In Confidence

OFFICE OF THE MINISTER
OF ENERGY AND RESOURCES

The Chair
Cabinet Economic Growth and Infrastructure Committee

Amendments to the Crown Minerals Act 1991

Proposal

1 This paper proposes amendments to the Crown Minerals Act 1991.

Executive Summary

2 In March and April 2012 public feedback was sought on the discussion paper *Review of the Crown Minerals Act 1991 Regime*, which set out proposals for amendments to the Crown Minerals Act 1991 (the Act), associated minerals programmes, and regulations made under the Act.[1] A related change was also proposed for the Continental Shelf Act 1964.

3 The review is one of several reforms intended to ensure that the regulatory system for petroleum and minerals works effectively as a whole. A review of the Crown Minerals Act 1991 regime was signalled in the Petroleum Action Plan of 2009 and is designed to improve its fitness for purpose in the context of an increased focus on the sector. A review of relevant health, safety and environmental legislation has also been completed which concluded that New Zealand's arrangements for offshore petroleum operations incorporate a number of key characteristics of international best practice. Further work is underway to further improve health and safety controls.

4 The proposals were based on three objectives:

a. Encourage the development of Crown-owned minerals so that they contribute more to New Zealand's economic development.

b. Streamline and simplify the regime where appropriate, ensuring it is in line with the regulatory reform agenda, and make it better able to deal with future developments.

c. Ensure that better coordination of regulatory agencies can contribute to stringent health, safety and environmental standards in exploration and production activities.

[1] Minerals programmes set out the details of how the Minister and Chief Executive will apply the provisions of the Act to specific minerals. They are prepared by the Minister of Energy and Resources and issued by the Governor-General on the advice of the Executive Council.

5 The petroleum and minerals sectors are already important contributors to the New Zealand economy. Alongside royalties and taxes, the sectors provide employment opportunities, profits for businesses, export earnings, and regional development opportunities. Taranaki's petroleum industry directly employs almost 4,000 people directly, over 5,000 indirectly, and crude oil is New Zealand's fourth-largest commodity export.

6 The proposals in this paper are designed to support further growth of the sector.

7 The Ministry of Economic Development received 168 submissions on the discussion paper. I have considered the feedback received from submitters, and revised a number of proposals accordingly. This paper:

a. Provides a summary of the key issues raised in the public consultation process, including outlining where changes to the policy are being sought.

b. Seeks Cabinet's approval to issue drafting instructions to Parliamentary Counsel Office for a bill implementing the proposals set out in this paper.

8 The key proposals are covered in the body of this paper, and the necessary technical amendments to the Act are set out in Annex 1. The key proposals are:

a. **Purpose statement:** Include a purpose statement in the Act promoting development through efficient allocation of rights to minerals, efficient regulation of those rights, and ensuring a fair financial return to the Crown.

b. **A two-tiered system for permit management:** Distinguish between the relatively small number of complex, higher-return petroleum and mineral activities (referred to as "Tier 1") and the larger number of lower-return industrial, small business and hobby mineral operations (referred to as "Tier 2"). Tier 1 activities will be subject to a more hands-on, coordinated management and regulatory regime and Tier 2 to a simpler and more streamlined management regime.

c. **Health, safety and environmental matters:** Improve coordination between the Crown Minerals Act 1991 permitting regime and health, safety and environmental regulatory functions for Tier 1 activities by introducing an initial assessment of health, safety and environmental capability; annual review meetings; and focusing regulatory effort away from those permit holders with only a financial interest in a permit and onto those responsible for day-to-day management of activities. This will support but not replicate processes under the Resource Management Act 1991, Exclusive Economic Zone and Continental Shelf (Environmental Effects) Bill, and Health and Safety in Employment Act 1992.

d. **Use of information provided by permit holder:** Provide certainty about which information will be kept confidential, and when other information provided to the Ministry can be provided to other regulators and external advisors.

e. **Engagement with iwi on Crown minerals:** Provide for permit holders to report on the engagement they have undertaken with affected iwi.

f. **Permit duration and relinquishment:** Increase maximum permit duration and flexibility to oversee work programme compliance over multiyear periods.

g. **Royalties:** Update royalty rates for minerals that are currently subject to Ministerial discretion (e.g. ironsands) and revisit rates for coal, gold, and silver in light of commodity price upswings over the past five years.

h. **Compliance mechanisms:** Enhance the existing compliance mechanisms, including increasing the penalties for offences above the rates set in 1991.

i. **Different policies and procedures for minerals occurring in different circumstances:** Clarify that different policies and procedures in a minerals programme can be applied to a mineral occurring in different circumstances.

j. **Continental Shelf Act 1964:** Import the minerals provisions of the Crown Minerals Act for all new Continental Shelf Licence applications to bring the Continental Shelf Act regime for minerals into alignment with the current practice for petroleum in the exclusive economic zone and continental shelf.

k. **Transitional arrangements and grandfathering:** Provide for the transition of current permit holders to the amended regime in a staged manner over a period of five years.

