



COVERSHEET

Minister	Hon Dr Megan Woods	Portfolio	Energy and Resources
Title of Cabinet paper	Fuel Industry (Improving Fuel Resilience) Amendment Bill – Approval for Introduction	Date to be published	27 June 2023

List of documents that have been proactively released		
Date	Title	Author
May 2023	Fuel Industry (Improving Fuel Resilience) Amendment Bill – Approval for Introduction	<i>Office of Hon Dr Megan Woods</i>
18 May 2023	Fuel Industry (Improving Fuel Resilience) Amendment Bill – Approval for Introduction: LEG-23-MIN-0060 Minute	<i>Cabinet Office</i>

Information redacted

YES / NO (please select)

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Some information has been withheld in order to protect the confidentiality of advice tendered by Ministers of the Crown and officials.

[In Confidence]

Office of the Minister for Energy and Resources

Cabinet Legislation Committee

**Fuel Industry (Improving Fuel Resilience) Amendment Bill:
Approval for Introduction**

Proposal

- 1 This paper seeks the introduction of the Fuel Industry (Improving Fuel Resilience) Amendment Bill (the Bill).
- 2 The Bill provides the statutory framework for adopting fuel resilience measures over time and ensuring adequate fuel stocks in New Zealand to mitigate the risk of potential fuel disruptions. In particular, it introduces a minimum fuel stockholding obligation on fuel importers with the right to draw fuel from a bulk storage facility.

Policy

- 3 In October 2022, the Cabinet Economic Development Committee agreed the high-level design of a fuel resilience policy package, including the establishment of a minimum fuel stockholding obligation (**MSO**) on fuel importers/wholesalers [DEV-22-MIN-0243 refers]. The MSO would initially be set at the estimated national average fuel stockholding levels following closure of the Marsden Point oil refinery. This is:
 - 3.1 28 days of consumption for petrol,
 - 3.2 24 days of consumption for jet fuel, and
 - 3.3 21 days of consumption for diesel.¹
- 4 In May 2023, the Cabinet Economic Development Committee (DEV) agreed to further details for the design and implementation of the MSO [DEV-23-MIN-0061 refers]. Those details include:
 - 4.1 The MSO obliged persons will be defined as fuel importers with the right to draw fuel from a bulk storage facility in New Zealand.
 - 4.2 The required minimum days of cover for the initial period are confirmed to be 28 days for petrol, 24 days for jet fuel and 21 days for diesel on average at the national level.

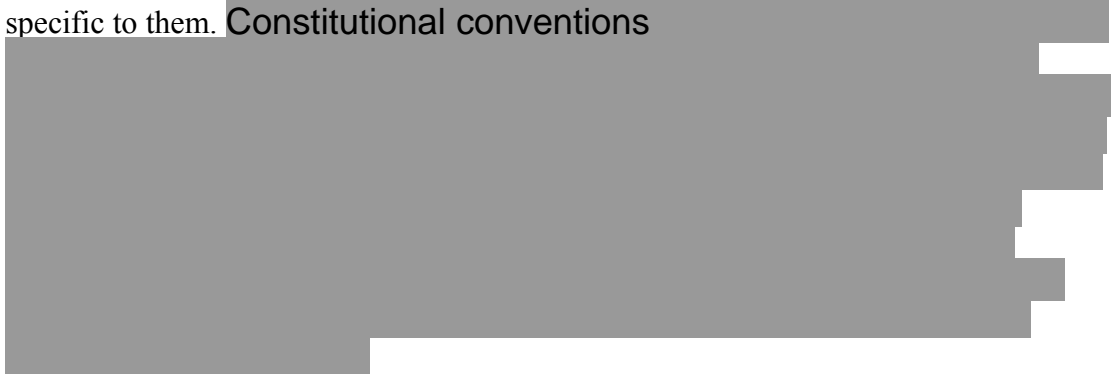
¹ Cabinet also agreed to government procurement of reserve fuel stocks, with an initial aim to increase diesel stocks by at least 70 million litres (roughly seven days of consumption taking the total to 28 days of cover with the MSO).

