



## COVERSHEET

<b>Minister</b>	Hon Shane Jones	<b>Portfolio</b>	Resources
<b>Title of Cabinet paper</b>	Further policy decisions for the Crown Minerals Amendment Bill 2024	<b>Date to be published</b>	19 November 2024

<b>List of documents that have been proactively released</b>		
<b>Date</b>	<b>Title</b>	<b>Author</b>
31 October 2024	Further policy decisions for the Crown Minerals Amendment Bill 2024	Office of Minister for Resources
6 November 2024	Further policy decisions for the Crown Minerals Amendment Bill 2024 ECO-24-MIN-0253 Minute of Decision	Cabinet Office
11 November 2024	Further policy decisions for the Crown Minerals Amendment Bill 2024 CAB-24-MIN-0439.01 Minute of Decision	Cabinet Office
30 October 2024	Supplementary Departmental Disclosure Statement – Crown Minerals Amendment Bill	MBIE
30 October 2024	Annex to Regulatory Impact Statement: Amendments to the Crown Minerals Act 1991 relating to petroleum exploration and mining	MBIE

### **Information redacted**

**YES**

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.

Some information has been withheld for the reasons of confidential advice to government, commercial information, free and frank opinions, and legal professional privilege.

### **Explanatory note**

Note that the Minute of Decision ECO-24-MIN-0253 of 6 November 2024 is superseded by the Minute of Decision CAB-24-MIN-0439.01 of 11 November 2024.

For clarity, both Minutes of Decision have been included together in this proactive release.

In summary, Cabinet agreed to amend the recommendations in the Cabinet Paper *Further policy decisions for the Crown Minerals Amendment Bill 2024* to:

- extend and clarify the list of persons to whom trailing liability applies (paragraph 3 of ECO-24-MIN-0253 has been amended in CAB-24-MIN-0439.01); and
- remove the discretion for the Minister to apply trailing liability (paragraphs 5 and 6 of ECO-24-MIN-0253 are removed from CAB-24-MIN-0439.01).

CAB-24-MIN-0439.01 reflects the final policy decisions, which differ, as described above, from the Cabinet paper and ECO-24-MIN-0253.

# Annex to Regulatory Impact Statement: Amendments to the Crown Minerals Act 1991 relating to petroleum exploration and mining

Purpose of Document	
Decision sought:	<i>Cabinet policy approval</i>
Advising agencies:	<i>Ministry of Business, Innovation and Employment (MBIE)</i>
Proposing Ministers:	<i>Minister for Resources</i>
Date finalised:	<i>30 October 2024</i>
Background / Context	
<p>This is an Annex to the Regulatory Impact Assessment (RIA): <i>Amendments to the Crown Minerals Act 1991 relating to petroleum exploration and mining</i>, which was finalised on 15 May 2024.<sup>1</sup> This RIA sought policy decisions to amend the Crown Minerals Act 1991 (CMA).</p> <p>Petroleum exploration and mining permit holders under the CMA and licence holders under the Petroleum Act 1937 (collectively in this paper, “permit holders”) are obliged to carry out and meet the cost of decommissioning and obtain and maintain financial securities for the performance of this obligation. A permit holder can be made up of one or more “permit participants”, each with an undivided interest (a “participating interest”) in a petroleum permit or licence (collectively in this paper, “permits”). Each permit holder has a “permit operator” who is the permit participant responsible for the day-to-day management of activities under the permit.</p> <p>The Crown Minerals Amendment Bill (the Bill) is currently before Parliament. It includes amendments to the petroleum decommissioning provisions, in particular, the provision that makes former permit holders and participants (henceforth in this paper, “permit holders”) liable for decommissioning costs. This is called trailing liability, and it exists only to the extent that the current permit holder fails to decommission or meet the costs, and only for petroleum infrastructure and wells that were in place when the permit was transferred. The Bill amends this provision so that ‘trailing liability’ only attaches to the immediately prior permit holder and no further back.</p>	
Problem definition	
<p>Submitters on the Bill to the Select Committee raised concerns about a potential loophole with the trailing liability provision.</p> <p>Under the CMA, permits can change hands in two ways – directly through a transfer or indirectly through a change of control of a permit operator or permit participant. A change</p>	

