



**PACIFIC ISLANDS
STUDENTS FIGHTING
CLIMATE CHANGE**

Prioritising the Pacific

Submission to the Inquiry into Australia's response to the priorities of Pacific Island countries and the Pacific region

Pacific Island countries and communities have articulated their key priorities with clarity, in detail, and on numerous occasions over many years.

The onus should not be on Pacific Island states to redescribe their priorities for the Australian Government's latest inquiry.

If Australia is to be a credible, good-faith partner to Pacific Island states, it should comply fully with the international agreements and commitments the Australian Government has already signed up to, and heed international legal opinions.

Contents

Contents	2
Summary	1
Introduction Pacific Island Students Fighting Climate Change	2
Context of this inquiry	3
The Paris Agreement (2015) and Annual UNFCCC Conference of Parties	4
The Boe Declaration (2018).....	5
The Pacific Climate Justice Demands (2022).....	5
The Port Vila Call for a Just Transition to a Fossil Fuel Free Pacific (2023)	5
Mobilising Pacific Island Priorities.....	7
Fossil Fuel Non-Proliferation Treaty	7
Loss and Damage Fund	8
International Court of Justice Advisory Opinion.....	8
International Tribunal for the Law of the Sea Advisory Opinion.....	11
Recommendations Actions for Australia.....	13
Recommendation 1: Comply with international agreements and commitments.	14
Recommendation 2: Comply with international advisory opinions.	15
Recommendation 3: Endorse the Port Vila Call and implement its demands.	16
Conclusion.....	17

Summary

The Boe Declaration on Regional Security elevates climate change as a stand-alone regional security priority as the single, greatest threat to the livelihoods, security, and well-being of the peoples of the Pacific.

Action Plan to Implement the Boe Declaration on Regional Security

The Australian Government is holding this inquiry to identify the key priorities of Pacific Island countries and assess Australia's response to these priorities. However, Pacific Island countries have already articulated their key priorities, concerns, and aspirations with clarity, in detail, and on numerous occasions over many years.

Examples include the Paris Agreement, the Boe Declaration on Regional Security, the Pacific Climate Justice Demands, and the Port Vila Call for a Just Transition to a Fossil Fuel Free Pacific.

Pacific Island countries have also sought to mobilise these priorities in formal and informal international fora, the Loss and Damage Fund, and seeking advisory opinions on climate change from the International Court of Justice and the International Tribunal for the Law of the Sea.

This submission recommends that the Australian Government:

1. Comply fully with the international agreements it has signed up to and the international commitments it has made.
2. Comply fully with advisory opinions issued by international legal bodies.
3. Endorse the Port Vila Call and implement its demands in full.

¹ Pacific Islands Forum (2018) *Boe Declaration Action Plan*, <https://forumsec.org/sites/default/files/2024-03/BOE-document-Action-Plan.pdf>, p9

Introduction

Pacific Island Students Fighting Climate Change

Pacific Island Students Fighting Climate Change (PISFCC) appreciates the opportunity to make this submission to the Inquiry into Australia's response to the priorities of Pacific Island countries and the Pacific region. We welcome the Committee's intention to "conduct consultations and hearings with relevant experts and representatives from Pacific Island nation."²

PISFCC is a youth-led organisation comprised of Pacific Island students and youth campaigning to seek an advisory opinion from the International Court of Justice (ICJ) on the obligations of states with regards to climate change and human rights.³ We are requesting the court respond to a legal question that will develop international law, integrate legal obligations around environmental treaties and basic human rights, and clarify state responsibility for climate harm.

Our organisation now comprises members from every Pacific Island country and includes students of all levels, from primary school to postgraduate university students. Our vision is to live with dignity, and without the fear of climate change denying us and our children the freedom to do so.

PISFCC was formed in March 2019. We spent several years advocating for Pacific Island states to endorse our request for an advisory opinion from the ICJ. In August 2022, the Pacific Islands Forum unanimously endorsed this request.⁴ In March 2023, the United Nations General Assembly unanimously adopted Resolution 77/276 calling on the ICJ to issue an advisory opinion.⁵

² Parliament of Australia (2024) *Terms of Reference: Inquiry into Australia's response to the priorities of Pacific Island countries and the Pacific Region*, https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Foreign_Affairs_Defence_and_Trade/PacificPriorities/Terms_of_Reference

³ Pacific Island Students Fighting Climate Change (n.d.) *Taking climate change to the world's highest court*, <https://www.pisfcc.org/>

