

Proactive Release

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Listed below are the most commonly used grounds from the OIA.

<u>Section</u>	<u>Description of ground</u>
6(a)	as release would be likely to prejudice the security or defence of New Zealand or the international relations of the New Zealand Government
6(b)	as release would be likely to prejudice the entrusting of information to the Government of New Zealand on a basis of confidence by <ul style="list-style-type: none"> (i) the Government of any other country or any agency of such a Government; or (ii) any international organisation
6(c)	prejudice the maintenance of the law, including the prevention, investigation, and detection of offences, and the right to a fair trial
9(2)(a)	to protect the privacy of natural persons
9(2)(b)(ii)	to protect information where the making available of the information would be likely unreasonably to prejudice the commercial position of the person who supplied or who is the subject of the information
9(2)(ba)(i)	to protect information which is subject to an obligation of confidence or which any person has been or could be compelled to provide under the authority of any enactment, where the making available of the information would be likely to prejudice the supply of similar information, or information from the same source, and it is in the public
9(2)(ba)(ii)	to protect information which is subject to an obligation of confidence or which any person has been or could be compelled to provide under the authority of any enactment, where the making available of the information would be likely otherwise to damage the public interest
9(2)(f)(ii)	to maintain the constitutional conventions for the time being which protect collective and individual ministerial responsibility
9(2)(f)(iv)	to maintain the constitutional conventions for the time being which protect the confidentiality of advice tendered by Ministers of the Crown and officials
9(2)(g)(i)	to maintain the effective conduct of public affairs through the free and frank expression of opinions by or between or to Ministers of the Crown or members of an organisation or officers and employees of any public service agency or organisation in the course of their duty
9(2)(h)	to maintain legal professional privilege
9(2)(i)	to enable a Minister of the Crown or any public service agency or organisation holding the information to carry out, without prejudice or disadvantage, commercial activities
9(2)(j)	to enable a Minister of the Crown or any public service agency or organisation holding the information to carry on, without prejudice or disadvantage, negotiations (including commercial and industrial negotiations)



19 November 2021

OC210934

Hon Michael Wood
Minister of Transport

Action required by:
Monday, 22 November 2021

CLEAN VEHICLES BILL – COVER BRIEFING FOR DRAFT DEPARTMENTAL REPORT

Purpose

Update you on issues arising in the draft Departmental Report for the Land Transport (Clean Vehicles) Bill (the Bill) and respond to questions raised when we met with you on Friday morning.

Key points

- We met with you on Friday morning to discuss issues arising from submissions on the Bill, and where you wanted to consider any changes to current proposals.
- There are options for amending the 2026 and 2027 targets and you indicated you would like to be advised on these. A range of options are presented in this paper, noting that modelling of the impacts of these options on emissions reduction has not been able to be completed in the time available.
- If you choose to change the targets you will need Cabinet agreement to do so. In order for officials to be able to respond meaningfully to the Select Committee on Thursday 25 November, there is some urgency to determining the appetite of Cabinet to contemplate change.
- We suggest you socialise the idea with your colleagues as a first step at the Cabinet meeting on Monday when the *Clean Vehicle Scheme 'Finalising Details'* paper is considered. Then, provide direction to officials so that we can engage with the Committee on this topic on Thursday. Later, once Cabinet has made a formal decision, we can make the change through a Supplementary Order Paper to the Bill.
- We recommend that you legislate the 2024 review of the policy Cabinet has already agreed to. This would help to address concerns around supply, the achievability of targets, and add transparency around the scope of the review.
- There are some other matters to advise you of as well. These comprise the requirement to consult under the regulations, parallel importing of vehicles, adding small vehicles to the Discount, disability vehicles and the definition of a new vehicle.
- The draft Departmental report is attached. We have left some placeholders highlighted in yellow, which we will update subject to your direction on this paper. We

are still finessing the document and will finalise it on Monday before submitting it to the Transport and Infrastructure Select Committee (the Committee) by 5pm.

- We will attend your meeting with transport officials meeting on Monday in order to hear any verbal feedback you have.

