

In the High Court of New Zealand
Wellington Registry

CIV-2024-485-

I te Kōti Matua o Aotearoa
Te Whanganui-A-Tara Rohe

Under

the Judicial Review Procedure Act 2016

In the matter of

an application for judicial review of a
decision to recommend the Land Transport
(Clean Vehicle Standard) Amendment
Regulations 2024 under s167C of the Land
Transport Act 1998

Between

The Better NZ Trust, a charitable trust
having its registered office at 69A Glenmore
Road, RD 3, Coatesville, Albany.

Applicant

And

Minister of Transport, a Minister of the
Crown having responsibilities under the Land
Transport Act 1998, Parliament Buildings,
Wellington

Respondent

Statement of Claim for Judicial Review

8 October 2024

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PARTIES

1. The Applicant is The Better NZ Trust, a charitable trust whose objects include supporting projects that assist the community to improve the quality of the environment through low and zero carbon technologies.
2. The Respondent is the Minister of Transport, a Minister of the Crown with functions, duties and powers under the Land Transport Act 1998.
3. The Respondent's powers include a power to recommend regulations prescribing targets for the level of carbon dioxide ("CO₂") emissions from light vehicles imported into New Zealand.

FACTS UPON WHICH THE APPLICATION IS BASED

Climate change and New Zealand's international and domestic obligations

4. Climate change threatens human well-being and planetary health.
5. The window of opportunity to ensure a liveable and sustainable future for all is rapidly closing.
6. The choices made, and actions implemented, in this decade will have impacts both now and for thousands of years.
7. The physical impacts of climate change are being observed in New Zealand now; with increasing temperatures, changes in the frequency and severity of droughts, more extreme rainfall patterns, increasing fire risk, rising seas and shrinking glaciers. With ongoing climate change, these changes are expected to continue and in some cases accelerate.
8. New Zealand is a party to the United Nations Framework Convention on Climate Change, and an agreement made pursuant to the Convention called the Paris Agreement.
9. An aim of the Paris Agreement is to hold the increase in global average temperature to well below 2 °C above pre-industrial levels and pursue efforts to limit temperature increase to 1.5 °C above pre-industrial levels.

[Paragraphs 10 to 11 relate to matters of law and are pleaded by way of context only]

10. Pursuant to its obligations under the Paris Agreement, New Zealand has enacted domestic legislation to provide a framework by which New Zealand can develop and implement clear and stable climate change policies that contribute to the global effort under the Paris Agreement to limit the global average temperature increase to 1.5 °C above pre-industrial levels.
11. The framework includes:
 - a. A target requiring that net accounting emissions of greenhouse gases in a calendar year, other than biogenic methane, are zero by 1 January 2050 (and for each subsequent year).

- b. A requirement for the Minister for Climate Change to set emissions budgets for the period 2022 to 2025 and for each five year period from 2026 to 2050 thereafter, with a view to meeting the 2050 target and contributing to the global effort under the Paris Agreement to limit the global average temperature increase to 1.5° Celsius above pre-industrial levels.
- c. A requirement for the Minister for Climate Change to prepare and make available a plan for each emissions budget period setting out the policies and strategies for meeting the relevant emissions budget, which must include sector-specific policies to reduce emissions and increase removals.

Transport emissions

- 12. Transport is one of New Zealand's largest sources of greenhouse gas emissions, accounting for approximately 20% of gross emissions.
- 13. Two-thirds of transport emissions come from the light vehicle fleet.
- 14. Rapid transition to low or no emissions vehicles is necessary to achieve New Zealand's emissions reduction targets.

First Emissions Reduction Plan

- 15. As required by the Climate Change Response Act 2002, the Minister of Climate Change prepared the first Emissions Reduction Plan, and made it publicly available in May 2022 ("**ERP1**").
- 16. ERP1 sets out the policies and strategies for meeting New Zealand's first emissions budget, which covers the period from 2022-2025.
- 17. New emissions reduction plans will be developed for subsequent emissions budgets.
- 18. ERP1 contains sector-specific plans and targets, including for transport.
- 19. Under ERP1:
 - a. The emissions reduction for the first emissions budget period from the transport sector initiatives in ERP1 is estimated at 1.7 to 1.9 Mt CO₂-e.
 - b. The transport sector policies in ERP1 are estimated to achieve the emissions reductions required to meet the transport sub-sector target for the first emissions budget period (along with changes in the vehicle fleet's profile and fuel efficiencies over time), and to make significant progress towards the second and third emissions budgets.
 - c. The Government has set four transport targets, of which Target 2 is to increase zero-emissions vehicles to 30% of the light fleet by 2035.

