**Communication No. 3624/2019**

**Submitted on behalf of Billy et al.**

**under the Optional Protocol to the**

**International Covenant on Civil and Political Rights**

# Australian Government Submission

**on Admissibility and Merits**

**to the United Nations Human Rights Committee**

**Office of International Law**

**Attorney-General's Department**

**Canberra**

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## I. INTRODUCTION

1. By a *note verbale* dated 18 June 2019, the Secretary General of the United Nations Office of the High Commissioner for Human Rights conveyed to the Permanent Representative of Australia to the United Nations in Geneva the text of Communication No. 3624/2019 (Billy et al v. Australia) ('the Communication').

2. The Communication was submitted by the Authors[1] to the Human Rights Committee ('the Committee') pursuant to the *First Optional Protocol to the International Covenant on Civil and Political Rights* ('the Optional Protocol').

3. In accordance with rule 97(2) of the Committee's Rules of Procedure, the Committee requested that Australia submit observations in respect of both the admissibility and merits of the Communication by no later than 18 December 2019. The Australian Government was subsequently granted an extension of time until 30 March 2020 to submit its written observations.

4. On 26 March 2020, the Committee advised that in light of the impact of COVID-19, the Committee has granted an automatic two month extension of deadlines to provide observations or comments for all registered cases before human rights treaty bodies (excluding urgent actions and interim measures requests). Therefore, the new deadline for the observations on admissibility and merits is 30 May 2020. The Australian Government appreciates the additional time to provide this response to the Authors' submissions.

5. The Australian Government recognises that climate change is a serious, long-term global challenge that will intensify climate-related stresses, including extreme weather events, climate shifts and sea-level rise. This may adversely affect food security, and local and regional stability over time.

6. The Australian Government also recognises its commitments in the *Paris Agreement*[2] and is taking practical action to reduce emissions, and increase resilience to climate impact. The Australian Government's 2030 target under the *Paris Agreement* is a significant contribution to global efforts to address climate change. It represents a halving of emissions per person in Australia, or a two-thirds reduction in emissions per unit of GDP, among the highest reductions of G20 countries. The Communication fails to confront these efforts.

[1] Mr Daniel Billy, Mr Ted Billy, Ms Nazareth Fauid, Mr Stanley Marama, Mr Yessie Mosby, Mr Keith Pabai, Mr Kabay Tamu and Ms Nazareth Warria, and their children, Genia Mosby, Ikasa Mosby, Awara Mosby, Santoi Mosby, Baimop Mosby and Tyrique Tamu.
[2] *Paris Agreement*, Paris, 12 December 2015 (entered into force generally on 4 November 2016; entered into force for Australia on 9 November 2016).

7. In short, the Australian Government respectfully submits that the Authors' claims are inadmissible, because they are either incompatible with the *International Covenant on Civil and Political Rights*[3] (the Covenant) or not sufficiently substantiated to support a claim.

8. If the Committee were to take the view that any of the claims made by the Authors are admissible, which is denied, the Australian Government respectfully submits that the allegations made by the Authors are meritless for the following reasons:

    i. all alleged obligations to take 'mitigation measures' do not fall within the scope of the Covenant;
    ii. all alleged obligations to take adaptation measures are without merit as the alleged effects of climate change on the enjoyment of the Authors' human rights are yet to be suffered and are mere projections about future impacts;
    iii. the right to life (Article 6) requires States to protect against arbitrary deprivation of life, not the general effects of climate change, and such a right does not extend to the right to life 'with dignity' or the 'right to a healthy environment';
    iv. there has been no breach of the Authors' cultural rights (Article 27). The Australian Government has put in place laws that are designed to protect the survival and continued development of Torres Strait Islander cultural identity, and the Authors' claims concern future hypothetical violations of the right;
    v. there has been no breach of Article 17, as there is no current unlawful or arbitrary interference with the right to privacy, family and home life;
    vi. there has been no breach of Article 24. The Australian Government has put in place laws and other measures to ensure the protection of minors in the Torres Strait region; and.
    vii. there has been no breach of Articles 6, 17, 24 and 27 and therefore no obligation to provide remedies under Article 2 of the Covenant.

9. In these submissions, the Australian Government will address issues of admissibility (section II), demonstrate that the Authors' claims in respect of Articles 6, 27, 17, 24, in conjunction with Article 2, lack merit (section III), and explain why the Authors are not entitled to any of the broad range of remedies they seek (section IV). Finally, while none of the Authors' claims have legal merit, in recognition of the serious challenge that climate change presents, the submissions will conclude by providing observations on the measures taken by the Australian Government to reduce greenhouse gas emissions, increase energy efficiency and fast track the development and uptake of clean energy.

[3] [1980] ATS 23.

## II. SUBMISSIONS ON ADMISSIBILITY

### *1) The Authors' claims concern treaties other than the Covenant and are inadmissible ratione materiae*

10. The Authors allege that the Australian Government has breached certain obligations under international climate change treaties to which Australia is a party, including the *Paris Agreement.*[4] The Authors further state, at paragraph 132 of their submissions, that 'Australia's international obligations under international climate change treaties…constitute part of the entire prevailing system relevant to the examination of Australia's human rights violations under the ICCPR'.

11. The Australian Government respectfully submits that, to the extent the Authors' claims rely on obligations under international climate change treaties to which Australia is a party, such claims are inadmissible *ratione materiae*, because they are not 'rights set forth in the Covenant' under Article 1 of the Optional Protocol.

12. Article 3 of the Optional Protocol provides that the Committee must consider a communication to be inadmissible if it meets one of three grounds of inadmissibility, namely: anonymity; abuse of the right to submit a communication; or incompatibility with the provisions of the Covenant. One of the ways a claim can be incompatible with the provisions of the Covenant is incompatibility '*ratione materiae'*. Pursuant to Article 1 of the Optional Protocol the object of a communication is limited to 'rights set forth in the Covenant'. Similarly, rule 99(b) of the Rules of Procedure requires the Committee to, when reaching a decision on the admissibility of a communication, ascertain that the individual in question claims, 'in a manner sufficiently substantiated, to be a victim of a violation by that State party of *any of the rights set forth in the Covenant*'. Thus, claims are incompatible with the provisions of the Covenant 'when they do not come under the scope of the Articles of the Covenant'.[5]

13. For example, in *K.L v Denmark,* the author claimed violations of the Covenant and other international instruments. The Committee concluded:

> in accordance with article 1 of the Optional Protocol, the Human Rights Committee has only examined the author's claims insofar as they are alleged to reveal breaches by the State party of the provisions of the International Covenant on Civil and Political Rights. The Committee has no competence to examine alleged violations of other international instruments.[6]

[4] See ie. Authors' submissions, [117].
[5] *Report of the Human Rights Committee* (Vol I), 94th Session, 95th Session, 96th Session (2009), UN Doc A/64/40, 99 [123].
[6] Human Rights Committee, *K.L v Denmark, Communication 59/1979, UN Doc. CCPR/C/OP/1*, at 25 (HRC 1980) [5].

14. The Australian Government submits that Australia's obligations under international climate change treaties are beyond the scope of the Covenant and the Optional Protocol, as they are not 'rights set forth in the Covenant'. The Australian Government submits that to argue that the provisions in the Covenant, such as the right to life in Article 6, imports specific obligations under the *Paris Agreement* into the Covenant would necessarily invite the Committee to consider every alleged breach of articles of an entirely different treaty in deciding whether a State is in breach of the provisions of the Covenant. Such an approach is clearly outside the scope of the Committee's mandate.

