# CLIMATE LITIGATION: CASES AND TRENDS

**THE HON JUSTICE BRIAN PRESTON**
**CHIEF JUDGE OF THE LAND AND ENVIRONMENT COURT OF NEW SOUTH WALES**
Centre for Environmental, Resources, and Energy Law
University of Waikato, New Zealand
Friday, 26 September 2025

# PRESENTATION STRUCTURE

CLIMATE LITIGATION:
WHAT, WHERE AND WHO?

CURRENT TRENDS IN
CLIMATE LITIGATION

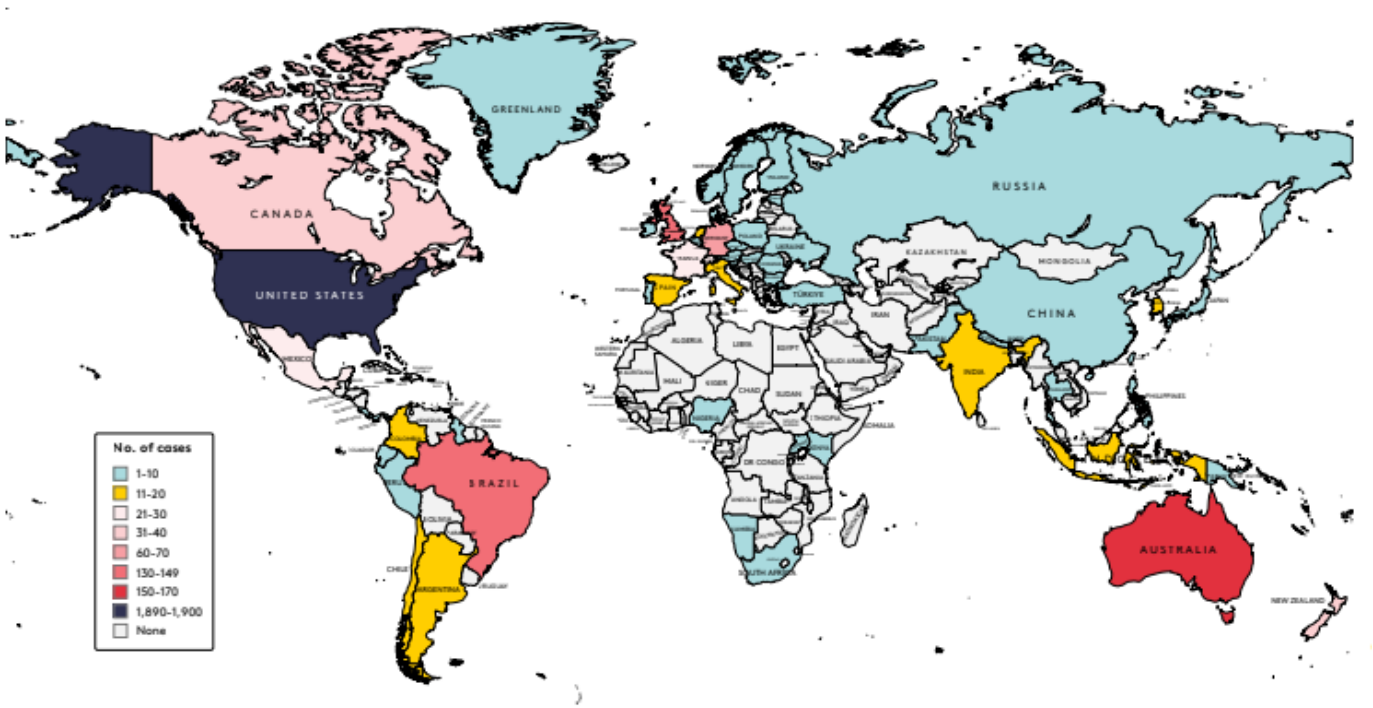
FUTURE OUTLOOK

# WHAT IS CLIMATE LITIGATION?

Climate litigation: includes lawsuits brought before administrative, judicial and other investigatory bodies, in domestic and international courts and organisations, that raise issues of law or fact regarding the science of climate change and climate change mitigation and adaptation efforts.

(Markell and Ruhl, 2012; Burger and Gundlach, 2017)

# WHERE IS CLIMATE LITIGATION HAPPENING?`




**Number of climate litigation cases around the world to 31 May 2025**

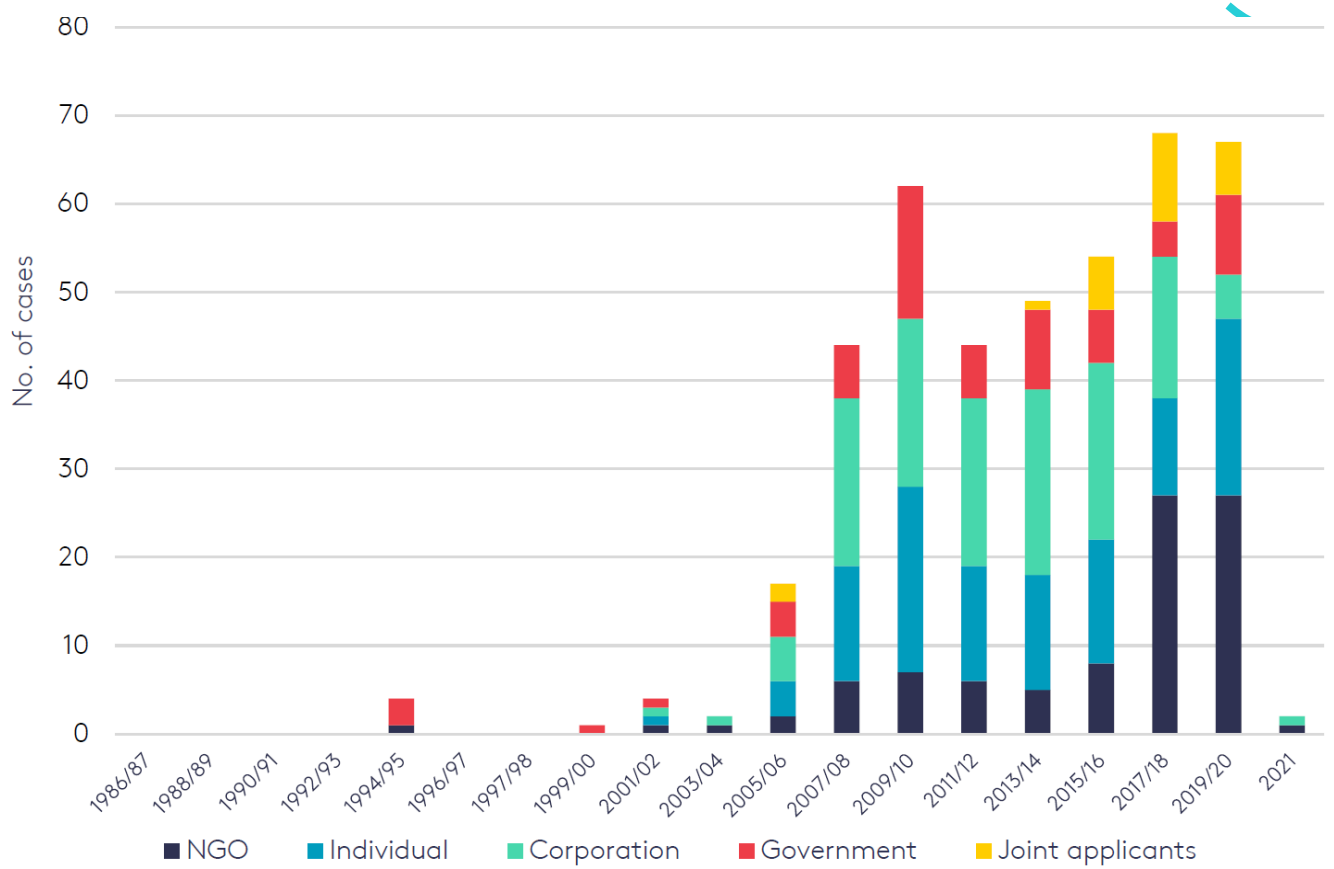
Source: *Global Trends in Climate Change Litigation: 2025 Snapshot* (Report, Grantham Research Institute on Climate Change and the Environment and Sabin Centre for Climate Change Law)

As of 31 May 2025, 2,967 cases of climate change litigation from around the world had been identified.

The jurisdiction with the highest identified number of climate litigation cases is the US (1,899).

# WHO ARE THE ACTORS IN CLIMATE LITIGATION?

- Increasing number of cases brought by NGOs and civil society groups.
- Outside the US, just over half of all documented cases were brought by NGOs (21%), individuals (23%), or both acting together (4%). The remainder were brought primarily by companies (32%) and governments (15%).
- Majority of climate cases outside the US have been brought against governments (76%). A small but significant number of cases continue to be filed against corporations.




**Non-US cases by applicant over time**
Source: *Global Trends in Climate Change Litigation: 2021 Snapshot* (Report, Grantham Research Institute on Climate Change and the Environment and Centre for Climate Change Economics and Policy)

# WHY CLIMATE LITIGATION?

Influence legislative or executive branches of government

Influence private actors and corporate behaviour

Influence public discourse and broader societal change

# THREE CURRENT TRENDS IN CLIMATE LITIGATION

1. **Government accountability** – seeks to hold governments to account for a failure to take climate action (mitigation or adaption)
2. **Corporate responsibility** – seeks to influence corporate behaviour in relation to climate change and/or raise public awareness about the responsibility of major emitters
3. **Human rights compliance** – seeks to use human rights arguments to hold governments and corporations accountable for climate change

# 1. GOVERNMENT ACCOUNTABILITY

- Governments' responsibilities for climate change are changing over time and place.
- Climate litigation seeks to hold governments to account for a failure to take sufficiently ambitious climate action (mitigation or adaptation).
- Government responsibility is often linked to climate targets, including temperature and time targets, and countries' commitments (NDCs), under the Paris Agreement.

# 1. GOVERNMENT ACCOUNTABILITY

Cases relating to government accountability includes:

a) Government accountability for inadequate climate action;

b) Government accountability for inadequate laws; and

c) Government accountability for inadequate policies.

# GOVERNMENT ACCOUNTABILITY FOR INADEQUATE CLIMATE ACTION

*Urgenda Foundation v the Netherlands*

- A Dutch environmental group, the Urgenda Foundation, and 900 Dutch citizens sued the Dutch government to require it to do more to mitigate climate change.
- This was the first litigation to successfully challenge the adequacy of a national government's approach to reducing emissions.
- Urgenda argued that the Dutch government's inadequate climate action breached its duty of care in negligence and human rights law.


