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 Response to the Additional Submissions for the Authors Dated 29 September 2020 Concerning the Admissibility and Merits of the Communication

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'). 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').

2. On 29 May 2020, the Australian Government conveyed to the Secretariat its submission concerning the admissibility of the Communication ('the Australian Government's earlier submissions'), observing that the Authors' claims are inadmissible, because they are either incompatible with the *International Covenant on Civil and Political Rights*[2] ('the Covenant') or not sufficiently substantiated to support a claim. The Australian Government further requested that all of the allegations made by the author concerning violations of Articles 6, 27, 17, 24, in conjunction with Article 2, of the Covenant be dismissed by the Committee for lack of merit.

3. By email of 8 October 2020, the Secretariat provided the Australian Government with the Authors' comments on the Australian Government's submissions of 29 May 2020 ('the Authors' additional submissions'). The Australian Government also received two third-party submissions in addition to the Authors' additional submissions: a submission by Professor Martin Scheinin dated 15 September 2020, and a joint submission by Dr. David Boyd and Professor John Knox dated 6 October 2020.

4. In accordance with its Rules of Procedure, the Committee requested that Australia submit observations in respect of the Authors' additional submissions and the two third-party submissions by 8 February 2021. The Australian Government was subsequently granted an extension of time by the Committee until 7 May and then 6 August 2021 to submit its written observations. The Australian Government appreciates the additional time to provide this response to the Authors' additional submissions and the two third-party submissions.

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[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] [1980] ATS 23.

1) Issues not in dispute

5. The Australian Government has considered carefully the Authors' additional submissions, as well as the two third-party submissions. It is evident that notwithstanding the Authors' representatives' assertions, there are a number of matters that are not in dispute.[3] This includes the following:

    a. Both the Australian Government and the Authors' representatives acknowledge and agree that climate change is a serious, long-term global challenge,[4] and that climate change can impact upon the enjoyment of human rights.[5]

    b. The Authors are within Australia's territorial jurisdiction and hence enjoy all rights under the Covenant.[6]

    c. The Authors have a strong spiritual connection to land, family and culture, which should be respected and upheld.[7]

    d. There are multiple causes of climate change, such that it is not caused by actions of any one country[8] and requires international cooperation.[9]

    e. Australia has recognised climate-related risks, including in the Torres Strait, and taken action to address climate change, both internationally and domestically.[10]

2) Nature of the Authors' communication

6. There is only one clear point of difference between the Authors' and Australian Government's submissions: that, notwithstanding the measures that Australia has already taken and continues to take to address the impacts of climate change upon both its population and the global

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[3] The Authors' representatives assert that numerous factual claims are 'uncontested by Australia' (see e.g. Authors' additional submissions, [4] and Section III(1)). Of course, the assessments made and actions taken by the Commonwealth Government, the State of Queensland, the Torres Strait Regional Authority (TSRA) and the Torres Strait Island Regional Council are accepted by and attributable to Australia. For the avoidance of doubt, other factual claims by the Authors' representatives are accepted only where expressly accepted in the Australian Government's submissions.

[4] Australian Government's earlier submissions, [5]; Authors' additional submissions, [59(1)-(3)].

[5] Australian Government's earlier submissions, [30]; Authors' additional submissions, [95].

[6] Authors' submissions dated 13 May 2019, [6].

[7] Authors' submissions dated 13 May 2019, [40]-[43]; Australian Government's earlier submissions, [88]; Authors' additional submissions, [3(3)].

[8] Authors' submissions dated 13 May 2019, [4]; Australian Government's earlier submissions, [26], [38].

[9] Authors' submissions dated 13 May 2019, [100], [104].

[10] See Section VI (4) and (5) of the Authors' submissions dated 13 May 2019 and Section III(3) of the Authors' additional submissions (even if the Authors' representatives dispute the adequacy of these actions). See [43] to [54] of the Australian Government's submissions dated 29 May 2020 regarding climate change programs and policies for the benefit of the Torres Strait region and its communities. See Section V of the Australian Government's submissions dated 29 May 2020 and Section IV(7) of the present submissions for further details regarding Australia's domestic and international climate change initiatives.

environment, in the Authors' view, the Australian Government should do more. In their submissions, the Authors' representatives cite views in relation to Australia's climate change policies expressed by NGOs, the United Nations Environment Programme and the Organisation for Economic Co-Operation and Development ('OECD'). Criticism of Australia's climate change policy is also expressed in the third-party submissions. Of course, these authors and organisations are all entitled to their views. The Australian Government takes a different view – that the practical, effective and ambitious action it has taken in response to climate change attests to its resolute commitment to the Paris Agreement[11] and to global action on climate change more broadly. Regardless of these differing views, the Australian Government respectfully submits that this policy debate is not governed by the Covenant. It is for this central reason that the Communication is both inadmissible and lacks merit.

7. In these submissions, the Australian Government submits that the Authors' representatives have failed to overcome the defects in the claims contained in their original submissions to the Committee, both in respect of the admissibility and merits of the Communication. The only question for the Committee is whether Australia is in violation of its obligations under the Covenant, properly understood. Neither the Authors' additional submissions, nor the third-party submissions, establish that the Australian Government has violated the Authors' rights under the Covenant. Even if the Committee found that there are positive obligations under Article 2(1) in respect of ensuring Covenant rights of the nature alleged by the Authors' representatives, Australia's climate change adaptation and mitigation initiatives evidence its compliance with that obligation.

[11] *Paris Agreement,* opened for signature 12 December 2015 (entered into force generally on 4 November 2016; entered into force for Australia on 9 November 2016).

II. SUBMISSIONS ON ADMISSIBILITY

1) The Authors' claims are manifestly unsubstantiated

8. The Australian Government accepts that climate change may have adverse consequences on the Authors. However, the evidence advanced by the Authors' representatives fails to substantiate that these constitute violations of their rights under the Covenant, whether this is a current or imminent threat of violation.

Climate change impacts do not equate to a breach of the Covenant

9. The Authors' representatives submit that this Communication 'is based on existing impacts of existing violations'[12] and evidence of 'substantive negative impact[s]'[13] and 'already existing adverse effects that amount to violations of the Covenant'. In their third-party submissions, Professors Boyd and Knox also cite acknowledgment by the Conference of the Parties to the UN Framework Convention on Climate Change that 'the adverse effects of climate change have implications for the effective enjoyment of human rights'.[14]

10. As noted in the introduction to the present submissions, the serious nature of climate change and its associated risks, including in the Torres Strait, is not in contention. The Australian Government accepts that climate change will have effects over time and, without global and domestic action, those future effects may be worse than at present. That is why the Australian Government continues to take action to address the adverse effects of climate change through a variety of policies and measures. However, in effect, the arguments put forward by the Authors' representatives concede that there is no direct violation today because 'existing impacts of climate change',[15] even if adverse, do not themselves equate to a breach of Covenant rights.[16] The evidence cited by the Authors' representatives of alleged current and imminent violations 'that are not "future hypothetical"' include changes to seasonal patterns, erosions of ancestral land, saltwater intrusion, damage to graves and related cultural practices, species decline and damage to homes.[17] While this may list 'impacts' of climate change, it does not evidence any current nor imminent violation in the direct sense of Covenant rights by Australia.

11. The Authors' representatives then draw on this "evidence" of breach to suggest that mitigation and adaptation measures are necessary now to prevent more severe impacts arising in future:

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[12] Authors' additional submissions, [127], [139], [143].
[13] Ibid [37(3)], see also [37(4)].
[14] Third-party submissions of Professors Boyd and Knox, [11].
[15] Authors' additional submissions, [40].
[16] Ibid [7].
[17] Ibid [56].

> Given that Australia accepts the science of climate change, and that sea levels are rising in the Torres Strait at this rapid rate, it must also accept that the continued sea level rise and risk from the storm surge will eventually make continued habitation of the Authors' Islands impossible *without urgent action … if these impacts are not addressed* they will be the inevitable conclusion of a slow-onset process that has already begun.[18]

12. Again however, these climate change 'impacts' do not amount to a violation in the direct sense now. They only suggest that adverse effects now may, subject to contingencies, worsen in future. Asserting that the effects of climate change will worsen over time is insufficient to allege that Australia has violated the Covenant. Despite the Authors' representatives' attempts to argue to the contrary, they have failed to substantiate any allegation that an act or omission by the Australian Government amounts to a current violation of the Authors' rights under the Covenant, including with respect to causation and attribution.

Causation

13. The Authors' representatives have accepted the relevance of causation in this Communication.[19] Indeed, the cause of climate change is common ground. The Authors' representatives define climate change as 'changes in the Earth's natural climatic systems since pre-industrial times *caused by* the accumulation of anthropogenic greenhouse cases in the atmosphere, and land use changes'.[20] Clearly, the Authors' representatives agree that the Australian Government has not itself caused climate change, even though they have since taken issue with the legal relevance of causation in their additional submissions.

14. As noted in the Australian Government's earlier submissions,[21] establishing causation as a matter of fact requires that the Authors meet a high threshold in order to demonstrate any violation of Covenant rights. The Australian Government maintains that the Authors' representatives have failed to sufficiently substantiate any meaningful connection or causation under international law between Australia's actions and the current and future 'impacts' that allegedly constitute violations of the Covenant.

15. As demonstrated above, the current 'adverse effects' and impacts of climate change do not amount to violation of the Covenant. What is in fact alleged is that there are 'already existing adverse effects' of climate change being experienced by the Authors[22] and that there are

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[18] Authors' additional submissions, [58].

[19] See, eg, Authors' submissions dated 13 May 2019, [149]: 'Australia's duties not to cause and to prevent foreseeable loss of life'.

[20] Authors' submissions dated 13 May 2019, [4] (emphasis added).

[21] See Australian Government's earlier submissions, [68]-[69].

[22] Authors' additional submissions, [7].

'devastating and irreversible *future* impacts on rights protected by the Covenant – such as those concerning future sea level rise *caused by* existing and current greenhouse gas emissions'.[23] The material identified in the Authors' additional submissions refers to the general risks and effects of climate change writ large but not any act or omission by any Australian Government agency or official to suggest that the Australian Government has itself caused a violation of the Authors' rights under the Covenant.

16. Regarding the threat of 'future impacts', the Authors' representatives falsely contend that Australia is somehow responsible because such threats do 'not depend on contingencies'.[24] Yet the Authors' representatives themselves recognise the contingencies regarding whether and the extent to which those threats are realised in the future: noting that sea level rise will continue to occur '*unless* urgent action is taken',[25] and that there is still a 'window of time in which adaptation measures can… [be] planned and implemented'.[26] Professors Boyd and Knox similarly acknowledge that climate change impacts are 'certain and inevitable *if* actions are not taken now to avert them'.[27] Indeed, the realisation of these threats depends in part on efforts of States – both individually and collectively – to reduce, mitigate and/or adapt to the effects of climate change. If the future effects were certain, this would effectively render the remedies sought by the Authors futile – that is, mitigation and adaptation would be futile if future violations were 'inevitable and irreversible', as the Authors' representatives claim.[28] The possibility for future action to address climate change impacts is also recognised by the Committee in *Teitiota v New Zealand* ('*Teitiota*') in its statement that '*without robust national and international efforts*, the effects of climate change in receiving states *may* expose individuals to a violation of their rights'.[29]

17. Accordingly, it cannot be maintained that Australia has caused or is responsible for 'existing adverse effects' or 'future impacts' of climate change.[30] A critical consequence is that, even if the Australian Government took all the steps sought by the Authors in the present Communication, it

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[23] Authors' additional submissions, [8] (emphasis added).
[24] Ibid [46].
[25] Ibid [135].
[26] Ibid [135].
[27] Third-party submissions of Professors Boyd and Knox, [23] (emphasis added).
[28] Authors' additional submissions, [41].
[29] *Teitiota v New Zealand* (ICCPR Comm 2728/2016), Views of 7 January 2020 ('*Teitiota*') (emphasis added).
[30] See also Christian Roschmann, 'Climate Change and Human Rights' in Oliver Ruppel, Christian Roschmann and Katharina Ruppel-Schlichting, *Climate Change: International Law and Global Governance (Volume 1)* (Nomos, 2013) 203, 234: 'The specific impact of any given emission on climate change is, in most cases, not measurable in any other state. This makes it largely impossible to sue any specific wrongdoer or any state on the grounds of human rights violations. This holds true for human rights violations under international Conventions as well as under customary law.'

would not ensure their human rights could be enjoyed in the manner the Authors seek. This outcome is dependent on a range of factors well outside the Australian Government's control including mitigation and adaptation steps taken by other States to address climate change, the global economic recovery from the COVID-19 pandemic and the pace of the global transition to less carbon-intensive energy sources. Global cooperation is required in order to reduce the effects of climate change that form the basis of the present Communication, and affect the admissibility of the Authors' complaint. Even if the Committee finds the Communication admissible, it is crucial to recognise the key role of global efforts – as well as Australia's existing domestic and international climate change initiatives – to address climate change and thus provide the protections sought by the Authors. As Boyle concludes, 'the response of human rights law [to climate change] – if it is to have one – needs to be in global terms, treating the global environment and climate as the common concern of humanity and climate change as a threat to human rights as a whole'.[31]

Attribution

18. The Australian Government recalls the elements of an internationally wrongful act of a State as per Article 2 of the International Law Commission's ('ILC') *Articles on Responsibility of States for Internationally Wrongful Acts* ('Articles on State Responsibility').[32] That is, an internationally wrongful act of a State arises when conduct consisting of an act or omission is attributable to the State under international law, and constitutes a breach of an international obligation of that State. As explained in the Australian Government's earlier submissions,[33] Article 4 of the Articles on State Responsibility contains the general rule of attribution, such that:

> [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 organization of the State, and whatever its character as an organ of the central Government or of a territorial unit of the State.

