MINISTRY OF BUSINESS, INNOVATION & EMPLOYMENT
HĪKINA WHAKATUTUKI

COVERSHEET

Minister	Hon Dr Megan Woods	**Portfolio**	Energy and Resource Markets
Title of Cabinet paper	**Crown Minerals (Decommissioning and Other Matters) Amendment Bill – Approval for Introduction**	**Date to be published**	25/06/2021

List of documents that have been proactively released		
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10 June 2021	*LEG-21-MIN-0086 Minute*	*Cabinet Office*

Information redacted **YES**

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In Confidence

Office of the Minister of Energy and Resources

Chair, Cabinet Legislation Committee

Crown Minerals (Decommissioning and Other Matters) Amendment Bill: Approval for Introduction

Proposal

1 This paper seeks approval for the introduction of the Crown Minerals (Decommissioning and Other Matters) Amendment Bill ('the Bill').

2 The Bill introduces provisions to strengthen petroleum permit and licence holders' legal and financial responsibility for decommissioning activities and any post-decommissioning work. The objective of these changes is to mitigate the risk of decommissioning costs falling to the Crown or other third parties.

3 It also includes changes that are not specific to decommissioning and will apply across the whole of the Crown Minerals Act 1991 (CMA).

Policy

Cabinet agreed to policy proposals to amend the CMA to strengthen legal and financial responsibility for decommissioning

Decommissioning is an increasing concern as a number of petroleum fields near the end of their economic lives

4 Decommissioning is the process of taking petroleum infrastructure and wells out of service at the end of their productive or economic life. It may include removing infrastructure, plugging and abandoning wells, and undertaking necessary site restoration activities.

5 Decommissioning costs are an ordinary component of petroleum field exploration and mining activities, and are expected to be provided for as part of good industry practice. However, decommissioning costs can be substantial.

There is a risk that the Crown or other third parties will potentially have to undertake and fund decommissioning and any needed post-decommissioning work

6 In the event of a petroleum company's failure to decommission (eg in case of financial default) there is a risk that the Crown will potentially have to carry out and fund decommissioning.

7 The risk materialised in December 2019 when Tamarind Taranaki Ltd (Tamarind), the operator of the Tui oil field (Tui), went into receivership and

liquidation. With Tamarind's liabilities far exceeding the value of its assets, it and the other Tui participants were not able to meet any part of the decommissioning costs. To protect the marine environment, the Crown stepped in as the provider of last resort to decommission the Tui infrastructure. In February 2020 Cabinet agreed to appropriate funding of NZ$155 million [CBC-20-MIN-0008]. Additional funding has been approved in Budget 2021.

8 There is also a risk that the Crown will be left to carry financial responsibility for any needed remediation work post-decommissioning. Even when a well has been plugged and abandoned properly, there is a risk that remediation work may be required in future to maintain well integrity and prevent or fix leaks. Similarly, remediation work may be required for petroleum infrastructure that is left in place. However, once a field has been accepted as decommissioned permit/licence holders may surrender their permits, and there may therefore be no permit/licence holder to call upon to undertake this post-decommissioning work.

Currently there is no explicit statutory obligation to decommission and a lack of clarity about petroleum permit and licence holder's legal and financial responsibilities

9 There is currently no explicit statutory obligation to decommission under the CMA, and therefore a lack of clarity about petroleum permit and licence holder's responsibilities, the length of time for which they are responsible, and the consequences for failing to carry out decommissioning.

10 Existing requirements for decommissioning under the CMA have largely evolved on a case-by-case basis, and are defined in individual permit conditions. Reliance on permit conditions to establish legal and financial responsibility for decommissioning means that the requirements may not necessarily be worded and applied consistently across permit and licence holders.

11 The CMA is currently also silent on who carries the financial responsibility for any post-decommissioning work.

To mitigate the risk to the Crown, Cabinet agreed to amend the CMA to strengthen the petroleum sector's legal and financial responsibility for decommissioning

12 In June 2020, the Government announced proposals to amend the CMA to strengthen the regulation of the petroleum sector's decommissioning activities.

