

# **Crown Minerals (Decommissioning and Other Matters) 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 (Decommissioning and Other Matters) Amendment Bill and recommends by majority that it be passed. We recommend all amendments by majority.

### **About the bill as introduced**

The Crown Minerals (Decommissioning and Other Matters) Amendment Bill aims to strengthen the regulation of petroleum decommissioning activities. Decommissioning is the process of taking petroleum infrastructure and wells out of service. It generally involves plugging and abandoning wells, removing or leaving infrastructure in place, and restoring the site if needed.<sup>1</sup>

The Crown Minerals Act 1991 does not explicitly provide for the decommissioning responsibilities of petroleum permit and licence holders. Instead, specific requirements related to decommissioning are listed in individual petroleum permit conditions, resulting in inconsistency both among permit holders and over time.

The bill would amend the Crown Minerals Act to:

- introduce an explicit statutory obligation for all current and future petroleum permit and licence holders to undertake and pay for decommissioning activities

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<sup>1</sup> “Plugging and abandoning” is a technical term for when a well is removed from service and made permanently inoperable.

- introduce civil pecuniary and criminal penalties for failing to fund and carry out decommissioning
- hold parties who transfer out of the permit or licence after the bill is enacted liable for meeting the costs of decommissioning if the new permit or licence holder failed to carry out and fund decommissioning
- enable the Minister<sup>2</sup> to more effectively and regularly monitor a permit or licence holder's financial position and plans for field development, and assess a permit or licence holder's financial capability to complete decommissioning
- require permit and licence holders to obtain and maintain adequate financial security that the Crown could access if the permit or licence holder failed to meet their obligations
- enable the Crown to collect payments to meet the cost of any post-decommissioning work.

The provisions in the bill would apply to the holders of petroleum permits under the Crown Minerals Act and holders of licences granted under the Petroleum Act 1937.

The bill would also make amendments to the Crown Minerals Act that are not specific to decommissioning. The amendments include strengthening the decision-making test for permit acquisitions and expanding the enforcement options available to the regulator. The bill would also make technical amendments to the Act.

### **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, technical, or consequential amendments.

### **Clarifying the bill's purpose**

We note that the purpose of the bill is to mitigate the risk to the Crown and other third parties of having to carry out and fund decommissioning. However, it does not make the Crown liable for decommissioning and post-decommissioning work if the responsible permit and licence holders failed to do so. To avoid doubt, we recommend inserting a provision as new section 89ZZX.

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<sup>2</sup> The Minister would be the Minister of the Crown who, under the authority of a warrant or with the authority of the Prime Minister, is responsible for the administration of the Crown Minerals Act.

### **Definition of “participating interest”**

Clause 4(2) of the bill would replace the definition of “participating interest” in the Crown Minerals Act. In relation to a permit, it would mean an individual share of the permit, expressed as a percentage. For a licence granted under Part 1 of the Petroleum Act, it would mean an individual share of a licence, as recorded on the licence.

We recommend amending the definition by replacing the reference to “individual share” with “undivided share”. Our proposed amendment would reflect that the definition of “participating interest” in the Crown Minerals Act refers to “undivided share”.

### **Decommissioning obligations**

#### **Definition of “decommissioning”**

Clause 17, proposed new section 89E, defines the term “decommissioning” for the purposes of the legislation.

Proposed new section 89E(1)(a) provides that decommissioning means “any activity undertaken under any enactment, and in accordance with any requirements or standards set by or under that enactment or imposed by a regulatory agency, to take out of service permanently petroleum infrastructure or a well used for prospecting or exploring for, or mining of, petroleum”. We recommend amending this section to make it clear that the enactments that could be applied include relevant health and safety, and environmental legislation.

#### **When infrastructure could be left in place**

Proposed new section 89E(2)(a) would enable a person with decommissioning obligations to leave specific objects on site or undertake decommissioning in a certain way if they had the consent of the landowner. We understand that this provision was designed to allow permit and licence holders to leave infrastructure remaining if they thought a landowner would reuse it. However, we consider that this section could undermine the intent of the bill. For example, a permit holder could buy the land and, as landowner, decide to leave the infrastructure in place. Therefore, we recommend removing section 89E(2).

Proposed new section 89E(3) specifies that, if no other relevant legislative or regulatory requirement exists, then infrastructure would need to be decommissioned by totally removing it. We note that this approach does not recognise the potential environmental effects of removal, and believe that leaving the infrastructure in place should be an available option. This provision could apply when the environmental effects of removal were greater than leaving the infrastructure in place. We recommend inserting new subsection 89E(4) to enable a permit holder to apply to the Minister for permission to leave the infrastructure in place where criteria prescribed in regulations were met.

### **Definition of “petroleum infrastructure”**

Proposed new section 89F provides a definition of “petroleum infrastructure”. It would include:

- a structure used onshore or offshore to explore or mine or process petroleum
- any equipment attached to, or used in connection with, a structure, well, vessel, or site
- infrastructure for production, storage, and off-loading and any attached equipment
- any other prescribed thing or class of thing used in connection with, prospecting or exploring for, or mining of, petroleum.

We understand that the intent of the bill is that the holder of a permit or licence would be responsible for decommissioning any structures or equipment installed or operated for the purposes of exploration or production activities under a permit or licence.

We consider that the definition of “petroleum infrastructure”, as introduced, is too broad. We recommend amending proposed new section 89F to limit the definition to infrastructure put in place for the purposes of petroleum exploration and production. It would include infrastructure used to extract, process, and treat petroleum, and for storage. The definition would not apply to anything after the point that petroleum entered any third party transmission or distribution infrastructure.

We also recommend amending section 89F to specify that the definition of “structure” has the same meaning as in section 101(A) of the Crown Minerals Act.

### **Conditions of permits and licences**

#### *Allowing the Minister to set conditions*

Proposed new section 89G would empower the Minister to set conditions relating to decommissioning when granting or transferring a permit or licence, or at any other time. The agreement of the permit or licence holder would not be needed. Section 33 of the Crown Minerals Act provides that a permit or licence is a statutory instrument and any conditions must be complied with under the legislation.

We consider that section 89G, as introduced, could create uncertainty for permit and licence holders by imposing unforeseen conditions. It would also be inconsistent with the Crown Minerals Act. Section 36 of the Act only allows changes to a permit with the consent of the permit or licence holder or in a way already provided for in the permit.

We acknowledge that the discretion granted to the Minister in new section 89G is broad. We recommend amending the bill so that conditions without the consent of the permit holder could only be imposed in certain circumstances. They would be when a permit is granted, on giving consent to the transfer of a permit or licence or all or part of a participating interest in a permit or licence, when a financial security is determined, and if timeframes for when decommissioning must be completed by have not been agreed.

*Interaction between the bill and existing conditions of permits and licences*

Proposed new section 89C describes how the requirements in new sections 42B and 42C and new subpart 2 would interact with existing conditions in permits or licences.

We recommend amending section 89C so that permits could be deemed to be amended to include the bill's decommissioning provisions from subpart 2 and new sections 42B and 42C. If the conditions of a permit and the decommissioning obligations in the legislation were duplicated, or overlapped, the legislation would prevail.

**Clarifying perpetual liability provisions**

Proposed new sections 89K and 89L set out the main rules governing the obligations of permit and licence holders to decommission petroleum infrastructure.<sup>3</sup> These sections also apply to transferors and transferees of permits and licences and participating interests in permits and licences. Permit and licence holders would be responsible for carrying out and meeting the costs of decommissioning all petroleum infrastructure put in place to undertake activities authorised by the permit or licence. Proposed new sections 89R and 89S replicate these provisions for wells.

The bill introduces a concept known as “perpetual liability”. Proposed new sections 89K(2)(a) and 89L(2)(a) would extend the obligation to meet the costs of decommissioning to any participant in a permit or licence that transferred their interest after the bill commenced. However, under section 89N, former participants would only be liable if the current permit or licence holder failed to carry out and fund decommissioning. Also, sections 89K(2)(b) and 89L(2)(b) provide that former participants would only be liable for the infrastructure that was in place when the consent to transfer was granted.

Several submitters expressed concern about the perpetual liability provisions. Their concerns included that the provisions would interfere with existing legal and commercial arrangements, are unnecessary given other requirements in the bill, and would hinder future transfers and sales of assets.

We understand that the perpetual liability provisions are designed to encourage participants to carefully consider who they transfer to. They aim to prevent situations where interests are transferred to another entity to avoid decommissioning obligations and costs without considering whether the transferee can fulfil them.

Several submitters also suggested that the provisions in sections 89K, 89L, 89R, and 89S are broad and would capture all former permit and licence holders, rather than the immediately prior holder. We accept this view and recommend amending the bill to specify an order of priority in which the Crown would enforce the perpetual liability of former permit and licence holders. The current permit holder would be liable first. If they were unable to fund decommissioning, the Crown would investigate for-

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<sup>3</sup> Section 89K relates to permits granted under the Crown Minerals Act, while section 89L applies to licences granted under the Petroleum Act.

mer permit holders in the order that they transferred out of the permit or licence. The most recent one would be next.

### **Definitions of older infrastructure and older well**

Proposed new sections 89I and 89J define the terms “relevant older petroleum infrastructure” and “relevant older well”. The bill provides that certain older wells and infrastructure would have to be decommissioned by the current permit or licence holder. This would apply when they had been put in place or used under a previous permit and licence that was converted to the current mining permit and licence.

We note that appraisal work and delineation of wells would be considered part of the current permit or licence’s lineage.<sup>4</sup> We recommend amending the definition of “older well” to make it as clear as possible what the decommissioning obligation would include. Our new definition would also include any well within that permit or licence area that was drilled or used to delineate or appraise a discovered deposit or occurrence of petroleum for which the current mining permit or licence was granted.

As introduced, the bill specifies that the conversion would need to have occurred under certain sections of the Crown Minerals Act or Petroleum Act. However, we received advice that some permits and licences that are considered prior permits or licences were not exchanged through the mechanism stated in the bill. As a result, some wells that were intended to be captured by the legislation could be excluded from the definition.

To ensure consistency regardless of the mechanism used to transfer the permit or licence, we recommend amending sections 89I and 89J. Our proposed amendment to the definitions would specify when a well or infrastructure would be considered “relevant older”.

We also recommend amending the bill so that specific wells, classes of wells, or infrastructure could be included or excluded from the definition of “relevant older well” or “relevant older infrastructure” through regulations (new sections 89I(1)(a)(iii) and 89J(1)(a)(iii)). This would recognise situations where there was a link between a current permit and a prior exploration permit or mining licence, or prospecting licence, but the mechanism for the exchange was not explicitly listed in the legislation. Accordingly, we recommend amending clause 25, which would amend section 105.

### **Time frame for decommissioning**

Proposed new sections 89O and 89V specify when decommissioning activities would need to be completed.<sup>5</sup> The deadline is either the expiry or surrender of the current

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<sup>4</sup> Appraisal work is undertaken under an exploration permit to determine the size and economic viability of mining a petroleum discovery. The work includes delineating the extent of the area of discovered field by drilling appraisal wells.

<sup>5</sup> Section 89O relates to petroleum infrastructure and section 89V relates to wells.

licence, whichever comes earlier, or timing specified by the Minister in the conditions of the permit or licence.

The bill provides that if a permit or licence was revoked, the holder would have to complete their decommissioning obligations within 2 years after receiving the notice of revocation or by a time agreed with the Minister.

The bill also specifies that decommissioning obligations would continue even if a permit or licence expired before the decommissioning was complete.

Some submitters were opposed to the requirement to carry out decommissioning before a permit or licence expires because permits and licences relate to the right to mine. They were concerned that the duration of a permit or licence was based on production profiles, and the time required for decommissioning was not taken into account. If decommissioning needed to occur before a permit or licence expired, the holder might need to prematurely end production activities. This could result in commercial reserves being left in the ground.

We understand that the time frames for decommissioning are specified in the bill for two reasons: to provide clear expectations for permit and licence holders and clarity about when enforcement action could be taken. Further, we note that land access arrangements or consents are often linked to active permits and licences. If a permit or licence expired or was surrendered before decommissioning was complete, the holder might be unable to renegotiate land access or other consents to undertake decommissioning.

We accept submitters' concerns that section 89O, as introduced, could have unintended consequences. We recommend amending sections 89O and 89V to increase flexibility about when decommissioning would need to occur.

Our proposed amendments would specify that decommissioning would need to take place within a defined time frame agreed with the Minister based on when production is expected to cease. If no timing was agreed two years before the permit is due to expire, the Minister could impose time frames. When agreeing the time frames for decommissioning under sections 89O and 89V, the Minister could also agree or specify key milestones. These would be based on a permit or licence holder's decommissioning plan and time frames. A permit or licence holder would be in breach of their decommissioning obligation if they did not meet the milestones.

We also recommend inserting as new sections 89OA and 89VA the matters that the Minister would need to take into account when deciding the time frame. They include the size of the field to be decommissioned, the estimated date when production will cease, the estimated complexity and cost of decommissioning, and any other relevant available information.

At present, section 36 of the Crown Minerals Act allows the Minister to grant extensions to the duration of a permit. However, they can only be granted for the purpose of extracting the resource. We recommend inserting clause 9A, which would amend the existing extension provisions of the Act to enable decommissioning to be completed before a permit expires or is surrendered.

We also propose similar amendments to the Petroleum Act to enable licence holders to apply for an extension. We recommend inserting clause 35 to this effect.

### **Partial surrender or relinquishment of a permit or licence**

Under sections 35B, 35C, and 40 of the Crown Minerals Act, a petroleum permit holder may be required to relinquish or surrender a portion of their permit area. We recommend inserting sections 89O(1)(ab) and 89V(1)(ab) to specify the decommissioning obligations before a partial relinquishment is approved or a surrender is accepted. A permit holder would be required to decommission any petroleum infrastructure unless an exemption or deferral was granted under proposed new section 89X of the bill. The obligations would apply only to the infrastructure and well in the area to be surrendered or relinquished.

We also recommend replicating these amendments for licences.

### **Definition of “plugging and abandoning” a well**

Proposed new section 89Q defines a well as “plugged and abandoned” when it is sealed to make it permanently inoperable. The sealing must be conducted in accordance with any relevant enactment or standard, and the requirements of any regulatory authority.

We consider that the definition could create confusion because it does not address the removal of particular components or site restoration. Also, the definition of petroleum infrastructure, as introduced, does not include a well but includes any equipment used in connection with a well.

We recommend amending the definition of “plugging and abandoning” by inserting a definition for “wellhead” in new section 89D. Our proposed new definition of “plugging and abandoning” in new section 89Q would also include the removal of the wellhead, any site remediation in accordance with requirements under other legislation, and anything as prescribed in regulations.

### **Decommissioning obligations under the Petroleum Act**

We note that the statutory obligation in the bill (clause 17) to carry out and fund decommissioning would apply to petroleum permits granted under the Crown Minerals Act and petroleum licences issued under the Petroleum Act. This would align the decommissioning obligations under both Acts and ensure consistency.

Section 34 of the Petroleum Act requires licence holders to remove infrastructure and equipment related to their licence 12 months before it expires or is surrendered. To remove duplication of the requirements, we recommend repealing section 34 of the Petroleum Act. Licence holders would instead be subject to the new requirements in the bill.

We recommend inserting a savings provision into clause 36, section 34(4) of the Petroleum Act. It would allow infrastructure already left in place with the permission of the landowner to remain. However, this section would not apply to any future infrastructure.



Under the Petroleum Act, licence holders must apply for an authorisation to construct a pipeline. We do not believe that these authorisations should be included in the bill. However, on reflection, we do not consider it is necessary to explicitly exclude them. This is because most pipelines put in place under pipeline authorisations would be unlikely to be covered by the definition of petroleum infrastructure (which is limited to infrastructure used for exploration, mining and processing). If it becomes necessary to explicitly exclude pipelines constructed under a pipeline authorisation, this could be done through new section 89F(a)(iv), which allows certain things or classes of things to be defined as infrastructure through regulations.

### **Introduction of a decommissioning completion report**

As introduced, the bill does not require a report to be produced when decommissioning is completed. Consequently, the Crown may not have a centralised record of how sites were left. We recommend inserting a requirement as new section 89ZAAD for permit and licence holders to submit a decommissioning completion report. It would need to provide evidence that everything listed on the asset register had been decommissioned.

### **Field development plans**

Clause 16, inserting section 42B, would require the holder of a petroleum mining permit or licence to submit a field development plan (FDP) to the chief executive of the Ministry of Business, Innovation and Employment. An FDP describes the petroleum resource and proposed development and includes geological settings, the estimated field life, and projected decommissioning activities. Under new section 42B, an FDP would need to detail the planned development of the field and meet requirements prescribed in regulations.

We consider that it would be more appropriate to include the information about planning for decommissioning in a separate document. This is because FDPs are generally broader in scope, focusing on the entire lifecycle of the petroleum permit or licence. A decommissioning plan could instead focus on decommissioning technicalities, time lines, and costs.

We recommend amending clause 17 to insert new requirements for permit and licence holders to submit a decommissioning plan (new section 89ZAAA) and a decommissioning cost estimate (new section 89ZAAB). They would need to do so when required by the Minister or as prescribed in regulations. The requirements for the decommissioning plans and cost estimates would be set in regulations.

We recommend amending clause 16, new section 42B, by removing the requirement for the FDP to contain a decommissioning cost estimate.

### **Monitoring the financial position of a permit or licence holder**

Proposed new section 89ZA provides that the Minister could require a permit or licence holder to provide information needed to monitor their financial position. Section 89ZB specifies that the Minister could assess whether a permit or licence holder

had the financial capability to meet their decommissioning obligations. This is known in the bill as a “financial capability assessment”.

### **Timing for carrying out financial monitoring**

Proposed new section 89ZA(2) would allow the Minister to request information by written notice. The notice would set out the form and manner of the information to be provided and the time frame for providing the information.

We believe that regular financial monitoring cycles would provide more certainty to permit holders and reduce the administrative burden on the regulator. We recommend amending section 89ZA to state that information required to enable ongoing financial monitoring would need to be provided at times specified in regulations.

We also recommend amending this section to enable the Minister to require any further information needed to carry out the monitoring.

### **Deciding whether to carry out a financial capability assessment**

To enable permit and licence holders to plan for assessments, we recommend inserting section 89ZBA to specify criteria that the Minister would need to consider when deciding whether to undertake a financial capability assessment. The decision would be informed by information provided through financial monitoring and in the FDP, asset register, proposed decommissioning plan, and decommissioning cost estimate. The decision would also be informed by any current or emerging risks.

### **Information provided for a financial capability assessment**

Proposed new section 89ZC specifies that permit and licence holders would need to provide information for the financial capability assessment. Under new section 89ZC(4), the Minister could require them to provide any information that the Minister considered necessary to carry out the assessment. We consider that this section is unnecessarily broad and recommend amending it to narrow the information that a permit holder would be required to provide. Our proposed amendment would instead refer to any supporting information that was relevant and reasonably necessary to assess financial capability.

We note that each permit and licence has one permit or licence holder but can have one or more participants. As introduced, section 89ZC would only enable information to be collected from the permit or licence holder. This would include individual participants in a permit or licence. However, for greater clarity, we recommend amending the bill to extend who section 89ZC(1) would also apply to. It would include a person who held a participating interest in the permit or licence and any other person the Minister considered was likely to hold information needed to perform the financial capability assessment.

### **Guidance on how information will be stored and used**

We note that most new provisions in the bill requiring information to be provided for financial monitoring and financial capability assessments would be subject to sections 90 and 90A of the Crown Minerals Act. Section 90 (Permit holder records and

reports) specifies that certain information provided by a permit holder under this section can be disclosed after five years or when the permit expires (whichever is earlier). Section 90A (Disclosure of information) sets out the criteria that must be met before the Minister or chief executive can disclose information gathered under certain sections of the Act.

We recommend that the financial information gathered under sections 89ZA, 89ZC, 89ZAAC, 89ZE, 89ZR, and 89ZS should only be subject to section 90A of the Crown Minerals Act. Section 90A provides a stronger power for protecting information because it states that the information is confidential and therefore cannot be disclosed in specified situations. Accordingly, we recommend amending sections 89ZA, 89ZC, 89ZAAC, 89ZE, 89ZF, 89ZR, and 89ZS to remove the references to information gathered under these sections being subject to section 90.

We recommend amending the bill to specify that sections 42B (Field development plans) and 42C (Notification of cessation of production) should be subject to section 90A of the Act.

We have recommended inserting requirements as sections 89ZAAA and 89ZAAB for separate decommissioning plans and decommissioning cost estimates. We recommend that these sections should also be subject to section 90A of the Act.

### **Requirement to obtain financial security**

Clause 17, new section 89ZE, provides that permit and licence holders would need to obtain one or more financial securities as security for the performance of their decommissioning obligations. The Minister would decide the amount and kind of financial security on a case-by-case basis under proposed new section 89ZG.

