



**Chairman:** Warren McNabb, [warren.mcnabb@altimarloch.com](mailto:warren.mcnabb@altimarloch.com)  
**Secretary:** David Inch, [david@nzenergy.co.nz](mailto:david@nzenergy.co.nz)

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Committee Secretariat  
Environment Committee  
Parliament Buildings  
Private Bag  
Wellington

By email: [en@parliament.govt.nz](mailto:en@parliament.govt.nz)

Dear Chair,

**Re: Conservation (Indigenous Freshwater Fish) Amendment Bill**

The Independent Electricity Generators Association Incorporated (IEGA) appreciates the opportunity to make this late submission to your Committee on the Conservation (Indigenous Freshwater Fish) Amendment Bill (the Bill). We request the opportunity to appear before the Environment Committee to speak in support of this submission.

#### **Background on IEGA**

The IEGA comprises approximately 40 members who are either directly or indirectly associated with predominately small scale power schemes throughout New Zealand for the purpose of commercial electricity production.<sup>1</sup>

Our members have made significant economic investments in generation plant and equipment throughout New Zealand that is embedded within local distribution networks with 95% of the plant using renewable fuel. IEGA members are small, entrepreneurial businesses, essentially the SME's of the electricity generation sector. Combining the capacity of member's plant makes the IEGA the sixth largest electricity generator in New Zealand.

More importantly, in the context of the Conservation (Indigenous Freshwater Fish) Amendment Bill, our members own 30 individual hydroelectricity generating plant located across New Zealand.

#### **Support submissions by other hydroelectricity generation plant owners**

As this is a late submission, we have had the opportunity to review other submissions. We submit in support of the submissions by other hydroelectricity generation plant owners – Genesis Energy, Mercury NZ and Trustpower.

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<sup>1</sup> The Steering Committee has signed off this submission on behalf of members

## Consultation

The IEGA is concerned about the lack of consultation associated with this Bill. The IEGA understand the Department of Conservation did not undertake any consultation during development of this Bill. This approach is not consistent with best practice. Consultation delivers advantages for government of identifying and addressing issues early, eliciting useful practical information and avoiding unintended consequences. If the IEGA had been aware of the development of this Bill we would have engaged constructively with officials to address our concerns about the regulation making powers discussed below.

We will also ensure the IEGA is on the Department of Conservation's stakeholder list so that we receive timely information about policy development consultations and legislative change that has the potential to impact our members existing and proposed generation assets.

## Specific comments on the Bill

The IEGA's concerns about this Bill relate to clause 16 about regulation making powers. Clause 16 proposes to introduce two new purposes for which regulations may be made under Section 48A of the Act, namely:

- (2) After section 48A(1)(n), insert:  
(na) ~~prohibiting, restricting, or regulating any structure or alteration to a water body that could impede or affect the passage of freshwater fish or specified freshwater fish:~~
- (3) After section 48A(1)(q), insert:  
(r) in relation to indigenous freshwater fish,—
  - (i) ~~specifying activities that are reasonably likely to injure or kill specified indigenous freshwater fish; and~~
  - (ii) ~~regulating, restricting, or imposing conditions on those specified activities; and~~
  - (iii) ~~specifying indigenous freshwater fish that are endangered and restricting or prohibiting the taking of those fish:~~

## Consultation

The IEGA is concerned that the Bill does not include any requirement for consultation when developing the regulations enabled by the Bill in clause 16. The Bill confers potentially broad powers to make regulations without regard to the impact these regulations might have on existing activities and structures associated with hydroelectricity generating plant.

The IEGA submits the Bill be amended to require consultation on any proposed regulations.

## ***Impact on existing lawfully established in-stream structures and activities***

IEGA members, as with other hydroelectricity generating plant owners, have a number of existing lawfully established in-stream structures and activities that are critical to our electricity generation.

It is unreasonable to impose additional regulation-making powers in respect of existing structures and activities, particularly the existing dams and diversion flows that are associated with hydroelectric generating plant. Existing structures and activities have been designed to be compliant with the regulatory regime in place at the time of construction. It would be intolerable if the new regulation making powers prohibited or restricted these activities. It may also be physically, technically, economically or commercially impractical to retrospectively change such structures.

This regulation making power might be appropriate for NEW structures or new alterations to a water body that affect fish passage when there is the opportunity to design and build the structure to take into account regulatory requirements applying at that time.

The IEGA requests that any powers conferred by the proposed amendment should either apply to new structures and activities only, or should specifically exclude existing hydroelectric generating plant structures and activities.

### ***Interaction between the Bill and existing resource management requirements***

Existing hydroelectric structures and activities are subject to detailed operational controls under existing resource consents. It may be legally impossible for hydroelectric plant or owners to comply with new regulations if the regulations are inconsistent with existing resource consents.

Further, the effects on indigenous fish are routinely considered at the time of re-consenting under the Resource Management Act 1991 (RMA). It is appropriate for the effects on indigenous fish to continue to be considered in that context (under the RMA) for existing structures and activities.

It is unclear whether applying for a new resource consent on expiry of an existing resource consent would be classified as a 'new' activity and therefore become subject to any restrictions imposed by the new regulations.

The IEGA submits, that at a minimum, the Bill needs to be amended to clarify that the application for a resource consent for an existing lawfully established structure would not trigger the regulations made under this Bill/Act.

We note Mercury's submission refers to the existing Freshwater Fisheries Regulations 1983. These regulations, administered by the Department of Conservation, recognise the impracticality of applying new regulations to existing structures or activities. Regulation 43 provides an exclusion from requirements to include a fish pass or fish screen for long standing dam and diversion structures subject to a water right prior to 1 January 1984. These regulations also allow for investors in any dam or diversion structure to seek approval for or a dispensation from the requirements of the regulations to build a 'fish facility'.

### ***Duplicate processes***

If the Bill remains unchanged there is the possibility that new activities may be subject to both the resource consent process under the RMA and any requirements or restrictions imposed under the new regulations. This would result in a duplication of process, which would be both unnecessary and undesirable. The resource consent application process already requires local authorities to consider actual or potential effects on the environment, which includes any relevant effects on freshwater fish.

One of our members has recent experience of seeking to re-consent a 100 year old hydroelectric plant. This required detailed analysis and monitoring to demonstrate that the presence of structures that impede or inhibit fish passage are avoided, remedied or mitigated as part of this resource consent process.

The smaller scale of our plant means that resource consent and other regulatory processes are a disproportionate impost on our members, relative to the utility-scale hydroelectric generators.

The IEGA strongly submits that the Bill be amended so that where the effects on freshwater fish have been considered through the resource consent process for new or existing structures, this removes any requirement for these activities to be subject to the new regulations.

### **Concluding comments**

In summary, IEGA members own and operate a significant number of hydroelectric generating plant that contribute to New Zealand's acclaimed renewable electricity supply. Members also have new

hydroelectric generating projects under consideration. We support the government's commitment to transition New Zealand to a low-emissions economy and believe distributed hydroelectric generation can continue to make an important contribution. We seek a clear and a fair regulatory regime that is cohesive and coordinated in relation to initiatives taken to achieve the government's climate change, environmental and conservation objectives.

The IEGA would welcome the opportunity to be heard by the Committee in support of this submission.

Yours sincerely

A handwritten signature in black ink, appearing to read 'W McNabb', is centered below the text 'Yours sincerely'.

**Warren McNabb**  
Chair