



## **Electricity (Renewable Preference) Amendment Act 2008**

Public Act    2008 No 86  
Date of assent    25 September 2008  
Commencement    see section 2

### **Contents**

	Page
1    Title	2
2    Commencement	2
3    Principal Act amended	2
4    New Part 6A inserted	2

### **Part 6A**

#### **Restriction on new fossil-fuelled thermal electricity generating capacity**

##### *Preliminary provisions*

62A	Purpose of this Part	3
62B	Expiry of this Part	3
62C	Interpretation	3

##### *Restriction on connection and operation of specified generation plant*

62D	Restriction on connection and operation of specified generation plant	6
62E	Additional penalty for breach involving commercial gain	6

##### *Exemptions*

62F	Minister of Energy may grant exemption	7
62G	Minister of Energy may only grant exemption if satisfied of certain matters	7



**“Part 6A****“Restriction on new fossil-fuelled thermal  
electricity generating capacity***“Preliminary provisions***“62A Purpose of this Part**

The purpose of this Part is to reduce the impact of fossil-fuelled thermal electricity generation on climate change by creating a preference for renewable electricity generation through the implementation of a 10-year restriction on new baseload fossil-fuelled thermal electricity generation capacity, except where an exemption is appropriate (for example, to ensure security of supply).

**“62B Expiry of this Part**

This Part expires on the close of the day that is 10 years after the date on which this Part comes into force.

**“62C Interpretation**

“(1) In this Part, unless the context otherwise requires,—

“**co-generation process** means a process for the combined production of electricity and useful thermal energy

“**commencement capacity** means, in relation to an existing plant, the rated generating capacity of the plant immediately before the commencement of this Part (determined according to its nameplate or nameplates)

“**distribution network** means the electricity lines, and associated equipment, owned or operated by an electricity distributor, but does not include—

“(a) the national grid; or

“(b) an embedded network that is used to convey less than 2.5 GWh per annum

“**exemption** means an exemption granted under this Part

“**existing plant**—

“(a) means an electricity generation plant that is in operation at the commencement of this Part; and

“(b) includes an electricity generation plant that was commissioned before the commencement of this Part that, at that commencement,—

“(i) is temporarily not in operation (for example, as a result of maintenance being carried out on the plant); or

“(ii) is not in operation but is available to come back into operation at less than 1 week’s notice

“**fossil fuel** means any of the following:

“(a) natural gas:

“(b) coal (as defined in section 2(1) of the Crown Minerals Act 1991):

“(c) petroleum:

“(d) any refined petroleum product:

“(e) any other obligation fuel (as defined in the Climate Change Response Act 2002)

“**greenhouse gas** has the same meaning as in section 4 of the Climate Change Response Act 2002

“**nameplate** has the same meaning as in section 3 of the Electricity Industry Reform Act 1998

“**natural gas** means—

“(a) all gaseous hydrocarbons produced from wells, including wet gas and residual gas remaining after the extraction of condensate from wet gas; and

“(b) liquid hydrocarbons, other than condensate, extracted from wet gas and sold as natural gas liquids, for example, liquid petroleum gas; and

“(c) coal seam gas

“**operate** does not include the provision only of maintenance and related services

“**petroleum** has the same meaning as in section 2(1) of the Crown Minerals Act 1991

“**specified generation plant**—

“(a) means an electricity generation plant that—

“(i) uses, or will use, fossil fuels if fossil fuels provide, or will provide, more than 20% of the total fuel energy input for the generator or generators constituting the plant in any 12-month period of

- operation commencing on the first day of operation or an anniversary of that date; and
- “(ii) has, or will have, a rated generating capacity (determined according to its nameplate or nameplates) of more than 10 MW; but
- “(b) does not include—
- “(i) an existing plant; or
- “(ii) an electricity generation plant that is operating in accordance with a contract for reserve energy entered into by, or on behalf of, the Commission; or
- “(iii) an electricity generation plant that is declared by regulations not to be a specified generation plant
- “**start-up time** means, in relation to a plant, the time that is necessary for the plant to be generating electricity at its rated generating capacity (determined according to its nameplate or nameplates) from a cold start where the generator or generators constituting the plant start generating electricity after having previously been completely shut down and not generating.
- “(2) For the purposes of the definition of specified generation plant and section 62G(1)(d), if a fossil fuel is blended with another substance that is not a fossil fuel, the fuel energy input of that blend must be calculated only from the proportion that is fossil fuel.
- “(3) For the purposes of this Part, **average load factor** must be calculated by reference to the ratio of energy generated during the 12-month period before the relevant date in respect of which it is being calculated (or any other period that is prescribed for the purposes of any provision of this Part) to the notional quantity of energy that could be generated if the plant were operated continuously during that period at its rated generating capacity (determined according to its nameplate or nameplates).
- “(4) If an existing plant having, at the commencement of this Part, the characteristics described in paragraph (a) of the definition of specified generation plant in subsection (1) is modified after that commencement to increase its rated generating capacity by more than 10% from its commencement capacity (determined according to its nameplate or nameplates), the