Recommendations

We recommend you:

- 1 **note** the attached draft Departmental Report for the Land Transport (Clean Vehicles) Bill
- 2 **note** that we will attend your transport officials meeting on Monday in order to hear any verbal feedback you have
- 3 **agree** to targets for 2026
 - a) keep the 2026 target as proposed by the Bill Yes / No
 - OR** Or
 - b) amend the 2026 targets to levels currently enacted by the EU Yes / No
- 4 **agree** to targets for 2027
 - a) keep the 2027 target as proposed by the Bill Yes / No
 - OR** Or
 - b) agree to set 2027 target at a later stage Yes / No
- 5 **note** that if you agree to recommendation 3B and/or 4B, we suggest you socialise the change with your ministerial colleagues and officials will prepare a Supplementary Order Paper
- 6 **agree** to legislate the 2024 review of the policy, previously agreed to by Cabinet Yes / No
- 7 **agree** to adding a high-level consultation requirement to the regulations Yes / No
- 8 **note** the other matters discussed in the paper.



Jemima de Lacey
**Programme Manager, Environment,
Emissions and Adaption**

Hon Michael Wood
Minister of Transport

19 / 11 / 2021

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- Minister's office to complete:**
- Approved
 - Declined
 - Seen by Minister
 - Not seen by Minister
 - Overtaken by events

Comments

Contacts

Name	Telephone	First contact
Ewan Delany, Manager, Environment, Emissions and Adaptation	s 9(2)(a)	✓
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PROACTIVELY RELEASED BY
 TE MANATU WAKA MINISTRY OF TRANSPORT

CLEAN VEHICLES BILL – COVER BRIEFING FOR DRAFT DEPARTMENTAL REPORT

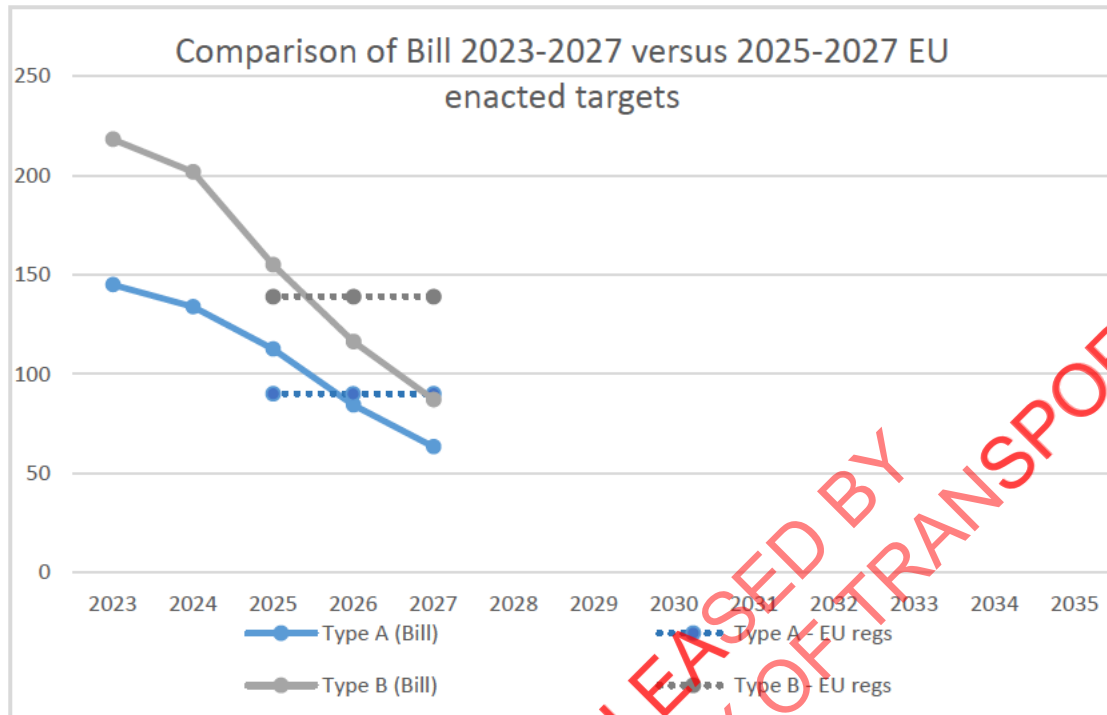
There are some outstanding issues before we can finalise the departmental report

- 1 We met with you on Friday morning to talk through some issues arising through submissions on the Land Transport (Clean Vehicles) Bill (the Bill).
- 2 In order to finalise the Departmental Report, which is due with the Transport and Infrastructure Committee (the Committee) by 5pm on Monday, 22 November 2021 we need your decision on a number of points.