New section 89ZF(1) specifies the matters that the Minister would need to consider when setting the kind and amount of security. Under section 89ZF(1)(c)(i), they would need to take into account the general need to ensure that the security was sufficient to meet the estimated costs of decommissioning.

New section 89ZG(3) provides that the Minister would need to determine that the amount of security was sufficient to meet all or any proportion of the estimated costs of decommissioning. New section 89ZG(4) specifies that the kind of financial security would need to be such as to enable the Crown to obtain payment of the amount if the permit or licence holder failed to carry out or meet the costs of decommissioning.

We consider that the minimum thresholds set in section 89ZG(3) and (4) could be unachievable in practice and we recommend deleting them. Rather than being requirements, we believe that they should be matters for consideration that would replace section 89ZF(1)(c)(i). We recommend amending section 89ZF(1) to this effect.

We recommend amending section 89ZG(5) to improve the transparency of the decision-making process. The Minister would need to demonstrate the factors they considered and how they made the decision about the amount and kind of financial security required.

We also recommend amending section 89ZG to specify that the minimum requirements that a financial security would need to meet would be set out in regulations.

### **Obligations for transferors and transferees**

Proposed new sections 89M and 89T set out the obligations of participants transferring in or out of permits or licences. Sections 89M(3) and 89T(3) require an incoming participant to establish a financial security or become a party to an existing one within the time specified by the Minister. If they did not, the transfer would be deemed void, and the outgoing participant would continue to be part of the permit or licence. We understand that these provisions are designed to avoid a situation where the financial security is dependent on the outgoing participant, and the new participant cannot provide the same level of assurance.

We recommend amending the bill to remove these requirements. Instead, the incoming participant to a permit or licence would need to establish or join a financial security before the transfer was approved. We consider that this approach would provide more certainty for a participant who planned to transfer a permit, and would better protect the Crown. It would avoid a period when one party had exited a permit and a new security had not been established.

### **Using cash or monetary deposits to fund decommissioning work**

We recommend inserting section 89ZG(4B) to specify when a permit or licence holder could access a financial security that was in the form of a bond or cash or a cash deposit. The funds could only be used for decommissioning work after production from a field had ceased. The Minister's consent would be needed to access funds before production had ceased.

### **Arrangements for existing securities**

Schedule 1 of the bill would insert Part 4 into Schedule 1 of the Crown Minerals Act. Clause 35 of the bill's schedule states that any existing financial security before enactment would be considered a financial security for the purposes of fulfilling the requirements in new section 89ZE.

We consider that it would be more appropriate for permit and licence holders to propose their existing security under section 89ZE. The Minister would then review it as part of the process set out in section 89ZF. We recommend deleting clause 35 of Schedule 1 and amending proposed sections 89ZE and 89ZF to this effect.

### **When deposits would be refunded**

Section 97 of the Crown Minerals Act sets out what the Minister can do with a bond or monetary deposit held for compliance with a permit. It specifies that Part 7 of the Public Finance Act 1989 applies to all money paid to the chief executive in respect of a monetary deposit or bond required under the Act. Section 97(4)(a) provides that a refund will be issued to a permit holder when a permit has been terminated or transferred if the conditions of the permit have been substantially complied with.

We recommend amending the bill to state how any bond or monetary deposit paid under new section 89ZE would be dealt with. Our proposed amendments would specify that section 97 of the Crown Minerals Act would apply, except for section 97(4). Instead, any funds would be refunded when decommissioning was complete. Funds would not be refunded if a permit or licence finished before decommissioning was complete.

Section 47H of Petroleum Act would continue to apply to bonds or monetary deposits already held by licensees under that Act before the bill was passed.

## **Penalties**

### **Pecuniary penalties**

The bill would introduce a civil pecuniary penalty for failing to meet decommissioning obligations.<sup>6</sup> This would apply to current and future holders of petroleum exploration and mining permits and mining licences.

Proposed new section 89ZZO sets out the pecuniary penalty regime for contravening the obligations to decommission petroleum infrastructure, plug and abandon wells, or establish and maintain adequate financial security. The maximum penalty would be \$500,000 for an individual or \$10 million for a body corporate.

We note that the estimated costs of decommissioning vary given the wide range of petroleum fields in New Zealand. To enable the penalty to be proportionate, we recommend amending the maximum civil pecuniary penalty for a body corporate. Our proposed new penalty would be the greater of \$10 million, or either three times the commercial gain or 10 percent of the turnover of the body corporate and all its interconnected bodies corporate.

### **Criminal penalties for permit and licence holders**

Proposed new section 89ZZQ would create a criminal offence for knowingly failing to carry out a person's decommissioning obligations or meet the costs, or both. A person liable for decommissioning obligations (A) would commit an offence if they did an act, failed to act, or engaged in conduct knowing that the act, failure to act, or conduct would result in not being able to meet their decommissioning obligations. If a body corporate committed an offence under this section, the director of the body corporate at the specified times would also commit an offence.

The penalties for an individual, if convicted, would be imprisonment for a term of up to two years or a fine of up to \$1 million. For a company, the penalties would be a fine not exceeding either \$10 million or three times the cost of decommissioning, whichever is greater.

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<sup>6</sup> Pecuniary penalties are non-criminal monetary penalties imposed by a court in civil proceedings. They apply the civil standard of proof (the balance of probabilities).

Proposed new section 89ZZR would create a defence to criminal liability for directors. The director would need to prove any of the following:

- the person liable for the decommissioning obligations (A) took all reasonable steps to ensure that they would meet their obligations
- the director took all reasonable steps to ensure that A would meet A's decommissioning obligations
- the director could not reasonably have been expected to take steps to ensure that A would meet A's decommissioning obligations.

Several submitters expressed concerns about the way that the criminal liability would interact with the perpetual liability provisions in the bill. They submitted that these provisions could result in a director still being criminally liable years after their company had transferred out of a permit.

We understand that the criminal offence provisions are intended to punish the most egregious breaches of decommissioning obligations. We consider that these are likely to be actions related to directors of current permit or licence holders. Therefore, we recommend amending section 89ZZQ to specify that only directors of current permit or licence holders could be held criminally liable for breaching the decommissioning obligation. However, directors of former permit or licence holders could still be liable for the civil pecuniary penalty.

#### **When civil and criminal action could be taken**

Proposed new sections 89ZZO(4) and 89ZZQ(5) set out when the Crown could take action after a breach of decommissioning obligations had occurred. As introduced, proceedings could be commenced within three years after the matter giving rise to the contravention or offence was discovered or should reasonably have been discovered.

We recommend amending the bill to clarify when the decommissioning obligation would become due. This would make it clear when the Minister could consider that a permit or licence holder had failed to undertake decommissioning. A permit or licence holder would be required to demonstrate that they had met the milestones agreed under new sections 89O and 89V.

#### **Relationship between pecuniary penalties and criminal liability**

Under proposed new section 89ZZS, a proceeding for a pecuniary penalty against a person would be stayed if a criminal proceeding against the person had begun for an offence relating to the same conduct. This section is intended to ensure that a person could not be convicted twice for the same offence.

New section 89ZZS(3) provides that a person could apply to have a stay lifted on civil proceedings after a criminal proceeding was completed. For clarity, we recommend amending section 89ZZS so that a civil pecuniary penalty could not be brought where a person had been prosecuted and found guilty under criminal proceedings for the same offence.

## **Post-decommissioning work**

Proposed new section 89ZO would require permit and licence holders to make payments towards the cost of any post-decommissioning work. Under proposed new section 89ZP, the Minister would need to set the amount that each permit or licence holder would have to pay based on prescribed criteria. Proposed new section 89ZR specifies that the chief executive would need to ensure that the money was paid into one or more accounts according to section 104 of the Crown Minerals Act.<sup>7</sup>

We recommend amending section 89ZO to provide the permit or licence holder with the option of providing a type of security, if certain criteria were met. The amount and type would be at the discretion of the Minister and informed by criteria set out in regulations.

Proposed new section 89ZN provides a definition of “post-decommissioning work”. It means activities carried out to remediate petroleum infrastructure that has been decommissioned but not removed, or a well that has been plugged or abandoned. It also means environmental damage or health and safety risks caused by a failure of the decommissioning of the petroleum infrastructure or well.

We recommend amending the definition to include monitoring activities.

## **Periodically reviewing the post-decommissioning fund**

Several submitters suggested that money in the post-decommissioning fund could remain untouched for a long period of time, which may not be the best use of the fund. To address these concerns, we recommend amending new section 89ZS to allow the level of funds to be periodically reviewed. The timing would be set out in regulations.

Proposed new section 89ZR(3) would allow the chief executive to refund all or part of the money collected for post-decommissioning obligations if the regulations authorised it. We recommend amending the bill to clarify that a refund could be issued while the permit or licence was still in force or after it had expired or been surrendered.

## **Enabling people to access the fund**

Proposed section 89ZS would authorise the Minister to direct that money received for post-decommissioning obligations be given to a specified person within a prescribed class of persons or organisations to use for a specified project. The Minister could do so in accordance with prescribed requirements. However, the bill as introduced contains no empowering provision to allow regulations to set the process that applicants would need to follow when seeking to access the fund. To enable this, we recommend inserting section 89ZS(ca).

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<sup>7</sup> Section 104 relates to the recovery of fees and other money.

### **Information that the Minister could consider**

As introduced, section 89ZS(2)(a) provides that the Minister could take into account information supplied under sections 89ZA and 89ZC.<sup>8</sup> This would be for the purposes of undertaking their duties related to post-decommissioning obligations.

We recommend amending section 89ZS so the chief executive and the Minister could also take into account information provided under new sections 42B (Field development plans), 42C (Notification of cessation of production), 89ZAAA to 89ZC, and 89ZP. We believe this would help the Minister perform their duties by providing better information to support decisions about post-decommissioning obligations.

### **Exemption and deferral powers of the Minister**

As introduced, the bill would enable the Minister to exempt a permit or licence holder from certain requirements in the legislation.

New section 89X would empower the Minister to exempt a permit or licence holder from the requirement to decommission petroleum infrastructure or to plug and abandon a well. The Minister could also defer the deadline for complying with the decommissioning obligation. Class exemptions could be made by regulations under clause 25, new section 105(1)(qb).

Proposed new section 89Y sets out the criteria for granting exemptions under section 89X. New section 89Z specifies the criteria for granting deferrals under section 89X.

Proposed new section 89ZT would enable the Minister to exempt a permit or licence holder from the obligation to make post-decommissioning payments (either in whole or part). Class exemptions could be made by regulations under clause 25, new section 105(1)(qg). Proposed section 89ZU sets out the criteria that the Minister would need to apply before granting an exemption.

### **Amendments resulting from views of the Regulations Review Committee**

On 13 August 2021, the Regulations Review Committee wrote to us setting out its concerns about the proposed exemption powers contained in the bill. It was concerned that there were no clear limits on the Minister's exemption powers, and no provision for Parliament to scrutinise the exercise of that power. The Regulations Review Committee's main concerns are listed below:

- It is unclear whether the criteria for determining exemptions under new sections 89Z and 89ZU apply equally to class exemptions as they do to individual exemptions.
- Even if those criteria did apply, they do not require the Minister to consider the purpose of the Act when granting exemptions nor to give reasons for their decision.

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<sup>8</sup> Section 89ZA relates to information needed to monitor a person's financial position. Section 89ZC relates to information provided for a financial capability assessment.



- No criteria are given for determining an application under new section 105(1)(qi)(viii).
- New section 105(1)(qk)(iv) would allow the Minister to set the criteria for determining class exemptions from the requirement to make a post-decommissioning payment.
- There are no reporting requirements to allow Parliament to monitor exemptions that are made.

The Regulations Review Committee recommended that the bill be amended to:

- set out the purposes for granting class exemptions and criteria under which an exemption would be determined
- require that any exemptions be consistent with the purposes of the Act
- require that any exemption be accompanied by clear reasons why it was granted.

We recommend several amendments to sections 89X and 89ZT in response to the Regulations Review Committee's concerns. We recommend amending both sections to require the Minister to provide written notice of the reasons for granting an exemption and to state them in the exemption instrument. We also recommend amending section 89X to make it clear that the Minister would need to apply the same criteria for individual exemptions as for class exemptions.

We do not recommend amending section 89ZT to include the purposes for granting class exemptions and the criteria under which they were determined. We note that the criteria will have undergone consultation and will be specified in regulations, and consider that this is sufficient.

We also do not believe it is necessary to require any exemptions to be consistent with the purposes of the Act. This is because no decision should be inconsistent with the purpose of the Act regardless of whether it is explicitly specified as a relevant consideration in the legislation.

The Regulations Review Committee also expressed concern about the power to create regulations exempting a class of permit or licence holder from the requirement to hold financial security. It noted that this section does not have an equivalent administrative power to exempt an individual licence or permit holder as the other powers do.<sup>9</sup> Therefore, there is no equivalent criteria section for determining whether to grant the exemption.

We accept these concerns and recommend deleting the powers under section 105 that would allow exemptions to be granted from the requirement to obtain and maintain a financial security.

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<sup>9</sup> An administrative power does not require any legislation to take effect and is used in this bill to enable the Minister to grant exemptions to individuals.

### **Criteria for granting an exemption to decommissioning obligations**

Before granting an exemption under section 89X, the Minister would need to be satisfied that the petroleum infrastructure or well was likely to be used for a purpose other than mining petroleum. We recommend amending section 89Y to require the Minister to be satisfied that the petroleum infrastructure or well would be used for a purpose other than mining petroleum. This would require a permit or licence holder to provide evidence that they have obtained agreement for infrastructure or wells to be used for another purpose. As introduced, they need only justify why another use is likely.

### **Commencement of the legislation**

Clause 2 provides that most clauses in the bill and Schedules 1 and 2 would come into force the day after the date of Royal assent. However, several clauses would come into force by Order in Council or after the 24-month period that starts on the date of Royal assent.

We recommend amending clause 2 so that the requirements relating to field development plans (new section 42B), asset registers (new section 89ZD), and notification of cessation of production (new section 42C) would come into effect the day after the date of Royal assent. Our proposed amendment would enable all requirements relating to decommissioning to come into effect immediately and provide the regulator with additional compliance and enforcement options. We believe it is important that these options are available as soon as possible to allow for improved monitoring of decommissioning obligations for permit and licence holders.

### **Compliance and enforcement tools**

#### **Infringement offences**

Clause 24 would insert new sections 104A to 104J into the principal Act. It would create a regulation-making power to establish an infringement offence regime that would apply to holders of mineral and petroleum permits and licences in proceedings for a breach of the infringement regulations. The regime would enable an enforcement officer to issue an instant infringement fee where they reasonably believed there had been clear, relatively low-level, breaches of the legislation.

We note that the infringement offence scheme provided for in the bill would enable the regulator to issue an instant fee. However, the bill does not provide for the prescribing of associated fines for failing to pay this fee. We believe this would be useful to guide the Court in proceedings against the permit or licence holder.

We were advised that fines could be issued under the Summary Proceedings Act 1957 and the Criminal Procedure Act 2011. However, the level of the fine is at the discretion of the Court. To make the bill clearer as to how much the fines might be, we recommend amending section 104J. Our proposed amendment would provide for the prescribing of maximum fines of no more than twice the amount of the fee.

Proposed new section 104A defines an “infringement offence” as “an offence against this Act or an offence against the regulations that is prescribed as an infringement

offence in the regulations”. The purpose of infringement offences is to enable a proportionate response to low-level breaches and encourage compliance without needing to resort to more serious punitive measures. They are intended to work alongside standard offences in the Act, not to replace them.

As introduced, however, new section 104A would inadvertently convert all standard offences in the Act and regulations to infringement offences. This would remove the ability to pursue criminal convictions and maximum penalties for more serious breaches of the Act. We note that this was not the intention.

Accordingly, we recommend inserting section 104K to make it clear that specifying a breach as an “infringement offence” in regulations would not prevent further action being taken under the Act for contravention related to the same obligation.

### **Compliance notices**

Proposed new section 89ZZD would empower the chief executive or enforcement officer to issue compliance notices. New section 89ZZE sets out the required content of a compliance notice. New section 89ZZE(1) refers to the chief executive or enforcement officer believing that a person had contravened the Act or regulations, or was likely to. For consistency with section 89ZZD, we recommend amending section 89ZZE(1) to refer to believing “on reasonable grounds”.

### **Extension of time for compliance with compliance notices**

Proposed new section 89ZZG would enable the chief executive or an enforcement officer to extend the compliance period for the compliance notice. They could only do so if the period had not ended.

We recommend inserting subsection (3A) to enable an extension of two weeks if the permit or licence holder requested one within the compliance period. This would apply if the chief executive or enforcement officer had not made a decision on the application within the compliance period.

### **General provisions relating to compliance notices**

Proposed new section 89ZZH(2) provides that a compliance notice could be addressed to any person under the person’s legal name or usual business name or style. We consider that the reference to “style” is unclear in this context and recommend deleting it.

### **Civil proceedings relating to non-compliance with compliance notice**

Proposed new section 89ZZM would enable the District Court to make an order compelling a person to comply with a compliance notice, or restraining a person from contravening one. New section 89ZZM(3)(b) provides that the courts could make an order whether or not the compliance period for the notice had expired. We do not believe it would be useful to enable a court to make an order against contravention of a compliance notice where the compliance period had expired. Therefore, we recommend deleting section 89ZZM(3)(b).

**Applying consistent time frames for delivering compliance and infringement notices**

Proposed new section 89ZZL (Issue of compliance notice) provides that a compliance notice is considered to have been received “at the time at which the notice would have been delivered in the ordinary course of the post”. Proposed new section 104G specifies that an infringement notice would be considered to have been served on a person on “the fifth working day after the date on which it was posted”.

We recommend amending section 89ZZL so that the requirements relating to delivery to a person are consistent with the provisions in section 104G.

**Permit holder records and reports**

Clause 19 would amend section 90, which relates to permit holder records and reports. Proposed new section 90(8A) would enable the chief executive to publish any of the information supplied under this section on a website.

We recommend amending this section to provide guidance on how the chief executive should exercise this discretion and how commercially sensitive information should be treated. Our proposed amendment would specify that nothing in this section requires the chief executive to make any information available gathered under subsection (1A)(a), including information gathered under sections 89ZA, 89ZC, 89ZAAA, 89ZAAB, 89ZAAC, 89ZAAD, 89ZE, 89ZF, 89ZR, and 89ZS.

**New Zealand National Party differing view**

Submitters on this bill were supportive of the petroleum sector’s responsibility for decommissioning gas fields in a safe and lasting way; however this bill is a huge over-reach and completely oversteps the solution to the challenges that it is trying to solve. The bill was based on one bad experience and if it passes, it will create an adverse effect on investment. This will have flow-on effects on affordability of gas and is likely to impact security of energy supply.

The retrospectivity of some provisions of the bill will impact on existing permit and licence holders and their existing rights and duties; the proposals in the bill are stricter than international comparisons. There are no other known directors in New Zealand who are bound to the requirements in this bill, which will discourage directors from governance in this industry.

The marginal costs of the proposed regime exceed the marginal benefits. This bill is another blow to an industry which has already been kneecapped by this Government to the detriment of New Zealand’s economy and climate sustainability. The medium-term results are likely to see more imported coal keeping our lights on.

## Appendix

### Committee process

The Crown Minerals (Decommissioning and Other Matters) Amendment Bill was referred to the committee on 6 July 2021.

The closing date for submissions on the bill was 18 August 2021. We received and considered 23 submissions from interested groups and individuals. We heard oral evidence from 11 submitters at hearings in Wellington and by videoconference.

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. The Regulations Review Committee reported to us on the powers contained in clause 25.

### Committee membership

Jamie Strange (Chairperson)

Glen Bennett

Naisi Chen

Melissa Lee

Hon Todd McClay

Barbara Kuriger took part in the consideration of this item of business.



