Departmental Disclosure Statement

Crown Minerals (Decommissioning and Other Matters) 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.

18 June 2021

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Part One: General Policy Statement

Decommissioning is the process of taking petroleum infrastructure and wells out of service, which may include removing the infrastructure, plugging and abandoning wells, and undertaking necessary site restoration activities.

New Zealand's petroleum sector is maturing and an increasing number of petroleum fields are nearing the end of their economic lives and will soon require decommissioning. The costs of decommissioning activities are substantial and the environmental effects and health and safety risks of failing to decommission can be significant.

In the event of a petroleum company's financial default, there is a risk that the Crown or other third parties will have to carry out and fund decommissioning. The Crown Minerals Act 1991 (CMA) does not currently explicitly provide for petroleum permit and licence holders' decommissioning responsibilities, the length of time for which they are responsible, and the consequences for failing to carry out decommissioning. Existing requirements for decommissioning under the CMA have largely evolved on a case-by-case basis, and are defined in individual permit conditions. Reliance on permit conditions to establish legal and financial responsibility for decommissioning means that the requirements may not necessarily be worded and applied consistently across permit and licence holders and time.

In June 2020, the Government announced proposals to strengthen the petroleum sector's financial and legal responsibility for decommissioning activities, as part of Tranche Two of the Review of the Crown Minerals Act 1991. In April 2021, Cabinet approved additional proposals to further strengthen the provisions.

This Bill introduces a number of new provisions to mitigate the risk to the Crown and other third parties of having to carry out and fund decommissioning. These new provisions include—

- introducing an explicit statutory obligation for all current and future petroleum permit and licence holders to carry out decommissioning activities in accordance with relevant requirements set under other legislation, standard-setting processes, or consents, or, if those requirements do not exist, ensure all wells are plugged and abandoned, and infrastructure is completely removed. The obligation will require all current and future petroleum permit and licence holders to meet the full financial costs of the decommissioning activities; and
- introducing a civil pecuniary penalty and criminal penalty for failing to meet this obligation. The criminal offence will run in parallel with the civil regime and is reserved for the most egregious breaches where the party "knowingly" breached the decommissioning obligation. Penalties reflect the high level of public interest in permit and licence holders fulfilling their explicit duty to decommission given the potential for significant environmental and health and safety harm of failing to decommission, and the substantial cost to the Crown or third parties, or both, if left to pay for and carry out decommissioning, particularly for offshore fields; and
- holding permit and licence holders liable for meeting the costs of decommissioning even if they transfer out of a permit, in the event that the new permit holder fails to carry out and fund decommissioning. This is designed to incentivise permit and licence holders to carry out sufficient due diligence to ensure the transferee has financial capacity to carry out and fund decommissioning; and
- empowering the Minister to carry out more effective monitoring of a permit or licence holder's financial position and plans for field development on a regular basis, and to carry out assessments of a permit or licence holder's financial capability to complete decommissioning when needed; and
- requiring permit and licence holders to establish and maintain adequate financial security for the purposes of funding and carrying out decommissioning activities, to minimise the risk of decommissioning liabilities being transferred to the Crown or third parties or both; and
- requiring permit on licence holders to make payments towards the cost of any post-decommissioning work. This includes activities carried out in relation to the remediation of wells that have been plugged and abandoned, or any infrastructure left in place after

decommissioning has been completed. The financial responsibility for this work could otherwise be left in full to the Crown or third parties, or both.

The provisions in the Bill will apply equally to holders of petroleum permits under the CMA and holders of licences granted under the Petroleum Act 1937.

The Bill also includes changes that are not specific to decommissioning and will apply across the whole of the CMA. These include—

