

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

Government Bill

As reported from the Local Government and  
Environment

## **Commentary**

### **Recommendation**

The Local Government and Environment Committee has examined the Resource Management (Energy and Climate Change) Amendment Bill and recommends, by majority, that it be passed with the amendments shown.

### **Introduction**

The provisions in the Resource Management Act 1991 were assessed to see whether amendments were necessary to give effect to the Government's energy and climate change objectives. These objectives are detailed in the Government's climate change policies and in the National Energy Efficiency and Conservation Strategy 2001 and form part of New Zealand's obligations as a signatory to the Kyoto Protocol.

The Resource Management Act does not explicitly provide for improved energy efficiency, the use of renewable energy, or planning for the effects of climate change. In order to meet the objectives contained in the above documents, this bill provides a stronger legal mandate to take into consideration energy and climate change matters.

## **Purpose**

The purpose of the bill is to amend the Resource Management Act in order to give effect to the Government's climate change and energy policies. The bill recognises the Government's preference for national co-ordination of controls on greenhouse gas emissions. It therefore removes the power of regional councils to consider the effect of greenhouse emissions on climate change when making rules in regional plans or determining air discharge consents. It also requires that persons exercising functions and powers under the Resource Management Act have particular regard to the effects of climate change, the benefits of efficient energy use, and the benefits of renewable energy.

## **Definition of "climate change"**

Many submitters requested that a definition of "climate change" and a definition of the "effects of climate change" be included in the bill. We support the first suggestion and recommend inserting a definition of "climate change" in clause 4. For the sake of consistency, this is the definition provided within Article 1 of the United Nations Framework Convention on Climate Change, which is annexed as Schedule 1 of the Climate Change Response Act 2002.

## **Planning for the effects of climate change**

With regard to a definition of the "effect of climate change", we acknowledge that local authorities would benefit from guidance on the relevant effects of climate change; however, we note that application of the term "effect" is already clarified within section 3 of the Resource Management Act. We also note that the New Zealand Climate Change Office is currently developing a range of materials for councils on how to plan for the effects of climate change and has also begun to develop a web-based "best practice" resource. Councils will therefore have access to published materials and will be able to download and share information on planning and regulatory responses to climate change challenges. We consider that the combination of the definition of climate change proposed above and this guidance material means there is no need for a specific definition within this bill.

The United Future member believes that, given the high degree of uncertainty surrounding all projections based on the science of climate change, stronger guidance from central government is needed

to assist local authorities in planning for the potential effects of climate change. Ideally this guidance would take the form of a National Policy Statement (NPS) from the Ministry for the Environment to ensure that the projections used for climate change planning are at least consistent on a nation-wide basis. However, the approach currently favoured by the Government is for the Climate Change Office to issue a set of non-binding guidelines for local authorities. Although such guidelines will be useful, the fact that they are non-binding means there is still a lot of scope for variation between different councils.

However, United Future realises that the preparation of NPSs is a complex and time consuming process that, even if undertaken, could not be completed soon enough for the purposes of this bill. Accordingly, United Future will support the bill in the hope that should problems arise with interpretation at a council level, stronger guidance such as the issuing of an NPS will be forthcoming.

## **Definition of “renewable energy”**

### **Inclusion of geothermal energy**

Many submitters were concerned about the inclusion of geothermal energy in the definition of renewable energy. They noted that the replenishment period for geothermal energy sources can be hundreds of years, and that, for it to be considered renewable in time frames similar to the other sources noted, its use would be uneconomic. Others suggested that increased geothermal energy exploitation might lead to loss of surface features and long-term loss in the pressure and temperature of the resource. We also received evidence that new techniques involving deep injection of geothermal fluids could potentially maintain both pressure and temperature.

Several submitters requested that geothermal energy be removed from the list in paragraph (b) of the definition of “renewable energy” but that it be given the same elevation as renewable energy within the body of the bill.

The point was also made that greenhouse gas emissions from geothermal energy vary enormously. While they are generally much lower than for fossil fuels, we were advised that in some cases geothermal energy emits more carbon dioxide than a combined cycle natural gas power station. It was questioned whether it was

appropriate to include geothermal energy, regardless of its greenhouse gas emissions, in a list of energy sources which are to have the special status of section 7 of the Act.

We were advised that new section 104E(b) would allow a consent authority, when considering an application for a new geothermal energy development, to take into account its effects on climate change compared with other possible sources of energy. We consider it is important that geothermal developments with emissions higher than fossil fuels are not given higher planning status. Given the above assurances, we consider geothermal energy should remain in the definition of “renewable energy” in clause 4.

