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# STATE OF DENIAL

Australia's legal obligations for human rights harms  
within Australia from its fossil fuel exports

## Summary Report

Australian Climate Accountability Project

September 2025

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## About the Australian Climate Accountability Project

This is a publication of the Australian Climate Accountability Project at the Australian Human Rights Institute (UNSW). As an Australia-based Institute, we have focused in '**State of Denial**' on human rights harms to people in Australia. Our aim is to demonstrate that the consequences of our actions in exporting large quantities of fossil fuels include serious and irreversible harms to people in Australia. We hope that the Institute's efforts to build domestic understanding of this, and of the resulting need for a rapid, managed phase-out of these exports, will also benefit those outside Australia facing climate-driven harms made yet more extreme by Australia's contributions to ongoing global warming.

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*The Australian Climate Accountability Project is located on the unceded territory of the traditional owners, the Bidjigal people.*

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# Foreword

From the ferocious 'Black Summer' bushfires that ravaged my beloved south coast of NSW, to the devastating flooding in the Northern Rivers, to the droughts in Victoria, to the rising sea levels threatening the Torres Strait and the continuation of First Nations lives and cultures, to the mass bleaching of the Great Barrier Reef, the Ningaloo Reef and beyond – Australia is experiencing devastating consequences as a result of climate change.

Weather patterns are shifting and changing, thousands of Australians are dying due to unprecedented heat, species are becoming extinct, entire suburbs and communities are losing their homes or risk going under water, and taxpayers are funding billions in climate change related disaster relief.

Climate change is not a future problem. We have already caused irreparable damage to the climate system. We are living in the age of consequences.

And if we don't act quickly, it is only going to get worse.

Far worse.

In short, the Australia I love – my home and yours – faces an existential danger. Our children and their grandchildren will never know the Australia we have known. Their future is uncertain because of our inaction. If we don't act now, they won't have a liveable future.

The Australian government has publicly acknowledged the risk of human-induced climate change since the 1980s. But, in truth, governments have known for far longer about climate change and that it would cause 'famine and starvation', 'unrest' and 'mass movement' of peoples across borders.<sup>[1]</sup>

For more than half a century, our governments have known what causes climate change and have known how to stop it. But, instead, successive Australian governments have continued to subsidise fossil fuels and approve and extend licenses for massive fossil fuel projects. These negligent actions, and ongoing climate inaction, threaten the future of Australia and the planet. As long predicted, rising temperatures, sea level rise and catastrophic weather events are decimating parts of our country, our Pacific neighbours, and our economies, displacing Indigenous communities from their ancestral homes and cultural practices, and violating everyone's human rights. As the research presented in State of Denial makes clear, climate change is having a disastrous effect on Australians and our human rights to health and to life.

All human rights are under threat. The climate crisis is a global human rights crisis. Governments knew but have failed to do what is required to protect our rights – and are continuing to fail to do what is needed.

That is why, as a human rights lawyer, I dedicated part of my practice to addressing climate change. Frustrated with the inaction of governments like ours, and the failure of international climate negotiations to deliver the action we need, I worked with the government of Vanuatu to take the world's biggest problem – climate change – to the world's highest court: the International Court of Justice.

State of Denial sets out how Australia has continued policies which encourage emissions, denied responsibility for our exported emissions, and has sought to avoid responsibility for climate harms by pointing to purported diffuse causes of climate change and by claiming Australia's emissions are merely a 'drop in the ocean' and that the harm caused by climate change cannot be attributed to Australia – or any other state. This was reflected in Australia's submissions before the International Court of Justice.

<sup>[1]</sup> See, for eg, CIA, '[A Study of Climatological Research as it Pertains to Intelligence Problems](#)', Aug 1974.

On 23 July 2025, the International Court of Justice handed down its historic opinion, rejecting all of Australia's arguments – along with those of the big emitting states like the US, China, Russia, and Saudi Arabia – to conclude that all states, including Australia, have binding international obligations to protect the climate system, which requires ambitious emission reduction targets to keep to 1.5 degrees. It also found that all states, including Australia, are responsible under international law for the harm caused by our emissions – including emissions we export – and this gives rise to obligations to provide reparation and remedies to the states and peoples harmed as a result. The Court made clear that protecting the climate system is necessary for the protection of all human rights and that the Australian government has obligations to all of us, as Australians, to prevent and protect against harm to the climate system and to provide us remedy for the human rights violations caused by climate change.

In short, the recommendations you read here in State of Denial are not just best practice policy recommendations – it is what is required of Australia under our binding international legal obligations.

We have done our bit as international lawyers, but as the International Court of Justice said:

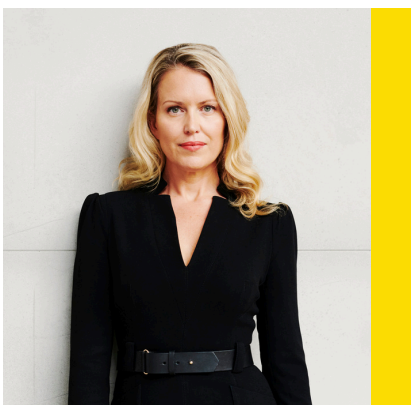
*...International law, whose authority has been invoked by the General Assembly, has an important but ultimately limited role in resolving this problem. A complete solution to this daunting, and self-inflicted, problem requires the contribution of all fields of human knowledge, whether law, science, economics or any other. Above all, a lasting and satisfactory solution requires human will and wisdom – at the individual, social and political levels – to change our habits, comforts and current way of life in order to secure a future for ourselves and those who are yet to come.<sup>[2]</sup>*

What we now need is implementation and accountability at home in Australia.

State of Denial is a roadmap to accountability, starkly depicting the gulf between what international law requires of the Australian government and the reality of its conduct. This analysis can be used by individuals, organisations, communities, activists, and lawyers to support their demands for our government to comply with its international obligations by making deep and rapid cuts to emissions. It also provides a glimpse into a shared future where international law, human rights and the best available science are at the forefront of decision-making – and where we do what is needed to protect our beautiful country and the ability of future generations to live and thrive in it.

I want our children, and their children, to have a liveable future. I want to protect Australia's incredible natural beauty and the ecological diversity that makes our country so unique.

For that, we need urgent climate action. State of Denial is an important resource to help shape what that can look like.



**Jennifer Robinson**

<sup>[2]</sup> International Court of Justice (ICJ), Obligations of States in Respect of Climate Change, Advisory Opinion, 23 July 2025. General List. No. 187, [456].




# About this Report

**State of Denial**, the larger report on which this Summary Report is based, is the first not only to explore how Australia's large fossil fuel exports and associated promotional policies are contributing to worsening climate change but also to demonstrate that they are harming people and human rights *within Australia*.

Prepared for lawyers and policymakers, **State of Denial** identifies the failure by Australia to take action to minimise the harms to people in its territory from its fossil fuel exports as a clear failure to comply with its binding obligations under human rights law and related international law. The report proposes essential reforms for Australia to rectify this. It also addresses the legal and evidentiary challenges faced by people in Australia seeking protection from climate-related harms which are being made worse by the fossil fuel exports and policies.

**State of Denial** arrives at a pivotal moment, as courts worldwide are increasingly recognising that the entirety of a State's fossil fuel actions and policies must comply with its binding legal obligations to protect Earth's climate system and affected human rights.

Our analysis focuses solely on Australia's obligations to prevent climate-driven human rights harms within its territory. We do not address the obligations it may also owe to affected people in other countries or to other States. The report concludes with 'National Guidance for Australia', setting out the essential elements of regulatory and policy reform for Australia to comply with its legal obligations.



*'States should be accountable to rights-holders for their contributions to climate change, including for failure to adequately regulate the emissions of businesses under their jurisdiction regardless of where such emissions ... actually occur.'*

United Nations High Commissioner for Human Rights,  
'Understanding Human Rights and Climate Change', 2015 [3].