13 Cabinet agreed to [DEV-20-MIN-0092, CAB-20-MIN-0294]:

13.1 Impose an explicit statutory obligation on all current and future petroleum permit and licence holders to undertake and fund decommissioning activities, as an integral part of a permit to mine petroleum resources;

13.2 Enable the regulator to periodically assess permit and licence holders' financial capability to meet their decommissioning obligations, based on sufficiently detailed and up to date planning and financial information disclosures;

13.3 Empower the regulator to require permit and licence holders to establish and provide adequate financial security for decommissioning purposes, based on permit and licence holders' individual circumstances and risk profiles;

13.4 Provide the regulator with additional enforcement powers to: accept enforceable undertakings, issue compliance notices, and authorise the development of an infringement offence scheme; and

13.5 Make some minor and technical amendments to support effective implementation of the above proposals and improve the general administration of the regulatory regime.

14 In April 2021, I sought approval to include the following additional proposals in the Bill to address issues that arose during drafting, and to further strengthen the provisions by [DEV-21-MIN-0058, CAB-21-MIN-0111]:

14.1 Rescinding the decision made in June 2020 to require a financial security only if required, and instead make establishing and maintaining an adequate financial security for decommissioning costs a mandatory requirement, for both permit and licence holders, and applicants involved in permit transfers;

14.2 Allowing the Minister of Energy and Resources (the Minister) to set timeframes within which decommissioning must be done;

14.3 Making failure to comply with the obligation to decommission a criminal offence with penalties of up to 2 years imprisonment for individuals, including directors, and/or a fine of up to $1 million. The fine for businesses would be the greater of up to $10 million or up to three times the cost of decommissioning;

14.4 Enabling the regulator to collect payments (i.e. cash funds) from permit and licence holders to contribute to the risk of failure after decommissioning has been completed. The payments will be held in a pooled, central government account and accessed at the discretion of the Minister;

14.5 Strengthening the decision-making tests for permit acquisition provisions; and,

14.6 Exempting consequential changes to the minerals programmes from the public notice and submission process.

15 In April, I also noted the following items:

15.1 The approach to addressing the limitations of linking the obligation to decommission to requirements under other enactments;

15.2 The introduction of a requirement on permit and licence holders to provide a Field Development Plan (FDP) and Asset Register throughout the field life; and,

15.3 The introduction of an exemption process to manage shared infrastructure or different operator/ owner scenarios.

The Bill introduces a number of new provisions to mitigate the risk to the Crown and other third parties of having to carry out and fund decommissioning

16 The Bill is designed to create a solid legislative base for a robust regulatory framework that imposes discipline and strengthens the incentives for petroleum companies to undertake and fund their decommissioning activities and any post-decommissioning work.

17 Clause 15, new subpart 2 of Part 1B of the Bill provides for the three key pillars of the new regime, it:

17.1 provides a clear and consistent obligation to decommission;

17.2 provides the Crown with powers to carry out more effective financial monitoring, and the regulator with oversight of field development; and

17.3 enables the Minister to require permit/licence holders to obtain and maintain a financial security that can be accessed if needed;

18 Clause 15, new subpart 3 of Part 1B:

18.1 provides the Crown with the ability to collect one or multiple payments towards funding any post-decommissioning work;

19 Clause 15, new subpart 4 of Part 1B:

19.1 introduces a civil pecuniary penalty and criminal sanction for failing to fund and carry out decommissioning.

20 Further details are provided below.

The Bill provides a clear and consistent obligation to decommission

21 The Bill sets out that:

21.1 **The obligation applies to all current and future permit and licence holders jointly and severally, in perpetuity.** The Bill specifies that the obligation applies:

21.1.1 to all current exploration and mining permit holders under the CMA, as well as licence holders under the Petroleum Act 1937;

21.1.2 to any future exploration and mining permit holders; and,

21.1.3 to those permit applications under consideration but not yet decided at the time of commencement.

21.2 Each permit has a permit holder, and a permit holder can be made up of one permit participant or several. The Bill provides that in the case of a

permit with multiple participating interests, the legal and financial responsibility for decommissioning applies jointly and severally to all current permit participants. The same applies to licences.

21.3 Consistent with the principle of joint and several liability, the Bill also provides that financial responsibility for decommissioning applies to a former permit or licence holder, where they transfer their interest in a permit/licence after the Bill is enacted. This would mean that in the event that the current permit/licence holder fails to fulfil their obligations in regard to decommissioning, a former permit/licence holder will continue to be held liable for funding decommissioning. Their liability will be limited to decommissioning infrastructure installed before the transfer has taken place.

21.4 **Permit and licence holders must decommission anything put in place for the purposes of activities under their permit and licence.** It is important that permit and licence holders and the regulator have sufficient clarity as to what is required under the obligation to decommission, so that both parties can refer to this when producing and considering the cost estimates that will form the basis of the financial security requirement. It is also important as there are penalties and enforcement actions associated with not complying with the obligation to decommission.

