



COVERSHEET

Minister	Hon Dr Megan Woods	Portfolio	Energy and Resources
Title of Cabinet paper	Release of Discussion Document: Proposed infringement offence regulations under the Crown Minerals (Decommissioning and Other Matters) Amendment Bill	Date to be published	5 November 2021

List of documents that have been proactively released

Date	Title	Author
September 2021	Release of Discussion Document: Proposed infringement offence regulations under the Crown Minerals (Decommissioning and Other Matters) Amendment Bill	Office of the Minister of Energy and Resources
22 September 2021	DEV-21-MIN-0179	Cabinet Office

Information redacted

YES/ NO

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In Confidence

Office of the Minister of Energy and Resources

Cabinet Economic Development Committee

Release of Discussion Document: Proposed infringement offence regulations under the Crown Minerals (Decommissioning and Other Matters) Amendment Bill

Proposal

- 1 This paper seeks approval to release for public consultation the Discussion Document: *Proposed infringement offence regulations under the Crown Minerals (Decommissioning and Other Matters) Amendment Bill* (the Discussion Document). The Discussion Document seeks feedback on proposed regulations for an infringement offence scheme as enabled through the Crown Minerals (Decommissioning and Other Matters) Amendment Bill (the Bill).

Relation to government priorities

- 2 The infringement offence scheme is part of the wider work programme the Government is undertaking with *Responsibly Delivering Value – A Minerals and Petroleum Resource Strategy for Aotearoa New Zealand: 2019-2029* (the Strategy). The Strategy is designed to drive a shift towards a ‘world leading environmentally and socially responsible petroleum and minerals sector that delivers affordable and secure resources, for the benefit of current and future New Zealanders’.
- 3 Action Area 1 of the Strategy is ‘Modernising the Crown Minerals Act.’ The review of the Crown Minerals Act 1991 (the CMA) seeks to modernise the regulatory regime for the petroleum and minerals sectors.
- 4 Action Area 5 of the Strategy is ‘Improving Industry Compliance.’

Executive Summary

- 5 The Bill was introduced on 23 June 2021. The Bill proposes to amend the CMA to strengthen the rules governing the petroleum sector’s responsibility for decommissioning petroleum infrastructure. In addition to introducing new rules that apply solely to the petroleum sector, the Bill also includes a number of proposed changes to the CMA that apply across the Crown minerals permitting regime.
- 6 The Bill proposes to provide the Ministry of Business, Innovation and Employment (MBIE) with additional enforcement powers to accept enforceable undertakings, issue compliance notices, and utilise a new infringement offence scheme.

- 7 I propose to release a Discussion Document for public consultation, to seek feedback on the details of an infringement offence scheme to be set in regulations.
- 8 I propose that the infringement scheme regulations are consulted on now, so that interested parties have an opportunity to consider the infringement offences and provide feedback ahead of final decisions on the regulations supporting the Bill. Consulting now would also allow regulations to be made in a timely manner to ensure compliance activities can be undertaken.

Background

- 9 The Bill was introduced on 23 June 2021. While the proposed decommissioning and post-decommissioning obligations in the Bill only apply to petroleum permit and licence holders, other proposed changes, such as the proposed additional enforcement powers, apply across the CMA to petroleum permit and licence holders and minerals permit holders.
- 10 The Bill proposes three enforcement powers to improve compliance and enforcement under the CMA:
- 10.1 Compliance notices – a notice with statutory backing requiring a specified matter to be addressed.
 - 10.2 Enforceable undertakings – a statutory agreement between the regulator and a non-compliant party that a prosecution will not be undertaken if they agree to certain conditions, activities, or actions.
 - 10.3 Infringement offences – instant monetary penalties for non-compliance with clear and simple requirements.
- 11 These proposed changes are intended to give MBIE, as the regulator, sufficient and fit-for-purpose tools, to ensure that the regulatory regime works effectively and is in line with modern regulatory practice.
- 12 This proposal was consulted on publicly in 2019 as part of the review of the CMA. Most submitters that provided views on the CMA's current enforcement toolbox agreed that it needs expanding. The additional compliance tools and penalties were largely supported.