**Crown Minerals (Decommissioning and Other Matters)  
Amendment Bill**

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**Key to symbols used in reprinted bill**

**As reported from a select committee**

text inserted by a majority

~~text deleted by a majority~~





*Hon Dr Megan Woods*

# **Crown Minerals (Decommissioning and Other Matters) Amendment Bill**

Government Bill

## **Contents**

		Page
1	Title	6
2	Commencement	6
3	Principal Act	7
<b>Part 1</b>		
<b>Amendments to Part 1</b>		
4	Section 2 amended (Interpretation)	7
5	Section 2B amended (Meaning of Tier 1 permit and Tier 2 permit)	7
6	Section 2C amended (Determination of permit tier status)	8
7	Section 5 amended (Functions of Minister)	8
<b>Part 2</b>		
<b>Amendments to other Parts of principal Act</b>		
8	Section 29A amended (Process for considering application)	8
9	Section 32 amended (Right of permit holder to subsequent permits)	8
<u>9A</u>	<u>Section 36 amended (Change to permit)</u>	<u>8</u>
10	Section 41 amended (Transfer of interest in permit)	8
11	Section 41AE amended (When Minister may consent to change of control of permit operator)	9
12	Section 41C amended (Change of permit operator)	9
13	Section 41D amended (General provisions relating to transfers, dealings, and changes of permit operator)	9
14	New subpart 1 heading in Part 1B inserted	9
Subpart 1—Permits, access to land, and title notations		

**Crown Minerals (Decommissioning and Other Matters)  
Amendment Bill**

15	New cross-heading above section 42 inserted	9
<i>Surveys</i>		
16	New sections 42B and 42C and cross-headings inserted	9
<i>Field development plans in respect of petroleum mining permits and licences</i>		
42B	Field development plans to be submitted to chief executive	9
<i>Notice of expected cessation and notice of cessation of petroleum fields</i>		
42C	Notice of expected cessation and notice of cessation	10
17	New subparts 2 to 5 of Part 1B inserted	10
Subpart 2—Decommissioning of petroleum infrastructure and wells		
89A	Application of this subpart	11
89B	Relationship between this subpart and other enactments	11
89C	Relationship between <del>new</del> sections 42B and 42C, this subpart, and existing conditions of permits and licences	11
89D	Interpretation	11
89E	Decommissioning	12
89F	Petroleum infrastructure	13
89G	Conditions relating to decommissioning	14
<del>89H</del>	<del>Criteria for setting time frames for decommissioning as condition of permit or licence</del>	<del>14</del>
89I	Meaning of relevant older petroleum infrastructure	15
89J	Meaning of relevant older well	17
<i>Decommissioning obligations for petroleum infrastructure</i>		
89K	Obligations of permit holders, transferors, and transferees: decommissioning of petroleum infrastructure	18
89L	Obligations of licence holders, transferors, and transferees: decommissioning of petroleum infrastructure	19
89M	Further obligations on transferors and transferees <u>and Minister</u>	20
89N	<del>Exceptions to sections 89K and 89L—</del> Extent of liability of former permit and licence holders under <b>sections 89K(2) and 89L(2)</b>	21
89O	When decommissioning obligations of persons under <b>section 89K, 89L, or 89M</b> arise	22

**Crown Minerals (Decommissioning and Other Matters)  
Amendment Bill**

<u>89OA</u>	<u>Criteria for agreeing or setting time frames for decommissioning</u>	<u>23</u>
89P	Joint and several liability	23
	<i>Plugging and abandonment of wells</i>	
89Q	What is plugging and abandonment of well	24
	<i>Decommissioning obligations in relation to wells</i>	
89R	Obligations of permit holders, transferors, and transferees: decommissioning of wells	25
89S	Obligations of licence holders, transferors, and transferees: decommissioning of wells	25
89T	Further obligations on transferors and transferees <u>and Minister</u>	26
89U	<del>Exceptions to</del> <u>Extent of liability of former permit and licence holders under <b>sections 89R and 89S</b></u>	27
89V	When decommissioning obligations of permit holders, licence holders, and other persons under <b>section 89R, 89S, or 89T</b> arise	28
<u>89VA</u>	<u>Criteria for agreeing or setting time frames for decommissioning of wells</u>	<u>29</u>
89W	Joint and several liability	30
	<i>Exemptions and deferrals</i>	
89X	Exemption and deferral powers of Minister	31
89Y	Criteria for granting exemption	31
89Z	Criteria for grant of deferral	32
	<u>Reporting requirements</u>	
<u>89ZAAA</u>	<u><b>Subpart 2</b> decommissioning plan</u>	<u>32</u>
<u>89ZAAB</u>	<u>Decommissioning cost estimate</u>	<u>33</u>
<u>89ZAAC</u>	<u>Asset registers to be submitted to chief executive</u>	<u>33</u>
<u>89ZAAD</u>	<u>Decommissioning completion report</u>	<u>34</u>
	<i>Ongoing monitoring of financial position</i>	
89ZA	<del>Minister may require information</del> <u>Permit and licence holders must provide information needed to monitor financial position of permit or licence holder</u>	34
	<i>Financial capability assessments</i>	
89ZB	Minister may assess financial capability to meet decommissioning obligations	35
<u>89ZBA</u>	<u>Criteria for considering whether to carry out financial capability assessment</u>	<u>36</u>
<u>89ZBB</u>	<u>Process for carrying out financial capability assessment</u>	<u>36</u>

**Crown Minerals (Decommissioning and Other Matters)  
Amendment Bill**

<u>89ZBC</u>	<u>Minister must notify outcome of financial capability assessment</u>	36
89ZC	<del>Permit and licence holders to</del> <u>Relevant persons must provide supporting information</u>	37
	<i>Asset registers</i>	
<del>89ZD</del>	<del>Asset registers to be submitted to chief executive</del>	<del>37</del>
	<i>Financial securities</i>	
89ZE	Permit and licence holders must hold 1 or more financial securities	38
89ZF	Matters to which Minister must have regard in setting kind and amount of security	39
89ZG	Decision of Minister	40
89ZH	Alteration of amount secured or kind of security required	42
89ZI	Minister must notify required changes in kind of security or amount secured	42
89ZJ	Permit holder or licence holder may object to kind of security or amount set or required change to those matters	42
89ZK	What happens if permit holder or licence holder makes objection	42
	Subpart 3—Post-decommissioning obligations	
89ZL	Application of this subpart	43
89ZM	Relationship between this subpart and other enactments and permit or licence conditions	43
89ZN	Interpretation	43
89ZO	Post-decommissioning obligations	44
89ZP	<del>Minister to set amount</del> <u>Matters for Minister to consider</u>	45
89ZQ	When payment is due <u>or financial security must be obtained</u>	45
89ZR	Other duties of chief executive	45
89ZS	Other duties of Minister	46
	<i>Exemptions</i>	
89ZT	Exemption powers of Minister	47
89ZU	Criteria for granting exemption	47
	Subpart 4—Enforcement, remedies, and appeals	
89ZV	Application of this subpart	47
89ZW	Chief executive or enforcement officer may accept enforceable undertakings	48
89ZX	Notice of decision and reasons for decision	48
89ZY	When enforceable undertaking is enforceable	48

**Crown Minerals (Decommissioning and Other Matters)  
Amendment Bill**

89ZZ	Compliance with enforceable undertaking	48
89ZZA	Contravention of enforceable undertaking	48
89ZZB	Withdrawal or variation of enforceable undertaking	49
89ZZC	Proceedings for alleged contravention	49
	<i>Compliance notices</i>	
89ZZD	Power to issue compliance notices	50
89ZZE	Content of compliance notices	50
89ZZF	Compliance with compliance notice	51
89ZZG	Extension of time for compliance with compliance notices	51
	<i>General provisions</i>	
89ZZH	General provisions relating to compliance notices	52
89ZZI	Changes to notice by chief executive or enforcement officer	52
89ZZJ	Chief executive or enforcement officer may vary or cancel compliance notice	52
89ZZK	Formal irregularities or defects in compliance notice	52
89ZZL	Issue of compliance notice	52
	<i>Civil proceedings for non-compliance with compliance notices</i>	
89ZZM	Civil proceedings relating to non-compliance with compliance notice	53
	<i>Pecuniary penalties</i>	
89ZZN	Reasonable mistake defence in pecuniary penalty proceedings	54
89ZZO	Pecuniary penalties	54
89ZZP	Proceedings for pecuniary penalties	56
	<i>Criminal liability for knowingly failing to carry out certain obligations</i>	
89ZZQ	Criminal liability for knowingly failing to carry out certain obligations	56
89ZZR	Defence to criminal liability for directors	57
	<i>Relationship between pecuniary penalties and criminal liability</i>	
89ZZS	Relationship between pecuniary penalties and criminal liability	57
	<i>Restrictions on indemnities and insurance</i>	
89ZZT	Restriction on indemnities	57
89ZZU	Restriction on insurance	58

**Crown Minerals (Decommissioning and Other Matters)  
Amendment Bill**

<u>Subpart 5—Crown liability</u>			
	<u>89ZZV</u>	<u>Effects of <b>subparts 2 and 3</b> on Crown liability</u>	<u>58</u>
18		New subpart <u>6</u> heading in Part 1B inserted	58
<u>Subpart 56—Offences and miscellaneous</u>			
19		Section 90 amended (Permit holder records and reports)	58
20		Section 90A amended (Disclosure of information)	59
<u>20A</u>		<u>Section 97 amended (Application of monetary deposits)</u>	<u>59</u>
21		Section 99C amended (Application for warrant for entry to search)	60
22		Section 100 amended (Offences)	60
23		Section 101A amended (Interpretation)	60
24		New sections 104A to <del>104J</del> <u>104K</u> inserted	60
	104A	Interpretation	60
	104B	Infringement offences	61
	104C	Who may issue infringement notices	61
	104D	When infringement notice may be issued	61
	104E	Revocation of infringement notice before payment made	61
	104F	What infringement notice must contain	61
	104G	How infringement notice may be issued to person	62
	104H	Payment of infringement fees	62
	104I	Reminder notices	63
	104J	Regulations	63
	<u>104K</u>	<u>Relationship between infringement offences and other offences</u>	<u>63</u>
25		Section 105 amended (Regulations)	63
26		Schedule 1 amended	66
27		Enactments consequentially amended	66
		<b>Schedule 1</b>	67
		<b>New Part 4 inserted into Schedule 1</b>	
		<b>Schedule 2</b>	70
		<b>Consequential amendments</b>	

**The Parliament of New Zealand enacts as follows:**

**1 Title**

This Act is the Crown Minerals (Decommissioning and Other Matters) Amendment Act **2021**.

**2 Commencement**

- (1) **Sections 1 to ~~45~~ 16 and 18 to 27 and Schedules 1 and 2** come into force on the day after the date of Royal assent.

5

- (2) **Section 17** also comes into force on the day after the date on which this Act receives the Royal assent, but only to the extent that it relates to—
- (a) **sections 89A to ~~89ZG~~ 89ZK** of the principal Act;
  - ~~(b) **sections 89ZE to 89ZK** of the principal Act;~~
  - (c) **sections 89ZV to 89ZZU** of the principal Act. 5
- (3) The rest of this Act comes into force—
- (a) on 1 or more dates set by Order in Council; or
  - (b) 24 months after the date of Royal assent, for any provision in this Act that has not come into force by then.
- (4) An order under this section is secondary legislation (see Part 3 of the Legislation Act 2019 for publication requirements). 10

### 3 Principal Act

This Act amends the Crown Minerals Act 1991.

## Part 1 Amendments to Part 1 15

### 4 Section 2 amended (Interpretation)

- (1) In section 2(1), insert in their appropriate alphabetical order:
- decommissioning** has the meaning set out in **section 89E**  
**petroleum infrastructure** has the meaning set out in **section 89F**  
**ship** has the same meaning as in section 2(1) of the Maritime Transport Act 1993 20
- (2) In section 2(1), replace the definition of **participating interest** with:
- participating interest**,—
- (a) in relation to a permit, means an ~~individual~~ undivided share of the permit that is expressed as a percentage recorded on the permit: 25
  - (b) in relation to a licence granted under Part 1 of the Petroleum Act 1937, means an ~~individual~~ undivided share of the licence that is recorded on the licence
- (3) In section 2(1), definition of **permit**, after “these permits”, insert “, except in **subparts 2 and 3** of Part 1B”. 30

### 5 Section 2B amended (Meaning of Tier 1 permit and Tier 2 permit)

- (1) Repeal section 2B(1)(b).
- (2) In section 2B(1)(e), replace “a permit” with “an exploration or mining permit”.

- 6 Section 2C amended (Determination of permit tier status)**
- (1) In section 2C(2)(a), delete “and then once in each permit year”.
  - (2) In section 2C(2)(b), delete “and then once in each permit year”.
  - (3) Repeal section 2C(4).

**7 Section 5 amended (Functions of Minister) 5**

In section 5, after paragraph (c), insert:

- (ca) to make decisions on decommissioning petroleum infrastructure and wells, requirements for financial securities, payments for post-decommissioning work, and related matters:

**Part 2 10**

**Amendments to other Parts of principal Act**

- 8 Section 29A amended (Process for considering application)**
- (1) In section 29A(2)(b) and (c), replace “likely” with “highly likely”.
  - (2) In section 29A(2)(d), replace “is likely” with “is highly likely”.

- 9 Section 32 amended (Right of permit holder to subsequent permits) 15**
- In section 32(5A), after “otherwise agree, and”, insert “, subject to **subpart 2** of Part 1B,”.

**9A Section 36 amended (Change to permit)**

- (1) In section 36(3), after “as provided by section 35A”, insert “or to enable the holder of a permit relating to petroleum to complete their decommissioning obligations under **subpart 2** of Part 1B, or the holder of a permit relating to minerals to complete rehabilitation work”. 20

- (2) In section 36(4), after “under section 35A”, insert “or to enable the holder of a permit relating to petroleum to complete their decommissioning obligations under **subpart 2** of Part 1B, or the holder of a permit relating to minerals to complete rehabilitation work”. 25

- (3) In section 36(5), replace “The” with “Subject to **subsection (5AA)**, the”.

- (4) After section 36(5), insert:

(5AA) The duration of any permit may be extended,—

- (a) if the permit relates to petroleum, to enable the permit holder to complete their decommissioning obligations under **subpart 2** of Part 1B; 30
- (b) if the permit relates to minerals, to enable the permit holder to complete rehabilitation work.

- 10 Section 41 amended (Transfer of interest in permit)**
- In section 41(6), replace “likely” with “highly likely”. 35



<b>11</b>	<b>Section 41AE amended (When Minister may consent to change of control of permit operator)</b>	
(1)	In section 41AE(1)(a)(ii) and (iii), replace “likely” with “highly likely”.	
(2)	In section 41AE(1)(b), replace “is likely” with “is highly likely”.	
<b>12</b>	<b>Section 41C amended (Change of permit operator)</b>	5
	In section 41C(3)(a) and (b)(i), replace “likely” with “highly likely”.	
<b>13</b>	<b>Section 41D amended (General provisions relating to transfers, dealings, and changes of permit operator)</b>	
	After section 41D(4)(b), insert:	
(c)	<b>subpart 2 of Part 1B.</b>	10
<b>14</b>	<b>New subpart 1 heading in Part 1B inserted</b>	
	After the Part 1B heading, insert:	
	<b>Subpart 1—Permits, access to land, and title notations</b>	
<b>15</b>	<b>New cross-heading above section 42 inserted</b>	
	After section 41D, insert:	15
	<i>Surveys</i>	
<b>16</b>	<b>New sections 42B and 42C and cross-headings inserted</b>	
	After section 42A, insert:	
	<i>Field development plans in respect of petroleum mining permits and licences</i>	
<b>42B</b>	<b>Field development plans to be submitted to chief executive</b>	20
(1)	The holder of a petroleum mining permit granted under this Act or a petroleum mining licence granted under the Petroleum Act 1937 (A) must submit a field development plan to the chief executive <del>at the prescribed time or on the occurrence of the prescribed event.</del>	
(a)	<u>at the prescribed times; or</u>	25
(b)	<u>within a specified time of the occurrence of prescribed events (if any); and</u>	
(c)	<u>on request from the Minister, within any reasonable time specified in the request.</u>	
(2)	The field development plan must—	30
(a)	detail the planned development of the field over its anticipated productive life, <del>including all anticipated decommissioning work;</del> and	

- ~~(b) estimate the cost of planned work, if regulations made under this Act prescribe that a cost estimate is required for that work; and~~
  - (c) be accurate as at the date of submission to the chief executive; and
  - (d) contain the prescribed information (if any); and
  - ~~(e) be in the prescribed form (if any); and~~ 5
  - (f) meet any further prescribed requirements.
- ~~(3) If a cost estimate is required under **subsection (2)(b)**, the estimate must comply with the standards prescribed (if any) for developing that estimate.~~
- ~~(4) The chief executive may require A to submit an updated field development plan at the prescribed times, on the occurrence of the prescribed events, or at regular intervals prescribed by regulations.~~ 10

*Notice of expected cessation and notice of cessation of petroleum fields*

**42C Notice of expected cessation and notice of cessation**

- (1) The holder of a petroleum mining permit granted under this Act or a petroleum mining licence granted under the Petroleum Act 1937 (A) must submit a notice of expected cessation to the chief executive ~~at the prescribed times, on the occurrence of the prescribed events, or at regular intervals prescribed by regulations.~~ 15
- ~~(a) at the prescribed times; or~~
  - (b) within a specified time of the occurrence of prescribed events (if any); or 20
  - (c) on request from the Minister, within any reasonable time specified in the request.
- (2) The notice of expected cessation must—
- (a) specify when A currently expects the field to permanently cease production; and
  - (b) contain the prescribed information (if any); and
  - ~~(e) be in the prescribed form (if any); and~~ 25
  - (d) meet any further prescribed requirements.
- (3) If the field permanently ceases production, A must give the chief executive notice of that cessation as soon as practicable and not later than 20 working days after cessation. 30

**17 New subparts 2 to 5 of Part 1B inserted**

After section 89, insert:

Subpart 2—Decommissioning of petroleum infrastructure and wells

**89A Application of this subpart**

This subpart applies to—

- (a) a permit holder:
- (b) any person who applies for a permit before commencement if the application has not been determined on commencement: 5
- (c) a licence holder:
- (d) a person who transfers a permit or licence or all or part of a participating interest in a permit or licence on or after commencement, and a person to whom the permit or licence or all or part of a participating interest is transferred: 10
- (e) a person who on commencement held a permit which has subsequently expired, been surrendered, or revoked (former permit holder):
- (f) a person who on commencement held a licence which has subsequently expired, been surrendered, or revoked (former licence holder). 15

**89B Relationship between this subpart and other enactments**

- (1) This subpart does not limit or affect any person's obligations under another enactment (for example, the Resource Management Act 1991, the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012, or the Health and Safety at Work Act 2015). 20
- (2) Any requirement under this subpart for a person to supply information does not replace or limit any requirement for that person to supply information under other provisions in this Act or another enactment.
- (3) An exemption granted under this subpart from complying with a decommissioning requirement under this subpart does not exempt the person from complying with another enactment. 25

**89C Relationship between ~~new~~ sections 42B and 42C, this subpart, and existing conditions of permits and licences**

- (1) If the requirements of **sections 42B and 42C** and this subpart (**the provisions**) duplicate or overlap with those conditions of a permit or licence imposed before commencement, the provisions and any conditions imposed under this subpart prevail, in the event and to the extent of any inconsistency between the provisions this subpart and those the conditions imposed before commencement. 30
- (2) On commencement, each permit and licence is deemed to contain a condition that repeats the provisions of **subsection (1)**. 35

**89D Interpretation**

In this subpart, unless the context otherwise requires,—

**commencement**, in relation to any provision in this subpart, means the day on which that provision commences

**current licence holder** means the holder of a licence that is in force

**current permit holder** means the holder of a current permit

**licence** means a prospecting licence or a mining licence granted under Part 1 of the Petroleum Act 1937 to prospect or mine for petroleum 5

**permit** means a permit to explore for petroleum or a petroleum mining permit granted under this Act

**petroleum infrastructure** has the meaning set out in **section 89F**

**plugging and abandonment**, in relation to a well, has the meaning set out in **section 89Q** 10

~~well means the holes drilled into the ground for the purpose of extracting or injecting fluids associated with petroleum mining, or for the purpose of obtaining exploration data, or production testing;—~~

(a) means a borehole drilled or re-entered for the purposes of exploring for, appraising, or extracting petroleum; and 15

(b) includes—

(i) any borehole used for injection or reinjection purposes; and

(ii) any down-hole pressure-containing equipment; and

(iii) the wellhead; and 20

(iv) any other prescribed thing

**wellhead** means any pressure-containing equipment on top of the well.

### 89E Decommissioning

(1) In this Act, unless the context otherwise requires, **decommissioning**, in relation to any petroleum infrastructure or a well,— 25

(a) means an activity undertaken under any enactment (for example, the Resource Management Act 1991, the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012, or the Health and Safety at Work Act 2015), and in accordance with any requirements or standards set by or under that enactment or imposed by a regulatory agency, to take out of service permanently petroleum infrastructure or a well used for prospecting or exploring for, or mining of, petroleum; and 30

(b) includes (without limitation) and to the extent required by this Act or another enactment or by standards or by a regulatory agency,—

(i) removing petroleum infrastructure; and 35

(ii) plugging and abandoning a well; and

(iii) undertaking site restoration when production of a well ceases (for whatever reason); and

- (iv) any other prescribed activity in relation to any petroleum infrastructure, or well drilled for the purposes of ~~exploration~~ exploring or prospecting for, or mining of, petroleum.
- (2) ~~To avoid doubt, an obligation to decommission any petroleum infrastructure or well does not prevent the person obliged to decommission from leaving specific objects on site, or carrying out decommissioning in a particular way, —~~ 5
- (a) ~~with the consent of the landowner; and~~
- (b) ~~if those actions are consistent with the requirements of this Act or any other relevant enactment or standard, or the requirements of a regulatory agency.~~ 10
- (3) However, if in relation to petroleum infrastructure, no other enactment, relevant standard, or requirement by a regulatory agency contains any requirements or standards relating to the method of decommissioning a particular item of petroleum infrastructure, that infrastructure must be decommissioned by totally removing it. 15
- (4) Despite **subsection (3)**, an item of infrastructure left in place in accordance with a process set out in the regulations (if any) must be treated as having been decommissioned.

