

Departmental Disclosure Statement

Climate Change Response (Tort Liability) Amendment Bill

The departmental disclosure statement for a government Bill seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill.

It identifies:

- the general policy intent of the Bill and other background policy material;
- some of the key quality assurance products and processes used to develop and test the content of the Bill;
- the presence of certain significant powers or features in the Bill that might be of particular Parliamentary or public interest and warrant an explanation.

This disclosure statement was prepared by Ministry of Justice.

The Ministry of Justice certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

22/06/2026

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Part One: General Policy Statement

The Climate Change Response Act 2002 (the **Act**) establishes the legal framework for New Zealand's regulatory response to climate change. It includes a 2050 target for emissions reductions and a regime for setting, and meeting, successive emissions budgets with a view to achieving the 2050 target.

The Climate Change Response (Tort Liability) Amendment Bill (the **Bill**) amends the Act to confirm that the role of developing, setting, and implementing regulatory policy in respect of greenhouse gas emissions sits with the Executive and the Legislature. The Bill creates a statutory bar on tort liability for emissions-related climate change effects. That bar will apply so that no person (including the Crown) can be found liable in tort for emissions-related climate change effects.

In order to ensure regulatory coherence, the statutory bar provided in the Bill applies to existing proceedings that have not been finally determined by a court or tribunal before the commencement of the Bill.

The Bill responds to the pending trial of the claim not struck out in *Smith v Fonterra Co-operative Group Ltd* [2024] NZSC 5, [2024] 1 NZLR 134. The Government is concerned that that litigation could lead to a finding that causing or contributing to the emission of greenhouse gases could result in tort liability. That would create a parallel and contradictory regime to the one provided in the Act. The Government considers that tort law is not an appropriate mechanism for responding to greenhouse gas emissions, as there needs to be careful consideration of social, economic, and distributional implications of different climate policy choices. The Government's policy intention is that New Zealand's regulatory response to climate change should be managed through the Act.

The Supreme Court's strike-out decision, allowing the claim to proceed to trial, noted that there was no basis to conclude that Parliament had displaced the law of torts in the realm of climate change in New Zealand. The Bill excludes tort liability for climate change, and for climate change-related damage, caused by greenhouse gas emissions.

Part Two: Background Material and Policy Information

Published reviews or evaluations

2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill?	NO
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Relevant international treaties

2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?	NO
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Regulatory impact analysis

2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?	YES
Regulatory Impact Statement: Targeted reform of emissions-related torts, Ministry of Justice, 21 April 2026: https://www.justice.govt.nz/justice-sector-policy/regulatory-stewardship/regulatory-impact-assessments/	

2.3.1. If so, did the Ministry for Regulation provide an independent opinion on the quality of any of these regulatory impact statements?	NO
A Quality Assurance Panel from the Ministry of Justice reviewed the regulatory impact statement and considered that it did not meet the quality assurance criteria.	

2.3.2. Are there aspects of the policy to be given effect by this Bill that were not addressed by, or that now vary materially from, the policy options analysed in these regulatory impact statements?	NO
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Extent of impact analysis available

2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?	NO
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2.5. For the policy to be given effect by this Bill, is there analysis available on:	
(a) the size of the potential costs and benefits?	YES
(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?	NO

2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:	
(a) the level of effective compliance or non-compliance with applicable obligations or standards?	NO
(b) the nature and level of regulator effort put into encouraging or securing compliance?	NO

Part Three: Testing of Legislative Content

Consistency with New Zealand's international obligations

3.1. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations?

We have consulted with the Ministry of Foreign Affairs and Trade on the proposals in the Bill, including New Zealand's obligations under relevant international agreements.

Consistency with the government's Treaty of Waitangi obligations

3.2. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi?

The statutory bar would apply equally in respect of all people's claims or potential tort liability. However, the claim in the *Smith v Fonterra* case, which will be affected by the Bill, includes pleaded damage to moana and whenua (including specific Māori freehold land) of Mr Smith and his whānau and pleadings that tikanga Māori should inform the reach and content of his causes of action. There has also been no engagement with Māori during policy development, which may be viewed as potentially inconsistent with Treaty obligations. This has also limited officials' ability to fully assess the proposals against CO (19) 5: Te Tiriti o Waitangi Guidance.

