

Energy Innovation (Electric Vehicles and Other Matters) Amendment Bill

Government Bill

Explanatory note

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 ac-

count 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 by-law-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 distribu-

tors (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).

Departmental disclosure statement

The Ministry of Business, Innovation, and Employment is required to prepare a disclosure statement to assist with the scrutiny of this Bill. The disclosure statement provides access to information about the policy development of the Bill and identifies any significant or unusual legislative features of the Bill.

A copy of the statement can be found at <http://legislation.govt.nz/disclosure.aspx?type=bill&subtype=government&year=2016&no=196>

Regulatory impact statement

The Ministry of Business, Innovation, and Employment and the Ministry of Transport produced regulatory impact statements to help inform the main policy decisions taken by the Government relating to the contents of this Bill.

Copies of these regulatory impact statements can be found at—

- <http://www.mbie.govt.nz/publications-research/publications/energy>
- <http://www.transport.govt.nz/about/publications/ris-bccs/>
- <http://www.treasury.govt.nz/publications/informationreleases/ris>

Clause by clause analysis

Clause 1 is the Title clause.

Clause 2 is the commencement clause. This Bill comes into force on **1 July 2017**.

Part 1

Amendments to Electricity Industry Act 2010

Part 1 amends the Electricity Industry Act 2010.

Clause 4 amends section 128 to—

- expand the purposes for which the electricity efficiency levy can be used;
- amend the regulation-making power to clarify that regulations made under section 128 may include provisions related to any shortfall in recovering, or over-recovery of, actual costs from a previous year.

Clauses 5 and 6 relate to consultation requirements. *Clause 5* makes minor amendments to section 129 to clarify that the existing consultation requirement in section 129 will only apply to the Electricity Authority. *Clause 6* inserts a new consultation requirement that the EECA must comply with before making a request for an appropriation.

Clause 7 inserts *new subpart 2A* in Part 5. *New section 131A* applies certain electricity industry legislation and the Code to secondary network providers as if those secondary network providers were distributors. This provides that a business providing the service of conveying electricity (other than on lines that are part of the national grid) is subject to electricity industry regulation. Secondary networks are electricity networks that are indirectly connected to the national grid. Examples include networks in some multi-tenanted office blocks, residential apartment buildings, retirement villages, shopping centres, airports, industrial or commercial parks, and residential subdivisions.

Part 2

Amendments to Energy (Fuels, Levies, and References) Act 1989

Part 2 amends the Energy (Fuels, Levies, and References) Act 1989.

Clause 9 inserts a definition of EECA into section 1B.

Clause 10 makes the transitional, savings, and related provisions schedule inserted by *clause 15* operative.

Clause 11 amends section 14 to expand the purposes for which the petroleum or engine fuel monitoring levy and the gas levy may be used.

Clause 12 inserts a consultation requirement that the EECA must comply with before making a request for an appropriation.

Clause 13 amends section 23 (relating to gas levies) to provide for the rate or amount of the levy to be prescribed in regulations.

Clause 14 amends section 33 to provide that regulations made under section 33(1) may include methods of calculating or ascertaining the rate or amount of levies. The amendments also clarify that any regulations may specify levy periods and make provision relating to shortfalls or over-recovery of actual costs.

Clause 15 inserts *new Schedule 1AA*. *New Schedule 1AA* contains a transitional provision relating to when the EECA consultation requirement in *new section 14A* applies from.

Part 3

Amendment to Land Transport Act 1998

Part 3 amends the Land Transport Act 1998.

Clause 17 amends section 22AB(1) to clarify that the power to make bylaws can be used in respect of any vehicle of a specified class (which may include electric vehicles).

Part 4

Amendments to Road User Charges Act 2012

Part 4 amends the Road User Charges Act 2012.

Clause 19 inserts a definition of heavy electric RUC vehicle into section 5(1). *Clause 19* also consequentially amends the definition of exempt vehicle.

Clause 20 inserts *new section 37A*. *New section 37A* contains an order-making power relating to the exemption of heavy electric RUC vehicles from road user charges.

Hon Simon Bridges

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The Parliament of New Zealand enacts as follows:

- 1 Title**
This Act is the Energy Innovation (Electric Vehicles and Other Matters) Amendment Act **2016**.
- 2 Commencement** 5
This Act comes into force on **1 July 2017**.

Part 1

Amendments to Electricity Industry Act 2010

- 3 Principal Act**
This Part amends the Electricity Industry Act 2010 (the **principal Act**). 10

4 Section 128 amended (Levies)

- (1) In section 128(3)(c), delete “in relation to the encouragement, promotion, and support of electricity efficiency.”.
- (2) After section 128(5)(a), insert:
 - (aa) include, in the method of calculating or ascertaining the amount of the levy, provisions related to any shortfall in recovering, or over-recovery of, the actual costs from a previous year: 5

5 Section 129 amended (Consultation about request for appropriation)

- (1) In the heading to section 129, replace “**Consultation**” with “**Authority consultation**”. 10
- (2) In section 129(1), delete “and the Energy Efficiency and Conservation Authority”.
- (3) In section 129(2), replace “Each Authority” with “The Authority”.