⁴ Pacific Islands Forum (2022) *Fifty-First Pacific Islands Forum Communique*, <https://pacificsecurity.net/wp-content/uploads/2023/11/51st-Pacific-Islands-Forum-Communique-2022.pdf>

⁵ United Nations General Assembly (2023) Resolution 77/276: Resolution adopted by the General Assembly on 29 March 2023, <https://www.un.org/en/ga/77/resolutions.shtml>

Context of this inquiry

The inquiry's Terms of Reference state it will:

1. Identify the key priorities for Pacific Island countries and the Pacific region.
 - a. Evaluate the key concerns and aspirations of Pacific nations regarding their economic, environmental, and social development.
 - ...
2. Assess Australia's engagement in the Pacific and alignment of initiatives and policies with the identified priorities of Pacific Island nations.
 - a. Evaluate Australia's current efforts in supporting the Pacific in areas such as trade, investment, infrastructure development, security and capacity building that enhance Australia's position as a partner of choice for the Pacific family.
 - ...
3. Assess Climate Change Mitigation and Adaptation responses in the Pacific.
 - a. Evaluate Australia's climate support and initiatives aimed at mitigating climate change and assisting Pacific nations in adapting to its impacts.
 - ...⁶

Greater attention paid by the Australian Government to these issues is welcome. The central premise of our submission, however, is that Pacific Island countries and communities have already articulated their key priorities, concerns, and aspirations with clarity, in detail, and on numerous occasions over many years.

Our priorities revolve around Australia taking genuine action to mitigate climate change in line with the 1.5°C pathway essential to the survival of Pacific Island countries. Doing so would require Australia to cease fossil fuel expansion and phase out fossil fuel use and exports.

Our priorities also revolve around Australia providing meaningful financial assistance to Pacific Island countries for climate change adaptation and loss and damage.

The inquiry does not need to ask Pacific Island states to redescribe their priorities. This work has already been done and putting the onus on Pacific Island leaders and communities to emphasise our priorities yet again is an unreasonable burden. When providing its “recommendations aimed at strengthening Australia's engagement with the Pacific region and advancing mutual interests and cooperation”,⁷ the Committee does not need to look much further than the priorities and demands already set out by Pacific Island states in international fora, a selection of which are described below.

⁶ Parliament of Australia (2024) Terms of Reference: Inquiry into Australia's response to the priorities of Pacific Island countries and the Pacific Region

⁷ Parliament of Australia (2024) Terms of Reference: Inquiry into Australia's response to the priorities of Pacific Island countries and the Pacific Region

The Paris Agreement (2015) and Annual UNFCCC Conference of Parties

At each annual Conference of the Parties (COP) to the United Nations Framework Convention on Climate Change (UNFCCC), Pacific Island states are vocal and unambiguous in their repeated demands for:

- a) stronger action from wealthy and high-emitting countries to reduce greenhouse gas emissions; and
- b) greater financial assistance from developed countries to developing countries for climate change mitigation, adaptation and loss and damage, and for a fossil fuel free just and equitable transition renewable.

During the negotiation of the Paris Agreement,⁸ the Alliance of Small Island States (AOSIS) (which includes 15 Pacific Island states) was “instrumental in winning the inclusion of language calling on the world to try to limit average global temperatures to 1.5 degrees Celsius, a level many scientists believe is essential to avert the worst impacts of climate change.”⁹ In subsequent years, AOSIS has maintained its pressure on other countries to pursue the 1.5°C temperature target, highlighting it as a “red line” for small island states beyond which our survival will be severely imperilled.¹⁰

Following the first global stocktake at the most recent COP—COP28 in Dubai—AOSIS voiced concerns that countries had “made an incremental advancement over business as usual when what we really needed is an exponential step-change in our actions and support”.¹¹ AOSIS highlighted loopholes for fossil fuel expansion and continued fossil fuel subsidies, and criticised the fact that COP28’s final agreement was approved when representatives from small island developing states were absent.¹²

⁸ UNFCCC (2015) *Paris Agreement*, https://unfccc.int/files/essential_background/convention/application/pdf/english_paris_agreement.pdf

⁹ AOSIS (n.d.) *UNITED NATIONS—Leaders from the Alliance of Small Island States*, <https://www.aosis.org/small-islands-lead-world-in-climate-treaty-ratification/>

¹⁰ AOSIS (2023) *AOSIS COP28 Press Conference – AOSIS Chair Statement*, <https://www.aosis.org/aosis-cop28-press-conference-aosis-chair-statement/>

¹¹ AOSIS (2023) *An Incremental Advance when Exponential Change is Needed: AOSIS Statement at COP28 Closing Plenary*, <https://www.aosis.org/cop28-closing-plenary-aosis-statement-on-gst-decision/>

