

Departmental Disclosure Statement

Land Transport (Clean Vehicles) Amendment Bill
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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 Transport.

The Ministry of Transport certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

5 August 2021

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Part One: General Policy Statement

The Land Transport (Clean Vehicles) Amendment Bill (the Bill) is an omnibus Bill that will amend the Land Transport Act 1998, The Land Transport Management Act 2003, the Energy Efficiency and Conservation Act 2000, the Income Tax Act 2007 and the Land Transport (Motor Vehicle Registration and Licensing) Regulations 2011. The Bill is introduced under Standing Order 267 because the amendments deal with an interrelated topic that can be regarded as implementing a single broad policy. This single broad policy is to achieve a rapid reduction in carbon dioxide emissions from light vehicles imported into New Zealand by –

- increasing the supply and variety of zero- and low-emissions vehicles available for purchase in New Zealand by applying a clean vehicle standard to importers of new and used light vehicles:
- increasing the demand for zero- and low-emissions vehicles by providing for a clean vehicle discount scheme designed to incentivise, through the issue of rebates or the imposition of charges, New Zealanders to purchase vehicles with lower or zero emission values over those with higher emission values:
- informing New Zealanders about vehicle emissions levels and rebates receivable or charges payable in relation to light vehicles offered for sale, by providing for vehicle labelling requirements.

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>Ināia tonu nei: a low emissions future for Aotearoa</i> Climate Change Commission, 31 May 2021 https://www.climatecommission.govt.nz/our-work/advice-to-government-topic/inaia-tonu-nei-a-low-emissions-future-for-aotearoa/</p> <p><i>Shifting gear: How New Zealand can accelerate the uptake of low emission vehicles</i> (Report 1: Policies to incentivise EV uptake) Concept Consulting & Retyna, 27 January 2021 https://www.concept.co.nz/uploads/1/2/8/3/128396759/ev_study_rept_1_v1.0_1_.pdf</p>	

Relevant international treaties

2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?	NO
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Regulatory impact analysis

2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?	YES
<p>Regulatory Impact Statement for the Clean Vehicle Standard: <i>Moving to a low emissions light vehicle fleet</i>, 15 May 2020 https://www.transport.govt.nz/assets/Uploads/RIA/LEV-Regulatory-Impact-Statement.pdf</p> <p>Regulatory Impact Statement for the Clean Vehicle Discount Scheme: <i>Moving to a low emissions light vehicle fleet</i>, 30 November 2019 https://www.transport.govt.nz/assets/Uploads/RISDemandsideoptionsinclAcceleratedFeebate.pdf</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 Regulatory Impact Statements identified above did not meet the threshold for receiving an independent opinion on the quality of the Regulatory Impact Statement from the RIA Team based in the Treasury. A Quality Assurance Panel including a representative from the Treasury did provide opinions on each of the Regulatory Impact Statements, and these are provided in Appendix One.</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
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The Bill corresponds to two of the options presented by the Regulatory Impact Statement for the Clean Vehicle Standard dated 15 May 2020 being *Option 2: Introduce a vehicle purchase feebate scheme* and *Option 3: Regulate a vehicle fuel efficiency standard*.

<https://www.transport.govt.nz/assets/Uploads/RIA/LEV-Regulatory-Impact-Statement.pdf>

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
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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

A summary of the costs, benefits, and groups affected by the policy is included in the *Discussion Paper on the Clean Car Discount and Clean Car Standard* released by Ministry of Transport on 9 July 2019 at <https://www.transport.govt.nz/assets/Uploads/Discussion/LEV-consultation-document-final.pdf>

The most up to date information on costs and benefits can be found in the following proactively released Cabinet papers:

Clean Vehicle Standard, January 2021

<https://www.transport.govt.nz/assets/Uploads/Cabinet/TheCleanCarStandard.pdf>

Clean Vehicle Discount – finalising decisions, April 2021

<https://www.transport.govt.nz/assets/Uploads/CleanCarDiscountfinalisingoutstandingdecisions.pdf>

Clean Vehicle Discount, May 2021

<https://www.transport.govt.nz/assets/Uploads/CabinetPaper-CleanCarDiscount.pdf>

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

Where vehicle importers do not meet carbon dioxide emissions targets under the Bill, they will face charges and the benefits of carbon dioxide emissions reduction will not be realised to the full extent. Regulator effort will be required to ensure that the vehicle industry is accurately reporting its performance against targets.

