

OFFICIAL:Sensitive



Australian Government
Department of Foreign Affairs and Trade

MEDIA TALKING POINTS
DISTRIBUTION: STANDARD

Topic: LEGAL

Originating Division: CSD

Subject: Climate Change: International Court of Justice (ICJ) advisory opinion

Version Date: 14/11/2025

Reason for Update: Updated to reflect appeal from the Federal Court decision

Version: 6

Expiry: 24/07/2026

Talking Points

- Australia welcomes the unanimous advisory opinion of the International Court of Justice (ICJ) on climate change [delivered on 23 July in the Hague]
 - this is a landmark opinion which has an important contribution to make in relation to the obligations of all States to respond to the climate emergency.
- We commend Vanuatu and other Pacific island countries and Pacific youth for their international leadership in shaping global responses to climate change.
- The Pacific has spoken with the moral authority and weight of lived experience regarding the adverse impacts of climate change, and has demonstrated sustained and innovative leadership to push global ambition
 - this has included driving and supporting initiatives to seek an advisory opinion from the ICJ.
- Australia was proud to join the Pacific in co-sponsoring the Vanuatu-led UN General Assembly resolution requesting an ICJ advisory opinion on climate change and then to participate in the ICJ advisory proceedings last year.
- Australia is carefully considering the ICJ's opinion on this most important topic of climate change, which is the greatest shared threat to all countries recognising SIDs are more likely to face greater levels of climate change related impacts.
- The unprecedented degree of participation by states in the ICJ proceedings reflected the global recognition of the challenge of climate change and the complexity of the legal issues involved.
- Australia is engaging with Pacific countries on next steps in respect of the ICJ
 - including the development of a follow-up resolution in the UN General Assembly.
- Australia joins other countries in recognising the need for strong global action to keep 1.5 degrees within reach
 - Australia is deeply committed to taking real and significant climate action at home and in support of our shared Pacific region.
 - Australia is decarbonising our economy and building new industries to export reliable, renewable energy to help the world address the climate crisis.

Does Australia support the advisory opinion?

- Australia welcomes the delivery of the unanimous advisory opinion of the International Court of Justice (ICJ) on climate change [delivered on 23 July in the Hague], which has an important contribution to make in relation to the obligations of all States to respond to the climate emergency.
- Australia respects the role and independence of the ICJ in upholding international law.

If raised: Does Australia's new NDC take into account the ICJ's opinion that all NDCs must be capable of contributing to the 1.5°C temperature goal set out in the Paris Agreement?

- Australia affirms the Global Stocktake's call for next NDCs to put the world on a path to 1.5 degrees, including by coming forward with ambitious, economy-wide emissions reduction targets, covering all sectors and gases and aligned with 1.5 pathways.
- Our NDC and 2035 target is informed by independent advice from Australia's Climate Change Authority
 - it is underpinned by the development of six sectoral decarbonisation plans and an overarching Net Zero Plan, covering all major sectors of Australia's economy.
- Australia's independent Climate Change Authority's analysis concluded that a target of 62–70% is our highest possible ambitious target, that it is informed by science, and aligned with pursuing efforts to limit warming to 1.5°C.
- Australia is strongly committed to achieving the Paris Agreement's temperature goals and keeping a 1.5-degree future within reach.

s 33(a)(iii)

- Our region is at the frontline of the climate emergency, where the effects of climate change are real and immediate, with a long and impressive record of climate leadership
 - Australia is deeply committed to taking real and significant climate action at home and in support of our shared Pacific region.
- Activities at the North-West Shelf facilities are already - and will continue to be - subject to our safeguard mechanism, placing binding limits on emissions consistent with our legislated net zero by 2050 commitment.
 - The Safeguard Mechanism - along with other key policies - is core legislation to ensure Australia can meet its international climate commitments.
- We believe the most practical way to drive decarbonisation is to help trading partners accelerate their transition and ensure they have access to clean energy solutions
 - ending all gas use would impact the cost of the energy transition and delay actions we can take right now to reduce our greenhouse gas emissions across Australia's economy.

s 33(a)(iii)

- Australia has joined the Pacific in welcoming the unanimous advisory opinion of the International Court of Justice (ICJ) on climate change [delivered on 23 July in The Hague].

- Australia is carefully considering the ICJ's opinion on this most important topic of climate change.
- Australia is deeply committed to taking real and significant climate action at home and in support of our shared Pacific region.

If pressed further:

- Australia takes its international legal obligations seriously.

s 33(a)(iii)

- Australia is pleased that the world-leading PIF initiatives on climate-change related sea-level rise, including relating to maritime zones and statehood, were favourably considered by the Court
 - noting the Maritime Zones Declaration as relevant practice for the purposes of the interpretation of UNCLOS
 - noting also the Court's consideration of statehood in the face of sea-level rise, and the significance of the duty to cooperate in this context
 - we look forward to continuing to progress this important work with the PIF and others.

Does Australia agree with the ICJ's conclusions?

- Australia respects the role and independence of the International Court of Justice in upholding international law.
- We are carefully considering the Court's opinion.
- The unprecedented participation by states in these proceedings reflects global recognition of the challenge of climate change and the complexity of the legal issues involved
 - we remain steadfast in our commitment to working together with the Pacific to strengthen global climate action.

Why did Australia decide to participate in the ICJ Advisory Opinion proceedings?

