

Departmental Disclosure Statement

Energy (Fuels, Levies, and References) Amendment Bill

2013 No 170

The departmental disclosure statement for a government Bill seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill.

It identifies:

- the general policy intent of the Bill and other background policy material;
- some of the key quality assurance products and processes used to develop and test the content of the Bill;
- the presence of certain significant powers or features in the Bill that might be of particular Parliamentary or public interest and warrant an explanation.

This disclosure statement was prepared by the Ministry of Business, Innovation and Employment.

The Ministry of Business, Innovation and Employment certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

1 November 2013

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Part One: General Policy Statement

The objective of this Bill is to allow for the costs of meeting New Zealand's oil stockholding treaty obligation under the Agreement on an International Energy Program (Agreement) to be met through a levy on fuel. New Zealand and other signatories to the Agreement are required to hold oil stock equivalent to 90 days of net imports. Stockholding costs have previously been funded through general taxation.

The Bill:

- provides for the purpose of the existing Petroleum or Engine Fuel Monitoring Levy (PEFML) to be extended so that PEFML revenue can be used to meet costs associated with the Crown's compliance with the Agreement
- removes the present maximum levy rate and provides for the levy rate and fuels which the PEFML applies to be set in regulations by Order in Council.

Providing for the levy rate to be set in regulations ensures that the rate can be set at an appropriate level to recover stockholding costs. These costs fluctuate depending on New Zealand's oil net import position and the price of contracts to hold oil stock, amongst other factors.

Providing for the fuel coverage to be set in regulations ensures that the appropriate fuels can be targeted as market conditions evolve.

Meeting the stockholding obligation by building government-owned stock, or by placing a mandate on industry to hold stock, were considered as alternative options for meeting the stockholding obligation. These options were rejected because holding stock contracts is a more economical way of meeting the obligation.

Continuing to meet the obligation by stock contracts funded from general taxation was also considered. This option was rejected because a fuel levy that can be adjusted in regulations provides better flexibility to meet uncertain and volatile oil stock contract costs.

Part Two: Background Material and Policy Information

Published reviews or evaluations

2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill?	YES
<ul style="list-style-type: none"> • <i>Review of New Zealand's oil security</i>, Ministry of Business Innovation and Employment, October 2012 (accessible at http://www.med.govt.nz/sectors-industries/energy/pdf-docs-library/energy-security/oil-security-review-2012/oil-security-discussion-document.pdf) • <i>RAP Contingency Options</i>, Hale & Twomey Limited, October 2011 (accessible at http://www.med.govt.nz/sectors-industries/energy/pdf-docs-library/energy-security/oil-security-review-2012/RAP%20Contingency%20Options.pdf) • <i>New Zealand Oil Security Assessment Update</i>, New Zealand Institute of Economic Research, 12 June 2012 (accessible at http://www.med.govt.nz/sectors-industries/energy/pdf-docs-library/energy-security/oil-security-review-2012/NZ%20Oil%20Security%20Assessment%20Update.pdf) • <i>Information for NZIER Report on Oil Security</i>, Hale & Twomey Limited, 18 May 2012, (accessible at http://www.med.govt.nz/sectors-industries/energy/pdf-docs-library/energy-security/oil-security-review-2012/Information%20for%20NZIER%20Report%20on%20Oil%20Security.pdf) 	

Relevant international treaties

2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?	NO
<p>The Bill does not seek to give effect to New Zealand action in relation to an international treaty. This Bill does seek to provide funding to meet New Zealand's obligations under the Agreement on an International Energy Program (accessible in the Schedule of the International Energy Agreement Act 1976: http://www.legislation.govt.nz/act/public/1976/0155/latest/DLM440510.html)</p>	

Regulatory impact analysis

2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?	YES
<p><i>Funding New Zealand's international oil stockholding obligation</i>, Ministry of Business, Employment and Innovation, December 2012 (accessible at http://www.med.govt.nz/about-us/publications/publications-by-topic/regulatory-impact-statements/mbie-regulatory-impact-statements/funding-nz-international-oil-stockholding-obligation.pdf and http://www.treasury.govt.nz/publications/informationreleases/ris).</p> <p>As per the following sections of the Official Information Act 1982, withholding some content of the RIS was necessary to :</p> <ul style="list-style-type: none"> • enable a Minister of the Crown or any department or organisation holding the information to carry on, without prejudice or disadvantage, negotiations (including commercial and industrial negotiations) [9(2)(j)] • to [avoid] prejudice [to] the security or defence of New Zealand or the international relations of the Government of New Zealand [6(a)]. 	

2.3.1. If so, did the RIA Team in the Treasury provide an independent opinion on the quality of any of these regulatory impact statements?	NO
The RIS did not meet the threshold for RIA Team assessment.	

2.3.2. Are there aspects of the policy to be given effect by this Bill that were not addressed by, or that now vary materially from, the policy options analysed in these regulatory impact statements?	NO
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Extent of impact analysis available

2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?	NO
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2.5. For the policy to be given effect by this Bill, is there analysis available on:	
(a) the size of the potential costs and benefits?	YES
(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?	YES
Analysis is available in the original RIS: <i>Funding New Zealand's international oil stockholding obligation</i> , Ministry of Business, Employment and Innovation, December 2012 (accessible at http://www.med.govt.nz/about-us/publications/publications-by-topic/regulatory-impact-statements/mbie-regulatory-impact-statements/funding-nz-international-oil-stockholding-obligation.pdf and http://www.treasury.govt.nz/publications/informationreleases/ris).	

