

QB25-000200

ICJ ADVISORY OPINION**ISSUE/QUESTION**

ICJ Advisory Opinion on Climate Change

Questions on the legal aspects of the Advisory Opinions are best directed to the Attorney General. Questions relating to the impacts of the Advisory Opinions on international relations are best directed to the Foreign Minister.

POLITICAL TALKING POINTS:

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KEY POINTS:

- The ICJ Advisory Opinion [delivered on 23 July] has an important contribution to make in clarifying the obligations of all states to respond to the climate emergency.
- Australia was proud to join the Pacific in co-sponsoring the Vanuatu-led UN General Assembly resolution requesting an ICJ advisory opinion on climate change and then to participate in the ICJ advisory proceedings last year.
- Australia is carefully considering the ICJ's opinion on this most important topic of climate change, which is the greatest shared threat to all countries.
- The unprecedented degree of participation by states in the ICJ proceedings reflected the global recognition of the challenge of climate change and the complexity of the legal issues involved.
- We congratulate Vanuatu and other Pacific island countries for their international leadership in shaping responses to climate change.
- We are working closely with the Pacific and the rest of the international community to strengthen global responses to address climate change.
- Australia is decarbonising our economy and building new industries to export reliable, renewable energy to help the world address the climate crisis.

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QB25-000200

OFFICIAL

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BACKGROUND:**Does Australia agree with the ICJ's conclusions?**

- . Australia respects the role and independence of the International Court of Justice in upholding international law.
- . We are carefully considering the Court's opinion.
- . The unprecedented participation by states in these proceedings reflects global recognition of the challenge of climate change and the complexity of the legal issues involved
 - we remain steadfast in our commitment to working together with the Pacific to strengthen global climate action.

Will Australia support a UN General Assembly resolution to endorse the ICJ advisory opinion on climate change?

- . Australia has been listening to our region and looks forward to discussing the appropriate next steps with our Pacific partners following the advisory opinion:
 - including consideration of any UNGA resolution on the ICJ Advisory Opinion.

Why did Australia decide to participate in the ICJ advisory opinion proceedings?

- . Climate change is the greatest shared threat to all countries
 - and the *greatest* threat to the livelihoods, security and wellbeing of the peoples of the Pacific.
- . Australia is deeply committed to taking real and significant climate action at home and in support of the shared Pacific region.
- . The Pacific has spoken with the moral authority and weight of lived experience regarding the adverse impacts of climate change, and has demonstrated sustained and innovative leadership to push global ambition
 - this has included driving and supporting initiatives to seek an advisory opinion from the ICJ.

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- . Australia is listening and responding to Pacific partners regarding the threat of climate change
 - nothing is more central to the security and economies of the Pacific.
- . Australia's support for the UN General Assembly resolution which requested an ICJ advisory opinion *[in 2023]*, and our active participation in the court

proceedings themselves, reflects Australia's support of Pacific leadership in taking strong climate action

- a difference in approach to some of the legal issues does not mean that our objectives on climate action are not aligned.

. Australia delivered an oral submission in the ICJ proceedings which celebrated Pacific leadership in bringing the historic process forward

- as well as highlighting the centrality of the UNFCCC and the Paris Agreement

: and other rules and norms that play an important role alongside the climate change treaties.

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| [REDACTED]

| [REDACTED]

| [REDACTED]

If raised: Judge Hilary Charlesworth's view (if expressed in a separate opinion)

. The Australian Government was proud to nominate and support Judge Charlesworth's successful re-election to the ICJ

- like all members of the Court, Judge Charlesworth is an independent judge.

: **If pressed:** Judge Charlesworth is an ICJ judge who is Australian, not an Australian ICJ judge.

. Australia is carefully considering the Court's opinion.

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[REDACTED]

- The Federal Court of Australia handed down its judgment in the *Pabai* class action on 15 July 2025
 - the Federal Court found the Commonwealth did not owe or breach a legal duty of care to protect Torres Strait Islanders, their environment and

traditional way of life from the current and projected impacts of climate change.

- The Australian Government recognises that the impacts of climate change are serious and are already being felt in the Torres Strait, in our region and the world at large
 - we are committed to working collaboratively with Torres Strait Islanders to address the challenges posed by climate change.
- The Australian Government recognises the urgency of the climate crisis and has introduced several significant policies to reduce Australia's emissions and to support the Australian community to adapt to the impacts of climate change
 - the Commonwealth is carefully considering the judgment and while under consideration, it would not be appropriate to comment further.

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How does the ICJ process differ from the ITLOS advisory opinion delivered in 2024?

- . The proceedings before the ICJ arose from a request by the UN General Assembly
 - whereas the proceedings before ITLOS arose from a request for an advisory opinion from the Commission of Small Island States on Climate Change and International Law (COSIS).
- . The ITLOS request related specifically to the obligations of States Parties to the UN Convention on the Law of the Sea (UNCLOS) in relation to the impacts of climate change on the marine environment.
 - ITLOS delivered its advisory opinion in May 2024.
- . The questions put to the ICJ were broader in scope *[than those put to ITLOS]* and related to a range of international law obligations.
- . Both the ICJ and ITLOS have important contributions to make in clarifying the obligations of all States to respond to the climate emergency.

Background

The ICJ Advisory Opinion will make an important contribution in clarifying States' obligations under international law in relation to climate change and will be considered an influential and authoritative statement of international law, however it is not legally-binding on any State.

On 29 March 2023, the UN General Assembly adopted by consensus a resolution requesting an advisory opinion from the International Court of Justice (ICJ) on the obligations of States in respect of climate change. The resolution was led by Vanuatu and co-sponsored by 131 others, including Australia. The legal question posed in the resolution was broad in scope and asked the ICJ to consider the obligations of States under international law with respect to climate change. The legal question is applicable to all States, including 'all major emitters past, present and future'.

Australia's first round written statement was lodged with the ICJ Registry in The Hague on 22 March 2024. 91 written statements in total were filed with the Court. This is the highest number of written statements ever to have been filed in advisory proceedings before it. Australia also lodged a second round written comment, which primarily responded to the first round written submissions of other States. 62 written comments in total were filed with the Court. Written statements and comments were available to all participants throughout the proceedings and became publicly accessible during the course of oral proceedings.

Public oral hearings took place in The Hague from 2 to 13 December 2024, in which Australia participated. At the conclusion of the oral hearings, four judges posed written questions to participants. Australia did not submit responses to those questions.

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Pabai & Anor v Commonwealth of Australia

On Tuesday 15 July 2025, the Federal Court of Australia dismissed a class action brought by Torres Strait Islanders against the Commonwealth in relation to ongoing impacts of climate change (*Pabai & Anor v Commonwealth*). The applicants, led by Pabai Pabai and Guy Paul Kabai of the Guda Maluyligal nation, alleged the Commonwealth breached a duty of care to protect Torres Strait Islanders, their environment and traditional way of life from the current and projected impacts of climate change.

Although the court dismissed the application and found wholly in favour of the Commonwealth on the legal issues, Justice Wigney made several critical factual findings in relation to the impacts of climate change in the Torres Strait Islands

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