- Climate change is the greatest shared threat to all countries
 - And the *greatest* threat to the livelihoods, security and wellbeing of the peoples of the Pacific.
- Australia is deeply committed to taking real and significant climate action at home and in support of the shared Pacific region.
- The Pacific has spoken with the moral authority and weight of lived experience regarding the adverse impacts of climate change, and has demonstrated sustained and innovative leadership to push global ambition
 - this has included driving and supporting initiatives to seek an advisory opinion from the ICJ.

s 33(a)(iii)

- Australia is listening and responding to Pacific partners regarding the threat of climate change

- nothing is more central to the security and economies of the Pacific.
- Australia's consistent support for the UN General Assembly resolution which requested an ICJ advisory opinion [*in 2023*], and our active participation in the court proceedings themselves, reflects Australia's support of Pacific leadership in taking strong climate action
 - a difference in approach to some of the legal issues does not mean that our objectives on climate action are not aligned.
- Australia delivered an oral submission in the ICJ proceedings which celebrated Pacific leadership in bringing the historic process forward
 - as well as highlighting the centrality of the UNFCCC and the Paris Agreement
 - and other rules and norms that play an important role alongside the climate change treaties.

If raised: Why does Australia want to host COP31?

- Our region is at the frontline of the climate emergency, where the effects of climate change are real and immediate, with a long and impressive record of climate leadership
 - this is why the Australian Government is bidding to host COP31 in partnership with the Pacific.
- We look forward to developing a pragmatic and focused plan for the COP31 in partnership with Pacific island countries, including to bring profile to the region's unique challenges and solutions, and to accelerate global climate action and investment.

If raised: Judge Hilary Charlesworth's view?

- The Australian Government was proud to nominate and support Judge Charlesworth's successful re-election to the ICJ
 - like all members of the Court, Judge Charlesworth is an independent judge.
 - ***If pressed:*** Judge Charlesworth is an ICJ judge who is Australian, not an Australian ICJ judge.
- Australia is carefully considering the Court's opinion.

s 22(1)(a)(ii)

s 22(1)(a)(ii)

s 33(a)(iii)

- No. We recognise that climate change is the greatest shared threat to all countries – and the biggest threat to the prosperity and security of our First Nations peoples and the peoples of the Pacific
 - we want to ensure Pacific voices and perspectives continue to inform and engage in global discussions on climate change
 - and support measures which amplify their participation in these discussions.
- We are proud to have joined the Pacific in participating in the ICJ and ITLOS advisory opinion proceedings.
- Australia supports the role of international organisations and respects the rule of law – we are committed to working with our region and globally to address climate impacts.
- Australia has been listening to our region and looks forward to discussing the appropriate next steps with our Pacific partners following the advisory opinion.

Australia's climate finance commitments

- Australia has strengthened its climate finance commitment and expects to deliver \$3 billion towards global efforts over 2020-25
 - This includes \$1.3 billion in climate finance for the Pacific, most of which will support adaptation.
- We recognise the significance of the COP29 decision on a New Collective Quantified Goal on climate finance and will continue to work with other countries to support ambitious climate action.

Human rights and climate change

- Australia recognises that the effects of climate change can have significant and adverse impacts on human rights.
- We also recognise the importance of upholding and promoting human rights in measures taken to address climate change, including in adaptation and mitigation efforts and through broader development of policies and programs relating to climate change action.
- Australia's International Gender Equality Strategy, International Disability Equity and Rights Strategy, and Humanitarian Policy, all recognise the important nexus of climate change and human rights.

How does the ICJ process differ from the ITLOS advisory opinion delivered in 2024?

- The proceedings before the ICJ arose from a request by the UN General Assembly

s 22(1)(a)(ii)

- whereas the proceedings before ITLOS arose from a request for an advisory opinion from the Commission of Small Island States on Climate Change and International Law (COSIS).
- The ITLOS request related specifically to the obligations of States Parties to the UN Convention on the Law of the Sea (UNCLOS) in relation to the impacts of climate change on the marine environment.
 - ITLOS delivered its advisory opinion in May 2024.
- The questions put to the ICJ were broader in scope [*than those put to ITLOS*] and related to a range of international law obligations.
- Both the ICJ and ITLOS have important contributions to make in clarifying the obligations of all States to respond to the climate emergency.

Any use or disclosure of personal information about individuals and the incidents contained in this background should not be made public. To do so may constitute a breach of the Privacy Act 1988 (Cth).

Background

On 23 July 2025 in The Hague, the International Court of Justice (ICJ) delivered its Advisory Opinion on the Obligations of States in respect of Climate Change. It was *unanimous*. s 33(a)(iii), s 42(1)

On 29 March 2023, the UN General Assembly adopted by consensus a resolution requesting an advisory opinion from the International Court of Justice (ICJ) on the obligations of States in respect of climate change. The resolution was led by Vanuatu and co-sponsored by 131 others, including Australia. The legal question posed in the resolution was broad in scope and asked the ICJ to consider the obligations of States under international law with respect to climate change. The legal question is applicable to all States, including ‘all major emitters past, present and future’.

Australia’s first round written statement was lodged with the ICJ Registry in The Hague on 22 March 2024. 91 written statements in total were filed with the Court. This is the highest number of written statements ever to have been filed in advisory proceedings before it. Australia also lodged a second round written comment, which primarily responded to the first round written submissions of other States. 62 written comments in total were filed with the Court. Written statements and comments were available to all participants throughout the proceedings and became publicly accessible during the course of oral proceedings.

Public oral hearings took place in The Hague from 2 to 13 December 2024, in which Australia participated. At the conclusion of the oral hearings, four judges posed written questions to participants. Australia did not submit responses to those questions.

s 42(1)

s 42(1)

s 22(1)(a)(ii)

Handling Notes

s 33(a)(iii)

The Attorney-General's Department led Australia's participation in the ICJ proceedings.

