

Legislative Statement: Sustainable Biofuel Obligation Bill

Purpose

This legislative statement supports the First Reading of the Sustainable Biofuel Obligation Bill **(the Bill)**.

The Bill introduces an obligation for any entity that imports or refines more than 50,000 litres of liquid fossil fuels for transport in New Zealand to reduce the greenhouse gas (GHG) emissions of their fuel supply by also supplying sustainable biofuels.

The purpose of the Bill is to reduce GHG emissions from New Zealand's transport system. It will play an important role in meeting the emissions budgets under the Climate Change Response Act 2022 (CCRA).

Background

In December 2020, Cabinet agreed to progress a biofuels mandate (now referred to as the Sustainable Biofuel Obligation). This acknowledged the role of biofuels could play at reducing emissions from the existing internal combustion engine vehicle fleet and the pace of decarbonisation needed to achieve New Zealand climate commitments.

In November 2021, Cabinet agreed on the final policy design of the Obligation following public consultation.

The Bill will make a significant contribution to the quantified emissions reductions set out in the Government's Emissions Reduction Plan (ERP). Within the first emissions budget period (2022 – 2025), the Obligation is expected to result in a reduction of around 1 MtCO_{2e}, with reductions of approximately 3 MtCO_{2e} and 4.4 MtCO_{2e} for the second (2026 – 2030) and third (2031 – 2025) emissions budget periods respectively.

Key features of the Bill

The main features of the Bill are:

1. The imposition of a biofuel obligation, which is:
 - i. based on reducing the GHG emissions intensity of transport fuels in New Zealand and applies to all transport fuels except aviation fuel.
 - ii. sets emissions intensity reduction targets for 2024, and 2025
 - iii. sets provisional emissions intensity reduction targets for 2026 to 2035.
2. Regulation-making power for the responsible Minister to recommend regulations to determine the eligibility of different biofuels based on their sustainability.

The imposition of a biofuel obligation based on reducing the GHG emissions intensity of transport fuels in New Zealand

The Bill introduces an obligation for entity that imports or refines more than 50,000 litres of liquid fossil fuels for transport in New Zealand to reduce the greenhouse gas (GHG) emissions of their

fuel supply by also supplying sustainable biofuels. Aviation fuels are excluded from the obligation.

Each year a fuel supplier would have to demonstrate that the percentage emissions reduction it achieved, across its fuels, is at least equal to, or higher than, the required percentage (outlined below). The targets in the Obligation are emissions intensity reduction targets.

The emissions intensity reduction achieved by an obliged person would be calculated by comparing the annual emissions of its fuel supply (fossil and biofuels) against the hypothetical emissions, if all its fuel supplied had been fossil fuels.¹

In other words, the approach to calculation in a simplified form would be:

$$\text{Reduction} = \frac{\text{Emissions if all supplier's fuels were fossil} - \text{Emissions of supplier's fuel blends (biofuels + fossil fuels)}}{\text{Emissions if all supplier's fuels were fossil}}$$

The Bill also allows for regulations to be made to prescribe methodologies for calculating the emissions intensity factors of different fuels. These factors are critical inputs for determining the emissions reductions achieved through the deployment of a given volume of biofuel. Each biofuel has a different emissions reduction potential.

Methodologies prescribed by the regulations must be based on lifecycle emissions analysis. This assesses the impact of greenhouse gas emissions from a fuel's total supply chain (often referred to as from 'well to wheel' for fossil fuels, or 'field to wheel' for biofuels). Factors unique to the biofuel's supply chain, such as land use change and the use of petrochemicals, can significantly impact net greenhouse gas emissions if they are poorly managed.

Using such a methodology creates incentives for the obliged persons to utilise biofuels that minimise emissions, and environmental impacts across their entire supply chain.

Emissions intensity reduction targets

The Bill sets out the following emissions intensity reduction targets in Schedule 2:

Year	Emissions intensity reduction
2024	2.4%
2025	3.5%

The Bill sets out provisional emissions intensity reduction targets in Schedule 2. They are:

Year	Emissions intensity reduction
2026	3.8%
2027	4.1%
2028	4.4%
2029	4.7%

¹ To make this comparison, the energy content (MJ) of the actual liquid fuel supply and the hypothetical fuel supply (all fossil fuels) must be equal.

