

Departmental Disclosure Statement

Crown Minerals (Petroleum) Amendment Bill

The departmental disclosure statement for a government Bill seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that bill.

It identifies:

- the general policy intent of the Bill and other background policy material;
- some of the key quality assurance products and processes used to develop and test the content of the Bill;
- the presence of certain significant powers or features in the Bill that might be of particular Parliamentary or public interest and warrant an explanation.

This disclosure statement was prepared by the Ministry of Business, Innovation and Employment.

The Ministry of Business, Innovation and Employment certified that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

18 September 2018

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Part One: General Policy Statement

The Crown Minerals (Petroleum) Amendment Bill contains amendments to the Crown Minerals Act 1991 (CMA), administered by the Ministry of Business, Innovation and Employment (MBIE).

The amendments in the Bill give effect to the Government's announcement made on 12 April 2018 relating to offshore petroleum permitting.

The Bill provides that:

- New petroleum prospecting, exploration and mining permits will only be available in the onshore Taranaki region which is defined in the Bill.
- New onshore petroleum exploration permit holders will be able to access conservation land only for minimum impact activities but will still be able to carry out activities below conservation land in accordance with section 57 of the Act.
- Future offshore petroleum mining permits may only be granted as a subsequent right to offshore petroleum exploration permits that existed before commencement of the new law.

The Bill also provides for how existing rights, privileges, applications for permits and legal proceedings (relating to petroleum permits) are affected by the changes to the Act:

- Permits that exist immediately before commencement of the new law will continue to have effect in accordance with the CMA as it was prior to commencement. This means, for example that the holder of a petroleum exploration permit could apply to surrender that permit and exchange it for a petroleum mining permit under section 32 of the Act or apply to extend the land to which it applies to land outside the onshore Taranaki region under section 36 of the Act.
- Existing privileges (which are privileges granted under previous legislation such as the Petroleum Act 1937) will continue to be treated in accordance with the CMA as it was prior to commencement.
- An application that has been lodged or submitted but not determined before the new law commences is deemed to be withdrawn. That application is then deemed to be resubmitted only for land in the onshore Taranaki area and must be determined in accordance with the new law.
- The Bill also provides that existing proceedings between Greymouth Gas Turangi Limited and the Minister of Energy and Resources may continue to be heard, and determined, or settled in accordance with the current law.

Part Two: Background Material and Policy Information

Published reviews or evaluations

2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill?	YES
Block Offer 2018 Release of Information, Minister of Energy and Resources, 5 June 2018: https://www.beehive.govt.nz/feature/block-offer-2018-release-information	

Relevant international treaties

2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?	NO

Regulatory impact analysis

2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?	YES
Proposed changes to the Crown Minerals Act 1991, Ministry of Business, Innovation and Employment. Available from: https://www.mbie.govt.nz/info-services/sectors-industries/natural-resources/oil-and-gas/overview-crown-minerals-act-regime/pdf-document-library/regulatory-impact-statement-proposed-changes-to-the-crown-minerals-amendment-act-1991.pdf	

2.3.1. If so, did the RIA Team in the Treasury provide an independent opinion on the quality of any of these regulatory impact statements?	YES
<p>The Treasury Regulatory Quality Team has reviewed the Regulatory Impact Analysis prepared by the Ministry for Business, Innovation and Employment and considers that the information and analysis summarised in the RIA partially meets the quality assurance criteria.</p> <p>Due to time limitations and analytical constraints arising from Cabinet's previous decisions, MBIE did not consult the petroleum industry and the public on the proposals. As such, it is not possible to be confident that all potential impacts have been identified. The consultation criterion has therefore not been satisfactorily addressed.</p> <p>Within these limitations, however, the RIA comprehensively sets out the current state, how it is expected to develop without further intervention and under different policy scenarios, and explores how and why to what extent the policy options meet the assessment criteria. Limitations and uncertainties in the modelling, and the assumptions used to inform it, are carefully explained.</p> <p>[Note this is comment by Treasury]</p>	

2.3.2. Are there aspects of the policy to be given effect by this Bill that were not addressed by, or that now vary materially from, the policy options analysed in these regulatory impact statements?	NO

Extent of impact analysis available

2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?	NO

2.5. For the policy to be given effect by this Bill, is there analysis available on:	
(a) the size of the potential costs and benefits?	YES
(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?	YES
Yes this is available in the Regulatory Impact Statement referred to in 2.3.	