21.5 The Bill defines requirements in relation to:

21.5.1 decommissioning petroleum infrastructure , and

21.5.2 plugging and abandoning wells.

21.6 Permit/licence holders must carry out and meet the cost of decommissioning all petroleum infrastructure and wells put in place for the purposes of carrying out activities authorised by a current permit/licence. This obligation applies to all wells and infrastructure, regardless of the type of permit, so it would include wells under current and future petroleum exploration permits, as well as petroleum mining permits.

21.7 The Bill also specifies that permit/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. The new requirement is designed to recognise that these exploration wells were part of the mining permit’s lineage, and therefore ought to fall under that permit’s liabilities..

21.8 **The Minister may grant exemption or deferral if necessary.** The Bill provides the Minister with the ability to grant exemptions or deferrals. Exemptions may be granted on an individual basis by written notice. The Bill defines criteria for granting an exemption to ensure the application is deliberately narrow, for example, in situations where multiple

permit/licence holders use the same infrastructure and would both be required to decommission it.

21.9 **Decommissioning must be completed before a permit/licence expires, is surrendered, or within a timeframe specified by the Minister.** The Bill provides that permit and licence holders are required to complete decommissioning activities prior to permit expiry, surrender or in accordance with timeframes set by the Minister in permit conditions.

21.10 If the permit expired prior to decommissioning being complete, the permit/licence holder would not be released from its obligation. In the case that a permit/licence was revoked, permit/licence holders would have two years post-revocation to complete decommissioning, one year to plug and abandon wells, or by a time agreed with the Minister.

21.11 **Decommissioning must be carried out in accordance with requirements or standards set under any other enactments.** The CMA is part of a wider legislative system that regulates the development of natural resources. Within this system, the CMA deals with allocating the right to explore or mine Crown owned minerals in exchange for a financial return, whereas the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act (the EEZ Act) and Resource Management Act 1991 (RMA) deal with environmental effects, and the Health and Safety at Work Act 2015 and associated regulations address work-related risks to health and safety**.**

21.12 If the Bill is passed into law, the CMA will provide an obligation to carry out and fund decommissioning of petroleum infrastructure and wells. The EEZ Act and RMA will continue to provide for the process to determine how activities, including decommissioning, must be carried out to achieve the best practicable environmental option. The Health and Safety at Work Act 2015 will continue to provide for the health and safety requirements. For example, WorkSafe NZ regulates the health and safety aspects of plugging and abandoning wells under the Health and Safety at Work (Petroleum Exploration and Extraction) Regulations 2016 and has a role in well examination schemes.

21.13 This approach is consistent with Cabinet's policy decisions in June 2020 and April 2021 and the current legislative framework. To give effect to this approach the Bill provides that decommissioning must be carried out in accordance with requirements or standards set under any other enactments.

21.14 Where resource consents and relevant authorities are silent on how decommissioning should be undertaken, the Bill provides that all petroleum infrastructure needs to be removed. This incentivises permit/licence holders to gain consent from local or regional authorities if they wish to leave infrastructure in place either on land or in territorial waters.

The Bill provides the Crown with additional financial capability assessment and monitoring powers

22 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.

23 The Bill requires permit/licence holders to keep a record of certain information (set by regulations) necessary to assist the Minister in conducting an assessment. The information must be provided to the Minister on or before times set out in regulations and/or when requested by the Minister.

24 Outside of financial capability assessments, the Bill provides that the Minister may require information to be provided by a permit/licence holder to enable the Minister to carry out basic 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. The kind of information and when it must be provided to the Minister will be set by regulations.

The Bill provides the regulator with oversight of field development

25 The Bill provides that permit/licence holders must prepare and submit new and/or updated Field Development Plans (FDP) and Asset Registers to the Minister in accordance with certain requirements and at times and/or events set out in regulations.

26 An FDP is a document that describes how a particular permit or licence holder will develop a resource, and an Asset Register will be a complete and accurate list of all infrastructure and wells that a permit/licence holder is required to decommission.

27 FDPs and Asset Registers will be used when the Minister carries out financial capability assessments. This provision is needed to provide the regulator with oversight over changes in intended field development, which may affect the nature of decommissioning activities and associated costs at the end of a permit's life.

