Submission by

Z Energy

to the

Justice Select Committee

on the

Climate Change Response (Tort Liability) Amendment Bill

9 July 2026

1. Z Energy (**Z**) welcomes the opportunity to make a submission on the Climate Change Response (Tort Liability) Amendment Bill (the **Bill**).

2. Z strongly supports the Bill. We welcome the opportunity to appear before the Select Committee and outline why we believe climate change policy is best delivered through the framework established under the Climate Change Response Act, rather than through private litigation against individual businesses.

Why Z supports the Bill

3. Z is a defendant to litigation brought by a private litigant, Michael Smith. If successful, that litigation could have significant implications for our ability to continue operating our core business. The Bill would resolve that litigation and provide greater certainty about how New Zealand addresses emissions reduction.

4. However, our support for the Bill is based on more than our involvement in the court proceedings. Even if Z was not a defendant, we would support the Bill because it aligns with our long-standing view that climate change is best addressed through clear government policy, applied consistently across the economy.

5. Z is committed to the energy transition. We support a coordinated, government-led approach that is underpinned by durable policy settings and clear targets to drive emissions reductions over time. New Zealand already has a framework for this through the Climate Change Response Act 2002 (**CCRA**) and the Emissions Trading Scheme (**ETS**).

6. In our view, the energy transition will be more effective, fairer and less costly if it is led by Parliament and Government policy, rather than through individual court cases against selected businesses. A litigation-led approach risks creating inconsistent outcomes, higher costs and uncertainty, while doing little to reduce emissions across the economy.

About Z

7. Z is one of Aotearoa New Zealand's leading transport energy companies and one of the country's largest fuel importers. We operate a nationwide network spanning fuel, retail and energy infrastructure, including more than 160 retail sites, a public EV charging network of 213 charging bays across 63 locations, and New Zealand's largest fuel storage network, with capacity of approximately 200 million litres. Through this infrastructure, we actively manage fuel supply, security and reliability to help ensure New Zealanders have access to the energy they need every day.

8. Z plays an important role in New Zealand's critical infrastructure. Our fuel supply and distribution services are classified as lifeline utilities under the Civil Defence Emergency Management Act 2002. We are also subject to fuel supply

obligations under the Fuel Industry Act 2020, including to ensure security of supply.

9. Recent global events have shown how important a reliable fuel supply remains to households, businesses and essential services. We take seriously our responsibility to provide that supply safely and reliably.

10. At the same time, we recognise our role in making it easy for our customers to choose lower-emissions transport solutions. Alongside supplying the energy New Zealand needs today, we are investing in and supporting lower emissions transport energy choices for our customers.

What we have said to the Government

11. We have shared our views on this litigation with both Government and the public. We want to the Select Committee to have the same information that has informed those discussions.

12. We have **attached** three supporting documents. These are:

- a briefing note developed by the defendants to Mr Smith's litigation to explain why it is appropriate for Parliament to clarify that emissions reduction policy should be led by the policy tools in the CCRA, and not through private litigation;
- information about the potential impact of Mr Smith's proceeding on Z's funding arrangements; and
- a report prepared by an independent economist, Dr Niven Winchester, that describes the economic impact of the remedies that Mr Smith seeks in his litigation on the New Zealand economy. This report was prepared on behalf of Z, Fonterra and Genesis for the purpose of the litigation. However, it is being provided to the Select Committee and released publicly so that it can assist informing the debate on the Bill.

13. We are making these documents available because we believe Parliament and New Zealanders should have access to this information to make informed decisions on this Bill.

14. As one of New Zealand's largest transport energy companies, we believe we have a responsibility to share our expertise and experience to help Government make informed decisions in the interests all New Zealanders.

Developments in the litigation

15. Since the defendants prepared the briefing note, there have been several important developments in the litigation:

- first, Mr Smith has abandoned his claim that the defendants have breached a duty of care in negligence. The only remaining causes of action are 'public nuisance', which has not previously been established in any New Zealand or overseas case addressing the effects of climate change, and the entirely new alleged climate change damage tort;

- second, the remedies sought by Mr Smith have changed. He is now asking the Court to require each defendant to immediately achieve net zero emissions. Mr Smith previously sought orders that the defendants were to reduce emissions over a longer period to 2050, in accordance with what Mr Smith alleges are the 'Minimum Global Reductions' in net emissions required to avoid climate-related harm.

16. In our view, these changes increase rather than reduce the potential impact of the case if successful on households, businesses and the New Zealand economy.

