



Proactive Release

The following document has been proactively released by the Department of the Prime Minister and Cabinet on behalf of Rt Hon Christopher Luxon, Prime Minister:

Documents held by the Prime Minister's office relating to the Smith v Fonterra litigation and related matters

The following documents have been included in this release:

Part 1 General documents

Item	Date	Document title, subject line or description	Decision
	August 2026	Background to the proactive release and information included	Release in full

Part 2 Information relating to the Smith v Fonterra Co-operative Group litigation

Item	Date	Subject line and attachments	Decision
Item 01	7/02/2024	RE: Lines: Smith v Fonterra - bullet points for PMO	Some information withheld under: s9(2)(a) s9(2)(h)
Item 02	7/02/2024	RE: Lines: Smith v Fonterra - bullet points for PMO [Article from Energy News (7/02/2024) " <i>Climate activist cleared to sue emitters</i> " is publicly available, but behind a paywall. Link to article. https://www.energynews.co.nz/news/climate-change/151880/climate-activist-cleared-sue-emitters]	Some information withheld under: s9(2)(a) s9(2)(b)(ii) s9(2)(h)
Item 03	7/02/2024	FW: Smith v Fonterra - bullet points for PMO	Some information withheld under: s9(2)(a) s9(2)(h)
Item 04	30/08/2024	FW: Additional letter to Attorney-General from the New Zealand Law Society <i>Attachments – not included here:</i> • 30/08/2026 letter from the New Zealand Law Society to the Attorney-General • 23/08/2026 letter from the New Zealand Law Society to the Attorney-General <i>[Both letters are published on the NZ Law Society website at:</i> • 23 August 2026 • 30 August 2026	Some information withheld under: s9(2)(a)
Item 05	29/10/2024	FW: S v F meeting notes <i>Attachment:</i> [withheld in full under s9(2)(h)]	Some information withheld under: s9(2)(a) s9(2)(h)



Item	Date	Subject line and attachments	Decision
Item 06	1/11/2024	RE: S v F meeting notes	Some information withheld under: s9(2)(a) Some duplicate information

Part 3 Information relating to the response to the litigation leading to the Climate Change Response (Tort Liability) Amendment Bill

Item	Date	Subject line and attachments	Decision
Item 07	12/02/2024	RE: Smith v Fonterra- reasoning and implications	Some information withheld under: s9(2)(a) s9(2)(h)
Item 08	26/02/2024	RE: [Withheld under s9(2)(h)]	Some information withheld under: s9(2)(a) s9(2)(h)
Item 09	28/02/2024	FW: AM on Smith v Fonterra <i>Attachment:</i> Briefing 23/02/2024 from MOJ to the Minister of Justice "Supreme Court decision in Smith v Fonterra".	Some information withheld under: s9(2)(a) s9(2)(g)(i) s9(2)(h)
Item 10	6/03/2024	[Email withheld in full under s9(2)(h)] <i>Attachments:</i> - Letter (6/03/2024) from the Attorney-General to the Prime Minister and other Ministers "Options for legislative reform following Smith v Fonterra [2024] NZSC 5" [Briefing withheld in full under s9(2)(h)]	Some information withheld under: s9(2)(a) s9(2)(h) Some duplicate information
Item 11	17/06/2024	LEGALLY PRIVILEGED - FW: BRF 4648 - Options for responding to Smith v Fonterra Litigation <i>Attachments:</i> - Briefing (4/06/2024) from MfE (now MCERT) to the Minister of Climate Change "Options for responding to Smith v Fonterra Litigation" [Duplicate] Letter (6/03/2024) from the Attorney-General to the Prime Minister and other Ministers "Options for legislative reform following Smith v Fonterra [2024] NZSC 5" [Duplicate: Briefing withheld in full under s9(2)(h)]. - Letter (14/03/2024) from Minister of Justice to Attorney General "RE: Options for legislative reform following Smith v Fonterra [2024] NZSC 5".	Some information withheld under: s9(2)(a) s9(2)(g)(i) s9(2)(h) Some duplicate information
Item 12	10/09/2024	FW: AM on Smith v Fonterra	Some information withheld under: s9(2)(a)