9 The amended Act will also implement previous Cabinet decisions on the Schedule 4 "stocktake" concerning joint decision making on land access arrangements and automatic inclusion of equivalent public conservation land into Schedule 4. The in-principle decision to publicly notify access arrangements for significant mining proposals is the subject of a separate Cabinet submission. This paper also seeks confirmation on a matter relating to the automatic inclusion of certain conservation areas into Schedule 4.

10 I propose that drafting instructions be issued to Parliamentary Counsel Office for the drafting of a bill to implement the proposal set out in this paper. Subsequent amendments will be required to associated minerals programmes and regulations made under the Act. I intend to seek Cabinet approval to release draft minerals programmes for consultation in August 2012.

Background

11 On 20 February 2012, Cabinet agreed to the release of the discussion paper, *Review of the Crown Minerals Act 1991 Regime* [CAB Min (12) 5/7]. The discussion paper was open for public submissions in March and April 2012. It proposed 76 changes to the Act, minerals programmes, and regulations that together comprise the Crown Minerals Act 1991 regime (CMA regime). The key proposals are covered in the body of this paper, and the necessary technical amendments to the Act are set out in Annex 1. The full list of proposals is included in Annex 2. Annex 3 explains the elements that make up the CMA regime.

12 The proposals contained in the discussion paper were based on three objectives:

a. Encourage the development of Crown-owned minerals so that they contribute more to New Zealand's economic development.

b. Streamline and simplify the regime where appropriate, ensuring it is in line with the regulatory reform agenda, and make it better able to deal with future developments.

c. Ensure that better coordination of regulatory agencies can contribute to stringent health, safety and environmental standards in exploration and production activities.

13 The discussion paper noted the government was not considering changes to several fundamental aspects of the CMA regime. These are:

a. Crown ownership, on behalf of all New Zealanders, of petroleum (primarily oil and natural gas), gold, silver and uranium.

b. The right of the government to be the ultimate decision-maker in allocating permits to develop Crown-owned petroleum and minerals.

c. The right for the Crown to collect royalty payments from Crown-owned petroleum and minerals, Crown ownership of any royalty payments, and the right to use such funds in any way the Crown sees fit, on behalf of New Zealanders.

14 The Ministry of Economic Development received 168 submissions on the discussion paper: 67 from individuals making unique submissions, 20 from individuals making identical submissions, one from a Member of Parliament, three from government organisations, five from local government, 37 from industry, 17 from iwi, 14 from NGOs and community groups (four of which were the identical submissions), and four from scientists and academics.

15 I have considered the feedback received from submitters, and revised a number of proposals accordingly. This paper:

a. Provides a summary of the key issues raised in the public consultation process, and identifies where agreement to policy changes is being sought.

b. Seeks Cabinet's approval to issue drafting instructions to Parliamentary Counsel Office.

16 In order to have amended legislation in force by the end of 2012, an amendment bill needs to be introduced in the House in August 2012.

17 The majority of proposals in the discussion paper will require amendments to the minerals programmes and regulations in addition to the necessary amendments to the Act. It is my intention to seek Cabinet approval to release draft minerals programmes for consultation by August 2012.

Related reforms

18 The Government is committed to ensuring that New Zealand has a world-class regulatory regime for the safe and environmentally responsible exploration and production of our petroleum and mineral resources. The review of the CMA regime (CMA review) is one of a number of related reform processes intended to ensure that the regulatory system for petroleum and minerals works effectively as a whole. These related reform processes are:

a. The Exclusive Economic Zone and Continental Shelf (Environmental Effects) Bill and associated regulations. The environmental effects of deepwater exploration for oil, gas and other minerals will be regulated under this legislation once enacted.

b. The establishment of a High Hazards Unit within the Department of Labour, to improve the Department's capability and capacity to operate effectively in the mining, petroleum, and geothermal industries.

c. The Government's response to the Royal Commission of Inquiry into the Pike River Mine Tragedy.

d. The Ministry of Transport's review of minimum insurance requirements for offshore oil installation activities in the territorial sea and Exclusive Economic Zone.

e. The Inland Revenue Department's review of the 'specified minerals' concessionary tax regime.

f. Implementing the decisions of the Schedule 4 stocktake.

19 In addition to these regulatory reforms, a review of New Zealand's marine oil spill preparedness and response capability was completed in 2011 and its recommendations implemented, including upgrading offshore installations' on-site response capability. The review is also informing proposed increases in the quantum of the levy paid to the New Zealand Oil Pollution Fund by the maritime industry, including the offshore petroleum sector.

Key proposals

Purpose statement

20 The Act does not currently include a purpose statement. The discussion paper proposed the inclusion of a purpose statement in the amended Act, as it is conventional for all new Acts of Parliament to contain one. These are useful insofar as they make the intention of specific legislation clear.

21 Many industry submitters were supportive of the proposal to include a purpose statement with a promotional element. I therefore propose that a purpose statement be included, along the following lines (subject to drafting):

> "The purpose of the Act is to provide for and promote development of Crown owned minerals for the benefit of New Zealand by:
>
> i. providing for the efficient allocation of rights to prospect for, explore for, and mine Crown owned minerals
>
> ii. providing for the efficient regulation of the exercise of those rights
>
> iii. ensuring a fair financial return to the Crown for its minerals."

