

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

CIV-2010-404-005092

UNDER the Judicature Amendment Act 1972
and Part 30 of the High Court Rules

BETWEEN **NEW ZEALAND CLIMATE SCIENCE
EDUCATION TRUST**

Plaintiff

AND **NATIONAL INSTITUTE OF WATER AND
ATMOSPHERIC RESEARCH LIMITED**

Defendant

STATEMENT OF DEFENCE ON BEHALF OF THE DEFENDANT

14 SEPTEMBER 2010

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THE DEFENDANT, BY ITS SOLICITOR, SAYS:

Parties

1. It admits paragraph 1, but says that the Plaintiff was incorporated under the Charitable Trusts Act 1957 on or about 10 August 2010, five weeks after the date recorded on the statement of claim.
2. It admits paragraph 2.
3. It admits that:
 - (a) As a Crown Research Institute it was established for the purposes of undertaking research;
 - (b) Its primary area of research is environmental, as is set out in its statement of corporate intent;
 - (c) It undertakes a wide variety of research;
 - (d) It advises the Crown on scientific issues related to climate change:-

but, save as admitted, denies paragraph 3.

Defendant obligations

4. It admits that it has the statutory obligations prescribed in the Crown Research Institutes Act 1992, the Crown Entities Act 2004 and the Public Records Act 2005, in particular:
 - (a) Section 5 of the Crown Research Institutes Act 1992 ("**CRIA**") sets out the Defendant's principles of operation as follows:

"5 Principles of operation

- (1) Every Crown Research Institute shall, in fulfilling its purpose, operate in accordance with the following principles:
 - (a) That research undertaken by a Crown Research Institute should be undertaken for the benefit of New Zealand;
 - (b) That a Crown Research Institute should pursue excellence in all its activities;
 - (c) That in carrying out its activities a Crown Research Institute should comply with any applicable ethical standards;
 - (d) That a Crown Research Institute should promote and facilitate the application of—

- (i) The results of research; and
 - (ii) Technological developments:
 - (e) That a Crown Research Institute should be a good employer as required by section 118 of the Crown Entities Act 2004;
 - (f) That a Crown Research Institute should be an organisation that exhibits a sense of social responsibility by having regard to the interests of the community in which it operates and by endeavouring to accommodate or encourage those interests when able to do so.
 - (2) Every Crown Research Institute shall, in fulfilling its purpose, operate in a financially responsible manner so that it maintains its financial viability.
 - (3) For the purposes of subsection (2) of this section, a Crown Research Institute is financially viable if—
 - (a) Regardless of whether or not it is required to pay dividends to the Crown, the activities of the Crown Research Institute generate, on the basis of generally accepted accounting principles, an adequate rate of return on shareholders' funds; and
 - (b) The Crown Research Institute is operating as a successful going concern."
- (b) Section 17 of the Public Records Act 2005 ("**PRA**") sets out the Defendant's obligations to create and maintain records as follows:

"17 Requirement to create and maintain records

- (1) Every public office and local authority must create and maintain full and accurate records of its affairs, in accordance with normal, prudent business practice, including the records of any matter that is contracted out to an independent contractor.
- (2) Every public office must maintain in an accessible form, so as to be able to be used for subsequent reference, all public records that are in its control, until their disposal is authorised by or under this Act or required by or under another Act..."

'Public record' is defined in the PRA as:

- "(a) ...a record or a class of records, in any form, in whole or in part, created or received (whether before or after the commencement of this Act) by a public office in the conduct of its affairs; and
- (b) includes—

- (i) a record or a class of records declared under section 5(1)(a)(ii) to be a public record for the purposes of this Act; and
 - (ii) stray records; but
- (c) does not include—
- (i) a special collection; or
 - (ii) records created by the academic staff or students of a tertiary education institution, unless the records have become part of the records of that institution”

‘Special collection’ is defined in the PRA as:

- “(a) ... records collected by a public office for purposes such as research or the preservation of records; but
- (b) does not include public records;”

(c) Section 50 of the Crown Entities Act 2004 (“**CEA**”) provides:

“50 Functions must be performed efficiently, effectively, and consistently with spirit of service to public

The board of a statutory entity must ensure that the statutory entity performs its functions efficiently and effectively and in a manner consistent with the spirit of service to the public.”

but, save as admitted, denies paragraph 4.

