



COVERSHEET

Minister	Hon Dr Megan Woods	Portfolio	Energy and Resources
Title of Cabinet paper	Crown Minerals (Decommissioning and Other Matters) Amendment Act 2021: infringement offence regulations and consequential changes to programmes	Date to be published	19 July 2023

List of documents that have been proactively released

Date	Title	Author
25 May 2023	Crown Minerals (Decommissioning and Other Matters) Amendment Act 2021: infringement offence regulations and consequential changes to programmes	Office of the Minister of Energy and Resources
31 May 2023	Crown Minerals (Decommissioning and Other Matters) Amendment Act 2021: infringement offence regulations and consequential changes to programmes DEV-23-MIN-0091 Minute	Cabinet Office
2 May 2023	Regulatory Impact Statement: Infringement offence regulations under the Crown Minerals Act 1991	MBIE

Information redacted

YES / NO

Any information redacted in this document is redacted in accordance with MBIE's policy on Proactive Release and is labelled with the reason for redaction. This may include information that would be redacted if this information was requested under Official Information Act 1982. Where this is the case, the reasons for withholding information are listed below. Where information has been withheld, no public interest has been identified that would outweigh the reasons for withholding it.

In Confidence

Office of the Minister of Energy and Resources
Cabinet Economic Development Committee

Crown Minerals (Decommissioning and Other Matters) Amendment Act 2021: infringement offence regulations and consequential changes to programmes

Proposal

- 1 This paper seeks your agreement to:
 - 1.1 policy proposals for infringement offence regulations under *the Crown Minerals (Decommissioning and Other Matters) Amendment Act 2021*
 - 1.2 issue drafting instructions to the Parliamentary Counsel Office, and
 - 1.3 release an exposure draft of the regulations for targeted consultation.

Executive Summary

- 2 The *Crown Minerals (Decommissioning and Other Matters) Amendment Act 2021 (2021 Amendment Act)* introduced the ability to prescribe infringement offences for low-level non-compliance with obligations under the Crown Minerals Act 1991 (**CMA**). In order for the Ministry of Business, Innovation and Employment (**MBIE**) to enforce infringement offences, they need to first be prescribed in regulation. If a permit or license holder fails to pay the fee associated with the infringement offence, they can then be charged an infringement fine by the Courts.
- 3 I propose that new infringement offences be prescribed for the following categories of obligations under the CMA, including obligations to:
 - 3.1 comply with permit, licence or land access requirements
 - 3.2 submit information, records and reports, in the correct form, or within the time specified or by the due date
 - 3.3 provide royalty returns and to pay royalties by the due date
 - 3.4 make required payments, such as annual fees, within the time specified or by the due date
 - 3.5 comply with certain decommissioning-related information, reporting or notification obligations.
- 4 I propose prescribing different maximum infringement fees relative to the permit tier or license held, reflecting the different scales of enterprise between Tier 1 and Tier 2 permit and licence holders. These would be:

- 4.1 Tier 1: \$1,000 for an individual and \$3,000 in any other case
- 4.2 Tier 2: \$500 for an individual and \$1,000 in any other case.
- 5 If these fees are not paid for any reason, I propose setting out maximum infringement fines in the regulations at a level relative to the tier of permit or license held. This would provide certainty and ensure proportionality. The proposed maximum infringement fines would be:
 - 5.1 Tier 1: \$2,000 for an individual and \$6,000 in any other case
 - 5.2 Tier 2: \$1,000 for an individual and \$2,000 in any other case.

Relation to government priorities

- 6 The proposals are part of the wider work programme the Government is undertaking with *Responsibly Delivering Value – A Minerals and Petroleum Resource Strategy for Aotearoa New Zealand: 2019-2029 (the Strategy)*. The Strategy is designed to drive a shift towards a ‘world leading environmentally and socially responsible petroleum and minerals sector that delivers affordable and secure resources, for the benefit of current and future New Zealanders’.
- 7 The proposals in this paper are relevant to Action Area 1 of the Strategy ‘Modernising the Crown Minerals Act’ and Action Area 5 ‘Improving Industry Compliance.’ They support the Strategy vision by giving MBIE, as the regulator, sufficient and fit-for-purpose compliance tools as provided for in the 2021 Amendment Act.