22 Some submitters suggested that the purpose statement include environmental considerations. My view is that this is inappropriate as such considerations are outside the functions of the Act and therefore introduces risk of legal challenge.

A two-tiered system for permit management

23 One of the key proposals for amending the CMA regime set out in the discussion paper was to draw a distinction between the relatively small number of complex, higher-return activities (Tier 1), and the larger number of lower-return industrial, small business and hobby mineral operations (Tier 2).

24 Tier 1 activities would be subject to a more hands-on, coordinated management and regulatory regime, while Tier 2 activities (e.g. alluvial gold operations and aggregate quarries) would be subjected to a simpler and more streamlined management regime.

25 Streamlining the Tier 2 regime would provide administrative benefits for government, enabling New Zealand Petroleum & Minerals (NZP&M) to focus on the promotion, allocation and coordinated regulation of the small number of high-value, complex Tier 1 exploration and mining operations. It will also reduce compliance costs for more than 430 alluvial gold operations, 230 aggregate and limestone permits and a number of other clay and industrial mineral operations that meet the proposed Tier 2 criteria. For example, Tier 2 operators will be required to report on a more limited range of matters, less frequently. Reducing reporting obligations for Tier 2 operations will not lead to greater risks to the environment or health and safety, nor will it affect the financial return to the Crown, as all health, safety and environmental requirements and royalty payment obligations will remain in place.

26 This proposal drew widespread support from submitters, although many minerals industry submitters expressed a desire to see more detail on the proposed categorisation of operations into the two tiers.

27 I propose that the Act be amended to include definitions for Tiers 1 and 2, and specify which provisions will apply to Tier 1 operations, Tier 2 operations, or both. Similar amendments will also need to be made to the minerals programmes and regulations. I propose that the Act define Tier 1 as:

a. Petroleum

b. Hard rock gold and silver

c. Coal

d. Ironsand

e. Metallic minerals

f. Any underground operation

g. Any offshore operation

h. Any operation that would otherwise be Tier 2 but exceeds a threshold set in a Schedule to the Act in relation to exploration expenditure, royalties, or production

28 Tier 2 will comprise all other permits (such as alluvial gold, aggregates and industrial minerals) and any operations that would otherwise be Tier 1, but are below a size threshold set in the proposed Schedule. I propose that the Act provide that size thresholds may be amended by Order in Council, on the recommendation of the Minister.

29 I propose that the Schedule initially provide that:

a. A mining permit for alluvial gold, which would ordinarily be Tier 2, would become Tier 1 if the annual royalty exceeds $20,000[2].

b. An exploration permit for hard rock gold or silver, iron sand, other metallic minerals, or coal, which would ordinarily be Tier 1, would become Tier 2 if expected total work programme expenditure is below $100,000, or $150,000 in the case of coal.

c. A mining permit which would ordinarily be Tier 1, would become Tier 2 if the permit is for:

   i. Hard rock gold or silver, and the annual royalty is less than $30,000.

   ii. Ironsand, and annual production is less than 500,000 tonnes.

   iii. Other metallic minerals, and annual production is less than 500,000 tonnes of ore.

   iv. Coal, and annual production is less than 100,000 tonnes.

Health, safety and environmental matters

30 Regulation of health, safety and environmental (HSE) matters relating to petroleum and mineral activities occurs outside of the CMA regime (for instance under the Health and Safety in Employment Act 1992, the Resource Management Act 1991, and the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Bill, once enacted).

[2] This would capture the large scale Grey River alluvial gold operation.

31 A review of relevant health, safety and environmental legislation for offshore petroleum operations was completed in December 2010. This concluded that New Zealand's arrangements incorporate a number of key characteristics of international best practice. The review identified a number of areas where improvements could be made to further improve the regime which are being progressed through the CMA review and related work.

32 Common features of regimes in other jurisdictions are a separation of resource allocation responsibilities from HSE regulation and recognition of the need to put in place specific legal or administrative frameworks for regulatory co-ordination and collaboration between relevant regulatory entities. In Australia, Norway and Ireland, permit applicants are required to demonstrate HSE capabilities. The UK regulator considers environmental management systems in the assessment process.

33 In addition to the HSE approval processes required under existing legislation, the discussion paper proposed that better coordination between the HSE regulatory functions and the CMA permitting regime could provide an even higher level of health, safety and environmental assurance during all stages of exploration and mining. The following proposals were put forward in the discussion paper:

a. Include an assessment of applicants' health, safety and environment policies, capability and record in the initial stages of the permit allocation process. Two options were put forward: an assessment as part of the permit application process or 'prequalification' whereby companies would be required to prequalify prior to lodging any applications.

b. Introduce an annual work programme review requirement on permits for oil and gas, and certain higher-risk mineral activities (Tier 1).

c. Focus regulatory effort on those responsible for day-to-day management of activities by differentiating operators from other permit holders.

