Annex 2: Table of proposed amendments for Energy and Resources Matters

Energy and Resources			
Crown Minerals Act 1991			
Section	*Reason for change*	*Status quo*	*Proposed change*
Section 19: Issue of minerals programmes	Keeping the regulatory system up to date and relevant	Section 19 provides that a minerals programme is both a disallowable instrument and a legislative instrument because it is made by an Order in Council. Section 19(3) should have provided that a minerals programme is a disallowable instrument but not legislative instrument to override the default position of the Legislation Act 2012. The main implication of this is that Parliamentary Counsel Office (PCO) would thereby not need to draft minerals programmes. Under the Legislation Act, Orders in Council are always going to be legislative instruments and are therefore also disallowable (see section 38(1)(a)) unless they come under the exclusions in para (a)(i) and (ii) in the definition of legislative instrument.	Amend section 19
Section 28: Restriction on granting of prospecting permits	Clarifying and updating statutory provisions in the Act amended to give effect to the purpose of the Act and its provisions	Section 28 provides that "special circumstances" must apply for a prospecting permit to be granted if the Minister considers that there is substantial interest in exploring for or mining the mineral in at least part of the proposed permit area. For non-exclusive petroleum permits this "special circumstances" test undermines the speculative prospecting model the government is seeking to encourage. Section 28 of the CMA was not changed as part of the amendment to the CMA in 2013. Because of that, section 28(b) does not reflect the important distinction that exists between minerals prospecting, where there is a desire to limit this activity to exceptional circumstances given the subsequent rights to exploration permits that exist for mineral prospecting permit holders, and non-exclusive petroleum prospecting, where there is a strong desire to see this activity promoted and where no subsequent rights to exploration permits exist for petroleum prospecting permit holders. The fact that section 28(b) was not amended at the time of the 2013 amendments to reflect this distinction was simply an oversight.	Amend section 28 so it does not apply to non-exclusive petroleum prospecting permits. The test would still apply to minerals prospecting permits and exclusive petroleum prospective permits, which is appropriate.

		This amendment would be consistent with the purpose statement of the CMA in that it would promote the development of Crown owned minerals for the benefit of New Zealand. It is also consistent with the policy decision to establish a non-exclusive (speculative) petroleum prospecting regime in New Zealand. Interest in non-exclusive petroleum prospecting permits has been strong since the legislative changes were made to establish the regime in 2013.	
Section 28A: Declaration that permits not to be issued or extended for specified land for specified period.	Keeping the regulatory system up to date and relevant	Section 28A(1) provides that the Minister may declare that specified kinds of permits will not be granted, or extended, in respect of specified land during a specified period if he or she believes the declaration is necessary to better meet the purpose of the Act. It is not clear from this wording that applications for extensions of duration will be accepted but not for extensions of land. The rationale for this is that extension of duration applications are a permit holder's right in order to continue its activities and should be granted if statutory requirements are met, whereas extensions of land involve adding reserved land to a permit so should not be accepted. It would be useful for permit holders if this was to be clarified.	Recommendation: Amend s28A so it is clear that applications for extensions of duration will be accepted but this excludes extensions of land.
Section 41A: Change of control of permit participants	Keeping the regulatory system up to date and relevant	Section 41A provides that a permit participant must notify the Minister if they undergo a change of control or if a guarantor undergoes a change of control. It is not clear that notification of a change of control must be provided to MBIE (on behalf of the Minister) within three months after the change of control has actually happened. The drafting currently provides the notification must be provided "within" three months. There is ambiguity over the definition of "within". Permit holders are interpreting that as meaning "before". Companies taking on greater interests in permits want assurances from government that changes of control will be smooth. The policy intent was for the notification of a change of control to be provided after the change of control had happened. It was intended as a notification of a virtual fait accompli rather than something to be assessed and approved.	Amend section 41A(3) to clarify a change of control agreement must be provided no later than 3 months after the change of control has taken effect.
Section 41A: Change of control of permit participants	Keeping the regulatory system up to date and relevant	This section provides that the Minister may revoke a permit in accordance with the procedure set out in section 39 if the Minister is not satisfied that, following the change of control, the permit holder has the financial capability to meet its obligations under the permit; and revokes the permit no later than three months from the date on which the	Amend section 41A(7)(b) so that revocation proceedings are

		permit participant notifies the change of control in accordance with this section. The three month timeframe for revocation is too brief. Section 39(2) requires the Minister to give the permit holder 40 working days to consider written notice of his or her intention to revoke. This essentially takes up two of the three months allowed for revocation under section 41A(7)(b). The permit holder has right of appeal within 20 working days after that point which can take up the remainder.	required to commence within three months rather than be complete.
Section 42A: Authorisation of geophysical surveys on adjacent land	Addressing regulatory duplication, gaps, errors, and inconsistencies within the Act.	Subsection 42A(2) provides that any authorisation granted under this section is to be considered as a prospecting permit. Therefore information gathered by the authorised surveying is subject to the rules and conditions of data collected under a prospecting permit (s 90(7) of the Crown Minerals Act 1991). This is a problem because almost all applications for authorisations come from exploration and mining permit holders. Data collected under an exploration or mining permit is subject to rules and conditions (s 90(6)) different to those for data collected under a prospecting permit. So, it is not logical for the information gathered under a section 42A authorisation to be subject to prospecting data rules and conditions in most cases (because most cases would involve either exploration or mining permits).	Amend the section so that the data collected under a section 42A authorisation is treated the same to data collected under the permit for which the authorisation is being sought.
Section 53: Access to land for petroleum and Section 54: Access to land for minerals other than petroleum	Addressing regulatory duplication, gaps, errors and inconsistencies within the Act.	Section 53 outlines at 53(1) that for minimum impact activities no access arrangement is required and then at 53(3) states that an access arrangement is required for minimum impact activities on land described in Schedule 4. This is through a cross-reference to section 61(1A)(c). Section 54 has the equivalent issue. Section 53 relates to petroleum. Section 54 relates to minerals. This confusion needs to be clarified.	Recommendation: amend subsection (1) to say: This section does not apply to minimum impact activities except in relation to land described in Schedule 4.
Section 61: Access arrangements in respect of Crown land and land in	Clarifying and updating statutory provisions in the Act to give effect to the purpose of the Act	Section 61(1A) states: The Minister of Conservation or the Minister and the Minister of Conservation, as the case may be, must not accept any application for an access arrangement, or variation to an access arrangement, or enter into any access arrangement, or variation to an access arrangement, relating to any Crown owned mineral in any Crown owned land or internal	To provide clarity, the section could be replaced with: With regard to section 61, the

