



# KEY POINTS ABOUT THE CASE



## Australian Climate Case: Key Information

July 2025

### Who are Uncle Pabai and Uncle Paul?

Uncle Pabai and Uncle Paul are two Guda Maluyligal (pronounced Gooda mah- loo -li-gal) men, Traditional Owners, and Native Title rights holders from the islands of Boigu and Saibai in Zenadth Kes (the Torres Strait). They are lead plaintiffs in a climate change class action against the Australian government for the Torres Strait, called the Australian Climate Case.

### Uncle Pabai says:

*"We are born to these islands, they are our mothers, our identities, who we are. For thousands of years, our warrior families fought off anyone who tried to take our homelands from us. But now we could lose the fight to climate change."*

*I'm a Guda Maluyligal man and a Traditional Owner of the island of Boigu in the Torres Strait. I am in my 50s, with five daughters and two sons. I've lived on Boigu my whole life, and I am a Director on the Prescribed Body Corporate that represents the 6 clans on the island.*

*Boigu is extremely low-lying – the highest point is 3m above sea level – making it very vulnerable to flooding. The flooding is getting worse because of climate change. As a Boigu man I have specific responsibility to protect sacred cultural sites but the rising sea*



# KEY POINTS ABOUT THE CASE



*is making it impossible and could mean they disappear forever. Loss of these places would be devastating for Guda Maluyligal communities now and for generations to come. That's why I'm bringing this case – I have a cultural responsibility to protect my community, our culture and spirituality from climate change."*

## Uncle Paul says:

*"Weather patterns have changed, seasons have changed. It's affecting everything – our homes, our gardens, our sacred sites, our reefs. If something doesn't change quick then we'll be environmental refugees on our own islands.*

*I'm a Guda Maluyligal man and a Traditional Owner of the island of Saibai in the Torres Strait. I am in my 50s and have 2 daughters and six sons. My family has lived on this island for thousands of years. I am a Director of the Prescribed Body Corporate which represents the 7 clans on the island.*

*Climate change is already here: storm surges are getting worse and the seasons have changed as well. Our gardens now get flooded with salt water, and our homes, cemetery, school and community centre are all at risk. There are also a lot more mosquitos, so the risk of catching malaria is greater.*

*If we become climate refugees we will lose everything: our homes, community, culture, stories, and identity. We can keep our stories and tell our stories but we won't be*



# KEY POINTS ABOUT THE CASE



*connected to Country because Country will disappear. That's why I am taking the government to court, because I want to protect my community and all Australians before it's too late."*

## What are the Uncles and their legal team arguing?

The Uncles are arguing that by failing to take reasonable steps to prevent climate change harms, the Federal Government is negligent and has unlawfully breached their duty of care to the Torres Strait community. They are also asking the court to make an order to reduce climate emissions in line with the best available science. The Australian Government has an emissions reduction target of 43% by 2030 (on 2005 levels), which has been roundly criticised by climate experts, with the Climate Council recommending 75% by 2030.

This case is the first time that anyone in Australia has asked the Court to make a binding order the Federal government reduce emissions in line with what the science tells us we need.

The case is inspired by one of the world's most successful climate test cases in history, the Urgenda case in the Netherlands. In this case, the court considered the current Dutch climate policies inadequate and unlawful, labelled them as hazardous negligence, and ordered the Dutch Government to limit annual GHG emissions by at least 25 percent below 1990 levels by 2020.



# KEY POINTS ABOUT THE CASE



## What does climate science say about climate change and the Torres Strait?

Scientists say that if global emissions don't change course – and fast – then islands in the Torres Strait could become uninhabitable due to rising sea levels in less than 30 years<sup>1</sup>. This will force Torres Strait Islander communities to leave their homes, severing thousands of years of connection, culture, and community. Uncle Paul and Uncle Pabai talk about their islands as their mothers and having to leave like the umbilical cord being cut forever.

In the immediate term, rapid sea level rise, combined with other climate change impacts like increased temperatures and extreme weather events, is causing widespread erosion, flooding, salt inundation and destruction of agricultural land and fishing grounds which is already leading to the loss of culture and livelihoods.

The science is clear — to prevent the worst of climate change and the destruction of the Torres Strait, global temperature rise must be kept below 1.5C. Climate Council analysis shows that Australia must strive for a 75% emissions cut below 2005 levels by 2030, and net zero emissions by 2035 in order to help limit global heating at the safest levels now possible.

