

1 February 2017

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Energy Innovation (Electric Vehicles and Other Matters) Amendment Bill

BusinessNZ is pleased to have the opportunity to provide a submission to the Commerce Select Committee on the Bill entitled 'Energy Innovation (Electric Vehicles and Other Matters) Amendment Bill', read for the first time on 8 November 2016.¹

BusinessNZ wishes to appear in front of the Select Committee in support of its submission.

Introduction

BusinessNZ supports policy initiatives that reflect our changing energy sector and environmental imperatives. It is important that the legislative frameworks under which the sector operates are flexible and adaptive to changing circumstances. This is no more important than in the case of the energy sector (power, heat and transport) where rapidly evolving consumer-facing technologies increasingly allow new business models to be unlocked and new consumer choices to be made about how they engage with the sector.

While two of the Bill's proposed amendments are relatively straight-forward (the amendments to the Land Transport Act 1998, Road User Charges Act 2012 and the Electricity Industry Act 2010 [the amendment to clarify legislation insofar as it applies to secondary networks]), the substantive

¹ Background information on BusinessNZ is attached in Appendix One.

amendment – to expand the purpose of three energy levies – is more problematic. It is problematic not because we do not support what EECA is doing, but because the reasons put forward for consumers and businesses to fund EECA’s activities are dubious, at best.

As such, BusinessNZ does not support the expansion of the purposes of any of the existing energy levies covered by the amendment, preferring instead that EECA be predominantly funded from general taxation, as befitting the public good nature of its services.

Recommendations

BusinessNZ **recommends** that:

- **the Select Committee carefully considers the Australian Productivity Commission Report "*Cost Recovery by Government Agencies – Inquiry Report No.15, 16 August 2001*" where the principles that should relate to charging for government-provided services are set out**
- **as the underlying intent of the activities undertaken by the EECA is of a public good nature, the Select Committee should:**
 - i. **reject the amendment to expand the levies funding the EECA; and**
 - ii. **request the Government to fund most of the cost of the EECA’s services from general taxation.**

Without prejudice to the above recommendations:

BusinessNZ **recommends** that:

- **should the Select Committee wish to proceed with the proposed funding approach, it should (at least) require heightened accountability to levy payers by requiring additional reporting elements when the EECA annually consults on the application of the levy funds by amending new clause 6 (new section 129A), and new clause 12 (new section 14A) of the Bill.**

The Bill perpetuates bad public policy

We do not consider that the proposal to fund the EECAs activities from levy funding is appropriate. The consultation process that preceded this Bill was an opportunity to walk potential submitters through a logical rationale of the EECA’s strategic focus, how it intends to achieve that (i.e. its various programmes), how it currently funds what it does, and how it will fund its

new activities (i.e. will it be met from general taxation or other mechanisms, or some mix) and what the most appropriate 'other' mechanisms are.

Submitters were instead provided with a narrow choice of funding mechanisms which excluded the option of greater taxpayer funding. In doing so, the Bill perpetuates bad public policy instigated in the early 2000's with the creation of the electricity efficiency levy. It was clear at that time that the levy was established as an easy means of ensuring that taxpayers avoided picking up the costs of an expanded range of services delivered by the EECA. Unsurprisingly with a further increase in the services the EECA seeks to deliver officials are treading a well-worn path to levy payers.

While administratively straight-forward and convenient, BusinessNZ remains concerned about the continued decision to fund EECA services out of levies rather than general taxation.

The benefits of general taxation (compared with a levy) are worthwhile stating:

- it ensures all taxpayers are required to contribute and signals the strategic priority of the expenditure;
- it would be highly cost effective, as government would be able to use its existing tax revenue collection systems;
- it would be relatively stable and predictable when compared with an levy; and
- funding decisions would be subject to Treasury scrutiny, increasing the EECA's accountability and efficiency.

