

Departmental Disclosure Statement

Fuel Industry (Improving Fuel Resilience) Amendment Bill
--

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.

4 May 2023.

Contents

Contents..... 2

Part One: General Policy Statement..... 3

Part Two: Background Material and Policy Information 5

Part Three: Testing of Legislative Content..... 7

Part Four: Significant Legislative Features 9

Part One: General Policy Statement

The Fuel Industry (Improving Fuel Resilience) Amendment Bill (the Bill) provides a statutory framework for implementing the Government's fuel resilience policy package announced in November 2022. This package aims to allow the Government to take an adaptive approach to adopting fuel resilience measures over time and ensure that New Zealand has adequate fuel stocks to mitigate the risk of plausible fuel disruptions, which may result from international or domestic events.

The Bill aims to strengthen the resilience of fuel supplies in New Zealand. As sectors ranging from freight services to building and construction are dependent on fuel supplies for day-to-day operation, the Bill will also contribute to New Zealand's economic security.

A key component of the Bill is the introduction of a minimum fuel stockholding obligation (MSO) on fuel importers with the right to draw fuel from bulk storage facilities¹ in New Zealand (obliged persons). The MSO reduces the risk that fuel stockholding, and therefore fuel supply resilience, could deteriorate as a result of international geopolitical events, the closure of the Marsden Point oil refinery, and changing commercial incentives for the fuel industry to invest in fuel supply infrastructure in light of the clean energy transition. During the initial period of implementing the MSO, the MSO will apply only to fuel importers with the right to draw fuel from bulk storage facilities. Small fuel industry participants without access to bulk storage facilities are not intended to be subject to the MSO.

The definition of the obliged persons may be amended by regulations in the future, should there be significant changes to fuel supply chains. For example, if a sizeable production plant of green fuels is developed in New Zealand, it may be desirable to impose stockholding requirements on the fuel producer and possibly the fuel wholesaler suppliers who directly acquire fuels from that fuel producer. Nevertheless, fuel importers with the right to draw fuel from bulk storage facilities are expected to remain obliged persons until they exit the New Zealand fuel market.

Minimum stockholding requirement will provide more certainty and lessen fluctuations in fuel stock level

The Bill creates an obligation on fuel importers with the right to draw fuel from bulk storage facilities in New Zealand to hold prescribed levels of stocks of diesel, petrol, and aviation kerosene (jet fuel). During the initial period (which continues until the MSO is reviewed and amended through regulations), the total stocks each obliged person must hold are equivalent to at least:

- 28 days of consumption² for petrol on average;
- 24 days of consumption for jet fuel on average;
- 21 days of consumption for diesel on average.

The minimum stockholding requirement for the initial period has been developed to avoid disproportionate economic impacts, minimising flow-on impacts on fuel prices, and the risk of stranded bulk storage assets in light of the expected decline in petrol and diesel in the coming decades. The calculation method for determining required

¹ Under the Fuel Industry Act, a bulk storage facility is defined as a facility for the storage of 5 million litres or more of engine fuel.

² The number of days of consumption means how many days the fuel stocks will last to meet expected normal demand.

average minimum stockholding volumes of obliged persons is set out in the Bill. The calculation method is designed to provide certainty about the minimum stockholding level that obliged persons will be required to achieve. It will also accommodate some fluctuations in stockholding level, although the fluctuations are expected to be smaller after the MSO is implemented.

Obliged persons will be able to enter into entitlement agreements with each other, which will allow the transfer of the right to count an amount of fuel stocks for compliance with the MSO from one party to another. This will give obliged persons more flexibility in how they meet their obligations, particularly when they experience short-term disruptions to their fuel supply chains or face temporary fuel storage constraints.

The Bill enables adaptive approach to managing fuel supply risks

The Bill sets out the framework for exempting obliged persons from the MSO, based on a set of criteria. This reflects that there will be exceptional circumstances where it would not be reasonable or beneficial for New Zealand to expect fuel wholesalers to comply with the MSO. Examples of such circumstances include a natural disaster or a manmade event significantly affecting international fuel supply chains or reducing the available bulk storage capacity. Exemptions will be secondary legislation, and publication requirements will apply to them.

The Bill provides for regulation-making powers to introduce new fuel stockholding requirements in the future, amend the calculation method for stockholding volumes, and specify requirements for disclosure of information in relation to resilience of fuel supplies in New Zealand. These powers will enable the Government to take an adaptive approach, over time, to adopting measures for managing fuel supply risks in light of transport and energy trends. In particular, the information disclosure requirements will enable better monitoring and information collection to provide clearer government oversight over fuel stocks, contingency arrangements, fuel storage capacity, and any potential vulnerabilities in the fuel supply chains for New Zealand at a granular level.

