

# Departmental Disclosure Statement

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Land Transport Management (Regional Fuel Tax) Amendment Bill
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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 Transport.

The Ministry of Transport certified that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

20 March 2018

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## Part One: General Policy Statement

### Introduction

The Bill proposes to introduce a mechanism under which regional fuel taxes can be established to provide a way for regions to fund transport infrastructure programmes that would otherwise be delayed or not funded. The revenue from a regional fuel tax is to go to the regional council (or unitary council) (the council) responsible for the region where the taxed fuel is delivered for sale or consumption.

The Bill will insert a new subpart 3 into Part 2 of the Land Transport Management Act 2003 that provides a process for establishing a regional fuel tax. The process includes:

- a council making a proposal that sets out the proposed tax rate, the duration of the tax, the transport programme and projects that the tax will fund, and how the proposal contributes to the relevant regional transport plan, the relevant Government Policy Statement on land transport, and any other relevant document specified by the Minister of Finance and the Minister of Transport (joint Ministers) which sets out transport priorities for the region
- a council consulting the community before finalising a proposal
- a council submitting its proposal to the joint Ministers
- the joint Ministers accepting or rejecting the proposal and, if accepting it, recommending the making of an Order in Council to implement a regional fuel tax in that region.

The Bill implements the following policy decisions relating to the introduction of a regional fuel tax.

The regional fuel tax is to:

- apply to petrol and diesel (fuel) but not to compressed natural gas and liquefied petroleum gas
- be collected at the distribution level (meaning the point where fuel is supplied by a distributor to service stations and commercial storage facilities, such as those on farms)
- be used toward the funding of capital expenditure, associated debt repayment, and operational expenditure when it is associated with the delivery of a package or programme of projects
- have a maximum rate of 10 cents per litre of fuel
- have a maximum initial duration of 10 years
- be reviewed by a council before its expiry if the council wishes to replace or extend it beyond 10 years
- be available initially only to the Auckland region and to other regions from 1 January 2021
- have similar exclusions to those in the local authorities fuel tax provisions in Part 11 of the Local Government Act 1974
- allow for rebates consistent with those available for fuel excise duty for off-road use of fuel
- be subject to goods and services tax

Joint Ministers may:

- accept or reject a proposal from a council under a broad discretion
- review the regional fuel tax at any time.

The New Zealand Transport Agency has:

- administrative, monitoring and enforcement functions including collecting the tax and processing refunds
- the power to charge on-going costs associated with administering the regional fuel tax scheme against the tax revenue from it.

## Part Two: Background Material and Policy Information

### Published reviews or evaluations

<b>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?</b>	<b>NO</b>
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### Relevant international treaties

<b>2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?</b>	<b>NO</b>
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### Regulatory impact analysis

<b>2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?</b>	<b>YES</b>
The Ministry of Transport prepared the regulatory impact statement “Regional fuel tax” for consideration by the Cabinet Business Committee on 20 December 2017. This will be made available at the Ministry of Transport’s website: <a href="http://www.transport.govt.nz/about/publications/ris-bccs/">http://www.transport.govt.nz/about/publications/ris-bccs/</a> .	

<b>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?</b>	<b>YES</b>
The Treasury’s comments: The Regulatory Quality Team at the Treasury has reviewed the regulatory impact statement “Regional fuel tax” by the Ministry of Transport and considers that it meets the Quality Assurance criteria. The RIS shows clearly that alternative options have been carefully considered, an indicative cost benefit analysis has been undertaken, implementation risks have been identified, a reasonable approach has been proposed to mitigate risks, and key stakeholders’ view have been considered.	
<b>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?</b>	<b>YES</b>

The regulatory impact statement recommended offences and enforcement powers to manage tax fraud and evasion. The Bill details these powers which includes offences and penalties when a person knowingly or recklessly:

- refuses or fails to file a return
- refuses or fails to pay a regional fuel tax
- makes a false rebate claim
- provides false information to the New Zealand Transport Agency.

The Bill allows an enforcement officer to make an application to an issuing officer (Judge, Justice of the Peace or Community Magistrate) to issue a search warrant in relation to a place, vehicle, or other thing when satisfied there are reasonable grounds –

- to suspect that an offence as set out in the Bill has been, is being, or will be committed
- to believe that the search will find evidential material in respect of the offence in the place, vehicle, or other thing.