common marine and coastal area	and its provisions	waters or land of the common marine and coastal area described in Schedule 4, except in relation to any activities as follows. Permit holders have been confused over the words "as the case may be". One interpretation considers that "as the case may be" refers to whether the permit is a Tier 1 or Tier 2 permit in relation to sections 61(1) and 61(1AA). Another interpretation considers that "as the case may be" refers to whether the permit is for minerals or petroleum in relation to sections 53(3) and 54(3). The drafting was intended to refer to sections 61(1) and 61(1AA).	Minister of Conservation or the Minister and the Minister of Conservation, as the case may be, must not accept any application for an access arrangement, or variation to an access arrangement, or enter into any access arrangement, or variation to an access arrangement, relating to any Crown owned mineral in any Crown owned land or internal waters or land of the common marine and coastal area described in Schedule 4, except in relation to any activities as follows.
Section 105: Regulations	Addressing regulatory inconsistencies within the Act	Sections 105(1)(ga) and (gb) refer to section 90A of the Act when they should refer to section 90B. This is a drafting error likely caused by a change in the proposed section numbering during the passage of the Crown Minerals Amendment Bill. In early draft of the Bill, what is now section 90B was section 90A.	Amend these sections to refer to section 90B rather than section 90A.
Schedule 1, clause 4: Provisions about royalties	Clarifying and updating statutory provisions to give effect to the purpose	The clause is inaccurately premised on the concept that the royalties always relate to the minerals programme that existed at the time the permit was granted. This is true for most permits but there is an exception. Some permit holders prior to 2008 were able to opt into (and did opt into) the 2008 Minerals Programme, including the royalty provisions. Their	Amend subclause 1 to refer to "the Minerals Programme that applied to the

	of the Act and its provisions	royalty rate is thereby in accordance with the 2008 Programme and not the initial permit.	existing permit on 23 May 2013".
Schedule 1, clause 12: Existing privileges continue Clause 13: Operators for existing privileges Clause 14: New sections apply to existing privileges	Keeping the regulatory system up to date and relevant	Before the Crown minerals permitting regime was established by the CMA in 1991, there was a licencing regime under various pieces of legislation that was similar in principle. Clauses 12, 13 & 14 of Schedule 1 provide that some sections of the CMA do apply to mining licences, and that some sections of the Mining Act 1971 (e.g. Clause 12(3)) do not apply anymore. There is one provision in the Mining Act 1971 which creates an administrative burden and could potentially be overridden through an express provision in Schedule 1. That provision is section 240A of the Mining Act 1971 – which reads: Notwithstanding anything in section 28 of the State Sector Act 1988, the Minister may not delegate any power conferred on the Minister by Part 3 of this Act, or by any of sections 128, 129, and 145 of this Act. One of these restricted sections, section 145, is the section that allows the Minister to consent to the transfer of a license. Therefore, every time an application is received for consent to the transfer of a mining licence, that decision must be put to the Minister. This is not the case for licenses under the Petroleum Act 1937, the Coal Mines Act 1979 or permits under the CMA. Transfers could be processed more swiftly if that provision was delegated to officials.	Recommendation: Changes must be made so the power under section 145 of the Mining Act 1971 can be delegated.
Continental Shelf Act 1964 (CSA)			
Section	*Reason for change*	*Status quo*	*Proposed change*
Section 5A: Payments and contributions with respect to exploitation of continental shelf beyond 200 nautical miles	Addressing regulatory duplication and inconsistencies within and between different pieces of legislation.	A permit can be granted for minerals development on the continental shelf beyond the 200 nautical mile limit of the Exclusive Economic Zone. This section of the CSA provides that a royalty rate is to be included for any permit granted under the CSA. Currently for production in petroleum prospecting permits, there is no need to specify a royalty rate for these permits. The Minister of Transport is comfortable with this proposal.	Recommendation to amend the CSA to remove this requirement for petroleum prospecting permits.

Section 5A: Payments and contributions with respect to exploitation of continental shelf beyond 200 nautical miles	Addressing regulatory duplication and inconsistencies within and between different pieces of legislation.	Subsections (2) and (3) of section 5A differentiate between providing the Minister of Energy (sic) imposing royalty rates for licences and the Minister of Transport imposing royalty rates for permits. This seems to be a regulatory duplication. The Minister of Transport is comfortable with this proposal.	Recommendation: amend the CSA to provide that royalty rates for licences and permits be imposed by the Minister of Energy and Resources.