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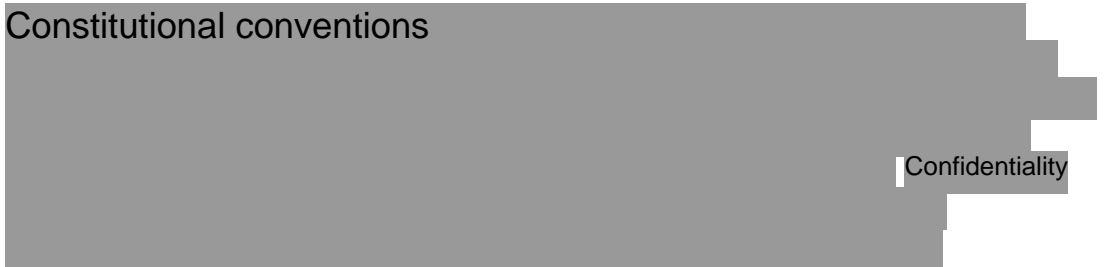
- 4.3 Regulation-making powers will be created to allow additional location-specific stockholding requirements to be developed and prescribed in regulations in the future, and more broadly amend or augment the MSO.
 - 4.4 The required minimum fuel stockholding volumes will be specified in terms of average stock during a single month.
 - 4.5 For the purpose of calculating the required minimum fuel stockholding volumes for each month, an obliged person will have to estimate its ‘daily fuel consumption’ on a twelve-month rolling average basis. The proxy for the daily fuel consumption is an obliged person’s average daily offtake of fuels from bulk storage facilities.
 - 4.6 The stock that may be counted towards the MSO will be limited to stock held in a bulk storage facility (as defined in the Fuel Industry Act 2020) and fuel cargo bound for a New Zealand port in a vessel within New Zealand’s Exclusive Economic Zone (EEZ).
 - 4.7 The Minister of Energy and Resources would grant exemptions in exceptional circumstances (such as severe fuel import disruptions) on a case-by-case basis, using set criteria.
 - 4.8 The Chief Executive of the regulator (i.e. the Ministry of Business, Innovation and Employment) will have the discretion to accept enforceable undertakings from obliged persons on behalf of the Minister.
- 5 The MSO and the broader fuel resilience policy package announced by the Government aim to provide assurance that fuel supplies will remain resilient to plausible fuel disruption scenarios. The MSO will reduce fluctuations in fuel stockholding levels in New Zealand and give us the flexibility to introduce stockholding requirements specific to Auckland Airport and other strategic locations in the future. More broadly, it aims to allow the Government to take an adaptive approach to adopting fuel resilience measures over time, taking into consideration future changes to fuel supply chains.
- 6 Some aspects of the Bill, particularly the regulation-making powers to amend or augment the MSO, are likely to be contentious. Those powers could be exercised to introduce new minimum fuel stockholding requirements in the future. Regulation-making powers include the ability to introduce new requirements after the initial period, location-specific stockholding requirements, the definition of the obliged persons, and the fuel types subject to the MSO. Some fuel industry participants may be concerned about facing higher compliance costs if more stringent fuel stockholding requirements are introduced in the future. To mitigate this concern, the Bill will require the Minister to consult with fuel industry participants and have regard to multiple considerations before recommending any regulations.
- 7 The Bill sets out the minimum stockholding requirements at the national level but not at regional or location-specific levels. **Constitutional conventions**
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8 Officials will look into which strategic locations may need stockholding requirements specific to them. Constitutional conventions



9 Constitutional conventions



Impact analysis

10 Two regulatory impact statements were prepared in accordance with the necessary requirements. They were submitted when DEV approved the fuel resilience policy package, which includes the final high-level design of the MSO [DEV-22-MIN-0243 refers], and when DEV approved the detailed design of the MSO [DEV-23-MIN 0061 refers].

