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Duty to Address Climate Change Litigation Risks for Australian Energy Companies—Policy and Governance Issues

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Abstract: The transition from fossil fuels to renewable energy requires cooperation from all, including corporations, shareholders, and institutional investors. The purpose of this paper is to explore climate change litigation risks for Australian energy companies and investors from a policy and governance perspective. Companies are increasingly reporting their climate policies to satisfy their shareholders and investor demands. In addition, the government and judiciary are making laws and decisions to support the Paris Agreement. This paper explores whether company directors can and, in some cases, should be considering the impact of climate change litigation risks on their business, or else risk breaching their obligation to exercise care and diligence under the Corporation Act 2001 (Cth, Australia). The paper concludes that in addition to reducing climate change litigation risks, Australian energy companies and institutional investment bodies that invest in Australian energy companies can make informed climate risk decisions by aligning their investments with the goal of net-zero or reduced emissions.

Keywords: energy companies; climate change litigation risks; directors duties; policy and governance

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1. Introduction

The landmark Dutch court decision *Milieudefensie v Shell* [1] handed down in Hague District Court on 26 May 2021, held that Royal Dutch Shell PLC, a global energy company, had a duty of care to reduce CO_2 emissions in its entire global value chain. The Court ordered Royal Dutch Shell to reduce the group's emissions by 45% through Shell group's corporate policy. This decision has ramifications for energy companies around the world in assessing their climate change litigation risks.

The conceptual measure of global climate change litigation risk can be measured with two main databases that maintain details of climate litigation cases: the Climate Change Laws of the World (CCLW) database maintained by the Grantham Research Institute of Climate Change and the Environment [2]; and the United States Climate Litigation Database maintained by the Sabin Centre for Climate Change Law [3]. The *Global trends in climate change litigation: 2021* report identified 1841 cases of climate change litigation around the world as of 31 May 2021, with the United States having the highest number of cases, totalling 1387, followed by Australia with 115 cases [4]. The forecast is for climate change litigation cases to grow in all countries, especially against corporations. However, the focus of this paper is not on global climate change cases, or the issues involved in the global cases against corporations as listed in Appendix B at the end of this paper. The global listings do, however, provide a conceptual measure of the climate change litigation risks. The purpose of this paper is to explore climate change litigation risks for Australian energy companies and how the directors can prevent the company from being exposed to this risk. Australian companies are increasingly reporting their climate policies to satisfy their shareholders and investor demands. In addition, the Australian government and judiciary are making laws and decisions to support the Paris Agreement.

The starting point for a discussion of global international obligations to climate change is the United Nations Framework Convention on Climate Change (UNFCCC). The UNFCCC has near-universal membership of 197 countries, including Australia, that have ratified the Convention. The UNFCCC has also established the Conference of the Parties (COP), which are the meetings of the participating countries to discuss climate change agenda. The most significant COP has been COP21, the 2015 Paris Agreement [5]. The Paris Agreement has changed from Kyoto's top-down approach of countries complying with legally binding commitments for emission reductions to a bottom-up approach whereby countries make their own commitment by pledging nationally determined contributions. This bottom-up approach recognises that adaptation is a global challenge faced by all. This means a broader responsibility than just through government policies. The responsibility is increasingly put on investors and corporations to make the right choices.

Climate change is also impacting institutional investors, as they are increasingly becoming aware of climate litigation risks, since investments in projects exposed to climate risks often flow into financial risks. Financial institutions may expose themselves to litigation by not addressing the Paris Agreement's objective of making "finance flows consistent with a pathway towards lower greenhouse gas emissions and climate resilient development [6]". The reason for this is that climate litigation can expose financial institutions to stranded assets from abandoned projects if the judge orders the project to halt due to associated climate risks. It is not possible to completely divest from these risks. However, the message from the litigated cases is being responded to through tangible investment decisions. The message of this paper is to make the financial institutions and corporations aware of the litigation risks if they ignore climate risks in investment and business decisions. In addition, they can become exposed to litigation for breaches of the Australian *Corporations Act 2001* (Cth, Australia) and climate legislation, as discussed below.