34 A large number of submitters commented on the HSE proposals. Generally submitters favoured the option of including an assessment of applicants' HSE capability during the evaluation of exploration permit applications, as opposed to 'prequalification'.

35 Some industry submitters commented that the HSE proposals would duplicate processes required under existing legislation. This is not the intent.

36 The assessment will consider technical capability and policies, and applicants' track record, rather than the specific plans for proposed activities. It would be designed to identify the small number of applicants unlikely to meet HSE controls, and signal to the applicants the capability they will need to prove. The assessment would be completed by officials during the permit allocation process and without prejudice to subsequent decisions made by other regulators in relation to specific activities.

37 I propose to proceed with the HSE capability assessment proposal in the amendment to the Act, as follows. I consider that, in conjunction with the existing detailed HSE approval processes, and related reform processes (as noted in paragraph 16), these amendments will ensure New Zealand's HSE regime for petroleum and minerals is robust and on par with international regimes.

Assessment of applicants' health, safety and environment policies, capability and record

38 I propose the Act provide for an assessment of applicants' HSE policies as part of the permit application process (rather than prequalification). The Act will provide that the Minister must not grant a Tier 1 exploration permit if not satisfied that the applicant is likely to meet the expected HSE requirements under other legislation. Granting a permit will not imply the applicant has met these requirements or duplicate processes under other legislation.

39 An HSE assessment undertaken by NZP&M as part of the permit allocation process can take account of the location and resource targeted by the applicant (for example, offshore and onshore permits will require different capabilities).

40 Feedback from the minerals sector noted the prevalence of permit holders focused exclusively in low risk and low impact prospecting activities. Such operators have no intention of undertaking mining operations. Rather, their business model is to prove resource deposits and transfer (sell) permits to operators who would then extract the resource under a mining permit.

41 In recognition of such business models, it is also proposed that the HSE assessment undertaken by NZP&M as part of the permit allocation process take account of the general nature of activities envisaged by the applicant.

Annual work programme review meetings

42 I propose the Act enable the Minister to require a Tier 1 permit holder to attend an annual review meeting with NZP&M, which other regulatory agencies with functions regarding the permit may also attend. The annual review meeting will provide a hands-on and coordinated means of monitoring permit holders' progress against work programme commitments, and enable better coordination of reporting requirements to the different regulatory agencies.

43 Annual review meetings, particularly at the exploration stage, will provide an opportunity for regulators to request from permit holders information on options for how they will undertake activities at the appraisal or mining stage. This will encourage explorers to take a more interactive approach with regulators in identifying and managing risks and testing alternative development technologies.

Designated 'operators'

44 I propose each Tier 1 permit be required to have a designated 'operator' who is responsible for the day-to-day management of the permit. Currently a 'permit holder' may be more than one person or company. This distinction would enable regulators to focus regulatory efforts on the operator during the proposed HSE assessment and annual review meetings. Even with this distinction, all permit holders would remain jointly liable for compliance with the permit, Act, programmes, and regulations.

Use of information provided by permit holder

45 The discussion paper proposed to amend the Act to provide greater certainty to applicants, permit holders and the Ministry of Economic Development about:

a. What, when, and for how long information received by the Ministry should be confidential.

b. When, and on what conditions, information provided to the Ministry can be provided to external advisors to assist the Ministry in performing its functions under the CMA regime.

c. Which information, if any, received by the Ministry should not be made publicly available.

46 Submitters expressed strong support for amending the Act to clarify under what circumstances information provided to NZP&M could be shared with other regulators and external advisors. Industry submitters noted the commercial sensitivity of some information made available to the Crown (particularly NZP&M), and the importance of permit holders knowing which information can be shared with other agencies. A small number of industry submitters commented that no confidential information should be released to other regulators under any circumstances.

47 Taking into account these submissions, I propose that the Act provide that all information supplied or disclosed to, or obtained by a person performing functions or exercising any power under the Act must be kept confidential unless:

a. The information is available to the public under any enactment, or otherwise would be.

b. Consent is given by the person to whom the information relates or the person to whom the information or document is confidential.

c. The publication or disclosure is for the purposes of the performance or exercise of any function, power, or duty under the Act.

48 I also propose another confidentiality exception. The Act will set out the circumstances under which the Chief Executive of the new Ministry of Business, Innovation and Employment, and Ministers with functions under the Act, will be able to provide information to other government agencies with HSE functions. This will be if they consider it would assist those agencies to perform their HSE functions in relation to a permit or permit application.

49 As both the Ministry of Economic Development (containing NZP&M) and the Department of Labour will be integrated into the new Ministry of Business, Innovation and Employment, consideration is being given to the information flows between the Ministry's separate regulatory functions relating to petroleum and minerals activities.

50 The Chief Executive, and Ministers, will be able to impose conditions on such a release. They will be able to determine information or classes of information that will not assist other agencies and would not be shared under this exception.

Engagement with iwi on Crown minerals

51 Section 4 of the Act says that "all persons exercising functions and powers under the Act shall have regard to the principles of the Treaty of Waitangi (Te Tiriti o Waitangi)".

