



## COVERSHEET

<b>Minister</b>	Hon Dr Megan Woods	<b>Portfolio</b>	Energy and Resources
<b>Title of Cabinet paper</b>	Sustainable Biofuels Obligation: Final Policy for Regulations  Sustainable Biofuels Obligation Bill: Approval for Introduction	<b>Date to be published</b>	9 November 2022

### List of documents that have been proactively released

<b>Date</b>	<b>Title</b>	<b>Author</b>
October 2022	Sustainable Biofuels Obligation: Final Policy for Regulations	Office of the Minister of Energy and Resources
19 October 2022	Sustainable Biofuels Obligation: Final Policy for Regulations  DEV-22-MIN-0241 Minute	Cabinet Office
October 2022	Sustainable Biofuels Obligation Bill: Approval for Introduction	Office of the Minister of Energy and Resources
19 October 2022	Sustainable Biofuels Obligation Bill: Approval for Introduction  DEV-22-MIN-0242 Minute	Cabinet Office

### Information redacted

**NO**

Any information redacted in this document is redacted in accordance with MBIE's policy on Proactive Release and is labelled with the reason for redaction. This may include information that would be redacted if this information was requested under Official Information Act 1982. Where this is the case, the reasons for withholding information are listed below. Where information has been withheld, no public interest has been identified that would outweigh the reasons for withholding it.

In Confidence

Office of the Minister of Energy and Resources

Office of the Minister of Transport

Cabinet Economic Development Committee

## **Sustainable Biofuel Obligation Bill: Approval for Introduction**

### **Proposal**

- 1 This paper seeks approval for the introduction of the Sustainable Biofuel Obligation Bill 2023 (the Bill).

### **Background**

- 2 The Sustainable Biofuel Obligation (the Obligation) is one of the many actions taken in response to Parliament's declaration of a climate change emergency and aligns with the Government's focus on intergenerational wellbeing as set out in the 2020 Speech from the Throne. It supports the Labour Party's commitment to transition to a clean, green and carbon-neutral New Zealand, as outlined in *Our Manifesto to Keep New Zealand Moving*.
- 3 This proposal falls under the Cooperation Agreement between the Labour and Green Parties because achieving the purpose and goals of the Zero Carbon Act is an agreed area of cooperation.
- 4 The Obligation makes a significant contribution to the quantified emissions reductions set out in the Government's Emissions Reduction Plan (ERP). Within the first emissions budget period (2022 – 2025), the Obligation is expected to result in a reduction of around 1 MtCO<sub>2e</sub>, with reductions of approximately 3 MtCO<sub>2e</sub> and 4.4 MtCO<sub>2e</sub> for the second (2026 – 2030) and third (2031 – 2025) emissions budget periods respectively.

### **Why a Sustainable Biofuel Obligation?**

- 5 Transport is responsible for 47 percent of New Zealand's domestic CO<sub>2</sub> emissions, and unless it is decarbonised, it will be difficult to achieve the Government's 2050 target to reduce CO<sub>2</sub> emissions to net zero [CAB-20-MIN-0536].
- 6 Biofuels are the only viable mitigation opportunity for New Zealand's existing internal combustion engine (ICE) vehicle fleet, where new vehicles will remain active over the next 20 years on average. Other low-emissions transport fuels such as hydrogen and electricity are not compatible with existing ICE vehicles and fuelling infrastructure.
- 7 Obligating fuel wholesalers to reduce their emissions from liquid transport fossil fuels by deploying sustainable biofuels in their fuel supply is a key

## IN CONFIDENCE

mechanism towards the decarbonisation of transport and overall emissions reductions as outlined in the first Emissions Reduction Plan agreed to by Cabinet earlier this year.