This review paper is in five parts. Following this brief introduction, Section 2 explores the climate change litigation risks faced by energy and superannuation companies in Australia that invest in nonrenewable energy. Section 3 then examines whether climate change risks may be relevant to an Australian company director's duty of care and diligence under s180(1) of the *Corporations Act 2001* (Cth, Australia) to the extent that they interact with the interests of the company, followed by Section 4, which points to actions that the directors of Australian energy companies can take to minimise the impact of climate change litigation risks on their businesses and prevent the risk of breaching their directors' duties under the *Corporations Act 2001* (Cth, Australia). Part 5 concludes the paper, stating that the role of directors is to manage physical and transitional risks and test company strategy against climate change scenarios, including timely flow of climate-change-related information from management to the board.

2. Climate Change Litigation Risks for Both Energy and Superannuation Companies in Australia

Companies involved in the production of energy resources, by the very nature of their operations, should be considering climate change litigation risk as a potential business risk when their directors and managers make management decisions.

Major companies and financial institutions in Australia are increasingly being challenged in their investment decisions that impact upon climate change, as shown in selected cases listed in the Appendix A of this paper. Some of the litigation issues that have impacted climate change risks for energy and superannuation companies are:

- Shareholders seeking disclosure from the Commonwealth Bank of Australia on internal documents under the *Corporations Act 2001* (Cth, Australia) relating to projects to ascertain whether the projects comply with the goals of the Paris Agreement [7];
- An institution (the Australasian Centre for Corporate Responsibility) challenging whether a company involved in oil and gas made a false and misleading representation about its net-zero emissions plan on the basis that natural gas is a clean fuel [8];
- An institution (Environment Victoria Inc.) challenging whether the Environmental Protection Authority had correctly considered the Climate Change Act when a new license for coal-burning power stations that failed to lower the limits of GHG emissions was granted [9];

- Climate activist Sharma (a teenager) challenging the Australian government's approval of a coal mine on the basis that the Minister owes a duty of care to avoid personal injury to children [10];
- An Australian government bondholder suing the Australian government for failure to disclose climate risks, and hence misleading and deceiving investors by failing to disclose such risks [11];
- A member of an Australian pension fund alleging that the Retail Employees Superannuation Trust (REST) failed to provide information relating to climate change business risks and any plans to address those risks, and hence violated the *Corporations Act 2001* (Cth, Australia) [12];
- The Minister for the Environment and Energy not taking into consideration the physical impacts of climate change on the Great Barrier [13];
- An application to open a new open cut mine was rejected, and one of the grounds for rejection was the impact of the mine on climate change [14].

Australia is a signatory to the Paris Agreement [15], whereby it agrees to contribute to keeping the global average temperature risk to 1.5° to 2° by a reduction in greenhouse gas emissions, namely carbon dioxide and methane from the burning of coal. This causal factor is well known to the judiciary, who have commented that greenhouse emissions "adversely impact upon measure to limit dangerous anthropogenic climate change [16]" That is, the burning of extracted coal, with the subsequent release of greenhouse gases, will have a cumulative effect on climate change globally [17]. As such, Australia has adopted a Carbon Budget Approach in order to highlight trade-offs involved between actions taken now to reduce greenhouse gas emissions and those made necessary later [18]. The carbon budget approach measures carbon sources against carbon sinks. In the case of *Gloucester Resources Limited v Minister for Planning* [14], the Federal Court of Australia defined this approach as being based on the close interplay between planetary temperature warming and the cumulative effect of anthropogenic emissions. The Court argued that this approach is a "scientifically robust approach to estimating the level of greenhouse gas emission reductions required to meet a desired temperature target". It was argued by the appellant that if the respondent refused authority for the mine site to be developed and opened, any savings to the emissions total would be negated globally, as another mine in a (probably lesser-developed) country would open in any event with less stringent supervision, and replace the emissions saved in Australia. The court found that this "market substitution" was a flawed argument to make, as it found there was no certainty of mines in other areas opening up. In fact, the strong position taken by Australia in this scenario could lead those lesser-developed countries to "follow suit". The US courts have also stated that the "market substitution" theory is one that is arbitrary, capricious, and irrational [19].

