

Supplementary Departmental Disclosure Statement

Crown Minerals Amendment Bill

A supplementary departmental disclosure statement for a Bill the government is proposing to amend seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill in amended form.

It highlights material changes to previous disclosures relating to:

- 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.

The original disclosure statement for the Crown Minerals Amendment Bill, dated 6 September 2024, can be found at this link <https://disclosure.legislation.govt.nz/bill/government/2024/82/>

This supplementary 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.

12 November 2024.

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The Main Areas of Change to the Original Disclosures

This is a supplementary disclosure statement for the Crown Minerals Amendment Bill.

A supplementary disclosure statement supplements the original disclosure statement for the Bill by reporting the additions and changes that would need to be made to the original disclosure statement to accurately reflect the Bill with the proposed government amendments incorporated.

The main areas of change to the original disclosure statement include:

- Extending trailing liability to:
 - a person with a controlling interest in a permit holder (or licence holder or person with a participating interest in a permit or licence);
 - the immediately previous person that had a controlling interest in the current permit holder (or licence holder or person with a participating interest in a permit or licence) (person A), if the controlling interest was held at a time when person A held the relevant permit or licence;
 - a person with a controlling interest in the immediately former permit holder (or licence holder or person with a participating interest in a permit or licence), at the time of transfer.

Part One: General Policy Statement

This Bill amends the Crown Minerals Act 1991 (the Act) to remove the ban on new petroleum exploration permits beyond onshore Taranaki. It supports the Government's objective to promote petroleum exploration and production, to ensure gas remains a transition fuel until viable and cost-effective alternatives are in place.

The Bill also makes changes to immediately improve investor confidence in the New Zealand petroleum sector and increase regulatory efficiency of the Crown Minerals regime.

Removing the ban on new petroleum exploration outside onshore Taranaki

The Bill reverses amendments made to the Act in 2018, that limited new petroleum exploration permits to onshore Taranaki, prohibited surface access to conservation land for permits in onshore Taranaki except for minimum impact activities, and explicitly restricted applications for petroleum exploration permits to public tenders (e.g., Block Offer).

These changes will allow the responsible Minister to receive and assess applications for new petroleum exploration permits outside onshore Taranaki, through the existing regulatory framework. Removing the restriction on access to conservation land in onshore Taranaki will ensure that conservation land in Taranaki is treated the same as conservation land across New Zealand. Conservation land in Taranaki that is listed in Schedule 4 (Land to which access restrictions apply) of the Act will continue to have these protections in place.

The Bill also extends the exclusive-use timeframe for existing speculative prospectors who were impacted by the ban. The Act currently provides speculative prospectors with a 15-year confidentiality period for the data they collect; during this time they can on-sell their data to interested explorers. The Bill extends this period by six years, reflecting the period of time lost due to the ban.

Changes to the decommissioning regime relating to financial securities

The Bill makes changes to the decommissioning regime, to provide greater flexibility and clarity about the types of financial securities that may be accepted.

Changes to the decommissioning regime relating to post-decommissioning

The Bill removes the requirement for permit and licence holders to provide payments, or financial security, to cover post-decommissioning costs that may be required. It introduces perpetual liability for permit holders who have completed their decommissioning obligations, for any wells and infrastructure left in situ. This will ensure that a permit holder who decommissions remains liable for any actual risks, as opposed to contributing payments in anticipation of any future risks.

Changes to the decommissioning regime relating to trailing liability

The Act currently provides for liability for a former permit holder or licence holder if the current permit holder (or licence holder) fails in their decommissioning obligations.

The Bill limits trailing liability for the cost of decommissioning to the most recent permit holder or participant who transferred out.

To close a loophole in the current Act, the Bill extends liability to:

- a person with a controlling interest in a permit holder (or licence holder or person with a participating interest in a permit or licence);
- the immediately previous person that had a controlling interest in the current permit holder (or licence holder or person with a participating interest in a

permit or licence) (person A), if the controlling interest was held at a time when person A held the relevant permit or licence;

- a person with a controlling interest in the immediately former permit holder (or licence holder or person with a participating interest in a permit or licence), at the time of transfer.

The trailing liability being extended includes the application of pecuniary penalties and criminal liability to the persons described above, if they fail to meet decommissioning costs (as is currently the case for current and former permit holders). Liability in the post-decommissioning period will apply to the current permit holder and persons with a controlling interest in that permit holder.