¹² AOSIS (2023) *An Incremental Advance when Exponential Change is Needed: AOSIS Statement at COP28 Closing Plenary*; Malinde S.N. Lancaster (2023) “How COP28 failed the world’s small islands”, *The Conversation*, <https://theconversation.com/how-cop28-failed-the-worlds-small-islands-219938>; Sefeti (2023) “‘Not conducive to our survival’: Pacific islands on the climate frontline respond to Cop28 deal”, *The Guardian*, <https://www.theguardian.com/environment/2023/dec/20/not-conducive-to-our-survival-pacific-islands-on-the-climate-frontline-respond-to-cop28-deal>

The Boe Declaration (2018)

The Boe Declaration on Regional Security, adopted in September 2018 by the Pacific Islands Forum—which includes Australia—stated first and foremost that “climate change remains the single greatest threat to the livelihoods, security and wellbeing of the peoples of the Pacific”.¹³

The Declaration reaffirmed a “commitment to progress the implementation of the Paris Agreement”. It also highlighted an “expanded concept of security” which includes “prioritising environmental security, and regional cooperation in building resilience to disasters and climate change.”¹⁴

The Pacific Climate Justice Demands (2022)

At the Pacific Climate Justice Summit in 2022, representatives from 19 Pacific Island countries and 30 other nations issued the Pacific Climate Justice Demands.¹⁵ The Demands included:

- Reaffirming the necessity of 1.5 degrees Celsius for the survival of Pacific Island countries and communities.
- Immediately ending the expansion and subsidisation of fossil fuel industries.
- Public and private sector divestment from fossil fuels.
- Prioritising climate justice, human rights, gender equality and social inclusion.
- Developed states delivering finance for loss and damage.
- Developed states fulfilling the existing USD 100 billion annual goal for climate finance and devising new adaptation finance pledges.
- Financing the renewable energy transition in Pacific Island states.
- Protecting oceans.

The Port Vila Call for a Just Transition to a Fossil Fuel Free Pacific (2023)

At the Second Pacific Ministerial Dialogue on Pathways for the Global Just Transition in March 2023, the governments of Vanuatu, Tuvalu, Tonga, Fiji, Niue, and the Solomon Islands, issued the Port Vila Call for a Just Transition to a Fossil Fuel Free Pacific (“The Port Vila Call”).¹⁶ The Port Vila Call makes four major proposals:

¹³ Pacific Islands Forum (2018) *Boe Declaration Action Plan*, <https://forumsec.org/sites/default/files/2024-03/BOE-document-Action-Plan.pdf>, p6

¹⁴ Pacific Islands Forum (2018) *Boe Declaration Action Plan*

¹⁵ Pacific Island Climate Action Network (2022) *Pacific Climate Justice Demands — a call to action*, <https://www.pican.org/pacific-demands>

¹⁶ 2nd Ministerial Dialogue on Pathways for the Global Just Transition Away from Fossil Fuels (2023) *Port Vila Call for a Just Transition to a Fossil Fuel Free Pacific*, <https://static1.squarespace.com/static/5dd3cc5b7fd99372fbb04561/t/6423bbb64f3bbb2785ad3719/1680063415682/Outcome%2BText%2B-%2BPort%2BVila%2BCall%2Bfor%2Ba%2BJust%2BTransition%2Bto%2Ba%2BFossil%2BFuel%2BFree%2BPacific.pdf>

1. A Fossil Fuel-Free Pacific and a global, just and equitable phase-out of coal, oil and gas.
2. New Pacific-tailored development pathways based on 100% renewable energy.
3. Expanded public and private finance for the just transition from fossil fuels to renewable energy.
4. Redoubled efforts to reaffirm, strengthen and codify legal obligations with respect to the global phase-out of fossil fuels.¹⁷

The Port Vila Call is a clear expression of Pacific Island States' frustration with the inaction of developed countries like Australia. It is also a clarion call for change and describes in detail numerous measures that Australia could, and should, take to protect the future of Pacific Island states. These include:

- Making a genuine commitment to a just and equitable phase-out of coal, oil and gas production, in line with the Paris Agreement's goal of limiting global warming to 1.5°C or below, and without loopholes for fossil fuel producers and polluters.
- Ending fossil fuel subsidies and other public finance for fossil fuel production and redirecting this finance towards enabling the just transition away from fossil fuels.
- Joining the Beyond Oil and Gas Alliance and urging major oil and gas producers to do the same.
- Calling for a Fossil Fuel Non-Proliferation Treaty.
- Using grant-based financing and direct investments to assist the Pacific region to transition away from fossil fuels.

