

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.

4 November 2022

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Part One: General Policy Statement

The Crown Minerals Act 1991 (the CMA) enables the Crown, as resource owner, to allocate rights to develop Crown-owned minerals. It operates alongside other legislation that regulates the health, safety and environmental aspects of prospecting for, exploring for and mining of Crown-owned minerals.

The Government commenced a 2-part Review of the CMA in 2018. Tranche One of the review gave effect to the policy to end future offshore petroleum exploration and confine any future onshore development to the Taranaki region only. Tranche Two was intended to be wider in scope, examining the changes needed to enable New Zealand's petroleum and mineral resources sector's contribution to a productive, sustainable, and inclusive economy. This included consideration of the CMA's fundamental role (to allocate rights to Crown-owned minerals for economic benefit); its purpose statement (to promote exploration for, prospecting for, and mining of Crown-owned minerals); whether it fairly balanced the rights, interests and activities of marine users (through the non-interference zone provisions); iwi engagement; and improving petroleum sector regulation.

The scope of Tranche Two was subsequently narrowed in November 2020 to incremental changes to align the CMA with wider Government policy while maintaining its current role as an allocation tool for economic benefit. This Bill progresses changes under Tranche Two, and further changes may be raised at select committee.

Amendments relating to improving petroleum sector regulation have been progressed separately through the Crown Minerals (Decommissioning and Other Matters) Amendment Act 2021, which introduced an explicit obligation for petroleum permit and licence holders to fund and carry out decommissioning.

Bill addresses the lack of flexibility in CMA as to management of Crown-owned minerals

In 2013, the CMA was amended to include an explicit promotional intent and give effect to the policy objectives of the time, which were to increase investment in New Zealand's petroleum and minerals sectors.

Since 2013, there have been strategic shifts in the wider regulatory environment in which the CMA operates. In 2019, the Government set a domestic target to reduce our greenhouse gas emissions (other than from biogenic methane) to net-zero by 2050. Also in 2019, the Government announced New Zealand's Resource Strategy, *Responsibly Delivering Value – A Minerals and Petroleum Strategy for Aotearoa New Zealand: 2019-2029*, which is intended to lay the groundwork to help realise our vision for a responsible minerals and petroleum sector that delivers value for New Zealand, now and in the future. New Zealand's first Emissions Reduction Plan, released in May 2022, included strategies and actions to contribute to the global effort to limit global warming to 1.5 degrees Celsius above pre-industrial levels.

The Government has also committed to developing an *Aotearoa New Zealand Energy Strategy* (the Energy Strategy) and a *Gas Transition Plan* by the end of 2024 and 2023 respectively. The Energy Strategy will set the direction for New Zealand's pathway away from fossil fuels and towards greater levels of renewable electricity and other low-emissions alternatives. The Gas Transition Plan is intended to establish transition pathways specifically for the fossil gas sector.

In this context, the CMA's focus on promoting the allocation of petroleum and minerals for economic benefit does not enable flexibility in the choices available to the Crown as resource owner. It limits the scope for decisions to achieve a managed and equitable transition away from fossil fuels, while also sustaining investor confidence to continue the development of Crown-owned minerals where required.

The Bill seeks to neutralise the promotional intent of the CMA, while retaining the existing emphasis under the CMA on the role of the Crown as resource owner, and its economic stewardship. This change would make clear the CMA's role as an allocation and management framework, while enabling flexibility in the pursuit and realisation of objectives that may evolve over time and be different for the different kinds of minerals that it regulates (eg petroleum as compared with critical minerals).

The Bill seeks to enable flexibility in the management of Crown-owned minerals to accommodate changes to policy objectives in an enduring way by amending:

- the purpose statement of the CMA to make neutral its promotional intent and enable increased flexibility as to the allocation of rights to Crown-owned minerals; and
- associated provisions in the CMA that currently reflect this promotional intent, such as section 5, functions of the Minister; and
- relevant provisions of the CMA to allow greater flexibility in the frequency of public tenders for petroleum exploration permits.

Bill makes improvements to permit/licence holder and permit applicant engagement with iwi and hapū

The Crown's expectations for permit and licence holders' and permit applicants' engagement with iwi and hapū are unclear and many iwi and hapū consider that engagement does not always demonstrate respect for their authority, mana, and local expertise. Where relationships are poor, potential benefits from positive engagement between iwi and hapū and industry are forgone.

