17 August 2026

Ref: OIA-2026/27-0032

[redacted]

Tēnā koe [redacted],

Official Information Act request relating to Climate Change Response (Tort Liability) Amendment Bill

Thank you for your request made under the Official Information Act 1982 (the Act), which was received by the Department of the Prime Minister and Cabinet (DPMC) on 8 July 2026. You requested:

> "*Pursuant to the Official Information Act 1982, I request the following official information held by the Department of the Prime Minister and Cabinet and/or the Office of the Prime Minister:*
>
> 1. *All correspondence, emails, meeting minutes, briefing notes, and metadata sent or received between 1 January 2026 and 2 July 2026 concerning the formulation, drafting, and fast-tracking of the Climate Change Response (Tort Liability) Amendment Bill 2026.*
> 2. *All communications within the scope of item 1 that were sent, received, or routed through the private email server/account '[redacted]' by policy officials, advisers, or Ministers, following the Chief Ombudsman's ruling on 1 July 2026.*
> 3. *All communications, draft texts, or agreements exchanged between officials using the '[redacted]' account and representatives of Fonterra Co-operative Group Limited, Z Energy Limited, or The New Zealand Initiative*."

On 22 July 2026, we advised you that we would usually transfer your request to the Prime Minister for information held by the office of the Prime Minister but, as you have made a request directly to the Prime Minister, we referred you to the response from the Prime Minister's office.

Parts 2 and 3 of your request, relating to emails sent or received from a personal Gmail account, were transferred to the Department of Internal Affairs (DIA).

On 3 August 2026, we wrote to you extending the time limits (both for final response and for any additional transfers needed) by 10 working days, to 20 August 2026. The additional time was needed to complete consultations before a final decision was made on your request.

I am now in a position to respond to part 1 of your request in relation to any information held by DPMC. To scope your request, keyword searches (using 'tort' and 'tort liability') were undertaken of our document management system for documents and emails, and the relevant official asked to search their records for any additional information.

There was an email with an attachment received by DPMC from the Ministry of Business, Innovation and Employment (MBIE). I believe this email and the attached document are more closely connected to the functions of MBIE and as such I have decided to transfer your request in relation to these documents to MBIE under section 14(b)(ii) of the Act.

The Climate Change Response (Tort Liability) Amendment Bill falls within the Justice portfolio. There were some draft Cabinet documents and other correspondence and attachments that are more closely connected to the functions of the Ministry of Justice (MOJ). I would usually transfer your request in relation to these documents to MOJ.

Executive Wing, Parliament Buildings, Wellington, New Zealand 6011
☎ 64 4 817 9698 www.dpmc.govt.nz

However, I understand that you have also made a request directly to MOJ that would include these documents. As such, I refer you to MOJ's response.

I note that some of the MOJ documents are now publicly available on the MOJ website at: www.justice.govt.nz/assets/Documents/Publications/Proactive-release-Policy-decisions-on-proposals-for-targeted-statutory-reform-of-public-nuisance-tort.pdf. The Cabinet paper and related minute "*Policy Decisions on Targeted Reform of Torts*" (29/04/2026) SOU-26-MIN-0044, are available here (from page 52).

Information being released:

Please find attached documents (emails, attached documents and text messages) identified as being held by DPMC that are relevant to your request. These are set out in the table below.

Doc	Date	Subject Line	Decision
Item 01	23/06/2026	BORA Vet: Consistency with the New Zealand Bill of Rights Act 1990: Climate Change Response *Attachment:* • Bill of Rights Vet (23/06/2026): Consistency with the New Zealand Bill of Rights Act 1990: Climate Change Response (Tort Liability) Amendment Bill: PCO 28711/1.9 The attached draft Bill "Climate Change Response (Tort Liability) Amendment Bill" is withheld under section 9(2)(h) of the Act. The Bill is available on the Legislation website at: www.legislation.govt.nz/bill/government/2026/330/en/latest.	Some information withheld under: s9(2)(a) s9(2)(h)
Item 02	1/07/2026	RE: BORA Vet: Consistency with the New Zealand Bill of Rights Act 1990: Climate Change Response *2 Attachments:* • [Duplicate] (Signed copy) Bill of Rights Vet (23/06/2026): Consistency with the New Zealand Bill of Rights Act 1990: Climate Change Response (Tort Liability) Amendment Bill: PCO 28711/1.9 • Email (1/07/2026) from Office of the Attorney-General enclosing document above	Some information withheld under: s9(2)(a) Some duplicate information (released with email of 23/06/2026 – Item 01) Some information not in scope