28 The Bill requires permit/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.

The Bill requires permit/licence holders to have a financial security

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

30 The requirement applies to permit/licence holders, rather than any individual participating interests, although permit/licence holders may hold multiple different securities.

31 The Bill empowers the Minister to determine the type and amount of security. When making this decision, the Bill sets out a range of considerations that the

Minister will take into account, including any proposals from permit/licence holders on the type and amount of security, and any further criteria set out in regulations.

32 The Bill provides for a risk-based approach to regulation as agreed by Cabinet.

33 The matters that the Minister may take into account provide a degree of flexibility and proportionality by giving some discretion as to what type of financial security should be employed and how much it needs to secure in certain circumstances. For example, the most effective option for the Crown in the circumstances might be to require only partial or incremental sums to be posted as security for existing permits with late life assets, and/or a parent company guarantee.

34 When making this decision, the Minister will be guided by criteria set out in regulations. I will consult on what criteria are appropriate to provide a degree of assurance to the Crown while still allowing flexibility. The Bill also allows regulations to be made on how certain types of securities will be held and managed.

35 The Bill requires that in the case of a transfer, the in-coming party joins the existing financial security or enters 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.

The Bill introduces civil and criminal penalties

36 The Bill introduces:

36.1 civil pecuniary penalties for failing to comply with decommissioning and financial security obligations, and;

36.2 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 and carry out decommissioning.

The criminal offence will run in parallel with the civil regime and is reserved for the most egregious breaches where a party 'knowingly' contravened the decommissioning obligation.

37 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.

38 The criminal sanction 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 the greater part of a fine not exceeding $10 million or up to 3 times the cost of decommissioning, whichever is greater. Defences 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.

39 These penalties reflect the high level of public interest in permit and licence holders fulfilling their explicit duty to decommission given the harm of failing to do so. This potential harm not only includes the substantial cost to the Crown and/or

third parties if left to pay for and carry out decommissioning but also significant environmental effects and/or harm to health and safety.

The Bill provides the Crown with the ability to collect one or multiple payments towards funding any post-decommissioning work

40 The Bill provides that a permit/licence holder captured by the obligation to decommission can also be required to pay an amount to the Chief Executive to meet the costs of any post-decommissioning work required in future. 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.

41 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.

42 Payments will be held in a pooled central government account, with access by the Minister of Energy and Resources in accordance with prescribed requirements. Operational matters such as the administration and management of the fund will be the responsibility of the Chief Executive. The fund will be available for use, at the discretion of the Minister, for work required in relation to the remediation of wells and infrastructure after decommissioning has been completed and any environmental damage or health and safety risks created by the failure.

The Bill also includes changes that are not specific to decommissioning and will apply across the whole of the CMA

43 The Bill also:

43.1 strengthens decision-making tests in permit acquisitions;

43.2 expands the enforcement toolkit across the CMA; and,

43.3 introduces technical amendments.

The Bill strengthens the decision-making test in permit acquisitions

44 The Bill proposes amendments to the permit acquisition provisions (sections 29A, 41, 41AE and 41C) to require the decision-maker to have a higher level of confidence that the proposed permit holder will comply with the work programmes or permit conditions, health and safety and environmental requirements and obligations relating to fees and royalties.

45 In a recent decision '*Greymouth Gas Turangi Ltd v Minister of Energy and Resources [2020] NZHC 2712'*, the High Court interpreted 'likely' in the context of ascertaining whether an applicant is "likely" to comply with and give proper effect to the proposed work programme (section 29A(2)(b)) as an "outcome that is reasonably in prospect, that being an outcome that is a distinct possibility".

46 The intent of these amendments is to shift the threshold higher than that set by the Court in the *Greymouth* judgement, to a level of confidence that is broadly

midway between 'more likely than not' and ‘certainty’. The intent is that the threshold is set so that the Minister can exercise greater control over who receives a permit, but not so high as to practically prevent the grant of all permits. This is intended to reduce the likelihood of companies that do not have the technical and financial capability, or that have a poor history of compliance, being awarded a permit. This would also apply in situations where there was a change of operator, change of control of a Tier 1 permit operator, and transfers.

The Bill provides the regulator with access to new compliance and enforcement tools

47 The Bill empowers the regulator to accept enforceable undertakings and issue compliance notices. These may be applied across the whole of the CMA. The penalty for breaching a compliance notice or enforceable undertaking is a fine of up to of $200,000. The Bill also provides the regulator with the power to issue infringement offence notices.

