

In the High Court of New Zealand
Wellington Registry
CIV-2015-

under the Judicature Amendment Act 1972 and under Part
30 of the High Court Rules
in the matter of an application for judicial review of decisions
made under the Climate Change Response Act 2002 and
public decisions made in relation to the United Nations
Framework Convention on Climate Change

between

SARAH LORRAINE THOMSON
Student, of Hamilton
Plaintiff

and

THE MINISTER FOR CLIMATE CHANGE ISSUES
Environment House, 23 Kate Sheppard Place, Wellington
Defendant

STATEMENT OF CLAIM

10 November 2015

ASSIGNED JUDICIAL OFFICER:

-

NEXT EVENT DATE:

-

LeeSalmonLong

Barristers and Solicitors

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STATEMENT OF CLAIM

The plaintiffs say:

Parties

1. The plaintiff is a student of Hamilton, New Zealand.
2. The defendant is the Minister for Climate Change Issues (**Minister**).

The Convention

3. New Zealand is a party to the United Nations Framework Convention on Climate Change drafted at New York on 9 May 1992 (**Convention**).
4. New Zealand signed the Convention on 4 June 1992.
5. New Zealand ratified the Convention on 16 September 1993.
6. The text of the Convention is set out in Schedule 1 to the Climate Change Response Act 2002 (**Act**).
7. The ultimate objective of the Convention is to achieve stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system.
8. New Zealand is listed as an Annex I (developed) country under the Convention.

The Act

9. The Ministry for the Environment administers the Act.
10. The Minister is responsible for the Act.
11. By s3(1) the purpose of the Act is to enable New Zealand to meet its international obligations under the Convention (and the Protocol to the Convention).
12. By s 3(2) a person who exercises a power or discretion, or carries out a duty, under the Act must exercise that power or discretion, or carry out that duty, in a manner that is consistent with the purpose of the Act.
13. Under s224 of the Act:
 - (a) The Minister must set a target for reduction of greenhouse gas emissions by New Zealand;
 - (b) The Minister may set a target, or amend or revoke an existing target, at any time;
 - (c) As soon as practicable after setting, amending, or revoking a target under this section, the Minister must give notice the target or revocation of the target in the Gazette.

14. Under s225 of the Act the Minister:
- (a) must review the target following publication of any Intergovernmental Panel on Climate Change Assessment Report; and
 - (b) may at any time recommend to the Governor-General the setting of a target, or amendment or revocation of a target, having regard to the following matters:
 - (i) any Intergovernmental Panel on Climate Change Assessment Report or report of a successor agency;
 - (ii) any other matters the Minister considers relevant.

Scientific consensus on climate change

15. Human activities have been substantially increasing atmospheric concentrations of greenhouse gases, including CO₂ (carbon dioxide), CH₄ (methane) and N₂O (nitrous oxide).
16. The release of greenhouse gases into the atmosphere from human activities increases the natural greenhouse effect which causes the warming of the planet.
17. Climate change will result on average in an additional warming of the Earth's surface and atmosphere and will adversely affect natural ecosystems and humankind.
18. Evidence of the warming of the climate system is unequivocal and, since the 1950s, many of the observed changes are unprecedented over decades to millennia. The atmosphere and ocean have warmed, the amounts of snow and ice have diminished, sea level has risen, and the concentrations of greenhouse gases have increased.
19. Each of the last three decades has been successively warmer at the Earth's surface than any preceding decade since reliable records began in 1850.
20. In the Northern Hemisphere, 1983 to 2012 was likely the warmest 30-year period of the 1400 years prior to 2012.
21. Ocean warming dominates the increase in energy stored in the climate system, accounting for more than 90% of the energy accumulated between 1971 and 2010. It is virtually certain that the upper ocean (0–700 m) warmed from 1971 to 2010, and it likely warmed between the 1870s and 1971.
22. Over the last two decades, the Greenland and Antarctic ice sheets have been losing mass, glaciers have continued to shrink almost worldwide, and Arctic sea ice and Northern Hemisphere spring snow cover have continued to decrease in extent.