Determining the Appropriate Funding Mechanism

In terms of the appropriateness of cost recovery mechanisms, the fundamental point to be acknowledged is that this will largely depend on the nature of the good or service provided. Each case has to be determined on its merits. There can well be justification for charging on efficiency grounds but the nature of the charge requires serious consideration to avoid obvious risks such as government simply passing on the costs of inefficiencies (or minimising its own risk through gold-plating).

A number of publications are available which provide in-depth thinking on the appropriateness of charging by government agencies. Probably the best is a report undertaken by the Australian Productivity Commission entitled "Cost Recovery by Government Agencies – Inquiry Report No.15, 16 August 2001". This report (over 600 pages) provides a very good basis for looking at the principles relating to charging for government-provided services.

Cost recovery principles covered in the report include, amongst others:

- cost recovery should be implemented for economic efficiency reasons not merely to raise revenue;
- for regulatory agencies, in principle, the prices of regulated products should incorporate all the costs of bringing the products to market, including the administrative costs of regulation;
- in all cases, cost recovery should not be implemented where it:
 - (a) is not cost effective;
 - (b) would not be consistent with policy objectives; and
 - (c) would unduly stifle competition and industry innovation (for example through “free-rider effects”);
- operational principles for cost recovery include:
 - (a) using fees for service where possible;
 - (b) applying cost recovery to activities, not agencies;
 - (c) not using targets;
 - (d) not using cost recovery to finance other unrelated government objectives; and
 - (e) not using cost recovery to finance policy development, ministerial or parliamentary services, or to meet certain international obligations; and
- design principles for cost recovery include:
 - (a) generally, avoiding cross-subsidies;
 - (b) ensuring transparency and accountability; and
 - (c) undertaking industry consultation.

Discussion on the appropriate funding arrangements for EECA services

If the services in question can be defined as public goods (which include non-rivalry in consumption and non-excludability), they are generally best funded out of general taxation. With private goods (where the benefits and costs are largely of a private nature, with few externalities or spillovers), clearly the cost should be funded as much as possible by means of user charges. Individuals and businesses will then be encouraged to undertake effective and efficient risk minimisation strategies based on known risks.

Given many of the desired energy efficiency outcomes, it is evident that the services are carried out to protect the wider public interest of the New Zealand economy, its citizens and the environment. The benefit is to all New Zealanders, not just selective (private) groups or particular sectors of the

economy but New Zealand-inc. The emphasis therefore is clearly on energy efficiency activities being a public good. This is especially relevant as the problem definition section of the Departmental Disclosure Statement acknowledges that:

“increasing the use of renewable energy makes better use of *our* abundant natural renewable resources and reduces *our* reliance on fossil fuels, making *us* more resilient to fluctuating (fuel) commodity prices, and contributing to reducing *our* energy-sector emissions. Energy efficiency can also reduce emissions for better environmental and health outcomes.”

These references to “our” and “us” are clearly references to the generic benefits that accrue to *all* New Zealanders.

BusinessNZ raised its concerns in its submission to MBIE on its consultation document entitled “Options for Expanding the Purpose of Existing Energy Levies” released 17 May 2016. There, BusinessNZ expressed concern about MBIE’s decision not to consult on funding via general taxation, particularly as the rationale for this source of funding is sound, with many of the EECA’s activities being of a public good nature. BusinessNZ stands by the comments made at that time.

In the absence of the consideration of taxpayer funding, the problem definition – and solution - is essentially contrived with the MBIE maintaining that *many* of the EECA’s activities fall into the category of industry or club goods (in other words, not public goods).²

However, because of the widely dispersed nature of the benefits – it is simply not possible to exclude people from enjoying the benefits of the services delivered by EECA (for example how do you exclude those who do not pay for services but benefit from the claimed lower overall electricity prices or the benefits of lower emissions?)

MBIE’s perspective is inconsistent with the Treasury Guidelines that state:

“In the case of a club good, *people can be excluded from its benefits at low cost* (unlike a public good), but its use by one person does not detract from its use by another. Club goods are an important example of “near-public” goods. *The key difference is that the ability to exclude implies the feasibility of charging for use.* Charging club members can be an efficient way of recovering costs.”³

(emphasis added)

² Departmental Disclosure Statement, page 13, paragraph 64.