Callide Power Station, Central QLD  
PHOTO BY: MARK LACEY, AUSTOCKPHOTO

## Key Findings

Australia is one of the largest fossil fuel exporters in the world, in second place globally for lifecycle carbon emissions from exported fossil fuels – behind only Russia and ahead of every Organization of the Petroleum Exporting Countries ('OPEC') country. The emissions from Australia's fossil fuel exports represent a significant and measurable contribution to global warming that materially threatens the climate system and human rights, including in Australia. Australia's total fossil fuel carbon dioxide ('CO<sub>2</sub>') footprint in 2022, including overseas emissions from the fossil fuels it produced for export, was 4.5% of global fossil fuel CO<sub>2</sub> emissions for that year. Of that 4.5%, only around 1% was emitted within Australia, while around 3.5% emanated solely from the production, processing, transportation and combustion or other use of Australia's exported fossil fuels.

Cumulatively, emissions associated with Australia's fossil fuel exports (from 1961-2023) have contributed approximately 0.013°C to global warming, with projected fossil fuel exports between 2023 and 2035 expected to add another 0.007°C. While these numbers appear small, they demonstrate a measurable contribution to climate system harm and intensifying climate extremes in Australia. The Intergovernmental Panel on Climate Change ('the IPCC') has made very clear that every fraction of a degree of warming worsens climate change, amplifying the likelihood and severity of extreme weather—heatwaves, floods, fires—that threatens lives, property and ecosystems on which human life depends.

Australia denies responsibility for the resulting climate harms and human impacts within its territory which correspond with the contribution of its fossil fuel exports to global warming and a worsening climate, relying on the argument that no single country's emissions alone can 'cause' climate change. This argument is directly contradicted by climate science, including by the IPCC.

Australia is aware of its substantial contribution to climate harm and adverse human rights impacts but it has taken no direct steps to minimise them, even though measures are available to it which have a real prospect of doing so. Australia's actions place it in a position of failing to comply with binding international human rights law and related international law. Its continuing approvals for new fossil fuel projects and granting of subsidies and other supports are potentially internationally wrongful acts. In failing to address the harms from its fossil fuel exports, Australia is choosing to stand outside the law.

# Australia's Current Policy Framework

Instead of taking steps to rectify this, Australia continues to take a defiant, 'business as usual' stance, in 'denial' of its human rights and international law responsibilities relating to the fossil fuel exports.

- 1. No Regulatory Framework:** Australia has no cap or limit on its fossil fuel export volumes, no associated reduction policies, no plan to restrict or reduce the exports, nor any national targets or framework to limit them in the future.
- 2. Continued Expansion:** Australia continues to issue new exploration licences and project approvals. Most of the production is for export, often approved to operate for decades.
- 3. Government Subsidies:** Federal and state governments continue to provide billions of dollars annually in fossil fuel production and consumption subsidies and other supports.
- 4. Regulatory Gaps:** Australia's domestic emissions mitigation framework for its fossil fuel production excludes exported emissions, even though they typically constitute at least 90% of the fossil fuel exporters' lifecycle emissions.
- 5. Active Promotion:** Government representatives continue to actively promote Australian coal and gas to overseas buyers.

## Human rights harms in Australia

While climate change significantly harms many human rights, this analysis explores the harms from worsening climate change in Australia for two rights in particular.

### The right to life:

Climate-driven heat extremes are increasing mortality rates across Australia, with vulnerable populations including the elderly, children, First Nations communities, and people with medical conditions facing increasing risk and death. Heat-related deaths in Australia have so far been substantially under-recorded, with tens of thousands of deaths here between 2006-2017 being in fact attributable to heat.

### The right to family and home life:

Climate change is increasingly interfering with people's family and home life, including by forcing many to make significant personal changes to stay safe – changes which themselves impair family and home life, and are effectively permanently required. For example, people with asthma will increasingly be forced by extreme weather to remain indoors, reducing quality of life, work attendance, outdoor activities and social connections.

Dust storm, Mid North, SA  
PHOTO BY: ROSALIE DIBBEN, AUSTOCKPHOTO



# Australia's Human Rights and International Law Obligations

Australia is a party to all the major international human rights treaties, which requires it to be especially vigilant in the climate change context and to take the measures necessary to protect human rights of people in its territory against real and foreseeable threats or harms – including those arising from business activities in Australia such as fossil fuel production, regardless of where the greenhouse gas ('GHG') emissions from that occur.

Australia has known for a considerable time of these serious climate-driven threats and harms to human rights in its territory. It has both the capability to minimise these harms and measures reasonably available to it that have a real prospect of doing so. Australia's failure to take action to minimise harms from its fossil fuel exports places it in breach of its binding human rights law obligations.

Australia is also, by its actions, failing to comply with its international law obligations. In its landmark 2025 Advisory Opinion on Climate Change, the International Court of Justice ('ICJ') recently concluded that all States are subject to the international law obligation to prevent significant harm to the climate system. The Court specifically identified failure by a State 'to take appropriate action to protect the climate system from GHG emissions – including through fossil fuel production, fossil fuel consumption, the granting of fossil fuel exploration licences or the provision of fossil fuel subsidies' - as a potentially wrongful act under international law. It also concluded that realisation of human rights cannot be ensured by States without such protection of the climate system.

## National Guidance for Australia

To comply with its human rights and related international law obligations, Australia must undertake a four-step reform process.

**1. Establish an Immediate Moratorium:** Halt all approvals of new or expanded fossil fuel projects and related infrastructure, and of new financial support and subsidy programs for fossil fuel production for export, pending decisions made in the course of the actions outlined below.

**2. Conduct Human Rights Due Diligence:** (i) Undertake a comprehensive assessment of the contribution of the fossil fuel exports to climate-related human rights harms within Australia, including from historical, current, and projected total emissions and their temperature effects. (ii) Conduct a review of its current fossil fuel exports-related national and sub-national policies and regulation (or their absence) and assess their role in worsening human rights harms. (iii) Identify the steps it could reasonably and effectively take to minimize the human rights harms, including in relation to the actions of private entities.

**3. Develop a regulatory and policy reform package:** In accordance with the due diligence outcomes from step 2, develop a reform package incorporating: (i) the necessary, adequate and appropriate measures and policies to protect the climate system and human rights in Australia, including in particular stopping its actions potentially constituting internationally wrongful acts; (ii) the implementation of an orderly but ambitious fossil fuel exports phase-out plan, in bona fide cooperation with stakeholders; and (iii) a process of consequential legislative reform, particularly in relation to protection of the climate and of human rights. Australia should reference the reform package in its Nationally Determined Contribution ('NDC').

**4. Rights-Based Implementation:** Ensure reform processes incorporate principles of accountability, transparency, participation, and non-discrimination, with effective remedies (through the introduction of a federal Human Rights Act) for human rights violations.

## Conclusion

The required reforms reflect Australia's binding legal obligations, but they also offer Australia an opportunity to demonstrate leadership in addressing the climate crisis while protecting the human rights of people within its territory, particularly of vulnerable communities already experiencing climate-related harms. Delay in implementing these measures will only increase the severity of climate damage, escalating both harms to human rights and the magnitude of Australia's breach of its human rights and international law obligations.



Aerial view of wind turbines and patchwork farmland, Murra Warra, VIC  
PHOTO BY: [ANDREW BERTULEIT](#), AUSTOCKPHOTO



# 1 Australia's fossil fuel exports: their climate impacts and harms to human rights in Australia

## Key facts

- Australia's role in driving climate change through the production and exporting of fossil fuels is significant. The fossil fuel carbon footprint in 2022 from all of its fossil fuels, for domestic use and for export, was 4.5% of global emissions.
- Australia ranks as the second largest contributor globally to exported fossil fuel lifecycle CO<sub>2</sub>e emissions - ahead of the United States and all OPEC states, and behind only Russia.
- Australia's fossil fuel exports have contributed approximately 0.013°C to global warming from 1960s to 2023, with projected exports to 2035 expected to add another 0.007°C.
- Small temperature increases like these have significantly harmful consequences. Climate hazards and extreme weather substantially intensify – including in Australia - with every fractional rise in global mean temperatures.
- Multiple scientific sources confirm that Australia's projected fossil fuel export production to 2035 is entirely incompatible with achieving the Paris Agreement temperature goal.
- Through their contribution to worsening climate hazards, Australia's fossil fuel exports are causing increased harms to human rights within Australia, including violating First Nations' rights, as found by the UN Human Rights Committee.
- Climate change disproportionately affects vulnerable groups including children, First Nations peoples, people with disability, and women and girls, with specific impacts on rights to life, health, adequate standard of living, and cultural practice.