The Bill proposes various technical amendments to improve the administration of the CMA

48 The following provisions in the Bill aim to improve the efficiency and administration of the proposed decommissioning regime and other areas of the CMA:

48.1 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 CMA , with a maximum level of penalty of $20,000, or $2,000 per day for an ongoing offence;

48.2 Amending section 90(1), to clarify the scope of existing record keeping requirements, and to include a new regulation making power to further specify the details of the record keeping requirements in specific circumstances if necessary;

48.3 Enabling the proactive release of reports once the relevant non-disclosure periods have passed under Section 90(6) and (7) to improve transparency;

48.4 Removing the requirement for annual reassessments of the tier status of mineral permits, which currently places a disproportionate administrative burden on the regulator for a relatively low-risk activity; and

48.5 Reclassifying all minerals prospecting permits as Tier 2 permits to improve administrative efficiency.

Risks and mitigations

The Bill is likely to be controversial with the petroleum sector

49 The Bill proposes an approach that will be a significant shift from the existing regulatory regime, which was intended to promote activities with less oversight and less regard to the ‘polluter pays’ principle. The provisions in the Bill are

intended to move New Zealand's decommissioning regime towards international best practice but this will be a step-change for industry.

50 There are several specific aspects of the Bill that are likely to be controversial:

50.1 **Financial security requirement**. The original package of proposals agreed by Cabinet empowered the regulator to require petroleum permit and licence holders to establish a financial security to discharge their decommissioning obligations, if, when, of a type and a financial value the regulator deems necessary.

50.2 Changing this to make the requirement mandatory may be controversial as it moves from a short-term to a longer-term approach to risk. I consider it necessary though, as it will be more effective to require permit and licence holders to set funds aside or enter into other types of security while they are financially strong, and not only at the point the regulator has concerns about the permit or licence holder's financial capability to fund decommissioning (as by then it is usually too late).

50.3 I also propose to maintain a degree of flexibility and proportionality in the requirement by taking a risk based approach and giving the Minister discretion as to what type of financial security and how much is required in certain circumstances.

50.4 **Criminal penalty**. The inclusion of a criminal offence may not sit comfortably with permit//licence holders. However, it is designed to punish specific behaviour, and the inclusion of a mens rea element means that it will be reserved for the most serious breaches where a party or individual 'knowingly' contravened the decommissioning obligation. It is not designed to apply to situations where a permit/licence holder did all they could to fund decommissioning and failed.

50.5 **Post-decommissioning** – The provisions requiring payments to be made towards post-decommissioning liabilities may be contentious. These have not been consulted on, although government has sought views through public consultation at various points since the Parliamentary Commissioner for the Environment released a report in 2014 recommending MBIE address residual liability arising from former petroleum producing wells onshore.

50.6 Because the exact nature of the risk, and corresponding financial liability arising from decommissioned petroleum fields (including both wells and infrastructure) is difficult to quantify, I expect there will be concerns around how the amount is set.

50.7 I intend to consult on the criteria for setting the amount of the payment, how it will be implemented, and the design of the post-decommissioning fund, through the discussion document, which will be released shortly after the Bill is introduced.

50.8 **Decision-making test**. The changes proposed around decision-making tests were not part of the 2019 discussion document and have not been consulted on publicly with as part of the overall package of decommissioning proposals.

50.9 The purpose of strengthening the decision-making test is not to make it more difficult for compliant companies to gain permits, but to reduce the risk of companies gaining permits (or permits being transferred to companies) that may not have the financial and technical capability to undertake activities, including decommissioning, and puts the Crown at risk of having to do so.

Confidential advice to Government

There is a risk of unintended consequences

54 The overall objective of the Bill is to mitigate the risk to the Crown of having to carry out and fund decommissioning, in the event of a permit/licence holder's default. However, some provisions, such as imposing a financial security on all permits, could result in unintended consequences.

55 For example, it may precipitate decommissioning of some permits or licences; or, in a worst-case scenario, be the catalyst for a permit or licence holder to become insolvent, if they are unable to meet the requirements. It could also potentially disincentivise investment.

56 If a permit or licence holder carried out decommissioning early or did not invest there may be flow-on cost impacts to the Crown through reduced royalties and

taxes and/or regional economies (through reduced investment and employment). The extent of these potential flow-on impacts is difficult to estimate. In the case that a permit or licence holder declared insolvency, the entire cost of decommissioning may still fall to the Crown.

57 This risk will be mitigated by taking a risk-based approach to decisions where individual circumstances are taken into account.

