

23 September 2026

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OIA 31159

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for proactive release

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Thank you for your email of 16 August 2026, in which you request the following under the Official Information Act 1982 (OIA):

"Please treat this as a request under the Official Information Act 1982 for existing information held by the Ministry of Foreign Affairs and Trade.

Timeframe: 1 January 2024 to the date of this request.

This is a focused request concerning the Climate Change Response (Tort Liability) Amendment Bill 2026, Smith v Fonterra Co-operative Group Ltd [2024] NZSC 5, and any proposed legislative response to emissions-related climate tort liability.

Please provide:

- 1. Final or substantive advice, briefings, memoranda, reports, emails or other records prepared by or for MFAT concerning the Tort Liability Bill, Smith v Fonterra, or possible legislation restricting emissions-related climate tort liability.*
- 2. Advice or analysis concerning any implications of that proposal for New Zealand's international climate obligations or positions, including the Paris Agreement, UNFCCC processes, international environmental law, international climate litigation or advisory opinions, and relevant international human-rights obligations.*
- 3. Advice or analysis concerning international trade, investment, FTA, investor-state, diplomatic, reputational or market-access implications of restricting climate-related tort claims in New Zealand.*
- 4. Records of consultation or communications with the Ministry of Justice, DPMC/Cabinet Office, MCERT or the former Ministry for the Environment, Treasury, Crown Law, the Attorney-General's office, the Minister of Climate Change, or other Ministers concerning these matters.*
- 5. Records of external representations received by MFAT from Fonterra, Z Energy, BusinessNZ, sector organisations, legal representatives or other private parties concerning Smith v Fonterra, climate tort liability, or the Tort Liability Bill, including records of meetings and substantive correspondence.*
- 6. Any record showing whether MFAT was invited to comment on, review, or contribute to Cabinet papers, drafting instructions, regulatory analysis, legislative design or consultation concerning the Tort Liability Bill.*

For documents withheld in full, please provide, where reasonably practicable, a schedule identifying the date, title or description, author/originating organisation, recipients, and withholding ground, without requiring disclosure of privileged or otherwise protected substance."

On 27 August 2026, the following parts of your request were transferred under section 14(b) of the OIA to Ministry of Justice for response:

1. *"Final or substantive advice, briefings, memoranda, reports, emails or other records prepared by or for MFAT concerning the Tort Liability Bill, Smith v Fonterra, or possible legislation restricting emissions-related climate tort liability.*
2. *Advice or analysis concerning any implications of that proposal for New Zealand's international climate obligations or positions, including the Paris Agreement, UNFCCC processes, international environmental law, international climate litigation or advisory opinions, and relevant international human-rights obligations.*
3. *Advice or analysis concerning international trade, investment, FTA, investor-state, diplomatic, reputational or market-access implications of restricting climate-related tort claims in New Zealand.*
6. *Any record showing whether MFAT was invited to comment on, review, or contribute to Cabinet papers, drafting instructions, regulatory analysis, legislative design or consultation concerning the Tort Liability Bill."*

On 27 August 2026, the Ministry of Foreign Affairs and Trade (MFAT) also contacted you to discuss the scope of your request, because as it was originally framed it captured a significant volume of information.

On 3 September 2026, you agreed to refine the scope of your request to be for:

4. *"Records of MFAT led consultation or communications with*
 1. *DPMC/Cabinet Office,*
 2. *MCERT or the former Ministry for the Environment,*
 3. *Treasury,*
 4. *Crown Law,*
 5. *the Attorney-General's office,*
 6. *the Minister of Climate Change,*
 7. *or other Ministers concerning these matters.*
5. *Records of external representations received by MFAT from Fonterra, Z Energy, BusinessNZ, sector organisations, legal representatives or other private parties concerning Smith v Fonterra, climate tort liability, or the Tort Liability Bill, including records of meetings and substantive correspondence."*

On 11 September 2026, the timeframes for responding to your request were extended by an additional 8 working days due to the consultations necessary to make a decision on your request (section 15A(1)(b) of the OIA refers).

Response to your request

There are two items in scope of part four of your request for MFAT led communications:

- The first item is a document called *Overview of MFAT advice on proposed targeted reform of emissions-related torts.*

- The second item is an email chain in scope of part four of your request titled *[LEGALLY PRIVILEGED]Advice on options to respond to Smith v Fonterra including a statutory bar -*
- *MfE advice to MCC, for review and feedback by COP Monday 20 May, dated 14 May 2024 to 22 May 2024.*

These items are attached. Some information is withheld in full under the following sections of the OIA:

- 6(a): to avoid prejudicing the security or defence of New Zealand or the international relations of the New Zealand Government;
- 9(2)(a): to protect individuals' privacy;
- 9(2)(g)(i): to protect the free and frank expression of opinions by departments; and
- 9(2)(h): to maintain legal professional privilege.

Where the information has been withheld under section 9 of the OIA, no public interest in releasing the information has been identified that would override the reasons for withholding it.

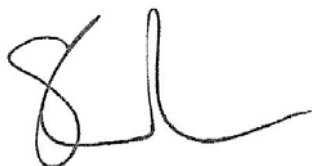
In relation to part five of your request, MFAT does not hold, *records of external representations received by MFAT from Fonterra, Z Energy, BusinessNZ, sector organisations, legal representatives or other private parties concerning Smith v Fonterra, climate tort liability, or the Tort Liability Bill, including records of meetings and substantive correspondence.* Accordingly, this part of your request is refused under section 18(e) of the OIA, as the information requested does not exist.

