

Proactive Release

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Some information has been withheld on the basis that it would not, if requested under the Official Information Act 1982 (OIA), be released. Where that is the case, the relevant section of the OIA has been noted and no public interest has been identified that would outweigh the reasons for withholding it.

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)



25 February 2022

OC220005

Hon Michael Wood
Minister of Transport

Action required by:
Friday, 4 March 2022

MINISTERIAL DIRECTION TO WAKA KOTAHI TO ADMINISTER REBATES IN ACCORDANCE WITH GOVERNMENT CLEAN VEHICLE POLICY

Purpose

Seeking your agreement to direct Waka Kotahi New Zealand Transport Agency (Waka Kotahi) under section 103 of the Crown Entities Act 2004 to give effect to government policy when administering rebates under the Clean Vehicle Discount Scheme (the Discount scheme). We also seek your agreement to revoke the New Zealand Transport Agency (Additional Functions) Direction 2021 as it is no longer required.

Key points

- On 19 April 2021, Cabinet agreed that from 1 July 2021, rebates would be issued to zero and low emission vehicles as part of the Discount scheme, to be administered by Waka Kotahi [CAB-21-MIN-0128.01 refers].
- Waka Kotahi is currently issuing rebates in accordance with the New Zealand Transport Agency (Additional Functions) Direction 2021, which came into force on 1 July 2021.
- The Land Transport (Clean Vehicles) Amendment Act 2022 (the Clean Vehicles Act) assigns a new function to Waka Kotahi. This is to administer the Clean Vehicle Discount Scheme in accordance with the Land Transport Act 1998, any charges regulations under that Act, and any direction under section 103 of the Crown Entities Act 2004.
- We propose that you give a new section 103 direction to Waka Kotahi to require them to give effect to government policy when it administers rebates under the Discount scheme (Appendix One). The direction will provide Waka Kotahi with a clear mandate to give effect to Cabinet's decisions on eligibility criteria for rebates, and act a formal reference point on which it can base its operational decisions when issuing rebates. We have provided you with a proposed direction.
- We also recommend you revoke the existing New Zealand Transport Agency (Additional Functions) Direction 2021 (Appendix Two). The purpose of the existing direction is to assign a function to Waka Kotahi, which is no longer necessary as the function has been permanently given to Waka Kotahi through the Clean Vehicles Act

2022. Waka Kotahi has been successfully implementing this scheme since 1 July 2021 and we do not expect this direction to materially change how it does that.

- An attached letter to Sir Brian Roche, Chair of Waka Kotahi, informs him of the issuance of this Ministerial Direction and revocation of the 2021 Direction (Appendix Three).
- We ask that you consider this proposed direction by 4 March 2022. This is to give Waka Kotahi sufficient certainty to allow it to prepare for the expanded rebate scheme, which begins on 1 April 2022.

Recommendations

We recommend you:

- 1 **agree** to direct Waka Kotahi, New Zealand Transport Agency under section 103 of the Crown Entities Act 2004 to give effect to government policy in the administration of rebates under the Clean Vehicle Discount Scheme **Yes / No**
- 2 **sign** the enclosed Direction **Yes / No**
- 3 **agree** to revoke the existing New Zealand Transport Agency (Additional Functions) Direction 2021 **Yes / No**
- 4 **sign** the enclosed revocation notice for the New Zealand Transport Agency (Additional Functions) Direction 2021 **Yes / No**
- 5 **sign** the enclosed letter to the Chair of New Zealand Transport Agency confirming you have directed Waka Kotahi to give effect to government policy in the administration of rebates under the Clean Vehicle Discount Scheme and that you have revoked the New Zealand Transport Agency (Additional Functions) Direction 2021 **Yes / No**
- 6 **authorise** the Ministry of Transport to publish a copy of the Direction in the *Gazette* and arrange presentation of a copy of the same Direction to the House of Representatives on your behalf, and to publish a copy of the revocation notice for the New Zealand Transport Agency (Additional Functions) Direction 2021 in the *Gazette* **Yes / No**



Ewan Delany
Manager, Environment, Emissions & Adaptation

24 / 2 / 22



Hon Michael Wood
Minister of Transport

28 / 2 / 2022

- 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)	
Jemima de Lacey, Programme Manager, Environment, Emissions and Adaptation	s 9(2)(a)	✓
Steph Gregor, Solicitor	s 9(2)(a)	
Arif Hasan, Adviser, Environment, Emissions and Adaptation	s 9(2)(a)	