- d. The transport Targets are implemented through Actions, which are implemented through Key initiatives. The Actions and Key initiatives for Target 2 include:
 - i. Action 10.2.1: Accelerate the uptake of low-emissions vehicles.
 - ii. Key initiative: Implement the Clean Vehicle Standard to increase the quantity and variety of low- and zero-emissions vehicles supplied to Aotearoa.

Clean Car Standard

- 20. The purpose of the “Clean Car Standard” is to assist New Zealand in meeting its 2050 target and emissions budgets under the Climate Change Response Act 2002 and its domestic and international climate change ambitions and commitments.
- 21. The Clean Car Standard aims to reduce the average CO₂ emissions of imported vehicles, by encouraging a greater supply of low- and no- emission vehicle imports to New Zealand. It does this by setting emissions targets for the light vehicle fleet, which conceptually would reduce each year.
- 22. Vehicle suppliers can import any mix of vehicles that they choose, but to meet their annual CO₂ target they need to ensure they import sufficient vehicles with low- or no-emissions, to offset the emissions of vehicles that they import that exceed the target. Financial charges apply where targets are not met, and emissions credits are earned for overachievement of targets. Credits can be used to offset current and future (2 years) targets, or transferred to other importers.

[Paragraphs 23 to 25 relate to matters of law and are pleaded by way of context only]

- 23. The Clean Car Standard is implemented through Part 13 of the Land Transport Act and regulations made under the Land Transport Act.
- 24. As enacted, s 175 Land Transport Act:
 - a. Specified targets (“emissions targets”) for the purposes of calculating the weight-adjusted target applicable to each vehicle importer in accordance with regulations for each calendar year beginning 1 January 2023, 1 January 2024, 1 January 2025, 1 January 2026 and 1 January 2027.
 - b. Specified that the emissions targets for any calendar year after 2027 would be as set by regulations made under s 167C(1)(j)(iv).
- 25. On 1 July 2024, the Land Transport (Clean Vehicle Standard) Amendment Act 2024:
 - a. Repealed the emissions targets previously specified in s 175 for the calendar years beginning 1 January 2025, 1 January 2026 and 1 January 2027.

- b. Amended s 175(1)(f) to specify that the emissions targets for any calendar year after 2024 would be as set by regulations made under s 167C(1)(j)(iv).

Recommendation to make regulations under s 167C(1)(j)(iv)

26. In about February 2024, the Government began a review of the Clean Car Standard.
27. In May 2024, the Respondent presented a paper to Cabinet on the Clean Car Standards, which recommended regulations providing for targets that are weaker (they allow a higher volume of CO₂, measured in grams per kilometre without attracting fees and charges) than the previous targets, for the years 2025, 2026 and 2027.

Particulars

Passenger vehicles (cars and SUVs)				
	Previous (s 175) target	Reduction from previous year	Recommended target	Reduction from previous year
2025	112.6	16%	112.6	16%
2026	84.5	25%	108	4%
2027	63.3	25%	103	5%
2028	-	-	76	26%
2029	-	-	65	14%

Commercial vehicles (vans, utes, light trucks)				
	Previous (s 175) target	Reduction from previous year	Recommended target	Reduction from previous year
2025	155	23%	223	7%
2026	116.3	25%	207	7%
2027	87.2	25%	175	15%
2028	-	-	144	18%
2029	-	-	131	9%

28. The Respondent recommended the making of amendment regulations ("2024 Amendment Regulations") in accordance with those recommended targets.
29. On 2 September 2024 the 2024 Amendment Regulations were made by the Governor-General by Order in Council. The targets in the 2024 Amendment Regulations are the same as the targets recommended by the Respondent, as set out in paragraph 27 above.

Consultation and advice prior to recommending the 2024 Amendment Regulations

30. In accordance with the Respondent's direction, the following entities were the only entities consulted as part of the Clean Car Standards review:
- a. Motor Industry Association
 - b. Imported Motor Vehicle Industry Association

- c. Motor Trade Association
 - d. Automobile Association
31. The four entities that were the only consultees had all submitted against the targets set by the Clean Car Standards when they were consulted on and introduced in 2021.
32. Ministry of Transport officials advised the Respondent that he should consider consulting organisations that would have a high level of interest in the review because of their interest in electric vehicle uptake, such as Drive Electric.
33. The consultation was not publicly notified, and public submissions were not invited.
34. There was no consultation with:
- a. The main suppliers of electric vehicles to the New Zealand market (Tesla and BYD – additionally, Tesla is not a member of any of the groups that were consulted).
 - b. The industry association for electric vehicles (Drive Electric),
 - c. Entities representing the public interest in reducing emissions from land transport, such as the Applicant.
35. Before making his recommendation, the Respondent received briefings from the Ministry of Transport.
36. The briefings included a paper titled “Outcome of the Review of the Clean Car Importer Standard” dated 15 May 2024 (“15 May Briefing”).
37. The 15 May Briefing advised that, according to the MIA and VIA, if the emissions targets were not weakened, vehicle supply could be reduced as importers would likely be unable to source sufficient volumes of affordable low emission vehicles, and the uptake of low and zero emission vehicles could slow.
38. The 15 May Briefing reported on information provided by consulted parties. This included advice:
- a. On the proportion of new vehicles likely to attract charges in 2025, 2026 and 2027, if the targets were not weakened.
 - b. That the capacity of the global market to supply new and used low- and no-emission vehicles to meet demand is constrained.
 - c. That the existing targets would cause the uptake of low and zero emission vehicles to slow.
 - d. From the MIA, that the supply of well-equipped vehicles would decline under existing targets because manufacturers are likely to make vehicle specification changes that remove vehicle content, such