¹⁷ Hawking & Hemming (2023) *A Fair COP31*, <https://australiainstitute.org.au/report/a-fair-cop31/>

Mobilising Pacific Island Priorities

Pacific Island countries have had some success in mobilising these priorities through formal and informal international fora.

Fossil Fuel Non-Proliferation Treaty

At the Pacific Islands Development Forum in 2016, Pacific Island leaders discussed a proposed Pacific climate treaty which would ban new or expanded coal mines.¹⁸ In subsequent years, Pacific Island leaders have been successful in promoting this proposal globally, leading to the establishment of the Fossil Fuel Non-Proliferation Treaty Initiative in 2019.

The Treaty Initiative aims to “accelerate a transition to renewable energy for everyone, end the expansion of coal, oil and gas, and equitably phase out existing production in keeping with what science shows is needed to address the climate crisis.”¹⁹ Through the Treaty Initiative, Pacific Island states can communicate their interests and priorities and other countries can demonstrate their alignment with these priorities.

It has since been endorsed by Pacific Island leaders, the World Health Organisation,²⁰ the European Parliament,²¹ numerous cities, subnational governments, and civil society organisations. In 2022, Vanuatu called on nations at the United Nations General Assembly to jointly establish a Fossil Fuel Non-Proliferation Treaty.²²

¹⁸ Slezak (2016) “Pacific islands nations consider world's first treaty to ban fossil fuels”, *The Guardian*, <https://www.theguardian.com/world/2016/jul/14/pacific-islands-nations-consider-worlds-first-treaty-to-ban-fossil-fuels>

¹⁹ The Fossil Fuel Non-Proliferation Treaty Initiative (2024) *Our Mission and History*, <https://fossilfueltreaty.org/mission>

²⁰ The Fossil Fuel Non-Proliferation Treaty Initiative (2022) International Health Organisations Call for Fossil Fuel Non-Proliferation Treaty to Protect Lives of Current and Future Generations, <https://fossilfueltreaty.org/health-letter-press-release>

²¹ European Parliament (2022) *Motion for a Resolution on the 2022 UN Climate Change Conference in Sharm El-Sheikh, Egypt (COP27)*, https://www.europarl.europa.eu/doceo/document/B-9-2022-0461_EN.html

²² The Fossil Fuel Non-Proliferation Treaty Initiative (2022) *Vanuatu Makes Historic Call for Treaty to End the Fossil Fuel Era*, <https://fossilfueltreaty.org/vanuatu>

Loss and Damage Fund

COP28 in 2023 established a Loss and Damage Fund²³ to assist developing countries in responding to loss and damage—“the negative effects of climate change that occur despite mitigation and adaptation efforts.”²⁴

Pacific Island countries have advocated for loss and damage funding for decades. During the negotiations for the UNFCCC in 1991, AOSIS, chaired by Vanuatu, proposed the establishment of an international fund for loss and damage.²⁵ Pacific Island negotiators have sought to maintain the salience of loss and damage at subsequent COPs, leading to the fund established at COP28.

The fund aims to compensate developing states for the climate harms caused by wealthy countries. Contributing to the fund, which is to be administered by the World Bank, is not mandatory and Australia is yet to commit loss and damage funding.²⁶ The fund received initial commitments of 700 million USD.²⁷ These pale in comparison to the estimated 400 billion USD in annual costs to developing states from climate-related harms.²⁸

International Court of Justice Advisory Opinion

As previously discussed, PISFCC and Pacific Island states such as Vanuatu have been instrumental in campaigning for the ICJ to provide an advisory opinion on climate change and human rights. The UNGA unanimously passed Resolution 77/276 in 2023, requesting the ICJ to do so.

²³ UNFCCC (2023) *Fund for responding to loss and damage*, <https://unfccc.int/loss-and-damage-fund-joint-interim-secretariat>

²⁴ United Nations Environment Programme (n.d.) *About Loss and damage*, <https://www.unep.org/topics/climate-action/loss-and-damage/about-loss-and-damage>

²⁵ Wewerinke-Singh & Hinge Salili (2019) “Between negotiations and litigation: Vanuatu’s perspective on loss and damage from climate”, *Climate Policy*,

<https://www.tandfonline.com/doi/pdf/10.1080/14693062.2019.1623166?needAccess=true>; Sutter (2022) “Opinion: In 1991, tiny Vanuatu already nailed the climate conversation”, *CNN*, <https://edition.cnn.com/2022/11/03/opinions/cop27-climate-loss-and-damage-vanuatu-sutter/index.html>

