



COVERSHEET

Minister	Hon Dr Megan Woods	Portfolio	Energy and Resources
Title of Cabinet paper	Clarifying Energy Resources Levy Obligations for Fossil Gas Production Energy Resources Levy Amendment Bill: Approval for Introduction Energy Resources Levy Amendment Bill: Amendments to Policy Decisions and Approval for Introduction by Delegated Ministers	Date to be published	26 June 2023

List of documents that have been proactively released		
Date	Title	Author
8 March 2023	Clarifying Energy Resources Levy Obligations for Fossil Gas Production	Office of the Minister of Energy and Resources
13 March 2023	Clarifying Energy Resources Levy Obligations for Fossil Gas Production DEV-23-MIN-0018 Minute	Cabinet Office
4 May 2023	Energy Resources Levy Amendment Bill: Approval for Introduction	Office of the Minister of Energy and Resources
8 May 2023	Energy Resources Levy Amendment Bill: Approval for Introduction – Minute of Decision CAB-23-MIN-0162.01 Minute	Cabinet Office
15 May 2023	Additional Item: Energy Resources Levy Amendment Bill CAB-23-MIN-0179 Minute	Cabinet Office
17 May 2023	Energy Resources Levy Amendment Bill: Amendments to Policy Decisions and Approval for Introduction by Delegated Ministers	Office of the Minister of Energy and Resources
17 May 2023	Energy Resources Levy Amendment Bill: Amendments to Policy Decisions and Approval for Introduction by Delegated Ministers DEV-23-MIN-0089 Minute	Cabinet Office

Information redacted**YES / 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.

Some information has been withheld for the reasons of confidentiality, commercial information, free and frank opinion, and legal professional privilege.

[In Confidence]

Office of the Minister for Energy and Resources

Cabinet Legislation Committee

Energy Resources Levy Amendment Bill: Approval for Introduction

Proposal

- 1 This paper seeks approval for the introduction of the Energy Resources Levy Amendment Bill (**the Bill**).

Policy

- 2 There have been inconsistent approaches to achieving a fair financial return on the Crown's fossil gas¹ resources, with royalty rates depending on when licences or permits were granted for gas discoveries. This is not uncommon and reflects practice at the time those licences were granted. Licences granted as a result of a pre-1 January 1986 discovery (**pre-1986 licence**) under the Petroleum Act 1937 are subject to five to ten per cent royalty rates compared to modern permit royalty rates of 20 per cent granted under the Crown Minerals Act 1991.
- 3 The Energy Resources Levy Act 1976 (**ERL Act**) provides for the imposition, assessment, and collection of a levy on certain energy resources produced in New Zealand. The Energy Resources Levy for fossil gas (**the levy**) set in 1993 under the ERL Act has the effect of covering the gap between lower pre-1986 licence royalty rates and higher royalty rates for gas discoveries made after 1 January 1986. Discoveries made after 1 January 1986 do not have to pay the levy. The law has always required licence holders to either pay a low royalty rate as well as the levy, or pay a higher royalty rate without the levy.

4 Commercial Information

- 5 Commercial Information
Ministry of Business, Innovation and Employment (**MBIE**) experts estimate this could amount to \$50 million in lost levy revenue for the life of production if no action is taken.² Free and frank opinions

¹ The Climate Change Commission (CCC) has adopted the term 'fossil gas' over natural gas. The term fossil gas is used in this Cabinet paper to be consistent with the CCC, however the term natural gas is used when quoting excerpts directly from the ERL Act or the Bill.

6 The ERL Act contains a process through which MBIE can assess the amount of production on which the levy should be paid and the amount of the levy which a person is liable to pay^{Free and frank opinions}

7 Legal professional privilege

The key purpose of the Bill is to ensure the Crown receives a fair financial return on its fossil gas

8 In March 2023, Cabinet agreed to amend the ERL Act to clarify that the levy applies to all gas produced from licences granted prior to 1 January 1986 [DEV-23-MIN-0018].

9 Accordingly, the Bill amends section 6 of the ERL Act, the exemption clause, to clarify that the levy exemption does not apply to gas produced from licences granted in relation to a discovery of natural gas made before 1 January 1986.

10 It does this to eliminate any risk of confusion about whether new gas production from deposits within pre-1986 licence areas can be considered new gas “discoveries” for the purposes of the exemption in the ERL Act.

The Bill applies the clarification retrospectively

11 Cabinet agreed to apply the above clarification throughout the period of four years prior to the amendment coming into force. This choice of four years was made to be consistent with the period for which formal assessments into non-payment can be made.

12 Legal professional privilege

13 I have agreed to this change in principle and the Bill now inserts a new Schedule 1 to the ERL Act to apply the amendment on and from 1 January 1986. However, I seek Cabinet Legislation Committee approval to introduce the Bill with the changed retrospective period.

² Commercial Information

- 14 While this change will apply on and from 1 January 1986, its effect is practically limited to a four-year period at which MBIE may make formal assessments into non-payment.