as on-board technology and safety features, to meet the emissions targets.

39. The advice and/or information, sourced from MIA and VIA, in the 15 May Briefing to the effect that:
- a. a large proportion of vehicles would attract charges in 2025, 2026 and 2027, if the targets were not weakened;
 - b. the supply of low emission vehicles was insufficient.
 - c. the existing targets would cause the uptake of low and zero emission vehicles to slow; and
 - d. retaining the targets would have safety implications;
- was factually incorrect and/or reflected the self-interest of the parties consulted.
40. Different information would have been provided if the main suppliers of electric vehicles, or Drive Electric, or entities representing the public interest in reducing emissions from land transport such as the Applicant, had been consulted.
41. When these parties became aware of the review (after the review had concluded), they wrote to the Ministry of Transport, providing evidence contradicting the advice/information in paragraph 38 above, in particular demonstrating that the previous targets were achievable.
42. The Respondent also received official advice in or around June 2024, in the form of the Climate Impacts of Policy Assessment, that:
- a. Weakening the Clean Car Standard targets would mean an increase in emissions relative to the previous (s 175) targets (an increase of 1.2-1.9MT by 2050, and an increase of 0.6-0.9MT by 2035).
 - b. This increase in emissions results from a change in the composition of the imported vehicle fleet, towards more higher emissions vehicles and fewer no- and low-emission vehicles.
43. To produce those outputs, the Ministry of Transport modelled the impact of the changes on no-emission and low-emission (electric and plug-in hybrid electric) vehicles.
44. The modelling predicted that the changes would result in 39,000 fewer electric vehicles and 19,000 fewer plug-in hybrid electric vehicles being registered by 2035.
45. The Climate Impacts of Policy Assessment demonstrated that weakening the targets would result in the imported vehicle fleet comprising a larger proportion of higher emitting vehicles and as such would cause emissions to increase in comparison to the existing targets.

46. On or around 27 June 2024 the Ministry for the Environment requested that the advice to Cabinet include additional options that could better balance the impact on consumers with emissions reductions.
47. The Ministry for the Environment's request was declined.
48. The Ministry for the Environment advised that the amended targets would "make achieving emissions budgets two and three materially more difficult in a context where meeting those budgets was already challenging".
49. Before recommending the 2024 Amendment Regulations, the Respondent did not seek advice on whether:
 - a. The recommended targets would be at an appropriate level to increase the supply of zero- and low-emission vehicles in the market.
 - b. The recommended targets would be consistent with transport-specific policies and strategies set out in ERP1.

GROUNDINGS ON WHICH RELIEF IS SOUGHT, AND RELIEF SOUGHT

First ground of review – failure to consult / consultation unlawfully and unreasonably constrained

50. Before recommending the making of regulations under s 167C(1)(j)(iv), the Respondent was required to consult with such persons as he considered appropriate, which required him to ensure that those who were particularly or directly affected by the change are consulted, and not to overlook organisations representing particular interests or individuals who were, by reason of expertise, in a position to express an informed view.
51. The Respondent's decision not to consult with manufacturers of low- and no-emission vehicles, or with the representative body for no-emission vehicles, Drive Electric, or with entities representing the public interest in reducing emissions from land transport, such as the Applicant, constituted a failure to consult and was unreasonable.
52. The Respondent's decision to consult only with entities that had opposed the introduction of the Clean Car Standards was unreasonable.
53. The narrowness and particular interests of the Respondent's consultees resulted in the information received by the Respondent being factually incorrect and lacking important information that was material to his decision, with respect to:
 - a. The proportion of new vehicles likely to attract charges if the targets were not weakened.
 - b. The capacity of the global market to supply new and used low- and no-emission vehicles to meet demand

Relief sought

54. The Applicant seeks the following relief:

- a. An order quashing the Respondent's decision to recommend the 2024 Amendment Regulations.
- b. An order that the Respondent reconsider his recommendation in accordance with this Court's findings.
- c. An order that the targets previously set out in s 175 for the years 2025, 2026 and 2027 apply until such time as the Minister has reconsidered his recommendation and revised Amendment Regulations are in place.
- d. Any such other orders the Court thinks fit.
- e. Costs.

