Discussion Document

Review of the Crown Minerals Act 1991

November 2019

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The Ministry of Business, Innovation and Employment (MBIE) seeks written submissions on the issues raised in this document by 27 January 2019. Your submission may respond to any or all of these issues. Where possible, please include evidence to support your views, for example, references to independent research, facts and figures, or relevant examples.

Please include your contact details in your submission. You can make your submission:

- By completing the online summary submission form, which can be found at www.mbie.govt.nz/.
- By sending your submission as a Microsoft Word document to: Resource.Markets.Policy@mbie.govt.nz
- By mailing your submission to:
  Resource Markets Policy
  Ministry of Business, Innovation & Employment
  PO Box 1473
  Wellington 6140

Please direct any questions that you have in relation to the submissions process to Resource.Markets.Policy@mbie.govt.nz.

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MBIE will consider you to have consented to uploading by making a submission, unless you clearly specify otherwise in your submission.

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- provide a separate version excluding the relevant information for publication on our website.

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Ministers Foreword

The Crown mineral estate is a significant national asset, but its contribution to the wellbeing of New Zealanders depends on how we use it. That is why we are undertaking this Review: to ensure that the settings in the Crown Minerals Act 1991 (CMA) contribute to mining that responsibly balances environmental, social, and economic considerations and meets the evolving needs of our society in a changing world.

We are on the precipice of a significant economic transformation over the coming decades. Our global confrontation with climate change is reshaping our economy and how we pay our way in the world. Globally, we are seeing major shifts away from fossil fuels and towards renewable energy. I do not underestimate the challenges of this transition – these changes are going to affect many sections of our society. But I also reiterate this Government's commitment to a just transition away from fossil fuels - one that is fair, equitable and inclusive. It is imperative that this is a well-planned and managed transition that does not leave people behind.

The challenge of transition is only one of many that are faced by the minerals and petroleum sector. Increasingly people expect a more socially conscious sector, which takes iwi/hapū and community views into consideration when making decisions. People increasingly expect mining to be carried out responsibly to avoid first, and, where not possible, mitigate adverse effects to the environment. But the sector also has a role to play in providing us with the raw materials and energy we need to achieve our objective of a productive, sustainable and inclusive economy. This is especially true of the minerals used in technologies central to the transition towards renewable energy.

Addressing these challenges, we recently released Responsibly Delivering Value – A Minerals and Petroleum Resource Strategy for Aotearoa New Zealand: 2019-2029. This Strategy was the product of a collaborative process with our Treaty partners, environmental groups, industry and the wider public. It imagines "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."

This Review is one of the key actions this Government is undertaking to build towards this vision. This discussion document consults on a range of proposals that should help ensure that the CMA regulatory regime is fit for purpose in the years to come.

As I stated above, we are committed to a just transition. Therefore, I encourage you to submit and comment on anything in this discussion document that may affect you. Your submissions help us understand the impact of these proposals. Only by understanding the impacts on all groups can we arrive at equitable and well considered decisions.

I am confident that this Review will lead to positive changes to the CMA regime. My hope is that we will achieve an effective and efficient regulatory regime that balances environmental and community interests with the need to secure our supply of critical minerals, both now and for the foreseeable future.

Hon Dr Megan Woods

Minister of Energy and Resources
Minita Take Pūngao, Rawa hoki

Table of Contents

Introduction

Reasons for reviewing the Crown Minerals Act 1991

New Zealand is embarking on the largest economic transformation that we have seen in decades as we transition towards a carbon neutral economy by 2050 in response to climate change. We also aim to build an economy that is productive, sustainable and inclusive. We are reviewing the Crown Minerals Act 1991 (the CMA) to ensure it can best support these objectives, as well as being fit for the purposes of iwi/hapū, industry, our communities, and Government.

It is now almost three decades since the CMA was enacted, and the last major review of the CMA occurred in 2012. The original aim of the regime (which has remained unchanged) is to promote the efficient and effective allocation of rights to prospect, explore, and mine Crown-owned minerals. The regime has remained indifferent towards our domestic needs given our ability to export and import the minerals and petroleum we need.

To transition to a carbon neutral economy and build a productive, sustainable and inclusive economy, we need a minerals and petroleum sector that enables these transformations. The jobs, taxes, export revenue, and material inputs, such as aggregate (necessary to build infrastructure and housing) that the sector provides are key to this outcome. As we transition to a carbon neutral economy the contribution of oil, gas and coal to our energy needs will reduce as we move away from fossil fuels. As we become more reliant on low carbon technologies, such as electric vehicles and solar panels, our demand for clean-tech minerals[1] that supports these technologies is projected to increase, as will our demand for aggregates to support our buildings and infrastructure.

The regulatory system has a significant role to play in moving the minerals and petroleum sector in this transition. The Government announced in November 2017 that there would be no new mines on conservation land. A discussion document will be released in the coming months seeking public input.

Another change to this sector, and an important step towards a carbon neutral economy was taken in April 2018 when the Government announced no new offshore oil and gas exploration permits would be granted. In November 2018 the Government passed the Crown Minerals (Petroleum) Amendment Act 2018 to give effect to this decision and ensure future exploration permits are limited to onshore Taranaki only.

This represents a significant change to the CMA, and is a first step towards reducing our reliance on fossil fuels. The Crown Minerals (Petroleum) Amendment Act 2018 received around 6,500 submissions from businesses, community groups, environmental groups, iwi, the oil and gas industry, and the general public. Submissions highlighted the need to protect existing rights and security of supply while balancing the transition to a carbon neutral economy. Responding to these submissions, the Government committed to a:

[1] These are minerals used in low emissions technology such as wind turbines, solar batteries and electric vehicle lithium batteries.

- **Resource Strategy** - *The Minerals and Petroleum Strategy for Aotearoa New Zealand: 2019 – 2029* sets the Government's long term vision for the minerals and petroleum sector. The 10-year Strategy is a first step towards transitioning our minerals and petroleum sector to a more socially and environmentally responsible sector that better supports our future as well as guiding future Government policy affecting the sector. The Strategy was developed with our Treaty partners, and key stakeholders including environmental non-governmental organisations, industry, local councils and research institutes. It was released for public consultation earlier this year and we have published the final Strategy alongside this discussion document.

- **Review of the Crown Minerals Act –** This Review is the opportunity to address some of the issues raised by submitters to both the Crown Minerals (Petroleum) Amendment Act 2018 and the Resources Strategy. The Review addresses issues under the CMA to ensure the regulatory regime is fit for purpose and is appropriately geared to meet Government priorities, including a just transition to a low emissions economy that is productive, sustainable and inclusive.

Working in tandem, the Strategy and the Review of the Crown Minerals Act should ensure that the minerals and petroleum sector best meet the current and future needs of New Zealanders.

Objectives, principles and scope of the review

The objectives for this review are to ensure:

- New Zealand's minerals and petroleum resources sector contributes to the country's "productive, sustainable and inclusive economy"

- risks and downsides associated with the sector can be appropriately managed, and

- the sector is governed by a regulatory regime that is clear, coherent and fair.

The review is underpinned by the following principles:

- **Support New Zealand's wellbeing** – changes will be made that benefit the long-term wellbeing of New Zealanders.

- **Fairness** – we want to make sure the legislative settings are fair for all affected parties.

- **Future-proofing** – the review seeks to make sure the legislative regime is able to accommodate new regulatory challenges as they arise.

- **Responsible regulation** – the review seeks to make sure the CMA regime is clear, predictable and coherent.

The Crown Minerals Act regime

The CMA sets out the legislative framework for the issuing of permits to the right to prospect, explore and mine Crown-owned minerals[2] within New Zealand. The CMA is supported by two

[2] Crown-owned (or vested) minerals includes all petroleum, gold, silver and uranium, as well as all minerals in the territorial sea, exclusive economic zone and extended continental shelf. Other minerals (for example, coal, iron sands, aggregates) have a mixture of Crown and private ownership. Privately-owned minerals do not fall under the Act.

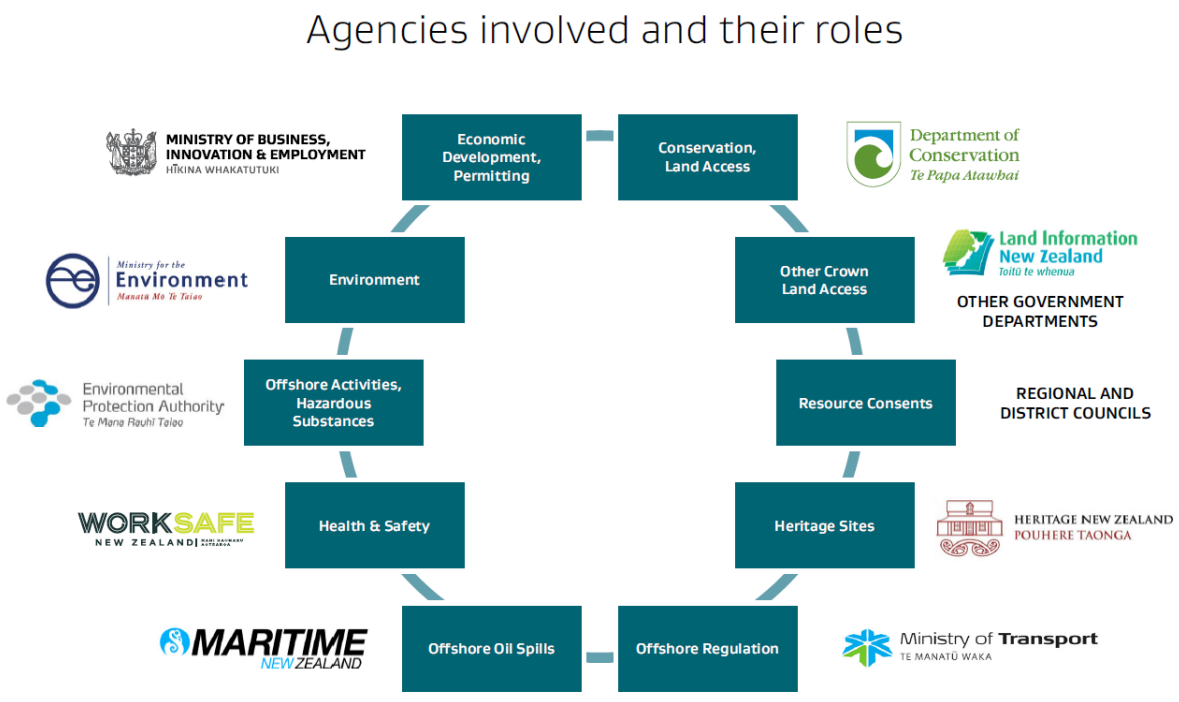
Minerals Programmes and a suite of regulations, which are referred to as the Crown Minerals Act regime.

The Minerals Programmes may set out or describe how the Minister or the Chief Executive will apply the powers given to them under the CMA. The programmes also set out the requirements for consultation with iwi and hapū. The regulations set out the reporting, fee and royalty obligations.

Minerals and Petroleum activities are regulated by a series of separate pieces of legislation and government agencies in a wide system of checks and balances. The separation in the statutory framework between powers and functions was designed to ensure independence, transparency and accountability.

The regulatory system provides for economic development through the CMA, environmental management through the Resource Management Act 1991 (RMA) and the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 (EEZ Act), and health and safety through the Health and Safety at Work Act 2015. As a whole the system makes sure the impacts of prospecting, exploring and mining are appropriately managed and balanced. Permit holders must meet the requirements set out in the CMA as well as all of the requirements set out in the other Acts to be able to extract resources.

The diagram below provides a high-level overview of the relevant parts of the wider regulatory framework and the agencies involved in their administration.



The regulatory framework for mineral and petroleum activities must also be understood within the context of New Zealand's international obligations. New Zealand's rights to the natural resources of our continental shelf sit within the context of our international obligations, notably the United Nations Convention on the Law of the Sea (UNCLOS). Under UNCLOS, New Zealand has sovereign rights to explore and exploit the natural resources of its continental shelf. However, it must do so

with due regard to the rights and duties of other States, for example the right for other States to freely navigate through our exclusive economic zone.

Introduction to the CMA

The regime illustrated in Figure 1 below begins with the CMA, which sets out the legislative framework for:

- the efficient allocation of the right to explore, prospect or mine Crown minerals
- the effective management of those rights, and
- for obtaining a fair financial return from the development of Crown-owned minerals.

The role of the Minister with responsibility for the Crown's petroleum and minerals estate is to manage this regime and deliver these outcomes.

The purpose of the CMA is to promote the prospecting for, exploration for, and mining of Crown-owned minerals for the benefit of New Zealand.[3] "The benefit of New Zealand" is defined as best achieved by increasing New Zealand's economic wealth through maximising the economic recovery of New Zealand's Crown-owned minerals.

The CMA is supported and applied through the Minerals Programme for Petroleum 2013, the Minerals Programme for Minerals (Excluding Petroleum) 2013 (collectively referred to in this document as the Programmes) and regulations.

The Programmes set out or describe how the Minister or the Chief Executive of MBIE will exercise any specified powers or discretions conferred on him or her by or under this Act in relation to the mineral or minerals that are subject to the programme. They also set out requirements for consultation with iwi and hapū, detailing what must be consulted on and the principles of consultation.

[3] The 2013 review of the Act introduced a purpose statement.

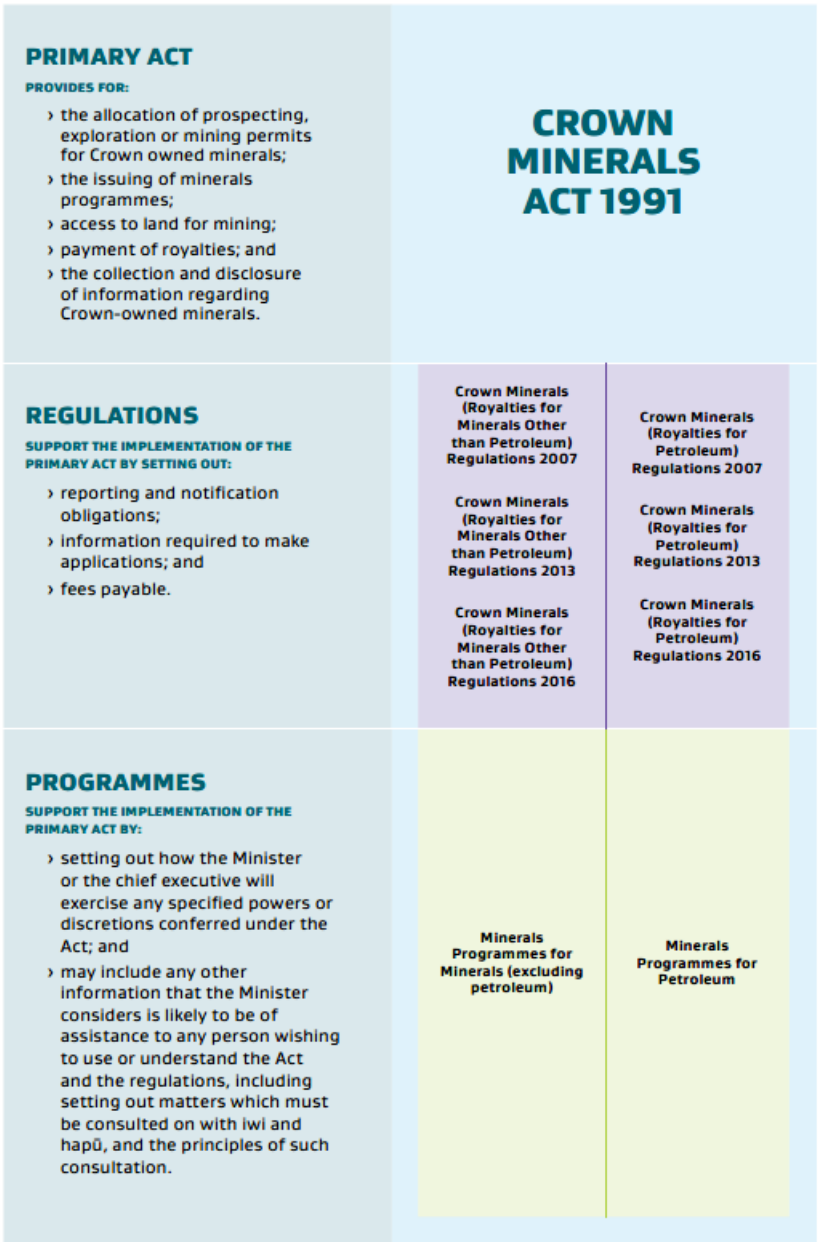


Figure 1: CMA regulatory regime

The CMA enables a permit to be issued, which provides the right to prospect, explore, or mine for Crown-owned minerals in a particular area.[4] A permit provides a permit holder with these rights subject to certain conditions, including compliance with good industry practice and, where applicable, the payment of royalties to the Crown.

Permit process

Permit work programmes are designed to strike a fair balance between giving the permit holder flexibility as to how they explore, prospect, or mine for petroleum or minerals while making sure this occurs in a reasonable timeframe and in a way consistent with good industry practice.

[4] Note the exception in Section 8 of the Crown Minerals Act 1991.

The CMA separates permits into Tier 1 and Tier 2 categories. Tier 1 includes high-return high-risk projects. Applicants for a Tier 1 permit must satisfy a high level health, safety and environmental capability test. Tier 2 permits are lower return industrial, small business, and hobby mineral operations needing a simpler, more pragmatic management regime.

Permits are required at different stages of operation. Each permit has specific time frames and requirements associated with it, which vary for petroleum and minerals permits. The types of permits are:

- **Prospecting permit** – These permits give the permit holder the right to look for minerals owned by the Crown using survey activities to assess the area
- **Exploration permit** – These permits give the permit holder the right to explore for mineral deposits and evaluating the feasibility of mining.[5]
- **Mining permit** – Mining permits give the permit holder the right to mine Crown-owned minerals once a discovery has been made.

Obtaining a permit is necessary, but is not sufficient on its own to start prospecting, exploration or production. The wider regulatory system operates as a system of checks and balances (economic, environmental, and health and safety) which together support the Government's objective of a more productive, sustainable, and inclusive economy. Other permissions (such as resource consents) under the wider regulatory system are also necessary before undertaking prospecting, exploration or mining activities.

Consultation process under the current regulatory system

Before any prospecting, exploration or mining activities can commence, CMA permit holders must meet the requirements of one or both of the "effects-based" laws –RMA and the EEZ Act. These "effects-based" Acts are responsible for assessing and regulating the impacts of the proposed activities on local communities and the environment.

The RMA gives people the opportunity to participate in the decision-making process for prospecting, exploration or mining activities, providing people with the opportunity to provide input into what activities can occur in their communities. This consultation is important because the public have an essential role in identifying the impacts of a proposed activity in their region. Under the RMA, community participation occurs during both the district and regional planning processes, and when an application for resource consent for prospecting, exploration or mining activity is considered. Most mining proposals meet the test for a consent application to be publicly notified, enabling wide public involvement in the decision-making process. This is further discussed in Chapter 4: Community participation.

Because the environmental effects and the effect on local communities is considered under the RMA, there is no mandatory requirement for public consultation under the CMA. The only exception to this is where an application is made for significant mining activities on conservation land. In that event, the Minister of Conservation must publish notices advising of the application. This is followed by a period of at least 20 working days in which any interested party can lodge an objection or make

[5] For example, seismic data acquisition, exploration drilling and excavations.

other written submissions about the application. These objections or submissions are then taken into account by the relevant Ministers as part of the decision-making process.

Māori-Crown relationship under the CMA

The Māori-Crown relationship is vital to the effective management of New Zealand's natural resources, and is underpinned by the Principles of the Treaty of Waitangi. Māori practice a holistic approach to the management of natural resources through kaitiakitanga.[6]

Section 4 of the CMA requires all persons exercising functions and powers under the CMA to *"have regard to the principles of the Treaty of Waitangi".* Chapter 2 of the Petroleum and Minerals Programmes set out the processes for meeting this obligation, including the specific consultation principles that must be adhered to when consulting on Crown minerals:

a) The Crown will act reasonably and in utmost good faith towards its Treaty partner.
b) The Crown will make informed decisions.
c) The Crown will consider whether a decision will impede the prospect of redress of any Treaty claims.
d) The Minister and NZP&M are informed of the Māori perspective, including tikanga Māori, and will have regard to the principles of the Treaty.
e) The Minister and NZP&M are committed to a process of meaningful consultation with iwi and hapū, which involves:
    i. early consultation with iwi and hapū during the decision-making process, aimed at informing the Minister and NZP&M of any Treaty implications or any other matters about which iwi and hapū may wish to express their views
    ii. ensuring that iwi and hapū who are consulted are given enough information to make informed decisions and to present their views
    iii. ensuring that iwi and hapū who are consulted are given enough time to consider the information provided by the Minister and NZP&M and to present their views
    iv. the Minister and NZP&M having an open mind on the views received from those iwi and hapū who are consulted
    v. the Minister and NZP&M giving those views full and genuine consideration.

The Minister can also issue Crown Minerals Protocols, which help govern the way the Crown will consult with Māori over permit matters. There are currently 40 Crown Minerals Protocols in place. Relationship agreements and accords provide further commitments to guide engagement between the Crown and Māori groups.

Section 33C of the CMA is the only provision that speaks directly to Māori engagement by permit holders. It requires permit holders to file an annual report outlining their engagement activities with affected iwi or hapū. This requirement was an amendment to the CMA arising from the 2013 review, signalling that iwi and hapū views should be considered by permit holders.

[6] Kaitiakitanga often approximated to guardianship or stewardship in English, is the obligation to care for a person or thing. In this context, it refers to the environmental, spiritual and cultural guardianship role of Māori over the natural environment and resources.

Māori engagement process under the CMA

1 APPLICATION FOR / EXTENSION OF A PERMIT

Clause 2.2 of the Programmes outlines that iwi and hapū whose role includes some or all of the permit area or who may be directly affected by a permit will be consulted by the Minister or NZP&M on the following matters:

- An application for a permit.
- Areas that may be permitted for alluvial gold.
- An application to extend the minerals or land to which a permit relates.
- An application in respect of newly available acreage that the Minister is considering granting.
- A proposal to hold a competitive tender to allocate permits.
- A proposal to designate gold fossicking areas.
- Affected iwi or hapū are given notice in writing outling the details of every application.

2 CONSULTATION PERIOD

Māori have 40 working days to comment on:

- Any aspect of the proposed Petroleum Exploration Permit Round (Petroleum Programme, clause 2.4(2)).
- A proposal to make an area available for permitting for alluvial gold (Minerals Programmes, clause 2.4(3)).
- A proposal to hold a competitive tender allocation for minerals (Minerals Programme, clause 2.6(2)).
- For other permit applications, iwi and hapū have 20 working days, plus a further 20 if requested, to comment.
- Māori can seek more direct consultation with an iwi engagement advisor at any time.

3 IWI AND HAPŪ CAN REQUEST TO PROTECT LAND

The Programmes provide that iwi and hapū can request certain areas not be included in the permit, or that activities within certain areas be subject to additional requirements.

Clauses 2.6/2.7 of the Programmes provide the matters that should be covered when iwi and hapū make these requests, including:

- What it is about the area that makes it important to the mana of iwi or hapū.
- Whether the area is a known wāhi tapu site.
- The uniqueness of the area - for example, whether it is one of a number of mahinga kai (food gathering) area or the only waka tauranga (landing place of ancestral canoes)
- Whether the importance of the area has already been demonstrated. For example, by Treaty claims and settlements, and objections made by iwi and hapū under other legislation.
- Any Treaty claims that may be relevant, and whether granting a permit over the land would impede the prospect of redress of grievances under the Treaty.
- Any customary rights and/or interests granted under the Marine and Coastal Area (Takutai Moana) Act 2011.
- Any iwi management plans in place that specifically state that the area should be excluded from certain activities."

4 CONSIDERING REQUESTS

Clauses 2.7/2.8 of the Programmes outline the matters the Minister must consider when considering Māori's requests to protect or exclude land, or subject activities within certain areas to additional requirements, including:

- The matters raised by iwi and hapū.
- The exercise of customary marine title or of protected customary rights under the Marine and Coastal (Takutai Moana) Act 2011
- Whether an area is already adequately protected under other legislation. For example, the Resource Management Act 1991, the Conservation Act 1987 or the Historic Places Act 1993
- The size of the area and the value of the potential resource affected if the area is excluded
- The impact on the viability of undertaking work under a permit if activities within certain areas are subject to additional requirements.
- Iwi or hapū are informed of the decision in writing.

5 PROCESSING OF PERMIT

Clauses 2.8/2.9 of the Programmes provide that iwi or hapū will be notified if a permit (or change) has been granted, and if so, the details of this (including the permit holder, operator, location & work programme).

6 PERIOD OF THE PERMIT

Section 51(2) of the Act provides that Māori land that is regarded as wāhi tapu cannot be entered for the purpose of carrying out a minimum impact activity without the consent of the land owners. Permit holders are encouraged to consult with relevant iwi and hapū in a positive and constructive manner. Permit holders are encouraged to consult with relevant iwi and hapū in a positive and constructive manner.

7 ANNUALLY

Section 33C of the Act requires Tier 1 permit holders to submit an iwi engagement report outlining their engagement with relevant iwi or hapū.

Summary of areas for consultation

Chapter 1: Role and purpose statement - seeks your views on the role and purpose statement of the CMA.