#### 89F Petroleum infrastructure

In this Act, unless the context otherwise requires, **petroleum infrastructure**— 20

- (a) means—
- (i) a structure (within the meaning of section 101A) or vessel used onshore or offshore for drilling for the purpose of exploring for, or mining of, or processing, petroleum;—
- (A) up until the point when the petroleum enters infrastructure used by a person other than a current permit holder or licence holder; and 25
- (B) up until the point when the infrastructure is used for distributing or transporting the petroleum, or otherwise ceases to be part of the system for producing petroleum; 30
- (ii) any equipment attached to, or used in connection with, a structure, well, vessel, or site, including cables, pipelines, flow-lines, gas lift lines, umbilicals, manifolds, and moorings ~~or well (for example platforms, cables, pipelines, and other facilities and structures that are used in connection with the exploration for petroleum or mining of petroleum);~~ 35
- (iii) ~~production, storage, and off loading infrastructure and any attached equipment (for example, cables, risers, umbilical lines, gas lift lines, anchors, mooring lines, and flow lines);~~

<ul style="list-style-type: none"> <li>(iv) any other prescribed thing or class of thing used in connection with, prospecting or exploring for, or mining of, petroleum; but</li> <li>(b) does not include— <ul style="list-style-type: none"> <li>(i) a well:</li> <li>(ii) any unmoored ship:</li> <li>(iii) any vehicle:</li> <li>(iv) any other prescribed thing or class of thing.</li> </ul> </li> </ul>	5
<b>89G Conditions relating to decommissioning</b>	
<ul style="list-style-type: none"> <li>(1) This section applies— <ul style="list-style-type: none"> <li>(a) if the Minister, on or after commencement, grants a permit:</li> <li>(b) if the Minister, on or after commencement, consents to the transfer of all or part of a participating interest in a permit under section 41 of this Act or consents to the transfer of a licence or all or part of a participating interest in a licence under the Petroleum Act 1937 (as preserved by clause 12(1)(a) of Schedule 1 of this Act), as the case requires:</li> <li>(c) at any time on or after commencement while a permit or licence (whenever granted) is in force.</li> </ul> </li> <li>(2) The Minister may (on the grant of a permit, or on giving consent to the transfer of a licence or all or part of a participating interest in a permit or licence, <del>or at any other time while the permit or licence is in force</del>) <u>or on giving consent to a change of control, or when agreeing or determining the amount or kind of financial security required, or when specifying a timetable for decommissioning, or if the permit or licence holder consents</u> impose <u>or vary</u> conditions on the permit or licence holder in relation to the decommissioning of petroleum infrastructure or a well.</li> <li>(3) <del>Examples of conditions that may be set under <b>subsection (2)</b> include—</del> <ul style="list-style-type: none"> <li>(a) <del>a condition that the decommissioning of a specified thing start on a specified date, continue after that date, and be completed by a specified date or within a specified period; or</del></li> <li>(b) <del>a condition that the decommissioning of a specified thing must be completed by a date that is before the expiry or surrender of a permit, or before the expiry of the periods referred to in <b>section 89G(2)(a)</b> or <b>89V(2)(a)</b>.</del></li> </ul> </li> </ul>	10 15 20 25 30
<b>89H Criteria for setting time frames for decommissioning as condition of permit or licence</b>	
<p><del>When considering what dates, times, or periods for decommissioning to be completed should be set as a condition under <b>section 89G(2)</b>, the Minister must consider,—</del></p> <ul style="list-style-type: none"> <li>(a) <del>in relation to petroleum infrastructure,—</del></li> </ul>	35

- ~~(i) when economic production under the relevant permit or licence is expected to cease:~~
- ~~(ii) any plans for field development (including the length of time before decommissioning of the whole field is expected to be undertaken and any plans for reuse of the infrastructure):~~ 5
- ~~(iii) when decommissioning needs to be completed:~~
- ~~(iv) when decommissioning needs to start if it is to be completed on time:~~
- ~~(v) the time required to comply with requirements under other enactments before decommissioning can commence or be completed:~~ 10
- ~~(vi) any other matters the Minister considers relevant:~~
- (b) in relation to a well,—
  - ~~(i) the amount of time during which the well has been inactive:~~
  - ~~(ii) the integrity of the well:~~
  - ~~(iii) any plans for field development (including the length of time before decommissioning of the whole field is expected to be undertaken and any plans for reuse of the well):~~ 15
  - ~~(iv) when decommissioning needs to be completed:~~
  - ~~(v) when decommissioning needs to start if it is to be completed on time:~~ 20
  - ~~(vi) the time required to comply with requirements under other enactments before decommissioning can commence or be completed:~~
  - ~~(vii) any other matters the Minister considers relevant.~~

**89I Meaning of relevant older petroleum infrastructure**

- (1) In this subpart, **relevant older petroleum infrastructure**— 25
- (a) means,—
    - (i) in relation to a current or former permit holder, petroleum infrastructure—
      - (A) put in place or used by a permit holder or licence holder (whether the current permit holder or a different permit holder or licence holder) under a permit that was exchanged for the current permit or the former permit under section 32 of this Act or otherwise exchanged on the same day (for example, as evidenced by any notation on a document linking an exploration permit to a current mining permit); and 30
      - (B) that was in place at the time the exchange occurred:
    - (ia) also, in relation to a current or former permit holder, petroleum infrastructure put in place or used by a permit holder or licence 35

- holder (whether the current permit holder or a different permit holder or licence holder)—
- (A) in a part of the permit area or licence area of any former holder's permit or licence that was subsequently relinquished or surrendered and included on the same day in the permit area of the current permit or included on the same day in a previous permit area or licence area and then subsequently included in the permit area of the current permit; 5  
or
- (B) anywhere outside the permit area or licence area, but used solely to facilitate activities conducted in the permit or licence area to be relinquished or surrendered: 10
- (ii) in relation to a current or former licence holder, petroleum infrastructure—
- (A) put in place or used by a licence holder (whether the current licence holder or a different licence holder) under a licence that was exchanged for the current licence or the former licence under section 9(3) or sections 11 and 12, or any other relevant provisions, of the Petroleum Act 1937 (as they read at the time of the exchange) or otherwise exchanged on the same day; and 15 20
- (B) that was in place at the time the exchange occurred:
- (ia) also, in relation to a current or former licence holder, petroleum infrastructure put in place or used by a licence holder (whether the current licence holder or a different licence holder)— 25
- (A) in a part of the licence area or licence area of any former licence holder that was subsequently surrendered and included on the same day in the licence area of the current licence or included on the same day in a previous licence area and then subsequently included in the licence area of the current licence; or 30
- (B) anywhere outside the licence area but used solely to facilitate activities conducted in the licence area to be surrendered:
- (iii) also includes any class, or item, of petroleum infrastructure declared by the regulations, in relation to a class of, or individual, permit or licence holders, to be relevant older petroleum infrastructure; but 35
- (b) excludes any class, or item, of petroleum infrastructure declared by the regulations, in relation to a class of, or individual, current permit or licence holders, not to be relevant older petroleum infrastructure. 40



- (2) In this section and **section 89J**,—
- (a) any reference to a permit or a former permit includes a permit or former permit of any kind:
  - (b) any reference to a licence or former licence includes a licence or former licence of any kind.

5

**89J Meaning of relevant older well**

In this subpart, **relevant older well**—

- (a) means,—
  - (i) in relation to a current or former permit holder, a well—
    - (A) drilled or ~~operated~~ used by a permit holder or licence holder (whether the current permit holder or a different permit holder or licence holder) under a permit or licence that was exchanged for the current permit under section 32 of this Act or otherwise exchanged on the same day (for example, as evidenced by any notation on a document linking an exploration permit to a mining permit); and 10
    - (B) that was in place at the time the exchange occurred:
  - (ia) also, in relation to a current or former permit holder, a well drilled or used by a permit holder or licence holder (whether the current permit holder or a different permit holder or licence holder)— 20
    - (A) in a part of the permit area or licence area of any former holder's permit or licence that was subsequently relinquished or surrendered and included on the same day in a permit area of the current permit or included on the same day in a previous permit area or licence area and then subsequently included in the permit area of the current permit; 25
      - or
      - (B) anywhere outside the permit area or licence area, but used solely to facilitate activities conducted in the permit or licence area to be relinquished or surrendered; 30
  - (ii) in relation to a current or former licence holder, a well—
    - (A) drilled or ~~operated~~ used by a licence holder (whether the current licence holder or a different licence holder) under a licence that was exchanged for the current licence under section 9(3) or sections 11 and 12, or any other relevant provisions, of the Petroleum Act 1937 (as they read at the time of the exchange) or otherwise exchanged on the same day; and 35
    - (B) that was in place at the time the exchange occurred:

- (ia) also, in relation to a current or former licence holder, any well put in place or used by the current licence holder or a different licence holder—
- (A) in a part of the licence area or licence area of any former holder’s licence that was subsequently surrendered and included on the same day in the licence area of the current licence or included on the same day in a previous licence area and then subsequently included in the licence area of the current licence; or 5
- (B) anywhere outside the licence area, but used solely to facilitate activities conducted in the licence area to be surrendered: 10
- (ib) any well included in the permit area of a current licence or permit that was used to delineate or appraise a deposit or trace of petroleum that the current permit or licence relates to (whether that well was drilled under the current licence or permit or a former licence or permit): 15
- (ii) also any class of well or individual well declared in the regulations, in relation to a class of, or individual, permit or licence holders, to be a relevant older well; but 20
- (b) excludes any class of well declared by the regulations, in relation to a class of current permit or licence holders, not to be a relevant older well.

*Decommissioning obligations for petroleum infrastructure*

**89K Obligations of permit holders, transferors, and transferees: decommissioning of petroleum infrastructure** 25

- (1) A person who holds or will hold a permit at the time the obligation to decommission is required to be completed must carry out, and meet the costs of, the decommissioning of all petroleum infrastructure ~~put in place for the purposes of carrying out, or otherwise related to, activities authorised by the current permit (whenever granted), and all relevant older petroleum infrastructure.~~ 30
- (a) put in place or used for the purposes of carrying out, or otherwise related to, activities authorised by the current permit (whenever granted), and all relevant older petroleum infrastructure; or
- (b) in a case where only part of the permit area is to be relinquished or surrendered, located in the area of the permit that is to be relinquished or surrendered, and all relevant older petroleum infrastructure. 35
- (2) A person with a participating interest in a permit (whenever granted) who transfers all or any part of their participating interest in the permit on or after commencement, but before decommissioning is completed, must meet the costs of decommissioning all petroleum infrastructure— 40

- (a) that is—
- (i) put in place or used for the purposes of carrying out, or otherwise related to, activities authorised by the current permit:
  - (ii) relevant older petroleum infrastructure; and
- (b) that is in place when consent to the transfer is given under section 41. 5
- (3) **Subsection (2)** does not apply in respect of all or any part of a participating interest in a permit that is transferred to the Minister.
- (4) A transfer of a participating interest in a permit is effective on and after the date of the Minister’s consent to that transfer under section 41.
- (5) **Subsections (1), (2), and (4)** are subject to **sections 89M and 89N.** 10
- 89L Obligations of licence holders, transferors, and transferees: decommissioning of petroleum infrastructure**
- (1) A person who holds or will hold a licence at the time the obligation to decommission is required to be completed, ~~must carry out, and meet the costs of, the decommissioning of all petroleum infrastructure put in place for the purpose of carrying out, or otherwise related to, activities authorised by the current licence (whenever granted) and all relevant older petroleum infrastructure.~~ 15
- (a) put in place or used for the purpose of carrying out, or otherwise related to, activities authorised by the current licence (whenever granted), and all relevant older petroleum infrastructure; or 20
  - (b) in a case where only part of the licence area is to be surrendered, located in the area of the licence that is to be surrendered, and all relevant older petroleum infrastructure.
- (2) A licence holder or any person with a participating interest in a licence who transfers the licence, or all or any part of their participating interest in the licence, on or after commencement but before decommissioning is completed must meet the costs of decommissioning all petroleum infrastructure— 25
- (a) that is—
- (i) put in place or used for the purposes of carrying out, or otherwise related to, activities authorised by the licence: 30
  - (ii) relevant older petroleum infrastructure; and
- (b) that is in place when consent to the transfer is given under the Petroleum Act 1937 (as preserved by clause 12(1)(a) of Schedule 1 of this Act).
- (3) **Subsection (2)** does not apply in respect of a licence, or all or any part of a participating interest in a licence, that is transferred to the Minister. 35
- (4) A transfer of a licence or a participating interest in a licence is effective on settlement of the agreement to transfer the licence or the interest in the licence.
- (5) **Subsections (1), (2), and (4)** are subject to **sections 89M and 89N.**

**89M Further obligations on transferors and transferees and Minister**

- (1) This section applies to—
- (a) a person (**person A**) who, on or after commencement, ~~transfers~~ intends to transfer a licence or all or any part of a participating interest in a permit or a licence; and 5
  - (b) a person (**person B**) who ~~acquires~~ intends to acquire, on or after commencement from person A, a licence or all or any part of a participating interest in a permit or licence; and
  - (c) the Minister.
- (2) Person A continues (~~subject to the extent provided in **section 89N**~~) to be liable for meeting the costs of decommissioning any petroleum infrastructure— 10
- (a) that is—
    - (i) put in place or used for the purpose of carrying out, or otherwise related to, activities authorised by the permit or licence;
    - (ii) relevant older petroleum infrastructure; and 15
  - (b) that is in place when consent to the transfer is given under section 41 of ~~this~~ Act or under the Petroleum Act 1937 (as preserved by clause 12(1)(a) of Schedule 1 of this Act), as the case requires.
- (3) ~~It is a condition of transfer, deemed to have been imposed under **section 89G**, The Minister, before consenting to the transfer of a licence or a participating interest in a permit or licence, must be satisfied that person B ~~must~~ has, in accordance with the directions of the Minister, ~~enter into a financial security that a permit holder or licence holder is required to obtain and maintain in accordance with **sections 89ZE to 89ZK** or become a party to an existing financial security that was entered into previously in accordance with those sections, and within the time specified by the Minister. —~~ 20~~
- (a) entered into a financial security (with all the other persons with a participating interest in the licence or permit) that a permit holder or licence holder is required to obtain and maintain in accordance with **sections 89ZE to 89ZK** and within the time specified by the Minister; or 30
  - (b) become a party to an existing financial security (entered into by all the other persons with a participating interest in the licence or permit) that was entered into previously in accordance with those sections, and within the time specified by the Minister.
- (4) A financial security referred to in **subsection (3)** may also be designed and operate to satisfy the requirements of **section 89T(3)**. 35
- (5) If person B fails to comply with **subsection (3)**,—
- (a) ~~the transfer is void; and~~
  - (b) ~~subject to the extent provided in **section 89N**~~, person A continues to be liable to meet the costs incurred in meeting ~~person A's and person B's~~ 40

the decommissioning obligations under this subpart in relation to the licence or participating interest in the licence or permit; and

- (c) person A must be treated as continuing to be the holder of the licence or the participating interest in the permit or licence that was the subject of the transfer.

5

**89N ~~Exceptions to sections 89K and 89L~~ Extent of liability of former permit and licence holders under sections 89K(2) and 89L(2)**

- (1) One or more persons who are liable to meet the costs of decommissioning under **section 89K(2) or 89L(2)** are only liable to meet those costs if, or to the extent that, those costs are not met by the persons referred to in **section 89K(1) or 89L(1)**.

10

- (2) Persons who are liable to meet the costs of decommissioning that are not met by the persons referred to in **section 89K(1) or 89L(1)** are liable, in the following order of priority, to meet those costs:

(a) the former licence or permit holder or person with a participating interest in a licence or permit (**person B**) who most recently transferred their licence or participating interest in the licence or permit to a person (**person A**) who is the current licence holder or a current holder of a participating interest in the permit or licence (as the case requires):

15

(b) if there are still any unpaid decommissioning costs, the person (**person C**) who most recently after person B transferred the licence or a participating interest in the licence or permit to another person (as the case requires):

20

(c) if there are still any unpaid decommissioning costs, the person (**person D**) who most recently after person C transferred the licence or a participating interest in the licence or permit to another person (as the case requires):

25

(d) if there are still any unpaid decommissioning costs, the person (**person E**) who most recently after person D transferred the licence or a participating interest in the licence or permit to another person (as the case requires):

30

(e) if there are still unpaid decommissioning costs, and there are still earlier former licence holders or former holders of a participating interest in a permit or licence, then those persons are liable, in an order of priority consistent with the formula in **paragraphs (a) to (d)**, for the unpaid decommissioning costs.

35

**89O When decommissioning obligations of persons under section 89K, 89L, or 89M arise**

- (1) Any person liable to carry out, or meet the costs of, decommissioning petroleum infrastructure, or both, under **section 89K, 89L, or 89M**, must carry out their obligations by the earliest of the following: 5
- (aa) in a case where production permanently ceases in the area of the current permit or licence before the permit or licence expires,—
- (i) by a date or dates agreed with the Minister for the completion of the decommissioning and the completion of earlier milestones in the decommissioning process; or 10
- (ii) if there is no such agreed date or dates, by a date that is 2 years before the expiry of the current licence or permit, by a date or dates specified by the Minister by notice in writing to the person:
- (a) the expiry or surrender of the current permit or licence:
- (ab) in a case where only part of the current permit area or licence area is to be relinquished or surrendered, before the Minister approves the partial relinquishment or surrender of the permit under section 35C or 40 of this Act or the partial surrender of a licence under the Petroleum Act 1937 (as preserved under clause 12(a) of Schedule 1 of this Act): 15
- ~~(b) the date or time or within the period specified for the purpose by the Minister in conditions attached to the current permit or licence.~~ 20
- (2) However, if a permit or licence is revoked, the person who held the permit or licence immediately before it was revoked must carry out their decommissioning obligations under this subpart by a time agreed with, or specified by, the Minister.— 25
- (a) ~~within 2 years after being given notice of the revocation; or~~
- (b) ~~by a time agreed with the Minister.~~
- (3) To avoid doubt, ~~the obligations imposed by **subsections (1) and (2)** continue in force even if—~~
- (a) the obligations imposed by **subsections (1) and (2)** continue in force even if— 30
- (i) the relevant permit or licence has expired or has been surrendered or revoked:
- (ii) the relevant person has ceased to be a permit or licence holder or the holder of any participating interest in a licence or permit; and 35
- (b) a person may carry out their obligations under **subsections (1) and (2)** even if their permit or licence has expired, or has been revoked, or, as the case requires, relinquished or surrendered.
- ~~(a) the relevant permit or licence has expired or has been surrendered or revoked.~~ 40

- (b) ~~the relevant person has ceased to be a permit or licence holder or the holder of any participating interest in a licence or permit.~~
- (4) ~~Any person referred to in **subsection (1) or (2)** must also meet the obligations set out in any conditions imposed under **section 89C** as to the start date set for, and continuing work on, and completing decommissioning.~~ 5
- (5) A permit holder or licence holder also acts in breach of their decommissioning obligations if they—
- (a) give notice under **section 42C(3)** (notice of cessation of production);  
but
- (b) fail within a period after that notice agreed with the Minister, or in the event that there is no agreement, within a period after that notice specified by the Minister, to complete milestones agreed or specified under **subsection (1)(aa)** to decommission the petroleum infrastructure for which they will be responsible for decommissioning, or fail to obtain an extension to that date or those dates from the Minister. 10 15
- (6) A certificate issued by the chief executive as to the date when decommissioning obligations took effect under this section—
- (a) must be given to the person who has those obligations as soon as practicable after they take effect; and
- (b) is conclusive evidence in any proceedings under this Act, in the absence of proof to the contrary, of when those obligations took effect. 20
- 89OA Criteria for agreeing or setting time frames for decommissioning**
- When considering under **section 89O** what date or dates for decommissioning to be agreed, or specified, by the Minister must consider—
- (a) the size of the field to be decommissioned; 25
- (b) the complexity of the required decommissioning;
- (c) the **subpart 2** decommissioning plan;
- (d) the estimated decommissioning cost;
- (e) the estimated date on which production in the field will cease;
- (f) the time required to comply with requirements under other enactments before decommissioning can commence or be completed; 30
- (g) any other matters the Minister considers relevant.
- 89P Joint and several liability**
- (1) **Subsection (2)** applies if **section 89K** applies and there is a permit holder who is 2 or more persons.— 35
- (a) ~~the permit holder is 2 or more persons; or~~
- (b) ~~the former permit holder is 2 or more persons.~~

- (2) Each person to whom this subsection applies is jointly and severally liable to perform the obligations of the permit holder in carrying out, and meeting the costs of, decommissioning petroleum infrastructure,—
- (a) ~~if a permit holder, jointly and severally liable to perform the obligations of the permit holder in carrying out, and meeting the costs of, decommissioning petroleum infrastructure:~~ 5
- (b) ~~if a former permit holder, jointly and severally liable to perform the obligations of the former permit holder to meet the costs of decommissioning petroleum infrastructure that are not met by the persons referred to in paragraph (a):~~ 10
- (3) ~~For the purposes of **subsections (1) and (2)**, a former permit holder is a person who previously held a permit and continues to have obligations under **section 89K, 89M, or 89O(1) or (2)** to meet the costs of decommissioning petroleum infrastructure.~~
- (4) **Subsection (5)** applies if **section 89L** applies and there is a licence holder who is 2 or more persons.— 15
- (a) ~~the licence holder is 2 or more persons; or~~
- (b) ~~the former licence holder is 2 or more persons.~~
- (5) Each person to whom this subsection applies is jointly and severally liable to perform the obligations of the licence holder in relation to carrying out, and meeting the costs of, decommissioning petroleum infrastructure.— 20
- (a) ~~if a licence holder, jointly and severally liable to perform the obligations of the licence holder in relation to carrying out, and meeting the costs of, decommissioning petroleum infrastructure:~~
- (b) ~~if a former licence holder, jointly and severally liable to perform the obligations of the former licence holder to meet those costs of decommissioning petroleum infrastructure that are not met by the persons referred to in **paragraph (a)** or **subsection (2)(a)**:~~ 25
- (6) ~~For the purposes of **subsections (4) and (5)**, a former licence holder is a person who previously held a licence and continues to have obligations under **section 89L, 89M, or 89O(1) or (2)** to meet the costs of decommissioning petroleum infrastructure.~~ 30

*Plugging and abandonment of wells*

**89Q What is plugging and abandonment of well**

A well is **plugged and abandoned** when— 35

- (a) the well is sealed in order to make it permanently inoperable; and
- (b) the sealing is conducted in accordance with any relevant enactment or standard, and the requirements of any regulatory authority; and
- (c) the wellhead is removed; and



- (d) any remediation of the site required by another enactment is completed;  
and
- (e) any other prescribed action required to plug and abandon the well is completed.