Compliance

11 The Bill complies with:

- 11.1 the principles of the Treaty of Waitangi;
- 11.2 the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993;
- 11.3 the disclosure statement requirements, a copy of the Departmental Disclosure Statement is appended to this paper;
- 11.4 the principles and guidelines set out in the Privacy Act 2020;
- 11.5 relevant international standards and obligations;
- 11.6 the Legislation Guidelines (2021 edition), which are maintained by the Legislation Design and Advisory Committee (LDAC).

12 When MBIE consulted with LDAC on the MSO proposal in 2022, LDAC commented that caution should be exercised before empowering the Executive to amend primary legislation through secondary legislation. In light of this, regulation-making powers as set out in the Bill will be subject to criteria being met.

Consultation

- 13 The following agencies were consulted in the development of this paper: National Emergency Management Agency, Te Manatū Waka Ministry of Transport, Ministry of Justice, the Ministry for the Environment, the Treasury, the Ministry of Defence, Waka Kotahi, Customs, Commerce Commission, Civil Aviation Authority, Maritime New Zealand, and Infrastructure Commission. The Department of Prime Minister and Cabinet was informed. These agencies were also consulted in the development of previous Cabinet papers on the fuel resilience policy package and the MSO.
- 14 Prior to the development of this paper, MBIE undertook two consultations with stakeholders. There was a public consultation on onshore fuel stockholding proposals, which culminated in the fuel resilience policy package, in early 2022. MBIE received 21 submissions received during that public consultation. Generally speaking, fuel importers opposed the MSO proposal released in early 2022, as they were concerned about the potential compliance costs that could result from having to change their operational practices and build more fuel storage facilities. They also considered that, if the New Zealand Government wishes to have more stocks held onshore, it should consider procuring onshore storage of reserve stocks itself. On the other hand, many submitters, particularly those from the transport sector, stressed the importance of fuel resilience.
- 15 In January and February 2023, my officials consulted with selected fuel industry participants, key consumers, and stakeholder groups. Feedback was largely polarised between importers and major users. Importers submitted a view that the fuel market was adequately resilient without the MSO, while major users consider the stockholding obligation is necessary, especially in light of the jet fuel incident in December 2022. Fuel importers and resellers provided substantive comments on the calculation method for determining the required minimum stockholding volumes for obliged persons, and the kinds of stocks that should be counted towards the MSO. My officials took these stakeholders' feedback when finalising the design of the MSO.

Binding on the Crown

- 16 The MSO, as set out in the Bill, will not be binding on the Crown [CAB-22-MIN-0448]. This means that the MSO will not apply to any fuel stock any government agencies may procure and import.
- 17 The required stockholding level under the obligation is intended to apply to commercial fuel industry participants only. The Government does not intend to procure reserve fuel stock at the level required under the obligation for commercial players, and should have the flexibility to determine how much reserve fuel stock it wishes to hold in the interest of New Zealanders.

Allocation of decision-making powers

- 18 The Bill will empower the Minister to recommend regulations on the following matters:

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

- 18.1 minimum fuel stockholding requirements, including introducing new requirements after the initial period, location-specific stockholding requirements, obliged persons and fuel types subject to the MSO;
 - 18.2 the calculation method for stockholding volumes;
 - 18.3 processes, procedures and circumstances related to exemptions from the MSO; and
 - 18.4 requirements for disclosure of information in relation to resilience of fuel supplies in New Zealand.
- 19 The Minister will also have the power to exempt or terminate a named obliged person's stockholding obligation in whole or in part.
- 20 The Chief Executive of MBIE will have the discretion to accept a written undertaking given by, or on behalf of, a person in connection with any matter relating to the breach of obligations proposed by the Bill. The person may withdraw or vary the undertaking with the consent of the chief executive.
- 21 The High Court may, on the application of the chief executive, order a person to pay the Crown a civil pecuniary penalty if they are satisfied that the person has contravened the MSO and the associated information disclosure requirements.