²⁶ Morton (2023) “Australia commits \$150m to climate finance for vulnerable Pacific countries”, *The Guardian*, <https://www.theguardian.com/environment/2023/dec/08/australia-commits-150m-to-climate-finance-for-vulnerable-pacific-countries>

²⁷ Lakhani (2023) “\$700m pledged to loss and damage fund at Cop28 covers less than 0.2% needed”, *The Guardian*, <https://www.theguardian.com/environment/2023/dec/06/700m-pledged-to-loss-and-damage-fund-cop28-covers-less-than-02-percent-needed>

²⁸ Richards et al (n.d.) *Standing in solidarity with those on the frontlines of the climate crisis: A loss and damage package for COP28*, The Unitarian Universalist Service Committee and The Loss and Damage Collaboration, https://assets-global.website-files.com/605869242b205050a0579e87/655b50e163c953059360564d_L%26DC_L%26D_Package_for_COP28_20112023_1227.pdf

In brief, Resolution 77/276 asks about the obligations of states under international law to ensure protection of the climate system, and the legal consequences for states when they cause significant harm to the climate system.²⁹

In March 2024, the ICJ received the highest number of written statements from states and international organisations regarding an advisory opinion, including from Australia.³⁰ Statements have not yet been made publicly available.

PISFCC has outlined four key pillars to underpin statements made by states to the ICJ regarding the advisory opinion.³¹ These pillars articulate several key priorities of Pacific Island states in relation to international law. Australia's position in international law relating to climate change must reflect the following:

Pillar 1: Climate science and impacts

- a) The causes of climate change are the cumulative anthropogenic greenhouse gas (GHG) emissions, predominantly from the burning of fossil fuels and land-use changes over time.
- b) The impacts of these changes have already materialised and will continue to worsen unless immediate and bold action is taken.
- c) There is scientific and state consensus on the reality of climate change, and the Intergovernmental Panel on Climate Change (IPCC) reports are the principal authority that emphasise the impacts of anthropogenic climate change and its violation of human rights.
- d) Support arguments on the best available science from the international scientific community, including on attribution science. Attribution science is sufficiently developed to identify event and source attribution to a standard sufficient for an advisory opinion.
- e) The impacts of climate change are particularly devastating for Small Island Developing States (SIDS), which face existential threats from rising sea levels, extreme weather events, and widespread damage to both the natural environment and human populations.

Pillar 2: Applicable law

- a) As clearly indicated in Resolution 77/276, States have obligations under multiple existing sources of law - including but not at all limited to - the law of State responsibility, customary and conventional international environmental and human

²⁹ United Nations General Assembly (2023) Resolution 77/276: Resolution adopted by the General Assembly on 29 March 2023

³⁰ ICJ (2024) Obligations of States in respect of Climate Change (Request for Advisory Opinion) Filing of written statements, <https://www.icj-cij.org/sites/default/files/case-related/187/187-20240412-pre-01-00-en.pdf>

³¹ PISFCC (n.d.) *Submissions to the ICJ*, <https://www.pisfcc.org/submissions>

rights law, and the law of the sea - to act in the face of the climate emergency to prevent further foreseeable harm from climate change and to remedy harm that is occurring as a result of climate change.

- b) The international climate agreements, comprising the United Nations Framework Convention on Climate Change (UNFCCC) and the Paris Agreement, should inform, but cannot, and indeed do not purport to, exhaustively set out or exclusively define state legal responsibilities and duties of care with respect to climate change. The ITLOS advisory opinion made clear that the state obligations go beyond the Paris Agreement and the UNFCCC and this must be endorsed by all States.

Pillar 3: Obligations of States under question 'a' of the legal question

- a) The duty of due diligence in preventing harm from activities within a State's jurisdiction or control be affirmed as a primary obligation of international law. This duty applies irrespective of a threshold of significant harm and requires proactive measures to prevent harm, whether such harm manifests domestically or extraterritorially. This duty must be proportional to the level of risk involved and encompasses taking all appropriate measures to avert harm from activities that occurred before the risk was foreseeable. It is a broad and continuous responsibility of all States.
- b) The UNFCCC and Paris Agreement represent the global consensus on achieving a 1.5°C temperature limit. Notably, the IPCC has stated that warming of 1.5°C above pre-industrial levels is not safe for most communities and ecosystems, and that if temperature rise exceeds 1.5°, even temporarily, it will unleash irreversible and even more catastrophic consequences. Urgent action is needed to stay well below 1.5 degrees of warming in line with concurrent legal duties, including under international human rights law.
- c) Increasing fossil fuel production, despite its harmful effects, violates human rights obligations. The Universal Declaration on Human Rights guarantees rights impacted by climate change, including life, liberty, security, privacy, family life, movement, property, adequate living standards, and cultural life. These universally applicable rights are supported by various treaties and customary international law. States must uphold these rights under the UN Charter, International Covenant on Civil and Political Rights, and International Convention on Economic Social and Cultural Rights, among other instruments.
- d) The right to self-determination is recognized as customary international law, and is linked to territorial integrity and indigenous cultural preservation and is threatened by climate change. All states must respect the right to self-determination by avoiding actions that harm the climate and the environment, and by promoting laws, policies, and cooperation to address climate threats. States must not limit the rights of self-determination of SIDS and developing countries but support these before the ICJ.