52 The minerals programmes for petroleum and minerals both set out specific principles to guide how the Crown will honour these obligations. These require that:

a. The Crown will act reasonably and in utmost good faith to its Treaty partner.

b. The Crown must make informed decisions.

c. The Crown must have regard to, or consider, whether a decision will impede the prospect of redress under the Treaty.

53 Further, the programmes list iwi consultation processes that must be followed prior to awarding exploration permits. This focuses on active protection of sites of cultural significance.

54 The discussion paper noted that the obligations and principles set out in the Act and minerals programmes are considered sound and are broad enough to support a productive relationship between the Crown and iwi. It noted, however, that non-regulatory changes, such as changes to the way government implements processes, could be made to enhance the way in which iwi and the Crown interact on petroleum and minerals issues.

55 The discussion paper proposed that government should work directly with iwi to develop specific options to ensure that:

a. Iwi are confident that they have the opportunity to input their local knowledge to Crown decisions on petroleum and minerals policy and permits.

b. There are clear opportunities for iwi to participate through investment in the minerals sector from an economic development perspective.

56 Submissions from iwi were consistent in expressing disappointment that fundamental issues of concern to them are out of scope of the review. However, recent engagements with the iwi technical advisory group, mandated to represent the Iwi Leadership Group, along with engagement with other individual iwi have generally acknowledged the positive approach taken by the Crown to ensuring opportunities to input their knowledge and to participate in the sector.

57 There are three main aspects to iwi concerns under the Crown Minerals regime. These are:

a. Engagement between permit holders and iwi.

b. Crown engagement with iwi over policy and permits.

c. Iwi claims to ownership, a role in decision-making and to sharing in royalties.

Engagement between permit holders and iwi

58 There are a number of instances where positive working relationships between existing permit holders and local iwi produce both positive commercial and local outcomes.

59 Some iwi submitters argued there is inadequate protection for wāhi tapu sites under the current CMA and Resource Management Act 1991 regimes. The Act and minerals programmes provide for processes to consider exclusions of such sites, which are considered on a case by case basis, also taking into account the value of the potential resource.

60 In addition to considering exclusion of sites at the permitting stage, officials believe sites can be protected through effective engagement between industry and iwi. Steps have been taken to address this concern in the 2012 competitive tender Block Offer process. The Block Offer notice sets out factors for permit holders that are not binding, but signals expectations that permit holders will engage constructively with iwi. The notice states that the permit holder will regularly engage with iwi on issues that are likely to affect iwi interests during the petroleum exploration process, particularly in relation to sites of particular importance to iwi. This, in effect, describes the processes that constructive companies operating in New Zealand already adhere to. It has worked well this year and been agreed upon by iwi and industry.

61 Therefore, I am of the view that permit holders should generally engage with the iwi in whose rohe they are operating on a regular basis. I propose requiring Tier 1 (and potentially, through regulations, some Tier 2) permit holders to provide an annual summary of the engagement they have undertaken with iwi. I consider that this, along with the development of guidelines for engagement, will provide adequate provisions for industry and iwi engagement throughout the life of permitted operations.

62 The discussion paper also proposed developing best practice guidelines for engagement between iwi and permit holders. This proposal was generally supported by iwi and industry submitters. The petroleum and minerals industries and the technical advisors to the Iwi Leaders Forum have agreed to start working together to develop such guidelines. These guidelines would be voluntary and therefore would not be linked to the Act, but government support for them could be indicated through non-legislative means (such as linking them to the Ministry's website). Ministry officials will support their progress as necessary.

Crown engagement with iwi over policy and permits

63 Some of the issues raised by iwi in their submissions are in essence about improving how the Crown implements the Act and minerals programmes. Rather than changes to the Act, these can be addressed through actions the Crown can take under the current Act, and in improving how engagement with industry is facilitated.

64 Some iwi submitters argued they should have a role throughout all stages of permitting decisions and operations. This could include involvement in the proposed annual work programme meetings with Tier 1 operators and regulators so that iwi can access information about and monitor the progress of work programmes.

65 I do not believe that it is appropriate for iwi to participate in the annual work programme meetings. I expect NZP&M to meet regularly with iwi whose rohe overlap allocated permits in order to actively monitor how engagement by permit holders and iwi is progressing. This will also help build more robust relationships between NZP&M and iwi.

66 The Ministry will continue to improve its in-house engagement practices. This will include:

a. Proactively engaging with affected iwi on the planning of blocks for competitive tenders.

b. As indicated above, engaging with iwi whose rohe overlap with existing permits to hear their views on how activities are progressing.

c. Engaging with the technical advisors from the Oil and Minerals Group under the Iwi Leaders Forum on the preparation of the new minerals programmes.

d. Consulting with iwi on the new minerals programmes.

e. Giving greater weight to Crown Minerals Protocols and other relationship arrangements when engaging with relevant groups.

f. Working more closely with the Office of Treaty Settlements.

67 I am confident that these changes have the potential to significantly improve the relationships between the Crown, iwi, and permit holders.

