

# **Crown Minerals Amendment Bill**

Government Bill

## **Explanatory note**

### **General policy statement**

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

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 of the Act, but an extension to the land area of a permit can be denied as a result of a declaration; and
- clarifies time frames for notifying the 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 licences 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.

### **Departmental disclosure statement**

The Ministry of Business, Innovation, and Employment is required to prepare a disclosure statement to assist with the scrutiny of this Bill. The disclosure statement provides access to information about the policy development of the Bill and identifies any significant or unusual legislative features of the Bill.

A copy of the statement can be found at <http://legislation.govt.nz/disclosure.aspx?type=bill&subtype=government&year=2018&no=47>

### **Clause by clause analysis**

*Clause 1* is the Title clause.

*Clause 2* is the commencement clause. The Bill comes into force on the day after the date of Royal assent.

*Clause 3* provides that the Bill amends the Crown Minerals Act 1991.

## **Part 1**

### **Amendments to Parts 1 to 1B of principal Act**

*Clause 5* amends section 19 to clarify the status of a minerals programme. Previously, a minerals programme was not a regulation for the purposes of the Acts and Regulations Publication Act 1989. The amendment provides that the programme is now not a legislative instrument for the purposes of the Legislation Act 2012 (and so does not need to be drafted by the Parliamentary Counsel Office).

*Clause 6* amends section 28A, which allows the Minister to declare that permits are not to be issued or extended for specified land for a specified period. Under section 28A(4), a declaration does not affect a permit granted before the notice is published in the *Gazette*. The amendments clarify the scope of the declaration so that it can relate to the land area of a permit but cannot deny an extension to the duration of a permit.

*Clauses 7 and 9* amend sections 39 and 41A to clarify the process for revoking a permit where there has been a change of control of a permit participant (other than a participant that is an operator of a Tier 1 permit). In particular, the time frame for giving notice of an intention to revoke the permit is limited to 3 months after the later of the date on which the participant notifies the Minister of the change of control and the date by which the participant provides information requested by the Minister.

Section 41A is also amended to clarify that the duty to notify the Minister of a change of control applies when the permit participant knows, or ought reasonably to know, of the change of control.

Sections 39 and 41A are also amended to allow the Minister to revoke a permit if the duty to notify the Minister of a change of control is not complied with.

*Clause 8* inserts *new sections 41AA to 41AF*. In summary, these provisions—

- require the Minister’s prior consent for a change of control of a permit operator of a Tier 1 permit; and
- require the permit operator to notify the Minister of such a change of control; and
- provide for applications for consent and the supply of information relating to applications; and
- specify when the Minister can consent; and
- provide for a Tier 1 permit to be revoked if consent is not granted.

*Clause 10* amends section 41D (which relates to conditions on consents) to refer to a consent under *new section 41AE*.

*Clause 11* amends section 42A, which relates to authorising geophysical surveys on adjacent land. Currently, the authorisation is subject to the Act as if it were a prospecting permit. This is changed so that the authorisation is subject to the Act as if it were a permit of the same type as that held by the relevant permit holder (that is, a prospecting permit, an exploration permit, or a mining permit, as the case may be).

*Clauses 12 to 14* amend sections 53 and 54 and insert *new section 54A*. Sections 53 and 54 (which require an access agreement to be entered into) do not apply to minimum impact activities. However, the sections provide for access arrangements for land described in Schedule 4 in relation to an activity set out in section 61(1A)(a) to (e). One of those activities is a minimum impact activity. The provisions relating to Schedule 4 land have been moved into *new section 54A* to avoid a potential conflict between the references to minimum impact activities in sections 53(1) and 54(1) and the effect of section 61(1A)(a) to (e). *Clauses 4, 15 to 17, and 21* make consequential amendments to sections 8, 57, 58, and 61 and Schedule 4.

*Clause 17* also amends section 61 (which relates to access arrangements for Crown land and land in the common marine and coastal area) to clarify which Minister or Ministers are acting in different contexts.

*Clauses 18 and 19* amend sections 100 and 101 to create offences and penalties relating to *new sections 41A(2) and 41AB(2) and (4)*.

## Part 2

### Amendments to schedules of principal Act

*Clause 20* amends Schedule 1, which contains transitional and savings provisions. The amendments—

- modify clause 4, which relates to royalties. The amendment clarifies the position for permit holders that opted into the minerals programme for minerals (excluding petroleum) that came into force on 1 February 2008. In this case,

royalties must continue to be calculated in accordance with that programme (rather than the programme that applied to any initial permit):

- allow the Minister to delegate certain powers relating to privileges granted under the Mining Act 1971:
- insert a new Part into the schedule. The new Part allows amendments to be made to a minerals programme that are consequential on the changes made by the Bill without complying with the public notice and submission process that would otherwise apply.