- 8 In December 2020, Cabinet agreed to progress a biofuels mandate (now referred to as the Sustainable Biofuel Obligation). This acknowledged the role of biofuels in enabling transport decarbonisation at a rate which would be otherwise difficult to achieve by 2050. Cabinet agreed that a biofuels mandate would be implemented subject to:
  - i. a review of the 2008 Biofuels Sales Obligation (the 2008 Obligation) for its suitability to facilitate an increase in the supply and use of sustainable biofuels in transport; and
  - ii. review and consultation on the mandate's policy design [CBC-20-MIN-0139].
- 9 In April 2021, Cabinet agreed to consult on a proposal that would retain some of the design features of the 2008 Biofuel Sales Obligation [CBC-21-MIN-0046]. The most significant difference lies in the new proposal prioritising focus on emissions reductions rather than blending a certain volume of biofuels into the fuel supply. The new obligation would also set out sustainability criteria to ensure biofuels are not creating adverse environmental and social impacts.
- 10 In November 2021, Cabinet agreed on the final policy design of the Obligation following public consultation. We also obtained Cabinet's agreement to begin drafting the Sustainable Biofuel Obligation Bill (the Bill) to give effect to the Obligation alongside developing policy proposals for the regulations.

### Policy decisions

#### *Changing when the Obligation comes into effect from 1 April 2023 to 1 April 2024*

- 11 Following public consultation Cabinet decided in November 2021 that the Obligation should come into effect on 1 April 2023. In its first year the Obligation will require fuel importers to reduce the emissions intensity of their fuel supply by 1.2 percent.
- 12 Fuel importers will have limited options to meet this target in 2023, due to the lack of infrastructure in New Zealand for first generation biofuels (ethanol and biodiesel). Fuel importers were likely to meet this in year one by using renewable diesel (a drop-in alternative which does not require specific infrastructure). Following the Russian war on Ukraine and global volatility in fuel markets, the price for renewable diesel has risen drastically in the last 6 months (about 40 percent). The Ministry of Business, Innovation and Employment (MBIE) has commissioned some analysis which shows that, based on current prices, meeting the 2023 target through mostly renewable diesel could add around 4 cents per litre to the price of diesel. Some fuel importers (who will become obliged persons under the Bill) have provided

IN CONFIDENCE

**IN CONFIDENCE**

higher estimates of the potential price increase of using renewable diesel to meet the Obligation of between 6 and 10 cents per litre in 2023.

- 13 Alternatively, in the first year fuel importers could pay a penalty of up to \$300 per tonne of CO<sub>2</sub> emissions not achieved. If fuel importers paid the penalty, they would likely spread this cost across petrol and diesel. This would increase the cost of all fuels by about 2 cents per litre in 2023, with no corresponding emissions reduction benefits.
- 14 Some of the major fuel importers have informed us that with implementation for year one of the Obligation so close, they will be better off paying the penalties. An obliged person who pays the penalty in 2023 instead of supplying biofuel would be likely to pass on lower cost fuel to retailers and consumers, meaning parties who choose to import more expensive renewable diesel may struggle to pass on its additional cost. There is a risk that this could create a race to the bottom i.e all obliged persons choosing to pay the penalty in 2023, with no actual emissions reductions achieved.
- 15 In the context of the current cost of living pressures we propose to delay the date that the Obligation comes into effect from 1 April 2023 to 1 April 2024, with the emissions intensity reduction for the 2024 year remaining 2.4 percent. Infrastructure for first generation biofuels (principally ethanol) could be in operation at key terminals by mid-2024, and this would lower the cost of meeting the target for obliged persons and fuel consumers.
- 16 The Minister of Energy and Resources will communicate to fuel companies that the delay will be the last and they should proceed with infrastructure development at pace.
- 17 Deferring the Obligation's implementation date to 1 April 2024 would, however, result in a shortfall of about 0.23 MtCO<sub>2</sub>e from the quantified emissions reductions in the Government's first Emissions Reduction Plan. However this shortfall has essentially already been locked in as fuel companies are expected to pay the penalty in the first year rather than comply if the implementation date remains 1 April 2023.
- 18 We propose to make up for this lost abatement across the second budget period, which would require an additional 0.3 percent emissions intensity reduction in each year from 2026 to 2030. The emissions intensity reduction for all other years would remain the same. The updated emissions intensity reduction percentages are in Table 1.

