MINISTRY OF BUSINESS, INNOVATION & EMPLOYMENT
HĪKINA WHAKATUTUKI

Summary of submissions with quotes

Review of Crown Minerals Act 1991

New Zealand Government

Overview

Public consultation on Review of the Crown Minerals Act 1991 (CMA), a discussion document, took place from 19 November 2019 to 27 January 2020. We are reviewing the Crown Minerals Act 1991 (the CMA) to ensure it can best support a transition towards a carbon neutral economy by 2050, as well as an economy that is productive, sustainable and inclusive, and one that is fit for the purposes of iwi/hapū, industry, our communities, and Government.

The CMA Review is one of the actions the Government is undertaking to realise the vision set out in the 10-year *Resource Strategy, Delivering Value - A minerals and Petroleum Strategy for Aotearoa New Zealand 2019-2029*, of a world-leading environmentally and socially responsible minerals and petroleum sector that delivers affordable and secure resources, for the benefit of current and future New Zealanders.

MBIE received 167 submissions on the discussion document. People were able to submit their feedback direct to us by email with attachments (substantial submission) or through completing the online survey on the MBIE webpage. A majority of submissions (59 per cent) were from environmental groups (50 submissions) and the general public (48 submissions). We received ten submissions from Iwi or hapū, nine from the oil and gas sector and nine from the minerals sector. Four submissions were from local government, three from the quarrying sector and two from research institutes. Twenty-seven submissions came from "Other" which included people or organisations from the business and electricity sector.

The following is a summary of the submissions received through the public consultation process for *Review of the Crown Minerals Act 1991*.

Chapter 1: Role and purpose statement of the Crown Minerals Act 1991 (CMA)

Substantial submissions

"What aspects of wellbeing (natural capital, human capital, social capital or financial capital) should decision makers consider when making decisions to allocate and manage rights to prospect for, explore for and mine Crown-owned resources?"

1. The response from submitters can be summarised as either:

    a. All aspects of wellbeing should be considered and/or environmental / natural capital must be prioritised (iwi and environmental submitters);

        i. "*We generally support the four capitals but wish to include 'identity' and 'relationships to place' in the human capital as these relate to many intrinsic and cultural values.*" – ***Te Rūnanga o Ngāti Kuia Trust***

        ii. "*The Crown Minerals Act should therefore focus on protecting the environment, and only considering any extraction that protects and enhances the environment as a priority, and secondly, contributes to the betterment of our human and cultural society as a whole." –* ***Forest & Bird***

        iii. "*We strongly advocate that the CMA integrate non-economic aspects of well-being, such as public and ecosystem health, as well as honouring traditional ownership and indigenous cultural and subsistence practices." –* ***Greenpeace***

iv. "*EDS accepts that it is appropriate that most environmental protections are contained with the RMA, rather than the CMA. However, EDS considers that the CMA should be amended to include a wider range of wellbeings (primarily natural and social)…*" – ***Environmental Defence Society (EDS)***

b. The CMA should focus on the efficient allocation of permits and other aspects of wellbeing are covered by other Acts in the regulatory system (industry submitters).

i. "*The Crown Minerals regime should focus on the efficient allocation of permits. It should not stray into the roles and functions of other statutes that would complicate what is fundamentally a clear and simple regime, as this would create regulatory overlap and duplication." – **Petroleum Exploration and Production Association of New Zealand (PEPANZ)***

ii. **"***The final outcome for an applicant and the community is a culmination of various legislative considerations of a project undertaken at national, regional and local levels. Each addresses specific issues and either rejects an application or allows it to operate within appropriate parameters. Only when all processes have been completed and the project is approved can it go forward. This whole of government approach ensures financial, natural, social and human capital issues are addressed*.**" – *Buller District Council***

"Do you agree or disagree that the purpose of the Crown Minerals Act should be amended from promoting the prospecting for, exploration for, and mining of Crown-owned minerals for the benefit of New Zealand?"

2. The response from submitters can be summarised as either:

a. Agree that the purpose statement be amended because "promote" is inappropriate and is inconsistent with other environmental objectives (iwi and environmental submitters).

i. "*The promotion of mining as an industry is inappropriate for a piece of legislation and undermines the intent of allowing other elements to be covered by other legislation." - **Te Rūnanga o Ngāti Ruanui Trust***

ii. "*The current purpose sets the Act in conflict with other aspects of NZ policy. In particular, the Purpose should refer to Treaty rights and environmental and conservation objectives.*" – ***Greenpeace***

b. Disagree that the purpose statement be amended because of the signal to investors, "promote" is common in other Acts and there may be unintended consequences (industry submitters).

i. "*Changes to the purpose statement will impact all Crown Minerals, not simply petroleum …These changes may have unintended consequences, for example, for the development of 'green-tech' minerals….Changing the purpose statement risks reducing confidence in the regime and indicating that the Government is not supportive of the petroleum and minerals sector.*

In a managed transition, it is very important that settings are stable and predictable, and managed accordingly." - ***Venture Taranaki Trust***

ii. "*A number of other statutes in the resources and environmental system use the term "promote". It is not unusual or inappropriate." e.g. "the Electricity Industry Act 2010"…" the Gas Act 1992"…" the Resource Management Act 1991"…" the Conservation Act 1987*". – ***PEPANZ***

<u>"If you answered "strongly agree" or "agree" above that the purpose of the Crown Minerals Act should be amended, what alternative wording would most appropriately describe the purpose of the Crown Minerals Act?"</u>

3. The response from submitters can be summarised as either:

   a. "Promote" to "Manage" - "*The word "manage" provides for strategic development of Crown minerals through government direction, which will necessarily involve working with the sector to optimise development, whilst recognising that the Crown has a significant regulatory function that should not be muddied by promotional activities.***" – *** *Te Rūnanga o Ngāi Tahu***

   b. "Promote" to "Regulate" - "*The purpose of this Act is to regulate prospecting for, exploration for, and mining of Crown owned minerals, such that these activities ensure the protection and conservation of our natural environment and climate recognising environmental limits, respect the rights of tangata whenua, and provide for the wellbeing of all New Zealanders.*" - ***Forest & Bird***

   c. "Promote" to "Administer" - "*Administering the sustainable and socially responsible prospecting, exploration, and mining of Crown minerals in Aotearoa New Zealand*." ***– Te Ātiawa Manawhenua Ki Te Tau Ihu Trust***

   d. Other – "*It is the TARIT view that the purpose statement should be amended to incorporate the words sustainable, sustainably, sustainability, for example "Sustainably promoting the prospecting for, exploration for, and mining of Crownowned minerals for the benefit of New Zealand.*" - ***Te Arawa River Iwi Trust (TARIT)***

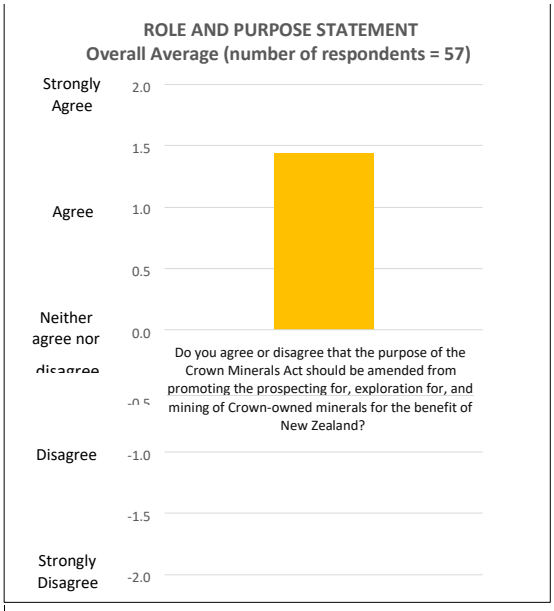
Online survey submissions

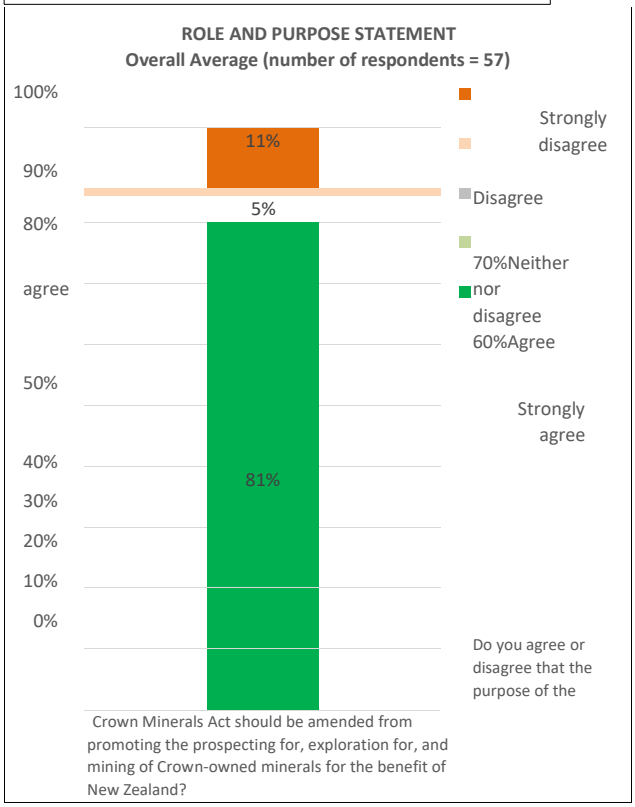
4. 57 people submitted on the purpose statement and 81 per cent of them strongly agreed that the purpose of the CMA should be amended from "promoting the prospecting for, exploration for, and mining of Crown-owned minerals for the benefit of New Zealand". Common explanations for this agreement included:

   a. Fossil fuel burning will damage the climate and ecosystems (stop mining); and

   b. "Promote" creates a bias towards mining (economy first) over other considerations such as environmental wellbeing.

5. 11 per cent of purpose statement respondents strongly disagreed with changing the purpose of the CMA and noted that minerals are important and it is better to extract minerals in New Zealand where the regulatory systems are best practice.

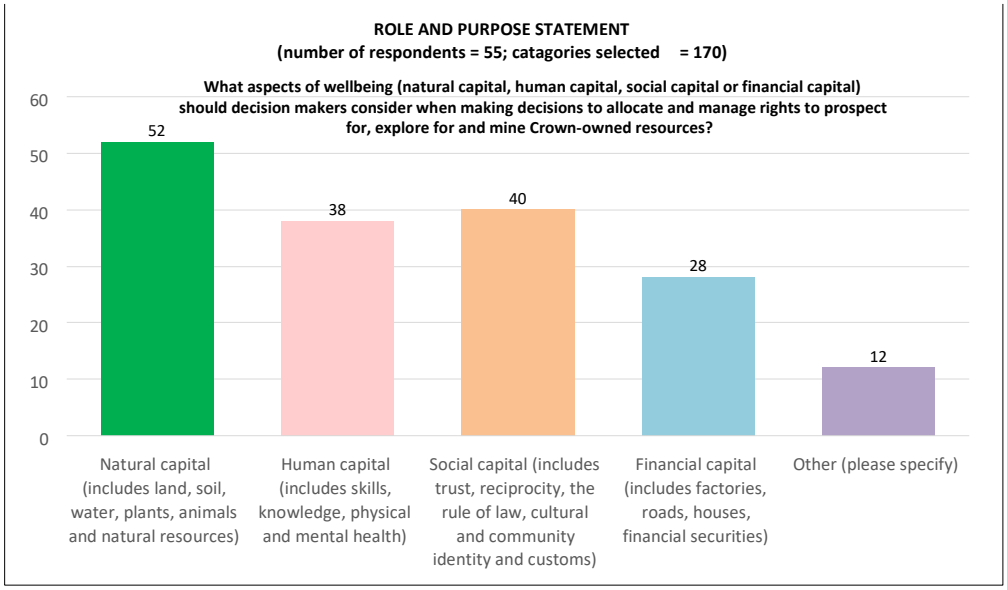




6. Of those that agreed that the purpose should be amended, 51 per cent thought that it should be changed to "Manage" while 13 per cent thought "Administer" (the remaining 36 per cent thought it should be changed to something else).

7. When submitters were asked "*What aspects of wellbeing (natural capital, human capital, social capital or financial capital) should decision makers consider when making decisions to allocate and manage rights to prospect for, explore for and mine Crownowned resources?*" 55 people responded and 52 people selected "Natural capital" while only 28 people selected "Financial capital"[1].