Investment companies, such as those in superannuation, are equally put at litigation risk for lack of climate change considerations in their investment decisions. Investments in coal-producing mines are no longer seen as a viable option, which could lead to such investments being stranded [20], with courts willing to directly link the burning of fossil fuels to climate change [14]. As a result, private corporations involved in the finance sector are being held to account over expectations of disclosing to shareholders corporate consideration relating to climate change [21]. Where they fail to meet the necessary level of specific disclosure, they face unwanted scrutiny, either through regulatory bodies or through activist third-parties [22].

In *Mark McVeigh v Retail Employees Superannuation Pty Ltd.* [23], a private suit brought against a major superannuation fund, whereby a shareholder sought specific climate change disclosure information, as that information was nonspecific and inadequate in detail. Declaratory relief was sought in the suit because the fund had violated the *Corporations Act 2001* (Cth, Australia) by failing to disclose the information, and further, an injunction was sought against the fund to produce the sought information. It was further alleged that the fund breached the *Superannuation Industry (Supervision) Act* [24], in that a trustee for the fund would have been able to ensure that the investment managers could have produced the required information, and further that such managers could ensure that such climate change specific information could be made easily accessible to beneficiaries of the fund, and thereby comply with recommendation of the task force on Climate-Related Financial Disclosures [12]. Justice Perram commented, during the maximum costs order hearing (paragraph 9) that:

"The case appears to raise a socially significant issue about the role of superannuation trusts and trustees in the current public controversy about climate change. It is legitimate to describe the Applicant's litigation as being of a public interest nature [12]."

The case was settled just before the hearing was due to commence. However, the case points towards a conclusion that "financial institutions, corporates and global investment funds, are likely to face increased scrutiny from their stakeholders with respect to their climate change policies [25]".

Superannuation investments are being adversely impacted by climate change from the transition of economic reliance on fossil fuels and the physical damage arising from the natural disasters that are becoming all the more common [26]. Investing in such industry that cumulatively impacts on climate change could be seen as not acting in the best interests of the investor [27]. Breach of fiduciary duties could then be alleged. One such fund, Unisuper, which operates an AUD 85 million fund with more than 450,000 members, has refused to divest its AUD 170 million investment in coal companies or its AUD 7.8 million investment in other fossil fuel companies, stating that selling the holdings would deprive them of the right to influence the industries in making a change. However, this is becoming the exception and not the rule, with the Australian Centre of Corporate Responsibility finding an increasing number of shareholder proposals for investments in fossil fuel mining companies being rejected by Australian super funds [26].

Regulators in Australia are being guided by the recommendations from the UNFCCC-approved Task Force on Climate-Related Financial Disclosures (TCDF). The TCDF's recommendations direct a company's climate change risk practices to four areas for adequate oversight and operations: governance, strategy, risk management, and metrics and targets [28]. The TCFD framework recommendations have been endorsed by the regulators in Australia, including the Reserve Bank of Australia (RBA), Australian Prudential Regulation Authority (APRA), the Australian Council of Superannuation Investors' (ACSI), and the Australian Securities and Investment Commission (ASIC) [29].

APRA currently supervises AUD 7.7 trillion in assets for Australian depositors, policyholders, and superannuation fund members. APRA has been raising awareness of climate-related risks to the financial sector and is developing prudential practice guidance that will be released at the end of 2021. The APRA guidance has adopted the TCDF recommendations [30].

The ACSI Governance Guidelines (2019) expect companies to disclose their approach to climate-related risks by adopting the TCFD and align their corporate strategy to the Paris Agreement (net zero by 2050), and the council may direct its members to vote against directors that fall short of managing their climate-related risks [31].

The company directors of energy companies should also observe the ASIC Commissioner's direction to have appropriate governance structures in place to manage climate-related risk and comply with reporting requirements established by the TCDF, and thereby provide their shareholders with reliable and useful information on the exposure to material climate-related risks and opportunities [32].This clear shift in focus in forcing compliance with strategies to meet the Paris Agreement's emission levels is beginning to involve the judiciary in enforcing that compliance and reporting obligations against companies that either directly or indirectly have an impact on the emission of greenhouse gases and hence there is a rise in climate change litigation.