15. For the same reasons as set out at paragraphs 11 to 14 above, the Australian Government disputes the admissibility of the Authors' claims that rely on international human rights treaties other than the Covenant. According to the Authors, Australia has breached its obligations under the *International Covenant on Economic, Social and Cultural Rights* (ICESCR), the *Convention on the Elimination of all Forms of Discrimination against Women* (CEDAW), the *Convention on the Rights of the Child* (CRC), and the *International Convention on the Elimination of all Forms of Racial Discrimination* (CERD). However, none of these obligations concern 'rights set forth in the Covenant' and they are therefore outside the scope of the Covenant and the Committee's mandate.

16. Accordingly, the Australian Government respectfully submits that any claims concerning treaties other than the Covenant are inadmissible *ratione materiae* as per Article 3 of the Optional Protocol and rule 99(b) of the Rules of Procedure.

### *2) International climate change treaties are irrelevant to the proper interpretation of the Covenant*

17. The Authors assert, at paragraphs 131 to 135 of their submissions, that international climate change treaties are 'relevant rules of international law applicable in the relation between the parties' within the meaning of Article 31(3)(c) of the *Vienna Convention on the Law of Treaties* (VCLT).[7]

18. The Australian Government respectfully submits that there is no basis for the Authors' assertion that international climate change treaties are relevant to interpreting rights under the Covenant.[8] Article 31(3)(c) is restricted to relevant rules of international law as applicable 'between the parties'. The basis for the Authors' assertion that international climate change treaties apply is unclear given that the State Parties vary widely with respect to the climate change treaties themselves and also with respect to State Parties to the Covenant.

[7] *Vienna Convention on the Law of Treaties*, Vienna, 23 May 1969, 1155 UNTS 331 (entered into force on 27 January 1980).
[8] Authors' submissions, [131] to [135].

19. It would also set down a marker that the Covenant is capable of picking up and applying any treaty regime, notwithstanding the differences in State Parties, subject-matter, context, object and purpose between the Covenant and other treaty regimes. For example, a comparison of the two treaties at issue here, the *Paris Agreement* and the Covenant, reveals the stark differences between them. The central aim of the *Paris Agreement* is to ensure cooperation among States Parties in order to strengthen the global response to the threat of climate change and to adapt to its effects, whereas the aim of the Covenant is to oblige States Parties to protect and preserve the civil and political rights of individuals within their territory and subject to their jurisdiction. There are currently 189 States Parties to the *Paris Agreement* compared with 173 States Parties to the Covenant;[9] this means that 16 States that have signed the *Paris Agreement* have not elected to be bound by the terms of the Covenant. Accordingly, to apply the terms of the *Paris Agreement* when interpreting the rights under the Covenant would be completely inappropriate and contrary to the fundamental principle of State consent under international law.

20. Such an approach also fundamentally misconceives the purpose of Article 31(3)(c), which is designed to take into account the external context of a treaty when interpreting it, rather than using it to apply one treaty regime to another.[10] This would be contrary to applying the ordinary meaning of the text of a treaty consistent with Article 31(1) as the text of international climate change treaties and other international human rights treaties cannot be used to supplant or add to the clear language of the Covenant.

21. For these reasons, the Australian Government respectfully submits that there is no basis for the Committee to characterise international climate change treaties as 'relevant rules of international law applicable in the relation between the parties' within the meaning Article 31(3)(c).

### *3) The Authors' claims are manifestly unsubstantiated*

22. The Australian Government also respectfully submits that the Authors' allegations are inadmissible given that the Authors have failed to present a claim that is 'sufficiently substantiated' within the meaning of rule 99(b) of the Rules of Procedure.

23. Rule 99(b) requires an author to claim 'in a manner sufficiently substantiated, to be a victim of a violation by that State party of any of the rights set forth in the Covenant'. Accordingly, the Authors must claim to be a 'victim of a violation' of the Covenant and also produce relevant evidence that demonstrates that such a claim is 'sufficiently substantiated'. In this regard, the

[9] United Nations Treaty Collection, Status of Treaties, Status of the Paris Agreement as at 27 May 2020 available at https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=XXVII-7-d&chapter=27&clang=_en; Status of the Covenant as at 27 May 2020, available at https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-4&chapter=4&clang=_en.
[10] Corten, Klein (eds), *Vienna Convention on the Law of Treaties: A Commentary, Volume 1*, (2011) 808.

Australian Government recalls the Committee's repeated position that 'for a person to claim to be a victim of a violation of a right protected by the Covenant, he or she must show either that an act or omission of a State party has already adversely affected his or her enjoyment of such right, or that such an effect is imminent'.[11]

24. All of the Authors' claims rely on alleged breaches of obligations other than those in the Covenant. To the extent that the Authors' claims do relate to a violation of a right under the Covenant, there is no evidence that there is any current or imminent threat of a violation of such rights. Whilst this is true of all of the Authors' claims, this is particularly the case in respect of the Authors' claims of a violation of Articles 27 and 17 of the Covenant.

25. Regarding Article 27, there is no evidence of any current or imminent threat of a violation of the Authors' enjoyment of their right to culture as their claims relate to a potential future relocation of communities and subsequent future impact on their way of life and culture. Regarding Article 17, the Authors' assertions relate entirely to a claimed future disruption to the Authors' private, home and family life based on a potential future risk of relocation. To succeed in the Authors' claims of violation of Articles 27 and 17, the Authors would have to show, for example, evidence of a lack of preservation of the Authors' cultural rights (Article 27),[12] and evidence of an arbitrary or unlawful interference with the Authors' private, home and family lives (Article 17).[13] The Authors have made no such allegations in the Communication.

26. The Australian Government also respectfully submits that the Authors' claims fail to 'sufficiently substantiate' any meaningful connection or causation under international law between Australia's measures (or alleged failure to take measures) and the alleged violations of the Covenant. As noted above, to be 'sufficiently substantiated', the Authors' claims must allege that an act or omission *by Australia* has adversely affected the enjoyment of their rights under the Covenant or that such an effect is imminent. By their own admission, the Authors have failed to meet that test. The Authors' own submissions define climate change as 'changes in the Earth's natural climatic systems' and therefore by definition a global issue and not the sole responsibility of the Australian Government or any other single State. The Authors have failed to allege or produce any evidence that Australia is responsible for the majority of climate change at a global level or exclusively responsible for the alleged impacts of climate change that the Authors claim they will experience in the future in the Torres Strait region. The Australian Government thus submits that the Authors

[11] *E.W. et al. v The Netherlands* (429/1990); *Bordes and Temeharo v. France* (No 645/1995); *Aalbersberg v The Netherlands* (No 1440/2005).
[12] Human Rights Committee General Comment No 23; *Poma Poma v Peru* (CCPR/C/95/D/145/2006) Human Rights Committee, Views adopted 27 March 2009*; Mavlonov and Sa'di v Uzbekistan* (CCPR/C/95/D/1334/2004) Human Rights Committee, Views adopted 29 April 2009, [8.7].
[13] General Comment No 16, Article 17 – The Right to Respect of Privacy, Family, Home and Correspondence, and Protection of Honour and Reputation, U.N. Doc. HRI/GEN/1/Rev.9 (1988), [1].

have failed to substantiate any claims relating to Australia's alleged obligation to take such measures because it is not possible, under the rules of State responsibility under international law, to attribute climate change to Australia.[14]

27. For these reasons, the Australian Government respectfully submits that the Committee must declare inadmissible the Authors' claims including in respect of Articles 27 and 17.