[1] Note that people were able to select more than one category.



Chapter 2: Balancing the rights, interests and activities of marine users

Substantial submissions

Do you think that the current non-interference zone (NIZ) provisions fairly balance the ability of marine users (including permit holders) to undertake their lawful activities, with the ability of other individuals and groups to exercise their lawful right to protest and oppose these activities?

If the NIZ provisions do not achieve this balance, which of the following aspects should the NIZ provisions prioritise?

a) individuals and permit holders to be kept safe from injury and harm in the sea?

b) permit holders to have freedom of movement to conduct their legal activities in the sea?

c) individuals to have freedom of movement in the sea?

d) individuals to have freedom of expression and peaceful assembly?

Do you think that the NIZ provisions should be removed? If so, why?

Do you think that the NIZ provisions should be retained in their current form? If so, why?

In the event you think these provisions should be retained, we also seek your views on the questions below. (23 email submissions)

8. **11 email submitters**[2] – generally those affiliated with industry – supported the retention of the NIZ provisions because:

   a. *"The cost of interference is significant…[and] there is no recourse for recovering costs."* – ***Trans-Tasman Resources Limited***

[2] Concrete NZ, Fulton Hogan, International Association of Geophysical Contractors, OMV, PEPANZ, Todd, Trans-Tasman Resources Limited, Venture Taranaki Trust, Aggregate and Quarry Association (AQA), The Australasian Institute of Mining and Metallurgy – NZ Branch (AUSIMM).

b. *"the current Non-Interference Zone (NIZ) provisions…ensure offshore petroleum and minerals operations can be conducted safely without additional or unnecessary risk to people."* – ***Concrete NZ***

c. *"should an activist group interfere with or board a platform or other infrastructure it may affect an operator's ability to produce from that platform, thereby affecting the security of supply to New Zealand and affordability."* – ***Todd Incorporated Ltd (Todd)***

d. *"The purpose of the non-interference provisions…is to…manage…environmental risks."* – ***OMV New Zealand Limited (OMV)***

e. *"There are clearly other equally effective means and locations at which protestors can pursue their causes."* – ***OMV***

f. *"Diluting protection by removing the non-interference provisions sends a signal that…the risk transfers to the company undertaking the activity to establish trespass orders and request police support."* – ***Venture Taranaki Trust***

g. *"removing the non-interference provisions…would send a negative signal that the Government will not protect the legitimate rights of lawful operations."* – ***PEPANZ***

9. **Nine email submitters**[3] argued that the NIZ provisions should be removed because:

a. *"it is tilted to the interests of seabed and at-sea explorers and miners."* – ***Environment and Conservation Organisations of NZ Inc (ECO)***

b. *"I support the removal of Non-Interference Zones as this takes away the rights of protesters."* – ***Generation Zero template submitter***

c. *"There is no basis for the provisions in international law, e.g. "There is no doubt that international law supports the right of legitimate and peaceful demonstration, protest and confrontation at sea.""* – ***Greenpeace***

d. *"The punishment for a NIZ violation is unreasonably high, e.g. "draconian"."* – ***Kuaotunu Anti Mining Action Group (KAMAG)***

10. Three other submitters commented:

a. **Caritas:** the NIZ provisions should be retained for safety but the size of the NIZ and the level of penalties could be reduced.

b. **Federated Farmers of New Zealand (Federated Farmers):** the NIZ provisions can be frustrating for the fishing industry.

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[3] Generation Zero, Climate Justice Taranaki, Environment and Conservation Organisations of NZ Inc (ECO), Forest & Bird, Greenpeace, Kuaotunu Anti Mining Action Group (KAMAG), Te Rūnanga o Ngāti Ruanui Trust

c. **New Zealand Law Society:** the "balance" of interests is a matter for government policy but the current approach seems consistent with and supportive of the approach taken in the Maritime Transport Act 1994 and Continental Shelf Act 1964, as well as the approach taken to eliminating or minimising risks mandated by Health and Safety at Work Act 2015.

Whether, and if so how, these provisions should be amended to better balance the ability of marine users (including permit holders) to undertake their lawful activities with the ability of other individuals and groups to exercise their lawful right to protest and oppose these activities? (Five email submissions)

11. **Caritas** suggested having smaller NIZ areas and lower penalties.

12. **Greenpeace** reiterated that the provisions should be deleted and **Climate Justice Taranaki** submitted that the provisions will become unnecessary when offshore minerals development stops.

13. **Todd** submitted that the provisions should not be amended.

14. **Trans-Tasman Resources Limited** submitted that criminality should remain but the minimum fine should be lifted to $25,000 for individuals and $250,000 for organisations, including their directors, reflecting the cost that industry can incur from interference.

Do you consider the current consequences for breaching a NIZ appropriate? If not:

a) should breaching a NIZ remain a criminal offence? If breaching a NIZ remains a criminal offence do you consider the current level of fines to be appropriate?

b) if you consider breaching a NIZ should no longer be a criminal offence and should not have associated fines, what sanctions (if any) do you consider should be imposed in order to incentivise compliance with the law? (12 email submissions)

15. **Six email submitters** affiliated with industry argued criminality should remain and that the fines were either appropriate at their current levels or should not be lowered. [redacted] and **OMV** said criminality and the current penalties should remain. **Todd** said the penalties should not be reduced. **Trans-Tasman Resources Limited** noted the costs to industry from interference were significant and unrecoverable. **PEPANZ** noted the current fine was modest compared to the potential cost to industry. The **International Association of Geophysical Contractors** (**IAGC)** argued the current penalties were inadequate and should be raised to reflect the cost of interference to industry (likely to be over $100,000 per day) and the consequences for entering other forbidden areas such as airports.

16. **Caritas** and **Te Rūnanga o Ngāti Ruanui Trust** argued criminality should be removed and the penalties should be low. **Climate Justice Taranaki**, **ECO** and **Greenpeace** argued there should be no adverse consequence for those who have breached NIZs (and the provisions should be removed).

17. **The New Zealand Law Society** wrote that sanctions need to be clear, effective and enforceable. They suggested that further work is needed to determine what (if any) may

be appropriate alternative sanctions, and that stakeholders have the opportunity to contribute their views on any alternative sanctions.

Do you think the CMA is the appropriate legislation for the NIZ provisions? If not, are these provisions more appropriately housed in alternative legislation (for example, in the Maritime Transport Act 1994)? (Nine email submissions)

18. the **New Zealand Law Society**, and **Todd** all said the CMA was the best place for the NIZ provisions. In justifying its view, the **Law Society** wrote:

"This is because the CMA applies to all minerals activities whether on-land, within the territorial sea or exclusive economic zone, and whether undertaken from a ship, or offshore installation. The MTA and CSA are more limited in their application – with the MTA being limited to ships and the CSA being limited to the continental shelf area."

19. **Todd** argued the CMA was the best place for the provisions because (i) this avoids any uncertainty or costs of change; and (ii) it shows the link between the NIZ provisions and permitting.

20. **Climate Justice Taranaki** and **Greenpeace** argued the provisions should be removed from any legislation. **ECO** said this was its preference too but if the provisions remained in law they should be moved to the MTA.

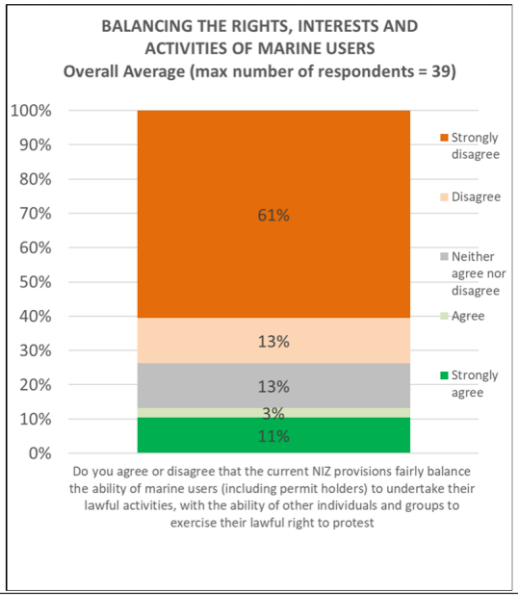
21. **Te Rūnanga o Ngāi Tahu** recommends that genuine risk to structures and safety best fits within the ambit of the MTA, which governs other aspects of activities at sea.

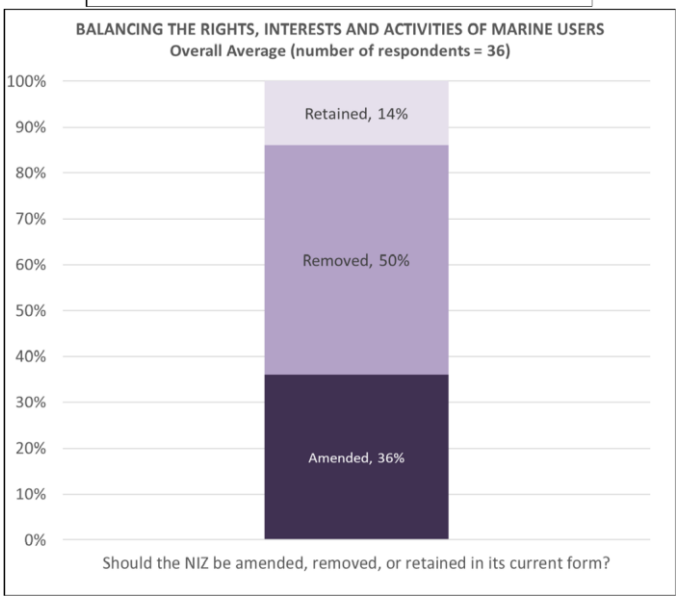
22. **GNS Science (GNS)** submitted that the NIZ provisions were best located in the MTA or HSWA so that the benefit they provide to health and safety can be captured by activities beyond Crown minerals development, such as research and scientific drilling.

23. **Trans-Tasman Resources Limited** argued the provisions could be in the Crimes Act 1961 as the CMA pertains to allocation, and there is other legislation for *"consenting projects and undertaking maritime operations"*.

Online survey submissions

24. 39 people submitted on questions related to balancing the rights, interests and activities of marine users through the current non-interference zone (NIZ) provisions. Overall 74 per cent of survey submitters disagreed or strongly disagreed "*that the current NIZ provisions fairly balance the ability of marine users (including permit holders) to undertake their lawful activities, with the ability of other individuals and groups to exercise their lawful right to protest and oppose these activities*". Written comments from those that disagreed generally reflected the importance of the right to peaceful protest. The few written comments from submitters that agreed related to the costs incurred from disruptions by protest activity, for example 'Fines should reflect the cost of the operations'.





25. This balance of views continues in the remaining online survey submissions, with a few supportive of the current NIZ provisions, but the significant majority unsupportive and wanting change. Overall 86 per cent of survey submitters wanted removal or amendment. For submitters that wanted amendment, on average the priority was for 'health and safety', followed by 'freedom of expression for peaceful assembly'. Of a lesser priority was 'individuals having freedom of movement in the sea', and 'permit holders having freedom of movement to conduct their legal activities in the sea'.

26. When asked *"If the NIZ provisions were to remain, should the NIZ provisions remain in the Crown Minerals Act 1991 or are these provisions more appropriately contained in alternative legislation?"*, 45 per cent of people still responded that it should be removed, while 33 per cent said it should be moved to the Maritime Transport Act. 12 per cent said it should be moved to another Act (generally unspecified), and 9 per cent said it should remain in the CMA.

27. When asked *"Do you agree or disagree that breaching a NIZ should remain a criminal offence?"* 74 per cent disagreed or strongly disagreed. Of the 23 per cent that agreed or strongly agreed, there was no clear pattern as to whether the current level of fines was

considered appropriate, with strong views either way. Some wanted much more given the high costs incurred by protest activity, while others said that fines were an inappropriate response to protest activity.