Ultimately, times have changed, and all corporations that directly or indirectly do business with those who emit greenhouse gases have an ever-increasing mandate to report upon and disclose such transactions. In addition to enforcement through Australian regulatory bodies, individuals (and activist groups) are obtaining greater recognition for standing in courts to litigate against companies that fail to consider or adequately disclose climate change risks.

In order to avoid unnecessary litigative risks, companies across the board, especially energy companies, should assess how their interests affect the possibility of changes to climatic conditions.

3. Relevance of Climate Change Risks on Director's Duty of Care and Diligence

As discussed above, Australian regulatory bodies have increasingly begun to focus on potential obligations of directors regarding environmental issues, such as climate change risks, in their management decisions. In Australia, the obligations to consider climate change risks also arise from Section 180 (1) of the *Corporations Act 2001* (Cth, Australia), which requires company directors to exercise their powers with the degree of care and diligence that would reasonably be expected of a director in the same position and responsibility of a corporation in those circumstances [33]. The degree of care refers to the degree of attention and thorough conduct necessary to act for the benefit of the company [34]. Diligence refers to the consistent attention a director pays to their responsibilities and in maintaining the minimum standards expected of that role [35]. An objective reasonable standard is used in determining a breach of the duty, and similar to other risks, climate risks would also be weighed against the magnitude of the risk of harm and the probability of it occurring; the seriousness of the resulting loss, should the harm occur; and the expense, difficulty, and inconvenience of taking alleviating action [36].

In assessing the climate change risks regarding directors' duty of care and diligence, it should be noted that the business judgement rule in s180 (2) of the *Corporations Act 2001* (Cth, Australia) is limited in application where "decisions" are made by a director to act or to not act. Those who fail to make a decision or to turn their mind to the issues presented by climate change will not be afforded the protection of the business judgment rule [37].

Directors' duties and their relevance to climate change risk were considered by the Centre for Policy Development and the Future Business Council, which commissioned the Australian Legal Memorandum of Opinion "Climate Change and Director's Duties" [38]. The report confirmed that climate change risks are capable of representing a risk to the interests of an Australian company and are relevant to a director's duty of care [39]. In addition to the Hutley 2016 and 2019 opinions, a further 2021 Supplementary Memorandum of Opinion was issued as follows:

"In 2016, our focus was the existence of the duty; that is, what directors could and should be doing on climate change to discharge their duty of due care and diligence. That is now uncontroversial. In 2019, we observed that the risk of liability for directors on this front was rising exponentially. In 2021, it appears to us that the focus is increasingly on how the duty is discharged" [40].

The Hutley 2021 report states that directors' disclosures of climate actions should be accurate, as inaccurate statements could lead to misleading conduct commonly known as "greenwashing" [40].

As regards the extent to which climate change risks are of relevance to the care and diligence duty under s180 of the *Corporations Act 2001* (Cth, Australia), the authors of the Hutley report took the view that such risks are relevant to the extent that they intersect with the interests of the company [39]. Particular emphasis was placed on the issue of foreseeability, and the potential ramifications for directors who fail to address foreseeable risks [38]. The general position in Australian law is that a risk is foreseeable so long as it is not far-fetched or fanciful [41], meaning a risk that is unlikely may nonetheless be entirely foreseeable. Furthermore, a plaintiff is not required to prove that a director's conduct in respect to a foreseeable risk resulted in actual loss [33]. Thus, any harm incurred by a company because of failure to mitigate their response to the risk could be deemed foreseeable by a court, as the risks associated with both climate change and attenuating global warming are "significant and well publicised" [39], not "far-fetched or fanciful". Whilst climate change risks have historically been viewed as a future or nonfinancial problem [42], the Hutley supplementary memorandum contends that intersection between such risks and the interests of companies, particularly in sectors such as energy resources and institutional investment, is inevitable. Thus energy company directors should take heed of the Hutley opinion that directors of Australian listed companies can potentially be liable for material harm to their company, should they fail to adequately consider and disclose foreseeable climate change risks [43].

