

Departmental Disclosure Statement

Energy Resources Levy Amendment Bill

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 Business, Innovation and Employment.

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

17 May 2023

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Part One: General Policy Statement

Policy to be given effect by the Bill

The key purpose of the Bill is to ensure that the Crown receives a fair financial return for its natural gas (now commonly referred to as fossil gas). This purpose aligns with Principle 8 of the Government's Resource Strategy *Responsibly Delivering Value – A Minerals and Petroleum Resource Strategy for Aotearoa New Zealand: 2019–2029*: the Crown receives a fair financial return for its minerals and petroleum. Wider petroleum legislation, including the Petroleum Act 1937 and the Crown Minerals Act 1991, which superseded it, also specifically grant rights to mine Crown owned minerals in exchange for a fair financial return.

There have been inconsistent approaches to achieving a fair financial return on the Crown's natural gas resources, with royalty rates depending on when licences or permits were granted for gas discoveries. This is not uncommon and reflects the practice at the time those licences were granted. Licences granted under the Petroleum Act 1937 as a result of a pre-1 January 1986 discovery (**pre-1986 licences**) are subject to 5-10% royalty rates. This compares with post-1986 licences or permits granted under the Crown Minerals Act 1991 that are subject to a royalty rate of 12.5 or 20%.

The Energy Resources Levy Act 1976 (the **Act**) imposes a levy on certain energy resources produced in New Zealand. To ensure a fair financial return to the Crown requires holders of pre-1986 licences to pay the levy on top of the 5-10% royalty rate. The levy is not payable on natural gas produced as a result of a discovery of natural gas made on or after 1 January 1986.

This Bill amends the Act, inserting new subsection 6(3), which provides that the levy exemption does not apply to any natural gas produced after the commencement of that subsection from any land to which a licence relates if the licence was granted in relation to a discovery of natural gas that was made before 1 January 1986. This amendment would ensure that new gas production from deposits within pre-1986 licence areas cannot be considered new gas discoveries for the purposes of the levy exemption in the Act.

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?	NO
<p>The Treasury's Regulatory Impact Analysis team determined that the proposed amendment to clarify obligations relating to the fossil gas levy exemption in the Energy Resources Levy Act 1976 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.</p>	

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?	NO
(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?	NO
<p>The size of potential costs or benefits to the Crown from this amendment are largely dependent on the amount of levy payable on any fossil gas produced that is claimed to be a discovery and exempt by a licence holder. No quantified estimates are available as costs and benefits cannot be accurately estimated for levies that may be claimed as exempt, but the amounts involved could be significant, involving millions of dollars in lost levies.</p> <p>If a levy exemption were to be claimed and successfully upheld without the amendment, the expected costs would be foregone Crown revenue. Conversely, with this amendment this revenue would be a cost to the licence holder.</p> <p>There is no cost to the Crown resulting from this Bill.</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

The Bill does not create new obligations or standards, or impact on existing obligations or standards.

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?

MBIE considers the Bill is consistent with New Zealand's 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?

MBIE do not see any issues with consistency with the government's Treaty of Waitangi obligations.

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

Advice was provided to the Attorney-General by the Ministry of Justice prior to the Bill's introduction to the House. The Ministry of Justice concluded that the Bill appears consistent with the New Zealand Bill of Rights Act 1990.

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

3.5.1. Was the Privacy Commissioner consulted about these provisions?

NO

The Privacy Commissioner was not consulted, as this Bill does not create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information.

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?

NO

No external consultation was undertaken on the policy to be given effect, or on a draft of the Bill.

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
New Zealand Petroleum and Minerals, the government regulator that manages New Zealand's Crown minerals estate, has assessed the provisions in the Bill and are comfortable that these achieve the policy intent of the Bill to ensure a fair financial return to the Crown on its fossil gas.	

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
This Bill relates to the Energy Resources Levy Act 1976 which makes provision for the imposition, assessment, and collection of a levy on certain energy resources produced in New Zealand. However, the Bill itself does not make any changes to levies prescribed within it. Instead, it clarifies who is exempt from paying the energy resources levy for natural gas.	

Retrospective effect

4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?	NO
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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?	NO
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4.8. Does this Bill create or amend any other powers to make delegated legislation?	NO
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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?	YES
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The Bill inserts Schedule 1 into the Act. Schedule 1 includes a validation of levy payments made before the commencement date. This validates all past levy payments as proper and that money received has always been lawfully collected and applied.