

Crown Minerals Amendment Bill

Government Bill

As reported from the Economic Development, Science and Innovation
Committee

Commentary

Recommendation

The Economic Development, Science and Innovation Committee has examined the Crown Minerals Amendment Bill and was unable to agree whether the bill should pass. We recommend amendments to the bill, as set out in this report, should the House decide that it should proceed.

Introduction

This bill would amend the Crown Minerals Act 1991. The bill aims to enable greater flexibility for allocating and managing Crown-owned mineral rights, improve permit and licence holder engagement with iwi and hapū, and clarify decommissioning-related obligations.

The Act was amended in 2013 to promote investment in Crown-owned minerals, with the introduction of a promotional purpose clause. The Act's current focus on promotion allows limited flexibility in the allocation and management choices available to the Crown, particularly in the context of a transition away from fossil fuels.

This bill would alter the purpose clause of the Act to remove the promotional intent. The change would mean that allocation would be promoted where there is a need, and minimised where there is not.

Legislative scrutiny

As part of our consideration of the bill, we have examined its consistency with principles of legislative quality. We have no issues regarding the legislation's design to bring to the attention of the House.

Proposed amendments

This commentary covers the main amendments we recommend to the bill as introduced. We do not discuss minor or technical amendments.

The purpose of the Act

The bill as introduced would amend the purpose clause of the principal Act. It would change the clause from “the efficient allocation of rights” to “the efficient processing and consideration of applications for rights”. We note that this would shift the focus from economic efficiency to administrative efficiency. Administrative efficiency is already expected. Therefore, we recommend removing clause 4(2) from the bill.

The Minister’s consideration of iwi or hapū feedback on permit and licence holder engagement

Section 33C of the Act requires each Tier 1 permit holder (and Tier 2 permit holders specified in regulations) to provide an annual report to the Minister. The report must describe the permit or licence holder’s engagement with iwi or hapū whose rohe includes some or all of the permit area or who may otherwise be affected by the permit. Amended section 33C would require permit and licence holders to provide those iwi and hapū with the draft report for feedback before it goes to the Ministry of Business, Innovation and Employment. Proposed section 33CA would also give iwi or hapū an opportunity to request an annual review meeting to discuss an iwi engagement report with the ministry and the permit or licence holder. Proposed section 29C would allow the Minister to have regard to iwi and hapū feedback on the quality of the applicant’s previous engagement before granting a permit.

We think that section 29C of the bill could be clearer about how the Minister considers feedback from iwi and hapū when assessing permit applications. We think that when the Minister considers permit applications, they should have regard to feedback from iwi and hapū about the applicant’s engagement as a permit or licence holder when this feedback is provided in iwi engagement reports or at an annual review meeting on iwi engagement. We also think it is necessary to state that the Minister may have regard to any other feedback from iwi and hapū about the applicant’s engagement as a permit or licence holder. We recommend amending proposed section 29C accordingly.

Timeframes for iwi engagement reports

Clause 19 of the bill would amend the Act’s existing regulation-making powers. Clause 19 would enable regulations to prescribe the minimum content of iwi engagement reports required under section 33C of the Act. However, we think that regulations should also be able to prescribe the timeframes within which permit or licence holders must provide the draft report to iwi and hapū for comment. Regulations should also be able to prescribe timeframes for iwi and hapū to give their feedback to the permit or licence holders. We consider that this would set clear expectations and

improve the efficiency of the feedback process. Therefore, we recommend amending clause 19 of the bill.

The Minister's consideration of iwi or hapū feedback on permit or licence holder engagement should come into effect next reporting year

As noted above, the bill and our recommended changes would affect how the Minister considers iwi and hapū feedback when making permit allocation decisions. We consider that all stakeholders would benefit from some time to understand the proposed changes, if this bill becomes an Act. Therefore, we recommend amending the bill so that proposed section 29C would come into force on 1 April 2024. This would align with the submission date for the next round of annual engagement reports. It would also allow permit and licence holders to make any necessary changes before they submit their next reports.

New Zealand National Party view

We have stringent environmental considerations which all extractive and mining companies must meet in order to gain consent. This legislation adds more bureaucracy and more layers of consultation which will ultimately make it expensive to do business in New Zealand.

From 2017 to 2021 the Crown has received \$51 million worth of royalties from coal and mineral extraction. This legislation will mean that the Crown will not promote mining, and hence revenue from royalties will inevitably decrease. At a time when Government debt is high, royalties can provide vital revenue for the Crown, however with this legislation that will diminish.