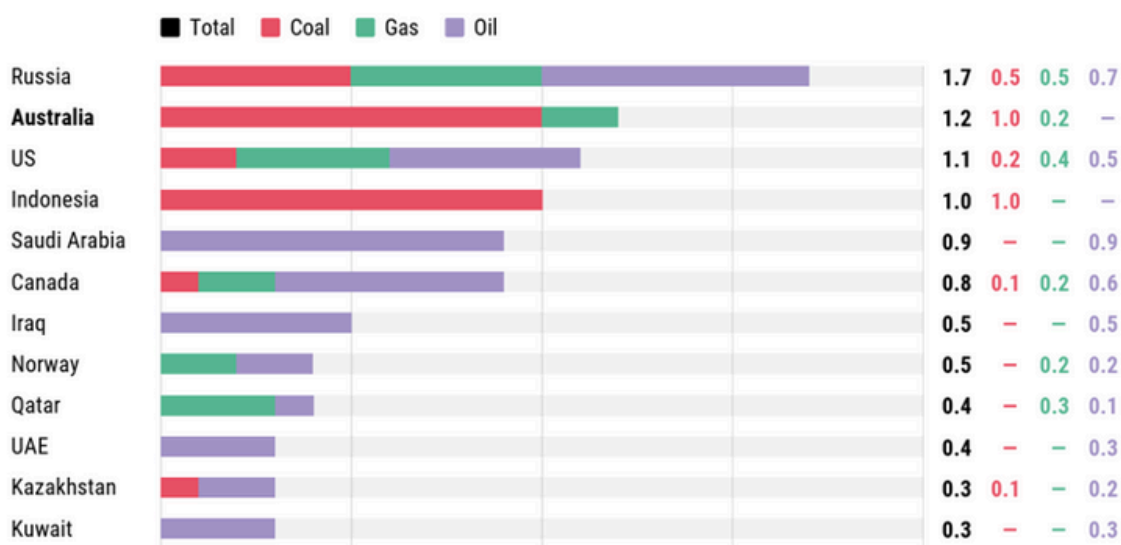
Australia tends to see itself as a responsible actor in international efforts to combat climate change and a small contributor to the global climate problem. As a Party to both the UN Framework Convention on Climate Change ('UNFCCC') and the Paris Agreement,<sup>1</sup> it actively participates in the processes established under those treaties. It pursues policies, laws and programs which are directed at reducing its domestic emissions against both interim and 2050 targets,<sup>2</sup> and complies with the Paris Agreement's emissions reporting and other procedural requirements. It has also legislated to stimulate investment in large-scale clean energy projects, including for export.<sup>3</sup>

But while Australia's domestic GHG emissions form only a small part of total global emissions, its total contribution to global warming and the worsening of climate change, including in its own territory, grows many fold when the effects of its fossil fuel exports are included.

## Australia's fossil fuel exports contribute measurably to worsening climate change

Even though Australia itself has currently warmed by even more than the world's average,<sup>4</sup> it remains one of the world's largest fossil fuel exporting countries, with most of its existing and new fossil fuel production sold overseas. In 2022-2023, 89% of Australia's black coal energy production and 73% of its domestic natural gas production were exported.<sup>5</sup> Australia's total fossil fuel carbon dioxide footprint in 2022, including overseas emissions from the fossil fuels it produced for export, was 4.5% of global fossil fuel CO<sub>2</sub> emissions for that year. Of that 4.5%, only around 1% was emitted within Australia,<sup>6</sup> while around 3.5% emanated solely from the production, processing, transportation and combustion or other use of Australia's exported fossil fuels.<sup>7</sup> Based on total lifecycle carbon dioxide equivalent ('CO<sub>2</sub>e') emissions associated with its fossil fuel *production*, in 2021 Australia ranked 5th largest in the world.<sup>8</sup> But when the CO<sub>2</sub>e lifecycle emissions are measured only for Australia's exported fossil fuels, it ranks 2nd largest in the world - ahead of the United States and each of the OPEC states, and behind only Russia.

## 2021 exports extraction and end-use GHG emissions (GtCO<sub>2</sub>e)



Climate Analytics, '[Australia's global fossil fuel carbon footprint](#)', August 2024, Figure 10, at 22.

New or expanded fossil fuel projects in Australia are continuing to come into operation, with coal and LNG (gas) exports expected to remain solid over the coming decade, and some major new projects expected to come online shortly (e.g. Santos' Barossa and Narrabri gas projects).<sup>9</sup>

There are several ways to demonstrate that Australia's fossil fuel exports are measurably contributing to worsening climate change.

- Expressed in terms of the sheer volume of emissions, Climate Analytics has calculated that 'cumulatively, from 1961 to 2023 Australia's fossil fuel exports have been responsible for emitting 30Gt of carbon dioxide to the atmosphere' and that, by 2035, 'Australia's fossil fuel exports will add another 15Gt to that cumulative total, bringing it to 45 Gt.'<sup>10</sup>
- It is possible to translate Australia's cumulative CO<sub>2</sub> exported fossil fuel emissions into corresponding degrees of global warming. This provides a second way to express the contribution of Australia's fossil fuel exports to worsening climate change: as the extent of temperature rise over Australia's decades of fossil fuel production to 2023, and over the period 2024 to 2035 based on current government and industry projections and plans. Cumulatively, since Australia's fossil fuel exports began at scale in the 1960s, associated emissions to 2023 have contributed approximately 0.013°C to global warming, with projected exports to 2035 expected to add another 0.007°C.<sup>11</sup>

While these temperature increases appear small, they have significant consequences. As climate scientists have repeatedly stated, '[w]ith every additional increment of global warming, regional changes in mean climate and extremes become more widespread and pronounced.'<sup>12</sup> In measurably raising Earth's global mean temperature, even by small fractions of a degree, Australia is raising the probability of more frequent, intense, longer lasting and often compounding heat extremes, fires, droughts, rainfall, flooding and storms,<sup>13</sup> including in its own territory. The 'likelihood of abrupt and irreversible changes ... [also] ... increases with higher global warming levels.'<sup>14</sup>

Moreover, for many climate hazards, a relatively small increase in temperature will result in an even greater proportional rise in the probability of the hazards occurring and in their intensity. A 2018 IPCC report showed that, compared to a 1.5°C warmer world, at 2°C warmer (a temperature rise of one-third) the world can expect a more than doubling in the population exposed to extreme



heat at least once every five years; in reduction in maize harvests in the tropics; in decline in marine fisheries; and, in the number of people worldwide exposed to water scarcity.<sup>15</sup>

- Limiting global temperature increase to a specific level (e.g. to 1.5°C ) requires limiting cumulative CO<sub>2</sub> emissions to within a maximum quantity, providing a third way to express Australia's contribution: as a share of the remaining 'global carbon budget' consistent with a 50% chance of limiting global mean warming to 1.5°C.<sup>16</sup> The emissions from Australia's projected fossil fuel exports from 2024 to 2035 would consume around 7.5% of that global carbon budget.<sup>17</sup> Based on 2024 global emissions levels, the remaining carbon budget for a 50% chance to limit warming to 1.5°C will likely be exceeded by 2030.<sup>18</sup>
- A fourth way to express the significance of Australia's contribution to worsening climate change is to consider the GHG emissions which will result over the period from 2024 to 2035 (around 15 Bt) and assess these against projected emissions from all existing and planned projects globally over the same period. This approach opens up, in effect, a clear understanding of the role which will be played by Australia's planned fossil fuel exports in pushing the Paris Agreement's temperature goal out of reach. A 2022 study calculated the upstream and downstream emissions from the world's existing or already under construction oil or gas fields and coal mines. The study found that 'staying within a 1.5°C carbon budget (with a 50% probability) implies leaving almost 40% of [already] developed reserves of fossil fuels unextracted'.<sup>19</sup> This shows clearly that Australia's planned fossil fuel export production cannot be consistent with the goal of limiting warming to 1.5°C.



Man canoeing in flood waters, Brisbane, QLD  
PHOTO BY: [GILLIAN VANN](#), AUSTOCKPHOTO

# Australia's fossil fuel exports are harming human rights

There is considerable evidence of worsening harms to people in Australia and to their human rights as climate extremes escalate in response to rising global mean temperatures. Australia's fossil fuel exports demonstrably contribute to this temperature rise and associated harms. Climate change has the potential to impact multiple human rights adversely.

