

Departmental Disclosure Statement

Crown Minerals 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 certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

19 March 2018

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Part One: General Policy Statement

The Crown Minerals Amendment Bill 2018 contains amendments to the Crown Minerals Act 1991 (CMA), administered by the Ministry of Business, Innovation and Employment (MBIE). The policy objective of the bill is to maintain the effectiveness and efficiency of the permitting regime established by the CMA.

The bill –

- provides that minerals programmes are not legislative instruments for the purposes of the Legislation Act 2012 and will continue to not be drafted by the Parliamentary Counsel Office; and
- clarifies that an extension of the duration of a permit cannot be denied as a result of a declaration under section 28A, but an extension to the land area of a permit can be denied as a result of a declaration; and
- clarifies timeframes for notifying revocation of permits; and
- clarifies processes in relation to changes of control of permit participants and makes them more workable; and
- changes processes in relation to changes of control of permit participants that are permit operators; and
- changes the permit classification for authorisations of geophysical surveys on adjacent land; and
- clarifies that an access arrangement is needed for access to Schedule 4 land for minimum impact activities; and
- clarifies which Ministers enter into access arrangements in respect of Crown land and land in the common marine and coastal area; and
- allows delegation of the Minister's powers in relation to licenses granted under the Mining Act 1971; and
- clarifies the applicable royalty calculations for certain permits granted before February 2008; and
- clarifies the public notice and submissions process around changes to be made to a minerals programme that are consequential on changes made by the bill.

The amendments were identified as part of MBIE's regulatory systems work programme, which arises from the chief executive's responsibility for the stewardship of the legislation administered by MBIE under section 32 of the State Sector Act 1988.

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?	NO
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Relevant international treaties

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

2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?	NO
<p>The policy changes agreed to by the former Cabinet were exempt from regulatory impact analysis requirements, being of a minor and/or technical nature.</p> <p>The additional amendment to section 41A of the Crown Minerals Act 1991 has received an exemption from the Treasury and does not require a regulatory impact statement as it is considered that it has only minor localised impacts on business.</p>	

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?	N/A
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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?	N/A
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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?	NO
(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?	NO

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?	NO
<p>In line with the purpose of the Crown Minerals Amendment Bill 2018 — to enhance the effectiveness and efficiency of the permitting regime established by the Crown Minerals Act 1991 — many of the proposed policy changes in the bill are intended to clarify compliance requirements to better reflect commercial realities. Therefore, compliance levels will be a measure of the Bill's effectiveness.</p>	

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?
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MFAT was consulted on the Crown Minerals Amendment Bill 2018. New Zealand's international obligations do not impact on the policies relating to the Crown Minerals Act 1991.
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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?

The proposals are consistent with the principles of the Treaty of Waitangi. The Office of Treaty Settlements was consulted with on the Crown Minerals Amendment Bill 2018.
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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 the introduction of a Bill at: http://www.justice.govt.nz/policy/constitutional-law-and-human-rights/human-rights/bill-of-rights/ .
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Offences, penalties and court jurisdictions

3.4. Does this Bill create, amend, or remove:	
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(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?	YES
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(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?	NO
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Clause 18 create offences. The CMA currently requires a permit participant company to notify the Minister that they have undergone a change of control. However it does not provide for a consequence if this notification requirement is not complied with. The bill provides that this failure would be an offence. The maximum penalty would be \$200,000 for not notifying of a change of control of a Tier 1 permit operator, or \$50,000 for not notifying of a change of control of any other permit participant.
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This makes it an offence for a person to obtain control of a tier 1 permit operator without Ministerial consent. The maximum penalty is \$800,000.
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3.4.1. Was the Ministry of Justice consulted about these provisions?	YES
The Ministry of Justice provided advice on strict liability. The offences are not strict liability offences – a person will have to know, or reasonably ought to know, of a change of control to be liable.	

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?	YES
<p>Departmental consultation on the draft bill has taken place with the Department of Prime Minister and Cabinet, the Ministry for the Environment, the Ministry of Foreign Affairs and Trade, the Department of Conservation, the Ministry of Justice, the Environmental Protection Authority, the Office of Treaty Settlements, and the Treasury.</p> <p>Targeted stakeholder consultation has taken place with the Petroleum Exploration and Production Association of New Zealand (PEPANZ), Straterra, and Greymouth Petroleum on additional amendments in relation to change of control of a permit participant.</p> <p>Stakeholder consultation has not been undertaken at this stage on the remaining proposed amendments to the CMA. This is on the basis that they are consistent with the policy intent of the CMA and considered to be minor.</p>	

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?	YES
Policy details have been tested through targeted consultation with government departments and external stakeholders.	

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
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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
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Retrospective effect

4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?	NO
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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
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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
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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
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4.8. Does this Bill create or amend any other powers to make delegated legislation?	YES
The CMA's 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?	NO
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