

What is the legal action about?

A group of eight Torres Strait Islanders are making a world first legal complaint against the Australian government. The complaint alleges Australia is violating their fundamental human rights by its failure to address climate change.

Where is the Torres Strait?

The claimants are from a group of islands off the northern tip of Queensland, Australia, between the Australian mainland and Papua New Guinea. There are more than 270 islands in the region, with around 18 of them inhabited. The Torres Strait is home to a unique first nation people, distinct from mainland indigenous Australians.

The islanders have inhabited the region for thousands of years, making it one of the oldest continuous cultures in the world. Although similar, each island is culturally unique and has its own practices and traditions, with culture and spiritual beliefs intrinsically linked to the islands and marine environment. The region includes the northern tip of the Great Barrier Reef as well as ecosystems including dugongs, turtles and saltwater crocodiles.

Why are the islanders making their legal complaint?

Climate change is predicted to devastate the low-lying islands of the Torres Strait. King tides are getting worse every year and are already causing regular flooding of land and homes, damaging important cultural sites located on the edges of islands. Sea level rise caused by climate change will increase inundation and storm surges on low-lying islands. Rising sea temperatures are also affecting the health of marine environments throughout the Torres Strait, by causing coral bleaching and ocean acidification.

Where has the claim been submitted?

The complaint has been submitted to the United Nations Human Rights Committee, a body of 18 legal experts that sits in Geneva, Switzerland. The Committee is established to monitor states compliance with the world's oldest human rights treaty, the International Covenant on Civil and Political Rights (ICCPR).

What are the islanders' claiming?

The Islanders allege that Australia has violated the following rights under the ICCPR:

- Article 27, the right to culture
- Article 17, the right to be free from arbitrary interference with privacy, family and home
- Article 6, the right to life

The complaint states these rights have been violated both by Australia's insufficient greenhouse gas mitigation targets and plans, and by its failure to fund adequate coastal defence and resilience measures on the islands, such as seawalls. Lawyers for the islanders allege that the catastrophic nature of the predicted future impacts of climate change on the Torres Strait Islands, including the total submergence of ancestral homelands, is a sufficiently severe impact as to constitute a violation of the rights to culture, family and life.

Why is the claim historic?

This complaint will be the first climate change litigation in Australia, based on human rights. It is also the first legal action brought by inhabitants of low-lying islands against a nation state. The claim will also be lodged three weeks before Mabo Day, named after the historic High Court Mabo decision for Torres Strait human rights campaigner, Eddie Mabo. That case recognised the traditional rights of the Meriam people and helped overturn Australia's 'terra nullius' laws, changing the country's land rights forever.

Who are the complainants?

There are eight islanders from four different islands behind the complaint. They include: Yessie Mosby and Nazareth Warri of Masig (Yorke Island); Keith Pabai and Stanley Marama of Boigu; Nazareth Faid of Poruma (Coconut Island); Ted Billy, Daniel Billy and Kabay Tamu of Warraber (Sue Island). Please see the authors' bios for more details.

What are their legal rights?

Australian citizens have the right to make a complaint to the Committee against Australia for violating the ICCPR – a treaty requiring Australia to take action to stop violations of the applicable human rights in its territory. The ICCPR allows individuals who have been the victim of a human rights violation by a signatory state to submit a written communication to the Committee.

What are the islanders asking of the Australian government?

The islanders are calling on Canberra do more to protect the Torres Strait from climate change, including funding adequate coastal defence measures after full consultation with the island communities, but also by addressing the root cause of the problem, by reducing Australia's greenhouse gas emissions. In particular, for Australia to:

- Commit at least \$20 million for emergency measures such as seawalls, as requested by local authorities – and sustained investment in long-term adaptation measures to ensure the islands can continue to be inhabited;
- Reduce its emissions by at least 65% below 2005 levels by 2030 and going net zero before 2050; and,
- Phase out thermal coal, both for domestic electricity generation and export markets.

How is Australia failing on climate change?

Currently, the Australian government has no policies to meet its low emissions reduction target of 26-28% by 2030. Meanwhile Canberra has continued to push the interests of fossil fuel industries, in particular coal and coal seam gas. Last year the UN's International Panel on Climate Change released a report stating humanity has just over a decade to introduce rapid decarbonisation of its economy to avert the worst of catastrophic climate change.

Who is providing legal advice to the islanders?

Lawyers from environmental law charity ClientEarth are providing legal advice. Lead lawyer, Sophie Marjanac is an Australian qualified environmental lawyer and has been at ClientEarth since 2015, working on climate change litigation worldwide. Sophie gave evidence to the Philippines Commission on Human Rights national inquiry on climate change in August 2018, and has published several articles about climate change litigation. In 2010, Sophie Marjanac, spent a year working in the Torres Strait, getting to know the region well.

Will there be a court hearing?

The Human Rights Committee reviews complaints via paper submissions, which means that it does not usually hold hearings.

When will the claim be decided?

The process is quite involved, and it could take up to three years for a decision. After the claim is filed on May 13th, 2019, the Committee is likely to request a response from the Australian government later this year. Once Canberra responds, the authors could expect a reply from the Committee in 2020 and, following a potential oral hearing, a decision in 2021.

What would a successful decision mean legally?

If successful, it would be the first decision from an international body finding that nation states have a duty to reduce their emissions under human rights law. Unfortunately, even if the Committee finds that there has been a violation, it cannot force Australia to comply with its decision, however taking a case to the Committee result in international pressure on Australia and nation states do frequently comply with rulings of the Human Rights Committee.

Who is supporting the islanders' claim?

The region's peak native title body for the region, Gur A Baradharaw Kod (GBK) Sea and Land Council is supporting the claim. GBK represents the collective interests of the region's Traditional Owners by driving policy and program development in the region.

How can the public get involved?

To support the islanders' claim, GBK is launching a campaign calling for urgent action on climate change and to proper adaptation measures for Torres Strait communities. To raise awareness, an online public petition, hosted by environmental charity 350 Australia, calls on the Prime Minister to take action. The public can sign up at www.ourislandsourhome.com.au

How is the legal action being funded?

Making a complaint to the Human Rights Committee is free. ClientEarth is providing its legal advice to the islanders pro bono. ClientEarth is funded by philanthropic foundations. Five barristers are also acting for the islanders pro bono, including Sudhanshu Swaroop QC, Monica Feria-Tinta and Simon Milnes of 20 Essex Street London and Brian Walters Qc and Dr Adam McBeth of the Victorian bar.