28.

[556] Peel Report, Annex 17, paras. 28–33.

climate change—is not being examined under another procedure of international investigation or settlement. To the Authors' knowledge, this Communication is the first of its kind and does not duplicate any individual communication pending before or already examined by this Committee or another international body.

10 REQUEST FOR ORAL COMMENTS

365. The Authors respectfully request that the Committee exercise its discretion to invite oral comments in this matter pursuant to its guidance on the communications procedure.[557] In accordance with paragraph 3(a) of that guidance, the Committee may, in exceptional circumstances, invite parties to comment on each other's submissions orally or on the admissibility or merits of their communication.[558] The Committee's decision to invite oral comments depends on the complexity and importance of the case.

366. Each of these considerations weigh in favour of inviting oral testimony regarding this Communication. Foremost, the Communication raises issues that are important for clarifying the Committee's jurisprudence since the ICJ's 2025 Advisory Opinion, in the context of State responsibility for climate change impacts and in particular exported emissions. It thus raises consequential questions about the scope and content of State parties' obligations under the Covenant. In *Sacchi et al. v Argentina*, for example, the United Nations Committee on the Rights of the Child considered that the novelty and systemic importance of the issues warranted direct engagement with the parties.[559]

367. Further, hearing from the Authors directly will allow the Committee to better understand the lived, enduring, and escalating nature of the harms that the Authors are experiencing as a result of Australia's fossil fuel exports.

11 REQUEST FOR RELIEF

368. Where the Committee finds that an individual communication demonstrates violations of Covenant rights, it may delineate "measures designed to make full reparation to the victims (restitution, compensation, rehabilitation and measures of satisfaction), as well as measures aimed at preventing the reoccurrence of similar violations in the future (guarantees of non-repetition)."[560]

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[557] UN Human Rights Committee, *Guidelines on Making Oral Comments Concerning Communications* (UN Doc. CCPR/C/159/Rev.1), (**Guidelines on Oral Comments**) https://docs.un.org/en/CCPR/C/159/Rev.1.
[558] Guidelines on Oral Comments, para. 3(a); *see* Rules of Procedure, Rule 101(4).
[559] *See Sacchi et al. v. Argentina*, para. 9.
[560] UN Human Rights Committee, *Guidelines on Measures of Reparation under the Optional Protocol to the International Covenant on Civil and Political Rights*, UN Doc. CCPR/C/158 (**HRC Guidelines on Reparations**), para. 2, https://docs.un.org/en/CCPR/C/158; *see also* IACtHR Advisory Opinion, para. 558.

369. In determining the appropriate reparation measures, the Committee "should take into account the specific circumstances of the communication."[561]

370. With respect to guarantees of non-repetition, the Committee may request, among other measures, repeal or amendment of laws or regulations that are inconsistent with Covenant obligations, or adoption of laws and regulations necessary to remedy violations.[562]

11.1 Adaptation measures cannot provide full reparation

371. Given that "adaptation measures cannot in themselves suffice to combat climate change,"[563] the Committee may conclude that a State has failed to comply with its obligation to adopt mitigation measures without examining "whether the ancillary adaptation measures were put in place."[564]

372. In any event, adaptation measures would be inadequate to remedy the rights violations already suffered by the Authors or prevent their reoccurrence. For example, no adaptation measure can eliminate the extreme heatwaves that trigger Melissa Fisher's excruciating pain and threaten Cat [redacted] health, the increasingly frequent and severe bushfires that threaten Jack Egan's life and home and place Barry Traill's life at risk, or the flooding that trapped Brendon Donohue and Sama Youhana in their homes. Likewise, adaptation cannot reverse the algal blooms across southeastern Australia that prevent Latisha and Pam Francis from accessing their Sea Country and inhibit the intergenerational transfer of cultural knowledge. Adaptation cannot reverse the irreparable harm to Rikki Dank's and Anne Poelina's Countries that has prevented the passing of ancient cultural traditions from previous millennia to younger generations or destroyed the wildlife that is integral to their culture. More fundamentally, adaptation measures cannot avert the escalating harms that will accompany each additional increment of global warming driven by the burning of fossil fuels.