The Federal Government's current commitment to reduce emissions by 43% by 2030 is not in line with the best available science, nor is it consistent with a global 1.5 degree warming limit.

---

<sup>1</sup> Pabai Pabai v Commonwealth of Australia, *Applicants' primary closing submissions* (Federal Court of Australia, VID622/2021, 28 May 2024) [17].





# KEY POINTS ABOUT THE CASE



## What could a win in the Uncles' case look like?

As a bold and complex case, there are many branching potential outcomes. Because the Uncles' case is also a 'test case', or case containing legal questions that have not been tested in a court before, a win on any aspect of this case will create a historically significant foundation for cases that come after.

There are several possible outcomes that would have a significant positive impact on communities and the development of law.

These include, but are not limited to:

- A. **The Court finding a 'duty of care':** A court finding that the Federal Government has a 'duty of care' to protect Torres Strait communities from climate harms would be an historic and incredibly significant development in the law. Even if the court doesn't rule in the Uncles' favour on the other points of the case, a finding of a 'duty' would be a foundation for Torres Strait people to vindicate their rights in future cases.
- B. **Finding of a breach of a 'duty of care':** If a 'duty of care' is found (see A) *and* the court finds that the government has breached this duty by, for example, failing to consider the science in formulating emissions reductions targets, this would set a significant legal precedent.
- C. **Establishment of 'cultural loss':** The Court could find that harm to culture or *Ailan Kastom* is legally protected and compensable. This would be a very significant development in the law, because the Federal Court would be recognising for the first time that loss of culture, as a stand-alone loss is legally protected and



# KEY POINTS ABOUT THE CASE



something that can be compensated under the law. (Previously cultural loss has increased compensation in other cases, but hasn't been an independent source of damages). This could lead to further cases brought by First Nations people across the country for other forms of cultural loss as a result of climate change, such as loss of cultural heritage sites, loss of traditional food sources, and forced displacement from traditional lands as a result of extreme weather. This would be the first time compensation is given for cultural loss as a stand-alone loss, or it's own "head of damage", beyond native title, and could pave the way for compensation for other types of cultural loss caused by government policies.

- D. **A court order to the Federal Government to remedy the breach:** If the court finds that a 'duty of care' exists and that it has been breached (both A and B), the court could make an order to the Commonwealth to 'remedy' this breach, or take specific actions to resolve it. Uncle Paul and Uncle Pabai are asking for declaratory relief and injunctions from the court. This could mean that the court orders the Australian Government to stop contributing to the climate harm experienced in the Torres Strait by reducing Australia's carbon emissions in line with the best available science.
- a. The Climate Council's analysis shows that Australia must strive for a 75% emissions cut below 2005 levels by 2030, and net zero emissions by 2035, in order to help limit global heating at the safest levels now possible. At the moment, the Federal Government's emissions reduction targets are 43% by 2030 and net zero by 2050. This is not in line with the best available science, nor is it consistent with a global 1.5 degree warming limit. **A full win could be transformational in that it could lead to the Government reshaping Australia's Federal climate and energy policies.** It could supercharge our transition to a clean economy, and make new coal, oil, and



# KEY POINTS ABOUT THE CASE



gas projects unlawful, for example.

## Who is supporting Uncle Pabai and Uncle Paul to bring their case?

- The Uncles are being represented in Court by commercial law and class action specialist firm Phi Finney McDonald, and a large team of counsel led by senior counsel Fiona McLeod AO SC and Tomo Boston KC.
- Grata Fund, a not-for-profit organisation, supported the incubation of this case, and helped the Uncles get it off the ground. They are providing campaign capacity and funding support to the Uncles and their communities, to enable the case to go to court, to develop and implement a public campaign that elevates Torres Strait voices and builds community campaigning capacity.
- Climate-hit communities from across Australia are standing together. A broad range of climate-impacted individuals and groups have pledged support for the Uncles and the case, and participated in campaign activities. In a show of solidarity, representatives from the Climate Impacted Communities Alliance— including Bushfire Survivors for Climate Action — attended the case's closing arguments hearings in April 2024. In November 2024, Uncle Pabai and Uncle Paul toured the Northern Rivers, meeting with flood survivors and community leaders.
- **Nearly half a million people around the world have pledged their support to the Uncles.** Thousands of people have signed Grata Fund's 'Mura Kalmel Sipa' pledge (meaning 'Together We Stand' in Kala Kawa Ya (KKY)), and more than 518,078 people have signed Amnesty International's petition in support of the Uncles or written a letter of support.



