

## **Legislative statement: Crown Minerals (Decommissioning and Other Matters) Amendment Bill First Reading**

Presented to the House of Representatives under Standing Order 272

### **Overview**

The Crown Minerals (Decommissioning and Other Matters) Amendment Bill (the Bill) amends the Crown Minerals Act 1991 (the Act) to strengthen the petroleum sector's financial and legal responsibility for decommissioning activities and so mitigate the risk to the Crown and other third parties of having to carry out and fund decommissioning.

The Bill does this through provisions that:

- Introduce an explicit statutory obligation for all current and future petroleum permit and licence holders to carry out decommissioning activities and meet the full financial costs of those activities;
- Introduce a civil pecuniary penalty and criminal sanction for failing to fund and carry out decommissioning;
- Empower the Minister to monitor a permit or licence holder's financial position, and carry out assessments of their financial capability to carry out decommissioning;
- Provide the regulator with oversight of mining permit and licence holders' plans for field development;
- Require permit and licence holders to obtain and maintain a financial security to secure in full or in part the performance of their decommissioning obligations that can be accessed by the Crown in the event that a permit or licence fails to carry out or fund decommissioning; and,
- Provide the Crown with the ability to collect one or multiple payments to meet the cost of any post-decommissioning work.

It also includes changes that are not specific to decommissioning and will apply across the whole of the Act, including provisions that:

- Strengthen decision-making tests in permit acquisitions;
- Expand the enforcement toolkit across the Act; and,
- Make technical amendments.

The following is a brief outline of the policy matters covered by this Bill.

### **An explicit, statutory obligation to carry out and fund decommissioning**

The Bill provides that the obligation to carry out and fund decommissioning applies:

- to all current petroleum exploration and mining permit holders under the Act, as well as licence holders under the Petroleum Act 1937; and,
- to any future petroleum exploration and mining permit holders.

The Bill provides that the obligation to carry out and fund decommissioning will apply to permit/licence participants jointly and severally, and the obligation to fund decommissioning applies to a former permit or licence holder where they transfer their interest in a permit/licence after the Bill is enacted. The liability in transfer situations (i.e. 'perpetual' or 'trailing' liability) will be limited to decommissioning infrastructure and wells installed before the transfer has taken place, and only in situations where the current permit holder fails to meet their obligations.

The Bill also provides the following in relation to the obligation to carry out and fund decommissioning:

- Permit and licence holders must carry out, and meet the costs of, the decommissioning of all petroleum infrastructure put in place for the purposes of carrying out, or otherwise related to, activities authorised by the current permit (whenever granted). This obligation applies to all wells and infrastructure under current and future petroleum exploration permits, as well as petroleum mining permits and licences.
- Permit and licence holders must decommission relevant older petroleum infrastructure and relevant older wells. This includes wells drilled or infrastructure installed as part of a prior permit that was converted into the existing mining permit, even if the well has not been used as part of the current permit's activities.
- In certain circumstances, the Minister may grant exemptions or deferrals in relation to a permit or licence holder's obligation to carry out decommissioning.
- Decommissioning must be completed before a permit/licence expires, is surrendered, or within a timeframe specified by the Minister.
- Decommissioning must be carried out in accordance with any requirements or standards set by or under any other enactments or imposed by a regulatory agency.

### **Penalties for failure to decommission**

The Bill introduces:

- A civil pecuniary penalty for failing to comply with decommissioning or financial security obligations or both, and;
- A criminal offence and penalties for engaging in conduct that the permit/licence holder knows will result in the holder not being able to fund or carry out decommissioning or both.

The civil pecuniary penalty can be a fine of up to \$500,000 for an individual, including directors, and \$10 million for a body corporate.

The criminal penalty for an individual can be a fine of up to \$1 million and/or a custodial sentence not exceeding 2 years. The criminal sanction for a business can be a fine not exceeding \$10 million or a fine up to 3 times the cost of decommissioning, whichever is greater. Defences to criminal liability will be available for directors, for example, where a director took all reasonable steps to ensure the permit or licence holder fulfilled its decommissioning obligations.

### **Monitoring of financial position and field development**

The Bill provides that the Minister may, at any time while the permit/licence is in force, assess whether a permit/licence holder is highly likely to have the financial capability to complete its obligations to carry out and fund decommissioning (a "financial capability assessment").

Permit/licence holders will be required to keep a record of certain information (set by regulations) necessary to assist the Minister in conducting a financial capability assessment. The information must be provided to the Minister on or before times set out in regulations and/or when requested by the Minister.

