

8

Climate change and the law

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International trade

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MC11 Ministerial Declaration on Fossil Fuel Subsidy Reform



Photo: WTO

At the WTO's 11th Ministerial Conference in Buenos Aires, 12 WTO members signed a Ministerial Declaration encouraging reform and phasing out of fossil fuel subsidies. Reducing subsidies to fossil fuels would have a significant environmental impact, and would contribute to limiting the estimated temperature increases. The WTO has an important role to play in this regard, including through enhanced transparency and reporting. The members that signed the statement include Chile, Costa Rica, Iceland, Liechtenstein, Mexico, Moldova, New Zealand, Norway, Samoa, Switzerland, Chinese Taipei and Uruguay. The Ministerial Declaration reads as follows:



"A lot of people forget that trade is also a force for good. Not just in terms of lifting incomes... but also for some of the rules that can help overcome some of these international problems like climate change."

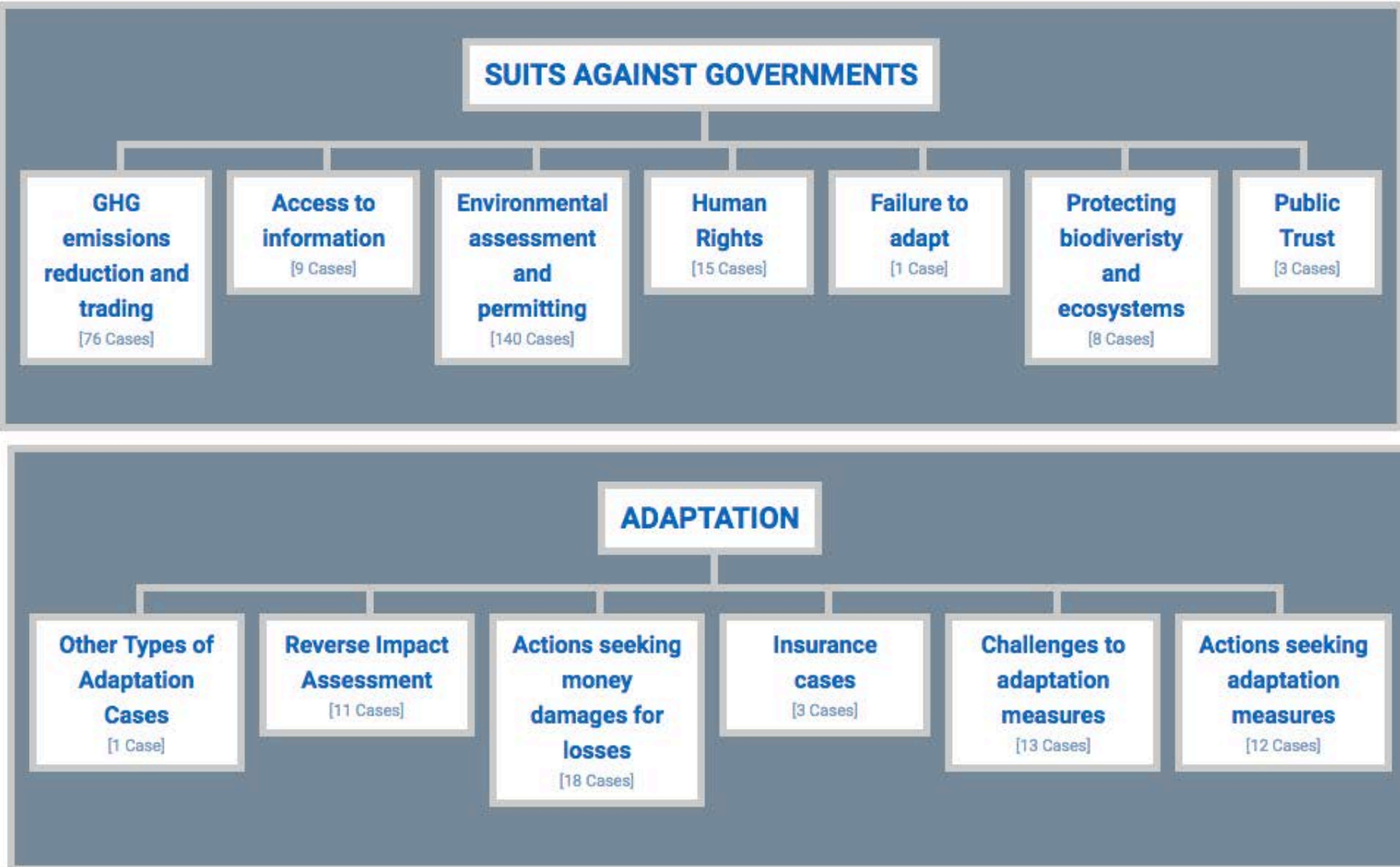
David Parker
New Zealand Minister for Trade and Export Growth



