

9 November 2021

Legislative statement: Crown Minerals (Decommissioning and Other Matters) Amendment Bill Second Reading

Presented to the House of Representatives under Standing Order 272

Overview

The Crown Minerals (Decommissioning and Other Matters) Amendment Bill (the Bill) amends the Crown Minerals Act 1991 (the Act) to strengthen the petroleum sector's financial and legal responsibility for decommissioning activities and so mitigate the risk to the Crown and other third parties of having to carry out and fund decommissioning.

The Bill does this through provisions that:

- Introduce an explicit statutory obligation for all current and future petroleum permit and licence holders to carry out decommissioning activities and meet the full financial costs of those activities;
- Introduce a civil pecuniary penalty and criminal sanction for failing to fund and carry out decommissioning;
- Empower the Minister to monitor a permit or licence holder's financial position, and carry out assessments of their financial capability to carry out decommissioning;
- Provide the Chief Executive with oversight of mining permit and licence holders' plans for field development;
- Provide the Chief Executive with powers to require information relating to decommissioning, including: decommissioning cost estimates, decommissioning plans, asset registers, a decommissioning completion report;
- Require permit and licence holders to obtain and maintain a financial security that may be accessed in the event that a permit or licence holder fails to carry out or fund decommissioning; and,
- Provide the Crown with the ability to collect one or multiple payments or accept a financial security to meet the cost of any post-decommissioning work.

It also includes changes that are not specific to decommissioning and will apply across the whole of the Act, including provisions that:

- Strengthen decision-making tests in permit acquisitions by requiring the decision-maker to be satisfied that the prospective permit holder is highly likely to fulfil the conditions of their permit, and other obligations;

- Expand the enforcement toolkit across the Act, by allowing the Chief Executive to accept enforceable undertakings, issue compliance notices, and establishing an infringement offence scheme; and,
- Make technical amendments.

The following is a brief outline of the policy matters covered by this Bill.

Clarification of the Crown's liability for decommissioning

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.

While in the Tui permit situation the Crown has stepped in to carry out and fund decommissioning, this is not the default position if a permit or licence holder fails to do so. Subpart 5, new section 89ZZV clarifies that subparts 2 and 3 of the Bill do not create a requirement that the Crown undertake or pay for decommissioning or post-decommissioning work in the event that the responsible permit and licence holders fail to do so.

An explicit, statutory obligation to carry out and fund decommissioning

The Bill provides that permit and licence holders must carry out, and meet the costs of, the decommissioning of all petroleum infrastructure and wells put in place or used for the purposes of carrying out, or otherwise related to, activities authorised by the current permit (whenever granted).

Infrastructure includes those items put in place for the purposes of petroleum exploration and production. This includes infrastructure used in the extraction, processing and treatment of petroleum and storage. It does not apply after the point that petroleum enters any third party transmission or distribution infrastructure.

Permit and licence holders must decommission relevant older petroleum infrastructure and relevant older wells. This includes wells drilled or infrastructure installed as part of a permit or licence that was exchanged for the existing permit or licence, even if the well or infrastructure was not used as part of the current permit holder's activities. This also includes any wells drilled as part of appraisal work or delineation of a permit.

The obligation to carry out and fund decommissioning applies:

- To all current petroleum exploration and mining permit holders under the Act, as well as licence holders under the Petroleum Act 1937; and,
- To any future petroleum exploration and mining permit holders.

The Bill provides that the obligation to carry out and fund decommissioning will apply to permit and licence participants jointly and severally.

The Bill also contains perpetual liability provisions that mean any person that transfers their interest in a permit or licence after the Bill is enacted will continue to be liable for meeting the costs of decommissioning, in the event that the current permit or licence holder fails to do so. This perpetual liability will be limited to the infrastructure and wells installed before the transfer has taken place, and only in situations where the current permit/licence holder fails to meet their obligations, and after the Crown has attempted to access the current permit or licence holder's financial security. Former permit holders could be called upon in the order that they transferred out of the permit or licence, starting with the most recent.