The Department of Climate Change, Energy, the Environment and Water (DCCEEW) can respond to broader questions on climate change, including Australian legislation and draft Nationally Determined Contribution (NDC).

The Department of Foreign Affairs and Trade can respond to broader issues that relate to international climate diplomacy and Pacific engagement.

Media Interest

s 22(1)(a)(ii)

Media coverage of the ICJ advisory opinion in late July 2025 was extensive and picked up by most media outlets. Coverage outlined the main elements of the Court's opinion, noting it was progressive and unanimous. Framing was broadly positive, claiming it as a landmark opinion that could pave the way for further litigation. Pacific representatives, many of whom were present in the Hague when the advisory opinion was delivered, were widely quoted.

On 13 September 2025, the ABC reported comments by Vanuatu's Climate Change Minister, Ralph Regenvanu, referring to Australia "perpetuating" fossil fuel production, said "the fact that Australia continues to engage in this behaviour is an internationally wrongful act, according to what the court said." (link)

On 12 September 2025, The Canberra Times reported comments by Vanuatu's Climate Change Minister, Ralph Regenvanu, in the sidelines of the Pacific Islands Forum, that Australia's long-held argument that it's only responsible for cutting the greenhouse gases it emits within its borders "is no longer tenable" following the ICJ opinion. Minister Regenvanu said that Australia was decarbonising its own economy "very fast", but the argument that "the domestic transition is sufficient under the Paris Agreement" is untenable (link).

In late July 2025, there was moderate media reporting on the International Court of Justice (ICJ) ruling that found "a failure of a state to take appropriate action to protect the climate system... may constitute an internationally wrongful act" (link) (link).

On 24 July 2025, the Guardian reported on Vanuatu's Climate Change Minister, Ralph Regenvanu, saying that ICJ's decision gives Pacific Island nations "much greater leverage" in dealing with partners such as Australia (link).

On 24 July 2025, ABC also reported that Vanuatu's Climate Change Minister, Ralph Regenvanu, "has not ruled out launching litigation against large polluting countries, including Australia, in the wake of the findings" (link).

On the 14 August the 2025 Forum Foreign Ministers Meeting (FFMM) agreed the following:

Forum Foreign Ministers also commended the successful campaign for the International Court of Justice Advisory Opinion, as spearheaded by the Government of Vanuatu, and the related landmark decision issued on 23 July 2025. Ministers emphasised the importance of maintaining momentum and advocacy on this and related processes and agree to progress next steps in respect of the ICJ AO, including the development of a follow-up resolution in the UN General Assembly.

Forum Foreign Ministers:...

vii. **welcomed** the International Court of Justice Advisory Opinion (ICJ AO) on climate change as a powerful affirmation of what we can achieve when we work together as one Blue Pacific;

viii. **noted** Vanuatu's appreciation for the collective unity and efforts of Forum member countries, the advocacy of the Pacific Islands Students Fighting Climate Change, and the dedicated support of CROP and regional agencies throughout the process leading to the issuance of the landmark advisory opinion;

ix. **urged** all countries, including Forum Members to utilise, as appropriate, the ICJ AO in respect of States’ obligations in relation to climate change in implementing their respective obligations nationally and internationally;

x. **strongly encouraged** all Forum member countries to consider the ICJ AO when engaging in international climate change negotiations and associated processes, and to uphold the importance of maintaining the 1.5 global temperature goal in accordance with the Paris Agreement and to engage in appropriate mitigation efforts;

xi. **agreed** to progress next steps in respect of the ICJ AO including in the development of a follow-up resolution in the UN General Assembly; and

xii. **endorsed** the inclusion of the ICJ AO on climate change as a formal agenda item for discussion and consideration of final decision text in the upcoming Leaders' meeting in September in Honiara, Solomon Islands.

PIF Leaders meeting (12 September) agreed the following:

Leaders **commended** the ICJ AO on climate change as a powerful affirmation of what the region can achieve when it works together as one Blue Pacific, and **acknowledged** with appreciation the leadership by the Government of Vanuatu on this matter. Leaders **further acknowledged** the advocacy of the *Pacific Islands Students Fighting Climate Change*, and the dedicated support of CROP and regional and sub-regional agencies throughout the process leading to the issuance of the landmark advisory opinion.

Leaders **urged** all countries, including Forum Members, to utilise, as appropriate, the ICJ AO in respect of States’ obligations in relation to climate change in implementing their respective obligations nationally and internationally. Leaders **strongly encouraged** all Forum Members to consider the ICJ AO when engaging in international climate change negotiations and associated processes, and to uphold the importance of maintaining the 1.5°C global temperature goal in accordance with the Paris Agreement and to engage in appropriate mitigation efforts, including by calling on all countries to submit updated Nationally Determined Contributions (NDCs), as soon as possible, ahead of COP30;

Leaders **agreed** to progress next steps in respect of the ICJ AO, including in the development of a follow-up resolution in the UN General Assembly. Leaders **further acknowledged** that the ICJ AO reiterates the calls from the global stocktake for countries to come forward in their next NDCs with ambitious emissions reduction targets aligned with keeping 1.5°C degrees within reach, and **urged** all parties, particularly major economies, to implement their NDCs in a manner consistent with closing the ambition gap.

