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Grata Fund

MEDIA RELEASE

28 JULY 2026

UNCLE PAUL & UNCLE PABAI'S LANDMARK AUSTRALIAN CLIMATE CASE DECISION WILL BE APPEALED IN THE FULL FEDERAL COURT, MELBOURNE

A historic moment for Australia's climate future and for First Nations communities experiencing cultural loss, to appeal the court's decision in Full Federal Court 28-31 July 2026.



AUSTRALIAN CLIMATE CASE APPEAL: TUESDAY 28 JULY / MELBOURNE

Australian Government to face more climate scrutiny in appeal of landmark Torres Strait class action case.

Torres Strait community leaders, Uncle Pabai Pabai and Uncle Paul Kabai, have appealed to the Full Federal Court for their landmark duty of care negligence case, *Pabai Pabai & Anor v Commonwealth of Australia*.

In his decision handed down in July 2025, Justice Wigney found that the Torres Strait Islands, its people and their culture are being “ravaged by human induced climate change” and that climate change poses “an existential threat to the whole of humanity”. He said that the Australian Government does not “currently” have a legal duty of care to protect Torres Strait people from climate harm and that it is not open to a “single judge of this Court to expand the Australian common law of negligence”.

Uncle Pabai and Uncle Paul will challenge the decision before three judges in the Full Federal Court. Their legal team will argue that the judge erred in several of his legal conclusions, and put to the Court that: the Commonwealth does owe a duty of care to Torres Strait Islanders in relation to climate change; the Commonwealth’s additional emissions are a legal cause of harm to Torres Strait Islanders; and cultural harm is compensable under Australian law.

Uncle Pabai and Uncle Paul are represented by law firm Phi Finney McDonald, and the appeal will be argued by a Counsel team headed by Fiona McLeod AO SC and Sera Mirzabegian SC.

While the Uncles and their legal team have been taking on the Australian Government over the past few years, climate change has continued to impact their homelands. In January this year, the Torres Strait was hit by King Tides with water levels higher than anywhere in the world. And yet, the government continues to approve more mines and gas projects across the country, contributing to Australia’s ranking as the world’s third largest exporter of emissions. Unless we see dramatic changes to climate policies, scientists estimate that the Uncles have 24 years before their home islands Saibai and Boigu will go underwater.

This case is more important than ever in seeking justice as Australia prepares for more climate disasters.

Aunty McRose Elu, Saibai / Seisia Elder said:

“This situation gets more severe and no action is taken. What is the government waiting for? The time is getting closer where the islands will go underwater. We can change. And if we don’t take action now it will be too late. Where is the government’s duty of care? Uncle Paul, Uncle Pabai and I have been on this long journey. It’s been over four years and this appeal is our next step. We stay strong and confident and hoping for the better outcome.”

Uncle Paul, Plaintiff and Traditional Owner, Saibai, said:

"Why is the government turning a blind eye to all Indigenous people of Australia facing climate change? Where's the duty of care for people affected by rising sea levels, bushfires and unpredictable storms? Why does the Australian Government keep approving new coal mines and gas projects when it knows the damage? Australia is the third largest exporter of fossil fuel emissions in the world. Why is it the people who don't contribute much to climate change are the ones most affected? We Torres Strait Islanders will be the first climate change refugees. Let's stand together in solidarity and deal with the problem."

Brett Spiegel, Principal Lawyer, Phi Finney McDonald said:

"Torres Strait Islanders face what his Honour Justice Wigney acknowledged is an 'existential threat' from climate change. Uncle Pabai and Uncle Paul's case and their appeal is about the Commonwealth ignoring its alleged duty of care to vulnerable Torres Strait Islanders and ignoring the science in responding to this existential threat."

Isabelle Reinecke, Founder and Executive Director, Grata Fund said

"Last year, the Federal Court acknowledged that climate change is 'ravaging' the Torres Strait Islands, but it stopped short of recognising that the Commonwealth owes a duty of care."

Since then we've seen our worst fears for climate harms in the Torres Strait continue to unfold, with more severe floods and rising seas, while the Federal Government's climate policies remain woefully inadequate. So today Uncle Pabai and Uncle Paul and their legal team are appealing their case to the Full Federal Court, to seek accountability and action."

Uncle Pabai and Uncle Paul are joined by communities across the country who are increasingly seeking accountability through the courts for climate harms. Until it aligns its emissions reduction targets with science, Australia is likely to face significant legal liability, financial cost and human toll."

I commend the determination of Uncle Pabai and Uncle Paul for continuing their fight in the Full Federal Court this week, and all communities across the country fighting for climate accountability."