Source: Urgenda / Chantal Bekker

# INADEQUATE CLIMATE ACTION WAS NEGLIGENT

The Hague District Court (2015):

- On 24 June 2015, The Hague District Court found that the Dutch state's emissions reductions targets were insufficient and ordered the Dutch state to limit GHG emissions to 25% below 1990 levels by 2020.
- The Court concluded that the state has a duty to take mitigation measures due to the severity of the consequences of climate change and the risk of climate change occurring.
- "Due to the severity of the consequences of climate change and the great risk of hazardous climate change occurring – without mitigating measures – the court concludes that the State has a duty of care to take mitigation measures. The circumstances that the Dutch contribution to the present global greenhouse gas emissions is currently small does not affect this" (at [4.83]).
- The Court concluded that "the State … has acted negligently and therefore unlawfully towards Urgenda by starting from a reduction target for 2020 of less than 25% compared to the year 1990" (at [4.93]).

See: *Urgenda Foundation v State of the Netherlands* (ECLI:NL:RBDHA: 2015:7145)

# INADEQUATE CLIMATE ACTION BREACHED HUMAN RIGHTS

The Hague Court of Appeal (2018):

- On 9 October 2018, The Hague Court of Appeal dismissed the Dutch Governments appeal and upheld the District Court's ruling, concluding that by failing to reduce greenhouse gas emissions by at least 25% by end-2020, the Dutch government is acting unlawfully in contravention of its duty of care under Article 2 and Article 8 ECHR.
- The Court held that the emissions targets contravened Articles 2 and 8 of the European Convention on Human Rights (ECHR), which protect a right to life, and a right to private life, family life, home, and correspondence. The Court found that "dangerous climate change threatens the lives, wellbeing and environment of citizens in the Netherlands and worldwide" are therefore threatened the rights under articles 2 and 8 (at [5.2.2]-[5.3.2] and [5.6.2]).
- The Court determined that articles 2 and 8 create an obligation for the state to take **positive measures to contribute to reducing emissions relative to its own circumstances.** Whilst the ECHR does not impose an impossible or disproportionate burden on the state, as the state is not required to guarantee the achievement of these rights, the state must take appropriate measures (at [5.3.4] and [5.9.1]).

See: *State of the Netherlands v Urgenda Foundation* (ECLI:NL:GHDHA:2018:2610)

# INADEQUATE CLIMATE ACTION BREACHED HUMAN RIGHTS

Supreme Court of the Netherlands (2019):

- On 20 December 2019, the Supreme Court of the Netherlands upheld the decision of The Hague Court of Appeal.
- The Supreme Court upheld the finding of the Court of Appeal that the ECHR imposed a positive obligation to take appropriate measures to prevent climate change.
- These measures require the Netherlands to meet a greenhouse gas emissions reduction target 25% compared to 1990, by the end of 2020.
- Even though the Netherlands was only a minor contributor to climate change, it had an independent obligation to reduce emissions.

See: *State of the Netherlands v Urgenda* (ECLI:NL:HR:2019:2007)

# GOVERNMENT ACCOUNTABILITY FOR INADEQUATE LAWS

*Neubauer et al v Germany* (2021)

- A group of youth plaintiffs challenged the constitutionality of emissions reduction targets in the German Climate Protection Law.
- The Court found that the current provisions of the law place an unreasonable burden on future generations.
- The German Constitution enshrined a right to future freedoms that protected the complainants against threats to freedom caused by the greenhouse gas reduction burdens being unilaterally offloaded onto future generations.
- The failure to set emissions targets beyond 2030 limited the intertemporal guarantee of freedom in the Constitution.
- The Court ordered the federal government to remake the emissions reduction targets in the law and determine targets for the years beyond 2031.

See: *Neubauer et al v Germany* (2021) 1 BvR 2656/18, 1 BvR 96/20, 1 BvR 78/20, 1 BvR 288/20, 1 BvR 96/20, 1 BvR 78/20


Luisa Neubauer, one of the complainants.

*Source: https://www.npr.org/2020/07/03/885644410/make-the-climate-a-priority-again-says-germany-s-student-activist-neubauer*

# GOVERNMENT ACCOUNTABILITY FOR INADEQUATE POLICIES

*Friends of the Environment v Ireland* (2020)

- Friends of the Irish Environment (FIE) challenged the Irish government's approval of the National Mitigation Plan which sought to transition to a low-carbon economy by 2050. FIE argued that the Plan violated Ireland's *Climate Action and Low Carbon Development Act 2015*, the Constitution of Ireland, and obligations under the European Convention on Human Rights (ECHR), particularly the right to life and the right to private and family life.
- On September 19, 2019, the High Court found in favour of the government. FIE appealed the ruling to the Court of Appeal. FIE also submitted an application to leapfrog the traditional appeal route and go directly to the Supreme Court.
- The Supreme Court unanimously determined that the plan fell short of the sort of specificity that the *Climate Action and Low Carbon Development Act 2015* required because a reasonable reader of the Plan would not understand how Ireland would achieve its 2050 goals and "a compliant plan must be sufficiently specific as to policy over the whole period to 2050" (at [6.32]).

See: *Friends of the Environment CLG v. The Government of Ireland & The Attorney General* [2020] IESC 49

# GOVERNMENT ACCOUNTABILITY FOR INADEQUATE POLICIES

*Bushfire Survivors for Climate Action v Environment Protection Authority* (2021)

- A climate action group sought an order in the nature of mandamus to compel the Environment Protection Authority (**EPA**), to perform a statutory duty to develop environmental quality objectives, guidelines and policies to ensure the protection of the environment from climate change.
- The Court held:
  - The statutory duty to develop environmental quality objectives, guidelines and policies to ensure environment protection includes a duty to develop instruments to ensure the protection of the environment from climate change (at [16], [68]).
  - At the current time and in the place of New South Wales, the threat to the environment of climate change is of sufficiently great magnitude and sufficiently great impact as to be one against which the environment needs to be protected (at [16], [69]).
  - The EPA has a discretion as to the specific content of the instruments it develops under s 9(1)(a) to ensure the protection of the environment from climate change (at [16], [148]).
  - The EPA had not fulfilled this duty to develop instruments of the kind described to ensure the protection of the environment from climate change (at [17], [18], [144], [145]).

See: *Bushfire Survivors for Climate Action Incorporated v Environment Protection Authority* [2021] NSWLEC 92

# GOVERNMENT ACCOUNTABILITY FOR INADEQUATE POLICIES

*R (Friends of the Earth Ltd) v Secretary of State for Business, Energy and Industrial Strategy* (2023)

- The plaintiff environmental groups sought judicial review of decisions of the UK Secretary of State for Business, Energy and Industrial Strategy (SoS) under ss 13 and 14 of the *Climate Change Act 2008* (UK) (CCA) to make the Net Zero Strategy (NZS).
- The NZS set out the UK Government's proposals and policies to reduce the UK's GHG emissions to net zero by 2050:
  - Section 13 of the CCA imposes a duty on the SoS to "prepare such proposals and policies" that the SoS considers will enable the carbon budgets under the CCA to be met.
  - Section 14 of the CCA requires the SoS to lay before Parliament a report setting out proposals and policies for meeting the current and future "budgetary period" up to and including the carbon budget that has just been set.
  - The NZS purported to state the proposals and policies required under s 13 and be the report required by s 14 of the CCA.
- The High Court found in favour of the claimants on aspects of two grounds concerning ss 13 and 14, holding that:
  - The SoS did not discharge his duty under s 13 of the CCA as, due to insufficiencies in the ministerial briefing materials, he was unable to take into account and decide for himself how much weight to give to his department's approach to overcoming the 5% shortfall in meeting the sixth carbon budget targets, or to the contributions which individual proposals and policies were expected to make in reducing GHG emissions.
  - The SoS did not satisfy the requirements of s 14 because the NZS did not assess the contributions expected to be made by individual proposals and policies to GHG emissions reductions, and because it did not reveal that the analysis put before the SoS left a shortfall against the CB6 targets or how that shortfall was expected to be met. The High Court noted that a report under s 14 was important as it allows Parliament and the public to understand and assess the adequacy of the UK Government's policy proposals.
- The High Court ordered the SoS to lay a revised report before Parliament by no later than 31 March 2023.

See: *R (Friends of the Earth Ltd) v Secretary of State for Business, Energy and Industrial Strategy* [2023] 1 WLR 225

# GOVERNMENT ACCOUNTABILITY FOR INADEQUATE POLICIES

*Friends of the Earth v Secretary of State for Business, Energy and Industrial Strategy* (2024)

- The revised report was the subject of another legal action by the same claimants, who brought an action against the Department for Energy Security and Net Zero over its decision to approve the carbon budget delivery plan in March 2023 (2023 CBDP).
- The claimants contended that the SoS again failed to comply with ss 13 and 14 of the CCA in relation to the 2023 CBDP.
- On 3 May 2024, the High Court found the government had breached its duty under s 13(1) of the CCA, which requires the SoS to prepare policies or proposals to enable the carbon budgets to be met. The breach was by way of an "irrational decision" that each of the proposals and policies in the CBDP would be delivered in full. This decision was found to be "based on reasoning which was simply not justified by the evidence", as it was not expected that all the policies would be implemented and achieve their estimated emissions cut in reality.
- The Court also held that s 13(3) of the CCA had been breached, which requires the proposals and policies to contribute to sustainable development. The Court stated that this duty "connotes a degree of certainty that a particular outcome will eventuate". The SoS had, the Court found, applied an incorrect and lower test in assessing the 2023 CBDP, by assessing that the policies were "likely" to contribute to sustainable development, rather than "must" (being the wording in the CCA).
- The Court, in orders given after judgment was handed down, ordered the SoS to revise and publish an updated version of the 2023 CBDP by 29 October 2025.