plant must be treated as a specified generation plant during any period in which it is generating electricity at a level greater than its commencement capacity plus 10% unless paragraph (b)(ii) or (iii) of that definition applies to the plant.

*“Restriction on connection and operation of  
specified generation plant*

**“62D Restriction on connection and operation of specified  
generation plant**

- “(1) No person may connect a specified generation plant to the national grid or a distribution network, or operate a specified generation plant, unless—
- “(a) the person has an exemption in relation to the plant; and
  - “(b) the plant is connected and operated in accordance with the exemption.
- “(2) Every person who breaches subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding \$500,000.

**“62E Additional penalty for breach involving commercial gain**

- “(1) If a person is convicted of an offence under section 62D, the court may, on the application of the Commission, in addition to any penalty that the court may impose under that section, order that person to pay an amount not exceeding 3 times the value of any commercial gain resulting from the breach of that section if the court is satisfied that the breach occurred in the course of producing a commercial gain.
- “(2) The order may be in addition to any other penalty the court may impose under this Part.
- “(3) For the purpose of subsection (1), the value of any gain is to be assessed by the court, and any amount ordered to be paid is recoverable in the same manner as a fine.
- “(4) In this section, **court** includes a District Court.

*“Exemptions***“62F Minister of Energy may grant exemption**

- “(1) The Minister of Energy may, by notice in the *Gazette*, exempt a person from the restriction in section 62D in respect of a specified generation plant.
- “(2) The Minister of Energy may only grant an exemption that—
- “(a) implements the effect of a recommendation of the Commission (including in relation to terms and conditions); and
  - “(b) does not differ from that recommendation in any material way (for example, other than in matters of drafting style or minor detail).
- “(3) More than 1 exemption may be granted in respect of a specified generation plant.
- “(4) To avoid doubt, exemptions are not regulations for the purposes of the Regulations (Disallowance) Act 1989 and the Acts and Regulations Publication Act 1989.
- “(5) The Minister of Energy may vary an exemption in the same way as an exemption may be granted under this section.

**“62G Minister of Energy may only grant exemption if satisfied of certain matters**

- “(1) The Minister of Energy may only grant an exemption if he or she is satisfied that 1 or more of the following applies:
- “(a) the specified generation plant will be a non-baseload plant that will—
    - “(i) have an average load factor less than a prescribed limit; and
    - “(ii) emit greenhouse gases less than a prescribed limit; and
    - “(iii) have a start-up time less than a prescribed limit; or
  - “(b) the specified generation plant, or the increased capacity referred to in section 62C(4), will be necessary for the purpose of mitigating the effects of an emergency (whether present or future); or
  - “(c) the specified generation plant will be necessary for the purpose of forming part of a co-generation process that

- will operate above an energy efficiency level prescribed for the purposes of this paragraph; or
- “(d) the specified generation plant will use a combination of renewable, or other non-fossil fuel, energy sources and fossil fuels, being a plant—
- “(i) in respect of which fossil fuels will provide less than a prescribed proportion of the total fuel energy input for the generator or generators constituting the plant in any 12-month period of operation commencing on the first day of operation or an anniversary of that date; and
- “(ii) that will operate above an energy efficiency level prescribed for the purposes of this subparagraph (if any); and
- “(iii) that will emit greenhouse gases less than a limit prescribed for the purposes of this subparagraph (if any); or
- “(e) the specified generation plant will be connected and operated in circumstances where an existing thermal electricity generation plant will be retired in whole or in part and the specified generation plant together with any part of the existing thermal electricity generation plant that is not retired will be operated in a manner that—
- “(i) will reduce greenhouse gas emissions by at least 20% (based on emissions of the existing thermal electricity generation plant and projected emissions assessed in the prescribed manner); and
- “(ii) will not reduce security of supply below prescribed margins (as assessed in the prescribed manner).
- “(2) For the purposes of subsection (1)(a), 1 or more combinations of limits may be prescribed (and for that purpose regulations under section 62O may prescribe the circumstances in which those combinations apply).
- “(3) For the purposes of subsection (1)(d), 1 or more combinations of fossil fuel proportion, energy efficiency level, and greenhouse gas emissions limit may be prescribed (and for that purpose regulations under section 62O may prescribe the circumstances in which those combinations apply).