Applying this clarification retrospectively is justified

- 15 The retrospectivity of the amendment is a significant legislative feature. Although the Legislation Design and Advisory Committee were not engaged when developing the Bill due to time constraints, their guidelines have been taken into account.
- 16 The provision will apply to all licence holders who operate licences granted in relation to a discovery of natural gas that was made before 1 January 1986 with low royalty rates. There are only two of these gas-producing licence holders. The effect is that it will ensure gas produced from those licences is payable at the low royalty rate as well as the levy. It will apply for the life of the licence. It will only practically apply retrospectively for four-years because of the four-year assessment period mentioned in paragraph 14.
- 17 I see the amendment as a clarification of existing law, that the ERL Act has always required licence holders to either pay a low royalty rate and the levy, or pay a higher royalty rate without the levy. However, the following factors mitigate concerns about the applying this clarification retrospectively:
- 17.1 The clarification will have a narrow effect, as its effects are limited to two pre-1986 licences producing fossil gas.
 - 17.2 Historically, and to MBIE's knowledge, no claims of "discovery" have resulted in production from a pre-1986 licence being exempt from the levy.
 - 17.3 With the clarification in place, pre-1986 petroleum licence holders will continue to pay similar returns to the Crown compared to other fossil gas producers operating on post-1986 licences. The clarification removes any unintended competitive advantage to pre-1986 licence holders that may result without the clarification.
 - 17.4 Although retrospective, the amendment will provide certainty to the ERL Act and avoid any confusion that would then need to be resolved by court proceedings.
 - 17.5 The retrospective effect is consistent with another amendment made in 1993 to the Energy Resources Levy Act that introduced the exemption with retrospective effect.

Impact analysis

- 18 The Treasury's Regulatory Impact Analysis team determined that the proposed amendment to clarify obligations relating to the fossil gas levy exemption in the ERL Act is exempt from the requirement to provide a Regulatory Impact Statement on the grounds that it has no or only minor impacts on businesses, individuals, and not-for-profit entities.

Compliance

- 19 The Bill complies with each of the following:

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- 19.1 the principles of the Treaty of Waitangi;
- 19.2 the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993;
- 19.3 the Departmental Disclosure Statement requirements which has been prepared and is attached to this paper;
- 19.4 the principles and guidelines set out in the Privacy Act 2020;
- 19.5 relevant international standards and obligations; and
- 19.6 the Legislation Guidelines (2021 edition), which are maintained by the Legislation Design and Advisory Committee.

Consultation

- 20 The Treasury and Inland Revenue Department were consulted. The Department of Prime Minister and Cabinet was informed.

Binding on the Crown

- 21 The ERL Act already binds the Crown. The Bill does not change this.

Creating new agencies or amending law relating to existing agencies.

- 22 The Bill does not create any new agencies.

Allocation of decision-making powers

- 23 The Bill does not create any new decision-making powers.

Associated regulations

- 24 The changes will not require consequential amendments to regulations.

Other instruments

- 25 The Bill does not include provisions empowering the making of other instruments that are deemed to be legislative instruments or disallowable instruments.

Definition of Minister/department

- 26 The Bill does not contain a definition of Minister, department, government agency or chief executive of a department.

Commencement of legislation

- 27 The Bill will come into force on the day after it receives Royal Assent.

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Parliamentary stages

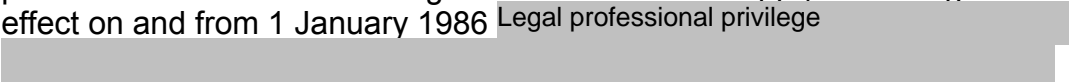
- 28 I am working with the Leader of the House and Minister of Finance to progress this amendment under urgency as part of Budget night legislation, as it seems appropriate to use this vehicle and for timing reasons.

Proactive Release

- 29 Following the Bill's introduction, I intend to release this paper with appropriate redactions.

Recommendations

I recommend that the Cabinet Legislation Committee:

- 1 **note** that the Energy Resources Levy Amendment Bill (the Bill) holds a category 3 priority on the 2023 Legislation Programme – to be passed if possible before the 2023 general election;
- 2 **note** that on 13 March 2023 Cabinet agreed to amend the Energy Resources Levy Act 1976 (ERL Act) to clarify that the levy applies to all fossil gas produced from licences granted prior to 1 January 1986 (DEV-23-MIN-0018);
- 3 **note** that the Bill amends section 6 of the ERL Act to clarify that the exemption cannot apply to gas produced from licences granted in relation to a discovery of natural gas made before 1 January 1986;
- 4 **note** that Cabinet also agreed to apply the above clarification throughout the period of four years prior to the amendment coming into force;
- 5 **agree** to changing the retrospective period of this amendment from four years prior to the amendment coming into force to instead apply as having had effect on and from 1 January 1986 ^{Legal professional privilege} 
- 6 **approve** the Energy Resources Levy Amendment Bill for introduction; and
- 7 **agree** that the Bill be progressed through all parliamentary stages under urgency on Budget night 18 May 2023, subject to ongoing discussions with the Minister of Finance and the Leader of the House.

Authorised for lodgement

Hon Dr Megan Woods

Minister of Energy and Resources