Article 20.15: Transition to a Low Emissions and Resilient Economy

1. The Parties acknowledge that transition to a low emissions economy requires collective action.
2. The Parties recognise that each Party's actions to transition to a low emissions economy should reflect domestic circumstances and capabilities and, consistent with Article 20.12 (Cooperation Frameworks), Parties shall cooperate to address matters of joint or common interest. Areas of cooperation may include, but are not limited to: energy efficiency; development of cost-effective, low emissions technologies and alternative, clean and renewable energy sources; sustainable transport and sustainable urban infrastructure development; addressing deforestation and forest degradation; emissions monitoring; market and non-market mechanisms; low emissions, resilient development and sharing of information and experiences in addressing this issue. Further, the Parties shall, as appropriate, engage in cooperative and capacity-building activities related to transitioning to a low emissions economy.

Climate Change Litigation





Urgenda Foundation v The Netherlands
Verdict on appeal expected **9 October 2018**



Juliana v United States
US Supreme Court denied federal govt
application for stay
30 July 2018

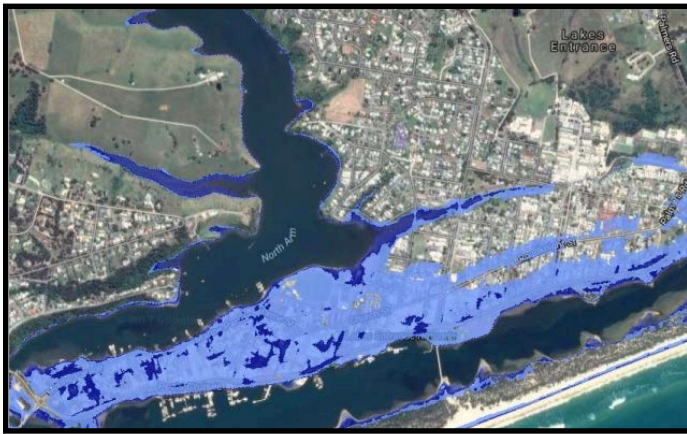
Overseas climate change mitigation cases



Föreningen Greenpeace Norden v Norge
Judgment of 4 January 2018 appealed
5 February 2018



Saúl Luciano Lliuya v. RWE
Higher Regional Court Hamm affirms decision
to allow appeal case to proceed
7 February 2018



Australia: *Gippsland Coastal Board v South Gippsland Shire Council* [2008] VCAT 1545



United Kingdom: *Castletown Estates Ltd & Anor v Welsh Ministers* [2013] EWHC 3293

Overseas climate change *adaptation* cases



Canada: *Burgess v. Ontario Minister of Natural Resources and Forestry* 16-1325 CP (filed 2016)



United States: *St. Bernard Parish Government v. United States, No. 16-2301* (Fed. Cir. 2018)

Local authority legal obligations

Resource
Management
Act 1991

Local Government
Act 2002

Building
Act 2004

Public Works
Act 1981

Local Government
Official Information
and Meetings
Act 1987



Climate Change
Response Act 2004

Tort law
(negligence, nuisance,
breach of statutory duty)

