

# **Resource Management (Energy and Climate Change) Amendment Bill**

Government Bill

## **Explanatory note**

### **General policy statement**

The purpose of this Bill is to give effect to the Government's climate change policy package and to require explicit consideration of the effects of climate change and renewable energy in the exercise of functions and powers set out in the Resource Management Act 1991.

The Bill has 3 objectives, as follows:

- to give greater weight to the value of renewable energy, and clarify that energy efficiency should be a consideration, regardless of the energy source; and
- to give greater weight to considering the effects of climate change, for example, addressing potential increase in flood risk, a rise in average sea level, and changes in typical rainfall patterns; and
- despite the second objective, to remove climate change as a consideration when considering industrial discharges of greenhouse gases, as these emissions are best addressed using a national mechanism.

### **Clause by clause analysis**

*Clause 1* is the Title clause.

*Clause 2* is the commencement clause. It provides that the Bill comes into force on the day after the date on which it receives the Royal assent.

*Clause 3* sets out the purpose of the Bill.

*Clause 4* inserts into the Resource Management Act 1991 (“the principal Act”) the definitions of **greenhouse gas** and **renewable energy**.

*Clause 5* amends section 7 of the principal Act to provide that, in addition to having particular regard to natural and physical resources, persons exercising functions and powers under the principal Act must have particular regard to—

- the efficient use of energy from minerals and other sources of energy; and
- the effects of climate change and the benefits to be derived from the use and development of renewable energy.

*Clause 6* inserts *new sections 70A and 70B* into the principal Act. *New section 70A* removes the power of regional councils, in making rules on the discharge of greenhouse gases into air, to have regard to the effects of a discharge on climate changes. However, as an exception to that prohibition, the clause expressly permits regional councils to have regard to the effects on climate change of an activity involving the use and development of renewable energy, to the extent that it reduces greenhouse gas emissions in New Zealand. As a further exception to the prohibition, *new section 70B* permits regional councils to make rules as necessary to implement a relevant national environmental standard made by regulation under section 43. Such rules must be no more or less restrictive than the national environmental standard being implemented.

*Clause 7* inserts *new sections 104E and 104F* into the principal Act. *New section 104F* precludes a consent authority, when considering applications for discharges otherwise prohibited by section 15 or section 15B, from having regard to the effects of a discharge on climate change. However, as an exception to that prohibition, in considering such applications, a consent authority is not precluded from having regard to the effects of an activity involving the use and development of renewable energy in reducing the discharge of greenhouse gases here in New Zealand. *New section 104E* provides, as a further exception to the prohibition in *new section 104E*, that regional councils may determine the specified applications that are necessary to implement a relevant national environmental standard made by regulation under section 43, but must be no more or less restrictive than the national environmental standard being implemented.

*Clause 8* is a transitional provision, providing that the Bill does not apply to specified matters already in train when the Bill comes into force.

*Clause 9* revokes rules in regional plans relating to the effects of greenhouse gas emissions on climate change.

## **Regulatory impact and compliance cost statement**

### *Background*

The purpose of these amendments is to amend the Resource Management Act 1991 (the **RMA**) to provide that climate change and related energy matters be relevant considerations for decision-makers.

The provisions in the RMA were assessed to see whether amendments were necessary to support or give effect to the Government's energy and climate change policies. Relevant policies include "continuing improvement in energy efficiency" and "progressive transition to renewable sources of energy", from the National Energy Efficiency and Conservation Strategy (2001) (the **NEECS**), and New Zealand's obligations as a signatory to the Kyoto Protocol.

The RMA does not explicitly provide for improved energy efficiency, the use of renewable energy, or planning for the effects of climate change (eg, sea level rise). It would be contrary to the effects-based nature of the RMA to specify particular activities as being desirable, but it is appropriate to highlight particular matters that should be given consideration.

In regard to discharges into air, under the RMA the definition of **contaminant** includes greenhouse gases. Therefore, regional councils can, in theory, either develop plans that permit discharges of greenhouse gases or specify that such discharges require resource consents. It is arguable that consent could be declined or that conditions could be imposed. To date, few councils have controlled greenhouse gases. A condition requiring mitigation of emissions, imposed in relation to the Stratford power station, was unusual and was recently removed at the instigation of an applicant who argued a "change in circumstances".

### *Statement of problem and need for action*

Meeting the Government's objectives, detailed in the NEECS and climate change policies, would be assisted by a stronger legal mandate to take into consideration energy and climate change matters.

