

**ORDER PROHIBITING PUBLICATION OF THE JUDGMENT IN NEWS
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DATABASE UNTIL AFTER 5 PM THURSDAY 13 JULY 2023.**

**IN THE HIGH COURT OF NEW ZEALAND
WELLINGTON REGISTRY**

**I TE KŌTI MATUA O AOTEAROA
TE WHANGANUI-A-TARA ROHE**

**CIV-2023-485-238
[2023] NZHC 1835**

UNDER Judicial Review Procedure Act 2016 and
Part 30 of the High Court Rules 2016

IN THE MATTER OF an application for judicial review

BETWEEN LAWYERS FOR CLIMATE ACTION NZ
INCORPORATED
Applicant

AND MINISTER OF CLIMATE CHANGE
Respondent

Hearing: 13 July 2023

Counsel: J D Every-Palmer KC, M R G van Alphen Fyfe and R A D' Silva
for the Applicant
A Hill and D Ranchhod for the Respondent

Judgment: 13 July 2023

JUDGMENT OF PALMER J

Counsel/Solicitors

J D Every-Palmer KC, Wellington
M C Smith, Barrister, Wellington
M R G van Alphen Fyfe, Barrister, Wellington
Gilbert Walker, Auckland
Crown Law Office, Wellington

Summary

P [1] In these proceedings, the Lawyers for Climate Action New Zealand Inc challenge the Climate Change (Auction, Limits and Price Control for Units) Amendment Regulations 2022 (the Amendment Regulations). In particular, the applicant claims the Minister of Climate Change (the Minister) did not have reasonable grounds to be satisfied that the settings preferred by Cabinet (and adopted by the Minister) were consistent with s 30GC(2) or (3) of the Climate Change Response Act 2002 (the Act). A two-day hearing was scheduled to commence in the High Court on 21 August 2023. However, the Minister admits he erred in recommending the unit limits and price control settings for 2023 to 2027 that were adopted in the Amendment Regulations. The parties have agreed on the error and on the relief required. The Court agrees the relief is appropriate. In summary, the Court declares that the Amendment Regulations are ultra vires s 30GC of the Act and directs the Minister to reconsider the unit limit and price control settings for 2023 to 2027.

What happened?

[2] The facts in this case, as set out below, have been agreed between the parties.

Emissions Trading Scheme limits and price control settings

[3] The Climate Change (Auctions, Limits, and Price Controls for Units) Regulations 2020 (the Regulations) contain limits and price control settings for the New Zealand Emissions Trading Scheme (ETS). The Regulations are updated annually to ensure that, at all times, they prescribe limits and price control settings for each of the next five calendar years.¹ The Regulations are made, and updated, by the Governor-General on the recommendation of the Minister.

[4] The limits restrict the annual volume of New Zealand units (NZUs) made available through auctioning, and overseas units that may be used, by ETS participants.

¹ Climate Change Response Act 2002, ss 30GB(3) and 30GB(4).