| | |
|-----------------|--|
| Approval | |
| Consultation | DFAT (LGD, CSD and OTP), DCCEEW, AGD, DISR, PM&C |
| Author | s 22(1)(a)(ii) CSD; s 22(1)(a)(ii) |

| | |
|------------|---------------------------|
| Cleared by | Kate Mitchell, A/g AS ILB |
|------------|---------------------------|

| Distribution |
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From: s 22(1)(a)(ii)
Sent: 3:27 PM
To: s 22(1)(a)(ii)
Subject: FW: ESTIMATES TRANSCRIPT - POCOCK ON ICJ ADVISORY OPINION [SEC=OFFICIAL]

OFFICIAL

FYI

Best,
s 22(1)(a)(ii)

Assistant Director | Climate, Human Rights, Advising and Treaties Section
International Law Branch I | Legal Division
Department of Foreign Affairs and Trade

P: s 22(1)(a)(ii) | M: s 22(1)(a)(ii)

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From: s 22(1)(a)(ii) <dfat.gov.au>
Sent: Monday, 1 December 2025 3:25 PM
To: Kate Mitchell <Kate.Mitchell@dfat.gov.au>; s 22(1)(a)(ii) <dfat.gov.au>; s 22(1)(a)(ii) <dfat.gov.au>
Subject: FW: ESTIMATES TRANSCRIPT - POCOCK ON ICJ ADVISORY OPINION [SEC=OFFICIAL]

OFFICIAL

FYI in case useful (re ICJ AO on climate change)

From: s 22(1)(a)(ii) <@dfat.gov.au>
Sent: Monday, 1 December 2025 3:18 PM
To: s 22(1)(a)(ii) <@dfat.gov.au>
Subject: ESTIMATES TRANSCRIPT - POCOCK ON ICJ ADVISORY OPINION [SEC=OFFICIAL]

OFFICIAL

ESTIMATES – LEGAL & CONSTITUTIONAL AFFAIRS COMMITTEE

1:39PM – Senator Pocock on ICJ advisory opinion – 1 December 2025

POCOCK: Thank you, chair. I have two separate things I was keen to ask questions on. First was the ICJ advisory opinion. I was just over asking officials about this in another committee and they sent me here and said you have been coordinating the work on a response to the opinion. I was interested to find out where that's up to? Is it ongoing? When will it sort of be given to government and will it be made public?

OFFICIAL: Thank you, Senator. The department was responsible for Australia's participation in the International Court of Justice advisory proceedings in relation to climate change. That advisory opinion was handed down on 23 July and that concludes that proceedings. Nevertheless, since that day we have been there gauged with other departments, including DQ, who have relevant policy responsibility to assist them in understanding the implications of the advisory opinion. That work is ongoing.

POCOCK: Has there been, will there be formal advice given to government? My reading of the ICJ opinion has some pretty serious ramifications for our emissions reduction targets, approval of fossil fuel projects.

OFFICIAL: They are all matters in which departments ask for our advice on relevant and contemporary questions of international law that are particular to their policy responsibilities and indeed we are actively engaged with DQ on the

sorts of matters that are raised by the advisory opinion.

POCOCK: Looking at the ICJ opinion, it found that mitigation must aim at the 1.5 degree Celsius temperature goal and must be based on best available science. I think the -- my reading of it, if you look at the ICJ then sets out the IPCC isn't as authoritative statement of available science. Would you agree with that?

OFFICIAL: Senator, what I can say is that Australia's submissions, there were two rounds of written submissions. One set of oral submissions at the hearing. They're all publicly available. I'm just conscious of not going beyond those and providing the committee with legal advice which you'll understand we don't do. You will see if you look at those publicly available submissions that the government took no issue with the role of the IPCC. And its articulation of the best available science. So I feel I can answer your question that way.

POCOCK: Sure. Thank you. That's helpful. I guess looking at what the IPCC has said about 1.5 degrees, which the ICJ has essentially ruled on, saying states have an obligation to be sort of in line with that, the last IPCC report states with high confidence between science speakers incredibly high

degree of certainty that future CO2 emissions from existing fossil fuel infrastructures, without additional abatement already exceed the budget to limited warming of 1.5 degrees Celsius. Does it follow then that we have a legal duty to not approve new fossil fuel projects if just the existing ones breach the 1.5 degree obligation under the ruling?

OFFICIAL: Senator, I hope you'll understand that while I was trying to be helpful in relation to your last question, I feel to answer that question would be to provide the committee with legal advice which would not be appropriate for me to do.

POCOCK: I'm happy to rephrase my questions. Have you provided legal advice on that particular matter to DQ?

OFFICIAL: Senator, we wouldn't disclose the particulars of the topic on which we would give advice.

POCOCK: Why is-s that?

OFFICIAL: Because it could disclose the advice itself.

POCOCK: What's wrong with that?

OFFICIAL: It is not our role to provide legal advice to the committee or the public. It's to provide advice to the government. And that legal advice is confidential and privileged.

POCOCK: Sure. I'm just trying to find out if you've given that advice. I don't want to know what it is says. You can't tell me if you've given legal advice on that. I'm trying to understand what the problem with that is?

OFFICIAL: Perhaps I should have led with the helpful part of the answer to your question which is I can confirm that we have been engaged with DQ since the delivery of the advisory opinion in providing them with advice on various aspects of the government's policies in relation to climate change and we have done that over the course of a few different advices and we continue to provide them with advice.

POCOCK: Does that include the ICJ opinion? I should say specifically in relation to the ICJ advisory opinion.

OFFICIAL: Yes.

POCOCK: Which ministers has the department briefed on the ICJ opinion?