Iwi engagement reports are mandatory for all Tier 1 permits (high-risk, high-return operations) and are intended to encourage permit and licence holders to engage in a positive and constructive manner. Submitting reports also allows the regulator to monitor these relationships. However, opportunities have been identified to further encourage engagement with iwi and hapū.

These new provisions include-

- providing iwi or hapū whose rohe include some or all of the permit or licence area or who otherwise may be directly affected by the permit or licence with opportunities to review iwi engagement reports;
- enabling annual meetings between iwi or hapū, permit and licence holders and the Ministry of Business, Innovation, and Employment (MBIE) for the purpose of discussing the content of annual iwi engagement reports; and
- making explicit that decision-makers may have regard to feedback from iwi or hapū on the quality of past engagement with permit and licence holders for future permit allocation decisions.

Further changes to the regulations that sit alongside the CMA will be progressed separately to-

- introduce minimum content requirements for iwi engagement reports;
- require, as part of certain application types, the provision of permit or licence holder (and permit applicant) contact information to be passed on by MBIE to iwi or hapū whose rohe includes some or all of the permit area or who otherwise may be directly affected by the permit if granted.

Bill makes decommissioning-related clarification amendments

The Crown Minerals (Decommissioning and Other Matters) Amendment Act 2021 introduced changes to strengthen the decision-making tests for permit acquisition,

transfer, and change provisions. These changes sought to ensure that only companies and individuals who have the financial and technical capability to give effect to the work programmes and permit conditions are able to acquire permits for petroleum and minerals in New Zealand. They were intended to reduce the likelihood of companies gaining permits in New Zealand that do not have the financial and technical capability to undertake and fund decommissioning.

To avoid ambiguity, the Bill makes changes to clarify and make consistent the CMA's tests for the grant, transfer, or change of a permit. These clarifications ensure that assessments can be carried out not just on compliance with work programmes and permit conditions, but also in relation to the decommissioning-related obligations in the CMA.

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
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
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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
Two impact assessments were prepared by MBIE for the policy proposals in this Bill: 1. Regulatory Impact Statement: Improving permit/licence holder and permit applicant engagement with hapū and iwi under the Crown Minerals Act 1991 https://www.mbie.govt.nz/dmsdocument/25445-regulatory-impact-statement-enabling-flexibility-in-the-management-of-crown-minerals-development-under-the-crown-minerals-act-1991 2. Regulatory Impact Statement: Enabling flexibility in the management of Crown minerals development under the Crown Minerals Act 1991 https://www.mbie.govt.nz/dmsdocument/25448-regulatory-impact-statement-improving-permitlicence-holder-and-permit-applicant-engagement-with-hapu-and-iwi-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 Regulatory Impact Analysis 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
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The Treasury's Regulatory Impact Analysis team determined that the proposal to clarify permit grant, transfer and change tests in relation to decommissioning obligations in the Crown Minerals Act 1991 is exempt from the requirement to provide a Regulatory Impact Statement. This is on the grounds that it has been addressed by three existing Regulatory Impact Assessments:

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>

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?	YES
(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?	NO
Cost/benefit analysis for 2.5(a) can be found at pages 30-32 of the first Regulatory Impact Statement (RIS) identified in 2.3 above, and pages 19-24 of the second RIS.	

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) – non-compliance with engagement proposals will result in loss of potential benefits from positive engagement between hapū/iwi and industry. These could include benefits such as hapū and iwi sharing economic benefits of activities (such as through employment opportunities), and industry being informed by local expertise of mana whenua.

The Bill explicitly states that past compliance with hapū/iwi engagement reporting requirements can be considered as part of future permit allocation decisions. This is intended to incentivise compliance.

In relation to 2.6(b) – monitoring and encouraging compliance will be important in helping ensure engagement improves, and therefore increasing the likelihood that potential benefits from greater iwi/hapū engagement eventuate.

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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No separate formal steps have been taken to determine whether the policy to be given effect by the Bill is consistent with New Zealand's international obligations, as the policy development process did not identify any questions of consistency with New Zealand's international obligations.