Economic impacts

17. Dr Winchester, an independent global expert in policy analysis, has used the economic model developed for the Climate Change Commission to assess the likely impact of the injunctions sought in the case.

18. His analysis concludes that, if the remedies sought against the defendants were granted, New Zealand's GDP would decline by at least $21.9 billion over the first five years.

19. Mr Smith has also indicated that if he is successful, similar litigation could be brought against other businesses in the future. Dr Winchester modelled the effect of applying the same immediate net-zero requirements across the wider sectors in which the defendants operate. Under that scenario, GDP losses would total approximately $112.6 billion over the first five years (a 4.8% reduction from the expected GDP baseline). These findings highlight the importance of a transition that is practical, coordinated and economy-wide. The impacts would be significant, affecting jobs, affordability and economic growth across New Zealand. Dr Winchester's modelling indicates that applying immediate net zero obligations across the relevant sectors would have an economic impact materially greater than that of the COVID-19 pandemic.

20. Z considers that decisions of this scale should be made through Parliament and existing climate policy frameworks, rather than through litigation involving a small number of individual companies.

Business certainty and investment confidence

21. The existence of potential tort liability for climate-related harm affects business certainty and investment confidence.

22. For Z, the litigation represents a significant strategic risk because of the potential implications for our ability to continue operating our core business. While we remain confident in our position in the litigation and will continue to defend the proceedings, the possibility of an adverse outcome creates uncertainty

for long-term planning and investment decisions. If the Bill is not enacted, that uncertainty is likely to continue for many years while the litigation proceeds through trial and any subsequent appeals.

23. Dr Winchester's focuses on the impact of injunctive relief, which is the remedy that Mr Smith is seeking. However, even a declaration that Z's conduct in selling fuel to New Zealanders is unlawful could have a significant impact on our ability to reliability supply fuel at affordable prices, including because of the potential for follow-on damages claims. We already meet our obligations under the ETS and pass those costs through to our customers in pricing as intended by the scheme. We think that's the right way of sending price signals to consumers about the need to transition based on Government policy and nationally set carbon budgets.

24. We do not believe that a just transition will be achieved through additional, fragmented court-imposed measures that increase costs for consumers without providing a coordinated pathway to lower emissions.

The Bill should apply to current proceedings, including Mr Smith's claim

25. If Parliament's intention is to clarify that climate-related emissions are to be addressed through the framework established under the Climate Change Response Act, then the Bill must apply to current as well as future claims.

26. Mr Smith's claims remain novel and unresolved. No court has yet determined that the causes of action he advances exist in New Zealand law in the way he suggests, and the remedies he seeks are directed at future emissions and future climate-related harm.

27. In our view, excluding the current proceeding from the Bill would significantly undermine its purpose. It would leave businesses facing many years of uncertainty while the courts consider a set of novel claims that could progress through trial and multiple levels of appeal.

28. Applying the Bill to Mr Smith's proceeding is not about removing established legal rights. No such rights have been recognised by the courts. Rather, it is about providing clarity on how New Zealand intends to manage future emissions reductions and the transition to a lower-emissions economy.

29. There are also practical reasons why the Bill should apply to the current proceeding. If Mr Smith's case were permitted to continue while future claims were prevented by the Bill, the result could be arbitrary and ineffective. For example, Z could be subject to an injunction requiring it to immediately achieve net zero emissions, while its competitors would not face the same obligations. Demand would simply shift to other suppliers, with little or no impact on overall emissions, while competition, investment certainty and consumer outcomes could be adversely affected.

30. This illustrates why climate change policy is best addressed through consistent, economy-wide measures that apply across sectors, rather than through litigation against individual companies. Decisions of this scale are more appropriately made through Parliament and the policy framework established under the Climate Change Response Act.

31. Parliament has the opportunity to provide certainty now. Delaying clarification until the conclusion of the litigation would prolong uncertainty for businesses, investors and consumers for many years, without advancing New Zealand's emissions reduction goals.

Wording of the Bill

32. We support the decision to amend the CCRA. The Supreme Court recognised that it is ultimately for Parliament to decide whether the statutory framework should govern this area.

33. We have reviewed the Bill carefully and consider it to be a balanced and well-drafted response.

34. The Bill appropriately clarifies that climate-related claims based on direct or indirect emissions cannot be pursued in tort, while preserving other legal rights and causes of action that are unrelated to the policy purpose of the Bill.

35. Importantly, the Bill does not reduce the courts' constitutional role in interpreting legislation or reviewing whether Government decisions made under the Climate Change Response Act are lawful.

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