There are options for amending the 2026 and 2027 targets

- 3 At the meeting on Friday you asked officials to advise on what reasonable alternatives to the current targets would be. As you know, many submitters stated that the CO₂ targets were unachievable, and emphasised the 2026 and 2027 as being particularly hard to meet.
- 4 They submit that the supply of sufficient zero emission vehicles to meet the targets cannot happen in this timeframe. On the other hand, submitters also note that New Zealand needs to have legislated targets to drive change and signal to global car makers that we want low and zero emission vehicles.
- 5 Keeping in mind this feedback, we have provided some options below. These options consider the impact of matching the targets that the European Union (EU) has enacted. The EU parliament is considering strengthening those targets.
- 6 The attached draft Departmental Report to the Committee provides several pages of further context on this matter, which we suggest you use to inform your understanding and decision of this matter.

Graph showing targets in the Bill versus what the EU has enacted 2025 to 2027



Type A refers to Passenger cars and SUVs – Type B refers to Commercial vans and utes

s 9(2)(f)(iv)

We don't consider any change in 2025 is needed.

7 The Bill proposes targets that are more relaxed than the current EU regulations, in each of the passenger and commercial categories for 2025. There is little reason to change targets in this year.

For 2026, relaxing the Bill's targets to EU regulations is workable

8 For passenger vehicles, the Bill proposes targets that are slightly stricter (~5g) than current EU regulations. As changing the Bill to match the EU figure would be very minor, it would make very small difference to CO₂ outcomes.

9 For commercial vehicles, the Bill is a fair bit (~25g) stricter than current EU regulations. Changing the Bill to match EU regulations in 2026 would still deliver emission reductions. The CO₂ impact of changing the commercial target for a single year has not been modelled but would be minor.

10 Relaxing the Bill in this way on commercial vehicles would mean the target could be met with about a 60 percent proportion of diesel vehicles rather than 40 percent (the balance being hybrid, plug-in hybrid, or electric). As there is uncertainty with the supply of hybrid and electric utes, relaxing the commercial target to enacted EU

regulations for 2026 has some rationale from an achievability standpoint, and would go some way to address concerns raised by the industry.

- 11 The Ministry intends to indicate setting the 2026 passenger and commercial target to the EU levels in the Departmental Report to Select Committee as one option it could use to address industry concerns.

For 2027, relaxing to EU targets is problematic and it may be better to leave it unstated

- 12 The Bill proposes targets in 2027 that are stricter than enacted EU regulations. For passenger and commercial vehicles, if the Bill is relaxed to match current EU regulations for 2027, there is an issue in that it would offer no improvement over 2026. The EU sets targets for several years at a time as a means of 'flexibility' whereas the Bill provides flexibility through 'borrowing' (earlier overachievement permits later underachievement).
- 13 In 2027, strict targets begin to matter much more in terms of CO₂ abatement, preparing the market for an eventual phase-out of internal combustion engine vehicles.
- 14 By 2027, almost all passenger vehicles, and most commercial vehicles, would have undergone a generational update, allowing for much greater proportions of low and zero emission vehicles. Still, achievability is more certain for the passenger target than for the commercial vehicle target, due to manufacturer progress and the pace of development.
- 15 For passenger vehicles, the 2027 target proposed by the Bill can be met with a mix of 20 percent petrol, 20 percent hybrid, and the balance (60 percent) being plug-in hybrid or electric vehicles. The EU target in 2027 could be met with 30 percent petrol, 30 percent hybrid, and the balance (40 percent) being plug-in hybrid or electric vehicles.
- 16 For commercial vehicles, the 2027 target proposed by the Bill can be met with 25-40 percent of diesel vehicles (the remainder being hybrid, plug-in hybrid, or electric). Retaining the EU regulation in 2027 would still permit about 60 percent diesel share, which is undesirable in terms of carbon reduction ambition.
- 17 The options for 2027 include:
 - 17.1 Keep the existing 2027 target in the Bill.
 - 17.2 Set the 2027 target to the EU target, meaning no improvement over 2026, because the EU targets for 2026 and 2027 are the same.
 - 17.3 Don't set any target for 2027 in the Bill. This means the 2027 target still matches 2026 if no further action is taken but provides flexibility that a stronger 2026 target could be set at a later stage. A small change to the Bill would be recommended to allow the 2027 target to be set by regulation, as currently this is only provided for 2028 and following years.