- e) States' obligations vary according to the principles of equity and Common but Differentiated Responsibilities and Respective Capabilities in light of national circumstances (CBDRRC).

Pillar 4: Legal Consequences and State Responsibility

- a) Anthropogenic emissions of greenhouse gases that cause significant harm to the climate system constitutes a breach of state obligations. States must consider the foreseeable emissions resulting from activities under their jurisdiction or control, regardless of where those emissions occur, as part of their due diligence obligations.
- b) Breaches of state obligations concerning climate change entail legal consequences. Accountability through recognised consequences is needed as our dependency on the voluntary contributions and actions through the climate change regime are not delivering the actions needed to avoid catastrophic harm. These consequences could involve cessation of harmful activities, and provision of full reparations.
- c) Recognise the existing mechanisms under international law, including human rights law, that will facilitate a transition to greater accountability for breaches by having access to effective remedies.

International Tribunal for the Law of the Sea Advisory Opinion

In 2022, the Commission of Small Island States on Climate Change and International Law submitted a request to the International Tribunal for the Law of the Sea (ITLOS) for an advisory opinion on the obligations of State Parties to the United Nations Convention on the Law of the Sea (UNCLOS):

- a) to prevent, reduce and control pollution of the marine environment in relation to the deleterious effects that result or are likely to result from climate change, including through ocean warming and sea level rise, and ocean acidification, which are caused by anthropogenic greenhouse gas emissions into the atmosphere?
- b) to protect and preserve the marine environment in relation to climate change impacts, including ocean warming and sea level rise, and ocean acidification?³²

In 2024, ITLOS responded to this request.³³ ITLOS' advisory opinion affirms that anthropogenic greenhouse gas (GHG) emissions constitute pollution of the marine environment, and that State Parties to the UNCLOS have obligations to prevent, reduce and control this pollution in line with 1.5°C. These obligations are separate from those under the

³² ITLOS (2024) *Press Release: Tribunal Delivers Unanimous Advisory Opinion in Case No. 31*, https://www.itlos.org/fileadmin/itlos/documents/press_releases_english/PR_350_EN.pdf

³³ ITLOS (2024) *Request for an advisory opinion submitted by the Commission of Small Island States on climate change and international law: Advisory Opinion*, https://www.itlos.org/fileadmin/itlos/documents/cases/31/Advisory_Opinion/C31_Adv_Op_21.05.2024_orig.pdf

Paris Agreement. They constitute a due diligence obligation to take all necessary measures to prevent, reduce and control marine pollution from anthropogenic GHG emissions. States must also adopt a precautionary approach in their exercise of due diligence to prevent, reduce, and control marine pollution from anthropogenic GHG emissions. This approach requires States to anticipate and mitigate potential risks, even when scientific evidence is not conclusive, ensuring the protection of human health and welfare.

Developed States also have an obligation to assist developing States, particularly those most vulnerable to climate change, in addressing marine pollution, including through financial support, technology transfer, and capacity-building initiatives.

Recommendations

Actions for Australia

Pacific Island countries have already made their priorities clear and have sought to give substance to these priorities in numerous formal and informal international fora. However, Australia's response to these Pacific Island priorities has been inadequate at best. If the Australian Government wishes to "strengthen its engagement with the Pacific region and advance mutual interests and cooperation",³⁴ it is now incumbent on the government to endorse and comply with these initiatives, decisions, and deliberations.