Associated regulations

- 22 To bring the Bill in to operation, regulations will be needed to provide more detailed requirements associated with the implementation of the MSO, including:
- 22.1 details of record keeping, information disclosure and auditing requirements for monitoring fuel stockholding and more broadly fuel resilience;
 - 22.2 documentation requirements for entitlement agreements between obliged parties for compliance with the MSO; and
 - 22.3 procedural matters for exemptions from and terminations of the MSO.
- 23 Regulations on the matters outlined above are to be developed as soon as possible, alongside passage of the Bill through Parliament. The Bill and the associated regulations will come into force at the same time. They will come into effect on the date appointed by the Governor-General by Order in Council, which must be no later than the second anniversary of the date of Royal assent.

- 24 **Constitutional conventions** [REDACTED]
- [REDACTED] I expect the regulations and the Bill to come into effect as early as 1 April 2024, taking into account the 28-day rule.

Other instruments

- 25 The Bill creates a power for the Minister to exempt by notice an obliged person from the MSO. The exemption notice will be secondary legislation, subject to publication requirements under Part 3 of the Legislation Act 2019.
- 26 The characteristics of such exemption notices make them more suitable for secondary legislation. These notices will be granted in a timely manner in exceptional circumstances only. Before they are granted, an assessment of the circumstances affecting fuel supply chains will be required. Once granted, these notices are expected to apply a narrowly defined or clearly identifiable obliged person or group – the definition of obliged persons suggests that there are currently only five obliged persons to whom an exemption notice may be issued.

Commencement of legislation

- 27 The Bill, if passed, will come into force by Order in Council after the necessary regulations have been made. The Bill must come into force no later than two years after the date on which it receives the Royal assent. I expect the Bill to come into effect as early as 1 April 2024, even though I intend to have the Bill passed by the end of August 2023 before the General Election.
- 28 Bringing the Bill into force on the day after the date on which the Act receives Royal assent is not appropriate. Time is required for development of regulations on the MSO-related information disclosure requirements, and to allow obliged persons to put the administrative systems and operational arrangements (including fuel shipment orders) in place to comply with the MSO.
- 29 It is difficult to confirm the exact commencement date of the Bill. It will depend on the development of the regulations on the MSO-related information disclosure and procedural requirements. Those regulations are essential to ensuring that obliged persons collect and report the information necessary for determining whether they comply with the minimum stockholding requirements. Constitutional conventions

Parliamentary stages

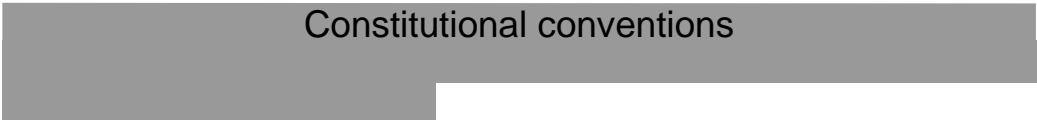
- 30 Constitutional conventions
- 31 I recommend the Bill be referred to the Transport and Infrastructure Select Committee.

Proactive Release

- 32 I propose to release this paper proactively, subject to any redactions that may be required consistent with the Official Information Act, within 30 business days following its consideration.

Recommendations

I recommend that the Cabinet Legislation Committee:

- 1  Constitutional conventions
- 2 **note** that the Bill will provide a statutory framework for implementing and adapting measures that aim to improve New Zealand's fuel resilience over time, including introducing a minimum fuel stockholding obligation on fuel importers with the right to draw fuel from bulk storage facilities;
- 3 **approve** the Fuel Industry (Improving Fuel Resilience) Amendment Bill for introduction, subject to the final approval of the government caucus and sufficient support in the House of Representatives;
- 4 **agree** that the Bill be introduced in the week beginning 22 May 2023;
- 5 **agree** that the government propose that the Bill be:
 - 5.1 referred to the Transport and Infrastructure committee for consideration;
 - 5.2 enacted by 31 August 2023.

Authorised for lodgement

Hon Dr Megan Woods

Minister of Energy and Resources