

Submission by



to the

Justice Select Committee

on the

Climate Change Response (Tort Liability) Amendment Bill

9 July 2026

Climate Change Response (Tort Liability) Amendment Bill

SUBMISSION BY BUSINESSNZ

1. BusinessNZ welcomes the opportunity to submit on the Climate Change Response (Tort Liability) Amendment Bill. We would like to present to the Select Committee.
2. BusinessNZ is New Zealand's largest business advocacy organisation, representing major companies, regional business associations and sector groups across the economy. Our membership is very diverse, representing exporters, manufacturers, services businesses and importantly for this submission, energy intensive businesses that compete globally and need a 'level playing field' in order to do so.
3. BusinessNZ supports the passage of the The Climate Change Response (Tort Liability) Amendment Bill (the **Bill**).
4. BusinessNZ submits that the appropriate way to control climate emissions is at the Country level (as is the norm globally) and that this is already being done by the The Climate Change Response Act 2002 (the **Act**). The Act establishes the legal framework for New Zealand's regulatory response to climate change. It includes a 2050 target for greenhouse gas (**GHG**) emission reductions and a regime for setting, and meeting, successive emissions budgets with a view to achieving the 2050 target.
5. The Emissions Trading Scheme (ETS) operates under the Act and puts a price on all emissions from industry, both via direct industrial emissions, and indirectly on fuel, energy and any fossil fuels used by industry. The price on emissions provides incentives for businesses to reduce their emissions directly, or buy emission reduction credits to offset their emissions. The market approach to emission reductions allows the reductions to be made at 'least cost', to the businesses and therefore the economy, while still aiming for the net zero target by 2050. A 'least cost' approach is very important, as ultimately it is consumers that bear the cost of transitioning to a lower carbon economy, and if this is not managed carefully, it is not an overstatement to say economic ruin could ensue (e.g. the impact on fuel prices due to the Iran conflict is a recent example of price increases on an energy source and what that does to the local and global economy).

6. The major problem all Countries have when it comes to tackling climate change and emission reductions, is that it is a global problem, and cannot be solved by any one country on its own. It requires a global effort, and global approach, because if some Countries take a strict approach, and other Countries do not, businesses will move production to Countries with weaker emissions regulation, where they might be using more emission intensive fuels (coal for example) and we have the problem known as "emissions leakage". If emission leakage occurs, it is a detriment to the economy that is pricing emissions because they have made their local industry globally uncompetitive versus other countries. It is also a detriment to the global climate if businesses move production to a country with lower standards and higher emitting industrial processes and fuel sources. This is why it is important that all countries try to move at the same pace on emissions reductions.

7. Given the above facts, BusinessNZ is surprised and concerned that the Courts even entertained litigation for liability in Tort in the Smith versus Fonterra, Genesis, Z Energy, NZ Steel, Dairy Holdings and BT Mining. Mr Smith's claim asked the High Court to require of the defendants to immediately cease emitting or contributing to net GHG emissions, thereby requiring them to stop entirely. That would clearly be an unacceptable outcome for New Zealand, when these companies are already accounting for emission reductions under a national scheme. Apart from the major loss of export earnings, the major loss of jobs, the significant loss of GDP to the economy and the impact on consumers facing higher costs for the importation of internationally sourced replacements, every business in New Zealand would be at risk of being sued in the courts for their emissions.

8. BusinessNZ is very concerned that unless this kind of litigation is **ruled out once and for all by Parliament**, every business in New Zealand is at risk of being sued for GHG emissions through the courts, on an individual, collective and/or completely ad hoc basis. Not just that. There is a floodgate risk of litigation spreading to matters subject to international agreement or treaty. As such, Parliament must assert its sovereign law-making status to provide direction to the courts when considering tort law and novel torts especially. As most Select Committee members will understand, businesses making long term investments worth hundreds of millions of dollars require certainty about a Country's legal framework within which they operate. Allowing novel tort claims to emerge years after Parliament has established a comprehensive emissions regime undermines that certainty and increases the cost of investing in New Zealand.

9. In addition to the chilling impact on domestic businesses, allowing business to be subject to court action for GHG emissions would create significant

Sovereign Risk for any international investor considering investment in New Zealand.

10. Climate Change and emissions reductions are not going to be solved by a Country that produces 0.17% of global emissions. As a final note, BusinessNZ is concerned that climate tort litigation is increasingly being used as part of broader advocacy campaigns to achieve policy outcomes through the courts rather than through the democratic and legislative processes established by Parliament. As we have noted earlier in the submission climate policy involves complex economic, environmental and social trade-offs that are properly determined by elected governments, not through ad hoc litigation against individual businesses. We have a nationally legislated approach to meeting net zero emissions targets, which has had (hard won) bi-partisan support in New Zealand.
11. BusinessNZ supports the amendment, which strikes out the current court action and prevents any similar action through the courts in the future. We need a nationally coherent solution to what is a global problem, a solution that is 'least cost', predictable and stays the course to the 2050 goal.

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Appendix One - Background information on BusinessNZ



The BusinessNZ Network is New Zealand's largest business organisation, representing:

- Business groups [EMA](#), [Business Central](#), [Major Companies Canterbury](#), and [Business South](#)
- [BusinessNZ](#) policy and advocacy services
- [Major Companies Group](#) of New Zealand's largest businesses
- [Gold Group](#) of medium-sized businesses
- [Affiliated Industries Group](#) of national industry associations
- [ExportNZ](#) representing New Zealand exporting enterprises.
- [ManufacturingNZ](#) representing New Zealand manufacturing enterprises.
- [Sustainable Business Council](#) of enterprises leading sustainable business practice.
- [BusinessNZ Energy Council](#) of enterprises leading sustainable energy production and use.
- [Buy NZ Made](#) - country of origin licensing organisation for NZ-made products, NZ-grown ingredients, and NZ-coded software services.

The BusinessNZ Network is able to tap into the views of over 76,000 employers and businesses, ranging from the smallest to the largest and reflecting the make-up of the New Zealand economy.

The BusinessNZ Network contributes to Government, tripartite working parties and international bodies including the International Labour Organisation ([ILO](#)), the International Organisation of Employers ([IOE](#)) and Business at OECD ([BIAC](#)).