The extent to which there are barriers in current regional and district plans has not been quantified, but the need for national direction in this area has been expressed by a number of councils and local government planners who have repeatedly requested central government to provide them with a stronger mandate and legally relevant guidance to take climate change effects and the benefits of renewable energy into consideration. They seek legal support to back up decisions, including those based on climate change predictions. Government direction is also sought to raise the priority given to climate change, and related energy matters, in local government budget decisions.

Recent decisions from the Environment Court have noted that the efficient use of energy from minerals is not a matter included in section 7(b). This omission needs to be corrected so that efficient use of energy is a matter that must be considered.

The problem, in relation to industrial greenhouse gas emissions, is that there is a current lack of clarity regarding the role of regional councils under the RMA. This has led to the Environment Court hearing debates on whether regional councils should control greenhouse gas emissions, and by which means.

Interested stakeholders have contested these controls at the Environment Court. However, as Environment Court decisions do not create consistency across regions and only High Court decisions provide binding precedent, there could be more expensive and time-consuming litigation. Emitters will also potentially face double controls on their emissions, through national climate change policies (including a carbon charge) and through local rules and consents.

### *Statement of the public policy objective*

#### **Energy**

For energy, the policy objectives are to—

- provide a stronger legal mandate for consideration of energy efficiency and the value of renewable energy so that decisions and council plans under the RMA take into consideration

national objectives detailed in the NEECS and climate change policies:

- provide a legal framework in the RMA that would support any guidance or national direction provided through any future national policy statement (NPS) or non-statutory guidance material;
- require councils, in the development of their plans, to consider national energy objectives so that proposals for renewable energy and energy efficiency do not encounter unnecessary barriers.

### **Climate change**

For managing the effects of climate change, the objectives are—

- to ensure that, nationwide, all councils consider the potential effects of climate change as appropriate for their area; and
- to provide legal back-up for councils planning for the effects of climate change.

For industrial greenhouse gas emissions into air, the objective is to clarify that, although councils, applicants, and all those acting under the RMA have energy and climate change responsibilities, it is most appropriate to specifically address industrial air discharges at the national level. The ability to control land uses for climate change purposes remains unchanged.

### *Statement of options for achieving the desired objective*

#### **Energy**

The options for achieving the objectives include—

- an amendment to the RMA to explicitly refer to the energy matters, including energy efficiency, and give greater prominence to the benefits of the use and development of renewable energy;
- an NPS under the RMA;
- development of non-statutory guidance and reliance on development of case law.

The most effective way of influencing resource consent decisions is to amend the RMA to require that particular regard must be given to the matters listed in section 7 as the Bill is enacted. An NPS works

primarily through requiring changes to plans, and so is not as immediate or as strong a legal direction as the inclusion of these matters in section 7.

An amendment is required to clarify that the efficient use of all energy must also be considered because neither an NPS nor guidelines can be used to clarify the law in this respect.

An NPS may be required to support these amendments by providing more detailed direction. A decision on the need for an NPS will be based on a review of existing planning documents and any requirements to amend plans.

### **Climate change**

The options for achieving the objectives include—

- amendment of the RMA to give climate change effects greater prominence:
- provision of an NPS on climate change effects, and/or amendment of the existing New Zealand Coastal Policy Statement (NZCPS):
- reliance on voluntary uptake of non-binding guidance and further development of case law:
- amendment of other relevant legislation.

This Bill amends section 7, requiring that the effects of climate change is a matter to be given particular regard in all RMA processes. In regard to the need for an NPS, the NZCPS is currently being reviewed. This presents an opportunity to review Government policy for managing the effects of development in the coastal environment. Whether an NPS is required to bring about changes in RMA plans for other climate change effects will be evaluated following further work.

On non-binding guidance, there is an agreed work programme for guidance for councils, but guidance alone is unlikely to be sufficient.

The amendment has potential implications for the Civil Defence Emergency Management Act 2002, the Building Act 1991, and the Building Code. Consistency of other legislation with the RMA and provisions for climate change is needed and this is being considered.

### **Industrial greenhouse gas emissions**

Options for achieving the objectives include—

- amending the RMA to explicitly restrict controls to national instruments:
- providing direction through an NPS:
- provision of guidance documents.

An amendment to the RMA to remove explicitly the ability of regional councils to control emissions of greenhouse gases for climate change reasons will mean that emitters only face controls on their emissions as a result of national instruments. This is the preferred policy option, primarily because it would provide greater certainty for councils and emitters across New Zealand. Examples of national instruments that could be used include—

- mechanisms being developed by the New Zealand Climate Change Office:
- a national environmental standard made by regulation under the RMA.