Item	Date	Subject line and attachments	Decision
		<i>Attachment:</i> [Duplicate] Briefing 23/02/2024 from MOJ to the Minister of Justice “ <i>Supreme Court decision in Smith v Fonterra</i> ”.	s9(2)(g)(i) s9(2)(h) Some duplicate information
Item 13	10/09/2024	FW: Letter from the Attorney-General: Smith v Fonterra [2024] NZSC 5 <i>Attachments:</i> [Duplicate] Letter (6/03/2024) from the Attorney-General to the Prime Minister and other Ministers “<i>Options for legislative reform following Smith v Fonterra [2024] NZSC 5</i>” [Duplicate: Briefing withheld in full under s9(2)(h)].	Some information withheld under: s9(2)(a) Some duplicate information
Item 14	12/09/2024	[FW: [LEGALLY PRIVILEGED] FW: BRF 4648 - Options for responding to Smith v Fonterra Litigation <i>Attachment:</i> [Duplicate] Briefing (4/06/2024) from MfE (now MCERT) to the Minister of Climate Change “ <i>Options for responding to Smith v Fonterra Litigation</i> ”	Some information withheld under: s9(2)(a) s9(2)(h) Some duplicate information
Item 15	30/03/2026	Ministerial consultation (SOU) - Targeted reform of emissions-related torts <i>Attachment:</i> Draft Cabinet Paper “ <i>Policy decisions on targeted reform of emissions-related torts</i> ” The final paper with related Cabinet Minute is available on the Ministry of Justice website , from Page 52.	Some information withheld under: s9(2)(a) s9(2)(g)(i)
Item 16	8/05/2026	FW: For weekend bag: aide-memoire [<i>withheld under s9(2)(h)</i>] [CLODOCS.JUS043.1305.FID592215] <i>Attachment:</i> Aide-mémoire [<i>withheld in full under s9(2)(h)</i>]	Some information withheld under: s9(2)(a) s9(2)(h)
Item 17	28/02/2024 to 14/10/2024	[<i>Text messages with PMO staff members</i>]	Some information withheld under: s9(2)(a) s9(2)(g)(i) Some duplicate information

Part 4 Information about meetings and communications between the Prime Minister or his office and the defendants to the litigation relating to the Smith v Fonterra case.

The defendants are:

1. Fonterra Co-operative Group Limited
2. Genesis Energy Limited
3. Dairy Holdings Limited
4. New Zealand Steel Limited
5. Z Energy Limited



6. Channel Infrastructure NZ Limited
7. BT Mining Limited

Item	Date	Document title or subject line	Decision
Item 18		Meetings and phone calls between staff in the Prime Minister's office and defendants to the Smith v Fonterra litigation in relation to the case	Release in full
Item 19	12/02/2026	Re: Fonterra - business update	Some information withheld under: s9(2)(a) Some information not in scope
Item 20	23/10/2025	FW: Request for Joint Ministerial Meeting – Smith v Fonterra Litigation	Some information withheld under: s9(2)(a)
Item 21	17/06/2026	FW: follow up – addendum <i>Attachment: Z Energy addendum document “Z Energy (Z) – Impact of Smith v Fonterra on funding Arrangements”</i>	Some information withheld under: s9(2)(a) s9(2)(b)(ii) s9(2)(ba)

Some parts of this information release would not be appropriate to release and, if requested, would be withheld under the Official Information Act 1982 (the Act). Where this is the case, the relevant section of the Act that would apply has been identified. Where information has been withheld, no public interest has been identified that would outweigh the reasons for withholding it.

Key to redaction codes:

- section 9(2)(a), to protect the privacy of individuals
- section 9(2)(b)(ii), to protect the commercial position of the person who supplied the information, or who is the subject of the information
- section 9(2)(ba), to protect the supply of similar information in the future, or to prevent damage to the public interest
- section 9(2)(g)(i), to maintain the effective conduct of public affairs through the free and frank expression of opinion
- section 9(2)(h), to maintain legal professional privilege.

Where information is duplicated or not in scope of the release, this has also been marked.