You need Cabinet approval to change the targets in the Bill

- 18 If you decide to change the targets in the Bill, you need Cabinet approval to do so¹. Due to the tight timeframes for this Bill, we suggest you socialise the question and seek a consensus from Cabinet on Monday, before returning for a formal decision at a Cabinet meeting in December.
- 19 If Cabinet agrees to change the targets we could prepare a Supplementary Order Paper. This will need to be in time for the Committee of the Whole House stage, which is expected to be in late February 2022. Due to the holiday period this timeline is still quite tight.

We recommend legislating the 2024 review agreed by Cabinet

- 20 We previously recommended [OC210914 refers] that the review did not need to be reflected in legislation. After further consideration, including having reference to legislation design and advisory committee (LDAC) guidance, we suggest that legislating the Cabinet agreed 2024 review of the policy would be a helpful way to mitigate submitters concerns about the suitability of the targets for 2026 and 2027. This move could also provide transparency on the timing and scope of the 2024 review.
- 21 We are working through what the final criteria for the review should be in the Bill should be but suggest some high-level criteria below.
- 22 We recommend that the Bill requires the Minister, before 30 June 2024, to begin an initial review of the suitability of the 2026 and 2027 targets. We recommend that the review takes into account the anticipated impact of the targets on vehicle emissions, safety, affordability and availability, and any other matter the Minister considers relevant.
- 23 We also recommend that the review must take into account movement in international standards. This would allow us to set future targets based on any updated or more ambitious targets that countries have set by 2024.
- 24 We recommend that the review be undertaken by any method the Minister considers appropriate, and that the Minister must consult with any person who appears to the Minister to be likely to have an interest in the review.
- 25 A key risk of including the review in legislation is that it imposes requirements on what must be done and by when and creates a risk of review or challenge from any party who does not consider these requirements to have been met. We are satisfied that these risks can be mitigated through running a good review process and should not preclude the review being legislated for.

¹ Cabinet agreed to the current targets, reflected in CAB-21-MIN-0004 and CAB-21-MIN-0316.

Other matters we discussed

We recommend adding a high-level consultation requirement to the regulations

- 26 We also previously recommended [OC210914 refers] that the review did not need to be reflected in legislation. The Ministry now recommends that a way to address concerns raised in submissions on the lack of opportunity for consultation on the regulations is to include a provision requiring the Minister to “consult with such persons as the Minister considers appropriate in each case”.
- 27 This will respond, in part, to submitters request for greater assurance that regulations will be subject to consultation. However, having regard to LDAC guidance and the nature of the content of the regulations, we consider it is appropriate to leave whether to consult, and who to consult, up to the discretion of the Minister. In deciding whether to consult any particular persons, the Minister could consider the extent to which the views of affected persons are already reasonably known, from previous consultation on the policy or through submissions on the Bill for instance.
- 28 The inclusion of a requirement to consult and the decisions the Minister makes in fulfilling this requirement, would be subject to challenge and review.

You asked about whether parallel importing would be possible

- 29 The parallel import of new or near new vehicles from other markets is possible under current legislation. However, it is rare for a private importer to be able to import a new vehicle for and sell it for less than the local manufacturer’s agent in New Zealand can sell the same vehicle. This is because the sale price overseas will include the dealer’s profit margin and shipping cost for small volumes are generally higher.
- 30 Where large scale imports of near new vehicles has occurred, it has been where subsidies effectively reduce a vehicle’s retail price below the wholesale price. For example, until recently Nissan New Zealand did not sell the Leaf electric vehicle as a new vehicle because it was undercut by near-new used vehicles imported from Japan.
- 31 The issue with utes in particular is that there are very limited global supplies of these vehicles. Outside of North America, utes are not as popular as they are in New Zealand and Australia. In 2019 (the last year we have data for) only 6,500 used diesel vehicles were imported, compared to 140,000 used petrol vehicles. This is because Japanese manufacturers largely stopped making light diesel vehicles (including utes) for its domestic market in the 1990s as a result of air quality concerns.
- 32 New diesel utes from Japanese brands are now almost exclusively made in Thailand and not sold in Japan. This means there is only a limited supply of utes and vans, whether new or used, available for purchase in Japan.
- 33 It would be possible to privately import a new vehicle, such as the anticipated plug-in electric Ford Ranger, from the UK or Ireland, but until prices and any rebates are known it is not possible to know if this would be cost effective. We also do not know

how many will be sold in that market as utes are uncommon in the UK and Ireland. More generally, the UK is not seen as a good potential source of used vehicles as the use of salt on the roads during winter means that vehicles corrode rapidly.²