The Bill allows an enforcement officer appointed by the New Zealand Transport Agency to make an application for a search warrant.

### Extent of impact analysis available

<b>2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?</b>	<b>NO</b>
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<b>2.5. For the policy to be given effect by this Bill, is there analysis available on:</b>	
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<b>the size of the potential costs and benefits?</b>	<b>YES</b>
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<b>the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?</b>	<b>NO</b>
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This information is available in the regulatory impact statement.

<b>2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:</b>	
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<b>the level of effective compliance or non-compliance with applicable obligations or standards?</b>	<b>YES</b>
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<b>the nature and level of regulator effort put into encouraging or securing compliance?</b>	<b>YES</b>
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If those liable to pay regional fuel tax do not comply with their obligations, regional fuel tax revenue will be reduced and the policy objective of the Bill will only be partially met. The New Zealand Transport Agency has a statutory obligation to prosecute offences in the Bill, and the ability to deduct those enforcement costs from regional fuel tax revenue it collects.

## 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?

No issues were identified in the development of the policy that may have specific implications for international obligations. As such, there have been no formal additional steps to determine whether the policies to be given effect by the Bill are consistent with New Zealand's international obligations.

### 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?

No issues were identified in the development of the policy that may have specific implications for the rights and interests of Māori under the Treaty of Waitangi. As such, there have been no formal steps to determine whether the policies to be given effect by the Bill are 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?

YES

The Ministry of Justice has undertaken an assessment of whether the Bill is consistent with the New Zealand Bill of Rights Act 1990 and has provided advice to the Attorney-General.

### Offences, penalties and court jurisdictions

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

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

YES

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

NO

<p>The Bill makes it an offence when a person knowingly or recklessly:</p> <ul style="list-style-type: none"> <li>• refuses or fails to file a monthly return</li> <li>• refuses or fails to provide information requested by the New Zealand Transport Agency relevant to the administration or enforcement of regional fuel tax</li> <li>• provides information that is false or misleading to the New Zealand Transport Agency</li> <li>• produces false records or information</li> <li>• refuses or fails to pay any regional fuel tax payable by the person</li> <li>• evades the payment of any regional fuel tax</li> <li>• refuses or fails to keep accounts or records required to be kept</li> <li>• makes a false or misleading statement in an application for a regional fuel tax rebate.</li> </ul> <p>A person who commits an offence in accordance with the above points will be liable on conviction to a fine not exceeding \$15,000, or in the case of body corporate to a fine not exceeding \$75,000.</p>	
<b>3.4.1. Was the Ministry of Justice consulted about these provisions?</b>	<b>YES</b>
<p>The Ministry of Justice has been consulted and are comfortable with the proposed offences and penalties included in the Bill.</p>	

### Privacy issues

<b>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?</b>	<b>YES</b>
<p>The New Zealand Transport Agency's functions in the Bill include collecting regional fuel tax, and in connection with the collection, maintaining:</p> <ul style="list-style-type: none"> <li>• a registry of regional fuel taxpayers</li> <li>• a registry of users of fuel for an exempt use and the locations where any fuel supplied to them will be used exclusively for an exempt use.</li> </ul> <p>These registers may on occasion include personal information.</p>	
<b>3.5.1. Was the Privacy Commissioner consulted about these provisions?</b>	<b>YES</b>
<p>The Office of the Privacy Commissioner was consulted on the Bill and no changes were recommended.</p>	

### External consultation

<b>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?</b>	<b>YES</b>
<p>The Ministry of Transport consulted stakeholders including Auckland Council, fuel companies and distributors, representative fuel user groups and off-road fuel user groups in the development of the policy proposals in the Bill.</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**

