

In Confidence

Office of the Minister of Transport
Cabinet Legislation Committee

Land Transport Management (Regional Fuel Tax) Amendment Regulations (No 2) 2018

Proposal

- 1 I propose that the Cabinet Legislation Committee (LEG) authorise the submission of the Land Transport Management (Regional Fuel Tax) Amendment Regulations (No 2) 2018 (the Amendment Regulations) to the Executive Council.

Policy

- 2 From 1 July 2018, a 10 cent per litre regional fuel tax was applied to both petrol and diesel distributed within the Auckland region. The purpose of regional fuel tax is to raise revenue from road users for transport projects. A regional fuel tax, like fuel excise duty, is intended to be a 'road tax' on fuel used on-road. As not all fuel is used on-road, exemptions and rebates are provided for in the legislation.
- 3 At my request, the Ministry of Transport (the Ministry) is undertaking work to improve the entitlements for regional fuel tax rebates and fuel excise duty refunds with a target date for completion of this review of 30 June 2019.
- 4 On 20 August 2018, Cabinet agreed that if there were situations where it was obvious that neither fuel excise duty nor regional fuel tax should apply, then the Minister of Transport may bring these to Cabinet, prior to the completion of the review being conducted by the Ministry [DEV-18-MIN-0162, CAB-18-MIN-0399 refers].
- 5 On 7 November 2018, the Cabinet Economic Development Committee (DEV) agreed to extend the eligibility for regional fuel tax rebates or exemptions to [DEV-18-MIN-0254 refer]:
 - 5.1. diesel used for home heating and water heating
 - 5.2. diesel used for electricity generation by non-commercial organisations
 - 5.3. petrol and diesel used in road registered vehicles that are used exclusively or predominately off-road
 - 5.4. petrol and diesel supplied inside a regional fuel tax region but subsequently distributed outside the regional fuel tax region.

6 These matters were confirmed by Cabinet on 12 November 2018 [CAB-18-MIN-0562 refer].

7 The attached Amendment Regulations give effect to these decisions.

Timing and 28-day rule

8 The Amendment Regulations have a proposed in-force date of 21 December 2018. A waiver from the 28-day rule is sought as the Amendment Regulations confer only benefits on the public by allowing members of the public who meet the requirements to claim a regional fuel tax rebate.

Compliance

9 The Amendment Regulations comply with each of the following:

9.1. the principles of the Treaty of Waitangi

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

9.3. the principles and guidelines set out in the Privacy Act 1993

9.4. relevant international standards and obligations

9.5. the *Legislation Guidelines (2018 edition)*, which are maintained by the Legislation Design and Advisory Committee.

10 The relevant empowering provisions to make the Amendment Regulations to enable a rebate or exemption from regional fuel tax paid from the date the regulations come into force are as follows.

10.1. For exemptions, the relevant empowering provision is section 65ZK(1)(b) of the Land Transport Management Act 2003 (LTMA), which is relevant for:

10.1.1. diesel used for home-heating and home water-heating

10.1.2. diesel used for electricity generation by non-commercial organisations.

10.2. For rebates, the relevant empowering provision is section 65ZK(1)(d)(iii) of the LTMA, which is relevant for:

10.2.1. petrol and diesel used in road registered vehicles that are used exclusively or predominately off-road

10.2.2. petrol and diesel supplied inside a regional fuel tax region but subsequently distributed outside the regional fuel tax region.

11 The Amendment Regulations will also enable entitlements to a rebate for regional fuel tax paid since 1 July 2018 for all of the situations identified in paragraphs 5.1 – 5.4. The

relevant empowering provision is section 65ZK(1)(d)(iii) of the LTMA. This is discussed further at paragraphs 15 to 18 below.

Requirements that must be met before making a recommendation to the Governor-General

12 When considering to recommend the making of regulations under section 65ZK(1)(b) of the LTMA, the following requirements must be met before the Minister of Transport may recommend to the Governor-General regulations be made:

12.1. the Minister of Transport is to have regard to the principle that regional fuel tax is intended to be borne only by those who use fuel on public roads