Chapter 2: Balancing the rights, interests and activities of marine users - asks for your views about whether the current non-interference zone (NIZ) provisions reasonably balance the rights, interests and activities of relevant parties. If you consider the provisions do not reasonably balance these rights, interests and activities, we seek your views on whether the NIZ provisions should be retained and, if so, in what form.

Chapter 3: Ensuring offshore petroleum permits contribute to a managed transition - considers the current settings for offshore petroleum allocation permits. We are seeking views on whether the following elements are still fit for purpose:

- partial permit area relinquishments;
- provisions concerning the extension of a permit area;
- the ability to retain areas subject to a sub-commercial discovery and near-field areas; and
- the circumstances under which the Minister can consent to a change to a key deliverable of the current stage of a work programme.

Chapter 4: Community participation - seeks views on whether there is a need for more community participation in the permitting process and, if so, how that could work.

Chapter 5: Māori engagement and involvement in Crown minerals - considers ways to improve Māori engagement under the CMA, to enable more effective and meaningful engagement. We are asking for views on how to expand the involvement of Māori in the sector and seek your views on the following:

- creating, and making available, a clearer process for iwi and hapū to request land to be excluded from permits;
- assessing current engagement between Māori and permit holders, and identifying further ways for the Crown to encourage and support this engagement; and
- working directly with Māori to develop further options to make sure they have wider opportunities to input into the Government's decisions and activities in the sector.

Chapter 6: Compliance and enforcement - considers options to improve compliance and enforcement under the CMA to make sure the regulatory regime is working effectively, and in line with modern regulatory practice. We seek your views on:

- including three 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;
- making it an offence under the CMA for non-permit holders to refuse to provide MBIE with information requested under section 99F; and
- clarifying what is required for record keeping under the CMA.

Chapter 7: Improving petroleum sector regulation - outlines a package of proposals relating to the end-of-life issues associated with petroleum exploration and mining permits. We seek your views on the following proposals:

- including explicit obligations in primary legislation for decommissioning, and plugging and

abandonment of wells (P&A) for permit/licence holders, including the obligation to meet the costs of doing so;
- enhancing the information requesting powers to enable MBIE to assess a permit/licence holders' ongoing financial capability against their field development plans and proposed obligations to decommission and P&A; and
- new regulatory powers with respect to financial security to make sure that permit/licence holders are financially capable to discharge decommissioning and P&A obligations to reduce the risk of permit/licence holders transferring financial risk to the Crown and other third parties.

Chapter 8: Technical amendments - considers technical amendments to the Crown Minerals Act that are not covered in other chapters. Specifically proposals:

- updating and embedding the process for serving notices and documentation within the CMA;
- including a high level environmental capability assessment for a change of permit operator for Tier 1 permits;
- prescribing Annual Summary Reports in an electronic form;
- confirming the Arbitrator appointment process in relation to land access;
- standardising the form of notices submitted by petroleum permit holders;
- clarifying the information for inclusion in petroleum permit holder annual reports;
- removing the requirement to determine the tier status of a permit annually;
- classifying all prospecting permits as Tier 2;
- clarifying the ability of MBIE to proactively release information under section 90; and
- refining the permit allocation process within onshore Taranaki.

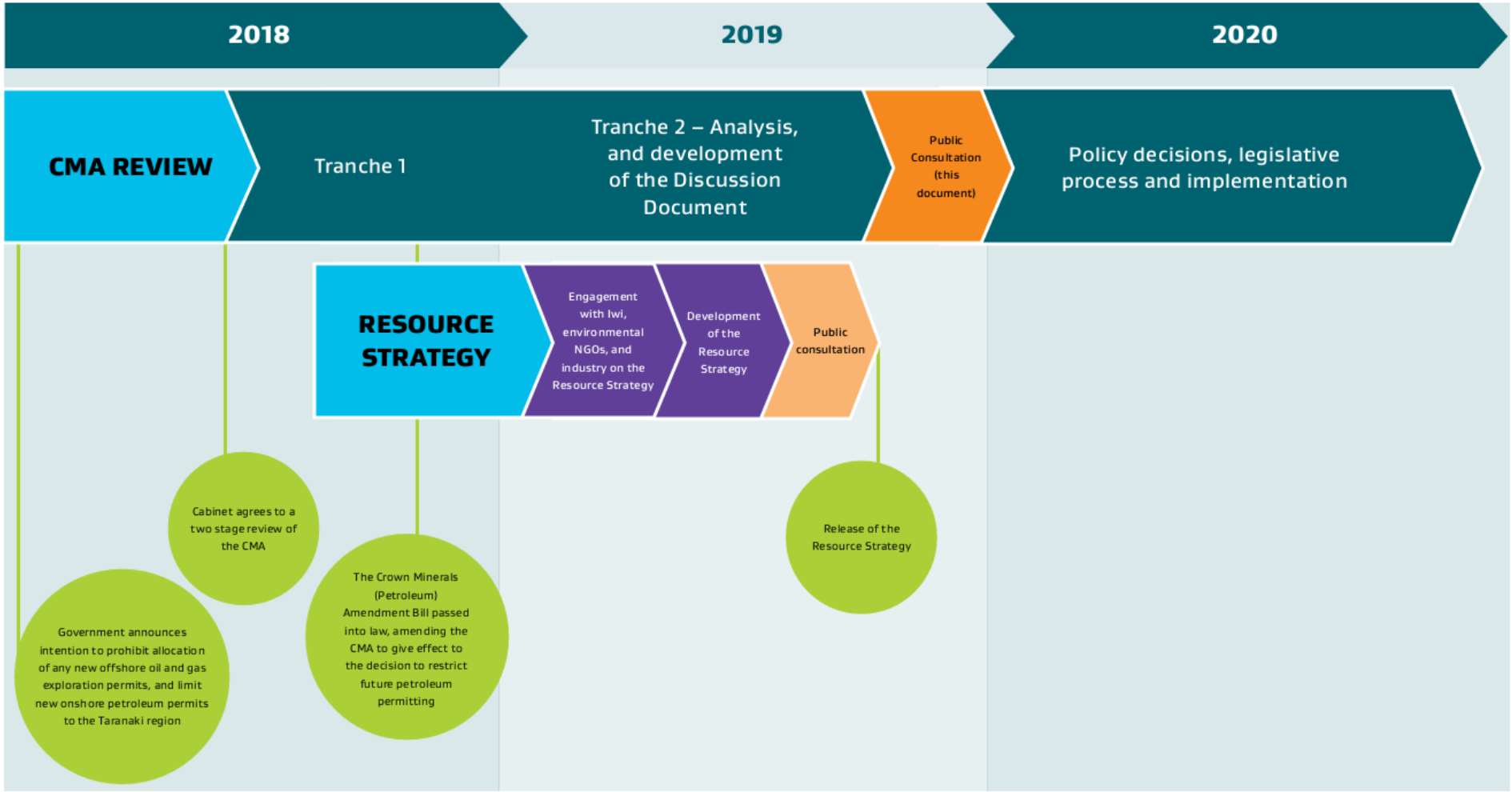
Process and Timeline for the review of the Crown Minerals Act

The Government began the Crown Minerals Act Review process with the 12 April 2018 announcement to limit future petroleum exploration permits to onshore Taranaki. Tranche One made only the changes necessary to implement this policy decision. Tranche Two is a wide-ranging review that will consider the factors affecting the CMA both now and in the future. A Resource Strategy *Responsibly Delivering Value – A Minerals and Petroleum Strategy for Aotearoa New Zealand: 2019-2029* has been developed, setting out the Government's vision for the Minerals and Petroleum sectors over the next ten years, and informs the Crown Minerals Act Review.[7]

Consultation on this document ends on 27 January 2019. These submissions will be reviewed, and they will inform the changes recommended by MBIE to the Government in early 2020. Once final policy decisions have been made, a bill implementing these changes will be drafted by the Parliamentary Counsel Office and presented to Parliament. The bill will be debated in Parliament and subject to Select Committee process where it will be examined in more detail. The public will also have an opportunity to submit on the content of the draft bill, through the Select Committee process, before it is ratified. The Government aims to have these changes made by late 2020. This is illustrated in the diagram below.

[7] This Strategy can be accessed at the following link: https://www.mbie.govt.nz/building-and-energy/energy-and-natural-resources/a-minerals-and-petroleum-resource-strategy/

Discussion Document Timeline



Chapter 1: Role and purpose statement

This chapter asks for your views on the role and purpose statement of the CMA. Specifically:

- What aspects of wellbeing (natural capital, human capital, social capital or financial capital) should the CMA consider when making decisions to allocate and manage rights to prospect, explore and mine Crown-owned resources?
- And why should the CMA focus on these aspects of wellbeing?
- How should the purpose of the CMA be expressed through its purpose statement?
- Should the purpose statement be amended from *promoting* the prospecting for, exploration for, and mining of Crown-owned minerals for the benefit of New Zealand?
  - If yes, why and how?
  - If not, why not?
- If you believe that the purpose statement should be amended, what alternative wording would most appropriately describe the purpose of the CMA (for example, "administer", "manage")?

1. The minerals and petroleum sector contributes significantly to the wellbeing of New Zealand. It provides jobs, incomes, and the resources we need to power and build the country's economy.

2. Historically the CMA has focused primarily on maximising the economic contribution of minerals and petroleum to New Zealand's wellbeing. The environmental or health and safety impacts have been been the focus of other legislation within the wider regulatory regime in which the CMA operates.

3. However, the Government's economic priority has now shifted to transitioning to a more productive, sustainable and inclusive economy. Specifically, the Government:
   - is phasing out offshore oil and gas exploration over time;
   - has announced an objective of "no new mines on conservation land";
   - has developed a hydrogen vision for NZ to investigate its potential in our energy system; and
   - has introduced the Climate Change Response (Zero Carbon) Amendment Bill.

4. Given this change of context and shift in priorities, we now need to consider whether the current focus on economic wellbeing in the CMA, and its related purpose statement, is still appropriate.

5. This chapter therefore asks for your views on whether the CMA should maintain its primary focus on economic wellbeing, or whether this focus should be broadened to include other aspects of wellbeing. Changes in the role of the CMA could also affect the purpose statement of the CMA.

Wellbeing and the CMA

6. Governments globally are increasingly considering whether a wider range of measures beyond economic growth should be used to evaluate the wellbeing of a country and its people.

7. In New Zealand, the Treasury has developed the "Living Standards Framework" to create a more holistic perspective to evaluating the wellbeing of the country, and the impact of proposed policies on it.[8]

8. The Living Standards Framework divides current wellbeing into 12 domains, and four capitals which together generate wellbeing now and in the future. The four capitals are:

   - **Natural capital**: All aspects of the natural environment needed to support life and human activity.
   - **Financial capital**: The country's physical, intangible and financial assets that have a direct role in supporting incomes and material living conditions.
   - **Human capital**: People's knowledge, physical and mental health that enables them to participate fully in work, study, recreation and society.
   - **Social capital**: The social connections, attitudes, norms and formal rules or institutions that contribute to societal wellbeing.

9. We consider that maintaining and sustaining these four capitals is important to increasing wellbeing in New Zealand over time.

The role of the CMA in a regulatory system that focuses on both economic and non-economic aspects of wellbeing

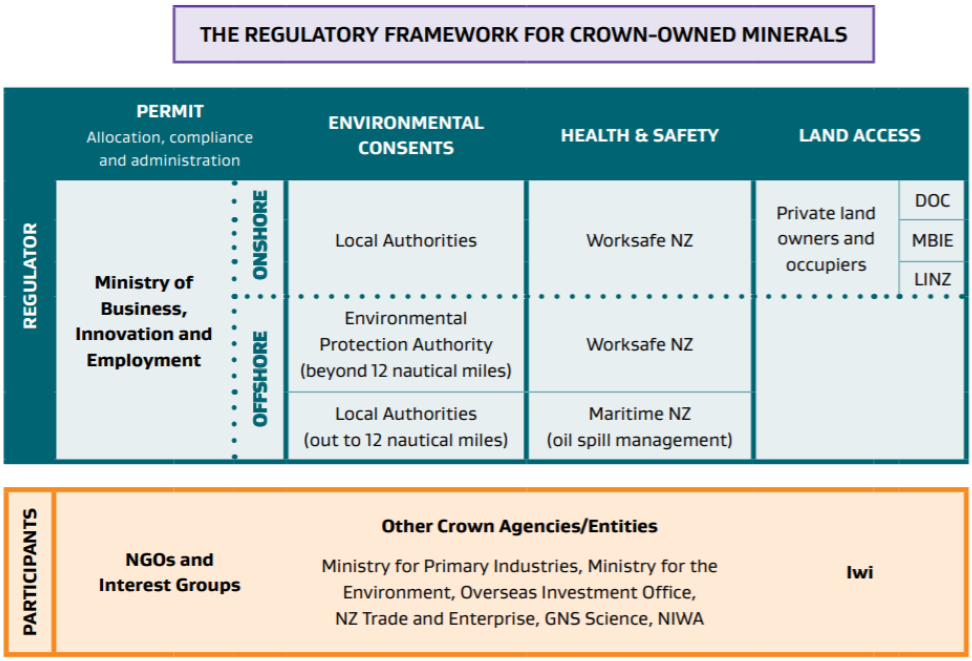
10. In considering the role of the CMA, it is important to note that the CMA regime is only one part of a wider regulatory system (Figure 1) of checks and balances that regulates the petroleum and minerals sectors in New Zealand.

11. For example, while the CMA focuses on the efficient allocation of rights to develop petroleum and mineral resources, the management of the environmental effects on extracting these resources, and the health and safety of workers who undertake this activity, are the focus of the Resource Management Act 1991 (RMA) and the Exclusive Economic

[8] More information on the Living Standards Framework is available through https://treasury.govt.nz/information-and-services/nz-economy/living-standards/our-living-standards-framework

Zone and Continental Shelf (Environmental Effects) Act 2012 (EEZ Act), and health and safety (the Health and Safety at Work Act 2015) respectively.[9]

Figure 1 The regulatory framework for Crown-owned minerals

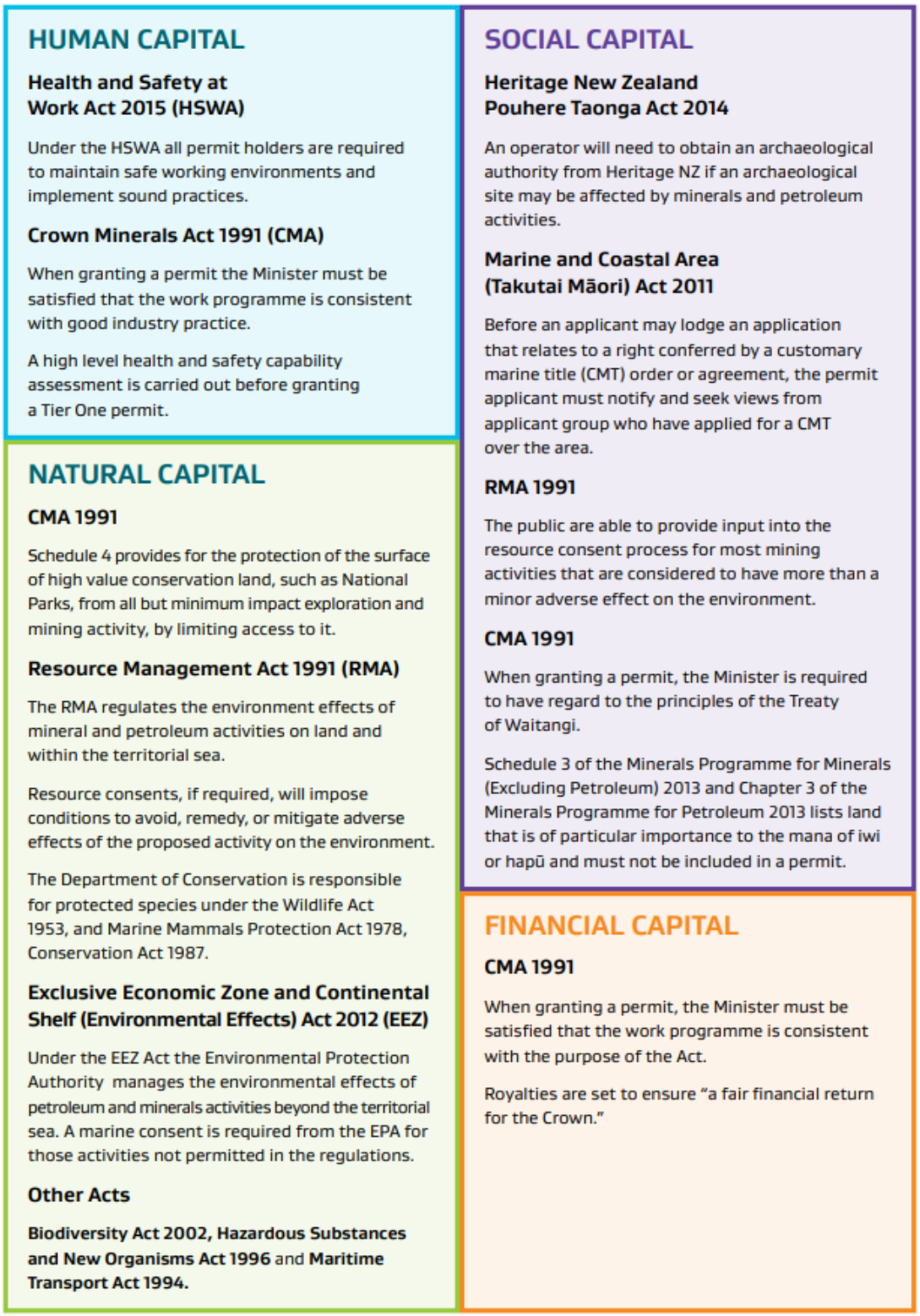


Source: "Responsibly Delivering Value – A Minerals and Petroleum Strategy for Aotearoa New Zealand: 2019-2029"

12. The regulatory system therefore acts as a system of checks and balances across the four capitals of wellbeing (natural, human, social and financial) in a way that contributes to, and sustains, the country's wellbeing. The diagrams on the following pages shows this in more detail.

[9] Other statutes that are part of the wider regulatory framework that regulates the petroleum and minerals sectors include: Climate Change Response Act 2002, Maritime Transport Act 1994 and Marine Protection Rules, Marine Mammals Protection Act 1978, Marine and Coastal Area (Takutai Moana) Act 2011, Biosecurity Act 1993, Hazardous Substances and New Organisms Act 1996, Heritage New Zealand Pouhere Taonga Act 2014 and the Conservation Act 1987.

Figure 2 Wellbeing in the regulatory systems for Crown Minerals



Source: "Responsibly Delivering Value – A Minerals and Petroleum Strategy for Aotearoa New Zealand: 2019-2029"

13. Having separate Acts and regulations for the regulation of health and safety, environmental, and other considerations was designed to enable the CMA to focus on the efficient

allocation and management of rights to prospect, explore and mine Crown-owned resources (and to collect royalties and levies thereon).

14. This separation is designed to ensure clear accountability for decision making for different parts of the process to develop petroleum and mineral resources. It also helps to avoid conflict on the part of Ministers and departments responsible for administering relevant legislation.

15. Obtaining a permit under the CMA is necessary[10] when the minerals are owned by the Crown, but is not sufficient on its own to start to develop those minerals.

16. Furthermore, obtaining a permit under the CMA does not provide or imply any rights with respect to other legislation. Similarly, compliance with the CMA does not relieve any person from any obligation under other legislation.

The CMA's focus on non-economic aspects of wellbeing

17. While the CMA focuses primarily on the economic benefits of Crown minerals (financial and physical capital), it also considers non-economic aspects of wellbeing as well.

18. Before permits are granted MBIE:

- considers an applicant's proposed work programme;
- considers the likelihood that the applicant is going to comply with and give proper effect to the work programme (taking into account the applicant's technical and financial capability, and failure to comply with other permits); and
- for Tier 1 exploration and mining permits, undertakes a preliminary, high-level assessment of a proposed permit operator's capability and systems that are likely to be required to meet applicable health, safety and environmental legislation.[11]

19. The upfront assessment of health and safety and environmental considerations attempts to support, but not replicate, processes under other legislation. This process is still aimed at ensuring only a "fit and proper person" is able to obtain a permit under the CMA.

20. In addition, the CMA also:

- provides that "All persons exercising functions and powers under this Act shall have regard to the principles of the Treaty of Waitangi (Te Tiriti o Waitangi)";[12]
- allows for land to be added to Schedule 4 (land to which access restrictions apply);
- provides that "at the request of an iwi or hapū, a minerals programme may provide that defined areas of land of particular importance to the mana of the iwi or hapū are

[10] There are some exclusions - http://www.legislation.govt.nz/act/public/1991/0070/latest/DLM246306.html

[11] Under section 29A the health and safety and environmental assessments only apply to Tier 1 permit operations for exploration or mining permits.

[12] http://www.legislation.govt.nz/act/public/1991/0070/latest/DLM246096.html

excluded from the operation of the Programme or must not be included in any permit."; and[13]

- in considering whether to agree to an access arrangement in respect of Crown land the appropriate Minister, or the Minister of Energy and Resources and the appropriate Minister shall have regard to various conservation, economic and other relevant matters. What weight is given to each of these matters is for Ministers to determine.

21. Furthermore, changes being proposed or feedback sought in this discussion document also involve the partial consideration of a wider range of well-being dimensions. For example, the proposals in relation to the decommissioning of petroleum infrastructure and the plugging and abandoning of wells are inherently related to managing environmental risks over the life of the resource development.

Future role of the CMA

22. Although the CMA does currently consider some non-economic aspects of wellbeing, it is useful to consider whether the CMA is still fit for purpose given the Government's priority to transition to a productive, sustainable and inclusive economy.

23. The CMA review is not proposing to change the fundamental role of the CMA to allocate and manage rights to Crown minerals. However, there may be opportunities to better align the CMA with the Government's priorities, and include more consideration of non-economic aspects of wellbeing when exercising powers under the Act.

24. However, if the CMA were to include greater consideration of non-economic aspects of wellbeing, then care would need to be taken to ensure that this does not conflict with decision-making that occurs in other parts of the wider regulatory system for Crown minerals.

Question

1	What aspects of wellbeing (natural capital, human capital, social capital or financial capital) should the CMA consider when making decisions to allocate and manage rights to prospect for, explore for and mine Crown-owned resources? Why should it focus on these aspects of wellbeing?

CMA purpose statement

25. When the CMA was enacted in 1991 it did not include a purpose statement.[14] In the 2013 CMA amendments, a purpose statement was added to the CMA consistent with good regulatory practice.[15]

[13] Minerals Programme for Minerals (Excluding Petroleum) 2013, 2.7.

[14] It did include a Long Title: "An Act to reform the law relating to the management of Crown-owned minerals."

[15] Legislation Design and Advisory Committee (LDAC), *Legislation Guidelines*, 2018, 14.

26. A purpose statement expresses the objectives of the legislation. It is an interpretative tool in the event any ambiguity arises in the interpretation of specific provisions of the statute. There are also certain parts of the CMA where decision makers must have regard to the purpose of the CMA.

27. The purpose statement therefore, helps to drive decision making under the CMA. This means that the purpose statement (and the Minerals Programmes that interpret it) acts as a lens through which the rest of the CMA regime is interpreted. As a result, the provisions of any legislation should be consistent with its purpose.

28. The current purpose of the CMA is focused on developing the Crown mineral estate for the benefit of New Zealand. Specifically, section 1A of the CMA (the purpose statement) states that:

> **(1) The purpose of this Act is to promote prospecting for, exploration for, and mining of Crown owned minerals for the benefit of New Zealand.**
>
> (2) To this end, this Act provides for—
> (a) the efficient allocation of rights to prospect for, explore for, and mine Crown owned minerals; and
> (b) the effective management and regulation of the exercise of those rights; and
> (c) the carrying out, in accordance with good industry practice, of activities in respect of those rights; and
> (d) a fair financial return to the Crown for its minerals.[16]

29. The Minerals Programmes 2013 set out how the Minister interprets "promote prospecting for, exploration for, and mining of Crown-owned minerals for the benefit of New Zealand":

> (4) The Minister interprets the words "promote prospecting for, exploration for, and mining of Crown owned minerals" as requiring the Minister and the Chief Executive [of MBIE] to:
> (e) ensure that parties interested in prospecting for, exploring for, and mining of Crown-owned minerals are able to do so as readily as possible within the mandate and provisions of the Act; and
>
> (f) publicise and encourage interest and investment in prospecting for, exploring for, and mining New Zealand's Crown-owned minerals."[17]
>
> (5) The Minister sees "for the benefit of New Zealand" as the over-arching objective of the purpose statement and as the touchstone for interpreting the rest of the purpose statement and the provisions of the Act governing various activities and processes. The Minister considers that, within the context and mandate of the Act, "the benefit of New Zealand" is best achieved by increasing New Zealand's economic wealth through maximising the economic recovery of New Zealand's Crown-owned mineral resources.
>
> (6) Other important components of "the benefit of New Zealand", including environmental considerations, are covered in other legislation, as noted in clause 1.4.

[16] http://www.legislation.govt.nz/act/public/1991/0070/latest/DLM5222604.html

[17] Clause 1.3(4) of the Minerals Programme 2013.