Moreover, if Australia wishes to host COP31 in partnership with the Pacific, and if it expects the international community to treat this goal as credible, then it cannot continue to ignore the demands of its "partners" and "Pacific family".³⁵

A comprehensive examination of Australia's present failure to satisfy these obligations and commitments is beyond the scope of this submission. In brief, Australia is the third-largest exporter of fossil fuels in the world and the largest fossil fuel exporter in the OECD.³⁶ The Australian Government currently lists over 100 new fossil fuel projects proposed or under development.³⁷ Australian state and federal governments gave AUD 14.5 billion in fossil fuel subsidies in 2023-24, including AUD 11.8 billion from the Federal Government.³⁸ The Australian Government's emissions reductions targets are not aligned with a 1.5°C pathway to net zero by 2050.³⁹

In contrast with these enormous fossil fuel subsidies, Australia consistently fails to meet its commitments for international aid by a large margin. In 1970, Australia agreed to a UN aid spending target of 0.7% of our Gross National Income (GNI).⁴⁰ Separately, Australia has made

³⁴ Parliament of Australia (2024) Terms of Reference: Inquiry into Australia's response to the priorities of Pacific Island countries and the Pacific Region

³⁵ Hawking & Hemming (2023) *A Fair COP31*, <https://australiainstitute.org.au/report/a-fair-cop31/>

³⁶ Swann (2019) *High Carbon from a Land Down Under: Quantifying CO2 from Australia's fossil fuel mining and exports*, <https://australiainstitute.org.au/report/high-carbon-from-a-land-down-under-quantifying-co2-from-australias-fossil-fuel-mining-and-exports/>

³⁷ Campbell et al (2023) *New fossil fuel projects in Australia 2023*, <https://australiainstitute.org.au/report/new-fossil-fuel-projects-in-australia-2023/>

³⁸ Campbell et al (2024) *Fossil fuel subsidies in Australia 2024*, <https://australiainstitute.org.au/report/fossil-fuel-subsidies-in-australia-2024/>

³⁹ Hare (2024) "Sleight of hand: Australia's Net Zero target is being lost in accounting tricks, offsets and more gas", *The Conversation*, <https://theconversation.com/sleight-of-hand-australias-net-zero-target-is-being-lost-in-accounting-tricks-offsets-and-more-gas-229479>

⁴⁰ OECD (n.d.) "The 0.7% ODA/GNI target - a history", <https://www.oecd.org/dac/financing-sustainable-development/development-finance-standards/the07odagnitarget-ahistory.htm#:~:text=In%201970%2C%20The%200.7%25%20ODA,reach%20the%20target%20by%202015>

a bipartisan commitment to spend 0.5% of its GNI on foreign aid.⁴¹ However, in its 2024-25 Federal Budget, the Australian Government announced a total aid budget of AUD 4.961 billion, equating to just 0.19% GNI. Of this amount, the government provided AUD 2.05 billion to the Pacific.⁴² In the same budget, the Australian Government provided AUD 10.18 billion in fossil fuel subsidies through the Fuel Tax Credit Scheme alone.⁴³

In conjunction with other developed countries, Australia committed to provide USD 100 billion in new and additional climate finance annually by 2020.⁴⁴ Australia has consistently failed to provide its fair share of this USD 100 billion. In the 2024-25 Federal Budget, Australia committed only AUD 150 million in climate finance to the Pacific, comprised of AUD 100 million to the Pacific Resilience Facility and AUD 50 million to the UNFCCC Green Climate Fund.⁴⁵

Additionally, Australia is yet to commit funding to the Loss and Damage Fund, despite having supported the fund's establishment at COP28.

Recommendation 1: Comply with international agreements and commitments.

In the first instance, the Australian Government needs to fully comply with the agreements it has already signed and the commitments it has already made. These include the Paris Agreement, the Boe Declaration, the Loss and Damage Fund, and existing climate finance commitments.

In brief, genuine compliance would involve taking all necessary steps to limit “the increase in the global average temperature to well below 2°C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5°C above pre-industrial levels”⁴⁶ (as per the Paris Agreement). The science shows that this limiting warming to 1.5°C requires preventing new fossil fuel projects and reducing fossil fuel use,⁴⁷ something which the Australian Government

⁴¹ Commonwealth of Australia (2014) *Australia's overseas aid and development assistance program*, https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Foreign_Affairs_Defence_and_Trade/Overseas_aid/Report/index

⁴² Department of Foreign Affairs and Trade (2024) *Australia's Official Development Assistance Budget Summary 2024-25*, <https://www.dfat.gov.au/about-us/corporate/portfolio-budget-statements/australias-official-development-assistance-budget-summary-2024-25>

⁴³ Commonwealth of Australia (2024) *Budget Paper No. 1*, https://budget.gov.au/content/bp1/download/bp1_2024-25.pdf