Background

- 8 The *Crown Minerals (Decommissioning and Other Matters) Amendment Act 2021 (the 2021 Amendment Act)* received Royal Assent on 1 December 2021. This amended the *Crown Minerals Act 1991 (CMA)*, providing the Ministry of Business, Innovation and Employment (**MBIE**) with enforcement powers to accept enforceable undertakings, issue compliance notices, and issue infringement notices.
- 9 These changes were intended to give MBIE fit-for-purpose compliance tools to ensure that the regulatory regime is working effectively and in line with modern regulatory practice. Without these changes, the only regulatory options available to MBIE are persuasion, which may not be effective, or prosecution, which is unproportionate in many instances of non-compliance.
- 10 The new enforcement powers apply to all minerals and petroleum permit and licence holders under the CMA, including those issued under previous allocation legislation. The Crown minerals permitting regime has 837 active permits across New Zealand, its territorial waters, and exclusive economic zone.
- 11 MBIE allocates either a Tier 1 or Tier 2 status to all permits. A Tier 1 permit is a permit that relates to petroleum, or other complex, higher risk and higher

return mineral operations that require a more hands-on and proactive regulatory regime. Due to the nature of Tier 1 permits, they are usually held by large businesses, including multinationals.

- 12 A Tier 2 permit is any permit that is not considered a Tier 1 permit and relates to lower return industrial, small business, or hobby mineral operations needing a simpler, more pragmatic management regime. This is defined under section 2B of the CMA.
- 13 Of the active permits, 78 are Tier 1, which includes some minerals permits and all petroleum licences and permits. There are 737 Tier 2 minerals permits.
- 14 Infringement notices are an administratively effective tool for responding to low-level non-compliance with permit and licence holder obligations (for example, filing reports and royalty returns on time).
- 15 On 27 September 2021, Cabinet agreed to the release of a Discussion Document: *Infringement offence regulations under the Crown Minerals (Decommissioning and Other Matters) Amendment Bill* [CAB-21-MIN-0388].

There is no cost effective or low-cost way to deal with low level offending

- 16 MBIE does not have effective tools to address minor breaches of the CMA. MBIE could send a letter requesting the permit holder address the non-compliance. However, this does not legally compel any action. If that approach is unsuccessful in correcting non-compliant behaviour, MBIE may have to resort to existing compliance tools. These tools are often not proportionate to the offending and have so far proven ineffective or overly costly to pursue for persistent low-level offenders.
- 17 The regulator can currently respond to minor, straightforward non-compliance by:
 - 17.1 taking no action
 - 17.2 sending a letter requesting the permit holder address the non-compliance (that does not legally compel action)
 - 17.3 prosecuting through the courts, or
 - 17.4 initiating the permit revocation process (i.e., notifying the intention to revoke a permit and following through with revocation if non-compliant behaviour is not rectified).
- 18 The proposed infringement offence scheme provides proportionate and cost-effective tools for bridging the gap between warnings and permit revocation for responding to low-level breaches.
- 19 An enforcement officer has the discretion not to impose an infringement fee if there are good reasons not to do so. A public interest test guides this decision and relevant mitigating factors may include the offender being elderly, in poor

health, or anything else about the offender that might not be considered to make enforcement action 'fair and reasonable in the circumstances' if challenged in court.

Regulations are required to implement the infringement notices as intended by the 2021 Amendment Act

- 20 Under the new section 104B of the CMA, infringement notices with associated fees may be issued to a permit or licence holder if MBIE believes, on reasonable grounds, that the person is committing or has committed an infringement offence. Regulations must prescribe conduct that would constitute an infringement offence and the fee associated with the offence.
- 21 The CMA also allows for infringement fines to be prescribed in regulations. Infringement fines are imposed by the Courts, including in proceedings against the permit or licence holder for failing to pay the infringement fee.
- 22 I consider that new regulations specifying infringement offences (and their associated fees and fines) are necessary to create certainty, predictability, and to enable the 2021 Amendment Act to be implemented effectively.

I propose prescribing infringement offences that fall into five categories of behaviour

- 23 I propose that the new regulations prescribe infringement offences in relation to failure to comply with obligations that exist under the CMA. These obligations can be grouped into five broad categories, including obligations to:
 - 23.1 comply with permit or land access requirements
 - 23.2 submit information, records and reports, in the correct form, or within the time specified or by the due date
 - 23.3 provide royalty returns and failure to pay royalties by the due date
 - 23.4 make required payments, such as annual fees, within the time specified or by the due date, or
 - 23.5 comply with certain decommissioning-related information, reporting or notification obligations.
- 24 Obligations relating to decommissioning would come into force from 1 December 2023, when the relevant sections of the Amendment Act come into force.
- 25 These obligations have been chosen on the basis either that there will be evidence of non-compliance or where the impact of such potential behaviour on the Crown would be high. Obligations relating to decommissioning would come into force from 1 December 2023, when the relevant sections of the Amendment Act come into force.

