

NOTICE OF FILING AND HEARING

Filing and Hearing Details

Document Lodged: Originating Application Starting a Representative Proceeding under Part IVA
Federal Court of Australia Act 1976 - Form 19 - Rule 9.32
Court of Filing: FEDERAL COURT OF AUSTRALIA (FCA)
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File Number: VID622/2021
File Title: PABAI PABAI & ANOR v COMMONWEALTH OF AUSTRALIA
Registry: VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA
Reason for Listing: To Be Advised
Time and date for hearing: To Be Advised
Place: To Be Advised



Sia Lagos

Registrar

Important Information

This Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The date of the filing of the document is determined pursuant to the Court's Rules.

Form 19
Rule 9.32



**Amended Originating application starting a representative proceeding
under Part IVA of the Federal Court of Australia Act 1976**

No. VID622 of 2021

Federal Court of Australia
District Registry: Victoria
Division: General

PABAI PABAI AND GUY PAUL KABAI

Applicants

COMMONWEALTH OF AUSTRALIA

Respondent

To the Respondent

The Applicants apply for the relief set out in this application.

The Court will hear this application, or make orders for the conduct of the proceeding, at the time and place stated below. If you or your lawyer do not attend, then the Court may make orders in your absence.

You must file a notice of address for service (Form 10) in the Registry before attending Court or taking any other steps in the proceeding.

Time and date for hearing:

Place: Federal Court of Australia
305 William Street
Melbourne VIC 3000

Date:

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Signed by an officer acting with the authority
of the District Registrar

.....
Filed on behalf of Pabai Pabai and Guy Paul Kabai (Applicants)
Prepared by Brett Spiegel, Phi Finney McDonald
Tel (03) 9314 7100 Fax
Email Brett.spiegel@phifinney-mcdonald.com
Address for service Level 3, 325 Flinders Lane, Melbourne VIC 3000
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Details of claim

Terms defined in the Amended Statement of Claim carry the same meaning when used in this Amended Originating Application.

On the grounds stated in the accompanying Amended Statement of Claim, the Applicants claim on their own behalf and on behalf of Group Members:

1. A declaration that the Commonwealth owes a duty of care to Torres Strait Islanders, including the Applicants and the Group Members, to take reasonable steps to:
 - a. protect Torres Strait Islanders; and/or
 - b. protect Torres Strait Islanders' traditional way of life, including taking steps to preserve *Ailan Kastom*; and/or
 - c. protect the marine environment in and around the Protected Zone, including the Torres Strait Islands;from the Current and Projected Impacts of Climate Change in the Torres Strait Islands **(Duty of Care)**.
2. A declaration that the Commonwealth is in breach of the Duty of Care.
3. An injunction requiring the Commonwealth ~~of Australia~~ to implement such measures as are necessary to:
 - a. protect the land and marine environment of the Torres Strait Islands and the cultural and customary rights of the Torres Strait Islanders, including the Applicants and the Group Members, from GHG emissions into the Earth's atmosphere;
 - b. reduce Australia's GHG emissions consistent with the Best Available Science Target; and
 - c. otherwise avoid injury and harm to Torres Strait Islanders, including the Applicants and the Group Members, from GHG emissions into the Earth's atmosphere.
4. Damages.
5. Costs.
6. Such further or other relief that the Court regards as appropriate.



Questions common to claims of group members

The questions of law or fact common to the claims of the group members are:

- ~~1. Whether the Applicants and Group Members are entitled to the relief sought.~~
- ~~2. Whether the claims of each of the Applicants and Group Members are against the same entity.~~
- ~~3. Whether the claim of each of the Applicants and Group Members are in respect of, or arise from the same, similar or related circumstances, namely the harm caused to them by Climate Change.~~
4. 1. Whether the Current and Projected Impacts of Climate Change in the Torres Strait Islands have occurred, and will continue to occur.
5. 2. Whether the Commonwealth's GHG emissions reduction targets are consistent with the Best Available Science.
3. Whether the Commonwealth owed to Torres Strait Islanders, including the Applicants and the Group Members, the Duty of Care.
6. 4. Whether the Commonwealth breached the Duty of Care.
7. 5. What are the principles for identifying and measuring compensable injuries or losses suffered by Torres Strait Islanders, including the Applicants and the Group Members, as a result of breaches of the Duty of Care.

Representative action

The Applicants bring this application as a representative party under Part IVA of the *Federal Court of Australia Act 1976*.

The group members to whom this proceeding relates are persons who are defined in the Amended Statement of Claim.

Applicant's address

The Applicants' address for service is:

Place: Phi Finney McDonald, Level 3, 325 Flinders Lane MELBOURNE VIC 3000

Email: brett.spiegel@phifinney-mcdonald.com

The Applicants' address is: c/- Phi Finney McDonald, Level 3, 325 Flinders Lane MELBOURNE VIC 3000.



Service on the Respondent

It is intended to serve this application on the Respondent.

Date: ~~26 October 2021~~ 7 October 2022

A handwritten signature in black ink, appearing to read 'Brett Spiegel'.

Signed by Brett Spiegel
Lawyer for the Applicants