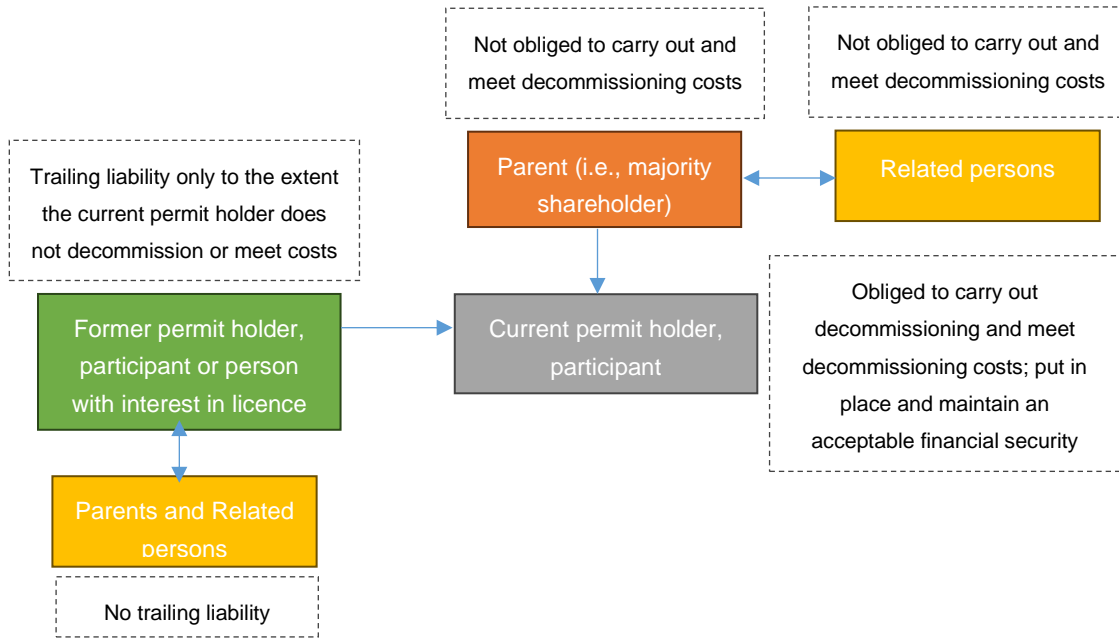
<sup>1</sup> <https://www.mbie.govt.nz/dmsdocument/28877-regulatory-impact-statement-amendments-to-the-crown-minerals-act-1991-relating-to-petroleum-exploration-and-mining-proactiverelease-pdf>

of control is where a person obtains the power (whether directly or indirectly) to exercise 50 per cent or more of voting rights in the corporate body that holds the permit operator or participant (for example, through a share transfer).