68 Te Puni Kōkiri notes that a number of iwi submissions have raised the need to strengthen the existing Treaty clause in the Act. Te Puni Kōkiri has commented that the existing clause (section 4) is at the weaker end of the spectrum of Treaty clauses, and considers there is a need to strengthen section 4 to provide for improved levels of active protection and involvement in economic growth opportunities.

69 I do not propose changing the wording of section 4. The Crown's obligation under section 4 is already significant and the processes for discharging this obligation are established through the minerals programmes. I am confident that the obligations and principles set out therein are sound and are broad enough to be able to establish a productive Treaty relationship. It is through the Ministry's implementation of the programmes that this relationship can be most effectively delivered.

Iwi claims to ownership, a role in decision-making and to sharing in benefits

70 I note that many of the submissions from iwi objected to Crown ownership, decision-making and right to collect royalties being outside the scope of the review. Many of the iwi submissions asserted iwi ownership of minerals and the rights that flow from that, and expressed discontent that the government has not responded to the issues raised in the Waitangi Tribunal's Wai 796 report. I do not propose responding to these points as they are out of scope of the review.

Permit durations and relinquishments

71 The discussion paper proposed a number of changes to the permit management regime. These include permit durations, work commitment deadlines, and relinquishment requirements.

72 Currently the duration of a mineral prospecting permit (MPP) is two years, with the ability to extend the duration for a further two years. The duration of mineral exploration permits (MEPs) and petroleum exploration permits (PEPs) is five years, with the ability to extend the duration for a further five years.

73 By international standards, New Zealand is relatively unexplored so exploration permit areas need to be comparatively large to entice foreign investment. More time is therefore required to adequately undertake exploration activities, particularly where they are offshore.

74 As set out in the discussion paper, I propose amendments to the permit management regime, providing more flexible permit durations that reflect the nature of the exploration block[3] and more flexible management of permit holder compliance with work programme obligations. These changes are designed to ensure that key work programme obligations are clearly monitored and that exploration activities are carried out efficiently according to agreed timeframes. Permit cancellation will be considered where primary work programme elements are not delivered.

75 There was general agreement from submitters on the proposed changes to the permit management regime for minerals. For petroleum, industry submitters were supportive of the proposed changes, however many individual submitters commented that the current durations were sufficient.

[3] Allowing, for example, longer permit durations to be applied in less-explored "frontier" areas where more time is required to establish the nature and extent of the resource.

76 I intend for the revised minerals programmes to specify the details of permit durations, phasing, and relinquishment obligations in different contexts. I propose amendments to the Act to provide for these. Table 1 sets out the proposed changes.

Table 1: Proposed permit durations and relinquishment obligations

Permit type	Maximum permit duration	Up to two relinquishment obligations, not exceeding:
Mineral prospecting permit (MPP)	Four years	50% of the original permit area
Mineral exploration permit (MEP)	Ten years	75% of the original permit area
Petroleum exploration permit (PEP)	Fifteen years	75% of the original permit area

Royalties

77 The petroleum royalty regime was reviewed in detail in 2010/11, including an independent review of New Zealand's international competitiveness. It was concluded that the level of royalties was appropriate given current levels of prospectivity and the need to remain internationally competitive, and therefore no changes are proposed to the current royalty rates for petroleum.

78 The discussion paper proposed a review of royalty rates for Tier 1 minerals. My intention is to consult on mineral royalty rates in August 2012. This process will address the royalty rates for ironsands, coal (including underground coal gasification), gold, silver, platinum group elements, phosphate and seafloor massive sulphide resources. It will be driven by two questions:

a. Is the Crown receiving a fair financial return?

b. Is the royalty rate applied, and the overall level of Crown take, competitive with other comparable jurisdictions, particularly Australia and Canada?

79 The Inland Revenue Department (IRD) is undertaking a separate review of the tax regime for specified minerals (e.g. gold and ironsands). This is expected to result in far greater returns to the Crown than the proposed review of mineral royalty rates. IRD is expected to report to Ministers on proposed changes to the specified minerals tax regime in June 2012.

80 An option was put forward in the discussion paper to transfer royalty collection functions from NZP&M to IRD. That option is not being pursued further. Rather, it is proposed to strengthen the royalty collection powers of NZP&M through enhanced compliance mechanisms.

Compliance mechanisms

81 The Act currently contains limited mechanisms to ensure compliance with its requirements. For example, enforcement officers' powers are incorporated from the Resource Management Act: officers at any reasonable time may take samples of water, air, soil, or organic matter for the purposes of determining compliance; whereas powers to investigate and enforce the requirements relating to royalties are limited.

82 The discussion paper noted the penalty provisions have not been updated since the Act was introduced in 1991, and proposed one or both of the following options:

a. Increase maximum fines so they are on par in real, inflation-adjusted terms with the maximum amounts established in 1991 (or at some other level).

b. Introduce alternative options to promote compliance such as incentives and sanctions potentially drawing from civil or criminal systems.

83 While evidence of non-compliance is limited, there is a risk that the Crown is not recovering its full royalty entitlement. Even if only a small proportion of total royalties are lost, the figures involved could be significant.[4] There is a particular risk that royalties may be lost through arm's-length transactions.