The next section explores how the directors of energy companies may be able to minimise the impact of climate change litigation risks on their businesses, and also avert the risk of breaching their obligations to exercise care and diligence.

4. Direction for Energy Company Directors to Minimise the Impact of Climate Change Litigation Risks

Climate change risks can be classified as transition risks and physical risks [43]. The physical risks brought about by climate change include increased temperatures, change in rainfall patterns, and an increase of frequency and/or intensity of extreme weather events such as heatwaves, drought, storms, flooding, and rising sea levels [44]. A prudent director of an energy company should include these factors in the future planning of the business. The financial implications of physical risks should also be considered, and this may include damage to assets [45]. Transitional risks refer to the regulatory risks and opportunities associated with carbon emissions and related pollutants. Examples include costs associated with retooling to fit within a low-carbon transition. Transitional impact also includes the risks of litigation, exposure to damage claims, operational disruption, and costs of enforcement of disclosure obligations and potential reputational damage [46].

A director of an energy company should also be aware that these climate change risks include advances in scientific discoveries and the attitudes of Australian regulators and investor groups. The courts will take into account all of these matters when deciding if a director of an energy company has appropriately responded to the risk and made proper disclosure of it [39]. The Australian Securities and Investment Commission (ASIC) published a report in 2018 suggesting that directors of listed companies should consider short-term and long-term climate change risk when assessing risks to a company [47].

The courts will, of course, balance the climate risk posed with potential benefits to the corporation [38], but the corporation needs to heed the commercial consequences that will flow from any breach of duty, as any adverse scrutiny could lead to reputational damage [48] and possible corporate failure.

Though no court in Australia has yet specifically ruled on whether a director's duty under s180 of the *Corporations Act 2001* (Cth, Australia) includes the appropriation of climate change risk, it has been reported by Kenneth Hayne QC that the duty to act in the best interest of the corporation incorporates climate change considerations [49]. The 2019 Hutley legal opinion that views climate change as being a "foreseeable risk to the interest of a company [39]", has been endorsed by the Australian Securities and Investment Commission (ASIC) as being legally sound and accurate as it pertains to prevailing laws in Australia [50]. It has also been supported by the ASX Corporate Governance Council, the Australian Prudential Regulation Authority, the Australian Accounting Standards Board, and the Auditing and Assurance Standards Board.

The Hutley 2021 opinion provides the following practical steps for directors:

- Develop a net-zero strategy that is integrated with a company's operational strategy;
- Document and test the assumptions underpinning the strategy, including any offsets;
- Explain which emissions are included in the strategy and express the scope and timing of the commitment; and

- Disclose promptly the circumstances that affect the strategy from being accomplished [40].

The number of recent climate change cases in the courts points to a conclusion that climate change is a serious factor for consideration for a director of an energy company in demonstrating the exercise of the duty of care and diligence in the management of the corporation. Company directors may risk breaching their duty of care and diligence if they fail to consider the impact of climate change risks on their businesses. The director has a duty to consider the gravity (seriousness) of risk, probability of outcome, cost of prevention, and other obligations when deciding whether to incorporate climate change risks into their decision making. This means that the director must consider climate change risks at least to the degree of determining whether they are a relevant factor in the decision they are making. Failure to contemplate climate change risks, and the reporting thereof, could place the company at the risk of facing litigation.

5. Conclusions

The pathway to avoid the risk of Australian energy company directors breaching duties relating to climate change litigation risks is to follow the Hutley 2021 recommendations, and in particular to include more detailed disclosures in line with TCDF recommendations. Directors should consider who may be relying on climate-related disclosures. They should have systems in place to regularly check whether appropriate disclosures pertaining to climate change have been made and determine the accuracy and completeness of climate-related disclosures.

In addition, the boards of energy companies should regularly consider climate change matters and risks, including the management of physical and transitional risks, and test company strategy against climate change scenarios, including timely flow of material; i.e., climate-change-related information from management to the board.