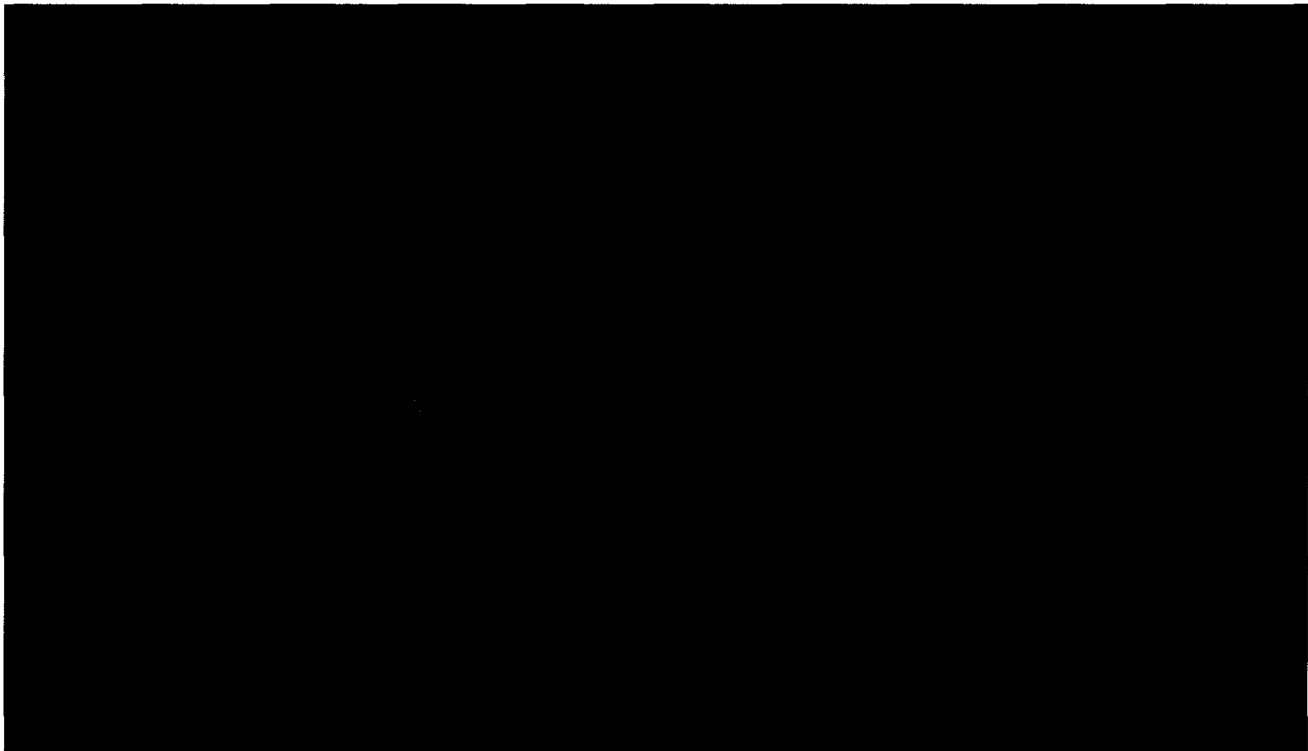
12.2. if the Minister of Transport recommends the making of regulations, the Minister's reasons must be set out in the explanatory note of those regulations.

13 I am satisfied that these requirements have been met.

Regulations Review Committee

Information withheld under section 9(2)(g)(i) of the OIA.

14 There are no grounds for the Regulations Review Committee (RRC) to draw the Amendment Regulations to the attention of the House of Representatives under Standing Order 319. [REDACTED]



Certification by Parliamentary Counsel

Information withheld under section 9(2)(h) of the OIA.

- 19 The Parliamentary Counsel Office has certified the Amendment Regulations as being in order for submission to Cabinet.

Impact analysis

- 20 The Regulatory Quality Team at the Treasury has agreed that no formal separate Regulatory Impact Assessment is required for the policy of the Amendment Regulations since the impact is expected to be minor overall.

Publicity

- 21 The Amendment Regulations will be published in the *New Zealand Gazette*.

Consultation

- 22 The Treasury, Ministry of Business, Innovation and Employment and the NZ Transport Agency have been consulted on the policy. The Department of Prime Minister and Cabinet has been informed.
- 23 Auckland Council has been consulted on the policy proposals and associated costs.

Recommendations

- 24 I recommend that the Cabinet Legislation Committee (LEG):
- 1 **note** that on 12 November 2018, Cabinet agreed to extend the eligibility for regional fuel tax rebates or exemptions to [CAB-18-MIN-0562 refer]:
 - 1.1. diesel used for home heating and water heating
 - 1.2. diesel used for electricity generation by non-commercial organisations
 - 1.3. petrol and diesel used in road registered vehicles that are used exclusively or predominately off-road
 - 1.4. petrol and diesel supplied inside a regional fuel tax region but subsequently distributed outside the regional fuel tax region.
 - 2 **note** that the Land Transport Management (Regional Fuel Tax) Amendment Regulations (No 2) 2018 (Amendment Regulations) give effect to recommendation 1
 - 3 **note** that the relevant empowering provisions to make the Amendment Regulations are:
 - 3.1. section 65ZK(1)(b) of the Land Transport Management Act 2003 (LTMA)
 - 3.2. section 65ZK(1)(d)(iii) of the LTMA.
 - 4 **note** that the following requirements must be met before the Minister of Transport may recommend to the Governor-General regulations be made under section 65ZK(1)(b) of the LTMA:

- 4.1. the Minister of Transport is to have regard to the principle that regional fuel tax is intended to be borne only by those who use fuel on public roads
- 4.2. if the Minister of Transport recommends the making of the Amendment Regulations, the Minister's reasons must be set out in the explanatory note of the Regulations
- 5 **note** my advice to LEG that the requirements at recommendation 4 have been met
- 6 **note** that a waiver of the 28-day rule is sought to enable the Amendment Regulations to come into force on 21 December 2018 as the Amendment Regulations confer only benefits on the public
- 7 **agree** to waive the 28-day rule to enable the Amendment Regulations to come into force on 21 December 2018
- 8 **authorise** the submission of the attached Amendment Regulations to the Executive Council.

Authorised for lodgement

Hon Phil Twyford
Minister of Transport

