New Zealand House of Representatives
Te Whare Māngai o Aotearoa

Justice Committee
Komiti Whiriwhiri Take Ture

54th Parliament
July 2026

Climate Change Response (Tort Liability) Amendment Bill

330—1

Presented to the House of Representatives
by Tom Rutherford, Chairperson

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Climate Change Response (Tort Liability) Amendment Bill

Recommendation
The Justice Committee has examined the Climate Change Response (Tort Liability) Amendment Bill and recommends by majority that it be passed without amendment.

About the bill as introduced

The bill would amend the Climate Change Response Act 2002 to create a statutory bar preventing liability in tort in relation to climate change, and climate change-related harms caused by greenhouse gas emissions.

The Act established a legal framework for New Zealand's regulatory response to climate change. It includes a 2050 target for emissions reductions, determined by Parliament. As a way of meeting that target, the Minister of Climate Change is required to set and meet a series of "emissions budgets", which stipulate the total amount of emissions allowed to be released during a multi-year period.

The bill seeks to address concerns that litigation could lead to a finding that actions which caused or contributed to the emission of greenhouse gases could result in tort liability. Such a finding risks the creation of a parallel and contradictory regime to the one provided for in the Climate Change Response Act. Specifically, the bill responds to the litigation in *Smith v Fonterra Co-operative Group Ltd* [2024] NZSC 5, [2024] 1 NZLR 134, which we outline briefly below.

About the court case *Smith v Fonterra*

In 2019, Michael Smith, climate change spokesperson for the Iwi Chairs' Forum, filed a lawsuit in the High Court against several companies. He argued that, through their greenhouse gas emissions, these companies are liable for three causes of action in tort: public nuisance, negligence, and breach of duty to cease contributing to climate change.

In March 2020, the High Court struck out the first two causes of action but allowed the third to proceed. Mr Smith appealed the decision to strike out the first two causes of action, while the defendants cross-appealed the court's decision that the third cause of action should proceed to trial. In October 2021, the Court of Appeal dismissed the appeal submitted by Mr Smith and upheld the cross appeal. Mr Smith gained leave to bring an appeal to the Supreme Court, and the appeal was heard in August 2022. On 7 February 2024, the Supreme Court unanimously decided to allow Mr Smith's appeal and reinstated his statement of claim.

Main issues raised by submitters

We received written submissions from 623 interested groups and individuals, and heard from 38 submitters in oral hearings. About 2.6 percent of submitters supported the bill, while 93 percent of submitters opposed it. We summarise below the main issues raised by submitters.

Concerns about the legislative process

Several submitters expressed concerns about the legislative process followed with the bill. The concerns included a lack of transparency and consultation, introducing the bill under urgency, a truncated select committee process, and inconsistency with the Regulatory Standards Act 2025. Mr Smith told us he believes the legislative process has been procedurally unfair. According to him, the Government discussed his legal rights with the defendants during the consultation process, "while I have not been afforded the same opportunity to participate in those discussions".

The New Zealand Law Society pointed to concerns about policy and legislative processes in its report, *Strengthening the rule of law in Aotearoa New Zealand*.[1] The report states that rushed policy development processes and the use of urgency undermine aspects of the rule of law by limiting or preventing meaningful consultation and proper scrutiny of policy proposals.

Rule of law related to retrospectivity

The bill would amend the Act by inserting new section 271 to create a new statutory bar on tort liability. Clause 5 would amend Schedule 1AA of the Act (transitional, savings, and related provisions) by inserting new Part 7 (new clauses 51–54). Clause 52 of Schedule 1AA provides that the statutory bar would apply to activities, related activities, emissions, and effects that occurred before, at, or after enactment of the bill.

More than half of the submissions we received discussed concerns about undermining the rule of law by creating retrospective provisions. The rule of law ensures fairness before the law and promotes public trust in institutions. We heard from several submitters that the bill could undermine the rule of law by affecting legal certainty by applying legislation retrospectively to *Smith v Fonterra*.

We were advised that the statutory bar proposed by new section 271 is not retrospective because there is currently no tort that relates to climate change in the common law. The bill would prevent the courts from developing such a tort and stop the creation of an emissions regulatory regime supervised by the courts that would operate in parallel to the statutory regime. The transitional provisions in clause 53 of Schedule 1AA would also have the effect of removing Mr Smith's ability to seek the injunction he is pursuing through the courts. Some of us consider that the extent to which this ability could be seen as a right is as a limited right to go to court to argue for a development in the common law that does not yet exist.

