

In Confidence

Office of the Minister of Transport

Chair, Cabinet Legislation Committee

Land Transport Management (Regional Fuel Tax) Amendment Bill: Approval for Introduction

Proposal

- 1 I propose that the Cabinet Legislation Committee (LEG) approve the introduction of the Land Transport Management (Regional Fuel Tax) Amendment Bill (the Bill).

Executive Summary

- 2 The Bill proposes to introduce a mechanism under which regional fuel taxes can be established to provide a way for regions to fund transport infrastructure programmes that would otherwise be delayed or not funded. The revenue from a regional fuel tax is to go to the regional council (or unitary council) (council) responsible for the region where the taxed fuel is delivered for sale or consumption.
- 3 The Bill amends the Land Transport Management Act 2003 (the LTMA) and provides a process for establishing a regional fuel tax that includes:
 - 3.1 a council making a proposal that sets out the proposed tax rate, the duration of the tax, the transport programme and projects that the tax will fund, and how the proposal contributes to the relevant regional transport plan, the relevant Government Policy Statement on land transport, and any other relevant document agreed by the Minister of Finance and the Minister of Transport (joint Ministers) which sets out transport priorities for the region
 - 3.2 a council consulting the community before finalising a proposal
 - 3.3 a council submitting its proposal to joint Ministers
 - 3.4 joint Ministers rejecting or accepting the proposal, and if accepting it, the Ministers recommending an Order in Council be made by the Governor-General to implement a regional fuel tax in that region.

Policy

4 The Bill implements the following policy decisions relating to the introduction of a regional fuel tax agreed to by the Cabinet Business Committee [CAB-17-MIN-0088 and CAB-17-MIN-0565 refer]:

4.1 The regional fuel tax is to:

- apply to petrol and diesel and excludes compressed natural gas (CNG) and liquefied petroleum gas (LPG)
- be collected at the distribution level (meaning the point where fuel is supplied by a distributor and includes both service stations and commercial storage facilities, such as those on farms)
- be used toward the funding of capital expenditure, associated debt repayment and operational expenditure when it is associated with the delivery of a package or programme of projects
- have a maximum rate of 10 cents
- have a maximum initial duration of 19 years
- apply initially only to the Auckland region, with joint Ministers able to make recommendations that a regional fuel tax apply to the other regions from 1 January 2021 provided they follow the processes set out in the Bill
- have similar exclusions to those relating to the Local Authorities Fuel Tax provisions in the Local Government Act 1974
- allow for rebates consistent with those available for fuel excise duty for off-road use of both petrol and diesel
- be subject to goods and services tax on payments made by fuel distributors.

4.2 Joint Ministers may:

- accept or reject a proposal from a council under a broad discretion
- review the regional fuel tax at any time.

4.3 The New Zealand Transport Agency has:

- administrative, monitoring and enforcement functions including collecting the tax and processing refunds
- the power to charge on-going costs associated with administering the regional fuel tax scheme against the tax revenue from it.

Council must review the regional fuel tax scheme before proposing to extend or replace it

5 I seek an amendment to the Cabinet Business Committee Minute [paragraph 8.2 of CAB-17-MIN-0088] where it was agreed that the legislation specify:

5.1 a mandatory review before the end of the 10 year period to determine whether it should expire or be renewed.

6 Transport officials advise that requiring a council to review a regional fuel tax scheme prior to its expiry in all circumstances imposes unnecessary costs on councils which are comfortable for the scheme to end on the expiry date. Review is only necessary if the council proposes to extend the scheme beyond 10 years, or replace it.

7 I seek LEG's approval for the Bill to instead state that there is a requirement on councils to review a regional fuel tax scheme for its region before preparing a proposal:

7.1 to replace a regional fuel tax scheme

7.2 to vary the regional fuel tax scheme to change its end date to a date later than 10 years after its original start date.

Offences and penalties

8 The Bill proposes to include offences and penalties that were not considered when Cabinet agreed to the policy decisions above.