It is the National Party's view that this legislation will not only have a negative impact on our economy, it will likely have a negative impact on the global environment as mining will simply go offshore where environmental standards are lower than ours.

Appendix

Committee process

The Crown Minerals Amendment Bill was referred to the committee on 22 November 2022. We invited the Minister of Energy and Resources to provide an initial briefing on the bill. She declined to do so.

We called for submissions on the bill with a closing date of 23 January 2023. We received and considered submissions from 334 interested groups and individuals. We heard oral evidence from 17 submitters.

We received advice on the bill from the Ministry of Business, Innovation and Employment. The Office of the Clerk provided advice on the bill's legislative quality. The Parliamentary Counsel Office assisted with legal drafting.

Committee membership

Naisi Chen (Chairperson)

Jamie Strange (Chairperson and member until 8 February 2023)

Glen Bennett

Barbara Kuriger (until 8 February 2023)

Melissa Lee

Stuart Smith (from 8 February 2023)

Hon Michael Woodhouse (from 14 February 2023)

Key to symbols used in reprinted bill

As reported from a select committee

text inserted unanimously

~~text deleted unanimously~~

Hon Dr Megan Woods

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Contents

		Page
1	Title	2
2	Commencement	2
3	Principal Act	2
Part 1		
Amendments to Parts 1 and 1A of principal Act		
4	Section 1A amended (Purpose)	2
5	Section 5 amended (Functions of Minister)	2
6	Section 16 amended (Changes to minerals programmes)	2
Part 2		
Amendments to other provisions of principal Act		
7	Section 23A amended (Application for permits)	3
8	Section 24 amended (Allocation by public tender)	3
9	Section 25 amended (Grant of permit)	3
10	Section 29A amended (Process for considering application)	3
11	New section 29C inserted (Minister may have regard <u>Minister's functions in relation</u> to feedback from iwi or hapū when considering application)	3
	29C Minister may have regard <u>Minister's functions in relation</u> to feedback from iwi or hapū when considering application	3
12	Section 33C amended (Iwi engagement reports)	4
13	New section 33CA inserted (Annual review meeting about iwi engagement reports)	4
	33CA Annual review meeting about iwi engagement reports	4
14	Section 41 amended (Transfer of interest in permit)	5

15	Section 41AE amended (When Minister may consent to change of control of permit operator)	5
16	Section 41C amended (Change of permit operator)	6
17	Section 50A amended (Restricted access to Taranaki conservation land)	6
18	Section 89D amended (Interpretation)	6
19	Section 105 amended (Regulations)	6
20	Schedule 1 amended	7
	Schedule	8
	New Part 5 inserted into Schedule 1	

The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Crown Minerals Amendment Act **2022**.

2 Commencement

- (1) This Act (~~except section 11~~) comes into force on ~~1 July 2023~~ the day after the date on which it receives the Royal assent. 5
- (2) **Section 11** comes into force on **1 April 2024**.

3 Principal Act

This Act amends the Crown Minerals Act 1991.

Part 1

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Amendments to Parts 1 and 1A of principal Act

4 Section 1A amended (Purpose)

- (1) In section 1A(1), replace “promote” with “manage”.
- (2) ~~In section 1A(2)(a), replace “allocation of rights” with “processing and consideration of applications for rights”.~~ 15

5 Section 5 amended (Functions of Minister)

In section 5(a), replace “attract permit applications, including by way of” with “from time to time offer permits for application by”.

6 Section 16 amended (Changes to minerals programmes)

Replace section 16(3) with:

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- (3) Nothing in section 17 or 18 applies to any change to a minerals programme if the purpose of the change is to—
- (a) correct any error and the effect of the change is minor; or

- (b) reflect and give effect to the amendments made by the Crown Minerals Amendment Act **2022**.