Consistency with the New Zealand Bill of Rights Act 1990

3.3. Has advice been provided to the Attorney-General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990?

YES

Advice provided to the Attorney-General by the Crown Law Office, or a section 7 report of the Attorney-General, is generally expected to be available upon introduction of a Bill. Such advice, or report will be accessible on the Ministry of Justice website at: <https://www.justice.govt.nz/justice-sector-policy/constitutional-issues-and-human-rights/the-bill-of-rights-act/compliance-reports/>

Offences, penalties and court jurisdictions

3.4. Does this Bill create, amend, or remove:

(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?

NO

(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?

YES

Clause 4 of the Bill inserts new Part 8 into the Climate Change Response Act 2002. This Part creates a statutory bar, which has the effect of preventing findings of civil liability in tort in relation to emissions-related climate change effects. This would preclude a court from issuing a finding of liability in tort that it may otherwise have found at common law.

3.4.1. Was the Ministry of Justice consulted about these provisions?

NO

The Ministry of Justice had responsibility for the development of this Bill.

Privacy issues

3.5. Does this Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information?

NO

External consultation

3.6. Has there been any external consultation on the policy to be given effect by this Bill, or on a draft of this Bill?	YES
<p>During policy development, targeted and in-confidence consultation was undertaken with experts in tort, environmental and public law, including some King's Counsel who are experienced commercial litigators and several academics. Experts were contacted via email and received a series of guiding questions to support the design of a statutory bar on emissions-related tort claims but were encouraged to respond freely. Meetings were held with individual experts in July and August 2025.</p> <p>Most tort and environmental law experts acknowledged the perceived benefits of a statutory bar, such as reduced litigation costs, increased investment certainty, and a signal of Government support for business. However, experts also cautioned that these benefits may be speculative. They also raised a number of concerns in relation to the design features of a statutory bar, policy implications and constitutional perspectives. A summary of consultation has been proactively released at: Proactive-release-Policy-decisions-on-proposals-for-targeted-statutory-reform-of-public-nuisance-tort.pdf.</p>	

Other testing of proposals

3.7. Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill's provisions are workable and complete?	NO
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Part Four: Significant Legislative Features

Compulsory acquisition of private property

4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?	NO
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Charges in the nature of a tax

4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?	NO
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Retrospective effect

4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?	NO
<p>Clause 4 of the Bill inserts new Part 8 into the Climate Change Response Act, which creates a statutory bar. The statutory bar has the effect of preventing findings of civil liability in tort in relation to emissions-related climate change effects (see new section 271). It applies to the actions of any person that may cause or contribute to emissions, including the Crown, and to actions and emissions occurring both before and after the commencement of the Bill.</p> <p>The Crown's position is that the Bill includes a prospective change by imposing a statutory bar on tort liability for emissions-related climate change effects. As the Schedule of the Bill applies that bar to the proceeding in <i>Smith v Fonterra Co-operative Group Ltd</i> CIV-2019-404-001730 and overrides the Supreme Court decision not to strike out Mr Smith's High Court action, it removes his expectation of continuing this proceeding. To the extent that this expectation is a right, it is a limited right to go to court to argue for a development in the common law that does not yet exist. Removing this expectation or right does not impact on the rule of law but merely prevents the courts making a future change in the common law.</p> <p>The Bill's policy would be undermined if the action succeeded, and removing this right now is a more efficient and appropriate way of providing certainty than leaving the matter to be resolved by court proceedings. At that point, the legislation would also need to have a more significant retrospective effect than by acting now.</p>	

Strict liability or reversal of the usual burden of proof for offences

4.4. Does this Bill:	
(a) create or amend a strict or absolute liability offence?	NO
(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?	NO

Civil or criminal immunity

4.5. Does this Bill create or amend a civil or criminal immunity for any person?	NO
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Significant decision-making powers

4.6. Does this Bill create or amend a decision-making power to make a determination about a person's rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests?	YES
Clause 4 of the Bill inserts new Part 8 into the Climate Change Response Act, which creates a statutory bar. The statutory bar has the effect of preventing findings of civil liability in tort in relation to emissions-related climate change effects (see new section 271). This applies to the actions of any person that may cause or contribute to emissions, including the Crown.	

Powers to make delegated legislation

4.7. Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?	NO
4.8. Does this Bill create or amend any other powers to make delegated legislation?	NO

Any other unusual provisions or features

4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?	NO
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