*Decommissioning obligations in relation to wells*

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**89R Obligations of permit holders, transferors, and transferees:  
decommissioning of wells**

- (1) A person who holds or will hold a permit at the time the obligation to plug and abandon 1 or more wells is required to be completed must carry out, and meet the costs of, the plugging and abandoning of all wells ~~drilled or operated for the purposes of carrying out, or otherwise related to, activities authorised by a current permit (whenever granted) and all relevant older wells.~~  
  - (a) drilled or used for the purposes of carrying out, or otherwise related to, activities authorised by the current permit (whenever granted), and all relevant older wells; or
  - (b) in a case where only part of the permit area is to be relinquished or surrendered, located in the area of the permit that is to be relinquished or surrendered and all relevant older wells.
- (2) A person with a participating interest in a permit (whenever granted) who transfers all or any part of their interest in the permit on or after commencement, but before decommissioning is completed, must meet the costs of plugging and abandoning all wells—
  - (a) that are—
    - (i) drilled or ~~operated~~ used for the purposes of carrying out, or otherwise related to, activities authorised by the current permit:
    - (ii) relevant older wells; and
  - (b) that are in place when consent to the transfer is given under section 41.
- (3) **Subsection (2)** does not apply in respect of all or any part of a participating interest in a permit that is transferred to the Minister.
- (4) A transfer of a participating interest in a permit is effective on and after the date of the Minister’s consent to that transfer under section 41.
- (5) **Subsections (1) and (2)** are subject to **sections 89T and 89U.**

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**89S Obligations of licence holders, transferors, and transferees:  
decommissioning of wells**

- (1) A person who holds or will hold a licence at the time the obligation to plug and abandon 1 or more wells is required to be completed must carry out, and meet the costs of, plugging and abandoning all wells ~~drilled or operated for the pur~~

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- ~~poses of, or otherwise related to, activities authorised by the current licence and all relevant older wells.~~
- (a) drilled or used for the purposes of, or otherwise related to, activities authorised by the current licence, and all relevant older wells; and
- (b) in a case where only part of the licence area is to be surrendered, located in the area of the licence that is to be surrendered, and all relevant older wells. 5
- (2) A licence holder or person with a participating interest in a licence who transfers the licence, or all or any part of their participating interest in the licence, on or after commencement but before decommissioning is completed must meet the costs of plugging and abandoning all wells— 10
- (a) that are—
- (i) ~~drilled or operated~~ used for the purposes of carrying out activities authorised by, or otherwise related to, the licence:
- (ii) relevant older wells; and 15
- (b) that are in place when consent to the transfer is given under the Petroleum Act 1937 (as preserved by clause 12(1)(a) of Schedule 1 of this Act).
- (3) **Subsection (2)** does not apply in respect of any licence or all or part of a participating interest in a licence that is transferred to the Minister. 20
- (4) A transfer of a licence or a participating interest in a licence is effective on settlement of the agreement to transfer the licence or the interest in the licence.
- (5) **Subsections (1) and (2)** are subject to **sections 89T and 89U**.
- 89T Further obligations on transferors and transferees and Minister**
- (1) This section applies to— 25
- (a) a person (**person A**) who, on or after commencement, ~~transfers~~ intends to transfer a licence or all or any part of a participating interest in a permit or a licence; and
- (b) a person (**person B**) who ~~acquires~~, intends to acquire, on or after commencement, from person A a licence or all or part of a participating interest in a permit or licence. 30
- (2) Person A continues (to the extent provided in **section 89U**) to be liable for meeting the costs of plugging and abandoning a well—
- (a) that is—
- (i) put in place or used for the purposes of carrying out, or otherwise 35  
related to, activities authorised by the permit or licence:
- (ii) a relevant older well; and

- (b) that is in place when the transfer is consented to under section 41 of this Act or under the Petroleum Act 1937 (as preserved by clause 12(1)(a) of Schedule 1 of this Act), as the case requires.
- ~~(2) It is a condition of transfer, deemed to have been imposed under **section 89G**, that person B must, in accordance with the directions of the Minister, enter into a financial security that a permit holder or licence holder is required to obtain and maintain in accordance with **sections 89ZE to 89ZK** or become a party to an existing financial security that was entered into in accordance with those sections, and within the time set by the Minister.~~ 5
- (3) The Minister, before consenting to the transfer of a licence or a participating interest in a permit or licence, must be satisfied that person B has, in accordance with the directions of the Minister,— 10
- (a) entered into a financial security (with all the other persons with a participating interest in the licence or permit) that a permit holder or licence holder is required to obtain and maintain in accordance with **sections 89ZE to 89ZK** and within the time specified by the Minister; or 15
- (b) become a party to an existing financial security (entered into by all the other persons with a participating interest in the licence or permit) that was entered into previously in accordance with those sections, and within the time specified by the Minister. 20
- (4) A financial security referred to in **subsection (3)** may also be designed and operate to satisfy the requirements of **section 89M(3)**.
- (5) If person B fails to comply with **subsection (3)**,—
- ~~(a) the transfer is void; and~~
- ~~(b) subject to the extent provided in **section 89U**, person A continues to be liable to meet the costs incurred in meeting person A's and person B's the decommissioning obligations under this subpart in relation to the licence or participating interest in the licence; and~~ 25
- (c) person A must be treated as continuing to be the holder of the licence or the participating interest in the permit or licence that was the subject of the transfer. 30
- 89U ~~Exceptions to~~ Extent of liability of former permit and licence holders under sections 89R and 89S**
- (1) One or more persons who are liable to meet the costs of plugging and abandonment under **section 89R(2) or 89S(2)** are only liable to meet those costs if, or to the extent that, those costs are not met by the persons referred to in **section 89R(1) or 89S(1)**. 35
- (2) Persons who are liable to meet the costs of decommissioning that are not met by the persons referred to in **section 89R(1) or 89S(1)** are liable, in the following order of priority, to meet those costs: 40

- (a) the former licence or permit holder or person with a participating interest in a licence or a permit (person B) who most recently transferred their licence or participating interest in the licence or permit to a person (person A) who is the current licence holder or a current holder of a participating interest in the permit or licence (as the case requires): 5
- (b) if there are still any unpaid decommissioning costs, the person (person C) who most recently after person B transferred the licence or a participating interest in the licence or permit to another person (as the case requires):
- (c) if there are still any unpaid decommissioning costs, the person (person D) who most recently after person C transferred the licence or a participating interest in the licence or permit to another person (as the case requires): 10
- (d) if there are still any unpaid decommissioning costs, the person (person E) who most recently after person D transferred the licence or a participating interest in the licence or permit to another person (as the case requires): 15
- (e) if there are still unpaid decommissioning costs, and there are still earlier former licence holders or former holders of a participating interest in a permit or licence, then those persons are liable, in an order of priority consistent with the formula in paragraphs (a) to (d), for the unpaid decommissioning costs. 20
- 89V When decommissioning obligations of permit holders, licence holders, and other persons under section 89R, 89S, or 89T arise**
- (1) A person liable to carry out, or meet costs of, plugging and abandoning wells, or both, under **section 89R, 89S, or 89T** must carry out their obligations by the earliest of the following: 25
- (aa) in a case where production permanently ceases in the area of the current permit or licence before the permit or licence expires,—
- (i) by a date or dates agreed with the Minister for the completion of the decommissioning and the date or dates of completion of earlier milestones in the decommissioning process; or 30
- (ii) if there is no such agreed date by the date or dates, that is 2 years before the expiry of the current licence or permit, by a date or dates specified by the Minister by notice in writing to the person: 35
- (a) the expiry or surrender of the current permit or licence:
- (ab) in a case where only part of the current permit area or licence area is to be relinquished or surrendered, before the Minister approves the partial relinquishment or surrender of the permit under section 35C or 40 of this Act or the partial surrender of a licence under the Petroleum Act 1937 (as preserved under clause 12(a) of Schedule 1 of this Act). 40

- ~~(b) the date or time, or within the period, specified for the purpose by the Minister in conditions attached to the current permit or licence.~~
- (2) However, if a permit or licence is revoked, the person who held the permit or licence immediately before it was revoked must carry out their decommissioning obligations under this subpart by a time agreed with, or specified by, the Minister.— 5
- ~~(a) within 1 year after being given notice of the revocation; or~~  
~~(b) by a time agreed with the Minister.~~
- (3) To avoid doubt, the obligations imposed by **subsections (1) and (2)** continue in force even if— 10
- (a) the relevant permit or licence has expired or has been surrendered or revoked;
- (b) the relevant person has ceased to be a permit or licence holder or the holder of any participating interest in a licence or permit.
- ~~(4) Any person referred to in **subsection (1) or (2)** must also meet the obligations set out in any conditions imposed under **section 89G** as to the start date set for, and continuing work on, and completing decommissioning.~~ 15
- (5) A permit holder or licence holder also acts in breach of their decommissioning obligations if they—
- (a) give notice under **section 42C(3)** (notice of cessation of production); 20  
but
- (b) fail within a period after that notice agreed with the Minister, or in the event that there is no agreement, within a period after that notice specified by the Minister, to complete milestones agreed or specified under **subsection (1)(aa)** to decommission the petroleum infrastructure for which they will be responsible for decommissioning, or fail to obtain an extension to that date or those dates from the Minister. 25
- (6) A certificate issued by the chief executive as to the date when decommissioning obligations took effect under this section—
- (a) must be given to the person who has those obligations as soon as practicable after they take effect; and 30
- (b) is conclusive evidence, in any proceedings under this Act, in the absence of proof to the contrary, of when those obligations took effect.
- 89VA Criteria for agreeing or setting time frames for decommissioning of wells**
- When considering under **section 89V** what date or dates for decommissioning to be agreed, or specified, by the Minister must consider— 35
- (a) the size of the field to be decommissioned;
- (b) the complexity of the required decommissioning;
- (c) the **subpart 2** decommissioning plan;

- (d) the decommissioning cost estimate:
- (e) the estimated date on which production in the field will cease:
- (f) the time required to comply with requirements under other enactments before decommissioning can commence or be completed:
- (g) any other matters the Minister considers relevant.

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**89W Joint and several liability**

(1) **Subsection (2)** applies if **section 89R** applies and there is a permit holder who is 2 or more persons.—

- (a) ~~the permit holder is 2 or more persons; or~~
- (b) ~~the former permit holder is 2 or more persons.~~

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(2) Each person to whom this subsection applies is jointly and severally liable to comply with and perform the obligations of the permit holder in relation to carrying out, and meeting the costs of, plugging and abandoning wells.—

- (a) ~~if a permit holder, jointly and severally liable to comply with and perform the obligations of the permit holder in relation to carrying out and meeting the costs of, plugging and abandoning wells:~~
- (b) ~~if a former permit holder, jointly and severally liable to comply with and perform the obligations of the former permit holder to meet those costs of plugging and abandoning wells that are not met by the persons referred to in **paragraph (a)**.~~

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(3) ~~For the purposes of **subsections (1) and (2)**, a former permit holder is a person who previously held a permit and continues to have obligations under **section 89R, 89T, or 89V(1) or (2)** to meet the costs of plugging and abandoning wells.~~

(4) **Subsection (5)** applies if **section 89S** applies and there is a licence holder who is 2 or more persons.—

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- (a) ~~the licence holder is 2 or more persons; or~~
- (b) ~~the former licence holder is 2 or more persons.~~

(5) Each person to whom this subsection applies is jointly and severally liable to perform the obligations of the licence holder in relation to carrying out, and meeting the costs of, plugging and abandoning wells.—

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- (a) ~~if a licence holder, jointly and severally liable to perform the obligations of the licence holder in relation to carrying out, and meeting the costs of, plugging and abandoning wells:~~
- (b) ~~if a former licence holder, jointly and severally liable to perform the obligations of the former permit holder to meet those costs of plugging and abandoning wells that are not met by the persons referred to in **paragraph (a)** or **subsection (2)(a)**.~~

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- (6) ~~For the purposes of **subsections (4) and (5)**, a former licence holder includes a person who previously held a licence and continues to have obligations under **section 89S, 89T, or 89V(1) or (2)** meet the costs of plugging and abandoning a well.~~

*Exemptions and deferrals*

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**89X Exemption and deferral powers of Minister**

- (1) The Minister may, on application or on their own initiative, and if they consider it appropriate,—

- (a) exempt a permit holder or licence holder from the requirements of this subpart to decommission a particular item of petroleum infrastructure or to plug and abandon a particular well; or  
(b) defer the time for complying with an obligation to decommission a particular ~~thing that is~~ item of petroleum infrastructure or to plug and abandon a particular well.

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- (2) The Minister may—

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- (a) grant an exemption or a deferral on any terms and conditions that they consider appropriate;  
(b) amend or revoke an exemption or a deferral;  
(c) grant an exemption for an indefinite or a limited period;  
(d) replace an exemption or a deferral either before or when it expires.

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- (3) An application under **subsection (1)** must be made in the prescribed manner (if any) and be accompanied by the prescribed fee (if any).

- (3A) If the Minister grants an exemption or a deferral under this section, the Minister must provide the licence holder or permit holder with reasons for their decision and state them in the notice of exemption or deferral.

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- (4) Class exemptions and class deferrals may be granted by regulations (*see* section 105).

**89Y Criteria for granting exemption**

- (1) Before granting an exemption under **section 89X**, the Minister must ~~be satisfied~~ be satisfied—

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- (a) be satisfied—  
(i) that the requirements are unreasonable or inappropriate in the particular case; or  
(ii) that events have occurred that make the requirements unnecessary or inappropriate in the particular case; and

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- (b) be satisfied that the petroleum infrastructure or well in question will be used for a purpose other than exploration for, or mining of, petroleum.

- (a) ~~that the requirements are unreasonable or inappropriate in the particular case; or~~
- (b) ~~that events have occurred that make the requirements unnecessary or inappropriate in the particular case.~~
- (2) For the purposes of applying **subsection (1)(a)(b) and (b)**, the Minister ~~must~~ may consider the following matters: 5
- (a) the ownership of the petroleum infrastructure or well in question:
- (b) ~~whether the petroleum infrastructure or well in question is likely to be used for a purpose other than mining petroleum:~~
- (b) any prescribed criteria: 10
- (c) any other matter the Minister considers relevant.

**89Z Criteria for grant of deferral**

- (1) Before granting a deferral under **section 89X**, the Minister must be satisfied that it is appropriate in the circumstances to defer the obligation to meet the requirements to a later date in the particular case. 15
- (2) For the purposes of applying **subsection (1)**, the Minister must consider—
- (a) whether there is economic value to the owners of the petroleum infrastructure or well in deferring the decommissioning of that petroleum infrastructure or plugging and abandoning that well:
- (b) the impact of failing to grant a deferral on the operation of associated petroleum infrastructure and wells: 20
- (c) any plans for field development:
- (d) the likelihood of an increase or a decrease in the costs of decommissioning during any deferral period, and the extent of that increase, so far as it can be estimated: 25
- (e) any other matter the Minister considers relevant.

Reporting requirements

**89ZAAA Subpart 2 decommissioning plan**

- (1) A person who is, or will be, obliged, under this subpart, to carry out and meet the costs of decommissioning must submit a **subpart 2** decommissioning plan to the chief executive— 30
- (a) at the prescribed times (if any); and
- (b) within a specified time of the occurrence of prescribed events (if any); and
- (c) on request from the Minister, within any reasonable time specified in the request. 35
- (2) The **subpart 2** decommissioning plan must—



- (a) describe the planned decommissioning activities and the processes to be used to carry out those activities, and set out a proposed schedule for those activities; and
- (b) be accurate as at the date of submission to the chief executive; and
- (c) contain the prescribed information (if any); and
- (d) meet any further prescribed requirements.

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**89ZAAB Decommissioning cost estimate**

(1) A person who is, or will be, obliged, under this subpart, to carry out and meet the costs of decommissioning must submit a cost estimate of all anticipated decommissioning work (a **decommissioning cost estimate**) to the chief executive—

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- (a) at the prescribed times (if any); and
- (b) within a specified time of the occurrence of prescribed events (if any); and
- (c) on request from the Minister, within any reasonable time specified in the request.

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(2) The decommissioning cost estimate must—

- (a) comply with the standards prescribed (if any) for developing that estimate; and
- (b) meet any further prescribed requirements.

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(3) The Minister may require any person who submits a cost estimate under **subsection (1)** to supply further information relating to the cost estimate within a time specified by the Minister.

**89ZAAC Asset registers to be submitted to chief executive**

(1) A permit holder or licence holder who is obliged, under this subpart, to carry out and meet the costs of decommissioning (**A**) must submit an asset register to the chief executive—

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- (a) at the prescribed times (if any); and
- (b) within a specified time of the occurrence of prescribed events (if any); and
- (c) on request from the Minister, within any reasonable time specified in the request.

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(2) The asset register must—

- (a) be a complete and accurate list of the petroleum infrastructure and wells that A must decommission under **sections 89K, 89L, 89R, and 89S**; and
- (b) contain the prescribed information (if any); and
- (c) meet any further prescribed requirements.

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**89ZAAD Decommissioning completion report**

- (1) A person who is obliged, under this subpart, to carry out and meet the costs of decommissioning must submit a decommissioning completion report to the chief executive—
- (a) at the prescribed times (if any); and
  - (b) within a specified time of the occurrence of prescribed events (if any); and
  - (c) on request from the Minister, within any reasonable time specified in the request.
- (2) The decommissioning completion report must—
- (a) contain the prescribed information (if any); and
  - (b) meet any further prescribed requirements.