6 New section 129A inserted (Energy Efficiency and Conservation Authority consultation about request for appropriation) 15

After section 129, insert:

129A Energy Efficiency and Conservation Authority consultation about request for appropriation

- (1) The Energy Efficiency and Conservation Authority must, before submitting a request to the Minister seeking an appropriation of public money for the following year, or any change to an appropriation for the current year, that relates to costs that are intended to be recovered by way of levies under section 128(3)(c), consult about that request with— 20
 - (a) those industry participants who are liable to pay a levy under that section; and 25
 - (b) any other representatives of persons whom the Energy Efficiency and Conservation Authority believes to be significantly affected by a levy.
- (2) The Energy Efficiency and Conservation Authority must, at the time when the request is submitted, report to the Minister on the outcome of that consultation.
- (3) This section applies to requests in respect of the financial year beginning 1 July 2018 and later financial years. 30

7 New subpart 2A inserted in Part 5

After section 131, insert:

Subpart 2A—Secondary networks

131A Application of electricity industry legislation to secondary networks

- (1) This Act, the regulations, and the Electricity Industry Participation Code apply, with all necessary modifications, to a secondary network provider as if that provider were a distributor. 5
- (2) In this section,—
- secondary network** means equipment that—
- (a) is used, designed, or intended for use in, or in connection with, the conveyance of electricity; and
- (b) is indirectly connected to the national grid 10
- secondary network provider** means a business that—
- (a) is engaged in the conveyance of electricity on a secondary network; and
- (b) provides services that are similar to the services provided by a distributor.

Part 2 15**Amendments to Energy (Fuels, Levies, and References) Act 1989****8 Principal Act**

This Part amends the Energy (Fuels, Levies, and References) Act 1989 (the **principal Act**).

9 Section 1B amended (Interpretation) 20

In section 1B, insert in its appropriate alphabetical order:

EECA means the Energy Efficiency and Conservation Authority established under section 20 of the Energy Efficiency and Conservation Act 2000

10 New section 1AAA inserted (Transitional, savings, and related provisions)

After section 1, insert: 25

1AAA Transitional, savings, and related provisions

The transitional, savings, and related provisions set out in **Schedule 1AA** have effect according to their terms.

11 Section 14 amended (Purpose of levies)

After section 14(2), insert: 30

- (2A) Despite subsections (1) and (2), levies recovered under sections 23 and 24 may be applied for the purpose of meeting a portion of the costs of the EECA, in performing its functions and exercising its powers and duties under the Energy

Efficiency and Conservation Act 2000, where the size of the portion to be met by each levy under this Act is determined by the Minister.

12 New section 14A inserted (Energy Efficiency and Conservation Authority consultation about request for appropriation)

After section 14, insert:

5

14A Energy Efficiency and Conservation Authority consultation about request for appropriation

(1) The EECA must, before submitting a request to the Minister seeking an appropriation of public money for the following year, or any change to an appropriation for the current year, that relates to costs that are intended to be recovered by way of a levy under section 23 or 24, consult about that request with—

10

(a) those persons who are liable to pay the levy; and

(b) any other representatives of persons whom the EECA believes to be significantly affected by the levy.

(2) The EECA must, at the time when the request is submitted, report to the Minister on the outcome of that consultation.

15

13 Section 23 amended (Gas levies)

(1) In section 23(3), after “with this section”, insert “and with regulations made under section 33”.

(2) In section 23(5), replace “2 cents for each complete gigajoule or such lesser amount for each complete gigajoule as may be prescribed” with “payable, for each complete gigajoule, at the rate or amount calculated or ascertained in accordance with this section and with regulations made under section 33”.

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14 Section 33 amended (Regulations prescribing levy rates)

(1) In section 33(1)(b), replace “formulas for calculating” with “methods of calculating or ascertaining”.

25

(2) After section 33(1), insert:

(1A) Regulations made under subsection (1) may—

(a) specify the periods for which amounts or rates of the levies apply; and

(b) include, in any prescribed method of calculating or ascertaining amounts or rates of the levies, provisions relating to any shortfall in recovering, or over-recovery of, the actual costs of EECA from a previous levy period.

30

(3) In section 33(2), replace “formula” with “method”.

15 New Schedule 1AA inserted

Insert the **Schedule 1AA** set out in the **Schedule** of this Act as the first schedule to appear after the last section of the principal Act.

35

Part 3 Amendment to Land Transport Act 1998

16 Principal Act

This Part amends the Land Transport Act 1998 (the **principal Act**).

17 Section 22AB amended (Road controlling authorities may make certain bylaws) 5

Replace section 22AB(1)(r) with:

- (r) prescribing, subject to the marking of lanes on the roadway, that on any road any traffic lane may be used or any turning movement may be made only by vehicles of specified classes or vehicles carrying specified classes of loads or no fewer than a specified number of occupants: 10

Part 4 Amendments to Road User Charges Act 2012

18 Principal Act

This Part amends the Road User Charges Act 2012 (the **principal Act**). 15

19 Section 5 amended (Interpretation)

- (1) In section 5(1), definition of **exempt vehicle**, after paragraph (b)(i), insert:
 (ia) heavy electric RUC vehicles exempted by an Order in Council made under **section 37A**:

- (2) In section 5(1), insert in its appropriate alphabetical order: 20
heavy electric RUC vehicle means a RUC vehicle with—
 (a) a gross vehicle mass of more than 3 500 kilograms; and
 (b) motive power wholly or partly derived from an external source of electricity

20 New section 37A inserted (Exemption of heavy electric RUC vehicles by Order in Council) 25

After section 37, insert:

37A Exemption of heavy electric RUC vehicles by Order in Council

- (1) The Governor-General may, by Order in Council, specify the period during which road user charges are not payable in respect of heavy electric RUC vehicles. 30
 (2) An order made under **subsection (1)**—
 (a) must specify the date on which the exemption expires; and
 (b) may, from time to time, be amended to provide for a later date.

Schedule
New Schedule 1AA inserted

s 15

Schedule 1AA
Transitional, savings, and related provisions

5

s 1AAA

Part 1

**Provision relating to Energy Innovation (Electric Vehicles and Other
Matters) Amendment Act 2016**

- 1** **Provision in relation to Energy Efficiency and Conservation Authority
consultation about request for appropriation** 10
- Section 14A** applies to requests in respect of the financial year beginning
1 July 2018 and later financial years.