9 Following advice received from transport officials, I seek LEG's approval:

9.1 to make it an offence when a person knowingly or recklessly:

- refuses or fails to file a monthly return
- refuses or fails to provide information requested by the New Zealand Transport Agency relevant to the administration or enforcement of regional fuel tax
- provides information that is false or misleading to the New Zealand Transport Agency
- produces false records or information
- refuses or fails to pay any regional fuel tax payable by the person
- evades the payment of any regional fuel tax
- refuses or fails to keep accounts or records required to be kept
- makes a false or misleading statement in an application for a regional fuel tax rebate

- 9.2 that a person who commits an offence in accordance with paragraph 9.1 is liable on conviction to a fine not exceeding \$15,000, or in the case of body corporate to a fine not exceeding \$75,000
- 9.3 that despite section 25(2)(b) of the Criminal Procedure Act 2011¹, a charging document may be laid at any time within 3 years after the date on which the offence was committed.
- 10 The proposed offences and penalties are consistent with similar offences already contained in transport legislation relating to road user charges.²
- 11 Transport officials advise that the proposed three year limitation period is justified on the grounds that it may take some time after an offence has been committed for that offence to be identified and then brought to prosecution. The proposed limitation period is also consistent with an existing limitation period for fuel excise prosecutions under section 43 of the LTMA.
- 12 The New Zealand Transport Agency and the Ministry of Justice have been consulted and are comfortable with the proposed offences and penalties included in the Bill.

Inspection powers

- 13 I wish to notify LEG that the Bill proposes to include a power to issue search warrants in certain circumstances.
- 14 The Bill states that an issuing officer³ may issue a search warrant in relation to a place, vehicle or other thing if, on an application made by an enforcement officer⁴, he or she is satisfied that there are reasonable grounds –
- 14.1 to suspect that an offence as set out in the Bill has been, is being, or will be committed
- 14.2 to believe that the search will find evidential material in respect of the offence in the place, vehicle, or other thing.
- 15 I propose the power be included in the Bill as there are similar powers in transport legislation relating to road user charges.⁵ Transport officials advise that the Bill does extend the power beyond the road user charges legislation to allow an enforcement

¹ As the proposed penalty amount listed at paragraph 9.1 is greater than \$7,500 but does not exceed \$20,000 – a charging document is required to be filed within 12 months after the date on which the offence was committed.

² Section 66 of the Road User Charges Act 2012.

³ Defined in section 3 of the Search and Surveillance Act 2012 as (a) a Judge or (b) a person, such as a Justice of the Peace, Community Magistrate, Registrar, or Deputy Registrar, who is for the time being authorised to act as an issuing officer under section 108 of that Act.

⁴ Appointed by the New Zealand Transport Agency under section 208(3) of the Land Transport Act 1998.

⁵ A constable may apply for a search warrant under section 79 of the Road User Charges Act 2012.

officer appointed by the New Zealand Transport Agency to make an application for a search warrant. The power is appropriately constrained to the functions to be carried out by the New Zealand Transport Agency as set out in the Bill and on balance is justified due to the level and nature of offending that may occur under a regional fuel tax scheme.

- 16 The proposed power is also consistent with the majority of the search and surveillance guidance set out in the *LAC Guidelines on the Process and Content of Legislation (2014 edition)* maintained by the Legislation Design and Advisory Committee (the Guidelines).

Matters likely to be contentious

- 17 Some members of the public may see the imposition of additional costs on vehicle users as undesirable. Industry stakeholders have been involved in the policy development process and are generally supportive, with the exception of the Road Transport Forum, which represents the trucking industry. The proposed offences and penalties listed above at paragraph 9 have not been tested with stakeholders.

Need for legislation

- 18 The Bill is required to give effect to the policy decisions outlined above because it requires changes to the LTMA.

