

# Energy (Fuels, Levies, and References) Amendment Bill

Government Bill

## Explanatory note

### General policy statement

The objective of the Energy (Fuels, Levies, and References) Amendment Bill (the **Bill**) is to allow for the costs of meeting New Zealand's oil stockholding treaty obligation under the Agreement on an International Energy Program (the **Agreement**) to be met through a levy on fuel. New Zealand and other signatories to the Agreement are required to hold oil stock equivalent to 90 days of net imports. Stockholding costs have previously been funded through general taxation. The Bill—

- provides for the purpose of the existing petroleum or engine fuel monitoring levy (**PEFML**) to be extended so that PEFML revenue can be used to meet costs associated with the Crown's compliance with the Agreement; and
- removes the present maximum levy rate and provides for the levy rate and fuels to which the PEFML applies to be set in regulations made by Order in Council.

Providing for the levy rate to be set in regulations ensures that the rate can be set at an appropriate level to recover stockholding costs. These costs fluctuate depending on New Zealand's oil net import position and the price of contracts to hold oil stock, among other factors.

Providing for the fuel coverage to be set in regulations ensures that the appropriate fuels can be targeted as market conditions evolve.

Meeting the stockholding obligation by building government-owned stock, or by placing a mandate on industry to hold stock, were considered as alternative options for meeting the stockholding obligation. These options were rejected because holding stock contracts is a more economical way of meeting the obligation. Continuing to meet the obligation by stock contracts funded from general taxation was also considered. This option was rejected because a fuel levy that can be adjusted in regulations provides better flexibility to meet uncertain and volatile oil stock contract costs.

### **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. It 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=2013&no=170&>.

### **Regulatory impact statement**

The Ministry of Business, Innovation, and Employment produced a regulatory impact statement on 6 December 2012 to help inform the main policy decisions taken by the Government relating to the contents of this Bill.

A copy of this regulatory impact statement can be found at—

- <http://www.med.govt.nz/about-us/publications/publications-by-topic/regulatory-impact-statements/mbie-regulatory-impact-statements/funding-nz-international-oil-stockholding-obligation.pdf>
- <http://www.treasury.govt.nz/publications/informationreleases/ris>

### **Clause by clause analysis**

*Clause 1* is the Title clause.

*Clause 2* provides that, apart from *clauses 5 and 8*, the Bill comes into force on the day after the date on which it receives the Royal assent. This enables the Bill to commence as soon as possible, so that costs incurred by the Crown in relation to its compliance with the Agreement (referred to in the Bill as the International Energy Agreement) may be recovered. *Clauses 5 and 8* come into force on a date to be appointed by Order in Council, or, if no Order is made, on the date that is 1 year after the Bill receives the Royal assent. It is intended that *clauses 5 and 8* will be brought into force at the same time as regulations made under *new sections 33 and 35(1)(fa)* to prescribe rates for the PEFML and the types of fuels to which the PEFML applies. This allows section 24, which *clause 5* replaces, to remain in force until new rates for the PEFML are prescribed in regulations. The Bill allows *clause 8* to be brought into force at the same time as *clause 5* so that administrative changes necessary to give effect to both clauses can be implemented at the same time.

*Clause 3* provides that the Bill amends the Energy (Fuels, Levies, and References) Act 1989 (the Act).

## Part 1

### Amendments to Part 3 (Levies)

*Clause 4* amends section 14 of the Act to allow the PEFML (which is recovered under section 24 of the Act) to be used to meet the Crown's costs and expenses in complying with New Zealand's obligations under the Agreement (in particular, the obligation to hold oil stock equivalent to 90 days of net imports). *Subclause (2)* allows the PEFML to be applied for the purpose of meeting the reasonable costs and expenses incurred by the Crown in complying with the Agreement on and from 1 July 2013.

*Clause 5* replaces section 24 of the Act. *New section 24* provides that a PEFML is payable for petroleum or engine fuel of a type specified in regulations made under section 35(1)(fa). The PEFML is payable at a rate prescribed in regulations made under section 33. Unlike the current section 24, *new section 24* does not specify a maximum levy rate. *New section 24(3)* provides that the New Zealand Customs Service must collect the PEFML on behalf of the Crown. This is a change from the current section, which requires the PEFML to be

collected on behalf of the Secretary (currently the Chief Executive of the Ministry of Business, Innovation, and Employment).

*Clause 6* repeals section 26 of the Act, which provides that the Secretary may grant a rebate of a levy paid under the Act. Section 26 is no longer necessary, as section 65U(4) of the Public Finance Act 1989 provides a power to refund any money paid in error or in excess of the amount required to be paid.

*Clauses 7 and 8* make consequential amendments to sections 29 and 30 of the Act to reflect the fact that the PEFML will be payable to the New Zealand Customs Service, rather than the Secretary.