- amending the permit acquisition provisions (sections 29A, 41, 41AE, and 41C) to require the decision-maker to have a higher level of confidence that the pro-posed permit holder will comply with the work programmes or permit conditions, health and safety and environmental requirements, and obligations relating to fees and royalties. In a recent High Court decision *Greymouth Gas Turangi Ltd v Minister of Energy and Resources* [2020] NZHC 2712, the High Court interpreted "likely" in the context of ascertaining whether an applicant is "likely" to comply with and give proper effect to the proposed work programme (section 29A(2)(b)) as an "outcome that is reasonably in prospect, that being an outcome that is a distinct possibility". The intent of these amendments is to shift the threshold higher than set by the court in the Greymouth judgment, to a level of confidence that is broadly midway between "more likely than not" and "certainty". The intent is that the threshold is set so that the Minister can exercise greater control over who receives a permit, but not so high as to practically prevent the grant of all permits. This is intended to reduce the likelihood of persons that do not have sufficient technical and financial capability, or that have a poor history of compliance, being awarded a permit; and
- providing the chief executive or an enforcement officer with the power to impose enforceable undertakings and issue compliance notices and infringement notices. This expands the regulator's existing toolbox and provides effective and proportionate responses to potential breaches across the whole of the CMA; and
- making amendments to improve the administration of the CMA, including—
- creating a new offence and penalty for non-permit holders who do not provide information as required under the CMA; and
- clarifying the scope of existing record-keeping requirements; and
- enabling the proactive release of reports once the relevant non-disclosure periods have passed to improve transparency; and
- removing the requirement for annual reassessments of the tier status of mineral permits, which currently places a disproportionate administrative burden on the regulator for a relatively low-risk activity; and
- reclassifying all minerals prospecting permits as Tier 2 permits to improve administrative efficiency.

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
Parliamentary Commissioner for the Environment - Drilling for oil and gas in New Zealand: Environmental oversight and regulation (June 2014) https://www.pce.parliament.nz/media/1265/fracking-report-web-may2015.pdf The Ministry of Business, Innovation and Employment - Discussion Document - Review of the Crown Minerals Act 1991 (November 2019) https://www.mbie.govt.nz/dmsdocument/7320-discussion-document-review-of-the-crown-minerals-act-1991	

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
Three impact assessments were prepared by MBIE for the policy proposals in this Bill: 1. **Regulatory Impact Assessment: Regulation governing legal and financial responsibility for decommissioning petroleum infrastructure and enforcement tools under the Crown Minerals Act 1991,** June 2020, available on MBIE's website: https://www.mbie.govt.nz/dmsdocument/11619-regulation-governing-legal-and-financial-responsibility-for-decommissioning-petroleum-infrastructure-and-enforcement-tools-under-the-crown-minerals-act-1991-proactiverelease-pdf 2. **Regulatory Impact Analysis: *Residual liability for petroleum wells and infrastructure following decommissioning,*** April 2021, available on MBIE's website: https://www.mbie.govt.nz/dmsdocument/14681-residual-liability-for-petroleum-wells-and-infrastructure-following-decommissioning 3. **Regulatory Impact Summary: *Additional options to address limitations with petroleum infrastructure decommissioning regime under the Crown Minerals Act 1991,*** April 2021, available on MBIE's website: https://www.mbie.govt.nz/dmsdocument/14678-impact-summary-additional-options-to-address-limitations-with-petroleum-infrastructure-decommissioning-regime-under-the-crown-minerals-act-1991	

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?	NO

The impact assessments identified above did not meet the threshold for receiving an independent opinion on the quality of the impact statements from the RIA Team based in the Treasury. MBIE's Regulatory Impact Analysis Review Panel reviewed the regulatory impact assessments, and considered that the information and analysis summarised in the impact assessments met the criteria necessary for Ministers to make informed decisions on the proposals.

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?	NO
The cost/benefit analysis for 2.5(a) can be found in Appendix One, and in the impact assessments identified under 2.3 above. Specifically, MBIE acknowledges that as described in the Regulatory Impact Assessment *Residual liability for petroleum wells and infrastructure following decommissioning,* all plugged and abandoned wells pose a small level of residual health, safety and environmental risk due to the possibility of failure of barriers. However, there is limited evidence around the risk that wells and related infrastructure pose after decommissioning has been completed, and the associated costs involved. Each instance of well and infrastructure failure would need to be assessed on a case-by-case basis for environmental and cost impact. There have only been a few instances of this occurring in New Zealand, and no instances in relation to offshore petroleum fields which are yet to be decommissioned, so MBIE has been unable to accurately assess the likely risks and costs involved.	

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

In relation to 2.6(a) - Decommissioning costs can be substantial, with hundreds of millions of dollars typically required to decommission offshore infrastructure. These costs are an ordinary component of petroleum field exploration and mining activities, and are expected to be provided for as part of good industry practice.