Impact analysis

- 19 A regulatory impact analysis was prepared by the Ministry of Transport and submitted at the same time the approvals for the policy relating to the Bill were sought.
- 20 The Regulatory Quality Team at the Treasury reviewed the regulatory impact analysis and considered that it met the Quality Assurance criteria.
- 21 The regulatory impact analysis shows that alternative options were carefully considered, an indicative cost benefit analysis had been undertaken, implementation risks identified, a reasonable approach proposed to mitigate risks, and key stakeholders' views considered.

Compliance

- 22 The Bill complies with each of the following:

22.1 the principles of the Treaty of Waitangi

22.2 the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993

22.3 the disclosure statement requirements (disclosure statement has been prepared and is attached to the paper)

22.4 the principles and guidelines set out in the Privacy Act 1993

22.5 relevant international standards and obligations.

23 The Bill complies with the majority of the Guidelines maintained by the Legislation Design and Advisory Committee (LDAC) but does allow:

23.1 the 10 cent maximum rate as specified in the Bill to be adjusted (either increased or decreased) by Order in Council. The Guidelines state that the power to set the maximum rate of regional fuel tax in delegated legislation is a matter more appropriate for primary legislation and departs from chapter 13.1 of the Guidelines. The power is also inconsistent with chapter 13.5 of the Guidelines, which states that delegated legislation should rarely, if ever, override, suspend or amend primary legislation.

- There are safeguards in place should this power to adjust the maximum rate be used. The Bill is drafted so that an Order in Council will be subject to confirmation by Parliament through the annual confirmation process. This approach is similar to the way road user charges and fuel excise duty are set.

23.2 the definition of 'exempt use' to be amended by regulation. This power is partially inconsistent with chapter 14 of the Guidelines, which relates to granting powers of exemption.

- Transport officials advise that flexibility is preferred to future-proof the legislation should changes in technology or the fuel sector mean that it becomes appropriate for the definition of 'exempt use' be broadened. Broadening the definition will bring the benefit of reducing the compliance costs of those who would otherwise be required to claim rebates. The criteria for the exercise of the power has also been limited to fuel which is used on roads other than a public road, consistent with the underlying policy of the Bill that road users should pay for transport investment.

Consultation

24 The following Government departments and agencies have been consulted on the relevant parts of the Bill and their comments incorporated: The Treasury, Department of Internal Affairs, Ministry of Business, Innovation and Employment, Inland Revenue, the Office of the Privacy Commissioner and the New Zealand Transport Agency.

25 The Department of the Prime Minister and Cabinet has been informed.

26 The LDAC has been consulted on this paper, but were unable to give any detailed consideration of the Bill in the time available. LDAC advise that this should not been seen as an engagement on the proposal itself.

27 Consultation has also been carried out with key stakeholders during the policy development process including: Auckland Council, the fuel companies and distributors⁶, representative road user groups⁷ and off-road user groups.⁸

28 Fuel companies would generally prefer that the cost of fuel not be increased, but have indicated that they expect to be ready to comply with their regional fuel tax obligations from 1 July 2018. The Road Transport Forum is strongly opposed to the introduction of a regional fuel tax. The New Zealand Automobile Association is concerned about the revenue being used appropriately. Other road user groups have welcomed the ability to claim rebates where fuel is used off-road.

29 Consultation has been carried out with caucus, New Zealand First, and the Green Party. No concerns were raised.

Binding on the Crown

30 The Bill amends the LTMA, which binds the Crown.

31 The Bill will not create any new agencies and will not amend the existing coverage of the Ombudsman Act 1975, the Official Information Act 1982, or the Local Government Official Information and Meetings Act 1987.

Allocation of decision-making powers

32 The Bill allocates decision-making powers between the executive and the courts. The Bill allocates functions and powers to the New Zealand Transport Agency and the Auditor General.

Associated regulations

33 The Bill includes transitional provisions that will provide for an Order in Council to implement a regional fuel tax for Auckland with an in force date of 1 July 2018. An exemption from the 28-day rule will be sought.