*Clause 9* replaces section 33 of the Act, which relates to the power to prescribe levy rates. *New section 33* reflects the fact that *new section 24* does not specify a maximum levy rate for the PEFML (although the Act still specifies maximum amounts for the electricity and gas levies). *New section 33(3) and (4)* requires the Minister to consult representative organisations before recommending regulations be made and requires regulations prescribing levy rates to be confirmed by an Act of Parliament.

## **Part 2**

### **Amendments to Part 4 (Miscellaneous provisions)**

*Clause 10* amends section 35, which is a general regulation-making power. The amendment allows for regulations to be made that prescribe the types of petroleum or engine fuels to which the PEFML applies.

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*Hon Simon Bridges*

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**The Parliament of New Zealand enacts as follows:****1 Title**

This Act is the Energy (Fuels, Levies, and References) Amendment Act **2013**.

**2 Commencement**

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(1) This Act, except **sections 5** and **8**, comes into force on the day after the date on which it receives the Royal assent.

(2) **Sections 5** and **8** come into force 1 year after the date on which this Act receives the Royal assent unless earlier brought into force on a date appointed by the Governor-General by Order in Council.

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**3 Principal Act**

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

**Part 1**

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**Amendments to Part 3 (Levies)****4 Section 14 amended (Purpose of levies)**

(1) After section 14(2)(b), insert:

“(ba) compliance by the Crown with New Zealand’s obligations under the International Energy Agreement; and”.

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(2) After section 14(2), insert:

“(3) Levies recovered under section 24 may be applied for the purpose of meeting the reasonable costs and expenses incurred by the Crown for the purpose set out in **subsection (2)(ba)** on and from 1 July 2013, even though **subsection (2)(ba)** commences after that date.

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“(4) In this section, **International Energy Agreement** has the meaning given in section 2 of the International Energy Agreement Act 1976.”

**5 Section 24 replaced (Petroleum or engine fuel monitoring levy)**

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Replace section 24 with:

- “24 Petroleum or engine fuel monitoring levy**
- “(1) A levy is payable at the rate prescribed under **section 33** for each complete litre of petroleum or engine fuel of a type specified in regulations made under **section 35(1)(fa)**.
- “(2) The levy must be paid to the New Zealand Customs Service— 5
- “(a) by the person who would be liable to pay any excise duty or excise-equivalent duty on the petroleum or engine fuel under the Customs and Excise Act 1996 if any were payable; and
- “(b) when any excise duty or excise-equivalent duty would be paid if any were payable. 10
- “(3) The New Zealand Customs Service must collect the levy on behalf of the Crown.
- “(4) Section 28 (which provides a penalty for late payment of a levy) does not apply in respect of the levy.” 15
- 6 Section 26 repealed (Rebates)**  
Repeal section 26.
- 7 Section 29 replaced (Recovery of levies)**  
Replace section 29 with:
- “29 Recovery of levies 20**
- All money payable to the Secretary or the New Zealand Customs Service under this Part is—
- “(a) a debt due to the Crown; and
- “(b) recoverable by the Crown in a court of competent jurisdiction.” 25
- 8 Section 30 amended (Payment into Departmental Bank Account)**
- (1) Replace the heading to section 30 with “**Payment of levy into account**”.
- (2) In section 30, insert as subsection (2): 30
- “(2) All money received by the New Zealand Customs Service under **section 24** must be paid into a Crown Bank Account.”

**9 Section 33 replaced (Rates of levies, etc, may be prescribed)**

Replace section 33 with:

**“33 Regulations prescribing levy rates**

“(1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations prescribing, for levies that are payable under this Part,— 5

“(a) amounts or rates of the levies; or

“(b) formulas for calculating amounts or rates of the levies.

“(2) However, an amount or rate prescribed, or calculated using a prescribed formula, must not exceed any maximum amount or rate set out in this Part. 10

“(3) Before recommending that regulations be made under this section, the Minister must consult persons or organisations considered by the Minister to represent the persons affected by the levy concerned. 15

“(4) Regulations made under **subsection (1)**,—

“(a) if made on or before 30 June in any year, expire on the close of 31 December of that year unless they are expressly confirmed by an Act of Parliament passed during that year; and 20

“(b) if made on or after 1 July in any year, expire on the close of 31 December in the following year unless they are expressly confirmed by an Act of Parliament passed before the end of that following year.” 25



**Part 2**  
**Amendments to Part 4 (Miscellaneous provisions)**

**10 Section 35 amended (Regulations)**

- (1) Replace the heading to section 35 with “**Other regulations**” 5
  - (2) After section 35(1)(f), insert:
    - “(fa) prescribing, in respect of the levy that is payable under **section 24**, the types of petroleum or engine fuels for which the levy is payable:”.
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