As noted in the table above and on the documents themselves, some information and some attached documents have been withheld. The information has been withheld under the following sections of the Act:

- section 9(2)(a), to protect personal information.
- section 9(2)(f)(iv), to maintain the confidentiality of advice tendered by or to Ministers and officials
- section 9(2)(h), to maintain legal professional privilege.

Due to the public interest, the Prime Minister's office is intending to publish information held by the Prime Minister's Office in relation to the Smith v Fonterra Co-operative Group litigation, the amendment to the Climate Change Response Act 2002 and related matters shortly.

There is some information in scope of your request that is also held by the Prime Minister's office and is to be included as part of the proactive release. Accordingly, I am refusing your request as it relates to this information under section 18(d) of the Act on the basis that the requested information will soon be publicly available. This is subject to some information being withheld under the provisions of the Act.

Information being withheld:

There are some emails and attached documents held by DPMC that relate to the Amendment Bill and the legislative programme. I have decided to withhold these documents in full under section 9(2)(h) of the Act, to maintain legal professional privilege.

There is an additional email identified in scope. This email is withheld under section 9(2)(g)(i) of the Act, to maintain the effective conduct of public affairs through the free and frank expression of opinions. I have decided to release the relevant part of this email to you as a summary under section 16(1)(e) of the Act as follows:

> *A list of consultation papers was circulated to staff in the Prime Minister's office and DPMC officials for a meeting on 2 June 2026. Included on the list was the paper for the Cabinet Legislation Committee "Climate Change Response (Tort Liability) Amendment Bill: Approval for Introduction"*

The Bill is publicly available on the New Zealand Legislation website at: www.legislation.govt.nz/bill/government/2026/330/en/latest.

The only other information identified as relevant to your request that would not be included in the responses from other agencies is a briefing provided to the Prime Minister by DPMC's Policy Advisory Group. These briefings are provided to the Prime Minister in confidence to support him in his role as leader of the Government and chair of Cabinet. This briefing is withheld in its entirety under the following sections of the Act:

- section 9(2)(f)(iv), to maintain the confidentiality of advice tendered by or to Ministers and officials
- 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.

In making my decision, I have considered the public interest considerations in section 9(1) of the Act. No public interest has been identified that would be sufficient to outweigh the reasons for withholding that information.

You have the right to ask the Ombudsman to investigate and review my decision under section 28(3) of the Act.

This response will be published on the DPMC website during our regular publication cycle. Typically, information is released monthly, or as otherwise determined. Your personal information including name and contact details will be removed for publication.

Nāku noa, nā



Janine Smith
DCE, Policy and Delivery Unit

Item 01

From: Ministerial Services
To: s9(2)(a): Attorney-General's office
Cc: s9(2)(a): Attorney-General's office; Peter Gunn; Jessica Gorman [DPMC]
Subject: BORA Vet: Consistency with the New Zealand Bill of Rights Act 1990: Climate Change Response
Date: 23 June 2026 15:21:35
Attachments: image001.png
BORA vet_ Climate Change Response (Tort Liability) Amendment Bill - 5 June 2026(10264819.4).pdf

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Kia ora s9(2)(a)

Please find **attached** BORA vet advice for the Attorney-General's consideration: Consistency with the New Zealand Bill of Rights Act 1990: Climate Change Response, 23 June 2026.

LEG is Thursday.

Ngā mihi

Joana Horne she/her
Advisor, Government and Ministerial Services

Te Tari Ture o te Karauna Crown Law Office
P: s9(2)(a)
19 Aitken Street | PO Box 2858 | Wellington 6011

Te Tari Ture o te Karauna Crown Law

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.