The policy to be given effect by this Bill may impose additional costs on petroleum companies that do not currently follow good industry practice, and do not provide for an adequate discharge of their decommissioning obligations. These permit and licence holders may be subject to civil proceedings and a pecuniary penalty, or, in the most egregious cases, criminal proceedings and a custodial sentence or fine or both.

In relation to 2.6(b) - The benefits to the Crown are dependent to an extent on permit and licence holders complying with the new requirements. The Bill does not entirely eliminate the risk of a permit or licence holder not complying with the obligation to carry out and fund decommissioning, and therefore there is a risk of decommissioning costs falling to the Crown.

However, the provisions in the Bill provide the regulator with powers designed to mitigate this risk, including the ability to carry out periodic financial capability assessments, determine the amount of financial security a permit or licence holder must establish, and use a range of new enforcement tools to encourage compliance, such as compliance notices and enforceable undertakings.

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 Ministry of Foreign Affairs and Trade has provided advice on the consistency of the Bill with New Zealand's international legal obligations.

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?
Most proposals in the Bill were included the Government's 2019 Discussion Document - Review of the Crown Minerals Act 1991, and were subject to public consultation. Officials contacted certain iwi in Taranaki, where most petroleum mining takes place, offering to meet to understand and incorporate views, or receive written feedback. Some policy proposals were not consulted on publicly or with iwi. Further detail is provided in 3.6, below.

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
Advice will be provided to the Attorney-General by the Ministry of Justice, and will be publically available at https://www.justice.govt.nz/justice-sector-policy/constitutional-issues-and-human-rights/bill-of-rights-compliance-reports/advice/ upon the Bill's introduction to the House.	

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)?	YES
(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?	YES

The Bill:

- **Provides for new offences under the Crown Minerals Act 1991 (CMA) in the event of failure to comply with the statutory obligation to undertake and fund decommissioning**, specifically:
  - A civil pecuniary penalty for failure to carry out and fund decommissioning or failure to establish and maintain an adequate financial security, with a fine of up to $500,000 for individuals and up to $10 million for a body corporate.
  - A criminal penalty for knowingly failing to carry out or meet the costs of decommissioning or both, with a prison sentence of up to 2 years for individuals and/or a fine of up to $1 million. The fine for businesses would be up to $10 million or up to three times the cost of decommissioning.
- **Enables the regulator to accept enforceable undertakings and issue compliance notices, and an infringement offence scheme.** These will be accompanied by the following relevant offence and penalties provisions:
  - Accepting enforceable undertakings. Contravention of an enforceable undertaking would attract a maximum penalty of $200,000.
  - Issuing compliance notices. Failure to comply with a compliance notice would be a strict liability offence under the CMA and attract a maximum penalty of $200,000. However, the defendant has a defence if they can prove that they had a reasonable excuse for failing to comply with the compliance notice within the required period.
  - Authorising an infringement offence regime to be developed in regulations, with a maximum infringement fee of up to $1,000 for an individual and up to $3,000 for a body corporate, per infringement offence.
- **Amends the CMA to make it an offence if a person who does not hold a permit fails to comply with a requirement to provide information under the CMA.**
  - Any person who fails to comply with a written notice given under section 99F commits an offence. Like the other offences specified in section 100(2), this new offence will have a maximum fine of $20,000 and, if a continuing offence, $2,000 for each day or part day that the offence continues. This offence will be a strict liability offence.

3.4.1. Was the Ministry of Justice consulted about these provisions?	YES
The Ministry of Justice was consulted on both Cabinet papers and on the draft Bill. Specific consultation occurred in respect of matters relating to offences and penalties prior to the Bill's introduction.	

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?	YES

The Bill proposes new provisions relating to financial monitoring, financial capability assessments, and provision of financial securities and requires information to be provided for these purposes. A permit holder could be an individual, and in that case an individual would be required to submit information about their circumstances and on their finances. Disclosure of this information would be treated as confidential and its disclosure would be restricted in accordance with section 90A of the CMA and, were these new provisions to come into force, all information would be treated in accordance with the requirements of the Privacy Act 2020.