Chapter 3: Ensuring offshore petroleum permits contribute to a managed transition

Substantial submissions

"Do you think the current settings concerning offshore petroleum permits fully contribute to the Government's goals, including transitioning to a low emissions economy that is productive, sustainable and inclusive and providing secure and affordable energy?" (19 email submissions)

28. **Nine email submitters**[4] argued the current settings should be amended to expedite the reduction in acreage subject to offshore Petroleum Exploration Permits (PEP) and/or reduce the flexibility in the settings for existing offshore PEP holders. These submitters argued fossil fuel extraction needed to be phased out or stopped as soon as possible to realise a low carbon economy in the timeliest manner. These submitters suggested revoking existing permits, removing the right to subsequent Petroleum Mining Permits (PMP), or making less significant changes to the settings. This is exemplified by the following quotes:

    a. ***Forest & Bird*** *"believes that the current settings are too slow to contribute to the Government's goals…Permits for new oil drilling and exploration should be revoked."*

    b. ***Te Korowai o Ngāruahine Trust*** *"is supportive of the government's restrictions for offshore exploration…and does support…restrictions on the extension of permits."*

    c. *"I support removing the right to further permits for current permit holders as part of a just transition to renewable energy"* – ***Generation Zero template submitter***

29. **10 email submitters**[5] argued the current settings for offshore PEPs should be amended to slow the reduction in offshore acreage subject to a PEP and provide greater flexibility to current offshore PEP holders. These submitters argued that the greater the acreage subject to offshore PEPs, the greater the likelihood that discoveries can continue to be made and New Zealand can continue to enjoy the benefits of natural gas for longer. These benefits include:

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[4] Climate Justice Taranaki, Environmental and Conservation Organisations, Fossil Fuels Aotearoa Research Network, Forest & Bird, Greenpeace, Generation Zero and Te Rūnanga o Ngāti Ruanui Trust, Te Korowai o Ngāruahine Trust.

[5] Flick, GNS, IAGC, MGUG, Mercury, Methanex, MEUG, OMV, PEPANZ, Todd.

a. security of supply, particularly as natural gas is a cleaner burning alternative to coal that can support a largely renewable electricity network; and

b. energy affordability, with some submitters noting periods of temporary gas scarcity had already resulted in higher electricity prices.

30. The following quotes come from these submissions.

a. *"Without new exploration acreage available, it makes little sense to require permit holders to relinquish land (as no competing party can apply for it). Instead, the*

focus must be on maximising options for exploring and developing in the existing permits." – ***PEPANZ***

b. *"Given there is no ability to 'churn' currently permitted offshore acreage through the Block Offer process,* ***Todd*** *recommends that the CMA be amended to allow holders of offshore permits and licences to retain current acreage and extend term limits."*

<u>If not, how might we alter the settings to fully provide for this goal to be realised?</u> (15 email submissions)

31. **Methanex** was the only email submitter that argued the existing settings should remain (to protect against any further erosion of offshore acreage).

Changes to expedite the reduction in offshore PEP acreage

32. **Five environmental groups**[6] argued the settings should be changed to expedite the reduction in acreage. Specifically, these submitters proposed:

a. Current permits be revoked;

b. Petroleum companies and workers be assisted to exit the industry; and

c. No further permits be granted, including mining permits.

33. **Te Rūnanga o Ngāti Ruanui Trust** argued extensions of land should not be available for offshore PEPs. The iwi also opposes avenues to extend the duration of permits, including appraisal extensions. [redacted] also argues against allowing extensions of land and extensions of duration.

34. **Fossil Fuels Aotearoa Research Network** suggested:

a. appraisal extensions should be available but reduced to only one year (down from four years) and the possibility of renewing an appraisal extension should be removed;

[6] Climate Justice Taranaki, Environmental and Conservation Organisations, Forest & Bird, Greenpeace, Generation Zero.

b. independent expert advice be sought as a matter of course to inform requests for an appraisal extension; and

c. the possibility of extending the duration of a PMP be removed.

Changes to slow the reduction in offshore PEP acreage

35. Other email submitters commented on the specific areas canvassed in the discussion document, with the aim of slowing the reduction in offshore acreage and/or increasing the flexibility available to current offshore PEP holders so as to better manage the transition to a low carbon economy.

Relinquishment obligations

36. **Five submitters**[7] argued that relinquishment obligations should be removed for offshore PEPs, noting that relinquished acreage cannot be reallocated.

Extensions of land

37. **Todd, PEPANZ, OMV** and **IAGC** submitted that there should be a lower threshold for extensions of land that was easier to reach than the current requirement to drill a well within 30 months into a "drill ready" prospect.

Appraisal extensions

38. **OMV** and **Todd** submitted that appraisal extensions should not be limited in land area to only the area of the discovery being appraised. These submitters argue any area within the "parent" PEP should be available for an appraisal extension.

Extension of duration of PEPs

39. **OMV, PEPANZ** and **Todd** argued that extensions of duration should be available for offshore PEPs without an obligation to conduct appraisal work.

Near-field areas

40. **IAGC, OMV, PEPANZ**, and **Todd** all submitted that offshore PMPs should not be limited to the area of the mineable discovery. These submitters argued that, given offshore acreage cannot be reallocated, if would be more reasonable to implement one of the following policy changes:

a. allow sub-commercial discoveries to be retained within a PMP area; or

b. allow a PMP area to include any land within the PEP that led to the PMP.

Changes to work programmes

41. **GNS, Todd, PEPANZ**, and **IAGC** argued work programmes should be able to be changed for a broader range of reasons than currently provided for in the minerals programmes. PEPANZ submitted that commercial reasons should be acceptable reasons for justifying

[7] Flick, IAGC, OMV, PEPANZ, Todd.

a change in work programme and that this change would increase the likelihood of New Zealand securing investment from wells to be drilled in the next three years. Todd noted that as acreage declines in New Zealand, there will be less activity so it will be harder to get rigs at economic rates (and therefore, harder to meet work programme obligations) and the law should be changed to reflect this.

Retention permits

42. **PEPANZ** and **Todd** both raised the prospect of a permitting mechanism that allowed permit holders to retain acreage without using it, theoretically until it became commercially feasible to mine. This would be similar to Australia's retention leases. The argument is that a permit holder has invested heavily to make the discovery and should therefore be able to hold the rights until it is commercially viable.

Application to onshore areas

43. **PEPANZ** suggested its recommendations were applicable to onshore permits, particularly those recommendations relating to extensions of land, appraisal extensions and work programme amendments.

Online survey submissions

44. This section consisted of six open ended question in the online survey. These are summarised below.

Do you think the current provisions concerning partial permit area relinquishments fully contribute to the Government's goals, including transitioning to a low emissions economy that is productive, sustainable and inclusive, and providing secure and affordable energy? (33 comments)

45. For partial permit area relinquishments, there was acceptance by some submitters (generally from industry) that transition needs to start somewhere, so while they accepted the Tranche One decision to limit future exploration, they opposed further restrictions on current PEPs. Other submitters said even current PEPs should be revoked.

Do you think the current provisions concerning the extension of a permit area fully contribute to the Government's goals, including transitioning to a low emissions economy that is productive, sustainable and inclusive, and providing secure and affordable energy? (33 comments)

46. Only nine per cent of survey submitters were in favour of these provisions. Those disagreeing state generally that extending the life of fields is inconsistent with Government climate goals.

Do you think the circumstances under which the Minister can consent to a change to a key deliverable of the current stage of a work programme fully contribute to the Government's goals, including transitioning to a low emissions economy that is productive, sustainable and inclusive, and providing secure and affordable energy? (25 comments)

47. 72 per cent of survey submitters disagreed with this for a range of reasons, including for the desire to avoid political interference in operational decisions, and a desire for more public disclosure and notification.

Do you think the ability for a permit holder to retain areas including sub-commercial discovery and/or near-field areas would better contribute to the Government's goals, including transitioning to a low emissions economy that is productive, sustainable and inclusive, and providing secure and affordable energy compared to the current settings? (24 comments)

48. 77 per cent of survey submitters were against the proposal, and generally said it was not justified given the threat of climate change. The three comments that agreed focussed around the usefulness of the provision for the climate transition and retaining security of supply.

How might we alter the offshore petroleum permit settings to ensure they fully contribute to the Government's goals, including transitioning to a low emissions economy that is productive, sustainable and inclusive, and providing secure and affordable energy? (31 comments)

49. There was a theme from survey submitters wanting to shut down existing operations and/or limiting any drilling because of the threat of climate change. One comment stated that oil & gas produce little revenue relative to overall costs, so are a net liability overall. In contrast, another submitter said that re-introducing the block-offer system was needed, and that the 2018 amendments (to limit new exploration permits to onshore Taranaki) have weakened the petroleum sector and its contribution to the climate transition, as well as reducing energy security and affordability.

Is there any other feedback you would like to provide on ensuring offshore petroleum permits contribute to a managed transition?

50. There were two groups or themes. Some survey submitters said that damage was done by the ban on new exploration permits outside onshore Taranaki as it inhibits a managed transition. The other group of survey submitters were focussed on the need to wind down the petroleum industry because of climate change threats, with some wanting this immediately or more quickly. One comment focussed on the need for spatial planning reform (under the RMA) so the Government can be more proactive in exploring the viability of mining minerals needed for clean technology. The CMA would need further reform to do this in their view.

Chapter 4: Community Participation

Substantial submissions

51. 35 substantial submissions were received on the Community Participation chapter of the discussion document, these came from a wide range of groups including; iwi, environmental groups, industry groups and councils. Of these, 11 supported more public involvement in the decision making process, while 21 submitted against more public involvement in the decision making process, three remained neutral.

52. In general, environmental groups supported more public involvement in the decision making process under the CMA, while industry groups and councils supported the status quo. Iwi had mixed views.

"Do you agree or disagree that there should be more public involvement in the decisionmaking process for the granting of permits under the Crown Minerals Act?"

Agree

53. Submitters who agreed that there should be more public involvement in the decision making process felt that the decisions around minerals and oil and gas activities under the CMA were of significant public interest and the affected community and the wider public should be involved in decision making from the earliest possible stage.

    a. "*Should be more public participation in the Act. The public, the community, should be able to participate from the earliest stages, before mining companies are able to invest a significant amount in looking for minerals in our lands*." - ***Te Rūnanga o Ngāti Ruanui Trust***

    b. "*The granting of minerals permits is a public act and should not take place behind closed doors. The acquisition, use, reuse, and recycling of minerals are matters of public interest, and should not be decided in closed door meetings between government officials and the mining industry*." – ***Greenpeace***

    c. "*There should be public consultation requirements in the CMA. We are concerned that there are currently no mandatory requirements for public consultation under the CMA. Any proposal for mining activity, particularly for Crown minerals, should be subject to mandatory public consultation. New Zealand has long progressed beyond the unregulated approach of promoting mining away from the gaze of public scrutiny or input.*" - ***Caritas***

Disagree

54. Submitters who disagreed that there should be more public involvement in the decisionmaking process tended to do so because they felt that opportunities within the wider legislative regime were sufficient and more consultation would add cost and delays to the permitting process and could result in duplicative consultation processes and consultation fatigue.

    a. "*Do not support additional, mandated community participation obligations in the CMA. Community participation obligations contained in other legislation are sufficient. Duplicating community participation obligations in the CMA would add cost to permitting processes without adding significant benefit, and also risk overburdening community groups (who may have limited resources). Community participation obligations sit best under the effects-based legislative regimes.*" – ***Development West Coast***

    b. "*Providing for public participation, such as through a formal submission process, would add time and cost to the permitting process for not only the applicant, but the regulatory authority and members of the public. It could result in duplicative consultation processes with the same issues being raised in both processes and*

potentially consultation fatigue (where certain members do not engage due to the sheer number of processes)". - ***New Zealand Law Society***

c. "*Currently the emphasis placed on public participation in the effects-based part of our regulatory regime is adequate to ensure community participation appropriately occurs. Public involvement at a number of levels in the Resource Management Act (RMA) system are putting unnecessary constraints on the supply of aggregates through a consenting process that is too expensive and taking far too long. Adding further complexity and time to decision-making processes through public involvement in the CMA processes, would add to the current complexity through unnecessary duplication." - **Aggregate and Quarrying Association of New Zealand***

"If you agree that there should be more public involvement in the decision-making process for the granting of permits under the Crown Minerals Act, what does this look like to you?"