The development of an NPS to achieve the objective was not the preferred option as it would involve considerable time and cost to prepare and would not provide the certainty of an explicit legislative change. Given the nature of an NPS, it would require ongoing consideration in the resource management planning and resource consent processes and accordingly would result in ongoing compliance costs on councils, consent applicants, and submitters.

National guidelines were not the preferred option since they have no statutory power and, while useful in advising councils, they provide little certainty or consistency across the country. Accordingly, ongoing costs would be incurred by councils, consent applicants, and submitters. Potential for unnecessary compliance costs is higher with this option.

### *Statement of the net benefit of this proposal*

#### **Energy**

This Bill addresses the issues of renewable energy and the efficient use of energy from all energy sources by adding them to the list of matters to which particular regard must be had in section 7. This, plus supporting guidance, will potentially have long-term benefits

for energy use, but the actual benefits and costs are difficult to estimate.

The proposed change is consistent with the direction of the Kyoto Protocol and, depending on the future price of carbon, could bring direct benefits to the New Zealand economy.

It is not expected that local authorities would incur additional administrative costs. The amendment does not, of itself, require local authorities to change their plans. Similarly, it is not expected that there would be any additional costs to applicants, including business. The amendments change the weighting to be given to a particular matter. Applicants will be required to provide information on how their proposal contributes to, or affects these energy-related issues. However, this requirement is already implicit in the RMA and many businesses already provide for it, particularly where it strengthens their case for being granted a resource consent.

There is a potential cost in that the proposed amendment may not, by itself, address the policy objective in some circumstances and so provide little initial benefit. For some developers, their primary concerns relate to council practice, delays in decision-making (particularly at the Environment Court), and uncertainties of outcome. It is acknowledged, however, that some of these concerns are not specific to the energy sector.

### **Climate change**

The amendment to include effects of climate change in section 7 potentially affects developers proposing changes in land use, developments likely to be affected by climate change effects in the future, local authorities, and submitters on the consent application process. The amendment to section 7, use of the NZCPS, and provision of non-binding guidelines will potentially have long-term benefits as all councils turn their attention to managing the effects of climate change. As with the energy amendments, the actual benefits and costs are difficult to estimate. They will likely occur and accumulate over the next 30 to 100 years and beyond, but will also have the co-benefits of better planning for currently existing natural hazards and availability of natural resources.

The amendment to section 7, which changes the weighting given to a particular matter, will not in itself create additional costs on property developments. Applicants will be required to provide information on



how their proposal takes into account the effects of climate change, a matter that is already an implicit requirement of the RMA.

Any costs arising from this requirement should be offset by a reduction in the cost of avoiding, mitigating, or remedying damage. Failing to properly recognise the effects of climate change exposes central and local government to fiscal risks, landowners to property damage, and the community generally to health and biodiversity risks.

### **Industrial greenhouse gas emissions**

The amendment to restrict regional council control of greenhouse gas emissions is likely to affect the emitters, local authorities, and submitters on applications for discharge into air consents.

As an example, the Taranaki Regional Council has stated that the role of the RMA in managing greenhouse gas emissions in its region has cost the Council at least \$907,000 in the last 10 years (including the cost of litigation in the Environment Court). This is broken down as follows:

- resource consent processes (27 applications): \$807,000; and
- policy and plan development: \$80,000; and
- advocacy: \$20,000.

It is expected that there will be a reduction in administrative, compliance, and economic costs for all parties, although these costs have not been quantified for the whole country. The Taranaki Regional Council stated to the Foreign Affairs, Defence and Trade Select Committee on the Climate Change Response Bill, 12 September 2002, that the costs arising from delays were higher for applicants than for the Council, and were likely to be in the order of tens of millions of dollars.

Taranaki, as a region with a high level of greenhouse gas emitters, will benefit from this amendment more than other regions.

An immediate amendment to the RMA will not create a policy vacuum prior to national price mechanisms taking effect in 2008 for 4 reasons, as follows:

- it is highly likely that investment decisions on long-lived capital made before 2008 will factor in a future price on greenhouse gas emissions (ie, a carbon charge):

- the “foundation policies” (such as NEECS) are not reliant on the application of the carbon charge and will indirectly address greenhouse gas emissions before 2008:
- the early development and management of Negotiated Greenhouse Agreements and Projects are likely to provide an incentive for some emission reductions in the period leading to 2008:
- greenhouse gas emissions from industries are not being controlled through the RMA at present, so removing the ability to address those emissions through local rules and consents is unlikely to result in significant emission growth.

### ***Business compliance cost statement***

This statement only relates to the amendment that restricts a regional council’s ability to control industrial greenhouse gas emissions. There are no new compliance costs for the other amendments. The Bill changes the weighting given to particular matters, and applicants will be required to provide information on how their proposal provides for, or affects, each matter. This requirement, however, is already an implicit requirement of the RMA process.