5. It repeats paragraph 4 above but, save as admitted, denies paragraph 5.

National Climate Database

6. It admits that:

- (a) It has maintained the National Climate Database (“**Database**”) since 1992;
- (b) The Database comprises climate information, including temperature, rainfall, wind, and other climate parameters;
- (c) There are 238 stations currently recording data for the Database;
- (d) There is no statutory duty requiring the Defendant to create and maintain the Database:-

but, save as admitted, denies paragraph 6.

New Zealand Temperature Record

7. It denies paragraph 7, and says:
- (a) There is no 'official' or formal New Zealand Temperature Record;
 - (b) The Defendant's website contains a page titled New Zealand temperature record ("**NZTR**"), being an informal description for a collection of different streams of climate information, including:
 - (i) The Seven-station Temperature Series ("**7SS**");
 - (ii) The Eleven-station Temperature Series ("**11SS**"); and
 - (iii) other references to information from ship measurements of sea-surface temperatures and marine night-time air temperatures over the oceans around New Zealand ("**Marine Measurements**").
8. It denies paragraph 8, and says:
- (a) Controlling public office is defined in the PRA as follows:
 - "controlling public office—**
 - (a) means,—
 - (i) **in relation to a public record**, the public office that controls the public record: ...
 - (b) includes any successor to that public office."
 - (b) The NZTR is not a record and is not a public record for the purposes of the PRA;
 - (c) The 7SS, 11SS and Marine Measurements are special collections for the purposes of the PRA;
 - (d) The Database is a public record;
 - (e) It is a controlling public office in respect of the Database; and

(f) It is not a controlling public office in respect of the NZTR, 7SS, 11SS or Marine Measurements for the purposes of the PRA.

9. It admits that:

(a) The public and the Crown may rely on the information on the Defendant's website or Database, including information on the page titled NZTR;

(b) It provides scientific assessments and reports relating to climate change to Ministries, Departments and other entities as required on a consultancy basis:-

but, save as admitted, denies paragraph 9.

Seven-station Temperature Series

10. It denies paragraph 10, and says:

(a) No determination as alleged was made;

(b) The 7SS is a source of evidence used in producing the website page titled NZTR; and

(c) The 7SS is an appropriate and reliable series of temperature data and is based on widely accepted scientific methods and practices.

11. It admits that the 7SS is based on temperatures recorded at the seven locations (Auckland, Masterton, Wellington, Nelson, Hokitika, Lincoln and Dunedin) of longest reliable record duration and that it is sometimes depicted as a graph or held in a spreadsheet but, save as admitted, denies paragraph 11.

12. It says:

(a) The raw data for the 7SS are sourced from the Database;

(b) The 7SS is the result of adjustments to the raw data;

(c) The adjustments methodology and adjustments for the 7SS were updated and revised in 1992 by the New Zealand Meteorological Service;

- (d) The adjustments methodology for the 7SS is internationally accepted standard practice;
- (e) The raw data and the adjustments methodology for the 7SS are publicly available; and
- (f) The adjustments currently in use by the Defendant are sourced from the 1992 revisions (together with subsequent updating):-

but, save as admitted, denies paragraph 12.

13. It denies paragraph 13, and says:

- (a) The 7SS trend is approximately $+0.9^{\circ}\text{C}$ ($\pm 0.3^{\circ}\text{C}$, 95% confidence interval) over the 100-year period from 1909 to 2009;
- (b) The global temperature trend, published in the Fourth (and most recent) IPCC Assessment in 2007 is 0.74°C ($\pm 0.18^{\circ}\text{C}$, 90% confidence interval) over the period 1906 to 2005;
- (c) There is no material statistical difference between the trend in the 7SS and the global trend; and
- (d) Localised or regional factors influence comparisons between the 7SS and other areas of the planet.