55. Submitters who agreed that there should be more involvement in the decision making process tended to be of the view that affected communities should be consulted at the earliest possible stage, and there were a range of ideas of what this could look like, including:

a. "*Any process should be transparent (including information that has often been deemed sensitive, e.g. financial) – there should be good access to information along the way, as well as the capacity to advise MBIE on what further information it should seek. There should be capacity for fair and equitable participation, and there should be rights of appeal retained.*" – ***Forest & Bird***

b. "*Major proposals should require public submissions and hearings, and for proposals to be approved, majority support.*" – ***Climate Justice Taranaki***

c. "*An affected community should be consulted in the earliest possible stage if a mining company has expressed interest in getting a permit in their area. The Crown should conduct initial consultation. A community's position should carry significant weight. A community should then be involved in subsequent stages of the permitting process, and the Crown should assist the community to participate. Where mining proposals are on public or Crown land, the wider community of Aotearoa New Zealand should be given an opportunity to participate at an early stage also." - **Te Rūnanga o Ngāti Ruanui Trust***

Online survey submissions

56. 49 people submitted on the Community Participation section of the online survey. A substantial majority of these submissions were from submitters who identified themselves as the general public.

57. 75 per cent of submitters strongly agreed that there should be more public involvement in the decision-making process for the granting of permits under the CMA. These submitters made a range of comments around the importance of the public, particularly the affected community, being involved in decisions that could impact on the environment, climate change and meeting future carbon emission reduction targets.

58. 10 per cent of submitters either strongly disagreed or disagreed that there should be more public involvement in the decision making process. The main reason for this was because they considered there were appropriate consultation mechanisms in place already, such as under the RMA. There was also concern expressed that added consultation would slow down the process of permits being processed and would impact the economic development of mining and oil and gas development.

59. Suggestions for what more public involvement could look like from those who agreed there should be more public consultation under the CMA included; public submissions, community meetings, public hearings and referenda.

Chapter 5: Māori engagement and involvement in Crown minerals

Substantial submissions

60. The Māori engagement chapter received 31 substantial submissions, 10 of these were from iwi groups and Māori organisations. The chapter asked six quite specific questions on Māori engagement and involvement in Crown Minerals. A majority of the submissions that came from groups that were not iwi and hapū tended not to go into the detail of the questions but commented more generally on Māori engagement. Many felt that the questions raised in the discussion document were best discussed between the Crown and iwi and hapū. Several industry submissions mentioned that care needed to be taken to distinguish between the Treaty obligations of the Crown to consult with iwi and the obligations of an applicant. Most of the industry submissions commented on the constructive relationships they currently held with iwi and hapū.

"How can we improve the processes for iwi and hapū to protect land from minerals development (which is laid out on page 14 of the discussion document) on a long-term basis under the Crown Minerals Act?"

61. A majority of iwi submissions received on this chapter commented on this question. All supported a clearer process for iwi and hapū to protect land from minerals development. Suggestions for how this could be improved included:

    a. "*as part of the review process, a different person could be tasked with speaking to each iwi and hapū group across different regions of Aotearoa, to establish which areas iwi and hapū seek protection from mining. This would be a complete no go for any activities (prospecting, exploring and mining) in perpetuity*." - ***Te Ātiawa Manawhenua Ki Te Tau Ihu Trust***

    b. "*A two tier system should be explored. A protection of sites from any mineral exploitation and; a second tier that allows for customary/traditional/cultural use of taonga minerals while preventing other exploitation or the allocation of that resource to other non-treaty parties*." - ***Te Rūnanga o Ngāti Kuia Trust***

    c. "*Development or review of government strategies and programmes, such as the recent Minerals and Petroleum Resource Strategy would be an opportune time for the Crown to engage with mana whenua to identify areas for exclusion, meaning the mahi has been done before the programme or strategy is progressed and private sector permit holders are involved*." - ***Te Rūnanga o Ngāi Tahu***

62. Some industry submitters felt that MBIE was pre-supposing that current process was not sufficient. "*the question pre-supposes that the processes are not adequate. It may well be that the resourcing of the parties involved in the process is inadequate.*" – ***Bathurst Resources***. "*All landowners, including Iwi, have rights over the land they own, so if they do not wish it to be developed it won't be, as the RMA consenting process requires the consent of the landowner, and land owner consent is also required under the CMA. Sensitive areas are already known about or recorded, so there shouldn't be any further requirements*." – ***Trans-Tasman Resources Limited***

63. Others submitted that a clearer process would benefit all parties involved. "*This proposal would provide greater clarity not only to iwi and hapū but also to the Minister and the applicant for the permit*." – ***New Zealand Law Society***

"What matters should the Minister consider when considering requests for defined areas of particular significance to iwi and hapū be excluded from the operation of a minerals programme or not be included in a permit under section 14(2)(c)?"

64. Only two iwi groups submitted on what matters the Minister should consider when considering requests for excluding areas in the Minerals Programme. Both iwi groups felt that MBIE should work with iwi in drafting the criteria. "*This is an issue that Te Rūnanga would like to address in direct dialogue with the Ministry as it will need careful crafting. Criteria currently assessed for exclusions under the Programmes are poorly considered and culturally inappropriate*." – ***Te Rūnanga o Ngāi Tahu***

65. Other submitters also felt that this was best left to iwi and hapū to decide.

"Do you agree or disagree that iwi engagement reports should be evaluated against a set of reporting requirements?" and "If so what should permit holders be required to report on in regards to engaging with iwi and hapū?"

66. Four out of the 10 iwi groups submitted on this proposal. All four supported this proposal but generally felt that engagement reports were meaningless without a mandatory requirement for permit holders to engage with iwi and hapū and felt that the engagement report should also be signed off by iwi and hapu before it is submitted to NZP&M.

    a. "*thinks this may lead to more comprehensive and transparent reporting. However, we note that unless our recommendation for the requirement of hapū and iwi to validate those reports, then even stipulated content will not necessarily capture the most relevant and pertinent issues relating to mana whenua*." - ***Te Rūnanga o Ngāti Ruanui Trust***

    b. "*There is no absolute requirement to engage, and as the discussion document says there is no penalty for non-engagement. The reporting clause is therefore meaningless. And, as already stated there is no measure or assessment about the effectiveness of the consultation. Moving forward if this provision is to remain, as part of each application process an engagement report, approved by the iwi/hapū should be submitted as part of the process.*" – ***Te Korowai o Ngāruahine Trust***

67. Other submitters generally supported iwi engagement reports being evaluated against a set of reporting requirement. **New Zealand Law Society** submitted "*This proposal would*

provide clarity to permit holders as to what is required and having a consistent format for the report would enable key issues or trends emerging overtime to be identified. It may also enable MBIE to identify where permit holders may benefit from additional guidance in relation to engagement."

68. **Bathurst Resources Limited** however "*queried whether requiring iwi engagement reports under CMA adds any real value to the administration of granted permits and whether it only duplicates what is already required under RMA.*"

69. Very few submissions commented on what permit holders should actually be required to report on. **Ngati Tahu-Ngati Whaoa Runanga Trust** was the only submitter to suggest a detailed list of reporting requirements. "*Reporting requirements must be set by iwi in conjunction with the Crown. Reporting requirements could include:*

    a. *What iwi group has been involved in any engagement process*
    b. *What permit activities have been actioned in the previous year and what is planned for the next year and how this has been notified and discussed with relevant iwi*
    c. *What opportunities have been provided for iwi to have input into these activities (where applicable)*
    d. *What concerns have been raised by iwi regarding any activities and how these have potentially been addressed*
    e. *Any other issues discussed during engagement.*"

70. While **Te Rūnanga o Ngāi Tahu** "*welcome the opportunity to co-design requirements for Iwi Engagement Reports with the Crown. This is important to ensure that mana whenua needs and aspirations are appropriately captured.*"

<u>"How can the Crown support effective engagement between Māori and permit holders?"</u>

71. Comments from iwi and hapū can be summarised as:

    a. **Requirement for permit holders to engage with iwi and hapū** – "*Do not support the status quo. There is a need for permit applicants to begin engagement with Maori on all permits as early as possible which the Crown should require rather than just encourage. Engagement with iwi should not be seen as something that would be nice to do but rather necessary to do therefore no incentification should be required.*" - ***Ngāti Tahu-Ngāti Whaoa Rūnanga Trust***

    b. **Proof of consultation with iwi from applicants** – "*Would like to see proof of consultation with iwi from applicants with every application made to NZP&M."* - ***Te Ātiawa Manawhenua Ki Te Tau Ihu Trust***

    c. **Mandatory culturally-based impact assessment reports** – "*Culturally-based impact assessment reports should be mandatory in consultation processes and required by applicants and regulators as part of the pre-application process. Ngāti Tama provision of such reports should also be remunerated accordingly by the applicant and regulator.*" - ***Ngāti Tama ki Te Waipounamu Trust***

72. Comments from permit holders / industry can be summarised as:

a. **Already sufficient engagement between permit holders and iwi and hapū** – "*Within the West Coast, there is already fairly effective engagement between Māori and permit holders. Once a permit holder wishes to progress their permit to the consenting stage, there will be involvement from local authorities, most of whom will often request consultation with iwi.*" – ***Minerals West Coast***

b. **MBIE could provide permit holders with iwi contact information** – "*NZP&M could assist by ensuring it has the authoritative iwi contact or contacts and provide for them to meet initially with the respective permit applicants or holder, prior to NZP&M formally accepting a permit application. Then it is up to each party to develop a relationship if so desired.*" – ***Trans-Tasman Resources Limited***

c. **Government should only assist with those permit holders who are struggling with engagement** – "*Considers that the involvement by Government in existing, successful relationships between iwi and permit holders may not be helpful to those relationships, but the Government should ideally be able to assist those permit holders that are struggling with iwi engagement or are new to New Zealand. Todd recommends that guidelines be issued rather than prescriptive regulations.*" - ***Todd Corporation Ltd***

<u>"What changes should the Crown make to its processes to provide for more effective engagement with Māori?"</u>

73. Comments from iwi and hapū can be summarised as:

a. **Crown or industry should resource iwi and hapū to assist with engagement** – "*Mana whenua should not be required to resource their own engagement with the processes under the Crown Minerals Act regime, and the Crown and industry should have human and financial resource available to support hapū and iwi engagement, as requested and determined by hapū and iwi ourselves*." - ***Te Rūnanga o Ngāti Ruanui Trust***

b. **Face to face discussions between iwi and regulators** – "*Supports quarterly workshops to conduct kanohi ki te kanohi consultation to discuss sector activities. Suggest employing regional Iwi Liaison Officers, to support and enable iwi and hapū in kaitiakitanga as well as informing iwi what is happening in their rohe." - **Te Ātiawa Manawhenua Ki Te Tau Ihu Trust***

c. **More information provided with mineral permit notifications** – "*There is not enough information about the permit holder and their activities provided with a minerals permit notification to base an informed submission*." - ***Ngati Tahu-Ngati Whaoa Runanga Trust***

d. **More time needed to review information** – "*Ngāruahine has written many times to government departments about the lack of time afforded to them to review information. Without repeating past submissions, applicants, their consultants and crown departments are engaging in dialogue and review of documents for a considerable length of time, in some cases years. We however are lucky to get 20 days to review bulky, complex and often inadequate documents with insufficient resource and access to technical ability. This has to change*." – ***Te Korowai o Ngāruahine Trust***

e. **Joint decision making between iwi and the Crown on minerals and oil and gas decisions** – "*Ngati Ruanui also recommends that shared decision making with relevant*

iwi be considered together with the Minister on Crown Land this would reinforce the treaty principles approach in a practical way." – ***Te Rūnanga o Ngāti Ruanui Trust***

74. Comments from other groups can be summarised as:

    a. **More resourcing needs to be provided to iwi and hapū** – "*See the main issue affecting Maori engagement as a lack of capacity and capability on the hapū side. If Government is serious about pursuing this duplication of process, then the Crown should help resource their capacity and capability.*" – ***West Coast Regional Council***

    b. **Too much consultation can be burdensome for iwi and hapū** – "*It should be noted too much consultation may prove burdensome for both permit holders and iwi, and simply consume more tax dollars. Within the West Coast region at any one time there could be hundreds of active permits. It would be prudent to ask Maori (at each local level) what level of engagement they desire.*" - ***Minerals West Coast***

    c. **Support improved engagement between iwi and hapū and the Crown** – "*Supports improved engagement between Maori and the Crown and notes that many of the questions raised in the chapter are best discussed between the Crown and Iwi and hapu.*" - ***OMV***

Online survey submissions

75. 28 submissions were received via the online survey on the Māori engagement chapter. A majority of these submissions were from the general public. Submissions from the general public and environmental groups made a range of comments around more consultation needed with Māori, the Treaty of Waitangi needing to be acknowledged, Māori being involved in decision making around mineral and oil and gas activities, more education for both iwi and hapū and permit holders and Māori being better resourced for engagement.