See: *Friends of the Earth; ClientEarth; Good Law Project v Secretary of State for Energy Security and Net Zero* [2024] EWHC 995

# GOVERNMENT ACCOUNTABILITY FOR INADEQUATE POLICIES

*KlimaSeniorinnen v Switzerland* (2024)

- In 2016, an association of senior women – Senior Women for Climate Protection Switzerland (the petitioners) – and four individual older women filed a suit against multiple bodies of the Swiss Government, alleging that they had failed to uphold obligations under the Swiss Constitution and European Convention on Human Rights (ECHR) by not steering Switzerland in an emissions reduction trajectory consistent with the goal of keeping global temperatures well below 2ºC above pre-industrial levels.
- On 9 April 2024, the ECtHR Grand Chamber of 17 judges (16 concurring, one partly dissenting), upheld the applicants' case. The ECtHR found Switzerland had violated art 8 of the ECHR, which encompasses a right to effective protection for individuals by State authorities from the serious adverse effects of climate change on their lives, wellbeing and quality of life.
- The Court outlined that the state's duty is to adopt, and apply, regulations and measures capable of mitigating the existing and potentially irreversible, future effects of climate change, in line with the Paris Agreement and the scientific advice of the Intergovernmental Panel on Climate Change.

See: *KlimaSeniorinnen v Switzerland* (European Court of Human Rights, Grand Chamber 53600/20, 26 November 2020, judgment 9.4.24)

# GOVERNMENT ACCOUNTABILITY FOR INADEQUATE POLICIES

*Do-Hyun Kim et al v South Korea* (2024)

- Activists from the environmental NGO, Youth4Climate Action, filed a petition in the Korean Constitutional Court, claiming that the emissions reduction target set by the South Korean Government under the *Carbon Neutrality and Green Growth Framework Act 2021* (the Act) was insufficient to protect them from the impacts of climate change and therefore violated their constitutional rights to life, health, a healthy and pleasant environment and equality.
- Under the Act, the South Korean Government committed to a 24.4% reduction of GHG emissions from 2018 levels by 2030 and carbon neutrality by 2050. This was later enhanced to a 40% reduction by decree.

See: *Do-Hyun Kim et al v South Korea* (Korean Constitutional Court, Case No. 2020Hunma389, 29 August 2024)

Source: https://www.climate-court.com/post/south-korea-faces-landmark-climate-litigation-court-hears-arguments-in-4-cases

# GOVERNMENT ACCOUNTABILITY FOR INADEQUATE POLICIES

*Do-Hyun Kim et al v South Korea* (2024)

- The Constitutional Court unanimously found that the Act violated constitutional rights due to its failure to quantify a standard for targets between 2031 and 2049. The Court found that the absence of such standards encouraged postponing reduction efforts, which placed a disproportionate burden on future generations to meet the 2050 standard of carbon neutrality.
- The Court found that the failure to set targets between 2031 and 2049 violated the principle of statutory reservation, thereby requiring the Korean Government to enshrine any further targets in legislation.
- The Court, however, considered that it could not assess whether the 2030 target was adequate, as it was unable to identify a single criteria to evaluate how much a specific state should contribute toward global emissions reductions efforts.
- A majority also held that the implementation plan, formulated to achieve the legislated target, did not in fact meet the 40% reduction required by the decree and therefore was unconstitutional. The 40% reduction in the implementation plan was based on the gross emissions of the base year (2018), compared to the net emissions of the target year (2030), with the gross emissions of the base year omitting emissions generated by land use, land-use change and forestry. However, as findings of unconstitutionality require a super majority, this claim was also dismissed.

See: *Do-Hyun Kim et al v South Korea* (Korean Constitutional Court, Case No. 2020Hunma389, 29 August 2024)

# GOVERNMENT ACCOUNTABILITY – EMBEDDED EMISSIONS:

# EMERGING CASES

In *KlimaSeniorinnen v Switzerland* (2024), the ECtHR also upheld the applicants' claim that 'embedded emissions', i.e. GHG emissions from the import of goods and their consumption, were the responsibility of the State under the ECHR.

The ECtHR found that these embedded emissions were a significant part of Switzerland's total GHG footprint, and it would be difficult (if not impossible) to discuss Switzerland's responsibility for the impacts of GHG emissions on the human rights of the applicants without accounting for embedded emissions.

This is an expansion of the responsibility designated under the Paris Agreement, which does not include embedded emissions in the accounting mechanisms for states' emissions.

# GOVERNMENT ACCOUNTABILITY - ‘JET ZERO’: EMERGING CASES

As countries increasingly legislate to deal explicitly with climate change, there is an emerging trend of challenging government policies that breach climate change legislation.

**Challenges to UK Government’s ‘Jet Zero’ strategy: *Possible v Secretary of State for Transport; GALBA v SST***

In October 2022, climate group Possible, and the Group for Action on Leeds Bradford Airport (GALBA), filed claims for judicial review in the High Court of England and Wales against the Secretary of State for Transport (SoS).

The plaintiffs sought to challenge the UK Government's “Jet Zero” strategy, for the aviation sector to be net zero by 2050. The plaintiffs claimed that the Secretary’s decision to adopt the strategy breached the UK’s Climate Change Act 2008 (CCA) by failing to align with the the carbon budget. It was also argued that the consultation process was unlawful.

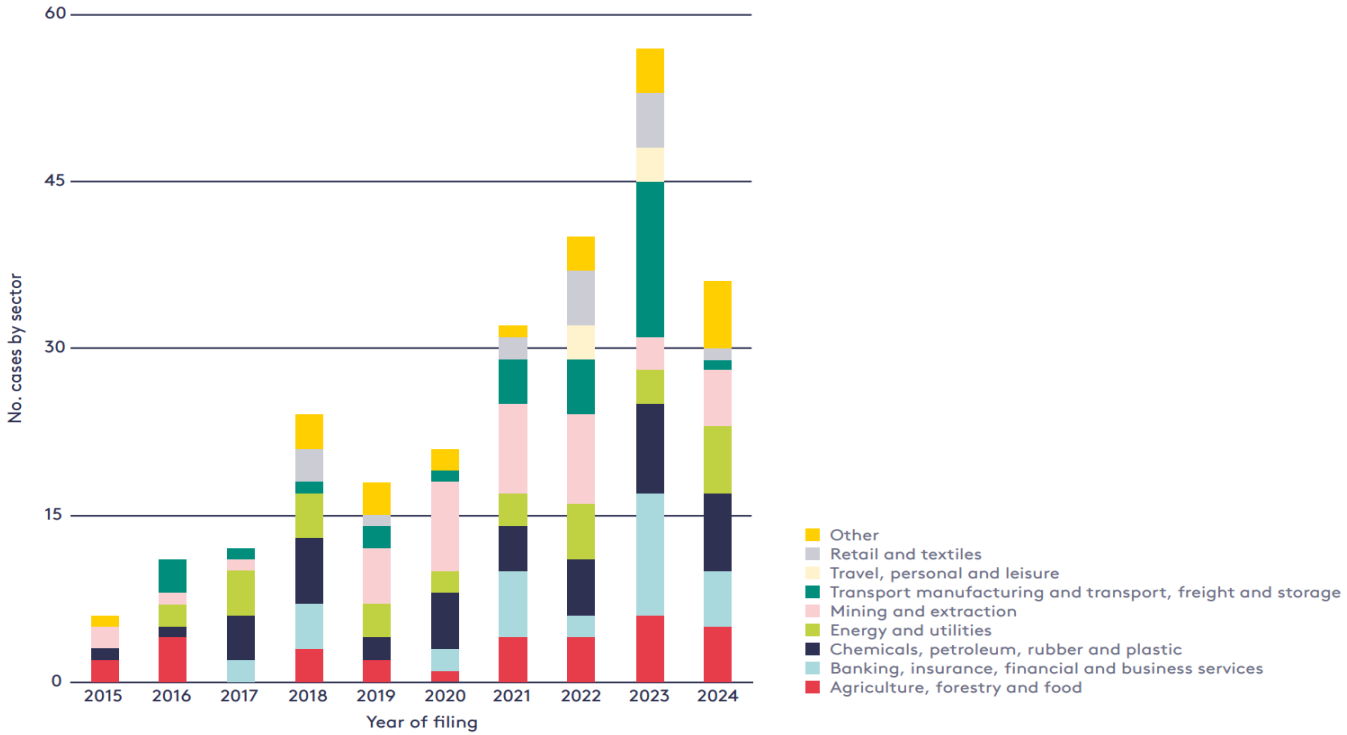
On 8 May 2025, the High Court dismissed the appeal, finding that the SoS, not being the minister with primary responsibility to ensure policies aligned with the carbon budget under the CCA, was entitled to exercise his discretionary judgement in adopting to the Jet Zero strategy.

Further, the Court found that the consultation process was lawful as the SoS retained a broad discretion in structuring the process. As a result, the consultation was not on aviation decarbonisation generally but rather was concerned with how to achieve net zero consistently with the SoS objective of not impacting aviation demand.

# 2. CORPORATE RESPONSIBILITY

- Climate litigation aims to influence corporate behaviour in relation to climate change and raise public awareness about the responsibility of major emitters.
- Early climate litigation involving the corporate sector was dominated by claims against companies involved in the extraction, refining and sale of fossil fuels.
- Later climate litigation is more diverse and seeks to influence corporate practice, including establishing corporate liability for past contributions to climate change and preventing activities for future contributions to climate change.