3.5.1. Was the Privacy Commissioner consulted about these provisions?	NO

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

For provisions in the Bill that relate to the:

- **Decommissioning obligation, financial capability assessments and financial security**, high-level policy options were included in the Discussion Document - Review of the Crown Minerals Act 1991 (November 2019) (referred to in 2.1), which MBIE consulted on publicly from 19 November 2019 to 27 January 2020. 55 submitters commented on the issues and high-level options that relate to decommissioning activities. All but one agreed that the CMA is currently unclear and possibly inconsistent in its application of the obligation to decommission. There was also general support for ensuring that permit/licence holders have access to sufficient funds available for decommissioning to mitigate the risk of these activities and their associated costs being passed on to the Crown or other third parties. However, some proposals on more detailed design characteristics of the decommissioning requirements were not consulted on. Stakeholders are likely to have a further opportunity to comment on those through the standard legislative change process.
- **Post-decommissioning requirements**, MBIE did not consult. However, the policy was informed by a 2017 discussion document, *Managing third party risk exposure from onshore petroleum wells,* on a related subject where stakeholders provided views on managing third party risk exposure from onshore petroleum wells. MBIE notes that the scope and objective of that consultation was different to the impact assessment carried out: the consultation was limited to onshore wells; also included historic wells that had been abandoned; and had the main objective of limiting third party risk arising from current, future and historic wells. Stakeholders are likely to have a further opportunity to comment on those through the standard legislative change process. MBIE also intends to consult on the design features of the regulations that will implement the legislative provisions to strengthen decommissioning obligations.
- **Penalties (criminal and civil pecuniary) for failing to comply with the obligation to decommission**, the policy proposal was not publicly consulted on. Stakeholders are likely to have a further opportunity to comment on those through the standard legislative change process.
- **Threshold for permit acquisition provisions**, the policy proposal was not publicly consulted on. Stakeholders are likely to have a further opportunity to comment on those through the standard legislative change process.
- **Power to impose enforceable undertakings and issue compliance notices and infringement notices**, and other **technical amendments** to improve the administration of the CMA, high level policy proposals were also included for feedback in the Discussion Document - Review of the Crown Minerals Act 1991.

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?	YES
The Bill does not impose a fee, levy or tax. However, it does propose a power which will allow the regulator to collect one or more payments (i.e. cash funds) from permit and licence holders to contribute to the cost of any work to be carried out to remediate wells and associated infrastructure after decommissioning has been completed. Specifically, the Bill provides that payments would be collected from current and future petroleum permit and licence holders affected by the new explicit obligation to decommission and held in a pooled central government account (i.e. post-decommissioning fund). The fund would be used solely for the purpose of any future remediation work required for those wells and infrastructure where decommissioning has been accepted by the relevant regulatory bodies. These provisions are necessary as, in practice, it is likely that government agencies will be left to carry responsibility for remediation work post-decommissioning on the grounds of environmental effects and/or health and safety concerns. Most petroleum permits and licences are held by limited subsidiary liability companies, by multiple participants, that cease to exist after the permit has been relinquished. It is therefore difficult to identify and hold previous permit and licence holders to account for any future failure to wells that have been plugged and abandoned and any infrastructure left in place after decommissioning has been completed. The Bill requires the Minister to set the amount of the payment in accordance with prescribed criteria. The Minister must require that the post-decommissioning payment is made in either a lump sum or instalments taking into account the most recent report on the person's financial capability and any prescribed criteria set out in regulations. The payment(s) will be assessed on a case-by-case basis following a risk assessment, the criteria of which will be subject to consultation as part of the proposed consultation for the regulations. The Bill allows the Minister to exempt a permit or licence holder from the obligation to make a post-decommissioning payment. Criteria that the Minister must consider when granting an exemption include the Minister being satisfied that events have occurred that make the requirement unnecessary or inappropriate in the particular case.	

Retrospective effect

4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?	YES

Decommissioning costs are an ordinary component of petroleum field exploration and mining activities, and permit holders are expected to cover these as part of good industry practice.

The Bill makes the obligation to carry out and fund decommissioning explicit.

It also imposes requirements on permit and licence holders in respect of existing petroleum infrastructure and wells. Permit and licence holders will be required to hold financial securities to secure or partly secure performance of this obligation should the permit or licence holder fail to carry out or fund the decommissioning.