From: s9(2)(a): former PMO staff member
To: s9(2)(a): Attorney-General's office
Cc:
Subject: RE: Lines: Smith v Fonterra - bullet points for PMO

Very helpful, thank you
s9(2)(a): former PMO staff member

CHIEF POLICY ADVISOR
Prime Minister's Office

s9(2)(a) | D: s9(2)(a)

From: s9(2)(a): Attorney-General's office

Sent: Wednesday, February 7, 2024 1:48 PM

To: s9(2)(a): former PMO staff member

Cc: s9(2)(a): Attorney-General's office

Subject: Lines: Smith v Fonterra - bullet points for PMO

s9(2)(a)

Here are a few short bullet points regarding the Supreme Court's decision in *Smith v Fonterra* released this morning, that the Prime Minister could use if asked at the stand-up this afternoon:

- The Crown is not a party to this litigation. It is a private claim by Mr Smith against seven private companies (including Fonterra, NZ Steel, Z Energy).
- While this decision does not directly impact the Crown, it is obviously a significant legal decision. The government's lawyers will be carefully considering the decision and potential implications.
- It wouldn't be appropriate for me to say anything further at this time.

s9(2)(h)

Thanks

s9(2)(a)

From: s9(2)(a)
To: s9(2)(a): PM's Office s9(2)(a): former PMO staff member PMO-Press
Cc: PMO-Advisors
Subject: RE: Lines: Smith v Fonterra - bullet points for PMO
Date: Wednesday, 7 February 2024 2:21:18 pm

Confirming our office has also received an identical request from TVNZ as noted below, but I haven't replied yet



s9(2)(a) **Ministerial Advisor**

Office of Hon Simon Watts

Minister of Climate Change | Minister of Revenue

E: s9(2)(a)

PH: s9(2)(a) | s9(2)(a)

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From: s9(2)(a): PM's Office
Sent: Wednesday, February 7, 2024 2:20 PM
To: s9(2)(a): former PMO staff member PMO-Press
Cc: PMO-Advisors; s9(2)(a): Minister of Climate Change's office
Subject: RE: Lines: Smith v Fonterra - bullet points for PMO

Thanks – fyi we've had this come through from TVNZ

Kia Ora PMO team,

We'd like to put a question or two to the Prime Minister at postcab this afternoon about this morning's Court judgement. It has allowed Mike Smith's case to go ahead, against some major companies that are blamed for climate change-related emissions.

<https://www.1news.co.nz/2024/02/07/iwi-leader-mike-smith-gets-his-day-in-court-against-seven-major-emitters/>

Some of those companies have said it should be parliament rather than the courts that set climate change policy and goals. So questions will be along lines of:

Businesses are resoundingly saying greater climate change regulations on companies is a decision for Parliament, not the courts – do you agree with this?

Do you have any plans as a Government to put further greenhouse gas emissions restrictions on big businesses in place?

We have put this to the Climate Change minister and are awaiting a response but this won't be on-camera.

From: s9(2)(a): former PMO staff member
Sent: Wednesday, February 7, 2024 2:17 PM
To: PMO-Press s9(2)(a)
Cc: PMO-Advisors s9(2)(a); s9(2)(a): Minister of Climate Change's office
Subject: FW: Lines: Smith v Fonterra - bullet points for PMO
 Suggested lines s9(2)(h) for post Cab s9(2)(a) is happy with these:

- The Crown is not a party to this litigation. It is a private claim by Mr Smith against seven private companies (including Fonterra, NZ Steel, Z Energy).
- While this decision does not directly impact the Crown, it is obviously a significant legal decision. The government's lawyers will be carefully considering the decision and potential implications.
- It wouldn't be appropriate for me to say anything further at this time.

s9(2)(h)

s9(2)(h)

A large rectangular area of the document is redacted, appearing as a solid grey block.

—
If it is any help, here is Energy News on the decision as background:

s9(2)(b)(ii)

A large rectangular area of the document is redacted, appearing as a solid grey block. A large, diagonal, semi-transparent red watermark reading "Proactively Released" is overlaid across the entire redacted area.