³ Guidelines for Setting Charges in the Public Sector, The Treasury, December 2002, section 3.2.2, page 11.

The very nature of club goods implies that exclusion from the benefits is feasible. However, the practical reality is that it is not possible in the case of the services delivered by the EECA, other than in the broadest possible way.

Not only does the MBIE mistakenly consider that many of the services delivered by the EECA are club goods but it also mistakenly concludes on that basis that levy funding is appropriate for the services delivered by the EECA.⁴ A levy may be appropriate *if* the services delivered by the EECA were club goods (an example of a levy for a club good would be a levy on farmers to pay for the costs of Tb eradication – the group of beneficiaries can be easily determined at relatively low cost). The nature of the services delivered by the EECA essentially requires the levy mechanism to be indiscriminate – essentially *all* energy users - because of the very inability to discriminate between those who will pay and those who benefit.

The Recovery of a Subsidy or Incentive by Levy is Unusual

The EECA was established because it was thought at the time that energy efficiency services were being under-procured and that government intervention by way of an incentive was required to rectify that.

It is true that there are beneficiaries (for example, businesses) that receive services from the EECA but the appropriate test - perhaps the only satisfactory test - of whether a service is being provided for someone's benefit is whether the recipients freely agree to purchase that service at the given price or whether they freely agree to be levied to fund that service.

If there are beneficiaries that can be identified then they should be charged directly – on a fee-for-service basis. This would allow those who receive services from EECA to make informed judgements about the quality and quantity of services provided by it. However, given the initial rationale for government intervention, and the need to provide an incentive to encourage uptake of energy efficiency services, we know that this will not work.

On the other hand, compulsory payments extracted without the consent of those on whom they are levied indicate that the benefits of those levies are being conferred on other parties. Government dictates that make payments mandatory suggest the absence of a first party benefit greater than or equal to the cost.⁵

⁴ Interestingly the reference to which officials point regarding the use of levies for club goods, 'Charging fees for public sector goods and services' published by the Controller and Auditor-General, June 2008, explicitly says that "This guide does not apply to levies or contractual payments." Part 1, page 6, paragraph 1.9.

⁵ For an in-depth discussion on this issue of cost recovery for imposed benefits see "*Assessment of Beneficiaries and Public Good Issues Relating to Cost Recovery for Supply Chain Security and Border Protection*" (Chapter 4, p.18-27) – A paper prepared for the Travel and Trade Industry Coalition by Bryce Wilkinson, Capital Economics Ltd, January 2004.

The proposal to recover the EECA's costs via a levy is akin to saying that while under 13 year olds are provided free GP visits, all GP patients (including the under 13's) will be charged to recover this cost.

BusinessNZ **recommends** that:

- **the Select Committee carefully consider the Australian Productivity Commission Report "*Cost Recovery by Government Agencies – Inquiry Report No.15, 16 August 2001*" where the principles that should relate to charging for government-provided services are set out;**
- **as the underlying intent of the activities undertaken by the EECA is of a public good nature, the Select Committee should:**
 - i. **reject the amendment to expand the levies funding the EECA; and**
 - ii. **request the Government to fund most of the cost of the EECA's services from general taxation.**

If the Levies Amendment Proceeds

Despite (and without prejudice to) the above, the Select Committee may wish to proceed with the amendment to broaden the range and scope of the levies able to be drawn on by the EECA in funding its activities.

If this pathway is chosen by the Select Committee it is important that the extent of transparency and accountability is real. While the explanatory note to the Bill states that consultation will include a draft work programme, which levy will fund each programme, the total amounts for each levy and how the levy was spent, BusinessNZ considers that explaining how the money was spent is a necessary, but not sufficient means to ensure adequate accountability.