19. The absence of a direct violation alleged by the Authors' representatives and the nature of climate change as a long-term, global phenomenon, mean that the present Communication simply cannot be characterised nor resolved as a question of whether one State's conduct complies with its obligations under the Covenant. Meaningful causal links cannot be traced between Australia's contributions to climate change, Australia's efforts to address climate

[31] Alan Boyle, 'Climate Change, The Paris Agreement and Human Rights' (2018) 67 *International and Comparative Law Quarterly* 759, 777.
[32] *Articles on Responsibility of States for Internationally Wrongful Acts*, UN General Assembly Resolution 56/82 (2001).
[33] Australian Government's earlier submissions, [37].

change and the alleged effects of climate change on the Authors' enjoyment of human rights.[34] Such an unprecedented finding would also depart from the Covenant's intention to regulate State conduct, not protect against the general, adverse effects of a global threat writ large absent an attributable link to conduct by a State agency or official.

20. Even setting questions of attribution aside, the Authors' representatives have failed to demonstrate that there has been any breach by the Australian Government of its obligations under the Covenant, and therefore do not substantiate that Australia has committed an internationally wrongful act under the rules of State responsibility in international law.

Lack of relevant legal authority to substantiate Authors' claims

21. The authorities relied upon by the Authors' representatives demonstrate the weakness of their arguments. It is uncontroversial that the starting point for interpretation of the Covenant is Article 31(1) of the *Vienna Convention on the Law of Treaties* ('VCLT'),[35] which stipulates that '[a] treaty shall be interpreted in good faith in accordance with the ordinary meaning given to the terms of the treaty in their context and in the light of its object and purpose'.[36] There are no substantive arguments put forward by the Authors' representatives regarding how the ordinary meaning of Articles 6, 27, 17, and 24 of the Covenant, read in accordance with Article 31(1), could support their claims. The Authors' representatives cannot rely on the Covenant's preparatory work, nor can they evidence any subsequent agreement between States nor practice of States, to support their interpretation of those Covenant rights. Faced with the fact that the VCLT's rules of interpretation do not support their arguments, the Authors' representatives base almost the entire Communication on two forms of authority – a misconceived notion of 'international human rights jurisprudence' and international instruments other than the Covenant.

22. First, it is evident that the submissions by the Authors' representatives purport to rely on a fundamentally imprecise notion of international human rights jurisprudence. The analogies drawn by the Authors' representatives between rights under the Covenant on the one hand, and economic, social and cultural rights on the other are not apposite, noting the latter is subject to progressive realisation. Concepts such as 'highest possible ambition' used in the UN treaty bodies' joint statement on human rights and climate change cited in paragraph 105 of the Authors' additional submissions cannot be imported into the context of the Covenant. It is also noteworthy that the Committee was not one of the five human rights treaty bodies to issue the

[34] Australian Government's earlier submissions, [38].
[35] *Vienna Convention on the Law of Treaties,* opened for signature 23 May 1969, 1155 UNTS 331 (entered into force 27 January 1980).
[36] Mark E. Villiger, *Commentary on the 1969 Vienna Convention on the Law of Treaties* (Martinus Nijhoff Publishers, 2009) 426.

statement. Other declarations of the relationship between climate change and human rights cited by the Authors' representatives – for example, in the preamble to the Paris Agreement and Human Rights Council Resolution 38/4[37] – are also of limited utility for interpreting the Covenant,[38] beyond recognising the impacts of climate change on the enjoyment of human rights (which is not in dispute).

23. Second, the Authors' representatives attempt to draw parallels to domestic case law that has no bearing on the interpretation of rights under the Covenant. For example, *Urgenda v the State of the Netherlands*[39] ('*Urgenda*') is again invoked by the Authors' representatives to support their submissions on due diligence obligations owed to the Authors. Professors Boyd and Knox also note *Urgenda* in suggesting that it is possible to assign responsibility to Australia in respect of the impacts of climate change on human rights and identify obligations to protect against those effects.[40] The Australian Government reiterates its earlier submissions that this Dutch domestic decision is neither binding on Australia – nor, as Professors Boyd and Knox note, is it binding on the Committee – as a matter of international law. The case also does not contain any reference to, nor offer any interpretation of, rights under the Covenant.

24. Third, the Authors' submissions are based largely upon the jurisprudence of the European Court of Human Rights ('ECtHR') and the Inter-American Court of Human Rights ('IACHR') where international environmental law has been referenced in considering States' human rights obligations.[41] Of course, Australia is not a member of these regional human rights bodies, nor is Australia a party to the human rights instruments that they are mandated to interpret. Consequently, the jurisprudence of the ECtHR and the IACHR cannot be a source of Australia's obligations; still less are they binding on the Committee. The arguments the Authors' representatives draw from the jurisprudence of the ECtHR, IACHR and domestic cases are not supported by the Covenant.

25. Even if the Committee were to accept that matters of international environmental law are relevant to the content of rights under the Covenant, the submissions by the Authors' representatives fail to appreciate the particular characteristics of climate change as a global phenomenon attributable to the actions of many States. Climate change requires global action, unlike other environmental issues previously considered by the Committee. In particular, the

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[37] Human Rights Council, *Human Rights and Climate Change*, UN Doc A/HRC/38/L.5 (5 July 2018).
[38] See Boyle (n) 769 ('Human rights law is neither incorporated into the Paris Agreement by [the wording of the preamble], nor does it explicitly constitute a standard by which the objectives of the Paris Agreement might be judged').
[39] *Urgenda Foundation v The Netherlands* [2015] HAZA C/09/00456689 (June 24, 2015).
[40] Third-party submissions of Professors Boyd and Knox, [48].
[41] Authors' additional submissions, [23]-[24].

authorities cited by the Authors' representatives concern instances of environmental harm that are clearly attributable to acts that are within the sole jurisdiction or control of one State, and therefore cannot be relied upon to attribute harms resulting from climate change to Australia in the context of its obligations under the Covenant. For example, the Stockholm Convention on Persistent Organic Pollutants ('Stockholm Convention'), cited by the Committee in *Portillo Cáceres v Paraguay* (*Cáceres*),[42] establishes specific rules regarding the elimination, restriction and waste management of certain chemicals to be observed by the Parties to it. Conversely, the Paris Agreement is directed to ensuring cooperation among States as part of the global response to climate change. This clear distinction between the context and subject matter of these instruments and nature of obligations contained therein are appropriate to the different environmental issues they regulate. Moreover, Paraguay's membership of the Stockholm Convention was merely observed by the Committee. It was not read into Paraguay's obligations under the Covenant nor relied on as a determinative basis for the Committee's findings of Paraguay's violation. Nor should the Committee read the Paris Agreement into Australia's obligations under the Covenant, as urged by the Authors' representatives in the present Communication. Instead, following the approach in *Cáceres*, the Committee could note that Australia is party to the Paris Agreement, which would support the Australian Government's submissions, set out in Section III(7), that it engages in good faith as part of the global response to climate change. The Authors' representatives thus fail to produce any legal authority to suggest that Australia is legally responsible for the alleged impacts of climate change that they claim the Authors will experience in future in the Torres Strait region, or that Australia has violated the Authors' rights under the Covenant.

26. The Committee's Views cited by the Authors' representatives in respect of Article 27 of the Covenant also fail to provide any legal authority to support their allegations in respect of climate change and again reflect their broader inability to meet necessary attribution requirements. The Authors' representatives note that in *Mavlonov and Sa'di v Uzbekistan*[43] ('*Mavlonov*'), the Committee found the refusal of a State to re-register a minority language newspaper violated Article 27. Whether to register a minority language newspaper is a decision completely within the State's control. The general effects of climate change, and the effectiveness of any mitigation or adaptation measures to address those effects, are not. It is for similar reasons that the Committee's jurisprudence in *Poma Poma v Peru*[44] could not support any finding of violation of Article 27 by the Australian Government. The author in that Communication identified a clear act by the State

[42] Authors' additional submissions, [23].
[43] *Mavlonov and Sa'di v Uzbekistan* (CCPR/C/95/D/1334/2004) Human Rights Committee Views adopted 29 April 2009.
[44] *Poma Poma v Peru* (CCPR/C/95/D/145/2006) Human Rights Committee Views adopted 27 March 2009.

party – that is, its authorisation of a water diversion, leading to negative impacts on her right to enjoy the cultural life of the community – resulting in the Committee's finding of a violation of Article 27. This is not the case in the Authors' complaint, nor their additional submissions.

27. Of all the authorities cited by the Authors' representatives, the most relevant and appropriate case for examination by the Committee in this context is *Teitiota*. The Committee's Views in that matter in fact support the Australian Government's position, as examined in Section III(3) of these submissions.

Clarification regarding status of the Australian Human Rights Commission

28. The Authors' additional submissions cite extensively from reports from the Australian Human Rights Commission ('AHRC') and mistakenly claim that the AHRC is an 'organ of the Commonwealth government'. In fact, the AHRC is Australia's accredited National Human Rights Institution and an independent statutory authority which, in that capacity, engages separately with UN human rights mechanisms independently of the Australian Government.

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

29. Given that the Authors' additional submissions fail to demonstrate that there is a current or imminent risk of violation of their rights under the Covenant, the Authors cannot be considered 'victims' within the meaning of the Optional Protocol. It is insufficient for the Authors' representatives to merely point to a policy measure, such as mitigation strategies,[45] that are separately relevant to climate change treaties as the basis for 'victim' status under the Optional Protocol. In relying primarily on evidence of the impacts of climate change, the Authors' representatives do not identify a concrete act or omission by the Australian Government amounting to a violation of their rights within the scope of the Covenant.

30. The Authors' representatives seek to cite the description of climate change as a 'slow onset' process in *Teitiota* to support the argument that the Authors are 'victims' for the purpose of the Covenant.[46] However, as a matter of international human rights law, there is no basis to support an argument that a 'slow onset' process may render individuals to be 'victims' for the purposes of the Covenant. As the Committee expressed in *Teitiota*, the relevant test is that 'any person claiming to be a victim of a violation of a right protected under the Covenant must demonstrate either that a State party has, by act or omission, already impaired the exercise of his right or that such impairment is imminent'.[47] The Australian Government submits that the possible impacts of a 'slow onset' process does not make the Authors 'victims', properly conceived.

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[45] Authors' additional submissions, [54].
[46] Ibid [56].
[47] *Teitiota* (n 29) [8.4].

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

31. The Authors' representatives state that their allegations are 'based squarely on "*the rights set forth in the Covenant*" and [are] admissible *ratione materiae*'.[48] The Authors' representatives further state that 'the content of Australia's duties under the Covenant may be *informed by* Australia's wider obligations and commitments under international law, including the Paris Agreement and under other international human rights treaties'.[49] Neither statement is accurate.

32. The Authors' representatives seek to distinguish the present Communication from *K.L. v Denmark*[50] by claiming that they are requesting the Committee to consider other international instruments for the purpose of interpreting the Covenant, rather than in their own right.[51] However, the Authors' representatives fail to adhere to the limits of the legal analysis for which they contend. Contrary to their own submissions and the Committee's Views in *K.L. v Denmark*, the Authors' representatives rely extensively on assertions relating to Australia's alleged non-compliance with international environmental law. For example, the Authors' representatives argue that 'if Australia is in breach of the UNFCCC or the Paris Agreement, it follows that it is also in breach of its obligations under Article 6 [of the Covenant]'.[52] Remedies sought by the Authors include 'compliance with the Paris Agreement' and that Australia 'must remain a party to the UNFCCC and the Paris Agreement'.[53] Annex 1 to the Authors' additional submissions focuses entirely on Australia's current climate and energy policies. In so doing, the Authors' representatives again invite the Committee to consider claims outside the scope of the Covenant's provisions, notwithstanding that the Committee lacks jurisdiction to do so.

33. The Australian Government therefore reiterates its earlier submissions that, to the extent the Authors' claims rely on obligations outside the Covenant, including 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.