AUSTRALIAN CLIMATE CASE APPEAL: TUESDAY 28 JULY / MELBOURNE

LOCATION: Federal Court of Australia, 305 William St, Melbourne VIC 3000

9:00AM: Cultural Welcome

9.30AM: Together We Stand (photo opportunity)

10:00AM: Images of the Uncles and their legal team walking into court

The Uncles and other spokespeople will be **available for interview** upon request over the days of the appeal (28-31 July).

The court hearing will likely commence at 10am, however this can change from time to time. Commencement time will be confirmed on the [Court listing](#) on Monday 27 July.

NB: There will be **NO press conference, but interviews are available upon request.**

Legal updates from the hearings will be available upon request.

MEDIA ENQUIRIES

Please contact Bec Bridges at Pitch on 0405 655 245 or bec@pitchprojects.com

MEDIA ASSETS

IMAGES/FOOTAGE/PAST RELEASES all available in this [MEDIA ASSETS](#) folder.

Images and footage from previous court appearances and press conferences, as well as on the islands and throughout the case, are [available here](#). Additional material from outside the court will be uploaded on Tuesday 28 July.

11AM TUESDAY 28 JULY: Images from the morning of the appeal will be available [here](#).

1PM TUESDAY 28 JULY: Footage and b-roll from the morning will be available [here](#).

AVAILABLE FOR INTERVIEW

- Uncle Pabai Pabai, lead plaintiff, Traditional owner and community leader, Boigu
 - Uncle Paul Kabai, lead plaintiff, Traditional owner and community leader, Saibai
 - Aunty McRose Elu, Torres Strait Islands Elder
 - Chelsea Aniba, Saibai - Representative, local government, woman
 - Benny Dau, Boigu - Representative, man
 - Isabelle Reinecke, founder and executive director, Grata Fund
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DECISION SUMMARY (under appeal)

In *Pabai Pabai & Anor v Commonwealth of Australia*, the Federal Court found that while the Torres Strait Islands, people and culture are being “ravaged by human induced climate change” and that climate change poses “an existential threat to the whole of humanity”, the Australian Government does not have a legal duty of care to protect Torres Strait people from climate harm.

Justice Wigney found that Uncle Pabai and Uncle Paul and their community proved the severe climate change harms being experienced on the Torres Strait Islands, the particular vulnerability of Torres Strait Islanders to the impacts of climate change and that the Australian Government's emissions reduction targets set in 2015, 2020 and 2021 had not taken into account the best available science.

Justice Wigney noted, "The Torres Strait Islanders are, both literally and figuratively, a world away from Canberra, the home of the Commonwealth Parliament. That is where many of the most important decisions are made about the nation's response to climate change and its impacts. While there may have been, and perhaps still are, some climate change doubters and deniers among the politicians and bureaucrats who are responsible for making those decisions, it is tolerably clear that the Commonwealth Government has for some time known about the perils of, and ongoing risks posed by, climate change."

Uncle Pabai and Uncle Paul had argued that loss of culture, or *Ailan Kastom*, should be compensable. Justice Wigney found that the law in Australia currently does not recognise loss of culture as compensable.

Justice Wigney found in favour of Uncle Pabai and Uncle Paul in many of the factual aspects of their claim, including scientific evidence about the devastating impacts that human-induced climate change has had, and continues to have, on the Torres Strait and Torres Strait Islanders, and their way of life.

In his judgment summary, Justice Wigney observed, "The projected future impacts of climate change in the Torres Strait Islands also paint a very bleak picture indeed. The Torres Strait Islands and their traditional inhabitants are quite literally at the very frontline of climate change and its devastating impacts. Unless something is done to arrest global warming and the resulting escalating impacts of climate change, there is a very real risk that the applicants' worst fears will be realised and they will lose their islands, their culture and their way of life and will become, as it were, climate refugees. That would, of course, be a devastating outcome."

Justice Wigney found that when the Commonwealth set Australia's greenhouse gas emissions reduction targets in 2015, 2020 and 2021, the government failed to engage with or give any real or genuine consideration to what the best available science indicated was required for Australia to play its part in reducing greenhouse gas emissions and the most dangerous impacts of climate change. Justice Wigney found that the targets set by the government in those years were not based on, and were not consistent with, what the science said about the size of the emissions reduction that would be necessary for Australia to play its part in meeting the global objective of keeping global warming to 1.5°C in line with the Paris Agreement.

However, Justice Wigney found that the Government does not owe a duty of care to Torres Strait Islanders in relation to mitigating climate harms or providing funding for adaptation measures on the Torres Strait Islands. His Honour noted that the law of negligence in Australia did not allow him to find a duty of care was owed by the Government, or that any such duty was breached.