# CORPORATE RESPONSIBILITY



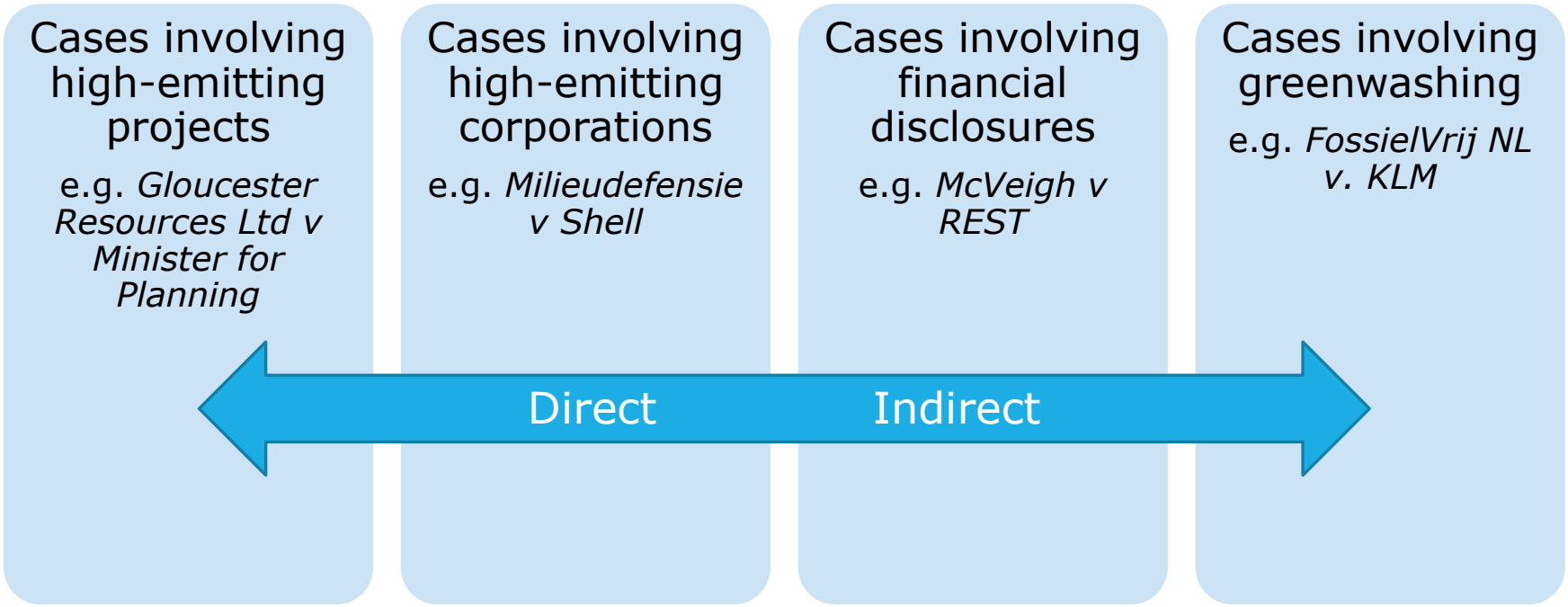

**Number of companies targeted by strategic climate litigation by sector, 2015-2024**
Source: *Global Trends in Climate Change Litigation: 2025 Snapshot* (Report, Grantham Research Institute on Climate Change and the Environment and Centre for Climate Change Economics and Policy)

Climate litigation targeting corporations has diversified beyond fossil fuel producers and now focuses on a range of sectors contributing to global emissions both directly and indirectly.

More recent climate litigation focuses on financial risks, fiduciary duties and corporate due diligence. This litigation targets banks, financial institutions and professional service firms.

# CORPORATE RESPONSIBILITY

- Cases can seek to influence corporate behaviour directly or indirectly.

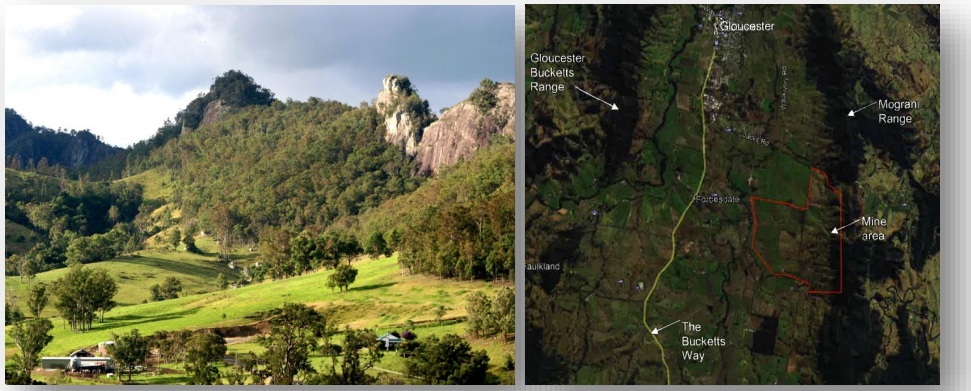


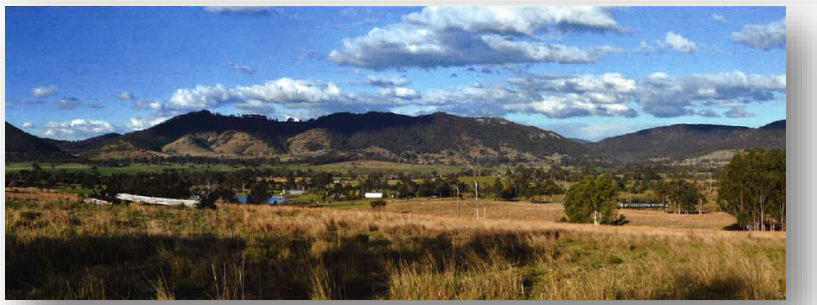
# CASES INVOLVING HIGH-EMITTING PROJECTS

*Gloucester Resources Ltd v Minister for Planning* (2019)

- A mining company sought consent to develop, operate and rehabilitate an open-cut coal mine. The Minister for Planning refused the application. The project proponent appealed to the Land and Environment Court of NSW.
- A community group was joined to the proceedings and raised the impacts of the mine on climate change.
- An expert for the community group used a carbon budget approach to contend that the Paris Agreement maximum acceptable temperature rise would require most fossil fuel reserves to remain in the ground and unburnt. Approval of the mine would be inconsistent with maintaining the maximum acceptable temperature rise.
- The Court upheld the Minister's refusal for the project, rejecting the market substitution and carbon leakage arguments raised by the mining company.

See: *Gloucester Resources Ltd v Minister for Planning* (2019) 234 LGERA 257



Sources: top-left, https://www.groundswellgloucester.com/; top-right & bottom, Xurban Visual Impact Expert Report (June 2018).

# CASES INVOLVING HIGH-EMITTING PROJECTS

*Finch v Surrey County Council* (2024)

- Horse Hill Developments sought and obtained planning permission from Surry County Council for the extension and expansion of an oil well site. The oil was to be extracted for a period of over 20 years, producing over 3.3 million tonnes of oil which when combusted would result in 10.6 million tonnes of CO2 emissions.
- Under the Town and Country Planning (Environmental Impact Assessment) Regulations 2017, which implemented the European Union Direction 92/11/EU (EIA Directive), Horse Hill was required to complete and submit an Environmental Impact Assessment (EIA) as part of its application. The EIA directive required an applicant to "identify, describe an assess… the direct and indirect significant effects of a project" (art 3(1)).
- Horse Hill provided an EIA, but only included an assessment of the direct GHG emissions and did not include an assessment of the downstream emissions caused by the combustion of the oil.
- The appellant, a community action group, brought proceedings challenging the grant of planning permission, arguing that Horse Hill was required to include downstream emissions in its EIA.
- The claim was dismissed by a single judge of the High Court who held it was impossible to say where the oil produced would be used or refined and therefore the combustion was incapable of falling within the scope of the EIA. The Court of Appeal dismissed the appellants' appeal.

*R (On the application of Finch on behalf of the Weald Action Group) v Surrey County Council and others* [2024] UKSC 20

# CASES INVOLVING HIGH-EMITTING PROJECTS

*Finch v Surrey County Council* (2024)

- A majority of the Supreme Court upheld the appellants' further appeal and quashed the planning permission. The Court found that downstream emissions from the combustion of the oil were to considered effects of the project and were to be included in the EIA
- The Court determined that there was a strong causal connection between the extraction of fossil fuels and the emissions generated by their combustion and that it was inevitable that oil produced from the wells would be combusted and emit GHG into the atmosphere.
- If the had EIA quantified the downstream emissions, the Court found that emissions attributable to the project could not have been dismissed as 'negligible' as had been done in the EIA.
- The Court also rejected Horse Hill's arguments.
  - It was argued that downstream emissions should be excluded from the EIA and that such an assessment should be wholly focused on emissions occurring at the project site. The Court reasoned that 'indirect' impacts necessarily occurred beyond the project site.
  - Further, the Court held that the downstream emissions were within the control of Horse Hill as it controlled the extraction of oil, without which there could be no combustion.

*R (On the application of Finch on behalf of the Weald Action Group) v Surrey County Council and others* [2024] UKSC 20

# CASES INVOLVING HIGH-EMITTING CORPORATIONS

*Milieudefensie et al v Royal Dutch Shell plc* (2022)

- Milieudefensie/Friends of the Earth Netherlands and six other plaintiffs claimed Royal Dutch Shell (RDS) had violated its duty of care under Dutch law by emitting greenhouse gas emissions (GHG) that contributed to climate change.
- The plaintiffs sought a ruling from the Court that Shell must reduce its greenhouse gas emissions by 45% by 2030 compared to 2010 levels, and to zero by 2050 in line with the Paris Climate Agreement.

Source: www.foei.org/features/historic-victory-judge-forces-shell-to-drastically-reduce-co2-emissions#

# CASES INVOLVING HIGH-EMITTING CORPORATIONS

*Milieudefensie et al v Royal Dutch Shell plc* (2022)

- The Hague District Court held that RDS is under an obligation to reduce GHG emissions. This stemmed from an unwritten standard of care laid down in the Code in which it is unlawful to act in conflict with what is generally accepted according to unwritten law (at [4.4.1]).
- The standard of care requires companies to take responsibility for Scope 3 emissions, especially where these emissions form the majority of a company's emissions, as is the case for companies that produce and sell fossil fuels (at [4.4.19]).
- RDS was ordered to reduce the CO2 emissions of the Shell group's activities by 45% by 2030, relative to 2019 levels. The reduction obligation related to the RDS's entire energy portfolio and to the aggregate volume of all emissions. The reduction obligation imposed was an obligation of result which required RDS to take the necessary steps to remove or prevent the serious risks ensuing from the CO2 emissions generated by them, and to use its influence to limit any lasting consequences as much as possible (at [4.4.55]).
- RDS appealed to the Hague Court of Appeal in July 2022.

See *Milieudefensie et al v Royal Dutch Shell plc* (Hague District Court, ECLI:NL:RBDHA:2021:5337)

# CASES INVOLVING HIGH-EMITTING CORPORATIONS

*Royal Dutch Shell plc v Milieudefensie et al* (2024)

- On appeal, The Hague Court of Appeal agreed with the District Court's decision insofar as it related to RDS having a legal duty of care to curb dangerous climate change. As a major oil and gas producer, RDS has a "special responsibility" to reduce its GHG emissions (at [7.79]).
- The Court affirmed the interrelationship between climate change and human rights law, stating that "there can be no doubt that protection from dangerous climate change is a human right" (at [7.17]).
- However, the Court overturned the District Court's order imposing a specific emissions target on RDS, finding that:
  - there was insufficient scientific consensus about what individual companies should adhere to in terms of specific reduction percentage of pathways (at [7.111]), and
  - there were legal and practical obstacles in imposing a reduction target for scope 3 emissions (at [7.73]).
- Therefore, the Court was of the view that companies "are free to choose their own approach to reducing their emissions in the – mandatory – climate transition plan as long as it is consistent with the Paris Agreement's climate targets" (at [7.56]).