Separation of powers

The separation of powers is the separation between different branches of government. Related to this is the principle of comity—the idea that the separate branches of government (executive, legislative, and judicial) recognise one another's independence and do not interfere with another's area of responsibility. Some submitters suggested that the bill raises

1 New Zealand Law Society, *Strengthening the rule of law in Aotearoa New Zealand*.

issues of comity. The Law Association, while noting Parliament's "constitutional authority to legislate", submitted that the bill could deliberately exclude future common law development. Professor Dean Knight stated that "[c]oncurrent legislative and common law regulation is not unusual … and does not offend the separation of powers".

Chapter 12 of the Legislation Design and Advisory Committee's *Legislation Guidelines* states that where legislation alters the law in existing proceedings, it should be justified as being in the public interest. We consider it appropriate for the bill to apply to *Smith v Fonterra* as it is in the public interest to maintain the coherence of a regulatory regime that has been legislated for by Parliament. As stated in the *Legislation Guidelines*, Parliament is sovereign and, therefore, "is entitled and empowered to act … That includes altering the law declared in completed court cases, or by amending or otherwise clarifying the law that is likely to arise in pending cases".

We note that the Marine and Coastal Area (Takutai Moana) (Customary Marine Title) Amendment Act 2025, which was considered by our committee before it was enacted, amended the test for customary marine title following several court cases. The amendments made by that Act applied to specified pre-commencement proceedings.

New Zealand's climate change response

We heard from many submitters who believe that businesses should be liable for the harm caused by the emissions they are responsible for. Emeritus Professor Bill Atkin told us that "given the seriousness of climate change and its consequences, it could well be argued that it is in the public interest to allow [*Smith v Fonterra*] to proceed". Lawyers for Climate Action observed that the bill's scope is extraordinarily wide. It told us that the "statutory ban would protect a significantly broader range of actors and activities than are currently within the scope of the legislative regime".

We were advised that the statutory bar was drafted broadly because it aims to respond to any possible future development in the common law. It therefore needs to account for conceptions of harm that have not yet been recognised by tort law but could potentially be the subject of future claims. The bill's stated purpose is to confirm that the role of developing, setting, and implementing regulatory policy in respect of greenhouse gas emissions sits with the Executive and Legislature.

During our consideration of this bill, we discussed tort claims where there is more than one potential cause of action. One example was where there might be negligent management of forestry slash, which then damages neighbouring land through flooding caused by a severe weather event, and a person's emissions have been found to have contributed to that event. This scenario could lead to a tort claim against the forestry owner and another tort claim against one or more emitters of greenhouse gases for their contribution to climate change.

We were advised that the bill would prevent findings of liability against all persons for emissions-related climate change effects. However, it would not change the ordinary principles applied by courts in determining causation and assessing damages in relation to other causes of action in tort law. Therefore, if a cause of action could be established against a forestry owner, the courts could still find that forestry owner liable for damages based on the facts of a particular case.

Treaty of Waitangi considerations

Several submitters raised concerns about the bill in relation to the Treaty of Waitangi | te Tiriti o Waitangi, which guarantees the exercise of tino rangatiratanga over taonga, including land, waterways, and resources. We heard that creating a statutory bar could interfere with the ability of tangata whenua to hold polluters to account, and could undermine the ability to exercise kaitiakitanga. The Environmental Law Initiative suggested that "Mr Smith's claim raises the issue that climate harm interferes with the ability of iwi and hapū to exercise Article 2 rights". It argued that preventing the claim from proceeding would remove a potential avenue for considering whether those rights are affected and providing recourse for any breach.

Some submitters told us that the lack of consultation with Māori on the bill could likely breach the principles of the Treaty of Waitangi. The New Zealand Law Society expressed concern that the bill was introduced while the Waitangi Tribunal was deciding whether to produce an urgent report on the bill. Other submitters suggested that the bill does not uphold the core principles of partnership and active protection.

International obligations

We heard that some submitters were concerned that the bill could affect New Zealand's compliance with international obligations, including the Paris Agreement, the International Covenant on Civil and Political Rights (ICCPR), and free trade agreements with the European Union and the United Kingdom.

Climate Clinic Aotearoa told us that the bill, by barring New Zealanders from seeking remedies for climate-related harm, could contradict several of New Zealand's obligations under the ICCPR, such as:

- Article 2(3)—the right to an effective remedy
- Article 6—the inherent right, of every human being, to life
- Article 14(1)—the right to a fair and public hearing
- Article 27—the rights of indigenous people to enjoy their culture.