84 I consider that the current penalties are set at too low a level to effectively discourage non-compliance. The current maximum fine for undertaking prospecting, exploration or mining activities without a permit is $200,000 (plus $10,000 per day for continuing offences). Other offences, such as non-compliance with the conditions of a permit, have maximum penalties of $10,000 (plus up to $1,000 per day if they continue).

85 I propose that amendments to the compliance mechanisms include:

a. Updating the enforcement functions and search provisions and aligning these with provisions in the Search and Surveillance Act 2012.

b. Providing for the Chief Executive to audit compliance with royalty payment requirements, or any requirements to keep records.

c. Providing the ability to require information from a permit holder for the purposes of ascertaining compliance.

d. Providing that royalty returns may be amended or assessed by the Chief Executive if they are considered to be inaccurate or incomplete, while also providing for objections and appeals in relation to these provisions.

e. Applying interest to unpaid money at the rate set out in the Tax Administration Act 1994.

f. Creating a new offence if a person knowingly provides altered, false, incomplete, or misleading information, and a new penalty for this offence being a fine set at $600,000.

g. Increasing the existing penalties for offences so they are on par in real, inflation-adjusted terms with the maximum amounts established in 1991. This will increase fines from $200,000 to $300,000, and from $10,000 to $15,000, respectively.

Different policies and procedures for minerals occurring in different circumstances

86 I propose that the Act be amended to clarify that different policies and procedures in a minerals programme can be applied to a mineral occurring in different circumstances – for example, a mineral occurring in different states, phases and strata, or minerals that are explored or produced through substantially different methods. This will enable, for example, distinct oil/gas and methane hydrate operations to be permitted over the same land.

[4] In the year to June 2010, the government collected $432 million in royalties from oil and gas.

Continental Shelf Act 1964

87 Exploration and mining activities in the exclusive economic zone (EEZ) and continental shelf are regulated under the Continental Shelf Act 1964 (CSA). Section 4 of the CSA addresses petroleum exploration and mining; it imports the relevant provisions of the Crown Minerals Act 1991. Section 5 of the CSA addresses mineral exploration and mining by providing for the granting of Continental Shelf Licences. I propose that the CSA be amended to import the minerals provisions of the Crown Minerals Act for all new Continental Shelf Licence applications. This would bring the CSA regime for minerals into alignment with the current practice for petroleum in the EEZ, and ensure there is a better fit with the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Bill (EEZ Bill) currently before the House which will manage the environmental effects of these activities. It is my intention that this amendment will not take effect until after the EEZ Act takes effect.

88 In addition, I propose that the penalties in the CSA be amended and aligned with those in the Crown Minerals Act; such penalties will only apply to existing licences granted under the CSA.

Transitional arrangements and grandfathering

89 The amended Act should provide for the transition of current permits to the amended regime. In May 2012, Cabinet approved the release of a subsequent discussion paper, *Review of the Crown Minerals Act 1991 Regime: Transitional arrangements for existing permit holders*, which sets out three options for transitioning current permit holders. The paper called for submissions by 8 June 2012 [EGI Min (12) 8/10].

90 The discussion paper on transitional arrangements set out three options for transitioning existing permit holders to the proposed new minerals programmes regime:

Option A (status quo)

91 *Continue to manage existing operations over time according to the minerals programme that was* current *when the operation was first permitted. Proposed changes to the minerals programmes would affect new permits, but not existing permits.*

Option B

92 *Revoke all existing rights immediately and make all permit holders, current and future, subject to the new minerals programmes from day one.*

Option C

93 *Retain current permit holders on their existing minerals programmes until they either apply to change a permit condition, seek a subsequent permit or choose to 'opt in' to the new regime – whichever* comes *first. At that point an existing operation would transition to the new minerals programmes.*

Submissions

94 Twenty-seven submissions were received from industry, iwi and individuals. Fifteen industry submissions supported Option A, four individual submissions supported Option B, and six submissions (three individuals, two iwi and the West Coast Commercial Gold Miners' Association) supported the transition proposal under Option C. Two submissions did not state an explicit preference.

95 Industry submitters strongly favoured option A[5]. Their submissions emphasised the importance of providing certainty to investors and the possible effects that transition to new minerals programmes might have on New Zealand's perceived sovereign risk.

96 A number of industry submissions stated that they favoured option A because the detail of the new regime is not yet available. Some respondents noted that permit holders might be happy to opt in voluntarily to the new regime once those details are available. This detailed information will be available when the amendment bill and the draft replacement minerals programmes are publicly released.

97 Four individuals submitted in support of option B. Three submitters supported option B on the grounds that it would provide an opportunity for New Zealand to collect more royalty from existing production. These submissions implicitly assume the new regime would apply higher royalty obligations on existing permit holders – this is not stated in any of the material.

98 Three individuals, two iwi and the West Coast Commercial Gold Miners' Association submitted in support of option C. Three submissions (two individuals and the Association) stated that option C would provide the best balance of preserving permit holder rights and reducing administrative costs.

