

Departmental Disclosure Statement

Energy Innovation (Electric Vehicles and Other Matters) 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; and
- 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 Business, Innovation and Employment, and the Ministry of Transport.

The Ministry of Business, Innovation and Employment and the Ministry of Transport certify that, to the best of their knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

13 October 2016

Contents

Contents.....2

Part One: General Policy Statement.....3

Part Two: Background Material and Policy Information6

Part Four: Significant Legislative Features9

Part One: General Policy Statement

This Bill is an omnibus Bill introduced under Standing Order 263(a). That Standing Order provides that an omnibus Bill to amend more than 1 Act may be introduced if amendments deal with an interrelated topic that can be regarded as implementing a single broad policy.

The broad policy of this Bill is to encourage energy innovation, such as emerging energy technologies and increased variation in energy-related business models, so that New Zealand has the ability to respond to its environmental and energy objectives. The Bill amends the Electricity Industry Act 2010, the Energy (Fuels, Levies, and References) Act 1989, the Land Transport Act 1998, and the Road User Charges Act 2012.

New Zealand's environmental and energy priorities have been changing. Our increased focus on improving the efficiency of our energy use and on our climate change commitments requires a greater focus on transport energy and process heat (that is, the use of geothermal energy, gas, wood, or coal to create heat for processing (eg, for drying milk)). Meanwhile, varying business models in the electricity sector are testing definitions in the legislation. The Bill will support this change in focus to reduce emissions and improve energy productivity, while ensuring our legislation can accommodate innovation (such as electric vehicles and changing business models).

The Bill will achieve this by:

- amending the Electricity Industry Act 2010 and the Energy (Fuels, Levies, and References) Act 1989 to allow the Government, through the Energy Efficiency and Conservation Authority (EECA), to focus levy funding on the areas where the greatest impact can be made, as well as to improve the operation and administration of those levies
- amending the Land Transport Act 1998 and the Road User Charges Act 2012 to implement measures to encourage the uptake of electric vehicles, specifically by extending the road user charge exemption to include heavy electric vehicles and clarifying a bylaw-making power so that road controlling authorities (RCA) may make bylaws to provide for electric vehicles (EVs) to have access to bus and high occupancy vehicle lanes:
- amending the Electricity Industry Act 2010 to clarify how electricity industry legislation applies to secondary networks (as a growing business model in the sector).

Changing EECA's levy funding

The EECA is the Crown entity that works to encourage, promote, and support energy efficiency, energy conservation, and the use of renewable sources of energy. Under the EECA's current funding model, its entire levy funding (almost half of its total funding) is recovered from the electricity efficiency levy charged under section 128 of the Electricity Industry Act 2010 (the electricity efficiency levy), which can only be spent on electricity efficiency activities.

The Bill amends the Electricity Industry Act 2010 and the Energy (Fuels, Levies, and References) Act 1989 to expand the purpose of 3 existing energy levies. The electricity efficiency levy is being amended to enable it to fund any of the EECA's activities, instead of being limited to electricity efficiency activities. Section 14 of the Energy (Fuels, Levies, and References) Act 1989 is being amended to allow the petroleum and engine fuels monitoring levy (PEFML) and the levy on piped natural gas (the gas levy) to fund the EECA's activities.

The Bill enables the cost of the EECA's activities to be spread across electricity, transport fuels, and gas users and provides for levy funding to be used for any of the EECA's activities to encourage, promote, and support energy efficiency, energy conservation, and the use of renewable sources of energy (in accordance with its statutory function). This will enable the EECA to use its levy funding to undertake a broader range of activities giving it flexibility to focus on areas where the gain is the greatest.

The Bill recognises the importance of transparency and accountability. The Bill requires the EECA to consult annually all levy payers and representative groups on the amount it proposes to spend from each levy. The intention is for this to include consultation on a draft work programme that shows which levy will fund each programme (including the rationale for using that levy) and proposed total amounts for each levy type. Further, it is also intended that the EECA will report on and publish its work programme annually, including how levy money was spent.

The Bill requires the EECA to report on the outcome of the consultation when it makes a request to the Minister on its appropriation for the following financial year. The Minister then determines how the levy funding will be apportioned between the 3 levies.

The Bill also enables the electricity efficiency levy to be aligned with the PEFML and gas levy by allowing the electricity efficiency levy to be adjusted in out-years to account for any underspend rather than money being refunded annually. This is consistent with the current approach to multi-category appropriations and improves the administrative simplicity of the levy.

The Bill makes other changes to improve the operation and administration of the 3 levies, particularly where the rates are currently set in the Energy (Fuels, Levies, and References) Act 1989. The changes will provide flexibility in how levy rates are set to ensure appropriate amounts are collected.