34. To the extent the Authors' additional submissions purport to relate to rights under the Covenant, the Australian Government respectfully submits (for the reasons set out below and in earlier submissions) that the allegations by the Authors' representatives proceed from a misconceived interpretation of rights under the Covenant that affects both the admissibility and merits of the

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[48] Authors' additional submissions, Section II(2)(B) at [18].
[49] Ibid (emphasis added).
[50] Human Rights Committee, *Views: Communication 59/1979*, UN Doc CCPR/C/OP/1 (26 March 1980) ('*K.L. v Denmark'*).
[51] Authors' additional submissions, [19].
[52] Authors' submissions dated 13 May 2019, [162].
[53] Authors' additional submissions, [216(1)-(2)].

present Communication. This is consistent with *K.L. v Denmark*, in which the Committee found that the communication was inadmissible on the ground that the allegations of violations of the Covenant were unsubstantiated.[54]

4) International climate change treaties are irrelevant to the proper interpretation of the Covenant

35. The Authors' representatives submit that the Australian Government's objections on the proper interpretation of obligations under the Covenant are relevant only to the merits of the Communication, not admissibility.[55] The Authors' representatives, as well as Professors Boyd and Knox, maintain that international climate change treaties, such as the Paris Agreement, are relevant to the interpretation of the Covenant.[56]

36. It is the Australian Government's submission that the effects of climate change are best addressed through both national action and international cooperation in accordance with obligations under international environmental law, including under the Paris Agreement. The Australian Government's position is not that 'the Authors must simply wait [and] suffer the increasingly severe climate impacts'.[57] Nor does the Australian Government's position on interpretation of the Covenant render it 'a dead letter'.[58] Indeed, if climate change were governed effectively by international human rights law, there would be no need for the international community to have concluded climate change treaties. However, it is undeniable that the international community has sought to address climate change primarily, and rightly, as a matter of international cooperation and under international environmental agreements. Notwithstanding the Authors' dissatisfaction with the pace and nature of the Australian Government's efforts, this does not mean that Australia's response to the threat of climate change, and consequently the response of many other States, amounts to a violation of the Covenant.

37. As with their earlier submissions, the Authors' representatives fail to establish that the allegations concern 'rights set forth in the Covenant' as properly understood. The allegations are therefore incompatible with the provisions of the Covenant itself, and fail to overcome the Australian Government's objections with respect to admissibility under the Optional Protocol.

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[54] The Committee indicated that it had 'carefully considered the material submitted by the author, but [was] unable to find that there are grounds substantiating his allegations of violations of the Covenant.': *K.L. v Denmark* (n) [6].

[55] Authors' additional submissions, [21].

[56] Authors' additional submissions, Section II(2)(B); third-party submissions of Professors Boyd and Knox, [19].

[57] Authors' additional submissions, [47].

[58] Ibid.

38. The Authors' submissions regarding the relevance of international environmental law to the interpretation of Covenant obligations are also inconsistent with Article 31(3)(c) of the VCLT, nor do they apply the principle of 'systemic integration' in accordance with the approach of the ILC set out below.

39. The Australian Government affirms the ILC's view that Article 31(3)(c) 'gives expression to the objective of "systemic integration"'.[59] The ILC defines 'systemic integration' as the principle that, 'whatever their subject matter, treaties are a creation of the international legal system and their operation is predicated upon that fact'.[60] In respect of the operation of the principle, the ILC states that:

> Where a treaty functions in the context of other agreements, the objective of systemic integration will apply as a presumption with both positive and negative aspects:
>
> (a) The parties are taken to refer to customary international law and general principles of law for all questions which the treaty does not itself resolve in express terms;
>
> (b) In entering into treaty obligations, the parties do not intend to act inconsistently with generally recognised principles of international law. ….[61]

40. The claims by the Authors' representatives are unsupported by the ILC's guidance and VCLT principles for the following reasons.

41. First, in applying the principle of systemic integration, the ILC notes that 'if any other result is indicated by ordinary methods of treaty interpretation that should be given effect, unless the relevant principle were part of *jus cogens*'.[62] Application of the principle of systemic integration therefore must occur consistently with, and give primacy to, the method set out in the VCLT. This requires consideration not of 'relevance' generally, but in the sense required by Article 31(3)(c) and confirmed by leading commentaries on the VCLT. As Crawford cautions, '[t]reaties cannot be interpreted in isolation of the wider context, but at the same time, tribunals should be cautious about using Article 31(3)(c) as a guise for incorporating extraneous rules in a manner that oversteps the boundaries of the judicial function'.[63] The ILC Special Rapporteur on Fragmentation of International Law, in the same report cited by the Authors' representatives, also

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[59] *Report of the International Law Commission*, 58th Session, UN Doc A/61/10, 180, 413 ('*Report of the International Law Commission*').

[60] Ibid.

[61] Ibid 413-414.

[62] Ibid 414.

[63] James Crawford, *Brownlie's Principles of International Law* (Oxford University Press, 2012) 383. See also Benoit Mayer, 'Climate Change Mitigation as an Obligation under Human Rights Treaties?' (2021) 115(3) *American Journal of International Law* 409, 442: to overlook the text, object and purpose of the human rights treaty at issue and focus exclusively on general mitigation obligations 'reduce[s]' human rights treaties 'to a Trojan horse allowing extraneous rules and objectives to take hold of human rights institutions'.

acknowledges that '[i]n case there is a systemic problem – an inconsistency, a conflict, an overlap between two or more norms – and no other interpretative means provides a resolution, then recourse may always be had to that article in order to proceed in a reasoned way'.[64] Evidently, care must be taken in applying Article 31(3)(c) to the interpretation of the Covenant, which is not reflected in the Authors' unfounded approach to the provision.

42. Second, the ILC's guidance makes clear that reference to sources of international law external to the treaty being interpreted must only occur where questions of treaty interpretation are not clearly resolved by the treaty, noting that '[i]n many cases, the issue of interpretation will be capable of resolution within the framework of the treaty itself'.[65] The contentions by the Authors' representatives are contrary to Article 31(1) of the VCLT insofar as they attempt to import the text of international climate change treaties to supplant or add to the Covenant's clear language. This was affirmed in the Namibia Advisory Opinion, where the Court asserted 'the primary necessity of interpreting an instrument in accordance with the intentions of the parties at the time of its conclusion'.[66] The ILC Special Rapporteur on Fragmentation of International Law also notes that exceptions to this would include where a term used in the treaty was 'not static but evolutionary' or where obligations have been described 'in very general terms, thus operating a kind of *renvoi* to the state of the law at the time of its application'[67] – neither of which applies in the case of the Covenant.

43. Third, the Authors' additional submissions continue to apply an overly broad definition of '*relevant* rules of international law' under Article 31(3)(c) of the VCLT. As noted by Villiger, 'relevant' rules must 'concern the subject-matter of the treaty term at issue'.[68] Climate change treaties do not provide evidence as to the object and purpose of the Covenant, nor the meaning of its terms. There is no material relationship between the aims, context and subject-matter of the Covenant and international climate change treaties, as set out in paragraph 19 of the Australian Government's earlier submissions. The Covenant recognises and promotes universal and inalienable civil and political rights and freedoms, whereas the Paris Agreement requires States

[64] Martti Koskenniemi, *Fragmentation of International Law: Difficulties arising from the diversification and expansion of international law*, UN Doc A/CN.4/L.682 (13 April 2006) [420]; see also Authors' additional submissions at [31].

[65] *Report of the International Law Commission* (n 59) 180.

[66] *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) Notwithstanding Security Council Resolution 276 (Advisory Opinion)* [1971] ICJ Rep 16, 31.

[67] Koskenniemi (n 64) 242-243. Note also, the ILC has similarly stated that '[r]ules of international law subsequent to be interpreted may be taken into account especially where the concepts used in the treaty are open or evolving. This is the case, in particular, where: … the concept has a very general nature or is expressed in such general terms that it must take into account changing circumstances': *Report of the International Law Commission* (n 59) 181.

[68] Villiger (n 36) 433.

to join in collective action to limit global warming, combat climate change and adapt to its effects. Evidently there is no basis in 'common meaning' between international climate change treaties identified by the Authors' representatives and the Covenant, as required by Article 31(3)(c).[69] Yet, their submissions assume that any treaty rules which might be argued to apply to a situation generally are 'relevant' rules for the purposes of Article 31(3)(c). In contrast, Gardiner notes that 'relevant rules must be those which can aid the quest for the meaning of a treaty provision, not those applying to a situation generally',[70] and that there is a 'distinction between using rules of international law as part of the apparatus of treaty interpretation and applying the rules of international law directly to the facts in the context of which the treaty is being considered'.[71] Therefore, the fact that Australia's obligations under climate change treaties might be relevant to the facts of the present Communication cannot be used to import those obligations into the Covenant as a matter of treaty interpretation under Article 31(3)(c).

44. Fourth, the Authors' representatives attempt to draw parallels to previous examples where international environmental law instruments were considered relevant to States' human rights obligations. However, in addition to failing to provide any legal basis to substantiate the allegations made by the Authors' representatives, those cases do not provide any basis to support the alleged relevance of international climate change treaties in the present Communication for the purposes of Article 31(3)(c).

45. Finally, the Authors' representatives have not otherwise identified any source of customary international law nor general principles of international law to support their contention that international environmental law should be relied upon to interpret the Covenant obligations cited in this Communication. Mayer writes that, in the context of international human rights law, 'the interpretation of States' obligations is limited to what States have accepted, and, absent a clear treaty provision, current State practice inevitably dismisses any suggestion that States may have already accepted an obligation to adopt or implement mitigation action consistent with the 1.5 or 2°C target'.[72]

[69] The ILC notes that 'Article 31(3)(c) requires the interpreter to consider other treaty-based rules so as to arrive at a consistent meaning. Such other rules are of particular relevance where parties to the treaty under interpretation are also parties to the other treaty, where the treaty rule has passed into or expresses customary international law or where they provide evidence of the common understanding of the parties as to the object and purpose of the treaty under interpretation or as to the meaning of a particular term': *Report of the International Law Commission* (n 59) 180.
[70] Richard Gardiner, *Treaty Interpretation* (Oxford University Press, 2015) 305.
[71] Ibid 320.
[72] Benoit Mayer, 'Temperature Targets and State Obligations on the Mitigation of Climate Change' (2021) 33(3) *Journal of Environmental Law* 1, 21.

46. Accordingly, Section III will examine the merits of the present Communication by focusing on the content and application of Australia's obligations under the Covenant and not questions of Australia's compliance with its international environmental law obligations.

5) Exhaustion of domestic remedies

47. The Authors' representatives contend that the Australian Government accepts that 'there are no domestic remedies available to the Authors for the ICCPR violations contained in the Communication'.[73]

48. The Australian Government does not accept that the Authors' representatives have established any violations of the Covenant and it is therefore unsurprising that no domestic remedies are available for the claims made by the Authors. The Australian Government (and every other State Party to the Covenant) is not required to make available a domestic remedy for the purposes of Article 2(3),

    a) where the alleged violations are outside the scope of the Covenant, insofar as they concern questions of Australia's compliance with international climate change treaties, or

    b) where there is no breach of rights recognised by the Covenant as properly understood, as is the case for the allegations in this Communication.

Conclusion

49. Ultimately, for reasons outlined in this section and in the Australian Government's earlier submissions, the Authors' representatives have failed to demonstrate that an act or omission by the Australian Government has already violated their rights under the Covenant, or that a violation by Australia is imminent. The Australian Government notes its earlier submission, recalling the Committee's Views in *Teitiota*, that there was sufficient time for intervening acts to take place, by both the Republic of Kiribati and the international community, to protect the population from the adverse impacts of climate change.[74] The Authors' representatives themselves contemplate the consequences that might arise '*if* and when the Authors' Islands become unviable for habitation',[75] therefore acknowledging there is sufficient remaining time for the international community and national climate change initiatives, including those of Australia, to address climate change.

[73] Authors' additional submissions, [16].
[74] Australian Government's earlier submissions, [30].
[75] Authors' additional submissions, [52] (emphasis added).

50. Accordingly, the Australian Government maintains its submissions that the claims made by the Authors' representatives are inadmissible.

III. SUBMISSIONS ON MERITS

51. To the extent that the Committee finds the claims made by the Authors' representatives admissible, the Australian Government respectfully submits that the Authors' additional submissions lack legal merit. As the Committee notes in General Comment No 31, '[t]he legal obligation under [Article 2(1)] is both negative and positive in nature'.[76] In these submissions, the Australian Government addresses the allegations put forward by the Authors' representatives relating to the obligations to 'respect' and 'ensure' under Article 2(1) of the Covenant, before proceeding to examine the alleged violations of the Covenant under each article invoked by the Authors.

1) No violation of the obligation to 'respect': Article 2(1)

52. The obligation to 'respect' in Article 2(1) of the Covenant is an obligation of non-interference with the rights contained therein.[77] The Authors' representatives have failed to establish any direct interference by the Australian Government constituting breach of the Authors' rights under the Covenant. There is no causation nor attribution established by the Authors' representatives such as to link, as a matter of international law (including under the Articles on State Responsibility), any organ or official of the Australian Government to the alleged violations under the Covenant. Notwithstanding the serious nature of climate risks, including in the Torres Strait, there is no violation by the Australian Government of its obligation to 'respect' the Authors' rights under Article 2(1) of the Covenant.