The Bill also provides the following in relation to the obligation to carry out and fund decommissioning:

- Decommissioning must be carried out in accordance with any requirements or standards set by or under any other enactments or imposed by a regulatory agency. If other enactments or requirements are silent, infrastructure must be completely removed and all wells must be plugged and abandoned. The Bill provides for a process to be established in regulations whereby the Minister may allow some infrastructure to be left in place.
- In certain circumstances, the Minister may grant exemptions or deferrals in relation to a permit or licence holder's obligation to decommission a particular item of infrastructure or a well, or classes of infrastructure or wells.
- Permit/licence holders must agree timeframes for completing decommissioning with the Minister based on the estimated date for cessation of production, the size of the field, estimated decommissioning costs and other considerations; if no timeframes are agreed, the Minister may specify timeframes. Decommissioning must be completed before permit expiry or surrender, but permits and licence may be extended for the purposes of completing decommissioning activities. If a permit expires before decommissioning is completed, the obligation continues.
- The Minister may also agree to key milestones with the permit/licence holder, and timeframes for completing these. Failure to meet these timeframes may be considered as failure to fulfil the obligation to carry out decommissioning.

Penalties for failure to decommission

The Bill introduces:

- A civil pecuniary penalty for failing to comply with the decommissioning or financial security obligations or both, and;
- A criminal offence and penalties for engaging in conduct that the permit or licence holder knows will result in the holder not being able to fund or carry out decommissioning or both.

The civil pecuniary penalty can be a fine of up to \$500,000 for an individual, including employees, agents and directors who participated in the offence, and for a body corporate, a fine not exceeding either \$10 million, three times the commercial gain or 10 per cent of the turnover of the body corporate and all its interconnected companies.

A permit or licence holder must not indemnify an individual in respect of a civil pecuniary penalty or the costs incurred in defending a civil proceeding. Similarly, no person can enter into an insurance agreement that indemnifies an individual in respect of these costs.

The criminal penalty for a director can be a fine of up to \$1 million and/or a custodial sentence not exceeding 2 years. The criminal sanction for a business can be a fine not exceeding \$10 million or up to 3 times the cost of decommissioning, whichever is greater. Defences to criminal liability are available for directors including where a director took all reasonable steps to ensure the permit or licence holder fulfilled its decommissioning obligations.

In relation to former permit and licence holders, liability for the permit or licence holder and director would only arise if and when the current permit or licence holder failed to fulfil their decommissioning obligation. Directors of former permit or licence holders could not be held criminally liable for failing to meet the decommissioning obligation.

The Bill requires that a civil proceeding against a person is stayed if a criminal proceeding against that person has been commenced for the same offence.

Information gathering, financial monitoring and assessing financial capability to decommission

The Bill provides that the Minister may, at any time while the permit or licence is in force, assess whether a permit or licence holder is highly likely to have the financial capability to complete its obligations to carry out and fund decommissioning (a “financial capability assessment”).

Permit and licence holders will be required to keep a record of certain information (set by regulations) necessary to assist the Minister in conducting a financial capability assessment. The information must be provided to the Minister on or before times set out in regulations and/or when requested by the Minister. The Minister may request further information if necessary.

Outside of financial capability assessments, the Bill provides that the Minister may require information to be provided by those permit or licence holders with decommissioning obligations, to enable the Minister to carry out monitoring of the permit or licence holder’s financial position and the Minister may use this information to decide whether a financial capability assessment is required. This information may be set out in regulations, and required at prescribed times, and the Minister may request further information if necessary.

Petroleum mining permit and licence holders must prepare and submit a new and/or updated field development plan to the Chief Executive in accordance with certain requirements and at times and/or events set out in regulations.

The Bill requires petroleum mining permit and licence holders to provide the Chief Executive with a notice of expected cessation of production at times prescribed in regulations, as well as notify the Chief Executive when production permanently ceases.

Permit and licence holders must also provide the following information to the Chief Executive, on or before times set out in regulations and/or when requested by the Minister:

- An asset register (a complete and accurate list of the petroleum infrastructure and wells that a permit holder must decommission);
- A decommissioning plan (describing planned decommissioning activities and processes to be used to carry out those activities, and set out a proposed schedule for those activities);
- A decommissioning cost estimate; and,
- A decommissioning completion report.

Provision of a financial security for decommissioning

The Bill requires that permit and licence holders must obtain and maintain a financial security for the performance of their decommissioning obligations.

The Bill empowers the Minister to determine the kind and amount of security. When making this decision, the Bill sets out matters that the Minister must take into account. Permit and licence holders may submit a proposal as to the amount and kind of security they consider appropriate for their circumstances. The Minister must be satisfied that prescribed criteria relating to the financial security are met.

If a financial security is a cash or monetary deposit, the permit or licence holder may access it for the purposes of decommissioning with the Minister's consent.