OFFICIAL: I couldn't tell you which minister's other departments are brief but I can tell you that throughout the proceedings we in the Office of International Law provided various submissions to the previous Attorney-General. We have also kept the current Attorney-General and her office up to date on the advisory opinion and its implications.

POCOCK: Okay. Thank you very much. Thank you

From: s 22(1)(a)(ii)
Sent: Monday, 1 December 2025 10:41 PM
To: Will Nankervis; s 22(1)(a)(ii)
Cc: CSD Executive; ; Emily Luck;
Subject: RE: CSD Briefs - Estimates [REDACTED]
Attachments: Climate Change - Advisory Opinions (AS ILB Cleared).docx

Follow Up Flag: Follow up
Flag Status: Completed

[REDACTED]

Hi Will,

Re ICJ, I have consulted both with LGD and DCCEEW on the update.

s 33(a)(iii), s 47E(d)

s 22(1)(a)(ii)

I have added some points on whether the FM has been briefed on the ICJ AO.

Re what s 22(1)(a)(ii) may say, IAT think their current brief still stands and don't see the need for any amendment (see attached). Note in particular the text below addressing the questions relating to legal advice given to date in relation to the AO and its potential implications.

Have you given legal advice on the implications of the Court's opinion?

- DFAT has been engaged on an ongoing basis on a range of international law issues in relation to these advisory proceedings since 2023.
 - And we are carefully considering the Court's opinion.
- As is long-standing practice, it would not be appropriate to comment on the content of any advice provided, or to provide legal advice or legal commentary to the Committee.

s 33(a)(iii), s 47E(d)

- Consistent with longstanding practice, not appropriate to provide legal advice or a legal commentary on the Opinion to the committee.
- Australia takes its international legal obligations seriously.
- Australia is deeply committed to taking real and significant climate action at home and in support of our shared Pacific region.

s 22(1)(a)(ii)

Document 3

Regards

s 22(1)(a)(ii)

From: Will Nankervis <Will.Nankervis@dfat.gov.au>
Sent: Tuesday, 2 December 2025 1:16 PM
To: s 22(1)(a)(ii) @dfat.gov.au; s 22(1)(a)(ii) @dfat.gov.au
Cc: CSD Executive <CSD.Executive@dfat.gov.au>; s 22(1)(a)(ii) @dfat.gov.au; Emily Luck <Emily.Luck@dfat.gov.au>; s 22(1)(a)(ii) dfat.gov.au
Subject: RE: CSD Briefs - Estimates [REDACTED]

Thanks. s 22(1)(a)(ii)

I stand ready to look at the revised ICJ one. Cheers, Will

Will Nankervis
 Ambassador for Climate Change
 Department of Foreign Affairs and Trade
 📞 s 22(1)(a)(ii) | 🌐 will.nankervis@dfat.gov.au

From: s 22(1)(a)(ii) @dfat.gov.au
Sent: Tuesday, 2 December 2025 12:34 PM
To: s 22(1)(a)(ii) @dfat.gov.au
Cc: CSD Executive s 22(1)(a)(ii) @dfat.gov.au; s 22(1)(a)(ii) @dfat.gov.au; Will Nankervis <Will.Nankervis@dfat.gov.au>
Subject: RE: CSD Briefs - Estimates [REDACTED]

May thanks s 22(1)(a)(ii) all.

s 22(1)(a)(ii)

Executive Officer to Deputy Secretary Jamie Isbister
 Development, Multilateral and Europe Group

P s 22(1)(a)(ii) M s 22(1)(a)(ii)

From: s 22(1)(a)(ii) @dfat.gov.au>
Sent: Tuesday, December 2, 2025 12:29 PM
To: s 22(1)(a)(ii) @dfat.gov.au>
Cc: CSD Executive s 22(1)(a)(ii) @dfat.gov.au>; s 22(1)(a)(ii) @dfat.gov.au>; Will Nankervis <Will.Nankervis@dfat.gov.au>
Subject: RE: CSD Briefs - Estimates [REDACTED]

Hi s 22(1)(a)(ii)

Briefs that have been updated with comments from Will and awaiting FAS clearance:

s 22(1)(a)(ii)

- ICJ advisory opinion on Climate Change – s 22(1)(a)(ii) – being updated and will send through ASAP.

Any queries or questions, please let me know.

Kind regards,
s 22(1)(a)(ii)

Executive Assistant
Climate Resilience and Finance Branch
Development Finance and Economics Branch
Climate Diplomacy and Development Finance Division
Department of Foreign Affairs and Trade
p s 22(1)(a)(ii)

M
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To: CSD Executive s 22(1)(a)(ii) @dfat.gov.au>; s 22(1)(a)(ii) @dfat.gov.au>; s 22(1)(a)(ii) @dfat.gov.au>
Cc: s 22(1)(a)(ii) @dfat.gov.au>
Subject: CSD Briefs - Estimates [REDACTED]

Hi s 22(1)(a)(ii) ,

As discussed briefly with s 22(1)(a)(ii) please find below the briefs Jamie carried for estimates last time around. Could you please let me know which of these will be updated from last estimates and I'll sub them in once received?