*Hon Dr Megan Woods*

## **Crown Minerals Amendment Bill**

Government Bill

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## Part 2

### Amendments to schedules of principal Act

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## Schedule

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### New Part 2 inserted into Schedule 1

## The Parliament of New Zealand enacts as follows:

### 1 Title

This Act is the Crown Minerals Amendment Act **2018**.

### 2 Commencement

This Act comes into force on the day after the date of Royal assent. 5

### 3 Principal Act

This Act amends the Crown Minerals Act 1991 (the **principal Act**).

## Part 1

### Amendments to Parts 1 to 1B of principal Act

### 4 Section 8 amended (Restrictions on prospecting or exploring for, or mining, Crown owned minerals) 10

In section 8(1)(b), replace “and 54” with “, 54, and **54A**”.

### 5 Section 19 amended (Issue of minerals programmes)

Replace section 19(3) with:

### (3) A minerals programme— 15

- (a) is a disallowable instrument for the purposes of the Legislation Act 2012 and must be presented to the House of Representatives under section 41 of that Act; but
- (b) is not a legislative instrument for the purposes of the Legislation Act 2012 (*see* section 20 of this Act); and
- (c) is not to be drafted by the PCO under section 59(2)(a) of the Legislation Act 2012. 5
- 6 Section 28A amended (Declaration that permits not to be issued or extended for specified land for specified period)**
- (1) Replace section 28A(1) with: 10
- (1) The Minister may declare that, during a specified period, specified kinds of permits—
- (a) will not be granted in respect of specified land; and
- (b) will not have the area of land that those permits apply to extended to include any of that specified land. 15
- (1A) For the purposes of **subsection (1)**,—
- (a) the declaration may be made only if the Minister believes that the declaration is necessary to better meet the purpose of this Act:
- (b) the declaration must be made by notice in the *Gazette*.
- (2) In section 28A(2), (3), and (4), replace “subsection (1)” with “**subsection (1A)(b)**”. 20
- (3) After section 28A(4)(b), insert:
- (ba) power to extend the duration of a permit; or
- 7 Section 39 amended (Revocation or transfer of permit)**
- (1) After section 39(1), insert: 25
- (1A) The Minister may also revoke a permit—
- (a) as referred to in **section 41A(7)**; or
- (b) in accordance with **section 41AF** (but, in this case, subsections (2) to (4) of this section do not apply).
- (2) After section 39(2), insert: 30
- (2A) In the case of an intention to revoke a permit under **section 41A(7)(b)** where the change of control has been notified in accordance with **section 41A(2)**, the Minister may only serve a notice under subsection (2) within 3 months after the later of the following:
- (a) the date on which the permit participant notifies the Minister of the change of control in accordance with **section 41A(2)**: 35

- (b) the date by which the permit participant provides to the Minister all of the information and documents requested under section 41A(5) (if any).
- (3) In section 39(3), replace “41 working days after the date on which the notice under subsection (2) is served” with “specified in the notice”.
- (4) After section 39(3), insert: 5
- (3A) In the case of **section 41A(7)(a)**, the following applies:
- (a) the Minister may, by serving written notice on the permit holder, revoke the permit with effect on the date specified in the notice if the Minister is satisfied that the permit should be revoked:
- (b) the Minister may be so satisfied even if the Minister becomes satisfied of the matter set out in **section 41A(7)(b)** (for example, the Minister may be satisfied that the permit should be revoked because there is no good reason to excuse the contravention of **section 41A(2)**). 10
- (3B) The notice under subsection (3) or **(3A)** may be served only on or after the date that is 40 working days after the date on which the notice under subsection (2) is served. 15
- (5) In section 39(5), after “(3)”, insert “or **(3A)**”.

## 8 New sections 41AA to 41AF inserted

After section 41, insert:

### 41AA Meaning of change of control of permit participant or guarantor 20

- (1) In **sections 41AB** to 41A, a corporate body undergoes a **change of control** if—
- (a) a person (**person A**) obtains the power (whether directly or indirectly) to exercise, or control the exercise of, 50% or more of the voting rights in the corporate body; or 25
- (b) a person (**person A**) obtains, together with 1 or more specified persons, the power (whether directly or indirectly) to exercise, or control the exercise of, 50% or more of the voting rights in the corporate body.
- (2) In **subsection (1)(b)**, a **specified person**, in relation to person A, means—
- (a) a person who is acting or will act jointly or in concert with person A in respect of exercising, or controlling the exercise of, the voting rights of the permit participant; or 30
- (b) a person who acts, or is accustomed to acting, in accordance with the wishes of person A.

