

Crown Minerals Amendment Bill

Government Bill

As reported from the committee of the whole House

Key to symbols used in reprinted bill

As reported from the committee of the whole House

text inserted

~~text deleted~~

Hon Dr Megan Woods

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Schedule

New ~~Part 2~~ Part 3 inserted into Schedule 1

13

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.

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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—
- (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.
- 6 Section 28A amended (Declaration that permits not to be issued or extended for specified land for specified period)** 10
- (1) Replace section 28A(1) with:
- (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.
- (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)**”.
- (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)** 25
- (1) After section 39(1), insert:
- (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:
- (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)**:

- (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, before the power referred to in **section 41AA(1)** is obtained, the person knows, or ought reasonably to know, that the person will obtain the power. 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
- (4A) **Subsection (4)** does not apply in the case of a contravention referred to in **section 41AC(2A)(c)**.
- (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** 25
- (1) An application for consent referred to in **section 41AB(2)** must—
- (a) be made—
 - (i) by the relevant person; or
 - (ii) if there is more than 1 relevant person, by all of the relevant persons; and 30
 - (b) be made at least 3 months before the date on which the proposed change of control takes effect; and
 - (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— 5
- (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 (which date must not be later than the date on which the proposed change of control takes effect). 10
- (2A) The following applies if an application is properly made in accordance with this section (including **subsection (1)(b) or (2)**) but the application is still being considered by the Minister when the change of control takes effect: 15
- (a) **section 41AB(2)** is not contravened while the application is being considered by the Minister; and
- (b) if the Minister gives his or her consent, **section 41AB(2)** is not contravened; but 20
- (c) if the Minister declines to give his or her consent, **section 41AB(2)** must be treated as being contravened from the date of the Minister's decision.
- (3) For the purposes of **subsection (1)(c)(ii)**, the shareholders or members of the corporate body that must be named are,— 25
- (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: 30
- (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 35
- 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)**. 5
- (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— 10
- (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 15
- (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 for the types of activities to be carried out under the permit. 20 25
- (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— 30
- (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— 35
- (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. 5
- (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— 10
- (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)**). 15
- (6) Section 39(5) to (7) applies to a revocation under this section, with all necessary modifications.
- 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)**”. 20
- (2) Repeal section 41A(1) and (8).
- (3) Replace section 41A(2) with:
- (2) A permit participant must notify the Minister in accordance with subsection (3) if— 25
- (a) the permit participant—
- (i) is a corporate body; and
- (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. 30
- (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**). 35
- (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”.

- (4A) In section 41A(5), after “person A concerned”, insert “(as referred to in **section 41AA(1)**)”.
- (5) Replace section 41A(7) with:
- (7) The Minister may revoke the permit in accordance with the procedure set out in section 39 if— 5
- (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)** 10
- In section 41D(1), after “41,”, insert “**41AE**,”.
- 11 Section 42A amended (Authorisation of geophysical surveys on adjacent land)**
- Replace section 42A(2) with: 15
- (2) An authorisation granted under this section—
- (a) 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); but
 - (b) does not authorise any activity other than the carrying out of a ~~geophysical survey~~ geophysical surveys. 20
- 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)** 25
- (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: 30
- 54A Access to Schedule 4 land in common marine and coastal area**
- Despite sections 53 and 54, if a permit relates to land in the common marine and coastal area that is described in Schedule 4, the permit holder may exercise the permit only—

- (a) in respect of land that is not subject to a customary marine title order or agreement; and
- (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): 5
- (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) 10**
In section 57, replace “53 and 54” with “53 to **54A**”.
- 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) 15**
- (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))”. 20
- (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))”. 25
- (4) Replace section 61(2)(e) with:
- (e) any other matters that that Minister or those Ministers consider relevant.
- 18 Section 100 amended (Offences) 30**
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, before the power referred to in **section 41AA(1)** is obtained, the person knows, or ought reasonably to know, that the person will obtain the power; or 35
- (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).

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: 5
- (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

10

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— 15
- (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 20
 - (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 old section 22(1)(a).
- (1A) **Subclause (1)** applies on and after 24 May 2013 (the date on which this schedule was replaced by the Amendment Act). 25
- (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 **subclause (1)(b)**). 30
- (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. 35
- (3) ~~In Schedule 1, after Part 1, insert the **Part 2** set out in the **Schedule** of this Act.~~

(3) In Schedule 1, after Part 2, insert the **Part 3** 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~~ Part 3 inserted into Schedule 1

s 20(3)

Part 23	
Provisions relating to Crown Minerals Amendment Act 2018	5
2230 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
2331 Existing transactions not affected	
(1) The amendments made by sections 7 to 10, 18, and 19 of the Crown Minerals Amendment Act 2018 <u>apply 2018</u> (to the extent that they relate to transactions) <u>apply</u> only to transactions entered into on or after commencement (and this Act, as in force immediately before commencement, continues to apply to a transaction entered into before commencement as if the Crown Minerals Amendment Act 2018 had not been enacted).	15
(2) In this clause, a transaction must be treated as being entered into before commencement even if, immediately before commencement, the transaction is subject to a condition precedent.	20
(3) In this clause,—	
change of control means a change of control (within the meaning of section 41A(1) and (8) of this Act (as in force immediately before commencement))	
commencement means the commencement of the Crown Minerals Amendment Act 2018	25
transaction means a contract or an arrangement that has or will have the effect of a corporate body undergoing a change of control.	

Crown Minerals Amendment Bill

Legislative history

5 April 2018	Introduction (Bill 47–1)
3 May 2018	First reading and referral to Economic Development, Science and Innovation Committee
2 November 2018	Reported from Economic Development, Science and Innovation Committee (Bill 47–2)
6 December 2018	Second reading
11 December 2018	Committee of the whole House (Bill 47–3)