### *4) The Authors are not 'victims' under Article 1 of the Optional Protocol to the Covenant*

28. In light of the above, the Authors have also failed to discharge the burden of proof that they are 'victims' within the meaning of Article 1 of the Optional Protocol to the Covenant. The Authors cannot argue that the risk to which they might be exposed through the effects of climate change would be such as to render imminent a violation of their rights under the Covenant.

29. Allegations that fall short of actual or imminent violations of the Covenant do not suffice to make the Authors 'victims' within the meaning of the Optional Protocol. As stated at paragraph 23 above, the Committee has advised that 'for a person to claim to be a victim of a violation of a right protected by the Covenant, he or she must show either that an act or omission of a State party has already adversely affected his or her enjoyment of such right, or that such an effect is imminent'.[15] The Authors' invocation of a risk that has not yet materialised does not make them 'victims'. The Australian Government recalls that the Committee in *Teitiota v New Zealand* rejected the Author's argument that a real risk of harm from the effects of climate change was imminent in Kiribati; there was sufficient time for intervening acts to take place, by the Republic of Kiribati and the international community, to take affirmative measures to protect the population.[16]

30. The Australian Government accepts that climate change may have adverse consequences now and in the future, but as a matter of international human rights law, there is no evidence to support an assertion that such adverse consequences have, or will imminently, adversely affect the Authors' enjoyment of their rights under the Covenant. None of the facts alleged place the Authors in the position to claim to be victims whose right are violated or under imminent prospect of violation.

31. The Australian Government therefore respectfully submits that the Authors have not shown that they are 'victims' within the meaning of Article 1 of the Optional Protocol and their claims should be declared inadmissible.

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[14] See further paragraphs [36] to [38] relating to State Responsibility and attribution.
[15] *E.W. et al. v The Netherlands* (429/1990); *Bordes and Temeharo v. France* (No 645/1995); *Aalbersberg v The Netherlands* (No 1440/2005).
[16] *Teitiota v New Zealand* (ICCPR Comm 2728/2016), Views of 7 January 2020, [9.12].

*Conclusion*

32. For these reasons, the Australian Government respectfully submits that the claims made by the Authors are inadmissible.

## III. SUBMISSIONS ON MERITS

33. The Authors allege that the Australian Government is violating its responsibility to protect their human rights by failing to take 'adaptation' measures and 'mitigation' measures.[17] The Australian Government submits that these two categories of claims must be dealt with separately.

### 1) *Mitigation measures*

34. The Authors allege that the Australian Government is violating its responsibility to protect their rights under the Covenant by failing to take adequate mitigation measures to reduce Australia's national greenhouse gas emissions which contribute to climate change. The Authors allege that Australia is failing to set an ambitious national emissions reduction target under the *Paris Agreement*, failing to pursue adequate domestic measures to meet that target, and failing to cease promoting the extraction and use of fossil fuels.[18]

35. However, none of these alleged obligations to take 'mitigation measures' fall within the scope of the Covenant. There is no obligation in the Covenant to 'set a sufficiently ambitious national emissions reduction target under the 2015 Paris Agreement', to pursue 'adequate domestic remedies to meet that target' or to 'cease promoting the extraction and use of fossil fuels, particularly coal for electricity generation'.[19] The Australian Government respectfully submits that the Authors' arguments in relation to mitigation measures are misconceived.

36. Even if the Committee found that certain mitigation measures do fall within the Covenant's remit, the Australian Government respectfully submits that there is no merit in the claims relating to Australia's alleged obligation to take such measures because it is not possible, as a matter of international human rights law, to attribute climate change to Australia. The Australian Government accepts that every internationally wrongful act of a State entails the international responsibility of that State.[20] As the Authors have noted at paragraphs 128 – 130, a State commits an internationally wrongful act when an action or omission (a) is attributable to the State under international law; and (b) constitutes a breach of an international obligation of the State.

37. As a matter of international law, whether or not certain acts or omissions are attributable to a State are determined by reference to the rules on attribution. The general rule of attribution is contained in Article 4 of the *Articles on Responsibility of States for Internationally Wrongful Acts* which provides that:

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[17] Authors' submissions, [8].
[18] Authors' submissions, [7].
[19] Ibid.
[20] *Articles on Responsibility of States for Internationally Wrongful Acts*, UN General Assembly Resolution 56/82 (2001), Article 1.

> [t]he conduct of any organ shall be considered an act of that State under international law, whether the organ exercises legislative, executive, judicial or any other functions, whatever position it holds in the organisation of the State, and whatever its character as an organ of the central Government or of a territorial unit of the State.[21]

38. The Australian Government submits that climate change cannot be attributed to Australia under international law. It is not possible, as a matter of international law, to trace causal links between Australia's contributions to climate change, Australia's efforts to address climate change and the alleged effects of climate change on the Authors' enjoyment of human rights. As stated by the UN High Commissioner for Human Rights in its Reports on the Relationship between Climate Change and Human Rights, 'it is virtually impossible to disentangle the complex causal relationships linking historical greenhouse gas emissions of a particular country with a specific climate change-related effect, let alone with the range of direct and indirect implications for human rights'.[22] Further, it is 'impossible to establish the extent to which a concrete climate change-related event with implications for human rights is attributable to global warming'.[23] The effects of climate change are not internationally wrongful acts that can be attributed to Australia under international law and, as a result, the Australian Government has no obligation under the Covenant to take 'mitigation' measures described by the Authors.

39. While such claims are without legal merit, the Australian Government takes this opportunity to provide the Committee with information on the measures that Australia is taking, including domestic mitigation measures, in relation to climate change and our obligations under the Paris Agreement. These are set out at paragraphs 120 to 139 below.

2) ***Adaptation measures***

40. The Authors allege that the Australian Government is also violating its responsibility to protect their rights under the Covenant by failing to take adequate adaptation measures to provide infrastructure to protect their lives and way of life, their homes and their culture against the threats posed by climate change.[24]

41. Yet these arguments are misconceived in the sense that there has been no breach: the allegedly adverse effects of climate change on the enjoyment of the Authors' human rights are yet to be suffered, if at all. As stated at paragraph 23 above, the Committee has clarified that for a person to

[21] *Articles on Responsibility of States for Internationally Wrongful Acts*, UN General Assembly Resolution 56/82 (2001), Article 4.
[22] UN High Commissioner for Human Rights, *Report of the Office of the United Nations High Commissioner for Human Rights on the Relationship Between Climate Change and Human Rights*, U.N. Doc A/HRC/10/61 (January 15 2009), [70].
[23] Ibid.
[24] Authors' submissions, [7].

claim to be a victim of a violation of a right 'he or she must show either than an act or omission of a State party has already adversely affected his or her enjoyment of such a right, or that such an effect is imminent'.[25] As demonstrated below, the Authors cannot establish that any human rights violations have occurred nor that such an effect is imminent.

42. In any event, the Australian Government submits that it is taking specific action in relation to adaptation measures. As the Authors have described,[26] a Commonwealth agency, Torres Strait Regional Authority (TSRA), coordinates climate change programs and policies for the benefit of the region and its communities.