Outside of financial capability assessments, the Bill provides that the Minister may require information to be provided by those permit or licence holders with decommissioning obligations, to enable the Minister to carry out monitoring of the permit/licence holder's financial position and the Minister may use this information to decide whether a financial capability assessment is required.

Petroleum mining permit and licence holders must prepare and submit new and/or updated Field Development Plans and Asset Registers to the Chief Executive in accordance with certain requirements and at times and/or events set out in regulations.

The Bill requires petroleum mining permit and licence holders to provide the Chief Executive with a notice of expected cessation of production at times prescribed in regulations, as well as notify the Chief Executive when production permanently ceases.

### **Provision of a financial security for decommissioning**

The Bill requires that permit/licence holders must obtain and maintain a financial security to meet their obligations to carry out and fund decommissioning.

The Bill empowers the Minister to determine the kind and amount of security. When making this decision, the Bill sets out matters that the Minister must take into account. The Minister may alter the amount or type required, and if this happens, the permit or holder must be given written notice. The Bill provides permit and licence holders with a right of objection to both the original and any subsequent decision by the Minister.

The Bill requires that in the case of a transfer, the in-coming party must join the existing financial security or enter a new one prior to the existing party leaving the arrangement. If the in-coming party fails to do so, the transfer will be void.

### **Payments towards post-decommissioning work**

The Bill provides that any permit holder or licence holder that is obliged to carry out and meet the costs of decommissioning, must pay the Chief Executive an amount to meet the cost of any post-decommissioning work required. This includes activities carried out in relation to the remediation of petroleum infrastructure that has been decommissioned but not removed, and any wells that have been plugged and abandoned.

The Minister will decide the amount to be paid by each permit/licence holder and will apply the criteria set out in regulations in making this determination.

### **Decision-making tests in permit acquisitions**

The Bill proposes amendments to the permit acquisition provisions (sections 29A, 41, 41AE and 41C) to require the decision-maker to be satisfied that the proposed permit holder will be highly likely to

comply with the work programmes or permit conditions, health and safety and environmental requirements and obligations relating to fees and royalties.

The intent of these amendments is to shift the threshold to a level of confidence that is broadly midway between “more likely than not” and “certainty”.

### **Enforcement Tools**

The Bill allows the Chief Executive and enforcement officers to accept enforceable undertakings and issue compliance notices. These may be used in relation to a matter relating to a contravention or an alleged contravention by the person of this Act or the regulations. The penalty for breaching a compliance notice or enforceable undertaking is a fine of up to of \$200,000.

The Bill also provides for an infringement offence scheme to be prescribed in regulations. The maximum fee for an infringement offence is \$1000 for an individual and \$3000 for a body corporate.

### **Technical amendments.**

The Bill includes the following provisions which apply more generally across the Act:

- Inserting a new section 100(2)(d) to create a new offence and penalty for non-permit holders who do not provide information as required under the Act , with a maximum level of penalty of \$20,000, or \$2,000 per day for an ongoing offence;
- Amending section 90 to extend the types of activities that records and reports must cover to include decommissioning activities, and provide some examples of the records and reports that must be kept;
- Enabling the proactive release of reports once the relevant non-disclosure periods have passed under section 90(6) and (7);
- Removing the requirement for annual reassessments of the tier status of mineral permits; and,
- Reclassifying all minerals prospecting permits as Tier 2 permits.

### **Transitional provisions**

Any application that was lodged or submitted, but not determined, before the day after the date on which the Bill receives the Royal assent will be determined in accordance with this Act as in force on the day after the date on which the Amendment Act received the Royal assent.

### **Associated regulations**

The Bill allows certain matters to be prescribed in regulations. This includes, but is not limited to:

- requirements in relation to monitoring and financial capability assessments;
- criteria to be taken into account by the Minister when setting the kind of financial securities that permit/licence holders may be required to obtain and maintain;
- the making of payments for post decommissioning work, the management of accounts into which those payments are deposited, and the use of those payments;

- criteria the Minister will apply in setting the amount to be paid and in determining whether to grant exemptions from post decommissioning associated payment(s);
- regulations in relation to infringement offences and compliance notices; and,
- the records, statements, or any other documentation or information required under other legislation that must be retained for the purposes of the Act.

The Bill also allows for additional details to be prescribed in regulations, such as: things that may or may not be defined as relevant older petroleum infrastructure and wells, and defining activities that may be included in the obligation to decommission.