There is some implementation challenges associated with the fragmented regime

58 As outlined above, the Bill provides that decommissioning must be carried out in accordance with requirements or standards set under any other enactments, or by the regulator.

59 I consider that the Environmental Protection Authority (EPA) and local and regional authorities are the right bodies to make decisions around what should be removed or left in place, and how land should be reinstated, in line with their responsibilities for managing environmental effects.

60 Offshore in New Zealand's Exclusive Economic Zone (EEZ, 12 – 200 nautical miles from the coast) under the EEZ Act and proposed regulations, permit/licence holders will be required to obtain a marine consent in order to carry out decommissioning. Prior to applying for the necessary marine consents, permit/licence holders must submit a decommissioning plan to the EPA for acceptance. Decommissioning plans are required to go through preliminary consultation with one or more marine management agencies, persons with existing interests, and relevant iwi authorities, and then a wider public consultation process. Plans are required to adequately respond to submissions in order for them to be accepted.

61 There is no equivalent process for permit/licence holders in New Zealand's Territorial Sea (up to 12 nautical miles offshore) and onshore. The environmental effects of activities in these areas are managed under the Resource Management Act 1991 (RMA), and any associated resource consent process. However, there is currently no legislative requirement under the RMA for decommissioning at the end of life of an installation, nor are there any existing mechanisms to identify what may be the best environmental option for the site.

62 Legal professional privilege

Constitutional conventions

[redacted]

Permit/licence holders may already be subject to financial security requirement under other enactments

64 I note that the Maritime Transport Act 1994 imposes a regime for financial compensation for oil spills from offshore installations and for operators to have insurance or other financial security available for claims, including claims by the Crown and maritime agencies for discharge prevention and clean-up costs. This regime is likely to apply, at least during the initial part of decommissioning.

65 The Maritime Transport Act 1994 also requires Maritime New Zealand to establish and administer an Oil Pollution Fund (OPF). This is used amongst other things to cover the costs of the Oil Pollution Advisory Committee and of investigating, controlling, and cleaning up any marine oil spill. The OPF applies to all offshore oil installations, exploration wells and oil pipelines.

66 Local authorities may require a bond to be held relating to environmental remediation when granting a resource consent.

67 I do not consider that the financial security requirement or the post-decommissioning payment proposed under this Bill duplicates these, as each is used for a different purpose. However, I note that permit/licence holders may be subject to multiple requirements to provide securities, and this should be

considered when the decommissioning regime is operationalised and financial capability assessments are conducted.

Constitutional conventions

Impact analysis

70 Regulatory Impact Analysis (RIA) requirements apply to the policies implemented through this Bill.

71 A full Regulatory Impact Assessment (RIA) was prepared at the time initial policy decisions were sought from Cabinet in June 2020.

72 The Impact Statement was reviewed by MBIE's Regulatory Impact Analysis Review Panel. The Panel considered that the information and analysis summarised in the Impact Statement met the criteria necessary for Ministers to make informed decisions on the proposal.

73 For the decisions sought in April 2021, the Regulatory Impact Analysis Team at the Treasury determined that there were no new regulatory proposals for the following:

73.1 addressing the limitations of linking the obligation to decommission to requirements under other enactments, by requiring permit/licence holders to estimate the cost of decommissioning using complete removal of infrastructure as a benchmark, unless otherwise provided for under other enactments;

73.2 introducing a requirement on permit and licence holders to maintain and provide a current FDP and Asset Register throughout the field life; and,

73.3 exempting amendments to the minerals programmes that are consequential to the changes made by Bill from the public notice and submission process that would otherwise apply.

74 Therefore Cabinet's Regulatory Impact Analysis requirements did not apply to the above.

75 The Regulatory Impact Analysis Team at the Treasury determined that the regulatory proposal in relation to making the provision of a financial security to cover decommissioning costs a mandatory requirement is exempt from the

requirement to provide a Regulatory Impact Statement on the basis that the substantive issues have been addressed by previous impact analysis.

76 A full Regulatory Impact Analysis was prepared to accompany the policy proposal requiring payments for post-decommissioning liabilities. The Impact Analysis was reviewed by MBIE's Regulatory Impact Analysis Review Panel. The Panel considered that the information and analysis summarised in the Impact Statement met the criteria necessary for Ministers to make informed decisions on the proposal.