23. The rate of sea level rise since the mid-19th century has been larger than the mean rate during the previous two millennia. Over the period 1901 to 2010, global mean sea level rose by 0.19 m.
24. Global warming will have many severe impacts, often mediated through water:
 - (a) Melting glaciers will initially increase flood risk and then strongly reduce water supplies, eventually threatening one-sixth of the world's population, predominantly in the Indian sub-continent, parts of China, and the Andes in South America.
 - (b) Declining crop yields, especially in Africa, could leave hundreds of millions without the ability to produce or purchase sufficient food. At mid to high latitudes, crop yields may increase for moderate temperature rises (2 to 3°C), but then decline with greater amounts of warming. At 4°C and above, global food production is likely to be seriously affected.
 - (c) In higher latitudes, cold-related deaths will decrease. But climate change will increase worldwide deaths from malnutrition and heat stress. Vector-borne diseases such as malaria and dengue fever could become more widespread if effective control measures are not in place.
 - (d) Rising sea levels will result in tens to hundreds of millions more people flooded each year with warming of 3 or 4°C. There will be serious risks and increasing pressures for coastal protection in South East Asia (Bangladesh and Vietnam), small islands in the Caribbean and the Pacific, and large coastal cities, such as Tokyo, New York, Cairo and London. According to one estimate, by the middle of the century, 200 million people may become permanently displaced due to rising sea levels, heavier floods, and more intense droughts.
 - (e) Ecosystems will be particularly vulnerable to climate change, with around 15% to 40% of species potentially facing extinction after only 2°C of warming. And ocean acidification, a direct result of rising carbon dioxide levels, will have major effects on marine ecosystems, with possible adverse consequences on fish stocks.
25. The damage resulting from the effects of climate change will accelerate as the world gets warmer.
26. Damage as a result of climate change is already being observed.
27. The impacts of climate change are not evenly distributed – the poorest countries and people will suffer damage resulting from climate change earliest and most.
28. Total anthropogenic GHG emissions were the highest in human history from 2000 to 2010 and reached 49 (±4.5) GtCO₂eq / yr in 2010.
29. It is extremely likely that human influence has been the dominant cause of the observed warming since the mid-20th century.

30. Without additional efforts to reduce GHG emissions beyond those in place today, emissions growth is expected to persist driven by growth in global population and economic activities.
31. Baseline scenarios, those without additional mitigation, result in global mean surface temperature increases in 2100 from 3.7°C to 4.8°C compared to pre-industrial levels.
32. It is inevitable that dangerous anthropogenic interference with the climate system will occur if the global temperature increases by more than 2°C relative to pre-industrial levels.
33. It is possible that dangerous anthropogenic interference with the Climate System will occur if global temperatures increase by less than 2°C relative to pre-industrial levels.
34. Warming of 2°C or less than 2°C will have cause extensive damage if maintained for any significant period of time.
35. Limiting climate change will require substantial and sustained reductions of greenhouse gas emissions.
36. Dangerous anthropogenic warming will likely not be able to be avoided if substantial mitigation steps are not undertaken immediately.
37. Mitigation scenarios in which it is likely that the temperature change caused by anthropogenic GHG emissions can be kept to less than 2°C relative to pre-industrial levels are characterized by atmospheric concentrations in 2100 of about 450 ppm CO_{2e}.
38. The largest share of historical and current global emissions of greenhouse gases has originated in developed countries.
39. Per capita emissions in developing countries are still relatively low.
40. Unless curtailed, the share of global emissions originating in developing countries will grow to meet their social and development needs.
41. New Zealand is a major emitter on a per capital basis when compared to other developed countries.
42. Developing countries are less likely to take action to reduce greenhouse gas emissions if developed countries, including New Zealand, do not make commitments to significant emissions reductions.
43. The global nature of climate change calls for the widest possible cooperation by all countries and their participation in an effective and appropriate international response.
44. Effective mitigation will not be achieved if individual states advance their own interests independently.
45. Steps required to understand and address climate change will be environmentally, socially and economically most effective if they are

based on relevant scientific, technical and economic considerations and continually re-evaluated in the light of new findings in these areas.

