Crown Minerals Amendment Bill

Government Bill

Explanatory note

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 of infrastructure and wells.

Bill addresses 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 New Zealand's 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 the 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:
- 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. Those 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 of compliance with work programmes and

permit conditions, but also in relation to the decommissioning-related obligations in the CMA.

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=2022&no=198

Regulatory impact statement

The Ministry of Business, Innovation, and Employment produced 2 regulatory impact statements on 21 June 2022 to help inform the main policy decisions taken by the Government relating to the contents of this Bill.

Copies of these regulatory impact statements can be found at—

- 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
- 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
- https://treasury.govt.nz/publications/informationreleases/ris

Clause by clause analysis

Clause 1 relates to the Title of the Bill.

Clause 2 provides that the Bill comes into force on 1 July 2023.

Clause 3 provides that the Act being amended is the Crown Minerals Act 1991 (the **principal Act**).

Part 1
Amendments to Parts 1 and 1A of principal Act

Clause 4 alters the purpose of the principal Act. The purpose will no longer be to "promote" prospecting for, exploration for, and mining of Crown owned minerals for the benefit of New Zealand. *Clause 4(1)* changes that purpose to the more neutral statement to "manage" prospecting for, exploration for, and mining of Crown owned minerals for the benefit of New Zealand. *Clause 4(2)* also alters the statement in section 1A(2) of the principal Act that the principal Act provides for "the efficient allocation of rights to prospect for, explore for, and mine Crown owned minerals" to state

that the principal Act provides for "the efficient processing and consideration of applications for rights to prospect for, explore for, and mine Crown owned minerals".

Clause 5 alters the functions of the Minister responsible for the administration of the principal Act (the **Minister**) set out in section 5 of the principal Act by removing the function of attracting permit applications, including by way of public tender.

Clause 6 amends section 16 of the principal Act by replacing section 16(3) with a provision that allows minerals programmes to be amended to reflect and give effect to the amendments made by this Bill.

Part 2
Amendments to other provisions of principal Act

Clauses 7 to 9 amend sections 23A, 24, and 25 of the principal Act to delete references to section 1A (which relates to the purpose of the principal Act) because the changes made to the purpose of the Act by *clause 4* mean it is no longer necessary to expressly override section 1A in those sections.

Clause 10 inserts a further matter into section 29A(2) of the principal Act that the Minister must be satisfied of before granting a permit to explore for petroleum or a petroleum mining permit. The Minister must be satisfied that the applicant is likely to satisfy their decommissioning and post-decommissioning obligations under the principal Act.

Clause 11 inserts *new section 29C* into the principal Act. *New section 29C* applies if the applicant for a permit is a previous or current permit holder and the applicant is or was required to submit an iwi engagement report or reports under section 33C. If *new section 29C* applies, the Minister may have regard to feedback from iwi or hapū about the quality of the applicant's previous engagement with them, in the applicant's capacity as a previous or current permit holder.

Clause 12 amends section 33C of the principal Act (which provides for iwi engagement reports) by requiring a permit holder, before giving an annual report on iwi engagement to the Minister, to provide a draft annual report to relevant iwi or hapū and give them a reasonable opportunity to comment. The annual report must now satisfy the minimum prescribed content for annual engagement reports and also include the comments provided by iwi or hapū in that report.

Clause 13 inserts *new section 33CA* into the principal Act. *New section 33CA* provides for an annual review meeting to discuss an iwi engagement report if the relevant iwi or hapū asks the chief executive of the Ministry of Business, Innovation, and Employment to arrange such a meeting. *New section 33CA* also deals with issues such as who must be invited to attend the meeting and participation rights.

Clause 14 amends section 41 of the principal Act to require the Minister to be satisfied, in the case of the transfer of a permit to explore for or mine petroleum, that the transferee is highly likely to be able to comply with their decommissioning and post-decommissioning obligations.

Clauses 15 and 16 make similar changes to sections 41AE and 41C of the principal Act, (which relate to the change of control of a permit operator).

Clause 17 amends section 50A of the principal Act to omit a reference to section 1A (which states the purpose of the principal Act) as it no longer needs to be overridden in light of the changes to its wording.

Clause 18 amends *section 89D* of the principal Act to set out a rule of interpretation for the application of the decommissioning provisions of the principal Act for when provisions are applied to persons of a different status from those to whom they would ordinarily apply or that otherwise raise issues of application. The applied provisions apply with any necessary modifications and in accordance with the purpose of the provision imposing the requirement.