The infringement offence scheme in the Bill will allow financial penalties to be set for relatively low-level breaches

- 13 Currently MBIE can respond to non-compliance by:
- 13.1 taking no action;
 - 13.2 sending a letter requesting the permit holder address the non-compliance (but that does not legally compel action);
 - 13.3 taking action through the courts; or

- 13.4 initiating the permit revocation process (i.e. notifying the intention to revoke a permit and following through with revocation if non-compliant behaviour is not rectified).
- 14 The current enforcement toolbox does not allow MBIE's compliance and enforcement function to effectively respond to low-level breaches of the CMA or regulations that require sanctions to deter non-compliant behaviour, or behaviour which would not justify the full imposition of the criminal law.
- 15 Infringement offence schemes address this gap by setting financial penalties for relatively low-level breaches of the law. This enables the enforcement officer to issue an infringement notice with an instant fee where there are reasonable grounds to believe that there has been a clear, relatively low-level breach.
- 16 In June 2020, Cabinet agreed [DEV-20-MIN-0092] to amend the CMA to:
- 16.1 enable an infringement offence scheme to be developed in regulations and specify such provisions as the form of the infringement notice, the specific action or omission constituting an infringement offence, and the specific penalty levels for each infringement offence; and
- 16.2 set the maximum infringement fee to \$1,000 for an individual and \$3,000 for a body corporate, per infringement.

I now propose to release the Discussion Document to consult on the proposed regulations for an infringement offence scheme

- 17 Stakeholders have a reasonable expectation that public consultation will occur as regulations under the CMA have been consulted on publicly in the past.
- 18 I seek Cabinet's agreement to release the Discussion Document: *Proposed infringement offence regulations under the Crown Minerals (Decommissioning and Other Matters) Amendment Bill*. The complexity of the Discussion Document is low. The primary audience is minerals permit holders and petroleum permit and licence holders. I do also anticipate interest from environmental groups and iwi.
- 19 I propose that the infringement scheme regulations are consulted on now so that interested parties have an opportunity to consider the infringement offences and provide feedback ahead of final decisions on the regulations supporting the Bill. Consulting now would also allow regulations to be made in a timely manner to ensure compliance activities can be undertaken.
- 20 Proposed regulations to support the Bill were also consulted on publicly in a Discussion Document: *Proposed regulations to support the Crown Minerals (Decommissioning and Other Matters) Amendment Bill 2021*. Submissions closed on 7 September 2021. I anticipate that after the consultation on the proposed infringement offence scheme, I will bring policy decisions on the full suite of regulations under the Bill to Cabinet by the end of the year.

The Discussion Document consults on specific infringement offences and the fees that apply to each offence

- 21 The Discussion Document concerns the details of the proposed infringement offence scheme under the Bill, setting the specific infringement offences and the fees that apply to each offence in regulations. The proposal applies to permit and licence holders under the Crown minerals permitting regime.
- 22 The proposals have been developed in line with the Ministry of Justice's *Policy Framework for New Infringement Schemes*, the Legislation Advisory Committee's Legislation Guidelines, and in line with the Bill's proposal that infringement fees not exceed \$1,000 in the case of an individual and \$3,000 in the case of a body corporate.
- 23 The proposed list of infringement offences generally fall into four categories:
- 23.1 failure to submit information, records and reports within the time specified/by the due date;
 - 23.2 failure to provide royalty return and failure to pay royalty by the due date;
 - 23.3 failure to make required payments, such as pay annual fees, within the time specified/by the due date; and
 - 23.4 failure to notify of change of address and telephone, within the time specified.
- 24 I propose consulting on options for the amount of the infringement fees. I propose two options:
- 24.1 a flat infringement fee of \$1,000 for an individual and \$3,000 for a body corporate for all offences; and
 - 24.2 an infringement fee of \$500 for an individual and \$1,000 for a body corporate for offences relating to Tier 2 permits; and \$1,000 for an individual and \$3,000 for a body corporate for offences relating to Tier 1 permits.

Financial Implications

- 25 The policy proposals agreed to by Cabinet previously [DEV-20-MIN-0092, DEV-21-MIN-0058] on an infringement offence scheme may incur the following additional costs:
- 25.1 additional costs on petroleum permit and licence holders and mineral permit holders; and
 - 25.2 additional administration, monitoring, enforcement, and litigation costs.
- 26 The infringement offence scheme is designed to reduce the regulator's existing compliance costs. However, the regulator will incur costs related to

the administration, enforcement, and litigation associated with the infringement offence scheme.

Legislative Implications

- 27 Regulations will be developed to implement the proposals following consultation. Development of regulations will be subject to the passage of the Bill through Parliament.