53. This inability to show any direct interference by the Australian Government in respect of the Authors' rights under the Covenant permeates the Authors' representatives' claims in respect of Articles 6, 17 and 27 in conjunction with Article 2(1). That is, the Authors' representatives have failed to demonstrate that the Australian Government, its agencies or officials have:

- engaged in conduct constituting arbitrary deprivation of life (or has failed to protect the right to life by law), under Article 6
- interfered with the Authors' right to privacy, home and family life, under Article 17, or
- denied the Authors' right to enjoy their own culture or use their own language, under Article 27.

[76] Human Rights Committee, *General Comment No 31: The Nature of the General Legal Obligation Imposed on State Parties to the Covenant*, 80th sess, UN Doc CCPR/C/21/Rev.1/Add. 13 (26 May 2004) [5] ('General Comment No 31').
[77] Ibid [6].

2) Nature and scope of the positive obligation to 'ensure' under Article 2(1)

54. The Authors' representatives' submissions are contingent upon an overly broad construction of States' 'positive obligation' to 'ensure' to all individuals the rights recognised in the Covenant. Such a positive obligation is an extension of the obligation to respect Covenant rights and has been recognised in limited circumstances, in particular because the conduct posing a threat to the enjoyment of the rights in question is not attributable to the State. However, the Authors' representatives fail to acknowledge these limits and instead allege that Australia is under a 'general duty' of due diligence and has broad 'positive duties' to protect against the known or foreseeable threat of climate change impacts. In doing so, the Authors' representatives have introduced a new argument in this Communication concerning the alleged positive obligations of State Parties to the Covenant, and thereby have sought to create new and unfounded 'positive duties' that stray beyond the scope of the obligation to ensure Covenant rights under Article 2(1). The Authors' representatives' claims regarding mitigation and adaptation rest squarely on this misconceived argument.

i) Any positive obligation only extends to 'real risks' against which a State can offer protection

55. The broad view of positive obligations under the Covenant presented by the Authors' representatives is not consistent with existing human rights jurisprudence, which suggests that this positive obligation applies only in respect of 'real risks' and, even then, gives States significant deference in identifying the threat and taking appropriate measures in response.

56. Both the Authors' representatives and Professors Boyd and Knox refer to the Committee's General Comment No 36, which states that State parties must 'exercise due diligence to protect the lives of individuals against deprivations caused by persons or entities, whose conduct is not attributable to the State'.[78] The Committee refers in a footnote to the General Comment No 31 and the judgment of the Grand Chamber of the ECtHR in the case of *Osman v the United Kingdom* ('*Osman*'), both of which support the Australian Government's submission that this positive obligation must be construed narrowly and arises only in exceptional circumstances.

57. The Committee first refers to its earlier statements in paragraph 8 of General Comment No 31. In particular:

> … the positive obligations on States Parties to ensure Covenant rights will only be fully discharged if individuals are protected by the State, not just against violations of Covenant rights by its agents, but also against acts committed by private persons or entities that would

[78] Human Rights Committee, *General Comment No 36: Article 6: Right to Life*, 124th sess, UN Doc CCPR/G/GC/36 (3 September 2019) [7] ('General Comment No 36').

> impair the enjoyment of Covenant rights insofar as they are amenable to application between private persons or entities.[79]

The Australian Government agrees with the Committee's statement. In the present Communication, however, the alleged threat to the Authors' rights is a global phenomenon arising from a myriad of acts committed by innumerable private and State entities over decades that are unquestionably beyond the jurisdiction and control of the Australian Government. It would be perverse if the Covenant were to impose a duty or obligation on Australia – to 'ensure' that climate change did not impair the Authors' human rights – that it could not hope to fulfil. The Australian Government submits that a positive obligation to protect against the general effects of climate change in the manner the Authors' representatives suggest is inconsistent with the scope and intention of the Committee's views in General Comment No 31.

58. The Australian Government also recalls the judgment of the Grand Chamber of the ECtHR in the case of *Osman v the United Kingdom* ('*Osman*').[80] In particular, the Australian Government recalls the statement of the Grand Chamber that:

> … not every claimed risk to life can entail for the authorities a Convention requirement to take operational measures to prevent that risk from materialising.[81]

In considering the right to life under the European Convention on Human Rights in the context of a duty to prevent and suppress offences against the person, the Grand Chamber's view was that:

> … it must be established to its satisfaction that the authorities knew or ought to have known at the time of the existence of a real and immediate risk to the life of an identified individual or individuals from the criminal acts of a third party and that they failed to take measures within the scope of their powers which, judged reasonably, might have been expected to avoid that risk. [82]

The Grand Chamber set a high and specific threshold, in terms of the real and immediate risk to life from the acts of a third party, which again could not support an argument of a due diligence obligation to protect against the general future effects of climate change. The Authors' representatives attempt to invoke *Urgenda* as the basis for what constitutes 'real and immediate risk',[83] despite the fact that this is not binding on Australia nor the Committee; nor, in the context of its own jurisprudence, is it even binding on the ECtHR.

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[79] General Comment No 31 (n) [8].
[80] [1998] Eur Court HR 101.
[81] Ibid 33.
[82] Ibid.
[83] Authors' additional submissions, [43].

59. The Australian Government respectfully submits there are two questions the Committee will need to consider in respect of the positive obligation under Article 2(1): first, whether the threat posed by climate change can be described as a 'real risk' to Covenant rights, consistent with the Committee's existing jurisprudence; and second, whether the Australian Government has taken reasonable measures, that do not impose disproportionate burdens on its resources, in response to that threat.

60. First, whether a threat presents a 'real risk' to Covenant rights involves an assessment of whether it will arise as a necessary and foreseeable consequence of a State's failure to take reasonable measures to avoid that risk. This is consistent with the Committee's Views in *A.R.J. v Australia* and *G.T. v Australia*, where a 'real risk' was defined as one arising as 'a necessary and foreseeable consequence' of a State's actions (in assessing whether extradition of an individual amounted to exposure to violation of their Covenant rights read alongside Article 2(1)).[84] A substantial degree of proximity should therefore be required between the State's act or omission and the 'necessary and foreseeable' consequence of exposure to a violation of Covenant rights, in order to amount to a failure to 'ensure' those rights under Article 2(1). It is not in dispute that climate change is a serious issue that may impact enjoyment of human rights, and one the Australian Government is taking action to address. However, the Authors' representatives themselves acknowledge that there are multiple global causes of climate change,[85] and that, as the Committee has also acknowledged, there is still opportunity for mitigating factors at the national *and* global level to intervene in order to allay the threat posed by its future impacts.[86] Accordingly, climate change-induced impacts do not meet the threshold of presenting a 'real risk' to the Authors in the context of the obligation to 'ensure' Covenant rights under Article 2(1): they are not a necessary nor foreseeable consequence of the effectiveness of Australia's actions, but their materialisation is contingent on collective action among States and other actors, including over the coming decades.

61. Academic commentators are also of the view that, in the context of positive obligations under the Covenant, it is difficult to link a single State's 'action on climate change mitigation, in itself' and meaningful 'benefit[s] to the rights of individuals within that State's territory or under its jurisdiction'.[87] For example, Mayer notes that:

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[84] *ARJ v Australia*, Communication No 692/1996 at [6.8] and [6.14]; *GT v Australia*, Communication No 706/1996 at [8.1]. See also *Ng v Canada*, Communication No 469/1991 at [15.1] and *Hamida v Canada*, Communication No 1544/2007 at [8.7].

[85] Authors' submissions dated 13 May 2019, [44].

[86] See, eg, Authors' additional submissions, [107]; *Teitiota* (n 29) at [9.11].

[87] Mayer (n 63) 433.

> …a key obstacle to interpreting human rights treaties as the source of an obligation to mitigate climate change is that a State's human rights obligations are generally limited to its jurisdiction or territory, whereas the impacts of climate change are global in nature. When one only takes into account the benefits of a State's mitigation action that take place within the State's own territory, these mitigation outcomes appear not just tiny, but vanishingly small.[88]

62. The Australian Government submits that any positive obligation that arises under the Covenant, including as described in General Comment No 36, is principally limited to the threat posed by the acts of private persons or entities within a State party's jurisdiction and control. The Australian Government accepts that this could also extend to positive obligations in respect of environmental issues that pose a direct, specific and objective threat to enjoyment of Covenant rights, such as use of pesticides (like in *Cáceres*), where it is within the scope of a State's power to avoid that risk (for example, by enforcing its laws regulating use of pesticides). However, it does not extend to an obligation to protect generally against the future effects of a global phenomenon like climate change that, as a matter of international law, extends well beyond the scope of a single State party's jurisdiction and control. If the Committee were to adopt the latter position in respect of Australia's positive obligations under the Covenant, it would be inconsistent with the Committee's jurisprudence, the ECtHR's decision in *Osman* and with the Committee's own statements in General Comment No 31. It would also set unduly and unreasonably broad parameters for all claimed risks to Covenant rights that the State is required to protect individuals within its territorial jurisdiction against. As Mayer writes, climate change 'differs in many respects from the issues to which human rights law has generally been applied: responsibilities are diffuse, there is no distinct class of victims, and overall a State's action on climate change mitigation, by itself, is never a quick or effective fix'.[89] Thornton similarly notes that 'causal pathways involving anthropogenic climate change, and especially its impacts, are intricate and diffuse',[90] and that human rights law 'cannot actually address the depth and breadth of the causes and impacts of climate change'.[91]

63. Ultimately, a threat that is not attributable to a State is not amenable to being 'ensured' or 'protected' by that State where such protection simply cannot be achieved by the State alone. Given the causes and impacts of climate change, not even the steps the Authors' representatives

[88] Mayer (n 63) 424-425. See also page 423: 'a State, acting on its own, is unable to achieve sufficient mitigation outcomes to effectively protect the human rights of individuals within its territory or under its jurisdiction'.
[89] Ibid, 412.
[90] Fanny Thornton, 'The Absurdity of Relying on Human Rights Law to Go After Emitters', in Benoit Mayer and Alexander Zahar (eds.), *Debating Climate Law* (Cambridge University Press, 2021) 159.
[91] Ibid.

suggest that the Australian Government should take would be capable of 'ensuring' their rights. For these reasons, the Australian Government submits that there has been no violation of its positive obligation to 'ensure' Covenant rights under Article 2(1).

ii) Positive obligations under the Covenant do not require 'maximum possible resources' nor 'highest possible ambition'

64. In addition to failing to establish a sufficiently direct threat that is within the Australian Government's powers to address, the Authors' representatives also fail to acknowledge the nature of the response required by a State's positive obligation. Instead, the Authors' representatives attempt to invoke and apply concepts such as 'maximum available resources',[92] 'highest possible ambition' and 'common but differentiated responsibilities and respective capabilities' that have no basis in the Covenant.[93] Professors Boyd and Knox also overstate the test required by international human rights law by suggesting that the Australian Government 'has *clear*, positive and enforceable obligations under the [Covenant] to *prevent* climate change from *interfering* with the human rights of those within its jurisdiction'.[94] To adopt these unprecedented tests would not only place an impossible burden on States but would also displace reasonable policy choices made in good faith by States as they assess a range of threats and challenges that impact on the enjoyment of human rights under the Covenant and decide how to distribute limited resources to address them.

65. It would be both inappropriate and unfounded for the Committee to interpret the Covenant in such a way as to allow it to re-make the informed, good faith and difficult policy decisions of a democratically elected government that inherently involve compromises, trade-offs and the allocation of limited resources across the range of challenges to the full enjoyment of human rights.[95] Consider, for example, just in relation to the right to life, that States need to grapple with threats posed by, *inter alia*, global pandemics, disease, poverty, terrorism, illness, workplace

[92] Authors' submissions dated 13 May 2019, [163(1)].
[93] See Authors' additional submissions, [90]-[91].
[94] Third-party submissions of Professors Boyd and Knox, [50] (emphasis added).
[95] See, eg, in the context of climate change, Mayer (n 63) 418: 'The ability of a State to effectively protect human rights is resource-dependent, and some of the resources that States invest in reducing [greenhouse gas] emissions are inevitably taken away from other priorities, including priorities that advance the protection of human rights. As an immediate budgetary constraint, mitigation action perhaps more obviously hinders efforts to protect social and economic rights such as the rights to an adequate standard of living, to the highest attainable standard of health, or to education; but it also affects the effective protection of civil and political rights as States may not, for instance, be able to invest as much in road safety, crime prevention, or the justice system, when they are massively investing in mitigation action'. See also Thornton (n 90) 165: '…in seeking to protect the enjoyment of some rights in their policymaking, most States inevitably face the conundrum of having to weaken the enjoyment of others'.

hazards and violent crime, including domestic and family violence. In urging the Committee to adopt an unduly broad interpretation of a positive obligation, the Authors' representatives invite the Committee to disregard States' discretion in making these decisions, even if exercised in good faith. There is no jurisprudence to substantiate these claims. Rather, fulfilment of positive obligations under Article 2(1) must recognise competing challenges to limited State resources. Accordingly, deference must be afforded to democratic States engaging in good faith efforts to address adverse human rights impacts through reasonable and appropriate precautionary measures that do not impose disproportionate burdens on their resources.