46. The benefits of strong, immediate action on climate change outweigh the costs.
47. The risks of serious, irreversible impacts of climate change increase strongly as concentrations of greenhouse gases in the atmosphere rise.
48. Climate change may initially have small positive effects for a few developed countries, but is likely to be very damaging for the much higher temperature increases expected by mid- to late-century under business as usual scenarios.
49. Emissions have been, and continue to be, driven by economic growth yet stabilisation of greenhouse-gas concentrations in the atmosphere is feasible and consistent with continued growth.
50. Delay in taking action on climate change would make it necessary to accept both more climate change and, eventually, higher mitigation costs, if effective mitigation can be achieved at all. Weak action in the next 10 to 20 years would put stabilisation even at 550ppm CO₂e beyond reach – and this level is already associated with significant risks.
51. Failure to act to reduce greenhouse gas emissions is likely to have significant adverse financial impacts, reducing global welfare by an amount equivalent to a reduction in consumption per head of between 5 and 20%.
52. The global costs of limiting greenhouse gas emissions to 450ppm CO₂e are likely to be significantly less than the global costs of failing to act to reduce emissions.
53. Mitigating the effects of climate change requires action now to prevent serious damage to the human environment decades in the future.
54. Delaying mitigation efforts beyond those in place today through 2030 is estimated to substantially increase the difficulty of the transition to low longer-term emissions levels and narrow the range of options consistent with maintaining temperature change below 2°C relative to pre-industrial levels, if that can be achieved at all.

The Copenhagen Accord

55. In 2009 various states including New Zealand became signatories to the “Copenhagen Accord”.
56. Under the Copenhagen Accord state parties agreed:
 - (a) That deep cuts in global emissions are required to hold the increase in global temperature below 2 degrees Celsius; and
 - (b) To take action to meet this objective consistent with science and on the basis of equity.

The Cancun Agreement

57. In 2010 New Zealand and all other state parties to the Convention agreed in “The Cancun Agreement” that:
- (a) All other parties to the Convention should take urgent action to hold the increase in global average temperature below 2°C above pre-industrial levels; and
 - (b) The largest share of historical global emissions of greenhouse gases originated in developed countries and that, owing to this historical responsibility, developed country Parties must take the lead in combating climate change and the adverse effects thereof.
58. New Zealand is a developed country.

Reductions in emissions necessary to limit global warming to 2°C

59. Limiting the warming caused by anthropogenic CO₂ emissions alone with a probability of >33%, >50%, and >66% to less than 2°C since the period 1861-1880, will require cumulative CO₂ emissions from all anthropogenic sources to stay between 0 and about 1570 GtC (5760 GtCO₂), 0 and about 1210 GtC (4440 GtCO₂), and 0 and about 1000 GtC (3670 GtCO₂) since that period, respectively.
60. These upper amounts are reduced to about 900 GtC (3300 GtCO₂), 820 GtC (3010 GtCO₂), and 790 GtC (2900 GtCO₂), respectively, when accounting for non-CO₂ forcings as in RCP2.6. An amount of 515 [445 to 585] GtC (1890 [1630 to 2150] GtCO₂), was already emitted by 2011.
61. To have at least a 50% chance of limiting global warming to less than 2°C since the period 1861 to 1880, there is a total budget of 820Gt of CO₂ that may be emitted.
62. By 2011, 515Gt of CO₂ had already been emitted.
63. At current rates of emissions, the remaining 305Gt of CO₂ will have been emitted by 2035 (another 20 years).
64. There are multiple mitigation pathways that are likely to limit warming to below 2°C relative to pre-industrial levels.
65. These pathways would require substantial emissions reductions over the next few decades and near zero emissions of CO₂ and other long-lived greenhouse gases by the end of the century.
66. Emissions scenarios leading to CO₂e concentrations in 2100 of about 450 ppm or lower are likely to maintain warming below 2°C over the 21st century relative to pre-industrial levels.
67. These scenarios are characterized by 40 to 70% global anthropogenic GHG emissions reductions by 2050 compared to 2010, and emissions levels near zero or below (CO₂ removal from the atmosphere) in 2100.