Table 1 – Updated emissions intensity percentages

<b>Year</b>	<b>Previous emissions intensity percentage</b>	<b>New emissions intensity percentage</b>
<b>2023</b>	1.2	-
<b>2024</b>	2.4	2.4
<b>2025</b>	3.5	3.5

**IN CONFIDENCE**

**IN CONFIDENCE**

<b>2026</b>	3.8	4.1
<b>2027</b>	4.1	4.4
<b>2028</b>	4.4	4.7
<b>2029</b>	4.7	5.0
<b>2030</b>	5.0	5.3
<b>2031</b>	5.8	5.8
<b>2032</b>	6.6	6.6
<b>2033</b>	7.4	7.4
<b>2034</b>	8.2	8.2
<b>2035</b>	9.0	9.0

- 19 We also propose that there would no longer be a lower penalty rate in the first year of the Obligation: the penalty rate will be \$800 per tonne of CO<sub>2</sub> emissions not achieved in all years. This, as well as the potential reputational risk associated with not meeting their obligations, will further incentivise compliance among fuel importers.
- 20 Although this would address the overall shortfall between now and 2035, the delay reduces expected emissions reductions in the first budget period by 0.23 MtCO<sub>2</sub>e. This would need to be addressed through alternative emissions reduction measures. However, we note that fuel consumption data indicates an approximate 5 percent drop since the beginning of 2020. This is likely the result of a variety of factors including higher pump prices, more people working from home and the introduction of more EVs into the fleet. It is likely that at least some of this demand will return.
- 21 The drop in fuel demand since 2020 may however, represent a more long-term decline in demand for liquid fuels because of changing travel patterns. If that is the case, even a 2 percent reduction in long-term fuel consumption could reduce emissions required to meet the first emissions budget by 0.3 Mt CO<sub>2</sub>e annually. We recommend that managing the impacts of the proposed delay is put to the Climate Change Response Ministerial Group for consideration.

**Policy changes to the Bill**

- 22 In November 2021, Cabinet [ENV-21-MIN-0058] authorised us to approve minor policy changes to the Bill in a manner not inconsistent with the recommendations. We have approved the inclusion of a threshold so that an obliged person must import or refine more than 50,000 litres of liquid fuel. This moves the definition of an obliged person to align with the Climate Change Response Act 2002 (CCRA) and ensures that the Obligation also aligns with the Emissions Trading Scheme and excludes small-scale importers of liquid fuels.
- 23 We are also seeking Cabinet’s agreement to the following features of the Sustainable Biofuel Obligation regime:

**IN CONFIDENCE**

**I N C O N F I D E N C E**

- 23.1 the sustainability of the biofuels being determined by the regulations, with the Minister having to consider the sustainability criteria before recommending these regulations. The regulations could also include requirements relating to certification of biofuels and feedstocks.
- 23.2 allowing regulations to prescribe biofuel as sustainable if made from particular waste or residue feedstocks.
- 23.3 allowing types of biofuels e.g. biofuels made from a particular feedstock to be excluded from the Obligation or limiting their contribution to meeting the percentages under the Obligation.
- 23.4 allowing an obliged person to apply to the relevant Minister to borrow up to 20 percent of the next year's emissions reduction.

*The sustainability of the biofuels being determined by the regulations*

- 24 This proposal would mean the sustainability of biofuels being determined by the regulations, with the Minister having to consider the sustainability criteria before recommending these regulations. The Bill requires the Minister to be satisfied about some of the criteria and to have regard to others.
- 25 Specifically, the Minister must be satisfied that both biofuels and feedstocks:
  - i. are not likely to have a significant adverse effect on biodiversity;
  - ii. are not likely to lead to the deforestation of native forests or canopy forests or the destruction of wetlands or peatland;
  - iii. are not likely to adversely impact food and feed security;
  - iv. are not likely to have a significant adverse impact on water quality or significantly restrict its availability in an area;
  - v. are not likely to be associated with a high risk of indirect land use change.