## **Advisory Opinion on Obligations of States in respect of Climate Change (2025), International Court of Justice (ICJ)<sup>20</sup>**

In March 2023, Vanuatu successfully led an initiative at the UN General Assembly to request an Advisory Opinion from the International Court of Justice on States' legal obligations regarding climate change and the legal consequences of causing significant harm to the climate system, particularly as it affects small island developing States and future generations. The ICJ delivered its Advisory Opinion in July 2025, in an analysis which addressed a wide range of legal questions. The Court unanimously concluded that States have legally binding obligations under international law to protect the climate system from significant harm, including harm resulting from GHG emissions. It also concluded that States have a duty to cooperate in good faith, and to act with stringent due diligence to limit global warming to 1.5°C above pre-industrial levels. States may also be legally responsible for failing to regulate the activities of private actors (such as fossil fuel companies) whose emissions contribute to significant harm to the climate system. The ICJ further concluded that States which breach these obligations can be held legally responsible and may be required to cease the harmful conduct, guarantee non-repetition, and provide reparations to those harmed, particularly to vulnerable nations and future generations. The Court clarified the obligations of States to protect human rights in the context of climate change, by concluding that a clean, healthy and sustainable environment, which includes the climate system, is a precondition for, and essential to, the realisation and enjoyment of human rights generally.

In its landmark 2025 Advisory Opinion on climate change, the ICJ noted that degradation of the climate system impairs the enjoyment of a range of rights protected by human rights law.<sup>21</sup>

The following examples illustrate the impacts.

**Climate change, human systems and vulnerability:** The IPCC has warned that climate change poses threats to foundational 'human systems', many of which underpin human rights by providing access to health services, food and water, education, safe housing, energy, and transport. The IPCC described strains on human systems from climate changes and increasing extremes as already occurring in Australia.<sup>22</sup>

**Economic and social rights:** Climate change threatens the right to an adequate standard of living and the right to health under the International Covenant on Economic, Social and Cultural Rights ('ICESCR').<sup>23</sup>

### ***Daniel Billy et al. v. Australia, UN Human Rights Committee (2022)*<sup>24</sup>**

The Daniel Billy complaint was brought to the UN Human Rights Committee by eight Torres Strait Islanders, who argued that Australia's inadequate action on climate change violated their human rights to life, to practice culture, and to be free from arbitrary interference with family and home life, as rising sea levels and climate impacts threatened their ancestral islands and traditional way of life. In 2022, the Committee ruled in favour of the complainants in finding that Australia had indeed violated their right to culture and right to family and home life, by failing to take timely and adequate measures to protect them from climate change impacts. The majority of the Committee did not find a violation of the right to life, due to adaptation and mitigation measures already in place. The Committee asked Australia to provide adequate compensation to the complainants for harm suffered; to engage in meaningful consultation with the complainants' communities; and to continue implementation of measures necessary to secure Torres Strait Islanders' continued safe existence on their islands.

In the case of *Daniel Billy*, the UN Human Rights Committee concluded that factors weighing strongly in its finding that Australia had violated Torres Strait Islanders' rights included the destructive effects of climate change on their housing, food sources and physical and mental health.<sup>25</sup>

Studies have identified numerous ways climate change is increasingly harming human health.

<b>Planetary Boundary</b>	<b>Examples of human health impacts</b>				
<b>Climate Change</b>	<b>Non-communicable diseases (NCDs)</b>	<b>Food and nutrition</b>	<b>Infectious diseases</b>	<b>Reproductive, maternal and child health</b>	<b>Mental Health</b>
	Heat exposure increases mortality from cardiovascular and respiratory diseases, <sup>1-4</sup> and heat-related mortality is projected to further increase with climate change. <sup>5-8</sup> Climate change can alter pollen seasons, distribution, production and allergenicity, and increase the burden of allergic diseases. <sup>9-13</sup>	Climate change has already reduced food security. <sup>14</sup> Resulting from impacts on food quality and quantity, socioeconomic and other factors, food insecurity and adverse nutritional outcomes are expected to worsen in the future. <sup>15-23</sup> In addition, the severe environmental impacts of agriculture itself will likely be amplified. <sup>24</sup>	Climate hazards such as temperature and precipitation changes, floods, droughts or storms can aggravate more than half of known human pathogenic infectious diseases. <sup>25</sup> For instance, they have been shown to expand or alter the range, transmission and occurrence of vector-borne diseases. <sup>26-33</sup>	Heat exposure is associated with higher risks of preterm birth, stillbirths, congenital anomalies, hypertensive disorders in pregnancy and gestational diabetes. <sup>34</sup> Heat also has a number of adverse effects on children's health, especially in marginalized communities. <sup>35-37</sup>	Chronic, slow-onset climate change, extreme events, and climate-related disasters and displacement lead to negative mental health impacts for affected populations, particularly for already disadvantaged groups such as Indigenous communities or gender-diverse people. <sup>38-45</sup>

S Myers et al., 'Connecting planetary boundaries and planetary health: a resilient and stable Earth system is crucial for human health', *The Lancet* (Comment), 15 July 2025, Appendix.<sup>170</sup>



**The right to a healthy environment:** In 2022, the UN General Assembly passed a resolution recognizing the human right to 'a clean, healthy and sustainable environment'.<sup>26</sup> Since then, the ICJ in its Advisory Opinion has recognised the right as part of States' binding international law obligations, adding 'that a clean, healthy and sustainable environment is a precondition for the enjoyment of many human rights, such as the right to life, the right to health and the right to an adequate standard of living, including access to water, food and housing'.<sup>27</sup>

**The rights of 'climate vulnerable' groups:** The ICJ and many others have noted that certain demographic groups are especially vulnerable to climate change harms.<sup>28</sup> Climate change disproportionately affects children, First Nations peoples, people with disability, and women and girls, among others. For example, when extreme weather disasters strike, women and children are 14 times more likely to die than men.<sup>29</sup> In *Daniel Billy*, the UN Human Rights Committee found that climate-driven harms to the way of life of Torres Strait Islanders on their traditional lands constituted interference with and impairment of the right to enjoy culture.<sup>30</sup>

In the next Part, we explore the impacts of worsening climate change in Australia on two human rights in particular: the right to life, and the right to family and home life. These are human rights which a number of courts around the world have held to be adversely impacted by the effects of climate change.



Coral Bleaching, Great Barrier Reef, QLD  
PHOTO BY JEN HOSKINS, AU STOCKPHOTO



## 2 Climate-related harms to the rights to life, and to family and home life, in Australia

### Key facts

- Climate change threatens multiple human rights, with a clean, healthy and sustainable environment (including climate) being necessary for the realisation of all human rights, and States having positive obligations under international law to protect these rights in the climate change context.
- Heat is the most pervasive and serious climate hazard threatening the right to life in Australia, with hot days already causing significant mortality increases in major cities including Brisbane, Sydney and Melbourne. Heat-related deaths in Australia are dramatically under-recorded.
- Vulnerable populations face escalating threats, including Australia's ageing population (23% - 25% projected over 65 by 2056), socio-economically disadvantaged groups, outdoor workers, infants, and those with common medical conditions like asthma, diabetes, and heart disease.
- The growing frequency and escalating intensity of climate hazards and extreme weather in Australia are threatening the right to family and home life. For example, around 2.8 million Australians (11%) live with asthma, significantly higher than the global average. People with asthma are particularly vulnerable to climate-related events including drought, flooding, wildfires, dust storms, and thunderstorms.
- Climate change is increasingly forcing people with common conditions like asthma to restrict their normal activities, interfering with their right to family and home life – interference that is effectively permanent and will increase with every fraction of degree of warming.
- Aboriginal and Torres Strait Islander people face 'cascading consequences' of climate change that compound historical injustices and threaten social and cultural determinants of health, with particular impacts on mortality rates.