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*Ongoing monitoring of financial position*

**89ZA ~~Minister may require information~~ Permit and licence holders must provide information needed to monitor financial position of permit or licence holder**

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- (1) ~~This section applies to a permit holder or licence holder (A) who is obliged, under this subpart, to carry out and meet the costs of decommissioning.~~
- (2) ~~The Minister may, by written notice, require A to provide information—~~
- (a) ~~that the Minister considers necessary to monitor A's financial position (including in relation to financial securities); and~~
  - (b) ~~that is of a prescribed kind.~~
- (3) ~~A must provide the information to the Minister—~~
- (a) ~~in the form and in the manner set out in the notice; and~~
  - (b) ~~within any reasonable time specified in the notice requiring the information.~~
- (4) ~~The Minister may use the information to inform their decision as to whether to carry out a financial capability assessment under **section 89ZB**.~~
- (5) ~~To avoid doubt, information gathered under this section is subject to section 90 (permit holder records and reports) and section 90A (disclosure of information).~~
- (1) A permit holder or licence holder (A) who is, or will be, obliged, under this subpart, to carry out and meet the costs of decommissioning must keep a record of any information prescribed by regulations as relevant and reasonably necessary to enable the Minister to monitor A's financial position (including in relation to financial securities).
- (2) A must submit a copy of the information to the Minister—

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- (a) at the prescribed times (if any); or
- (b) on request from the Minister, within any reasonable time specified in the request.
- (3) The Minister may, by written notice, require the person to provide any further information that the Minister considers relevant and reasonably necessary. 5
- (4) The person must provide a copy of the information to the Minister—
  - (a) in the form and in the manner set out in the notice; and
  - (b) within any reasonable time specified in the notice requiring the information.

*Financial capability assessments* 10

**89ZB Minister may assess financial capability to meet decommissioning obligations**

- (1) This section applies to a permit holder or licence holder (A) who is, or will be, obliged, under this subpart, to carry out and meet the costs of decommissioning. 15
- (2) The Minister may carry out an assessment to determine whether A is highly likely to have the financial capability to carry out and meet the costs of decommissioning (a **financial capability assessment**).
- (3) The Minister may carry out a financial capability assessment at any time while the relevant permit or licence is in force. 20
- (4) ~~When carrying out a financial capability assessment, the Minister—~~
  - (a) ~~may have regard to the following:~~
    - (i) ~~any field development plans submitted by A under **section 42B**:~~
    - (ii) ~~any notice of expected cessation submitted by A under **section 42C**:~~ 25
    - (iii) ~~any asset registers submitted by A under **section 89ZD**:~~
    - (iv) ~~any information provided by A under **section 89ZA or 89ZC**:~~
    - (v) ~~any other information the Minister considers relevant; and~~
  - (b) ~~must meet the prescribed requirements (if any):~~
- (5) ~~As soon as practicable after a financial capability assessment is completed, the Minister must notify A of—~~ 30
  - (a) ~~the Minister's conclusion as to whether A is highly likely to have the financial capability to carry out and meet the costs of decommissioning; and~~
  - (b) ~~the reasons for that conclusion.~~ 35
- (6) The Minister may appoint any suitably qualified person to carry out a financial capability assessment on their behalf.

**89ZBA Criteria for considering whether to carry out financial capability assessment**

When considering whether to carry out a financial capability assessment under **section 89ZB**, the Minister may take into account—

- (a) information received under the following: 5
  - (i) **section 42B** (field development plan);
  - (ii) **section 89ZAAA** (decommissioning plan);
  - (iii) **section 89ZAAB** (decommissioning cost estimate);
  - (iv) **section 89ZAAC** (asset register);
  - (v) **section 89ZA** (information needed to monitor financial position); and 10
- (b) the circumstances of the particular permit holder or licence holder; and
- (c) any information relating to current or emerging risks to the permit holder's or licence holder's ability to comply with their obligations under this subpart; and 15
- (d) any other matters the Minister considers relevant.

**89ZBB Process for carrying out financial capability assessment**

When carrying out a financial capability assessment under **section 89ZB**, the Minister—

- (a) may take into account information received under the following: 20
  - (i) **section 42B** (field development plan);
  - (ii) **section 89ZAAA (subpart 2)** (decommissioning plan);
  - (iii) **section 89ZAAB** (decommissioning cost estimate);
  - (iv) **section 89ZAAC** (asset register);
  - (v) **section 89ZA** (information needed to monitor financial performance); and 25
- (b) may take into account any other information the Minister considers relevant; and
- (c) must meet the prescribed requirements (if any).

**89ZBC Minister must notify outcome of financial capability assessment** 30

As soon as practicable after a financial capability assessment under **section 89ZB** is completed, the Minister must notify the permit holder or licence holder of—

- (a) the Minister's conclusion as to whether they are highly likely to have the financial capability to carry out and meet the costs of decommissioning; and 35
- (b) the reasons for that conclusion.

**89ZC ~~Permit and licence holders to~~ Relevant persons must provide supporting information**

~~(1) This section applies to a permit holder or licence holder (A) who may be subject to a financial capability assessment under **section 89ZB**.~~

(1) This section applies to— 5

(a) a permit holder or licence holder who may be subject to a financial capability assessment under **section 89ZB**; and

(b) any other person the Minister considers is likely to hold information that is relevant and reasonably necessary to carry out the financial capability assessment (for example, parent companies, banks, or auditors). 10

~~(2) The person must keep a record of any information prescribed by regulations as ~~necessary~~ relevant and reasonably necessary to enable the Minister to carry out a financial capability assessment.~~

~~(3) The person must provide a copy of the information to the Minister—~~

(a) on or before the prescribed time (if any); or 15

(b) on request from the Minister, within any reasonable time specified in the request.

~~(4) The Minister may, by written notice, require A the person to provide any further information that the Minister considers ~~necessary~~ relevant and reasonably necessary to carry out the financial capability assessment.~~ 20

~~(5) The person must provide a copy of the information to the Minister—~~

(a) in the form and in the manner set out in the notice; and

(b) within any reasonable time specified in the notice requiring the information.

~~(6) To avoid doubt, information gathered under this section is subject to ~~section 90 (permit holder records and reports)~~ and section 90A (disclosure of information).~~ 25

*Asset registers*

**89ZD ~~Asset registers to be submitted to chief executive~~**

~~(1) A permit holder or licence holder who is obliged, under this subpart, to carry out and meet the costs of decommissioning (A) must submit an asset register to the chief executive at the prescribed time or on the occurrence of the prescribed event.~~ 30

~~(2) The asset register must—~~

(a) ~~be a complete and accurate list of the petroleum infrastructure and wells that A must decommission under sections 89K, 89L, 89R, and 89S; and~~ 35

~~(b) contain the prescribed information (if any); and~~

~~(c) be in the prescribed form (if any); and~~

~~(d) meet any further prescribed requirements.~~

~~(3) The chief executive may require A to submit an updated asset register at the prescribed times, on the occurrence of the prescribed events, or at regular intervals prescribed by regulations.~~

*Financial securities*

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**89ZE Permit and licence holders must hold 1 or more financial securities**

(1) A person who holds a permit or a licence, (whenever granted), must obtain and maintain 1 or more financial securities, of a kind, and in an amount, determined by the Minister under **section 89ZG(1)**, ~~in order to secure, or secure in part, as security for the performance of their obligations under this subpart in the event that the permit holder or licence holder fails to carry out, or separately meet the costs of, the decommissioning.~~

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(2) The Minister must, as soon as practicable after commencement, give each permit holder or licence holder a notice requiring them—

~~(a) specifying the time by which a financial security must be obtained;~~

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~~(b) requiring the permit holder or licence holder to advise the chief executive in the prescribed manner (if any), by a specified date, of the kind of security, and the proposed amount to be secured, that the permit holder or licence holder considers appropriate and provide any information specified by the Minister to enable the Minister to make decisions on those matters.~~

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(a) to advise the chief executive in the prescribed manner (if any), by a specified date, of the kind of security, and the proposed amount to be secured, that the permit holder or licence holder considers appropriate; and

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(b) to provide any information specified by the Minister to enable the Minister to make decisions on those matters.

(2A) However, if the permit or licence holder already maintains a financial security of the kind referred to in **subsection (1)** when they receive notice under **subsection (2)**, they may propose that the Minister approve the continuation of that security (with or without modifications) as the Minister's determination under **subsection (1)**.

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(3) The permit holder must provide the information referred to in **subsection (2)(b)** and any proposal under **subsection (2A)**—

(a) in the form and manner set out in the notice; and

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(b) within any reasonable time set out in the notice requiring the information.

(3A) Any financial security referred to in this section is obtained or maintained on behalf of the Crown.

- (4) To avoid doubt, information gathered under this section is subject to ~~section 90 (permit holder records and reports)~~ and section 90A (disclosure of information).

**89ZF Matters to which Minister must have regard in setting kind and amount of security**

- (1) The Minister must, when determining the amount to be secured and the kind of security to be obtained by a permit holder or licence holder, take into account—

(a) the information (if any) provided by the permit holder or licence holder under **section 89ZE(2)(b)** ~~or under subsection (2)~~ and any proposal under **section 89ZE(2A)**:

(b) the prescribed criteria (if any) relating to particular kinds and amounts of financial security (including any prescribed hierarchy of securities and whether there is a preferred kind of security in the particular situation):

(c) the following:

(i) the estimated cost of decommissioning:

(ii) the extent to which the amount to be secured will cover the estimated cost of decommissioning:

(iii) the extent to which the kind of security to be required will ensure that the Crown will obtain payment of the amount in the event the permit holder or licence holder fails to carry out the decommissioning or separately meet those costs:

(d) the circumstances of the particular permit holder or licence holder:

(e) the time needed for the particular permit holder or licence holder to comply with their obligations under this subpart, and the time when work will need to start in order to achieve this:

(f) the estimated cost of the work needed for the particular permit holder or licence holder to complete their obligations under this subpart:

(g) the estimated administration costs to the particular permit holder or licence holder of meeting and maintaining the security for the required period (including the costs of maintaining any possible increase in the amount required to be secured while the security is in place):

(h) any information relating to current or emerging risks to the permit holder's or licence holder's ability to comply with their obligations under this subpart:

(i) the conclusions of the most recent financial capability assessment (if any):

(j) any other matters the Minister considers relevant.

~~(e) after considering the matters in paragraphs (a) and (b),—~~

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- (i) ~~the general need to ensure that the amount and kind of security required is sufficient to meet all or an approved proportion of the estimated costs of meeting the permit holder's or licence holder's decommissioning obligations under this subpart, in the event that the permit holder or licence holder fails to carry out, or separately meet, the costs of that decommissioning:~~ 5
- (ii) ~~the circumstances of the particular permit holder or licence holder:~~
- (iii) ~~the time needed for the particular permit holder or licence holder to comply with their obligations under this subpart, and the time when work will need to start in order to achieve this:~~ 10
- (iv) ~~the estimated cost of the work needed for the particular permit holder or licence holder to complete their obligations under this subpart:~~
- (v) ~~the estimated administration costs to the particular permit holder or licence holder of meeting and maintaining the security for the required period (including the costs of maintaining any possible increase in the amount required to be secured while the security is in place):~~ 15
- (vi) ~~any information relating to current or emerging risks to the permit holder's or licence holder's ability to comply with their obligations under this subpart:~~ 20
- (vii) ~~the conclusions of the most recent financial capability assessment (if any):~~
- (viii) ~~any other matters the Minister considers relevant.~~ 25
- (2) The Minister may require a permit holder or licence holder to give the Minister any information that the Minister considers will assist them in determining what kind of financial security should be obtained and the amount to be secured.
- (3) The permit holder or licence holder must provide the information— 30
- (a) in the form and in the manner set out in the notice; and
- (b) within any reasonable time specified in the notice requiring the information.
- 89ZG Decision of Minister**
- (1) The Minister, after following the processes set out in **sections 89ZE and 89ZF**, must ~~determine~~— 35
- (a) determine—
- (i) the kind of security to be obtained, or entered into, by the permit holder or licence holder; and



- (ii) the amount to be secured; and
- (b) impose any conditions of the financial security in that the Minister considers appropriate.
- (a) ~~the kind of security to be obtained, or entered into, by the permit holder or licence holder; and~~ 5
- (b) ~~the amount to be secured.~~
- (1A) Before making a determination under **subsection (1)**, the Minister must be satisfied that it complies with the prescribed criteria (if any) relating to particular kinds and amounts of financial security to be obtained and maintained.
- (2) The Minister may also direct how the security must be held, in accordance with the prescribed requirements (if any). 10
- (3) ~~The amount set under **subsection (1)(b)** must be sufficient to meet all or any proportion of the estimated costs, approved by the Minister, of meeting the decommissioning obligations under this subpart of the permit holder or licence holder, in the event that the permit holder or licence holder fails to carry out, or separately meet the costs of, that decommissioning.~~ 15
- (4) ~~The kind of financial security approved by the Minister must enable the Crown to obtain payment of the amount secured in the event that if the permit holder or licence holder fails to carry out, or separately meet the costs of, the decommissioning.~~ 20
- (4A) If the security required is in the form of a bond or a cash deposit paid to the chief executive,—
- (a) if the security relates to a participating interest in a permit, section 97 (except subsection (4)) applies;
- (b) if the security relates to a licence or a participating interest in a licence, section 47H of the Petroleum Act 1937 (as preserved by clause 16 of Schedule 1 of this Act) applies. 25
- (4B) If the security required is in the form of a bond or cash or a cash deposit held either in accordance with section 97 or separately by a third party (for example, in an escrow account), the permit holder or licence holder may, with the consent of the Minister, use a part or all of those amounts to carry out the decommissioning to which that security relates. 30
- (5) The Minister must give the permit holder or licence holder a notice of the Minister's decision specifying— 35
- (a) the kind of financial security to be obtained:
- (b) the amount to be secured:
- (c) the time by which it must be obtained:
- (d) if applicable, how it is to be held.:
- (e) a summary of the reasons for the Minister's decision.

**89ZH Alteration of amount secured or kind of security required**

- (1) The Minister may, at any time,—
  - (a) require a permit holder or licence holder referred to in **section 89ZE(1)** to increase the amount for which security is held:
  - (b) allow a permit holder or licence holder referred to in **section 89ZE(1)** to reduce the amount for which security is held: 5
  - (c) require the permit holder or licence holder referred to in **section 89ZE(1)** to alter the kind of security that is held.
- (2) When exercising a power conferred by **subsection (1)**, the Minister must take into account the matters referred to in **section 89ZF(1)(b) and (c)(i) to (viii)**. 10

**89ZI Minister must notify required changes in kind of security or amount secured**

- (1) The Minister must, after exercising a power under **section 89ZH(1)(a), (b), or (c)**, give the affected permit holder or licence holder written notice of the required or permitted changes to the kind of security to be obtained and maintained or the amount secured and, in a case where **section 89ZH(1)(a) or (c)** applies, the time by which the permit holder or licence holder must do this. 15
- (2) The notice must be accompanied by reasons for the required change.

**89ZJ Permit holder or licence holder may object to kind of security or amount set or required change to those matters** 20

- (1) A permit holder or licence holder who receives written notice under **section 89ZG(4) or 89ZI(1)** may within 30 working days of receiving that notice object to the required security or the required change, as the case requires, by notice in writing to the Minister. 25
- (2) A notice of objection under **subsection (1)** must be accompanied by reasons for, and evidence or other information supporting, the objection and refer to the criteria in **section 89ZF** that the objector considers relevant.
- (3) If a permit holder or licence holder makes an objection under **subsection (1)**, they cannot make any subsequent objection to the required security or required change described in the notice unless there is a change in circumstances. 30

**89ZK What happens if permit holder or licence holder makes objection**

- (1) If a permit holder or licence holder makes an objection under **section 89ZJ**, the Minister must—
  - (a) give the permit holder or licence holder an opportunity to be heard; and 35
  - (b) consider and determine the objection within a reasonable time after its receipt.
- (2) The Minister must—

- (a) dismiss the objection; or
- (b) uphold the objection in whole or in part.
- (3) Not later than 30 working days after deciding whether to uphold an objection, the Minister must send to the permit holder or licence holder—
  - (a) a copy of the decision, which must include the reasons for the decision; 5  
and
  - (b) written notice of any required or permitted changes to the kind of security to be obtained and maintained or the amount secured, as the case requires; and
  - (c) if **paragraph (b)** applies, and the changes are required changes, the 10  
time by which the permit holder or licence holder must comply with the changes referred to in **paragraph (b)**.

### Subpart 3—Post-decommissioning obligations

#### **89ZL Application of this subpart**

- (1) This subpart applies to— 15
  - (a) each permit holder;
  - (b) each licence holder;
  - (c) any other person who is, or will be, or was, obliged under **subpart 2** to carry out and meet the costs of decommissioning.
- (2) This subpart applies only in relation to— 20
  - (a) petroleum infrastructure that was decommissioned on or after commencement; or
  - (b) any well that was plugged and abandoned on or after commencement.

#### **89ZM Relationship between this subpart and other enactments and permit or licence conditions**

- (1) This subpart does not limit or affect any person's obligations under another enactment or under the conditions of a current permit or licence. 25
- (2) Any requirement under this subpart for a person to supply information does not replace or limit any requirement for that person to supply information under any other provision of this Act or another enactment. 30

#### **89ZN Interpretation**

In this subpart, unless the context otherwise requires,—

**commencement**, in relation to any provision in this subpart, means the day on which that provision commences

**current licence holder** has the same meaning as in **section 89D** 35

**current permit holder** has the same meaning as in **section 89D**

**licence** has the same meaning as in **section 89D**

**permit** has the same meaning as in **section 89D**

**petroleum infrastructure** has the meaning set out in **section 89F**

~~**post-decommissioning work** means activities carried out in relation to the remediation of—~~

~~(a) petroleum infrastructure that has been decommissioned but not removed;~~

~~(b) a well that has been plugged and abandoned;~~

~~(c) environmental damage or health and safety risks caused by a failure of the decommissioning of petroleum infrastructure or a well referred to in **paragraph (a) or (b)**~~

**post-decommissioning work** means—

(a) monitoring decommissioned petroleum infrastructure and wells in order to determine if activities need to be undertaken under **paragraph (b)**:

(b) activities carried out in relation to the remediation of—

(i) petroleum infrastructure that has been decommissioned but not removed;

(ii) a well that has been plugged and abandoned;

(iii) environmental damage or health and safety risks caused by a failure of the decommissioning of petroleum infrastructure or a well referred to in **subparagraph (i) or (ii)**

**well** has the meaning set out in **section 89D**.

### 89ZO Post-decommissioning obligations

(1) ~~Any permit holder or licence holder who~~ person who is obliged under **subpart 2** to carry out and meet the costs of decommissioning must ~~pay the chief executive an amount to meet the cost of any post decommissioning work required on petroleum infrastructure and 1 or more wells that have been decommissioned,~~ at the direction of the Minister,—

(a) pay the chief executive an amount to meet the cost of any post-decommissioning work required on petroleum infrastructure and 1 or more wells that have been decommissioned; or

(b) obtain and maintain a financial security, of a kind and in an amount determined by the Minister in accordance with the prescribed requirements, being a security of a kind and in an amount designed to meet the cost or a proportion of the cost approved by the Minister of post-decommissioning work on petroleum infrastructure or 1 or more wells for which the permit or licence holder was responsible for carrying out and meeting the costs of decommissioning.

(2) Any financial security referred to in this section is obtained or maintained on behalf of the Crown.

**89ZP ~~Minister to set amount~~ Matters for Minister to consider**

~~The Minister must set, in accordance with the prescribed criteria, the amount to be paid under this subpart by each permit holder or licence holder who is obliged to carry out and meet the costs of decommissioning petroleum infrastructure and 1 or more wells under **subpart 2**.~~

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In deciding under **section 89ZO** whether to require a permit holder or licence holder to pay an amount or obtain and maintain a financial security, the Minister may take into account any information supplied by the permit holder or licence holder and any proposal by that person to obtain and maintain a particular kind of security in an amount nominated by that person.

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**89ZQ When payment is due or financial security must be obtained**

(1) The Minister must direct that a payment by a person to whom **section 89ZO(a)** applies—

- (a) be made in 1 lump sum to the chief executive by a prescribed time; or
- (b) be made in 2 or more instalments on prescribed dates or at prescribed intervals.

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(2) In deciding whether to give a direction under **subsection (1)(a) or (b)**, the Minister must take into account—

- (a) the prescribed criteria (if any);
- (b) the most recent report (if any) available on the person's financial capability.

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(2A) The Minister must direct that a person to whom **section 89ZO(b)** applies obtain and maintain a financial security—

- (a) in an amount and of a kind specified by the Minister; and
- (b) on conditions related to the financial security or the manner in which it is held that the Minister considers appropriate; and
- (c) by a date specified by the Minister.

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(3) The Minister must give written notice of the matters in **subsection (1)** to the person or persons from whom payment is due.

**89ZR Other duties of chief executive**

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(1) The chief executive must ensure that—

- (a) money received under **section 89ZO(a)** is paid into 1 or more accounts in accordance with section 104 and is managed in accordance with the requirements (if any) in the regulations;
- (b) money received or made available for use under **section 89ZO** is used only to undertake, or reimburse the cost of, post-decommissioning work.

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(2) Any money referred to in **subsection (1)** may be invested by the chief executive, with the prior approval of the Minister.