76. The few submissions received from industry made a range of comments around more guidelines needed to aid permit holders with engagement with industry, more education, MBIE assisting permit holders to identify the correct contact points for iwi

    and making introductions and the government facilitating engagement between Māori and permit holders.

Chapter 6: Compliance and enforcement

Substantial submissions

Do you agree that adding each of these three new regulatory powers will achieve the desired outcome of a modern regulatory system? Why/Why not?

77. Submissions on the proposed tools were largely supportive or supportive with caveats. Approximately 10 per cent of submissions did not support infringement notices but supported compliance notices and enforceable undertakings. Some responses raised concerns about how MBIE would implement or operationalise the tools in practice rather than the tools themselves.

a. Responses supporting or partially supporting proposed tools

i. *"Te Rūnanga welcomes the introduction of new compliance and enforcement tools to ensure permit holders and operators are being appropriately held to account …….An amendment to the Act that enabled iwi officers to be accredited to undertake inspections as part of a local compliance and enforcement regime is sought. This is another proposed measure that would appropriately recognise iwi and hapū connection to mineral resources." –* ***Te Rūnanga o Ngāi Tahu***

ii. *"Compliance notices, enforceable undertakings and infringement fines would be welcome additions." –* ***Greenpeace***

iii. *"We accept that it is appropriate for MBIE to have a greater suite of compliance and enforcement tools, as proposed in the discussion document. We note that some of the proposals would simply add an enabling provision to the CMA which allows the relevant regulation to be made (e.g. infringement fines). If this is progressed, we would expect to be closely involved in the development of those regulations, as the policy detail will be critical." –* ***PEPANZ***

iv. *"Three regulatory powers - we support and promote industry compliance within a clear, coherent and fair regime. We also support enforcement action where operators fail to comply with the requirements of their licences and permits and the CMA itself (e.g. a level playing field). We do not support the use of infringement or on-the-spot fines…..There are a number of reasons leading to late filing of returns, including illness, business disruption or administrative errors, some of which are outside the control of the permit/licence holder." –* ***Fulton Hogan Limited***

b. Responses raising concerns about implementation

i. *"Overall, if administered and used in good faith, Minerals West Coast feels these tools would achieve the desired outcome outlined in the discussion document. To reiterate, these powers in the hands of a benevolent and competent civil service would be acceptable and even desirable. In the unlikely (but not impossible) event these powers were used by a civil servant who was either incompetent or malevolent, or even worse a combination of*

the two, our members would be severely disadvantaged. The legal cost of disputing an accusation of wrongdoing are most often more expensive than paying a fine, however it is delivered, and there is the risk of being fined out of business. Minerals West Coast is not saying this is likely, merely possible, and the possibility and the resultant risk should be considered when drafting legislation." – ***Minerals West Coast***

ii. *"Not supported without correct underlying structure and a regulator that understands and promotes activity viewed on a whole of project basis. Currently this isn't the case as permits are viewed on an individual basis*

narrowly on undertaking technical work, regardless of use, value or benefit to anyone.
Non-compliance could also occur due to factors outside of the control of permit holder, in particular environmental consenting regimes where timelines and processes do not easily marry with strict timelines of a licencing regime." – ***Trans Tasman Resources Ltd***

Are the proposed offence penalties set at the right levels to deter offending and are they in keeping with the other offence penalties under the CMA and other regulatory regimes?

78. The proposed offences penalties are a maximum of $200,000 for failure to comply with a compliance notice and $200,000 for failure to comply with an enforceable undertaking. We also proposed that a regulation-making power be included to enable MBIE to impose an infringement fee and set out the specifics of the operation of the regime.

79. Submissions received in relation to penalties were mostly supportive while expressing the need for proportionality. Some feedback related to the levels being set too low.

a. Responses received in relation to penalties

i. "*The penalties are in keeping with penalties under other regimes" –* ***Minerals West Coast***

ii. ***"****A penalty however of $200,000 is inadequate: a higher penalty would give the courts more flexibility. The figure should be subject to further consultation, but we would propose $1 million given the figures involved in mining****."*** *-* ***Greenpeace***

iii. "*The penalties may be appropriate in certain circumstances, not in others, depending on the nature of the non-compliance and level of impact, and in respect of the effects of other relevant legislation."-* ***Climate Justice Taranaki***

iv. "*Todd does not dispute the appropriateness of a $200,000 maximum fine for non-compliance with a compliance notice but requests that any fine imposed should take account of the materiality of the breach the culpability of the permit holder and any mitigating factors*

Non-compliance with an enforceable undertaking should involve a similar approach to penalty setting rather than a blanket penalty of $200,000." - ***Todd***

v. "Economic literature suggests that the penalties for non-compliance should reflect the significance, severity and irreversibility of harm caused, and also the probability of detection, prosecution and the imposition of a penalty. Where there are large gains to be had from non-compliance and where there is a low probability of detection, prosecution and the imposition of a penalty, the penalties should be correspondingly high." – ***ECO***

Do you agree that adding this offence will achieve the desired outcome of incentivising compliance with section 99F? Why/why not?

80. Under the current legislation it is an offence for a permit-holder to fail to provide information requested from MBIE under Section 99F of the CMA. Information requested is such as to allow MBIE to carry out the functions of and administer, the Act. However, despite MBIE also having the same powers under Section 99F to request information from non-permit-holders, there is no corresponding penalty for those parties should they fail to comply. This proposed offence seeks to rectify the gap in legislation.

81. There were few submissions on the proposed introduction of an offence for non-permit holders under Section 99F. Responses were mixed with some unsupportive of the proposal without limitations.

a. **Responses received in relation to the new offence provision proposed under Section 99F of the Act**

i. *"The discussion document proposes expanding MBIE's power to compel the provision of information from former permit holders and non-permit holders. As proposed, there does not appear to be any limitation on this power. The Law Society considers that the power to compel the provision of information from persons who are not current permit holders should be subject to some limitations. In particular, a requirement that MBIE has reasonable grounds to believe that the person holds information which is necessary for MBIE to carry out its functions and administer the CMA" –* ***New Zealand Law Society.***

ii. *"As the Review does not define or limit the scope of "non-permit holders", Todd is concerned that the proposed offence will allow MBIE to go directly to a permit holder's third-party advisers for information, thereby circumventing the permit holder. Todd strongly opposes any change of legislation that might allow for such an outcome." –* ***Todd***

iii. *"We agree with proposals to add new regulatory powers to incentivise permit and licence holders to comply with the CMA and assist MBIE as regulator, to carry out its enforcement functions; and make it an offence under the CMA for non-permit holders to refuse to provide information to MBIE requested under section 99f." -* ***Caritas***

iv. *"NZ Steel agrees that MBIE should incentivise compliance with section 99F of the act, notably to facilitate MBIE's obligation to understand and quantify the Crown minerals resource." –* ***New Zealand Steel***

v. *"Adding an offence for non-permit holders would be welcome addition." -* ***Greenpeace***

Is the proposed offence penalty set at the right level to incentivise compliance and is it in keeping with the other offence penalties under the CMA and other regulatory regimes?

82. There were very few submissions specifically related to the penalty for the proposed new offence under Section 99F of the Act.

a. Submissions received about proposed penalty under proposed new offence

*i. "In some circumstances it may be inadequate. We suggest that the range of considerations in setting penalties be set out, not a single maximum. We agree that non-compliance by non- or ex- permit holders is a problem and they should be brought within the fold of those who must comply and to provide information." – **ECO***

*ii. "$20,000 or $2000 a day is inadequate. Obviously $20,000 covers only 10 days of non-compliance. We suggest $200,000 or $4000/day to give the courts more flexibility." - **Greenpeace***

Do you agree with these proposed record keeping requirements? Why? Does it set the right balance between having comprehensive records and costs to industry?

83. Submissions about proposed changes to record keeping requirements were mixed – a common theme being that record keeping should be consistent with other legislative requirements.

a. **"***If legislation requires increased record keeping, it should provide the same allowances as the Tax Administration Act 1994 and Companies Act 1993 (e.g. the ability to keep records offshore and to prepare financial statements consolidated for the New Zealand group unless there is a specific enquiry otherwise)." – **PEPANZ***

b. *"Minerals West Coast supports many of the technical amendments within the discussion document but considers the record keeping requirements will be overly onerous and costly for smaller to medium sized operators and are an unnecessary duplication of existing tax laws." – **Minerals West Coast***

c. *"Paragraphs 254 to 256 of the Review proposes that permit holders provide financial statements in accordance with GAAP. However, the Review does not appear to consider that some permit holders may not be required to prepare financial statements under the Companies Act, or that a group of related companies may prepare consolidated financial statements rather than financial statements for each separate company in the organisation.*

Is it MBIE's intention to require companies to prepare financial statements even if not required by current law?" - ***Todd***

d. "*The requirements are a good first step, but the regulations must also cover publication of the records, with limited exceptions for confidential information." - **Greenpeace***

Online survey submissions

84. 35 people submitted on the addition of the three proposed compliance tools and 63 per cent, 53 per cent and 61 per cent strongly agreed that compliance notices, enforceable

undertakings and infringements should be added, respectively. Common explanations for the responses included:

a. Any tool that will increase compliance, without adding huge costs and administrative burden is welcome

b. New tools will prevent a long, protracted process to penalise permit holders who offend in a minor way

c. Immediate consequences are the most effective (in relation to infringement notices)

85. 34 people submitted on the proposed penalty levels for compliance notices and enforceable undertakings. 26 per cent strongly agreed and 15 per cent agreed that the proposed offence penalties were at an appropriate level to deter offending while 18 per cent disagreed and 24 per cent strongly disagreed resulting in an almost even split in opinion. Common explanations for the responses included:

a. The level is entirely inadequate as a deterrent

b. A higher penalty would give the Courts more flexibility

c. Penalties need to be commensurate with potential gain that may be made by being non-compliant

86. 28 people submitted on the proposed new offence for non-permit holders failing to comply with Section 99F and of these, 78 per cent either strongly agreed or agreed with the proposal. In addition, 29 people submitted on the proposed penalty for noncompliance of $20,000 (or $2,000 per day for ongoing offences) and 52 per cent either strongly agreed or agreed with the proposed penalty. Common explanations for responses included:

a. Mining companies must be utterly transparent about their activities

b. Adding a clause to allow the request of information to non-permit holders is a good idea but there needs to be a sub-clause that ensures that requesting information from a non-permit holder is justifiable.