Potential changes to the purpose statement

30. An underlying premise of the CMA is that the Government wants other parties, such as private sector organisations, to develop the Crown mineral estate as it does not generally wish to undertake these activities itself. This allows New Zealand to benefit from the development of Crown-owned minerals without taking on the risks of these activities or developing its own capacity to do so. As noted above, the review is not proposing that this objective for the CMA would change.

31. However, it is timely to consider as part of this review whether the purpose statement is still fit for purpose in the context of considering the role of the CMA, and the Government's priority for a productive, sustainable and inclusive economy.

32. The current wording of the purpose of the CMA has attracted some criticism in the past. For example, submissions on the Crown Minerals (Permitting and Crown Land) Bill 2012 showed there was widespread objection to the proposed purpose statement due to the express purpose to "promote" the sector. Many individual submissions recommended that "promote" be replaced with "manage" or "administer" and that the purpose statement should reflect a wider range of considerations.

33. In contrast, many industry submitters were supportive of the proposal to include a purpose statement with a promotional element.

34. When legislation is being reviewed a purpose statement would usually be reformulated once all final decisions are made about legislative changes. This ensures that the purpose statement is not in conflict with the individual provisions that make up the Act. This avoids any unintended regulatory consequences.

35. Given the important interpretive function that the purpose statement provides, making changes to the purpose statement is a significant step. It may have wider implications both for how the Government interprets and applies the CMA when making permit decisions or access arrangement decisions for new permits and for how the industry perceives New Zealand as an investment destination.

36. Any proposed amendments to other provisions of the CMA arising from this review will need to be taken into account when making a final decision about the purpose statement to ensure consistency with the other provisions of the CMA.

37. We encourage you to consider not just the current provisions in the CMA but also the proposed changes in this discussion document when providing feedback on the purpose statement of the CMA.

2	How should the purpose of the CMA be expressed through its purpose statement? Should the purpose statement be amended from *promoting* the prospecting for, exploration for, and mining of Crown-owned minerals for the benefit of New Zealand? • If yes, why? • If not, why not? If the purpose statement should be amended, what alternative wording would most appropriately describe the purpose of the CMA (e.g. “administer”, “manage”)?

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

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?

- 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 they should be retained, we also seek your views on:

- 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?
- whether the current consequences for breaching a NIZ are appropriate?
- whether the CMA is the appropriate legislation for the NIZ provisions?

Introduction

38. An objective of this review, is to ensure that the petroleum and minerals sectors are governed by a regulatory regime that is clear, coherent and fair. To this end the Government is reviewing the current non-interference provisions, in particular the non-interference zone (NIZ) provisions, to make sure they adequately balance the interests of different marine users.

39. The NIZ creates a specified zone around a structure or ship where interference is prohibited. This enables protection of the health and safety of both the permit holder carrying out petroleum and minerals-related activities at sea and those expressing opposition to those activities.

40. This chapter discusses the nature of the non-interference provisions (section 101B of the CMA as a whole) but specifically focuses on the NIZ provisions. In particular, we are asking for your views on whether the NIZ provisions reasonably balance the various rights, interests and activities of marine users.

41. We are also asking for your views on a number of second order questions such as whether breaching a NIZ should remain a criminal offence, and whether fines for breaching a NIZ should continue to apply, and at what level.

Overview of the non-interference provisions

42. The purpose of the non-interference provisions is to:

- protect the rights of permit holders to carry out lawful and permitted activities, and
- manage safety and environmental risks that could result from interference, including those that could affect the permit holder, the public and the marine environment.

43. The non-interference provisions attempt to achieve this purpose by providing:

- a clear deterrent to interference with lawful activities carried out in New Zealand's territory or exclusive economic zone and continental shelf, and
- operational powers to act against unlawful interference within a specified non-interference zone.

44. In essence, the non-interference provisions seek to balance the right to protest with the rights of those undertaking offshore petroleum and minerals operations to undertake their lawful activities.

45. Interference with offshore petroleum and minerals operations can have cost, disruption and safety impacts on marine users, as well as impacting on the marine environment. Interference with maritime vessels can also create safety and environmental risks that impact permit holders, protesters or third parties, as well as the marine environment.

46. The current non-interference provisions were introduced into the Crown Minerals Act in 2013, in response to concerns that there was no specific legislation relating to interference with offshore petroleum operations. There are more general provisions that apply to these activities, for instance under maritime regulation. However, unless in a harbour or the continental shelf, there is no power to create zones around structures or vessels to prevent them from being interferred with.

47. The current non-interference provisions are broadly split into two:

- general non-interference provisions (s101B(1)), and
- specific provisions that enable the establishment of non-interference zones (s101B(2)).

48. People can be prosecuted for intentionally engaging in conduct that results in damage to, or interference with, vessels involved with offshore petroleum and minerals activities, or for entering a NIZ without a reasonable excuse. Non-interference zones are a similar concept to the clear boundaries that are set around certain facilities, such as airports and industrial plants, for the safety of people and the environment.

49. A person breaching the general non-interference provisions under s101B(1) is liable to a criminal conviction and a fine not exceeding $50,000 if they are an individual, or not exceeding $100,000 if they are a body corporate. An individual can also be given a penalty of

up to 12 months imprisonment. A person who breaches a NIZ under s101B(2) may receive a criminal conviction and a fine of up to $10,000.

Related enactments in the wider marine regulatory framework

50. The non-interference provisions in the CMA are part of a wider system which involves other legislation including the Maritime Transport Act 1994 (MTA), the Continental Shelf Act 1964 (CSA), the Crimes Act 1961 and the Trespass Act 1980.

51. The provisions of the MTA and the CSA are the most relevant in this context and are briefly discussed below.

The Maritime Transport Act 1994

52. The MTA is focused on ensuring safety at sea and protection of the marine environment. It contains specific criminal jurisdiction over charges relating to maritime safety and the prevention of marine pollution from ships. The MTA generally applies to New Zealand ships in all maritime areas - internal waters, territorial waters and the exclusive economic zone (EEZ), the high seas and waters under the jurisdiction of another state - and to foreign ships in New Zealand's territorial sea, internal waters and the EEZ.

53. Specifically the MTA makes it a criminal offence:

- for any holder of a maritime document to do, or omit to do, any act that causes or permits unnecessary danger to other people or property. This is a strict liability offence[18], and

- for any person to operate or "act in respect of" any ship in a manner that causes unnecessary danger or risk to another person or property. Penalties for both sections are up to 12 months imprisonment or $10,000 fine for an individual, or a fine of up to $100,000 for a body corporate.

The Continental Shelf Act 1964

54. The United Nations Convention on the Law of the Sea (UNCLOS) provides the international framework for coastal states to establish safety zones around offshore installations connected to the continental shelf.

55. Consistent with articles 60 and 80 of UNCLOS, the CSA provides for the creation of 500 metre radius safety zones around any fixed installation that is in or above New Zealand's continental shelf, and their associated mobile facilities.[19] Section 8 of the CSA allows the

[18] A "strict liability" offence, as defined by the LDAC guidelines, is one where the prosecution is not required to prove intent, but the defendant can escape liability if he or she can show the existence of a defence or an absence of fault – in this way the liability is not absolute. Strict liability offences are used to enforce requirements of regulatory regimes, such as regulating an occupation or commercial activity.

[19] Safety zones established under the CSA are currently in place for the permanent installations associated with the Kupe, Maari, Maui, Pohokura, and Tui fields. The CSA could theoretically be used for fixed (but temporary) installations in the continental shelf, but we are not aware of previous examples where the CSA has been used for this purpose. Entry into safety zones is prohibited to all but authorised vessels, with a fine of up to $1,000.

Government to regulate or prohibit unauthorised vessels from entering safety zones.[20] The safety zones for fixed structures are intended primarily to ensure safety of navigation and of the installation.

56. The Ministry of Foreign Affairs and Trade has overall responsibility for administering the CSA. However, they have a formal agreement in place with the Ministry of Transport that they will carry out the administrative functions associated with establishing safety zones under the CSA.

Discussion

Do the non-interference zone provisions reasonably balance various stakeholder rights, interests and activities?

57. During the Select Committee stage of the Crown Minerals (Petroleum) Amendment Bill 2018 a number of submissions opposed the non-interference provisions of the CMA. Specifically, the submissions sought the removal of the clauses providing for non-interference zones on the basis that they were inconsistent with the democratic rights of freedom of expression and peaceful protest.

58. Sections 14 and 18 of the New Zealand Bill of Rights Act 1990 affirm the rights to freedom of movement and freedom of expression respectively. However, section 5 provides that these freedoms are not without limitations and therefore that they are not absolute. Restrictions on these rights may be justifiable in certain contexts and only to the extent necessary to achieve the objectives of preserving national security, public safety, public order, public health and as can be demonstrably justified in a free and democratic society. The powers used to preserve these objectives must also be rational and proportionate.

59. The NIZ provisions provide clarity around which interference activities can be prosecuted within a designated zone. This clarity reduces the potential for legislation to unintentionally deter freedom of expression. For example, it does this by creating a clear zone outside of which individuals can freely move and express themselves.

60. The NIZ provisions could be seen to affect peoples' freedom of expression by providing a zone where protestors are not permitted to enter. Additionally, the effectiveness of protest can be questioned as the NIZ may result in the zone where protest action can occur not being visible to permit holders or not impacting operations. It may also be argued that the possibility of prosecution (for example, by inadvertently entering the NIZ) may discourage individuals from exercising their legitimate right to express themselves even where they are lawfully able to do so outside of the NIZ.

61. A key element to the NIZ, and a key objective of the Government, is making sure offshore petroleum and minerals operations can be conducted safely without additional or unnecessary risk to people (those involved in the operation or otherwise) and the environment. One method for achieving this is by restricting the movement of non-essential

[20] The Maritime NZ website provides information about existing safety zones around offshore installations. https://www.maritimenz.govt.nz/commercial/environment/offshore-industry/safety-zones.asp

people or vessels in the immediate vicinity of the operations. In this sense, NIZ provisions are similar to the restricted nature of access to civil aviation facilities (under the Civil Aviation Act 1990), fixed offshore petroleum installations (under the CSA), or commercial ports (under navigational bylaws and the Maritime Security Act 2004).

62. We ask for your views on whether the NIZ provisions reasonably balance the rights, interests and activities of different parties in the marine environment. If you don't believe that they do, how should these provisions should be amended to better balance the rights, interests and activities of all marine users?

63. If the NIZ provisions remain, the following two sections discuss, and ask for your views on a number of second order questions.

64. We also ask for your views on whether the CMA is the appropriate legislation for the non-interference (including the NIZ) provisions in the event you consider they should remain.

The nature and level of sanctions for a breach of a NIZ

65. In the event you consider the NIZ provisions should be retained, we also seek your views on whether:

- entering a NIZ should remain a criminal offence
- the current maximum fine is appropriate, and
- the offences should remain strict liability offences.

66. Section 101B(2) provides for two offences for entering a NIZ. The first applies to the master of a ship that, without reasonable excuse enters a specified NIZ (s101B(2)(a)). The second applies to a person who leaves a ship and, without reasonable excuse, enters a specified NIZ.

67. Both of these offences are "strict liability" so the prosecution only needs to prove that the person committed the physical act, it is not necessary for the prosecution to prove that the person acted intentionally.

Whether breaching a NIZ should remain a criminal offence

68. Currently, a breach of a NIZ is a criminal offence that can result in a criminal conviction. However, imposing a criminal offence is not the only means of ensuring compliance with legislation.

69. Imposing criminal sanctions can have a serious impact on individuals, including imprisonment, loss of reputation and a loss of property, such as fines. Consequently, criminal offences are typically only included where harm to persons/society is involved.[21]

70. We seek your views on whether breaching a NIZ should remain a criminal offence.

[21] http://www.ldac.org.nz/assets/documents/1c9f9c7fe8/Chapter-24-Creating-criminal-offences.pdf

Offence fine

71. As noted above, a person who breaches a NIZ under s.101B(2) may receive a criminal conviction and a fine of up to $10,000. We ask for your views on whether a fine should continue to apply for breaching a NIZ, and if so, whether the current level of fine should change.

Sanctions if criminal offence and fine removed

72. If you consider the NIZ provisions should remain but that breaching a NIZ should no longer be a criminal offence and should not have an associated fine, what sanctions do you consider should be imposed to incentivise compliance with the NIZ (if any).

Are the NIZ provisions fully aligned with the primary role of the CMA and MBIE as the regulator?

73. A key focus of the CMA is the efficient allocation of rights to prospect for, explore for, and mine Crown-owned resources (noting that other legislation is the primary means of regulating matters such as environmental effects and health and safety). The current NIZ provisions in the CMA are intended to both deter interference with the movement, or operation, of structures and vessels involved in lawful activities at sea, and prevent health, safety and environmental incidents.

74. The intention to deter interference with permit holders' activities (s101B(1)) is aligned with the key functions of the CMA, and therefore appears to be well-aligned with the CMA. However, the prevention of maritime health, safety and environmental incidents is arguably not part of the primary role of the CMA and is more closely aligned with other legislation, such as the MTA.

Questions

3	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.
4	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?
5	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?
6	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)?

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

This chapter considers the current settings for offshore petroleum allocation permits. We are seeking views on whether the following elements are still fit for purpose:

- partial permit area relinquishments;
- provisions concerning the extension of a permit area;
- the ability to retain areas subject to a sub-commercial discovery and near-field areas; and
- the circumstances under which the Minister can consent to a change to a key deliverable of the current stage of a work programme.

Introduction

75. One objective in the terms of reference for this review of the CMA is to make sure that New Zealand's petroleum and minerals resources sector contributes to the country's productive, sustainable and inclusive economy. This should be done by:

    - Growing and sharing New Zealand's prosperity, and supporting thriving regions
    - Providing a secure and affordable supply of critical resources
    - Supporting the transition to a clean, green New Zealand.[22]

76. We are interested in your views about how the CMA should manage existing offshore petroleum permits; contribute to energy security; and facillitate New Zealand's long-term transition to a carbon neutral economy.

77. In April 2018, the Government announced it would not grant further petroleum exploration permits offshore. However, the existing permits are allowed to run their course. This policy change has led us to consider if the current provisions relating to the existing offshore petroleum exploration permits are optimal for achieving the objectives above.

78. This chapter canvasses views on how the current settings for offshore petroleum exploration permits support or inhibit the objectives above. It does this by describing the current settings and seeking feedback on the approach. It does not propose specific options.

[22] https://www.mbie.govt.nz/dmsdocument/6603-crown-minerals-act-1991-review-tranche-two-terms-of-reference-proactiverelease-pdf

Petroleum permits provide for the discovery and development of petroleum as a fuel, as a feedstock and for a fair financial return to the Crown

79. Petroleum permits granted under the CMA provide for the discovery and development of Crown-owned petroleum resources. Exploration for petroleum is a necessary precursor to mining petroleum. The latter provides a fair financial return to the Crown in the form of royalties and taxes, and helps ensure petroleum is available to the market as an industrial feedstock and fuel. In theory, the larger the area being explored for petroleum, the greater the chances of petroleum field discoveries that can be mined to realise these benefits. However, these benefits come with the cost of greenhouse gas emissions.

80. The management of current offshore petroleum permits need to be strategically considered to provide for a managed transition to a low emissions economy that is productive, sustainable and inclusive.

81. Offshore petroleum permits currently account for more than 90 per cent of the total area subject to petroleum permits. Currently 60 per cent of New Zealand's gas supply is produced from offshore petroleum fields and these same fields contain 50 percent of remaining "proven plus probable" (2P) reserves of gas.

Existing permit management settings may not fully contribute to a managed transition

82. Since 2012, all new petroleum exploration permits have been granted through the competitive annual permit round Block Offer. In the 2012 review of the CMA, competitive allocation was considered "necessary to ensure that permits are obtained by the party that is most likely to effectively and efficiently explore and develop the resource" – to provide a fair financial return to the Crown for its minerals. The competitive allocation principle was reflected in updated provisions in the CMA and the production of a new Minerals Programme for Petroleum in 2013 (the Programme).

83. The application of these settings resulted in a cycle of regular permit grants via Block Offer, followed by regular relinquishments of permit area (either in part, or in full) followed by subsequent opportunities to re-allocate the acreage in further Block Offers.

84. The current settings for offshore petroleum permits will result – over time – in a reduction in the area permitted, and limit the type of areas that can be retained for appraisal and development purposes. We are interested in whether these settings fully contribute to a managed transition to a low emissions economy, having considered energy security and regional prosperity.

85. We are particularly interested in the settings relating to:

- partial petroleum exploration permit area relinquishments;
- extending the land to which a petroleum permit relates;
- the area available for petroleum mining permits and appraisal extensions; and

- the circumstances under which petroleum permit holders can apply to amend permit conditions.

86. Collectively, these settings affect the timeframe over which the area permitted for offshore petroleum exploration will diminish. Therefore, these settings affect the likelihood and timeframe over which New Zealand could gain the benefits of another mineable offshore petroleum discovery, and the corresponding downside of greenhouse gas emissions from the end use of these resources.

Partial permit area relinquishments

87. The CMA has provided for partial permit area relinquishments in order to achieve two outcomes:

- to provide a focussing mechanism of exploration programmes; and
- to allow for a continuous stream of newly available acreage to be re-allocated in subsequent Block Offers.

88. However, the 2018 amendments to the CMA prohibited the granting of new offshore petroleum exploration permits. Therefore, relinquished permit areas are no longer able to be reallocated in subsequent Block Offers.

89. The CMA limits the number and size (percentage) of partial permit area relinquishments that can be required by the Minister. In the case of petroleum exploration permits, partial relinquishments are limited to two, and the total area relinquished cannot exceed 75 per cent of the original permit area. Permit holders can make additional partial permit area surrenders as they see fit. Permit holders may also elect to surrender their permit in full at any time.

90. While the current area subject to a petroleum exploration permit offshore is approximately 71,000 square kilometres, partial permit area relinquishment obligations will result in the decline of permitted area over time, impacting the total area available for new resources to be discovered. Partial permit area relinquishment obligations are included in all current petroleum exploration permits and, along with relinquishment associated with permit expiry, will result in:

- approximately 56 per cent of today's offshore petroleum exploration acreage to be relinquished by November 2021; and
- approximately 75 per cent of today's offshore exploration petroleum acreage to be relinquished by April 2025.

91. The remaining area subject to an offshore petroleum exploration permit will expire by April 2030.

92. These figures do not account for ad-hoc partial permit area relinquishments or the full surrender of permits prior to expiry. New commercial discoveries may result in some

exploration areas being converted into a petroleum mining permit. However, the overall trend will be a decline in permitted area between now and 2025.[23]

93. Partial permit area relinquishment obligations were designed as one part of the competitive allocation process – to focus permit holders efforts on the most prospective areas of the permit and to provide the Minister with acreage to re-allocate in subsequent permit rounds. Given the high cost of exploration activities, a permit holder's internal capital allocation process is likely to be more influential in focussing exploration effort than the requirement to relinquish parts of the permit.

94. Because surrendered acreage will not be re-allocated due to the 2018 amendments to the CMA, it is worth considering whether this mechanism is retained, and if it is, in what form.

Provisions relating to extending a permit area[24]

95. Petroleum permit holders may wish to change the boundary of their permit to better reflect their understanding of the location of petroleum accumulations. At times, this may result in an overall increase in the permit area. To explore or produce from an area outside of a permit boundary would be illegal. Permit holders therefore need to apply for an extension of land.

96. When assessing an application for an extension of land[25] of a petroleum exploration permit the Minister must agree that a "drill ready prospect" exists. This is a high threshold and would suggest that very little technical work is required prior to drilling the prospect.[26] Under current settings a credible case could be put forward to extend a permit boundary to facilitate the type of activities that could provide for a drill ready prospect to be established as was allowed under the Minerals Programme for Petroleum 2005.

97. Currently, the Petroleum Programme states that where the Minister declines an application, because one or more alternative clear prospects are identified by neighbouring permit holders, the Minister will make the land available in a subsequent Block Offer. In agreeing to extend a permit area, the Minister must be satisfied that they are unlikely to get a better result in the form of more exploration activities committed via Block Offer.

98. However, the 2018 amendments to the CMA prohibit the granting of new offshore petroleum exploration permits but continue to provide for existing permit holders to apply to amend their permit area. As a result it is unclear how this provision in the Petroleum Programme should now be applied.

99. Finally, if the Minister agrees to the extension of land then the applicant must commit to drilling an additional well (to that already included in the permit work programme) within 18 months for onshore permits or 30 months for offshore permits. This is likely beneficial in

[23] The duration of current offshore petroleum mining permits can continue until roughly 2036 and may be extended by the addition of reserves and ongoing production activity.
[24] Where the permit holder's application for an extension of land is based only on seismic and other geotechnical information and not a discovery.
[25] Land in this context means both onshore and offshore.
[26] E.g. beyond well design.

terms of financial return to the Crown (in the form of more committed work) but could discourage permit holders from seeking an extension to their permit area.

100. The current provisions governing the extension of land of a permit may no longer be fit-for-purpose given the potential inconsistency between the recently amended CMA and the Petroleum Programme. Additionally, the current provisions may not provide the level of flexibility to manage offshore permit area boundaries. It may be desirable to make changes to ensure the remaining offshore petroleum exploration permits fully contribute to the managed transition.

Provisions governing Petroleum Mining Permits and Appraisal Extensions

101. Petroleum resources may be discovered as a result of activities carried out under a petroleum exploration permit. It may take more investigation to understand the exact location and dimensions of the discovery, a process called "appraisal" that could include additional work (for example, drilling an appraisal well).

102. There is currently an expectation that this appraisal work can be carried out within the duration of the petroleum exploration permit. Following the completion of the appraisal work the permit holder may apply for a petroleum mining permit to develop and produce the discovered petroleum resource. If there is insufficient time to appraise the discovery within the duration of the petroleum exploration permit then an "appraisal extension" can be applied for.

Appraisal extensions to Petroleum Exploration Permits

103. Currently, the duration of an appraisal extension cannot exceed eight years and is normally spread across two terms of up to four years each. The area of an appraisal extension is restricted to the area that the Minister determines that the discovery is likely to relate to. Any acreage within the original petroleum exploration permit that is not the subject of a discovery cannot be retained in the appraisal extension area. This could include "near field" areas – areas that contain prospects that are similar in nature to the discovered petroleum resource.

Petroleum Mining Permits

104. Following discovery and appraisal activities the holder of a petroleum exploration permit may apply for a petroleum mining permit (PMP) to develop and produce the discovered resources. Holders of a petroleum exploration permit can apply for a PMP over the area that a mining operation is proposed. In doing so the permit holder surrenders that area of the petroleum exploration permit in exchange for consideration of the petroleum mining permit application.

105. At times this exchange will relate to the entire petroleum exploration permit area. Alternatively, only a portion of the petroleum exploration permit may be the subject of a subsequent PMP application. In this case, those areas not subject to the PMP application are retained within the petroleum exploration permit until such time as the petroleum

exploration permit expires, is surrendered, or an additional discovery is made that justifies its inclusion in a PMP.

106. The area of a PMP will be determined by the Minister after consulting with the applicant and considering the technical information supporting the application. Normally the area of the PMP will be limited to only an area that is sufficient to allow the permit holder to carry out the mining activities related to the discovered resource.

107. Near field areas cannot normally be carried over into the PMP area. Equally, PMPs will not be granted for a discovered resource that may become commercially viable under a future price or technology scenario.[27]

108. The design of these settings is intended to produce the smallest reasonable petroleum mining permits possible. Where additional exploration work is to be conducted around a discovery (near field areas) this needs to be achieved via a petroleum exploration permit.

109. Petroleum mining permits and petroleum exploration permit appraisal extensions do not provide for the retention of discovered resources that may become commercial to develop under a future technology or price scenario. Nor do these permit types provide for the retention of near-field areas which could potentially be brought on-stream should the need arise. To support a secure and affordable transition of our energy system we may want to retain access to sub-commercial discoveries and/or near field areas.

Circumstances under which petroleum permit holders can apply to amend permit work programme conditions

110. Exploration permits are granted with a work programme detailing the type and timing of exploration activities required under the permit, and comprise stages, containing individual work programme obligations. The present stage of a permit is considered “committed” while subsequent stages are considered “contingent”. Contingent stages remain in a contingent status until the permit holder makes a written commitment to undertake the activities/obligations. Following written commitment the subsequent stage becomes “committed” and so this cycle continues through all stages of the work programme, or until the permit holder elects not to commit to a future stage and instead decides to surrender the permit.

111. Work programmes are further broken down to activities that are considered a “key” or “secondary” deliverable. A “key” deliverable is a component of the work programme that the Minister considers crucial to the success of the permit. “Secondary” deliverables are less crucial elements such as technical studies.

112. At times, it is desirable to amend a work programme during the permit term. A change to the work programme must be in the mutual interest of the permit holder and the Minister. The Minister retains the discretion to grant or decline an application to amend a permit work

[27] When granting a PMP the Minister must be satisfied that the petroleum field can be effectively mined within technical and economic constraints. Delays in the commencement of production can be considered on account of coordination with other PMPs (there is a logical development progression) or if the permit applicant wishes to delay development until new transport or processing infrastructure has been constructed.

programme. The Minister may also initiate a change to a permit with the consent of the permit holder.

113. The Minister will not consent to an application to change the conditions of a permit with respect to key deliverables within a stage, other than specific circumstances identified in the Programme. These circumstances are relatively narrow and include force majeure events, technical and operational issues. There is no requirement to apply to amend a secondary deliverable.