77 An Impact Summary was prepared to accompany the regulatory proposals in relation to making the failure to carry out and fund decommissioning a criminal offence; allowing the Minister of Energy and Resources to set timeframes within which decommissioning must be done, and strengthening the decision-making test for permit acquisition provisions in the CMA.

78 The Impact Summary was reviewed by MBIE's Regulatory Impact Analysis Review Panel. The Panel considered that the information and analysis summarised in the Impact Statement met the criteria necessary for Ministers to make informed decisions on the proposal.

Compliance

79 I consider that the Bill complies with each of the following:

79.1 The principles of the Treaty of Waitangi.

79.1.1 Due to time constraints on policy development, some policy proposals that are now included in the Bill have not been consulted on publicly or with iwi, including: the changes to permit acquisition tests; criminal penalties for failure to decommission; and, post-decommissioning payments. However, in line with the principle of partnership, officials have contacted iwi in Taranaki, where most petroleum mining takes place, to discuss the Bill and share details of decommissioning and related policy development.

79.2 The rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993;

79.3 The Departmental Disclosure Statement requirements. This has been prepared and is attached to this paper;

79.4 The principles and guidelines set out in the Privacy Act 1993;

79.5 Relevant international standards and obligations;

79.6 The Legislation Guidelines (2018 edition), which are maintained by the Legislation Design and Advisory Committee (LDAC).

79.7 Officials consulted with LDAC who advised on the key Legislation Guidelines and design issues associated with the Bill. This advice has been taken into account where practicable.

Iwi engagement

80 Most of the proposals in the Bill that were included the Government's 2019 CMA Review Tranche 2 discussion document were subject to public consultation. This is in line with the "duty to consult" principle of the Treaty of Waitangi.

81 MBIE received iwi submissions on the discussion document released in November 2019, which dealt with issues around decommissioning.

82 Following submissions to the discussion document officials provided an update on the development of the Bill and the associated regulations to iwi through the Energy and Resource Markets Pānui newsletter.

83 Officials contacted specific iwi in Taranaki and those with which MBIE has relationship agreements offering to meet to understand and incorporate views, or receive written feedback. Officials discussed this approach with Te Arawhiti.

84 Confidential advice to Government

85 I consulted on how to improve iwi engagement under the CMA in November 2019 as part of the CMA Review. This included consideration of how to improve engagement between industry and iwi. I am currently considering options to progress this work.

Consultation

Public Consultation

86 MBIE consulted publicly from 19 November 2019 to 27 January 2020 as part of the CMA Review discussion document, where feedback was sought on the high-level policy options that Cabinet agreed to in June 2020.

87 From the consultation carried out on decommissioning in 2019, there appeared to be broad support for incentivising better planning and funding for decommissioning by permit/licence holders. 55 submitters commented directly on the issues and high-level options that relate to decommissioning activities. All but one agreed that the CMA is currently unclear and possibly inconsistent in its application of the obligation to decommission.

88 75 submitters commented on the current compliance enforcement tools. Most agreed that the CMA's current enforcement toolbox needs expanding. The additional compliance tools and penalties were largely supported, or supported with caveats.

89 While criminal penalties were not part of the 2019 discussion document, there was strong support for a robust enforcement and penalties regime from some respondents.

90 The changes proposed around decision-making tests were not part of the 2019 discussion document, and have not been directly consulted on publicly.

91 There has been limited public consultation on the provisions related to post-decommissioning payments. Issues related to post-decommissioning offshore were out of scope for the 2019 discussion document, however it did ask submitters for views on how the residual liability for onshore petroleum wells should be managed. The policy on post-decommissioning payments was also informed by the 2017 discussion document on a related subject where stakeholders provided views on managing third party risk exposure from onshore petroleum wells.

Consultation with other government agencies

92 An interagency working group was established in October 2020, with the stated purpose of ensuring that the regulations and legislation are developed with input from other agencies and that they complement existing rules and regulation. Members included representatives from: the Ministry of Justice, the Treasury, the Inland Revenue Department, the Environmental Protection Authority, the Department of Conservation, Maritime NZ, the Ministry for the Environment, the Ministry of Foreign Affairs and Trade, and the Ministry of Transport.

Binding on the Crown

93 The Act to be amended by the Bill already binds the Crown. The Bill does not change this.

Creating new agencies or amending law relating to existing agencies.

94 The Bill does not create a new agency.

Allocation of decision making powers

95 The Bill proposes new decision-making powers for the Minster in relation to carrying out financial capability assessments, setting the amount and type of financial security for decommissioning, and relating to post-decommissioning payments.