I have asked other teams to send me briefs by **COB Wednesday 26th** , but I am conscious a lot of these will need to be updated following COP. Could you send me those that can be updated by this date, and we can keep in touch on the others?

s 22(1)(a)(ii)

Other:
s 22(1)(a)(ii)

- ICJ
s 22(1)(a)(ii)

Thanks,

s 22(1)(a)(ii)

Executive Officer to Deputy Secretary Jamie Isbister
Development, Multilateral and Europe Group
Department of Foreign Affairs and Trade
R.G Casey Building
Barton ACT 2600 Australia

P s 22(1)(a)(ii)

M s 22(1)(a)(ii)

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s 33(a)(iii), s 33(b) - Pages (24-29) are exempt and the following pages have been removed

PROTECTED



Title: COP31 and the Pacific: Where we landed and what's to come
MRN: s 22(1)(a)(ii) 05/12/2025 s 22(1)(a)(ii)
To: Pacific Posts
Cc: Europe Posts , COP31 Climate Diplomacy Posts , Indo-Pacific Posts
From: Canberra
Sent by: (CHCH/DFAT/CSD/CCB) Emily Luck
References: s 22(1)(a)(ii)
Response: Routine, Information Only
Summary:
s 22(1)(a)(ii)

s 22(1)(a)(ii) - This section and page (31) are irrelevant and the following page has been removed





s 22(1)(a)(ii)

s 33(a)(iii), s 33(b)

s 22(1)(a)(ii)

Sent By: Emily Luck
Prepared By: Emily Luck
Approved By: Isbister/Chittick
Topics: ENVIRONMENT/Climate Change , POLITICAL-ECONOMIC/International Political , UN & COMMONWEALTH/UN Discussions

Canberra distribution

s 22(1)(a)(ii) - This section and pages (33-37) are irrelevant and the following pages have been removed





s 33(a)(iii), s 33(b) - Pages (38-46) are exempt and the following pages have been removed

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Title: UN: General Assembly resolution on ICJ climate change opinion
MRN: s 22(1)(a)(ii) 11/12/2025 s 22(1)(a)(ii)
To: UN New York , Port Vila
Cc: Brasilia , Brussels , Singapore , Berlin , Paris EMB , The Hague , Pacific Posts , Washington , London , Geneva UN , Ottawa , Istanbul , Wellington
From: Canberra
Sent by: (CHCH/DFAT/CSD/CCB) s 22(1)(a)(ii)

From File:

References:

Attachments: s 33(a)(iii), s 47E(d)

Response: Routine, Information Only

Summary:
s 33(a)(iii), s 47E(d)

s 33(a)(iii), s 33(b), 47E(d)

Thank you to posts for reporting to date on reactions to the International Court of Justice (ICJ)'s advisory opinion on the obligations of States in respect of climate change.

2. Australia has supported and promoted the ICJ advisory opinion in multiple fora since it was delivered, in solidarity with the [PIF Leaders' position](#) in support of the ICJ advisory opinion and the Pacific's leadership role in that regard s 33(a)(iii), 47E(d)



s 33(a)(iii), 47E(d)

10. Posts can draw on the latest talking points on the ICJ advisory opinion available in the DFAT media TPs database.

11. Prepared by CSD in consultation with DFAT LGD, DCCEEW and AGD.

Sent By: s 22(1)(a)(ii)

Prepared By:

Approved By:

Topics: ENVIRONMENT/Climate Change , UN & COMMONWEALTH/UN
Discussions , LEGAL/International Law

Canberra distribution

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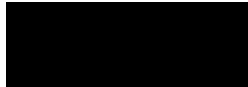


s 22(1)(a)(ii) - Pages (49-52) are irrelevant and the following pages have been removed

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s 33(a)(iii), s 33(b), s 47E(d) - Pages (53-55) are exempt and the following pages have been removed

From: s 22(1)(a)(ii)
Sent: Thursday, 11 December 2025 11:44 PM
To: s 22(1)(a)(ii)
Cc: Jean-Bernard Carrasco; Will Nankervis; s 22(1)(a)(ii) ; Emily Luck; Kate Mitchell; s 22(1)(a)(ii)
Subject: RE: Vanuatu ICJ AO resolution [REDACTED]
Attachments: s 33(a)(iii), s 33(b), s 47E(d)



Hi s 22(1)(a)(ii)

For information, please see update below to close the loop on the ICJ resolution and UNNY overnight engagement s 33(a)(iii), s 33(b), s 47E(d)

Regards

s 22(1)(a)(ii)

From: s 22(1)(a)(ii) <[REDACTED]@dfat.gov.au>
Sent: Wednesday, 10 December 2025 5:15 PM
To: s 22(1)(a)(ii) <[REDACTED]@dfat.gov.au>; s 22(1)(a)(ii) <[REDACTED]@dfat.gov.au>;

s 22(1)(a)(ii) dfat.gov.au>

Cc: Jean-Bernard Carrasco <Jean-Bernard.Carrasco@dfat.gov.au>; Will Nankervis <Will.Nankervis@dfat.gov.au>;

s 22(1)(a)(ii) dfat.gov.au>; s 22(1)(a)(ii) dfat.gov.au>; Emily Luck

<Emily.Luck@dfat.gov.au>; Kate Mitchell <Kate.Mitchell@dfat.gov.au>; s 22(1)(a)(ii)

dfat.gov.au>

Subject: RE: Vanuatu ICJ AO resolution [REDACTED]



Thanks – as discussed, comfortable with approach.

I.