114. In the event that a change cannot be achieved, it is not uncommon for permit holders to surrender their permit to remain in good standing rather than run the risk of becoming non-compliant with conditions they will not meet. Previously, through Block Offers, investors in offshore acreage could apply to re-acquire a surrendered area should their interest persist. This dynamic allowed for some "churn" of acreage, which can no longer occur offshore.

115. There may be opportunities to amend current circumstances under which petroleum permit holders can apply to amend permit conditions in order to give effect to a managed transition.

7	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?
8	If not, how might we alter the settings to fully provide for this goal to be realised?

Chapter 4: Community participation

We are asking for views on whether there is a need for more community participation in the permitting process.

- In your view, should there be more public involvement in the decision-making process for the granting of CMA permits?
- If so, what does that look like to you?

Introduction

The CMA is one part of a wider regulatory system

116. The CMA is one part of a wider regulatory system that governs mining activities in New Zealand. While obtaining a permit under the CMA is the first step in obtaining approval to conduct mining activities, having a permit does not relieve the permit holder of their obligations under other legislation. In particular, permit holders must still meet the requirements of the "effects-based" legislation – primarily the Resource Management Act 1991 (RMA) and the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 (EEZ Act) – which is responsible for assessing and regulating the impacts of proposed activities on local communities and the environment.

Consequently, decision-making under the CMA has limited community involvement

117. The current process for making decisions about mining activities is shaped by this systems approach. Under the CMA, initial rights are allocated, based on applicants' abilities, in order to maximise economic recovery; and then, before activities are able to commence, the relevant effects-based legislation assesses where the impact of any proposed activities on local communities and the environment. Proposed activities must meet the requirements of all other legislation before they can go ahead.

118. At present, Ministers (or delegated officials) allocate the right (permits) to prospect for, explore for, and mine Crown-owned minerals. Permits are published on the MBIE website, but there is no community participation in their granting. Affected iwi and hapū are consulted as part of the CMA process (see *Chapter 5: Māori engagement and involvement in Crown minerals* for proposed changes to improve this process), but wider public and community input is provided for through decision-making under the relevant effects-based legislation. This reflects the important role the public play in identifying the local impacts of a proposed activity, and the weight placed on giving local communities power over what activities can happen in their area. The system was carefully designed this way, through the resource management reforms of the late 1980s.

119. The CMA provides for public notification, and the receiving of public submissions, when an application is made for an access arrangement for "significant mining activities" (broadly,

activities likely to have a significant impact on the land) on conservation land. Under section 61C the Minister of Conservation must publish notices advising of the application, followed by at least 20 working days in which any interested party can lodge an objection (or make other written submissions) about the application, including requests for a hearing to be held. These submissions are then formed into a report for the Minister, which is used to assist in their decision-making on the application for access.

What does public participation in our effects-based legislation look like?

120. There are two key Acts that regulate the broad environmental effects of mining activities:

- the RMA, which regulates the environmental effects of mining activities on land and within New Zealand's territorial boundary - the "territorial sea" from the coastline to 12 nautical miles offshore, and
- the EEZ Act, which regulates the environmental effects of mining activities in the Exclusive Economic Zone (EEZ) – which extends 200 nautical miles offshore – and the continental shelf.

Resource Management Act

121. Community participation can occur at a number of levels in the RMA system – but is most prominent when the rules are set through the policy statement and plan making processes, and when an application for resource consent is considered.

122. Under the RMA, the "rules" for activities are set through a framework of policies and plans at national, regional and district levels. These rules are then used to guide decisions about whether or not, or under what conditions to allow certain activities. Significant public participation is built into district and regional planning processes, allowing communities the chance to influence how their local resources are managed, and how the local environment can be affected by mining activities.

123. The rules set in regional and district plans then determine the extent of community consultation required for decision-making in relation to proposed mining activities. These will determine whether a resource consent is required, and if so, whether or not it should be publicly notified. Generally speaking, prospecting is classified as a permitted activity in most planning documents and therefore does not require a resource consent (but controls are still placed on how the activity is carried out). Mining however, is usually a discretionary activity, which means a resource consent is usually required.

124. Resource consent applications are publicly notified if the consenting authority thinks that the adverse effects of the proposed activity on the environment are likely to be more than minor. This is likely to be the case for most mining proposals. As a result, most applications for consent to mine are publicly notified, enabling wide public involvement in the decision-making process.

EEZ Act

125. The EEZ Act framework governing the zone beyond the territorial sea is largely based on the RMA framework. However, there are a number of important differences. For example, the activity status (permitted, discretionary, prohibited) of marine activities is defined in regulations, so compared to the RMA there is limited public involvement in decisions about which status should apply to an activity. Another difference is that under the EEZ Act notification requirements are defined in regulations, instead of being determined on a case-by-case basis by the consenting authority. Discretionary activities are the only activities subject to the marine consent process, which is administered by the Environmental Protection Authority (EPA).

126. As an example, public submissions can be made on marine consent applications for the production phase of petroleum operations. However, marine consent applications for activities involved in exploration drilling are classified as non-notified discretionary under the EEZ Act. This means applications for these activities will not be publicly notified. Applicants would still be required to identify and consult with existing interest holders (including iwi authorities and Māori groups) who may be affected by the proposed activity, but the EPA cannot consider public submissions or information provided to it.

Is this sufficient?

127. Public participation is an important part of New Zealand's regulatory landscape. It recognises and protects the particular rights and interests of those affected, alongside more general public interests and it enhances the quality of decision making. However, public participation also adds complexity and time to decision-making processes, and any duplication adds to that complexity. This means that public involvement needs to be managed appropriately.

128. As this review is also considering what aspects of wellbeing should be reflected in the CMA, it is timely to consider whether the current public participation provisions are also fit for purpose. Further, the RMA is currently under review. Once that review is completed, changes to the way the public participate in decisions about mining (and other activities with environmental effects) may come under consideration.

Questions

129. We are seeking your views on whether, given the emphasis placed on public participation in the effects-based part of our regulatory regime, there is a need for greater public involvement in permitting decisions under the CMA.

130. Although we are seeking feedback on the status quo, we also welcome your views on what greater public participation might look like. For example, do you think that local consultation is the right approach, or would you like to see more national-level public consultation?

9	In your view, should there be more public involvement in the decision-making process for the granting of CMA permits?
10	If so, what does that look like to you?

Chapter 5: Māori engagement and involvement in Crown minerals

This chapter considers ways to improve Māori engagement under the CMA, to enable more effective and meaningful engagement. We are asking for views on how to expand the involvement of Māori in the sector and seek your views on the following:

- Creating, and making available, a clearer process for iwi and hapū to request land to be excluded from permits.
- Assessing current engagement between Māori and permit holders, and identifying further ways for the Crown to encourage and support this engagement.
- Working directly with Māori to develop further options to make sure they have wider opportunities to input into the Government's decisions and activities in the sector.

Introduction

131. This chapter describes:

- the current engagement and involvement of Māori under the CMA regime;
- the issues we have heard from Māori and stakeholders in relation to iwi and hapū involvement;
- the impacts of ineffective engagement, and the objectives for engagement and involvement with iwi and hapū; and
- some proposals to improve upon the status quo, within the parameters of the Terms of Reference as agreed to by Cabinet.

132. Māori have varying interests in minerals and petroleum development (including but not limited to):

- A desire to protect sites of significance from the impact of resource development.
- A desire to protect the environment as kaitiaki.[28]
- An interest in sharing the economic benefits of the industry.
- Claims to customary title under the Marine and Coastal Area (Takutai Moana) Act 2011 which creates special rights for applicants and groups for whom customary marine title has been recognised.

[28] Kaitiaki refers to a guardian or trustee, typically of an environmental area or resource.

- Having appropriate recognition of their mana and status as Treaty partners.

133. These interests are evident from Waitangi Tribunal reports produced as a result of Treaty claims, including:

- **Wai 796** – The Report on the Management of the Petroleum Resource – which focuses on the system of laws, policies, and practices that regulates the discovery and development of petroleum in New Zealand and its waters, and the effects of those activities on Māori interests in land, in the environment, and in their culture and traditions.[29]

- **Wai 262** - Ko Aotearoa Tēnei – which considers the place of Māori culture, identity and traditional knowledge in New Zealand's laws, and in government policies and practices. It also concerns the place in contemporary New Zealand life of core Māori cultural values such as the obligation of iwi and hapū to act as kaitiaki (cultural guardians) towards taonga (treasured things) such as traditional knowledge, artistic and cultural works, important places, and flora and fauna that are significant to iwi or hapū identity. The Government intends to develop a whole-of-government approach to dealing with the issues raised in this claim.[30]

134. Māori interests are, therefore, relevant to the objectives of the review, including:

- Appropriately managing the risks and downsides associated with the sector, including the risks to Māori interests.

- Having a petroleum and minerals sector that contributes to the country's productive, sustainable and inclusive economy, which seeks to contribute to the outcome of the Crown to "keep Māori informed, listen and acknowledge concerns and aspirations, and provide feedback on how Māori input influences decisions in the sector".[31]

135. Further, we know industry participants want constructive relationships with iwi and hapū. Some certainly have constructive relationships already, while others are having difficulty for a range of reasons.

Discussion

Current engagement and involvement of Māori under the CMA regime

The Crown's engagement with Māori is governed by the Treaty of Waitangi

136. Pages 13-15 of this document explain the obligations placed on the Crown in relation to engagement with Māori. This section outlines the matters the Crown engages with iwi and hapū on, in what timeframe, and in accordance with the consultation principles.

[29] https://forms.justice.govt.nz/search/Documents/WT/wt_DOC_68187775/PetroleumReportW.pdf
[30] https://www.tpk.govt.nz/en/a-matou-mohiotanga/crownmaori-relations/wai-262-te-pae-tawhiti
[31] Terms of Reference – Tranche 2 of the Crown Minerals Act 1991 Review.

The legislation provides mechanisms for iwi and hapū to protect land from minerals development

137. The diagram on page 14 presents the process iwi and hapū can go through to protect land from minerals development on a permit-by-permit basis. The Programmes outline what matters should be covered when iwi and hapū make these requests, and the matters the Minister must take into account when considering these requests.

138. In addition to protections on a permit-by-permit basis through permit conditions, section 14(2)(c) of the CMA provides a mechanism for land to be excluded from all permitting. This provision provides that a minerals programme – on the request of an iwi or hapū "may provide that defined areas of land of particular importance to the iwi's or hapū's mana are excluded from the operation of the minerals programme or are not to be included in any permit."

139. Clause 3.1 of both Programmes gives effect to this section of the CMA. In the Minerals Programme, this clause refers the reader to Schedule 3, which describes land of particular importance to the mana of iwi that must not be included in a permit. Clause 3.1 of the Petroleum Programme describes some areas of land unavailable for permitting for the same reason.

140. Further protection of land of significance to Māori is provided for in section 51(2) of the CMA. This section states that "No person may, without the consent of the owners of the land, enter Māori land for the purpose of carrying out a minimum impact activity where the land is regarded as wāhi tapu by the tangata whenua."

141. As explained in the introduction section of this document, the CMA is part of a wider regime where permit holders must meet the requirements of other Acts, such as the RMA and EEZ Act. The RMA provides further opportunities for Māori to protect areas from minerals development activities, while the EEZ Act contains mechanisms to give effect to the principles of the Treaty.

Permit holders' engagement with iwi and hapū is encouraged under the current regime

142. Section 33C of the CMA requires permit holders to file an annual iwi engagement report outlining their engagement activities with affected iwi or hapū. This provision was a result of the 2013 amendments to the CMA, signalling to permit holders the expectation for them to engage with Māori.

143. There is no explicit requirement for permit holders to engage with iwi and hapū – only to report on the engagement that did occur, if any. Although the provision does not require any specific consideration of the interests of Māori stakeholders, it indicates that iwi and hapū views are encouraged to be considered by permit holders.

Issues

144. The Government has received a range of comments from Māori and others on the current and future Crown minerals regime. Māori have been engaged through written submissions, various kanohi ki te kanohi (face-to-face) engagements, and their interests are often

acknowledged through the Crown Minerals Protocols and Accords. Three main interrelated groups of issues have emerged from what we have heard[32]:

1. Māori feel there is a lack of quality engagement from the Crown during the permit allocation process.

2. Māori feel there is a lack of quality engagement with permit holders during the duration of the permit.

3. Resource constraints affect the capacity of iwi and hapū to effectively engage with other parties.

Issue 1: The Crown's engagement with iwi and hapū during the permit allocation process

145. We have heard there are two main issues with Māori-Crown engagement, as set out below.

146. **Issue 1A: Involvement in permit allocation decisions*:*** Iwi and hapū have expressed dissatisfaction with their levels of involvement and influence on the permit allocation decision making process.

147. **Issue 1B: Protection of cultural minerals and wāhi tapu:** Some iwi and hapū have argued that the CMA does not provide sufficient protection of cultural minerals and sites of significance. The current process for protecting land under section 14(2)(c) is unclear with the CMA outlining this can be done "on the request of an iwi or hapū". How iwi and hapū do this, or what considerations the Minister must take into account when receiving these requests, are not explicitly laid out in the legislation. This lack of clarity may be preventing Māori from using section 14(2)(c) as a mechanism for land protection. We note, for completeness, that other legislation can protect sites of significance for iwi and hapū once it is known exactly where specific activities are proposed to be undertaken, e.g. the RMA, which is currently being reviewed.[33]

Issue 2: Permit holders' engagement with iwi and hapū during the duration of the permit

148. Relationships between iwi/hapū and individual permit holders vary. Some permit holders have very positive relationships with iwi and hapū, while others do not. Iwi and hapū view the Crown as having an active role in ensuring permit holders effectively engage. We have heard three main issues relating to this theme as set out below.

149. **Issue 2A: Permit holder's knowledge regarding effective and appropriate engagement with Māori:**

- Concerns have been raised around the lack of knowledge permit holders, many of whom are headquartered overseas, have about effective engagement with Māori. There have been circumstances cited of "cultural indiscretions" from permit holders towards iwi and hapū.

[32] We understand there are a range of views on Crown minerals development within Māoridom. These views may not be reflective of those held by all iwi and hapū, but they reflect themes that have emerged from what we have heard.
[33] https://www.mfe.govt.nz/sites/default/files/media/RMA/cabinet-paper-comprehensive-review-rm-system-scope-process.pdf

- There are no official measures of an applicant's willingness and ability to appropriately engage with Māori. With no measurement of this, it could be difficult for the Crown to determine whether an applicant is "culturally competent", or if effective engagement during the permit period is likely to occur.

150. **Issue 2B: Incentivising permit holders to engage:**

- Regardless of the level of cultural competence of permit holders, some iwi and hapū have stated that no "true engagement" can occur with permit holders due to a lack of incentives for industry. A number of iwi and hapū have said there can be a lack of consideration of the role of Māori by permit holders.

- A number of iwi engagement reports state "no engagement" occurred between permit holders and Māori. As the CMA only requires a report to be submitted, this has no consequence, allowing permit holders to conduct activities without actual engagement with iwi or hapū. It is important to note that when MBIE asks permit holders about these reports, sometimes it emerges that engagement did occur and this was recorded in a report relating to another permit, or that a permit holder attempted to engage with iwi/hapū but this was unsuccessful. We also note that some activities undertaken by permit holders are generally of considerably more interest to iwi and hapū (and communities) than others, e.g. drilling compared with desktop research undertaken from overseas.

151. **Issue 2C: Information disclosure:** Iwi and hapū have expressed their desire for greater transparency by permit holders through the sharing of full and complete information relating to the activities being undertaken within their rohe.[34] We are aware that permit holders can be unwilling to share commercially sensitive information.

Issue 3: Resource constraints affecting the capacity of iwi and hapū to effectively engage

152. The lack of resources available to many iwi and hapū to engage with both the Crown and permit holders is an overarching issue that needs to be considered. We view that a lack of capacity and capability can be a barrier to effective engagement.

153. Iwi and hapū have continually expressed their ability to engage with the Crown during the permitting process is limited by resourcing constraints. A number of iwi have also stated that no relationship with permit holders can occur due to the lack of time, money and expertise that would otherwise allow them to be an active participant. This accords with what we have heard from some permit holders who have approached iwi/hapū to engage but have been unable to.

154. Each iwi and hapū is consulted on minerals development proposals in their area. Some areas are significantly more prospective than others, entailing more demand for consultation on permits (and resource consents), and therefore, more demand on the resources of affected iwi and hapū. In 2018, several iwi groups had significant numbers of permit applications or changes within their rohe, notably 115 for one iwi group.

[34] Rohe refers to a boundary, district, region, territory, area, border (of land).

Impacts of ineffective engagement with Māori on Crown minerals

155. These problems could result in poor quality outcomes for all parties involved, including:

- impaired Māori-Crown relations
- inconsistency with Government objectives (discussed below)
- poor Māori-industry relations, and
- reduced opportunities to identify and mitigate risks (cultural and otherwise).

Objectives for engagement and involvement with iwi and hapū

156. This review strives to reach key outcomes, including to make sure that "the Crown will keep Māori informed, listen and acknowledge concerns and aspirations, and provide feedback on how their input influences decisions about the sector."[35]

157. Engaging with iwi and hapū also relates to the objectives of the Crown in upholding its obligations under the Treaty:

- **Partnership:** Both the Crown and Māori have a positive duty to act in good faith, fairly, reasonably and honourably towards the other.
  - This includes the responsibility of the Crown to make informed decisions on matters that affect Māori interests. The Courts have acknowledged that this will often require consultation, a two-way process where both parties must actively participate in good faith.
- **Active protection:** The Crown has a positive duty to protect Māori property interest and taonga.[36]
- **Redress:** Past wrongs give rise to a right of redress.

158. Engagement under the CMA should also align with the Crown Engagement with Māori Framework and Guidelines produced by Te Arawhiti and approved by Cabinet at the end of 2018.[37] These state that the "goal is to have effective, efficient and inclusive approaches to Māori engagement" which "reflects the inclusion and consideration of Māori perspective and cultural values." These guidelines also highlight that the significance of the issue for Māori is fundamental for determining the level of engagement.

159. In regard to industry engagement with Māori, we have the following objectives:

- Iwi and hapū feel permit holders hear their perspectives, react appropriately and provide reasonable information when requested.

[35] Terms of Reference – Tranche Two of the Crown Minerals Act 1991 Review
[36] Taonga refers to an object or natural resource which is highly prized.
[37] The engagement guidelines can be found here: https://tearawhiti.govt.nz/assets/Maori-Crown-Relations-Roopu/6b46d994f8/Engagement-Guidelines-1-Oct-18.pdf

- Permit holders engage respectfully, ensuring adequate information is provided to iwi and hapū, reasonable opportunities for feedback and discussion are provided and the views of iwi and hapū are considered when undertaking activities under the permit.

- Any legal obligations placed on industry are described through a clear, practical statutory test.

Proposals

160. As noted, the Government has ruled out any change to the Crown's ownership of minerals or the royalty settings through this Review. The Government will also maintain the exclusive right to make decisions around allocation. However, in line with the objectives above, it is important there is a reasonable framework for iwi and hapū to provide their views to government and permit holders in a way that can influence decision making.

161. With this in mind, we seek feedback on a number of non-exclusive proposals that could improve the way the system works for Māori. Some proposals would entail amending the Act, Programmes or Regulations, while others involve operational changes. Each addresses one or more of the issues described above and has been considered against the status quo.

Proposal 1: Maintain the legislative settings while evaluating the engagement condition in Block Offer 2018

162. One option is to maintain the status quo by making no legislative changes to the CMA, Programmes, or Regulations while evaluating the implications of the added engagement condition in Block Offer 2018.

163. We are actively working to make sure effective engagement under the CMA is occurring between Māori, the Crown, and industry. For example, the Block Offer 2018 Invitation for Bids has a general condition stating: *"the permit holder is required to engage with iwi and hapū on an ongoing basis and in a positive, fair and constructive manner, with a strong preference for kanohi ki te kanohi (face-to-face) interactions".*[38] Ongoing discussion between permit holders and iwi and hapū should allow Māori interests to be conveyed to permit holders so they can be considered as the work programme is implemented.

164. This general condition is the greatest requirement MBIE has placed on permit holders in regard to iwi and hapū engagement. It builds on previous conditions that require permit holders to notify iwi/hapū in certain circumstances only. Maintaining the legislative status quo would allow for the effects of this general condition – used for the first time in Block Offer 2018 – to be more fully understood and, potentially, for the condition to be used in future Block Offers and minerals permitting.

165. The Block Offer 2018 condition should improve engagement between the petroleum industry and Māori, addressing issue 2. However, this proposal does nothing in the immediate term to make any changes to existing permits and licences[39], nor does it improve engagement between the minerals industry and Māori (although we have heard some

[38] The new engagement condition is explained here: https://www.nzpam.govt.nz/about/news/block-offer-2018-opens/
[39] The new condition does not apply to minerals permits or existing permits that have already been issued.

companies are engaging effectively already). On its own, it also forgoes some of the benefits that could come from adopting the other proposals below. For these reasons, we would prefer to move beyond the status quo and attempt to capture some benefits from the other options.

Proposal 2: Create, and make available, a clearer process for iwi and hapū to protect land under section 14(2)(c) of the CMA

166. This proposal could directly contribute to addressing issues 1 and 3.

167. We are looking at ways to take greater account of the views of iwi and hapū in permit allocation decisions, and particularly address concerns about the impact of permitted activity on sites of significance. As section 14(2)(c) of the CMA offers an existing tool to achieve this, we propose to streamline, and make available, a clearer process for iwi and hapū to utilise this provision. We seek views on what this process could look like.

168. Establishing a clearer process for requests under section 14(2)(c) will provide a mechanism for Māori to identify and inform the Crown of areas of importance to Māori, with the potential for this land to be protected from minerals development.

169. If a minerals programme were to exclude defined areas from permitting as provided for under section 14(2)(c) of the Act, this would also relieve iwi and hapū of the task of requesting this land be excluded from every permit or tender.[40] This could reduce resourcing pressures on iwi and hapū to respond during each consultation period.

170. The opportunity cost to New Zealand in regard to undeveloped mineral deposits from this proposal (in forgone royalties, tax revenue, jobs, etc) would depend on how the proposal is implemented and the prospectivity (if any) of the areas of land, if any, that become excluded from permitting.

171. Creating a clearer, user-friendly process for section 14(2)(c) requests does not guarantee that requests to protect land will be approved. This will remain at the discretion of the Minister. Should we proceed with this proposal, the matters the Minister must consider for requests to protect land are to be determined but could potentially resemble a strengthened version of the matters the Minister currently considers when considering to protect land of significance to Māori from a permit. As explained earlier, these matters are:

- the matters raised by iwi and hapū
- the exercise of customary marine title or of protected customary rights under the Marine and Coastal (Takutai Moana) Act 2011
- whether an area is already adequately protected under other legislation - for example, the Resource Management Act 1991, the Conservation Act 1987 or the Historic Places Act 1993

[40] The Programmes provide that iwi and hapū can request certain areas not be included in a permit, or that activities within certain areas be subject to additional requirements. These requests must be made for each permit application.

- the size of the area and the value of the potential resource affected if the area is excluded

- the impact on the viability of undertaking work under a permit if activities within certain areas are subject to additional requirements.

172. As noted, the RMA regime can provide for areas significant to Māori to be protected from the environmental impacts of specific activities onshore and in the Territorial Sea. The RMA is currently being reviewed.

11	How can we improve the processes for iwi and hapū to protect land from minerals development on a long-term basis under the CMA?
12	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)?

Proposal 3: Stipulation of required content for iwi engagement reports

173. This proposal could help directly address issue 2.

174. As set out above, section 33C of the CMA requires permit holders to submit an annual report of the holder's engagement with affected iwi or hapū. These reports have no requirements regarding their contents, only that one is submitted. This option would involve stipulating content requirements for these reports. For example; when and how they contacted iwi/hapū, the outcome of that contact, explanation of any meetings, etc.

175. Requiring specific information be reflected in iwi engagement reports would indicate to permit holders the expectation of engaging with Māori and allow MBIE to assess the quality and quantity of engagement between Māori and industry, where engagement has occurred.

176. However, MBIE is aware of circumstances where permit holders have reached out to iwi or hapū in attempts to engage and received no response. Engagement on certain activities can be a low priority for iwi and hapū due to resource constraints, the nature of the permit insofar as the activities have minor impacts on Māori interests (e.g. desktop research), and other reasons. In these circumstances, it is still useful for MBIE to have a record of the attempts at engagement in order to assess the commitment a permit holder has to operating in a way that is respectful to Māori.

13	Do you think iwi engagement reports should be evaluated against a set of reporting requirements? If so, what should permit holders be required to report on in regards to engaging with iwi and hapū?

We seek views on other ways to improve engagement between Māori and permit holders

177. MBIE perceives great value in effective engagement between Māori and permit holders in order to establish a cohesive, fair regime that meets the interests of Māori. We have been

considering ways to incentivise permit holders to engage more regularly and respectively with iwi and hapū in order to address issue 2.

178. We have considered requiring all permit holders to engage with affected iwi and hapū, as seen in Block Offer Invitation for Bids 2018. However, it was determined that this requirement would not be suitable for all permit types because, as explained above, some permit activities involve minor activities that do not involve accessing the land. It would also be demanding on the resources of smaller permit holders with few resources, as well as iwi and hapū with many permits overlapping their rohe if it was applied to all permits. Conditions of this nature can also be added as a permit condition to relevant permits, making legislative change potentially unnecessary. As noted in Proposal 1, we want to consider how the condition works in Block Offer 2018 before applying it more broadly.