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[Article above from Energy News (7/02/2024) "Climate activist cleared to sue emitters" is publicly available, but behind a paywall. Link to article: <https://www.energynews.co.nz/news/climate-change/151880/climate-activist-cleared-sue-emitters>]

From: s9(2)(a): Attorney-General's office
To: s9(2)(a): former PMO staff member
Cc: s9(2)(a): Attorney-General's office
Subject: FW: Smith v Fonterra - bullet points for PMO
Date: 07 February 2024 15:13:50

Hi s9(2)(a)

I hope you don't mind me reaching out to you directly.

Jess Gorman, PAG advisor, requested that s9(2)(h) provide more context for the two proceedings for the Prime Minister's information, in addition to what was already sent to you by s9(2)(a)

Please find the additional context, in addition to the original bullet points, in red.

From: Kate Wevers <Kate.Wevers@crownlaw.govt.nz>

Sent: Wednesday, February 7, 2024 1:44 PM

To: s9(2)(a): Attorney-General's office

Subject: Smith v Fonterra - bullet points for PMO

Kia ora s9(2)(a)

Thanks for your call. Here are a few short bullet points regarding the Supreme Court's decision in *Smith v Fonterra* released this morning, that the Prime Minister could use if asked at the stand-up this afternoon:

- The Crown is not a party to this litigation. It is a private claim by Mr Smith against seven private companies (including Fonterra, NZ Steel, Z Energy) in tort relating to damage caused by climate change.
- The Supreme Court's decision found that the claim should proceed to trial. The Supreme Court allowed an appeal by Mr Smith against the Court of Appeal decision striking out the claim. While the Supreme Court decision does not directly impact the Crown, it is obviously a significant legal decision. The government's lawyers will be carefully considering the decision and potential implications.
- It wouldn't be appropriate for me to say anything further at this time.

s9(2)(h)

Ngā mihi

Kate

Kate Wevers ([she/her/Ms](#))

Team Manager and Crown Counsel, Public Law

Te Tari Ture o te Karauna Crown Law Office

M: s9(2)(a)

19 Aitken Street | PO Box 2858 | Wellington 6011



Confidentiality Notice: This email may contain information that is confidential or legally privileged. If you have received it by mistake, please:

(a) reply promptly to that effect, and remove this email and the reply from your system; (b) do not act on this email in any other way. Thank you.

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From: [Hamish Rutherford](#)
To: [PMO-Press](#); [PMO-Advisors](#)
Subject: FW: Additional letter to Attorney-General from the New Zealand Law Society
Date: 30 August 2024 15:44:50
Attachments: [AG - Judiciary criticisms - 30.8.24.pdf](#)
[Letter to Attorney-General.pdf](#)

No action necessary – but the law society has written to the AG a second time about the Jones comments and I understand is going to publicise the letters.



Hamish Rutherford
Chief Press Secretary | Office of Rt Hon Christopher Luxon
Prime Minister
Minister for National Security and Intelligence
Minister Responsible for Ministerial Services

M: [s9\(2\)\(a\)](#)
Private Bag 10041, Parliament Buildings, Wellington 6160, New Zealand

From: [s9\(2\)\(a\): Attorney-General's office](#)
Sent: Friday, August 30, 2024 2:27 PM
To: Hamish Rutherford <Hamish.Rutherford@parliament.govt.nz>
Cc: [s9\(2\)\(a\): Attorney-General's office](#) [s9\(2\)\(a\): PM's Office](#)
Subject: Fwd: Additional letter to Attorney-General from the New Zealand Law Society

From: [s9\(2\)\(a\): Attorney-General's office](#)
Sent: Friday, August 30, 2024 2:08 PM
To: [s9\(2\)\(a\): PM's Office](#)
Cc: [s9\(2\)\(a\): Attorney-General's office](#)
Subject: FW: Additional letter to Attorney-General from the New Zealand Law Society

FYI – [s9\(2\)\(a\)](#) – please see **attached** and **below**.

[s9\(2\)\(a\)](#)

From: [s9\(2\)\(a\): Attorney-General's office](#)
Sent: Friday, August 30, 2024 1:58 PM
To: [s9\(2\)\(a\): Attorney-General's office](#)
Subject: FW: Additional letter to Attorney-General from the New Zealand Law Society

Hi [s9\(2\)\(a\)](#)

Please see **below** and **attached** letters from the Law Society. They want to publish these letters.