Second ground of review – error of law / failure to have regard to mandatory relevant consideration

The Applicant repeats paragraphs 1 to 44 and says:

55. Before recommending the making of regulations under s 167C(1)(j)(iv), the Respondent was required to be satisfied that the targets were set at an appropriate level to increase the supply of zero- and low-emission vehicles in the market.
56. In recommending the 2024 Amendment Regulations:
 - a. The Respondent did not seek or receive advice to demonstrate that the recommended targets were set at an appropriate level to increase the supply of zero- and low-emission vehicles in the market.
 - b. The Respondent received official advice that the recommended targets would result in a change in the composition of the imported vehicle fleet towards more higher emissions vehicles and fewer no- and low-emission vehicles.
57. The Respondent erred in recommending the 2024 Amendment Regulations.

Relief sought

58. The Applicant seeks the following relief:
 - a. An order quashing the Respondent's decision to recommend the 2024 Amendment Regulations.
 - b. An order that the Respondent reconsider his recommendation in accordance with this Court's findings.
 - c. An order that the targets previously set out in s 175 for the years 2025, 2026 and 2027 apply until such time as the Minister has reconsidered his recommendation and revised Amendment Regulations are in place.
 - d. Any such other orders the Court thinks fit.

e. Costs.

Third ground of review – error of law / failure to have regard to mandatory relevant consideration

The Applicant repeats paragraphs 1 to 44 and says:

59. Before recommending the making of regulations under s 167C(1)(j)(iv), the Respondent was required to be satisfied that the targets were consistent with transport-specific policies and strategies set out in ERP1.
60. In recommending the 2024 Amendment Regulations, the Respondent failed to have regard to ERP1.
61. In recommending the 2024 Amendment Regulations, the Respondent failed to be satisfied that the recommended targets were consistent with transport-specific policies and strategies set out in ERP1:
 - a. Currently, 2% of the light vehicle fleet comprises zero-emission vehicles (73,000 out of 4.4 million vehicles).
 - b. Achieving Target 2 – that zero-emissions vehicles are 30% of the light vehicle fleet by 2035 – requires a steep adoption curve.
 - c. The effect of the 2024 Amendment Regulations is a relative increase in higher-emitting vehicles and a relative decrease in zero-emission vehicles, which is contrary to:
 - i. The adoption curve required to achieve Target 2.
 - ii. Action 10.2.1: Accelerate the uptake of low-emissions vehicles.
 - iii. Key initiative: Implement the Clean Vehicle Standard to increase the quantity and variety of low- and zero-emissions vehicles supplied to Aotearoa.
62. In recommending the 2024 Amendment Regulations, the Respondent:
 - a. Received official advice that the recommended targets would make achieving emissions budgets two and three materially more difficult in a context where meeting those budgets was already challenging.
 - b. Failed to be satisfied that the targets were consistent with the achievement of emissions budgets two and three.

Relief sought

63. The Applicant seeks the following relief:
 - a. An order quashing the Respondent's decision to recommend the 2024 Amendment Regulations.
 - b. An order that the Respondent reconsider his recommendation in accordance with this Court's findings.

- c. An order that the targets previously set out in s 175 for the years 2025, 2026 and 2027 apply until such time as the Minister has reconsidered his recommendation and revised Amendment Regulations are in place.
- d. Any such other orders the Court thinks fit.
- e. Costs.

Fourth ground of review – improper purpose / taking into account irrelevant consideration

64. The purpose of Part 13 (Clean vehicle standard) of the Land Transport Act is to achieve a rapid reduction in carbon dioxide emissions from light vehicles imported into New Zealand, to assist New Zealand in meeting its 2050 target and emissions budgets under the Climate Change Response Act 2002 and its domestic and international climate change ambitions and commitments.
65. The Respondent's decision to recommend that the 2024 Amendment Regulations should increase the targets compared to the existing targets was contrary to that purpose.

Relief sought

66. The Applicant seeks the following relief:
 - a. An order quashing the Respondent's decision to recommend the 2024 Amendment Regulations.
 - b. An order that the Respondent reconsider his recommendation in accordance with this Court's findings.
 - c. An order that the targets previously set out in s 175 for the years 2025, 2026 and 2027 apply until such time as the Minister has reconsidered his recommendation and revised Amendment Regulations are in place.
 - d. Any such other orders the Court thinks fit.
 - e. Costs.

This Statement of Claim is filed by Jack Cundy, solicitor for the Applicant.

Documents for the Applicant may be served at 41 Sherwood Ave, Grey Lynn, Auckland, or may be emailed to jack@jackcundy.co.nz, copied to sally@sallygepp.co.nz, with service by email to be complete on acknowledgement (not being an automated reply).