See: *Milieudefensie et al v Royal Dutch Shell plc* (Hague Court of Appeal, ECLI:NL:GHDHA:2024:2100)

# CASES INVOLVING HIGH-EMITTING CORPORATIONS

*Smith v Fonterra* (2024)

- In New Zealand, a claim has been brought by a Maori elder against seven high-emitting companies whose businesses either released greenhouse gases into the atmosphere or supplied products that released greenhouse gases when they are burned. The plaintiff claimed the companies are liable in tort (public nuisance, negligence and a novel duty of care) for their contribution to climate change.
- The High Court in 2020 struck out the public nuisance and negligence causes of action in 2020. The Court of Appeal in 2021 affirmed the High Court's decision and also struck out the novel duty of care claim and dismissed the appeal.
- In 2024, the Supreme Court overturned the Court of Appeal, allowing the trial on all three causes of action. The Supreme Court allowed the claims of negligence and the novel duty of care to proceed on the basis that the public nuisance claim did not meet the threshold for being dismissed (in part because there were actionable rights tenably pleaded) and therefore, as the primary cause of action was not struck out, the other actions should generally not be struck out either.
- In deciding this, the Supreme Court also held that there was no basis to conclude that legislation has displaced tort law in relation to climate change in New Zealand.

See: *Smith v Fonterra Co-operative Group Limited* [2020] NZHC 419; *Smith v Fonterra Co-operative Group Limited* [2021] NZCA 552; *Smith v Fonterra Co-operative Group Limited* [2024] NZSC 5

# CASES INVOLVING HIGH-EMITTING CORPORATIONS

*Lliuya v RWE AG* (2025)

- In 2015, A Peruvian farmer, Saúl Luciano Lliuya, brought a proceedings against German multinational energy company RWE AG in the District Court of Essen. Lliuya claimed that RWE's historical GHG emissions had contributed to climate induced glacial melting in the Andes that left his property in the Peruvian city of Huaraz vulnerable to flooding.
- Lliuya argued that there was a causal and foreseeable connection between RWE's emissions, which had contributed to climate change, and the melting of glaciers in the Andes that had increased the risk of glacial lake outburst flooding. Lliuya claimed that RWE's emissions therefore constituted an interference with property that was contrary to s 1004 of the German Civil Code.
- Lliuya's claim was dismissed by the District Court of Essen, who found that it was not possible to establish causation between RWE's emissions and specific climate impacts as the contributions of all emitters were indistinguishably mixed.
- On appeal, the Higher Regional Court of Hamm was satisfied that there was a sufficient causal relation between RWE's emissions and glacial melting. The Court considered that RWE's emissions, being 0.38% of total global industrial CO2 emissions and 0.24% of total global CO2 emissions, were substantial and that a person in the position of RWE would have recognised, at least since the mid-1960s, that a significant increase in GHG emissions would lead to global warming and the consequences alleged by the Lliuya.
- However, the Court was not satisfied that the risk of glacial outburst flooding was imminent, barring relief under s 1004 of the German Civil Code.

See: *Lliuya v RWE AG,* Oberlandesgericht Hamm [Higher Regional Court of Hamm], I-5 U 15/17, 28 May 2025.

# CASES INVOLVING FINANCIAL DISCLOSURES

*McVeigh v Rest* (2018)

- A superannuation fund member commenced proceedings against his superannuation fund, Retail Employees Superannuation Pty Ltd (REST), for failing to adequately disclose climate related business risks and strategies. The plaintiff, who will be unable to access his superannuation until the second half of the century, contended that REST failed to provide adequate information relating to:

  > "(a) knowledge of REST's Climate Change Business Risks;
  >
  > (b) opinion of Climate Change, the Physical Risks, the Transition Risks and REST's Climate Change Business Risks;
  >
  > (c) actions responding to REST's Climate Change Business Risks;
  >
  > (d) compliance with the [company and directors' duties] with respect to REST's Climate Change Business Risks."

- In November 2020, the parties settled, with REST stating "that climate change is a material, direct and current financial risk to the superannuation fund," and "that REST, as a superannuation trustee, considers that it is important to actively identify and manage these issues."

*McVeigh v Retail Employees Superannuation Pty Limited* (Federal Court of Australia, NSD1333/2018, 24 July 2018)

The plaintiff, Mark McVeigh

Source: www.abc.net.au/news/2020-01-18/mark-mcveigh-is-taking-on-rest-super-and-has-the-world-watching/11876360)

# CASES INVOLVING FINANCIAL DISCLOSURES

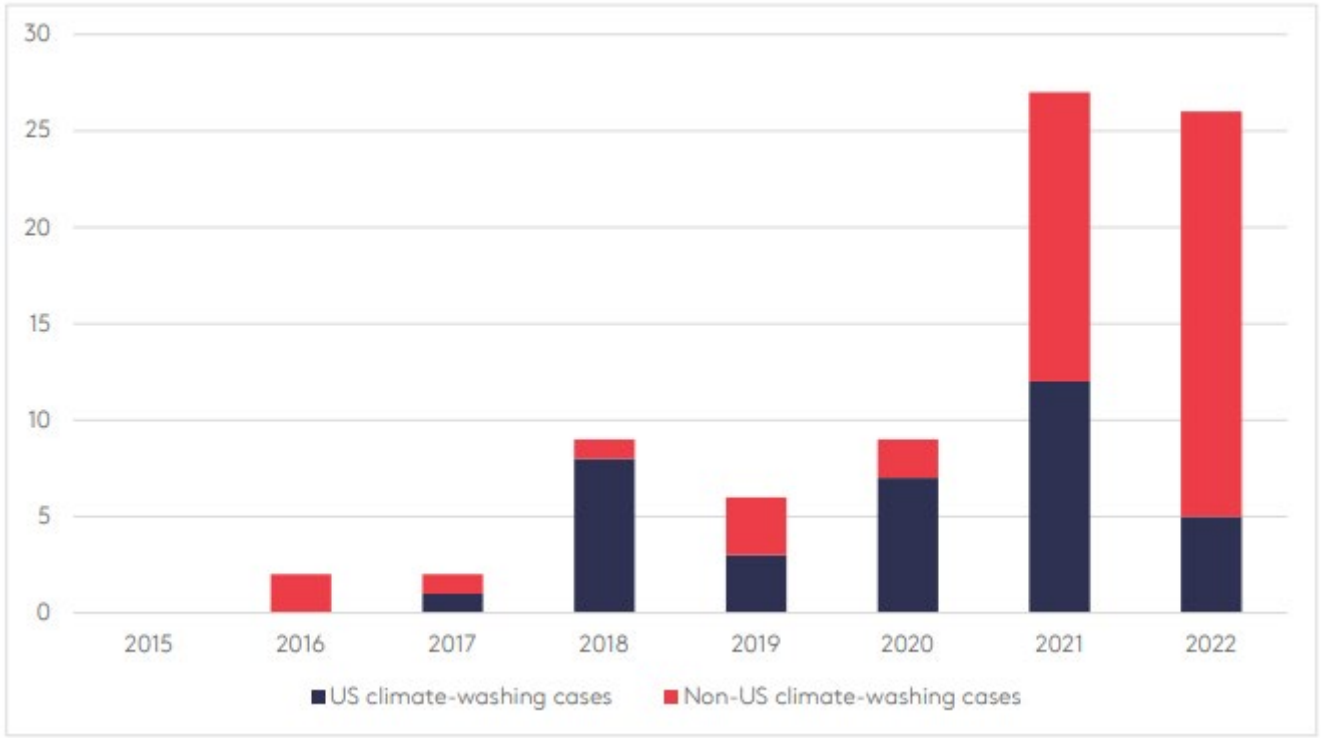
There are numerous cases in which plaintiffs (including government bodies, shareholders etc.) are suing companies in relation to climate-related financial disclosures.

- ***Commonwealth of Massachusetts v Exxon Mobil Corporation*** (Mass Sup Ct, 33333/2019, Complaint filed 24 October 2019): Massachusetts Attorney General filed a complaint which alleges that Exxon "systematically and intentionally has misled Massachusetts investors and consumers about climate change... all in violation of Massachusetts law". The deceptive practices alleged in the complaint include "failing to disclose climate change risks, misrepresenting its business practices related to use of proxy costs of carbon, misleadingly advertising its products, failing to disclose its products' impacts on climate change, and engaging in greenwashing campaigns". In 2021, a trial judge rejected Exxon's bid to dismiss the claim under the State's anti-SLAPP (Strategic Litigation Against Public Participation) statute, which was upheld by the Massachusetts Supreme Judicial Court. The case is ongoing.

- ***Ramirez v Exxon Mobil Corp*** (ND Tex, 3:16-cv-3111, 14 August 2018): A pension fund filed a class action in securities fraud against Exxon Mobil Corporation and some of its officers. The plaintiff alleges that Exxon made material misrepresentations or omissions in relation to the value of its oil and gas assets. The District Court in August 2018 denied Exxon's motion to dismiss, finding the plaintiff had alleged sufficient facts to (1) support its claims, (2) support the heightened standard of scienter for the majority of its claims and (3) support an inference of loss causation.

- ***Abrahams v. Commonwealth Bank of Australia*** (NSD864/2021): Shareholders of the Commonwealth Bank of Australia (**CBA**) filed an application in the Federal Court, seeking access to internal documents related to the CBA's involvement in projects including numerous gas projects, and other projects which allegedly infringe the CBA's environmental and social policies. These documents were sought to assess the environmental and social impacts of the projects and whether the projects are in line with the Paris Agreement goals; and to discharge any obligation of the CBA under its environmental and social policies. The Federal Court made orders by consent for CBA to produce the documents. Further orders by consent were made on the basis that the shareholders can use certain documents the CBA produced for the purpose of further litigation against CBA and for the purpose of providing these documents to regulatory bodies (Australian Prudential Regulation Authority and the Australian Securities and Investments Commission.

# CASES INVOLVING CLIMATE-WASHING




**Climate-washing cases against corporate actors in the US and outside the US, 2015-2022**
Source: *Global Trends in Climate Change Litigation: 2023 Snapshot* (Report, Grantham Research Institute on Climate Change and the Environment and Centre for Climate Change Economics and Policy)

"Climate-washing cases" brought against corporations challenge the accuracy of green commitments and claims. These cases have increased in number significantly in the last five years.