*Governance of the Torres Strait Islands*

43. The Torres Strait Islands are subject to multiple levels of government – Commonwealth, State and local, as well as joint regulatory and liaison bodies which facilitate the *Treaty between Australia and the Independent State of Papua New Guinea Concerning Sovereignty and Maritime Boundaries in the Area between the Two Countries, including the Area Known as Torres Strait, and Related Matters*[27] (the Torres Strait Treaty).

44. The Torres Strait Treaty defines the border between Australia and Papua New Guinea and provides a framework for the management of the common border area. It also establishes the Torres Strait Protected Zone to enable Torres Strait Islanders and the coastal people of Papua New Guinea to carry on their traditional way of life. The formation of the Protected Zone has also helped to preserve and protect the land, sea and air of the Torres Strait, including the native plant and animal life.

45. While a number of Australian Government agencies operate in the Torres Strait, the TSRA is a Commonwealth statutory authority that provides regional coordination of policies and programs of benefit to Torres Strait Islander and Aboriginal people living in the region. The TSRA consists of an elected arm of 20 Torres Strait Islander and Aboriginal representatives from the region. It also has an administrative arm, consisting of a Chief Executive Officer and staff who implement and manage TSRA programs.

46. In order to respond to coastal management and climate change issues in the Torres Strait, a Torres Strait Coastal Management Committee was established by the TSRA from 2006-2013. The Committee comprised representatives from the communities worst affected by coastal erosion and inundation, including Boigu, Warraber, Masig and Poruma, as well as State and Australian Government agencies and various research institutions. The Committee enabled a whole of

[25] *Aalbersberg v The Netherlands* (No 1440/2005).
[26] Authors' submissions, [89].
[27] ATS 1985 No4, entered into force 15 February 1985.

government, coordinated response to coastal and climate change issues in the Torres Strait region and secured funds to progress identified priority coastal works.

47. The Queensland Government has lead responsibility for delivering a range of community services and land use planning and management functions that directly and indirectly affect land and sea management in the broader Torres Strait.

48. In addition, there are three local governments in the region – the Torres Strait Island Regional Council, Torres Shire Council and Northern Peninsula Area Regional Council. These councils have a strong role to play in supporting land and sea management through their technical expertise, planning and on-ground environmental management responsibilities, policy commitments and relevant initiatives.

*TSRA specific climate response*

49. The TSRA in collaboration with partner organisations developed the Torres Strait Climate Change Strategy 2014-2018 which considers local climate change projections, likely impacts and actions aimed at addressing knowledge gaps and risks.

50. In December 2016 the Torres Strait Regional Adaptation and Resilience Plan 2016-2021 (the Plan) was released which assesses climate change risks in greater details for a number of key areas. The Plan identifies a number of actions to reduce climate risks. Climate change impacts are greater in vulnerable communities compared to communities that are better resourced and less vulnerable. It is for this reason this Plan focuses both on climate impacts as well as reducing vulnerability through building resilience.

51. The core proposition underpinning the Plan is the recognition that:

> Torres Strait is the ancestral homeland of our people and is inseparable from our culture. Therefore we strive to remain here, to retain the achievements of the present and regain the good ways of the past for a future that is resilient to change, in particular to the effects of climate change. The ability to be responsive and adaptable is important in attaining the goals of individual and community happiness and wellbeing.

52. Moreover, the Plan recognises that adapting to climate change is an ongoing learning process and fast-tracking community sustainability and resilience will need to be high level strategic priorities for communities and governments alike. The TSRA has been, and continues to be, directly involved with communities in the Torres Strait to enable them to respond to climate change impacts. This includes:

    a. Community climate change workshops conducted across most outer island communities to develop local adaptation and resilience plans.

b. A climate resilient communities pilot project to work with two communities to consider how to fast-track increased community resilience and sustainability to reduce their vulnerability to climate change impacts.

c. A community heat mapping project to monitor temperature and humidity levels across a community to help assess heat stress risks and to progress measures to reduce heat risk for communities.

d. Working with Fisheries agencies and Health agencies to progress climate change implications for these two critical sectors.

e. Installing a number of monitoring sites to monitor tides, sea level changes, ocean and atmospheric temperature and rainfall.

53. TSRA also played a lead role in securing the information and funding to progress the construction of a new seawall for the low-lying island of Saibai. The project, co-funded by the Queensland and Australian Governments, will provide significant protection for the community from erosion and storm surge impacts. TSRA is working with local councils to progress more detailed assessment of coastal hazards to inform coastal adaptation responses.

54. TSRA is also actively seeking opportunities to reduce the region's carbon footprint through the uptake of clean energy technologies. TSRA has installed 70kW of solar PV on its own facilities on Thursday Island.

### *3) Summary of Authors' allegations*

55. The Australian Government respectfully submits that, to the extent that the Committee finds the Authors' claims admissible, the Committee should find that the Authors' claims are without merit.

56. The Authors' allege that Australia has breached the following rights under the Covenant:

a. The right to life (Article 6): the Authors allege that the Australian Government has not taken 'any (or any adequate)' measures of adaptation and mitigation amounting to a violation of the obligation to respect and ensure the right to life. The Authors allege that the right to life includes an obligation to prevent loss of life from the impacts of climate change, as well as a right to a life with dignity and a right to a healthy environment.[28]

b. The right to enjoy one's own culture (Article 27, in conjunction with Article 2(1)): The Authors allege that the effects of climate change will affect the traditional ways

[28] Authors' submission, 33-41.

of subsistence and cultural and spiritual way of life of persons of Torres Strait Islander descent.[29]

c. The right to be free from arbitrary interference with privacy, family and home (Article 17, in conjunction with Article 2(1)): The Authors claim that the effects of climate change constitute an arbitrary or unlawful interference with their private, family and home life.[30]

d. The right to ensure the rights of children and future generations (Article 24, in conjunction with Article 2(1)): Two of the Authors have brought the complaint on behalf of their children. They allege that the Australian Government has breached the rights of their children under Article 24 by violating Articles 6, 17 and 27 of the Covenant.[31]

57. The Australian Government will address each of these allegations in turn.

### *4) Merits - Article 6*

58. The Authors claim that the Australian Government has not taken 'any (or any adequate)' climate change adaptation and mitigation measures amounting to a violation of the obligation to respect and ensure the right to life. The Authors allege that the right to life includes an obligation to prevent loss of life from the impacts of climate change, as well as a right to a life with dignity and a right to a healthy environment.[32]

59. The Australian Government submits that the right to life under Article 6(1) requires States to protect against arbitrary deprivation of life, not the general effects of climate change, and that such a right does not extend to the right to life 'with dignity' or the 'right to a healthy environment'.

#### i) **Article 6(1) requires States to protect against arbitrary deprivation of life, not the general effects of climate change**

60. Article 6(1) of the Covenant provides:

> 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.

[29] Authors' submissions, 41-44.
[30] Authors' submissions, 44-46
[31] Authors' submissions, 46-47.
[32] Authors' submission, 33-41.

61. Article 6 requires State Parties to the Covenant to take appropriate steps to protect the right to life of those within its jurisdiction, including to investigate arbitrary or unlawful killings and punish offenders. This is reflected in General Comment No 36, which states relevantly:

> States parties must enact a protective legal framework which includes effective criminal prohibitions on all manifestations of violence or incitement to violence that are likely to result in a deprivation of life, such as intentional and negligent homicide, unnecessary or disproportionate use of firearms, infanticide, "honour killings", lynching, violent hate crimes, blood feuds, ritual killings, death threats and terrorist attacks.[33]

62. Accordingly, the Australian Government submits that the right to life established in Article 6(1) will only be engaged where conduct constitutes an arbitrary deprivation of life or a State has failed to protect the right to life by law.