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?
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The Ministry of Foreign Affairs and Trade was consulted during the development of the policy proposals and provided advice on consistency with New Zealand's international obligations. This advice has been reflected in the Cabinet papers seeking policy approval.

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?

No specific issues were identified in the policy process that may have implications on the rights and interests of Māori protected by the Treaty of Waitangi. Te Puni Kōkiri was consulted during the development of the policy proposals.
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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
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The Bill is consistent with the rights and freedoms affirmed in the Bill of Rights Act. The finalised advice will be published on the Ministry of Justice website here: 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

Clause 7, new section 195: Offence in relation to failure to collect data and keep records for purposes of clean vehicle standard Clause 7, new section 196: Offence of knowingly producing false records or information Clause 7, new section 197A: Offence in relation to production of records or other information Clause 7, new section 197C: Offence in relation to requirement to supply information, produce documents or give evidence
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3.4.1. Was the Ministry of Justice consulted about these provisions?	YES
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The Ministry of Justice offences and penalties team was consulted on the offences in the Bill and their comments have been addressed in the final version of the Bill.
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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?	YES
<p>The Bill provides for the creation of carbon dioxide accounts in clause 7, new sections 185 to 193. Vehicle importers will be required to provide the information specified in regulations to the Director of Land Transport to create a new account. Many vehicle importers will be companies, but some will be private individuals. The regulations will be drafted to ensure consistency with the provisions of the Privacy Act 2020.</p> <p>Any person will be able to apply to the Director of Land Transport to obtain information from the record of vehicle importers in accordance with the regulations. The purpose of the record of carbon dioxide holders is to assist any person to establish whether a vehicle importer holds a current carbon dioxide account and the account number is correct, and to facilitate the transfer of carbon dioxide credits between importers. The provision of information from the record will be limited to these purposes.</p>	

3.5.1. Was the Privacy Commissioner consulted about these provisions?	YES
<p>The Office of the Privacy Commissioner was consulted on the provisions in the Bill related to carbon dioxide accounts and their comments have been addressed in the final version of the Bill.</p>	