66. The Australian Government therefore submits that while the positive obligation to 'ensure' Covenant rights under Article 2(1) requires effort by States to identify and address harms caused by private persons and entities whose conduct is not attributable to the State, a breach can only be found in exceptional and defined circumstances. That is, a positive obligation to 'ensure' must only require that States, having due regard to threats that pose a 'real risk' to enjoyment of Covenant rights, undertake positive steps in good faith to address those threats. There is nothing in this Communication to suggest that the Australian Government has failed to meet this standard in respect of the Covenant rights invoked by the Authors' representatives.

67. In light of the Australian Government's submissions regarding its obligations to 'respect' and 'ensure', the merits of each Article of the Covenant invoked by the Authors' representatives, read alongside Article 2(1), are now examined in turn.

3) Merits – Article 6 (in conjunction with Article 2(1))

68. The Authors' representatives fail to substantiate their claims that Article 6(1) of the Covenant includes a generalised right of protection against the effects of climate change. Further, the Authors' representatives have not demonstrated that the Australian Government has engaged in conduct constituting an arbitrary deprivation of life or has failed to protect the right to life by law. By failing to provide evidence of any Australian Government conduct constituting an arbitrary deprivation of life or failure to protect the right to life by law, such as to amount to a violation of Article 6 in conjunction with Article 2(1), the Authors' representatives fail to establish that any breach of Article 6 has occurred.

Interpretation of Article 6: alleged positive obligations of due diligence

69. The Australian Government's earlier submissions set out the content of the right to life under Article 6, which reflects the current state of international law. That is, the right to life under Article 6(1) requires States to protect the right to life by law and to protect against arbitrary deprivation of life, not the general effects of climate change.

70. The Authors' additional submissions claim that the Committee is the 'authoritative organ' to interpret the Covenant, and not State parties. The Australian Government respectfully submits that, as with all human rights obligations, the Covenant must be interpreted in accordance with the customary principles reflected in the VCLT, as examined in Section II of the present submissions, and in paragraphs 71 and 82 of the Australian Government's earlier submissions. The Australian Government's interpretation of Article 6 is accurate and faithful to the rules of treaty interpretation, whereas the broad interpretation presented by the Authors' representatives is simply not supported by the ordinary meaning of its text nor the practice of States.

Interpretation of Article 6: The right to life 'with dignity', and the 'right to a healthy environment'

71. The Australian Government reiterates that Article 6 does not extend to the right to life 'with dignity' or the 'right to a healthy environment', for the reasons set out in paragraphs 70 to 85 of its earlier submissions. These claims go beyond the scope of Article 6(1) as understood in accordance with the VCLT. In their additional submissions, the Authors' representatives are still unable to substantiate how Article 6(1) of the Covenant includes a right to 'life with dignity' extending to protections from the generalised global threat of climate change. Of course, there is no dispute that all States should support individuals to live with dignity, as the Australian Government does. But that commendable policy objective does not enable Article 6 to be read beyond its clear and express terms as requiring an unfounded additional right to life 'with dignity'. Nor can Article 6 be interpreted to require the Australian Government to take additional

specific measures and allocate the 'maximum available resources'[96] to address one type of threat to the enjoyment of the right to life – the future effects of climate change – which is not attributable to Australia.

Portillo Cáceres v Paraguay

72. The Authors' representatives cite the Committee's Views in *Cáceres* to support their contentions in respect of Article 6(1). However, their attempt to draw parallels between *Cáceres* and the present Communication remains both unfounded and inappropriate, noting the clear factual distinctions between the two.[97]

73. Specifically, the Committee's Views in that Communication provide no basis for the contentions by the Authors' representatives that, under Article 6(1), Australia must protect the right to life 'with dignity' from the threat of climate change, nor that Australia has violated its duty to protect because it has not diligently enforced its 'duties'. In *Cáceres*, the Committee considered the State party's lack of enforcement and oversight of domestic laws regulating use of toxic agrochemicals. Conversely, the Authors' representatives have not adduced any evidence of a failure by Australia to enforce its laws that amounts to a violation of Article 6. In their discussion of the duty to protect under Article 6(1), it is also unclear what is meant by the reference to Australia's diligence in enforcement of 'duties'. Whatever it means, it is not comparable to the specific instance of enforcement of environmental standards and laws to actions clearly and exclusively within a State party's jurisdiction and control, as in *Cáceres*. Understandably, the Committee did not adopt an interpretation of the obligation in Article 6(1) that was beyond the power and control of the State party to fulfil. It remains that the characterisation by the Authors' representatives of Article 6(1) in respect of the right to life 'with dignity' and the duty to protect in respect of climate change are not supported by *Cáceres* and have no foundation in international human rights law.

General Comment No 36 and the 'precautionary approach'

74. With respect to the status of General Comment No 36, as explained in the Australian Government's earlier submissions, General Comments are only capable of providing guidance to States Parties in their interpretation of their obligations. Similarly, Professors Boyd and Knox's invocation of the precautionary approach is a recommendation that can provide guidance to States. But, as a concept derived from international environmental law, it is not one 'required by human rights law'.[98] General Comment No 36 is non-binding in nature and there is otherwise no

[96] Authors' submissions dated 13 May 2019, [159].
[97] See Australian Government's earlier submissions, [78]-[79].
[98] Third-party submissions of Professors Boyd and Knox, [36], [38].

obligation to pay due regard to the 'precautionary approach' under the Covenant or international human rights law more generally.

Relevance of Teitiota

75. The Authors' representatives simultaneously seek to distinguish *Teitiota* from the present Communication, and invoke it to support the Authors' position. However, this is an artificial distinction and is not meaningfully substantiated in their claims.

76. First, the Authors' representatives suggest that unlike *Teitiota*, 'this case is not about whether Australia has been "*arbitrary*", but whether it has complied with its positive obligations of conduct and due diligence'.[99] In doing so, they concede there is no evidence that the Authors have been arbitrarily deprived of their lives by the Australian Government, and therefore there is no breach of this limb of Article 6.

77. Second, the Authors' representatives suggest that rather than alleging that a violation had occurred, Mr Teitiota's claim was that 'his (future) deportation would be a violation because it would expose him to threats to his life'.[100] It is true, as the Authors' representatives note, that in *Teitiota*, the Committee held 'that the risk of a violation must be "imminent" "*means that the risk to life must be, at least, likely to occur*"'.[101] The Committee also took note that the timeframe in which sea level rise was likely to render the Republic of Kiribati uninhabitable was 10 – 15 years, which could allow for intervening acts by the State to take affirmative measures to protect and relocate its population.[102] Similarly, in the present Communication, the Authors' representatives themselves acknowledge at paragraph 127 of their additional submissions that their allegations are based on impacts 'over the coming decades'. The alleged harm to be experienced by the Authors is therefore not imminent, similar to the author's situation in *Teitiota*.

78. Third, the Authors' representatives allege that unlike *Teitiota*, the Covenant rights relevant to the present Communication are 'wider in scope (not limited to the risk of arbitrary deprivation of life)', and that the Authors 'allege actual violations by the State party… not only an anticipated violation'.[103] However, as explained above, their broad view of Article 6's scope does not reflect the current state of international human rights law. Moreover, in relation to the obligation to 'respect' when Article 6 is read with Article 2(1), the additional submissions fail to adduce evidence of any direct violations by the Australian Government, as opposed to identifying risks that might arise in future.

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[99] Authors' additional submissions, [124].
[100] Ibid [125].
[101] Ibid.
[102] *Teitiota* (n 29) [9.12].
[103] Authors' additional submissions, [129].

79. Fourth, the Authors' representatives suggest that the information about initiatives by the Republic of Kiribati was more limited in *Teitiota* compared to the information before the Committee in the present Communication. The Authors' representatives also seek to distinguish the circumstances in the Republic of Kiribati, as a developing country, from Australia. There is nothing in the Committee's Views in *Teitiota* to support this distinction. Notwithstanding the fact that climate change obligations are separate to the interpretation and content of rights under the Covenant, the extensive information the Australian Government has provided on its adaptation and mitigation initiatives clearly demonstrates that Australia is acting to protect those under its jurisdiction from the adverse impacts of climate change.

80. Finally, the Authors' representatives assert that *Teitiota* supports their case because, 'it shows that… climate change is relevant to the obligations of States under the ICCPR''.[104] However, the suggestion that climate change may be relevant to States' human rights obligations does not support the broad obligations under Article 6 allegedly owed by the Australian Government as the Authors' representatives suggest.

81. For these reasons, the Australian Government respectfully submits that *Teitiota* supports its position, and that the Authors' representatives have failed to demonstrate that Australia has violated Article 6 in the present Communication.

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[104] Authors' additional submissions, [131].

4) Merits – Article 27 (in conjunction with Article 2(1))

82. As explained in paragraphs 90 to 92 of the Australian Government's earlier submissions, Article 27 obliges States Parties to the Covenant 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. As General Comment No 23 states, Article 27 'recognise[s] the existence of a "right" and requires that it shall not be denied'.[105] Positive legal measures, including those that ensure the effective participation of minority communities in decisions which affect them, can further ensure exercise of the right under Article 27 is protected against denial or violation,[106] as well as the survival and continued development of cultural identity. Insofar as those positive measures of protection are 'aimed at correcting conditions which prevent or impair the enjoyment of that right', this is intended to address 'the treatment between different minorities, and between those belonging to minorities and the remaining part of the population',[107] not as against conditions of climate change.

83. The allegations contained in the Authors' additional submissions and the third-party submissions,[108] that Australia is taking no measures to prevent the Islands becoming unviable for habitation, disregard the adaptation and mitigation measures described at length in the Australian Government's earlier submissions (see paragraphs 34 to 54). Aside from being factually incorrect, the Authors' representatives again fail to establish any violation of Article 27. The Authors' representatives frame their case as being based on the 'existing and foreseeable future impacts of current (and imminent) violations of their right to enjoy their culture', and allege that it is 'the failure to take action now' on the impacts of climate change 'that constitutes the violation of Articles 2 and 27'.[109] Notwithstanding this, it still remains unclear how climate change impacts (including possible future impacts), and the Australian Government's role in addressing those impacts, have denied the Authors' rights under Article 27. This argument is also beyond scope and intention of Article 27 regarding the ability of minorities to enjoy their culture on the same basis as others, as set out in the preceding paragraph.

84. The survival and continued development of Torres Strait Islander cultural identity is protected through a range of legal and policy measures in accordance with Article 27. In respect of the

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[105] Human Rights Committee, *General Comment No 23*: *Article 7 (Rights of Minorities),* 50th sess, UN Doc CCPR/C/21/Rev.1/Add. 5 [6.1] ('General Comment No 23'); see also Paul M. Taylor, 'A Commentary on the International Covenant on Civil and Political Rights: The UN Human Rights Committee's Monitoring of ICCPR Rights' (Cambridge University Press, 2020) 789.
[106] General Comment No 23 (n 105) [6.1].
[107] Taylor (n 105).
[108] See third-party submissions of Professors Boyd and Knox, [42].
[109] Authors' additional submissions, [135].

allegations that Australia's 'track record (at Commonwealth level and by the state of Queensland) is one of inaction, of very limited and delayed measures and of a failure to listen to what the people of the Torres Strait know is happening to their traditional lands and sea',[110] the Australian Government reiterates that it has a variety of laws, policies and initiatives to protect the cultural identity of Torres Strait Islander communities, including in its environmental conservation initiatives.

85. As noted in paragraph 47 of the Australian Government's earlier submissions, the Queensland Government has lead responsibility for the delivery of community services and support for land and sea management in the broader Torres Strait region. The *Torres Strait Islander Cultural Heritage Act 2003* (Qld) provides for the recognition, protection and conservation of Torres Strait Islander cultural heritage. The Act provides blanket protection of areas and objects of traditional, customary, and archaeological significance; recognises the key role of Traditional Owners in cultural heritage matters; and establishes practical and flexible processes for dealing with cultural heritage in a timely manner. In addition, the *Meriba Omasker Kaziw Kazipa (Torres Strait Islander Traditional Child Rearing Practice) Act 2020* (Qld) legally recognises Torres Strait Islander 'Ailan Kastom' (Island Custom) child rearing practices and allows better access to support and services for connection to community and culture.

86. A key component of the Torres Strait Regional Authority's ('TSRA') role is also to recognise and maintain the special and unique Ailan Kastom of the Torres Strait Islander people living in the Torres Strait region. The TSRA's Traditional Ecological Knowledge ('TEK') project directly supports Traditional Owners to preserve their traditional knowledge of land and sea country in adherence to cultural protocols.[111] The TEK project works in two ways. It delivers a confidential database system only accessible to the relevant Traditional Owners. It also assists communities to promote publicly available Indigenous knowledge by working with Traditional Owners to develop educational products such as seasonal calendars for the benefit of future generations. In recent times, seasonal calendars are being used by Torres Strait Traditional Owners and Elders to capture their observations of temporal changes in seasonal indicators such as weather patterns, animal migrations, plant flowering and fruiting times.

87. It is clear that those policies facilitate and support Torres Strait Islander communities in the enjoyment and common practice of their culture. Those policies also recognise and protect the relationship between Torres Strait Islander culture and land.

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[110] Authors' additional submissions, [134].