### **Definition to list renewable energy sources**

Some submitters consider there is potential for misinterpretation of the relationship between paragraph (a) and paragraph (b) of the definition of “renewable energy” in clause 4. The confusion arises out of a possible tension between the descriptive portion in paragraph (a) and the inclusion of geothermal energy in paragraph (b). As discussed above, we consider the inclusion of geothermal energy appropriate. However, in order to assist interpretation, we recommend amending the definition by deleting paragraph (a) and including only a closed list of renewable energy sources in the definition. We consider this simplifies the definition.

### **Efficient use of energy relates to post-conversion energy**

Some submitters questioned the meaning of the term “efficient use of energy” in clause 3(a) and clause 5, new section 7(ba) of the bill. There was confusion about whether the term refers to efficiency of energy conversion or efficiency of end use. Within this bill, “use” refers to the final consumption of energy – its end use. It is not intended to refer to the efficiency of converting or tapping the inherent available energy within the primary resource. We therefore recommend replacing the word “use” with the words “end use” in clause 3(a) and clause 5, new section 7(ba).

Many submitters also expressed concern at the direct reference to minerals in clause 3(a) and clause 5, new section 7(ba). Some suggest it implies the encouragement of the use of minerals, which is contrary to the intent of the bill. We were advised that the reference to minerals was included on the basis of the exclusion of minerals

from the test as to sustainable management of natural and physical resources in section 5(2)(a) of the Resource Management Act. The Environment Court has issued decisions that specifically exclude minerals and mineral-derived energy from consideration in respect of section 7(b) and (g) of the Resource Management Act. The exclusion created by the case law is in relation to the rate of extraction or depletion of minerals. Because we recommend replacing “use” with “end use”, the need to counteract this exclusion is no longer relevant. We therefore recommend deleting the reference to “minerals and other sources of energy” in clause 3(a) and new section 7(ba) in clause 5.

These amendments clarify that the efficiency of use relates to all forms of energy regardless of source and that it does not relate to the efficiency of conversion from the primary source.

### **Councils prevented from controlling greenhouse gas emissions from any source**

The bill as introduced removes the ability of regional councils to consider the effects on climate change from discharges into air of greenhouse gases from “industrial or trade premises”. Many submitters thought that specifically identifying industrial and trade premises may leave regional councils in the position of being able to control greenhouse gas emissions from other sources. The example was given of hothouses burning fossil fuels to heat the facility, which would potentially continue to face both local and national controls since they do not come within the definition of an industrial or trade premises.

We consider this specification is unnecessary because the intent of this clause is to prevent consideration of effects on climate change of any discharge needing a consent.

The effects of greenhouse gas emissions from transport can still be considered in land use planning.

It is important to ensure that there is ongoing potential for local management of domestic emissions. However, we consider that domestic emission management is more likely to be designed for the mitigation of human health effects, which is not affected by the bill.

We therefore recommend deleting the words “industrial or trade premises” from all clauses of the bill, and replacing the words “relating to” with “controlling” in new section 70A in clause 6.

This clarifies that the restriction created by new section 70A only applies to regional council functions when making rules controlling discharges of greenhouse gases to air under section 30(1)(d)(iv) or (f).

Further, we understand that the reference to 7(i) in clauses 6 and 7 is a drafting error and should be removed. New section 7(i) relates to effects of climate change while new sections 70A and 104E relate to effects of discharges on climate change. It is not a relevant reference and we recommend it be deleted.

## **New sections 70A and 104E amended**

### **Words “in New Zealand” unnecessary**

Some submitters were concerned about the words “in New Zealand” in clause 6, new section 70A(b) and clause 7, new section 104E. We understand that these words were intended to highlight the benefit of the establishment of renewable energy generation in one region, by possibly offsetting the need for non-renewable energy being established elsewhere. However, since the Resource Management Act limits councils’ geographic jurisdiction only in respect of their regulatory powers, not in terms of what environmental effect should be taken into account in their decision-making, we consider that the words “in New Zealand” are unnecessary and we recommend deleting them from new section 70A(b) and new section 104E(b).

### **Mandatory consideration**

While new sections 70A and 104E prohibit regional councils from having regard to the effects of discharges of greenhouse gases in specified circumstances, the bill as introduced implied that there is a discretion when it comes to considering the use and development of renewable energy in this context. Some submitters expressed concern that the words “may have regard to” could lead to inconsistency with the requirement of new section 7(j). For clarity, we recommend amending new sections 70A(b) and 104E(b) to remove the implied discretion.