An appropriate level of accountability can only be achieved if the EECA accounts to levy payers for any differences between the planned and actual delivery of outputs, and the energy efficiency outcomes that it expects the levy spending to allow them to achieve. This will allow levy payers to make informed judgements of the value for money being generated by the use of the levy funding.

BusinessNZ proposes the following amendment be adopted by the Select Committee:

14A Energy Efficiency and Conservation Authority consultation about request for appropriation

- (1) The EECA must, before submitting a request to the Minister seeking an appropriation of public money for the following year, or any change to an appropriation for the current year, that relates to costs that are intended to be recovered by way of a levy under section 23 or 24, consult about that request with—
 - (a) those persons who are liable to pay the levy; and
 - (b) any other representatives of persons whom the EECA believes to be significantly affected by the levy.
- (2) When consulting with those persons liable to pay the levy, the EECA must include—
 - (a) the forecast spending outturn against the spending activities approved for the previous financial year; and
 - (b) an explanation of any material variances between approved spending and forecast; and
 - (c) the energy efficiency outcomes achieved from the spending; and
 - (d) a statement of the energy efficiency outcomes expected to be achieved in the new financial year.
- (3) The EECA must, at the time when the request is submitted, report to the Minister on the outcome of that consultation

BusinessNZ **recommends** that:

- **should the Select Committee wish to proceed with the proposed funding approach, it should (at least) require heightened accountability to levy payers by requiring additional reporting elements when the EECA annually consults on the application of the levy funds by amending new clause 6 (new section 129A), and new clause 12 (new section 14A) of the Bill.**

Summary

While some of the proposals set out in the amending Bill may be appropriate, the proposal to expand the purpose of three energy levies is not. This weights flexibility and convenience over good public policy and accountability.

The repeated rationale in the Departmental Disclosure Statement for greater flexibility of funding mechanisms rings alarm bells for BusinessNZ. We also remain concerned that the proposed funding arrangements fail to comply with the Government's own departments' (notably the Treasury's) best practice funding policy guidelines, as well as to take account of some of the best thinking coming out of the Australian Productivity Commission. BusinessNZ considers the Select Committee needs to revisit the proposed funding policy in respect to EECA services or risk facing a justified claim of seriously flawed policy development.

Our preference is that the amendment to expand the purpose of three energy levies not proceed, with funding for the public-good type services delivered by the EECA coming instead from general taxation. Should this course of action not be accepted by the Select Committee then it should, at a minimum, require heightened accountability to levy payers by requiring additional reporting elements when the EECA annually consults on the application of the levy funds.

Yours sincerely

A handwritten signature in black ink, appearing to read 'John Carnegie', with a stylized, cursive script.

John Carnegie
Manager, Energy, Environment and Infrastructure
BusinessNZ

APPENDIX ONE: ABOUT BUSINESSNZ

[BusinessNZ](#) is New Zealand's largest business advocacy body, representing:

- Regional business groups [EMA](#), [Business Central](#), [Canterbury Employers' Chamber of Commerce](#), and [Employers Otago Southland](#)
- [Major Companies Group](#) of New Zealand's largest businesses
- [Gold Group](#) of medium sized businesses
- [Affiliated Industries Group](#) of national industry associations
- [ExportNZ](#) representing New Zealand exporting enterprises
- [ManufacturingNZ](#) representing New Zealand manufacturing enterprises
- [Sustainable Business Council](#) of enterprises leading sustainable business practice
- [BusinessNZ Energy Council](#) of enterprises leading sustainable energy production and use
- [Buy NZ Made](#) representing producers, retailers and consumers of New Zealand-made goods

BusinessNZ is able to tap into the views of over 76,000 employers and businesses, ranging from the smallest to the largest and reflecting the make-up of the New Zealand economy.

In addition to advocacy and services for enterprise, BusinessNZ contributes to Government, tripartite working parties and international bodies including the International Labour Organisation ([ILO](#)), the International Organisation of Employers ([IOE](#)) and the Business and Industry Advisory Council ([BIAC](#)) to the Organisation for Economic Cooperation and Development ([OECD](#)).

The BusinessNZ family



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