63. The Authors do not claim that their lives (or the lives of any other Torres Strait Islander people) have been arbitrarily deprived by the Australian Government contrary to Article 6(1). The Australian Government respectfully submits that this is correct.

64. The obligation to protect the right to life by law means that States Parties are required to enact laws that criminalise unlawful killings and those laws must be supported by law enforcement machinery for the prevention, investigation and punishment of breaches of the criminal law. However, State Parties have discretion as to how best to fulfil this duty.[34] Thus one eminent commentator on the Covenant states that 'a violation of the obligation can only be assumed when State legislation is lacking altogether or when it is manifestly insufficient as measured against the actual threat'.[35]

65. The Australian Government respectfully submits that the Authors have failed to demonstrate both that Article 6(1) includes a generalised right of protection against the effects of climate change, and that relevant Australian legislation is 'manifestly insufficient' or 'lacking altogether'.

66. While the Authors claim that State Parties to the Covenant have an obligation to prevent loss of life from climate change, none of the jurisprudence they cite substantiates this claim. For example, the Authors rely on *Urgenda Foundation v The State of the Netherlands*[36], a Dutch domestic decision and therefore not binding on Australia as a matter of international law. It was in substance a negligence claim, relying upon the general negligence provisions of the *Dutch Civil Code*.

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[33] General Comment No 36, [20].
[34] M Nowak, *U.N. Covenant on Civil and Political Rights: CCPR Commentary*, 2005, page 123, [4].
[35] Nowak, ibid; N Petersen, 'Life, Right to, International Protection' in Max Planck Encyclopedia of International Law, October 2012
[36] *Urgenda Foundation v The Netherlands* [2015] HAZA C/09/00456689 (June 24, 2015); aff'd (Oct. 9, 2018) (District Court of the Hague, and The Hague Court of Appeal (on appeal), and *Netherlands v Urgenda* the Supreme Court of the Netherlands (20 December 2019).

67. The Authors have not demonstrated that other domestic courts (let alone international bodies) would follow the reasoning in this decision, given not only the differences in domestic constitutions but also negligence law. Indeed, the Authors' submissions acknowledge that the legal theory used in this case would 'plainly be ineffective in Australia'.[37]

68. Also, as noted by leading commentators, establishing factual causation as a matter of international law presents 'near insurmountable' barriers for potential tortfeasors due to the multitude and highly dispersed nature of the individual agents responsible for the emission of greenhouse gases into the atmosphere and the consequent difficulty of establishing that the negligence of one particular entity was a precondition to the realisation of particular climate change impacts.

69. The Australian Government notes the Authors' claims that Australia is obliged to prevent 'foreseeable loss of life'.[38] The Australian Government recalls that the Committee considers remoteness of harm in its assessment of an alleged breach to the right to life, for example, in *Teitiota v New Zealand.* In assessing an alleged breach to the right to life, the Australian Government notes that the Committee relevantly took into account that the timeframe for climate related impacts to take place in the Republic of Kiribati permitted sufficient time for intervening acts to take affirmative measures to protect the population. The Committee also took into account the adaptive measures the Republic of Kiribati was taking to reduce existing vulnerabilities and to build resilience to climate change-related harms.[39] In this regard, the Australian Government refers to the adaptation measures that it is taking in the Torres Strait, outlined at paragraphs 42 to 54 above. The Australian Government respectfully submits that the Committee's Views in *Teitiota v New Zealand* reinforces the high threshold required to demonstrate a violation of Article 6.

**ii) The claim of a right to life 'with dignity' goes beyond the scope of Article 6(1)**

70. The Authors claim that Article 6(1) of the Covenant includes a right to 'life with dignity', and that it requires the Australian Government to protect individuals from the generalised global threat of climate change.

71. The Australian Government respectfully rejects this submission, noting that it goes beyond the ordinary meaning of Article 6(1). The established rules of treaty interpretation are provided in the VCLT. In particular, Article 31(1) of the VCLT requires that treaties should be interpreted 'in good faith in accordance with the *ordinary meaning* to be given to the terms of the treaty in their context and in light of its object and purpose' (emphasis added). In this context, 'ordinary meaning' means the literal interpretation of the treaty terms. In relation to the right to life

[37] Authors' submissions, [23].
[38] Authors' submissions, 33-34.
[39] *Teitiota v New Zealand* (ICCPR Comm 2728/2016), Views of 7 January 2020, [9.12].

expressed in Article 6(1), the Australian Government respectfully submits that such a right does not extend to a right to a life with dignity. Although a laudable policy objective, which the Australian Government shares, such an extension of a right to life is unsupported by established rules of treaty interpretation.

72. The Authors' submissions rely solely on General Comment No 36 and jurisprudence from the Inter-American Court of Human Rights (IACtHR) to support their interpretation. The Australian Government respectfully submits that General Comments are only capable of providing guidance to States Parties in their interpretation of their obligations, and do not necessarily reflect an interpretation of the Covenant that is consistent with the established rules of treaty interpretation and agreed upon by States Parties.

73. The Australian Government also maintains its previously publicly stated position that the position adopted in General Comment No 36 in this respect is not supported by the ordinary meaning of Article 6(1) or any relevant jurisprudence.[40] This is reflected in the United States' public submissions on the General Comment:

> Any suggestion, even if only by implication, of a duty to protect life that would extend to addressing "general conditions in society that may eventually give rise to direct threats to life or prevent individuals from enjoying their right to life with dignity" strays beyond the mandate of the Committee and is unsupported by established rules of treaty interpretation with respect to Article 6. Whatever steps a State may take to address such conditions as those addressed in the draft such as environmental pollution, life threatening disease, the adequacy of health care, traffic and industrial accidents, hunger, poverty or homelessness, natural disasters or cyber-attacks, none of these fall within the scope of ICCPR obligations.

This position is also shared by other State Parties including Canada, the Netherlands, and the United Kingdom.[41]

74. The jurisprudence from the IACtHR on which the Authors seek to rely is based on a treaty to which Australia is not a party. Such jurisprudence from a regional court is not binding on the Committee and is only representative of the state of the law in that region.

75. Further, the Australian Government respectfully notes that socio-economic entitlements, such as the right to an adequate standard of living and the right to the highest attainable standard of health, are already protected by the particular regime under the ICESCR.

76. The Australian Government notes that ICESCR imposes a different standard of implementation of States Parties' obligations, which is the progressive realisation of rights, as described in Article 2(1) of ICESCR. Given that ICESCR was negotiated and concluded in parallel with the

[40] Submission of the Australian Government, Draft General Comment No 36 on Article 6 of the International Covenant on Civil and Political Rights: Right to life, available at https://www.ohchr.org/EN/HRBodies/CCPR/Pages/GC36-Article6Righttolife.aspx, accessed on 11 March 2020.
[41] These public submissions are available at https://www.ohchr.org/EN/HRBodies/CCPR/Pages/GC36-Article6Righttolife.aspx, accessed on 11 March 2020.

Covenant specifically to address such rights separately, there is no basis to infer that the negotiators would have considered such measures to be required or necessary to also give effect to the right to life within the meaning of Article 6.

**iii) Alternatively, the right to life 'with dignity' has limited application**

77. In the alternative, in the event the Committee should adopt, in the present Communication, that Article 6(1) includes the right to life 'with dignity', the Australian Government submits that such an interpretation should only be recognised in limited and particular circumstances.