[111] See Torres Strait Regional Authority, 'Traditional Ecological Knowledge Project', *Our Projects* (Web Page) <https://www.tsra.gov.au/the-tsra/programmes/env-mgt-program/our-projects>.

88. Professors Boyd and Knox also note that Australia has an obligation to 'respect the right of Torres Strait Islanders to participate fully in decisions that have implications for their culture'.[112] The Australian Government supports and actively engages in consultation with Torres Strait Islander communities about decisions that are likely to impact them, including by giving them the opportunity to participate in the making of such decisions through both formal and informal Government processes. As noted in paragraph 45 of the Australian Government's earlier submissions, the TSRA consists of a democratically elected arm of Aboriginal and Torres Strait Islander representatives from the region. Consultation and participation opportunities are also afforded as part of Australian Government policies to protect the cultural identity of Torres Strait Islander communities. Some examples have already been provided to the Committee in paragraphs 45 to 46 and 52 of the Australian Government's earlier submissions. Those examples are not exhaustive and the Australian Government would also note the following, additional examples that demonstrate its commitment to active consultation with Torres Strait Islander communities.

89. The TSRA develops collaborative land and sea management activities with Traditional Owners to address community concerns and aspirations, and aligns these with both scientific and traditional ecological knowledge. A key initiative designed to protect and preserve the terrestrial and marine environments of the Torres Strait is the Torres Strait Indigenous Ranger Project, which employs 55 Indigenous rangers and support staff across all 14 outer islands.[113] Rangers deliver management actions under agreed Working on Country (WoC) Ranger Plans that are aligned with the 16 key values contained in the Torres Strait Land and Sea Management Strategy.

90. The TSRA has also supported Traditional Owners to declare three Indigenous Protected Areas (IPAs) in the Torres Strait region, including the Warrabalgal Porumalgal IPA in the central island cluster, the Pulu IPA in the near-western cluster and the Ugul Malu Kawai IPA in the north-west of the Torres Strait.[114] The IPAs protect natural and cultural resources in accordance with values prescribed by the International Union for the Conservation of Nature and are recognised as part of Australia's National Reserve System. The Australian Government provides funding for ongoing planning, management and community consultations to maintain these reserves. In June 2021 the Australian Government committed funds to the TSRA to support the Masigalgal and Magani Lagaugal IPA consultation projects. The funds will enable the community to decide how it wishes

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[112] Third-party submissions of Professors Boyd and Knox, [42].
[113] See Torres Strait Regional Authority, 'Ranger Project', *Our Projects* (Web Page) <https://www.tsra.gov.au/the-tsra/programmes/env-mgt-program/our-projects>.
[114] See Torres Strait Regional Authority, 'Indigenous Protected Areas Project', *Our Projects* (Web Page) <https://www.tsra.gov.au/the-tsra/programmes/env-mgt-program/our-projects>.

to protect its natural and cultural resources into the future, including whether it wishes to declare their lands as IPAs.

91. In connection with the Native Title system, the Queensland Government's Torres Strait Infrastructure and Housing Indigenous Land Use Agreements provide for State and Council infrastructure development, home ownership, housing renovations and future acts necessary to facilitate a land transfer under the *Torres Strait Islander Land Act 1991* (Qld).[115] These land transfers provide ownership of land by way of inalienable freehold to the Registered Native Title Bodies Corporate for the islands.

92. The Queensland Government also engages and supports remote discrete Torres Strait Islander communities in its preparation of Master Plans, Planning Schemes and detailed studies in response to climate change scenarios. For example, Master Plans provide for future direction for development in communities and reflect a community's vision and aspirations for any future development. The Master Plans include climate change response and adaptation initiatives in all the island communities.

93. Local Thriving Communities ('LTC') is another significant, long-term reform being undertaken by the Queensland Government to bring decision-making closer to remote and discrete Torres Strait Islander communities.[116] LTC is based on mutual respect, high expectations relationships, and application of a collaborative approach to ensure Torres Strait Islander peoples have greater decision-making authority in regard to service delivery and economic development.[117] By enabling locally-led decision-making that respects existing leadership structures and responds to each community's aspirations and needs, LTC ensures that Torres Strait Islander communities benefit from whole-of-government systemic, structural and economic reform.

94. These effective consultation and participation opportunities promote the Australian Government's obligations under Article 27 to protect Torres Strait Islander cultural identity. The above examples, in addition to the examples cited in the Australian Government's earlier submissions, demonstrate that the Australian Government places traditional knowledge centrally within land and sea management initiatives in the Torres Strait, in recognition of their implications for Torres Strait Islander peoples' cultural and spiritual way of life.

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[115] See Queensland Government, *Land Transfers* (Web Page) < https://www.qld.gov.au/atsi/environment-land-use-native-title/land-transfers>; Torres Strait Island Regional Council, *Native Title* (Web Page) <http://www.tsirc.qld.gov.au/our-work/native-title>.

[116] See Queensland Government, *Local Thriving Communities* (Web Page) <https://www.datsip.qld.gov.au/programs-initiatives/tracks-treaty/local-thriving-communities>.

[117] See Queensland Government, *About Local Thriving Communities* (Web Page) <https://www.datsip.qld.gov.au/programs-initiatives/tracks-treaty/local-thriving-communities/about-local-thriving-communities>.

95. The Authors' representatives suggest that dispossession from sea level rise is a 'slow-onset process', and that the violations of Article 27 'are not future hypothetical but have already commenced'.[118] However, the Australian Government submits that Article 27 does not involve any positive obligation to prevent 'slow-onset' risks that might arise in future – noting, as explained above, this threshold is without foundation in international human rights law. The nature of the obligations in Article 27 require that the Committee consider the suite of measures in this Communication, described above, that are implemented by the Australian Government to support the Authors' language, culture and religion.

96. The Authors' representatives suggest that *Mavlonov* supports their case insofar as it demonstrates that 'acts which affect minority culture, but fall short of causing its total destruction, can also amount to violations of Article 27'.[119] However, the Authors' representatives have not adduced any new evidence that the impugned restriction has an "impact… [so] substantial that it does effectively deny to the [complainants] the right to enjoy their cultural rights"', being the relevant test as set out in the Australian Government's earlier submissions at paragraph 96.

97. In his third-party submission, Professor Scheinin asserts that there is an intergenerational element to Article 27, and that '[t]here is a violation of Article 27 today, if members of the present generation are subjected to such hardship for their right to transmit their culture to the next generation that this hardship amounts to a "denial" under Article 27'.[120] Professor Scheinin submits that '[s]uch denial can take different forms, ranging from direct interference by the State party with the process of transmitting a culture, to its failure to provide adequate protection, including against known threats to the effective enjoyment of the right to transmit their culture to future generations, resulting from action by third parties or from natural hazards or other major changes'.[121]

98. The Australian Government respectfully submits that any 'intergenerational' element of cultural transmission neither produces violations of Article 27, nor denies rights under Article 27, *at present*. A breach of Article 27 only arises at the time of any 'denial' – it does not convert a risk of future denial into a present breach. Even if the Committee were to accept Professor Scheinin's observations on the content of Article 27, the degree of hardship suggested in his third-party submission is not substantiated, neither in his brief nor the Authors' additional submissions. There is simply no evidence to suggest that the Australian Government has directly interfered in the Authors' ability to transmit their culture across generations. To the contrary, the Australian

[118] Authors' additional submissions, [135].
[119] Ibid [137].
[120] Third-party submissions of Professor Scheinin, [3].
[121] Ibid.

Government's policies encourage and support such transmission. To the extent that Australia has positive obligations to protect the Authors' rights under Article 27, the submissions also fail to establish that there has been any failure to provide protection of the right to transmit culture against any threats to the right. This lacuna in the Authors' case, having failed to identify any act or omission by the Australian Government to substantiate any breach of Article 27, is especially apparent when considered in light of the initiatives described above. Finally, Professor Scheinin's references to the impacts of environmental degradation on the Authors (in paragraphs 22 and 25 of the third-party submission) fail to establish that the Australian Government, by its conduct, has violated Article 27.

5) Merits – Article 17 (in conjunction with Article 2(1))

99. The response by the Authors' representatives to the Australian Government's submissions on Article 17 focuses on the effects of climate change on the Torres Strait, allegedly due to Australia's 'lack of action' to address those effects.

100. The Australian Government respectfully submits that there is no obligation to protect the Authors from the general effects of climate change under the Covenant. Article 17 obliges State parties to respect and ensure individuals' rights to privacy, family and home. Moreover, Article 17 prohibits a real and effective interference with family life, and not the risk of possible future interference. Again, the allegations by the Authors' representatives that Australia has violated Article 17 are entirely based on an obligation that simply does not exist in the Covenant's framework. The Authors' further submissions still do not provide evidence of any arbitrary nor unlawful interference by the Australian Government with the Authors' private, home and family lives, nor failure by the Australian Government to provide protection by law against such interference. The Authors' representatives have therefore failed to substantiate that any direct breach of Article 17 by Australia has occurred.

6) Merits – Article 24 (in conjunction with Article 2(1))

101. The Authors' representatives submit that the Australian Government 'has not mentioned one single measure to ensure the protection of the Authors' children's right to life with dignity'.[122] The Australian Government takes its obligations under Article 24(1) very seriously and fully complies with those obligations. However, as explained in paragraphs 112 to 113 of the Australian Government's earlier submissions, Article 24(1) does not itself set out the rights of children but, in the Committee's own words, 'entails the adoption of special measures to protect children'.[123] It 'guarantees a right to *necessary measures of protection by the child's family, the society and the State*'.[124] Again, the Authors' representatives have not provided any evidence that the Australian Government does not provide the requisite measures of protection to minors in the Torres Strait region. Instead of identifying any measures specifically sought by the Authors to obtain such protection for children, their additional submissions only describe climate change impacts which affect the Torres Strait population generally – adults and children alike – and that, subject to contingencies (including the possibility for intervening action), may continue to be experienced by adults and children alike in the future. These impacts may shape the world that today's children – being tomorrow's adults – inherit, but that is a separate issue. The special measures warranted by Article 24 seek to protect children *because of* their status as minors. There is no evidence of a breach of Article 24 in this Communication.

102. The allegations by the Authors' representatives in respect of Article 24(1) would appear more relevant to an assessment of whether any violation has occurred under Article 6, which protects the Authors' children's right to life. Even so, the Australian Government respectfully submits that the right to a life with dignity is outside the scope of Article 6, as explained in the Australian Government's earlier submissions. The submissions by the Authors' representatives in respect of Article 24(1) are therefore not founded in the Convention's provisions and add nothing to their arguments regarding Article 6.

103. The Authors' representatives also submit that Australia's duties to children under the Covenant must be interpreted in accordance with Article 3(1) of the *Convention on the Rights of the Child* ('CRC'). Article 3(1) provides that, in all actions concerning children, 'the best interests of the child shall be a primary consideration'. In an attempt to reverse their burden to demonstrate a breach, the Authors' representatives state that '[n]owhere in the submissions has Australia

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[122] Authors' additional submissions, [146].

[123] Human Rights Committee, *CCPR General Comment No 17: Article 24 (Rights of the child),* 35th sess (7 April 1989) [1].

[124] Manfred Nowak, *U.N. Covenant on Civil and Political Rights: CCPR Commentary* (2005) 546, cited in paragraph 112 of the Australian Government's earlier submissions.

referred to this consideration and its specific application to the Authors' children'.[125] However, the Authors' representatives have not made such an allegation in the Communication nor have they provided any evidence that Australia's system does not give primary consideration to the best interests of the child. Nor is there anything in Australia's earlier submissions to suggest that the best interests of the child are not being applied as a primary consideration in its measures of protection under Article 24(1). The mere fact that this is not referred to in Australia's earlier submissions is not material, but for completeness the Australian Government affirms that it does give primary consideration to the best interests of the child in accordance with Article 3(1) of the CRC in all actions concerning children. In any case, the Australian Government reiterates that its obligations under the CRC are outside the scope of the Committee's mandate, as outlined in paragraph 15 of the Australian Government's earlier submissions.

104. Finally, the Authors' representatives attempt to link the 'intergenerational equity' principle in international environmental law with the alleged violations of Article 24. This too is outside the scope of Article 24. Aside from the fact that 'intergenerational equity' is not a legal obligation in international environmental law, the Authors' representatives fail to substantiate any clear link between the 'principle' and the content of Australia's obligations under Article 24. Of course, the Australian Government recognises that the policy choices it makes today may have consequences for the well-being of future generations – that is one of the reasons why the Australian Government is committed to mitigating and adapting to the effects of climate change. However, as explained above, that does not ground the claims made by the Authors' representatives. Article 24 concerns 'measures of protection as are required by [a child's] status as a minor'. The effects of climate change do not depend upon a person's status as a minor. Accordingly, the Authors' representatives' submissions on Article 24 add nothing to the Authors' complaint.

[125] Authors' additional submissions, [148].

