

From: Becky Prebble <Becky.Prebble@mfe.govt.nz>
Sent: Wednesday, 12 November 2025 12:34 pm
To: 9(2)(a)
Cc: 9(2)(a); Rosa Winter; Stephen Goodman
Subject: Classification RE: Supplementary advice: policy decisions on targeted reform of emissions-related torts - addition MfE advice
Attachments: BRF-4648 (signed) Options for responding to Smith v Fonterra litigation 10052024.pdf

Kia ora 9(2)(a)

Thanks for this, MoJ talked to us as they were preparing this advice. We gave our own advice on this issue 18 months ago (attached), and the MCC's decision was that he did not want to do a statutory bar.

Broadly, everything in our previous advice still stands and is equally relevant now. Key points from us now are:

- MfE does not think it would support the overall coherence and consistency of our climate change system to have a private law cause of action against large emitters (ie the subject of the *Smith* litigation). There are arguments either way but on balance we consider that it is preferable for the climate change response to sit with central government, which can best consider social and economic objectives as well as environmental ones.
- But the key question is whether to legislate now to prevent the potential existence of a private law cause of action – ie, while a case is before the courts – or whether to wait until the case is actually concluded. The court may well say there is no cause of action, in which case there would be no need to legislate.
- There are pros and cons either way on that question:
 - Proceeding with a statutory bar now has risks. 9(2)(h)
 - The downside of waiting until the outcome of *Smith* is known is that the path to a final decision is likely to be costly to the respondents and also lengthy, potentially creating uncertainty about the law in the meantime. There is an argument that legislating now saves everyone a lot of time, money, and effort.
 - A key thing Minister Watts will also want to weigh is the potential market perception of a statutory bar that protects large emitters and the impact that might have on ETS market confidence and stability.
- We can't speculate on what the likely outcome of the substantive hearing will be. I will note though that this proceeding was struck out in both the High Court and Court of Appeal, meaning that those courts did not think it contained a reasonably arguable cause of action.

- The attached advice from Justice advises to stick with the status quo, ie let the court case play out. On balance we agree that that is probably the best option but it's not a straightforward issue.
- One further point: 9(2)(h) [redacted]
[redacted] We don't have a view right now on whether reforming public nuisance law is a good idea or not but I will point out that pursuing that option would not necessarily stop the *Smith* litigation from proceeding because Mr Smith had more causes of action than just public nuisance.
- Ministers meeting to discuss seems valuable, although I am not sure whether the Minister has any capacity in the short term to meet with Minister Goldsmith to discuss this, and I see Minister Goldsmith also doesn't have a lot of availability. If and when that meeting happens I am happy to attend in support.

Becky.

Becky Prebble (she/her)

Chief Advisor | Kaitohutohu Whakarae

Climate Change Mitigation and Resource Efficiency

Ministry for the Environment | Manatū Mō Te Taiao

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From: 9(2)(a)

Sent: Monday, 10 November 2025 2:11 pm

To: Francesca Williams <Francesca.Williams@mfe.govt.nz>; Stephen Goodman <Stephen.Goodman@mfe.govt.nz>; Becky Prebble <Becky.Prebble@mfe.govt.nz>

Cc: 9(2)(a)

Subject: Supplementary advice: policy decisions on targeted reform of emissions-related torts - addition MfE advice

Kia ora Fran, Steve, Becky,

Supplementary advice: policy decisions on targeted reform of emissions-related torts - addition MfE advice

Minister Goldsmith's office has just confirmed we can share this advice with MfE. Can you please consider and if needed provide Minister Watts with advice on this?

My reading is that he may want to discuss this with Minister Goldsmith ahead of this being progressed.

Happy to discuss next steps and potential timing of advice to the office.

Ngā mihi,

9(2)(a)

9(2)(a) | Private Secretary – Climate Change
Office of Hon. Simon Watts
Minister of Climate Change
Minister for Energy
Minister of Local Government



Minister of Revenue

M: 9(2)(a)

E: 9(2)(a)

Parliament Buildings, Wellington 6160, New Zealand

From: 9(2)(a)

Sent: Thursday, 6 November 2025 4:53 PM

To: 9(2)(a)

Justice.PS <Justice.PS@parliament.govt.nz>; 9(2)(a)

Subject: briefing for consideration by your Ministers

Hi,

Minister Goldsmith has received the attached briefing on tort reform, related to climate change. He has asked that it be forwarded to your Ministers and would value their feedback and discussion. He has not yet taken decisions on the paper.

Please note, Minister Goldsmith is traveling from 10-18 November, when he will be largely uncontactable, and from 23-30 November, when he will be more contactable.

Happy to discuss! I'm also on leave for three weeks from Monday, 9(2)(a) (cc'ed in this email) will be covering for me, so please get in touch with her and 9(2)(a)

Thanks!

9(2)(a)



9(2)(a)

Private Secretary – Justice | Office of Hon Paul Goldsmith

Minister for Arts, Culture and Heritage

Minister of Justice

Minister for Media and Communications

Minister for Treaty of Waitangi Negotiations

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Private Bag 18041, Parliament Buildings, Wellington 6160, New Zealand

Authorised by Hon Paul Goldsmith, Parliament Buildings