

# Departmental Disclosure Statement

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Energy (Fuels, Levies and References) 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 Business, Innovation and Employment.

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

17 March 2023.

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## Part One: General Policy Statement

The Energy (Fuels, Levies, and References) Amendment Bill (the **Bill**) aims to strengthen New Zealand's fuel resilience and economic security. Sectors ranging from freight services to building and construction are dependent on fuel supplies. The Bill adds the purpose of meeting the reasonable costs and expenses of the Crown in promoting resilience of engine fuel supplies in New Zealand as an additional purpose for which the petroleum or engine fuel monitoring levy (the **levy**) can be applied. This will enable the Government to use the levy to cover the costs of fuel resilience measures, such as—

- government procurement of services relating to storage and management of reserve fuel stocks to be held onshore:
- facilities that would be useful for mitigating the impacts of local fuel disruptions or distributing fuels in an emergency:
- fuel emergency planning and management activities:
- tools and programmes to improve monitoring and collecting information on fuel resilience.

Fuel industry participants may not have the incentive to invest in fuel resilience measures that are not in their commercial interest, even though the measures may be in the national interest. Using the levy to fund these measures will benefit the parties who pay the levy directly or indirectly, namely, fuel importers, and fuel consumers to whom fuel importers pass on at least some of the levy costs. The levy rate is not expected to have to increase significantly immediately as a result of the additional purpose, but the calculation method for the levy rate will be reviewed in the future to ensure that the levy rate continues to be set in a justifiable and transparent way.

The alternative of using Crown funding to pay for these measures would mean that all general taxpayers, regardless of whether they use fuel or not and how much fuel they use, would bear the cost of these measures.

*Uncertainty about whether existing statutory purpose of levy allows for recovery of cost of onshore fuel resilience initiatives*

Section 14(2) of the Energy (Fuels, Levies, and References) Act 1989 sets out the statutory purposes of the levy. One of the existing 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>.

However, there is uncertainty about whether the levy can be used to fund onshore fuel resilience initiatives under the current purposes. For example, government procurement of onshore reserve diesel stock may be more expensive than other options for meeting the IEA obligation, such as purchasing offshore oil tickets. This could mean that such procurement is not consistent with the levy's existing statutory purposes. The changes proposed in the Bill will ensure that the Government has the flexibility to use the levy to fund initiatives such as government procurement of onshore diesel stock.

*The Bill is part of a wider fuel resilience policy package*

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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.

The Bill is part of a wider fuel resilience policy package announced by the Government in November 2022, which includes—

- introducing a minimum onshore fuel stockholding obligation for fuel importers:
- dedicating additional resources to operationalising the National Fuel Plan, which involves undertaking activities that enable better government–industry co-ordination in planning for and managing fuel emergencies:
- government procurement of storage and management of at least 70 million litres of reserve diesel stock to be held onshore.

The Bill will allow the levy to be used to cover the additional government administration and procurement costs associated with implementing the fuel resilience policy package, as well as the costs of other potential measures for improving fuel resilience. The minimum onshore fuel stockholding obligation will require fuel importers to meet a minimum stockholding level for diesel, jet fuel, and petrol. The Ministry of Business, Innovation, and Employment will undertake additional compliance, enforcement, and monitoring activities to ensure this obligation is met.

The minimum onshore fuel stockholding obligation will be complemented by government procurement of onshore reserve diesel stock, as the fuel industry currently has relatively low stockholding levels for diesel. Diesel is the most important fuel for critical services, such as delivery by truck of food and essential goods. Government procurement of onshore reserve diesel stock will ensure that New Zealand has sufficient diesel stock onshore to weather the impacts of plausible fuel import disruptions, which may be caused by natural disasters or man-made events.

## Part Two: Background Material and Policy Information

### Published reviews or evaluations

<b>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?</b>	<b>YES</b>
<i>Fuel Security and Fuel Stockholding Costs and Benefits 2020</i> , Hale and Twomey (commissioned by the Ministry of Business, Innovation and Employment), 16 December 2020. It is available at <a href="https://www.mbie.govt.nz/dmsdocument/15257-fuel-security-and-fuel-stockholding-costs-and-benefits-2020">https://www.mbie.govt.nz/dmsdocument/15257-fuel-security-and-fuel-stockholding-costs-and-benefits-2020</a> .	