68. Delaying additional mitigation to 2030 will substantially increase the challenges associated with limiting warming over the 21st century to below 2°C relative to pre-industrial levels.
69. It will require substantially higher rates of emissions reductions from 2030 to 2050; a much more rapid scale-up of low-carbon energy over this period; a larger reliance on carbon dioxide removal in the long term; and higher transitional and long-term economic impacts.
70. Estimated global emissions levels in 2020 based on the pledges made by nations in Cancún at the time of the Cancun Agreement are not consistent with cost-effective mitigation trajectories that are at least about as likely as not to limit warming to below 2°C relative to pre-industrial levels.

Target set under the Act

71. On 27 March 2011, acting under s224 of the Act, the Minister set a target for a 50% reduction in New Zealand greenhouse gas emissions from 1990 levels by 2050 (**Target**).
72. The target was set by publishing the Climate Change Response (2050 Emissions Target) Notice 2011 in the Gazette. The date of publication was 31 March 2011. The full text of the notice is set out in **Schedule 1** to this claim.

Duty to review and make decision on Target following release of IPCC reports

73. Under s225(3) of the Act the Minister—
- (a) must review the Target following publication of any Intergovernmental Panel on Climate Change Assessment Report or report of a successor agency; and
 - (b) may at any time recommend to the Governor-General the setting of a target, or amendment or revocation of a target, having regard to the following matters:
 - (i) any Intergovernmental Panel on Climate Change Assessment Report or report of a successor agency;
 - (ii) any other matters the Minister considers relevant.
74. Section 225(3) requires the Minister to review **and** make a decision on whether to re-set the Target following publication of any IPCC report.

AR5 published since Target set

75. The Fifth IPCC Assessment Report (**AR5**) was released by the IPCC between September 2013 and November 2014.
76. AR5 is the most comprehensive assessment of scientific knowledge on climate change since 2007 when the Fourth Assessment Report (AR4) was released.

77. The key conclusions in AR5 include the facts pleaded in paragraphs 15 to 54 and 59 to 70 above.

Setting of INDC

78. The nineteenth session of the Conference of the Parties to the Convention (**COP 19**) took place from 11 to 22 November 2013 in Warsaw, Poland.
79. At COP 19 the Parties to the Convention decided “to invite all Parties to initiate or intensify domestic preparations for their intended nationally determined contributions, without prejudice to the legal nature of the contributions, in the context of adopting a protocol, another legal instrument or an agreed outcome with legal force under the Convention applicable to all Parties towards achieving the objective of the Convention as set out in its Article 2 and to communicate them well in advance of the twenty-first session of the Conference of the Parties (by the first quarter of 2015 by those Parties ready to do so) in a manner that facilitates the clarity, transparency and understanding of the intended contributions, without prejudice to the legal nature of the contributions”.
80. The twentieth session of the Conference of the Parties to the Convention (**COP 20**) took place from 1 to 12 December 2014 in Lima, Peru.
81. The report of COP 20 “Not[ed] with grave concern the significant gap between the aggregate effect of Parties’ mitigation pledges in terms of global annual emissions of greenhouse gases by 2020 and aggregate emission pathways consistent with having a likely chance of holding the increase in global average temperature below 2 °C or 1.5 °C above pre-industrial levels”.
82. At COP 20 the parties to the Convention agreed to submit an “intended nationally determined contribution” (**INDC**) for the purposes of negotiating a new framework agreement under the Convention to meet the goal of Article 2 of the Convention.
83. During the period 7 May 2015 to 3 June 2015 the Minister undertook public consultation on New Zealand’s post-2020 emissions target under the Convention.
84. On 7 July 2015 the Minister announced a “provisional target” for reduction of emissions of greenhouse gasses of 30% below 2005 levels by 2030, which equates to a reduction of 11% below New Zealand’s 1990 emission levels by 2030.
85. On or about 7 July 2015 the Minister set the “provisional target” as New Zealand’s INDC (**INDC decision**).
86. The twenty first session of the Conference of the Parties to the Convention (**COP 21**) will take place in Paris from 30 November 2015 to 11 December 2015.
87. The objective of COP 21 is to achieve a legally binding and universal global agreement on climate change.