# KEY POINTS ABOUT THE CASE



## When will a decision be handed down?

The Federal Court has indicated that a judgment will be delivered at 2pm, 15 July 2025.

## Plain English version: Australian Climate Case — Key Information

### Who are Uncle Pabai and Uncle Paul?

Uncle Pabai and Uncle Paul are Torres Strait Islander / Zenadth Kes leaders and Guda Maluyligal men. They are from Boigu and Saibai and are Traditional Owners.

Uncle Paul and Uncle Pabai have brought a case against the Australian Government to protect Boigu, Saibai and all the other islands in the Torres Strait from climate change.

This case is a 'class action' case which means a few people fight in the court on behalf of a bigger group of people because the whole group is being affected by the same problem. Uncle Pabai and Uncle Paul are bringing the case on behalf of all Torres Strait Islanders because everyone in the Torres Strait is being affected by climate change.

The Uncles are saying that the government is not doing enough to protect the islands and reduce carbon emissions, which is making climate change worse and threatening their islands.





# KEY POINTS ABOUT THE CASE



## Why are the Uncles taking the Government to Court?

Climate change is a big problem for the Torres Strait and is already causing lots of damage. Climate change makes the sea level rise, causes big storms and changes the natural weather patterns. This is causing flooding, erosion and extreme temperature on the islands which is dangerous for families in lots of different ways:

- Erosion of land, sacred sites and resting places of the ancestors;
- Damage to infrastructure like housing, fresh water sources, sewerage systems and schools;
- Damage to the mangroves, reefs, seagrass beds and ocean which is hurting the fish, turtles and dugong and makes it harder for people to feed their families and practice *Ailan Kastom*;
- Damage to the soil and garden beds which is hurting the birds, ground vegetables and trees and makes it harder for people to feed their families and practice *Ailan Kastom*; and
- Impacts to the physical health and wellbeing of the community, especially Elders caused by extreme heat, mosquito-borne diseases, loss of access to healthcare, culture, spirituality and healthy food.

Scientists say that rising seas could make some islands in the Torres Strait uninhabitable in under 30 years. This would mean communities may have to leave their homes.

Uncle Pabai and Uncle Paul have told the Court that the Australian Government has not done enough to stop climate change from hurting island communities in the Torres Strait and that they have a responsibility to do more.



# KEY POINTS ABOUT THE CASE



## How does climate change work and what do scientists say?

Climate change is caused by carbon emissions which come from burning fossil fuels like coal, oil and gas.

These carbon emissions make a blanket around the earth so the heat from the sun gets trapped and makes everything hotter.

The heat makes ice from the North and South Pole melt and causes the sea level to rise. All the heat trapped in the sky and the ocean also causes more extreme storms, cyclones, heatwaves, bushfires, droughts and the death of plants, animals and coral reefs.

Expert scientists can measure how much the earth's temperature has risen or will rise because of the fossil fuels in the atmosphere.

This number is very important because just a small rise can cause big problems. It's similar to a person having a fever – if your temperature goes up just 1 degree it can cause big problems to all the different parts of your body. The higher the temperature goes up the more dangerous it will be for the Torres Strait.

Scientists say that to stop some of the worst harm from climate change, we have to keep the temperature rise below 1.5 degrees.

To prevent the worst impacts of climate change, the Climate Council says that Australia has to:

- Reduce emissions by 75% by 2030 (compared to 2005 levels); and



# KEY POINTS ABOUT THE CASE



- Reach net zero by 2035.

But right now, the Australian Government has said it will reduce emissions by 43% by 2030—far below what the science says is needed.

That is why Uncle Pabai and Uncle Paul are taking the Government to court to argue that they have a duty of care to stop making the earth hotter and causing more climate harm to our communities.