78. The Australian Government recalls that the Committee's recent decision in *Caceres v Peru*.[42] This case directly involved the State through its lack of enforcement of domestic laws and oversight over the extensive spraying of banned pesticides. The State's lack of enforcement and oversight directly resulted in the death of one person, and the poisoning of many others.

79. In contrast to the Authors' claims in this Communication, the actions in question in *Caceres* were attributable to the State. The factual circumstances are also clearly distinguishable from the present Communication. The Australian Government has not infringed any domestic laws nor failed to enforce its laws. The Authors have not suffered any poor health, let alone acute poisoning or deaths.

80. Accordingly, the Australian Government respectfully submits that any interpretation of Article 6(1) to include the right to life 'with dignity' could only be breached in circumstances where a State's actions or inaction directly caused the death of an individual, which is outside the scope of the Authors' claims in this Communication.

**iv) The claim of a 'right to a healthy environment' goes beyond the scope of Article 6(1)**

81. The Authors assert at paragraph 156 of their submissions that the right to life under Article 6(1) of the Covenant includes the right to a healthy environment.

82. The Australian Government does not accept that the right to life under Article 6(1) includes the right to a healthy environment. Such an assertion is unsupported by established rules of treaty interpretation.

83. The Authors seek to rely on *Advisory Opinion 23 on Environment and Human Rights* by the IACtHR in support of this statement. The Australian Government reiterates that Australia is not bound by the decisions of the IACtHR. The IACtHR is established by the *American Convention on Human Rights* (American Convention), a regionally-based treaty regime to which Australia is not a party.

[42] *Caceres v Peru*, Views of 25 July 2019, [7.3].

84. The Australian Government respectfully rejects the Authors' assertion that the Advisory Opinion recognises the right to a health environment as a necessary component of the right to life.[43] The author cites paragraph 59 of the Advisory Opinion as the source for this assertion. In fact, paragraph 59 of the Advisory Opinion states as follows:

> The human right to a healthy environment has been understood as a right that has both individual and also collective connotations. In its collective dimension, the right to a healthy environment constitutes a universal value that is owed to both present and future generations. That said, the right to a healthy environment also has an individual dimension insofar as its violation may have a direct and an indirect impact on the individual *owing to its connectivity to other rights*, such as the rights to health, personal integrity, and life. (emphasis added)

85. The Court determined that the right to a healthy environment is an autonomous human right encompassed under Article 26 of the American Convention relating to progressive development. This is plainly not equivalent to imputing a 'right to a healthy environment' to Article 6(1) of the Covenant. Accordingly, such a right to a healthy environment is not binding on the Committee.

**Conclusion**

86. For these reasons, the Australian Government respectfully submits that the claim by the Authors that the Australian Government has violated their rights to life under Article 6(1) of the Covenant is without merit.

[43] Authors' submissions, [156].

### *5) Merits - Article 27 (in conjunction with 2(1))*

87. The Authors claim that the effects of climate change will affect the traditional ways of subsistence and cultural and spiritual way of life of persons of Torres Strait Islander descent and therefore violate Article 27 of the Covenant. [44]

88. The Australian Government respectfully asserts that there is no evidence to demonstrate that the impact of climate change currently violates, or will imminently violate, the Authors' rights with respect to Article 27. The Australian Government has put in place laws that are designed to protect the survival and continued development of Torres Strait Islander cultural identity. The Authors' claims merely assert future hypothetical violations of the right.

#### i) The rights of the Authors and other Torres Strait Islander people are protected by Australia

89. Article 27 of the Covenant provides:

> In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.

90. State Parties are obliged under Article 27 not to deny persons belonging to minorities the common enjoyment of their cultural life, the common practice of their religion and the common use of their language.[45] State Parties have discretion as to how they protect their minorities, provided that such measures are effective.

91. Certain aspects of the rights of individuals protected under that article – for example, to enjoy a particular culture – may consist in a way of life which is closely associated with territory and use of its resources. The Human Rights Committee's General Comment No 23 points out, with regard to the exercise of the cultural rights protected under Article 27, that culture manifests itself in many forms, including a particular way of life associated with the use of land resources, especially in the case of indigenous peoples. That right may include such traditional activities as fishing or hunting and the right to live in reserves protected by law.

92. The enjoyment of those rights may require positive legal measures of protection and measures to ensure the effective participation of members of minority communities in decisions which affect them. The protection of these rights is directed to ensure the survival and continued development of cultural identity, thus enriching the fabric of society as a whole.[46]

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[44] Authors' submissions, [84].
45 Manfred Novak, U.N. Covenant on Civil and Political Rights, CCPR Commentary (N.P. Engel, 1993) p 500.
46 Human Rights Committee General Comment No 23.

93. In the case of the Authors and other Torres Strait Islander people, those rights are already protected by legislation with the enactment by the Australian Parliament of the *Native Title Act 1993*.

**ii) The Authors' claims concern future hypothetical violations of Article 27**

94. The Australian Government respectfully submits that the Authors' claims primarily concern future hypothetical violations of Article 27 rather than past or present continuing violations.

95. Relevantly, all of the relevant examples in which Article 27 has been engaged before the Committee relate to existing breaches of human rights, not future violations. For example, in *Poma Poma v Peru* the Human Rights Committee considered whether the author's enjoyment of her right to enjoy the cultural life of the community to which she belongs was negatively impacted as a consequence of a water diversion authorized by the State party, due to the effects it would have on the author's ability to raise llamas. In this instance, the Committee held that there was a breach of the author's rights under Article 27 as the water diversification forced her to abandon her land and her traditional economic activity.[47]

96. Further, in the *Mavlonov and Sa'di v Uzbekistan* Communication, the Committee made clear that the question of whether Article 27 has been violated is whether the challenged restriction has an 'impact… [so] substantial that it does effectively deny to the [complainants] the right to enjoy their cultural rights'.[48] The Committee's view was that a refusal of a State to re-register a minority language newspaper amounted to a violation of Article 27 of the Covenant as the use of a minority language press as means of airing issues of significance and importance to the Tajik minority community in Uzbekistan was seen as an essential element of the Tajik minority's culture. Again, this Communication dealt with an existing breach of Article 27 and not a potential future breach.

97. Article 27 was never intended to protect from the impacts of climate change. In the present Communication, the Authors have failed to establish how climate change impacts (including, potential future impacts), and the Australian Government's role in mitigating those impacts, have denied their current right to enjoy their own culture.

98. For these reasons, the Australian Government respectfully submits that the claim by the Authors that the Australian Government has violated Article 27 of the Covenant is without merit.

[47] *Poma Poma v Peru* (CCPR/C/95/D/145/2006) Human Rights Committee Views adopted 27 March 2009.
[48] *Mavlonov and Sa'di v Uzbekistan* (CCPR/C/95/D/1334/2004) Human Rights Committee, Views adopted 29 April 2009, [8.7]; See also Länsman et al. v. Finland, Communication No. 511/1992, Views adopted on 26 October 1994, [9.5].

### *6) Merits - Article 17 (in conjunction with Article 2(1))*

99. The Authors claim that the effects of climate change constitute an arbitrary or unlawful interference with their private, family and home life in violation of Article 17.

100. The Australian Government respectfully submits that the Authors have failed to demonstrate any past or present violation of Article 17. As there is no current unlawful or arbitrary interference with the right to privacy, family and home life, there is no violation of Article 17.