# CASES INVOLVING CLIMATE-WASHING

*FossielVrij NL v KLM* (2024)

- Environmental organisation Fossielvrij NL, with the support of ClientEarth, brought a claim against Dutch airline KLM, alleging KLM's advertisements in its 'Fly Responsibly' campaign are misleading.
- In March 2024, the Amsterdam District Court found that the advertising, which suggested flying can be, or is becoming, sustainable and that its offsets reduce or compensate for the impact of flying, breached EU consumer law.
- The Court also found that KLM's claims that it was "committed to the Paris Agreement climate goals" breached the law because KLM's climate targets painted "too rosy a picture" given the minimal measures the airline was actually taking.


Source: https://esgnews.com/dutch-court-rules-klms-sustainability-advertising-breached-eu-consumer-law/

See: *FossielVrij NL v KLM* (Amsterdam District Court, ECLI:NL:RBAMS:2024:1512)

# CASES INVOLVING CLIMATE-WASHING

*ASIC v Mercer Superannuation* (2024)

- ASIC brought proceedings against Mercer Superannuation (Australia) Limited (Mercer) concerning misleading statements made by Mercer on its website about seven "Sustainable Plus" investment options.
- The options were marketed as suitable for members who "are deeply committed to sustainability" and as options which "will not invest in alcohol, gambling and carbon intensive fossil fuels like thermal coal."
- The Federal Court of Australia found that these options had multiple investments involved in the extraction or sale of carbon intensive fossil fuels (including Whitehaven Coal Ltd and BHP Group Ltd), the production and sale of alcohol, and gambling.
- On 2 August 2024, the Federal Court ordered Mercer to pay an $11.3 million penalty for the misleading statements, which were found to be in contravention of s 12DF(1) of the *Australian Securities and Investments Commission Act 2001* (Cth).

*"The contraventions admitted by Mercer are serious. They arose from failures by Mercer to implement adequate systems to ensure that ESG claims in relation to its superannuation products were accurate, and to monitor and enforce the application of any sustainability exclusions associated with such ESG claims."*

(Justice Horan at [147])

See: *Australian Securities and Investments Commission v Mercer Superannuation (Australia) Limited* [2024] FCA 850

# CASES INVOLVING CLIMATE-WASHING

*ASIC v LGSS Pty Ltd* (2025)

- Active Super, formerly known as the Local Government Superannuation Scheme (LGSS), operates on a profit-to-member model and manages approximately $14.7m in superannuation assets for 86,547 members as of 30 June 2024.
- The Federal Court found that LGSS had made false or misleading representations and had engaged in conduct liable to mislead the public in relation to investments made for the superannuation fund known as Local Government Super (Active Super).
- This including making false and misleading representations to members and potential members of the Active Super fund about its "green" or "ESG" credentials on their fund's website, email correspondence, various Product Disclosure Statements, a Responsible Investment Report and more.
- The Court was particularly concerned with how LGSS utilised its "ethical" self-representation to enhance its ability to attract investors.
- A pecuniary penalty of $10.5 million was ultimately ordered against LGSS, with an adverse publicity order in the form sought by ASIC.


Source: https://www.lawyersweekly.com.au/the-bar/37919-asic-commences-proceedings-against-active-super-for-alleged-greenwashing

See: *Australian Securities and Investments Commission v LGSS Pty Ltd (No 3)* [2025] FCA 205

# CORPORATE RESPONSIBILITY – VALUE CHAIN EMISSIONS:

# EMERGING CASES

There is increasing attention on ‘value chain climate litigation’, where claimants seek to hold companies responsible for acts and omissions in their value chains and/or supply chains.

***Envol Vert et al. v. Casino***

On March 2, 2021, an international coalition of eleven NGOs sued the French supermarket chain Casino for its involvement in the cattle industry in Brazil and Colombia, which plaintiffs allege cause environmental and human rights harms. The alleged environmental harms include destruction of carbon sinks essential for the regulation of climate change resulting from cattle industry-caused deforestation.

This case does not yet appear to have been heard.

# CORPORATE RESPONSIBILITY – FINANCIAL DISCLOSURES:

# EMERGING CASES

The standard by which directors are considered to have discharged their duties in relation to climate-related financial disclosures has increased in recent years:

> *"The COVID-19 pandemic has elevated a focus on how firms and sectors prepare and act in respect of other foreseeable systemic risks like climate change. In our opinion, it is no longer safe to assume that directors adequately discharge their duties simply by considering and disclosing climate-related trends and risks; in relevant sectors, directors of listed companies must also take reasonable steps to see that positive action is being taken: to identify and manage risks, to design and implement strategies, to select and use appropriate standards, to make accurate assessments and disclosures, and to deliver on their company's public commitments and targets."*

See: Mr Noel Hutley SC and Mr Sebastian Hartford Davis, *Climate Change and Directors' Duties: Further Supplementary Memorandum of Opinion* (Centre for Policy Development, 23 April 2021)

# CORPORATE RESPONSIBILITY – FINANCING OF FOSSIL FUELS:

# EMERGING CASES

There has also been an increase in cases targeting the 'financial value chains' that support high-emitting activities incompatible with climate goals. These cases are filed against public and private financial institutions and aim to internalize climate risk into capital allocation.

***Milieudefensie et al v ING Bank N.V.***

On 28 March 2025 Milieudefensie commenced proceedings against ING in the Amsterdam District Court, alleging that ING had violated its societal duty of care under Article 6:162 of the Dutch Civil Code. The case seeks to extend the duty of care established in the *Urgenda* and *Royal Dutch Shell* cases to financial institutions that provide finance to fossil fuel projects and other heavy emitting industries.

Milieudefensie claims that the Dutch Civil Code imposes a duty of care on financial institutions to counter climate change, which was breached by ING in its provision of finance to high emitting industries with the knowledge of the long-term climate risks associated with such emissions. ING, as the largest bank in the Netherlands, was responsible for 261.6 megatons of CO2 emissions in 2024.

Milieudefensie is seeking orders that ING halve its total emissions by 2030, cease all investment in new oil and gas projects, reduce its investment in eight of the highest polluting industries and require all of ING's large corporate clients to submit credible, science-based climate plants aligned with the OEDC guidelines.

# CORPORATE RESPONSIBILITY – FINANCIAL DISCLOSURES:

# EMERGING CASES

The introduction of legislation and rules mandating certain climate-related financial disclosures has lead to increased climate litigation, brought by companies affected by such regulation.

***Iowa v. Securities & Exchange Commission***

On 6 March 2024, the US Securities and Exchange Commission (SEC) adopted rules to enhance and standardise climate-related disclosures by public companies and in public offerings. Following this, ten petitions for review were filed in various circuit courts of appeal challenging the rule. Petitions were filed by entities including energy companies, business and industry groups, states, environmental organisations. The consolidated petitions will be heard by the Eighth Circuit Court.

The SEC entered a stay of the new rule, pending completion of the judicial review.

In March of 2025, SEC notified the Court that it wished to withdraw its defence of the rules. Intervenor states applied for, and were granted, orders holding the proceedings in abeyance.

The SEC subsequently applied for the abeyance order to be lifted, advising the Court that it had no intention to "review or reconsider the rules" but that a final determination by the Court would clarify the SEC's authority to make such rules and guide potential further actions.

The Eighth Circuit Court is yet to determine the SEC's application.

# CORPORATE RESPONSIBILITY – CLIMATE-WASHING:

# EMERGING CASES

Climate-washing cases have typically occurred in relation to companies directly related to mining or burning of fossil fuels, such as the climate-washing case of *FossielVrij NL v KLM*. However, climate-washing cases related to other causes of climate change are emerging.

### *People v JBS USA Food Co*

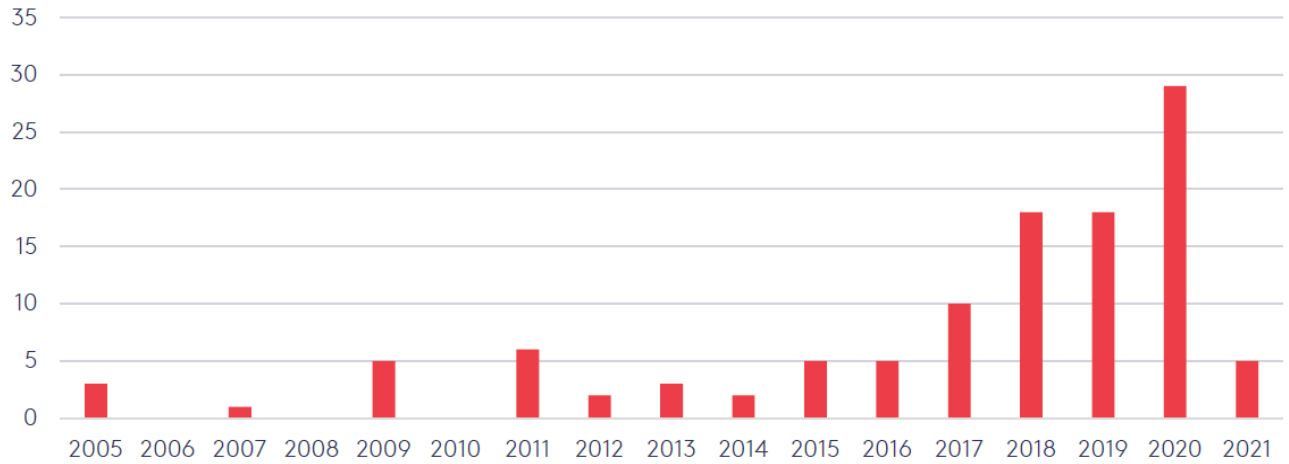
The New York Attorney General (NY AG) filed a lawsuit against JBS USA Food Company and JBS USA Food Company Holdings (together, JBS), the world's largest beef and poultry producers. While JBS have pledged to achieve net zero GHG emissions by 2040, the NY AG claims JBS has no viable plan to achieve this.

Because of this, the NY AG claims JBS has made unsubstantiated and misleading environmental marketing claims. The claim alleges that beef production is a significant contributor to climate change through GHG and land-use changes which reduce or eliminate carbon sinks. The claim also alleges that the world's top five meat and dairy corporations – of which JBS is the biggest contributor - are, combined, responsible for more annual GHG emissions that ExxonMobil, Shell, or BP (individually).

On 10 January 2025 the Supreme Court of New York dismissed the NY AG's claim finding that JBS' statements represented an aspiration rather than a guarantee. The NY AG was given 90 days to file a further amended complaint.