The proposal brings New Zealand further into alignment with Australia and the United Kingdom. Both jurisdictions extend trailing liability to a range of related bodies corporate.

Amending the purpose statement of the Act and introducing an optional Government Policy Statement

Prior to a change in 2023, the purpose of the Act was to 'promote prospecting for, exploration for, and mining of Crown owned minerals for the benefit of New Zealand'. In 2023 the purpose of the Act was amended, replacing 'promote' with 'manage'; the Bill reverses this change. It also amends the Minister's functions under the Act, to 'attract permit applications' to align with the change in purpose.

The Bill also introduces a mechanism to allow for an optional Government Policy Statement (GPS) to cover petroleum and minerals. A GPS, if issued, could signal focus areas for the Government, provide strategic guidance to the regulator on how it should manage its functions, and inform the sector and general public of the Government's priorities for the sector.

Improving regulatory efficiency and consistency within the Act

The Bill makes a number of changes to the Act to improve regulatory efficiencies within the Crown Minerals regime, and fix inconsistencies or drafting errors. The most significant of these is the creation of a new permit category (Tier 3) to ensure a proportionate and risk appropriate approach to small-scale, non-commercial gold mining operations. The new Tier 3 permit will be subject to a simpler and quicker application process, and less onerous reporting requirements. The Bill includes transitional provisions to allow existing Tier 2 permit holders who meet the new Tier 3 requirements to readily move to a Tier 3 permit when they come into effect from 1 July 2025.

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?	YES
MBIE completed an annex to <i>Regulatory Impact Statement: Amendments to the Crown Minerals Act 1991 relating to petroleum exploration and mining</i> on 30 October 2024. It is available here: https://www.mbie.govt.nz/dmsdocument/29856-annex-to-regulatory-impact-statement-amendments-to-the-crown-minerals-act-1991-relating-to-petroleum-exploration-and-mining-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?	NO
The Ministry of Regulation's RIA team delegated the responsibility for providing comment on the quality of the annex to the regulatory impact statement to a MBIE Quality Assurance Panel. The Panel considers that the Statement meets the Quality Assurance criteria.	
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
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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 affected by:	
(a) the level of effective compliance or non-compliance with applicable obligations or standards?	NO
(b) the nature and level of regulator effort put into encouraging or securing compliance?	NO

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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New Zealand's international obligations were considered during the policy development process.
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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?

There was no specific Treaty analysis undertaken for this amendment proposal. In earlier engagement, MBIE received submissions from iwi and hapū which generally supported strengthening the decommissioning regime including: retaining decommissioning requirements including financial securities, trailing liability, and liability in the post-decommissioning period.

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?	NO
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The Ministry of Justice advised that amendment papers are not usually vetted for consistency with the New Zealand Bill of Rights Act 1990. Further, the Ministry of Justice noted the proposals in the amendment paper seemed unlikely to raise significant New Zealand Bill of Rights Act 1990 implications.

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)?	NO
<p>The Bill extends trailing liability to a broader range of persons. This is a liability to cover the cost of decommissioning, if the current permit holder fails in their decommissioning obligations. To ensure pecuniary penalties under section 89ZZV (which provide for pecuniary penalties for failing to meet the costs of decommissioning, for those who transferred out of a permit) are consistent, the Bill also provides for pecuniary penalties to be ordered on the parties that will now be subject to trailing liability. This includes:</p> <ul style="list-style-type: none"> • a person with a controlling interest in a permit holder (or licence holder or person with a participating interest in a permit or licence) • the immediately previous person that had a controlling interest in the current permit holder (or licence holder or person with a participating interest in a permit or licence) (person A), if the controlling interest was held at a time when person A held the relevant permit or licence • a person with a controlling interest in the immediately former permit holder (or licence holder or person with a participating interest in a permit or licence), at the time of transfer. <p>Clause 45 repeals section 89ZZV(1)(a)(iv), which are the pecuniary penalties associated with the existing post-decommissioning requirements, that are being replaced via clause 43.</p>	
3.4.1. Was the Ministry of Justice consulted about these provisions?	YES
The Offences and Penalty team at the Ministry of Justice were consulted. They advised that these proposals did not raise any issues or require changes.	

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
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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
New Zealand Petroleum and Minerals, the government regulator that manages New Zealand's Crown minerals estate, has assessed the provisions in the Bill and are comfortable that these achieve the policy intent of the Bill.	

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 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?	NO
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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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