- 26 The Minister must have regard to:
  - i. the impacts on soil carbon of any activities that are associated with the cultivation, production and processing of feedstocks;
  - ii. the principles of the waste hierarchy.

- 27 These two criteria are treated differently because it is more difficult to conclusively evaluate whether a biofuel or feedstock meets these criteria.

*Allowing regulations to include requirements concerning certification of biofuels*

- 28 The regulations may also include requirements relating to certification of biofuels and feedstocks.
- 29 This proposal would require Cabinet's decision from November 2021 to be rescinded. At that time, Cabinet agreed that obliged persons must use

**I N C O N F I D E N C E**

international sustainability certification schemes to certify that feedstocks and biofuels meet the sustainability criteria and to evaluate the life cycle emissions of biofuels. Instead, the Bill would include an empowering provision allowing the relevant Minister to make regulations regarding the certification of biofuels, feedstocks and their emissions intensity reductions.

- 30 The preferred option of making regulations to determine the sustainability of biofuels and their eligibility under the Obligation better supports the Government's objective of establishing a domestic biofuels industry. MBIE and the Ministry of Primary Industries propose to work with stakeholders to develop a biofuels standard that could be used to provide assurance on the sustainability of biofuel feedstocks likely to form the basis of a New Zealand biofuels industry.

*Allowing regulations to prescribe biofuel as sustainable if made from particular waste or residue feedstocks*

- 31 This provision would allow for regulations to define feedstocks which are wastes or residues. Classifying a feedstock, such as whether it is a waste or a residue, is important because it has implications for how the biofuel will be treated in the life cycle analysis, and whether upstream GHG emissions should be allocated to it. Only fuels derived from biological waste or residues will be eligible under the Obligation.
- 32 Wastes and some residues (i.e. processing residues such as sawdust from a sawmill) would be considered sustainable as long as they are verified as genuine. Residues collected directly from forestry, agriculture, aquaculture or fisheries would need to meet the requirements sustainable biofuels set out in the regulations.

*Allowing particular biofuels to be excluded or limited from the Obligation*

- 33 This provision would allow for regulations to:
- 33.1 exclude types of biofuels e.g. those produced from a particular feedstock on the grounds that they are highly unlikely to meet one or more of the sustainability criteria.
  - 33.2 limit types of biofuels e.g. those produced from a particular feedstock on the grounds that there is a risk that an over-reliance on them might result in an adverse impact on the sustainability criteria.
- 34 These are particularly relevant to the criterion that feedstocks should not be associated with a high risk of indirect land use change. For example, through the regulations we propose banning the use of feedstocks (palm and soybean) that have created significant indirect land use change emissions which can be attributed to an increase in biofuels production from these feedstocks. These two feedstocks have contributed to significant deforestation in Southeast Asia and South America. We also propose capping the amount of food and feed-based biofuels that can be used to meet an obliged person's emissions intensity reduction, which will also limit feedstocks which require large areas of land to produce.

*Allowing an obliged person to apply to the relevant Minister to borrow up to 20 percent of the next year's emissions reduction*

- 35 This is to allow more flexibility for the smaller obliged persons who have fewer deliveries of fuel in a year and are likely to experience a relatively larger impact, for example if a shipment of fuel is delayed. The existing provision which allows obliged persons to borrow up to 10 percent will remain.
- 36 When considering an application to borrow up to 20 percent of the next year's reductions the Minister would need to consider whether:
- the applicant has made reasonable attempts to comply with the Obligation
  - the need to borrow up to 20 percent is based on unforeseen circumstances such as delayed shipments or other supply chain constraints
  - the applicant is likely to be able to pay back the emissions deficit in the following year.