The Minister may alter the amount or type required, and if this happens, the permit or licence holder must be given written notice. The Bill provides permit and licence holders with a right of objection to both the original and any subsequent decision by the Minister.

The Bill requires that in the case of a transfer, the incoming party must join the existing financial security or enter a new one prior to the Minister consenting to the transfer.

Payments towards post-decommissioning work

The Bill provides that any permit holder or licence holder that is obliged to carry out and meet the costs of decommissioning, must pay the Chief Executive an amount or provide a financial security to meet the cost of any post-decommissioning work required. This includes activities carried out in relation to the monitoring and remediation of petroleum infrastructure that has been decommissioned but not removed, and any wells that have been plugged and abandoned.

The Minister will decide the amount to be paid by each permit and licence holder and will apply criteria set out in regulations in making this determination.

The level of payments held in the post decommissioning fund may be periodically reviewed, in accordance with timeframes specified in regulations. Following a review, payments may be refunded, in part, under certain criteria set out in regulations.

Decision-making tests in permit acquisitions

The Bill proposes amendments to the permit acquisition provisions (sections 29A, 41, 41AE and 41C) to require the decision-maker to be satisfied that the proposed permit holder will be highly likely to comply with the work programmes or permit conditions, health and safety and environmental requirements and obligations relating to fees and royalties.

Enforcement Tools

The Bill allows the Chief Executive and enforcement officers to accept enforceable undertakings and issue compliance notices. These may be used in relation to a matter relating to a contravention or an alleged contravention by the person of the Act or the regulations. The penalty for breaching a compliance notice or enforceable undertaking is a fine of up to of \$200,000.

The Bill also provides for an infringement offence scheme. This includes allowing regulations to specify what constitutes an infringement offence, a corresponding infringement fee, and fines. The maximum fee for an infringement offence is \$1000 for an individual and \$3000 for a body corporate. The Bill allows regulations to be made prescribing fines of up to twice the specified fine.

Technical amendments

The Bill includes the following provisions which apply more generally across the Act:

- Inserting a new section 100(2)(d) to create a new offence and penalty for non-permit and licence holders who do not provide information as required under section 99F of the Act, with a maximum level of penalty of \$20,000, or \$2,000 per day for an ongoing offence;
- Amending section 90 to extend the types of activities that records and reports must cover to include decommissioning and post-decommissioning activities, and provide some examples of the records and reports that must be kept;
- Enabling the proactive release of reports once the relevant non-disclosure periods have passed under section 90(6) and (7), provided that the test in section 90(A) is met;

- Removing the requirement for annual reassessments of the tier status of mineral permits; and,
- Reclassifying all minerals prospecting permits as Tier 2 permits.

Transitional provisions

Any application that was lodged or submitted, but not determined, before the day after the date on which the Bill receives the Royal assent will be determined in accordance with the Act as in force on the day after the date on which the Amendment Act received the Royal assent.

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) will be unaffected and the Act as in force at the time of the decision will continue to apply.

Consequential changes may be made to the Minerals Programme for Petroleum 2013 and the Minerals Programme for Minerals (Excluding Petroleum) 2013 (Minerals Programmes), without public consultation.

Section 34 of the Petroleum Act (which requires structures to be removed) ceases to have effect, except subsection 4 which allows infrastructure to be left in place with the consent of the landowner.

Associated regulations

The Bill allows certain matters to be prescribed in regulations. This includes, but is not limited to:

- Regulating the decommissioning of petroleum infrastructure and the plugging and abandoning of wells, including defining what may or may not be included in the relevant definitions (for example, petroleum infrastructure, relevant older infrastructure and wells);
- Granting class exemptions;
- Requirements in relation to the provision of information, including the timing and information required in field development plans, asset registers, notification of cessation of production, decommissioning plans, decommissioning cost estimates, decommissioning completion reports and financial information for monitoring purposes;
- Requirements in relation to financial capability assessments;

- The setting, obtaining and maintain of a financial securities, including criteria to be taken into account by the Minister when setting the kind and amount of security, and requirements which a security must meet;
- The making of payments for post decommissioning work, the criteria for when a financial security may be provided for post decommissioning work, management of accounts into which payments are deposited, and the use of those payments;
- Criteria the Minister will apply in setting the amount to be paid towards post-decommissioning work and in determining whether to grant exemptions from post decommissioning associated payment(s);
- Regulations in relation to infringement offences and compliance notices; and,
- The records, statements, or any other documentation or information required under other legislation that must be retained for the purposes of the Act.