7) There is no breach of any positive obligation under Article 2(1)

105. The Authors' submissions that Australia's positive duties under the Covenant extend to adaptation and mitigation initiatives are expressed in very general terms and remain without legal merit. In essence, the present Communication attempts to assess Australia's domestic climate change policy pursuant to its international environmental law obligations via an unfounded and misconceived interpretation of Covenant rights. The Australian Government rejects any suggestion that it has not complied with its international climate change obligations and, in any event, respectfully submits that the Committee does not have jurisdiction to consider any such allegation of non-compliance by Australia. Those obligations do not form part of Australia's obligations under the Covenant. Accordingly, the Australian Government submits that the Committee should decline the Authors' invitation to venture beyond the Committee's mandate.

106. Even if the Committee were to accept that there is a positive obligation to 'ensure' Covenant rights under Article 2(1) in respect of climate change impacts, the Australian Government's policies would still clearly be consistent with that obligation, properly understood. The Australian Government has due regard to climate change threats and has formulated a clear policy response on mitigation and adaptation to address those threats in good faith. As stated in the introduction to the present submissions, the fact that views may differ as to whether these initiatives are 'enough' or whether Australia has 'done its fair share', does not substantiate that there has been a breach of the Authors' rights under the Covenant.

107. The Australian Government reiterates its firm commitment to addressing the impacts of climate change and to the goals of the Paris Agreement. It is the Australian Government's aim to achieve net zero emissions as soon as possible – preferably, by 2050. 'If' and 'when' are not in dispute – the Australian Government is focused on 'how' to reach net zero. The Australian Government is on track to beat its 2030 Paris target, and is confident that this can be done without drawing on overachievement of previous targets.[126]

108. Since signing the Paris Agreement in 2015, the Australian Government has made significant contributions to make Australia's natural resources, environment and water infrastructure more resilient to the challenges faced in Australia's climate, including from drought, marine heatwaves and natural disasters. In addition to those measures already set out in the Australian Government's earlier submissions (see Section V), the Australian Government's commitment to

[126] The Hon Angus Taylor MP, 'Projections Confirm Australia on Track to Meet and Beat 2030 Target' (Media Release, 10 December 2020) <https://www.minister.industry.gov.au/ministers/taylor/media-releases/projections-confirm-australia-track-meet-and-beat-2030-target>; the Hon Scott Morrison MP, 'Address, Pacific Islands Forum' (Speech, 11 December 2020) <https://www.pm.gov.au/media/address-pacific-islands-forum>.

taking action on climate change is further illustrated by the following recent initiatives at the domestic and international level, including since its submissions were lodged in May 2020. These initiatives plainly rebut the mischaracterisation by the Australia Institute in Annex I to the Authors' additional submissions that the Australian Government 'has been reticent to act', or '[does] not prioritise' climate change adaptation, and 'continues to support policies that will detract from emissions reduction… contributing to greater climate change impacts'.

Adaptation

109. The Australian Government is committed to build on its world-leading collaboration with scientists, communities and traditional owners and work with the international community to act and adapt to an already changing climate and protect Australia's unique ecosystems.

110. The Australian Government is developing a new National Climate Resilience and Adaptation Strategy to set out a roadmap towards climate resilience, and will submit an Adaptation Communication to the UNFCCC, ahead of the 26th UN Climate Change Conference of the Parties (COP26).[127] The Australian Government has committed more than $15 billion in natural resource management, water infrastructure, drought and disaster resilience and recovery funding. This includes support for the farming, world heritage and tourism sectors through:

- $1.9 billion to increase the resilience of the Great Barrier Reef, helping to keep the reef's ecosystems vibrant and diverse in the face of impacts such as ocean warming and acidification, land-based pollutants and other threats
- $5 billion to support farmers and communities prepare for future drought under the Future Drought Fund
- $3.5 billion to build water infrastructure that will strengthen drought resilience in our rural and regional communities under the National Water Grid Authority, and
- $1 billion under the National Landcare Program towards sustainable agricultural outcomes.

111. The Australian Government is also investing over $500 million in science to prepare Australia for future climate risks, such as:

- $149 million for Phase 2 of the National Environmental Science Program, which will fund environment and climate research to support decision-makers across the Australian community, including Indigenous communities. This includes $38 million for a new Climate Systems Hub to advance understanding of Australia's climate and its extremes, and to inform climate adaptation solutions for Australia

[127] The Hon Sussan Ley MP, 'Australia Joins Coalition for Climate Adaptation Action' (Media Release, 19 March 2021) <https://minister.awe.gov.au/ley/media-releases/australia-joins-coalition-climate-adaptation-action>.

- $106 million to support Antarctica and Southern Ocean science, research and innovation
- $30 million for the Australian Research Council Centre of Excellence for Climate Extremes to research climate extremes and build capacity to predict them, and
- $37 million for decadal climate forecasting within the Commonwealth Scientific and Industrial Research Organisation (CSIRO) Climate Science Centre.

112. The Australian Government has announced that it will commit an additional $100 million investment towards management of ocean habitats and coastal environments.[128] The investment package will target 'blue carbon' ecosystems involving the key role of seagrass and mangroves in drawing carbon out of the atmosphere. $39.9 million will be dedicated to reinforcing Australia's position as a world leader in marine park management, including:

- $19.4 million to be delivered through two additional rounds of the successful Our Marine Parks Grants program, which will create opportunities for industry, community organisations and Indigenous communities to further engage and connect with the management of Australian Marine Parks
- $15 million towards ocean discovery and restoration projects
- $5.4 million to support the health and sustainability of waters around Australia's Indian Ocean Territories, and
- $11.6 million over two years to incorporate Sea Country in IPAs in nine locations, to provide Indigenous communities with economic and employment opportunities.

$30.6 million will be invested in practical action to restore and account for blue carbon ecosystems. This will improve the health of coastal environments in Australia and around the region and export Australia's internationally recognised expertise in ocean accounting. Over $19 million will go to four major on-ground projects restoring coastal ecosystems across the country, including tidal marshes, mangroves and seagrasses. $10 million will support on-ground projects in developing countries to restore and protect their blue carbon ecosystems. Over $1 million will solidify Australia as a leader in ocean and natural capital accounting assistance, enabling Australia to understand and account for the environmental and economic benefits of protecting these critical ecosystems.

113. Almost $18 million will target practical actions to protect iconic marine species, improve the sustainability of Australia's fisheries and stimulate investment in Australia's oceans. $10 million will deliver ocean health through at least 25 targeted projects to restore and protect threatened

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[128] The Hon Scott Morrison MP, 'Australia Announces $100 Million Initiative to Protect our Oceans' (Media Release, 23 April 2021) <https://www.pm.gov.au/media/australia-announces-100-million-initiative-protect-our-oceans>.

marine species, eradicate invasive species from islands and restore coastal habitats. $5 million will fund new and innovative measures to support the marine environment and sustainable fisheries through practical measures to avoid bycatch of threatened species. $3 million will support the roll-out of ocean accounting at the national scale and a Blue Finance Unit.

114. Following the devastating 2019-20 Black Summer bushfires, the Australian Government committed to establish a new National Recovery and Resilience Agency (NRRA) as a practical measure to build resilience across all sectors, and to bring together Australia's world-leading scientific organisations in a national climate and disaster risk information service.[129] These new functions will help build resilience into the Australian Government's work, prepare Australia better for natural disasters and enable Australia to recover quicker.

115. The new $210 million Australian Climate Service will also provide a world class capability in climate information and services to inform the NRRA and Emergency Management Australia.[130] This is a key part of the Australian Government's response to the Royal Commission into National Natural Disaster Arrangements and is a crucial step forward in building resilience to the impacts of climate change. Using information from the Bureau of Meteorology, the CSIRO, Australian Bureau of Statistics and Geoscience Australia, the Australian Climate Service will not only help save lives through a more informed emergency response, but will inform long-term planning for infrastructure, housing and basic services like power, telecommunications and water. The service will coordinate with other activity across government including the National Environmental Science Program and the Great Barrier Reef Restoration and Adaptation Initiatives. It will also evaluate risks and opportunities to guide priorities for action and underpin Australia's future adaptation strategies, including the new National Climate Resilience and Adaptation Strategy.

116. The Australian Government also works closely with regional partners to address climate impacts, build resilience and reduce emissions in line with our Paris Agreement commitments. Over 70% of Australia's regional and bilateral support is focused on achieving adaptation outcomes. The Australian Government provided over $1.4 billion in climate finance from 2015 to 2020, and has committed new global finance of at least $1.5 billion over the period 2020 to 2025, representing a 50% increase on the previous period.

[129] The Hon Scott Morrison MP, 'Reforms to National Natural Disaster Arrangements' (Media Release, 13 November 2020) <https://www.pm.gov.au/media/reforms-national-natural-disaster-arrangements>.

[130] The Hon Sussan Ley MP, 'A New National Climate Service for Australia' (Media Release, 5 May 2021) <https://minister.awe.gov.au/ley/media-releases/new-national-climate-service-australia>; Australian Government Bureau of Meteorology, 'Australia's Top Science and Statistical Agencies Welcome World-Leading Climate Service' (Media Release, 5 May 2021) <https://media.bom.gov.au/releases/833/australias-top-science-and-statistical-agencies-welcome-world-leading-climate-service/>.

117. In the Pacific, the Australian Government continues to advocate for the ten calls to action in the Kainaki II Declaration for Urgent Climate Change Action Now, agreed by Pacific leaders in 2019. The Boe and Kainaki II Declarations are clear about the growing security threat of climate change, as extreme events such as cyclones, floods, droughts and king tides become more frequent and intense.

118. At the Pacific Islands Forum Roundtable on Urgent Climate Action on 11 December 2020, the Prime Minister announced Australia will invest at least $1.5 billion over 2020 to 2025 to support developing countries' response to climate change. This includes and builds on the Australian Government's $500 million investment in the Pacific to support renewable energy deployment and climate and disaster resilience, announced in 2019. Guided by the Australian Government Department of Foreign Affairs and Trade's *Climate Change Action Strategy (2020-25)*, Australia's next phase of support will include targeted climate-specific activities plus broad integration of climate change across the entire development assistance program to

- promote the shift to lower emissions development in the Indo-Pacific region
- support partner countries to adapt to climate change and build resilience
- drive innovative solutions, including those that encourage private sector investment, and
- support resilient COVID-19 recovery plans.

119. The $140 million Australian Climate Finance Partnership will also mobilise significant private sector investments in low emissions, climate-resilient solutions for the Pacific and Southeast Asia and develop a substantial portfolio of projects with contributions from the private sector and other agencies. Climate resilience infrastructure in the region is also supported by the Australian Government's $2 billion Australian Infrastructure Financing Facility for the Pacific. In 2022, the Australian Government will host the ninth Asia-Pacific Ministerial Conference on Disaster Risk Reduction. The conference will bring the region together to address the shared challenge of accelerating climate adaptation and disaster resilience efforts.

120. Alongside these measures, the Australian Government continues to lead the International Partnership for Blue Carbon and the 4th Asia-Pacific Rainforest Summit, which are invaluable hubs of international collaboration on the protection of coastal and inland forest ecosystems – supporting both climate change mitigation and adaptation. [131]

121. At the Climate Adaptation Summit in January 2021, the Australian Government announced it would join the UK's Call for Action to Raise Ambition on Climate Adaptation and Resilience and

[131] The Hon Sussan Ley MP, 'Minister Ley Speech to the Climate Adaptation Summit 2021' (Media Release, 26 January 2021) <https://minister.awe.gov.au/ley/speeches-and-transcripts/minister-ley-speech-climate-adaptation-summit-2021>.

the Coalition for Climate Resilient Investment. The Australian Government has also signed on as one of the first members of the global Adaptation Action Coalition ('AAC'), in support of the AAC's commitment to practical climate adaptation strategies that deliver on-ground support for vulnerable communities. Australia's membership of the AAC also builds on the Prime Minister's commitment to global climate action helping nations in our region support renewable energy deployment and strengthen climate and disaster resilience, and the Minister for the Environment's commitment to the Coalition for Climate Resilient Investment.

122. More broadly, the Australian Government also plays an active and constructive role in UN climate negotiations as chair of the Umbrella Group, which includes the United States, and work to raise the profile of social inclusion, gender, indigenous, oceans and human rights issues in climate change.

Mitigation

123. The Authors' representatives present a misleading representation of Australia's emissions reduction efforts, by incorrectly asserting that Australia has 'the highest per capita GHGs of any developed country'[132] and, in absolute terms, 'the second highest emissions of CO_2 in the world on a per capita basis'.[133] The Authors' representatives exclude emissions and removals from Land Use, Land-Use Change and Forestry ('LULUCF') in their claims, which is not consistent with Australia's international reporting obligations. Excluding LULUCF does not provide a comprehensive basis for considering emissions outcomes since all sources and sinks matter.

124. The Australian Government is committed to taking practical and ambitious action to reduce emissions and to reaching net zero emissions as soon as possible, preferably by 2050. Australia has a strong track record of reducing emissions: between 2005 and 2020 Australia's emissions reduced by 20.1%, compared to an OECD average of around 6.6% (2005 to 2018). In 2020, emissions per person were 46.7% lower than 1990, while the emissions intensity of the economy was 66.1% lower than 1990. In December 2020, the Australian Government recommunicated its Paris Agreement Nationally Determined Contribution ('NDC'), and outlined the real and meaningful action being undertaken to reduce emissions, including an update on newly announced polices and measures and a snapshot of progress on policies and measures outlined in the 2015 NDC communication.[134]

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132 Authors' additional submissions, [55(13)].