[561] HRC Guidelines on Reparations, para. 5; *see also* IACtHR Advisory Opinion, para. 557 ("In the context of the climate emergency, States are obliged to establish effective administrative and judicial mechanisms that allow victims access to comprehensive redress. These mechanisms and the measures of reparation they establish should be adapted to the nature of the harm and consider the particular circumstances of its effects on individuals and on Nature.").
[562] HRC Guidelines on Reparations, para. 13(a).
[563] *Klimaseniorinnen v. Switzerland*, para. 418.
[564] *Klimaseniorinnen v. Switzerland*, para. 555.

11.2 The Authors' request for relief

373. The Authors do not seek compensation; no amount of money could compensate for the harms that they have suffered and are suffering due to climate change, and will continue to suffer as climate change intensifies. Instead, the Authors respectfully request that the Committee adopt the following recommendations for declaratory and remedial relief:

    a. **Declaration of incompatibility**: Declare that Australia's continuing acts and omissions, and those of its subnational governments for which it has responsibility under international law, related to the production of fossil fuels for export, and its failure to adequately regulate the activities of public and private operators within its jurisdiction or control related to the production of fossil fuels for export, are incompatible with its human rights obligations to prevent a global average temperature increase of 1.5°C above pre-industrial levels.

    b. **Declaration of violation:** Declare that by recklessly perpetuating life-threatening climate change through its fossil fuel production for export, Australia is violating the Authors' rights to life; privacy, family, and home life; and culture under the Covenant.

    c. **Assessment of export policy**: Recommend that Australia establish a process to review the compatibility of its fossil fuel exports with pathways to limit warming to 1.5°C.

    d. **Phase-out of exports and related subsidies**: Recommend that Australia urgently and rapidly implement a plan to phase out the production of fossil fuels for export to the extent necessary to ensure alignment with a 1.5°C pathway, including ceasing public subsidies (including any State-supported financial incentives) which effectively support or promote the export of fossil fuels.

    e. **Moratorium on approvals for new fossil fuel exports**: Recommend that Australia pause approvals for fossil fuel production projects for export, including pausing any permitting process for proposed and existing projects that would expand exported emissions, until it complies with recommendations (c) and (d) above.

12 LIST OF ANNEXES

12.1 Author witness statements

Annex 1 – Statement of Anne Poelina

Annex 2 – Statement of Barry Traill

Annex 3 – Statement of Brendon Donohue

Annex 4 – Statement of Catherine [redacted]

Annex 5 – Statement of Jack Egan

Annex 6 – Statement of Latishamarie Francis

Annex 7 – Statement of Pamelarose Francis

Annex 8 – Statement of Melissa Fisher

Annex 9 – Statement of Sama Youhana

Annex 10 – Statement of Rikki Dank

12.2 Expert opinions

Annex 11 – Expert opinion of Professor Kevin Anderson and Dr Dan Calverley on Australia's export emissions

Annex 12 – Expert opinion of Professor Dr Wim Thiery, Dr Marie Cavitte, and Amaury Laridon on climate attribution

Annex 13 – Expert opinion of Dr Andrew Watkins on flooding in Brisbane and the Kimberley region

Annex 14 – Expert opinion of Professor Perran Cook, Associate Professor Ruth Reef, Associate Professor Ailie Gallant, Dr Michael Barnes, and Dr Peter van Rensch on algal blooms

Annex 15 – Expert opinion of Dr George Crisp on health impacts for Melissa Fisher

Annex 16 – Expert opinion of Dr George Crisp on health impacts for Catherine [redacted]

Annex 17 – Expert opinion of Professor Jacqueline Peel, Dr Laura Schijers, and Rohan Nanthakumar on exhaustion of domestic remedies