- “(4) The Minister of Energy must, when considering whether to grant an exemption, have regard to any prescribed matters.

**“62H Grounds and terms and conditions of exemption**

- “(1) The Minister of Energy must specify in the exemption the ground or purpose under section 62G(1) under which the exemption is granted.
- “(2) The Minister of Energy may grant an exemption on any terms and conditions he or she reasonably considers are necessary to give effect to the purpose of this Part (subject to section 62F(2)).
- “(3) A person who is granted an exemption must ensure that the specified generation plant is operated in accordance with—
- “(a) any purpose under section 62G(1) for which the exemption was granted; and
  - “(b) all terms and conditions of the exemption.
- “(4) The Commission may modify the terms and conditions of an exemption in the prescribed manner (for example, to allow a plant operating under an exemption to be operated at an increased capacity in the event of a present emergency).

**“62I Public consultation on recommendations**

- “(1) Before making a recommendation to the Minister of Energy to grant an exemption, the Commission must—
- “(a) publish its intention to do so and invite members of the public and interested organisations to give their views on the matter; and
  - “(b) give a reasonable opportunity to those persons to give those views; and
  - “(c) have regard to those views.
- “(2) Subsection (1) does not apply if the exemption relates to section 62G(1)(b) and the Commission reasonably considers that consultation is not desirable in the circumstances.
- “(3) The notice of intention must—
- “(a) be published—
    - “(i) in the *Gazette*; and
    - “(ii) in any other manner (if any) that the Commission considers appropriate; and

- “(b) specify the matter to which the recommendation will relate; and
- “(c) specify the time and manner within which members of the public and interested organisations may give their views on that matter to the Commission.

**“62J Publication of exemption and reasons**

- “(1) The Minister of Energy must make exemptions granted under section 62F available to the public by making copies of them available for inspection, free of charge, on an Internet site in an electronic form that is publicly accessible (at all reasonable times).
- “(2) The Minister of Energy’s reasons for granting an exemption (including why the exemption is appropriate) must be notified in the *Gazette* together with the exemption.
- “(3) If the Minister of Energy declines to follow a recommendation from the Commission to grant an exemption, the Minister’s reasons must be notified in the *Gazette*.
- “(4) However, the Minister of Energy may defer notifying or not notify reasons under this section if he or she is satisfied that it is proper to do so on the ground of commercial confidentiality.

**“62K Revocation of exemption**

- “(1) The Minister of Energy may, by notice in the *Gazette*, on the recommendation of the Commission, revoke an exemption if he or she considers that—
  - “(a) the specified generation plant is no longer required for the purpose for which the exemption was granted; or
  - “(b) the specified generation plant has not been, or is not being, operated in accordance with the terms and conditions of the exemption.
- “(2) If an exemption in respect of a specified generation plant is revoked, no person may continue to rely on that exemption for the purposes of section 62D.
- “(3) Before recommending the revocation of an exemption, the Commission must—
  - “(a) give the person who was granted the exemption notice of its reasons for proposing to make that recommenda-

- tion and invite that person to give its views on the matter; and
- “(b) give a reasonable opportunity to that person to give those views; and
- “(c) have regard to those views.
- “(4) The Minister of Energy must, when considering whether to revoke an exemption, have regard to any prescribed matters.