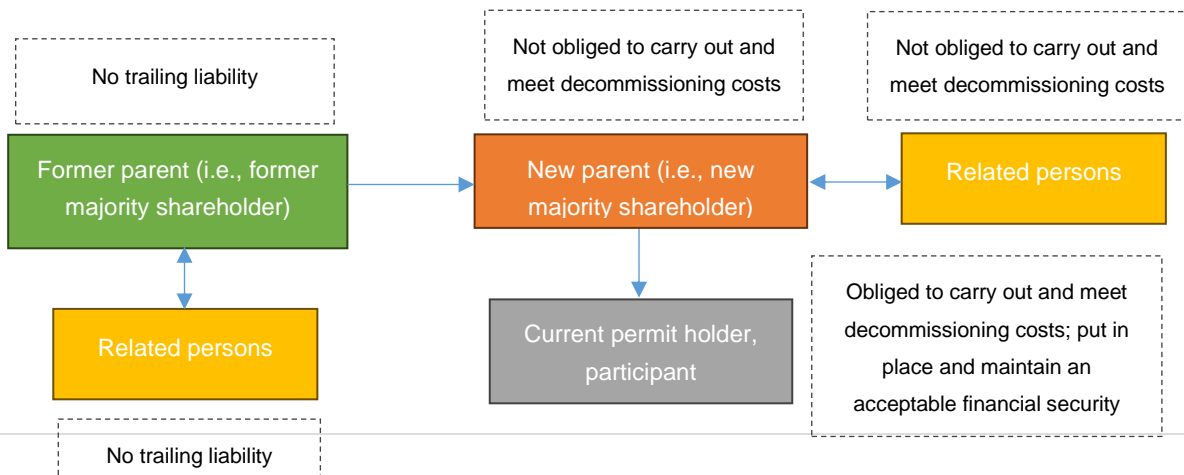
A permit transfer requires Ministerial consent. A sale of shares in a permit operator, if it occurs without the Minister’s prior consent, is a contravention of the CMA. Under both processes, the Minister must be satisfied that (among other things) the permit holder or transferee is highly likely to comply with the decommissioning obligations under the CMA. Sale of shares in a permit participant do not require Ministerial consent but only Ministerial notification, which must include a statement from the permit participant that it has the financial capability to meet its obligations under the permit. The Minister may revoke a permit if a permit participant fails to notify the Minister or if the Minister is not satisfied that following the change of control, the permit holder has the financial capability to meet its obligations under the permit.

However, the decommissioning trailing liability provisions only apply to transfers of permits and not to changes of control of the permit operator or permit participant (see diagrams below).

**Decommissioning liability when permits are transferred**



**Decommissioning liability when majority shares in a permit are sold**



Submitters raised concerns that this could lead to the industry structuring businesses and transactions in a way that avoids trailing liability for decommissioning i.e., by selling shares in an entity rather than transferring the permit. If this happens, the Crown’s only risk mitigation tool will be the decommissioning financial securities that the permit holder must provide. There will be no ‘former permit holder’ to trail.

This may lead to the decision maker under the CMA taking a more conservative approach to transfer or change of control applications or to decisions on an acceptable financial security arrangement for decommissioning. In either case, this may have a chilling impact on investment in our existing fields, contrary to the Government’s policy objectives.

### What is the proposed policy change?

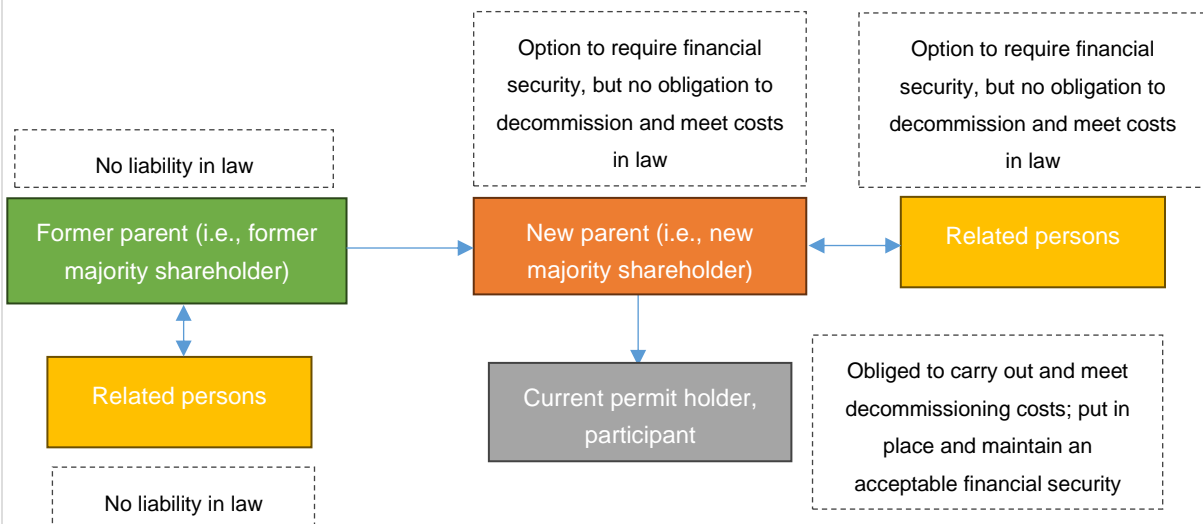
There are three potential options to address the problem:

- **Option 1:** Maintain the status quo
- **Option 2:** Partially extend trailing liability in the context of change of control only
- **(Preferred) Option 3:** Extend trailing liability

#### Option 1: Maintain the status quo

Option 1 would mean relying on the financial security arrangement already in place, or seeking to change it to ensure the Crown’s risk exposure to any decommissioning costs is managed. This could include, for example, seeking a parent company guarantee from the new parent i.e., the new majority shareholder or a related person of the parent, in combination with another, liquid form of security from the permit participant itself. Liability would therefore fall as per the diagram below:

#### **Existing trailing liability**



This option would not allow the Crown to fully ensure that it has a robust trailing liability arrangement in place with the previous owner. As indicated in the problem definition above, potentially risk-averse financial security decisions may have implications for investment activity in the upstream sector. Furthermore, if sale of shares become the only way in which permits change hands in the future, the decommissioning trailing liability provisions in the CMA become redundant.

Option 2: Partially extend trailing liability in the context of change of control

Option 2 would involve ‘trailing’ decommissioning liability to cover:

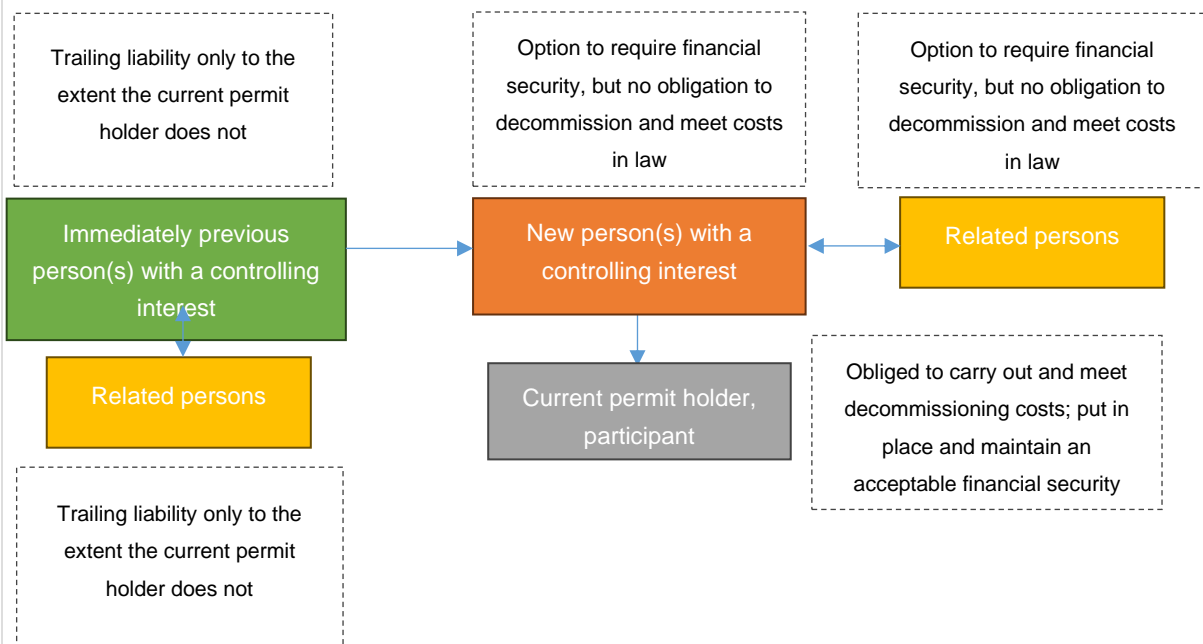
- The immediately previous person(s) with a controlling interest<sup>2</sup> in the current permit holder
- Related bodies corporate of that person (at the discretion of the Minister).