Permit and licence holders will also be required to pay an amount to meet the cost of any post-decommissioning work required in relation to that same petroleum infrastructure or wells. This requirement is designed to ensure permit and licence holders financially contribute to any work required post-decommissioning.

There are powers to exempt in relation to decommissioning of petroleum infrastructure, and payment towards post-decommissioning work. Exemptions may be granted if the requirements are unreasonable or inappropriate in a particular case, or the events have occurred that make the requirements unnecessary or inappropriate in a particular case.

The requirement to carry out and fund decommissioning, and to provide a financial security, could be perceived as the creation of new obligations retrospectively as they apply to actions taken in the past (for example, wells that have already been drilled), as well as prospectively, to actions that will occur in the future (any new wells). However, it is important to note that there is an generic statutory requirement in the CMA for permit holders to act in accordance with ‘good industry practice’, and many existing permit and licence holders already have explicit conditions in relation to decommissioning. Some also have financial securities in place.

The requirement to provide payments towards any post-decommissioning work will also apply to existing operations and could be considered as the creation of a new obligation retrospectively. The current CMA does not impose residual liability on permit holders when decommissioning has been completed, however clarifying that industry should take some of the financial responsibility for risk of any future failure is consistent with the polluter-pays principle. The proposed provisions in the Bill make it clear and explicit what is expected, and that obligations must be discharged by those who undertake exploration and mining activities, not the Crown or other third parties.

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?	YES
(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?	YES

Strict liability offences reverse the usual burden of proof as the defendant must prove the existence of a statutory defence or absence of fault.

There is one new strict liability offence in the Bill:

- **Failure of a non-permit/ licence holder to respond to an information request.** This offence is consistent with the existing penalties in the CMA and other comparable legislation. In the event that a person failed to provide the information, they will be best placed to establish absence of fault because those matters will be primarily within their knowledge.

There are three offences that may be considered strict liability offences in the Bill:

- **The civil pecuniary penalty for failure to undertake and fund decommissioning.** This offence is subject to a civil pecuniary penalty. This penalty has a 'reasonable mistake' defence, which allows a person a defence if they prove that the breach was due to a reasonable mistake or events outside of their control and the breach was remedied, and the person has compensated or offered to compensate those who suffered any loss as a result of the breach;
- **Failure to comply with a compliance notice.** This offence is subject to a civil pecuniary penalty. This penalty has a 'reasonable excuse' defence, which allows a person a defence if they prove that they had reasonable excuse for failing to comply with the compliance notice within the required period.; and,
- **Breach of an enforceable undertaking.** This offence could fit the category of strict liability offence. In the event that a person breaches an enforceable undertaking, they will be best placed to establish absence of fault because those matters will be primarily within their knowledge.

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?	YES
The policy to be given effect by the Bill proposes allowing the Minister to make individual assessments and determinations about a person who has a petroleum permit or licence. This includes the power to determine the amount and kind of financial security that a permit or licence holder must obtain and hold, and the amount of payment required for any post-decommissioning work. The Minister will also have the power to exempt a permit or licence holder from the requirements to decommission a particular petroleum infrastructure or to plug and abandon a well, and the power to exempt a permit or licence holder from the post-decommissioning obligations.	

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?	YES

The Bill allows the Minister to grant permit or licence holders or a class of permit or licence holders exemptions or deferrals from requirements to decommission. It also provides that class exemptions and class deferrals may be granted by regulations. This is intended to allow flexibility in the application of the decommissioning obligation, for example when infrastructure is shared or may be repurposed.

The Bill also allows the Minister to grant permit or licence holders or a class of permit or licence holders exemptions from their obligation to make post-decommissioning payments. Regulations may define a class of permit or licence holders for the purpose of this provision.

Certain provisions of the Bill also allow for regulations to be made to add to or exclude things from the following defined terms:

- petroleum infrastructure;
- relevant older petroleum infrastructure; and,
- relevant older well.