### 41AB Change of control of permit operator of Tier 1 permit 35

- (1) This section applies if a corporate body that is a permit operator of a Tier 1 permit undergoes a change of control.



- (2) Every person who obtains the power referred to in **section 41AA(1)** contravenes this subsection if the change of control is made without the prior consent of the Minister (*see sections 41AC to 41AE*, which relate to obtaining that consent).
- (3) A contravention of **subsection (2)** by a person may result in either or both of the following: 5
- (a) the revocation of the permit under **section 41AF**;
  - (b) an offence under **section 100(2A)** if the person knows, or ought reasonably to know, that the person has obtained the power referred to in **section 41AA(1)**. 10
- (4) The permit operator must notify the Minister in accordance with **subsection (5)** if—
- (a) **subsection (2)** is contravened; and
  - (b) the permit operator knows, or ought reasonably to know, that it has undergone a change of control. 15
- (5) For the purposes of **subsection (4)**, the notification must—
- (a) be given as soon as is reasonably practicable, but in any event not later than 3 months after the permit operator becomes aware, or ought reasonably to have become aware, that it has undergone a change of control; and 20
  - (b) be accompanied by a copy of any agreement or other document that specifies the change of control.

#### **41AC Application for consent for change of control**

- (1) An application for consent referred to in **section 41AB(2)** must— 25
- (a) be made— 25
    - (i) by the relevant person; or
    - (ii) if there is more than 1 relevant person, by all of the relevant persons; and
  - (b) be made at least 3 months before the date on which the proposed change of control takes effect; and 30
  - (c) include the following information:
    - (i) the name of each relevant person;
    - (ii) if a relevant person is a corporate body, the name of each director of the body and of each shareholder or member of the body referred to in **subsection (3)**; 35
    - (iii) particulars about how the change of control is proposed to be undertaken:

- (iv) particulars about when the change of control is proposed to take effect; and
- (d) be accompanied by—
- (i) a copy of any agreement or other document that specifies the change of control; and
- (ii) information or documents that show how the test in **section 41AE(1)** is satisfied.
- (2) If the Minister is satisfied that there are compelling reasons why a relevant person could not comply with **subsection (1)(b)**, the Minister may receive an application by a later date agreed by the Minister.
- (3) For the purposes of **subsection (1)(c)(ii)**, the shareholders or members of the corporate body that must be named are,—
- (a) if the body has equity securities quoted on a stock exchange,—
- (i) the shareholders or members who hold the 10 largest numbers of equity securities; or
- (ii) if there is more than 1 class of equity securities, the persons holding the 10 largest numbers of equity securities in each class:
- (b) in any other case, all of the shareholders or members.
- (4) In this section and **sections 41AD and 41AE**,—
- director** has the same meaning as in section 6(1) of the Financial Markets Conduct Act 2013
- equity security** has the same meaning as in section 8(2) of the Financial Markets Conduct Act 2013
- relevant person** means a person referred to in **section 41AA(1)** who is proposed to obtain the power referred to in that subsection
- stock exchange** has the same meaning as in section 2(1) of the Companies Act 1993.
- 41AD Minister may require information or documents to be supplied**
- (1) A permit participant, or a relevant person, must, if requested to do so, provide to the Minister information or documents relevant to the matters referred to in **section 41AE(1)**.
- (2) **Subsection (1)** applies to a permit participant whether or not that participant is the permit operator.
- 41AE When Minister may consent to change of control of permit operator**
- (1) The Minister may consent to the change of control of a permit operator for the purposes of **section 41AB** only if the Minister is satisfied that—
- (a) the permit holder, given the proposed change in control,—