For consistency with a permit transfer scenario, Option 2 would also strengthen trailing liability to cover:

- The person(s) with a controlling interest in the immediately *former* permit holder
- Related bodies corporate of that person (at the discretion of the Minister).

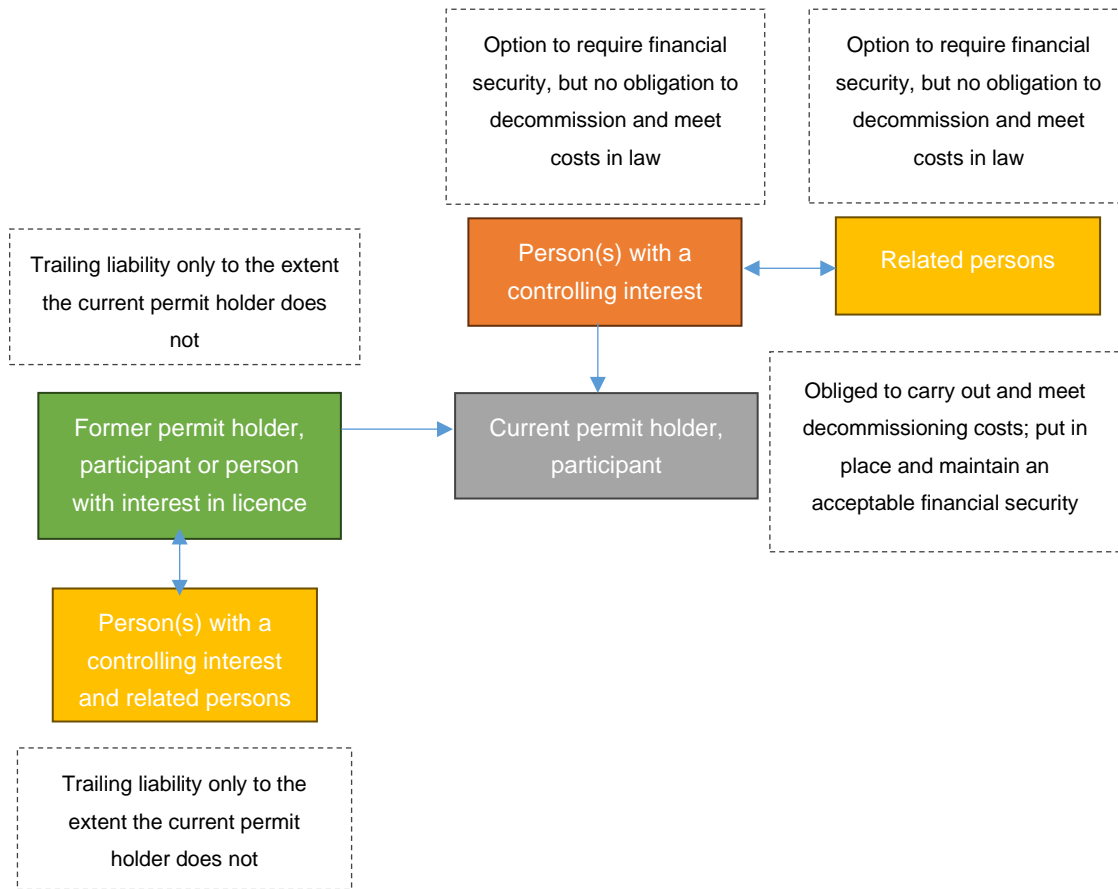
Liability would therefore fall as per the diagrams below:

***Trailing liability when majority shares in a permit are sold***



<sup>2</sup> Meaning the power (whether directly or indirectly, and alone or acting together with others) to exercise, or control the exercise of, 50 per cent or more of the voting rights in a corporate body.