Lawyers for Climate Action highlighted that the bill might breach the New Zealand–United Kingdom free trade agreement. Under that agreement, New Zealand made a commitment not to weaken its environmental laws, to encourage trade or investment between the two countries.

We note that the Ministry of Justice consulted the Ministry of Foreign Affairs and Trade on the bill's proposals, including New Zealand's obligations under relevant international agreements.

Possible business uncertainty

The companies comprising the defendants in *Smith v Fonterra* told us that litigation could have significant implications for their ability to operate their core business. We heard that the ongoing litigation represents a strategic risk to them. Z Energy said an example of this risk would be the creation of uncertainty for long-term planning and investment decisions. Several submitters provided economic analysis reports describing the expected economic effects if their companies were required to cease emitting. Fonterra told us that if Mr Smith’s court case was successful, it would need to immediately cease all operations.

Some submitters, however, told us that there is no evidence of business uncertainty that would justify legislative intervention. Associate Professor Vernon Rive stated that there is “no credible evidence that the *Smith v Fonterra* litigation has had a negative impact on business confidence justifying the extraordinary step of legislative intervention with court proceedings”.

New Zealand Labour Party differing view

The Labour Party opposes this bill and will repeal it when in government. The bill offends against the principles of the rule of law by preventing the further progress of Mr Mike Smith's case against six large climate emitters that is currently before the courts. Two main reasons were given in favour of the bill: (1) that government is better placed to develop and implement climate policy than the courts; and (2) allowing Mr Smith's case to continue creates too much uncertainty for business. With respect to (1), even if government is better placed to develop and implement climate policy, the Labour Party thinks that it would have been better to allow the case to continue through the courts and then to consider what further action, if any, was needed depending on the outcome of the case. With respect to (2), the Minister's officials did not provide any evidence that the progress of Mr Smith's case created any more uncertainty than businesses usually experience.

In submissions, one large business entity claimed that if Mr Smith's case succeeded, then it would need to stop virtually all of its operations immediately. However, another submitter pointed out that this was an extreme scenario, and a more likely scenario was that the business would be obliged to start working towards changing some of its practices.

Green Party of Aotearoa New Zealand differing view

The Green Party opposes the Climate Change Response (Tort Liability) Amendment Bill (the bill) in the strongest terms.

The bill undermines the rule of law and the integrity of Parliament. The bill seeks to establish a statutory bar on tort liability, preventing any person (including the Crown) from being found liable in tort for emissions-related climate change effects. The bill would remove what is likely the only mechanism through which responsibility for climate-related damage could currently be determined, preventing citizens and groups the ability to seek accountability through the courts for climate related harm from those whose emissions are causing that harm.

Moreover, the bill will impact cases already underway and apply retrospectively. The most notable of these is the *Smith v Fonterra* proceedings, which the bill responds directly to, and would retrospectively shut down before it is even heard. If enacted, the bill will burden the public with carrying costs of climate change damage and emission reduction action that should otherwise sit with those causing harm.

There was overwhelming opposition to the bill at Select Committee. Of the 621 unique written submissions received, 578 submissions (93%) were opposed to the Bill and more than 75% of the total submissions specifically included a recommendation that the bill should not progress.

In line with these submissions, the Green Party opposed the bill at Select Committee based on the following concerns:

The rationale for the Bill is flawed

Current legislative settings (including the newly proposed resource management reform bills) provide no mechanism by which emitters can be held accountable for climate-related harm; nor do they require the reduction of greenhouse gas emissions, as sought by Mike Smith. The common law cannot override legislation, but it has the capacity to fill these gaps in the legislative framework. As the Supreme Court held in *Smith v Fonterra*, liability in tort does not cut across the existing legislative regime. In fact, many of the arguments made by the Government in support of the need for legislative intervention were made by the defendants in the *Smith v Fonterra* litigation and were rejected by the Supreme Court.

A key premise of the bill is that the Climate Change Response Act and its emissions trading scheme is sufficient and covers the field. But the emissions of many emitters, including some of the defendants in the *Smith v Fonterra* litigation, are not fully captured by the emissions trading scheme (which excludes, for example, agricultural emissions).

The scope of the bill is extraordinarily wide, with the statutory bar protecting a much broader range of actors and activities than are within scope of the current regime.