I note a new letter dated today.

[s9\(2\)\(a\)](#)

From: Bronwyn Jones [s9\(2\)\(a\)](#)
Sent: Friday, August 30, 2024 1:52 PM
To: Judith Collins (MIN) <L.Collins@ministers.govt.nz>
Cc: [s9\(2\)\(a\): Attorney-General's office](#)
Subject: Additional letter to Attorney-General from the New Zealand Law Society

Tēnā koe Attorney General,

Following on from our letter of 23 August 2024, please find attached a further letter from the New Zealand Law Society. We had initially held off publishing this letter while waiting for a response. However, given the most recent events we feel we do now need to be publish both letters.

Please do not hesitate to contact me if you have any queries or concerns.

Nāku noa, nā

Bronwyn Jones (she/her)
General Manager Policy, Courts and Government

New Zealand Law Society | Te Kāhui Ture o Aotearoa

Ms9(2)(a) · lawsociety.org.nz

s9(2)(a)

Level 4, 17-21 Whitmore Street, Wellington · PO Box 5041, Wellington 6140 · DX SP20202

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[Attached two letters from the New Zealand Law Society to the Attorney-General are publicly available on the Law Society's website at:

23 August 2024: <https://www.lawsociety.org.nz/assets/News-and-publications-documents/News-documents/Letter-to-Attorney-General-23.08.24.pdf>

30 August 2024: <https://www.lawsociety.org.nz/assets/News-and-publications-documents/News-documents/Letter-to-Attorney-General-30.08.24.pdf>]

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From: s9(2)(a): Attorney-General's office
To: s9(2)(a): former PMO staff member
Cc: s9(2)(a): Attorney-General's office
Subject: FW: S v F meeting notes
Date: 29 October 2024 17:29:50
Attachments: [2024_10_23 Smith v Fonterra.pdf](#)

Hi s9(2)(a)

Here are the minutes for the S v F meeting. If you have any changes, let us know.
(Also copying in s9(2)(a) as she will be looking after this eventually).

Cheers

s9(2)(a)

From: s9(2)(a): Attorney-General's office
Sent: Tuesday, 29 October 2024 5:02 PM
To: s9(2)(a): Attorney-General's office
Subject: RE: S v F meeting notes

Hi s9(2)(a)

Please see meeting notes below from the Attorney's meeting with the **below** attendees on Smith v Fonterra.

Thanks,
s9(2)(a)

Attendees:

1. Hon Judith Collins KC, Attorney-General
2. Hon Penny Simmonds, Minister for the Environment
3. s9(2)(a) Chief Policy Advisor
4. Aaron Martin, Deputy Solicitor-General
5. Kirsty Millard, Senior Crown Counsel
6. s9(2)(a) Ministerial Advisor (Hon Judith Collins KC)
7. s9(2)(a) Ministerial Advisor (Hon Penny Simmonds)
8. s9(2)(a) Private Secretary (Attorney-General)

s9(2)(h)





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From: s9(2)(a): Attorney-General's office
To: s9(2)(a): former PMO staff member
Cc: s9(2)(a): Attorney-General's office
Subject: RE: S v F meeting notes
Date: 01 November 2024 14:54:48

Hi s9(2)(a)

Just checking you have no further comment before the notes are sent on to MOJ's office?

Cheers

s9(2)(a)

From: s9(2)(a): Attorney-General's office
Sent: Tuesday, 29 October 2024 7:45 PM
To: s9(2)(a): former PMO staff member
Cc: s9(2)(a): Attorney-General's office
Subject: RE: S v F meeting notes

They came from my notes, which s9(2)(a) refined and checked for accuracy.

From: s9(2)(a): former PMO staff member
Sent: Tuesday, 29 October 2024 7:26 PM
To: s9(2)(a): Attorney-General's office
Cc: s9(2)(a): Attorney-General's office
Subject: Re: S v F meeting notes

Thanks. Who wrote this?

s9(2)(a): former PMO staff member

Chief Policy Advisor
Office of the Prime Minister

s9(2)(a)

[Duplicate]



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