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 TE MANATU WAKA MINISTRY OF TRANSPORT

MINISTERIAL DIRECTION TO WAKA KOTAHI TO ADMINISTER REBATES IN ACCORDANCE WITH GOVERNMENT CLEAN VEHICLE POLICY

Background

Rebates under the Clean Vehicle Discount Scheme

- 1 On 19 April 2021, Cabinet agreed to the Clean Vehicle Discount Scheme with rebates available for zero and low emission vehicles registered for the first time in New Zealand from 1 July 2021, to be administered by Waka Kotahi [CAB-21-MIN-0128.01 refers]

Waka Kotahi has been administering rebates under Additional Functions Direction

- 2 On 20 July 2021 you signed the New Zealand Transport Agency (Additional Functions) Direction 2021 (Additional Functions direction) pursuant to section 95(1)(t) of the Land Transport Management Act 2003 (LTMA) and sections 112 and 115 of the Crown Entities Act 2004 (CEA) to give Waka Kotahi the function of administering the Discount scheme.
- 3 At the time you signed the direction, we advised you that the function of administering the Discount scheme would be added to Waka Kotahi's functions in the LTMA by the Land Transport (Clean Vehicles) Amendment Bill, and at that point the direction would no longer be required [OC210432 refers].
- 4 Upon commencement of the Clean Vehicles Act on 23 February 2022, Waka Kotahi was assigned this statutory function of administering the Discount scheme under section 95(1)(ma) of the LTMA. Although the Additional Functions direction has an expiry date of 30 June 2022, we recommend that you revoke it now as it is no longer required.
- 5 Section 115(3A) of the CEA allows you to revoke a direction by notice in writing to the entity and by publishing that notice in the *Gazette*.
- 6 We have attached a proposed revocation notice as Appendix Two which we recommend you sign and provide to Waka Kotahi alongside their notice that the proposed section 103 direction has been given.
- 7 The attached letter to Sir Brian Roche, Chair of Waka Kotahi, advising of the new Direction, also mentions the revocation of the Additional Functions direction (Appendix Three).

The Clean Vehicles Act assigns Waka Kotahi the function of administering the Discount scheme

- 8 The Clean Vehicles Act received Royal Assent on 22 February 2022 and came into force on 23 February 2022. The Act inserted section 95(1)(ma) into the LTMA which gave Waka Kotahi the following function:

- 8.1 To administer the clean vehicle discount scheme funded under section 9(1E) and (1F) in accordance with this Act, the regulations made under section 167(1)(j) of the Land Transport Act 1998 for the purpose of section 167A of that Act, and any direction under section 103 of the CEA 2004
- 9 A section 103 direction will allow you to outline at a high level the government policy decided by Cabinet that is intended to govern how rebates are to be issued under the Discount scheme.
- 10 Waka Kotahi has been successfully implementing this scheme since 1 July 2021 and we do not expect this direction to materially change how Waka Kotahi administers rebates under the Discount scheme. However, it will provide Waka Kotahi with a clear mandate to give effect to Cabinet's decisions on eligibility criteria for rebates, and a formal reference point on which it can base its operational decisions when issuing rebates.
- 11 The proposed direction is attached as Appendix One.

The proposed section 103 CEA direction

A section 103 CEA direction allows you to direct Waka Kotahi to give effect to government policy

- 12 The government policy you direct Waka Kotahi to give effect to must relate to its functions and objectives.
- 13 The objective of Waka Kotahi under section 94 of the LTMA is to undertake its functions in a way that contributes to an effective, efficient, and safe land transport system in the public interest.
- 14 Waka Kotahi's new function under section 95(1)(ma) of the LTMA is to administer the Discount scheme in accordance with the LTMA, regulations imposing charges under the Discount scheme, and any section 103 CEA direction.
- 15 The government policy in the proposed direction relates to the administration of rebates under the Discount scheme and Waka Kotahi's objectives.