Released under the Official Information Act 1982

Te Tari Ture o te Karauna
Crown Law

BILL OF RIGHTS VET ADVICE

23 June 2026

Consistency with the New Zealand Bill of Rights Act 1990: Climate Change Response (Tort Liability) Amendment Bill: PCO 28711/1.9

We have concluded this Bill is **consistent** with the New Zealand Bill of Rights Act 1990.

Details of the Bill

Choose from drop down box.	Hon Paul Goldsmith	Bill Type:	Government
Committee:	LEG	Date of next meeting:	25 June 2026

Recommended action

Agree with the attached advice about the consistency of the Bill with the New Zealand Bill of Rights Act	Yes / No / Discuss
Agree to publication of the advice on the Ministry of Justice website	Yes / No
Refer a copy of the advice to the Ministry of Justice	Yes / No
Refer a copy of the advice to Minister Goldsmith	Yes / No
Refer a copy of the advice to the Parliamentary Counsel Office	Yes / No

Contact for telephone discussion (if required)

Name	Position	Telephone	Order for Contact
Peter Gunn	Crown Counsel	s9(2)(a)	1

_____

Hon Chris Bishop
Attorney-General
/ / 2026

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BILL OF RIGHTS VET ADVICE

Introduction

1. We have concluded that the **Climate Change Response (Tort Liability) Amendment Bill** is **consistent** with the rights and freedoms affirmed in the Bill of Rights Act.

2. In reaching that conclusion, we have considered the consistency of the Bill with sections 19 (freedom from discrimination), 20 (rights of minorities) and 27 (right to justice). Our analysis is set out below.

The Bill

3. The Bill amends the Climate Change Response Act 2002 to introduce a statutory bar on tort claims for emissions-related climate change effects.

4. The context of the Bill is the *Smith v Fonterra* litigation, in which Mike Smith has brought a claim against seven New Zealand defendants, each of which are involved in an industry that either emits greenhouse gases or supplies products which release greenhouse gases when burned. The Court of Appeal confirmed the striking out of the proceeding on the basis that the claim could not succeed.[1] The Supreme Court would have allowed the claim to proceed, taking the view that it was premature to strike out the claim before the evidence had been heard.[2]

5. The intent of the Bill is to ensure that New Zealand's response to climate change should be managed through the Climate Change Response Act, avoiding a parallel and potentially contradictory regulatory regime through the courts. That was one of the reasons the Court of Appeal gave for striking out the claim:[3]

> In effect Mr Smith is seeking a court-designed and court-supervised regulatory regime. The design of such a system requires a level of institutional expertise, democratic participation and democratic accountability that cannot be achieved through a court process. Courts do not have the expertise to address the social, economic and distributional implications of different regulatory design choices. The court process does not provide all affected stakeholders with an opportunity to be heard, and have their views taken into account. Climate change provides a striking example of a polycentric issue that is not amenable to judicial resolution.

Non-discrimination and minority rights

6. This reflects the claim in *Smith v Fonterra*. Mr Smith is an elder of Ngāpuhi and Ngāti Kahu, and a climate change spokesperson for the Iwi Chairs Forum. Part of Mr Smith's claim is that the respondents "have contributed materially to the climate crisis and have damaged, and will continue to damage, his whenua and moana, including places of customary, cultural, historical, nutritional and spiritual significance to him and his whānau".[4] Part of the loss

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1 *Smith v Fonterra Co-operative Group Ltd* [2021] NZCA 552; [2022] 2 NZLR 284

2 *Smith v Fonterra Co-operative Group Ltd* [2024] NZSC 5; [2024] 1 NZLR 134

3 At [26].

4 SC decision at [3].

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Mr Smith claims is tikanga-based.[5] We have therefore considered whether the Bill engages the right to be free from discrimination, and the rights of minorities.

Discrimination

7. Discrimination requires differential treatment based on a prohibited ground, which results in material disadvantage.[6] Mr Smith did not make a discrimination claim in his pleading in *Smith v Fonterra*, but one of the causes of action pleaded – public nuisance – requires Mr Smith to establish that he has suffered special damage. The courts therefore considered whether Mr Smith would experience the effects of climate change in a way that was distinct from the rest of the community. To the extent that the new statutory bar would prevent Mr Smith and other Māori from bringing a claim for loss that Māori experience differently from other New Zealanders, it could be argued that the Bill is indirectly discriminatory.