- (3) The chief executive may refund all or any part of any money referred to in **subsection (1)**, in any circumstances where a refund is authorised by the regulations.
- (4) For the purposes of carrying out their duties under this subpart, the chief executive may— 5
- (a) take account of any information supplied under **sections 89ZA and 89ZC**;
  - (b) require a permit holder or licence holder by written notice to supply any specified information.
- (5) The permit holder or licence holder must provide the information— 10
- (a) in the form and in the manner set out in the notice; and
  - (b) within any reasonable time specified in the notice requiring the information.
- (6) To avoid doubt, information gathered under this section is subject to ~~section 90 (permit holder records and reports)~~ and section 90A (disclosure of information). 15

**89ZS Other duties of Minister**

- (1) The Minister may, in accordance with the prescribed requirements (if any), direct that money received under **section 89ZO** be given to a specified person within a prescribed class of persons or organisations for use in relation to a specified project (being a project for which expenditure or reimbursement is authorised under **section 89ZR(1)(b)**). 20
- (2) For the purposes of carrying out their duties under this subpart, the Minister may—
- (a) take into account any information supplied under ~~sections 89ZA and 89ZC~~ **42A, 42B, 42C, and sections 89ZAAA to 89ZC and 89ZP**; 25
  - (b) review the adequacy of the funds available for decommissioning work, periodically, in accordance with the prescribed requirements;
  - (c) authorise the grant of refunds to persons who have made payments or made available money for use under **section 89ZO**, in accordance with the prescribed requirements; 30
  - (ca) approve any specified person or class of person to apply for funds, in the prescribed manner and in accordance with the prescribed criteria (if any), to use in post-decommissioning work;
  - (bd) require a permit holder or licence holder by written notice to supply any specified information. 35
- (3) The permit holder or licence holder must provide the information—
- (a) in the form and in the manner set out in the notice; and

- (b) within any reasonable time specified in the notice requiring the information.
- (4) To avoid doubt, information gathered under this section is subject to ~~section 90 (permit holder records and reports)~~ and section 90A (disclosure of information).

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### *Exemptions*

#### **89ZT Exemption powers of Minister**

- (1) The Minister may, if they consider it appropriate and if satisfied that the criteria in **section 89ZU(1)(a) or (b)** are satisfied, exempt a permit holder or a licence holder from the obligation to pay all or part of any amount the person would otherwise be required to pay under **section 89ZO(a)** or from the obligation to obtain and maintain a financial security under **section 89ZO(b)**.
- (2) The Minister ~~may~~—
- (a) may grant an exemption on any terms and conditions that the Minister considers appropriate:
- (b) may amend or revoke an exemption:
- (c) may grant an exemption for an indefinite or a limited period:
- (d) may replace an exemption either before or when it expires:
- (e) must provide a summary of reasons for a decision under **paragraphs (a) to (d)** and include that summary in the notice of exemption.
- (3) Class exemptions may be granted by regulations (*see* section 105).

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#### **89ZU Criteria for granting exemption**

- (1) Before granting an exemption under **section 89ZT(1)**, the Minister must be satisfied that—
- (a) the requirement is unreasonable or inappropriate in the particular case; or
- (b) events have occurred that make the requirement unnecessary or inappropriate in the particular case.
- (2) For the purposes of applying **subsection (1)(a) and (b)**, the Minister must consider the prescribed criteria (if any).

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### Subpart 4—Enforcement, remedies, and appeals

#### **89ZV Application of this subpart**

This subpart applies in relation to any contravention or alleged contravention of this Act or the regulations.

**89ZW Chief executive or enforcement officer may accept enforceable undertakings**

(1) The chief executive or an enforcement officer may accept an enforceable undertaking given by a person in writing in connection with a matter relating to a contravention or an alleged contravention by the person of this Act or the regulations. 5

(2) The giving of an enforceable undertaking does not constitute an admission of guilt by the person giving it in relation to the contravention or alleged contravention to which the undertaking relates.

Compare: 2015 No 70 s 123 10

**89ZX Notice of decision and reasons for decision**

The chief executive or enforcement officer must give the person seeking to make an enforceable undertaking written notice of—

- (a) their decision to accept or reject the undertaking; and
- (b) the reasons for the decision. 15

Compare: 2015 No 70 s 124

**89ZY When enforceable undertaking is enforceable**

An enforceable undertaking takes effect and becomes enforceable when the chief executive's or enforcement officer's decision to accept the undertaking is given to the person who made the undertaking, or at any later date specified by the chief executive or enforcement officer. 20

Compare: 2015 No 70 s 125

**89ZZ Compliance with enforceable undertaking**

(1) A person must not contravene an enforceable undertaking given by that person that is in force. 25

(2) A person who contravenes **subsection (1)** commits an offence and is liable on conviction to a fine not exceeding \$200,000.

Compare: 2015 No 70 s 126

**89ZZA Contravention of enforceable undertaking**

(1) The chief executive or an enforcement officer may apply to the District Court for an order referred to in **subsection (2)** if a person contravenes an enforceable undertaking. 30

(2) If the court is satisfied that the person who made the enforceable undertaking has contravened the undertaking, the court may make either or both of the following orders: 35

- (a) an order directing the person to comply with the undertaking;
- (b) an order discharging the undertaking.



(3) In addition to the orders referred to in **subsection (2)**, the court may make any other order that the court considers appropriate in the circumstances, including orders directing the person to pay the department that, with the authority of the Prime Minister, is responsible for the administration of this Act—

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- (a) the costs of the proceedings; and
- (b) the reasonable costs of the chief executive or the enforcement officer in monitoring compliance with the enforceable undertaking in the future.

(4) This section does not prevent proceedings being brought for the contravention or alleged contravention of this Act or regulations to which the enforceable undertaking relates.

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Compare: 2015 No 70 s 127

**89ZZB Withdrawal or variation of enforceable undertaking**

(1) A person who has given an enforceable undertaking may at any time, with the written agreement of the chief executive,—

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- (a) withdraw the undertaking; or
- (b) vary the undertaking.

(2) However, the provisions of the undertaking cannot be varied to provide for a different alleged contravention of this Act or regulations.

Compare: 2015 No 70 s 128

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**89ZZC Proceedings for alleged contravention**

(1) Subject to this section, no proceedings (whether civil or criminal) for a contravention or an alleged contravention of this Act or regulations may be brought against a person if an enforceable undertaking is in effect in relation to that contravention.

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(2) No proceedings may be brought for a contravention or an alleged contravention of this Act or regulations against a person who—

- (a) has made an enforceable undertaking in relation to that contravention; and
- (b) has completely discharged the enforceable undertaking.

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(3) The chief executive or an enforcement officer may accept an enforceable undertaking in relation to a contravention or an alleged contravention before proceedings in relation to that contravention have been completed.

(4) If the chief executive or an enforcement officer accepts an enforceable undertaking before the proceedings are completed, the chief executive or an enforcement officer must take all reasonable steps to have the proceedings discontinued as soon as practicable.

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Compare: 2015 No 70 s 129

*Compliance notices***89ZZD Power to issue compliance notices**

- (1) This section applies if the chief executive or an enforcement officer reasonably believes that a person—
- (a) is contravening a provision of this Act or the regulations; or 5
  - (b) is likely to contravene a provision of this Act or the regulations.
- (2) The chief executive or enforcement officer may issue a compliance notice requiring the person to—
- (a) remedy the contravention; or
  - (b) prevent a likely contravention from occurring; or 10
  - (c) remedy the things or activities causing the contravention or likely to cause a contravention.
- (3) The chief executive or enforcement officer may issue a compliance notice only, if in the opinion of the chief executive or enforcement officer,—
- (a) the contravention or likely contravention is or would be sufficiently serious to justify the issue of a compliance notice; or 15
  - (b) there has been a repeated contravention or a repetition of behaviour that is likely to lead to a contravention occurring; or
  - (c) the contravention or behaviour likely to lead to a contravention has been committed intentionally or recklessly or involves negligence on the person's part. 20
- (4) However, each of the criteria specified in **subsection (3)(a) to (c)** may be considered on the basis of the information readily available to the chief executive or enforcement officer and the chief executive or enforcement officer need not make further enquiries before applying those criteria. 25

Compare: 2015 No 70 s 101

**89ZZE Content of compliance notices**

- (1) A compliance notice must state—
- (a) that the chief executive or an enforcement officer believes, on reasonable grounds, that the person— 30
    - (i) is contravening a provision of this Act or the regulations; or
    - (ii) is likely to contravene a provision of this Act or the regulations; and
  - (b) the provision the chief executive or enforcement officer believes, on reasonable grounds, is being, or is likely to be, contravened; and 35
  - (c) briefly, how the provision is being, or is likely to be, contravened; and
  - (d) a period within which the person is required to remedy—

- (i) the contravention or likely contravention; or
  - (ii) the things or activities causing the contravention or likely to cause a contravention.
- (2) A compliance notice may include recommendations concerning—
- (a) the measures that could be taken to remedy the contravention, or prevent the likely contravention, to which the notice relates: 5
  - (b) the things or activities causing the contravention, or likely to cause a contravention, to which the notice relates.

Compare: 2015 No 70 s 102

**89ZZF Compliance with compliance notice** 10

- (1) A person who has been issued with a compliance notice must comply with the notice within the period specified in the notice.
- (2) A person who contravenes **subsection (1)** commits an offence and is liable, on conviction, to a fine not exceeding \$200,000.
- (3) However, in a prosecution for an offence against **subsection (2)** the defendant has a defence if they prove that they had a reasonable excuse for failing to comply with the compliance notice within the required period. 15
- (4) It is not an offence to fail to comply with recommendations in a compliance notice.

Compare: 2015 No 70 s 103

**89ZZG Extension of time for compliance with compliance notices** 20

- (1) This section applies if a person has been issued with a compliance notice.
- (2) The chief executive or enforcement officer may, on their own initiative or on the application of the person, by written notice given to the person, extend the compliance period for the compliance notice. 25
- (3) However, the chief executive or enforcement officer may extend the compliance period only if the period has not ended.
- (3A) If a person applies for an extension of time for complying with a compliance notice not less than 2 weeks before the time for compliance expires but a decision has not been made on the application before the time for compliance expires, the period for compliance is deemed to be extended for a period of 2 weeks, to enable a decision on extension to be made within that period. 30
- (4) In this section, **compliance period**—
  - (a) means the period stated in the compliance notice under **section 89ZZE(1)**; and 35
  - (b) includes any extension of that period under this section.

Compare: 2015 No 70 s 104

*General provisions***89ZZH General provisions relating to compliance notices**

- (1) A compliance notice must be in writing.
- (2) A compliance notice may be addressed to any person under the person's legal name or usual business name ~~or style~~.

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Compare: 2015 No 70 s 112

**89ZZI Changes to notice by chief executive or enforcement officer**

The chief executive or an enforcement officer (as the case may be) may make minor changes to a compliance notice—

- (a) for clarification; or
- (b) to correct errors or references; or
- (c) to reflect changes of address or other circumstances.

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Compare: 2015 No 70 s 113

**89ZZJ Chief executive or enforcement officer may vary or cancel compliance notice**

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Except as provided in **section 89ZZI**, a compliance notice issued by the chief executive or an enforcement officer may be varied or cancelled only by the chief executive or the enforcement officer.

Compare: 2015 No 70 s 114

**89ZZK Formal irregularities or defects in compliance notice**

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A compliance notice is not invalid merely because of—

- (a) any defect, irregularity, omission, or want of form in the compliance notice unless the defect, irregularity, omission, or want of form causes or is likely to cause a miscarriage of justice; or
- (b) a failure to use the correct name of the person to whom the compliance notice is issued if the notice sufficiently identifies the person and is issued to the person in accordance with **section 89ZZL**.

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Compare: 2015 No 70 s 115

**89ZZL Issue of compliance notice**

- (1) A compliance notice may be issued to a person by—
- (a) ~~by delivering it personally to the person; or~~
- (b) ~~by sending it to the person—~~
- (i) ~~by post to the person's usual or last known place of residence or business; or~~
- (ii) ~~by electronic transmission; or~~

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- (e) ~~by leaving it for the person at the person's usual or last known place of residence or business with a person who appears to be 16 years or over and who appears to reside or work there; or~~
- (d) ~~in a prescribed manner.~~
- (a) delivering it to the person or, if the person refuses to accept it, bringing it to the person's notice; or 5
- (b) leaving it for the person at the person's last known place of residence with another person who appears to be of or over the age of 16 years; or
- (c) leaving it for the person at the person's place of business or work with another person; or 10
- (d) sending it to the person by prepaid post addressed to the person's last known place of residence or place of business or work; or
- (e) sending it to an electronic address of the person in any case where the person does not have a known place of residence or business in New Zealand. 15
- (2) Regulations may prescribe the steps a person to whom a compliance notice is issued must take to bring it to the attention of other persons.
- (3) A compliance notice ~~— posted under **subsection (1)(b)(i)** is to be treated as having been received at the time at which the notice would have been delivered in the ordinary course of the post, in the absence of proof to the contrary.~~ 20
- (a) posted under **subsection (1)(d)** is to be treated as having been received by the person on the fifth working day after the day on which it was posted;
- (b) delivered electronically under **subsection (1)(e)** is to be treated as having been received at the time the electronic communication first entered an information system that is outside the control of the chief executive or an enforcement officer. 25

Compare: 2015 No 70 s 116

*Civil proceedings for non-compliance with compliance notices*

- 89ZZM Civil proceedings relating to non-compliance with compliance notice** 30
- (1) On an application by the chief executive or an enforcement officer, the District Court may make an order—
- (a) compelling a person to comply with a compliance notice; or
- (b) restraining a person from contravening a compliance notice.
- (2) The court may make an order— 35
- (a) under **subsection (1)(a)**, if it is satisfied that the person has refused or failed to comply with a compliance notice:

- (b) under **subsection (1)(b)**, if it is satisfied that the person has contravened, is contravening, or is likely to contravene a compliance notice.
- (3) The courts may make an order under **subsection (2)** whether or not proceedings have been brought for an offence against this Act or regulations in connection with any matter in relation to which the compliance notice was issued.— 5
- ~~(a) whether or not proceedings have been brought for an offence against this Act or regulations in connection with any matter in relation to which the compliance notice was issued; and~~
- ~~(b) whether or not the compliance period for the compliance notice has expired.~~ 10

Compare: 2015 No 70 s 122

### *Pecuniary penalties*

#### **89ZZN Reasonable mistake defence in pecuniary penalty proceedings**

- (1) Every person has a defence to proceedings for pecuniary penalties under **section 89ZZO**, in connection with a breach of this Act, if the person proves that— 15
- (a) the breach was due to a reasonable mistake or due to events outside of the person's control; and
- (b) the breach was remedied (to the extent that it could be remedied) as soon as practicable after the breach was discovered by the person or brought to the person's notice; and 20
- (c) the person has compensated or offered to compensate any person who has suffered loss or damage by that breach.
- (2) For the avoidance of doubt, a **mistake** does not include a mistake of law or a mistake in the interpretation of any enactment or of any document. 25

#### **89ZZO Pecuniary penalties**

- (1) A court of competent jurisdiction may, on the application of the chief executive, order a person to pay to the Crown the pecuniary penalty that the court determines to be appropriate if the court is satisfied that the person— 30
- (a) has contravened any of the following provisions:
- (i) **sections 89K and 89L** (which require the decommissioning of petroleum infrastructure);
- (ii) **sections 89R and 89S** (which require the plugging and abandoning of wells);
- (iii) **section 89ZE** (which requires the establishment and maintenance of an adequate financial security); 35
- (iv) **section 89ZO** (which requires the making of post-decommissioning payments or the taking out of a financial security):

- (b) has attempted to contravene such a provision; or
- (c) has aided, abetted, counselled, or procured any other person to contravene such a provision; or
- (d) has induced, or attempted to induce, any other person, whether by threats or promises or otherwise, to contravene such a provision; or 5
- (e) has been in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by any other person of such a provision; or
- (f) has conspired with any other person to contravene such a provision.
- (2) In determining an appropriate penalty under this section, the court must have regard to all relevant matters, in particular,— 10
- (a) the nature and extent of the contravention; and
- (b) the nature and extent of any loss or damage suffered by any person because of the contravention; and
- (c) any gains made or losses avoided by the person in contravention; and
- (d) the circumstances in which the contravention took place (including whether the contravention was intentional, inadvertent, or caused by negligence). 15
- (3) The amount of any pecuniary penalty must not, in respect of each act or omission, exceed,—
- (a) in the case of an individual, \$500,000; or 20
- (b) in the case of a body corporate, ~~\$10,000,000~~. the greater of—
- (i) \$10,000,000 (or, in the case of a contravention referred to in **subsection (1)(a)(iv)**, \$5,000,000); or
- (ii) either—
- (A) if it can readily be ascertained and if the court is satisfied that the contravention resulted in a cost to the Crown or another person to remedy the effects of the contravention, 3 times the commercial gain; or 25
- (B) if the commercial gain cannot be readily ascertained, 10% of the turnover of the person and all its interconnected bodies corporate (if any) in each accounting period during which the contravention occurred. 30
- (4) Proceedings under this section may be commenced within 3 years after the matter giving rise to the contravention was discovered or ought reasonably to have been discovered. 35
- (5) Where conduct by any person constitutes a contravention of 2 or more provisions referred to in **subsection (1)(a)**, proceedings may be instituted under this Act against that person in relation to the contravention of any 1 or more of

the provisions; but no person is liable to more than 1 pecuniary penalty under this section in respect of the same conduct.

Compare: 2003 No 52 s 107A

**89ZZP Proceedings for pecuniary penalties**

In any proceedings under this subpart for a pecuniary penalty,— 5

- (a) the standard of proof is the standard of proof that applies in civil proceedings; and
- (b) the chief executive may, by order of the court, obtain discovery and administer interrogatories.

Compare: 2003 No 52 s 107B 10

*Criminal liability for knowingly failing to carry out certain obligations*

**89ZZQ Criminal liability for knowingly failing to carry out certain obligations**

- (1) This section applies to a person (A) if A is liable for 1 or more of the following (A's decommissioning obligations):
  - (a) carrying out or meeting the costs (or both) of decommissioning petroleum infrastructure under **section 89K or 89L** by the time A is required to do so under **section 89O**: 15
  - (b) carrying out or meeting the costs (or both) of plugging and abandoning wells under **section 89R or 89S** by the time A is required to do so under **section 89V**. 20
- (2) A commits an offence if they do an act, fail to act, or engage in a course of conduct knowing that the act, failure to act, or course of conduct will result in A not being able to meet A's decommissioning obligations.
- (3) If A is a current permit or licence holder that is a body corporate, and commits an offence under **subsection (2)**, any person who is ~~or was~~ a director of A ~~during a period when A was liable for A's decommissioning obligations~~ when A commits the offence also commits an offence. 25
- (4) A person who commits an offence under this section is liable on conviction,—
  - (a) in the case of an individual, to imprisonment for a term not exceeding 2 years, or a fine not exceeding \$1 million, or both; and 30
  - (b) in any other case, the greater of the following:
    - (i) a fine not exceeding \$10 million:
    - (ii) a fine not exceeding 3 times the cost of decommissioning.
- (5) Proceedings under this section may be commenced within 3 years after the matter giving rise to the offence was discovered or ought reasonably to have been discovered. 35



**89ZZR Defence to criminal liability for directors**

- (1) In any proceeding against a director under **section 89ZZQ(3)**, it is a defence if the director proves that—
- (a) A took all reasonable steps to ensure A would meet A’s decommissioning obligations; or
  - (b) the director took all reasonable steps to ensure that A would meet A’s decommissioning obligations; or
  - (c) in the circumstances, the director could not reasonably have been expected to take steps to ensure that A would meet A’s decommissioning obligations.
- (2) In this section,—
- A has the meaning set out in **section 89ZZQ**
- A’s decommissioning obligations has the meaning set out in **section 89ZZQ**.

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*Relationship between pecuniary penalties and criminal liability*

**89ZZS Relationship between pecuniary penalties and criminal liability**

- (1) A criminal proceeding for an offence may be commenced against a person in relation to particular conduct whether or not a proceeding for a pecuniary penalty has been commenced against the person in relation to the same conduct.
- (2) A proceeding for a pecuniary penalty against a person in relation to particular conduct is stayed ~~(unless the court orders otherwise)~~ if a criminal proceeding against the person has been commenced for an offence in relation to the same conduct.
- ~~(3) After the criminal proceeding referred to in **subsection (2)** has been completed or withdrawn, a person may apply to have the stay lifted on the pecuniary penalty proceeding.~~

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*Restrictions on indemnities and insurance*

**89ZZT Restriction on indemnities**

- (1) A body corporate must not indemnify any director, employee, or agent, or former director, employee, or agent, of the body corporate or of any related body corporate (**person C**) in respect of—
- (a) any pecuniary penalty imposed on person C under this Act; or
  - (b) any costs incurred by person C in defending any civil proceedings in which the pecuniary penalty referred to in **paragraph (a)** is imposed.
- (2) An indemnity given in contravention of **subsection (1)** is void.