⁴⁴ UNFCCC (2009) *Copenhagen Accord*, <https://unfccc.int/resource/docs/2009/cop15/eng/l07.pdf>; Gabbatiss (2021) “Analysis: Why climate-finance ‘flows’ are falling short of \$100bn pledge”, *Carbon Brief*, <https://www.carbonbrief.org/analysis-why-climate-finance-flows-are-falling-short-of-100bn-pledge/>

⁴⁵ Commonwealth Government (2024) *Budget Paper No. 2*, https://budget.gov.au/content/bp2/download/bp2_2024-25.pdf

⁴⁶ UNFCCC (2015) *Paris Agreement*

⁴⁷ International Energy Agency (2023), *Net Zero Roadmap: A Global Pathway to Keep the 1.5 °C Goal in Reach*, <https://www.iea.org/reports/net-zero-roadmap-a-global-pathway-to-keep-the-15-0c-goal-in-reach>; Hare et al (2021) *Why gas is the new coal*, Climate Analytics, <https://climateanalytics.org/publications/why-gas-is-the-new-coal>

continues to show no signs of doing.⁴⁸ Additionally, genuine compliance would involve contributing Australia's fair share to existing international commitments to provide USD 100 billion in new climate finance annually.

Recommendation 2: Comply with international advisory opinions.

Considering ITLOS' recently issued advisory opinion, and as a party to the UNCLOS, the Australian Government needs to comply with its obligations to prevent, reduce and control marine pollution from anthropogenic GHG emissions. Australia's current and projected greenhouse gas emissions are inconsistent with the 1.5°C temperature target.⁴⁹

Additionally, the ITLOS advisory opinion states that:

States Parties have the specific obligation to take all measures necessary to ensure that anthropogenic GHG emissions under their jurisdiction or control do not cause damage by pollution to other States and their environment, and that pollution from such emissions under their jurisdiction or control does not spread beyond the areas where they exercise sovereign rights.⁵⁰

The Australian Government has not demonstrated how it is acting in accordance with this obligation in relation to its interpretation of the London Protocol when passing the *Environment Protection (Sea Dumping) Amendment (Using New Technologies to Fight Climate Change) Bill 2023*.⁵¹ This bill enables Santos' Bayu Undan carbon capture and storage project, a transboundary project that transports greenhouse gas pollution through Timorese maritime territory.

Similarly, when the ICJ releases its advisory opinion on climate change and human rights, the Australian Government needs to comply with its legal obligations as a party to the relevant international agreements, such as the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the UNFCCC, and the Paris Agreement.

⁴⁸ Department of Industry, Science and Resources (2024) *Future Gas Strategy*, <https://www.industry.gov.au/publications/future-gas-strategy>

⁴⁹ Climate Analytics (2022) *What is Australia's pathway to limit global warming to 1.5°C?*, <https://1p5ndc-pathways.climateanalytics.org/countries/australia>; Hare (2024) "Sleight of hand: Australia's Net Zero target is being lost in accounting tricks, offsets and more gas", *The Conversation*

⁵⁰ ITLOS (2024) Press Release: Tribunal Delivers Unanimous Advisory Opinion in Case No. 31

⁵¹ Campbell (2023) *Submission on the sea dumping and carbon capture and storage bill 2023*, <https://australiainstitute.org.au/report/submission-on-the-sea-dumping-and-carbon-capture-and-storage-bill-2023/>

Recommendation 3: Endorse the Port Vila Call and implement its demands.

The Port Vila Call outlines actions that Australia can take to genuinely address climate change and credibly claim to be responding to Pacific Island priorities. These actions would include rapidly phasing out fossil fuels and expanding climate finance.

Instead, however, the Australian Government has chosen to weaken any commitment to a Fossil Fuel Free Pacific. At the Pacific Island Forum Leader's Meeting in November 2023, Australia worked to remove mentions of fossil fuel extraction and production from the final text and insert loopholes to permit continued Australian fossil fuel exports.⁵²

⁵² The Fossil Fuel Non-Proliferation Treaty Initiative (2023) *52nd Pacific Island Forum Leaders' Meeting mentioned fossil fuels. Let's assess the Good, the Bad, the Ugly*, <https://fossilfueltreaty.org/blog/pif-communicue>

Conclusion

Pacific Island countries have already made our priorities clear. The Australian Government knows what it needs to do; it is just unwilling to do it.

The true test of Australia's climate credentials is not the government holding an inquiry, but whether the government takes actions aimed at stopping fossil fuel expansion and exports, ceasing fossil fuel subsidies, and expanding climate finance. Without doing these things, Australia cannot be considered a credible host for COP31 or a genuine partner of Pacific nations.

Our future is on the line. The Australian Government does not need to ask more questions. It needs to listen and to act.