The regulator will be allowed to share information collected under the MSO regime with other public service agencies and statutory entities, as set out in the Bill. This will allow these organisations to cross-check information and use the information for emergency management and planning.

To enable enforcement of the MSO, the Bill includes provisions on penalties when it is breached. The Bill also provides for the discretion to accept enforceable undertaking from obliged persons in connection with any matter relating to the enforcement of the MSO. Such undertakings may take the form of payment to the regulator for reimbursement of legal costs associated with MSO breaches, or terms and conditions agreed by the parties (such as commitments to changing fuel stockholding practices or making infrastructure investments). These enforceable undertakings may be accepted for use in resolving investigations into potential breaches of the MSO, thereby avoiding lengthy enforcement proceedings seeking a punitive sanction.

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
<p><i>Fuel Security and Fuel Stockholding Costs and Benefits 2020</i>, Hale and Twomey (commissioned by the Ministry of Business, Innovation and Employment), 16 December 2020. It is available at https://www.mbie.govt.nz/dmsdocument/15257-fuel-security-and-fuel-stockholding-costs-and-benefits-2020.</p> <p><i>Final Report of the Government Inquiry into the Auckland Fuel Supply Disruption</i>, 17 September 2019. https://www.dia.govt.nz/Government-Inquiry-into-the-Auckland-Fuel-Supply-Disruption</p>	

Relevant international treaties

2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?	NO
Nevertheless, the minimum fuel stockholding obligation, can contribute to New Zealand's compliance with its obligation under the International Energy Agreement (90-day reserve commitment).	

Regulatory impact analysis

2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?	YES
<p>The Ministry of Business, Innovation and Employment (MBIE) completed a Regulatory Impact Statement on the fuel resilience policy package, which includes the proposal to amend the statutory purpose of the PEFM Levy, on 15 August 2022. It is available at https://www.mbie.govt.nz/dmsdocument/25591-regulatory-impact-statement-fuel-resilience-policy-package-proactiverelease-pdf.</p> <p>The Regulatory Impact Statement (RIS) on the regulatory design of the minimum fuel stockholding obligation is expected to be published on MBIE's web page, https://www.mbie.govt.nz/document-library, shortly.</p>	

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
<p>The Treasury's RIA team delegated the responsibility for providing comment on the quality of the regulatory impact statements to internal review panels set up within MBIE.</p> <p>For the two RISs mentioned above, the panels considered that "the information and analysis summarised in the Impact Statement meets the criteria necessary for Ministers to make informed decisions on the proposals".</p>	

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
--	-----------

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
---	-----------

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?	NO
<p>The Bill is intended to improve fuel resilience, which would decrease the potential for people to suffer a substantial unavoidable loss of income or wealth caused by a fuel shortage.</p> <p>More explanation can be found in the RISs mentioned above.</p>	

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>Non-compliance with the minimum stockholding requirements could result in worse outcomes for fuel resilience in New Zealand, as obligated parties may not hold a sufficient level of fuel stock for mitigating plausible fuel disruption risks. Non-compliance with information disclosure requirements associated with the MSO could also undermine the Government's ability to keep clear oversight of New Zealand's fuel resilience. The penalties in this Bill are expected to incentivise obligated parties to comply with the MSO requirements.</p> <p>Obligated parties will be required to provide independent assurance, from time to time, that the method used to measure or estimate average daily stock is fit for purpose. MBIE, as the regulator, will also have the power to undertake spot audits on this information, including measuring stock levels in bulk storage facilities.</p> <p>MBIE plans to recruit new staff and set up new administrative systems for monitoring, compliance and enforcement activities associated with MSO. As discussed in the aforementioned RISs, MBIE could incur up to \$1.4 million per year for the administration of the MSO. The administration costs are expected to be recovered by the petroleum or engine fuel monitoring levy, once its statutory purpose is amended.</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?
--

New Zealand's obligations under the International Energy Agreement were considered during the policy development process.

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?

When designing the approach to stakeholder engagements for developing the fuel resilience policy package, MBIE's policy team discussed the issues with internal advisors specialising in managing iwi and regional relationships. MBIE concluded that the policy proposals, which focus on increasing onshore fuel stocks, are unlikely to be of high interest to iwi. MBIE has not identified any inconsistencies between the policies in this Bill and the government's Treaty of Waitangi obligations.

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
---	------------

Advice provided to the Attorney-General by the Ministry of Justice is generally expected to be available on the Ministry's website upon introduction of a Bill at: https://www.justice.govt.nz/justice-sector-policy/constitutional-issues-and-human-rights/bill-of-rights-compliance-reports/

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)?	YES
--	------------

(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?	NO
---	-----------

The Bill would introduce the ability for the High Court to order a person to pay to the Crown a civil pecuniary penalty if the person has contravened, or has attempted to contravene, the provisions of the stockholding obligation or the information disclosure requirements, or if they have in any way been involved with an attempted or direct contravention of the provisions of the Bill. This is outlined in Subpart 5 of the Bill.