34 The Bill includes prerequisites for the Order in Council including consultation with specified persons and makes it clear that those prerequisites can be met before the Bill comes into force.

35 Regulations will also be required to allow for rebates consistent with those available for fuel excise duty for off-road use in both petrol and diesel vehicles. The regulations will have a commencement date of 1 July 2018 and will seek approval for an exemption from the 28-day rule.

⁶

s9(2)(ba)(ii) of the OIA

⁷ Road Transport Forum, New Zealand Automobile Association, Bus and Coach Association.

⁸ Federated Farmers, Horticulture New Zealand, Civil Contractors New Zealand.

36 Other than consequential amendments, no other regulations are likely to be required.

Other instruments

37 Not applicable.

Definition of Minister/department

38 The Bill does not contain definitions of a Minister, department, an agency, or a chief executive. These definitions are already contained in the LTMA.

Commencement of legislation

39 The transitional provisions in the Bill provide that the power to establish, replace, or vary a regional fuel tax will apply initially only to the region of Auckland, with the application extending to the rest of New Zealand on 1 January 2021.

40 The remaining provisions in the Bill are expected to come into force on the day after the date of Royal assent.

Parliamentary stages

41 I expect to introduce the Bill during the week of 26 March 2018 with the intention that it is passed, if possible, before 1 July 2018.

42 To achieve this timeline, I will seek the House of Representative's approval for the Bill to be considered by the Transport and Infrastructure Select Committee, and be reported back in a period less than the usual 6 months.

43 I am the responsible Minister.

Recommendations

44 I recommend that the Cabinet Legislation Committee:

- 1 **note** that the Land Transport Management (Regional Fuel Tax) Amendment Bill (the Bill) holds a category 2 priority (must be passed in the year) on the 2018 Legislation Programme
- 2 **note** that it is desirable for the Bill to be in force by 1 July 2018 and I will seek approval from the House of Representatives for a shortened select committee process to achieve this
- 3 **note** that the Bill will provide a process for establishing a regional fuel tax that is intended to provide an additional way for regions to fund transport infrastructure programmes that would otherwise be delayed or not funded
- 4 **approve** that paragraph 8.2 of the Cabinet Business Committee Minute [CAB-17-MIN-0088] be replaced with the following:

- 4.1 that there is a requirement on regional councils to review a regional fuel tax scheme for its region before preparing a proposal:
- to replace a regional fuel tax scheme
 - to vary the regional fuel tax scheme to change its end date to a date later than 10 years after its original start date
- 5 **approve** that the following offences and penalties be included in the Bill:
- 5.1 to make it an offence when a person knowingly or recklessly:
- refuses or fails to file a monthly return
 - refuses or fails to provide information requested by the New Zealand Transport Agency relevant to the administration or enforcement of regional fuel tax
 - provides information that is false or misleading to the New Zealand Transport Agency
 - produces false records or information
 - refuses or fails to pay any regional fuel tax payable by the person
 - evades the payment of any regional fuel tax
 - refuses or fails to keep accounts or records required to be kept
 - makes a false or misleading statement in an application for a regional fuel tax rebate
- 5.2 that a person who commits an offence in accordance with recommendation 5.1:
- is liable on conviction to a fine not exceeding \$15,000 or in the case of body corporate to a fine not exceeding \$75,000
 - that despite section 25(2)(b) of the Criminal Procedure Act 2011, a charging document may be laid at any time within 3 years after the date on which the offence was committed
- 6 **approve** the Bill for introduction, subject to the final approval of Government caucuses and sufficient support in the House of Representatives
- 7 **agree** that the Bill be introduced during the week of 26 March 2018
- 8 **agree** that the Government propose that the Bill be:
- 8.1 referred to the Transport and Infrastructure Committee for consideration

8.2 enacted on the day after the date of Royal assent.

Authorised for lodgement

Hon Phil Twyford

Minister of Transport

RELEASED UNDER THE
OFFICIAL INFORMATION ACT