## What does Uncle Pabai say?

Uncle Pabai is from **Boigu Island**, which sits just **three metres above sea level** at its highest point. The island is flooding more often because of climate change and could be lost underwater:

*"We are born to these islands, they are our mothers, our identities, who we are. For thousands of years, our warrior families fought off anyone who tried to take our homelands from us. But now we could lose the fight to climate change.*

*I'm a Guda Maluyligal man and a Traditional Owner of the island of Boigu in the Torres Strait. I am in my 50s, with five daughters and two sons. I've lived on Boigu my whole life, and I am a Traditional Owner from the Koedal (crocodile) clan, one of 6 clans on the island.*

*Boigu is very low-lying – the highest point is 3m above sea level – making it very vulnerable to flooding. The flooding is getting worse because of climate change. As a Boigu man I have specific responsibility to protect sacred cultural sites but the rising sea*



# KEY POINTS ABOUT THE CASE



*is making it impossible and could mean they disappear forever. Loss of these places would be devastating for Guda Maluyilgal communities now and for generations to come. That's why I'm bringing this case – I have a cultural responsibility to protect my community, our culture and spirituality from climate change."*

## **What does Uncle Paul say?**

Uncle Paul is from **Saibai Island**, where his family has lived for thousands of years. He has seen firsthand how climate change is affecting his community:

*"Weather patterns have changed, seasons have changed. It's affecting everything – our homes, our gardens, our sacred sites, our reefs. If something doesn't change quick then we'll be environmental refugees on our own islands.*

*I'm a Guda Maluyilgal man and a Traditional Owner of the island of Saibai in the Torres Strait. I am in my 50s and have 2 daughters and 6 sons. My family has lived on this island for thousands of years. I am a Traditional Owner from the Umay (dog) clan, one of 7 clans on the island.*

*Climate change is already here: storm surges are getting worse and the seasons have changed as well. Our gardens now get flooded with salt water, and our homes, cemetery, school and community centre are all at risk. There are also a lot more mosquitos, so the risk of catching malaria is greater.*

*If we become climate refugees we will lose everything: our homes, community, culture, stories, and identity. We can keep our stories and tell our stories but we won't be connected to Country because Country will disappear. That's why I am taking the*





# KEY POINTS ABOUT THE CASE



*government to court, because I want to protect my community and all Australians before it's too late."*

## What are the Uncles arguing in Court?

The Uncles' legal team is arguing that the **Australian Government has a duty of care** to protect the Torres Strait from climate change harms. They believe the government is not doing enough to stop climate change, and is failing this duty.

They are also asking the court to make a decision on:

- Legally forcing the government to cut emissions in line with science, to reduce climate change harms;
- Compensating Torres Strait Islanders for the harm caused by the Commonwealth's approach to climate change; and
- Taking concrete actions to reduce the impact of climate change in the Torres Strait.

## What could a win in Court mean?

The case is very complex – which means there are lots of different legal questions the Judge has to make a decision about.

If the Judge says that Uncle Paul and Uncle Pabai have won all or just some of these legal questions – it would make history and be a huge step in the fight for First Nations and climate justice.

A win could mean:



# KEY POINTS ABOUT THE CASE



1. **The Court rules that the government has a duty of care to protect Torres Strait communities from climate change harms.** This could push the law forward, and make it much easier for other people in the Torres Strait to win similar cases in the future.
2. **The Court finds the government has not met their duty to protect Torres Strait Islanders from climate harms.** This could push the law forward even further, and make it much easier for other people in the Torres Strait to win similar cases in the future.
3. **The Court recognises the loss of culture that Torres Strait Islanders face due to climate change harms.** This could lead to future legal cases where First Nations communities seek compensation for the loss of parts of their culture.
4. **The Court orders the government to take action to reduce climate change pollution in line with the science.** This could lead to the government setting lower science-based emissions reductions targets.

The Court could say yes to everything, or just some things. There is also a chance it could say no to everything, but no matter what happens, the Uncles will have made it easier for other people to win cases like this in the future.

Through their case, they have also made thousands of other Australians and people around the world aware of the threat to the Torres Strait caused by climate change, and inspired them to take action for climate justice.



# KEY POINTS ABOUT THE CASE



## **Who is supporting the Uncles?**

Uncle Pabai and Uncle Paul are backed by a strong legal and community support team, including:

- Lawyers from Phi Finney McDonald, a firm specialising in class action lawsuits.
- Grata Fund, a non-profit helping to fund the Uncles' case and campaign, and working with them to raise awareness about what is happening in the Torres Strait and the need for rapid climate pollution reduction and adaptation.
- Other climate-affected communities, including bushfire and flood survivors from Australia and the Pacific.
- Hundreds of thousands of supporters worldwide, many of whom have signed petitions backing the Uncles.

## **When will a decision be made?**

The Federal Court has indicated that a judgment will be delivered at 2pm, 15 July 2025.

This case could be a turning point for climate action in Australia. If the Uncles win, it could push the government to take stronger action on emissions and help protect communities across Australia from climate change.