The Bill is subject to lobbying and process concerns

There are well documented and reported lobbying influences that have led to and impacted the development of the bill to the exclusion of counterfactual considerations and evidence. Of note, is the Government actively intervening on behalf of business interests in relation to the live *Smith v Fonterra* proceedings. Moreover, corporate interests have successfully lobbied for this legislation, evidenced by the meetings between Fonterra, Z Energy and the Prime Minister's Chief Policy Advisor and written briefing documents provided to argue for a legislative intervention. The fact of these meetings and written materials was omitted from an official information response to the Environment Law Initiative, only becoming public through discovery as part of the substantive *Smith v Fonterra* proceedings. Legislation that so closely matches the requested outcome of two defendants to litigation is in the private interests of those parties, not the broader public interest. The result is that the defendants have had direct input into the development of legislation that will retrospectively remove the rights of a private citizen, without notice to that citizen and without giving him the same opportunity to participate in the process.

The Chief Ombudsman's investigation found that the Prime Minister's Office acted unreasonably by failing to disclose a corporate lobbying document regarding the *Smith v Fonterra* case in response to an Official Information Act 1982 (OIA) request. Key findings included withheld information of the Fonterra and Z Energy briefing note, which was not identified or released during the official information request made by the Environmental Law Initiative, and that the briefing note only surfaced publicly due to High Court discovery obligations in the *Smith v Fonterra* proceedings. The Ombudsman also criticised the Prime

Minister's Office for inadequate record-keeping and raised concerns over the use of personal emails to conduct official business.

There are several process issues with the bill including a lack of transparency, a lack of consultation, progressing the bill with the House sitting under urgency, a shortened select committee including a 10-day submission period, and inconsistency with the Regulatory Standards Act 2025.

This bill has called into question the good reputation of New Zealand’s political system through exposing its susceptibility to inappropriate influence by vested interests and it risks the government being called to respond to accusations of corruption.

The bill undermines the rule of law and separation of powers

The bill raises significant constitutional concerns because it applies retrospectively to the ongoing *Smith v Fonterra* proceeding. Retrospective legislation that determines the outcome of existing litigation undermines legal certainty, a fundamental element of the rule of law, and deprives parties of the opportunity to have their rights determined by an independent court. In addition, rather than being in the public interest, the bill clearly undermines it; the bill would not only extinguish Mr Smith's claim but also prevent future claims by any citizen or group seeking to hold emitters accountable for the harm and damage caused by their greenhouse gas emissions.

Strong constitutional convention, grounded in the separation of powers and the principle of comity, control and guide Parliament’s lawmaking powers, including that Parliament should not interfere with ongoing judicial proceedings. The bill explicitly intends to do just this, contradicting the legal findings of the Supreme Court and resolving the case in favour of the defendants before it has had a chance to be fully heard in court.

The bill undermines te Tiriti o Waitangi and negatively impacts Māori

The bill interferes with the ability of tangata whenua to hold major emitters accountable for climate-related harm and undermines the exercise of kaitiakitanga. It was introduced without meaningful consultation with Māori, despite its potential implications for rights and interests protected by te Tiriti o Waitangi. This is particularly concerning given that the Waitangi Tribunal was considering whether to undertake an urgent inquiry into the bill at the time of its introduction.

Mr Smith’s claim raises the issue that climate harm interferes with the ability of iwi and hapū to exercise the tino rangatiratanga guaranteed under Article 2 of te Tiriti o Waitangi. By preventing such claims from proceeding, the bill removes a potential avenue for the courts to consider whether those rights have been affected and, if so, what remedies may be available. In addition, the bill also engages Article 3 of te Tiriti o Waitangi by overriding the ability of Mr Smith to access the courts and have his rights determined under the common law.

More broadly, because tikanga Māori forms part of the common law of Aotearoa New Zealand, the statutory exclusion of climate-related tort claims may inhibit the continued development of tikanga principles within the common law, including Māori conceptions of harm, responsibility, and redress.

The bill undermines New Zealand’s climate change response

The Climate Change Commission’s latest annual monitoring report found that New Zealand’s climate pollution progress stalled in 2024, and the pace of reductions now must double for the country to remain on track. The Commission concluded that second and third emissions budgets are “at high risk”, and the 2030 biogenic methane target is “unlikely to be met”.

Against that backdrop, it is more important than ever that those responsible for greenhouse gas emissions remain accountable for the harm those emissions cause. Climate change imposes significant and increasing costs. Where those contributing to climate harm cannot be held accountable through the courts, those costs instead fall to taxpayers, local communities, insurers, future generations, and the natural environment. This bill does not reduce those harms; it reallocates their costs away from those responsible for causing them.

