



LCANZI wins judicial review

(Lawyers for Climate Action
New Zealand Incorporated, 2023)

LCANZI · 13 JULY 2023

Today the High Court gave judgment in favour of Lawyers for Climate Action NZ Inc in a judicial review of the Regulations which set the number of additional Emissions Trading Scheme (ETS) units available over the next five years and imposed various price restrictions. The Regulations are referred to as the Climate Change (Auctions, Limits, and Price Controls for Units) Amendment Regulations 2022 and were made in December 2022.

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The judgment means that the Minister of Climate Change must now reconsider the unit limit and price control settings for 2023 to 2027 by 30 September 2023.

The ETS requires businesses in covered sectors to surrender one unit for every tonne of greenhouse gas emitted.

The ETS has an important role to play in meeting our domestic and international emissions reduction targets.

In order to do this, the Climate Change Response Act 2002 requires volume and price settings to be made annually. By law the settings must be in accordance with our emissions budgets, our nationally determined contribution under the Paris Agreement (NDC) and the 2050 net zero target.

The Climate Change Commission had recommended reducing the number of units available by auction in line with our emissions budgets and to tackle a large stockpile of existing units, and substantially increasing the trigger price to release additional cost containment reserve units.

However, in December last year Cabinet rejected this advice. The effect of the Cabinet decision was to make available at low prices an additional 35 million units over the next five years. That is more than one year's worth of emissions for sectors within the ETS.

On 9 May this year, LCANZI commenced this judicial review application on the basis that Cabinet had failed to adequately address whether the settings were in accordance with the emissions budgets and the NDC. In LCANZI's view, the settings were incoherent: the base volume of units available for auction was reduced, but then this was neutralised by setting a low trigger price for the cost containment reserve due to concerns that rising ETS unit prices would flow through to households.

The Minister has accepted that the process leading to the December decision was flawed and the decision needs to be re-made. Given this admission, the parties sought orders by consent requiring the Regulations to be re-made by 30 September 2023.

President of LCANZI, Bronwyn Carruthers KC welcomed the decision. "It is vital that the ETS settings are made in accordance with our emissions budgets and not out of political concerns about the ETS price going too high."

"The December decision caused participants to lose confidence that the Government would properly constrain the supply of units over time. We have seen the secondary market price collapse and the first two auctions of 2023 fail. We hope that by reconsidering the Regulations, the Government can restore confidence in the ETS mechanism."

"We appreciate the cooperation of the Minister in promptly acknowledging that the process leading to the December decision was flawed and working to resolve this judicial review without the time and expense of a full hearing."

"There is scientific consensus that limiting warming to 1.5°C is essential to avoid the worst impacts of climate change. It is also the agreed global goal under the Paris Agreement, and the purpose of the Climate Change Response Act. Every lever we have must be exercised to its greatest extent possible to try to mitigate this coming humanitarian and ecological disaster. While it will be for the Government to reconsider the ETS settings, we will be watching closely to ensure that the settings are tightened in accordance with the science."

[CLICK HERE TO SEE THE DECISION](#)

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