### **Reduction to be absolute or relative**

We were concerned about the use of the term “reduces” in new sections 70A(b) and 104E(b). We consider it is ambiguous as to

whether it implies that the use and development of renewable energy would enable an absolute reduction of greenhouse gas emissions or, in comparative terms, a reduction in the rate at which greenhouse gases are emitted. We therefore recommend amending new sections 70A(b) and 104E(b) to clarify the scope of the consideration that is relevant. This amendment explicitly specifies that a reduction in the discharge of greenhouse gases may be either in absolute terms or relative to the use and development of non-renewable energy.

### **“Potential” effects of climate change deleted**

Section 3 of the Resource Management Act provides a meaning of the term “effect”. This includes provision for potential effects of high probability and for potential effects of low probability but with a high potential impact. For consistency, we recommend deleting the word “potential” in clause 3(b)(i).

### **Transitional provisions**

The transitional provision of clause 8 lists matters that must be continued and completed as if this bill had not been enacted. Our investigations have identified only one air discharge consent containing conditions controlling greenhouse gas emissions. That consent is not currently under review. We therefore saw no need for subclause (2)(b) and recommend that it be deleted.

### **Existing rules or parts of rules controlling greenhouse gas effects on climate change to be revoked**

We consider the clause 9 reference to rules that relate “solely” to the control of greenhouse gas effects on climate change to be inappropriate. Very few rules deal specifically and “solely” with addressing greenhouse gas effects on climate change. Discharge rules can include terms and conditions that either individually address different effects or address more than one effect simultaneously. We recommend amending clause 9 to clarify that any rule or part of a rule, controlling greenhouse gas emissions solely for their effects on climate change that existed prior to the proposed commencement of this bill is revoked.

## **Minority view from National and ACT**

National and ACT do not support this bill because we believe the approach is muddled. It will not improve the environment, will only cause more uncertainty and confusion in the energy sector, and will impose additional costs on councils and ratepayers.

The bill requires all councils to plan for climate change when there is huge uncertainty about its effects. The temperature and rainfall models at a global, let alone a national or local level, are scenarios not predictions. It is premature for councils to be required to spend millions on planning for a phenomenon that is both uncertain and very long-term. Weather variability is a fact of life and the climate will change with or without human induced global warming.

The bill's proposal to exempt greenhouse gas effects from air discharge permits from industrial and trade premises is supported because the Resource Management Act is a poor mechanism for controlling emissions. However, the provision as introduced is selective and moves away from the long established principle that effects and not the activity should drive environmental law-making. Greenhouse gas emissions from farming or transport activities will still be covered under the Resource Management Act. This is unfair and wrong. We support the removal of the specific reference to industrial and trade premises.

The bill's energy efficiency provisions are well meaning, but flawed. They fail to recognise the market that exists in all types of energy and energy services, and the degree to which prices are the principal driver in efficient energy use. The proposed Resource Management Act requirements for the end use of energy to be efficient is illogical, particularly as there is no role for the Resource Management Act to determine the way energy is produced. Effectively, this bill is saying it is okay to waste energy with inefficient turbines, gas extraction or petroleum processing, but not okay to waste the energy in manufacturing or home use.

New Zealand faces huge energy problems in the next decade as the Maui gas field phases down production. We believe the Resource Management Act is a barrier to investment in much needed new energy developments. The Act needs major revision to provide certainty and clear environmental rules for the energy sector. The bill will add to the uncertainties, anomalies, delays and costs of the Resource Management Act for this key sector of the economy.

## **Appendix**

### **Committee process**

The Resource Management (Energy and Climate Change) Amendment Bill was referred to the committee on 29 July 2003. The closing date for submissions was 29 September 2003. We received and considered 40 written submissions. Twenty-five of these were heard orally. We received advice from the Ministry for the Environment. The Parliamentary Counsel Office drafted the amendments recommended by the committee.

### **Committee membership**

Jeanette Fitzsimons (Chairperson)

David Parker (Deputy Chairperson)

Larry Baldock

Dr Ashraf Choudhary

Sandra Goudie

Ann Hartley

Nanaia Mahuta

Hon Damien O'Connor

Jim Peters

Hon Ken Shirley

Hon Clem Simich

Hon Dr Nick Smith

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Resource Management (Energy and  
Climate Change) Amendment

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**Key to symbols used in reprinted bill**