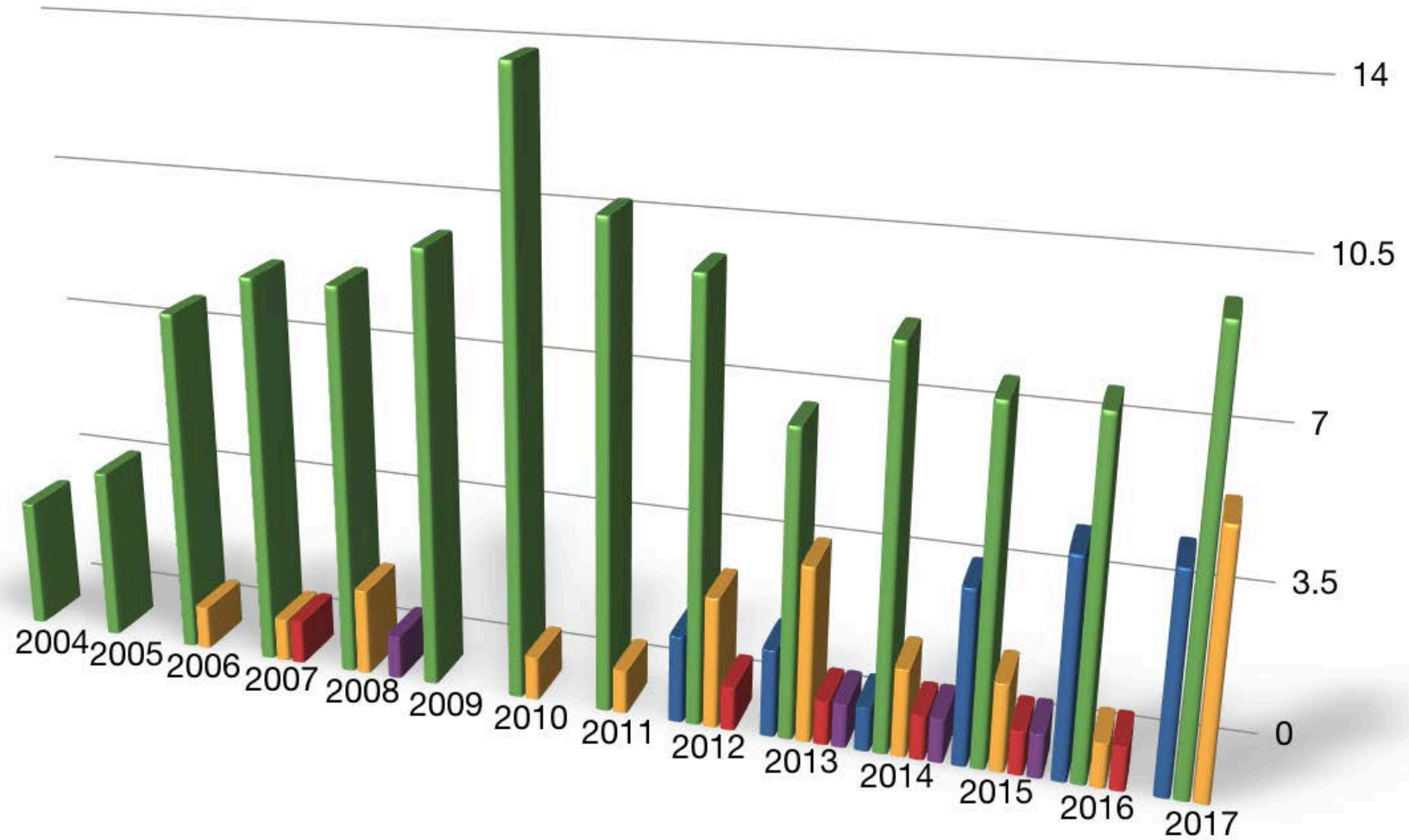
Public law
(judicial review)

