



Office of Hon Phil Twyford
1 MAR 2018
received

LAND TRANSPORT MANAGEMENT (REGIONAL FUEL TAX) AMENDMENT BILL – APPROVAL TO INTRODUCE

Reason for this briefing	The attached Cabinet paper seeks the Cabinet Legislation Committee's (LEG) approval to: <ul style="list-style-type: none"> include specified offences and penalties in the Land Transport Management (Regional Fuel Tax) Amendment Bill (the Bill) introduce the Bill.
Action required	Sign the attached Cabinet paper.
Deadline	10.00am, Thursday 15 March 2018.
Reason for deadline	To be considered by LEG on Thursday 22 March 2018, the attached paper needs to be lodged with the Cabinet Office by 10.00am on Thursday 15 March 2018.

Contact for telephone discussion (if required)

Name	Position	Telephone	First contact
Marian Willberg	Manager, Demand Management	[REDACTED]	✓
David Bowden	Chief Legal Adviser	[REDACTED]	
[REDACTED]	Senior Solicitor	[REDACTED]	(Legal issues)

MINISTER'S COMMENTS:

s9(2)(a) of the OIA.

Date:	1 March 2018	Briefing number:	OC05738
Attention:	Hon Phil Twyford (Minister of Transport)	Security level:	In-confidence

Minister of Transport's office actions

- | | | |
|---------------------------------------|---|--|
| <input type="checkbox"/> Noted | <input type="checkbox"/> Seen | <input type="checkbox"/> Approved |
| <input type="checkbox"/> Needs change | <input type="checkbox"/> Referred to | |
| <input type="checkbox"/> Withdrawn | <input type="checkbox"/> Not seen by Minister | <input type="checkbox"/> Overtaken by events |

Purpose of report

1. This report recommends that you seek agreement from the Cabinet Business Committee (CBC) to:
 - 1.1. include specified offences and penalties in the Land Transport Management (Regional Fuel Tax) Amendment Bill (the Bill)
 - 1.2. introduce the Bill.

Comment

2. The Bill amends the Land Transport Management Act 2003 (the 'LTMA') to implement Cabinet decisions on a regional fuel tax scheme [CAB-17-MIN-0088 and CAB-17-MIN-0565 refer].
3. In summary, the Bill provides a process for establishing a regional fuel tax scheme 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 that region
 - 3.2. a council consulting the community before finalising a proposal
 - 3.3. a council submitting its proposal to the joint Ministers
 - 3.4. joint Ministers rejecting or accepting the proposal, and if it is accepted the Ministers recommending an Order in Council be made by the Governor-General to implement a regional fuel tax in that region.
4. The Bill incorporates the matters discussed in the briefing 'Matters for Decision on the Draft Land Transport Management (Regional Fuel Tax) Amendment Bill 2018' dated 23 February 2018 (GC05655).
5. The Bill is in draft form and is still subject to quality assurance checks and minor technical changes. The Parliamentary Council Office will provide a certified copy of the Bill to the Cabinet Office.

Offences and penalties

6. We propose that offences and penalties for breach of the regional fuel tax provisions be included in the Bill.
7. Should you agree, the Cabinet paper seeks the agreement of LEG to include the proposed offences and penalties in the Bill:
 - 7.1. to make it an offence when a person knowingly or recklessly:
 - 7.1.1. refuses or fails to file a monthly return

- 7.1.2. refuses or fails to provide information requested by the NZ Transport Agency relevant to the administration or enforcement of regional fuel tax
- 7.1.3. provides information that is false or misleading to the NZ Transport Agency
- 7.1.4. refuses or fails to pay any regional fuel tax payable by the person
- 7.1.5. evades the payment of any regional fuel tax
- 7.1.6. produces false records or information when the NZ Transport Agency requires that person to produce for inspection any records or other information that is relevant to the regional fuel tax payable
- 7.1.7. makes a false rebate claim.
- 7.2. that a person who commits an offence in accordance with paragraph 7.1 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.
- 7.3. that despite section 25(2)(b) of the Criminal Procedure Act 2011 (CPA)¹, a charging document may be laid at any time within 3 years after the date on which the offence was committed.
8. The proposed offences and penalties are consistent with similar offences already contained in transport legislation relating to road user charges.²
9. Transport officials advise that the proposed 3-year limitation period is justified on the grounds that collection of the necessary evidence for a prosecution can take several years. The proposed limitation period is also consistent with an existing limitation period for fuel excise prosecutions under section 43 of the LTMA.
10. The NZ Transport Agency and the Ministry of Justice have been consulted and are comfortable with the proposed offences and penalties included in the Bill.