8. Mr Smith has claimed that he would suffer special damage because of his interest (according to custom and tikanga) in Māori freehold land on the coast of Wainui Bay in Northland. He also claimed that he would experience distinct loss under tikanga because of his role as a kaitiaki, whose role it is to care for the environment.

9. Both the High Court and Court of Appeal found that the harm suffered by Mr Smith was no different from that suffered by other New Zealanders who live in or use the coastal or marine area. The Supreme Court took a different view, holding that Mr Smith had a "tenable claim" because of his interest (including tikanga interests) in coastal land.[7]

10. Mr Smith's claim that the effects of climate change will be experienced differently by him because of his interest in coastal property cannot amount to differential treatment for the purposes of discrimination, because having an interest in coastal land is not a prohibited ground of discrimination. As the Court of Appeal observed (in the context of the claim of special damage), "[i]n very many places throughout New Zealand there will be sites of historical, nutritional, spiritual and cultural significance that are at risk or under threat. Their harm is substantially the same".[8]

11. It could be argued that removing the right to bring a tort claim for tikanga-based loss would impact Māori differently, on the basis that non-Māori will not experience tikanga-based loss. Although the Supreme Court found the claim to tikanga-based loss "tenable", its decision was on strike-out, and the Court did not comment on whether the claim would ultimately succeed. In the absence of any findings about differential impact between Māori and non-Māori in the Supreme Court, the view adopted by the Court of Appeal remains open: that climate change affects New Zealanders universally. On that basis the right against discrimination would not be infringed. Even if indirect discrimination were established because of the potential for tikanga-based loss, the limit on the right against discrimination would be justified for the reasons set out below at paragraph [16].

---

5 The Bill defines harm to include harm "that is neither physical nor economic (and that may, but need not, be supported by tikanga Māori, or by the right of a minority to enjoy their culture)".

6 *Ministry of Health v Atkinson* [2012] 3 NZLR 456

7 *Smith v Fonterra Co-operative Group Ltd* [2024] NZSC 5; [2024] 1 NZLR 134 at [177]-[189]

8 At [82].

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Rights of minorities

12. Section 20 of the Bill of Rights Act states:

> A person who belongs to an ethnic, religious, or linguistic minority in New Zealand shall not be denied the right, in community with other members of that minority, to enjoy the culture, to profess and practise the religion, or to use the language, of that minority.

13. In *Mendelssohn v Attorney-General*, the leading appellate authority on s 20, the Court of Appeal unanimously held that s 20 does not in general cast positive duties (duties to do some positive act), but only negative duties (duties of noninterference).[9] This is consistent with the general scheme of the Bill of Rights Act, which protects individuals against direct interference by the state rather than requiring the state to confer a substantive benefit.

14. It is clear that cultural connection to land is central to Māori culture. But the statutory bar introduced by the Bill does not deny Māori the right to enjoy their culture in coastal areas. Rather, it ensures that New Zealand's response to climate change is managed through the Climate Change Response Act, avoiding a parallel and contradictory regulatory regime through the courts. To the extent that Māori are unable to enjoy their culture because of the effects of climate change (including rising sea levels), that impact is not a consequence of the statutory bar. It is the consequence of the effects of climate change, which would arise whether or not the defendants to Mr Smith's proceeding reduced their emissions as sought by Mr Smith. As the Court of Appeal said:

> This claim is brought against a small subset of those responsible for the harm that is being suffered by Mr Smith and those he represents. Mr Salmon was not able to identify any principled basis for singling out the seven defendants in these proceedings. If their contribution to climate change is an actionable wrong, the logic underpinning that finding would apply to every individual and every business that has not achieved net zero emissions. Mr Salmon said that the defendants had been selected as "major profit-seeking entities that emit or enable emissions". But as he accepted, none of these defendants standing alone makes a material contribution to climate change …

15. The Supreme Court did not determine this issue, instead concluding it was a matter requiring evidence and therefore unsuitable for determination on a strike-out application. That conclusion reflects the lower evidential threshold applicable in interlocutory proceedings, as distinct from a substantive hearing. While that procedural distinction is significant in litigation, it does not assist in the present context of assessing consistency with the New Zealand Bill of Rights Act 1990. For present purposes, there is no meaningful causal link between the emissions of a particular New Zealand entity and the climate change that affects New Zealand including the specific interests of any person or group, including Māori. Section 20 is therefore not engaged.