- (i) has the financial capability to meet its obligations under the permit; and
  - (ii) is likely to comply with, and give proper effect to, the work programme for the permit; and
  - (iii) is likely to comply with the relevant obligations under this Act or the regulations in respect of reporting and the payment of fees and royalties; and
- (b) in the case of a Tier 1 permit for exploration or mining, the permit operator, after undergoing the change of control, has, or is likely to have by the time the relevant work in the permit is undertaken, the capability and systems that are likely to be required to meet the health and safety requirements of the Health and Safety at Work Act 2015 and the Maritime Transport Act 1994 for the types of activities to be carried out under the permit.
- (2) Section 29A(3) and (4) applies for the purposes of **subsection (1)(b)**, with all necessary modifications.
- 41AF Revocation of permit if change of control made without consent**
- (1) This section applies if **section 41AB(2)** is contravened.
- (2) The Minister may serve on the permit holder written notice of his or her intention to revoke the permit. The notice must—
- (a) refer to this section; and
  - (b) state, with reasons, that the Minister considers that **section 41AB(2)** has been contravened; and
  - (c) give the holder 40 working days after the date on which the notice is served to—
    - (i) show that **section 41AB(2)** has not been contravened; or
    - (ii) provide reasons why the permit should not be revoked (including showing why the Minister should be satisfied of the matters set out in **section 41AE** and why the contravention should be excused).
- (3) A notice under **subsection (4)** may be served on or after the date that is 40 working days after the date on which the notice under **subsection (2)** is served.
- (4) After considering any thing provided under **subsection (2)(c)**, the Minister may, by serving written notice on the permit holder, revoke the permit with effect on a date specified in the notice if the Minister is satisfied that—
- (a) **section 41AB(2)** has been contravened; and
  - (b) the permit should be revoked.

- (5) The Minister may be satisfied under **subsection (4)(b)** even if the Minister becomes satisfied of the matters set out in **section 41AE** (for example, the Minister may be satisfied that the permit should be revoked because there is no good reason to excuse the contravention of **section 41AB(2)**).
- (6) Section 39(5) to (7) applies to a revocation under this section, with all necessary modifications. 5
- 9 Section 41A amended (Change of control of permit participants)**
- (1) In the heading to section 41A, after “**participants**”, insert “**(other than operators of Tier 1 permits)**”.
- (2) Repeal section 41A(1) and (8). 10
- (3) Replace section 41A(2) with:
- (2) A permit participant must notify the Minister in accordance with subsection (3) if—
- (a) the permit participant—
- (i) is a corporate body; and 15
- (ii) knows, or ought reasonably to know, that it has undergone a change of control; or
- (b) the permit participant knows, or ought reasonably to know, that a corporate body that has provided a guarantee for the permit participant’s obligations under the permit (a **guarantor**) has undergone a change of control. 20
- (2A) However, this section does not apply to a change of control of a permit participant who is a permit operator of a Tier 1 permit (*see* instead **sections 41AB to 41AF**).
- (4) In section 41A(3), replace “of the change of control and” with “after the permit participant becomes aware, or ought reasonably to have become aware, of the matters referred to in **subsection (2)** and must”. 25
- (5) Replace section 41A(7) with:
- (7) The Minister may revoke the permit in accordance with the procedure set out in section 39 if— 30
- (a) **subsection (2)** is contravened; or
- (b) the Minister is not satisfied that, following the change of control, the permit holder has the financial capability to meet its obligations under the permit.
- 10 Section 41D amended (General provisions relating to transfers, dealings, and changes of permit operator)** 35
- In section 41D(1), after “41,”, insert “**41AE**,”.

- 11 Section 42A amended (Authorisation of geophysical surveys on adjacent land)**
- Replace section 42A(2) with:
- (2) An authorisation granted under this section is subject to the provisions of this Act as if the authorisation were a permit of the same type as the permit held by the permit holder and referred to in subsection (1). 5
- 12 Section 53 amended (Access to land for petroleum)**
- Replace section 53(3)(b) with:
- (b) land in the common marine and coastal area.
- 13 Section 54 amended (Access to land for minerals other than petroleum)** 10
- (1) In section 54(2), replace “in land” with “on or in land”.
- (2) Replace section 54(3)(b) with:
- (b) land in the common marine and coastal area.
- 14 New section 54A inserted (Access to Schedule 4 land)**
- After section 54, insert: 15
- 54A Access to Schedule 4 land**
- Despite sections 53 and 54, if a permit relates to land described in Schedule 4, the permit holder may prospect, explore, or mine on or in land to which the permit relates only—
- (a) in respect of land that is not subject to a customary marine title order or agreement; and 20
- (b) in accordance with an access arrangement agreed in writing—
- (i) between the permit holder, the Minister, and the appropriate Minister in relation to an activity set out in section 61(1A)(a) to (e) (if the permit is in respect of petroleum): 25
- (ii) between the permit holder and the appropriate Minister in relation to an activity set out in section 61(1A)(a) to (e) (if the permit is in respect of a mineral other than petroleum).
- 15 Section 57 amended (Meaning of entry on land)**
- In section 57, replace “53 and 54” with “53 to **54A**”. 30
- 16 Section 58 amended (Disputes as to classification of land and activities)**
- In section 58(1)(c), replace “section 53 or section 54” with “any of sections 53 to **54A**”.