### Relevant international treaties

<b>2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?</b>	<b>NO</b>
Nevertheless, the reserve diesel stock arrangement, which is expected to be funded by the levy after amendment to the statutory purpose of the levy, can contribute to New Zealand's compliance with its obligation under the International Energy Agreement (90-day reserve commitment).	

### Regulatory impact analysis

<b>2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?</b>	<b>YES</b>
MBIE completed a Regulatory Impact Statement on the fuel resilience policy package, which includes the proposal to amend the statutory purpose of the PEFM Levy, on 15 August 2022. It is available at <a href="https://www.mbie.govt.nz/dmsdocument/25591-regulatory-impact-statement-fuel-resilience-policy-package-proactiverelease-pdf">https://www.mbie.govt.nz/dmsdocument/25591-regulatory-impact-statement-fuel-resilience-policy-package-proactiverelease-pdf</a> .	

<b>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?</b>	<b>NO</b>
The Treasury's RIA team delegated the responsibility for providing comment on the quality of the regulatory impact statement (available at <a href="https://www.mbie.govt.nz/dmsdocument/25591-regulatory-impact-statement-fuel-resilience-policy-package-proactiverelease-pdf">https://www.mbie.govt.nz/dmsdocument/25591-regulatory-impact-statement-fuel-resilience-policy-package-proactiverelease-pdf</a> ) to an internal review panel set up within MBIE. The panel considers that the information and analysis summarised in the Impact Statement meets the criteria necessary for Ministers to make informed decisions on the proposals.	

<b>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?</b>	<b>NO</b>
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### Extent of impact analysis available

<b>2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?</b>	<b>NO</b>
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<b>2.5. For the policy to be given effect by this Bill, is there analysis available on:</b>	
<b>(a) the size of the potential costs and benefits?</b>	<b>YES</b>
<b>(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?</b>	<b>NO</b>
<p>Due to expected levy surplus in the forecast period to 2025/26, the levy rate is not expected to increase significantly in this period. As a result, the policy change should have minimal impact in the forecast period. More explanation can be found in the aforementioned regulatory impact statement (available at <a href="https://www.mbie.govt.nz/dmsdocument/25591-regulatory-impact-statement-fuel-resilience-policy-package-proactiverelease-pdf">https://www.mbie.govt.nz/dmsdocument/25591-regulatory-impact-statement-fuel-resilience-policy-package-proactiverelease-pdf</a>).</p>	

<b>2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:</b>	
<b>(a) the level of effective compliance or non-compliance with applicable obligations or standards?</b>	<b>YES</b>
<b>(b) the nature and level of regulator effort put into encouraging or securing compliance?</b>	<b>YES</b>
<p>To ensure that the Government can recover the cost of the onshore fuel resilience initiatives in line with the Bill's policy intent, levy payers (namely fuel importers) need to pay the levy as required. The magnitude of the costs of such initiatives depends on how MBIE, the administrative department, spends the levy.</p> <p>The New Zealand Customs Service can rely on the existing enforcement provisions under the <i>Customs and Excise Act 2018</i> to ensure that the levy is paid. MBIE has procurement processes and financial systems in place to deliver value for money and keep track of how the levy is spent on various initiatives.</p>	

## Part Three: Testing of Legislative Content

### Consistency with New Zealand's international obligations

<b>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?</b>
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New Zealand's obligations under the International Energy Agreement were considered during the policy development process.
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### Consistency with the government's Treaty of Waitangi obligations

<b>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?</b>
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When designing the approach to stakeholder engagements for developing the fuel resilience policy package, MBIE's policy team discussed with internal advisors specialising in managing iwi and regional relationships. MBIE concluded that the policy proposals, which focus on increasing onshore fuel stocks, are unlikely to be of high interest to iwi. MBIE has not identified any inconsistencies between the policies in this Bill and the government's Treaty of Waitangi obligations.
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### Consistency with the New Zealand Bill of Rights Act 1990