Section 5 justification

16. Even were the statutory bar to create a limit on sections 19 or 20, we consider that the limit would be reasonably justified under section 5. The test for section 5 requires that the limit serves a legitimate and sufficiently important objective, is rationally connected to that objective, impairs the right no more than is reasonably necessary for that purpose, and is proportional to the importance of the objective.

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9 *Mendelssohn v Attorney-General* [1999] 2 NZLR 268 (CA) at [14]-[15] and [19]-[26].

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17. The objective of the statutory bar is to ensure that greenhouse gas emissions are addressed through the comprehensive framework established under the Climate Change Response Act. As the Court of Appeal recognised in *Smith v Fonterra*, the regulation of emissions engages inherently polycentric considerations and requires complex policy design of a kind that courts are not well equipped to undertake. Those matters are more appropriately addressed through the legislative and executive branches, which are institutionally capable of balancing competing social, economic, environmental, and intergenerational interests. The statutory scheme also reflects a democratic process that enabled public participation and accountability and delivered a coherent and predictable framework for affected industries. Any remaining issues are better addressed by amendment of the legislation rather than the uncertainty that would arise if such issues were left to be resolved through what is likely to be complex and protracted litigation.

18. The relief sought by Mr Smith highlights the issue. He has not brought a conventional tort claim, seeking compensation for loss caused by the defendants. Instead, he seeks an injunction requiring that each of the defendants' emissions peak by 2025 and reach net zero by 2050 by continued linear reductions "to be supervised by the court". Alternatively, Mr Smith seeks an injunction requiring the defendants to "immediately cease" emitting net emissions.

19. Such relief would require the courts to engage in the kind of regulatory design for which Parliament is properly resourced. The courts would need to decide questions such as: how to weigh different greenhouse gases, at what point in the supply chain should emissions be measured, and how to account for emissions-reducing activities. The court-designed scheme would operate in parallel to the statutory scheme.

20. Courts are not designed or equipped to undertake such a role, and the relief sought is well outside the relief normally sought for tort claims. We consider that the objective of managing climate change emissions through the Climate Change Response Act is sufficiently important to justify limits on sections 19 and 20. The statutory bar on tort claims is rationally connected to the objective.

21. The statutory bar will apply to Mr Smith's claim and therefore the Bill effectively brings the claim to an end. We have considered whether it would have been possible to introduce a statutory bar without affecting Mr Smith's claim. However, such a measure would not have achieved the intended objective. Allowing the claim to proceed to trial would have left open the possibility of the courts developing exactly the kind of parallel regulatory scheme that this Bill is intended to avoid. Although it could be argued that Mr Smith is unlikely to obtain the injunctive relief he seeks (he also seeks declaratory relief), the Supreme Court has held that the claim is "tenable". We consider it open to if Parliament is to intervene now rather than wait for the outcome of the substantive hearing, likely to be some time away.

22. Finally, we consider that any limit is proportional to the importance of the objective.

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Right to justice

23. Section 27 states:

> (1) Every person has the right to the observance of the principles of natural justice by any tribunal or other public authority which has the power to make a determination in respect of that person's rights, obligations, or interests protected or recognised by law.
>
> (2) Every person whose rights, obligations, or interests protected or recognised by law have been affected by a determination of any tribunal or other public authority has the right to apply, in accordance with law, for judicial review of that determination.
>
> (3) Every person has the right to bring civil proceedings against, and to defend civil proceedings brought by, the Crown, and to have those proceedings heard, according to law, in the same way as civil proceedings between individuals.

24. The Bill does not engage section 27:[10]

24.1 Subsection 1 is about natural justice; it does not guarantee that substantive law will not be altered.[11] The statutory bar introduced by the Bill does not impact the procedural right to be heard. Although Mr Smith's proceedings will be brought to an end, that is because his substantive claim in tort law is barred, not because he has lost the opportunity to be heard on an otherwise available claim.