96 The Bill may mean that the Courts need to make decisions on new matters relating to the CMA, for example in relation to infringement notices, compliance notices and enforceable undertakings. The Bill also proposes a criminal penalty and civil pecuniary penalty for the failure to carry out and fund decommissioning.

Associated regulations

97 Achieving the appropriate balance between primary and delegated legislation is an integral part of the design of this Bill.

98 Cabinet has agreed that the overarching statutory obligation is to be supported by sufficient regulatory flexibility to impose specific requirements that are proportionate, and can be applied to individual circumstances [CAB-20-MIN-0294].

99 Therefore, the Bill allows the following details to be designed in regulations:

99.1 declaring which petroleum infrastructure and wells are relevant older petroleum infrastructure and defining activities included in the obligation to decommission;

99.2 requirements in relation to monitoring and financial capability assessments;

99.3 the setting and obtaining of financial securities that permit/licence holders may be required to obtain and maintain;

99.4 the making of payments for post-decommissioning work, the establishment and management of accounts into which those payments are deposited, and the use of those payments;

99.5 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);

99.6 regulations in relation to infringement offences and compliance notices; and

99.7 the records, statements, or any other documentation or information required under other legislation that must be retained for the purposes of the CMA.

100 I have instructed officials to develop the associated regulations concurrently with progressing the Bill. There will be a full public consultation on the design of the regulations, in the form of a discussion paper. Constitutional conventions

102 I recognise that implementation of certain provisions in the Bill, such as the financial security requirements and assessments of financial capability, would be more effective when regulations are in force, but these are still workable without the regulations.

Other instruments

103 The proposed Bill does not include provisions empowering the making of other instruments that are deemed to be legislative instruments or disallowable instruments.

Definition of Minister/department

104 The proposed Bill does not contain a definition of Minister, department, government agency or Chief Executive of a department.

Commencement of legislation

105 Most clauses in the Bill and the Schedule will come into force the day after the date of Royal Assent. This will enable the requirements relating to decommissioning to come into effect straightaway and give the regulator access to the new compliance and enforcement tools.

106 The Bill provides for several clauses to come into force by Order in Council, or to come into force after the expiry of a 24 month period that starts on the date of Royal Assent. These include:

106.1 provisions relating to field development plans, Constitutional conventions

106.2 provisions relating to notifying the regulator of cessation of production, Confidential advice to Government

106.3 provisions relating to asset registers, which I expect to commence within six months after the associated regulations being brought into force;

106.4 provisions relating to post-decommissioning obligations, Confidential advice to Government

107 These clauses require regulations to be in place in for the provisions to be implemented effectively. Commencement via Order in Council is required so that permit/licence holders are not required to comply with a provision before the requirements are specified in regulations.

108 I confirm that the explanatory note to the Bill sets out the reasons for commencement by Order in Council.

Parliamentary stages

109 I propose the Bill be introduced in the week commencing on 14 June 2021 and be passed by the end of 2021. The Bill should be referred to the Economic Development, Science and Innovation Committee. Consistent with 2021 Legislation Programme bid submitted, I propose a four-month Select Committee process, due to the financial risk to the Crown.

Proactive Release

110 Consistent with the Government's proactive release policy, I intend to release this paper within 30 business days from the date that Cabinet considers this paper.

Recommendations

111 The Minister of Energy and Resources recommends that the Committee:

1 **note** that the Crown Minerals (Decommissioning and Other Matters) Amendment Bill holds a category 3 priority (to be passed if possible in the year) on the 2021 Legislation Programme;

2 **note** that the Bill introduces provisions to strengthen the regulation of petroleum sector decommissioning activities to mitigate the risk of decommissioning costs falling to the Crown or other third parties, and requirements related to funding any post-decommissioning work. It also expands the current enforcement toolbox under the CMA;

3 **note**, a further version of the Crown Minerals (Decommissioning and Other Matters) Amendment Bill will be supplied to Cabinet;

4 **approve** the Crown Minerals (Decommissioning and Other Matters) Amendment Bill for introduction, subject to the final approval of the government caucus and sufficient support in the House of Representatives;

5 **agree** that the Bill be introduced in the week commencing on Monday 14 June 2021;

6 **agree** that the government propose that the Bill be:

6.1 referred to the Economic Development, Science and Innovation Committee for consideration;

6.2 enacted by December 2021

Authorised for lodgement

Hon Dr Megan Woods

Minister of Energy and Resources