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- (3) In this section and **section 89ZZU**, **indemnify** includes relieve or excuse from liability, whether before or after the liability arises, and **indemnity** has a corresponding meaning.

Compare: 2003 No 52 s 107D

**89ZZU Restriction on insurance**

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No person may enter into a contract of insurance that indemnifies or purports to indemnify a person (**person C**) in respect of—

- (a) any pecuniary penalty imposed on person C under this Act; or  
(b) any costs incurred by person C in defending any civil proceedings in which the pecuniary penalty referred to in **paragraph (a)** is imposed.

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Compare: 2003 No 52 s 107E

Subpart 5—Crown liability

**89ZZV Effects of subparts 2 and 3 on Crown liability**

- (1) **Subparts 2 and 3** of this Part (which deal with decommissioning and post-decommissioning obligations) do not require the Crown to undertake or pay for the decommissioning of petroleum infrastructure or wells or post-decommissioning work.

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- (2) **Subsection (1)** does not extinguish or otherwise affect any liability the Crown may have under any other enactment, rule of law, or agreement.

**18 New subpart 6 heading in Part 1B inserted**

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Before the cross-heading above section 90, ~~above the cross heading, insert the following subpart heading insert:~~

Subpart 56—Offences and miscellaneous

**19 Section 90 amended (Permit holder records and reports)**

- (1) In section 90(1), replace “in respect of all prospecting, exploration, and mining activities” with “in respect of all prospecting, exploration, mining, ~~and~~ decommissioning activities and post-decommissioning activities”.

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- (2) After section 90(1), insert:

- (1A) Without limiting the generality of subsection (1), the records and reports required to be kept include—

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- (a) financial records, including any financial records required to be kept and retained under the Tax Administration Act 1994;  
(b) commercial records, including any feasibility studies;  
(c) scientific and technical records;  
(d) any calculations made in support of the above records:

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- (e) records, reports, statements, or any other documentation or information required under other legislation, if regulations made under this Act prescribe that they must be retained for the purposes of this Act:
- (f) any other records or reports prescribed by regulations.
- (3) After section 90(8), insert: 5
- (8A) The chief executive may, but is not required to, publish on an Internet site maintained by the chief executive or in any other way the chief executive considers appropriate all or any of the information supplied under this section, at any time after the information is required to be made available under any of subsections (6) to (8). 10
- (4) Replace section 90(11) with:
- (11) Nothing in this section requires the chief executive to send or make available any records, reports, information, or returns—
- (a) gathered under **subsection (1A)(a)**, including information gathered under **sections 42B, 42C, 89ZA, 89ZC, 89ZAAA, 89ZAAB, 89ZAAC, 89ZAAD, 89ZE, 89ZF, 89ZR, and 89ZS**: 15
- (b) relating to the calculation and payment of royalties by permit holders.
- 20 Section 90A amended (Disclosure of information)**
- (1) In section 90A(1), after “42A”, insert “42A, **42B, 42C**”.
- (2) In section 90A(1), after “61C,”, insert “**89ZA, 89ZC, 89ZD, 89ZE, 89ZF, 89ZR, 89ZS,**”.
- (3) In section 90A(1), after paragraph (e), insert:
- (ea) disclosure is authorised under **section 90(8A)**; or
- 20A Section 97 amended (Application of monetary deposits)**
- (1) In section 97(3), replace “subsection (2)” with “subsections (2) and **(5)**”. 25
- (2) In section 97(4), replace “On the termination” with “Subject to **subsection (5)**, on the termination”.
- (3) After section 97(4), insert:
- (5) In the case of any money held by the chief executive under a financial security required under **section 89ZE**, the provisions of subsections (3) and (4) apply subject to the following modifications: 30
- (a) the funds held by the chief executive must not be refunded until any required decommissioning is completed:
- (b) any interest to be paid to the permit holder must be repaid in 1 lump sum at the time when the principal sum deposited by the permit holder under **section 89ZE** is refunded. 35

**21 Section 99C amended (Application for warrant for entry to search)**

In section 99C(1), replace “place or vehicle” with “place, structure, vehicle, or ship” in each place.

**22 Section 100 amended (Offences)**

(1) After section 100(2)(d), insert: 5

(e) **section 99F**, which relates to providing certain information to the Minister, the chief executive, or an enforcement officer:

(2) After section 100(4), insert:

(5) If an enforceable undertaking has been given, criminal proceedings may be taken for an offence within 6 months after— 10

- (a) the enforceable undertaking is contravened; or
- (b) it comes to the notice of the regulator that the enforceable undertaking has been contravened; or
- (c) the chief executive agreed to the withdrawal of the enforceable undertaking. 15

**23 Section 101A amended (Interpretation)**

In section 101A, repeal the definition of **ship**.

**24 New sections 104A to ~~104J~~ 104K inserted**

After section 104, insert:

**104A Interpretation** 20

In this Act,—

**infringement fee**, in relation to an infringement offence, means the infringement fee for the offence ~~specified~~ prescribed in the regulations

**infringement offence** means an offence against the regulations that is prescribed as an infringement offence against the regulations.— 25

(a) ~~means an offence against this Act or an offence against the regulations that is prescribed as an infringement offence in the regulations; but~~

(b) ~~does not include the following offences:~~

(i) ~~knowing failure to carry out certain obligations (section ~~89ZZQ~~);~~ 30

(ii) ~~wilfully obstructing, hindering, resisting or deceiving any person in the execution of powers (section 100(3));~~

(iii) ~~knowingly providing altered, false, incomplete, or misleading information to the chief executive or any other person (section ~~100(3A)~~).~~ 35

**104B Infringement offences**

- (1) A person who is alleged to have committed an infringement offence may—
- (a) be proceeded against by the filing of a charging document under section 14 of the Criminal Procedure Act 2011; or
  - (b) be issued with an infringement notice under **section 104D**. 5
- (2) Proceedings commenced in the way described in **subsection (1)(a)** do not require the leave of a District Court Judge or Registrar under section 21(1)(a) of the Summary Proceedings Act 1957.
- (3) *See* section 21 of the Summary Proceedings Act 1957 for the procedure that applies if an infringement notice is issued. 10

**104C Who may issue infringement notices**

The chief executive may, in writing, authorise an enforcement officer to issue infringement notices under this Act.

**104D When infringement notice may be issued**

The chief executive or an enforcement officer may issue an infringement notice to a person if the chief executive or enforcement officer believes on reasonable grounds that the person is committing, or has committed, an infringement offence. 15

**104E Revocation of infringement notice before payment made**

- (1) The chief executive or an enforcement officer may revoke an infringement notice before— 20
- (a) the infringement fee is paid; or
  - (b) an order for payment of a fine is made or deemed to be made by a court under section 21 of the Summary Proceedings Act 1957.
- (2) The chief executive or enforcement officer must take reasonable steps to ensure that the person to whom the notice was issued is made aware of the revocation of the notice. 25
- (3) The revocation of an infringement notice before the infringement fee is paid is not a bar to any further action as described in **section 104B(1)(a) or (b)** against the person to whom the notice was issued in respect of the same matter. 30

**104F What infringement notice must contain**

An infringement notice must be in the form prescribed in the regulations and must contain the following particulars:

- (a) details of the alleged infringement offence that fairly inform a person of the time, place, and nature of the alleged offence: 35
- (b) the amount of the infringement fee:
- (c) the address of the [place where the infringement notice must be paid]:

(d)	how the infringement fee may be paid:	
(e)	the time within which the infringement fee must be paid:	
(f)	a summary of the provisions of section 21(10) of the Summary Proceedings Act 1957:	
(g)	a statement that the person served with the notice has a right to request a hearing:	5
(h)	a statement of what will happen if the person served with the notice neither pays the infringement fee nor requests a hearing:	
(i)	any other matters prescribed in the regulations.	
<b>104G</b>	<b>How infringement notice may be issued to person</b>	10
(1)	An infringement notice may be issued to a person who the chief executive or enforcement officer believes is committing or has committed the infringement offence by—	
(a)	delivering it to the person or, if the person refuses to accept it, bringing it to the person's notice; or	15
(b)	leaving it for the person at the person's last known place of residence with another person who appears to be of or over the age of 16 years; or	
(c)	leaving it for the person at the person's place of business or work with another person; or	
(d)	sending it to the person by prepaid post addressed to the person's last known place of residence or place of business or work; or	20
(e)	sending it to an electronic address of the person in any case where the person does not have a known place of residence or business in New Zealand.	
(2)	Unless the contrary is shown,—	25
(a)	an infringement notice (or a copy of it) sent by prepaid post to a person under <b>subsection (1)</b> is to be treated as having been served on that person on the fifth working day after the date on which it was posted; and	
(b)	an infringement notice sent to a valid electronic address is to be treated as having been served at the time the electronic communication first entered an information system that is outside the control of the chief executive or enforcement officer.	30
<b>104H</b>	<b>Payment of infringement fees</b>	
	All infringement fees paid for infringement offences must be paid into a Crown Bank Account.	35

**104I Reminder notices**

A reminder notice must be in the form prescribed in the regulations and must include the same particulars, or substantially the same particulars, as the infringement notice.

**104J Regulations**

~~Regulations may be made under section 105 specifying the offences in this Act and the regulations that are infringement offences, and prescribing infringement fees for these offences—~~

- ~~(a) not exceeding \$1,000, in the case of an individual;~~
- ~~(b) not exceeding \$3,000, in the case of a body corporate.~~

Regulations may be made under section 105—

- (a) prescribing infringement offences by—
  - (i) prescribing a duty, restriction, or prohibition for conduct that is similar to conduct, or similar to an element of conduct, for which there is a duty, restriction, or prohibition under any provision of this Act; and
  - (ii) providing that a contravention of the duty, restriction, or prohibition is an infringement offence:
- (b) prescribing for those infringement offences—
  - (i) fines not exceeding—
    - (A) \$2,000 for an individual;
    - (B) \$6,000 in any other case;
  - (ii) infringement fees not exceeding—
    - (A) \$1,000 for an individual;
    - (B) \$3,000 in any other case.

**104K Relationship between infringement offences and other offences**

A person may be prosecuted or convicted of any offence referred to in the Act (rather than proceeding under **sections 104A to 104I**), even if their conduct is, or may be, an infringement offence.

**25 Section 105 amended (Regulations)**

- (1) In section 105(1)(a), after “the manner in which such documentation or information is to be provided”, insert “(including electronically)”.
- (2) After section 105(1)(g), insert:
  - (gaaa) prescribing the records, statements, or any other documentation or information required under other legislation that must be retained for the purposes of this Act:

Crown Minerals (Decommissioning and Other Matters)  
Amendment Bill

Part 2 cl 25

- (gaab) prescribing requirements in relation to the **subpart 2** decommissioning plan submitted under **section 89ZAAA**:
- (gaac) prescribing matters for the purposes of **sections 89ZAAB** (decommissioning cost estimate), **89ZAAD** (decommissioning completion report), and **89ZA** (provision of information needed to monitor financial position): 5
- (gab) prescribing the standard or requirements that a decommissioning cost estimate submitted ~~as part of a field development plan~~ under **section 42B 89ZAAB** must meet:
- (3) After section 105(1)(q), insert: 10
- (qa) regulating the decommissioning of petroleum installations and the plugging and abandonment of wells:
- (qb) exempting specified classes of permit holders or licence holders from the obligation to decommission specified classes of petroleum infrastructure, or to plug and abandon specified classes of wells, or both, or deferring any or all of those obligations: 15
- (qc) declaring petroleum infrastructure and classes or items of petroleum infrastructure to be or not to be, as the case requires, relevant older petroleum infrastructure:
- (qd) ~~declaring a an individual well~~ or class of wells to be, or not to be, as the case requires, to be a relevant older well or relevant older wells: 20
- (qe) requiring permit holders and licence holders to notify the chief executive of the likely date in which production will cease at any well, or in any field, at specified times:
- (qf) regulating the making of payments for post-decommissioning work, the establishment and operation of accounts into which those payments are deposited, and the use of, and accounting for, funds in those accounts: 25
- (qg) exempting specified classes of permit holders or licence holders from the obligation to make post-decommissioning payments under **section 89ZO** (either in whole or in part): 30
- (qh) prescribing requirements in relation to the ongoing monitoring of a permit or licence holder's financial position and assessing their financial capability under ~~sections 89ZA, 89ZB, and 89ZC~~ **sections 89ZA to 89ZC**:
- (qi) regulating the setting, obtaining and maintaining of financial securities that permit holders and licence holders may be required to obtain and maintain, which may include, without limitation,— 35
- (i) setting criteria that the Minister must consider under **section 89ZF(1)(b)** when deciding the ~~kind~~ kinds and amounts of financial security to be required: 40



- (ii) specifying matters to be considered by the Minister when determining the ~~amount that is~~ amounts that are required to be secured (including 1 or more formulas or other methods of calculating ~~the amount~~ those amounts):
- (iii) prescribing circumstances in which certain kinds of securities will or will not be permitted: 5
- (iv) requiring certain kinds of financial securities to be held in specified situations:
- (v) setting a hierarchy of preferred financial securities, which may differ in different circumstances: 10
- (vi) specifying how certain financial securities must be held:
- (vii) setting time frames for the obtaining and maintaining of all or part of a required security:
- ~~(viii) exempting specified classes of permit holder or licence holders from the requirements to hold a financial security either generally, or in relation to any specified matter: 15~~
- ~~(ix) prescribing the form or content of applications to be made to the chief executive in connection with financial securities: 15~~
- ~~(x) deferring the obligations of specified classes of permit holder or licence holder to obtain and maintain a financial security, either generally, or in relation to any specified matter: 20~~
- (xi) prescribing the manner in which information is to be supplied for the purposes of **section 89ZE(2)**:
- (xii) enabling the Minister to determine any other specified matter in connection with financial securities: 25
- (qj) specifying the maximum amount or a scale of maximum amounts, to be secured by financial securities that permit holders and licence holders may be required to obtain and maintain:
- (qk) regulating the setting and use of post-decommissioning payments, including, without limitation,— 30
  - (i) specifying criteria for calculating the amount of post-decommissioning payments that permit holders and licence holders are required to make:
  - (ii) setting time frames for making payments in ~~one~~ 1 lump sum or by instalments: 35
  - (iii) setting criteria to be applied in determining whether post-decommissioning payments are to be made in a lump sum or by instalments:
  - (iv) setting criteria to be applied in determining whether to grant exemptions from post-decommissioning payments: 40

- (v) providing for refunds of all or part of a post-decommissioning payment in specified circumstances:
- (vi) setting restrictions on the use of post-decommissioning payments or post-decommissioning payments of a specified class:
- (ql) regulating the setting, obtaining and maintaining of financial securities that persons with post-decommissioning obligations under **section 89ZO** may be required to obtain and maintain. 5
- (4) After section 105(3), insert:
- (3A) Regulations made under this section may apply in relation to licences, licence holders, and holders of a participating interest in a licence, or any class of licence or those persons, in so far as the regulations relate to ~~sections 42B and 42C and subparts 2 and 3 of subpart Part 1B~~ or any other provision of this Act specified in the regulations. 10
- (3B) Regulations made under **subsection (1)(qb) or (1)(qc)** (which relates to class exemptions) may only provide for exemptions— 15
- (a) that the Minister is satisfied are exemptions from requirements that are unreasonable or inappropriate for the exempted class of persons to comply with; or
- (b) if the Minister is satisfied that events have occurred that make the requirements unnecessary or inappropriate for the exempted class of persons to comply with. 20
- 26 Schedule 1 amended**
- In Schedule 1, ~~— after Part 3, insert the **Part 4** set out in **Schedule 1** of this Act.~~
- (a) insert the Part set out in Schedule 1 of this Act as the last Part; and 25
- (b) make all necessary consequential amendments.
- 27 Enactments consequentially amended**
- Amend the enactments specified in **Schedule 2** in the manner set out in that schedule.

**Schedule 1**  
**New Part 4 inserted into Schedule 1**

**s 22**

<b>Part 4</b>		
<b>Provisions relating to Crown Minerals (Decommissioning and Other Matters) Amendment Act 2021</b>		
<b>32</b>	<b>Consequential amendments to minerals programmes</b>	5
	Nothing in section 17 or 18 of this Act applies to any change to a minerals programme if the change that is made is consequential to the amendments made to this Act by the Crown Minerals (Decommissioning and Other Matters) Amendment Act <b>2021</b> (including any change to remove inconsistencies between the minerals programme and this Act as amended).	10
<b>33</b>	<b>Specific proceedings unaffected</b>	
	To avoid doubt,—	
	(a) the decision of the High Court in the proceedings between Greymouth Gas Turangi Limited and the Minister of Energy and Resources (CIV-2018-485-237) is binding on the parties for the purposes of the matters at issue in those proceedings; and	15
	(b) the Act, as it was in force on 6 March 2018, continues to apply for the purposes of giving effect to that decision, notwithstanding the commencement of the Crown Minerals (Decommissioning and Other Matters) Amendment Act <b>2021</b> (other than this clause).	20
<b>34</b>	<b>Existing applications determined in accordance with Act as amended</b>	
(1)	Any application that was lodged or submitted, but not determined, before the day after the date on which the Crown Minerals (Decommissioning and Other Matters) Amendment Act <b>2021</b> (the <b>Amendment Act</b> ) received 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 received the Royal assent.	25
(2)	<b>Subclause (1)</b> applies despite anything to the contrary in this Act.	
(3)	In this clause, <b>application</b> means—	30
	(a) an application under section 23A (application for permits); and	
	(b) an application under section 24 (allocation by public tender); and	
	(c) an application under section 41 (transfer of interest in permit); and	
	(d) an application under section 41AB (change of control of permit operator of Tier 1 permit); and	35
	(e) an application under section 41C (change of permit operator).	

<b>35</b>	<b><del>Existing financial securities for decommissioning</del></b>	
(1)	<del>This section applies if,—</del>	
(a)	<del>before the day after the date on which the Crown Minerals (Decommissioning and Other Matters) Amendment Act 2021 received the Royal assent, a permit holder, a licence holder, or a person who holds a participating interest in a permit or a licence has obtained a financial security; and</del>	5
(b)	<del>on and after that day, the Crown may obtain payment of the amount secured by that security in the event that the holder of that permit or licence fails to carry out, or separately meet, the costs of, the decommissioning of—</del>	10
(i)	<del>petroleum infrastructure or 1 or more wells put in place or drilled or operated for the purposes of, or otherwise related to, activities authorised by the permit or licence; or</del>	
(ii)	<del>relevant older petroleum infrastructure or a relevant older well or wells.</del>	15
(2)	<del>The financial security is to be treated as being of a kind and amount required by the Minister under <b>sections 89ZE and 89ZG</b> and held and maintained in accordance with <b>sections 89ZE to 89ZK</b>, regardless of whether it is maintained by—</del>	20
(a)	<del>the permit holder or a person who holds a participating interest in the permit; or</del>	
(b)	<del>the licence holder or a person who holds a participating interest in the licence.</del>	
(3)	<del>However, the Minister may at any time exercise the power in <b>section 89ZH</b> to—</del>	25
(a)	<del>require an increase to the amount secured or an alteration to the kind of security that is held; or</del>	
(b)	<del>reduce the amount required to be secured.</del>	
<b>35</b>	<b><u>Section 13 of Petroleum Act 1937 amended (Term of mining licence)</u></b>	30
	<u>Section 13(3) of the Petroleum Act 1937 (as preserved by clause 12(1)(a) of Schedule 1) must be applied as if there were inserted the following paragraph:</u>	
(d)	<u>may be extended under this paragraph (or also under any other relevant provision enabling the duration of a licence to be extended, for some purpose, in force at the applicable time) by the Minister for such period as the Minister considers reasonable, to enable the licensee to comply with their decommissioning obligations under <b>subpart 2</b> of Part 1B of the Crown Minerals Act 1991.</u>	35

**36** **Section 34(1) to (3) of Petroleum Act 1937 ceases to have effect**  
Section 34(1) to (3) of the Petroleum Act 1937 ceases to have any effect  
(including for transitional purposes) on the day on which the Crown Minerals  
(Decommissioning and Other Matters) Amendment Act 2021 receives the  
Royal assent.

5

## Schedule 2

### Consequential amendments

**s-23 27**

#### Search and Surveillance Act 2012 (2012 No 24)

In the Schedule, item relating to section 99C of the Crown Mineral Act 1991, replace “place or vehicle” with “place, structure, vehicle, or ship”. 5

#### Summary Proceedings Act 1957 (1957 No 87)

In section 2(1), definition of **infringement notice**, after paragraph (g), insert:

(ga) **section 104D** of the Crown Minerals Act 1991:

#### Legislative history

23 June 2021  
6 July 2021

Introduction (Bill 47–1)  
First reading and referral to Economic Development, Science  
and Innovation Committee