<b>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?</b>	<b>YES</b>
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The Ministry of Justice's advice to the Attorney-General will be publicly available at <a href="https://www.justice.govt.nz/justice-sector-policy/constitutional-issues-and-human-rights/bill-of-rights-compliance-reports/advice/">https://www.justice.govt.nz/justice-sector-policy/constitutional-issues-and-human-rights/bill-of-rights-compliance-reports/advice/</a> upon the Bill's introduction to the House.
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### Offences, penalties and court jurisdictions

<b>3.4. Does this Bill create, amend, or remove:</b>	
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<b>(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?</b>	<b>NO</b>
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<b>(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?</b>	<b>NO</b>
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### Privacy issues

<b>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?</b>	<b>NO</b>
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## External consultation

<b>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?</b>	<b>YES</b>
<p>Public consultation on onshore fuel stockholding proposals, which culminated in the fuel resilience policy package, was conducted in early 2022 (see <a href="https://www.mbie.govt.nz/have-your-say/onshore-fuel-stockholding-consultation/">https://www.mbie.govt.nz/have-your-say/onshore-fuel-stockholding-consultation/</a>). The consultation paper 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. Twenty-one submissions, mainly from the fuel and transport sectors, were received.</p> <p>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 stock arrangement with the fuel sector if it wishes to increase onshore fuel stocks.</p>	

## Other testing of proposals

<b>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?</b>	<b>YES</b>
<p>MBIE had internal discussions between policy staff, finance staff and legislation staff regarding the ability to have the accounting system in place to ensure that spending on new items to be funded by the PEFM levy after the Bill is passed can be recorded transparently.</p>	

## Part Four: Significant Legislative Features

### Compulsory acquisition of private property

<b>4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?</b>	<b>NO</b>
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### Charges in the nature of a tax

<b>4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?</b>	<b>YES</b>
<p>Section 14 of the <i>Energy (Fuels, Levies, and References) Act 1989</i> sets out the statutory purposes of the levy. The existing statutory purposes include meeting some of the costs of the Energy Efficiency and Conservation Authority (<b>EECA</b>), as well as the “reasonable costs” of:</p> <ul style="list-style-type: none"><li>• compliance with the 90-day reserve commitment obligation under the International Energy Agreement (IEA)</li><li>• inspection and monitoring of liquid fuels</li><li>• information dissemination regarding the fuel industry’s safety.</li></ul> <p>The Bill introduces an additional statutory purpose of promoting onshore engine fuel resilience. This will enable the Government to fund initiatives such as an arrangement for procuring reserve diesel stock to be held onshore.</p> <p>While these onshore fuel resilience initiatives could contribute to New Zealand’s IEA obligation, there is uncertainty as to whether the existing statutory purposes would allow such initiatives to be funded. These initiatives may not pass the “reasonable cost” test, given there are there is a much cheaper alternative for meeting the IEA obligation—purchasing offshore oil tickets.</p> <p>When making funding decisions on onshore fuel resilience initiatives, MBIE will assess the business case, applying selection criteria and standard procurement principles. Cabinet approval will be sought before any onshore fuel resilience initiatives are funded. Should there be any significant change to the calculation method for the rate of the levy, which is set out in section 5 of the <i>Energy (Petrol, Engine Fuel, and Gas) Levy Regulations 2017</i>, there will also be public consultation.</p>	

### Retrospective effect

<b>4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?</b>	<b>NO</b>
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### Strict liability or reversal of the usual burden of proof for offences

<b>4.4. Does this Bill:</b>	
<b>(a) create or amend a strict or absolute liability offence?</b>	<b>NO</b>
<b>(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?</b>	<b>NO</b>

### Civil or criminal immunity

<b>4.5. Does this Bill create or amend a civil or criminal immunity for any person?</b>	<b>NO</b>
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### Significant decision-making powers

<b>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?</b>	<b>NO</b>
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### Powers to make delegated legislation

<b>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?</b>	<b>NO</b>
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<b>4.8. Does this Bill create or amend any other powers to make delegated legislation?</b>	<b>NO</b>
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### Any other unusual provisions or features

<b>4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?</b>	<b>NO</b>
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