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 the clean vehicle policies took place from 9 July to 10 September 2019. Overall, 85 percent of the 967 submitters who responded to the discussion document question “Is a clean car standard appropriate for New Zealand?” supported the Clean Vehicle Standard. Opposition to the Standard came from a few individuals and the motor vehicle industry. The Motor Industry Association (representing new vehicle distributors) and the Automobile Association expressed a strong preference for a consumer demand-based incentive such as the Clean Vehicle Discount instead of the Standard. Toyota New Zealand was supportive of the Standard, albeit with a more gradual phase-in, as it considered it would enable new vehicle distributors to negotiate larger volumes of low emission vehicles from overseas manufacturers. The Imported Vehicle Industry Association (VIA) representing used importers has consistently opposed the Standard.</p> <p>There was strong public support for the Clean Vehicle Discount from 79 percent of the 1043 submitters who responded to the question: “Is a Clean Car Discount appropriate for New Zealand?” A National Party of New Zealand email campaign focused on the Clean Car Discount provided three emails supporting the Discount and 1641 opposing it. Distributors of new vehicles strongly supported the Discount, while the VIA opposed the Discount and would prefer alternative approaches. Over 30 written submissions expressed the need to bring implementation forward as New Zealand is lagging well behind other countries in reducing road transport emissions, and that New Zealand is seen as a dumping ground for high emission vehicles that few other countries will take.</p> <p>The Ministry of Transport consulted Government departments and relevant Crown agencies on the development of the policies. The Ministry has continued to work with the vehicle industry throughout the development of the clean vehicle policies.</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>Waka Kotahi has been involved in the drafting stages of the Bill to ensure the provisions are workable and can be administered effectively.</p> <p>The Motor Industry Association (representing new vehicle distributors) and the Vehicle Industry Association (representing used vehicle importers) have been involved in testing the policy proposals as they have developed.</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
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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?	YES
<p>The Bill provides for charges that will apply where a vehicle importer exceeds a carbon dioxide emissions target. The charges will be land transport revenue for the purposes of the Land Transport Management Act 2003. The charges are set out in clause 7, section 177 and 182 of the Bill. The Bill includes options to assist vehicle importers to comply with targets rather than facing a charge. These options include deferring an obligation until the following year (for new vehicle importers only), banking carbon dioxide credits for the following three years to offset against future underachievement of a target, and the ability to transfer credits between vehicle importers.</p> <p>Clause 5, new section 167A of the Bill provides for regulations to impose charges in relation to the carbon dioxide emissions of a vehicle. Regulations will be made to impose charges on vehicles with higher carbon dioxide emissions, and the revenue from these charges will be used to provide a rebate for vehicles with lower or zero carbon dioxide emissions. The Minister must be satisfied of the criteria set out in the new section 167A(6) before recommending regulations imposing charges. This includes being satisfied that the fees or charges are appropriate to sustain a scheme designed to increase consumer demand for zero and low emission vehicles and decrease consumer demand for high emission vehicles. The Minister must also be satisfied of a number of additional matters, including that the imposition and level of fees and charges are appropriate after considering the variety and availability of zero and low emission vehicles expected to enter the New Zealand market in the following 12 to 24 months, and international and domestic climate change ambitions and commitments.</p> <p>Clause 5, new section 167B empowers regulations providing for fees and charges payable where a vehicle importer does not include a minimum level of zero carbon dioxide emission vehicles within the fleet of vehicles they import. These regulations will sit alongside regulations made under new section 167C that prescribe the minimum level of zero carbon dioxide emission vehicles that must be imported. The Minister must be satisfied of the criteria set out in new section 167B(5) before recommending the making of the regulations.</p>	

Retrospective effect

4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?	YES
<p>Amendments to Schedule 5 of the Income Tax Act 2007 will have retrospective effect by coming into force on 1 July 2021, when rebates on zero and low emission vehicles were first made available to the public. The amendment to Schedule 5 is favourable to tax payers, and clarifies that, for fringe benefit tax purposes, the cost of the vehicle in relation to which a payment under the clean vehicle discount scheme is received by the owner is net of the amount of the rebate.</p> <p>The amendments to the Income Tax Act 2007 are set out in clauses 22 to 24 of the Bill. The commencement date is set out in clause 2 of the Bill.</p>	

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
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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?	NO
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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 definition of 'excluded vehicle' in clause 7, new section 172, means a vehicle declared by regulations to be an excluded vehicle for the purposes of Part 13. These vehicles will be prescribed in secondary legislation to allow the list of excluded vehicles to be adjusted if necessary, over time.</p> <p>The definitions of Type A vehicle and Type B vehicle in clause 7, new section 172 may be expanded by regulation to include any other vehicle. This will maintain a degree of flexibility to include other vehicle types within these definitions.</p> <p>The definition of 'approved test cycle' in clause 7, new section 172 means the WLTP (three-phase variant of the Worldwide Harmonised Light Vehicle Test Procedure) or any other another test cycle declared by regulations to be the approved test cycle. The ability to prescribe a different test cycle is necessary to future proof the legislation as new testing procedures are developed.</p>	

4.8. Does this Bill create or amend any other powers to make delegated legislation?	YES
<p>Clause 5, new section 167A empowers regulations imposing fees and charges for the purposes of the clean vehicle discount scheme. These regulations are necessary to promote the transition of New Zealand's light vehicle fleet to zero and low emission vehicles and reduce vehicle carbon dioxide emissions by providing for fees and charges to be paid in relation to the carbon dioxide emissions of imported new and used light vehicles. The Minister must be satisfied of the criteria set out in new section 167A(6) before recommending the making of the regulations.</p> <p>Clause 5, new section 167B empowers regulations providing for fees and charges payable where a vehicle importer does not include a minimum level of zero carbon dioxide emission vehicles within the fleet of vehicles they import. These regulations will sit alongside regulations made under new section 167C that prescribe the minimum level of zero carbon dioxide emission vehicles that must be imported. The Minister must be satisfied of the criteria set out in new section 167B(5) before recommending the making of the regulations.</p> <p>Clause 5, new section 167C empowers regulations to support Part 13 of the Act, relating to the clean vehicle standard. These regulations provide for the technical detail and requirements necessary for the administration of the standard.</p>	