179. We have also considered assessing an operator's cultural capability prior to a permit being granted. However, how this can be difficult to implement in practice (ie. how to measure 'cultural capability') is uncertain. This assessment could only be done for new applicants, not existing permit holders, resulting in inconsistent requirements of operators. Further, measuring an operator's cultural capability does not ensure effective engagement will follow.

180. We seek your views on how to improve engagement between Māori and permit holders in a way that is fair, practical and does not place unreasonable constraints on affected parties.

14	How can the Crown support effective engagement between Māori and permit holders?

We ask for your feedback on ways to address the other issues

181. We understand Māori want meaningful input into permit allocation decisions (issue 1) and that limited resourcing for many iwi and hapū can be a barrier for effective engagement with other parties (issue 3).

182. We are investigating, and seeking views on, other ways to improve our engagement to alleviate resource pressures placed on iwi and hapū and to provide a platform through which Māori feel heard. For example, some groups have told us that establishing regular workshops to conduct kanohi ki te kanohi (face-to-face) consultation where Māori can be informed of sector activities would help.

183. The intention is to create more targeted, meaningful engagement for both the Crown and Māori. We invite suggestions on how MBIE could improve its processes and address the issues outlined in this chapter, within the parameters of government policy.

15	What changes could the Crown make to its processes to provide for more effective engagement with Māori?

Chapter 6: Compliance and enforcement

This chapter considers options to improve compliance and enforcement under the CMA to make sure the regulatory regime is working effectively, and in line with modern regulatory practice. We seek your views on the following proposals:

- Compliance Notices – a notice with statutory backing requiring a specified matter to be addressed.
- Enforceable Undertakings – a statutory agreement between the regulator and a non-compliant party that a prosecution will not be undertaken if they agree to certain conditions, activities, or actions.
- Infringement Fines – instant fines for non-compliance with clear and simple requirements.
- Include an offence for non-permit holders who refuse to comply with an information request under 99F of the CMA.
- Clarifying what is required for record keeping under the CMA.

Introduction

184. Compliance with the provisions of the CMA and associated regulations is essential in achieving the purpose and objectives of the CMA. In particular, compliance is critical to permit and licence holders adequately carrying out their obligations in a responsible and timely manner - ensuring all New Zealanders benefit from the development of Crown-owned minerals.

185. Compliance in any regulatory system, as well as confidence in that system, is promoted by the setting of clear requirements and expectations for permit and licence holders. Non-compliance can create incentives for further non-compliance and erode confidence in the regulatory system. A key aspect of effective compliance and enforcement is ensuring the regulator has sufficient and fit for purpose regulatory powers or tools.

186. This chapter underpins the objectives of the CMA review with a focus on ensuring "the sector is governed by a regulatory regime that is clear, coherent and fair". Where we refer to compliance in this chapter, we mean compliance with the CMA and associated regulations.

What we aim to achieve

187. MBIE's vision for regulating the mineral and petroleum industry is "A mineral and petroleum industry that responsibly delivers value to New Zealand".

188. MBIE's regulatory activities are guided by four principles, which are that we will be:

- transparent and consistent
- targeted
- fair, reasonable and proportionate
- collaborative and responsive.

189. In line with its commitment to modern regulatory practice, MBIE has:

- moved towards electronic filing making it easier to file, manage and access required information
- expanded available guidance and education to make the requirements clearer and easier to follow.

190. The Crown minerals permitting regime has around 950 active permits across New Zealand, its territorial waters, and exclusive economic zone. Permit operators range from small hobby gold panners to multi-national companies involved in petroleum extraction. Because of the difference in the scale of operations, it is important that the system is flexible enough to allow us to target our compliance approach appropriately.

191. We propose adding additional regulatory tools to the CMA regime to allow MBIE to effectively and efficiently address non-compliance, and incentivise compliance as a result. This is to ensure that the CMA's regulatory tools keep pace with changes in the operating environment, to modernise them given the advances in other regulatory frameworks, and to ensure that MBIE can regulate in a proportionate way.

192. We ask for your views on whether or not you agree with the addition of new tools to the CMA regime. Most of the tools suggested are based on other legislative regimes and we're interested in your views and feedback.

193. We have considered the following criteria in developing these proposals (a short explanation of key effects is provided at the end of each proposed tool):

- Economic impacts
- Improved compliance
- Fair return to the Crown
- Information availability.

Discussion

194. The 2013 review of the CMA improved the ability[41] of MBIE to require information from operators and conduct audits but it did not address some key issues being considered now.

195. There is a range of non-compliance that occurs under any regulatory regime. To promote compliance and deal with non-compliance in an appropriate way, the regulator must apply a proportional response, using fit for purpose regulatory tools while taking into account the circumstances of each case. In addressing non-compliance MBIE considers the:

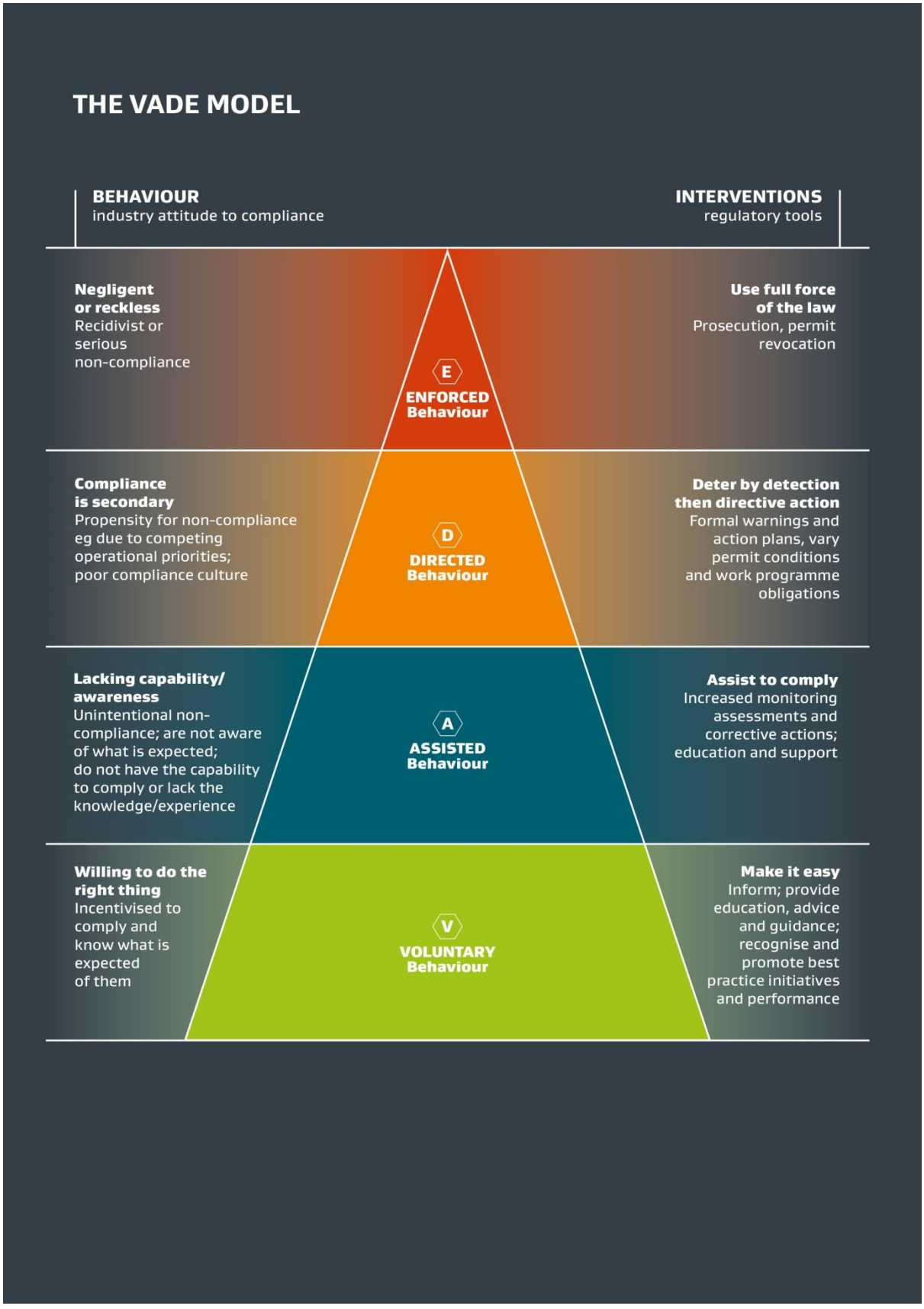
- willingness of the offender to comply and their compliance history
- seriousness of offending
- likelihood of successful prosecution
- costs of prosecution
- public interest test.

196. Non-compliance under the CMA can occur across a spectrum of offences, a range of different operations, and a range of different permit operators. For example, a small-producing permit holder who was not aware of their obligations but is willing to rectify non-compliance, through to a large-producing permit holder who has deliberately not complied for a number of years. The appropriate response from MBIE is likely to be different for each of these cases.

197. In approaching cases of non-compliance, MBIE has adopted the VADE model (summarised in the diagram below), to make sure that the response to each case is transparent, measured and appropriate.

[41] Inserted sections 99A-99G, provisions relating to the powers of enforcement officer auditing and requiring information.

Figure 2: The VADE model



198. Currently, MBIE can respond to non-compliance by:

- taking no action
- sending a letter requesting the permit holder to address the non-compliance (but does not legally compel action)
- taking action through the courts, which is time consuming and costly, and which may not be proportional to a given offence
- seeking to revoke the permit, which is frequently not proportional to the offence, and may, in some cases, create perverse incentives for non-compliance.[42]

199. This limited range of regulatory response options increases the chance that regulatory actions are not proportionate to the non-compliance, do not promote compliance, and can reduce incentives to comply for permit holders. A wider range of compliance and enforcement tools, as well as an improvement to existing tools, would allow a more tailored approach to individual cases of non-compliance. This would result in improved incentives to comply and more effective, lower-cost, enforcement actions.

200. In proposing these changes we have taken into account the non-statutory interventions that MBIE has in place, including increased guidance and education, and implementing electronic filing to make submission and management of required information easier. While these are helpful in ensuring that regulatory requirements are well understood and are easy to comply with, they are insufficient in themselves to provide effective responses to the wide range of possible non-compliance.

Proposals

201. We propose to include three new regulatory powers:

- compliance notices
- enforceable undertakings
- infringement fines.

202. The aim of including these new tools is to provide MBIE the ability to respond to non-compliance in a way that is measured and responsive to individual cases, addressing non-serious issues in a proportional way while addressing more serious issues through appropriate mechanisms.

Compliance notices

203. A compliance notice is a formal notification from a regulator that:

[42] On the basis that once a permit is revoked the permit holder has few responsibilities under the CMA, and the regulator has few enforcement powers.

- states the regulator has reasonable grounds to believe the CMA has not been complied with
- specifies which requirements are not being met, and a brief explanation of the relevant details
- sets out the action(s) to be taken to address the non-compliance, and
- sets the date by which these actions must be completed.

204. This tool would allow MBIE to clearly outline a circumstance that needs to be addressed, including the reasons why, what action(s) should be undertaken to address it, and the timeframe by which this is expected to be completed. The actions and the timeframes set need to be reasonable and take into account the date the notice is likely to be received by the permit/licence holder.

205. An example of where a compliance notice could be issued is where a permit holder has been unintentionally mining outside their permit boundaries.

206. In this example, the compliance notice would specify:

- that MBIE has reasonable grounds to believe the permit holder is extracting a Crown-owned mineral outside of their permit boundary in breach of Section 8 of the CMA (including a summary of where this was occurring in relation to their permit)
- that the permit holder needs to cease extracting outside of their permit area, and
- the applicable date(s) by which the activity needs to be stopped by.

207. Under the proposed tool, a compliance notice would be able to be challenged by the recipient through the courts where they dispute that the:

- specified breach occurred
- that there are reasonable grounds to believe it occurred, and/or
- the time given to comply is not reasonable.

208. The courts would then be able to assess the validity of the compliance notice and direct it to be complied with, overturn it, or modify it as the Court saw fit.

209. Where non-compliance is serious, this would generally be addressed through other means, such as action through the Courts rather than through a compliance notice. However, a compliance notice would still allow for prosecution at a later date if it is not complied with.

210. A compliance notice would provide clarity for permit holder remedial action, or for that party to challenge the notice (or not comply and face conviction on a readily provable offence).

211. The intention with the compliance notice is for the regulator to provide sufficient time for the permit holder to comply with the notice, with additional allowances being built into the

required timeframe to facilitate reasonable delays beyond the permit holder's control. However, while a compliance notice could require compliance within a short timeframe (for example, if a resource was about to be sterilised due to poor practices), the notice is not intended to "shut down" permit holder operations.[43] This is consistent with the approach adopted by other regulatory regimes with similar compliance notice tools.

212. The addition of compliance notices will add some compliance and administrative costs for industry, but the majority of these costs would be borne by non-compliant parties. By clearly setting out the issues requiring resolution (and by when), we expect compliance notices will significantly improve the incentive to comply. Further, they facilitate a more proportionate approach which is consistent with modern regulatory practice.

213. We also considered what alternatives to compliance notices are available to achieve the same effect. Making it easier to revoke permits and increasing the penalties for offences under the CMA would both increase the incentive to comply. However, these alternative options both sit at the most severe end of the spectrum of regulatory response, which may be disproportionate for less serious cases.

Penalty for failure to comply with compliance notice

214. In considering the appropriate penalty for failure to comply with a compliance notice we have considered the improvement notice tool used in the Health and Safety at Work Act 2015 (HSWA), which is an analogous tool and provides useful guidance in setting the applicable penalty.

215. The most serious analogous monetary penalty under HSWA is a maximum of $500,000 for a legal entity (s49). The offence for non-compliance with an improvement notice under HSWA for a legal entity is a maximum of $250,000 (representing 50% of that maximum).

216. The analogous maximum penalty under the CMA is section 101(1), which applies a $400,000 monetary penalty. Following a similar approach to HSWA, 50% of this maximum fine would be $200,000. Therefore we propose that the maximum fine for non-compliance with a compliance notice is $200,000.

217. A key aspect of this tool is that there would be no fine if the compliance notice was followed, or successfully challenged in Court (and leave is given by the Court to suspend or alter it). However, not complying with the compliance notice could result in a cumulative penalty being applied – both for the original matter and non-compliance with the compliance notice itself. This is consistent with HSWA and provides an additional compliance incentive.

218. When the Courts consider imposing a penalty under the CMA they consider the Sentencing Act 2002 criteria, including the culpability of the permit holder and any mitigating factors. As with other offences (except for infringement offences, which are not subject to this Act), we are seeking to set the "maximum" fine only. The Courts would determine the application of any penalty and the applicable amount within that maximum amount.

[43] In the Health and Safety at Work Act 2013 (HSWA) this is a separate power, which is not proposed to be included within the CMA.

Enforceable undertakings

219. At present the CMA provides very little flexibility to allow settlement of a breach or potential breach before involving the courts, compared to other regulatory regimes, even where doing so is in the best interests of the CMA regulatory system, the Crown, and the wider public.

220. In other regulatory regimes enforceable undertakings allow an agreement to be made between the regulator and the permit/licence holder for reparations/or alternative actions following a breach (or potential breach) of the CMA. Enforceable undertakings are generally used as an alternative to prosecution, to support the objectives of the CMA. This tool is similar to the diversion process[44] but can be used outside of the Courts with a wider range of benefits and lesser costs. The purpose of an enforceable undertaking is to:

- allow an alternative approach to legal action where it may not be in the best interests of the public to prosecute (for example, if the likelihood of conviction is not high but the costs of the prosecution action are), and
- achieve outcomes that may not be achievable through Court action (for example, promoting industry good practice; carrying out or funding exploration of Crown-owned minerals).

221. The existence and application of enforceable undertakings is well developed in HSWA and the Employment Relations Act 2000. However, they are not utilised in cases of serious or chronic non-compliance, or where a prosecution is in the best interests of the public (for example, where there is a high chance of conviction and the costs of prosecution are outweighed by the benefits).

222. An example of where an enforceable undertaking could be used is where there is evidence that a mine is not producing as expected and that the mining schedule has been set up to provide for earlier high grade returns at the expense of other parts of the resource that may result in sterilisation of parts of the resource. This is not in line with good industry practice required under the permit under section 33(1)(b) of the CMA and may affect the fair financial return to the Crown. In this case an enforceable undertaking could be used to agree with the permit holder to further define the resource through drilling and to re-optimise the mine plan and schedule and have both audited by a mutually agreed independent expert within a specified period of time (for example, 18 months).[45]

223. As seen in the above example, the purpose and objectives of the CMA are met and the interests of the Crown as mineral owner are preserved in a manner that is acceptable to both parties but does not result in costly Court action for either party. A key consideration of any accepted enforceable undertaking is whether it serves the objectives of the CMA, in each circumstance.

224. Enforceable undertakings would involve a voluntary agreement, which would only create costs for non-compliant parties. They would allow greater flexibility for MBIE and permit

[44] Settling in the early stages of a court case.
[45] A database of accepted enforceable undertakings for HSWA is available on WorkSafe's website.

holders to address non-compliance, improve the incentive to comply, and allow a more cost effective regulatory response, as well as improving consistency with modern regulatory practice.

Penalty for non-compliance with enforceable undertaking

225. We propose that an offence, and a monetary penalty, applies to non-compliance with enforceable undertakings. This is to ensure enforceability and the incentive to comply, as well as consistency with similar instruments in other regulatory regimes.

226. In proposing the penalty for this offence we have again looked to HSWA. Under HSWA this is set at the same level as an improvement notice. Therefore we propose that the penalty is set at $200,000, following the same approach as an improvement notice.

Infringement fees

227. In 2019, 35% of annual royalty returns[46] were filed late, representing 317 individual instances. Following up on these returns can create significant costs for MBIE. For example, even if only five minutes are spent per case a significant amount of time is diverted away from higher value regulatory activities. Further, without sufficient disincentive to file late returns, compliance across the wider regulatory system can be undermined.

228. An established method to incentivise compliance in such cases is through infringement fees. These are instant fees that an enforcement officer can issue where there are reasonable grounds to believe that there has been clear, non-serious offending - such as the failure to file an annual royalty return by the due date. Infringement fees are a common feature of many other regulatory regimes, including fisheries, resource management, and telecommunications.

229. The level of fees imposed in other regulatory settings tends to be low (e.g. often less than $1,000, but up to $5,000 per infringement) due to their instant nature and the low level of offending involved. Their intent is to encourage compliance with simple, specific requirements. Typically, if an infringement fee is issued, this would preclude further enforcement action in respect of that offence, although not paying the fee itself could be prosecuted through the Courts.

230. We propose to include a regulation-making power to allow for the imposition of an infringement fee for non-compliance with simple, specific requirements, such as the late filing of returns. We also propose that the specifics of the operation of the infringement fee regime are set out in regulations[47], in the same way as other regimes. The development of these regulations would be subject to a separate stakeholder consultation. MBIE would have the discretion not to impose an infringement fee if there were good reasons not to do so.

231. Infringement fees significantly add to the incentive to comply for low level offences, as well as improving the information available for MBIE to carry out its functions. There would be

[46] Annual royalty returns are an administrative requirement that supports royalty collection.

[47] For an example of how such regulations could look, refer to the Health and Safety at Work (Infringement Fees) Regulations.

some compliance and administrative costs for the industry, although the majority of this would be borne by non-compliant parties. The intention is not for infringement fees to impose additional obligations, but rather provide a tool to promote compliance within existing requirements.

232. Other options available to address low-level, clear, non-compliance include increased guidance, education and engagement with industry. However, these options are already being employed by MBIE with disappointing compliance improvements being realised.

Why these options?

233. In addition to the above options we also considered the following options:

- making it administratively easier for MBIE to revoke a permit
- including enforcement orders consistent with the approach taken in the Resource Management Act 1991 (RMA)
- enhancing guidance, education and engagement with the industry around CMA compliance obligations.

Revocation

234. The CMA provides for the revocation of a permit in certain circumstances (for example if royalties are not paid or the permit conditions are breached). However, revocation is at the extreme end of regulatory responses, and is usually a last resort when all other options have been exhausted. In addition revocations need to be carefully considered, and it is not clear that an increasing the ease of revocation would improve compliance, as well as being costly for both the Crown and permit holder. Revocations also have the potential to create a perverse incentive for non-compliance if not used with care – the revocation, aside from having significant financial effects on the party involved, does remove them from future obligations under the CMA, as they are no longer operating under a permit. Consequently, we consider that making it easier to revoke a permit/licence is not an appropriate means of addressing low-level offending.

Enforcement orders

235. An enforcement order, for example, is made by the Environment Court compelling a person to comply with the provisions of the RMA[48], a rule in a regional or district plan, or the terms and conditions of a resource consent. An interim enforcement order can be made where there is imminent risk of irreparable environmental damage.

236. Enforcement orders are wide in scope and allow flexibility in how the Courts address a breach under the RMA, as well as how the regulator carries out their enforcement activities. Enforcement orders are suitable for regulatory regimes with a very wide range of industries and circumstances. In addition, Enforcement orders still require Court involvement and are therefore more costly and time consuming for the regulator and non-compliant party, than

[48] Section 314 of the Resource Management Act 1991.

other options we have proposed, although they do provide a greater incentive to comply. Given these differences in circumstances, and the current tools that are available to fulfil a similar role, we have not proposed to include a similar provision.

Enhancing guidance, education and engagement with the industry

237. In addition to the proposed regulatory tools we considered, increased guidance, education and engagement with the industry on their regulatory obligations could have compliance benefits. However, MBIE is already undertaking these activities, and has been doing so for some time. Consequently, this was not included as an additional option.

16	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?
17	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?
18	Do you think there are other changes to the CMA and/or regulations that should be considered in this review to assist in improving and enforcing compliance?

Improving our ability to compel the provision of information

238. Section 99F of the CMA is a general provision that enables MBIE to require information from any person so MBIE can carry out the functions of, and administer, the CMA. This section is typically used to seek information from permit holders, and can also be used for ex-permit and non-permit holders. Generally, requests under section 99F request additional information about active permits, and the operation and capabilities relating to those permits/permit holders.

239. However, while it is an offence (with a corresponding financial penalty) for a *permit holder* not to comply with a request for information issued under section 99F, there is currently no offence (nor any corresponding financial penalty) for *non*-permit holders (including ex-permit holders) not to provide information requested under this section. This means there is a lesser incentive to comply with a request under section 99F unless you are a *current* permit holder.

240. This creates a gap in the ability of MBIE to gather information it needs to carry out its functions under the CMA. The two main effects of this are that; MBIE is reluctant to release permit holders from their permit unless we have received all the relevant information (tying up land that could otherwise be re-permitted); and inhibiting our ability to detect, investigate and incentivise compliance in some circumstances. For example, where non-permit-holding parties hold information relevant to an investigation of a permit holder; or where a person has never been a permit holder and is illegally mining Crown-owned minerals.

241. The proposed change will ensure MBIE can access the information it requires to carry out its activities and functions under the CMA; which includes enforcement, permitting and assessment, and understanding the Crown minerals resource. We therefore propose that an offence provision is added to the CMA also making it an offence for non-permit holders not to comply with a valid request for information furnished by MBIE under section 99F.

242. This option would likely create some additional costs for those who are non-permit holders. However, the power to require this information already exists, so those costs will be borne primarily by those who are not complying with MBIE's information requests

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

The offence provision

243. Non-provision of information is typically a lower level breach of the CMA, and, while it should be enforceable, does not generally represent serious or reckless offending, unless there is a deliberate intent to mislead, obstruct or deceive (for which offences already exist).

244. We therefore consider it is appropriate that the maximum penalty be set at $20,000, or $2,000 per day for an ongoing offence, being the same penalty that applies for offences (such as a breach of permit holder's obligations to comply with the CMA and regulations) under section 100(2) of the CMA.

245. Although the maximum fine is set at a level to address non-compliance by those working under the CMA, we acknowledge that this includes parties who have never held a permit under the CMA. The culpability and appropriate reduction in fine for those who are not immediately working with Crown-owned minerals is properly assessed by the Courts, as per the Sentencing Act criteria.

20	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?

Clarifying record keeping requirements

246. MBIE is seeking to clarify record keeping requirements in the CMA. Currently, there are obligations as a permit holder to keep records for a specified time (s 33), as well as specific record keeping requirements (s 90).

247. However, based on the results of regulatory activities conducted by MBIE, there is some permit holder uncertainty about what is meant by adequate "records". Therefore we consider that the meaning of adequate "records" should be clarified. This will provide

greater certainty to permit holders and, where necessary, facilitate prosecution for non-compliance. We propose making changes both to the CMA and regulations to that end.

General record keeping

248. The CMA does not currently define what adequate "records" are. This can create uncertainty for permit holders in terms of what must be kept for the regulator. It can also make it difficult to hold permit holders to account for not keeping these records to an acceptable standard for review, making prosecution for not keeping adequate records more difficult.