133 Authors' submissions dated 13 May 2019, [106].

134 Australian Government, 'Australia's Nationally Determined Contribution: Communication 2020' <https://www4.unfccc.int/sites/ndcstaging/PublishedDocuments/Australia%20First/Australia%20NDC%20recommunication%20FINAL.PDF>.

125. Australia is investing in renewables faster than any other country in the world on a per-person basis. Between 2017 and 2020, Australia has invested nearly $30 billion in renewable energy. In 2020, Australia deployed new renewable energy nearly eight times faster per capita than New Zealand, Japan and the global average, and nearly three times faster than the United States, China and the European Union. Australia has the world's highest uptake of household solar (1 in 4 homes), and the Australian Government Department of Industry, Science, Energy and Resources projects that, by 2025, 47% of Australia's national electricity supply will come from renewables, rising to 55% by 2030.

126. The Australian Government operates the world's largest government-owned 'Green Bank' (the Clean Energy Finance Corporation ('CEFC')) which has committed more than $9.1 billion in new and emerging technologies through more than 200 direct clean energy transactions and a further 13 co-finance arrangements, leading to investment in projects worth $31 billion (as at 31 March 2021).

127. The Australian Government will continue to reduce its emissions through practical technology projects that drive economic growth. The Australian Government is committed to making clean energy technologies globally scalable, commercial and achievable. Driving down the cost of low emissions technologies and accelerating their deployment will be key to all countries reducing emissions and achieving the goals of the Paris Agreement.

128. The Australian Government has developed a Technology Investment Roadmap ('the Roadmap') to guide an estimated $20 billion of investment in low emissions technologies over the decade to 2030, including through the CEFC, Australian Renewable Energy Agency ('ARENA') and the Clean Energy Regulator. The Roadmap is a comprehensive, adaptive framework for prioritising investment in the technologies needed to bring emissions down both in Australia and around the world. Under the Roadmap, the Australian Government aims to leverage $3 to $5 of co-investment for every $1 invested by the Commonwealth, leading to at least $80 billion of total new investment in low emissions technologies in the decade to 2030. Investment will prioritise projects that drive down the cost of low emissions technologies and accelerate their deployment, both in Australia and overseas.

129. Under the Roadmap, annual Low Emissions Technology Statements will be released to ensure Australia stays well positioned as a low emissions technology leader. The Australian Government's first Statement, released in September 2020, articulates five priority technologies and accompanying stretch goals.[135] Stretch goals are ambitious but realistic levels of cost at which

[135] The Hon Angus Taylor MP, 'Technology-led plan to lower emissions, lower costs and support jobs' (Media Release, 22 September 2020) <https://www.minister.industry.gov.au/ministers/taylor/media-releases/technology-led-plan-lower-emissions-lower-costs-and-support-jobs>.

priority technologies reach economic parity with existing mature technologies. Priority technologies are expected to avoid in the order of 250 million tonnes of emissions per year by 2040, through deployment in Australia and low emission exports.

130. The Australian Government is working bilaterally and through multilateral fora, including the G20, UN, and International Energy Agency to drive cooperation on the development and commercial deployment of low-emissions technologies. The Australian Government has appointed former Chief Scientist, Dr Alan Finkel, as Special Adviser on Low Emissions Technology to conduct strategic engagement in support of the Government's technology-led approach to reducing emissions.[136] This appointment forms an integral part of the Australian Government's plan to pursue partnerships with key countries ahead of COP26, with a focus on practical industry-led projects and investments to reduce low emission technology costs and advance international supply chains. As of 22 June 2021, Dr Finkel had brokered new partnerships with Singapore, Japan and Germany,[137] drawing on an investment of $565.8 million in low emissions technology partnerships as part of the $1.6 billion emissions reduction package announced in the 2021-22 Budget.

131. Through the 2021-22 Budget, the Australian Government is also investing $275.5 million to accelerate the development of clean hydrogen hubs in regional Australia, and supporting legal reforms and trials of a Guarantee of Origin certification scheme. This funding takes the Government's investment in a hydrogen hubs program to $314 million, being part of a total broader commitment of $1 billion to support the development of an Australian hydrogen industry as a priority low emissions technology under the Roadmap.

132. With funding for hydrogen industry development, international technology partnerships, and carbon capture and storage projects, the 2021-22 Budget investment of $1.6 billion builds on a previous $1.9 billion investment in low emissions technologies announced in the 2020-21 Budget. This complements the Australian Government's $3.5 billion Climate Solutions Package and the $2.55 billion Emissions Reduction Fund ('ERF'), underpinning its commitment to advance technology-led solutions that will reduce emissions, create jobs, and achieve economic growth.

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[136] The Hon Angus Taylor MP, 'Appointment of Special Adviser for Low Emissions Technology' (Media Release, 5 March 2021) <https://www.minister.industry.gov.au/ministers/taylor/media-releases/appointment-special-adviser-low-emissions-technology-0>.

[137] The Hon Scott Morrison MP, 'Japan-Australia Partnership on Decarbonisation Through Technology' (Media Statement, 13 June 2021) <https://www.pm.gov.au/media/japan-australia-partnership-decarbonisation-through-technology>; The Hon Scott Morrison MP, 'Australia Partners with Singapore on Hydrogen in Maritime Sector' (Media Release, 10 June 2021) <https://www.pm.gov.au/media/australia-partners-singapore-hydrogen-maritime-sector>; The Hon Scott Morrison MP, 'Australia and Germany Partner on Hydrogen Initiatives' (Media Release, 13 June 2021) <https://www.pm.gov.au/media/australia-and-germany-partner-hydrogen-initiatives>.

133. Through ARENA, the Australian Government has contributed $1.75 billion in grant funding to 587 projects, contributing to projects with a total value of $7.7 billion (as at 30 April 2021). In the 2020-21 Budget, the Australian Government committed an extra $1.62 billion for ARENA to invest. This package includes $1.4 billion in baseline funding, $9.4 million to maintain current resourcing over 2020-21 and 2021-22 financial years, and an additional $192.5 million to deploy targeted budget programs associated with industrial energy efficiency, transport and regional microgrids. ARENA, on behalf of the Australian Government, has also provided $300,000 to ClimateWorks Australia to assist in the establishment of the Australian Industry Energy Transitions Initiative. This will bring together key industry stakeholders from hard-to-abate sectors to explore solutions to reduce emissions across supply chains, aiming to set up Australian industry for a successful transition to a decarbonised global economy.[138]

134. As part of the 2021-22 Budget investment in low emissions technology, the Australian Government will establish a new $250 million Carbon Capture, Use and Storage (CCUS) Hubs and Technologies Program to support the development of CCUS projects and hubs. This measure builds on the $50 million CCUS Development Fund established in the 2020-21 Budget,[139] which awarded grants to six pilot or pre-commercial CCUS projects in June 2021. Projects will support emissions reduction in power generation and heavy industry, as well as CO_2 utilisation or carbon recycling technologies that transform CO_2 into economically viable products. The Australian Government has also committed $60 million to Chevron-Gorgon's CO_2 Injection Project, which will seek to reduce 3.4 to 4 million tonnes of CO_2 annually – the equivalent of taking approximately 1.25 million cars off the road every year.

135. Through its ERF, the Australian Government purchases lowest cost abatement (in the form of Australian carbon credit units ('ACCUs')) from a wide range of sources to incentivise businesses, households and landowners to proactively reduce their emissions. The Clean Energy Regulator has recently confirmed that a record 16 million tonnes of emissions reductions were credited under the ERF in 2020 – 8% higher than the previous record in 2019.[140] A further 6% increase is forecasted in 2021, with more than 17 million ACCUs expected to be issued. New projects registered in 2020 will have the potential to deliver 50 million tonnes of abatement over their

[138] ARENA, 'Industry-Led Initiative to Develop a Pathway to Reduce Emissions' (Media Release, 27 July 2020) <https://arena.gov.au/news/industry-led-initiative-to-develop-a-pathway-to-reduce-emissions/>.
[139] The Hon Angus Taylor MP, '$412 Million of New Investment in Carbon Capture Projects' (Media Release, 8 June 2021) <https://www.minister.industry.gov.au/ministers/taylor/media-releases/412-million-new-investment-carbon-capture-projects>.
[140] The Hon Angus Taylor MP, 'Record Year for Emissions Reduction Fund' (Media Release, 10 March 2021) <https://www.minister.industry.gov.au/ministers/taylor/media-releases/record-year-emissions-reduction-fund>.

lifetime, delivering benefits for farming and Indigenous communities and helping business and industry to offset their emissions.

136. The Australian Government is a world leader in emissions reporting, and is helping other countries develop their capability. Australia is sharing expertise with China, Thailand, Indonesia, Kenya, Papua New Guinea and Fiji to find better ways to estimate and report emissions.

Initiatives in the Torres Strait

137. The Australian Government's commitment to address climate change also includes initiatives that address the specific impacts of climate change on communities in the Torres Strait. The Australian Government is undertaking a range of practical, innovative actions to build resilience and eliminate climate change risks, in order to support the region's future. Some of these initiatives were already set out in paragraphs 49 to 54 of the Australian Government's earlier submissions. Since then, the TSRA has reported that 58 actions identified in the *Torres Strait Regional Adaptation and Resilience Plan 2016-2021* ('TSRA Adaptation and Resilience Plan') are in progress or have been completed. Local adaptation and resilience plans have also been developed for the 14 outer island communities. These plans are designed to help communities to identify local actions that can be undertaken to prepare for possible climate change impacts and to assist in building greater community strength and resilience.

138. As noted in paragraph 89, through funding from the Australian Government, the TSRA employs 55 local Indigenous Rangers that are spread across 14 outer island communities of the Torres Strait. The Rangers' annual work plans and subsequent on-ground activities are guided by WoC Ranger Plans that are being updated by the TSRA using a staged approach over the next three years. The updated WoC Ranger Plans use a participatory planning framework to ensure environmental action priorities are in line with current Traditional Owner aspirations for management of the cultural and natural values of islands and sea country. Rangers, through their annual work plans, complete monitoring and on-ground activities against WoC Ranger Plans and Climate Adaptation and Resilience Plans to mitigate the local effects of climate change that are being observed in communities.

139. In addition:

- the TSRA has developed a draft regional resilience framework to help build greater local and regional resilience to climate change impacts, informed by discussions with community representatives from Masig and Mer, where a pilot resilient communities initiative has been conducted under the TSRA Adaptation and Resilience Plan
- the TSRA is monitoring heat stress risk in 8 households on Masig

- sustainability business case options have been developed for Masig as part of the Queensland Government's Decarbonisation of Great Barrier Reef Islands initiative
- the TSRA is collaborating with Queensland Health to develop and deliver community workshops on climate change and health
- a weather station was installed at Mer to complete the network of six regional TSRA – Australian Institute of Marine Science ('AIMS') weather stations
- the TSRA is collaborating with Commonwealth Scientific and Industrial Research Organisation and the Australian Fisheries Management Authority to assess climate change impacts for Torres Strait fisheries
- the TSRA is working with AIMS, James Cook University, and the Queensland Government to assess climate change impacts on critical marine ecosystems and species that are of cultural and subsistence significance to local communities
- the TSRA is developing a renewable energy transition plan for the Torres Strait, and
- high-resolution drone-based coastal mapping has been undertaken at Iama, Warraber, Masig, Mabuiag, Mer and Poruma, helping form the basis of a monitoring program to map changes in erosion-prone beach areas to inform coastal works and coastal adaptation planning.

140. The TSRA has continued its coastal protection initiatives to address erosion and storm surge impacts on local communities. The Australian and Queensland governments have jointly committed $40 million of funding towards Stage 2 of the Torres Strait Seawalls Program. This is a four year program (2019 to 2023) that will construct and upgrade multiple infrastructures to address ongoing coastal erosion and storm surge impacts at Poruma, Warraber, Masig, Boigu and Iama.

IV. REMEDIES

141. As set out in the previous section of the present submissions, the Australian Government maintains that there has been no breach of the Authors' rights under the Covenant. Therefore, there is no obligation to provide remedies under Article 2. The Australian Government respectfully submits that the remedies sought by the Authors remain outside the Covenant's scope, inappropriate and unprecedented.

142. In their third-party submissions, Professors Boyd and Knox submit that 'Australia should be required to submit a new [nationally determined contribution] reflecting its highest possible ambition'.[141] The Australian Government respectfully submits that this should not be recommended by the Committee, as it does not relate to any of Australia's obligations under the Covenant, let alone is it required by the Covenant.

[141] Third-party submissions of Professors Boyd and Knox, [50].

V. CONCLUSION

143. The Australian Government has again given careful considerations to the allegations made by the Authors, as well as those views provided in the third-party submissions. However, the Australian Government remains of the view that each of the claims in the present Communication concerning Articles 2, 6, 17, 27 and 24 remain inadmissible and should be dismissed without consideration of their merit.

144. 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.