## Part Four: Significant Legislative Features

### Compulsory acquisition of private property

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

<b>4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?</b>	<b>YES</b>
<p>The Bill will insert a new subpart 3 into Part 2 of the Land Transport Management Act 2003 to introduce a mechanism under which regional fuel taxes can be established to provide a way for regions to fund transport infrastructure programmes that would otherwise be delayed or not funded. The revenue from a regional fuel tax is to go to the regional council (or unitary council) responsible for the region where the taxed fuel is delivered for sale or consumption.</p> <p>Proposed section 65K will enable an Order in Council to be made upon the recommendation of joint Ministers prescribing the rate of the regional fuel tax. Initially section 65K will be available only to the Auckland region, and available to other regions from 1 January 2021.</p> <p>The regional fuel tax will be paid by regional fuel taxpayers (meaning a person liable to pay regional fuel tax) to the New Zealand Transport Agency, who will be responsible for distributing the revenue to the regional council responsible for the transport infrastructure programmes to be funded by the tax. The New Zealand Transport Agency will be required to report annually on each regional fuel tax scheme it administers and provide information on:</p> <ul style="list-style-type: none"><li>• the revenue collected, including from regional fuel tax, penalties, and interest</li><li>• regional fuel tax rebates</li><li>• funds held for future regional fuel tax rebates</li><li>• administration and enforcement costs.</li></ul> <p>The regional fuel tax will be limited to a maximum of 10 cents per litre of fuel for up to 10 years.</p> <p>Regional councils will be required to prepare and consult on a proposed regional fuel tax scheme, which will then be forwarded to joint Ministers for them to decide whether to recommend to the Governor-General the making of an Order in Council to approve a regional fuel tax scheme.</p> <p>A person will be entitled to apply for a rebate when the fuel has been used either for an 'exempt use' or for the purposes set out in regulations.</p>	

### Retrospective effect

<b>4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?</b>	<b>NO</b>
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## Strict liability or reversal of the usual burden of proof for offences

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

## Civil or criminal immunity

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

<b>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?</b>	<b>NO</b>
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## Powers to make delegated legislation

<b>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?</b>	<b>YES</b>
<p><i>The maximum rate of regional fuel tax</i></p> <p>The Bill sets the maximum rate of regional fuel tax at 10 cents per litre. The Bill includes a power to allow the 10 cent maximum rate to be adjusted (either increased or decreased) by Order in Council and will be subject to confirmation by Parliament through the annual confirmation process.</p> <p><i>Fuel used for an 'exempt use'</i></p> <p>The Bill states that a person is not liable to pay regional fuel tax on fuel that the person uses for an 'exempt use'. The Bill defines 'exempt use' and allows the definition to be amended by regulation. The regulation making power has been limited to fuel which is used on roads other than a public road.</p>	

<b>4.8. Does this Bill create or amend any other powers to make delegated legislation?</b>	<b>YES</b>
See Appendix One for further information.	

## Any other unusual provisions or features

<b>4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?</b>	<b>YES</b>
<p>The Bill includes transitional provisions that mean the power to establish a regional fuel tax scheme (see the proposed section 65K) will be available initially only to the Auckland region until 1 January 2021.</p> <p>The transitional provisions also allow the validation of certain actions in relation to a proposal to establish a regional fuel tax scheme for Auckland before the Bill comes into force. The Bill provides that these actions are deemed to have been taken in compliance:</p> <ul style="list-style-type: none"><li>• preparation of a regional fuel tax proposal</li><li>• consultation on a regional fuel tax proposal</li><li>• submission of a regional fuel tax proposal to joint Ministers</li><li>• consideration of a regional fuel tax proposal by joint Ministers</li><li>• any recommendation or referral back to establish a regional fuel tax scheme by joint Ministers.</li></ul> <p>The transitional provisions are necessary to enable a regional fuel tax scheme to commence in the Auckland region on 1 July 2018 while reflecting the policy position that a regional fuel tax is not appropriate for other regions at this time.</p>	

## Appendix One: Further Information Relating to Part Four

### Powers to make delegated legislation- question 4.8

The Bill allows regulations to be made for the following purposes:

- prescribing information or any other thing that must be included in a proposal to establish, replace, or vary a regional fuel tax scheme
- prescribing uses of fuel (other than use in a vehicle on a public road) that are exempt from regional fuel tax
- prescribing the circumstances in which persons are entitled to a regional fuel tax rebate
- prescribing any information or other matter that must be provided to the New Zealand Transport Agency in support of an application for a regional fuel tax rebate
- prescribing accounts or records to be kept by any person
- prescribing the minimum amount for a regional fuel tax rebate
- providing for any other matter contemplated by the Bill necessary for its administration, or necessary for giving it full effect.

The regulation making powers allow regulations to be made that set out the technical details for the regional fuel tax regime.