249. We propose to define "records" in the CMA and to set specific regulations providing more detailed requirements in specific circumstances. We propose looking to the Tax Administration Act 1994 for the definition of records. We propose clarifying in the CMA that, for all permit holders, and in respect of each permit, general record keeping requirements would include:

- a record of the assets and liabilities of the permit holder;
- a record of the income and expenditure of the permit holder;
- a record of all entries from day to day of all sums of money received and expended by the person (in relation to that permit) and the matters in respect of which the receipt and expenditure takes place;
- the charts and codes of accounts, the accounting instruction manuals, and the system and programme documentation which describes the accounting system used in each permit year in the carrying on of that permit activity;
- books of account (whether contained in a manual, mechanical, or electronic format) recording receipts or payments or income or expenditure;
- vouchers, bank statements, invoices, receipts, and such other documents as are necessary to verify the entries in the books of account referred to above; and
- documents in respect of financial, economic, scientific or other technical data and information, including underlying calculations.

250. These general record keeping requirements are proposed to allow MBIE to be able to access the components that make up the permit holder's financial information, as well as sufficient context to be able to understand the information, as well as other economic, scientific or other technical data and information. This includes both electronic and written records.

251. The overall intent is for MBIE to access and view financial information, as well as the documents and calculations that feed into creating this to verify royalty returns, tier status and other aspects of compliance with the CMA. This proposal is deliberately aligned with some of the requirements of the Tax Administration Act, and so it should not introduce new requirements or costs for permit holders who are required to keep these records to comply with their tax obligations.

252. In addition to these changes, and in line with other New Zealand regulatory regimes, we propose clarifying in the CMA that:

- records, or a copy of them, must be kept in New Zealand (so they can be accessed by MBIE)
- records must be kept in English, Te Reo or another written official New Zealand language
- records must clearly identify which permit(s) they relate to, and differentiate between activities undertaken on different permits.

253. For the sake of consistency these proposals include licenses currently administered under the CMA.

Financial statements

254. Financial statements can be an important source of information for MBIE when carrying out their compliance and enforcement functions under the CMA. These financial statements are particularly important in the verification of permit holders' royalty returns, which make sure that the Crown is receiving a fair financial return. However, there may be uncertainty about when financial statements must be provided and to what standard they must be prepared.

255. Therefore, in addition to the general recordkeeping requirements proposed above, we propose to include specific record keeping requirements in the CMA with respect to financial statements, differentiating between the requirements for Tier 1 and Tier 2 permits.

256. For Tier 1 permits we propose that the following must be provided to the Chief Executive of MBIE on request:

- Financial statements that have been prepared in accordance with Generally Accepted Accounting Practice (GAAP) as defined in section 6 of the Financial Reporting Act 2013.

257. For Tier 2 permits we propose that the following must be provided to the Chief Executive of MBIE on request:

- Any financial statements that have been prepared in accordance with GAAP as required by any statute or regulation; or
- Where the above does not apply, and at the discretion of the Chief Executive of MBIE, financial statements prepared in accordance with other non-GAAP financial reporting standards or authoritative notices and guidance as is promulgated by the accounting profession from time to time.

Effects of Proposals

258. These proposals draw directly from section 22 the Tax Administration Act. The financial statement requirement proposals are also drawn from the Financial Reporting Act 1993 (although worded differently). By extension there should be little additional cost for permit and licence holders, as they are required to be maintaining these records in any event.

259. The ‘documents in respect of financial, economic, scientific or other technical data and information, including underlying calculations’ proposal is specific to the CMA. This is included to clarify that MBIE can request underlying information (such as the underlying calculation sheets that ultimately feed into the royalty returns). For example, this information might be in relation to:

- Calculating decommissioning costs for removal of infrastructure;
- Calculating costs of decommissioning wells;
- Contextual information for items that go into royalty returns to help us understand the provenance of costs and revenues.

260. This is information permit and licence holders should be maintaining in order to complete royalty returns. This proposal is to clarify that they must do so, and provide this to MBIE upon request.

Record keeping in the regulations

261. Following consultation and final decisions on any changes to the CMA, MBIE proposes to amend record keeping requirements in a later regulation development phase. There may also need to be changes made to the regulation making power of the CMA (s105) to enable this to occur.

262. Changes to the Minerals Royalty Regulations 2013 are included as part of this discussion document – we are seeking your early feedback on these ahead of a later regulation making phase. A further discussion on record keeping is included below, based upon the proposals in Chapter 7: Improving petroleum sector regulation.

263. Some minor and technical record keeping proposals are contained in Chapter 8: Technical amendments, such as electronic form submissions.

Record keeping for chapter 9 proposals

264. The petroleum regulator takes a lifecycle approach to the management of mining permits. Central to this will be a requirement for permit holders to have, maintain and regularly provide to MBIE a field development plan (FDP). Permit holders are required to undertake activities in accordance with an accepted FDP.

265. The primary purpose of the FDP is efficient resource extraction in accordance with good industry practice to maximise economic recovery for the benefit of permit holders and the people of New Zealand. As such an FDP should describe the lifecycle of the development; this includes the timing for cessation of production and decommissioning activities.

266. The Crown will also require cost estimates and the basis for those estimates to be supplied, consistent with the FDP and permit conditions. It is expected this will be provided in a form prescribed by the Crown, or any other form accepted. Information required will include estimates of the quantities of materials and equipment to be removed, costs for plugging

and abandoning wells, and allowances for site restoration and remediation. The phasing of those costs will also be required.

Royalty requirements for minerals (other than petroleum) permits

267. In order to ensure that there are appropriate, and specific, record keeping requirements for minerals permits, we propose to amend the Minerals Royalty Regulations. In particular, we propose to ensure that all royalty paying permits (whether ad valorem or hybrid, gold or other mineral) have comprehensive record keeping requirements in the regulations, requiring permit holders to keep records of:

- 'production costs', as defined in regulation 7 of the Mineral Royalty Regulations;
- 'indirect costs', as defined in regulation 4 of the Mineral Royalty Regulations;
- restoration costs incurred in that year, as defined in regulation 8 of the Mineral Royalty Regulations; and
- assets and depreciation records.

268. All permit holders in the business of mining are already required to keep these types of records under Section 22 of the Tax Administration Act, and so the only new requirement would be to provide these records if requested by MBIE. Accordingly, there should be minimal additional compliance cost for permit holders from this proposal.

269. In contrast, the compliance benefits are large and significant, allowing for the verification of royalties and other fees that are due to the Crown and allowing for the prosecution of permit holders who fail to abide by the duties under s33 of the CMA.

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

Chapter 7: Improving petroleum sector regulation

This chapter considers the end-of-field-life issues associated with petroleum exploration and mining permits. This is an area the CMA has not historically focused on but has potential to create significant liabilities for the Crown and other third parties. We want your views on the following proposals:

- including explicit obligations in the CMA for decommissioning, and plugging and abandonment of wells (P&A) for permit/licence holders, including the obligation to meet the costs of doing so.
- a requirement for permit/licence holders to obtain approval from the Minister of Energy and Resources to cease petroleum production.
- enhancing the ability for MBIE to require information to determine permit/licence holders' ongoing financial capability to complete decommissioning and P&A obligations and other work programme commitments. These financial capability assessments would be supported by additional powers to require other relevant information, such as field development plans.
- new regulatory powers relating to financial security to make sure that permit/licence holders are financially capable to discharge decommissioning and P&A obligations to reduce the risk of transferring financial risk to the Crown or third parties.

The proposals in this chapter work together as a package. The main benefit is the reduced likelihood that the costs of decommissioning petroleum infrastructure and meeting P&A obligations will fall to the Crown or third parties. The aim of these proposals is to make decommissioning and P&A obligations of permit/licence holders clear, and provide MBIE with the tools necessary to monitor permit/licence holders' ability to discharge them.

Introduction

270. The CMA does not contain provisions associated with declining production petroleum fields and is not specific about what the end-of-field-life obligations for petroleum permit holders are.[49] Instead these obligations are typically set out in permit conditions, which do not necessarily have the status of primary legislation. This creates uncertainty as to whether the CMA appropriately manages the risks of non-compliance in relation to the decommissioning of petroleum infrastructure and the P&A of petroleum wells.

271. We consider a review of the settings around end-of-field-life obligations is timely. Addressing these issues is well aligned with the CMA review objective of ensuring that the risks and downsides associated with the sector are appropriately managed.

[49] It is important to note that other regulatory regimes also contain requirements for petroleum operators about their end-of-life obligations. Including in relation to environmental aspects and health and safety.

272. Providing for clear end-of-life obligations is also likely to assist New Zealand in meeting its international obligations under the United Nations Convention on the Law of the Sea. Such obligations include requirements on states to remove abandoned installations or structures to ensure safety of navigation (unless special circumstances apply).[50]

273. Making sure end-of-field-life obligations associated with a petroleum field are appropriately managed is of particular concern as some of New Zealand's petroleum fields may be nearing the end of their operational life over the next decade, and will require decommissioning and P&A of wells. The timing of decommissioning will depend on ongoing field development work that may be undertaken by permit/licence holders.

Issues that this review does not intend to address

Historic orphaned petroleum wells

274. This review does not address the issue of liability for historic orphaned onshore petroleum wells in detail. Orphaned wells are those where there are outstanding P&A liabilities, but no liable permit/licence holder. The intention of this chapter is to address the risks posed by current and future wells on the basis that there are current permit/licence holders who have responsibility for them. At this time, MBIE's view is that the creation of any new funds at a later date to address residual liability of historic orphaned wells would not require amendment to the CMA. MBIE is committed to further work with interested parties on these issues at a later date.

Residual liability issues associated with offshore wells and petroleum infrastructure

275. Residual liability refers to situations where there is no liable person that can be held responsible for an issue arising from a petroleum well or petroleum infrastructure.

276. At this time, we do not intend for the review to address issues associated with the liability with offshore petroleum wells and petroleum infrastructure. MBIE has done limited work to date around this issue, but acknowledges that this is an important issue for stakeholders. Residual liability of offshore petroleum wells and petroleum infrastructure is a cross-cutting issue for Government with a range of marine agencies involved, including the Ministry for the Environment, the Environmental Protection Authority, Maritime New Zealand, WorkSafe New Zealand and MBIE.

277. MBIE is intending to engage further with these agencies to identify potential issues associated with residual liability and develop options once a more thorough review of the current issues has been undertaken. This work will inform what regulatory interventions may be required, if any, including legislative solutions.

278. We intend for this to be a separate programme of work to this review with separate consultation to be undertaken with stakeholders at a later date. This will likely be after amendments to the CMA have been made through this review.

[50] In New Zealand, refer to the Guidelines and Standards for the Removal of Offshore Installations and Structures on the Continental Shelf and in the Exclusive Economic Zone 1989.

A. Obligation to decommission petroleum infrastructure

What is decommissioning?

279. When petroleum fields reach the end of their productive or economic lives the permit conditions will typically commit the permit holder to conduct decommissioning. Decommissioning generally involves the removal or abandonment of platform installations and other structures, and the removal of equipment, pipelines and cables. The specific nature of decommissioning activities will vary from field to field, with further complexities occurring when multiple fields use the same infrastructure, which may influence the timing of, and responsibility for, decommissioning.

280. For the avoidance of doubt, section A only relates to petroleum infrastructure. Non-petroleum infrastructure does not present the same risks to the Crown around obligations of decommissioning. The issues around decommissioning in the minerals sector are generally dealt with through the RMA.

Decommissioning directly relates to two objectives of this review

281. The review objectives directly relating to decommissioning are:

- Risks and downsides associated with the sector need to be appropriately managed; and
- The sector needs to be governed by a regulatory regime that is clear, coherent and fair.

Managing risks and downsides associated with the sector

282. In regard to the first objective, two types of risks and downsides must be managed; harm to the environment; and financial loss to the Crown and third parties.

283. The significance of **environmental risk management** is evident through decommissioning activities being subject to processes under the RMA or EEZ Act, depending on the location of the petroleum field. Different options for decommissioning – for example full or partial removal of infrastructure – will have different environmental effects that need to be carefully considered. There are significant environmental risks that could arise in the event that decommissioning is not undertaken, or, not undertaken to the required standard. This review seeks to ensure that the CMA plays an appropriate role in ensuring decommissioning is performed, and to the required standard.

284. The **financial risk to the Crown and other third parties** is also significant. As noted earlier, a number of New Zealand's petroleum mining installations are approaching the end of their operational life and will require decommissioning in the coming decades. MBIE's indicative estimate is that decommissioning New Zealand's five existing offshore petroleum production fields is likely to cost up to $3 billion. There is inherent uncertainty around these figures, as the total cost of decommissioning is highly dependent on the standard to which decommissioning is required by other regulators, when and where the decommissioning

occurs, and any technical difficulties in the decommissioning process for a particular facility.[51]

285. MBIE is currently building its understanding of the likely cost of decommissioning onshore petroleum production fields. Decommissioning onshore is less technically challenging than offshore decommissioning so the cost per onshore field is expected to be much lower.

Ensuring a clear, coherent, and fair regulatory regime

286. The obligation to decommission petroleum infrastructure is generally a requirement for permit holders under their permit conditions, and is generally contemplated in a field development plan provided as part of an application for a mining permit. However, the obligation to decommission is not set out in the CMA itself, even though the activity entails significant potential risks and downsides for the Crown and third parties. Adding a provision to the CMA itself would improve clarity, coherence and fairness in this important area.[52]

287. To illustrate the point:

- Decommissioning obligations for permits are contained within permit conditions without the clear, statutory backing of primary legislation. Without clear obligations being set out in primary legislation, significant potential financial risks may arise to the Crown and other third parties if decommissioning is not undertaken (or not undertaken to the required standard). The Minister can require a bond to be paid as security for compliance with the conditions of the permit but bonds are rarely required; there is a cost to administer them; they tie up capital that could be used to fulfil the permit holder's work programme; and they can be quite sizable, yet still insufficient for covering all costs.

- As obligations are set out in permit conditions which are not easily visible to stakeholders, this may not afford Cabinet, Parliament, and the New Zealand public the oversight over potentially significant obligations for the Crown, should a permit/licence holder not be able to meet the costs of decommissioning. In this sense, the current approach has limited transparency.

- Permit conditions can have a variety of wording due to changing practices as permits have been granted over time. This creates inconsistencies across permits, interpretation difficulties, and operational complexity for MBIE, which further increases the complexity associated with enforcement and permit administration.

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51 For example, one cost analysis of a North Sea pipeline indicates that to flush, seal and leave it alone would cost £2 million, cleaning or burying in situ would cost £20 million and complete removal would cost £100 million.

52 The Minerals Programme for Petroleum 2013 (the Petroleum Programme), a disallowable instrument intended to provide guidance on the implementation of the CMA, states it is an obligation in each permit to properly decommission production facilities and abandon wells in accordance with good industry practice. The Petroleum Programme also stipulates that the Minister may include provisions in a mining permit's work programme for decommissioning structures and abandoning wells in accordance with good industry practice.

Wider regulatory regime for decommissioning

288. Other enactments are also relevant for managing decommissioning in New Zealand. We set out a brief overview of these below.

Health and Safety at Work Act 2015

289. Under the Health and Safety at Work (Petroleum Exploration and Extraction) Regulations 2016, operators are required to have a valid safety case to account for decommissioning. WorkSafe New Zealand is responsible for overseeing the safety case acceptance process.

Resource Management Act 1991

290. Under the RMA, both onshore and within 12 nautical miles offshore, the appropriate regional council acts as the consenting authority for decommissioning. In practice this is the Taranaki Regional Council - as all petroleum production subject to the RMA are in that region (with some in the EEZ – discussed below).

291. The RMA provides flexibility for the Taranaki Regional Council to consider how to minimise the environmental effects of decommissioning. This could include complete removal of infrastructure, or consideration of leaving some infrastructure in situ (for example, pipelines under jackets or platform foundations on the seabed) where doing so may have a lower environmental impact.

Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012

292. Outside 12 nautical miles, the Environmental Protection Authority (EPA) is the relevant consenting authority. In 2017, the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act (EEZ Act) was amended to strengthen the regulatory framework for decommissioning by introducing a requirement for decommissioning plans.

293. The amendment to the EEZ Act aims to strengthen New Zealand's decommissioning framework by introducing an obligation for operators to engage in conversations with stakeholders and the EPA in advance of applying for marine consents to carry out decommissioning related activities. The requirement for a plan ensures that the agreed environmental outcomes (between the EPA, public, iwi and operators) are achieved in line with the purpose of the EEZ Act and New Zealand's international obligations. This process will also provide further certainty to permit/licence holders about the infrastructure that may be removed or abandoned subject to marine consents. The Government is currently developing detailed regulations to set out this process.

Therefore current decommissioning obligations are fragmented and potential risks are significant

294. The discussion above shows New Zealand's regulatory settings for decommissioning petroleum infrastructure are set out across several different Acts. In regard to MBIE's role, current decommissioning obligations are fragmented, set out across varying conditions in permits awarded under the CMA, or as obligations on licence holders under the Petroleum

Act 1937.[53] As noted, environmental aspects of these activities are provided for under the RMA or EEZ Act.

295. While current practice is for MBIE to include decommissioning as a permit condition for mining permits, the wording of conditions has changed over time. With the current compliance and enforcement tools in the CMA, failure to decommission would currently allow for the permit holder to be prosecuted for a breach of 'good industry practice', or for a breach of the specific permit condition around decommissioning and for the permit to be revoked. If prosecution is successful, this would mean that a permit holder would be convicted of a crime under section 101 of the CMA. Aside from the reputational consequences of being convicted of a crime, this would make it harder for a permit holder to obtain future permits under the CMA.

296. Section 39(7) of the CMA provides that, if a permit is revoked or transferred to the Minister, the permit holder is not released of any liability. However, there could be difficulties in practically compelling a former permit holder to fulfil an obligation if they are owned by one or more foreign companies and/or headquartered overseas.

297. With the relatively long life of petroleum fields, New Zealand has yet to undertake a major decommissioning project. Permit/licence holders should be planning for decommissioning throughout the life of the field, including making sure that they will have sufficient funds to decommission at the end of production. As noted above, the cost to the Crown or third parties of poor (or no) decommissioning could be considerable.

Proposals for decommissioning

298. The above issues have given rise to the following proposals in regard to decommissioning of petroleum infrastructure on which we seek your views.

Proposal A1: Establishing clear obligations for permit and licence holders in primary legislation

299. We propose to include in the CMA a specific legislative obligation on petroleum exploration and mining permit and licence holders to decommission petroleum infrastructure. This obligation would oblige the permit/licence holder to:

- decommission infrastructure in accordance with good industry practice and the applicable health and safety and environmental requirements in other legislation, and
- meet the costs of decommissioning.

[53] The Petroleum Act 1937 (Petroleum Act) was repealed by the CMA in 1991, but a number of existing privileges and obligations continue to be governed by the Petroleum Act. In general, licences (the term used under the Petroleum Act, rather than permits under the CMA) granted under the Petroleum Act continue to have effect as if they were still in force. The requirement to decommission (called abandonment in the Petroleum Act) is an explicit requirement in that Act, with an associated offence for failure to undertake this activity. Licence holders are obligated to remove buildings, machinery and equipment on the expiry, surrender or revocation of the licence and leave abandoned pipelines in a safe condition.

300. We propose that these new legislative obligations be extended to petroleum licences under the Petroleum Act. This would replace and modernise the requirements for licences under that Act and align the decommissioning obligations under both the CMA and Petroleum Act, providing clarity and coherence.

Proposal A2: Add relevant definitions to support the decommissioning obligations

301. In order to support these obligations, we propose that two additional terms are defined in the CMA.

Defining "Decommissioning"

302. We propose the following definition of decommissioning and seek your views:

> ***Decommissioning****: To permanently take out of service petroleum infrastructure before a permit or licence can be surrendered, relinquished, revoked or before it expires.*
>
> Activities undertaken as part of the development of a petroleum field while it is still producing would not be considered decommissioning activities under the CMA, for example, the decommissioning of a single production unit where others are available. For the avoidance of doubt, decommissioning would still need to meet any other requirements from other applicable legislation.

Defining "petroleum infrastructure"

303. The term "petroleum infrastructure" is also not currently defined in the CMA. We propose to include the following definition and seek your views:

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

Costs and benefits of proposals A1 and A2

304. Permit/licence holders who will eventually decommission in accordance with good industry practice (and any other regulatory obligations) will incur little-to-no additional cost from these proposals, as they essentially reflect existing commitments and expectations.[54] In the event that any permit/licence holders do not decommission in accordance with good industry practice and other regulatory obligations, these proposals would generate a cost which should rightly fall to these parties. The estimated costs for decommissioning petroleum infrastructure vary widely:

- well over $50 million for an onshore production facility if a complex process is required to mitigate damage caused by any hazardous material (although the average cost to decommission an onshore installation may be around $10 million); and

[54] Currently, most mining permits have conditions that require operators to decommission any plant or other equipment. However, this is not a condition on all permits.

- from $100 million to $3 billion to decommission New Zealand's five existing offshore installations.[55]

305. As the regulator, MBIE would need to specifically consider permit/licence holder compliance with these new obligations, whereas previously the standard of decommissioning would be considered against a specific permit/licence condition. These proposals should reduce costs for MBIE, as it would now be checking compliance with a consistent set of obligations, rather than varying conditions over different permits.

306. The main benefit of these proposals is to the Crown and third parties, in terms of the avoided costs of needing to decommission petroleum infrastructure or alleviate any adverse environmental effects from decommissioning being done poorly or not at all. Infrastructure improperly decommissioned could be a health and safety or navigation hazard, or could contaminate the adjacent marine environment. These proposals would also assist in ensuring New Zealand meets its international obligations.

307. There would likely be a benefit to permit/licence holders by clarifying the obligations with respect to decommissioning and making it clear that all permit and licence holders have the same fundamental obligations.

308. Given the above, we believe the costs of these proposals are easily outweighed by the benefits. Any additional costs would primarily fall to any permit/licence holders who do not decommission in accordance with good industry practice, and any other regulatory obligations. The main benefit is in the avoided potential cost to the Crown and third parties of undertaking decommissioning where a permit/licence holder has not done so.

Proposal A3: Add provisions regarding the cessation of petroleum production

309. We propose to include an obligation that a permit/licence holder must obtain approval from the Minister of Energy and Resources to cease petroleum production, and for the associated timeline for doing so. This aims to make sure that permit/licence holders demonstrate that they will meet the necessary statutory obligations (such as relevant decommissioning requirements), and that the cessation of production of a field is aligned with the objectives of the CMA (including to maximise the economic recovery of resources to the benefit of New Zealand and ensure the Crown can earn a clear financial return for its resources).

310. Due to the production profile of petroleum fields, there may be an incentive for permit/licence holders to end production earlier than the Crown would consider ideal. A requirement for Ministerial agreement to cessation will make sure that there is a formalised process between the Crown and the permit/licence holder for ending production.

Costs and benefits of proposal A3

[55] For offshore production facilities the cost to decommission any infrastructure can vary widely depending on the specific production facility, and other regulatory requirements (e.g. requirements from the Environmental Protection Authority). Based on discussions with permit/licence holders, MBIE estimates the cost to decommission New Zealand's offshore facilities ranges from $100 million to $3 billion. However, the actual cost will ultimately depend on the complexity of the field development and the requirements of regulators.

311. The cost to permit/licence holders to prepare and submit applications for approval to cease production is expected to be very low. Similarly, the cost to MBIE in evaluating these applications on behalf of the Minister is expected to be very low.

312. There are benefits to MBIE and the Crown in this proposal. For MBIE as the regulator, formalising the cessation of production will provide greater transparency around forthcoming decommissioning (and P&A) obligations and their timing. It will also formalise and strengthen the process for a mining permit/licence to be surrendered. For the Crown, requiring approval to cease production helps ensure that a fair financial return is received by the Crown by making sure that fields are efficiently produced, and that economic recovery from these fields is maximised. Estimating the potential financial benefit in terms of additional royalties that could arise from this proposal is difficult. However, total petroleum royalties for 2018-19 (excluding the gas energy resource levy) were approximately $262 million. If this proposal were to lead to even a modest 2% increase in these royalties that could result in a modest fiscal benefit to the Crown of approximately $4 million.

313. On balance, we consider the costs of proposal A3 to permit/licence holders and MBIE to be low, and benefits to MBIE and the Crown to be modest.

Adding decommissioning obligations will contribute to the review's objectives

314. We have considered the feasibility of manually working through every permit/licence to ensure consistency in conditions relating to decommissioning. The tool that may be used for this would be a Minister-initiated change to permit conditions under section 36(1)(a) of the CMA. This provision requires the agreement of the permit holder for a condition to be changed. We rejected this option because it would be costly and time consuming, and would not provide the same level of transparency and accountability as would primary legislation.

315. We consider that adding an obligation to the CMA to decommission is the only effective option that achieves the objectives of the review. It does this by:

- providing accountability by achieving clarity of legal obligations in the most effective, transparent way possible – placing them in primary legislation;
- setting consistent expectations across all permits/licences in the most administratively feasible way possible – placing them in primary legislation to which all permit/licence holders are subject; and
- reducing potential risks and downsides to the Crown and third parties of decommissioning not being undertaken to the required standard through transparent means.

316. We welcome your views on other options to strengthen the provisions relating to decommissioning, if they can address the objectives of the review.

22	Will making decommissioning an obligation in the CMA provide greater accountability, transparency and consistency? Why/Why not?
23	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?
24	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?
25	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?

B. Obligation for plugging and abandoning petroleum wells

What is plugging and abandonment?

317. "Plugging and abandonment" (P&A) is a technical term for when a well is sealed, making it permanently inoperable. P&A may occur throughout the life of both exploration and mining permits as required. Some P&A may be performed alongside other decommissioning obligations.