101. Article 17(1) of the Covenant provides:

> No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.

102. Article 17 protects the right to privacy of individual members of the family, as expressed in family life, against unlawful or arbitrary interference. In determining the compatibility of any alleged interference with the family with Article 17, the Committee must determine:

a. whether there has in fact been interference with the family, and

b. whether any such interference is arbitrary or unlawful.

103. Examples of interference which extend to family life include the separation of children from a parent or parents.[49] In its General Comment No 16, the Committee stated that 'the objectives of the Covenant require that for purposes of Article 17 this term be given a broad interpretation to include all those comprising the family as understood in the society of the State party concerned'.[50] The Australian Government accepts that for Aboriginal and Torres Strait Islanders such as the Authors, the term 'family' is understood to include kinship structures, which encompass an extended family system often including distant relatives.

104. None of those types of interference is made out in this Communication by the Authors. Rather, the Authors' claims focus entirely on the future disruption to family life which *may* be caused by the effects of climate change. The Authors rely again on the Dutch domestic case *Urgenda Foundation v the State of the Netherlands* which can be distinguished for the reasons set out at paragraphs 66 to 68 above. The Australian Government respectfully submits that there is no current 'interference' with the family and that the Authors are therefore unable to demonstrate a violation of Article 17 of the Covenant.

105. Prohibited unlawful interference with family life is a real and effective interference, and not the risk of a potential future interference. The potential future effects of climate change cannot be

[49] Manfred Novak, U.N. Covenant on Civil and Political Rights, CCPR Commentary (N.P. Engel, 1993) p 301.
[50] Human Rights Committee, General Comment No 16, 32nd session (1988), U.N. Doc. HRI/GEN/1/Rev.1 at 21 (1994), [5].

conceived of as a present interference. Further, the Australian Government notes that the Committee has stated in relation to Article 17 that 'this right is required to be guaranteed against all such interferences and attacks whether they emanate from State authorities or from natural or legal persons'.[51] The Australian Government respectfully submits that any alleged interference that might arise in the future as a consequence of climate change would not emanate from State authorities nor from natural or legal persons that were authorised by the State. Accordingly, no violation by the Australian Government can be found. Likewise, the Australian Government submits that, if the Committee were to find that there had been an 'interference', it is not possible to determine that such an interference was either an arbitrary or unlawful act by Australia.

106. The Authors' allegation of a potential future need for 'relocation' also cannot be conceived of as a present interference. This allegation is based on speculation as to a future act by Australia. The Australian Government further notes that, in an instance where relocation were to take place, any such 'interference' would also not necessarily be unlawful or arbitrary.

107. On this basis, the Australian Government respectfully submits that the claim by the Authors that the Australian Government has violated Article 17 of the Covenant is without merit.

[51] General Comment No 16, Article 17 – The Right to Respect of Privacy, Family, Home and Correspondence, and Protection of Honour and Reputation, U.N. Doc. HRI/GEN/1/Rev.9 (1988), [1].

### *7) Merits - Article 24 (in conjunction with Article 2(1))*

108. Two of the Authors have made claims on behalf of their children. They allege that the Australian Government has breached the rights of their children under Article 24 by violating Articles 6, 17 and 27 of the Covenant.

109. The Australian Government respectfully submits that the relevant Authors' children enjoy measures of protection as required by their status as minors in the Torres Strait region, as provided by their family, community and government. The Authors have not provided any evidence to demonstrate that the wide range of legislative and other measures put in place by the Australian Government to protect children fail to comply with the obligation in Article 24(1).

110. Article 24(1) of the Covenant provides:

> Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.

111. The Australian Government asserts that the Authors' allegations with respect to Article 24(1) are without merit.

112. Article 24(1) itself does not set out the rights of children. As explained by Nowak:

> Art. 24(1) neither sets forth specific rights of the child nor does it establish the general applicability of all provisions of the Covenant to children; rather…it guarantees a right to nec*essary measures of protection by the child's family, the society and the State*.[52] (emphasis in original)

113. With regards to the implementation of this provision, the Committee in its General Comment No 17 on the Rights of the Child explains as follows:

> [T]he implementation of this provision entails the adoption of special measures to protect children, in addition to the measures that States are required to take under article 2 to ensure that everyone enjoys the rights provided for in the Covenant.[53]

114. Article 24(1) does not define which protective measures are required by a child's status as a minor. Accordingly, States Parties are entitled to a broad discretion regarding the manner in which they implement this obligation, provided that they guarantee that all children subject to its jurisdictional authority are afforded protection. The Australian Government has a wide range of legislative and other measures in place to ensure that children are protected by their families, society and the State. The Authors have not provided any evidence that Australia's system does not provide the requisite measures of protection to minors in the Torres Strait region.

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[52] Ibid, 546.
[53] Human Rights Committee, General Comment No 17, Rights of the Child (Article 24) (1989), [1].

115. On this basis, the Australian Government respectfully submits that the claim by the Authors that the Australian Government has violated Article 24 of the Covenant is without merit.

## IV. REMEDIES

116. The Australian Government notes that the Authors are seeking a very broad range of remedies,[54] which are focused on Australia's climate change 'adaptation' and 'mitigation' measures. The Australian Government submits that the right to an effective remedy under Article 2 can be violated only in conjunction with some other (substantive) provision of the Covenant.[55] The Communication fails to demonstrate that the allegations are admissible, and to the extent that the Committee finds the Authors' claims admissible, that the Authors' rights under the Covenant have been breached. As such, the Australian Government submits that none of the remedies sought by the Authors should be recommended by the Committee.

117. Even if the Committee determines that a breach of the Covenant has arisen (which Australia does not admit), the Australian Government submits, for the reasons indicated below, that the remedies sought by the Authors fall outside the scope of the Covenant.

**Mitigation measures**

118. In relation to mitigation measures, the Australian Government reiterates that, for the reasons set out above (including at paragraphs 10-16 and 34-39), there is no legal basis for this Communication to incorporate all of Australia's international climate change treaty obligations. Accordingly, the Australian Government submits that none of the mitigation measures sought by the Authors fall within the remit of Covenant.[56]

**Adaptation measures**

119. The other remedies sought by the Authors broadly fall within the category of 'adaptation measures'. The remedies sought would be largely unprecedented and generally fall outside the scope of the Covenant. Appropriate remedies for breaches of the Covenant would ordinarily include restitution; compensation and rehabilitation for the victim; law reform and changes in policies and practices that are in violation of the Covenant; and steps to prevent the repetition of the violation (guarantee of non-repetition).[57] In contrast, the Australian Government submits the remedies sought by the Authors are disconnected from the Covenant and unrelated to any of Australia's obligations under the Covenant.

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[54] Authors' submissions pp47-49

[55] Manfred Nowak, *UN Covenant on Civil and Political Rights CCPR Commentary*, (Engel, 2005, 2nd edition), 35.

[56] The mitigation measures sought by the Authors at paragraph 216 of their submissions include: Australia remaining a party to the UNFCCC and the Paris Agreement; measures relating to Australia's nationally determined contribution; and measures relating to the use of coal in electricity generation.

[57] Human Rights Committee, 'Guidelines on measures of reparation under the Optional Protocol to the International Covenant on Civil and Political Rights', 30 November 2016.

## V. FURTHER OBSERVATIONS

***Australia's response to climate change***

120. While none of the Authors' claims have legal merit, the Australian Government wishes to take this opportunity to affirm that climate change is a serious long-term global challenge and that it is committed to taking action to reduce greenhouse gas emissions, increase energy efficiency and fast track the development and uptake of clean energy. The measures taken by Australia are set out below.