**Key elements of the Bill following Cabinet policy decisions**

- 37 The Bill will implement the following Cabinet policy decisions [ENV-21-MIN-0058]:

*The Biofuels Obligation*

- 37.1 The Bill provides for an obligation to increase the supply and use of sustainable biofuels for transport purposes by requiring obliged persons to reduce their annual greenhouse gas emissions through the deployment of biofuels in their fuel supply.
- 37.2 An obliged person refers to someone who imports or refines liquid fossil fuels into New Zealand. 'Obliged person' under this Bill aligns with those required to participate under the Emissions Trading Scheme.
- 37.3 The Bill creates an empowering provision to allow the development of regulations to determine what a sustainable biofuel is and how that should be measured.
- 37.4 Emission intensity reduction targets which obliged persons are required to reach every year are set out in percentage form, from 2024 through to 2035. The targets for 2024 and 2025 are fixed and those from 2026 onwards can be altered through an Order in Council on the recommendation of the relevant Minister.
- 37.5 The Bill provides a methodology which obliged persons can use to calculate whether they have met their emission intensity reduction percentages. The methodology provides that the emission intensity



## IN CONFIDENCE

reduction target can be calculated by comparing the annual emissions of its fuel supply (fossil and biofuels) against the hypothetical emissions, if all its fuel supplied had been fossil fuels.

37.6 The Bill provides flexibility measures where obliged persons can:

- 'Bank' any overachievement or excess of reductions in a year to be carried forward into the next year, thus reducing that parties' obligation for that year;
- Transfer (party A) any overachievement or excess of reductions in a year to another obliged person (party B) thus reducing party B's biofuel obligation by the amount traded for that year; or
- Borrow up to 10 percent of the emissions reduction (provided that it is repaid in the next year). We are also proposing, subject to Cabinet approval, that an obliged person could borrow up to 20 percent of the next year's emission intensity if approved by the relevant Minister.

### *Administration and enforcement*

37.7 The Bill sets out the Environmental Protection Authority (EPA) as the regulator for the Obligation. The Bill provides that the EPA is to:

- Receive and collate information provided by obliged persons under the Bill;
- Monitor compliance, and take any action deemed appropriate to enforce the Act and the regulations; and
- Publish a summary of the information contained in annual reports provided by obliged persons on their emissions reductions.

37.8 The Bill requires obliged persons to provide annual reports to the EPA containing information on how their biofuel obligation has been met and calculated. The Bill also requires that these reports be certified by an auditor listed by the EPA.

37.9 It will be an offence to:

- Fail, without reasonable excuse, to keep and maintain records, or to provide required information to the EPA; and/or
- Knowingly provide false information to the EPA

37.10 These offences will carry a liability for a fine.

IN CONFIDENCE

## IN CONFIDENCE

- 37.11 If an obliged person is found by the High Court to have contravened their biofuel obligation, they are liable for a civil pecuniary penalty of \$800 per tonne of carbon dioxide equivalent emissions not achieved.
- 37.12 The court may reduce the civil pecuniary penalty amount, after having regard to factors such as:
- The nature and extent of the contravention
  - Any gains or losses avoided by obliged person in contravention
  - The circumstances in which the contravention took place (whether intentional, inadvertent, or negligent)
  - Whether obliged person in contravention has engaged in similar conduct before
- 37.13 In a proceeding against an obliged person for contravention, it is a defence if the person can prove that their contravention was due to:
- A reasonable reliance on information supplied by another person; or
  - The act or default of another person or an accident or some other cause beyond the obliged person's control; and
  - The obliged person took reasonable precautions and exercised due diligence to avoid the contravention.

### Regulatory Impact Analysis

- 38 A Regulatory Impact Assessment was prepared in accordance with the necessary requirements and was submitted at the time Cabinet policy approvals relating to the Bill were sought [ENV-21-MIN-0058].