**As reported from a select committee**

**Struck out (unanimous)**

Subject to this Act,

Text struck out unanimously

**New (unanimous)**

Subject to this Act,

Text inserted unanimously

*(Subject to this Act,)*

Words struck out unanimously

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Hon Pete Hodgson

# Resource Management (Energy and Climate Change) Amendment Bill

Government Bill

## Contents

1	Title		70B	Implementation of regulations made under section 43
	<b>Part 1</b>			
	<b>Preliminary provisions</b>	7		
2	Commencement			New heading and new sections 104E and 104F inserted
3	Purpose			<i>Decisions on applications relating to discharge of greenhouse gases</i>
4	Interpretation			104E Applications relating to discharge of greenhouse gases
	<b>Part 2</b>			104F Implementation of regulations made under section 43
	<b>Amendments to principal Act and transitional provisions</b>			
5	Other matters	8		Transitional provision relating to applications made before commencement of Act
6	New heading and new sections 70A and 70B inserted			
	<i>Rules relating to discharge of greenhouse gases</i>	9		Transitional provision relating to rules made before commencement of Act
	70A Application to climate change of rules relating to discharge of greenhouse gases			

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—

**Struck out (unanimous)**

- (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 5

**New (unanimous)**

- (a) to make explicit provision for all persons exercising functions and powers under the principal Act to have particular regard to— 10
- (i) the efficiency of the end use of energy; and
  - (ii) the effects of climate change; and
  - (iii) the benefits to be derived from the use and development of renewable energy; and 15

- (b) to require local authorities—
- (i) to plan for the (*potential*) effects of climate change; but
  - (ii) not to consider the effects on climate change of discharges into air of greenhouse gases (*from industrial and trade premises*). 20

**4 Interpretation**

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

**New (unanimous)**

“**climate change** means a change of climate that is attributed directly or indirectly to human activity that alters the composition of the global atmosphere and that is in addition to natural climate variability observed over comparable time periods 25

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

**Struck out (unanimous)**

“renewable energy—

“(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

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

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**New (unanimous)**

“renewable energy means energy produced from solar, wind, hydro, geothermal, biomass, tidal, wave, and ocean current sources”.

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**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:

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**Struck out (unanimous)**

“(ba) the efficient use of energy from minerals and other sources of energy:”.

**New (unanimous)**

“(ba) the efficiency of the end use of energy:”.

- (2) Section 7 of the principal Act is amended by adding the following paragraphs:
- “(i) the effects of climate change:
  - “(j) the benefits to be derived from the use and development of renewable energy.”

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**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:

*“Rules relating to discharge of greenhouse gases*

**Struck out (unanimous)**

**“70A Application to climate change of rules relating to discharge of greenhouse gases**

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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—

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“(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 into air of greenhouse gases in New Zealand.

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**New (unanimous)**

**“70A Application to climate change of rules relating to discharge of greenhouse gases**

Despite section 68(3), when making a rule to control the discharge into air of greenhouse gases under its functions under section 30(1)(d)(iv) or (f), a regional council must not have regard to the effects of such a discharge on climate change, except to the extent that the use and development of renewable energy enables a reduction in the discharge into air of greenhouse gases, either—

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**New (unanimous)**

- “(a) in absolute terms; or  
“(b) relative to the use and development of non-renewable energy.”

**“70B Implementation of regulations made under section 43  
(to control climate change) 5**  
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 regula-  
tions, provided the rules are no more or less restrictive than 10  
the regulations.”

**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 15  
greenhouse gases*

**Struck out (unanimous)**

**“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 20  
otherwise contravene section 15 or section 15B relating to the  
discharge into air of greenhouse gases, a consent authority—  
“(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 25  
activity involving the use and development of renewa-  
ble energy to the extent that it reduces the discharge of  
greenhouse gases in New Zealand.

## New (unanimous)

**“104E Applications relating to discharge of greenhouse gases**

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 must not have regard to the effects of such a discharge on climate change, except to the extent that the use and development of renewable energy enables a reduction in the discharge into air of greenhouse gases, either—

“(a) in absolute terms; or

“(b) relative to the use and development of non-renewable energy.

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**“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,—

“(a) may grant the application, with or without conditions, or decline it, as necessary to implement the regulations; but

“(b) in making its determination, must be no more or less restrictive than is necessary to implement the regulations.”

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**8 Transitional provision relating to applications made before commencement of Act**

(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.

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(2) **Subsection (1)** applies to the following matters, if made or given before the commencement of this Act:

(a) an application for a resource consent:

**Struck out (unanimous)**

- (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

**Struck out (unanimous)**

- 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.

**New (unanimous)**

- 9 Transitional provision relating to rules made before commencement of Act** 15
- On the commencement of this Act, an existing rule or part of a rule in a regional plan that controls the discharge into air of greenhouse gases solely for its effects on climate change is revoked. 20

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**Legislative history**

29 July 2003  
5 August 2003

Introduction (Bill 48-1)  
First reading and referral to Local Government and Environment Committee

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