### Climate change-driven harms to the right to life in Australia

Climate change brings with it more frequent and intense weather extremes and hazards which threaten the right to life and increase premature human deaths. The right to life is contained in Article 6(1) of the International Covenant on Civil and Political Rights ('ICCPR'): 'Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life'.<sup>31</sup> The UN Human Rights Committee noted that the right to life 'is a right that should not be interpreted narrowly'.<sup>32</sup> It includes the right 'to be free from acts and omissions that ... may be expected to cause [a person's] unnatural or premature death'<sup>33</sup> and extends to protection from 'reasonably foreseeable threats and life-threatening situations that can result in loss of life', whether or not loss of life actually occurs.<sup>34</sup>

The most pervasive and serious climate hazard threatening human life in Australia is increasing heat, particularly in combination with rising humidity. The IPCC has observed that global warming is already causing hot days and heatwaves in Australia to increase in frequency, intensity and duration.<sup>35</sup>

Looking globally, the IPCC reported that 'in all regions, extreme heat events have resulted in human mortality (very high confidence)', and projected that 'climate change and related extreme events will significantly increase ... premature deaths from the near- to long-term (high confidence)'.<sup>36</sup> A 2021 study found that 37% of warm-season heat-related deaths across 43 countries between 1991 and 2018 can be attributed to anthropogenic climate change and that increased mortality is evident on every continent.<sup>37</sup>



Bushfire, Blue Mountains, NSW  
PHOTO BY: LEAH-ANNE THOMPSON, AUSTOCKPHOTO

The Australian Academy of Science has noted that the greatest climate-related risks to urban populations in Australia are likely to come from increasing temperatures, with more frequent, longer and more intense heatwaves likely to increase human death and illness, especially among vulnerable members of the population: 'the socio-economically disadvantaged, outdoor workers, those with pre-existing medical conditions, infants and the elderly'.<sup>38</sup>

Evidence of escalating threats to the right to life in Australia includes:

- A 2014 study of mortality in Brisbane, Sydney and Melbourne found a consistent and significant increase in mortality during heatwaves.<sup>39</sup> Heat-related deaths in Australia are under-recorded, often being attributed to the medical emergency which the heat triggered. A 2019 study found that more than 36,000 deaths between 2006 and 2017 in Australia were, in fact, attributable to heat.<sup>40</sup>
- At 2.7°C to 3°C degrees of warming, some areas of northern Australia, including Darwin, will be pushed outside the 'human climate niche'. At this mean temperature rise, Darwin will have as many as 265 days each year on average above 35 degrees by 2090.<sup>41</sup> First Nations communities across Northern Australia face increasing climate displacement due to rising temperatures, with heat extremes now more frequent and intense.<sup>42</sup>
- Personal characteristics increase vulnerability: studies indicate that mortality impacts vary with factors like age, gender, education level, income level, and diabetes prevalence. Australia's ageing population (23–25% are projected to be older than 65 by 2056) is particularly vulnerable to heat stress.<sup>43</sup>
- Common medical conditions increase mortality risk: heat-vulnerable groups include those living with asthma, diabetes, heart disease, lung, mental health and other relevant conditions.<sup>75</sup>
- First Nations people face 'cascading consequences' of climate change that compound historical injustices and threaten social and cultural determinants of health, with adverse consequences for mortality rates.<sup>44</sup>

## Climate change harms to the right to family and home life in Australia

The right to family and home life is contained in Article 17 of the ICCPR, which guarantees that 'no one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence' and that 'everyone has the right to the protection of the law against such interference or attacks.' The right has been interpreted as encompassing interference which takes the form of harms to life, health, wellbeing and quality of life.

### **Verein KlimaSeniorinnen Schweiz and Others v. Switzerland, European Court of Human Rights (2024)<sup>45</sup>**

The *KlimaSeniorinnen* case was brought by four individuals and an association of 2000 older women, whose average age was 73. They claimed that Switzerland had violated their human right to family and home life under Article 8 of the European Convention on Human Rights ('ECHR') by failing to implement adequate climate protection policies. The European Court of Human Rights (ECtHR) found that Switzerland had violated the right to family and home life, which encompasses a right to effective protection by State authorities from the serious adverse effects of climate change on lives, health, wellbeing and quality of life. The Court found that there were critical gaps in Switzerland's regulatory framework – in particular, Switzerland's lack of an individual carbon budget or national greenhouse gas emissions limits. The Court found that Switzerland had failed to act in an appropriate and timely way to meet its obligations to protect the affected human right. The Court also found that Switzerland was required to include the GHG emissions embedded in its imports when developing its individual carbon budget. The Court noted that Switzerland had a legal obligation to assess the specific measures to be taken to ensure the Swiss authorities were complying with Convention requirements as clarified in the judgment.

The European Court of Human Rights ('ECtHR') in the *KlimaSeniorinnen* case concluded that the right to family and home life in the European Convention 'must be seen as encompassing a right for individuals to effective protection by the State authorities from serious adverse effects of climate change on their life, health, well-being and quality of life'.<sup>46</sup>

The ways in which climate change can interfere with the right to family and home life is well illustrated by the case of people in Australia living with asthma. In 2022, around 2.8 million (11%) people in Australia were estimated to be living with asthma,<sup>47</sup> including 8.5% of all children aged 0-14 years.<sup>48</sup> This is significantly higher than the global population rate.

Multiple studies have revealed that extreme weather events elevate asthma risks. Asthma is susceptible to triggering by drought, flooding, high humidity, wildfires, dust storms, and thunderstorms, which lead 'to increases in air pollution, pollen season length, pollen and mold concentration, and allergenicity of pollen'.<sup>49</sup>

The changes occurring in Australia's climate are raising the likelihood of extreme weather occurring more frequently and with greater intensity and, with that, the likelihood of harms to people with asthma. Key examples include:

- In 2016, 'the world's largest, most catastrophic epidemic thunderstorm asthma event' occurred in Melbourne, resulting in 3,365 people presenting to hospital emergency departments over 30 hours, and 10 deaths.<sup>50</sup>
- The 2019-20 bushfires led to increased hospitalisation rates for asthma, including a 25% increase in NSW, 95% increase in Victoria, and 36% increase in Queensland during peak fire periods.<sup>51</sup>

The result is that people with asthma are increasingly required by climate-related circumstances to limit aspects of their family and home lives to protect themselves from what are, for them, life-threatening events. This is clear from the general direction of advice to asthmatics from government and health sources, which is to adopt self-protection during weather extremes. For example, the Asthma Council of Australia recommends staying indoors with doors and windows closed during bushfires.<sup>52</sup> The NSW Government advises people with asthma to 'STAY INDOORS as much as possible with windows and doors closed until outdoor air quality is better'.<sup>53</sup>

While such self-protective steps are essential to save lives, they are also personal restrictions which are not voluntary, having been made necessary by the hazards of climate change. As such, they constitute a form of interference in the right to family and home life of people with asthma - interference which is predicted to grow in scale with every fraction of a degree of warming. For people with asthma who are also vulnerable for other reasons (such as socioeconomic or age factors) to the adverse effects of climate change, adopting the recommended lifestyle restrictions is especially onerous: regularly using air conditioning can cause financial distress; self-protection may mean missing work or school; avoiding exercise may mean declining health; isolation may damage mental health or access to essential services.

### 3 Australia's fossil fuel exports policies: international and human rights law obligations

#### Key facts

- Australia has no policy or regulatory framework to limit or reduce its fossil fuel exports, and has failed to develop any plan for doing so in the future, instead approving new fossil fuel projects, providing financial supports and actively promoting the exports overseas – all while disclaiming any responsibility for consequent harms.
- Australia's actions signal to the world that unrestricted fossil fuel production is acceptable, undermining global ambition, and creating a risk of 'carbon lock-in' that makes energy transition more difficult by favouring ongoing fossil fuel development.
- Two landmark legal cases have clarified Australia's binding legal obligations: Daniel Billy (UN Human Rights Committee, 2022) and the ICJ Advisory Opinion on Climate Change (2025), as has the reasoning on similar law by the ECtHR in the case of KlimaSeniorinnen (2024).
- The ICJ unanimously concluded that States have legally binding obligations under international law to protect the climate system from significant harm, and that causing 'significant harm to the climate system' likely constitutes 'an internationally wrongful act'.
- States have 'positive' obligations to protect human rights where there are foreseeable threats of harm and where they have the capacity to minimise the threats. Australia has actual knowledge of climate-related threats to human rights in its territory and has the capability to minimise them, given the measures reasonably available to do so through reforming its fossil fuel exports policies.
- 'Due diligence' obligations under human rights law require Australia to systematically identify climate-related threats to human rights, take all appropriate measures to prevent foreseeable harms, and monitor the effectiveness of climate measures.
- The ICJ specified that due diligence in the climate context is 'stringent', requiring effective national measures to prevent significant climate harm, including 'regulatory mitigation mechanisms' for deep, rapid, sustained GHG emissions reductions.
- States must regulate private entities, including fossil fuel corporations, with the ICJ identifying fossil fuel production, granting exploration licences, and providing subsidies as potentially internationally wrongful acts.
- Australia's obligations apply to the totality of its activities contributing to climate system damage, regardless of whether GHG emissions occur within or outside territorial boundaries.
- As a wealthy State with high capability for additional action, Australia faces particularly stringent obligations under the principle of common but differentiated responsibilities and respective capabilities ('CBDR-RC').