Clause 19 amends section 105 of the principal Act to insert a regulation-making power for regulations setting minimum prescribed contents for iwi engagement reports.

Clause 20 inserts *new Part 5* into Schedule 1 of the principal Act. Schedule 1 contains transitional, savings and related provisions. The general effect of *new Part 5* is to apply the provisions of the Bill with immediate effect to any pending application or any current permit or licence.

Hon Dr Megan Woods

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Contents

The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Crown Minerals Amendment Act **2022**.

2 Commencement

This Act comes into force on **1 July 2023**.

3 Principal Act

This Act amends the Crown Minerals Act 1991.

Part 1
Amendments to Parts 1 and 1A of principal Act

4 Section 1A amended (Purpose)

(1) In section 1A(1), replace "promote" with "manage".

(2) In section 1A(2)(a), replace "allocation of rights" with "processing and consideration of applications for rights".

5 Section 5 amended (Functions of Minister)

In section 5(a), replace "attract permit applications, including by way of" with "from time to time offer permits for application by".

6 Section 16 amended (Changes to minerals programmes)

Replace section 16(3) with:

(3) Nothing in section 17 or 18 applies to any change to a minerals programme if the purpose of the change is to—

(a) correct any error and the effect of the change is minor; or

(b) reflect and give effect to the amendments made by the Crown Minerals Amendment Act **2022**.

Part 2
Amendments to other provisions of principal Act

7 Section 23A amended (Application for permits)

In section 23A(2)(d), replace "1A, 25(1)(b)(i)," with "25(1)(b)(i)".

8 Section 24 amended (Allocation by public tender)

In section 24(5A)(d), delete "(including section 1A)".

9 Section 25 amended (Grant of permit)

In section 25(2A), delete "(including section 1A)".

10 Section 29A amended (Process for considering application)

(1) After section 29A(2)(d), insert:

(e) in the case of an application for a permit as defined in section 89D, a statement that the applicant is highly likely to comply with the relevant obligations in subparts 2 and 3 of Part 1B.

(2) In section 29A(5), replace "section 29B" with "sections 29B and **29C**".

11 New section 29C inserted (Minister may have regard to feedback from iwi or hapū when considering application)

After section 29B, insert:

29C Minister may have regard to feedback from iwi or hapū when considering application

(1) This section applies if—

(a) the applicant is a previous or current permit holder; and

(b) the applicant, in their capacity as a previous or current permit holder, is required to submit an iwi engagement report or reports under section 33C.

(2) If this section applies, before granting a permit, the Minister may have regard to feedback from any iwi or hapū about the quality of the applicant's previous engagement with the iwi or hapū, in the applicant's capacity as a previous or current permit holder.

12 Section 33C amended (Iwi engagement reports)

(1) After section 33C(2), insert:

(2A) Before providing an annual report to the Minister, the permit holder must—

(a) provide a draft annual report to iwi or hapū whose rohe includes some or all of the permit area or who otherwise may be directly affected by the permit; and

(b) give those iwi or hapū a reasonable opportunity to comment on the draft report.

(2B) The annual report must—

(a) meet the minimum prescribed content; and

(b) include any comments provided by those iwi or hapū on the draft annual report.

(2) After section 33C(3)(b), insert:

(c) the minimum prescribed content for annual engagement reports, which may vary for different classes or kinds of Tier 2 permit.

13 New section 33CA inserted (Annual review meeting about iwi engagement reports)

After section 33C, insert:

33CA Annual review meeting about iwi engagement reports

(1) This section applies only if—

(a) an iwi engagement report is required under section 33C; and

(b) any relevant iwi or hapū asks the chief executive to arrange a meeting under this section.

(2) The chief executive may require the holder of a permit for which an iwi engagement report is required to attend, once in each permit year, a review meeting—

(a) to discuss an iwi engagement report or draft iwi engagement report; and

(b) to provide an opportunity for discussion about the report or draft report between any iwi or hapū, the chief executive, the permit holder, the appropriate Minister (but only if the permit relates to Crown land), and any regulatory agency that the chief executive has invited to attend the meeting.

(3) Without limiting **subsection (2)(b)**, the chief executive—

(a) must—

(i) invite all iwi or hapū identified in an iwi engagement report or a draft iwi engagement report as a relevant iwi or hapū; and

(ii) invite any other iwi or hapū whom the chief executive considers to be directly affected by the permit to the meeting; and

(iii) give all invited iwi or hapū a reasonable opportunity to confirm their attendance; and

(b) may invite any regulatory agency that he or she thinks is likely to have regulatory oversight of the activities under the permit.