Uncle Pabai, Uncle Paul, their communities and their legal team carefully considered Justice Wigney's judgement and have now filed an appeal to the Full Federal Court.

Link to [summary](#) and [full judgment](#).

CASE SUMMARY

Having filed their case against the Australian government in October 2021 in fear for their homelands, Torres Strait Traditional Owners Uncle Paul Kabai and Uncle Pabai Pabai will now appeal the court's decision in the Full Federal Court.

Climate change is already causing sea level rise and more frequent and intense storms in the Torres Strait, with local communities at risk of becoming Australia's first climate change refugees. The court heard evidence that communities on Boigu and Saibai could have less than 24 years left before their islands become uninhabitable.

Uncle Paul and Uncle Pabai aren't alone in their fears for their lives and homes - communities around Australia are reeling from the devastating consequences of fires, floods and drought.

The Uncles sought orders from the court requiring the government to take steps to prevent this harm to their communities, including cutting greenhouse gas emissions in line with the best available science.

The case is now under appeal at the Full Federal Court, where Uncle Pabai and Uncle Paul's legal team will argue that Justice Wigney erred in his original decision and the Commonwealth does in fact owe a duty of care to Torres Strait Islanders in relation to climate change; the Commonwealth's additional emissions are a legal cause of harm to Torres Strait Islanders; and cultural harm is compensable under Australian law.

If successful, this case has the potential to force the Federal Government to rapidly reduce emissions. The Climate Council says that all emissions from fossil fuel projects are incompatible with the best available science and a safe future, and that the Australian Government must stop approving or expanding new coal, gas and oil projects and rapidly transition to a clean economy.

AUSTRALIAN CLIMATE CASE – ADDITIONAL BACKGROUND

1. The plaintiffs

Wadhuam (Maternal Uncle) Pabai Pabai, proud Guda Maluyilgal man and Traditional Owner Boigu

Wadhuam Pabai is in his 50's and has lived on Boigu Island his whole life, like generations and generations before him. He is a Director on the Prescribed Body Corporate, which represents the 6 clans on the island. He is extremely concerned about the myriad of climate impacts his community is facing and is proud to be taking on this case. Wadhuam Pabai is a father of five daughters and two sons, aged between 30 and 12, and is bringing this case to ensure they and their children and their grandchildren have continuing connection to Boigu into the future.

Wadhuam (Maternal Uncle) Paul Kabai, proud Guda Maluyilgal man and Traditional Owner Saibai

Wadhuam Paul is in his 50s and has lived on Saibai since he was born. He is a Director on the Prescribed Body Corporate, which represents the 7 clans on the island. Wadhuam Paul is deeply concerned about his island flooding and disappearing beneath the waves. He is also worried about the effects of heatwaves and other climate impacts on people's health. Paul is a father to two girls and six boys aged between 40 and 10, and he is bringing the case to protect their future and the future of all Saibai

Islanders, Guda Maluyligal Peoples and all Australians.

2. About the case

In the class action, filed on 26 October 2021, plaintiffs Wadhuam Paul and Wadhuam Pabai are arguing that the Commonwealth has a legal 'duty of care' towards Torres Strait Islander Peoples, which they say arises by application of the common law of negligence. Uncle Pabai and Uncle Paul are arguing that by failing to prevent climate change, the Australian Government has unlawfully breached this duty of care, because of the severe and lasting harm that climate change would cause to their communities.

This landmark case is modelled on one of the most successful climate cases in history. In 2015, environmental group the Urgenda Foundation supported 886 Dutch people to bring a case against their Government, arguing that it had a legal responsibility to reduce greenhouse gas emissions to protect them from climate change. On 24 June 2015, the District Court of The Hague ruled in favour of Urgenda and ordered the Government to cut its greenhouse gas emissions by at least 25% by the end of 2020 (compared to 1990 levels). The Government appealed, but in December 2019 the Dutch Supreme Court found in favour of Urgenda and confirmed the original court order. This led to the rapid closure of coal-fired power stations and billions of euros of investment in renewable energy and energy efficiency. More information about the Urgenda Climate Case can be found on the Urgenda Foundation's website.

3. Key climate harms in the Torres Strait

Zenadth Kes (the Torres Strait Islands) is the frontline of the climate crisis. Sea levels in the Torres Strait are rising at double the global average, and rose 6cm in the last decade. Without urgent action to cut greenhouse gas emissions, sea levels are projected to rise by up to one metre by 2100. The weather would become more extreme, with more intense rain in the wet season, a longer, hotter, drier dry season, more severe cyclones and more frequent and severe storms and flooding, leading to coastal erosion and inundation, which threatens freshwater supplies.