# Australia's fossil fuel exports policies

Despite the measurable contribution of its fossil fuel exports to global warming and its worsening climate, Australia's has no laws or direct regulations setting limits on the sector.

- It has no policy in place to cap, restrict or reduce its fossil fuel export production, nor any targets or plans for doing so in the future.<sup>54</sup>
- It is continuing to issue new exploration licenses and approvals for expanded and new coal, gas and oil projects, with many more in the approvals pipeline.<sup>55</sup>
- Substantial subsidies, financial supports and tax concessions continue to be granted to fossil fuel exporters.<sup>56</sup>
- The binding net emissions baselines for operators of large industrial facilities under Australia's Safeguard Mechanism do not apply to emissions occurring overseas, even though the vast bulk of emissions from Australia's coal and gas production occur overseas through its fossil fuel exports.<sup>57</sup>
- Environmental protection laws in Australia are not currently ensuring that decision-making which has climate impacts and consequences for people in Australia, such as new fossil fuel project approvals, gives these harms the weighting they warrant.<sup>58</sup>
- Australia has so far declined<sup>59</sup> to follow Europe in requiring fossil fuel corporations to disclose the external climate-related impacts from their business activities, to adopt credible transition plans and to conduct mandatory human rights and environmental due diligence.<sup>60</sup>
- Australia has pursued diplomatic policies to facilitate and promote its fossil fuel exports. For example, government representatives are reported to be actively promoting Australia's coal and gas to overseas buyers.<sup>61</sup>

Australia has introduced incentives to develop alternative industries which could potentially displace some fossil fuel exports to some extent. For example, the initiatives under the Federal Government's Future Made in Australia Act form the core of Australia's future industrial policy, as well as its national transition policy.<sup>62</sup> Yet it is unlikely that such initiatives will result in any significant displacement of Australia's current fossil fuel exports in the near-term. Instead, Australia's aim appears to be to develop thriving clean export industries while steadily maintaining its fossil fuel export volumes.

In a world still hesitating to embrace the necessary global transition at scale, Australia's policies and actions encourage inaction and delayed action to limit climate change, and they weaken global ambition. They act to increase the risk of 'carbon lock-in', making the energy transition more difficult by creating an inertia that favours the ongoing development and use of fossil fuels.

## Australia's climate-related international law obligations

Australia's failure to take the measures and actions reasonably available to minimise the harms associated with its exported fossil fuels is a failure to comply with its binding international law obligations and to abide by the rule of law.

The HRC's conclusions in *Daniel Billy* and the ICJ's Advisory Opinion have helped to clarify and solidify

Australia's obligations under international law and human rights law in relation to its fossil fuel exports and their contribution to worsening harm to the climate system and human rights, as has the reasoning of the ECtHR in *KlimaSeniorinnen*. All three cases accepted that climate change results in harms to human rights and that States have legal obligations to take measures and actions to minimise those harms. While decisions of the ECtHR are not binding on Australia, since it is not a party to the ECHR, the reasoning and conclusions of the ECtHR are likely to have weight in interpreting Australia's obligations under the international human rights treaties to which it is a party, especially where the rights contain the same or similar wording.

The ICJ confirmed in its recent Advisory Opinion on climate change that States have a customary international law obligation to prevent significant harm from GHG emissions to Earth's climate system, 'which must be protected for present and future generations.'<sup>63</sup> In fact, causing 'significant harm to the climate system' is likely to constitute 'an internationally wrongful act.'<sup>64</sup> The ICJ also confirmed that a clean, healthy and sustainable environment is essential to ensure the realisation of human rights generally,<sup>65</sup> with the result that State actions which pose a risk of significant harm to the climate system will also constitute actions posing risks of harm to human rights.

States which (like Australia) are parties to the ICCPR or ICESCR also have 'positive' obligations to protect human rights. In the climate change context, these obligations are actively engaged once a State knows, or ought reasonably to know, of a foreseeable and real threat to human rights and where it has the capacity to minimise or reduce that threat.

Applying this, Australia's obligations are clearly engaged. It has actual knowledge of real threats from worsening climate change to human rights in its territory, knowledge it has obtained through multiple channels including IPCC processes in which it has actively engaged, domestic sources (such as the CSIRO), and multiple UN bodies.<sup>66</sup> Australia also has substantial capacity to reduce harms to the climate system and, consequently, to human rights by addressing the volume of its fossil fuel exports and their GHG emissions.

A central element of the positive protection obligations of States under human rights law (and under international law generally, in the climate change context) is the obligation to conduct 'due diligence'.<sup>67</sup> In the climate change context, due diligence includes systematically identifying and assessing actual and potential climate-related threats to human rights, taking all appropriate measures to prevent foreseeable harms from occurring, and monitoring the effectiveness of climate-related measures in protecting human rights.

The ICJ explained that the due diligence required under international law in the climate change context is a particularly 'stringent' obligation, requiring a State to establish an effective and enforceable national package of measures and policies adequate to prevent significant climate harm resulting from its fossil fuel exports. In doing so, it must use all means at its disposal to avoid activities causing significant damage to the climate system, including 'regulatory mitigation mechanisms that are designed to achieve the deep, rapid, and sustained reductions of GHG emissions that are necessary for the prevention of significant harm to the climate system.'<sup>68</sup>

States must also regulate the conduct of private entities, including fossil fuel producing corporations, through measures such as establishing environmental impact assessment procedures capable of capturing the specific risks that these entities create. Actions identified by the ICJ as potentially internationally wrongful acts include fossil fuel production, granting fossil fuel exploration licences, and subsidising fossil fuel production.<sup>69</sup>

The ICJ also clarified that, when a State is conducting due diligence to determine whether it is meeting its international and human rights law obligations, its focus should be on whether it is taking the necessary actions to protect the climate system, including (as appropriate) '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.<sup>70</sup> For this reason, States' obligations are not defined by whether emissions occur within or outside their own territorial boundaries. Rather, the obligations apply to the totality of a State's activities (including by private entities under the State's control or jurisdiction) which are contributing to cause significant damage to the climate system.

Given the known temperature impacts of the historical and projected emissions from Australia's fossil fuel exports, actions to reduce those exports fall within the range of 'means' at Australia's 'disposal' by which it could minimise the harms it is causing to the climate system and to human rights in Australia.

As a wealthy State with high capability for further action, Australia's obligations are particularly stringent under the international law principle of common but differentiated responsibilities and respective capabilities ('CBDR-RC'), and must be undertaken in cooperation with other States as part of continuous, sustained and good faith efforts to achieve the collective goal of limiting global temperature rise to 1.5°C above pre-industrial levels.



Aerial view of solar farm panels, Tuggeranong, ACT.  
PHOTO BY: NICK CLARK, AUSTOCKPHOTO.

## 4 National Guidance for Australia's international and human rights law compliance

This National Guidance for Australia outlines a four-step reform process which, based on the analysis and information in **State of Denial** and summarised here, Australia must undertake to meet its obligations regarding its fossil fuel exports under international human rights law and related international law, particularly in light of the contribution of those exports to worsening harms to the human rights to life and to family and home life.

# 1 Establish a moratorium

To avoid perpetuating internationally wrongful acts and to meet its binding legal obligations, Australia must immediately halt all approvals of new or expanded fossil fuel projects and related infrastructure, and of new financial support and subsidy programs for fossil fuel production for export, pending decisions made in the course of the actions outlined below.

## 2 Conduct due diligence in relation to the human rights impacts and climate system harms of the fossil fuel exports

In the context of climate change, Australia is obliged under international human rights law to conduct a particularly 'high standard' of human rights due diligence to investigate the contribution of its fossil fuel exports and associated policies to worsening climate harms and related adverse impacts on human rights within its territory, and to identify actions available to it to mitigate these.