Please note that it is our policy to proactively release our responses to official information requests where possible. Therefore, our response to your request (with your personal information removed) may be published on the Ministry website:

www.mfat.govt.nz/en/about-us/contact-us/official-information-act-responses/

If you have any questions about this decision, you can contact us by email at: DM-ESD@mfat.govt.nz. You have the right to seek an investigation and review by the Ombudsman of this decision by contacting www.ombudsman.parliament.nz or freephone 0800 802 602.

Nāku noa, nā



Sarah Corbett
for Secretary of Foreign Affairs and Trade

From: [KLINKUM, Olivia \(LGL\)](#)
To: [KLINKUM, Olivia \(LGL\)](#)
Subject: FW: [LEGALLY PRIVILEGED]Advice on options to respond to Smith v Fonterra including a statutory bar -
MfE advice to MCC, for review and feedback by COP Monday 20 May
Date: Wednesday, 22 May 2024 1:23:29 pm

[RESTRICTED]

For GDM records

s9(2)(h)

Released under the Official Information Act

s9(2)(h)

Released under the Official Information Act

Released under the Official Information Act

s9(2)(h)

Ngā mihi
Luke

From: Becky Prebble <Becky.Prebble@mfe.govt.nz>

Sent: Tuesday, 14 May 2024 3:44 pm

To: Isabel Poulson <Isabel.Poulson@mbie.govt.nz>; BRIGHTON, Claire (LGL/TLU) <Claire.Brighton@mfat.govt.nz>; BROADHURST, Anna (CAE) <Anna.Broadhurst@mfat.govt.nz>; ROUGHTON, Luke (LGL) <Luke.Roughton@mfat.govt.nz>; Kate Wevers <Kate.Wevers@crownlaw.govt.nz>; Aaron Martin [EXTERNAL] (CROWNLA) <Aaron.Martin@crownlaw.govt.nz>; polly.higbee@crownlaw.govt.nz; kirsty.millard@crownlaw.govt.nz; s9(2)(a) <[s9\(2\)\(a\)@justice.govt.nz](mailto:s9(2)(a)@justice.govt.nz)>; s9(2)(a) <[s9\(2\)\(a\)@justice.govt.nz](mailto:s9(2)(a)@justice.govt.nz)>; Jessica Gorman [EXTERNAL] (DPMC) <jessica.gorman@dpmc.govt.nz>; John Scott [EXTERNAL] (DPMC) <John.Scott@dpmc.govt.nz>

Cc: Juliette Derry <Juliette.Derry@mfe.govt.nz>; Rosa Winter <Rosa.Winter@mfe.govt.nz>; Emily Chan <Emily.Chan@mfe.govt.nz>; Patricia Parre <Patricia.Parre@mfe.govt.nz>; Hemi Smiler <Hemi.Smiler@mfe.govt.nz>

Subject: [LEGALLY PRIVILEGED]Advice on options to respond to Smith v Fonterra including a statutory bar - MfE advice to MCC, for review and feedback by COP Monday 20 May

Kia ora koutou,

We've talked to all of you at different times about the advice we are writing on options Ministers have to respond to the *Smith v Fonterra* decision, in particular proceeding with a statutory bar on private law causes of action based on greenhouse gas emissions. It took us a bit longer than expected to write a first cut of this advice, but here it is, for your review and feedback. Different agencies will have different areas where they are most interest, but overall the key things we want to test are:

- Pitch and framing – this is a tough one but does the “tone” feel right given the various issues involved?
- Have we captured the key issues (particularly the constitutional ones that are less our daily bread and butter), and given them appropriate emphasis?
- The policy justification and narrative – in a number of places the attached advice says something like “a clear policy justification will be necessary for a statutory bar”. In our view, there is a clear policy justification for a statutory bar, although there is a question about how much that justification mitigates the overall risks of doing it. We are interested in your feedback on the strength of that policy rationale, both in an absolute sense and relative to the proposed way of addressing it.
- s9(2)(h)

In terms of timing, could you please come back to us with your feedback by COP Monday 20 May? Let me know if you are likely to have trouble meeting that timetable, I think it is different from what I have previously told some of you but hopefully still in the not blatantly unreasonable category.

Also if it would like to have early discussions with us over the next few days as you gather your thoughts we'd find that very helpful. I've held time in our calendars at 10-11am on Thursday just in case that time happens to work for people, but if it doesn't but the general idea of talking to us appeals we can certainly organise a different time. Some of you are likely to focus on similar issues as each other so there might be some benefit in all getting together to discuss.

Thanks very much for the useful conversations so far!

Becky.

Becky Prebble ([she/her](#))

*Chief Advisor | Kaitohutohu Whakarae
Climate Change Mitigation and Resource Efficiency*

Ministry for the Environment | Manatū Mō Te Taiao
s9(2)(a) | becky.prebble@mfe.govt.nz | mfe.govt.nz

Ministry staff work flexibly by default. For me this means I work Monday to Thursday, occasionally from home.

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Released under the Official Information Act

Overview of MFAT advice on proposed targeted reform of emissions-related torts

MFAT advice in Minister of Justice's draft Cabinet paper

- s9(2)(h)

- s9(2)(h)

This measure could also impact New Zealand's brand overseas – sustainability credentials are increasingly important for consumers in high-value markets like the European Union and United Kingdom.

Summary of additional MFAT comments in draft Regulatory Impact Statement

- MFAT noted that there was no evidence for the suggestion that a statutory bar would signal a stable regulatory environment and subsequently increase business confidence and attract international investment. It is possible that the development could have the opposite effect.
- MFAT noted that choosing not to act (i.e. not imposing a statutory bar on tortious liability for emissions harms) was unlikely to have positive implications for New Zealand's international reputation. However, imposing a bar could attract unwanted attention of criticism in terms of New Zealand's sustainability credentials, s6(a), s9(2)(g)(i)

New Zealand's sustainability brand is increasingly important in higher-value markets.