c. There may be financial benefits to a company withholding information

d. $2,000 may be a way to encourage speedy outcomes

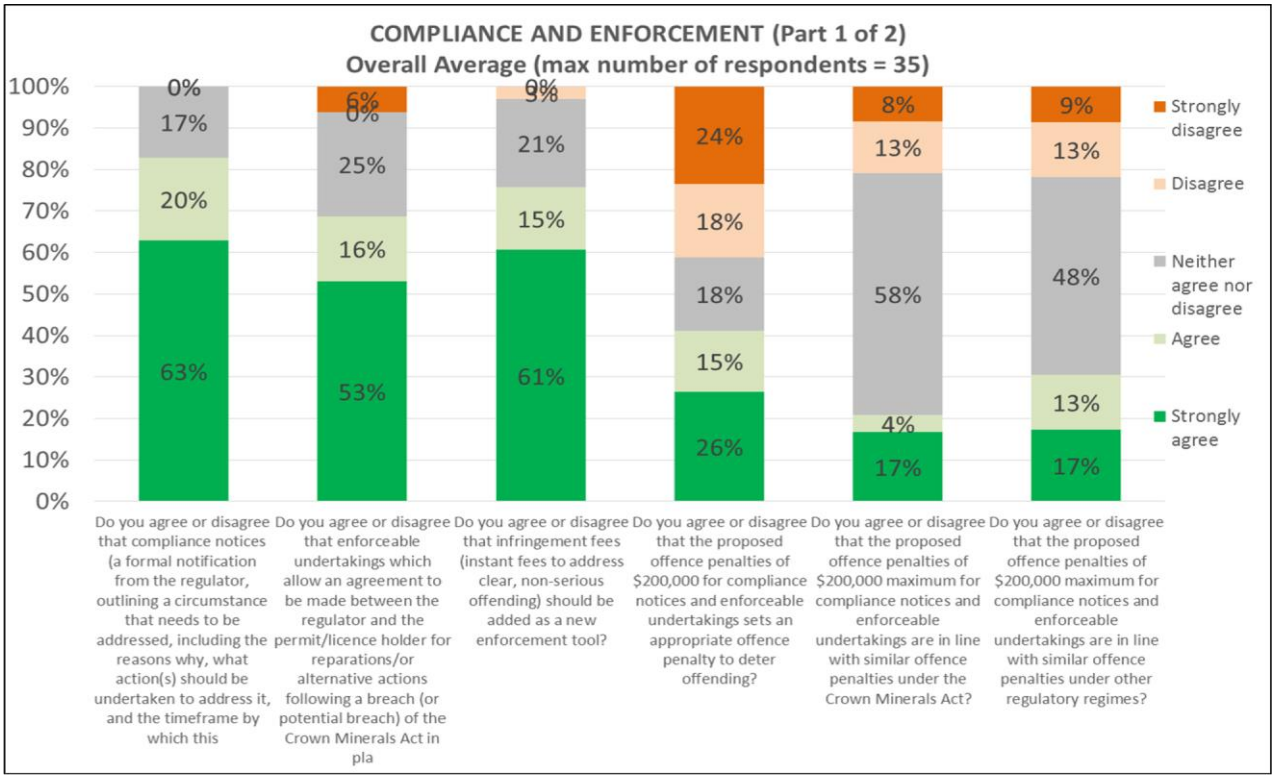
87. 28 people submitted on the proposal that record keeping requirements for permit holders should align with the Tax Administration Act 1994 with 75 per cent either strongly agreeing or agreeing with the proposal.

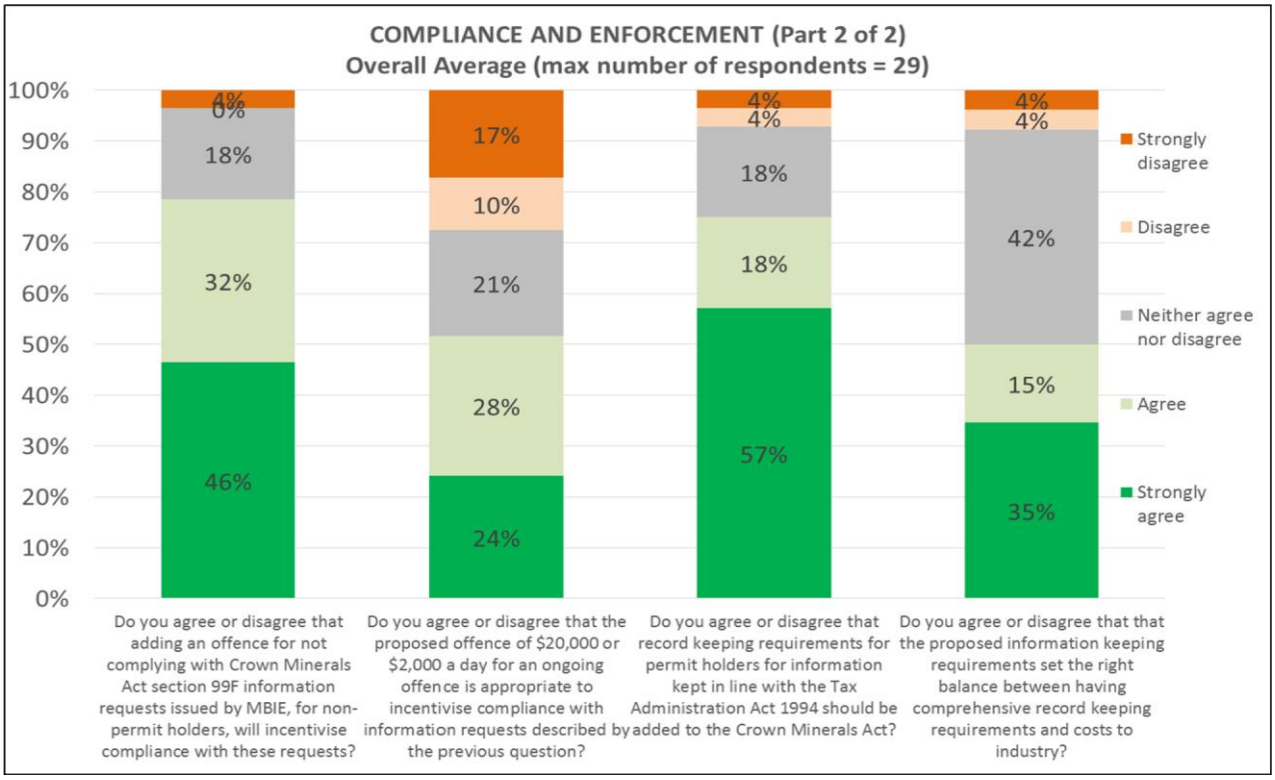
88. 26 people submitted on the question of whether the proposed information keeping requirements set the right balance between having comprehensive record keeping and the cost to industry. 42 per cent neither agreed nor disagreed and 50 per cent either strongly agreed or agreed. Some of the explanations for these responses include:

a. Given the public risks, including risks to future generations, a very high requirement needs to be set and monitored

b. Companies should have these records anyway

c. It is hard to see how the regulator would use fully detailed company account data. Audited accounts supplied by companies should be sufficient.





Chapter 7: Improving petroleum sector regulation

Substantial submissions

Will making decommissioning an obligation in the CMA provide greater accountability, transparency and consistency? Why/Why not? (18 email submissions)

89. Only **New Zealand Energy Corp. (NZEC)** said an obligation to decommission was not needed in primary legislation, as permit conditions could provide for this obligation.

90. **OMV, Todd** and **PEPANZ** all submitted that they had no objection to an obligation to decommission in primary legislation. **Todd's** view came with the caveat that any new obligation be no more onerous than its current permit conditions. **OMV** considered that permit conditions also managed the issue (but had no objection to the proposal).

91. **OMV,** the **New Zealand Law Society** and [redacted] submitted that any new obligation needed to be carefully designed to avoid duplicating other legal obligations.

92. 12 email submitters explicitly supported the proposal. **Climate Justice Taranaki** submitted that it was needed to avoid another permit holder going into receivership without decommissioning. The **Environmental Defence Society** said the Crown should approve decommissioning and there should be significant penalties for non-compliance. **Greenpeace** supported the proposal but stressed financial security should be required from permit holders. **Te Korowai o Ngāruahine Trust** supported the proposal but questioned whether the decommissioning regulations made under the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 (EEZ Act) handled the issue. **Venture Taranaki Trust** supported the proposal but stressed the need for the provisions to be "workable" and to consider possibilities such as repurposing.

Do you agree with the proposed definitions of "decommissioning" and "petroleum infrastructure"? Would they create any inconsistencies within the CMA or difficulties in working with the broader regulatory regime? (11 email submissions)

Definition of decommissioning

93. **Climate Justice Taranaki** and **First Gas** submitted that defining decommissioning was appropriate. However, **First Gas** favoured the use of the term "good industry practice" in the definition whereas **Climate Justice Taranaki** questioned if this was specific enough.

94. **Forest & Bird, ECO** and **Greenpeace** submitted that the definition of decommissioning should require the "removal" of infrastructure rather than that it be "taken out of service". **NZEC** submitted that the proposed definition seemed to "confuse" removal with taking out of service.

95. **Five email submitters**[8] submitted that the proposed definition seems to prevent the Crown revoking a permit before decommissioning has occurred. Accordingly, the **New Zealand Law Society** suggests that the definition of decommissioning be amended as follows:

> ***"Petroleum decommissioning*** *means to permanently take out of service petroleum infrastructure ~~before a permit or licence can be surrendered, relinquished, revoked or before it expires.~~"*

8 [redacted] PEPANZ, NZEC, NZ Law Society, OMV

96. **NZEC** and **Todd** questioned whether the proposed definition of decommissioning allowed for repurposing of wells and infrastructure, e.g. for gas storage or carbon capture and underground storage.

97. [redacted] questioned whether non-petroleum minerals operations should be covered by the obligation to decommission. The **New Zealand Law Society** submitted that given the obligation to decommission appears to only apply to petroleum permit holders, the definition should be for "petroleum decommissioning".

Definition of petroleum infrastructure

98. **Greenpeace** argued the definition of petroleum infrastructure was not broad enough and should include the words "any other material".

99. **Five submitters** argued the definition was potentially too broad. **Todd** suggested the definition be aligned with other Acts, e.g. the EEZ Act and Income Tax Act and should clearly exclude wells which are plug and abandoned (P&A). **PEPANZ** argued that given we propose a separate definition of P&A, the definition of petroleum infrastructure should exclude wells (which would be captured by "structure") and exploration (no infrastructure other than wells which are captured by WorkSafe). The **New Zealand Law Society** said the proposed definition appears overly broad and may capture aspects which were not intended. The **Law Society** suggests that the definition of petroleum infrastructure be amended as follows:

    "Petroleum infrastructure *includes, ~~but is not limited to,~~ offshore and onshore installations, platforms, structures, cables, facilities and pipelines ~~concerned with~~ used in the exploration for, or production of, petroleum products ~~reasonably associated with~~ pursuant to a Crown Minerals permit or licence."*

Do you support the proposal for permit/licence holders to seek agreement from the Minister of Energy and Resources to cease petroleum production? Why/Why not? (14 email submissions)

100. **Climate Justice Taranaki** and the **Environmental Defence Society** supported the proposal.

101. **Forest & Bird, Greenpeace,** [redacted] and **ECO** were concerned the proposal would prevent production ceasing earlier than it otherwise could.

102. **NZEC, OMV, PEPANZ, Greymouth Petroleum** and **Todd** submitted opposition to the proposal. [redacted] and **First Gas** expressed concern. These submitters were concerned that the Crown would direct them to produce when it was uneconomic to do so. They also noted MBIE would need more resourcing to implement this proposal and that annual review meetings already provided an adequate opportunity to discuss the end-of-field-life arrangements and the timeframe for ceasing production.

103. The **Law Society** said it was not clear how it would be enforced in instances of liquidation or where it was uneconomic to produce, and did not consider it necessary given the other proposals to oblige permit holders to decommission and P&A.

Outside of creating an obligation through primary legislation, do you consider there are other robust options available to ensure permit and licence holders meet their obligations in regard to decommissioning? (Six email submissions)

104. **Climate Justice Taranaki** and **Greenpeace** submitted that bonds should be required, particularly to mitigate the effects of "sudden" bankruptcies.

105. **ECO** suggested a suite of tools was needed, including unlimited joint and several liability applied to natural and corporate persons, an industry fund held by government to cover any gaps, and protection for whistleblowers.

106. The **Law Society** submitted that if the intention is to act as a signal to address end of life issues, then notice to MBIE of a permit holder's intention to cease production may be sufficient.

107. **Todd** considers that existing decommissioning obligations contained in permit conditions and within other legislation are sufficient, especially so if the CMA is amended to also impose decommissioning obligations on permit holders.

108. **NZEC** argued that there are other options available including legislative provisions to the effect that prior permit holders are not relieved of decommissioning obligations if their permit interest is assigned. NZEC submits that such options should be developed and then become subject to discussion and consultation.

Do you agree that making plugging and abandonment an obligation in the CMA will provide greater accountability, transparency, clarity, consistency, and coherence? Why/Why not? (16 email submissions)

109. **13 email submitters** expressed support for the proposal to include an obligation to P&A wells in primary legislation. Some of these submitters made minor comments, i.e.

    a. **Climate Justice Taranaki** said "good industry practice" needed to be clarified

    b. The **Environmental Defence Society** said strong penalties are needed for noncompliance

    c. **Federated Farmers** said the obligation should not be overly onerous

    d. **NZEC** said the obligation must be clear

    e. **Venture Taranaki Trust** submitted that the obligation must be workable and provide for "broader possibilities" such as repurposing of wells.