I propose prescribing infringement fees

- 26 Infringement fees can be issued by the Chief Executive or an enforcement officer for an infringement offence. The maximum amount for infringement fees are set in section 104J(b) of the CMA at \$1,000 for an individual and \$3,000 in any other case.
- 27 I propose prescribing different maximum infringement fees proportionate to the tier of the permit or license held, reflecting the different scales of enterprise between Tier 1 and Tier 2 permit and licence holders. These would be:
- 27.1 Tier 1: \$1,000 for an individual and \$3,000 in any other case
- 27.2 Tier 2: \$500 for an individual and \$1,000 in any other case.
- 28 Permit and licence holders are categorised in into two tiers. Tier 1 permit and licence holders include petroleum, or other complex, high risk and higher return operations where Tier 2 permits include lower return industrial, small business, or hobby mineral operations. The average annual royalties for Tier 1 petroleum permit/licence holders are \$1.9 million and for Tier 1 minerals permit holders are \$380,000. In comparison, for Tier 2 minerals permit holders, the average annual royalties are \$11,000. Around 30 per cent of Tier 2 minerals permit holders pay less than \$1,000 in royalties. Tier 2 permits are typically held by individuals and could face a \$500 fee for late submission.

I propose prescribing infringement fines that are double the amount of the fee

- 29 Infringement fines can be issued by the Courts for failure to pay an infringement fee, if an infringement fee is unsuccessfully challenged, or if a defendant is found guilty of, or pleads guilty to for an infringement offence. The maximum amount for infringement fines are set in section 104J(b) of the CMA at \$2,000 for an individual and \$6,000 in any other case.
- 30 To give certainty, and to provide proportionality, I propose prescribing maximum infringement fines in the regulations at a level proportional to the tier of permit or license held. Maximum infringement fines would be:
- 30.1 Tier 1: \$2,000 for an individual and \$6,000 in any other case
- 30.2 Tier 2: \$1,000 for an individual and \$2,000 in any other case.
- 31 This would mean that the penalty for breach of the infringement offence where the infringement fee is not paid or that is alternatively proceeded through the court would be clear and transparent for all affected parties (permit and licence holders, MBIE, and the Courts).

In September to October 2021, MBIE consulted on most of these proposals

- 32 MBIE publicly consulted on proposed infringement offences and infringement fees in September-October 2021 while the 2021 Amendment Act was being considered by Parliament.
- 33 Some proposals, such as specific decommissioning-related offences and infringement fines, were not consulted on as the then-Bill was amended during the Select Committee process (reported back in November 2021).
- 34 During the Select Committee process, the proposals in the then-Bill were amended to provide for the prescribing of fines, therefore infringement fines were not consulted on in the Discussion Document. We propose prescribing these fines in regulations.
- 35 MBIE received nine submissions, all from industry submitters. Five submitters opposed the utilisation of infringement offences altogether. Four submitters were supportive in principle, but they expressed that the offences must be applied consistently, with transparent operational guidelines in the event of non-compliance.

I propose releasing a public exposure draft of the regulations on information requirements

- 36 I seek approval to release an exposure draft of the regulations to the public to test the drafting clarity, obtain technical feedback, and ensure that the regulations can work as intended. Any exposure draft will be released in accordance with the Attorney-General's *Protocol for Release of Draft Government Legislation outside the Crown* (CO (19) 2).
- 37 I also seek authorisation to make any minor policy changes to the regulations following feedback on the exposure draft before submitting the regulations to the Cabinet Legislative Committee for approval.

Financial Implications

- 38 Upon receipt of an infringement notice, permit and licence holders will need to pay the infringement fee. Permit and licence holders may incur additional costs, for example, if they do not pay the fee and are issued an infringement fine by the Courts upon conviction of committing an infringement offence.
- 39 MBIE, as the regulator, may incur costs in monitoring and enforcing the infringement notices, including pursuing fines through the Courts. These costs will be met within existing baselines. However, the intent of the infringement notices is to improve permit and licence holder compliance with reporting requirements, and reduce the resource required to follow up non-compliant parties.

Legislative Implications

- 40 I am seeking Cabinet approval to instruct Parliamentary Counsel Office to draft regulations that reflect the policy recommendations set out in this paper. The policy decisions in this paper will require legislative change.
- 41 I am also seeking Cabinet approval to release an exposure draft of the regulations once drafted. This will be released in accordance with the Attorney-General's *Protocol for Release of Draft Government Legislation outside the Crown* (CO (19) 2).