### **Source of compliance costs**

There are no new compliance costs from the proposal to restrict controls on industrial greenhouse gas emissions. By limiting the opportunity for local controls to address these matters and relying instead on national mechanisms, the Bill reduces the potential for higher compliance costs. Further, by expressly stating this exclusion in the legislation, the Bill removes a general need for businesses to assess and estimate greenhouse gas emissions in the context of RMA processes. Any national mechanisms that are introduced will address compliance costs as part of that process.

### **Parties likely to be affected**

The amendment is likely to result in cost savings for those industries and individuals who emit greenhouse gases or who make submissions on proposals. Sectors likely to be affected are those with high emissions, such as oil refineries, coal- and gas-fired power stations, and cement producers. The number of businesses and submitters affected has not been determined.

### **Quantitative and qualitative estimates of compliance costs**

No quantitative assessment of the impact of compliance costs on businesses has been made. Whatever the exact amount for each business, this policy proposal will result in a reduction of existing compliance costs.

In qualitative terms, unless required by a national mechanism such as a national environmental standard, industries will no longer need to include greenhouse gases in their assessment of environmental effects, nor incur the costs associated with legal contests from project opponents. Similarly, submitters on resource consent or plan change applications will not incur negotiation and analysis costs when the issue involves greenhouse gas emissions from industries.

### **Longer-term implications of the compliance costs**

The reduction in costs will continue over time, and will be felt when industries are normally required to resubmit applications for discharge to air permits.

### **Assessment of the risks associated with estimates and level of confidence that can be placed on the compliance cost assessment**

There has been no attempt to quantify the effect on compliance costs arising from this amendment. It is assumed that compliance costs will be reduced, based on the following assumptions:

- that emitters will no longer need to measure and report greenhouse gas emissions to councils as part of a resource consent condition, unless required by a national mechanism such as a national environmental standard;
- emitters will not need to bear the costs of consultation;
- the amendment will remove an opportunity for litigation.

While these are assumptions, it is logical that as a result of this proposed policy there will be a reduction in compliance costs.

### **Key issues relating to compliance costs identified in consultation**

There was no mention of business compliance costs in consultation other than submissions from local authorities that indicated their support for the amendment based on less demand on their resources.

**Overlapping compliance requirements with other agencies**

None.

**Steps taken to minimise compliance costs**

This proposal reduces compliance costs.

*Consultation*

Officials from the Climate Change Project Team and the Ministry for the Environment consulted with Government departments, including Ministry of Agriculture and Forestry, Ministry of Civil Defence and Emergency Management, Ministry of Economic Development, Te Puni Kōkiri, The Treasury, Department of Internal Affairs, Department of Conservation, and Department of Prime Minister and Cabinet. The Energy Efficiency and Conservation Authority was also consulted on energy matters.

Consultation with local government occurred separately for each of the topic areas: discharges of greenhouse gases, planning for the effects of climate change, and the use of renewable energy and energy efficiency. The involvement and interest of councils depended on their local circumstances. Local Government New Zealand was consulted on all topics.

For each of the topic areas, there were councils that did not support amendments to the RMA. Some supported an NPS, rather than the proposed amendment, as a mechanism to give government direction. Other councils consider the amendments unnecessary, believing that the powers of councils were appropriate, particularly in regard to discharges of gases, or that the national benefits of renewable energy could already be considered.

For the energy provisions, consultation meetings were held with 6 renewable energy developers, Transpower, the Electricity Networks Association, the Major Electricity Users Group, Business New Zealand, and a number of people working with Māori on energy issues. The issues raised by private organisations were not limited to energy matters and included generic concerns of costs, in both time and money, associated with RMA processes. But a stronger legal mandate for decisions, to give weighting to renewable energy, was generally supported.

General public consultation occurred around the Government's preferred policy package for climate change (November 2001 and May 2002).

Consultation with other parties represented in Parliament occurred on the policy papers submitted to Cabinet in 2002.

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Hon Pete Hodgson

# Resource Management (Energy and Climate Change) Amendment Bill

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**The Parliament of New Zealand enacts as follows:**

### **1 Title**

- (1) This Act is the Resource Management (Energy and Climate Change) Amendment Act **2003**.
- (2) In this Act, the Resource Management Act 1991<sup>1</sup> is called “the principal Act”.

<sup>1</sup> 1991 No 69

## Part 1

### Preliminary provisions

#### 2 Commencement

This Act comes into force on the day after the date on which it receives the Royal assent.