4.8. Does this Bill create or amend any other powers to make delegated legislation?	YES

Cabinet has agreed that the overarching statutory obligation is to be supported by sufficient regulatory flexibility to impose specific requirements, and can be applied to individual circumstances. Therefore, the Bill allows the following details to be prescribed in regulations:

- requirements in relation to monitoring and financial capability assessments; and,
- criteria to be taken into account by the Minister when setting the amount and kind of financial securities that permit/licence holders may be required to obtain and maintain;
- the making of payments for post-decommissioning work, the management of accounts into which those payments are deposited, and the use of those payments;
- criteria the Minister will apply in setting the amount to be paid and in determining whether to grant exemptions from post-decommissioning associated payment(s);
- regulations in relation to infringement offences and compliance notices; and,
- the records, statements, or any other documentation or information required under other legislation that must be retained for the purposes of the CMA.

The Bill also allows for additional details to be prescribed in regulations, such as: things that may or may not be defined as relevant older petroleum infrastructure and wells, and defining activities that may be included in the obligation to decommission.

Further details, including the relevant provisions of the Bill, can be found in Appendix Two.

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

Appendix One: Further Information Relating to Part Two

Extent of impact analysis available – question 2.5(a)

Who is expected to benefit?

The Crown and other third parties will be the main beneficiaries of the provisions in this Bill. The key intended outcome is to impose greater discipline and strengthen the incentives for petroleum companies to undertake and fund their decommissioning activities to the required health and safety and environmental standards. This will mitigate undue risk that the Crown and other third parties will potentially have to step-in as the provider of last resort.

In circumstances where the Crown or other third parties may have otherwise chosen not to step-in as the provider of last resort, the health and safety and environmental outcomes will be improved. More robust regulation of the petroleum sector may also increase the sector's social licence to operate by providing greater public confidence in the regulatory system and stewardship of New Zealand's petroleum resources.

Where do costs fall?

The costs of decommissioning are an ordinary component of petroleum field exploration and mining activities, and are expected to be covered by permit and licence holders as part of good industry practice. Additional costs are likely to fall on the current petroleum companies that do not appropriately plan and provide for their decommissioning activities.

The requirement to provide a financial security will generate additional costs for permit and licence holders.

There will also be some increase in compliance costs for all petroleum companies (including those who already follow good industry practice), depending on their existing levels of compliance, business systems and practices.

Petroleum companies may ultimately pass the additional costs to the Crown (through reduced royalties and taxes) and/or regional economies (through reduced investment and employment in the petroleum sector and its related service industries).

The regulator will incur additional administration, monitoring, enforcement and potential litigation costs, due to the expanded remit of financial capability monitoring and the enforcement toolbox.

Appendix Two: Further Information Relating to Part Four

Powers to make delegated legislation - question 4.8

The Bill contains regulation-making powers to prescribe:

In relation to decommissioning:

- Section 42B: the content and form of a Field Development Plan, and when it must be provided.
- Section 42C: the content of a notice of cessation of production, and when it must be provided.
- Section 89E: activities that may be included as part of carrying out decommissioning.
- Section 89F: what may or may not be considered 'petroleum infrastructure'.
- Section 89X: the manner in which an exemption or deferral may be applied for, and the setting of any accompanying fee.
- Section 89ZA: the information that must be provided as part of on-going monitoring, and when it must be provided.
- Section 89ZB: requirements that the Minister must meet when carrying out a financial capability assessment.
- Section 89ZC: information permit/licence holders must maintain and provide for the purposes of a financial capability assessment, and when it must be provided.
- Section 89ZD: the content and form of an Asset register and when it must be provided.
- Section 89ZE: the manner in which a financial security must be proposed.
- Section 89ZF: criteria the Minister must consider when determining the kind of security required, and further matters that the Minister must consider when determining the amount and kind.

In relation to post-decommissioning:

- Section 89ZP: the criteria the Minister will use when setting the amount to be paid.
- Section 89ZQ: when a payment or payments must be made.
- Section 89ZU: the criteria the Minister must consider when granting an exemption.