The proposed direction includes core government policy decided by Cabinet

- 16 The proposed direction includes the core government policy relating to issuing rebates as decided by Cabinet. This consists of:
- 16.1 Core eligibility criteria, namely that rebates may only be issued to:
- 16.1.1 new and used light vehicles registered for the first time in New Zealand on or after 1 July 2021 [CAB-21-MIN-0128.01 refers];
 - 16.1.2 Vehicles with a purchase price of less than \$80,000 including GST and on-road costs [CAB-21-MIN-0128.01 refers];
 - 16.1.3 Vehicles with a 3-star safety rating or higher as reported on the Rightcar website [CAB-21-MIN-0186 refers];

- 16.2 That the amount of the rebate is the amount agreed by Cabinet from time to time. This is to future proof the direction, so any adjustments to rebate amounts over time can be implemented without a need to amend this direction;
- 16.3 That the rebate may only last as long as funding is available, and that withheld rebates will not be queued up for later payment [CAB-21-MIN-0128.01 refers];
- 16.4 That carbon dioxide (CO₂) emissions for the purposes of rebates from 1 April 2022 will be determined in accordance with the Land Transport Rule: Vehicle Efficiency and Emissions Data 2022 [CAB-21-MIN-0488.01 refers];
- 16.5 A list of classes of vehicles eligible for the rebate, depending on the date of registration [CAB-21-MIN-0128.01 refers]; and
- 16.6 A list of excluded vehicles not eligible for the rebate scheme [CAB-21-MIN-0128.01 and CAB-21-MIN-0553 refer].

The proposed direction is intended to be long-lasting and not require frequent amendment

- 17 On 1 April 2022, the rebate scheme will expand to include more eligible vehicles than those which are currently eligible. This will require a calculation of CO₂ emissions to assess the amount of rebate available for any given vehicle.
- 18 The proposed direction provides policy direction for both the current (pre-April) rebates and the rebates from 1 April 2022. By including the post-April settings in the proposed direction we can provide Waka Kotahi with certainty about the new system, which will assist its implementation preparation.
- 19 Including all matters in the one direction also avoids the need to amend or revoke the current proposed direction in advance of 1 April 2022.

On matters not addressed in the proposed direction, we still expect Waka Kotahi to give effect of the spirit of the scheme and be consistent with Cabinet direction

- 20 The proposed direction is high level and only includes the core Cabinet policy decisions. There will be aspects of administering the Discount scheme that Waka Kotahi will need to make operational decisions on. This is appropriate as part of its statutory role as administrator of the scheme.
- 21 We expect Waka Kotahi to give effect to the spirit of the scheme and act consistently with relevant Cabinet decisions when making operational decisions about the administration of this scheme.

Legislative authority

- 22 Section 103 of the CEA provides for a Minister to direct a Crown agent to give effect to government policy that relates to the entity's functions and objectives.
- 23 We consider that this direction is consistent with Waka Kotahi's objectives under section 94 of the LTMA and functions under section 95, and section 95(1)(ma) in particular.
- 24 Section 113 of the CEA states that you may not direct a Crown entity in relation to a statutorily independent function or require the performance or non-performance of a

particular act in respect of a particular person or persons. The proposed direction does not conflict with this section.

- 25 Waka Kotahi has been consulted on this direction, which fulfils the requirement for you to consult the relevant entity under section 115(1) of the CEA.
- 26 Section 115 of the CEA requires you, as soon as practicable after giving this direction, to publish it in the *Gazette* and present a copy of it to the House of Representatives.

Next steps

- 27 We ask that you consider signing the enclosed Ministerial Direction by 4 March 2022. This is to give Waka Kotahi sufficient certainty to allow it to prepare for the expanded rebate scheme, which begins on 1 April 2022.
- 28 We are also asking you to sign the revocation notice for the New Zealand Transport Agency (Additional Functions) Direction 2021.
- 29 The enclosed letter to Sir Brian Roche, Chair of Waka Kotahi, informing him of the issuance of this Ministerial Direction and revocation of the 2021 Direction also needs your signature.
- 30 The Ministry will arrange for the publication of the Direction in the *Gazette*, as well as its presentation to the House of Representatives. We ask you to authorise the Ministry to do this on your behalf.
- 31 We ask that you consider this proposed direction by 4 March 2022. This is to give Waka Kotahi sufficient certainty to allow it to prepare for the expanded rebate scheme, which begins on 1 April 2022.

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MINISTRY OF TRANSPORT

Appendix One: Proposed section 103 direction to Waka Kotahi

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**Appendix Two: Proposed revocation notice for New Zealand Transport Agency
Additional Functions) Direction 2021**

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Appendix Three: Proposed letter to Sir Brian Roche, Chair of Waka Kotahi

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