2030	5.0%
2031	5.8%
2032	6.6%
2033	7.4%
2034	8.2%
2035	9.0%

The targets from 2026 onwards can be considered as provisional. Fuel suppliers have stressed the need for certainty about the longer-term reduction targets out to 2035 to facilitate their planning, particularly infrastructure investment.

The Bill requires the Minister to review the provisional emissions intensity reduction percentages in 2024 and 2029 (before new emissions budget periods in the CCRA).

This review will assess whether the high-level targets under the obligation have been appropriately set. The key considerations will be how the GHG emissions reductions achieved by the obligation are balanced against the economic cost, and whether the targets can be met through the supply of genuinely sustainable biofuels.

The Minister will recommend regulations to determine the eligibility of different biofuels based on their sustainability

The Bill requires that biofuels used to meet the obligation are ‘sustainable’ biofuels. The Bill empowers the Minister to recommend regulations that prescribe what biofuels are sustainable. The regulations may provide this by reference to specified criteria, methodologies, standards, and certification requirements.

In addition, the regulations may place limits on the extent to which a particular type of biofuel can be used to meet the obligation.

When recommending these regulations, the Bill requires the Minister to be satisfied about some of the criteria and to have regard to others. Specifically, the Minister must be satisfied that both biofuels and feedstocks:

- i. are not likely to have a significant adverse effect on biodiversity;
- ii. are not likely to lead to the deforestation of native forests or canopy forests or the destruction of wetlands or peatland;
- iii. are not likely to adversely impact food and feed security;
- iv. are not likely to have a significant adverse impact on water quality or significantly restrict its availability in an area;
- v. are not likely to be associated with a high risk of indirect land use change.

The Minister must also have regard to:

- i. the impacts on soil carbon of any activities that are associated with the cultivation, production and processing of feedstocks;
- ii. the principles of the waste hierarchy.

These criteria ensure that the key sustainability considerations regarding the production and use of any given biofuel are considered when a biofuel is determined as sustainable under the regulations.

Allowing regulations to prescribe biofuel as sustainable if made from particular waste or residue feedstocks

The Bill allows for regulations to define feedstocks which are wastes or residues. Classifying a feedstock as a waste or a residue, is important because it has implications for how the biofuel will be treated in the life cycle analysis, and whether upstream GHG emissions should be allocated to it. Only fuels derived from biological waste or residues will be eligible under the Obligation.

Other features of the Bill

The Bill also establishes other matters for the obligation's implementation and administration, including:

1. The Environmental Protection Authority to be the regulator, and its powers to monitor and enforce the new requirements.
2. A pecuniary penalty regime when an obliged person does not achieve its biofuel obligation.
3. A requirement for obliged persons to report on their achievement of the emissions intensity reduction percentage annually.
4. Flexibility measures to allow obliged persons to bank, borrow, or trade emissions reductions to meet the targets under the obligation.

The Environmental Protection Authority as the regulator

The Environmental Protection Authority (EPA) will be the regulator of the obligation. Its functions are to receive information provided by obliged persons; monitor compliance and take action to enforce where necessary; and to publish information about whether the obliged persons have met their biofuel obligation.

A civil pecuniary penalty regime

The Bill provides for the EPA to apply to the High Court to impose a civil pecuniary penalty on an obliged person. The pecuniary penalty is \$800 per tonne of carbon dioxide equivalent emissions that have not been achieved. The High Court can reduce the penalty (including to zero).

The EPA may also accept an undertaking by an obliged person to pay to the EPA an amount in lieu of a civil pecuniary penalty.

A requirement for obliged persons to report

Obliged persons must provide an annual report within four months after the end of each year to set out whether and how they have achieved their biofuel obligation. The report must be audited by an approved person.

Flexibility mechanisms

The Bill provides for flexibility mechanisms that allow obliged persons to:

- trade emissions reductions between obliged persons,
- bank excess emissions reductions that have been achieved into the next year,
- borrow up to 10 percent of emissions reductions from the next year, or
- apply to the Minister to borrow up to 20 percent of emissions reductions from the next year (the Minister must have regard to certain factors when making a decision).

These mechanisms assist the obligated parties to more easily manage small deficits or surpluses in their achievement of the emissions intensity reductions and smooth the cost of meeting the obligation between years.