In relation to compliance and enforcement tools:

- Section 899ZZL: The manner in which a compliance notice may be issued to a person, and the steps a person to whom a compliance notice is issued must take to bring it to the attention of other persons.
- Section 90(1A): records, reports, statements, or any other documentation or information required under other legislation that a permit or licence holder must keep, as well as any other records or reports required.
- Section 104A: an offence that constitutes an infringement offence

The Bill also proposes the following amendments to existing section 105 of the CMA which allows the Governor-General may from time to time, by Order in Council, make regulations:

- In relation to existing section 105(1)(g):
    - (gaa) prescribing the records, statements, or any other documentation or information required under other legislation that must be retained for the purposes of this Act:

- (gab) prescribing the standard or requirements which a cost estimate submitted as part of a field development plan under section 42B must meet:

- In relation to existing 105(1)(q):
  - (qa) regulating the decommissioning of petroleum installations and the plugging and abandonment of wells:
  - (qb) exempting specified classes of permit holders or licence holders from the obligation to decommission specified classes of petroleum infrastructure, or to plug and abandon specified classes of wells, or both or deferring any or all of those obligations:
  - (qc) declaring petroleum infrastructure and classes of petroleum infrastructure to be or not to be, as the case requires, relevant older petroleum infrastructure:
  - (qd) declaring a well or class of wells to be, or not to be as the case requires, a relevant older well or relevant older wells:
  - (qe) requiring permit holders and licence holders to notify the chief executive of the likely date in which production will cease at any well, or in any field, at specified times:
  - (qf) regulating the making of payments for post decommissioning work, the establishment and operation of accounts into which those payments are deposited, and the use of, and accounting for, funds in those accounts:
  - (qg) exempting specified classes of permit holders or licence holders from the obligation to make post-decommissioning payments under section 89ZO (either in whole or in part):
  - (qh) prescribing requirements in relation to the ongoing monitoring of a permit or licence holder's financial position and assessing their financial capability under sections 89ZA, 89ZB, and 89ZC:
  - (qi) regulating the setting, obtaining and maintaining of financial securities that permit holders and licence holders may be required to obtain and maintain, which may include, without limitation,—
    - (i) setting criteria that the Minister must consider under section 89ZF(1)(b) when deciding the kind of financial security to be required:
    - (ii) specifying matters to be considered by the Minister when determining the amount that is required to be secured (including 1 or more formulas or other methods of calculating the amount):
    - (iii) prescribing circumstances in which certain kinds of securities will or will not be permitted:
    - (iv) requiring certain kinds of financial securities to be held in specified situations:
    - (v) setting a hierarchy of preferred financial securities, which may differ in different circumstances:
    - (vi) specifying how certain financial securities must be held:
    - (vii) setting time-frames for the obtaining and maintaining of all or part of a required security:
    - (viii) exempting specified classes of permit holder or licence holders from the requirements to hold a financial security either generally, or in relation to any specified matter:

        - (ix) prescribing the form or content of applications to be made to the chief executive in connection with financial securities:
        - (x) deferring the obligations of specified classes of permit holder or licence holder to obtain and maintain a financial security, either generally, or in relation to any specified matter:
        - (xi) prescribing the manner in which information is to be supplied for the purposes of section 89ZE(2):
        - (xii) enabling the Minister to determine any other specified matter in connection with financial securities:
    - (qj) specifying the maximum amount or a scale of maximum amounts, to be secured by financial securities that permit holders and licence holders may be required to obtain and maintain:
    - (qk) regulating the setting and use of post-decommissioning payments, including, without limitation,—
        - (i) specifying criteria for calculating the amount of post-decommissioning payments that permit holders and licence holders are required to make:
        - (ii) setting time-frames for making payments in one lump sum or by instalments:
        - (iii) setting criteria to be applied in determining whether post-decommissioning payments are to be made in a lump sum or by instalments:
        - (iv) setting criteria to be applied in determining whether to grant exemptions from post-decommissioning payments:
        - (v) providing for refunds of all or part of a post-decommissioning payment in specified circumstances:
        - (vi) setting restrictions on the use of post-decommissioning payments or post-decommissioning payments of a specified class:
- In relation to existing section 105(3):
    - (3A) Regulations made under this section may apply in relation to licences, licence holders, and holders of a participating interest in a licence, or any class of licence or those persons, in so far as the regulations relate to sections 42B, 42C and subparts 2 and 3 of subpart 1B or any other provision of this Act specified in the regulations.

These powers are necessary because:

- They are matters of detail for which it is not appropriate to utilise Parliamentary time;
- They will allow unforeseen matters that may arise to be addressed; and,
- They provide flexibility in how the Bill is applied.