Allowing EVs access to bus and high occupancy vehicle lanes

The Bill amends the Land Transport Act 1998 to clarify that an RCA may use its bylaw-making powers to give EVs access to special vehicle lanes. EVs in this context are vehicles which are powered solely by electric batteries, as well as plug-in-hybrid vehicles that operate on a combination of externally charged batteries and a petrol or diesel motor. This is because these 'plug-in' EVs make use of New Zealand's renewable electricity and therefore offer the most potential for emissions reduction.

When using its bylaw making powers, an RCA can balance other transport objectives when deciding which special vehicle lanes to allow EVs access to in order to deliver the maximum level of total benefit.

Further changes to give full effect to this policy will need to be made to the Land Transport (Road User) Rule 2004 and the Land Transport Rule: Traffic Control Devices 2004. (These changes include adding a definition of EVs, altering bus and transit lane definitions to include EVs as permitted users if RCAs make relevant bylaws, and requiring road signage or marking showing when EVs may use such lanes.) The Ministry of Transport intends progressing these rule changes separately under section 152A of the Land Transport Act 1998.

Exemptions to road user charges

The Bill amends the Road User Charges Act 2012 to enable heavy EVs to be exempted from road user charges (RUC), which is an extension of the current RUC exemption for light EVs. Extending the RUC exemption to heavy EVs is a transparent and efficient way to provide a financial incentive to encourage heavy EVs over equivalent conventional heavy vehicles. The intention is that the RUC exemption for heavy EVs should be in place until they comprise 2% of the heavy vehicle fleet.

The Bill inserts a definition of heavy electric RUC vehicles, and includes a power for the Governor General, by Order in Council, to specify a period during which RUC are not payable in respect of a heavy electric RUC vehicle.

Secondary networks

The Bill clarifies that electricity industry legislation applies to secondary networks, which are electricity networks that are indirectly connected to the national grid. Secondary networks as a developing business model have been increasing in number as more companies utilise the unique model that they offer. Providers of secondary networks can undertake the same activities as electricity retailers and electricity distributors (local electricity network owners) and should be subject to the same regulatory requirements. It is clear when they meet the definition of an electricity retailer, but there is some ambiguity in the legislation about whether they meet the definition of an electricity distributor.

The Bill amends the Electricity Industry Act 2010 to clarify that the Act, and the regulations and Code made under the Act, apply to secondary network providers where the services provided are akin to those of an electricity distributor. Owning and operating a secondary network offers business owners opportunities for integrating new energy technologies, such as combining solar photovoltaics and battery storage on a residential subdivision, and for providing those to consumers.

The Bill ensures the legislation provides certainty to the industry regulator (the Electricity Authority) that the services provided on secondary networks are within its scope. It will also improve market and consumer outcomes (for example, by ensuring that consumers on secondary networks have the same access to dispute resolution as consumers on local electricity networks).

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?	NO
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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
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Energy levies

Regulatory Impact Statement: Expanding an existing energy levy, Ministry of Business, Innovation and Employment, 21 July 2016, available at: www.mbie.govt.nz/publications-research/publications/energy

Exemption to road user charges for heavy vehicles

Regulatory Impact Statement: Road user charges exemptions and discounts for electric vehicles, Ministry of Transport, March 2016, available at www.transport.govt.nz/about/publications/ris-bccs/

Secondary networks

Regulatory Impact Statement: Application of electricity legislation to secondary networks, Ministry of Business, Innovation and Employment, 7 September 2016, available at: www.mbie.govt.nz/publications-research/publications/energy

All three statements are available at: www.treasury.govt.nz/publications/informationreleases/ris

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
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None of the RIS identified above met the threshold for RIA Team assessment.

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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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
<p>An estimate of potential costs and benefits related to the energy levy and secondary networks changes are set out in the respective RISs and the Cabinet papers, available at www.mbie.govt.nz/publications-research/publications/energy</p> <p>An estimate of potential costs and benefits related to the RUC exemption for heavy electric vehicles is set out in the RIS and Cabinet paper. The RIS is available at www.transport.govt.nz/about/publications/ris-bccs/ and the Cabinet paper is available at www.transport.govt.nz/assets/Uploads/Our-Work/Documents/Electric-Vehicles-Package-of-Measures-to-Encourage-Uptake.pdf</p>	

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?	NO
(b) the nature and level of regulator effort put into encouraging or securing compliance?	NO

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?
No specific steps were taken as it was considered that the provisions do not affect any international obligations.

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 steps were taken as it was considered that the provisions do not affect the general principle that New Zealand legislation is to be interpreted consistently with the principles of the Treaty of Waitangi.