- 34 In theory it would also be possible to import Australian vehicles, but vehicles, and especially used vehicles, generally cost the same or more in Australia, meaning that the addition of shipping costs make the trade uneconomic. There is very limited trade in used vehicles from Australia at present.

s 9(2)(f)(iv)

We will signal our intent to ensure disability vehicles are provided for the in the regulations

- 37 You asked us to ensure that the Departmental Report positively signals your intent that disability vehicles be exempted from provisions that may increase costs for purchasers, such as being excluded from charges under the Clean Vehicle Discount Scheme. The Ministry is open to this revision in the interests of fairness and ensuring a just transition.
- 38 We are advised by the Low Volume Vehicle Technical Association (LVVTA) that most vehicles modified for disability purposes are second-hand vehicles already in New Zealand, and thus do not travel through either the Discount or Standard policy or incur associated charges.
- 39 Furthermore, for the Standard, we do not consider that an exclusion for disability vehicles is likely to be necessary, because most importers will be able to offset or transfer CO₂ credits to avoid charges.
- 40 A more general exclusion could be difficult to implement and monitor as the obligations under the Standard arise at entry certification which is usually before a vehicle has been selected to be modified for a disability purpose.
- 41 We expect to make further revision to this section of the report on Monday to reflect your feedback.

Functionally new vehicles will be classified as new under the legislation (issue raised by VIA)

- 42 You noted that in the Imported Motor Vehicle Industry Association (VIA) submission they asked that the government classify functionally new vehicles as new. These are vehicles that have been driven very few kilometres, for example as demonstration vehicles on a show room floor.

² The need to scrap vehicles up to a decade earlier than NZ on average, as a result of corrosion due to salt, is a key reason why the UK has a much younger vehicle fleet than New Zealand.

- 43 We are aware that because the level of rebates or charges depends in part on whether a vehicle is considered a new or used vehicle it may create incentives to have vehicles reclassified to reduce the level of fees or gain a larger rebate.
- 44 The definitions in the Bill ensure vehicles described by VIA as functionally new, are regarded as such for the purposes of the policy.
- 45 The definition of 'new vehicle' in the Bill is identical to that used in a range of existing transport legislation. The definition of a used vehicle in those other pieces of transport legislation specifies that a used vehicle includes a vehicle that has been used for a purpose not connected with its manufacture or sale. This means that any use in relation to the manufacture or sale of the vehicle does not result in the vehicle being defined as a used vehicle. Adopting this definition will clarify that simply using a vehicle for a demonstration before it is registered does not make it a used vehicle.
- 46 Because most land transport rules that affect vehicle registration allow different (lower) standards for used vehicles than new ones, Waka Kotahi has extensive case law on how 'new and 'used' are defined in practice. This is provided on its website³.

Officials are presenting the Departmental Report to the Committee on Thursday 24 November

- 47 The draft Departmental Report is attached. We have left some placeholders highlighted in yellow, which we will update subject to your direction on this paper. We are still finessing the document and will finalise it on Monday before submitting it to the Committee by 5pm.
- 48 Officials have a 75-minute slot with the Committee on Thursday, 25 November 2021. We will answer questions that the Committee have about the Departmental Report.
- 49 It is important that officials advising the Committee can represent a clear view of the Government's position regarding targets, as we anticipate this will be a key consideration of the Committee.
- 50 Subject to your initial feedback on this paper and the departmental report on Monday, we will work with you and your office on options for reflecting any changes to targets you may wish to make. The Parliamentary Counsel Office then spends the next two weeks making any changes to the Bill that the Committee recommends, and the revision tracked version of the Bill is reviewed by the Committee on Thursday, 9 December 2021.

³ <https://vehicleinspection.nzta.govt.nz/virms/entry-certification/pre-reg-and-vin/vehicle-attributes/vehicle-attributes-definitions#heading2-for-tab1>.