In addition to reducing climate change litigation risks, corporations and institutional investment bodies can provide support to their government by making informed climate risk decisions and by aligning their investments with the goal of net-zero or reduced emissions. However, this is not an easy task for directors of energy companies to reduce litigation risk exposure by setting short, medium, and long-term emission-reduction targets that align to the Paris Agreement and the objective of net-zero emissions by 2050. Energy company directors have to continue to attract investments from investors and also play a major part in global reduction of emissions by pledging major emission reductions in support of the Paris agreement, as many large companies have already done [51].

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Appendix A

Table A1. Selected climate change litigation in Australia.

Case Name	Filing Date	Court	Status as of October 2021	Summary of Finding Relevant to Climate Change
Abrahams v Commonwealth Bank of Australia	2021	Federal Court of Australia	Pending	Shareholders of Commonwealth Bank of Australia brought an action to obtain documents to verify whether the bank carried out an environmental assessment of its involvement in projects in line with the Paris agreement.
Australasian Centre for Corporate Responsibility v Santos	2021	Federal Court of Australia	Pending	The Environmental Defenders Office challenged the company Santos' claims of net-zero emissions target by 2040.
Complaint to Ad Standards on HSBC's Great Barrier Reef ad	2021	Ad Standards	Pending	An action challenging HSBC's greenwashing practice on its promotion of Great Barrier Reef protection.
Environment Victoria vs. the EPA et al.	2021	Victorian Supreme Court	Pending	Environment Victoria is challenging the EPA for failing to protect the community by granting license to operate coal mines.
Sharma and others v Minister for the Environment	2020	Federal Court of Australia	Appeal Pending	Climate activist Sharma (a teenager) is challenging the Australian Government for approving a coal mine on the basis that the Minister owes a duty of care to avoid personal injury to children.
O'Donnell v Commonwealth	2020	Federal Court of Australia	Pending	Action brought by a holder of Austrtalian bonds against the Commonwealth Government for failure to disclose climate risks.
Youth Verdict v Waratah Coal	2020	Queensland Land Court	Pending	Youth Verdict Limited application for objection to develop a thermal coal mine in Galilee Basin.
KEPCO Bylong Australia v Independent Planning Commission and Bylong Valley Protection Alliance	2019	New South Wales Court of Appeal	Decided	The Independent Planning Commission has discretion to reject the planning application of a coal mine on the basis of climate change impacts.
McVeigh v Retail Employees Superannuation Trust	2018	Federal Court of Australia	Decided	A pension fund member sued a superannuation fund, who settled the case and agreed to take into considration climate risks and reach net zero by 2050.
Australian Conservation Foundation Incorporated v Minister for the Environment and Energy	2017	Federal Court of Australia	Decided	The appeal related to the Minister for the Environment and Energy not taking into consideration the physical impacts of climate change on the Great Barrier Reef.
Gloucester Resources Limited v Minister for Planning	2017	New South Wales Land and Environment Court	Decided	An application to open a new open cut mine was rejected, and one of the grounds for rejection was the impact of the mine on climate change.

SOURCE: For further information, see the Climate Change Litigation Database, Columbia University, at http://climatecasechart.com/climate-change-litigation/non-us-jurisdiction/australia/ (accessed on 12 October 2021).

Appendix B

Table A2. Selected non-US climate change litigation cases against corporations.