Impact Analysis

Regulatory Impact Statement

- 28 The Regulatory Impact Analysis panel at the Ministry of Business, Innovation and Employment has reviewed and confirmed that the Discussion Document can substitute for an interim Regulatory Impact Statement. It will lead to effective consultation and support the eventual development of a quality Regulatory Impact Statement.

Climate Implications of Policy Assessment

- 29 The Climate Implications of Policy Assessment (CIPA) team has been consulted and confirms that the CIPA requirements do not apply to this proposal as the threshold for significance is not met.

Population Implications

- 30 There are no population implications in regards to the proposals in this paper.

Human Rights

- 31 This paper is not inconsistent with the New Zealand Bill of Rights Act 1990 or the Human Rights Act 1993.

Consultation

- 32 The following departments and agencies were consulted on the proposals of the regulations set out in the Discussion Document: Ministry of Justice (MoJ), Ministry for the Environment (MfE), Department of Conservation, WorkSafe NZ, the Environmental Protection Authority, Maritime NZ and Inland Revenue.

- 33 MfE questioned whether the infringement fee levels were disproportionately stern for the types of infringement offences proposed. MBIE consulted with MoJ and considers the infringement fee levels to be proportionate, and comparable with similar infringement offences under the Resource Management (Infringement Offences) Regulations 1999 and the Health and Safety at Work (Infringement Offences and Fees) Regulations 2016.

- 34 MfE also asked whether the infringement offences are continuing offences, for example if a permit or licence holder is infringed for providing information to MBIE late, whether they would still be liable to provide the information. MBIE

consulted with their Legal team and on their advice, have not made any changes. The infringement offences are not continuing offences. They are one-off offences, which is consistent with other regimes. They are intended to be short, sharp notices that disincentive the behaviour. Once the permit or licence holders pay the infringement fee it does not negate their obligation to, for example, provide information. If the infringement offence does not change the behaviour and the permit or licence holders continue to breach their obligations, there are further enforcement actions that can be taken.

- 35 MBIE officials have also consulted with industry on the high-level policy decisions included in the Bill.

Iwi Engagement

- 36 Through the 2019 consultation on the review of the CMA, officials received submissions from Ngāruahine, Te Rūnanga o Ngāi Tahu and Ngati Ruanui, who made it clear that they thought stronger enforcement tools were needed and re-enforced the need for a compliance framework that is bold, clear and disincentives poor performance. No specific iwi engagement has been taken on the infringement offence scheme.

- 37 MBIE officials will inform iwi of the consultation on the proposed infringement offences through MBIE's Pānui to be published on 30 September 2021 and will offer to discuss the proposals with iwi.

Risks and Mitigations

- 38 MBIE is currently analysing submissions on the Bill. None of the submissions addressed the infringement offence scheme, therefore I do not anticipate any risks associated with publishing this Discussion Document.

- 39 There is a risk that the three week consultation period is too short for all respondents to submit on time. I consider this risk to be mitigated as the complexity of the proposals is low, respondents are already familiar with the proposed introduction of an infringement offence scheme from previous consultation, and MBIE will communicate with permit and licence holders to make this consultation widely known.

Communications

- 40 I propose to release the Discussion Document in September 2021 for a three week consultation period.

- 41 MBIE will issue a media statement of the Discussion Document's release and publish it on the MBIE website. Officials may also contact relevant stakeholders to inform them of its release.

Proactive Release

- 42 I intend to proactively release a copy of this this paper within 30 business days of decisions being confirmed by Cabinet with appropriate redactions under the Official Information Act 1982.

Recommendations

The Minister of Energy and Resources recommends that the Committee:

- 1 **note** that on Wednesday, 23 June 2021, the Crown Minerals (Decommissioning and Other Matters) Amendment Bill was introduced, which includes a proposal to authorise the development of an infringement offence scheme for the Crown Minerals Act 1991 [LEG-21-MIN-0092];
- 2 **agree** to the release of the Discussion Document titled *Discussion Document: Proposed infringement offence regulations under the Crown Minerals (Decommissioning and Other Matters) Amendment Bill*, subject to any minor or technical amendments, in September 2021 for a three-week public consultation;
- 3 **note** that consultation on proposed regulations should start in September to allow for final policy decisions to be made alongside the rest of the regulations supporting the Bill;
- 4 **note** that the consultation period on the Discussion Document is three weeks; and
- 5 **note** that after I consider feedback received from consultation, I will provide policy recommendations to Cabinet and seek approval to issue drafting instructions to the Parliamentary Counsel Office to draft regulations.

Authorised for lodgement

Hon Dr Megan Woods

Minister of Energy and Resources