Part 2

Amendments to other provisions of principal Act

- 7 Section 23A amended (Application for permits)** 5
In section 23A(2)(d), replace “1A, 25(1)(b)(i),” with “25(1)(b)(i)”.
- 8 Section 24 amended (Allocation by public tender)**
In section 24(5A)(d), delete “(including section 1A)”.
- 9 Section 25 amended (Grant of permit)**
In section 25(2A), delete “(including section 1A)”.
- 10 Section 29A amended (Process for considering application)** 10
(1) After section 29A(2)(d), insert:
(e) in the case of an application for a permit as defined in section 89D, ~~a statement~~ that the applicant is highly likely to comply with the relevant obligations in subparts 2 and 3 of Part 1B. 15
(2) In section 29A(5), replace “section 29B” with “sections 29B and **29C**”.
- 11 New section 29C inserted (~~Minister may have regard~~ Minister’s functions in relation to feedback from iwi or hapū when considering application)**
After section 29B, insert:
- 29C ~~Minister may have regard~~ Minister’s functions in relation to feedback from iwi or hapū when considering application** 20
(1) This section applies if—
(a) the applicant is a previous or current permit holder; and
(b) the applicant, in their capacity as a previous or current permit holder, is or was required to submit an iwi engagement report or reports under section 33C; and 25
(c) the applicant is applying for a permit for which an iwi engagement report is required under section 33C.
(2) If this section applies, before granting a permit, the Minister ~~may have regard to feedback from any iwi or hapū about the quality of the applicant’s previous engagement with the iwi or hapū, in the applicant’s capacity as a previous or current permit holder.~~ 30
(a) must have regard to feedback provided in iwi engagement reports and at annual review meetings about the quality of the applicant’s previous

<p><u>engagement with iwi or hapū in the applicant's capacity as a previous or current permit holder; and</u></p> <p>(b) <u>may have regard to any other feedback from iwi or hapū about the quality of the applicant's previous engagement with iwi or hapū, in the applicant's capacity as a previous or current permit holder.</u></p>	5
12 Section 33C amended (Iwi engagement reports)	
(1) After section 33C(2), insert:	
<p>(2A) Before providing an annual report to the Minister, the permit holder must—</p> <p>(a) provide a draft annual report to iwi or hapū whose rohe includes some or all of the permit area or who otherwise may be directly affected by the permit; and</p> <p>(b) give those iwi or hapū a reasonable opportunity to comment on the draft report.</p> <p>(2B) The annual report must—</p> <p>(a) meet the minimum prescribed content; and</p> <p>(b) include any comments provided by those iwi or hapū on the draft annual report.</p>	10 15
<p>(2) After section 33C(3)(b), insert:</p> <p>(c) the minimum prescribed content for annual engagement reports, which may vary for different classes or kinds of Tier 2 permit.</p>	20
13 New section 33CA inserted (Annual review meeting about iwi engagement reports)	
After section 33C, insert:	
33CA Annual review meeting about iwi engagement reports	
<p>(1) This section applies only if—</p> <p>(a) an iwi engagement report is required under section 33C; and</p> <p>(b) any relevant iwi or hapū asks the chief executive to arrange a meeting under this section.</p> <p>(2) The chief executive may require the holder of a permit for <u>in relation to</u> which an iwi engagement report is required to attend, once in each permit year, a review meeting—</p> <p>(a) to discuss an iwi engagement report or draft iwi engagement report; and</p> <p>(b) to provide an opportunity for discussion about the report or draft report <u>(including any matter relating to the quality of engagement by the permit holder with iwi or hapū)</u>, between any iwi or hapū, the chief executive, the permit holder, the appropriate Minister (but only if the permit relates</p>	25 30 35

- to Crown land), and any regulatory agency that the chief executive has invited to attend the meeting.
- (3) Without limiting **subsection (2)(b)**, the chief executive—
- (a) must—
 - (i) invite all iwi or hapū identified in an iwi engagement report or a draft iwi engagement report as a relevant iwi or hapū; and
 - (ii) invite any other iwi or hapū whom the chief executive considers to be directly affected by the permit to the meeting; and
 - (iii) give all invited iwi or hapū a reasonable opportunity to confirm their attendance; and
 - (b) may invite any regulatory agency that ~~he or she~~ the chief executive thinks is likely to have regulatory oversight of the activities under the permit.
- (4) Unless otherwise agreed between all attending iwi or hapū, the chief executive, and the permit holder, a review meeting must be—
- (a) attended by at least 1 representative of the permit operator who has sufficient seniority, expertise, and knowledge to enable full discussion of the work programme and conditions of the permit; and
 - (b) held on a date and at a place notified to the attending iwi or hapū and the permit holder by the chief executive (which must be at least 20 working days after the date of notification).
- (5) The chief executive must inform all attending iwi and hapū if any person other than those referred to in **subsections (2) and (3)** is attending the review meeting.
- (6) In this section, **relevant iwi or hapū** means an iwi or a hapū whose rohe includes some or all of the permit area or who otherwise may be directly affected by the permit in question.