Climate change in NZ courts & tribunals

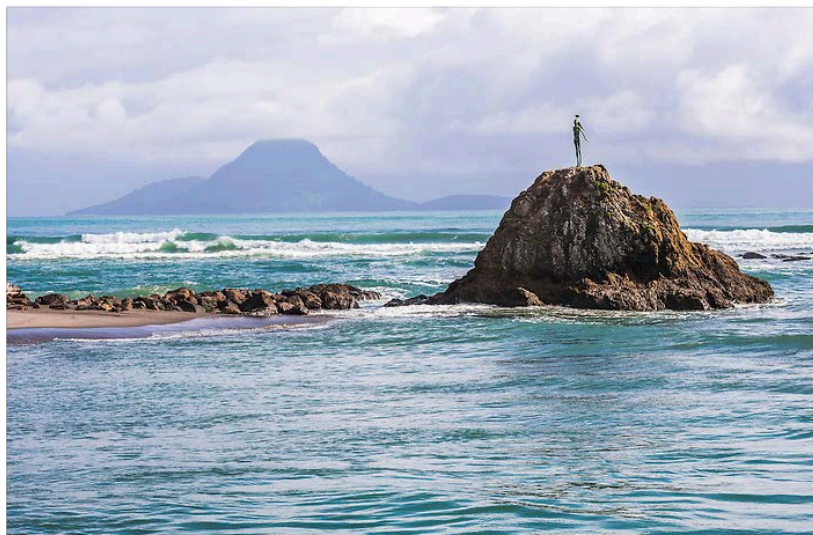


NZ judgments involving climate change considerations 2004-2017

■ IPT ■ EC ■ HC ■ CA ■ SC



WAI 2607 Mataatua District Māori Council Claim



'The Lady on the Rock', remembering the Maori women of Mataatua, Whakatane Bay.
Photo Matthew Williams-Ellis

[3] The applicants allege that the Crown has breached its Treaty obligations to Māori by failing to implement adequate policies to address ongoing detriment and future threats posed by global climate change. Further, the applicants allege that Māori are prejudiced as a result of their heavy involvement in the forestry industry.

[50] in April 2015, the Chairperson of the Tribunal announced that a series of kaupapa inquiries would be undertaken in the near future to hear claims relating to a particular kapa or area of Crown policy. Environment is the seventh such enquiry in the list to be heard. In the context of that enquiry, a Tribunal will likely address the issues that form the backdrop to this claim...

per Judge PJ Savage
17 October 2017

Thomson v Minister for Climate Change Issues [2017] NZHC 733



Photo credit: 'Mike Scott/Fairfax

[94] ...The IPCC reports provide the most up to date scientific consensus on climate change. New Zealand accepts this. To give effect to the Act and what New Zealand has accepted, recognised and committed to under the international instruments, and in light of the threat that climate change presents to humankind and the environment, I consider the publishing of a new IPCC report requires the Minister to consider whether a target set under s 224 should be reviewed. That is, it is a mandatory relevant consideration in whether an existing target should be reviewed...

[98] However I need not consider that further in light of the recently elected Government's announced intentions to change this target.

...This judgment is a sufficient record of the Court's view on this cause of action.

per Mallon J

Coastal Ratepayers United Inc v Kāpiti Coast District Council [2017] NZEnvC 31; [2017] NZHC 2933



Kapiti Coast flooding 1976. Photo credit: Kapiti Coast District Council archive



Kapiti Coast flooding 2015. Photo credit: 1 News

[37] Integral to determination of appropriate coastal hazards provisions is consideration of the effects of climate change, a matter to which the Council is required to have "particular regard" in exercising its functions under RMA. Aspects of the provisions as to coastal hazards which the Council sought to bring down in the PDP were found to be seriously deficient and the Council determined to withdraw those provisions and bring down more appropriate provisions.

[38] Under those circumstances **it is more important that the Council gets it right rather than gets it quick.**

per Judge Dwyer
(affirmed on appeal by Collins J)

Zero carbon bill



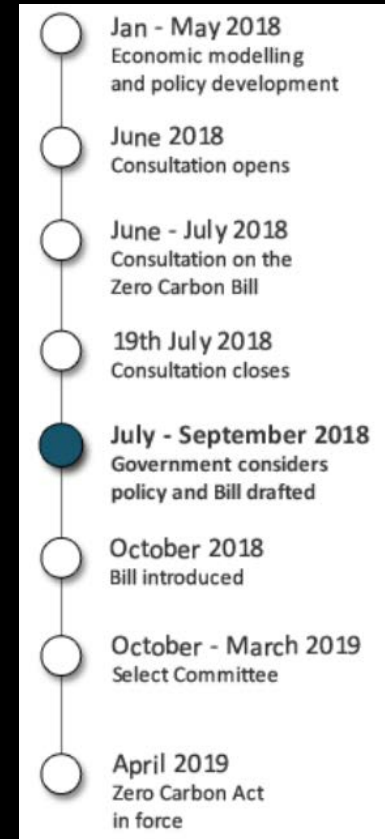
My intent is to introduce a

Zero Carbon Bill

34. I intend that the overarching purpose of the Bill will be to act as the architecture for transitioning New Zealand to a net zero target.