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
<p>Advice provided to the Attorney-General by the Ministry of Justice, or a section 7 report of the Attorney-General, is generally expected to be available on the Ministry of Justice's website upon introduction of a Bill. Such advice, or reports, will be accessible on the Ministry's website at http://www.justice.govt.nz/policy/constitutional-law-and-human-rights/human-rights/bill-of-rights/</p>	

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)?	NO
(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?	NO

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?	NO
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3.5.1. Was the Privacy Commissioner consulted about these provisions?	NO
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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>Agency consultation was undertaken during the policy development of the provisions in the Bill.</p> <p>The electric vehicles package that resulted in the Electric Vehicles Programme was developed by a group of persons from industry, local government and central government.</p> <p>Consultation on specific policies is outlined below:</p> <p><i>Energy levies</i></p> <p>Public consultation was undertaken on the levy provisions in the Bill. A copy of the discussion document, submissions and submissions report is available here: www.mbie.govt.nz/info-services/sectors-industries/energy/current-reviews-consultations/energy-levy-consultation</p> <p><i>Exemption to road user charges for heavy vehicles</i></p> <p>There was engagement with selected stakeholders such as the NZ Transport Agency, Road Transport Forum and the Bus and Coach Association on the definition of heavy EVs.</p> <p><i>Secondary networks</i></p> <p>Public consultation was undertaken on the clarification regarding secondary networks in the Bill. A copy of the discussion document and submissions is available here: www.mbie.govt.nz/info-services/sectors-industries/energy/current-reviews-consultations/electricity-legislation-consultation-on-the-application-of-electricity-legislation</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?	NO
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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 amends existing powers to impose a levy. The Bill amends the Electricity Industry Act 2010 to expand the purpose of the electricity industry participants levy so that EECA can recover funding for any activities within its statutory purpose (this levy is currently restricted its use for 'electricity efficiency' activities only). The Bill also amends the Energy (Fuels, Levies, and References) Act 1989 to expand the purposes of the levy on petroleum and engine fuels and the levy on piped natural gas to enable these levies to fund activities within EECA's statutory purpose.</p> <p>The amendments are necessary so that EECA can use levy funding for its full range of activities. It means the cost of EECA's activities can to be spread across electricity, transport fuels and gas consumers, rather than just electricity consumers. This means that more of the 'causers' of the need for the activities will be paying for them.</p> <p>The total amount EECA can levy is set by Cabinet (currently it is \$17.5m). The allocation of the levy across the three sources will be determined by the Minister each year based on advice from EECA. EECA will prepare and consult on its work programme annually. The work programme will identify the activities where levy funding is proposed to be used, which levy (or levies) will be contributing funding and by how much. The total amount levied cannot exceed the amount agreed by Cabinet, and set out in the Estimates of Appropriations.</p>	

Retrospective effect

4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?	NO
<p>If it becomes likely that the provisions contained in the Bill will not be able to come into force by 1 July 2017, it may be necessary to include a provision in the Bill to enable the levy collected for 2017/18 to include costs incurred by EECA from 1 July 2017.</p> <p>If this occurs the Bill will not affect rights, freedoms, or impose obligations, retrospectively. It will, however, provide for levy revenue collected under the new provisions to fund EECA to undertake activities in relation to its statutory purpose from 1 July 2017. This provision will not mean that the levy will be collected retrospectively; rather, it will allow the rate of the levy to take into account costs incurred from 1 July 2017.</p> <p>This provision is necessary to give effect to Cabinet's decision that EECAs levy funding of \$13 million in 2017/18 will be recovered at the following rates: 40 per cent from the electricity levy; 50 per cent from the PEFML; and 10 per cent from the gas levy.</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 Bill creates a new section in the Road User Charges Act 2012 that grants the Governor General the power, through an Order in Council, to exempt heavy electric vehicles from their obligation to pay road user charges (RUC). This is consistent with the current approach taken with exempting light electric vehicles. Cabinet has agreed that the exemption will end once heavy electric vehicles make up two percent of the heavy vehicle fleet.</p>	

4.8. Does this Bill create or amend any other powers to make delegated legislation?	YES
<p>The Bill amends section 33 of the Energy (Fuels, Levies, and References) Act, which already provides the power to make delegated legislation. The Bill expands the purpose for which existing levies under the Act can be recovered and makes a small change to provide for a method for calculating or ascertaining amounts or levy rates. The Bill also amends section 128 of the Electricity Industry Act 2010 to remove the narrow scope of what the electricity levy can be used for.</p> <p>The Bill amends section 22AB(1)(r) of the Land Transport Act 1998 to clearly empower a road controlling authority (RCA) to use its bylaw making powers to give EVs access special vehicle lanes. Under this approach, an RCA can make case-by-case trade-offs against other transport objectives when deciding which special vehicle lanes to allow EVs access to. This delivers the maximum level of total benefit. When considering any change to bylaws, the process involves consultation with the community (the length and structure of this process varies between RCAs).</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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