# 3. HUMAN RIGHTS COMPLIANCE

Commentators have noted a ‘rights-turn’ in climate litigation, through which claimants seek to use human rights arguments to hold governments and corporations accountable for climate change (Osofsky and Peel, 2018).




Chronological distribution of rights-based climate cases (% of cases, to May 2021)

Source: *Global Trends in Climate Change Litigation: 2021 Snapshot* (Report, Grantham Research Institute on Climate Change and the Environment and Centre for Climate Change Economics and Policy)

# TYPES OF HUMAN RIGHTS-BASED CLIMATE LITIGATION

Climate litigation claiming breach of human rights includes:

a. Government inaction for adaptation to climate change;
b. Constitutional right of due process;
c. Right to life and healthy environment;
d. Right to life and culture; and
e. Human rights in environmental decision-making.

# GOVERNMENT INACTION FOR CLIMATE ADAPTATION

*Leghari v Pakistan* (2018)

- Pakistan had two policies relating to adaptation to climate change, which the Government had not implemented. Leghari submitted that this inaction breached his fundamental rights, read with constitutional principles and international environmental principles.
- The Court held that the government's inaction in implementing the climate policies breached Leghari's fundamental human rights.
- By way of remedy, the Court ordered the establishment of a Climate Change Commission to effectively implement the climate policies.
- In 2018, the Commission submitted a supplemental report on the implementation of priority actions. The Court agreed with the Commission's submissions that 66% of the priority items of the Framework had been completed due to the Commission's efforts and the responsibility for the remaining items should be left to government. Accordingly, the Court dissolved the Commission and instead constituted a Standing Committee on Climate Change to ensure the continued implementation of the Policy and the Framework.

See: *Asghar Leghari v Federation of Pakistan* (2015) WP No. 25501/2015

# CONSTITUTIONAL RIGHT OF DUE PROCESS

*Juliana v United States* (2015-ongoing)

- On 12 August 2015, 21 youth and the organisation Earth Guardians filed a constitutional climate lawsuit against the US government.
- The plaintiffs challenged affirmative government action under the **due process clause** in the US Constitution, which bars the Federal government from **depriving a person of "life, liberty or property" without "due process" of law.**
- The plaintiffs sought declaratory relief that, by its affirmative actions in promoting and approving fossil fuel development and its inaction in regulating greenhouse gas emissions, the US Government has caused and contributed to catastrophic climate change and violated the plaintiffs' constitutional **rights to life** and **equal protection** and **the implicit constitutional right to a stable climate**.
- The US government and industry interveners sought to summarily dismiss the action.


Source: http://chej.org/juliana-v-united-states-2015-2021

# CONSTITUTIONAL RIGHT OF DUE PROCESS

*Juliana v United States* (2015-2024)

- On 10 November 2016, the federal District Court denied the federal government's and industry intervenors' motions to dismiss the case.
- The Court determined that the political question doctrine did not apply, the plaintiffs had standing, and the plaintiffs had properly asserted their due process and public trust claims.
- The Court articulated a new fundamental right, the right to a climate system capable of sustaining human life and held:
  - The right to a climate system capable of sustaining human life is fundamental to a free and ordered society (at 32-33).
  - Where a complaint alleges governmental action is affirmatively and substantially damaging the climate system in a way that will cause human deaths, shorten human lifespans, result in widespread property damage, threaten food sources, and dramatically alter the planet's ecosystem, a claim for a due process violation exists (at 33).
  - The Plaintiffs had adequately alleged an infringement of this fundamental right (at 34).
- On 17 January 2020, the 9th Circuit Court by majority found the plaintiffs lacked standing to bring the complaint, but the District Court allowed the plaintiffs to replead the complaint.
- On 1 May 2024, the 9th Circuit Court granted the government's petition of mandamus, ordering the District Court to dismiss the complaint on the basis that the plaintiffs lack the required standing to bring even a repleaded a claim.

See: *Juliana v United States* 217 F. Supp. 3d 1224 (D. Or. 2016); *Juliana v United States,* 947 F.3d 1159, 1175 (9th Circ. 2020); *Juliana v United* States No.6:15-CV-01517-AA, 2023 WL 9023339 (D. Or. Dec. 29, 20.23); *United States v US District Court* No. 24-684m - D.C. No.6:15-cv-1517 (Fed Cir 2024)

# RIGHT TO LIFE AND HEALTHY ENVIRONMENT

*Future Generations v Ministry of the Environment* (2018)

- A group of 25 plaintiffs, between 7 and 26 years old, filed a *tutela*, a special action under the Colombian Constitution used to protect fundamental rights, before the Superior Tribunal of Bogota.
- The plaintiffs demanded that the relevant Colombian Ministries and Agencies protect their rights to a healthy environment, life, food and water.
- They claimed that deforestation in the Colombian Amazon and climate change are threatening these rights. They sought orders that the government halt deforestation in the Colombian Amazon.
- At first instance, the Court found against the plaintiffs.

Source: www.dejusticia.org/en/asi-se-gano-en-colombia-un-litigio-por-el-planeta/

# RIGHT TO LIFE AND HEALTHY ENVIRONMENT

*Future Generations v Ministry of the Environment* (2018)

- The Supreme Court of Colombia reversed the lower court decision, recognizing that the "fundamental rights of life, health, the minimum subsistence, freedom, and human dignity are substantially linked and determined by the environment and the ecosystem": at [13].
- The Court recognized the Colombian Amazon as a "subject of rights" in the same manner that the Constitutional Court recognized the Atrato River. The Supreme Court declared that the Colombian Amazon accordingly was entitled to protection, conservation, maintenance, and restoration: at [14].
- The Court made orders across three levels of government, including ordering:
  - The Federal government to propose a plan to reduce deforestation in the Colombian Amazon and to establish an 'intergenerational pact for the life of the Colombian Amazon' with the plaintiffs, scientists and community members with the aim of reaching zero deforestation;
  - Municipal governments to update their Land Management Plans and to propose a plan for reaching zero deforestation; and
  - Regional environmental authorities to put forward a plan for reducing deforestation.

See: *Demanda Generaciones Futuras v Minambiente* (STC4360-2018)

# RIGHT TO LIFE AND HEALTHY ENVIRONMENT

*KlimaSeniorinnen v Switzerland* (2024)

- An association of senior women (the **petitioners**) and four individual older women filed a suit against multiple bodies of the Swiss Government, alleging that they had failed to uphold obligations under the Swiss Constitution and European Convention on Human Rights (**ECHR**) by not steering Switzerland in an emissions reduction trajectory consistent with the goal of keeping global temperatures well below 2ºC above pre-industrial levels.
- The petitioners' claim was dismissed by the Federal Department of the Environment, Transport, Energy and Communications, the Swiss Federal Administrative Court and the Swiss Supreme Court. After having exhausted all national remedies, the petitioners took their claim to the European Court of Human Rights (**ECtHR**).
- The petitioners listed two main complaints: (1) Switzerland's inadequate climate policies violate their right to life and health under arts 2 and 8 of the ECHR; and (2) the Swiss Federal Supreme Court's rejection of their case was arbitrary and in violation of the right to a fair trial under art 6.

# RIGHT TO LIFE AND HEALTHY ENVIRONMENT

*KlimaSeniorinnen v Switzerland* (2024)

- On 9 April 2024, the ECtHR Grand Chamber of 17 judges (16 concurring, one partly dissenting), upheld the applicants' case. The ECtHR found:
  - Art 34: the four individuals did not fulfil the victim-status criteria of the Convention (Art 34) and declared their complaints inadmissible.
  - Art 8: this Article encompasses a right to effective protection for individuals by State authorities from the serious adverse effects of climate change on their lives, wellbeing and quality of life. The State's duty is to adopt, and apply, regulations and measures capable of mitigating the existing and potentially irreversible, future effects of climate change.
  - Art 6: The Swiss authorities had violated this Article, by not taking the Association's complaints seriously and had failed to provide convincing reasons as to why they had not examined the merits of the complaints.

See: *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland* (ECtHR, application number 53600/20)


Source: https://blogs.law.columbia.edu/climatechange/2024/05/09/klimaseniorinnen-and-gender/

# RIGHT TO LIFE AND HEALTHY ENVIRONMENT

*Great Indian Bustard case – India* (2024)

- The Great Indian Bustard (GIB) is a critically endangered bird species. The attrition of the GIB has been partly attributed to overhead transmission lines.
- In April 2021, the Supreme Court imposed restrictions on the installation of overhead powerlines across 99,000 square kilometers in Rajasthan and Gujarat to protect the GIB.
- In November 2021, the respondents filed an interlocutory application seeking modification of the directions, on the grounds that the judgment has vast adverse implications for the renewable energy transition and reduction of emissions.
- In March 2024, in response to a writ petition seeking directions on the conservation of the GIB, the Court delivered a judgment which acknowledged the competing considerations of protecting the GIB from overhead transmission lines and the need for renewable energy.

See: *M. K. Ranjitsinh & Ors. V Union of India & Ors.* (Writ Petition (Civil) No. 838 of 2019; and Civil Appeal No. 3570 of 2022)

The Great Indian Bustard

Source: *https://cdn.britannica.com/09/157809-050-073D23F3/Indian-bustard-bird-species.jpg*

# RIGHT TO LIFE AND HEALTHY ENVIRONMENT

*Great Indian Bustard case – India* (2024)

- The Court discussed India's obligations to take climate action, including under the constitutional protections to the right to a clean environment and the right to be free from the adverse effects of climate change. A key strategy in India's sustainability efforts is renewable energy capacity installation, which helps achieve these rights by reducing emissions and addressing air pollution.
- For several reasons, including that banning overhead transmission lines would make the cost of harnessing renewable energy prohibitive, the Court revoked the ban on overhead transmission lines.
- The Court instead appointed an expert committee to consider the appropriate action, balancing the need for preserving the GIB with the need for sustainable development, in the context of promoting renewable energy, and ordered the Union of India to implement the measures it had described in its affidavit to conserve the GIB.

See: *M. K. Ranjitsinh & Ors. V Union of India & Ors.* (Writ Petition (Civil) No. 838 of 2019; and Civil Appeal No. 3570 of 2022)

A solar farm in India.