14. It admits the allegations in paragraph 14.

Reliance on 7SS

- 15. It denies paragraph 15, and repeats paragraph 12 above.
- 16. It denies paragraph 16, and repeats paragraphs 10 and 12 above.
- 17. It denies paragraph 17, and repeats paragraphs 10 and 12 above.
- 18. It denies paragraph 18, and repeats paragraphs 10 and 12 above.
- 19. It denies paragraph 19, repeats paragraphs 10, 12 and 13 above, and says:
 - (a) It has taken into account the past work of the New Zealand Meteorological Service ("**MetService**");

- (b) Most of the MetService staff working on the National Climate Database joined the Defendant in 1992;
 - (c) Most of the Defendant's scientists presently working on the temperature series are climate scientists who worked at MetService;
 - (d) The adjustments to the temperature data for the 7SS are appropriate, reasonable and explicable, and are not influenced by bias;
 - (e) The 11SS (which is unadjusted) in any event demonstrates an appreciable temperature increase over the past century; and
 - (f) The Plaintiff's allegations are based on improper scientific and statistical methodology.
20. It denies paragraph 20, and repeats paragraphs 10, 12 and 13 above.
21. It denies paragraph 21, and repeats paragraphs 10 and 12 above.
22. It denies paragraph 22, and repeats paragraphs 15 to 20 above.
23. It denies paragraph 23, and repeats paragraphs 15 to 20 above.

Refusal to repudiate 7SS and suspend NZTR

24. It repeats paragraphs 1 to 23 above.
25. It denies paragraph 25, and says:
- (a) The Plaintiff did not exist in February 2010;
 - (b) It has reviewed the adjustments for the sites contributing to the 7SS;
 - (c) Its papers documenting the review of the adjustments are being peer-reviewed by the Australian Bureau of Meteorology; and
 - (d) Its papers documenting the review of the adjustments will be made publicly available when completed.

26. It denies paragraph 26, and repeats paragraph 25 above.
27. It denies paragraph 27, and repeats paragraphs 10, 12 and 25 above.

Eleven-station Temperature Series

28. The Defendant says the 11SS:
- (a) Is a dataset which is often displayed in a spread sheet or graphic form;
 - (b) Is selected from locations where no adjustments were made because there were no significant site or environmental changes (although the entire set was not available for the same period of time, as stations commenced recording at different times);
 - (c) Was prepared by its Principal Scientist Dr James Renwick in consultation with Dr Jim Salinger:-

but, save as admitted, denies paragraph 28.

29. It denies paragraph 29, repeats paragraph 28 above, and says:
- (a) The reasons for selecting the stations for the 11SS are appropriate, reasonable and explicable;
 - (b) The data for the 11SS is reliable.
30. It denies paragraph 30, and repeats paragraphs 10, 12, 25, 28 and 29 above.
31. It denies paragraph 31.
32. It denies paragraph 32, and repeats paragraphs 10 - 13, 25, 28 and 29 above.
33. It denies paragraph 33, repeats paragraphs 10 - 13, 25, 28 and 29 above, and says:
- (a) Three global temperature databases (HadleyCRUT, GISTemp, and GHCN), produced by organisations from the United States and United Kingdom ("**International Organisations**"), draw on data from the Database;

- (b) The International Organisations also adjust temperature data to make long-term temperature series homogeneous in time and space; and
- (c) The International Organisations utilise the data for the purpose of calculating trends for much larger grid-squares, rather than specific localised sites as the Defendant does.

- 34. It denies paragraph 34, and repeats paragraphs 10 - 13, 25, 28 and 29 above.
- 35. It denies paragraph 35, and repeats paragraphs 4 - 8, 10 - 13, 25, 28 and 29 above.
- 36. It denies paragraph 36, and repeats paragraphs 4 - 8, 10 - 13, 25, 28 and 29 above.
- 37. It denies paragraph 37.

This Statement of Defence is filed by Michael Holm, solicitor for the Defendant, of Atkins Holm Joseph Majurey. The address for service of the Defendant is Level 19, 48 Emily Place, Auckland 1010.

Documents for service may be left at that address or may be:

- (a) posted to the solicitor at PO Box 1585, Shortland Street, Auckland 1140; or
- (b) by facsimile at (09) 304 1821.