Country	Name of Case	Issue
Australia	Mullaley Gas and Pipeline Accord Inc v Santos NSW (Eastern) Pty Ltd.	Challenge to the development consent of the Narrabri Gas Project by the Independent Planning Commission.
UK	ASA Ruling on Ryanair Ltd. t/a Ryanair Ltd.	Challenge to the accuracy of advertisement relating to emissions from an airline.
Germany	Barbara Metz et al. v Wintershall Dea AG	Petitioners challenging car companies' emissions by producing internal combustion engines.
Germany	Deutsche Umwelthilfe (DUH) v Mercedes-Benz AG	Petitioners challenging car companies' emissions by producing internal combustion engines.
Germany	Deutsche Umwelthilfe (DUH) v BMW	Petitioners challenging car companies' emissions by producing internal combustion engines.
Australia	Complaint to Ad Standards on HSBC's Great Barrier Reef ad	An action challenging HSBC's greenwashing practice on its promotion of Great Barrier Reef protection.
Australia	Abrahams v Commonwealth Bank of Australia (2021)	Shareholders of Commonwealth Bank of Australia brought an action to obtain documents to verify whether the bank carried out an environmental assessment of its involvement in projects in line with the Paris Agreement.
Brazil	Instituto Preservar et al. v Copelmi Mineração Ltd.a. and IBAMA	Whether precautionary measures should be taken to develop open-pit coal mining.
Australia	Australasian Centre for Corporate Responsibility v Santos	The Environmental Defenders Office challenged the company Santos' claims of net-zero emissions target by 2040.
New Zealand	Complaint by Lawyers for Climate to the Advertising Standards Board	Greenwashing advertisement challenged.
South Africa	South Durban Community Environmental Alliance v Minister of Environment and Others	South Africa's authorization of oil exploration challenged on the grounds of climate violations.
Brazil	Ministério Público Federal v de Rezende	Deforestation in the Amazon challenged.
UK	R v Bramwell et al. ("The Shell Six case")	Environmental protestors charged for criminal damage.
UK	Attorney General v Crosland	Unregistered barrister convicted of criminal contempt of court for breaching a court embargo of publication on a court judgement with an environmental issue.
Belgium	ClientEarth v Belgian National Bank	NGO seeks to stop the bank from directing its capital to programmes that affect climate.
France	Envol Vert et al. v Casino	NGO is suing a French supermarket for seeking supplies of cattle from areas that impact the environment.
France	Friends of the Earth et al. v Prefect of of Bouches-du-Rhône and Total	Challenging a permit to operate a biorefinery on the basis of environmental impact.
Australia	Conservation Council of Western Australia v Hatton and Woodside	Challenges to approval of gas projects without full climate impact assessment.
Argentina	Carballo et al. v MSU S.A., UGEN S.A., & General Electric	Whether environmental impact assessment was flawed.
Argentina	OAAA v Araucaria Energy SA.	Whether environmental impact assessment was flawed.
Argentina	Hahn et al. v Araucaria Energy Sociedad Anonima	Whether environmental impact assessment was flawed.
Argentina	Hahn et al. v APR Energy S.R.L	Whether environmental impact assessment was flawed.
Argentina	FOMEO v MSU S.A., Rio Energy S.A., & General Electric	Whether environmental impact assessment was flawed

Table A2. *Cont.*

Country	Name of Case	Issue
Australia	Friends of Leadbeater's Possum Inc v VicForests (No 3)	Conservation group seeking protection of the environment.
Australia	EH v Queensland Police Service; GS v Queensland Police Service	Climate protesters' convictions for protesting against coal mine.
Australia	Australasian Centre for Corporate Responsibility (ACCR) v Commonwealth Bank of Australia	Shareholders sought climate disclosures.
Canada	Trans Mountain Pipeline ULC v Mivasair	Pipeline protesters sought to assert necessity defense
Poland	Development YES—Open-Pit Mines NO v Group PZU S.A.	NGO claimed that Polish NCP did not observe OECD National Guidelines relating to environmental protection.
Australia	Youth Verdict v Waratah Coal	Youth Verdict Limited application for objection to develop a thermal coal mine in Galilee Basin.
Germany	Germanwatch vs. Volkswagen	Whether Volkswagen violated climate obligations.
Norway	Norwegian Climate Network et al. v Statoil	Claim that oil sands must not be exploited for climate stability.
Netherlands	BankTrack and Friends of the Earth Netherlands v ING Bank	Complaint against the bank for not committing to OECD guidelines on climate change.
Japan	Market Forces v SMBC, MUFG and Mizuho	Complaint against funding of coal mines in Vietnam by Japanese banks.
Brazil	Federal Environmental Agency (ibama) v Siderúrgica São Luiz Ltd.	Action against steel company to prevent deforestation by not sourcing coal.
Poland	Greenpeace Poland v PGE Giek	Greenpeace sues to stop fossil fuel investment.
New Zealand	Smith v Fronterra Co-Operative Group Limited & Ors	Maori heritage spokesperson claims company owes duty to cease contributing to climate change.
Japan	Citizens' Committee on the Kobe Coal-Fired Power Plant v Kobe Steel. Ltd., et al.	Construction of coal-fired plant was challenged.
Switzerland	Credit Suisse Protesters v Credit Suisse	Activists protesting for Credit Suisse to heed climate change.
UK	ClientEarth v BP.	Whether BP misled the public about its presentation of low-carbon activities.
France	Friends of the Earth et al. v Total.	Whether company owes duty of vigilence to assess threats of oil projects to human rights.
Argentina	Mapuche Confederation of Neuquén v YPF.	Dispute about dumping dangerous waste and harming the environment.
	R v Roberts	Protestors dispute about anti-fracking.
UK	R v Basto	Climate activists challenged for protesting near airport.
Poland	ClientEarth v Polska. Grupa Energetyczna.	Seeking Europe's largest power plant operator to reduce emissions.
France	The Take Down Macron campaign Cases	Activists challenged for protesting against France's failure to meet climate targets.
France	Notre Affaire a Tous and Others v Total.	Whether climate change risks were adequately reported.
Netherlands	Milieudefensie et al. v Shell	Whether a multinational corporation is obliged to curtail carbon dioxide emissions.
Poland	ClientEarth v ENEA	Breach of fiduciary duties for decision to construct coal plant.
Australia	McVeigh v Retail Employees Superannuation Trust	A pension fund member sued a superannuation fund, who settled the case and agreed to take into considration climate risks and reach net zero by 2050.