110. **OMV, PEPANZ** and **Todd** submitted that they did not oppose an obligation. They each made comments also:

    a. **OMV** said permit conditions could create this obligation without the need to amend the CMA

    b. **PEPANZ** said the obligation must be workable, to allow for uses other than production, e.g. injection and sidetracking

c. **Todd** said it was not clear what was meant by the need to P&A "in a timely manner".

Do you agree with the proposed definition of "Plugging and abandonment"? Does it create any inconsistencies within the CMA or difficulties in working with the broader regulatory regime? (Five email submissions)

111. **Forest & Bird** and **NZEC** agreed with the proposed definition.

112. **Climate Justice Taranaki** suggested the definition should be: "plugging and abandonment, in relation to a well, means to seal the well in order to render it permanently inoperative and impermeable to leakage." **Greenpeace** was similarly concerned about the potential harm caused by long term effects of poor P&A and proposed the following amendment to the definition:

"plugging and abandonment, in relation to a well, means to seal the well effectively and permanently in order to render it permanently inoperative and permanently and effectively sealed to pose no residual health, safety or environmental risk".

113. **Todd** submitted that any definition of P&A should only apply to wells that are made permanently inoperative, and not to (temporarily) suspended wells.

Outside of creating an obligation through the CMA, do you consider there are other robust options available to ensure permit and licence holders meet their obligations in regard to P&A? (Four email submissions)

114. **Climate Justice Taranaki** submitted that P&A wells need to be monitored and there needs to be a way of pursuing companies for damage from wells that are P&A but decay over time.

115. **Greenpeace** argued that imposing sufficient bonds to ensure compliance is essential.

116. **ECO** submitted that joint and several liability was needed, alongside bonds, levies and a regime to "name and shame" poor performers.

117. **NZEC** submitted that there are other options to consider including attaching a continuing (but time dated) liability to a prior permit assignor.

Do you agree that MBIE should have greater visibility over permit and licence holder's financial capabilities? What frequency of assessment do you think is appropriate and what information do you think is necessary to adequately demonstrate financial capability? (10 email submissions)

118. **Nine** either explicitly supported MBIE having greater visibility of permit holder finances or were clear they had no objection. Some additional comments were received from this group:

a. **PEPANZ** and **OMV** said they wanted to see the details of the proposal

b. **First Gas** said the costs of the proposal needed to be minimised and it may not manage the risks effectively even if implemented

c. **PEPANZ** noted there were implementation issues to consider, e.g. if a financial capability assessment found a company's finances were weak, the imposition of a bond could expedite the collapse of the company

d. **Greenpeace** argued a company's financial capability assessment should be made public

e. **ECO** and **Climate Justice Taranaki** advocated that other tools should also be available such as bonds, particularly as it is hard to recover funds from companies headquartered overseas.

119. The **Law Society** submitted that the power to assess financial capability should not be unlimited and that the legislation or regulations should set out the parameters for how the power would be used, e.g. how often financial information would be requested. The Law Society also noted the costs of the proposal had not been addressed, including the level of cost and where it would fall.

Do you agree with the proposed option [an ability for MBIE to periodically assess financial capability in the CMA with the parameters provided in regulations]? Why/why not? If not, what would you propose to manage the risks identified? (10 email submissions)

120. **Five email submitters**[9] said they agreed with the proposed option.

121. **ECO** preferred option two, which would involve placing the detail of financial capability requirements for permit/licence holders in legislation.

122. **NZEC** submitted that MBIE already has the power to obtain financial information and does not need a new power.

123. Three free text submitters made other points:

a. [redacted] argued the private sector needed to be involved in the design of this provision

b. **Todd** stated that the amount of financial information recommended in the Chapter 6 record-keeping proposals is more than required for the financial capability statement

c. **Climate Justice Taranaki** asked what MBIE would be able to do if a company suddenly collapsed.

Do you support MBIE having greater ongoing visibility of field development plans in order to maximise the economic recovery from fields, and more actively identify future decommissioning and P&A obligations? (15 email submissions)

124. 13 email submitters supported the proposal. Some made comments:

9 [redacted] Forest & Bird, Greenpeace, Te Rūnanga o Ngāti Ruanui Trust, Te Rūnanga o Ngāi Tahu

a. **Climate Justice Taranaki** and **ECO** supported the proposal but generally wanted production to cease and did not want the provision of field development plans (FDPs) to assist in the maximising of recovery

b. **First Gas** noted there was a large cost to updating an FDP, and that more resources could be needed at MBIE to implement this proposal

c. **NZEC** supported the proposal if the Minister could not reject an FDP

d. **PEPANZ** "conceptually" supported the proposal but said it was unclear what it was trying to achieve and what would happen if MBIE did not like the FDP.

125. **OMV** also said it was unclear what the proposal was aiming to achieve, saying that if the purpose of the proposal was to better understand planned decommissioning the decommissioning plan associated with a permit would be a better document to obtain. OMV also questioned if MBIE had the capability to implement the proposal.

126. **Greymouth Petroleum** objected to the implication that the government would tell industry how to operate and argued this would have a chilling effect on investment. Further, Greymouth Petroleum submitted that annual review meetings already offered a forum for discussing the end-of-field-life plans, timeframes and costs.

Do you agree with the proposal to require permit/licence holders to demonstrate appropriate financial security, using a risk-based approach? What are your concerns with this proposal? (16 email submissions)

127. **10 email submitters** supported this proposal because they want to protect liabilities from being imposed on the taxpayer. Two made further points:

a. **Greenpeace** submitted that financial information pertaining to permit holders should be publicly available.

b. **ECO** submitted that the financial security regime should be applied to nonpetroleum permit holders as well as petroleum permit holders.

128. Five submissions from the upstream petroleum industry expressed concern, or opposition to the proposals.

a. **First Gas** submitted that it supports ensuring financial liabilities are not transferred to the taxpayer. However, it is concerned about the possible imposition of financial security. First Gas argues financial security should be agreed in permit conditions when the permit is awarded, not at the end-of-fieldlife. It believes MBIE should now work with permit holders to find a solution that minimises the impact on existing operations.

b. **NZEC** opposes the proposal unless the risk based assessment criteria are clearly set out, fit for purpose and have been consulted on.

c. **OMV** considers this a challenging regime to develop and argues substantial industry involvement is needed. They note financial security products need to be workable and obtainable on the international market.

d. **PEPANZ** submitted that it could support this proposal only if permit holders fail to maintain financial capability. PEPANZ would prefer statutory requirements that set out the criteria to be met before financial security is imposed. They argue it is unclear when a bond would be required and what the trigger would be.

e. **Todd** supports the proposal when applied to riskier permit holders but does not want MBIE to have an unbridled power to arbitrarily require financial security without a valid reason. Todd requests that a limited test be written into legislation. Todd emphasises that financial security should not be imposed "midpermit" on well performing permit holders.

129. The **Law Society** considers that it would aid both MBIE and permit/licence holders if there were criteria or grounds set out in the legislation to guide determining when a risk-based assessment is warranted, and also what financial security mechanisms may

be appropriate. The Law Society considers the proposal to consult extensively with stakeholders on these matters will assist.

Are there particular types of financial security that MBIE should focus on, or any particular types that MBIE should include or exclude? (Seven email submissions)

130. **Climate Justice Taranaki** and **Forest & Bird** supported the use of bonds, with the latter adding they should be commensurate with the potential clean-up cost of the activity if not done correctly.

131. **Greenpeace** and **NZEC** submitted that there would be merit in considering and consulting on the creation of an industry administered assurance fund which could readily address the Crown's concerns about its residual liability.

132. **First Gas, PEPANZ** and **Todd** were all concerned about the efficient use of capital.

a. **First Gas** favours solutions that reflect the least inefficient uses of capital. They submit that the regime is likely to need a suite of options so a "horses for courses" approach can be taken. They recommend a separate consultation process be instigated on this issue.

b. **PEPANZ** submitted that instruments must be available in the international market and workable. Further, that bonds have a significant opportunity cost which could compromise working the permit. If bonds are brought into the regime, transitional arrangements need to be considered.

c. **Todd** had concerns over bonds and escrow accounts; contractual commitments to not distribute profits; and the establishment of a sinking fund. This is because these instruments tie up capital which cannot be invested for long periods. This can have a detrimental impact on production and deter investment.

Has the issue of residual liability for onshore petroleum wells been adequately identified? Are there any issues that have not been covered that you consider are important? (Five email submissions)

133. **Climate Justice Taranaki** submitted that issues of well leakage and contamination of ground water have not been adequately addressed to date, although they may bear more relevance to other legislation.

134. **Greenpeace** submitted that the ongoing risk of damage to the environment should be quantified and that industry should bear the risk.

135. **Seaport Land Company** argued nothing is in place to fund liabilities when wells are either not abandoned properly or abandoned "properly" at the time but later show problems and need re-abandoning.

136. **PEPANZ** supported the discussion document's assessment of residual risk relating to offshore petroleum wells and argued that future risk is "significantly mitigated" by proposals to regularly assess financial capability and impose financial security.

137. **Todd** argued that the CMA does not need to be amended to deal with residual liability and the risks of onshore wells are very low. Further, Todd argued that perpetual liability to permit holders is not appropriate and the Crown should adopt the risk.

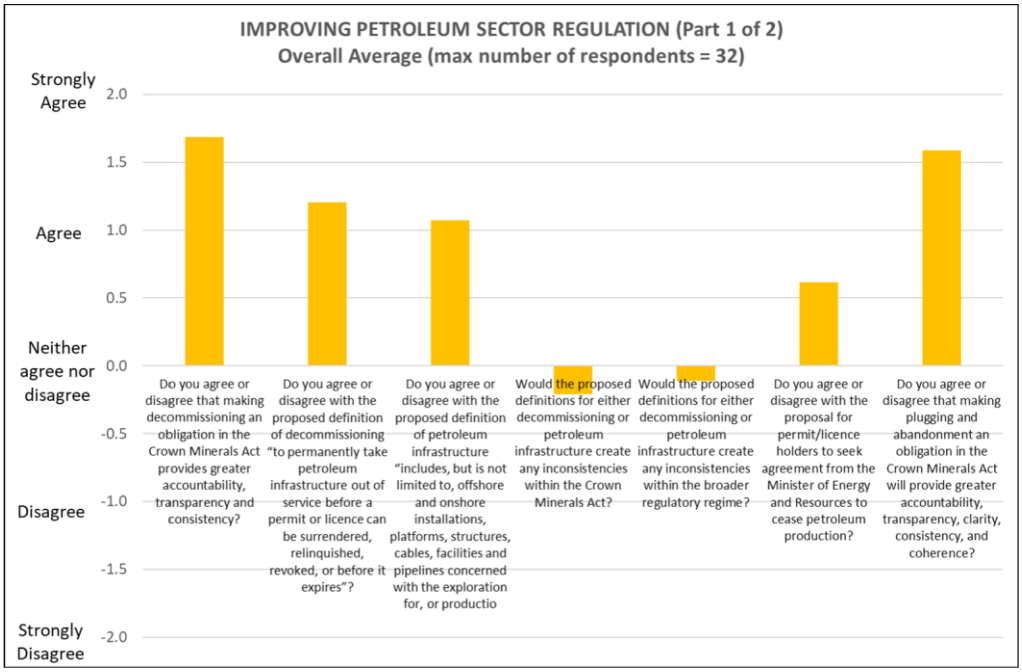
What are your views on how the residual liability for onshore petroleum wells should be managed? (Nine email submissions)

138. **Climate Justice Taranaki, Forest & Bird, Greenpeace,** [redacted] **ECO**, and the **Seaport Land Company** submitted that industry should carry the liability, through one or more of: bonds, levies, insurance, and/or a pooled industry fund.

