

19. Litigation for climate action

Certainty

Mid

Impact

Mid

Category

Risk

Summary

The UNEP 'Global Climate Litigation Report: 2023 Status Review' notes that litigation cases have more than doubled since 2017 and are growing globally, with 2,180 cases being brought in 2022. The UN General Assembly approved a resolution in March 2023 calling on the International Court of Justice (ICJ) to provide an advisory opinion on how climate change intersects with international law. Among other things, it will consider states' human rights responsibilities and their intergenerational duties.

Consistent with overseas trends, New Zealand is experiencing a rise in climate change litigation. In July 2023 the High Court ruled that the Government must reconsider regulatory decisions made with respect to limits and price control settings the Emissions Trading Scheme. This was in response to litigation brought by Lawyers for Climate Action NZ claiming the Climate Change Minister failed to adopt recommendations of the Climate Change Commission to ensure settings be set in line with emissions budgets for the 2050 target and New Zealand's NDC for the Paris Agreement. Private companies that are perceived to have substantial carbon footprints have also emerged as targets – in *Smith v Fonterra*, the claimant asserted a new tort to impose a duty not to contribute to dangerous interference in the climate system. A decision by the Supreme Court is yet to be made on the defendant companies' application to strike out the proceeding as untenable.

Potential implications

Climate change litigation is growing globally and is becoming an integral part of securing climate action. Outcomes achieved in judicial forums are likely to impact on decision makers, including government ambition regarding climate change mitigation and adaptation goals and investment decisions by private entities.

Advisory opinions by the ICJ interpret existing international law rather than creating new legal obligations and are not legally binding. However, the upcoming opinion is likely to be highly influential with the potential to shape the trajectory of future international climate negotiations and climate litigation at both domestic and international levels.