### Compliance

- 39 The Bill complies with each of the following:
- 39.1 The principles of the Treaty of Waitangi. There are no specific impacts on iwi/Māori interests from the Bill, and therefore no specific Treaty clause has been included. Officials have engaged with Te Arawhiti, the Office for Māori-Crown relations, who agreed that there were no specific impacts on iwi/Māori interests. The Bill will be an 'environmental act' under the Environmental Protection Authority Act 2011, which means that the Environmental Protection Authority's Māori Advisory Committee can advise the Environmental Protection Authority (EPA) on policy, process, and decisions of the EPA;

IN CONFIDENCE

## IN CONFIDENCE

- 39.2 The rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993;
- 39.3 Disclosure statement requirements;
- 39.4 The principles and guidelines set out in the Privacy Act 2020;
- 39.5 Relevant international standards and obligations;
- 39.6 The Legislation Guidelines (2021 edition). Officials obtained advice from the Legislation Design and Advisory Committee, and we have taken this advice into account.

### Consultation

- 40 In June and July 2021, the Ministry of Business Innovation and Employment (MBIE) and Ministry of Transport (MoT) publicly consulted on the preferred design of a sustainable transport biofuels mandate. The submissions acknowledged the important role biofuels will play in decarbonising transport and generally supported the preference for an obligation based on GHG emissions intensity reductions. Refinement to the design of the Obligation were made per suggestions from the submissions received:
  - 40.1 Setting a separate mandate for aviation fuel;
  - 40.2 Adopting provisional targets out to 2035, which will be confirmed in 2024 (for 2026-2030) and 2029 (for 2031-2035);
  - 40.3 Changing who must comply with the Obligation to those who first import or refine fuels (fuel wholesalers).
- 41 In June 2022, MBIE publicly consulted on the regulations associated with the Obligation.
- 42 In June 2022, MBIE also shared a draft of the Bill with obliged persons in order to test the workability of the draft legislation before finalising the Bill. The obliged persons shared some suggestions to improve the workability and clarity of the Bill.
- 43 The EPA has worked closely with MBIE throughout the development of the Bill, particularly in regard to their functions as the regulator under the Obligation.
- 44 MBIE has conducted inter-departmental consultation on a draft of the Bill.
- 45 The Green Party does not object to the delay proposed to the Obligation to 1 April 2024. While we recognise the grounds for this proposed delay from the Government are based largely on cost of living pressures, the Green Party instead supports a more gradual phase-in because of serious concerns that currently, there is not adequate supply of biofuels that are genuinely sustainable to meet both the demand that would be induced by the mandate and global pressures for the same feedstock and production.

IN CONFIDENCE

- 46 The Green Party would like to see more work done in the intervening year to ensure that the regulations for the sustainability criteria and certification process are robust and take a precautionary approach to avoid any risk of increasing global emissions through use of biofuels sourced from environmentally unsustainable feedstocks overseas. The sustainability of biofuel supply must also take precedence over the enforcement of penalties on obliged persons. This work should include a strategy for domestic production of sustainable biofuels, to improve both environmental outcomes and energy security, without disrupting the waste hierarchy.

### **Binding on the Crown**

- 47 There are no compelling reasons for the resulting Act not to bind the Crown. Therefore, we propose the Act will be binding on the Crown.

### **Creating new agencies or amending law relating to existing agencies.**

- 48 The Bill does not create new agencies.

### **Allocation of decision-making powers**

- 49 The Bill will not affect the allocation of decision-making powers between the executive, the courts, and tribunals.

### **Associated regulations**

- 50 The Bill requires regulations to support the primary legislation. They will predominantly be concerned with the calculation of different elements of the obligation such as the emissions intensity of biofuels and fossil fuels as well as the verification of GHG emissions intensity factors.
- 51 The regulations also provide for the sustainability criteria including international sustainability certification schemes used to certify the sustainability of biofuels, issues around land use change, food security, the use of waste and classification of feedstocks.

### **Other instruments**

- 52 There are no other instruments associated with the Bill.