(4) Unless otherwise agreed between all attending iwi or hapū, the chief executive, and the permit holder, a review meeting must be—

(a) attended by at least 1 representative of the permit operator who has sufficient seniority, expertise, and knowledge to enable full discussion of the work programme and conditions of the permit; and

(b) held on a date and at a place notified to the attending iwi or hapū and the permit holder by the chief executive (which must be at least 20 working days after the date of notification).

(5) The chief executive must inform all attending iwi and hapū if any person other than those referred to in **subsections (2) and (3)** is attending the review meeting.

(6) In this section, **relevant iwi or hapū** means an iwi or a hapū whose rohe includes some or all of the permit area or who otherwise may be directly affected by the permit in question.

14 Section 41 amended (Transfer of interest in permit)

Replace section 41(6) with:

(6) Before granting consent, the Minister must be satisfied that the transferee is highly likely to be able to comply with—

(a) the conditions of, and give proper effect to, the permit; and

(b) in the case of a permit as defined in section 89D, the relevant obligations in subparts 2 and 3 of Part 1B.

15 Section 41AE amended (When Minister may consent to change of control of permit operator)

After section 41AE(1)(a)(iii), insert:

(iv) in the case of a permit as defined in section 89D, is highly likely to comply with the relevant obligations in subparts 2 and 3 of Part 1B; and

16 Section 41C amended (Change of permit operator)

After section 41C(3)(a)(ii), insert:

(iii) in the case of a permit as defined in section 89D, comply with the relevant obligations in subparts 2 and 3 of Part 1B; and

17 Section 50A amended (Restricted access to Taranaki conservation land)

In section 50A(2), delete "1A and".

18 Section 89D amended (Interpretation)

In section 89D, insert as subsections (2) and (3):

(2) **Subsection (3)** applies in this subpart and, to avoid doubt, it applies if a person is required to comply with provisions that—

(a) apply to persons of a different status (for example a transferee, who, in order to obtain the Minister's consent to the transfer of a participating

interest in a permit, is required to comply with provisions relating to financial securities that are expressed to apply only to a permit or licence holder); or

(b) otherwise raise issues relating to their application.

(3) If this subsection applies, the provisions that the person is required to comply with—

(a) apply with any necessary modifications; and

(b) apply in a way that gives effect to the purpose of the provision imposing the requirement.

19 Section 105 amended (Regulations)

In section 105(1)(cb), after "under section 33C,", insert "the minimum prescribed content for the reports,".

20 Schedule 1 amended

In Schedule 1,—

(a) insert the Part set out in the **Schedule** of this Act as the last Part; and

(b) make all necessary consequential amendments.

Schedule
New Part 5 inserted into Schedule 1

s 20

Part 5
Provisions relating to Crown Minerals Amendment Act 2022

38 Interpretation

In this schedule,—

Amendment Act means the Crown Minerals Amendment Act **2022**

new section means the specified section of this Act as amended by the Amendment Act

new subsection means the specified subsection of this Act as amended by the Amendment Act

39 New sections to apply to existing privileges

New **sections 29C and 33CA** apply to each existing privilege as if the existing privilege were a permit and the holder of the privilege a permit holder.

40 Amendments apply to existing privileges

New **sections 29A and 33C** apply to each existing privilege as if the existing privilege were a permit and the holder of the privilege a permit holder.

41 Amendments apply to existing permits and licences

(1) New **sections 29A and 33C** apply to every existing permit and licence.

(2) **Subclause (1)** does not limit **clauses 39 and 40**.

42 Existing applications determined in accordance with this Act as amended

(1) Any application that is lodged or submitted, but not determined, before the day after the date on which the Amendment Act receives the Royal assent must be determined in accordance with this Act as in force on the day after the date on which the Amendment Act receives the Royal assent.

(2) **Subclause (1)** applies despite anything to the contrary in this Act.

(3) In this clause, **application** means—

(a) an application under section 23A (application for permits):

(b) a tender under section 24 (allocation by public tender):

(c) an application under section 41 (transfer of interest in permit):

(d) a notification under section 41AB (change of control of permit operator of Tier 1 permit):

(e) an application under section 41C (change of permit operator).

Wellington, New Zealand:
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