Table A2. *Cont.*

Country	Name of Case	Issue
Brazil	Public Prosecutor's Office v H Carlos Schneider S/A Comércio e Indústria & Others.	Dispute about draining and clearing mangrove forest.
Brazil	Public Prosecutor's Office v Oliveira & Others.	Challenged low-tech sugar refining's impact on emissions.
Brazil	Sao Paulo Public Prosecutor's Office v United Airlines.	Seeking airlines to use regional airports to offset emissions.
Germany	Lliuya v RWE AG.	Whether the German company that produces energy contributes to climate change that caused damage to property.
UK	The Kingsnorth Six Trial	Greenpeace activists attempted to shut down coal-power station.
UK	Heathrow Airport Ltd. & Ors v Garman & Ors.	Protestors campaign near Heathrow Airport challenged.
UK	Grainger plc and others v Nicholson.	Employees claimed that climate change belief is not merely an opinion.
UK	Deutsche Bank AG v Total Global Steel Ltd.	Breach of contract by using "surrendered" Certified Emissions Reductions (CERs).
UK	CF Partners (UK) LLP v Barclays Bank PLC.	Misuse of confidential information relating to carbon credits.
Philippines	In re Greenpeace Southeast Asia et al.	Fossil fuel companies challenged for climate change impacts.
New Zealand	Royal Forest and Bird Protection Society of New Zealand Incorporated v Buller Coal Ltd.	Dispute about whether regard should be given to effects of climate change arising from use of coal.
Canada	Weaver v Corcoran.	Dispute over articles about global warming.
Canada	Chicago Climate Exchange, Inc v Montreal Green Exchange.	Challenge of a trademark application, as the name was similar
Australia	Australian Competition and Consumer Commission v V8 Supercars Australia Pty Ltd.	Claims made about offsetting carbon emissions from its V8 car racing series challenged.
Australia	Australian Competition and Consumer Commission v Prime Carbon Pty Ltd.	Challenge to representations about carbon sequestration program.
Australia	Australian Competition and Consumer Commission v Goodyear Tyres.	Challenge to misleading consumers about the environmental benefits.
Australia	Australian Competition and Consumer Commission v GM Holden Ltd.	Green claims challenged in advertising Saab vehicles.
Australia	Australian Competition and Consumer Commission v Global Green Plan Ltd.	ACCC pursues court order for Green Plan to puchase Renewable Energy Certificates.
Australia	Australian Competition and Consumer Commission v De Longhi Australia Pty Ltd.	De Longhi's environmental claims challenged by ACCC.

Extracted from: http://climatecasechart.com/climate-change-litigation/non-us-case-category/corporations/ (accessed on 9 November 2021).

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