

25 November 2019

To: The Minister for Climate Change, the Minister of Justice and the Attorney-General.

cc: National Spokesperson for Climate Change (Scott Simpson); and
Shadow Attorney-General (Tim Macindoe).

Letter in support of proposal to amend NZBORA

We the undersigned write in support of the proposal from Lawyers for Climate Action NZ Inc. (LCANZ) to amend the New Zealand Bill of Rights Act 1990 (NZBORA) by recognising the right to a sustainable environment.

NZBORA provides significant protection for human rights in New Zealand. Yet, none of these rights can be fully realised absent a sustainable environment. For example, the rights to peaceful assembly, freedom of expression, manifestation of religion and freedom of movement all presuppose that there will be a safe environment within which they may be exercised. In our view, the right to a climate system capable of sustaining human life is fundamental to a free and ordered society.¹ While an environmental right might be read into existing rights, it is preferable that it be expressly recognised.

We therefore support LCANZ's proposal to amend NZBORA to include such an express right, expressed as follows:²

Right to a sustainable environment

Everyone has the right to a sustainable environment that is protected for the benefit of present and future generations.

Climate change in particular places the absence of such a right into stark relief. We consider that climate change poses a significant, validated and urgent threat to the rights and freedoms of individuals in New Zealand. The most comprehensive and authoritative statement of scientific consensus on climate change is the special report by the Intergovernmental Panel on Climate Change (IPCC), *Global Warming of 1.5°C*, published in October 2018.

The IPCC describes the broad impact climate change could have on our life and security: "Climate-related risks to health, livelihoods, food security, water supply, human security and economic growth are projected to increase with global warming of 1.5°C and increase further with 2°C". The report also

¹ See *Juliana v United States of America* No 15-cv-01517-TC US District Court Oregon 10 November 2016 at 32. This decision was an interim decision declining the government's motion to dismiss the case on a summary (without trial) basis. The decision is subject to appeal. See also article 28 of the Universal Declaration of Human Rights, and *Case Concerning the Gabčíkovo–Nagyymaros Project (Hungary v Slovakia)* [1997] ICJ Rep 7 at 91–92 per Judge Weeramantry.

² See also Geoffrey Palmer and Andrew Butler *Towards Democratic Renewal* (Victoria University Press, Wellington, 2018) at 163–166.

provides a snapshot of what the world might look like in 2100 with 3°C of warming. This includes heatwaves, droughts, flooding, ecosystems being destroyed, a decrease in global crop production, with an increase in starvation, high levels of political destabilisation and conflict, mass migration, high extinction rates and an overall substantial decline in health and wellbeing.

Keeping the risks of climate change within tolerable limits is a unique challenge for humanity. As Professor Lord Nicholas Stern notes, “We are the first generation that through its neglect could destroy the relationship between humans and the planet, and perhaps the last generation that can prevent climate change.”³

It is hard to comprehend such extreme risks, particularly if they will only manifest sometime in the future and where the actions of a single country (let alone a single person) will not be sufficient to materially reduce these risks acting alone.

Including the right to a sustainable environment in NZBORA would embed protection of the natural environment alongside other fundamental rights and freedoms. While not interfering with Parliamentary sovereignty, it would mean that it is subject to a framework where:

- legislation would be interpreted consistently with the right to a sustainable environment where possible in accordance with section 6 of NZBORA;
- decisions by Government agencies that affect the right to a sustainable environment would need to engage with whether the limit on the right is justified under section 5 of NZBORA; and
- new legislation would be vetted for compliance with right to a sustainable environment by the Attorney-General under section 7 of NZBORA.

We commend the urgent consideration of this proposal on a non-partisan basis.

Yours sincerely

Judith Ablett-Kerr ONZM QC

Andrew Barker QC

John Billington QC

Greg Blanchard QC

³ Nicholas Stern (2015), *Why Are We Waiting? The Logic, Urgency, and Promise of Tackling Climate Change*, MIT Press: Cambridge, Mass., p.xxvii.

Stephen Bonnar QC

Vanessa Bruton QC

Margaret Casey QC

Matthew Casey QC

Lady Deborah Chambers QC

Anita Chan QC

David Chisholm QC

Jenny Cooper QC

Vivienne Crawshaw QC

Paul Dacre QC

Kate Davenport QC

The Hon Nicholas Davidson QC

Maria Dew QC

John Dixon QC

Matthew Dunning QC

Marie Dyhrberg QC

Clive Elliott QC

Dr James Every-Palmer QC

Dr James Farmer QC

The Hon Robert Fisher QC

Richard Fowler QC

Nathan Gedye QC

Bruce Gray QC

Nigel Hampton CNZM QC

The Hon Rodney Hansen CNZM QC

Rodney Harrison QC

David Heaney QC

Michael Heron QC

Andru Isac QC

Frances Joychild QC

David Laurenson QC

Jan McCartney QC

Matthew McClelland QC

Dr Campbell McLachlan QC

Christine Meechan QC

Julian Miles QC

Stephen Mills QC

Derek Nolan QC

Paul Radich QC

Kieran Raftery QC

Hugh Rennie QC

Michael Ring QC

The Hon Peter Salmon CNZM QC

Belinda Sellars QC

Philip Skelton QC

Justin Smith QC

Royden Somerville QC

Terence Stapleton QC

Prudence Steven QC

Anne Stevens QC

John Upton QC

Dr Campbell Walker QC

Peter Whiteside QC

Paul Wicks QC

James Wilding QC

Bill Wilson QC