***Australia's domestic framework***

121. Australia has a federal constitutional system in which legislative, executive and judicial powers are shared or distributed between the various federal institutions of the Commonwealth and the six States (including Queensland) and two Territories.

*Responsible agencies for implementing climate change policy and initiatives*

122. The Commonwealth Department of Industry, Science, Energy and Resources (DISER) has responsibility for implementing the Commonwealth's climate change policies and initiatives to meet Australia's emissions reduction targets: the Emissions Reduction Fund, the National Carbon Offset Standard and the Renewable Energy Target.[58] Further, the Department of Agriculture, Water and the Environment also supports climate risk management capability through the Australian Government Disaster and Climate Resilience Reference Group and works with other Australian Government agencies and the Commonwealth Scientific and Industrial Research Organisation to finalise Climate compass: a climate risk management framework for Commonwealth agencies.[59]

123. DISER also supports clean energy innovation by coordinating Australia's participation in Mission Innovation and works with other agencies responsible for research and development funding to encourage more investment in clean energy research and development.[60]

124. In the State of Queensland, which has jurisdiction over the Torres Strait Islands, the Queensland Department of Environment and Science leads the whole-of-government delivery of the Queensland Government's response to climate change. The Department of Environment and Science works to avoid, minimise or mitigate negative impacts on the environment with policies, standards and regulations that guide the operation of businesses, individuals and governments.[61]

[58] DoEE, Annual report 2018-2019, p3
[59] DoEE, Annual report 2018-2019, p4
[60] DoEE, Annual report 2018-2019, p57
[61] DES, Annual report 2018-2019, p 6

The agency also supports science and research in Queensland and provides scientific information and advice to support government priorities.[62]

Commonwealth Climate Change Policy

125. Australia ratified the *Paris Agreement* on 9 November 2016 and has committed to a 2030 target to reduce emissions to 26-28 per cent below 2005 levels. Australia is committed to playing its part in the coordinated global action necessary to deliver a healthy environment for future generations, while keeping our economy strong.

126. Australia has a strong record of meeting our emissions targets—we beat our first Kyoto target and we are on track to beat our 2020 target.

127. Australia has a comprehensive suite of policies to meet our emissions reduction commitments, encourage innovation and expand the clean energy sector. The Australian Government's Climate Solutions Package (CSP) is a $3.5 billion investment that builds on existing measures and maps out how we will achieve our 2030 Paris target.

128. The Australian Government notes that it is also supporting renewable generation technology and funding research into new technologies. In 2019 Australia installed a record estimated 6.3 gigawatts of new renewable capacity, 24 per cent above the previous record set in 2018. This follows Australia's investment of $11.9 billion in renewable energy in 2018, our highest on record. Renewables are expected to contribute 27 per cent of Australia's electricity sent out in 2020 and 48 per cent in 2030. Australia is currently in its 29th year of economic growth and emissions per person are at their lowest levels in 29 years.

129. Australia also cooperates with others in the international community on clean energy research and development, conserving rainforests, coastal blue carbon ecosystems and building capacity for measuring and reporting on emissions.

***Climate Change Adaptation***

130. The Australian Government recognises that climate change is a global problem, requiring a unified response, and that despite our efforts, existing $CO_2$ remains in the atmosphere for hundreds of years. As such, the Australian Government recognises the importance in adapting to climate change impacts and ensuring the resilience of our communities.

131. The National Climate Resilience and Adaptation Strategy (the Strategy) recognises that, in Australia, national and subnational governments, businesses, households and communities all have different but important roles in managing climate risks. The Strategy sets out that the federal

[62] DES, Annual report 2018-2019, p 6

Government is responsible for the provision of national climate science information and management of climate risks to its own policies, programs and assets.

132. In line with the Strategy, the Government is working to manage climate and disaster risks in its policies, programs and assets. Senior officials from all Australian Government departments and four science agencies meet quarterly through the Disaster and Climate Resilience Reference Group (the Group). The Group conducted extensive collaboration in the development of the National Disaster Risk Reduction Framework developed in 2018 by the Department of Home Affairs.

133. Further, in recognition that Australia is exposed to severe weather events, such as increased bushfires and cyclones, the National Disaster Risk Reduction Framework guides national, whole-of-society efforts to proactively reduce disaster risk in order to minimise the loss and suffering caused by disasters.[63] One of the priorities in the Framework is enhanced investment to:

a. pursue collaborative commercial financing options for disaster risk reduction initiatives;

b. develop disaster risk reduction investment tools to provide practical guidance on investment mechanisms;

c. leverage existing and future government programs to fund priority risk reduction measures;

d. identify additional current and future potential funding streams; and

e. empower communities, individuals and small businesses to make informed and sustainable investments.

134. The Framework recognises that existing stresses or pressures in the natural and social environments may cause natural hazards to disproportionately impact vulnerable communities. Investing in disaster risk reduction across each of natural, social, built and economic environments can reduce Australia's vulnerability to disasters and help achieve broader social and economic benefits.

135. Finally, the Australian Government is also continuing to invest in improved climate science and information. The Australian Government has committed $25 million in the 2019-20 Budget towards the establishment of a National Centre for Coasts, Environment and Climate at Point Nepean—hosted by Monash and Melbourne Universities—to improve understanding of the impacts of climate change on coastal environments.

[63] *National Disaster Risk Reduction Framework*, Commonwealth of Australia, 2018, accessible at: https://www.homeaffairs.gov.au/emergency/files/national-disaster-risk-reduction-framework.pdf

***Queensland Government measures***

136. The Queensland Government is committed to playing its part in the global effort to address the impacts of climate change and developed the Queensland Climate Change Response setting out the State's transition to a low carbon, clean growth economy and adapt to the impacts of a changing climate. The Queensland Climate Change Response includes two key strategies:

    a. Queensland Climate Transition Strategy; and

    b. Queensland Climate Adaptation Strategy.

137. The Climate Transition Strategy frames the path for a transition to a clean growth economy, with a goal of achieving zero net emissions by 2050 for Queensland, reducing emissions by 30% below 2005 levels by 2030, and generating 50% of Queensland's energy from renewable sources by 2030. A suite of actions across government aim to put Queensland on the path to achieving these targets and support Queensland industries and communities to prosper in a low carbon economy.

138. The Queensland Climate Adaptation Strategy in particular recognises climate change impacts on Aboriginal and Torres Strait Islander people. To address this, the Queensland Government specifically identifies the need to build the adaptive capacity in communities, such as those in the Torres Strait, as well as advance climate science and provide climate data to facilitate risk-based decision-making.

139. As part of its Queensland Climate Change Response, the Queensland Government has a range of commitments, initiatives and programs in relation to climate change. Under this, QCoast2100, is providing over $12million over three years to assist local councils deal with coastal hazards and the impacts of sea-level rise. Additionally the Queensland Climate Resilient Council's program aims to build and strengthen local government capacity to respond to the opportunities and risks of climate change.

## VI. CONCLUSION

140. Having given careful consideration to the allegations made by the Authors, the Australian Government submits that each of the claims under Articles 2, 6, 17, 27 and 24 are inadmissible and should be dismissed without consideration of its merit.

141. Should the Committee be of the view that any of the allegations are admissible, the Australian Government submits that each of the claims should be dismissed for lack of merit.