### Trailing liability when permits transferred



While Option 2 fixes the loophole, it would result in an unusual outcome. If the current permit holder fails to decommission or pay for it and the financial security is insufficient, the entities that directly benefited from the permit, the person with a controlling interest and related bodies corporate of the permit holder, are not liable in law. The Crown would instead need to approach former parties, which could be considered unreasonable.

#### (Preferred) Option 3: Extend trailing liability

Option 3 would build on Option 2 and extend trailing liability under the CMA to cover:

- A person with a controlling interest in the current permit holder, and
- Related bodies corporate of that person (at the discretion of the Minister).

In summary, Option 3 would see the following persons and entities liable for trailing liability:

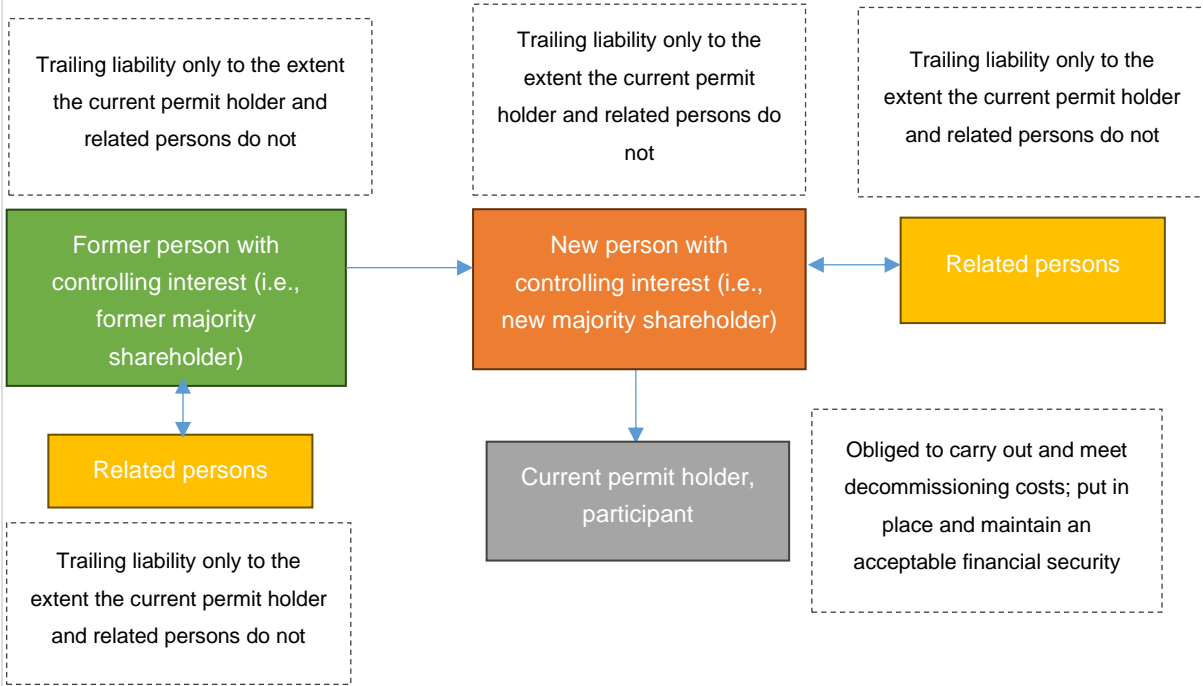
- The immediately former permit holder
- The person(s) with a controlling interest in the current or immediately former permit holder
- Related bodies corporate of the persons described above (at the discretion of the Minister).