### **Definition of Minister/department**

- 53 The Bill defines Minister as the Minister of the Crown who, under the authority of any warrant or with the authority of the Prime Minister, is for the time being responsible for the administration of the Act.

### **Commencement of legislation**

- 54 The Bill will come into force on 1 April 2024.

### Parliamentary stages

- 55 We intend to introduce the Bill on 27 October 2022. Depending on availability of House time, I will move first reading during the week of 7 November 2022. The Bill should be passed by 31 June 2023.
- 56 We will propose the Bill be referred to the Environment Committee for consideration for a period of 4 - 6 months.

### Proactive release

- 57 We propose to issue a media statement when the Bill has been introduced into the House. This paper will be proactively published on MBIE's website, and MBIE will email interested parties.

### Public education campaign

- 58 The Obligation will represent a significant change for the fuel industry and motorists. Consumer perception of biofuels could have a significant impact on the success of the initiative. We intend to seek a one-off sum of up to \$1 million in funding through Budget 2023 to develop and undertake a public information campaign.
- 59 Australian experience highlights the need to prepare consumers for biofuels being blended into the fuel supply. New South Wales and Queensland both have biofuel mandates. The New South Wales government introduced a biofuel sales mandate in 2007. It was not until 2017 that the New South Wales government introduced an E10<sup>[1]</sup> educational campaign 'Fuel for Thought'. As a result, there has been little change in consumer preferences; many consumers choose instead to purchase premium unleaded fuels instead of ethanol blended fuels, likely due to perceived risks of biofuels use, such as damage to vehicle engines.
- 60 We note that all biofuels used to meet the Obligation will need to meet specifications set under the Engine Fuel Specifications Regulations 2011. Under the Engine Fuel Specifications Regulations 2011, the blend limit for bioethanol is up to 10 percent, and up to 7 percent for biodiesel. This ensures that conventional biofuels will pose limited risk to conventional vehicle engines when used in their blended form. Strict labelling requirements will also be in place to inform consumers of the presence of biofuels at the pump.
- 61 The Queensland government launched a campaign 'E10 Ok' before the beginning of its biofuel mandate in 2017. This has led to slightly higher sales of E10 in Queensland compared to New South Wales. However, Queensland consumers continue to choose premium unleaded petrol or regular unleaded petrol over E10.

---

<sup>[1]</sup> E10 is a term for petrol which is blended with 10 percent ethanol.

## Recommendations

The Minister for Energy and Resources and the Minister for Transport recommend that the Committee:

- 1 note that the Bill will:
  - 1.1 Provide for an obligation requiring persons who import or refine liquid fossil fuels into New Zealand ('obliged persons') to reduce their annual greenhouse gas emissions intensity of their liquid fossil fuels through the deployment of biofuels;
  - 1.2 Set out emissions reduction targets which obliged persons are required to reach every year from 2023 to 2035;
  - 1.3 Set out that the targets are subject to review in 2024 and 2029 and can be adjusted from 2026 onwards;
  - 1.4 Provide a methodology which obliged persons can use in order to calculate their emission reduction percentages;
  - 1.5 Provide flexibility measures whereby obliged persons can bank, borrow or transfer emissions reductions under their obligation;
  - 1.6 Provides for the Environmental Protection Authority (EPA) to be the regulator for the Obligation and prescribes functions for the EPA to carry out this role;
  - 1.7 Require obliged persons to provide annual reports to the EPA containing information on how their biofuel obligation has been met and calculated;
  - 1.8 Set out penalties for obliged persons who fail to comply with administrative requirements as outlined above;
  - 1.9 Set out a strict liability on obliged persons to a civil pecuniary penalty of \$800 per tonne of carbon dioxide equivalent emissions that results, or is likely to result, from a contravention of their biofuel obligation;
- 2 note that, to align it with the application of the Climate Change Response Act 2002, only companies which import or refine more than 50,000 litres of liquid fuel will be subject to the Sustainable Biofuel Obligation;
- 3 note that Cabinet agreed on 1 November 2021 that the Sustainable Biofuel Obligation should come into effect from 1 April 2023; [ENV-21-MIN-0058]
- 4 agree to recommend that Cabinet rescind the decision referred to in recommendation 3, and instead agree that the Sustainable Biofuel Obligation come into effect from 1 April 2024 with the following emissions intensity percentage reductions:

**IN CONFIDENCE**

<b>Year</b>	<b>Previous emissions intensity percentage</b>	<b>New emissions intensity percentage</b>
<b>2023</b>	1.2	-
<b>2024</b>	2.4	2.4
<b>2025</b>	3.8	3.5
<b>2026</b>	3.8	4.1
<b>2027</b>	4.1	4.4
<b>2028</b>	4.4	4.7
<b>2029</b>	4.7	5.0
<b>2030</b>	5.0	5.3
<b>2031</b>	5.8	5.8
<b>2032</b>	6.6	6.6
<b>2033</b>	7.4	7.4
<b>2034</b>	8.2	8.2
<b>2035</b>	9.0	9.0

- 5 note that the Climate Change Response Ministerial Group will consider how to manage the impact of the proposed delay and the associated shortfall in the first emissions budget;
- 6 note that Cabinet agreed on 1 November 2021 that the primary legislation would provide for a maximum penalty of \$300 per tonne of carbon dioxide equivalent emissions not achieved in the first year of the Obligation;
- 7 agree to recommend that Cabinet rescind the decision referred to in recommendation 6, and instead agree that the maximum penalty rate of \$800 per tonne of carbon dioxide equivalent emission reductions not achieved apply in the first year of the Obligation;
- 8 agree that the required sustainability of biofuel will be determined by regulations, with the relevant Minister having to consider the sustainability statutory prerequisites in the bill (agreed to by Cabinet) before recommending such regulations;
- 9 note that Cabinet agreed on 1 November 2021 that obligated parties must use international sustainability certification schemes to certify that feedstocks and biofuels meet the sustainability criteria and to evaluate the life cycle emissions of biofuels;
- 10 agree to recommend that Cabinet rescind the decision referred to in recommendation 9, and instead agree to include an empowering provision allowing the Minister to make regulations concerning certification of biofuels;

**IN CONFIDENCE**

## IN CONFIDENCE

- 11 agree to include an empowering provision allowing feedstocks that are identified as particular waste or residue products to be considered as sustainable;
- 12 agree to include an empowering provision allowing types of biofuels to be excluded from the Obligation or limiting their contribution to meeting the percentages under the Obligation;
- 13 agree to allow obliged persons to apply to the relevant Minister to up to 20 percent of the reduction in emissions intensity that should have been made may be borrowed from the next year;
- 14 note that the Bill gives effect to recommendations 4-13;

### **Consultation**

- 15 note that the Green Party has serious concerns over whether there is adequate supply of genuinely sustainable biofuels to meet the demand induced by the mandate and in light of global pressures;
- 16 note that the Green Party considers that the sustainability of biofuel supply needs to be regulated through stringent criteria and certification processes and must take precedence over the enforcement of penalties on obliged persons;
- 17 note that the Green Party seeks further work on the feasibility of domestic production of sustainable biofuels before the Obligation is in place. agree that the resulting Act will be binding on the Crown;

### **Legislative process**

- 18 note that the Bill is currently a category 2 Bill in the 2022 legislation programme, meaning it was intended to be passed in 2022, but this is unlikely to occur;
- 19 agree that the Bill be introduced on 27 October 2022;
- 20 agree that the Government propose that the Bill be:
  - 20.1 Referred to the Environment Committee for consideration;
  - 20.2 Enacted by 1 June 2023.

IN CONFIDENCE



**I N C O N F I D E N C E**

Authorised for lodgement

Hon Dr Megan Woods

Minister of Energy and Resources

Hon Michael Wood

Minister of Transport

**I N C O N F I D E N C E**