Source: https://www.pv-magazine.com/2021/10/27/taxes-set-to-push-up-solar-energy-tariffs-in-india/

# RIGHT TO LIFE AND CULTURE

Torres Strait Eight (2022)

- A group of eight Torres Strait Islanders submitted a petition against the Australian government to the United Nations Human Rights Committee (UNHRC).
- The petition alleged that Australia is violating the plaintiffs' fundamental human rights under the International Covenant on Civil and Political Rights (ICCPR) due to the government's failure to address climate change.
- Specifically, the complaint argued that the violations stemmed from both insufficient targets and plans to mitigate greenhouse gas emissions and inadequate funding for coastal defence and resilience measures on the islands, such as seawalls.
- The UNHRC found Australia had failed to protect the Torres Strait Islanders against the adverse impacts of climate change, in violation of their rights to enjoy their culture and be free from arbitrary interferences with their private life, family and home under articles 17 and 27 of the ICCPR.
- The UNHRC asked Australia to compensate the Torres Strait Islanders, engage in consultation with their communities to assess their needs, and take measures to continue to secure their safe existence on their islands.

See *Daniel Billy and others v Australia* (Torres Strait Islanders Petition) (CCPR/C/135/D/3624/2019)

Source: https://www.abc.net.au/news/2020-09-30/torres-strait-islanders-fight-government-over-climate-change/12714644

# RIGHT TO LIFE AND CULTURE

*Pabai v Commonwealth of Australia* (2025)

- On 22 October 2021, Pabai Pabai and Guy Paul Kabai, First Nations' elders from the Gudamalulgal nation of the Torres Strait Islands filed proceedings against the Commonwealth Government alleging that the Commonwealth owed a duty of care to Torres Strait Islanders to take reasonable steps to protect them, their culture and traditional way of life, and their environment from harms caused by climate change, having regard to the best available science.
- The applicants alleged that the Commonwealth had breached this duty of care by setting emissions reduction targets in 2015, 2021 and 2022 without regard to the best available science and by failing to take reasonable steps to implement adaptation measures, namely the provision of funding for the construction of seawalls.
- The loss or damage claimed as a result of both breaches was the collective loss for all Torres Strait Islander Peoples of knowledge systems, traditions, laws, protocols and practices that together form Ailan Kastom (or island custom).

See: *Pabai & Anor v Commonwealth of Australia (No 2)* [2025] FCA 796

Source: https://australianclimatecase.org.au/torres_strait_about/

# RIGHT TO LIFE AND CULTURE

*Pabai v Commonwealth of Australia* (2025)

- The Federal Court of Australia dismissed the case finding that the Commonwealth did not owe the applicants a duty of care.
- The Court considered that both the setting of emissions reductions targets and the determination of appropriate adaptation measures were matters of core or high government policy and political judgment that were unsuitable for judicial determination and should not be subjected to the common law duty of care.
- If the duties did exist however, the Court determined that there had been no breach, as the Commonwealth was entitled to consider a range of matters, along with the best available science, when setting reduction targets or providing funding for adaptation projects.
- In making these findings the Court did acknowledge the particular vulnerability of Torres Strait Islander Peoples to climate impacts and warned that without immediate action "there could be little, if any, doubt that the Torres Strait Islands and their traditional inhabitants face a bleak future" (at [6]). The Court also found that the best available science was and is clear, and that Australia, in failing to have regard to that science, had failed to play its part in the global effort against climate change.

"[T]he law in Australia as it currently stands provides no real or effective avenue through which the applicants were able to pursue their claims… That will remain the case unless and until the law in Australia changes, either by the incremental development or expansion of the common law by appellate courts, or by the enactment of legislation."

Wigney J at [1275]

See: *Pabai & Anor v Commonwealth of Australia (No 2)* [2025] FCA 796

# HUMAN RIGHTS IN ENVIRONMENTAL DECISION-MAKING

*Waratah Coal Pty Ltd v Youth Verdict Ltd & Ors* (2022)

- The Queensland Land Court recommended refusal of Waratah Coal's mining lease and environmental authority for a new open-cut coal mine in central Queensland. The Land Court found that the proposed project poses "unacceptable climate change impacts to Queensland people and property" (at [36]).
- The Land Court held that approving the proposed project for a large open-cut coal mine would contribute to "foreseeable and preventable life-terminating harm" (at [1512]).
- The Land Court found that the release of greenhouse gases (GHG) from the mining and burning of the coal would increase climate change impacts and breach the right to life, the rights of First Nations people, the rights of children, the right to property, the right to privacy and home, and the right to equal enjoyment of human rights (at [1514]-[1649]).

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


Source: https://clxtoolkit.com/casebook/waratah-coal-pty-v-youth-verdict/

# HUMAN RIGHTS:

# INTERNATIONAL COURTS' ADVISORY OPINIONS

In July 2025, advisory opinions were handed down by two international courts, the International Court of Justice (ICJ) and the Inter-American Court of Human Rights (IACtHR). Each detailed the human rights obligations of states with regard to the climate crisis.

These two advisory opinions followed the International Tribunal on the Law of the Sea's advisory opinion that was handed down on 21 May 2024. ITLOS found that states were obligated under the United Nations Convention on the Law of the Sea to protect the oceans and marine diversity from the impacts of climate change.

A further advisory opinion is expected from the African Court on Human and Peoples' Rights after a request was lodged by African civil society organisations in May 2025.

# HUMAN RIGHTS:

# INTERNATIONAL COURTS' ADVISORY OPINIONS

***Obligations of States in Respect of Climate Change***

The ICJ's opinion, handed down on 23 July 2025, was in response to a UN General Assembly request for the Court's opinion on the obligations of states regarding climate change under international law and the consequences of causing significant harm to the climate system and environment.

On human rights, the ICJ ruled that the right to a clean, healthy and sustainable environment is a precondition to the enjoyment of many other human rights and that it is difficult to see how states could effectively fulfill their human rights obligations without also safeguarding the right to a clean, healthy and sustainable environment (at [393]). As a result, states have a human rights obligation to protect the climate system and other parts of the environment (at [408]).

The ICJ clarified state's obligations under climate change treaties, particularly noting that a state's NDC under the Paris Agreement must at least be capable of achieving the global temperature goal of limiting warming to 1.5 degrees (at [245]).

The ICJ detailed the obligations of states to prevent significant environmental harm and co-operate with each other in good faith to prevent harm to the climate system under customary international law (at [271]-[315]).

See: *Obligations of States in Respect of Climate Change (Advisory Opinion) (Judgement)* (International Court of Justice, General List No 187, 23 July 2023).

# HUMAN RIGHTS:

# INTERNATIONAL COURTS' ADVISORY OPINIONS

***Climate Emergency and Human Rights***

The IACtHR's advisory opinion was more narrowly focused on the obligations of American states under the Inter-American human rights framework.

Like the ICJ, the Court found that states possessed a human rights obligation to protect a healthy environment. However, the Court recognized the right to a healthy environment as autonomous from other human rights obligations, with this right protecting both the environment as a whole and each of the inextricably linked elements and systems of which it is composed of (at [273]-[274]).

The Court recognized a separate right to a healthy climate, as the climate system is one of the inextricably linked systems which together make present and future life possible (at [298]-[300]). A healthy climate being, "a climate system free from anthropogenic interferences that are dangerous to human beings and nature as a whole" (at [300]).

This right, in the Court's reasoning requires states to take action to mitigate emissions, adopt measures to protect nature and its components, and implement progressive measures toward sustainable development (at [320]).

The Court also acknowledged that the correlative of the state obligation to protect the environment, was a right to which nature was the subject, to maintain its essential ecosystem functions (at [279]).

See: *Climate Emergency and Human Rights* (Advisory Opinion) (Inter-American Court of Human Rights, OC-32/25, 29 May 2025)

# HUMAN RIGHTS – RIGHT TO A STABLE CLIMATE:

# EMERGING CASES

Reflecting the IACtHR's finding that the right to a healthy climate is itself an autonomous right, cases are being brought internationally based on a nascent, stand-alone right to a stable climate.

***Institute of Amazonian Studies v. Brazil***

In October 2020, the Institute of Amazonian Studies (Instituto de Estudos Amazônicos - IEA) filed a Public Civil Action against the Federal Government of Brazil, seeking recognition of a fundamental right to a stable climate for present and future generations under the Brazilian Constitution, and seeking an order to compel the federal government to comply with national climate law.

The case is currently pending before the Federal Court of Curitiba.

# FUTURE OUTLOOK

The Grantham Institute has identified a number of future trends for climate change litigation.

1. **Environmental and climate litigation reinforcing each other:** strategies in climate cases are increasingly likely to be transferred to and integrated into other types of environmental cases such as cases involving plastic pollution or cases that emphasise the biodiversity-climate nexus and the importance of carbon sinks.

2. **Focus on the ocean**, which is the world's largest carbon sink, including government and corporations' duties to protect the ocean. Obligations to protect the marine environment from climate impacts under international law, specifically UNCLOS, were discussed in both the ICJ and ITLOS advisory opinions.

3. **Extreme weather events and post-disaster cases:** with an ever-growing amount of climate related disasters, cases concerning responses to disasters and recovery and reconstruction plans are likely to also increase as are cases about anticipatory failure to adapt and cases considered "**beyond 'climate' litigation**", such as contractual cases about force majeure.

4. **Short-lived climate pollutants**, such as nitrous oxide, through litigation based in existing tort or human rights law, e.g. against governments or businesses regarding black carbon soot or tropospheric ozone, or nuisance suits against farms that emit methane and ammonia.

5. **Inter-state litigation**, filed in international and regional bodies, e.g. regarding ongoing fossil fuel production or used by a state.

6. **Non-climate-aligned strategic cases**, that seek to oppose, delay or complicate climate action, including anti-regulatory challenges, corporate backlash to ESG requirements, SLAPP suits and litigation over the just energy transition.

Source: *Global Trends in Climate Change Litigation: 2023 Snapshot* (Report, Grantham Research Institute on Climate Change and the Environment and Centre for Climate Change Economics and Policy), *Global Trends in Climate Change Litigation: 2024 Snapshot* (Report, Grantham Research Institute on Climate Change and the Environment and Centre for Climate Change Economics and Policy), and *Global Trends in Climate Change Litigation: 2025 Snapshot* (Report, Grantham Research Institute on Climate Change and the Environment and Centre for Climate Change Economics and Policy),

# CONCLUSION

Increasing volume and diversity of climate litigation worldwide

Includes three current trends in climate litigation:

- Government accountability for climate action
- Corporate responsibility for climate action
- Human rights-based climate litigation

Future trends