Given the body of information already available, this exercise need not be onerous or protracted. As demonstrated in this report, information is already available as to the contribution of Australia's fossil fuel exports - historically, currently and as projected – to increasing global mean temperatures and associated increases in climate extremes. While information and data about the adverse human and human rights impacts of climate change in Australia are rapidly growing, Australia will need to investigate those impacts comprehensively. It will also need to identify its national and sub-national policies and regulation (or their absence) relating to the fossil fuel exports, and assess their role in worsening these adverse impacts. Finally, Australia must identify the steps it can reasonably and effectively take to minimize the adverse impacts, including in relation to the actions of private entities (such as fossil fuel companies operating in Australia).

Australia is also obliged under customary international law to conduct 'stringent' due diligence in relation to significant harm to the climate system which is attributable to its fossil fuel exports or associated policies. Once again, this exercise by Australia need not be protracted, given the wealth of relevant information already available, including in the IPCC reports. Australia is required as part of due diligence to identify and mobilise 'all means at its disposal' to prevent such harm, including where harm is attributable to the actions of private entities.

## 3 Develop a package of reform measures and policies

There can be little doubt, based on the evidence in this report, in ***State of Denial*** and other sources (which include the 'Australasia' chapter of recent IPCC assessment reports; the analyses undertaken by human rights bodies; and uncontested expert evidence presented in domestic litigation) that due diligence conducted by Australia will reveal that it must institute a process of substantial reform in relation to its fossil fuel exports if it is to comply with its international law obligations. It is already evident that Australia's contribution to climate damage through its fossil fuel exports is substantial and that it has taken no direct steps to address or mitigate that contribution, even though measures are available which have a real prospect of reducing the harms.



In light of this evidence, as the law and jurisprudence set out in this analysis make clear, Australia's protective and preventative legal obligations have been engaged by both the real threats posed by climate change and Australia's failure to take available actions in relation to its fossil fuel exports, given their measurable contribution to climate and human rights harm. To meet these obligations, Australia is required to protect the climate system and climate-exposed human rights **by adopting protective and preventative measures and policies** which are necessary, adequate and appropriate for these ends, and which are consistent with the individual and cooperative efforts necessary to meet the Paris Agreement's 1.5°C temperature goal. Australia must ensure that the measures and policies it adopts are also consistent with the core principle of common but differentiated responsibilities and respective capabilities, by taking due account of its historical role and contribution to harming the climate system, as well as its high levels of human development, economic capacity and technological capability.

Australia must **reform its existing measures and policies which permit and facilitate potentially internationally wrongful acts**. The ICJ has made clear that certain types of measure or policy - particularly sustained fossil fuel production, granting fossil fuel exploration licences, and subsidies for fossil fuel projects - are likely to constitute internationally wrongful acts under international law.<sup>71</sup> These are the very kind of measures and policies which federal and sub-national governments and their agencies in Australia are currently pursuing in relation to fossil fuel production, which is almost entirely for export.

Reform so as to comply with international and human rights law will require Australia to develop and implement **a fossil fuel exports phase-out plan**, and must involve ambitious, early reductions in those export volumes. Reduction targets might focus, for simplicity, on percentage reductions in earmarked production or in export volumes, rather than on more complicated systems for reductions in emissions which will occur overseas.<sup>72</sup>

To comply with international and human rights law, Australia must also implement a **process of legislative reform**. Its reforms must include consequential amendments to environmental protection and mining legislation, as well as to requirements for corporations in relation to harmful, climate-related impacts from their business activities. Additionally, the reforms must include the introduction of a federal Human Rights Act, incorporating enforceable human rights protections and State obligations into Australia's domestic law. Existing procedural challenges for those experiencing climate-related human (rights) harms or threats of harm and seeking to enforce their rights must also be addressed, particularly the high threshold for meeting courts' 'standing' requirements for those seeking prevention of anticipated harms from climate extremes.

If implementation of Australia's fossil fuel exports phase-out plan is to be effective and orderly, and to meet the international law obligation of cooperation, a critical element will be **good faith consultations and partnerships with stakeholders**. Importantly, Australia should initiate bilateral talks with its major fossil fuel buyer countries aimed at the cooperative development of pathways for an ambitious, managed and orderly transition away from reliance on our (or, indeed, any) fossil fuels. This action is particularly important for maximizing the overall, global mitigation gain from Australia's exports-related reforms and minimizing any potential for market substitution.

Finally, multiple international law obligations compel Australia to **secure its reforms by referencing them in its Nationally Determined Contribution ('NDC')**. The obligations include its duty to use all means at its disposal to prevent significant harm to the climate system and its customary international law and treaty law-based duty of cooperation. They also include its Paris Agreement obligations to make mitigation commitments which reflect 'its highest possible ambition' and to ensure its NDC is 'capable of making an adequate contribution to the achievement of the temperature goal' of 1.5°C above pre-industrial levels, which 'has become the scientifically based consensus target under the Paris Agreement'.<sup>73</sup>

## 4 Apply human rights principles to the fossil fuel exports reform package

Human rights law also offers guidance of a procedural rights nature.<sup>74</sup> The effective implementation of the processes and reforms necessary for Australia's compliance requires an institutional architecture which is aligned with the human rights law principles of accountability and transparency, and with the human rights to participation, effective remedies and non-discrimination. These will direct Australia to ensure that its fossil fuel exports reform package:

- is well resourced, and has the engagement of state and territory governments;
- is accountable and has integrity, such as with annual reporting requirements to Parliament and independent oversight of compliance with climate and human rights commitments;
- is transparent, for example, is developed through a phased approach with clear benchmarks, beginning with the moratorium and followed by the comprehensive due diligence process;
- is participatory, involving consultation with affected communities;
- respects human rights during implementation, for example, with targeted assistance for economic diversification, and comprehensive transition planning for regional areas;
- is non-discriminatory, in that it does not perpetuate broader social inequalities and considers the needs of marginalized groups; and,
- offers effective and meaningful remedies for human rights impairments, including judicial and other redress mechanisms.

## Conclusion

Australia's ongoing actions as a major exporter of fossil fuels - and the consequent harms to its own climate and to human rights in its territory - have engaged its binding protection obligations under international law and human rights law. Yet instead of complying with these obligations, Australia is taking no steps to limit its fossil fuel export volumes, to stop approving new, often decades-long fossil fuel projects, or to wind up its generous subsidies for fossil fuel production.

This approach is not only accelerating global climate damage but is also intensifying consequential harms within Australia's own borders, particularly affecting the country's most vulnerable populations. The 2025 ICJ Advisory Opinion on Climate Change makes clear that Australia's current approach constitutes a breach of its binding international law and human rights law obligations to protect people within its territory from climate-related harms.

By continuing along its current fossil fuel exports path, Australia is choosing to stand outside the law. It is doing this even though delay in taking action will cause greater damage to its own climate, and escalating harms to the lives and human rights of people within its territory.

Our 'National Guidance' offers Australia both a framework for complying with its international law obligations and an opportunity, through genuine climate leadership, to alter the current global course of climate destruction through ongoing fossil fuel use.