I intend that the Bill will:

- set a new 2050 greenhouse gas emissions reduction target in law;
- establish an independent Commission;
- define the Commission's roles, powers and functions.



Zero carbon bill key issues

What should the **emissions goal** be?

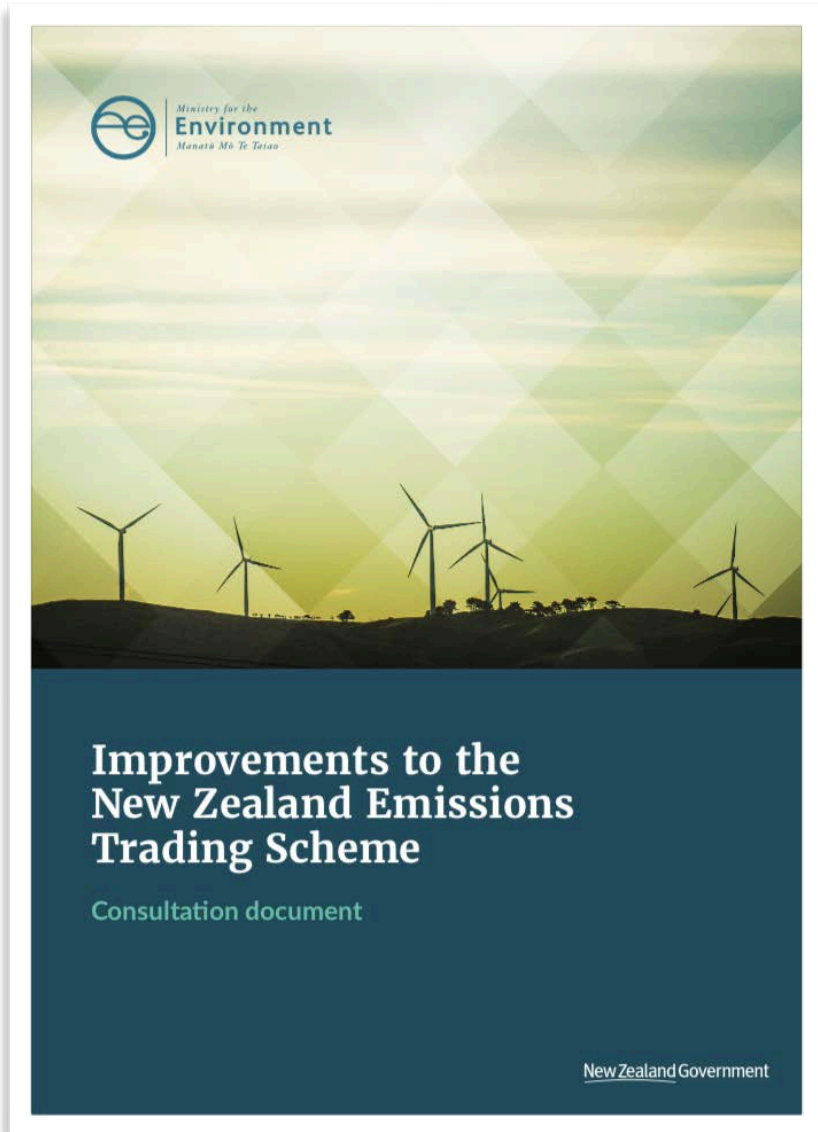
How should **budgets/targets be set**, changed?

Should **methane be included** in the net zero target? If not, what, for CH₄ ?

Should there be access to **international offset** units?

Should the Climate Commission have a role on **adaptation** planning and the **ETS**?

ETS review



The proposals aim to make the scheme fit-for-purpose to help New Zealand deliver on its emissions reduction targets.

The proposals focus primarily on the framework of the NZ ETS so the scheme provides more predictability for market participants and gives the Government flexibility to make well-signalled adjustments in response to changing circumstances.

Submissions are due by 5.00pm on Friday 21 September 2018.