Boigu and Saibai are very flat and low-lying islands, about one and a half metres above sea level. They are particularly exposed to sea level rise - more so than many other islands in Zenadth Kes. Both islands are already being regularly flooded by seawater. This is already affecting settlements, infrastructure, important cultural sites and the gardens where people grow vegetables to feed themselves and their families.

Guda Maluyligal Kastom governs how Guda Maluyligal Peoples take responsibility for and manage their land and sea country, and how and by whom natural resources are harvested. As the ocean continues to warm, this poses a severe threat to marine life and complex systems of biodiversity, including coral reefs, turtles, dugongs and fish populations. Connection to sea country and marine hunting is integral to Gudalmalulgal Kastom. Marine hunting and fishing are also crucial food sources for Torres Strait Islander Peoples.

Irreplaceable cultural heritage and sacred sites will be completely destroyed. Inhabited and uninhabited islands are home to significant sites for ceremonies such as initiation for different clans, burial sites and locations that contain human remains and places that have as much spiritual significance as Christian heaven.

The climate crisis is a health crisis. Heatwaves are already the most deadly form of natural disaster in Australia, and climate change would bring a longer, hotter, drier dry season to the Torres Strait, in which more people become sick or die from heat-related illnesses. Malaria and dengue fever would increase because warmer temperatures, increased rainfall and flooding provide optimal breeding conditions for mosquitoes.

With very limited options for adapting to climate change, many islands in Guda Maluyligal and the wider Torres Strait will become uninhabitable. Torres Strait Islander Peoples would become Australia's first climate refugees. Being forcibly removed from their land, place and culture because of Government inaction would form another shocking chapter in Australia's oppression of First Nations Peoples.

4. About the team

Grata Fund advocates for a strong and functioning democracy by using circuit-breaking litigation to hold the powerful to account. Grata is Australia's first specialist non-profit strategic litigation incubator and funder. Grata develops, funds, and builds sophisticated campaign architecture around high-impact, strategic litigation brought by people and communities in Australia. We focus on communities, cases and campaigns that have the potential to break systemic gridlocks across human rights, climate action and democratic freedoms.

Phi Finney McDonald is a specialist litigation firm with offices in Melbourne, Sydney and London. They practice in complex and large-scale litigation, with a focus on class actions and group litigation. Their lawyers have decades of experience seeking justice for those who have suffered loss or injury from corporate or government misconduct. Phi Finney McDonald, with assistance from Urgenda, developed the case and has conducted the litigation on the instructions of plaintiffs Paul and Pabai.

Fiona McLeod AO SC is an eminent Senior Counsel with decades of experience conducting trials and appeals in complex commercial, class action and public law matters. She is recognised for her clear advice and expert advocacy in large-scale matters of national significance. She has represented the Commonwealth of Australia in numerous Royal Commissions and significant cases. She is regularly briefed by major corporations in critical litigation and community groups in matters of public interest. She has acted in numerous other notable matters, including as counsel assisting the Yoorrook Justice Commission and matters concerning environmental protection and climate change impacts. Fiona has led numerous civic institutions and government bodies, including at the highest levels of the legal profession in Australia and internationally, earning deep respect and recognition of her commitment to justice, compassion and principled leadership. She is presently leading the response of the International Bar Association on climate change issues.

Sera Mirzabegian SC has a broad commercial, class action, regulatory and public law practice, and appears principally in trial and appellate matters in the Federal Court and state and territory Supreme Courts. Sera is regularly briefed to act for Australian and international corporates in various industries (including financial services, property, infrastructure, mining, pharmaceutical, media and technology) in commercial and class action litigation. She has extensive experience in regulatory investigations and enforcement proceedings, including civil penalty cases, having acted for regulators and against them. She has acted for independent statutory commissions and has been briefed in Royal Commissions. Sera has also acted for human rights and environmental organisations as well as marginalised and disadvantaged individuals and communities on a pro bono basis. She is a published legal author in a range of areas and has lectured at several universities. Sera is the Chair of the Justice and Equity Centre (formerly known as the Public Interest Advocacy Centre). She was previously a member of the NSW Bar Council and chaired the NSW Bar's Diversity and Equality Committee and Commercial Law Section.

The Urgenda Foundation is a Dutch NGO that is working to promote a fast transition towards a sustainable society. Urgenda views climate change as one of the biggest challenges of our time and looks for solutions to ensure that the Earth will continue to be a safe place to live for future generations. Urgenda has helped develop the case and will continue to provide strategic and scientific support.