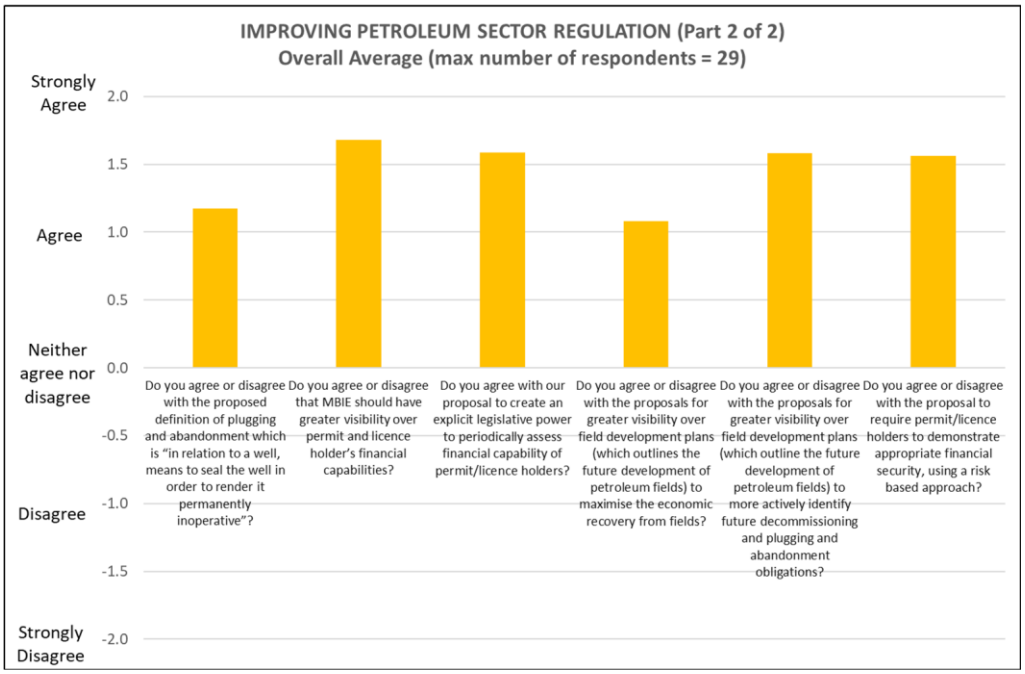
139. **Federated Farmers, Venture Taranaki Trust**, and **Te Rūnanga o Ngāi Tahu** submitted that the Crown should carry the liability.

Online survey submissions

140. Survey submitters were generally supportive of the proposals and unsure whether the proposed decommissioning definitions would create inconsistencies with the CMA or wider regulatory regime as indicated in the graph below.

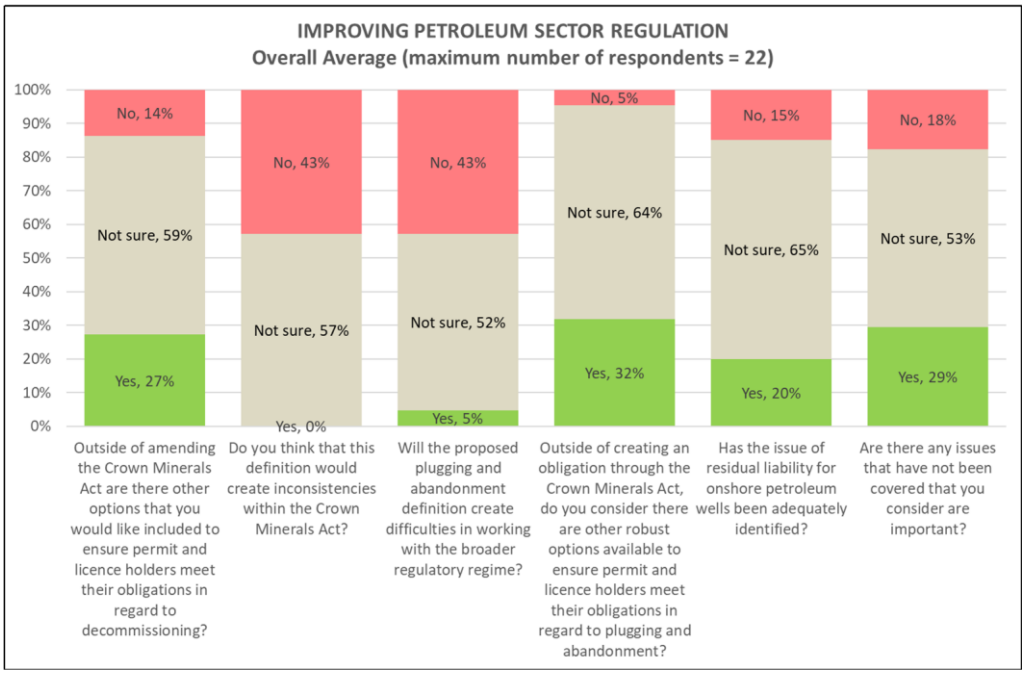


141. There was consistent agreement with the proposed financial capability tests. In particular, survey submitters strongly agreed that MBIE have greater visibility to assess permit/licence holder financial capability. 42 per cent said assessment should be conducted every three years, and 42 per cent said 'other', (between one and two years).



142. For the remaining questions asked, survey submitters were generally comfortable with the definitions proposed, but many were unsure about other questions on end-of-fieldlife obligations (as reflected in the figure below). Survey submitters with comments on these obligations stated a range of options including fines, bonds and making it a criminal offence to avoid these obligations. 65 per cent of survey submitters were also

unsure if the issue of residual liability for onshore petroleum wells was adequately identified.



Chapter 8: Technical amendments

Substantial submissions

143. 29 substantive submissions included comments on technical amendments, mostly supporting proposed amendments. Of those:

a. 11 generally supported providing for the high level environmental capability assessments to be undertaken as part of the change of operator for Tier 1 permits process, while three were opposed on the basis that *"..the Minister does not have any particular expertise in assessing environmental capability and what is proposed will be a doubling up with RMA"* – **Bathurst Resources.** One submitter commented on the options for assessing a potential operator's environmental capability, preferring the option of empowering, but not requiring, the Minister to undertake the assessment.

b. 10 supported incorporating "service of documentation" provisions into the Act. Seven supported or did not oppose electronic submission of annual summary reports, subject to the existing online system being simplified and made more user-friendly.

c. Two opposed the proposal for the arbitrator to be appointed in relation to land access, on the basis that there are *"…significant health and safety risks and need for considerable setback distances from petroleum operations, if landholders do not wish for companies to enter their land, then that should be the end of it. Arbitration should not be permitted"* - **Climate Justice Taranaki.** One submitter (**Federated Farmers**) suggested amending the land access provision to include a

right to delay entry, consistent with the land access provisions in the Electricity Act.

d. Eight generally supported proactive release of records and standardising the form for notices. One submitter explicitly supported proposed removal of the requirement for the annual re-assessment of permit tier status of mineral permits, with two supporting and one opposing the proposal to classify all minerals prospecting permits as Tier 2 permits.

e. 13 submitters commented on the allocation process for new petroleum exploration permits within onshore Taranaki. Of those, five considered that no new mining and exploration permits should be issued, while the remaining eight supported consideration of whether block offers were the best way to issue new permits. For example, "*…the Crown could include a "newly available acreage" approach, rather than offering discrete blocks, given the smaller onshore area available for exploration compared to offshore settings. A period of time could be set for multiple interested parties to lodge applications with permit boundaries chosen by the applicant and that would be more closely aligned with known geology and potential petroleum systems. Mechanisms could be devised to manage any overlapping applications."* – **GNS**

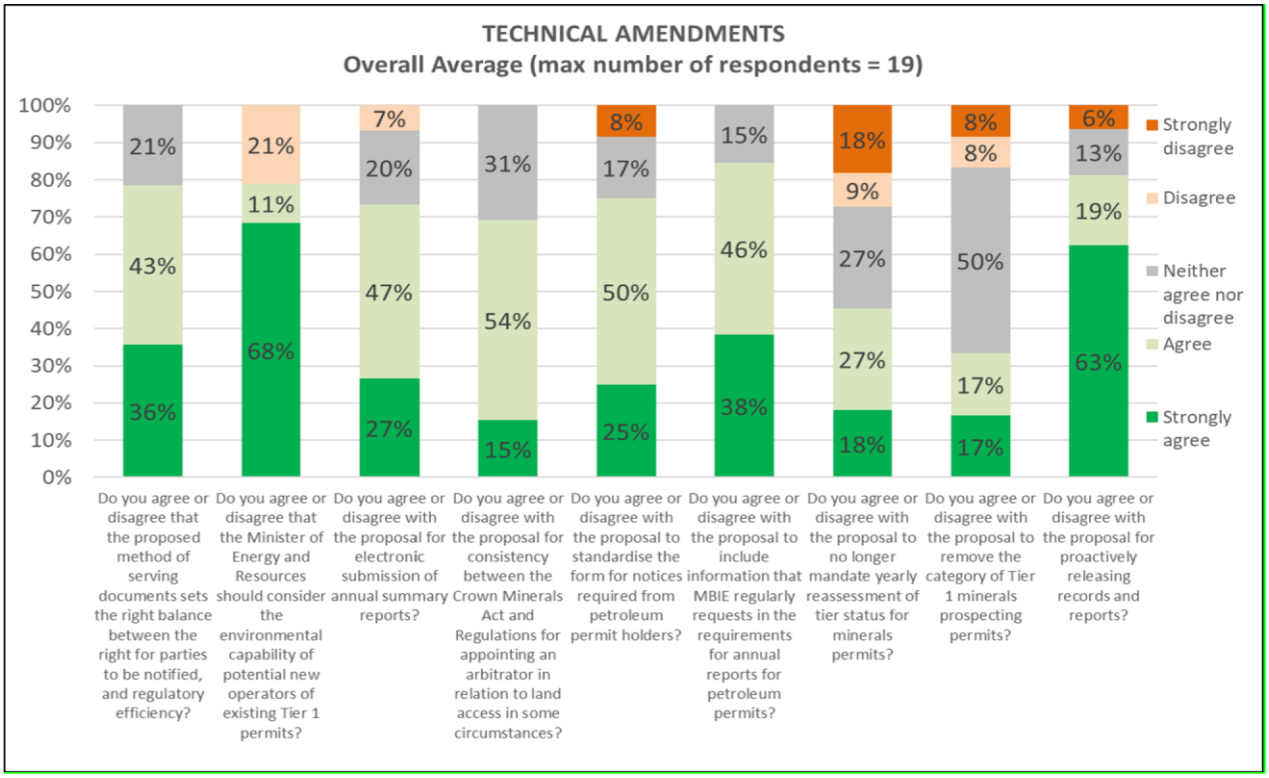
Online survey submissions

144. 19 responses to our online questionnaire have been received in relation to technical amendments. As summarised in the graph below, these have mostly agreed or did not oppose most of the proposed amendments. Although:

a. 21 per cent of the respondents, who commented on the proposal for the high level environmental assessments to be undertaken as part of the change of operator for Tier 1 permits process, have disagreed with the proposal. Of those,

31 per cent were concerned about potential unintended consequences and duplication..

b. 27 per cent of the respondents, who commented on the proposal to no longer mandate annual reassessment of tier status for mineral permits, have strongly disagreed or disagreed with it.


TECHNICAL AMENDMENTS
Overall Average (max number of respondents = 19)
100%
90%
80%
70%
60%
50%
40%
30%
20%
10%
0%
21%
43%
36%
21%
11%
68%
7%
20%
47%
27%
31%
54%
15%
8%
17%
50%
25%
15%
46%
38%
18%
9%
27%
27%
18%
8%
8%
50%
17%
17%
6%
13%
19%
63%
Strongly disagree
Disagree
Neither agree nor disagree
Agree
Strongly agree
Do you agree or disagree that the proposed method of serving documents sets the right balance between the right for parties to be notified, and regulatory efficiency?
Do you agree or disagree that the Minister of Energy and Resources should consider the environmental capability of potential new operators of existing Tier 1 permits?
Do you agree or disagree with the proposal for electronic submission of annual summary reports?
Do you agree or disagree with the proposal for consistency between the Crown Minerals Act and Regulations for appointing an arbitrator in relation to land access in some circumstances?
Do you agree or disagree with the proposal to standardise the form for notices required from petroleum permit holders?
Do you agree or disagree with the proposal to include information that MBIE regularly requests in the requirements for annual reports for petroleum permits?
Do you agree or disagree with the proposal to no longer mandate yearly reassessment of tier status for minerals permits?
Do you agree or disagree with the proposal to remove the category of Tier 1 minerals prospecting permits?
Do you agree or disagree with the proposal for proactively releasing records and reports?