MBIE considers the Bill is consistent with New Zealand's international 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?

Hapū and iwi have had opportunities to engage in the policy development process. Most proposals in the Bill were included in the Government's 2019 *Discussion Document - Review of the Crown Minerals Act 1991*, and were subject to public consultation. Further targeted hapū and iwi engagement on changes relevant to the Discussion Document chapter "Māori engagement and involvement in Crown minerals" then took place over the end of 2021 into early 2022. This took the form of four hui (online hui), at which participants represented at least 11 hapū and iwi.

Further detail on external engagement is provided in 3.6, below.

Officials also progressed advice on policy proposals to improve hapū and iwi engagement with permit holders in consultation with Te Arawhiti, and Te Arawhiti was given opportunity to review the associated Cabinet paper.

Officials have also engaged with the Treaty Provisions Oversight Group (TPOG), chaired by Te Arawhiti, on the draft Bill.

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 will be provided to the Attorney-General by the Ministry of Justice, and will be publicly 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:	
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(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?	NO
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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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3.4.1. Was the Ministry of Justice consulted about these provisions?	YES
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MBIE consulted with the Offences and Penalties team at the Ministry of Justice. The Ministry of Justice did not raise any concerns.

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
While the Bill does not specifically require the collection of personal information, amendments relating to iwi/hapū engagement will require the regulator to have knowledge of iwi/hapū contact information and rohe. The regulator already undertakes their best efforts to have up to date knowledge of this information, and therefore this does not represent a significant departure from the status quo.	

3.5.1. Was the Privacy Commissioner consulted about these provisions?	YES
The Privacy Commissioner has been consulted and has no comment.	

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
Hapū/iwi engagement requirements <p>Chapter 5 of the 2019 Discussion Document included six questions on Māori engagement and involvement with Crown-owned minerals. The Māori engagement chapter received 31 substantial submissions, 10 of these were from iwi groups and Māori organisations. 28 submissions were also received via the online survey on the Māori engagement chapter. Based on this feedback, MBIE developed a range of draft proposals for non-regulatory and regulatory changes to respond to the issues raised. MBIE then engaged with hapū and iwi on those draft proposals from November 2021 to February 2022. MBIE ran four hui (online hui), at which participants represented at least 11 hapū and iwi. MBIE also received seven written submissions on the draft proposals, with three of these coming from representatives who also attended a hui, and four from other groups.</p> Promotional intent of the CMA <p>As part of the Discussion Document, MBIE publicly consulted on the purpose statement of the CMA, and whether this should be changed. Proposals around the other aspects of the promotional intent in the CMA, such as the functions of the Minister and the timing of public tenders for petroleum exploration permits, were not specifically consulted on. 167 submissions were received on the purpose statement, of which 57 were from the online survey.</p> Decommissioning-related clarification amendments <p>Decommissioning changes were part of the Discussion Document and subsequently went through the Parliamentary process as part of the passing of the Crown Minerals (Decommissioning and Other Matters) Amendment Act 2021. This included a robust select committee process. The changes proposed are consistent with the policy intent of the aforementioned amendment Act, so further consultation was not considered necessary.</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
The regulator for the Crown Minerals Act 1991 has been engaged throughout the policy and legislative process.	

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
Since the amendments proposed in the Bill will apply to both existing permits and licences and to any applications that are pending at the time the Bill comes into effect, the amendments could appear to have a retrospective effect. However, the amendments will only apply prospectively, in that conduct under the CMA prior to the amendments coming into force will not be subject to the proposed amendments. For more information see guidance on section 4.3: https://www.treasury.govt.nz/publications/guide/disclosure-statements-government-legislation-technical-guide-departments-html#child-13 .	

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
The Bill proposes amendments to the purpose statement of the CMA to neutralise its promotional intent which will increase flexibility as to the allocation of rights to Crown-owned minerals. These amendments will not have significant impacts on existing permits and licences as the economic focus of the CMA will remain.	

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 Bill proposes to create a power to prescribe minimum content requirements for iwi engagement reports in the Crown Minerals (Petroleum) Regulations 2007 and the Crown Minerals (Minerals Other than Petroleum) Regulations 2007.	

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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