14 Section 41 amended (Transfer of interest in permit)

Replace section 41(6) with:

- (6) Before granting consent, the Minister must be satisfied that the transferee is highly likely to be able to comply with—
- (a) the conditions of, and give proper effect to, the permit; and
 - (b) in the case of a permit as defined in section 89D, the relevant obligations in subparts 2 and 3 of Part 1B.

15 Section 41AE amended (When Minister may consent to change of control of permit operator)

After section 41AE(1)(a)(iii), insert:

- (iv) in the case of a permit as defined in section 89D, is highly likely to comply with the relevant obligations in subparts 2 and 3 of Part 1B; and

16 Section 41C amended (Change of permit operator)

After section 41C(3)(a)(ii), insert:

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- (iii) in the case of a permit as defined in section 89D, comply with the relevant obligations in subparts 2 and 3 of Part 1B; and

17 Section 50A amended (Restricted access to Taranaki conservation land)

In section 50A(2), delete “1A and”.

18 Section 89D amended (Interpretation)

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In section 89D, insert as subsections (2) and (3):

- (2) To avoid doubt, **subsection (3)** applies in this subpart and, to avoid doubt, it applies if a person is required to comply with provisions that— are expressed to apply to persons of a different status (for example a person who, in order to obtain the Minister’s consent to the transfer of a participating interest in a permit or licence, is required to comply with provisions in this subpart (see sections 89L(3), 89T(3), and 89ZL to 89ZR), that relate to financial securities and that are expressed to apply only to a permit holder or licence holder).

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- (a) apply to persons of a different status (for example a transferee, who, in order to obtain the Minister’s consent to the transfer of a participating interest in a permit, is required to comply with provisions relating to financial securities that are expressed to apply only to a permit or licence holder); or

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- (b) otherwise raise issues relating to their application.

- (3) If this subsection applies, the provisions that the person is required to comply with— apply as if the person were a person to whom the provision is expressed to apply and with any other necessary modifications.

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- (a) apply with any necessary modifications; and

- (b) apply in a way that gives effect to the purpose of the provision imposing the requirement.

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19 Section 105 amended (Regulations)

~~In section 105(1)(cb), after “under section 33C,”, insert “the minimum prescribed content for the reports,”.~~

In section 105(1), replace paragraph (cb) with:

- (cb) prescribing, in relation to iwi engagement reports required under section 33C the minimum required content, the manner in which the reports are to be provided, the periods to which the reports must apply and—

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- (i) the respective times by which the reports must be provided and then distributed for the purposes of **section 33 or 33CA**:
- (ii) the respective times by which feedback must be provided on those reports to the permit holder and the chief executive for the purposes of **section 33 or 33A**.

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20 Schedule 1 amended

In Schedule 1,—

- (a) insert the Part set out in the **Schedule** of this Act as the last Part; and
- (b) make all necessary consequential amendments.

Schedule

New Part 5 inserted into Schedule 1

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Part 5	
Provisions relating to Crown Minerals Amendment Act 2022	5
38 Interpretation	
In this schedule,—	
amendment Act means the Crown Minerals Amendment Act 2022	
new section means the specified section of this Act as amended by the amendment Act	10
new subsection means the specified subsection of this Act as amended by the amendment Act	
39 New sections to apply to existing privileges	
New sections 29C and 33CA apply to each existing privilege as if the existing privilege were a permit and the holder of the privilege a permit holder.	15
40 Amendments apply to existing privileges	
New sections 29A and 33C apply to each existing privilege as if the existing privilege were a permit and the holder of the privilege a permit holder.	
41 Amendments apply to existing permits and licences	
(1) New sections 29A and 33C apply to every existing permit and licence.	20
(2) Subclause (1) does not limit clauses 39 and 40 .	
42 Existing applications determined in accordance with this Act as amended	
(1) Any application that is lodged or submitted, but not determined, before the day after the date on which the amendment Act receives the Royal assent must be determined in accordance with this Act as in force on the day after the date on which the amendment Act receives the Royal assent.	25
(2) Subclause (1) applies despite anything to the contrary in this Act.	
(3) In this clause, application means—	
(a) an application under section 23A (application for permits):	
(b) a tender under section 24 (allocation by public tender):	30
(c) an application under section 41 (transfer of interest in permit):	
(d) a notification under section 41AB (change of control of permit operator of Tier 1 permit):	
(e) an application under section 41C (change of permit operator).	

Crown Minerals Amendment Bill

Legislative history

22 November 2022

Introduction (Bill 198–1), first reading and referral to Economic Development, Science and Innovation Committee