**FIRST CAUSE OF ACTION, UNDER JUDICATURE AMENDMENT
ACT: ILLEGALITY (FAILURE TO REVIEW TARGET)**

88. In setting the Target the Minister is required to act consistently with the purpose of the Act which is, among other things, to enable New Zealand to meet its international obligations under the Convention. Accordingly, the Minister must act consistently with:
- (a) The objective expressed in Article 2 of the Convention of achieving stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system.
 - (b) The principles in Article 3 of the Convention which Parties are to be guided by in their actions to achieve the objective of the Convention and to implement its provisions, including:
 - (i) The Parties should protect the climate system for the benefit of present and future generations of humankind, on the basis of equity and in accordance with their common but differentiated responsibilities and respective capabilities.
 - (ii) The developed country Parties should take the lead in combating climate change and the adverse effects thereof.
 - (iii) The specific needs and special circumstances of developing country Parties, especially those that are particularly vulnerable to the adverse effects of climate change, and of those Parties, especially developing country Parties, that would have to bear a disproportionate or abnormal burden under the Convention, should be given full consideration.
 - (iv) The Parties should take precautionary measures to anticipate, prevent or minimize the causes of climate change and mitigate its adverse effects.
 - (c) The commitments in Article 4 of the Convention, which themselves must be fulfilled consistently with the objectives and principles of the Convention, including:
 - (i) To formulate, implement, publish and regularly update national programmes containing measures to mitigate climate change by addressing anthropogenic emissions;
 - (ii) To adopt national policies and take corresponding measures on the mitigation of climate change, by limiting anthropogenic emissions of greenhouse gases and protecting and enhancing greenhouse gas sinks and reservoirs; and

- (iii) To adopt national policies and measures that demonstrate that developed countries are taking the lead in modifying longer-term trends in anthropogenic emissions consistent with the objective of the Convention.

- 89. In light of these obligations, the Minister is required to exercise his target setting power under the Act to set a target at a level that will, if adopted by other developed countries in combination with appropriate targets set by developing countries, stabilize greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system.

- 90. The Target will not, if adopted by other developed countries in combination with appropriate targets set by developing countries, stabilize greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system.

- 91. In breach of s225 of the Act the Minister:
 - (a) failed to review the Target after the release of AR5; and / or
 - (b) failed to set a new Target; and / or
 - (c) failed to set a new Target that will, if adopted by other developed countries in combination with appropriate targets set by developing countries, stabilize greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system.

Relief sought:

- (a) A declaration that the Minister has breached the Act in:
 - (i) failing to review the Target after the release of AR5; and / or
 - (ii) failing to set a new Target; and / or
 - (iii) failing to set a new Target that will, if adopted by other developed countries in combination with appropriate targets set by developing countries, stabilize greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system.

- (b) An order requiring the Minister to set a new Target that will, if adopted by other developed countries in combination with appropriate targets set by developing countries, stabilize greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system.

- (c) Costs.