**“62L Commission may grant temporary emergency exemption**

- “(1) The Commission may exempt a person from the restriction in section 62D in respect of a specified generation plant if the Commission is satisfied that the specified generation plant, or the increased capacity referred to in section 62C(4), is necessary or desirable for the purposes of mitigating the effects of a present emergency.
- “(2) The Commission may grant an exemption under subsection (1) on any terms and conditions it reasonably considers are necessary to give effect to the purpose of that subsection.
- “(3) An exemption under subsection (1), and the Commission’s reasons for granting it, must be notified in the *Gazette* as soon as practicable after being granted.
- “(4) An exemption under subsection (1), unless it is sooner revoked, remains in force for the period (not exceeding 3 months) stated in it.
- “(5) The Commission may revoke the exemption if it considers that the specified generation plant has not been, or is not being, operated in accordance with the terms and conditions of the exemption.

*“Enforcement*

**“62M Commission must monitor compliance**

- “(1) The Commission must monitor compliance with this Part (including compliance with the terms and conditions of exemptions).
- “(2) The High Court and any District Court each have jurisdiction to restrain any breach or threatened breach of section 62D(1) by injunction on the application of the Commission or the Min-

ister of Energy, and to make any order in the matter as to costs and otherwise as it thinks fit.

- “(3) Section 14 applies, with all necessary modifications, for the purposes of subsection (2).
- “(4) Subsection (2) does not limit the liability of any person to be convicted of an offence under section 62D.

*“Commission may use information collected or provided under regulations or rules*

**“62N Commission may use information collected or provided under regulations or rules**

The Commission may, in connection with the exercise or performance by the Commission of any power or function conferred on it in relation to this Part, use any information that is collected by, or provided to, the Commission under the electricity governance regulations or rules (despite anything in those regulations or rules to the contrary).

*“Regulations*

**“62O Regulations for purposes of this Part**

- “(1) The Governor-General may, by Order in Council made on the recommendation of the Minister of Energy, make regulations for all or any of the following purposes:
  - “(a) declaring an electricity generation plant not to be a specified generation plant:
  - “(b) prescribing limits for average load factors, greenhouse gas emissions, and start-up times for the purposes of section 62G:
  - “(c) specifying how those average load factors, greenhouse gas emissions, and start-up times are to be calculated or determined:
  - “(d) prescribing matters for the purposes of sections 62C(3) and 62G(1)(c) to (e), (2), and (3):
  - “(e) prescribing how applications for exemptions are to be made and dealt with:
  - “(f) prescribing matters that the Minister of Energy must have regard to when granting, varying, or revoking an exemption:

- “(g) authorising the Commission to require payment by an applicant for an exemption of any costs incurred by the Commission in connection with the exercise or performance by the Commission of any power or function relating to the application:
- “(h) authorising the Commission to modify the terms and conditions of exemptions (including prescribing when and how the Commission may act and the criteria that the Commission must comply with).
- “(2) A regulation under subsection (1)(a) may be made only on the recommendation of the Commission.
- “(3) Before making a recommendation in accordance with subsection (2), the Commission must—
  - “(a) publish its intention to do so and invite members of the public and interested organisations to give their views on the matter; and
  - “(b) give a reasonable opportunity to those persons to give those views; and
  - “(c) have regard to those views.
- “(4) This section does not limit section 169.”

## **5 Regulations**

- (1) Section 169(1)(25) (as in force on the day on which this Act receives the Royal assent) is amended by inserting “, the Commission,” after “the Board”.
- (2) Section 169(1)(26B) (as inserted by section 26 of the Electricity Amendment Act 2006) is amended by inserting “, the Commission,” after “the Board”.
- (3) Section 169(1)(30) is amended by inserting “, the Commission,” after “the Board”.

## **6 Party must co-operate with investigations**

Section 172KB is amended by inserting “Part 6A or” after “monitoring or enforcing”.

## **7 Functions of Commission**

Section 172O(1) is amended by inserting the following paragraphs after paragraph (j):

- “(ja) make recommendations to the Minister of Energy under Part 6A and modify terms and conditions of exemptions under that Part in the prescribed manner:
- “(jb) monitor compliance with Part 6A and investigate breaches of that Part:
- “(jc) take enforcement action in relation to breaches of Part 6A:
- “(jd) grant temporary emergency exemptions under section 62L:”.

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### Legislative history

9 September 2008	Divided from the Climate Change (Emissions Trading and Renewable Preference) Bill (Bill 187–2) as Bill 187–3B
10 September 2008	Third reading
25 September 2008	Royal assent

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This Act is administered by the Ministry of Economic Development.

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