2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:	
(a) the level of effective compliance or non-compliance with applicable obligations or standards?	YES
(b) the nature and level of regulator effort put into encouraging or securing compliance?	YES
Yes this is available in the Regulatory Impact Statement referred to in 2.3 above.	

Part Three: Testing of Legislative Content

Consistency with New Zealand's international obligations

3.1. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations?

The provisions are consistent with New Zealand's international obligations. The provisions in the Bill apply equally to domestic and international providers.

Consistency with the government's Treaty of Waitangi obligations

3.2. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi?

Limited. The proposals in the Bill are consistent with the principles of the Treaty of Waitangi as they do not affect legislated rights to consult with iwi on the Minerals Programme. However, as no consultation on these policy proposals has been undertaken our obligations under Treaty settlement agreements have not been met.

Consistency with the New Zealand Bill of Rights Act 1990

3.3. Has advice been provided to the Attorney-General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990?	YES
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Advice provided to the Attorney-General by the Ministry of Justice, or a section 7 report of the Attorney-General, is generally expected to be available on the Ministry of Justice's website upon introduction of a Bill. Such advice, or reports, will be accessible on the Ministry's website at <http://www.justice.govt.nz/policy/constitutional-law-and-human-rights/human-rights/bill-of-rights>

Offences, penalties and court jurisdictions

3.4. Does this Bill create, amend, or remove:	
(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?	NO
(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?	NO

Privacy issues

3.5. Does this Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information?	NO
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External consultation

3.6. Has there been any external consultation on the policy to be given effect by this Bill, or on a draft of this Bill?	NO
Cabinet noted on 3 September 2018 that the Bill needed to be passed by the end of September 2018 [CAB-18-MIN-0417 refers]. An implication of the timeframe was that consultation was not able to be undertaken.	

Other testing of proposals

3.7. Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill's provisions are workable and complete?	NO

Part Four: Significant Legislative Features

Compulsory acquisition of private property

4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?	NO

Charges in the nature of a tax

4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?	NO

Retrospective effect

4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?	YES
<p>The Bill has some limited retrospective effect in respect of any applications for Petroleum Permits that have been lodged or submitted, but not determined before commencement of the new law. The Bill provides that these applications will be treated as having been withdrawn. The application is then treated as being re-lodged or resubmitted but only to the extent that it applies to land in the onshore Taranaki region. These applications must then be determined in accordance with the Act as amended by the Bill.</p> <p>This provision clarifies what law should apply to any relevant applications and is necessary to limit the issue of new petroleum permits outside the onshore Taranaki region following commencement.</p>	

Strict liability or reversal of the usual burden of proof for offences

4.4. Does this Bill:	
(a) create or amend a strict or absolute liability offence?	NO
(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?	NO

Civil or criminal immunity

4.5. Does this Bill create or amend a civil or criminal immunity for any person?	NO

Significant decision-making powers

4.6. Does this Bill create or amend a decision-making power to make a determination about a person's rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests?	NO

Powers to make delegated legislation

4.7. Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?	NO
No, but see item 4.8 below.	

4.8. Does this Bill create or amend any other powers to make delegated legislation?	YES
The CMA consultation requirements for changes to a minerals programme will not apply to any change that is consequential to the amendments made to the CMA by the Bill.	

Any other unusual provisions or features

4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?	YES
The Bill provides that an existing proceeding between Greymouth Gas Turangi Limited and the Minister of Energy and Resources (CIV 2018-458-237) may be continued, heard, and determined, or settled, in accordance with the CMA as it is before amendment by this Bill.	