Power to issue search warrant in respect of alleged offence

11. The Bill proposes to include a power to issue search warrants in certain circumstances.
12. 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 a constable or a enforcement officer appointed by the Commissioner of Police, he or she is satisfied that there are reasonable grounds—
- 12.1. to suspect that an offence has been, is being, or will be committed
- 12.2. to believe that the search will find evidential material in respect of the offence in the place, vehicle, or other thing.

¹ As the proposed penalty amount listed at paragraph 7.2 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 at 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.

13. This power is 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').
14. You and the Minister of Finance have been authorised by Cabinet to make final decisions on details that arise during the drafting of the Bill without further reference to Cabinet [CBC-17-MIN-0088 refers].
15. Should you and the Minister of Finance agree, we propose that this power outlined above be included in the Bill as there are similar powers already contained in transport legislation relating to road user charges.⁴ The Bill does extend the power beyond the road user charges legislation that we believe is justified due to the nature and level of offending that could occur under the regional fuel tax scheme.

Letter to Minister of Finance confirming joint decisions

16. We propose that a letter be sent to the Minister of Finance confirming joint decisions relating to the Bill as required by Cabinet [CAB-17-MIN-0088 refers].
17. A draft letter is attached for your consideration and, should you agree, signature.

Bill of Rights matters

18. The Bill is currently undergoing a final check by the Ministry of Justice for compliance with the New Zealand Bill of Rights Act 1990. The Ministry of Justice has not yet confirmed whether the Bill is consistent with that Act. We will update your office once we have been advised.

Additional supporting material

19. We will provide you with supporting information before your attendance at the LEG meeting on Thursday 22 March 2018 and for the subsequent introduction of the Bill. The supporting information will include:
 - 19.1. speaking points for CBC
 - 19.2. background information on the Guidelines and how these relate to the provisions in the Bill
 - 19.3. aide memoire summarising the policy proposals
 - 19.4. media release
 - 19.5. draft questions and answers
 - 19.6. first reading speech.

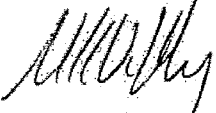
⁴ See section 79 of the Road User Charges Act 2012.

Recommendations

20. The recommendations are that you:

- | | |
|---|--------------------|
| 1. agree that the Land Transport Management (Regional Fuel Tax) Amendment Bill (the Bill) include the following matters as set out in this paper: | Yes/ No |
| • offences and penalties for breach of the regional fuel tax provisions | |
| • the power to issue search warrants in certain circumstances | |
| 2. sign , should you agree, the attached Cabinet paper | Yes/ No |
| 3. agree to lodge the attached paper with the Cabinet Office for consideration by the Cabinet Legislation Committee on Thursday 15 March 2018 | Yes/ No |
| 4. agree to publicly release the final Cabinet paper and accompanying regulatory impact statement following their consideration at the Cabinet Legislation Committee on Thursday 22 March 2018 | Yes/ No |
| 5. sign the attached letter to the Minister of Finance confirming joint decisions relating to the Bill | Yes/ No |
| 6. copy the Cabinet paper and the Bill to the Associate Minister of Transport, Hon Julie Anne Genter | Yes/ No |
| 7. copy the Cabinet paper and the Bill to the Minister of Local Government, Hon Nanaia Mahuta | Yes/ No |


[Redacted]
Senior Solicitor


Marian Willberg
Manager, Demand Management

MINISTER'S SIGNATURE:



DATE: 3.3.18