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#### 3 Purpose of this Act

The purpose of this Act is to amend the principal Act—

- (a) to make explicit provision for all persons exercising functions and powers under the principal Act to have particular regard to the efficient use of energy from minerals and other sources of energy, the effects of climate change, and the benefits to be derived from the use and development of renewable energy; and 10
- (b) to require local authorities—
  - (i) to plan for the potential effects of climate change; but 15
  - (ii) not to consider the effects on climate change of discharges into air of greenhouse gases from industrial and trade premises.

#### 4 Interpretation

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Section 2(1) of the principal Act is amended by inserting, in their appropriate alphabetical order, the following definitions:

“**greenhouse gas** has the meaning given to it in section 4(1) of the Climate Change Response Act 2002

“**renewable energy**—

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“(a) means energy from a source—

“(i) that occurs naturally; and

“(ii) the use of which will not permanently deplete New Zealand’s energy sources of that kind, because the source is generally expected to be replenished by natural processes; and 30

“(b) includes energy produced from solar, wind, geothermal, hydro, biomass, tidal, wave, and ocean current sources”.

## Part 2 Amendments to principal Act and transitional provisions

- 5 Other matters**
- (1) Section 7 of the principal Act is amended by inserting, after paragraph (b), the following paragraph: 5  
“(ba) the efficient use of energy from minerals and other sources of energy:”.
- (2) Section 7 of the principal Act is amended by adding the following paragraphs: 10  
“(i) the effects of climate change:  
“(j) the benefits to be derived from the use and development of renewable energy.”
- 6 New heading and new sections 70A and 70B inserted**
- The principal Act is amended by inserting, after section 70, the following heading and sections: 15  
“*Rules relating to discharge of greenhouse gases*
- “70A Application to climate change of rules relating to discharge of greenhouse gases**
- Despite **sections 7(i)** and 68(3), when making a rule relating to the discharge into air of greenhouse gases from industrial or trade premises under its functions under section 30(1)(d)(iv) or (f), a regional council— 20
- “(a) must not have regard to the effects of such a discharge on climate change; but 25
- “(b) may have regard to the effects on climate change of an activity involving the use and development of renewable energy, to the extent that it reduces the discharge into air of greenhouse gases in New Zealand.
- “70B Implementation of regulations made under section 43 to control climate change** 30
- If regulations are made under section 43 to control the effects on climate change of the discharge into air of greenhouse gases from industrial or trade premises, a regional council may make rules that are necessary to implement the regulations, provided the rules are no more or less restrictive than the regulations.” 35



- 7 New heading and new sections 104E and 104F inserted**
- The principal Act is amended by inserting, after section 104D, the following heading and sections:
- “*Decisions on applications relating to discharge of greenhouse gases* 5
- “104E **Applications relating to discharge of greenhouse gases**
- Despite **section 7(i)**, when considering an application for a discharge permit or coastal permit to do something that would otherwise contravene section 15 or section 15B relating to the discharge into air of greenhouse gases, a consent authority— 10
- “(a) must not have regard to the effects of such a discharge on climate change; but
- “(b) may have regard to the effects on climate change of an activity involving the use and development of renewable energy to the extent that it reduces the discharge of greenhouse gases in New Zealand. 15
- “104F **Implementation of regulations made under section 43 to control climate change**
- If regulations are made under section 43 to control the effects on climate change of the discharge into air of greenhouse gases, a consent authority, when considering an application for a discharge permit or coastal permit to do something that would otherwise contravene section 15 or section 15B,— 20
- “(a) may grant the application, with or without conditions, or decline it, as necessary to implement the regulations; but 25
- “(b) in making its determination, must be no more or less restrictive than is necessary to implement the regulations.”
- 8 Transitional provision relating to applications made before commencement of Act 30**
- (1) The matters referred to in **subsection (2)** must be continued and completed in all respects in accordance with the principal Act as if this Act had not been enacted.
- (2) **Subsection (1)** applies to the following matters, if made or given before the commencement of this Act: 35
- (a) an application for a resource consent:

- (b) an application made under section 127 to change or cancel a condition of a resource consent granted before the commencement of this Act:
  - (c) a notice of requirement for a designation.
- (3) For the purposes of **subsection (1)**, an application is made, or a notice is given, on the day on which the local authority receives the application, or the notice is given, in accordance with the requirements of the principal Act. 5
- 9 Transitional provision relating to rules made before commencement of Act** 10
- On the commencement of this Act, an existing rule in a regional plan that relates solely to the control of the effects on climate change of greenhouse gas emissions from any industrial or trade premises is revoked.