



COVERSHEET

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

List of documents that have been proactively released		
Date	Title	Author
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Note that the Minute of Decision ECO-24-MIN-0253 of 6 November 2024 is superseded by the Minute of Decision CAB-24-MIN-0439.01 of 11 November 2024.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.

Supplementary Departmental Disclosure Statement

Crown Minerals Amendment Bill

A supplementary departmental disclosure statement for a Bill the government is proposing to amend seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill in amended form.

It highlights material changes to previous disclosures relating to:

- the general policy intent of the Bill and other background policy material;
- some of the key quality assurance products and processes used to develop and test the content of the Bill;
- the presence of certain significant powers or features in the Bill that might be of particular Parliamentary or public interest and warrant an explanation.

The original disclosure statement for the Crown Minerals Amendment Bill, dated 6 September 2024, can be found at this link <https://disclosure.legislation.govt.nz/bill/government/2024/82/>

This supplementary disclosure statement was prepared by the Ministry of Business, Innovation and Employment.

The Ministry of Business, Innovation and Employment certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

30 October 2024.

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The Main Areas of Change to the Original Disclosures

This is a supplementary disclosure statement for the Crown Minerals Amendment Bill.

A supplementary disclosure statement supplements the original disclosure statement for the Bill by reporting the additions and changes that would need to be made to the original disclosure statement to accurately reflect the Bill with the proposed government amendments incorporated.

The main areas of change to the original disclosure statement include:

- Extending trailing liability to:
 - person(s) with a controlling interest in a permit holder; and
 - the immediately previous person(s) that had a controlling interest in the current permit holder.
- Providing for the Minister responsible for the Crown Minerals Act 1991 to have the discretion to extend this liability to related bodies corporate of the current permit holder, previous permit holder, and persons described above, on a case-by-case basis.

Part One: General Policy Statement

Extending trailing liability

Decommissioning petroleum infrastructure is costly. If a permit holder fails to decommission, responsibility may fall to the Crown and landowners. A current safeguard against this in the Crown Minerals Act 1991 (the CMA) is trailing liability. This is liability for a former permit holder if the current permit holder fails in their decommissioning obligations.

The problem is that, while trailing liability applies if there is a transfer of a permit, it does not apply if the controlling shareholder in a permit holder changes. In such a case, the only risk mitigation for the Crown will be the current permit holder and any financial security that is required of them.

This could expose the Crown to significant fiscal risk and dampen investment activity, if Ministers make more conservative transfer approval decisions (for example, in deciding whether to approve a change in a controlling shareholding of a permit holder, or when determining an acceptable financial security arrangement).

This policy seeks to ensure there is an enabling environment for the sale and purchase of petroleum assets, while ensuring the Crown's liability is covered.

This is particularly important as petroleum fields near end of life, and larger more stable companies seek to sell petroleum assets to smaller companies that are willing to take on a higher level of risk and specialise in the ownership of later life assets. Such a sale could well be an efficient outcome and it is important that the Crown does not hinder sensible outcomes because of undue risk averseness over decommissioning.

To address this issue, the proposal will extend trailing liability to person(s) with a controlling interest in a permit holder, and the immediately previous person(s) that had a controlling interest in the current permit holder.

As a backstop, the proposal enables the Minister responsible for the CMA to have the discretion to extend trailing liability to related bodies corporate of the current and previous permit holder, and the current and previous persons with a controlling interest, on a case-by-case basis.

The proposal brings New Zealand further into alignment with Australia and the United Kingdom. Both jurisdictions extend trailing liability to a range of related bodies corporate.

Part Two: Background Material and Policy Information

Published reviews or evaluations

2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill?	NO
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Relevant international treaties

2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?	NO
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Regulatory impact analysis

2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?	YES
MBIE completed an annex to <i>Regulatory Impact Statement: Amendments to the Crown Minerals Act 1991 relating to petroleum exploration and mining</i> on 30 October 2024. The Statement will be made publicly available following Cabinet approval. We will update this Departmental Disclosure Statement with the link at the appropriate time.	

2.3.1. If so, did the RIA Team in the Treasury provide an independent opinion on the quality of any of these regulatory impact statements?	NO
The Ministry of Regulation's RIA team delegated the responsibility for providing comment on the quality of the annex to the regulatory impact statement to a MBIE Quality Assurance Panel. The Panel considers that the Statement meets the Quality Assurance criteria.	

2.3.2. Are there aspects of the policy to be given effect by this Bill that were not addressed by, or that now vary materially from, the policy options analysed in these regulatory impact statements?	NO
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Extent of impact analysis available

2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?	NO
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2.5. For the policy to be given effect by this Bill, is there analysis available on:	
(a) the size of the potential costs and benefits?	NO
(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?	NO

2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be affected by:	
(a) the level of effective compliance or non-compliance with applicable obligations or standards?	NO
(b) the nature and level of regulator effort put into encouraging or securing compliance?	NO

Part Three: Testing of Legislative Content

Consistency with New Zealand's international obligations

3.1. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations?

New Zealand's international obligations were considered during the policy development process.

Consistency with the government's Treaty of Waitangi obligations

3.2. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi?

There was no specific Treaty analysis undertaken for this amendment proposal. In earlier engagement, MBIE received submissions from iwi and hapū which generally supported strengthening the decommissioning regime including: retaining decommissioning requirements including financial securities, trailing liability, and liability in the post-decommissioning period.

Consistency with the New Zealand Bill of Rights Act 1990

3.3. Has advice been provided to the Attorney-General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990?

NO

The Ministry of Justice advised that amendment papers are not usually vetted for consistency with the New Zealand Bill of Rights Act 1990. Further, the Ministry of Justice noted the proposals in the amendment paper seemed unlikely to raise significant New Zealand Bill of Rights Act 1990 implications.

Offences, penalties and court jurisdictions

3.4. Does this Bill create, amend, or remove:

(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?

NO

(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?

NO

Privacy issues

3.5. Does this Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information?

NO

External consultation

3.6. Has there been any external consultation on the policy to be given effect by this Bill, or on a draft of this Bill?

NO

Other testing of proposals

3.7. Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill's provisions are workable and complete?	YES
New Zealand Petroleum and Minerals, the government regulator that manages New Zealand's Crown minerals estate, has assessed the provisions in the Bill and are comfortable that these achieve the policy intent of the Bill.	

Part Four: Significant Legislative Features

Compulsory acquisition of private property

4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?	NO
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Charges in the nature of a tax

4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?	NO
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Retrospective effect

4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?	NO
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Strict liability or reversal of the burden of proof for offences

4.4. Does this Bill:	
(a) create or amend a strict or absolute liability offence?	NO
(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?	NO

Civil or criminal immunity

4.5. Does this Bill create or amend a civil or criminal immunity for any person?	NO
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Significant decision-making powers

4.6. Does this Bill create or amend a decision-making power to make a determination about a person's rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests?	NO
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Powers to make delegated legislation

4.7. Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?	NO
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4.8. Does this Bill create or amend any other powers to make delegated legislation?	NO
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Any other unusual provisions or features

4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?	NO
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