# Endnotes

- <sup>1</sup> United Nations Framework Convention on Climate Change, opened for signature 9 May 1992, 1771 UNTS 107 (entered into force 21 March 1994); Paris Agreement, opened for signature 22 April 2016.
- <sup>2</sup> Climate Change Act 2022 (No. 37, 2022) (Cth).
- <sup>3</sup> See, for e.g., the *Clean Energy Finance Corporation Act 2012* (Cth).
- <sup>4</sup> Australia has warmed on average by 1.51 degrees above pre-industrial levels: CSIRO, State of the Climate 2024.
- <sup>5</sup> DCCEEW, Australian Energy Update, August 2024, at 39.
- <sup>6</sup> Climate Analytics, 'Australia's Global Fossil Fuel Carbon Footprint' ("footprint report"), August 2024, at 1.
- <sup>7</sup> Climate Analytics, Footprint report, at 1.
- <sup>8</sup> SEI et al., Production Gap Report 2023, at 36; Climate Analytics, Footprint Report, at 56.
- <sup>9</sup> DCCEEW, Resources & Energy Quarterly: June 2025, at 39, 45-47 and 55.
- <sup>10</sup> Climate Analytics, 'Footprint report', at 19 and Executive Summary.
- <sup>11</sup> Climate Analytics' calculations, based on the results in 'Footprint report' and applying the median IPCC AR6 estimate for transient climate response to cumulative CO<sub>2</sub> emissions.
- <sup>12</sup> IPCC, 'Climate Change 2023: Synthesis Report', 'Summary for Policymakers', at 12. Such warnings are repeated many times in various forms in the IPCC's 2023 Synthesis Report and other recent IPCC reports.
- <sup>13</sup> IPCC, 'Climate Change 2022: Impacts, Adaptation, Vulnerability', AR6, WGII, 'Chapter 11: Australasia', at 1635-1638, Table 11.14.
- <sup>14</sup> IPCC, 'Climate Change 2023: Synthesis Report', at 77.
- <sup>15</sup> IPCC, 2018, *Special Report on Global Warming of 1.5°C*, 'Summary for Policymakers', at B.5
- <sup>16</sup> IPCC, 'Climate Change 2023: Synthesis Report', AR6, at 82.
- <sup>17</sup> Climate Analytics, 'Footprint report', at 35.
- <sup>18</sup> CSIRO, Global carbon budget, 2024
- <sup>19</sup> K Trout et al., 'Existing fossil fuel extraction would warm the world beyond 1.5 °C', *Environmental Research Letters*, 17 (2022). And see F Green, 'Britain's tough new test for fossil fuel projects', *Inside Story*, 3 July 2025.
- <sup>20</sup> International Court of Justice (ICJ), Obligations of States in Respect of Climate Change, Advisory Opinion, 23 July 2025. General List. No. 187 ('ICJ, Advisory Opinion No. 187').
- <sup>21</sup> ICJ, Advisory Opinion No. 187, [372]-[386].
- <sup>22</sup> IPCC, 'Chapter 11: Australasia', AR6, WGII, at 1583.
- <sup>23</sup> International Covenant on Economic, Social, and Cultural Rights, adopted ,16 December 1966, entered into force 3 January 1976, 999 UNTS 171.
- <sup>24</sup> *Daniel Billy et al. v. Australia ('Daniel Billy')*, Communication No. 3624/2019, CCPR/C/135/D/3624/2019, 18 September 2023,
- <sup>25</sup> *Daniel Billy*, [8.12].
- <sup>26</sup> United Nations, Resolution A/RES/76.300, 28 July 2022.
- <sup>27</sup> ICJ, Advisory Opinion No. 187, [393].
- <sup>28</sup> ICJ, Advisory Opinion No. 187, [382].
- <sup>29</sup> UN, Climate Action: 'Why women are key to climate action'.
- <sup>30</sup> *Daniel Billy*, [8.12].
- <sup>31</sup> International Covenant on Civil and Political Rights, adopted 16 December 1966, entered into force 23 March 1976, 999 UNTS 171.
- <sup>32</sup> HRC, General comment No. 36, Article 6: right to life, CCPR/C/GC/36, 3 September 2019, [3].
- <sup>33</sup> HRC, General Comment No. 36, [3].
- <sup>34</sup> HRC, General comment No. 36, [7].
- <sup>35</sup> IPCC, AR6, WGII, Chapter 11: 'Australasia', at 1583.
- <sup>36</sup> IPCC, AR6, WGII, 'Summary for Policymakers', [B.1.4] and [B.4.4].
- <sup>37</sup> Vicedo-Cabrera et al., 'The burden of heat-related mortality attributable to recent human-induced climate change', *Nature Climate Change*, 11 (2021).
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- <sup>43</sup> Tong et al., above; AAS, 'The risks to Australia of a 3°C warmer world', at 63.
- <sup>44</sup> Lowitja Institute, 'Climate Change and Aboriginal and Torres Strait Islander Health', November 2021, at 39.
- <sup>45</sup> *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland* ('KlimaSeniorinnen') App no 53600/20 (ECtHR, 9 April 2024).
- <sup>46</sup> *KlimaSeniorinnen*, [519].
- <sup>47</sup> Asthma Australia, 'Asthma Statistics and facts', Nov 2024.
- <sup>48</sup> Australian Institute of Health Welfare, 'Asthma', 2023.
- <sup>49</sup> Goshua A. et al., 'The Role of Climate Change in Asthma', *Advances in Experimental Medicine and Biology*, Jan 2023, 1426.
- <sup>50</sup> F Thien et al, 'The Melbourne epidemic thunderstorm asthma event 2016', *Lancet Planet Health*, 2(6), at e255.
- <sup>51</sup> Australian Institute of Health and Welfare, 'Australian bushfires 2019–20: Exploring the short-term health impacts', 2020.
- <sup>52</sup> Asthma Council of Australia, 'Bushfires and Asthma'.
- <sup>53</sup> NSW Government, 'Air quality: health advice'.
- <sup>54</sup> See Australian Climate Accountability Project, 'Escalation', August 2024.
- <sup>55</sup> See 'Escalation.'
- <sup>56</sup> See, e.g., R Campbell et al., 'Fossil Fuel Subsidies in Australia 2024', Australia Institute.
- <sup>57</sup> Coal export giant Glencore disclosed in 2023 that its emissions from the burning of its coal overseas 'represent more than 90% of our emissions, the majority of which relate to our current coal portfolio': Glencore, 'Climate Action Transition Plan: 2024-2026', at 9.
- <sup>58</sup> A missed opportunity is the failure to provide, specifically or explicitly, in Part 3 of the *Federal Environmental Protection and Biodiversity Conservation Act 1999* (Cth) (*EPBC Act*) for the impacts of total project emissions on climate change to be taken into account in the granting of environmental approvals.
- <sup>59</sup> See Commonwealth of Australia, *Treasury Laws Amendment (Financial Market Infrastructure and Other Measures) Act 2024*.
- <sup>60</sup> Australia's new regime is a 'single materiality' one, requiring disclosure of material climate-related risks to the company but not of material climate-related impacts of the company's business activities. The disclosure regime introduced under the EU Corporate Sustainability Reporting Directive (CSRD) is a 'double materiality' disclosure regime – covering not only traditional 'risk materiality' but also 'impact materiality' (the actual or potential external impacts of the operations of the company, its subsidiaries or its value chain): European Commission, 'Corporate Sustainability Reporting'.
- <sup>61</sup> See, e.g., R Denniss and A Behm, 'Double Game', July 2021; S Ali and J Sherley, 'How to Build a Gas Empire: Part 1', July 2025.
- <sup>62</sup> Prime Minister of Australia, 'A future made in Australia', speech given 11 April 2024.
- <sup>63</sup> ICJ, Advisory Opinion No. 187, [273].
- <sup>64</sup> ICJ, Advisory Opinion No. 187, [427].
- <sup>65</sup> ICJ, Advisory Opinion No. 187, [393].
- <sup>66</sup> Multiple channels have long been available to Australia through which reliable information has been provided about climate threats, including IPCC processes, CSIRO State of the Climate reports, Lancet Countdown reports, and UN human rights bodies explicitly stating that climate change is a major threat to human rights globally.
- <sup>67</sup> See HRC, General comment No. 36, [7].
- <sup>68</sup> ICJ, Advisory Opinion No. 187, [282] and [457] 3.B(a).
- <sup>69</sup> ICJ, Advisory Opinion No. 187, [427].

# Endnotes

<sup>70</sup> ICJ, Advisory Opinion No. 187, [403].

<sup>71</sup> ICJ, Advisory Opinion No. 187, [427].

<sup>72</sup> Climate Council, 'Submission to Climate Change Authority', 7 July 2023, at 42-43. The phase-out might be modelled on Australia's highly successful system of controls for implementing the *Montreal Protocol* in a stepwise, time-bound manner: see *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989* (Cth), particularly s.3 objectives. Controls might also include a tax on production by volume: see F Green and R Denniss, 'Thinking creatively about phasing out coal', *Inside Story*, 2018.

<sup>73</sup> ICJ, Advisory Opinion No. 187, [224] and [242]-[245].

<sup>74</sup> See, e.g., UNHCHR 'Good governance practices for the protection of human rights', 2007; in the climate change context, UNHCHR, 'Understanding human rights and climate change', 2015.

<sup>75</sup> K Ebi et al, "Burning embers: Synthesis of the health risks of climate change", (2121) *Environmental Research Letters*, 16