318. Because P&A may be performed throughout the life of a permit/licence, as well as at the end-of-life of a field we consider that it should be treated separately (but similarly) to the establishment of decommissioning obligations under the CMA. The intent of this is to ensure that any new obligations around P&A apply both throughout the life of the field, and to any P&A that may be performed alongside decommissioning of petroleum infrastructure associated with a field.

319. For the avoidance of doubt, "plugging" can be associated with two well activities: suspension and abandonment. Well suspension is used to refer to sealing a well to make it temporarily inoperative. The term "well abandonment" is used to refer to the shutting in of a petroleum well to make it permanently inoperative.

Plugging and abandonment directly relates to the review's objectives

320. Effective P&A is necessary to prevent well failure, ie petroleum or other contaminants migrating up the well and leaking through the side or out the top. There have been relatively few instances of well failure over the approximately 1,200 wells that have been drilled in New Zealand. There have only been four situations of a well leak (all of which were onshore) where a permit holder has not been able to meet the costs and the Crown and third parties were exposed to liability.

321. While there is a low likelihood of these events occurring, well failures have the potential to cause significant environmental damage and transfer large financial liabilities to

landowner/occupiers, other parties (for example, a regional authority), and the Crown. The main way to minimise the likelihood of well failure occurring is to ensure that P&A is conducted by the permit/licence holder to "good industry practice".

322. Therefore, effective well abandonment is vital to meet an objective of this review: **appropriate management of the risks of the sector**.

323. As for decommissioning, with P&A we also want to ensure a **clear, coherent and fair regulatory system**. Well abandonment is generally contemplated in a field development plan provided as part of an application for a mining permit (and in the well examination scheme provided to WorkSafe). However, there is no obligation to P&A in the CMA itself, even though the activity entails significant potential risks and downsides for the Crown and third parties. Adding a specific obligation provision to the CMA itself can improve clarity, coherence and fairness in relation to P&A. This is particularly important given the careful risk management required, as set out above.

P&A obligations are fragmented and potential risks are significant

324. Either a requirement for "abandonment", or a requirement to "plug and abandon", is currently included as a condition in permits awarded under the CMA, but is not provided for directly in the CMA itself. It is arguable that P&A would likely be considered as part of general 'good industry practice' even if it weren't explicitly included as a work programme obligation. If a permit holder was prosecuted this matter would likely be decided by the courts.

325. As considered in the Compliance chapter of this discussion document, MBIE is only able to prosecute permit/licence holders, or proceed with revocation procedures. MBIE is unable to obtain enforceable undertakings from the Court, or order permit holders to compensate the Crown if the Crown is required to undertake a permit/licence holder's obligation under the CMA. In this instance, general civil law proceedings may be able to be undertaken.

326. Regional councils regulate P&A from an environmental perspective onshore and within 12 nautical miles offshore. This may entail the payment of bonds. WorkSafe NZ regulates the health and safety aspects of P&A, and under the Health and Safety at Work (Petroleum Exploration and Extraction) Regulations 2016 and has a role in well examination schemes, requiring that operators design plans for abandonment at the end of a well's useful life.

327. For installations in the Exclusive Economic Zone and Extended Continental Shelf, P&A of wells does not require a decommissioning plan. Rather, the decommissioning plan must include information about all active, suspended and previously abandoned wells, to ensure the EPA has a complete picture of the infrastructure that is to be decommissioned, and any wells that may still be active and therefore subject to a future process.

328. The reliance on permit conditions to establish P&A obligations means:

- P&A obligations are inconsistent in their wording, creating unnecessary complexity and risk to the Crown or third parties in regard to enforcement. Further operational complexity is added by the differences in conditions across permits and licences.

- Parliament may not have the appropriate level of oversight for an activity carrying so much environmental and financial risk.

329. We want your views on proposals to clarify P&A obligations to make sure that permit/licence holders P&A according to the appropriate requirements as soon as practical after wells are no longer needed.

Proposals for plugging and abandonment of wells

Proposal B1: Establish clear obligations for permit and licence holders to plug and abandon wells in accordance with good industry practice

330. We propose to include in the CMA specific legislative obligations that petroleum exploration and mining permit/licence holders must P&A petroleum wells. The provisions would set out that petroleum exploration and mining permit/licence holders are required to:

- suspend or abandon wells in accordance with "good industry practice", in a timely manner, and to an appropriate standard that is set out by the relevant consenting authority under other legislation and the aligned WorkSafe NZ well integrity acceptance process, and

- meet the costs of undertaking these activities, noting that these costs are included in the calculation of income tax and royalties.

331. These obligations would seek to formalise what P&A requirements are, and will strengthen the regime where well abandonment conditions are not included in permits and licences, not clear, or in the event a permit or licence holder does not P&A. Setting out obligations in primary legislation will also simplify enforcement of these obligations.

332. Inclusion of these obligations in primary legislation is well aligned with the review outcome of ensuring that the responsibility for risks and liabilities is clear and agreed up front.

Proposal B2: Define terms to support proposal B1

333. The term "plugging and abandonment" is not defined in the CMA. For these proposals that relate to end-of-field-life issues, the focus is on rendering wells permanently inoperative rather than temporary suspensions. We propose to include the following definition of P&A in the CMA:

Plugging and abandonment *, in relation to a well, means to seal the well in order to render it permanently inoperative.*

Proposal B3: New CMA requirement for permit holders to demonstrate that P&A has occurred

334. We also propose that a permit/licence holder would be required to demonstrate to the Minister of Energy and Resources that all petroleum wells have been plugged and abandoned in accordance with good industry practice. This would ensure that WorkSafe's

well integrity assessment regime is aligned with the CMA, and minimise the risk of P&A not being performed.

335. This proposal essentially formalises what is expected from permit/licence holders' current operational practice. The requirement would provide appropriate exclusions for situations where a petroleum exploration permit holder has applied for a mining permit and has suspended appraisal or exploration wells for future production purposes.

Costs and benefits of the proposals in section B

336. These proposals will essentially reflect existing commitments and expectations relating to permits/licences, so will add little additional cost (if any) to permit/licence holders who P&A in accordance with good industry practice, and any other regulatory obligations.[56] In the event that permit/licence holders do not P&A in accordance with good industry practice and any regulatory obligations, these proposals will create a cost. MBIE estimates it can cost up to $5 million to P&A an onshore well, with an average onshore well potentially costing around $1 million to P&A. P&A of an offshore well could cost $20 million to $50 million. This wide estimate reflects that the mobilisation of an oil rig from outside of New Zealand may be required, which would add considerably to the cost.

337. In addition, if a well with naturally flowing petroleum was P&A poorly (or not at all), the cost to clean up a spill could be considerable. Estimates for cleaning up a spill from an existing offshore production facility in shallow water in South Taranaki Basin range from $120 million to $360 million depending on a range of variables. Onshore, there have only been four instances of a well leak where a permit holder has not been able to meet the costs. Costs to third parties from these four wells total $1.12 million.

338. A significant leak or spill from a poorly P&A well in the offshore environment could harm marine life and compromise marine activities such as fishing, tourism and recreational use of beaches. The estimated adverse impacts on tourism activity from an existing offshore production facility range from $100,000 to $6.5 million depending on the nature of the leak or spill. The impact on the fisheries industry is likely to be lower.[57]

339. The greatest benefit of these proposals is to the Crown and third parties in terms of the avoided costs for having to P&A a petroleum well in the event a permit/licence holder fails to do so.

340. We consider there is a benefit to permit/licence holders in clarifying the obligations with respect to P&A liabilities and making it clear that all permit and licence holders have the same fundamental obligations in regard to P&A. Similarly, this will simplify administration of the CMA, as MBIE will not need to review against different obligations across different permits and licences.

[56] A majority of petroleum exploration and mining permits have conditions that require operators to plug and abandon a well.

[57] See Oldham, K. et al. (2015). It is also worth noting that an $11 million fund was set up by the owners and insurers of the *MV Rena* to provide compensation to businesses adversely affected when the ship's grounding (on 5 October 2011) and the subsequent oil spill. MBIE's understanding is that the clean-up costs associated with the Rena spill have run into the hundreds of millions of dollars.

341. On balance, we believe the benefit (in avoided potential costs to the Crown and third parties) outweighs the marginal costs on permit/licence holders of these proposals.

Adding P&A obligations in the CMA best addresses the objectives of the review

342. We consider that adding P&A obligations to the primary legislation is the only viable option, to address the risks identified and the objectives of the review. A legislative requirement:

- provides the most clarity to all parties of the obligation on permit and licence holders;
- creates consistency across all permits and licences, adding to the coherence of the regime;
- offers complete transparency to the public, industry and government; and
- provides the greatest certainty that the environmental and financial risks of P&A will be addressed.

343. We welcome suggestions of other options to strengthen the provisions relating to P&A, if they can address the risks identified and the objectives of the review.

26	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?
27	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?
28	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?

C. Ensuring permit/licence holders have financial capability to discharge their obligations and commitments

Financial capability assessments

344. When an exploration or mining permit is applied for, or a change application is made (such as a new permit operator coming into the permit), MBIE undertakes a financial capability assessment of the applicant(s). Financial capability assessments are aimed at ensuring permit holders can *give effect* to the permit work programme, including decommissioning and P&A.

345. Significant changes can occur to an operator's financial capability across the life of a permit or licence, due to circumstances such as the impact of international events, commodity prices, or poor exploration success across a permit holder's portfolio. For example, offshore petroleum wells can cost up to US$100 million to drill, with no guaranteed return on this

investment. Several dry wells can negatively affect the financial capability of a company to meet its statutory obligations around decommissioning of petroleum infrastructure and P&A of petroleum wells.

346. Separate to financial capability assessments, reporting of information about decommissioning obligations and P&A of wells is not currently required under the CMA. field development plans (FDPs) are required to be agreed with permit holders at the commencement of operations, but there is no consistent requirement to provide an update of the FDP to MBIE over the life of the field. This means that MBIE has limited visibility over the nature and expected cost of decommissioning and P&A obligations over time.

Problem with current arrangements

347. The main problem with the status quo is that the current financial capability assessments under section 29A of the CMA can only be performed on permit applications. The test applied when a permit holder applies for a transfer, change of operator, or change of control is slightly different in that the test requires MBIE to be satisfied that the permit holder can meet the work programme of the permit. In the Petroleum Programme, this test includes an assessment of the financial capability.

348. However, while this means that there is a high bar to become a permit holder, there is no obligation to maintain financial capability over the life of the permit. The same goes for licences. Therefore, MBIE has limited visibility over the ability of permit/licence holders to continue to meet obligations such as decommissioning and P&A throughout the life of the permit.

349. MBIE lacks a clear legislative power to proactively and periodically seek and assess specific information about financial capability and field development from a permit or licence holder, even if MBIE has reason to believe financial capability has changed significantly over time. This type of information, supported by the collection of other information that may be relevant, could:

- help identify and quantify what future liabilities may be;
- make sure sufficient end-of-life planning for the field is being done by permit and licence holders; and
- make sure sufficient financial capability to discharge their obligations is being maintained.

350. The Maritime Transport Act 1994 provides for financial assurance requirements to minimise the likelihood of financial risks being transferred to the Crown and other third parties in the event of a significant marine oil spill. This regime operates independently of the financial capability assessments performed when a permit is granted under the CMA, and manages specific activities relating to containment and clean up rather than obligations to fulfil a work programme.

351. Having a specific power to conduct financial capability assessments would further align New Zealand's approach to those used internationally, such as in the UK and Australia. A

framework could be developed for the regulations along the lines of those developed in the UK for clearly identifying which permit/licence holders may present the most risk of not meeting their decommissioning and P&A obligations.

Proposal C1: Explicit legislative power to periodically assess financial capability

352. We therefore propose to include within the CMA a new legislative power to perform periodic financial capability assessments of permit/licence holders, as well as a power to create regulations setting out the requirements of those reviews. These requirements would include the review purpose, scope, frequency, and key information required to be provided by permit/licence holders. Readers are encouraged to consider the discussion of record keeping requirements in Chapter 6: Compliance and enforcement, as the record keeping proposals would support proposal C1.

353. This proposal would support MBIE taking a risk-based approach as a regulator, ie if greater risk was identified through the information a permit/licence holder provided, regulatory scrutiny could increase. The assessments could also consider whether a permit holder has met its financial assurance obligations in regard to containment and clean up (e.g. maintaining certificates of insurance) under the Maritime Transport Act 1994.

Costs and benefits of proposal C1

354. There would be an administrative cost to permit/licence holders in providing relevant financial capability information to MBIE if requested. The details of the scope, frequency and required information for these assessments would be set out in regulations, the development of which would be subject to public consultation. The additional administrative cost to MBIE as the regulator would be modest, as MBIE already reviews financial capability at specific trigger points (eg permit applications).

355. The benefit of this proposal to permit/licence holders is likely to be small, but may include greater transparency, and the ability to show internal planning to manage ongoing liabilities from decommissioning and P&A costs. However, we would expect companies to be regularly reviewing their finances regardless of any regulatory change. There is a high benefit to MBIE as the regulator in being able to (earlier and more effectively) identify permit/licence holders who may not have the financial capability to:

- discharge their obligations to decommission and P&A, as this could help avoid a situation where the Crown or third parties had to pay these costs;
- fulfil their work programme commitments and be at risk of breaching their permit/licence obligations.

356. On balance, we believe the benefits would far exceed the costs as ensuring permit/licence holders can fulfil their commitments would improve the ability of the Crown to continue to provide stewardship over the Crown mineral estate.

357. We want your views on this proposal and on what key details your consider should be set out in regulations to achieve the objectives of the review, while minimising the burden to the Crown and industry.

Less favoured options for ensuring permit/licence holders have financial capability to discharge their obligations and commitments

358. Proposal C1 above was formulated after considering a range of options against the following criteria:

- Permit/licence holders are able to demonstrate across the life of the permit/licence that they are able to meet their obligations.
- Transparency of forthcoming obligations and liabilities to the Crown and permit holder.
- Administrative burden of new requirements for industry and government are minimised. "Burden" refers to the cost of new or changed administrative systems, generation of new documentation, resourcing costs and the cost of engagement.

359. Two other options were considered against these criteria:

1. **Option one: Status Quo** – As noted above, under the status quo the Crown would continue to have limited visibility over the financial capability of permit/licence holders to meet obligations such as decommissioning and P&A.
2. **Option two: Place the detail of financial capability requirements for permit/licence holders in legislation** – this option is similar to the preferred option but would involve placing the information provision requirements we propose in the CMA itself, rather than in regulations.

360. We consider the status quo should change. As set out above, the current regime does not clearly provide for systematic collection and analysis of financial information to ensure permit and licence holders demonstrate their capability to meet their financial obligations across the life of a permit or licence. Therefore Crown visibility of risk is limited.

361. While Option Two would be an improvement on the status quo , it entails a major drawback. Regulations are easier to update than primary legislation. One of the main advantages of the preferred option is that it allows for the regulations to be updated as best practice evolves. Therefore, the preferred option allows for greater flexibility over time than Option Two.

362. We consider a new regulation-making provision is needed in the CMA to enable financial capability assessments to be performed across the life of the permit or licence. Regulations would set out the details of these information disclosure requirements for these assessments. Failure to maintain sufficient financial capability could result in MBIE imposing financial security obligations as discussed in section D below.

29	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?
30	Do you agree with the proposed option? Why/why not? If not, what would you propose to manage the risks identified?

Requiring regular provision of field development plans

363. Field development plans (FDPs) are submitted as part of an application for a mining permit. While they consider decommissioning activities as part of the economic return on the operation, FDPs are subject to change throughout the lifecycle of the operation. As a field is developed, the understanding of the geology and commerciality of a field changes. This means that the desirability of different configurations of production infrastructure may change over the life of the field. Currently, some permit/licence holders are not required to keep MBIE updated with field development plans or cost estimates for developing their fields, decommissioning their installations and P&A their wells (although some have this obligation as a condition of the permit). The obligations on permit/licence holders are inconsistent in this regard. Where FDPs are provided to MBIE, they are simply provided as notification. MBIE does not have the power to accept or reject them.

364. Therefore, for some permit/licence holders, MBIE currently has no check-in points in regard to a permit/licence holder's FDPs across the life of the field, with little oversight over what may be significant changes in intended field development. The development of a field and the form of infrastructure chosen may significantly affect the nature of decommissioning and P&A activities and associated costs at the end of a permit's life. Section 37 of the CMA provides a process for changing the work programme of a Petroleum Mining Permit if the Minister considers it necessary to maximise the economic recovery of the petroleum in accordance with good industry practice. However, the section only applies to permits subject to the 2013 Petroleum Programme and generally a FDP is considered a more detailed, separate document to the work programme.

365. FDPs also have a broader role in influencing how acreage is developed by a permit/licence holder, and ultimately the economic recovery of resources. As owner of the petroleum resource, the Crown has an interest in ensuring acreage is developed responsibly and efficiently so that economic recovery is maximised and end-of-field-life obligations are provided for. Better visibility over the life of petroleum fields allows better oversight and management of the resource to the wider benefit of New Zealand. For example, ensuring the economic security of the gas supply will contribute to the stability of the gas and electricity wholesale markets, with stable markets contributing to an affordable transition to a lower emissions economy.

366. The development of a field is one of the key factors influencing what eventual decommissioning and P&A obligations will be. Therefore this information is of interest to

MBIE. This information would be used in conjunction with the financial capability assessment proposed earlier.

Proposal C2: Statutory power to compel provision of field development plans

367. We propose to include in the CMA a statutory power to require the provision of updated FDPs to MBIE for approval no less regularly than every four years, or when significant changes are made to an FDP. The FDPs would be required to set out updated cost estimates for decommissioning and P&A activities, in a form specified by MBIE. This is to make sure that permit/licence holders are applying good industry practice to their operations, including adequate planning for the cessation of operations, and that acreage is developed responsibly and efficiently so that economic recovery is maximised.

368. This proposal complements proposal C1. Proposal C1 aims to give MBIE appropriate oversight of a permit/licence holder's financial capability. The risk derived from a permit/licence holder's financial capability is directly related to the ambition in their plans to develop a field. Therefore the two proposals complement each other.

Costs and benefits of proposal C2

369. The marginal cost to permit holders of this proposal should be low, as we would expect permit holders to regularly review their FDPs as part of their business operations, regardless of any new regulatory requirement to provide to MBIE. The cost to MBIE in administering this proposal is also likely to be low. The main benefit is the Crown having better visibility over the development of the petroleum resource (in conjunction with other proposals in this chapter) to ensure that economic recovery is maximised and that decommissioning and P&A obligations are being planned and provided for.

370. On balance, we believe the benefits of the proposal would exceed the costs as ensuring permit/licence holders can fulfil their commitments and efficiently develop resources would increase the likelihood that all New Zealanders can benefit from the Crown minerals estate, and decrease the likelihood of the Crown or third parties needing to pay to fulfil end-of-field-life obligations that are required to be fulfilled by the permit/licence holder.

371. We seek your views on the requirement to provide FDPs, and on how this change might better enable MBIE to identify forthcoming decommissioning and P&A liabilities, as well as provide better visibility of intended field development across its life.

31	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?

D. Financial security obligations

The current approach in New Zealand

372. There is currently an inability under the CMA for MBIE to proactively apply a range of financial security mechanisms[58] to minimise the risk that liabilities for decommissioning and P&A obligations are transferred to the Crown or other third parties. While MBIE can require a bond to be paid as security for compliance with permit conditions, the existing ability to do so has limitations (such as the amount of bond that can be taken).

373. MBIE also does not have visibility over the funds (or other financial security mechanisms) that permit and licence holders are employing or saving, if any, for decommissioning and P&A purposes, and whether deductions included in royalty returns for decommissioning can be substantiated.

374. The Petroleum Act provides for a bond to be deposited before a licence is granted. The Crown employed this mechanism in the past. This bond is for the purpose of ensuring compliance with the licence. For licences under the Petroleum Act financial mechanisms can be used on a case-by-case basis when changes are applied for (such as a change of operator). This can be done for licences as decommissioning is an obligation under the Petroleum Act.

375. It is less clear whether a range of financial security mechanisms can be employed under the CMA, as decommissioning is not specified as a primary obligation in the Act and there are no explicit powers to that effect in the Act. If there is a relevant condition for decommissioning under a permit then financial security mechanisms may be imposed when transfers or changes of control are undertaken.

376. In order for the Minister to be satisfied a permit holder under the CMA is likely to comply with the permit, a bond may be requested. Section 25 of the CMA states that the Minister may grant a permit subject to any conditions that the Minister may impose. Usually such financial security is provided (e.g. a parent company guarantee). Otherwise the application may be declined. MBIE notes that permit/ licence holders may voluntarily provide information that demonstrates that they are able to meet their liabilities to decommission and P&A.

377. Therefore under the CMA there is no direct mechanism for MBIE to impose financial security in respect of P&A and decommissioning obligations *across the life of the permit*. Financial security can only be imposed when a permit holder applies for changes to the permit (for example, a permit participant transfer or a change of control application) and only in some circumstances.

[58] This expression refers to the use of different disciplines, arrangements, and contracts that ensure permit/licence holders have sufficient funding available to carry out decommissioning and P&A activities.

The current approach in the United Kingdom

378. Compared to international jurisdictions, where forms of financial assurance can be required by regulators to cover decommissioning and P&A costs, the CMA has limited tools available to manage these risks. For example, recent changes in the UK[59] require more frequent reviews of the net worth of companies and joint-ventures and these are compared against an estimate of their respective decommissioning obligations on a field-by-field basis. This occurs at the beginning of the project, in response to any evidence of changing financial capability, and regularly after that. This enables the UK oil and gas regulator to access better information to understand the nature and magnitude of decommissioning and P&A costs, and make sure these costs are not transferred to third parties by operators.

There are a range of financial security mechanisms

379. By being able to impose financial security on permit/licence holders, MBIE would be able to make sure that permit/licence holders have the financial capability to discharge their decommissioning and P&A obligations. As for financial capability assessments, MBIE would adopt a risk-based approach, whereby if monitoring showed a permit or licence holder posed higher risk, additional regulatory scrutiny would be applied, and/or higher levels of financial security would be required.

380. Types of financial security products (or some combination) that we propose should be able to be imposed in the event financial capability is not adequately demonstrated to MBIE's satisfaction could include:

- parent company guarantees (typically sought now).
- parent company indemnities.
- performance bonds or separate Escrow accounts (relating to monetary amounts held on trust to meet liabilities in the event they are not met by the permit/licence holder).
- Letters of Credit issued by substantial financial institutions or insurers acceptable to MBIE.
- contractual commitments by permit participants not to distribute profits from the permit or apply them for purposes unrelated to the permit without consent of the Crown.
- establishment of a sinking fund[60] where amounts of money are set aside on trust, calculated by reference to the permit holder's production profits earned each year.

381. The aim of obtaining some form of financial security is to ensure the costs of decommissioning and P&A are able to be met and funded by permit and licence holders. It is

[59] The United Kingdom's decommissioning guidance notes are at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/760560/Decom_Guidance_Notes_November_2018.pdf

[60] A sinking fund is a fund formed by periodically setting aside money for the gradual repayment of a debt or replacement of a wasting asset.

not to duplicate any such mechanisms that might be required under other enactments or by other government agencies or by local government.

Proposal D1: A new power to ensure operators can meet their obligations

382. We propose the introduction of a new power in the CMA to enable MBIE to make regulations for the purposes of ensuring that permit/licence holders are able to meet their obligations to decommission and P&A. These regulations would allow the imposition of a range of financial security mechanisms to cover a permit/licence holder's decommissioning and P&A obligations, where considered appropriate by MBIE on the basis of a risk-based assessment. Any financial security imposed would follow a risk-based assessment and would take into account all other security already demonstrated or provided by the permit/licence holder.

383. The detailed requirements for imposition of these financial security mechanisms would be set out in regulations. By including these tools in regulations (with the appropriate empowering provision in the CMA), changes can be more easily accommodated from time-to-time to align with developing international best practice.

384. In developing regulations, we would seek to consult extensively with stakeholders in order to inform the types of financial security mechanism that might be used and under what circumstances.

Costs and benefits of proposal D1

385. The cost to permit/licence holders of providing financial assurance for decommissioning and P&A costs will depend on a number of factors such as: what kind of financial security is/are required, when, for how long, and how much. Financial security in the form of a parent company guarantee or a Letter of Credit from a bank or similar institution, may have lower costs compared to a cash bond, which would entail a net opportunity cost (equal to the return on any forgone investment minus the interest earned on the bond). In some cases these instruments are already used, for example, parent company guarantees as financial assurance for offshore installations under the Maritime Transport Act 1994.

386. As for the other proposals in this chapter, the potential benefit of this option is that it reduces the likelihood of the Crown or third parties incurring the cost of decommissioning or P&A, or paying to clean up any damage caused by the permit/licence holder failing to complete these activities to a good industry standard.

387. On balance, we believe the benefits would far exceed the costs as ensuring permit/licence holders can fulfil their known commitments would minimise the likelihood that the Crown and third parties will be burdened with liabilities from petroleum exploration and development.

388. We seek your feedback on appropriate financial security mechanisms and issues we should be aware of in deciding how and when these might be used.