The pecuniary penalty must not exceed, in the case of an individual, \$500,000 for each act or omissions, or in any other case, the greater of the following for each act or omission:
--

- five million dollars; or

- either:

- | |
|---|
| <ul style="list-style-type: none">• if the commercial gain can be ascertained, three times the value of any commercial gain resulting from the contravention; or• if the commercial gain cannot be ascertained, 10 per cent of the turnover of the person and all interconnected bodies corporate in each accounting period in which the contravention occurred. |
|---|

3.4.1. Was the Ministry of Justice consulted about these provisions?	YES
<p>The Ministry of Justice (MoJ) was consulted on the MSO-related penalty proposals in May 2022 when the Cabinet paper on the fuel resilience policy package was being drafted. MoJ drew MBIE's attention to the difference between a fine on conviction and a pecuniary penalty. MBIE provided the rationale for preferring a pecuniary penalty for breaches of the MSO at the time. MoJ accepted that rationale and did not make any further comments.</p>	

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
<p>The information collected under the MSO regime is expected to be fuel stock data and other information relating to fuel resilience.</p>	

3.5.1. Was the Privacy Commissioner consulted about these provisions?	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>Public consultation on onshore fuel stockholding proposals, which culminated in the fuel resilience policy package, was conducted in early 2022 (see https://www.mbie.govt.nz/have-your-say/onshore-fuel-stockholding-consultation/). The consultation paper discussed options for the target level of onshore fuel stocks, and how to meet the target level, such as a minimum onshore fuel stockholding on the fuel importers, and the option of setting up a standalone government agency for managing fuel stocks and fuel emergency planning. Twenty-one submissions, mainly from the fuel and transport sectors, were received.</p> <p>Further targeted consultation took place in January and February 2023 to design the proposals with fuel industry participants and key consumer and stakeholder groups in the form of workshops and bilateral discussions. Feedback was largely polarised between importers, who submitted that the fuel market was adequately resilient without the MSO, and major users, who consider the stockholding obligation is necessary, especially in light of the jet fuel incident in December 2022.</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?	YES
<p>A MSO is implemented in many overseas jurisdictions. When developing this Bill, officials considered the design of overseas MSO regimes, particularly in Australia, and enforcement provisions in other primary legislation, such as the Fuel Industry Act, the Commerce Act and the Crown Minerals Act.</p> <p>During targeted consultation in January and February, MBIE looked into fuel importers' stockholding data and sought feedback on their data collection practices to ensure that the calculation method for determining the minimum stockholding volumes for obligated parties would be workable without adding disproportionate compliance costs.</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
--	-----------

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?	NO
--	-----------

Retrospective effect

4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?	NO
---	-----------

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
---	-----------

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?	YES
<p>The Bill creates the power for the Minister to exempt, suspend temporarily, or terminate an obligated person's stockholding obligation, in whole or in part. Exemptions will be secondary legislation, and publication requirements will apply to them.</p> <p>There may be instances such as a fuel supply disruption, when it would not be reasonable or beneficial for New Zealand to expect fuel wholesales to comply with the obligation.</p> <p>In these instances, there are criteria that could be applied to determine whether suspension or exemption is appropriate. These could include:</p> <ul style="list-style-type: none">• the impact of an event on fuel imports and fuel storage capacity• the duration of the event• the level of control of an obligated party over the event• the time required to achieve compliance with the obligation• the impact on fuel resilience in regions.	

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?	YES
<p>The Bill creates the power for the Minister to exempt, suspend temporarily, or terminate an obligated person's stockholding obligation, in whole or in part as outlined above in Section 4.6.</p> <p>The Bill also creates regulation-making powers to allow additional location-specific stockholding requirements to be developed and prescribed in regulations in future, and more broadly amend or augment the obligation. Any recommendations of this type may be made by the Minister only if the Minister has consulted affected parties and taken into consideration factors such as the resilience of supplies of each type of fuel, and the current or recent commercial stockholding levels for that type of fuel.</p>	

4.8. Does this Bill create or amend any other powers to make delegated legislation?	YES
<p>The Bill provides for powers to create or amend regulations on the following matters:</p> <ul style="list-style-type: none">• minimum fuel stockholding requirements, including introducing new requirements after the initial period, location-specific stockholding requirements, obligated parties and fuel types subject to the MSO• the calculation method for stockholding volumes• processes, procedures and circumstances related to exemptions from the MSO• requirements for disclosure of information in relation to resilience of fuel supplies in New Zealand.	

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
--	-----------