SECOND CAUSE OF ACTION, DECLARATION: INDC DECISION UNLAWFUL (FAILURE TO TAKE INTO ACCOUNT RELEVANT CONSIDERATIONS)

92. In setting the INDC the Minister obtained extensive economic modelling of the costs of reducing emissions from Treasury, Infometrics, and Landcare Research.
93. That economic modelling did not take into account the costs of dealing with the effects of climate change in a “business as usual” scenario.
94. The Minister failed to obtain any similar economic modelling assessing the costs of dealing with the effects of climate change in a “business as usual” scenario.
95. Under Article 3 of the Convention the Minister was required to give “full consideration” to “the specific needs and special circumstances of developing country Parties to the Convention, especially those that are particularly vulnerable to the adverse effects of climate change, and of those Parties, especially developing country Parties, that would have to bear a disproportionate or abnormal burden under the Convention”.
96. In setting the INDC the Minister failed to take into account relevant considerations, namely:
 - (a) The costs of dealing with adverse effects of climate change in a “business as usual” situation.
 - (b) The fact that the scientific consensus shows the INDC to fall short of the extent and speed of reductions needed to stabilize greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system.
 - (c) The specific needs and special circumstances of developing country Parties to the Convention, especially those that are particularly vulnerable to the adverse effects of climate change, and of those Parties, especially developing country Parties, that would have to bear a disproportionate or abnormal burden under the Convention.

Relief sought:

- (a) A declaration that the INDC decision was unlawful.
- (b) An order for certiorari / quashing the INDC decision and an order that the decision be remade.
- (c) Costs.

**THIRD CAUSE OF ACTION, DECLARATION: INDC DECISION
(IRRATIONALITY/UNREASONABLENESS)**

97. The INDC decision was irrational.

Particulars

- (a) There is no rational basis for belief that the INDC will, if adopted by other developed countries in combination with appropriate targets set by developing countries, stabilize greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system.
- (b) The global scientific consensus shows the INDC to fall short of the extent and speed of reductions needed to stabilize greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system.

Relief sought:

- (a) A declaration that the INDC decision was unlawful.
- (b) An order for certiorari / quashing the INDC decision and an order that the decision be remade.
- (c) Costs.

FOURTH CAUSE OF ACTION: INDC DECISION (MANDAMUS)

98. The only lawful decision in relation to the INDC is a decision to set the INDC at a level that will, if adopted by other developed countries in combination with appropriate targets set by developing countries, stabilize greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system.

Relief sought:

- (a) An order for Mandamus requiring the Minister to set the INDC at a level that will, if adopted by other developed countries in combination with appropriate targets set by developing countries, stabilize greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system.
- (b) Costs.

This document is filed by Michael Heard solicitor for the plaintiff of the firm LeeSalmonLong.

Documents for the plaintiff may be served at the offices of LeeSalmonLong situated on Level 16, Vero Centre, 48 Shortland Street, Auckland, or may be posted to P O Box 2026, Shortland Street, Auckland.

**Schedule 1 – Climate Change Response (2050 Emissions Target) Notice
2011 [Published 31 March 2011]**

Pursuant to section 224 of the Climate Change Response Act 2002, the Minister for Climate Change Issues gives the following notice:

NOTICE

1. Title-

This notice is the Climate Change Response (2050 Emissions Target) Notice 2011.

2. Commencement-

This notice comes into force 28 days after the date of publication of this notice in the New Zealand Gazette.

3. Target-

The government has set a target for a 50% reduction in New Zealand greenhouse gas emissions from 1990 levels by 2050.

Dated at Wellington this 27th day of March 2011.

HON NICK SMITH, Minister for Climate Change Issues.

Explanatory Note

This note is not part of the notice, but is intended to indicate its general effect.

The 1990 level is based on New Zealand's gross greenhouse gas emissions as per the agreed accounting rules of the Kyoto Protocol under the United Nations Convention Framework rules on climate change.

The 2050 target is based on New Zealand's net greenhouse gas emissions and will take into account any removals or emissions arising from afforestation or deforestation since 1990 consistent with the Kyoto Protocol under the United Nations Convention Framework on Climate Change.