



## COVERSHEET

<b>Minister</b>	Hon Megan Woods	<b>Portfolio</b>	Energy and Resources
<b>Title of Cabinet paper</b>	Energy (Fuels, Levies, and References) Amendment Bill: Approval for Introduction	<b>Date to be published</b>	2 August 2022

### List of documents that have been proactively released

<b>Date</b>	<b>Title</b>	<b>Author</b>
April 2023	Energy (Fuels, Levies, and References) Amendment Bill: Approval for Introduction	Office of the Minister of Energy and Resources
6 April 2023	Energy (Fuels, Levies, and References) Amendment Bill: Approval for Introduction LEG-23-MIN-0031 Minute	Cabinet Office

### Information redacted

YES / NO [select one]

Any information redacted in this document is redacted in accordance with MBIE's and MFAT'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 reason of Confidential advice to Government.

**[In Confidence]**

Office of the Minister of Energy and Resources

Cabinet Legislation Committee

**Energy (Fuels, Levies, and References) Amendment Bill: Approval for Introduction**

**Proposal**

- 1 I am seeking approval to introduce to Parliament on Budget night the Energy (Fuels, Levies, and References) Amendment Bill (**the Bill**), to pass through all stages under urgency on the night. The Bill will amend the statutory purpose of the petroleum or engine fuel monitoring levy so that it can be used to fund initiatives for improving New Zealand's onshore fuel resilience, such as government procurement of reserve diesel stock to be held onshore.

**Policy**

*The Bill enables the petroleum or engine fuel monitoring levy to recover the costs of onshore fuel resilience initiatives*

- 2 Section 14(2) of the Energy (Fuels, Levies, and References) Act 1989 sets out the statutory purposes of the petroleum or engine fuel monitoring levy (the levy). One of the statutory purposes is to meet the reasonable costs of complying with the 90-day reserve commitment obligation under the International Energy Agreement (IEA)<sup>1</sup>. The levy is also used for other purposes, including inspection and monitoring of liquid fuels, and some of the programmes run by the Energy Efficiency and Conservation Authority (EECA), such as the Low Emission Vehicles Contestable Fund.
- 3 On 19 October 2022, the Cabinet Economic Development Committee (DEV) agreed that the statutory purpose of the petroleum or engine fuel monitoring levy be amended to enable the levy to recover the costs of promoting onshore fuel resilience initiatives. [DEV-22-MIN-0243]. The Bill will be the legislative vehicle for this amendment.

*Need for legislation to be in place from the 2023/24 financial year to allow levy to be used to fund reserve diesel stock arrangement and other onshore fuel resilience initiatives*

- 4 The amendment to the levy's statutory purpose is part of a wider fuel resilience policy package announced by the Government in November 2022, which includes:
  - 4.1 introducing a minimum fuel stockholding obligation for fuel importers

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<sup>1</sup> As an IEA member state, New Zealand must hold oil or fuel stocks equivalent to at least 90 days of net oil and fuel imports of the previous calendar year.

- 4.2 dedicating additional resources to operationalising the National Fuel Plan, which involves undertaking activities that enable better government-industry coordination in planning for and managing fuel emergencies
- 4.3 government procurement of storage and management of at least 70 million litres of reserve diesel stock to be held onshore.
- 5 The fuel resilience policy package aims to help safeguard resilience and reliability of fuel supplies and transport systems and our economic security. To ensure that levy funding will be available for rolling out the wider fuel resilience policy package from the start of the 2023/24 financial year, the levy’s statutory purpose will need to be amended as soon as possible.
- 6 I will report back to Cabinet in the middle of 2023 on the financial and contractual options on the reserve diesel stock arrangement by the middle of this year, and will seek authority to run tender processes and enter into contracts for this arrangement. To enter into contracts, there needs to be certainty that the levy can be used to fund the reserve diesel stock arrangement. Significant delay in finalising contracts is not ideal from the perspective of fuel security and could potentially result in the loss of more economical options for developing reserve diesel storage capacity (namely converting existing redundant crude oil tanks to diesel storage tanks).
- 7 The Ministry of Business, Innovation and Employment (MBIE) will also need certainty that it can use the levy for administering the minimum stockholding obligation, which is expected to be implemented sometime in the 2023/24 financial year. To effectively administer the obligation, systems will need to be put in place to improve monitoring of the fuel industry’s stock data and contingency arrangements for managing fuel supply risks. A separate bill on the minimum stockholding obligation and the associated information disclosure requirements is being drafted, and I will seek Cabinet agreement to introduce that bill separately in the coming weeks.
- 8 If the Bill is not introduced to amend the levy’s statutory purpose, there is uncertainty about whether the levy can be used to fund onshore fuel resilience initiatives, such as the onshore reserve diesel stock arrangement. Under section 14(2)(ba) of the Energy (Fuels, Levies, and References) Act 1989, the levy can be used to meet the “reasonable cost” of complying with the IEA 90-day reserve commitment obligation. It is not clear that the onshore reserve diesel stock arrangement in paragraph 4.3 would pass the “reasonable cost” test, given that there is a much cheaper alternative for meeting the IEA obligation—purchasing offshore oil tickets<sup>2</sup>.