2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:	
(a) the level of effective compliance or non-compliance with applicable obligations or standards?	YES
(b) the nature and level of regulator effort put into encouraging or securing compliance?	YES
<p>Refer to the original RIS for further detail: <i>Funding New Zealand's international oil stockholding obligation</i>, Ministry of Business, Employment and Innovation, December 2012 (accessible at http://www.med.govt.nz/about-us/publications/publications-by-topic/regulatory-impact-statements/mbie-regulatory-impact-statements/funding-nz-international-oil-stockholding-obligation.pdf and http://www.treasury.govt.nz/publications/informationreleases/ris).</p>	

Part Three: Testing of Legislative Content

Consistency with New Zealand's international obligations

3.1. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations?

Appendix 3 of the Legislation Advisory Committee Guidelines on Process and Content of Legislation was considered. Consultation was undertaken with the Ministry of Transport regarding New Zealand's obligations under the Convention on International Civil Aviation and New Zealand's Air Service Agreements.

Consistency with the government's Treaty of Waitangi obligations

3.2. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi?

Legal advice was sought on whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi.

Consistency with the New Zealand Bill of Rights Act 1990

3.3. Has advice been provided to the Attorney-General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990?

NO

Offences, penalties and court jurisdictions

3.4. Does this Bill create, amend, or remove:

(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?

NO

(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?

NO

3.4.1. Was the Ministry of Justice consulted about these provisions?

YES

The Ministry of Justice was consulted on the Bill and no issues were raised by the Ministry of Justice.

Privacy issues

3.5. Does this Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information?

NO

External consultation

3.6. Has there been any external consultation on the policy to be given effect by this Bill, or on a draft of this Bill?	YES
<p>The Ministry of Business, Innovation and Employment released a discussion document containing the levy proposal on 30 October 2012. 15 submissions were received and of these 10 contained direct comments on issues relating to the IEA obligation. The vast majority of submitters either agreed with, or were neutral to, the overall proposal to meet the IEA obligation through PEFML-funded ticket contracts.</p> <p>Prior to the release of the discussion document, the Ministry discussed the levy proposal with a number of key stakeholders.</p>	

Other testing of proposals

3.7. Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill's provisions are workable and complete?	NO
<p>The PEFML already exists so the collection and compliance systems are already well-established thus testing was deemed unnecessary.</p>	

Part Four: Significant Legislative Features

Compulsory acquisition of private property

4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?	NO
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Charges in the nature of a tax

4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?	YES
<p>The Bill remove the present maximum PEFML rate and the fuels to which the PEFML applies and provides for the levy rate and fuel coverage to be set in regulations by Order in Council (previously the levy could be prescribed by Order in Council at a rate below the maximum rate set in the Act). The levy will still be paid by the person who would be liable to pay any excise duty or excise-equivalent duty on the relevant fuel under the Customs and Excise Act 1996.</p> <p>Before recommending such regulations the Minister must consult with persons or organisations considered by the Minister to represent the persons affected by the levy.</p> <p>The Bill specifies that the levy regulations expire unless they are expressly confirmed by an Act of Parliament. Further, Parliament would still set the appropriation, through the Budget process, for stockholding costs. This appropriation would be offset by PEFML revenue.</p> <p>Any over or under recovery of the levy with respect to stockholding costs would be taken into account by adjusting the levy rate in future years.</p> <p>The Ministry of Business, Innovation and Employment anticipates that the additional levy rate to fund stockholding would be calculated by dividing forecast stockholding costs by forecast demand for the fuels that the levy would apply to. Assuming that levy collection begins in July 2014, the Ministry forecasts that the additional levy rate required to cover the expected stockholding costs of \$24.5 million over 2013/14 – 2015/16 would be around 0.204 cents per litre on petrol, diesel, biodiesel, and ethanol.</p> <p>PEFML revenue can only be used for the purposes specified in the Act. The Bill provides for the purpose of the PEFML to be extended so that PEFML revenue can be used to meet the costs of the Crown's compliance with the Agreement on an International Energy Program. Additional levy revenue would be used to fund oil stockholding costs (existing levy revenue would still fund the existing purposes for which the levy is presently collected).</p> <p>Continuing to fund stock contracts from general taxation was also considered. This option was rejected because a fuel levy that can be set in regulations provides better flexibility to meet uncertain and volatile oil stock contract costs.</p>	

Retrospective effect

4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?	NO
<p>While the Bill does not affect rights, freedoms, or impose obligations, retrospectively, it provides for PEFML revenue collected under the new PEFML regulation making power to fund oil stockholding costs incurred from 1 July 2013. This provision does not mean that the levy will be collected retrospectively from 1 July 2013, rather it allows the rate of the levy to take into account costs incurred from 1 July 2013.</p> <p>This provision is necessary to give effect to Cabinet's direction that the 2013/14 – 2015/16 stockholding appropriation should be fully offset by PEFML revenue.</p>	

Strict liability or reversal of the usual burden of proof for offences

4.4. Does this Bill:	
(a) create or amend a strict or absolute liability offence?	NO
(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?	NO

Civil or criminal immunity

4.5. Does this Bill create or amend a civil or criminal immunity for any person?	NO
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Significant decision-making powers

4.6. Does this Bill create or amend a decision-making power to make a determination about a person's rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests?	NO
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Powers to make delegated legislation

4.7. Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?	NO
<p>While the Bill does not create or amend a power to make delegated legislation that could amend the Act, it does provide for the appointment of a date of commencement of clauses 5 and 8 of the Bill by Order in Council. This is a transitional measure that ensures that the existing PEFML continues to be collected in the period between the commencement of the rest of the Bill, and the making of the regulations. These clauses would automatically commence a year after the enactment of the Bill if they are not commenced by Order in Council.</p>	

4.8. Does this Bill create or amend any other powers to make delegated legislation?	YES
See section on "Charges in the nature of a tax" above.	

Any other unusual provisions or features

4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?	NO
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