The bill would remove one of the few remaining legal avenues for addressing climate-related harm where existing legislative and regulatory frameworks have not provided an effective remedy. Cases like *Smith v Fonterra* have proceeded because other avenues have not resolved these issues. A statutory exclusion of climate-related tort claims would prevent the courts from considering these questions and would leave unresolved the issue of legal responsibility for climate-related harm.

The bill will further worsen New Zealand’s ability to meet its international obligations under the Paris Agreement; cut against New Zealand’s binding legal duties to protect the climate system recognised by the International Court of Justice; and put New Zealand’s trade relationship with climate-responsible states like the EU.

The bill poses risks to New Zealand’s international trade

The bill may create significant trade and economic risks for New Zealand by weakening domestic climate accountability at a time when climate commitments are becoming increasingly integrated into international trade agreements. Rather than reducing uncertainty for businesses, the bill could expose New Zealand to greater international scrutiny by removing a legal mechanism through which major emitters may be held accountable for climate-related harm. This may be viewed by trading partners as a weakening of New Zealand's climate policy framework and a departure from its commitment to implementing the Paris Agreement.

These risks are particularly relevant to New Zealand's trade relationship with the European Union. The EU–New Zealand Free Trade Agreement contains enforceable commitments relating to climate change and sustainable development, including mechanisms through which parties may raise concerns about measures that undermine those commitments. If the bill is perceived as climate policy backsliding, it could expose New Zealand to formal dispute processes and damage its reputation as a credible trading partner. Any resulting economic impacts would likely be the responsibility not only of major emitters but also by New Zealand exporters more broadly, whose continued access to international markets increasingly depends on demonstrating credible climate action and compliance with evolving environmental standards.

The industry case for economic risk not credible

The economic case advanced by industry in support of the bill relies heavily on analysis commissioned by Z Energy and Fonterra, which seeks to quantify the economic consequences if the plaintiff in *Smith v Fonterra* were successful. The report assumes an immediate court order requiring the defendant companies to cease greenhouse gas emissions, and models the resulting impacts on economic activity, employment, and exports. It concludes that such an outcome would have significant costs for New Zealand's economy.

However, the analysis considers only the potential costs to businesses of being subject to climate litigation, while giving little attention to the economic costs of continued greenhouse gas emissions and climate change. Several economists and academics have observed that the report does not incorporate categories of costs that are now routinely included in climate policy analysis, such as the social cost of carbon, which seeks to quantify the economic damage associated with additional greenhouse gas emissions. Nor does it account for the broader costs of climate-related harm, including impacts on infrastructure, public health, ecosystems, and future generations, that are ultimately borne by communities and the public.

There is an absence of a replacement pathway for the removed tort right

The bill removes a long-established avenue for seeking relief through the courts without providing any alternative mechanism for accountability or compensation. The orthodox justification for removing a private right of action is that Parliament has chosen to replace it with an alternative (and usually better) statutory right to compensation. For example, when the right to sue for injury was removed it was replaced with ACC. There is no such compensatory option with the removal of this tort right on climate change.

The absence of a replacement remedy raises important rule of law and access to justice concerns. Individuals and communities who suffer loss allegedly caused by climate-related conduct would be left without any civil avenue through which to test their claims, even where existing statutory regimes do not provide a remedy.

Appendix

Committee procedure

The Climate Change Response (Tort Liability) Amendment Bill was referred to the committee under urgency on 30 June 2026. (The calendar date was 2 July 2026.) The House instructed us to report the bill back no later than 30 July 2026. We called for submissions with a closing date of 13 July 2026. We received and considered written submissions from 623 interested groups and individuals. We heard oral evidence from 38 submitters.

As part of our consideration of the bill, we examined its consistency with principles of legislative quality. We have no issues regarding the legislation's design to bring to the attention of the House.

We received advice on the bill from the Ministry of Justice and the Ministry for Cities, Environment, Regions and Transport. The Office of the Clerk provided advice on the bill's legislative quality. The Parliamentary Counsel Office was available to assist with legal drafting.

Committee members

Tom Rutherford (Chairperson)
Jamie Arbuckle
Carl Bates
Camilla Belich
Tākuta Ferris
Paulo Garcia
Rima Nakhle
Dan Rosewarne
Todd Stephenson
Hon Dr Duncan Webb
Dr Lawrence Xu-Nan

Steve Abel and Hon Dr Deborah Russell participated in our consideration of this bill.

Related resources

The documents that we received as advice and evidence are available on the Parliament website. The recording of our hearings on 14 July 2026 is available on Vimeo.