From: s 22(1)(a)(ii) dfat.gov.au>

Sent: Tuesday, December 9, 2025 12:07 PM

To: s 22(1)(a)(ii) dfat.gov.au>; s 22(1)(a)(ii) dfat.gov.au>;

s 22(1)(a)(ii) dfat.gov.au>

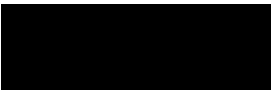
Cc: Jean-Bernard Carrasco <Jean-Bernard.Carrasco@dfat.gov.au>; Will Nankervis <Will.Nankervis@dfat.gov.au>;

s 22(1)(a)(ii) dfat.gov.au>; s 22(1)(a)(ii) dfat.gov.au>; Emily Luck

<Emily.Luck@dfat.gov.au>; Kate Mitchell <Kate.Mitchell@dfat.gov.au>; s 22(1)(a)(ii)

dfat.gov.au>

Subject: Vanuatu ICJ AO resolution [REDACTED]



Good morning, s 22(1)(a)(ii) ,

The purpose of this email is to:

- update you and the Vanuatu led ICJ AO GA resolution; and
- seek your views on approach to engagement.

s 33(a)(iii), s 33(b), s 47E(d)

Action: confirmation of approach as above.

Timing: by COB Tuesday 10/12 s 33(a)(iii), s 33(b), s 47E(d)

We have been closely consulting with DCCEEW, AGD, as well as DFAT Legal Division.

Regards

s 22(1)(a)(ii)

Director | Climate Resilient Environment and Ocean Section (CND) | Climate Resilience Branch (CLB) | Climate Change
Division (CSD)

Department of Foreign Affairs and Trade

P s 22(1)(a)(ii) | M s 22(1)(a)(ii)

s 22(1)(a)(ii) - Pages (59-62) are irrelevant and the following pages have been removed

s 33(a)(iii), s 33(b) - This section and page (64) are exempt and the following page has been removed

s 22(1)(a)(ii) - This section and pages (66-75) are irrelevant and the following pages have been removed

12:21 –
12:42

**ICJ Advisory opinion;
DFAT mention;
Japanese gas
companies; South-
East Asia**

Senator Pocock asks questions regarding legal advice on the **International Court of Justice (ICJ) advisory opinion**.

Q: In October, officials said the government had received legal advice on the ICJ advisory opinion and was still considering its response. In terms of considering its response is that is that still ongoing - where things up to?

A: So, this is the Attorney General's Department (AGD) are lead, so we don't have a direct lead or responsibility on that issue

Q: So, there's a cross department advisory body or how is this being worked through?

A: This is being led by the Attorney General's department and the **Office of International Law**.

Q: Will there be a formal response?

A: I think that's a question for the Attorney General's department.

Q: So, it's Department of Climate Change, Environment, Energy and Water (DCCEEW), AGD and **DFAT**? Those are the three?

A: But again, is the Attorney General's Department.

Q: You must know who's involved?

A: Senator they will all seek advice as they see fit from a range of departments. And while we may be involved in providing some of that advice certainly whole of government responsibility for a matter like this rests with the Attorney General's Department.

Q: And if you're part of the response, are you aware of when that body of work will be done?

A: Sorry Senator the response to what in particular?

Q: The ICJ decision.

A: No, I don't have a time frame I'm afraid no.

Q: So, just ongoing?

A: AGD will be able to assist you.

Q: In terms of looking at the ICJ decision, the ICJ found that mitigation must aim at the 1.5 temperature goal and needs to be based on best available science. That's found in paragraphs 224, 245 and 254. The ICJ sort of accepts the **Intergovernmental Panel on Climate Change** (IPCC) as an authoritative statement of best available science. Would the department also

accept the IPCC as an authoritative statement of best available science?

A: We participate as part of the **IPCC**; we certainly accept the science. Australia's national interest and is based on robust analysis of the best available evidence need anchors Australia's commitment to the global goal of pursuing efforts to limit warming to 1.5 degrees.

[Further discussion on ICJ judgement implementation on Australia's domestic policy on scope 1 and 2 emissions]

Q: Should not be approving new fossil fuel projects. I'm just curious as to whether or not you think you can say you accept the science, the **IPCC's** is the sort of authority on this, but then approve fossil fuel projects at the same time as saying we're still heading to 1.5?

A: The way that the framework works is there are scope 1, 2 and 3 emissions. And the largely while I accept the projects themselves depending upon the project and the technology that's been engaged have their own scope 1 and 2 in Australia. It is largely the export gas or export coal is largely the responsibility of the economy that uses the emissions in their industrial or their or their energy processes. That is a framework that Australia's interests, that is true. But it is also a framework that is in the interest of international action and that's the framework that we're going to follow and promote. The idea that we should reduce the **energy**

security of our partners and that will somehow contribute to greater action is just not right, and it would undermine the action being taken now and sort of throw the global emissions effort into disarray.

Q: We're going to say we're acting and continue to swallow the line from **Japanese gas companies** when they're exporting our gas into **Southeast Asia** now and they are helping invest in new gas infrastructure. **Japan** is on selling more gas than we export to the. But I guess to come to bring you back to the ICJ case you may your government may just say you know fob off stringent obligations of due diligence, include conducting environmental impact assessments of climate related effects and assessing their possible downstream effects, you can't just under Paris punt your Scope 3 emissions. You must look at how will this affect our Global emissions? Are we opening ourselves up to potential cases against Australia.

A: While we're swapping various tribunal approaches.

Q: I'm interested in the ICJ.

A: The global framework that in the real world is going to drive emissions reductions, is the framework that we work within. And it is in my view, more likely to achieve a real global emissions reduction if everybody agrees the Framework and doesn't take unilateral action. And that is the approach the Australian government is taking. We

support the international framework, we support it because it is the most realistic path forward in terms of emissions reduction, we support it because knocking over the card table at this point of the game will just increase global emissions. I say this is a dinner party discussion because it only makes sense until you confront the realities of how economies are in the framework and number three it is in Australia's interest. All three things taken together means this is the right approach.