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
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Appendix One: Further Information Relating to Part Two

Regulatory impact analysis – question 2.3.1

A Quality Assurance Panel including a representative from The Treasury provided the following opinions on the quality of each Regulatory Impact Statement:

Clean Vehicle Standard

Quality Assurance Reviewing Agency:

An Independent Quality Assurance Review Panel chaired by a representative from the Ministry of Transport (Ministry) containing an additional representative from the Ministry and one representative from the Treasury reviewed the Regulatory Impact Analysis (RIA) for the proposed Clean Car Standard (CO2 Standard). The Ministry developed the RIA. The CO2 Standard is designed to bring forward the transition of the light vehicle fleet to lower emission vehicles.

Quality Assurance Assessment:

The panel considers that, overall, the RIA “partially meets” the quality assurance (QA) criteria.

Reviewer Comments and Recommendations:

This is a complex RIA, backed up with a separate Benefit Cost Analysis (BCA). Overall, despite its complexity, the RIA is clear and concise and contains extensive analysis to assist decision-makers. The RIA sets out the problem statement clearly and contains a robust set of options. The RIA also details extensive consultation undertaken by the Ministry with stakeholders when developing the proposed CO2 Standard in conjunction with a possible feebate scheme.

The RIA includes a relatively comprehensive overview of the issues and problems but lacks detail in some areas. We have given the RIA a “partially meets” rating because the RIA lacks sufficient information on the potential distributional impacts of the proposed CO2 Standard. The CO2 Standard will likely increase the prices of new and used vehicles and these increases will impact different groups of buyers. However, the RIA does not provide sufficient detail on these possible increases and, therefore, their potential impacts. The RIA points out that people could hold onto their existing vehicles longer, suggesting the distributional impacts may be significant.

We also wonder whether the possible impacts on the composition and age of the vehicle fleet are covered fully enough in the RIA. The RIA notes that turn-over of the vehicle fleet may well slow once the CO2 Standard is implemented. The downstream consequences of reduced vehicle fleet turn-over merits a fuller discussion, such as potential for increased safety and emissions’ costs.

Finally, we note that there is a general assumption that the market will respond by the supply of more electric vehicles (EVs). Should this not occur, the analysis of benefits and costs could change. EVs are only one of the possible options available for the lower emission vehicles that might come into the New Zealand market as a result of the CO2 Standard, including diesel vehicles.

Clean Vehicle Discount

Quality Assurance Reviewing Agency:

A Quality Assurance Panel with representatives from Maritime New Zealand, Ministry of Transport and the Treasury Regulatory Quality Team has reviewed the Regulatory Impact

Assessment “Moving to a low emissions light vehicle fleet” produced by the Ministry of Transport and dated 26 November 2019.

Quality Assurance Assessment:

The Panel considers that it partially meets the Quality Assurance criteria.

Reviewer Comments and Recommendations:

The RIA reviews both demand and supply-side options with the attached CBA report describing the impact of the proposed policy options. The proposals have been consulted on and feedback from stakeholders has been incorporated.

The RIA suffers from the limited discussion of assumptions and inclusion of results from the CBA on the different proposed options. This concern is partly mitigated by evidence being available through the CBA report attached to the RIA.

The problem definition restricts the RIA to ultimately only considering demand-side options and the underlying problem could have been better framed around reducing road transport emissions. The grounds for restricting the problem definition, urgency of action coupled with the pending design of alternative options (supply side in particular), did not entirely convince the panel. Finally, the consistency between the ratings of the options in the Impact Analysis on one hand and the estimated costs and benefits of the proposed options in the CBA report on the other is unaddressed in the RIA.