The definition of related bodies corporate would be similar to section 50 of the Australian Corporations Act 2001. There, a body corporate is defined as:

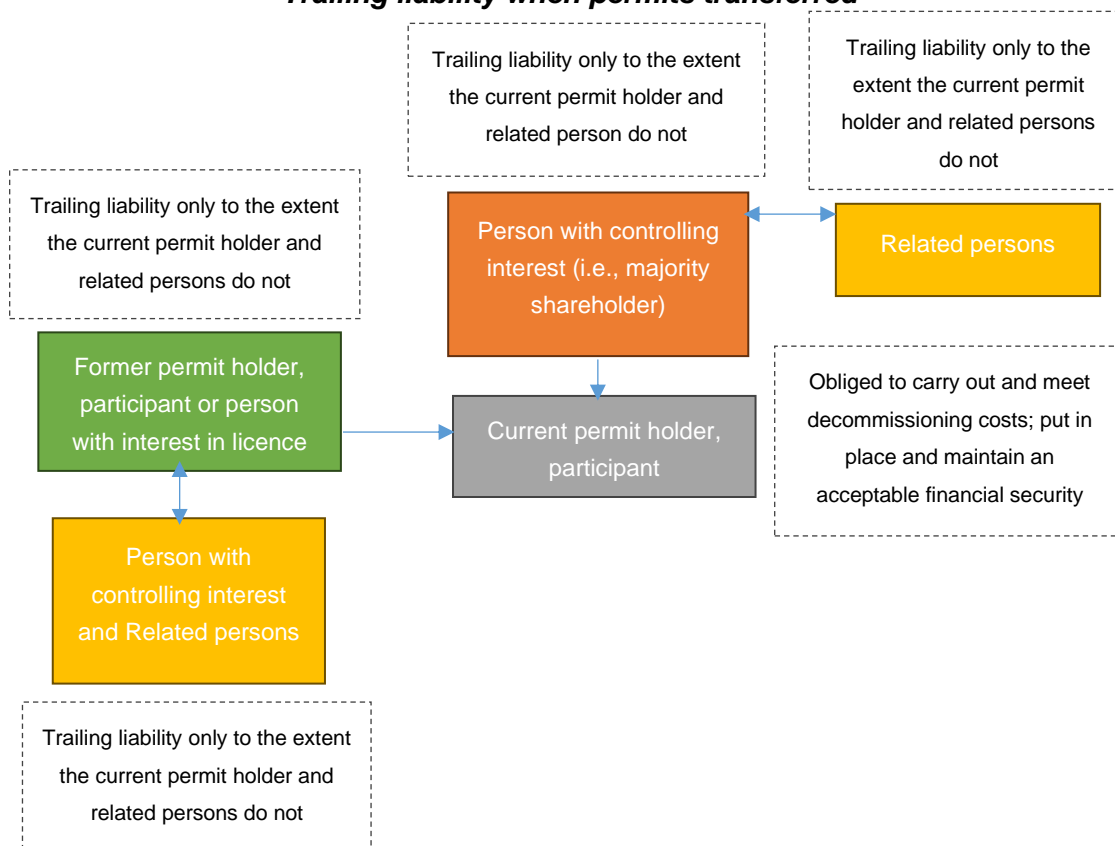
- A holding company of another body corporate, or
- A subsidiary of another body corporate, or
- A subsidiary of a holding company of another body corporate.

Decommissioning liability under the CMA would therefore fall as per the diagrams below:

***Trailing liability when majority shares in a permit are sold***



### Trailing liability when permits transferred



We propose that trailing liability under Option 3 apply by default to the following persons:

- The immediately former permit holder
- A person with a controlling interest in a permit holder
- The immediately previous person that had a controlling interest in the current permit holder

For related bodies corporate, as they can be numerous, we propose that the responsible Minister under the CMA be given the discretion to determine liability for the related bodies corporate, based on their direct involvement, the degree to which they have (or are capable of) significantly benefiting financially from the operations authorised by the permit, and their level of influence over the compliance with the permit holder’s obligations.