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<sup>2</sup> Oil tickets are contracts with oil companies, which give the Government the right to purchase oil and fuel stocks at market prices in the event of an oil supply emergency declared by the International Energy Agency.

### **Impact analysis**

- 12 A Regulatory Impact Assessment was prepared and submitted to the Cabinet Economic Development Committee [DEV-22-MIN-0243 refers].

### **Compliance**

- 13 The Bill complies with each of the following:
- 13.1 the principles of the Treaty of Waitangi;
  - 13.2 the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993;
  - 13.3 the principles and guidelines set out in the Privacy Act 2020; and
  - 13.4 relevant international standards and obligations.
- 14 The Legislation Design Advisory Committee (LDAC) commented that if and when MBIE amends the levy empowering provision, it ought to ensure that the purposes for which the levy can be used are clearly defined. This would be consistent with the principle in Chapter 17.5 of the Legislation Guidelines (2021 edition) that “legislation must set out the manner by which the levy is determined”. An additional option for increasing transparency could be a requirement to periodically publish a funding strategy.
- 15 To ensure that the levy is used transparently for the intended purposes and set at a justifiable rate, MBIE will undertake a comprehensive review of the levy’s regulations (the Energy (Petrol, Engine Fuel, and Gas) Levy Regulations 2017), which prescribe the levy’s calculation method.

### **Consultation**

#### *Public consultation*

- 16 Public consultation on onshore fuel stockholding proposals, which culminated in the fuel resilience policy package, was conducted in early 2022. The consultation paper

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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. The consultation paper also sought comments on whether the levy should be used for funding such a government agency, and if so, how the calculation method for the levy should be amended.

- 17 During the public consultation, submitters focused on the minimum stockholding obligation proposal. Many submitters did not make substantive comments on the levy-related options, although the majority of those who commented on these options were opposed to setting up a standalone government agency for managing fuel stocks and fuel emergency planning. Some fuel companies submitted that the Government should consider entering into a reserve diesel stock arrangement with the fuel sector if it wishes to increase onshore fuel stocks.

### *Inter-agency consultation*

- 18 The following agencies were consulted in the development of this paper: the National Emergency Management Agency, Te Manatū Waka Ministry of Transport, Waka Kotahi New Zealand Transport Agency, the Civil Aviation Authority, the New Zealand Customs Service, the Ministry for the Environment, Maritime New Zealand, the Ministry of Foreign Affairs and Trade, and the Treasury. The Department of Prime Minister and Cabinet has been informed.
- 19 The Ministry of Justice has been consulted in relation to consistency with the New Zealand Bill of Rights Act 1990.

### **Binding on the Crown**

- 20 The amendment to the statutory purpose of the levy will be binding on the Crown.

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

- 21 The Bill does not create any new agencies. MBIE and EECA will continue to be responsible for administering the levy

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

- 22 The Bill does not create any new decision-making powers between the executive, the courts, and tribunals.

### **Associated regulations**

- 23 There are existing regulations for setting the annual levy rate, and the current levy rate is expected to be high enough to cover the cost of all the existing and new activities to be funded by the levy in the period to 2025/26 once the Bill is passed. Therefore, new regulations do not need to be introduced to bring the Bill into operation immediately.
- 24 MBIE has plans to review the levy regulations, particularly the calculation method for the levy, after the Bill is passed. The review will aim to ensure that the levy rate will be set in a transparent and justifiable way into the future, in view of the broader range of activities that the levy will be used to fund.

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### Other instruments

- 25 The Bill does not introduce new provisions empowering the making of other instruments that are deemed to be legislative instruments or disallowable instruments. The current Energy (Fuels, Levies and References) Act 1989, which the Bill will amend, includes such provisions. Section 33 of the Act provides for the power to make regulations on the levy rate.

### Commencement of legislation

- 26 I propose that the Bill come into force 1 July 2023.

### Parliamentary stages

- 27 I propose the Bill be introduced, and passed through all stages, under urgency on Budget night. The Bill should be referred to the Cabinet Legislation Committee.

### Proactive Release

- 28 Consistent with the Government's proactive release policy, I intend to release this paper within 30 business days from the date that Cabinet considers the paper, subject to any redactions as appropriate under the Official Information Act 1982.

### Recommendations

I recommend that the Committee:

- 1 **note** that the Energy (Fuels, Levies, and References) Amendment Bill will amend the statutory purpose of the petroleum or engine fuel monitoring levy so that the levy can be used to fund onshore fuel resilience initiatives, such as government procurement of services relating to storage and management of reserve fuel stocks;
- 2 **approve** the Energy (Fuels, Levies, and References) Amendment Bill for introduction, subject to the final approval of the government caucus and sufficient support in the House of Representatives;
- 3 **agree** that the Energy (Fuels, Levies, and References) Amendment Bill be introduced on 18 May 2023 (Budget night), and passed through all stages under urgency.

Authorised for lodgement

Hon Dr Megan Woods

Minister of Energy and Resources