Impact Analysis

Regulatory Impact Statement

- 42 A Regulatory Impact Statement has been completed and is attached in Appendix 1.
- 43 The MBIE Assessment Panel has reviewed the paper and considers that the information and analysis summarised in the Impact Statement meets the criteria necessary for Ministers to make decisions on the proposals.

Climate Implications of Policy Assessment

- 44 The Climate Implications of Policy Assessment (**CIPA**) team has been consulted and confirms that the CIPA requirements do not apply to this proposal as the threshold for significance is not met.

Population Implications

- 45 The proposals in this paper have no population implications.

Human Rights

- 46 This paper is consistent with the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993.

Consultation

- 47 MBIE publicly consulted on the majority of the policy proposals for the infringement offence regulations in a Discussion Document: *Proposed infringement offence regulations under the Crown Minerals (Decommissioning and Other Matters) Bill*. Consultation took place during September to October 2021, while the amendments to the CMA were being considered by Parliament.
- 48 The options for fines and infringement offences relating to decommissioning completion reporting requirements have not been consulted on, as the provisions in the 2021 Amendment Act were added at the Select Committee stage after public consultation through the Discussion Document closed.

49 The following agencies were provided opportunity to comment: The Treasury; The Ministry of Justice; and The Inland Revenue Department. The Ministry of Justice sought clarity on how these infringement offences interact with existing compliance tools, and this feedback has been incorporated.

50 I also intend to release an exposure draft of the regulations to ensure that the regulations can work as intended.

Communications

51 I do not intend to publicly announce decisions on this paper following Cabinet approval.

Proactive Release

52 I intend to proactively release a copy of this paper within 30 business days of decisions being confirmed by Cabinet with appropriate redactions under the Official Information Act 1982.

Recommendations

The Minister for Energy and Resources recommends that the Committee:

- 1 **note** that following the passing of the Crown Minerals (Decommissioning and Other Matters) Amendment Bill 2021 on 1 December 2021, the Crown Minerals Act 1991 provides MBIE with additional enforcement powers to accept enforceable undertakings, issue compliance notices, and issue infringement notices
- 2 **note** that to enable MBIE to issue infringement notices, the infringement offence and infringement fee must be prescribed in regulations
- 3 **note** that without the ability to issue infringement notices there is no proportionate and cost-effective way to deal with low-level offending within the Crown minerals regime
- 4 **agree** to prescribe in regulations infringement offences relating to the failure to:
 - 4.1 comply with permit, licence or land access requirements
 - 4.2 submit information, records and reports, in the correct form, or within the time specified or by the due date
 - 4.3 provide royalty returns and failure to pay royalties by the due date
 - 4.4 make required payments, such as annual fees, within the time specified or by the due date, or
 - 4.5 comply with certain decommissioning-related information, reporting or notification obligations

- 5 **agree** to prescribe in regulations infringement fees of:
 - 5.1 \$1,000 for an individual and \$3,000 in any other case for offences relating to Tier 1 permits and licences, and
 - 5.2 \$500 for an individual and \$1,000 in any other case for offences relating to Tier 2 permit and licences
- 6 **note** that the CMA provides that infringement fines may be prescribed in regulations to be imposed by the Courts in the event of non-payment of infringement fee, if an infringement fee is unsuccessfully challenged or if a defendant is found guilty of, or pleads guilty to, an infringement offence
- 7 **agree** to prescribe in regulations maximum infringement fines of:
 - 7.1 \$2,000 for an individual and \$6,000 in any other case for offences relating to Tier 1 permits and licences, and
 - 7.2 \$1,000 for an individual and \$2,000 in any other case for offences relating to Tier 2 permit and licences

Release of exposure draft of regulations and other recommendations

- 8 **agree** to the release of an exposure draft of the regulations
- 9 **invite** the Minister of Energy and Resources to issue drafting instructions to the Parliamentary Counsel Office to give effect to the recommendations in this paper (including, if required, issuing updated drafting instructions after considering any submissions on the exposure draft of the regulations)
- 10 **authorise** the Minister of Energy and Resources to make minor or technical changes to the policy decisions in this paper, consistent with the general policy intent, on issues that arise in drafting
- 11 **authorise** the Minister of Energy and Resources to make additional policy decisions, consistent with the general policy intent, on issues that arise in drafting, or after considering submissions on the exposure draft of the regulations.

Authorised for lodgement

Hon Dr Megan Woods

Minister of Energy and Resource

**Appendix 1: Regulatory Impact Statement: Infringement offence regulations
under the Crown Minerals Act 1991**