- 17 Section 61 amended (Access arrangements in respect of Crown land and land in common marine and coastal area)**
- (1) In section 61(1) and (1AA), replace “sections 53(3) and 54(3)” with “**section 54A**”.
- (2) In section 61(1A), replace “The Minister of Conservation or the Minister and the Minister of Conservation, as the case may be,” with “The appropriate Minister (in the case of subsection (1)) or the Minister and the appropriate Minister (in the case of subsection (1AA))”. 5
- (3) In section 61(2), replace “appropriate Minister, or the Minister and the appropriate Minister, as the case may be,” with “appropriate Minister (in the case of subsection (1)) or the Minister and the appropriate Minister (in the case of subsection (1AA))”. 10
- (4) Replace section 61(2)(e) with:
- (e) any other matters that that Minister or those Ministers consider relevant.
- 18 Section 100 amended (Offences)** 15
- After section 100(2), insert:
- (2A) Every person commits an offence against this Act who contravenes, or permits a contravention of,—
- (a) **section 41AB(2)** (which relates to obtaining prior consent for a change of control of a permit operator of a Tier 1 permit) if the person knows, or ought reasonably to know, that the power referred to in **section 41AA(1)** has been obtained; or 20
- (b) **section 41AB(4)** (which relates to notifying the Minister of a change of control of a permit operator of a Tier 1 permit); or
- (c) **section 41A(2)** (which relates to notifying the Minister of a change of control of certain permit participants). 25
- 19 Section 101 amended (Penalties)**
- After section 101(2), insert:
- (2A) Every person who commits an offence against **section 100(2A)** is liable on conviction to the following: 30
- (a) in the case of **section 100(2A)(a)**, a fine not exceeding \$800,000;
- (b) in the case of **section 100(2A)(b)**, a fine not exceeding \$200,000;
- (c) in the case of **section 100(2A)(c)**, a fine not exceeding \$50,000.

## Part 2

### Amendments to schedules of principal Act

#### 20 Schedule 1 amended

- (1) In Schedule 1, replace clause 4(1) with:
- (1) Despite anything in clause 3, new section 105A, or regulations made under new section 105A, any royalties to be calculated under a permit or a subsequent permit that is granted in exchange for an existing permit must continue to be calculated in accordance with—
- (a) the minerals programme that applied when the existing permit (or, if the existing permit is a subsequent permit, the initial permit to that subsequent permit) was granted; or
  - (b) the minerals programme for minerals (excluding petroleum) that came into force on 1 February 2008 if the permit holder opted into that programme in accordance with clause 1.7(2) of that minerals programme and section 22(1)(a) (as in force before that section was replaced by the Amendment Act).
- (1A) **Subclause (1)** applies on and after 24 May 2013 (the date on which this schedule was replaced by the Amendment Act).
- (1B) The chief executive, on application by a permit holder who opted in as referred to in **subclause (1)(b)**, may refund an overpaid royalty, or reduce a royalty amount payable, for a reporting period that applied (in whole or in part) on or after 24 May 2013 until the commencement of this subclause (so that the royalty that is paid or payable is consistent with that paragraph).
- (2) In Schedule 1, after clause 12(2), insert:
- (2A) Despite subclause (1), the prohibition in section 240A of the Mining Act 1971 on a Minister delegating a power conferred by section 145 of that Act no longer applies to an existing privilege.
- (3) In Schedule 1, after Part 1, insert the **Part 2** set out in the **Schedule** of this Act.

#### 21 Schedule 4 amended

In the Schedule 4 heading, replace “53(3), 54(3)” with “**54A**”.

**Schedule**  
**New Part 2 inserted into Schedule 1**

**s 20(3)**

**Part 2**

**Provision relating to Crown Minerals Amendment Act 2018** 5

**22 Consequential amendments to minerals programme**

Nothing in section 17 or 18 of this Act applies to any change to a minerals programme if the change that is made is consequential to the amendments made to this Act by the Crown Minerals Amendment Act **2018** (including any change to remove inconsistencies between the minerals programme and this Act as amended). 10