The following entities would be subject to the Minister’s discretion on whether to hold them liable:

- Related bodies corporate of the current permit holder
- Related bodies corporate of the immediately former permit holder
- Related bodies corporate of a person with a controlling interest in a permit holder
- Related bodies corporate of the immediately previous person that had a controlling interest in the current permit holder.

### Australia and the United Kingdom can ‘trail’ liability to a broader set of persons

In both Australia and the United Kingdom, legislation enables decision makers to ‘trail’ offshore decommissioning liability to a range of persons. In the United Kingdom, this



includes parent companies or other associated body corporate, but only if the decision-maker is not satisfied that adequate arrangements (including financial arrangements) have been made by others to ensure that decommissioning will be carried out.<sup>3</sup>

In Australia, the decision-maker can issue a 'remedial direction' to decommission to any of the following:

- A related body corporate of the current registered holder of the permit, lease or licence
- Any former registered holder of the permit, lease or licence
- A person who was a 'related body corporate' of any former registered holder of the permit, lease or licence
- A 'related person' in relation to the title.<sup>4</sup>

### Implementation, monitoring, evaluation and review

The preferred option will need to be implemented through changes to the CMA. They are intended to take effect immediately, with no transitional arrangements. Changes to the Minerals Programme for Petroleum will need to be made. The Programmes are considered secondary legislation that interpret the CMA.

The proposed changes will be monitored to gauge their impact on mergers and acquisitions and further investment in the upstream petroleum sector.

### What impact will this have?

The broader range of persons captured by this proposed change will be directly impacted and will need to account for this potential liability. However, we consider that the impacts on them as related bodies corporate of the current or former permit holders are reasonable, given that permit holding entities are often limited liability subsidiaries of their larger, more financially capable parents.

For the Crown and other third parties who may be responsible for decommissioning if a permit holder fails to decommission or pay for it, the broader range of liable persons is likely to reduce the risk of this occurring.

### Consultation

In the time available, MBIE has been unable to consult with industry on these proposed changes as the proposals have been identified through the submissions process on the Bill. Incumbent industry players are unlikely to support the proposed changes, however, they may be supported by potential new sector entrants.

In the time available, MBIE has been unable to consult with iwi and hapū on the proposed changes. However, consultation with iwi and hapū on the other decommissioning-related changes in the Bill has highlighted support for a robust decommissioning regime. The proposed changes are likely to strengthen the decommissioning regime.

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<sup>3</sup> See section 31(1) of the Petroleum Act 1998.

<sup>4</sup> 'Related person' is determined on the basis of them being capable of significantly benefiting financially or has significantly benefited financially from the activities authorised by the title, and/or is or has been in a position to influence compliance with obligations under the Offshore Petroleum and Greenhouse Gas Storage Act 2006, and/or acts or has acted jointly with the current or former titleholder in relation to activities authorised by the title.

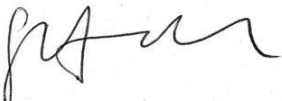
MBIE will continue its engagement with the petroleum industry and with iwi and hapū through the implementation of the preferred option.

### Responsible Manager(s)

*Susan Hall*

*Policy Director, Resource Markets*

*Ministry of Business, Innovation and Employment*



*30 October 2024*

### Quality Assurance

Reviewing Agency:	Ministry of Business, Innovation and Employment
Panel Assessment & Comment:	The MBIE Quality Assurance Panel has reviewed the Regulatory Impact Statement prepared by the MBIE Resource Policy team, and, while noting that consultation was not undertaken for this particular proposal, consider that the information and analysis summarised in the Regulatory Impact Statement meets the Quality Assurance criteria.