24.2 Subsection 2 is about the right to bring judicial review: the Bill will bar tort claims but does not impact the courts' ability to review the executive government.

24.3 Subsection 3 is about proceedings against the Crown. The Bill does not alter the position of the Crown in tort proceedings; the Crown is in the same position as any other party.

Review of this advice

25. In accordance with Crown Law's policies, this advice has been peer reviewed by Austin Powell, Senior Crown Counsel.

Peter Gunn
Crown Counsel

Annexes Climate Change Response (Tort Liability) Amendment Bill: PCO 28711/1.9

[The attached draft Bill "Climate Change Response (Tort Liability) Amendment Bill" is withheld under section 9(2)(h) of the Act. The Bill is available on the Legislation website at: https://www.legislation.govt.nz/bill/government/2026/330/en/latest]

10 Section 27 does not prohibit retrospectivity, see *Mangawhai Ratepayers and Residents Association Incorporated v Kaipara District Council* [2015] NZCA 612,]2016] 2 NZLR 437 at [205] per Harrison and Cooper JJ.

11 In *Combined Beneficiaries Union Inc v Auckland City COGS Committee* [2009] 2 NZLR 56 the Court of Appeal confirmed the content of s 27(1) coincides with natural justice at common law. In *Westco Lagan v Attorney General* [2001] 1 NZLR 40 the High Court did not accept that s 27(3) was intended to restrict the power of Parliament to determine substantive rights, and the same must be true of s 27 as a whole. An intrusion on Parliamentary sovereignty is irreconcilable with s 4 of the Bill of Rights Act.

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s9(2)(h) - plus 12 additional pages

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Item 02

From: s9(2)(a)
To: Ministerial Services
Cc: s9(2)(a): Attorney-General's office; Peter Gunn; Jessica Gorman [DPMC]
Subject: RE: BORA Vet: Consistency with the New Zealand Bill of Rights Act 1990: Climate Change Response
Date: 01 July 2026 13:57:38
Attachments: image003.png
Signed BORA vet - Climate Change Response (Tort Liability)....pdf
Signed BORA vet - Climate Change Response (Tort Liability) Amendment Bill.msg
Signed BORA vet - Climate Change Response (Tort Liability) Amendment Bill.msg

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Hi Joana

Please see **attached** signed BORA consistent vet on the Climate Change Response (Tort Liability) Amendment Bill.

This has been forwarded to PCO and the Minister of Justice, Hon Paul Goldsmith's office. If Crown Law could please send to the Ministry of Justice, that would be appreciated.

Thanks,

s9(2)(a)

s9(2)(a)
Private Secretary (Attorney-General) | Office of Hon Chris Bishop MP

Attorney-General | Minister of Housing | Minister for Infrastructure
Minister Responsible for RMA Reform | Minister of Transport
Associate Minister of Finance

s9(2)(a)@parliament.govt.nz
Private Bag 18041, Parliament Buildings, Wellington 6160, New Zealand

Authorised by Hon Chris Bishop MP, Parliament Buildings, Wellington

[Duplicate]

Released under the Official Information Act 1982

[Duplicate] - plus 5 additional pages

Released under the Official Information Act 1982

From: s9(2)(a)
To: Kay Purdey
Cc: s9(2)(a): Attorney-General's office
Subject: Signed BORA vet - Climate Change Response (Tort Liability) Amendment Bill
Date: 01 July 2026 13:55:00
Attachments: Signed BORA vet - Climate Change Response (Tort Liability)....pdf

Hi Kay

Please see **attached** BORA consistent vet on the Climate Change Response (Tort Liability) Amendment Bill.

Thanks,
s9(2)(a)

s9(2)(a)
Private Secretary (Attorney-General) | Office of Hon Chris Bishop MP

Attorney-General | Minister of Housing | Minister for Infrastructure
Minister Responsible for RMA Reform | Minister of Transport
Associate Minister of Finance

s9(2)(a) @parliament.govt.nz
Private Bag 18041, Parliament Buildings, Wellington 6160, New Zealand

Authorised by Hon Chris Bishop MP, Parliament Buildings, Wellington

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