Less favoured options for ensuring operators can meet their obligations

389. As for section C, proposal D1 above was formulated after considering a range of options against the following criteria:

- Permit holders are able to demonstrate that they are able to meet their obligations across the life of the permit/licence.
- Transparency of forthcoming obligations and liabilities to the Crown.
- Administrative burden of new requirements for industry and government are minimised.

390. **The status quo option** would rely on permit/licence holders being able to meet their permit obligations. MBIE would continue to be able to impose limited bonds and deeds of guarantee for licences and permit/licence transactions on a case-by-case basis. The status quo represents an unacceptable risk of non-compliance by permit/licence holders for decommissioning and P&A. While failure to meet these obligations is a breach of permit conditions or the Petroleum Act, it would be difficult to prosecute a permit holder who, for instance, had ceased to trade and was based overseas. This situation potentially exposes the Crown and other third parties to considerable financial risk associated with decommissioning and P&A obligations.

391. A second option would be to simply **provide all obligations in the primary legislation only**, including the detailed requirements of when and how financial security would be chosen and applied, without using regulations. This option appeals against the first two criteria. However, over time, this option could become increasingly inflexible. As international best practice evolves, regulations can be changed more swiftly than primary legislation. Therefore, we would prefer to establish the detail of the regime through more flexible regulations.

32	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?
33	Are there particular types of financial security that MBIE should focus on, or any particular types that MBIE should include or exclude?

E. Exploring the residual financial risks of current and future onshore petroleum wells

392. In 2014, the Parliamentary Commissioner for the Environment produced a report titled *Drilling for oil and gas in New Zealand: Environmental oversight and regulation.* In response to this report, MBIE undertook a broad review of financial assurance and risk exposure for onshore petroleum wells to manage the risk exposure to third parties. To date, no changes to the regulatory or legislative regime have been made as a result of this consultation but non-statutory guidance was issued to assist landowners when establishing land access agreements.[61]

393. In practice, New Zealand's onshore petroleum regulatory regime does not impose perpetual liability on permit holders as permits are normally held by limited liability companies which can be closed when a permit is surrendered or expires. A well that has been P&A to what is considered "good industry practice" still poses residual health, safety and environmental risk, due to the possibility of the failure of barriers.[62] The risk of failure is generally accepted to be low, with few instances of well failure occurring in New Zealand.

394. In instances where the former permit/licence holder is not liable (for example, they didn't cause the harm), or if they can no longer be held liable in the event of a well failure (for example, the permit/licence holder no longer exists), the Crown or third parties may be financially exposed to the costs associated with wells that pose a health, safety or environmental risk. This chapter focuses on the issues posed by onshore wells that are currently held by permit holders, or will be drilled in future.

395. While there have only been a small number of cases where third parties were financially exposed to P&A, restoration or remediation costs, out of the approximately 1,000 wells drilled onshore in New Zealand, previous consultation undertaken by MBIE in 2017 has indicated that land owners and occupiers are not always aware of the circumstances in which they may be financially exposed.

396. MBIE's understanding is that there have only been four occasions where third parties have had to remediate wells, with approximately $1.12 million spent as there was no permit holder liable. We are not aware of any cases where the landowner has had to pay to P&A a well, or restore or remediate a wellsite, when there has been a permit holder that was liable or could be held liable.

397. P&A of petroleum wells to "good industry practice" is the best way to minimise the likelihood of future well failures. Further, options proposed to address issues identified around financial capability aim to minimise the chance that a well is not P&A properly before a permit is surrendered, revoked or expires.

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61 This non-statutory guidance can be found in the document "New Zealand's onshore petroleum and minerals regulatory regime". This can be located here.

62 A barrier is the term for a system, for example a cement plug, used to prevent unintended flow from a well and is put in place when suspending or plugging and abandoning a well.

Current mitigations

398. There are Crown-funded mechanisms, e.g. the Contaminated Sites Remediation Fund (CSRF), that can be used to fund the remediation of well sites, but receiving this funding is an uncertain and time-consuming process. In the long-term, the CSRF cannot be relied on as:

- the ability to meet the funding criteria for current or future sites is significantly more difficult to meet than for historic sites.
- the CSRF is taxpayer funded, not industry funded, and arguably well failures should only be funded by the taxpayer as a last resort.
- the CSRF is not provided for by legislation, and could be withdrawn at any time if a future government decides not to fund it.
- a stronger regulatory framework may result in the CSRF being withdrawn in the future due to a lack of need.

399. There are currently no regulatory mechanisms requiring the original permit holder to contribute to the financial management of the residual risk of well failure. However, a number of mechanisms can be used by different parties to manage third party risk exposure for the cost of P&A (for example, financial assurance provisions in resource consents or land access arrangements or bonds). MBIE's understanding is that these mechanisms are not widely utilised because third parties do not appear to be aware of the circumstances where they are financially exposed.

400. We are not proposing any specific changes to the CMA in regard to the management of residual financial risks associated with onshore petroleum wells in this discussion document. However, we are interested in your views on the suitability of existing CMA provisions and also the wider regulatory regime in managing these residual financial liability issues, particularly if there are current mechanisms which are underutilised.

34	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?
35	What are your views on how the residual liability for onshore petroleum wells should be managed?

Chapter 8: Technical amendments

This chapter considers technical amendments to the Crown Minerals Act that are not covered in other chapters. We are considering the following proposals and seek your views on:

- updating and embedding the process for serving notices and documentation within the CMA;
- including a high level environmental capability assessment for a change of permit operator for Tier 1 permits;
- prescribing Annual Summary Reports in an electronic form;
- the Arbitrator appointment process in relation to land access;
- standardising the form of notices submitted by petroleum permit holders;
- clarifying the information for inclusion in petroleum permit holder annual reports;
- removing the requirement to determine the tier status of a permit annually;
- classifying all prospecting permits as Tier 2;
- clarifying the ability of MBIE to proactively release information under section 90; and
- refining the permit allocation process within onshore Taranaki.

401. This chapter outlines the technical amendments that have been identified as a priority at this stage. We seek your views on the proposals raised in this chapter.

402. At the end of this chapter we have also included two minor corrections: one to the CMA and the other to the Crown Minerals (Petroleum) Regulations 2007.

403. In addition to the technical amendments discussed in this chapter, there will likely be required changes to Regulations and Programmes to give effect to policy decisions made through this Review.

A. Service of documentation

Introduction

404. "Service of documentation" refers to the process of providing notices and other official documentation to permit holders. The Government needs to have confidence that this material has been received by the intended party. The Government also needs workable solutions in the event that they reasonably suspect that this material has not been received.

405. The CMA does not currently contain service of documentation provisions, instead it points to the relevant sections in the Resource Management Act 1991 (RMA) to define these

requirements. In October 2017 the service of documentation provisions were changed in the RMA without complementary changes to the CMA.

406. We propose to include service of documentation requirements within the CMA, based on similar settings in other regimes.

Proposal

407. We propose documentation can be served by one or more of the following methods:

- Using a specified address including:
  - PO BOX
  - Email
  - Delivering or posting to their registered office (if a company)
  - Sending it via document exchange to a specified document exchange box
- In person (if an individual)
- Delivering it or posting it to a usual or last known place of residence or business.

408. The address for service (whether physical or email) must be updated if it is no longer valid, or changes (for example if the permit holder moves, or the email address is deactivated). MBIE will use the nominated address for service in the first instance.

409. While it is rare to serve documents on Māori Land, we propose that the original RMA provision is carried over, with appropriate modifications (section 353 of the RMA).

410. Failing effective service, or where there is reasonable doubt that service has been achieved, the Government will have the option to apply to the courts to deem that notice has been given.

36	Does this proposal provide the right balance between the right for parties to be notified, and regulatory efficiency?
37	Are there any other methods of service that we should consider?
38	Are there any unintended effects of this proposal, what are these, and why?

B. High level environmental capability assessments with change of operator for Tier 1 permits

Introduction

411. To grant a **new** exploration or mining Tier 1 permit, the Minister must be satisfied that the permit operator has, or is likely to have, by the time the relevant work in any granted permit is undertaken, the capability and systems likely to be required to meet the health and safety

and environmental requirements of all specified Acts for the types of activities proposed under the permit. To fulfil this requirement the Minister may, but is not required to, rely on the views of regulatory agencies, and must consult with the health and safety regulator.

412. This high level environmental capability assessment is not currently included in the Minister's consideration under an application to change the **operator** of a Tier 1 permit (although the health and safety regulator must be satisfied a potential new operator could meet health and safety requirements). Currently, the regime is set up this way as, by the time a new operator is brought in, the activities for which environmental consent is needed should have already been approved by the relevant regulators and these can be transferred if certain conditions are met.

Proposal: provide for a high-level assessment of a new operator's capability and systems to meet environmental requirements

413. We are considering whether the capability and systems of potential new operators of Tier 1 permits to meet the environmental requirements[63] should be assessed (in addition to the health and safety requirements).

414. The permit operator is responsible for the day-to-day implementation of tasks comprising the work programme, including tasks where risks to the environment need to be mitigated. We consider it would be beneficial to establish consistency between the process for considering applications for new permits and the process for considering changes of permit operator. This ensures that new operators are held to the same standard as new permit applicants, ensuring the integrity of the CMA regime, strengthening environmental safeguards and reducing a perverse incentive to avoid assessment by the regulator by purchasing an established operation.

415. The status quo has the advantage of being less administratively burdensome for MBIE and applicants. However, this review aims to ensure risks and downsides – including risks to the environment - associated with the sector are appropriately managed. Under the status quo, there is a risk that a potential operator's capability and systems to fulfil environmental requirements are inadequate. Further, these are intended to be high-level only, so the additional administrative burden for both parties is minimal.

There are options for assessing a potential operator's environmental capability

416. We have identified two potential options for establishing a high level assessment in the CMA:

- Apply a test to potential new operators identical to that in section 29A(2)(d), as in; "that the proposed permit operator has, or is likely to have…the capability and systems that are likely to be required to meet the…environmental requirements of all specified Acts for the types of activities proposed under the permit"; or

[63] These are covered by a range of regulatory regimes, including the Resource Management Act 1991, Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012, Conservation Act 1987 and Hazardous Substances and New Organisms Act 1996.

- Introduce a higher-level option, whereby the Minister may, but is not required to, consult environmental regulators to inform a decision of whether to allow a change of operator, to ensure capability of achieving environmental outcomes.

417. The first of these options is more rigorous, entailing greater administrative burden for MBIE and operators – as MBIE undertakes its own assessment of the capability and systems of the potential new operator, including using external experts. However, a key benefit of this option is a more thorough managing of the potential risks and downsides associated with the sector.

418. The second option reduces the additional administrative burden, in that it allows the Minister to consider the capability of a new operator if they see a need to, but does not require it, and allows them to rely upon the views of environmental regulators rather than making their own assessment as considered under option one. The second option would not work as well for operators new to New Zealand, i.e. unknown to New Zealand regulators. There would potentially be additional costs from seeking the views of overseas regulators.

419. Both options create more legislative consistency in the treatment of similar circumstances: applications for new Tier 1 exploration and mining permits and applications to change Tier 1 operators.

39	Do you agree that the Minister should consider the environmental capability of potential new operators of Tier 1 permits? If so, what is the best option for doing this? Are there any unintended effects of doing so, what are these and why?

C. Electronic submission of annual summary reports

420. The CMA allows for the Chief Executive of MBIE ('the Chief Executive') to prescribe the manner in which documents are submitted to MBIE if this is not otherwise specified in regulations. Regulation 35 of the Crown Minerals (Minerals Other than Petroleum) Regulations 2007 requires that Annual Summary Reports are provided 'in the form prescribed by the Chief Executive'.

421. The legislation does not prevent the prescription of an electronic form. MBIE intends to require electronic submission of Annual Summary Reports via the Online Permitting System[64], beginning 2021. To signal this intent, we are proposing to clarify in Regulation 35 that the form prescribed may be electronic.

D. Appointment of arbitrator in relation to land access

422. Part 1B of the CMA allows for the appointment of an arbitrator if a land access arrangement cannot be reached between an exploration, prospecting or mining permit holder, and the owner and occupier of the land.

[64] https://www.nzpam.govt.nz/permits/online-permitting-system/

423. However, regulation 28 of the Crown Minerals (Petroleum) Regulations 2007 (the Petroleum Regulations) 'Application for appointment of arbitrator in relation to access arrangement', does not provide for an application for an arbitrator for an exploration or prospecting permit. Given this misalignment between the Act and the regulations, we are proposing that regulation 28 is updated to reflect the requirements of the CMA. Given that these regulations are issued under the CMA, they must be consistent with the requirements of the CMA, and the proposed change would ensure consistency.

E. Standardising the form for notices

424. Notices are required to be submitted by petroleum permit holders to notify the Chief Executive of certain activities the permit holder plans to carry out. For example, a permit holder must give the Chief Executive notice if the permit holder intends to carry out a geochemical, gravity, magnetic or seismic survey in the permit area concerned.

425. The requirements for each notice are prescribed in the Petroleum Regulations. Currently there is no prescribed form for the submission of these notices. MBIE would like to receive these notices in a standardised form as this allows for easier data interrogation, and monitoring and compliance activities.

Proposal

426. MBIE proposes introducing a standard form for each notice required under the current regulations which clearly sets out the information required therein. This information is not intended to differ significantly from the information currently required under the Petroleum Regulations, although it would be in a prescribed format.

427. We propose to add a clause to the notice regulations to clarify that the information provided must be to the satisfaction of the Chief Executive and in the prescribed form.

F. Annual reports for petroleum permit holders

428. Petroleum permit holders are required by the Petroleum Regulations to annually submit a report to MBIE summarising activities carried out with respect to the permit over the previous calendar year. The information to be included in the report is set out in Schedule 6 of the Petroleum Regulations. These are prescribed forms which the permit holders are required to complete.

429. There is additional information that MBIE requires annually from permit holders that is currently not captured in the Petroleum Regulations. Section 90(3)(b) provides MBIE the ability to request a report on any specified aspect of the permit holder's activities under the permit. MBIE has been using this power to ask for additional information as part of annual summary reporting.

430. The information MBIE regularly requests from petroleum permit holders is:

- for well workover and stimulation activities (including when providing information on well workovers and their purpose): the purpose, outcome, start date, end date, formation and depth.

- for well completion and perforation intervals: formation and depth to top and depth to base.
- for expenditure under the permit: operating and capital expenditure for well and production.

431. Rather than using the powers under section 90(3)(b) annually to request the above additional information we propose to require this information to be submitted as part of annual summary reporting.

Proposal

432. We propose to amend Schedule 6 of the Petroleum Regulations by adding the information set out above to the annual reporting requirements.

433. We also propose to add a clause to Schedule 6 of the Petroleum Regulations to clarify that the information provided must be to the satisfaction of the Chief Executive and in the prescribed form, which may be electronic.

G. Re-assessment of permit tier status of minerals permits

434. The 2013 CMA amendments introduced a two-tier system for all permits to reduce the administrative burden for the majority of permit holders but increase the scrutiny applied to high-value or high-risk permits. The concept of tier status is referred to in section 2B of the CMA and Clause 1.7 of the Minerals Programme.

435. Tier 1 permits include all petroleum permits, underground operations[65] and offshore minerals permits. The tier status for the remainder of minerals permits is determined using a framework that distinguishes based on mineral type, expenditure and production set out in Schedule 5 of the CMA. Tier 1 permits are usually the more complex, higher 'risk and return' minerals operations. Tier 1 permits are subject to closer assessment, monitoring and management.

436. Tier 2 permits are for lower 'risk and return', industrial, small business and hobby minerals operations. Tier 2 permits are managed in a pragmatic streamlined process incurring less time and effort for all parties.

437. Currently the CMA provides that the Minister may determine the tier status of a minerals permit at any time he or she thinks fit, but must determine the status:

- on first granting the permit
- once in each permit year; and
- at any time the permit is changed pursuant to section 36(1) of the CMA.

438. The requirement for the Minister to determine the tier status of every mineral permit each year places an additional administrative burden on the Minister (or delegated party, in this

[65] Excluding special purpose underground operations.

case MBIE). There are currently 854[66] minerals permits, all of which must have their permit tier status reviewed annually. This results in MBIE, as delegated by the Minister, having to dedicate up to one month to reviewing Annual Summary Reports and assessing each and every permit's tier status by comparing past and forecast production with the criteria in section 2B of the CMA.

439. In the past 12 months only one permit has changed tier due to information reviewed as part of the Annual Summary Report review process. This indicates that there is very little change in the factors which determine tier status. Therefore, the frequency of the review of tier status does not justify the additional administrative burden placed on MBIE.

Proposal: remove requirement that the Minister must reassess permit tier status annually.

440. We propose to remove the requirement in the CMA that the Minister must determine the tier status of a permit each year. Section 2C(2)(b) and 2C(3) of the CMA already allows the Minister to determine the tier status of a permit when an application is made to change the conditions of a permit and at any other time he or she thinks fit. This means that, during the assessment of Annual Summary Reports or at other times during the monitoring of permits, if MBIE notices a difference in the expenditure, production or nature of the operation, then the tier can be reviewed and changed (if necessary) as appropriate.

441. This will remove the need to assess each and every permit annually and will allow the Minister discretion as to when to change the tier status of a permit thereby reducing the associated administrative burden.

H. Tier of minerals prospecting permits

442. Minerals prospecting permits allow the permit holder to undertake minimum impact activities such as geological mapping, geophysical surveys and hand sampling to identify areas of potential mineral deposits for further exploration (which would need to take place under an exploration permit).

443. Minerals prospecting permits for gold, silver, coal, iron sand, metallic minerals and platinum group metals are currently classified as Tier 1 permits, as set out in section 2B(1)(b) and Schedule 5 of the CMA. The remainder, including alluvial gold prospecting permits, are classified as Tier 2 permits. As set out above, Tier 1 permits are subject to closer assessment, monitoring and management than Tier 2 permits and are usually the more complex, higher risk and return minerals operations.

444. Clause 8.1 of the Minerals Programme sets out that the Minister will ordinarily decline to grant Tier 2 prospecting permits, and prospecting permits for coal over defined coal fields, on the basis that the resource potential is generally well established. Accordingly it does not make sense to split prospecting permits into a two tier system - it is more practical to make them all Tier Two.

[66] As at 4 September 2019.

445. In practice the main difference between Tier 1 and Tier 2 permits is that the Minister may require the holder of a Tier 1 permit to attend an annual review meeting for the purposes of monitoring a permit holder's progress against the work programme of the permit, and every holder of a Tier 1 permit must provide to the Minister an annual report of the holder's engagement with iwi whose rohe overlaps the permit area.

446. We do not currently hold annual review meetings for minerals prospecting permits as the activities allowed for under the permit are generally minimum impact in nature. Prospecting permits do not have resources or reserves so reporting requirements do not apply.

Proposal: Classify all minerals prospecting permits as Tier 2 permits

447. We propose to classify all minerals prospecting permits as Tier 2 permits, regardless of which minerals they are for. Activities under minerals prospecting permits are generally minimum impact in nature and do not need to be subject to closer assessment, monitoring and management like Tier 1 permits.

448. Classifying all minerals prospecting permits as Tier 2 permits will allow MBIE to spend more time on the more complex Tier 1 exploration and mining permits that warrant closer monitoring. Accordingly MBIE will need to spend less time monitoring lower risk, lower return, prospecting permits.

I. Proactive release of records and reports

449. Sections 90(1) to 90(3) set out the information that permit holders must provide to MBIE – this can include reports on exploration activities undertaken during the permit duration, lithological and analytical data, and feasibility studies. Any person can request this information held by MBIE under section 90(6), and upon payment of a reasonable charge the Chief Executive must make this information available, provided the non-disclosure periods stipulated in section 90(6) or section 90(7) have passed.

450. Section 90A further prohibits the Minister and MBIE from disclosing information provided under section 90 unless one of the section 90A exceptions apply.

451. There is currently some uncertainty whether MBIE can proactively release information gathered under sections 90(1) to 90(3) once the relevant non-disclosure periods have passed.

452. The current practice is for MBIE to proactively release some of the sections 90(1) to 90(3) information once the relevant non-disclosure periods (sections 90(6) to 90(7)) have passed. If proactive release is not allowed, then MBIE will no longer be able to make this information available in the absence of a request. This reduces the public's ability to access this information.

Proposal: Provide for proactive release

453. In order to remove any doubt, we propose to amend the Act to specifically permit proactive release of section 90 information once the non-disclosure (sections 90(6) to 90(7)) time

periods have passed. This will ensure that MBIE can continue to release information via the internet which helps improve transparency and the availability of data to the public.

40	Do you agree with these proposed technical amendments and why? Do you think there will be any unintended consequences resulting from these proposals?

J: Permit allocation within onshore Taranaki

454. The Government has committed to holding Block Offers for allocating petroleum exploration permits within onshore Taranaki for 2018, 2019, and 2020. We are considering whether there are options to refine the approach to better reflect the smaller area offered.

455. The Crown Minerals (Petroleum) Amendment Act 2018 limits the granting of new petroleum exploration permits to onshore Taranaki. The shift to onshore-only may justify a change in how permit allocation processes are run. We want the requirements of the allocation regime to be fit for purpose.

41	The Government is interested in your views on how the allocation process for new petroleum exploration permits within onshore Taranaki could be improved to: 1) make acreage within onshore Taranaki accessible via competitive methods 2) allow for more effective engagement with iwi 3) make sure applications are processed efficiently and transparently.

Minor corrections and fixes

456. MBIE has identified two minor corrections as part of the review. These are summarised below.

Location	**Correction**
CMA, section 39(8).	Replace the reference to subsection (2) with a reference to subsection (3).
Crown Minerals (Petroleum) Regulations 2007 Schedule 6, Part 3, Title.	Replace the reference to regulation 40 with a reference to regulation 41.

Annex – Consultation Questions

Chapter 1: Role and purpose statement

Question 1: What aspects of wellbeing (natural capital, human capital, social capital or financial capital) should the CMA consider when making decisions to allocate and manage rights to prospect for, explore for and mine Crown-owned resources? Why should it focus on these aspects of wellbeing?

Question 2: How should the purpose of the CMA be expressed through its purpose statement? Should the purpose statement be amended from *promoting* the prospecting for, exploration for, and mining of Crown-owned minerals for the benefit of New Zealand? If yes, why? If not, why not? If the purpose statement should be amended, what alternative wording would most appropriately describe the purpose of the CMA (e.g. administer, manage)?

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

Question 3: 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.

Question 4: 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?

Question 5: 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?

Question 6: Do you think the CMA is the appropriate legislation for the NIZ provisions? If not, are these provisions are more appropriately housed in alternative legislation (for example, in the Maritime Transport Act 1994)?

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

Question 7: 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?

Question 8: If not, how might we alter the settings to fully provide for this goal to be realised?

Chapter 4: Community participation

Question 9: In your view, should there be more public involvement in the decision-making process for the granting of CMA permits?

Question 10: If so, what does that look like to you?

Chapter 5: Māori engagement and involvement in Crown minerals

Question 11: How can we improve the processes for iwi and hapū to protect land from minerals development on a long-term basis under the CMA?

Question 12: 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)?

Question 13: Do you think iwi engagement reports should be evaluated against a set of reporting requirements? If so, what should permit holders be required to report on in regards to engaging with iwi and hapū?

Question 14: How can the Crown support effective engagement between Māori and permit holders?

Question 15: What changes could the Crown make to its processes to provide for more effective engagement with Māori?

Chapter 6: Compliance and enforcement

Question 16: 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?

Question 17: 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?

Question 18: Do you think there are other changes to the CMA and/or regulations that should be considered in this review to assist in improving and enforcing compliance?

Question 19: Do you agree that adding this offence will achieve the desired outcome of incentivising compliance with section 99F? Why/why not?

Question 20: 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?

Question 21: Do you agree with these proposed record keeping requirements? Why? Does it set the right balance between having comprehensive records and costs to industry?

Chapter 7: Improving petroleum sector regulation

Question 22: Will making decommissioning an obligation in the CMA provide greater accountability, transparency and consistency?

Why/Why not?

Question 23: 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?

Question 24: 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?

Question 25: 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?

Question 26: Do you agree that making plugging and abandonment an obligation in the primary legislation will provide greater accountability, transparency, clarity, consistency, and coherence? Why/Why not?

Question 27: 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?

Question 28: 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?

Question 29: 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?

Question 30: Do you agree with the proposed option? Why/why not?

If not, what would you propose to manage the risks identified?

Question 31: 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?

Question 32: 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?

Question 33: Are there particular types of financial security that MBIE should focus on, or any particular types that MBIE should include or exclude?

Question 34: 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?

Question 35: What are your views on how the residual liability for onshore petroleum wells should be managed?

Chapter 8: Technical amendments

Question 36: Does this proposal provide the right balance between the right for parties to be notified, and regulatory efficiency?

Question 37: Are there any other methods of service that we should consider?

Question 38: Are there any unintended effects of this proposal, what are these, and why?

Question 39: Do you agree that the Minister should consider the environmental capability of potential new operators of Tier 1 permits? If so, what is the best option for doing this? Are there any unintended effects of doing so, what are these and why?

Question 40: Do you agree with these proposed technical amendments and why? Do you think there will be any unintended consequences resulting from these proposals?

Question 41: The Government is interested in your views on how the allocation process for new petroleum exploration permits within onshore Taranaki could be improved to:

1) make acreage within onshore Taranaki accessible via competitive methods
2) allow for more effective engagement with iwi
3) make sure applications are processed efficiently and transparently.