[Further discussion between Senator Pocock and Minister Ayres]

Q: I'm concerned the government of the day is opening us up to potential litigation, not to mention the impacts of climate change, where we're trying to have it both ways. We're saying we're doing everything we can and at the same time we've somehow convinced ourselves that opening up huge new gas projects for export will actually reduce emissions when all of the expert evidence says that we simply cannot go down this pathway.

A: It is very clear to me that the framework we're approaching, reducing domestic emissions, improving the position of our industry and our electricity system, modernising our electricity system, being very clear about whose responsibility is what, and that is scope 3 emissions are the responsibility of the country and the economy that is engaging those products in their processes and that is the best way of delivering a coherent response.

| | | |
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| | | <p><i>[Further discussion between Senator Pocock and Minister Ayres]</i></p> <p>Q: So you disagree with the ICJ judges?</p> <p>A: I said what I said, Australia’s approach is going to be the one I outlined. We pay attention to decisions made by international tribunals but there’s an international framework there, that is in Australia’s interest but also in our judgement that in the interests of a coherent global approach on emissions and to take an alternative approach, in the real world, would be disruptive to efforts to say the least.</p> <p><i>[Discussion on Minister’s lack of legal specialisation and capability to discuss tribunal discussions]</i></p> |
|--|--|--|

AGD

| | | |
|---------------------------------|--|--|
| <p>14:39 – 14:45</p> | <p>ICJ Advisory Opinion on Climate Change</p> | <p>Senator Pocock</p> <p>Q: I was just over at DCCEEW asking officials about this in the ENC Committee. And they sent me here, as they said, you're coordinating the work on a response to the opinion. And I was just interested to find out where that's up to. Is it ongoing? When will it be given to government and will it be made public?</p> |
|---------------------------------|--|--|

A: Jesse Clark, General Counsel International

Law: Thank you Senator, the department was responsible for Australia's participation in the International Court of Justice advisory proceedings in relation to climate change. You'll be aware that that advisory opinion was handed down on the 23rd of July and that concludes that proceedings. Nevertheless, since that day we have been engaged with other Departments, including DCCEEW, who have relevant policy responsibility to assist them in understanding the implications of the advisory opinion. That work is ongoing.

Q: And will there be sort of formal advice given to government? You know, my reading of the ICJ opinion has some pretty serious ramifications for our emissions reduction targets, our approval of fossil fuel projects.

A: So, they are all matters Senator on which departments ask for our advice on relevant and contemporary questions of international law that are particular to their policy responsibilities and indeed we are actively engaged with DCCEEW on the sorts of matters that are raised by the Advisory opinion.

Q: And looking at the ICJ opinion, they found that mitigation must aim at the 1.5 degree C. Celsius temperature goal and must be based on best available science. I think those paragraphs 224, 245, 254. My reading of it, if you look at the ICJ then sort of sets out that the IPCC is an authoritative

statement of best available science. Would you agree with that?

A: Senator, what I can say is that Australia's submissions, there were two rounds of written submissions, one set of oral submissions at the hearing, they're all publicly available. I'm just conscious of not going beyond those and providing the committee with legal advice, which you'll understand we don't do. You will see, if you look at those publicly available submissions, that the government took no issue with the role of the IPCC. And its articulation of the best available science. So, I feel I can answer your question that way.

Q: Sure. Thank you, that's helpful. And I guess looking at what the IPCC has said about 1.5 degrees, which the ICJ has essentially ruled on, saying that states have an obligation to be sort of in line with that. The last IPCC report states, with high confidence, which we know in science speak, is an incredibly high degree of certainty, that future CO2 emissions from existing fossil fuel infrastructures, without additional abatement, already exceed the remaining carbon budget for limiting warming to 1.5 degrees Celsius. Does it follow then, that we have a legal duty to not approve new fossil fuel projects if just the existing ones breach the 1.5 degree obligation under the ruling?

A: Senator, I hope you'll understand that while I was trying to be helpful in relation to your last question, I feel to answer that question would be to provide the

committee with legal advice which would not be appropriate for me to do so.

Q: Sure, have you provided legal advice on that particular matter to DCCEEW?

A: Senator, again, we wouldn't disclose the particulars of the topic on which we would give advice.

Q: Sorry. Why is that?

A: Because it could disclose the advice itself.

Q: So, what's wrong with that?

A: Well, it is not our role to provide legal advice to the committee or the public. It's to provide advice to the government. And that legal advice is confidential and privileged.

Q: Sure. I guess. I'm just trying to find out if you've given that advice. I don't want to know what it says. But you can't even tell me if you've given legal advice on this? I'm trying to understand what the problem with that is.

A: Perhaps I should have led with the helpful part of the answer to your question, Senator, which is I can confirm that we have been engaged with DCCEEW

since the delivery of the advisory opinion in providing them with advice on various aspects of the government's policies in relation to climate change, and we've done that over the course of a few different advices, and we continue to provide them with advice.

Q: Does that include the ICJ opinion?

A: I should say specifically in relation to the ICJ advisory opinion. Yes.

Q: Which ministers has the department briefed on the ICJ opinion?

A: So, I couldn't tell you which ministers other departments have briefed, but I can tell you that throughout the proceedings, we in the Office of International Law provided various submissions to the previous Attorney General. We've also kept the current Attorney General and her office up to date on the advisory opinion and its implications.

Q: Thank you.