99 Industry groups were the most likely to express a view on royalties. All were opposed to increases in royalty rates.

100 My preferred option is option C as this allows realisation of the advantages of the proposed regime arising from a streamlined application processes and reduced reporting requirements. This is particularly the case for Tier 2 permit holders. Tier 1 permit holders are likely to see both relaxation and tightening of obligations under the new programmes relative to the current situation, e.g. criteria for approving extension land applications are likely to be tightened, but permit durations lengthened. Option C allows both industry and NZP&M to adapt to the new regime gradually over the next five years with overall reductions in compliance and administrative costs.

101 I also propose preserving existing royalty arrangements for existing permit holders. This provides certainty for existing operations, avoids the negative impact on perceived sovereign risk by investors and will reduce some industry concern with option C.

102 Option A would involve considerable legislative complexity as multiple regimes would need to be maintained. Whilst this would be possible in practice, it would not achieve the intent of the review.

103 Industry will have the opportunity to submit on this proposal when the Bill is considered by the Select Committee and this is likely to be an area of significant focus. My view is that the Select Committee will be well placed to work through this issue, and that option C is the appropriate starting point.

[5] Todd Corporation, Solid Energy NZ, OceanaGold, Newmont Waihi Gold, Shell, Origin Energy, Contact Energy, Trans-Tasman Resources Ltd, Francis Mining, ROA Mining, Rio Tinto Iron Ore, Ocean Harvest International, Straterra and Business NZ.

104 The Act currently contains provisions for the transition of "existing privileges" granted under previous legislation. These are the Mining Act 1971, Coal Mines Act 1979, Petroleum Act 1937, and Iron and Steel Industry Act 1959. While these existing privileges, such as those for the Maui and Kapuni petroleum fields, and the Martha gold mine, will continue to be grandfathered in the amended regime, I propose that certain provisions of the amended Act, such as those relating to compliance mechanisms, use of information, Tier 1 and Tier 2 reporting distinctions, and Tier 1 annual review requirements, and the need to appoint an "operator" will apply to these privilege holders.

Mining on Conservation land

105 In July 2010, the Government decided on seven matters relating to public conservation land in response to public feedback on the Schedule 4 stocktake [ECC Min(10)10/4]. Cabinet invited the Ministers of Energy and Resources and Conservation to issue drafting instructions to give effect to two of the matters requiring legislative amendment. These instructions have been drafted and the proposed amendment bill is the first opportunity to make these changes. They are:

a. Areas given classifications equivalent to conservation areas described in clauses 1 to 7 of Schedule 4 (for example, national parks and marine reserves) will in the future be automatically added to Schedule 4. Such classifications will be agreed by Cabinet.

b. The process for approval of mineral-related access arrangements over Crown land will be amended so that approvals are jointly decided by the land-holding Minister and the Minister of Energy and Resources, and take into account criteria related to the economic, mineral and national significance of the proposal.

106 Cabinet also agreed in principle that significant applications to mine on public conservation land should be publicly notified. This will be considered as part of a separate Cabinet paper.

Automatic inclusion of equivalent land to clause 1 to 7 of Schedule 4

107 The Act provides that Schedule 4 can be amended by Order in Council, with some exceptions; for example, no such Order in Council can be made in respect of ecological areas in land subject to Schedule 4 of the Conservation Act 1987, or certain Mercury islands.

108 As noted above, Cabinet has previously agreed that the Act be amended so that new conservation areas with the appropriate classification be automatically added to Schedule 4.

109 I also propose that the Act be amended to provide that conservation land described by clauses 1 to 7 can be removed from Schedule 4 only if the land is reclassified so that it is not covered by clauses 1 to 7 of the Schedule, rather than amending the Schedule by Order in Council.

Other amendments

110 Annex 1 sets out proposed amendments to the Act that are of a more technical nature. These proposed amendments were either explicitly consulted on in the discussion paper, or are necessary to give effect to proposed changes to the minerals programmes or regulations. These relate to the following matters:

a. Purpose of permits

b. Functions of the Minister and Chief Executive
c. Methods of allocating permits and Minister's considerations
d. Reservation of acreage
e. Crown participation in permits
f. Minerals programmes
g. The requirement for 'statements of reasons' in minerals programmes
h. Notification requirements for draft minerals programmes
i. Changes to permits
j. Royalty returns and payments
k. Permitting requirements in certain small Crown-owned areas
l. Gold fossicking areas on non-Crown owned land
m. Expert determination
n. Information sharing and public release
o. Work programme compliance
p. Obligations to cooperate
q. Obligations to keep records
r. Transfers and dealings
s. Licences issued under the Mining Act 1971 and the Coal Mines Act 1979.

111 I propose a further technical amendment that was not contemplated by the discussion paper. Currently 'oil shale' is included within the Act's definition of 'coal', and therefore is not 'petroleum' (the definition of petroleum explicitly excludes coal). This means that policies and procedures relating to oil shale are included in the Minerals Programme for Minerals (Excluding Petroleum).

112 Due to the nature of the resource, I consider it more appropriate for oil shale to be classed in future as petroleum rather than coal. I therefore propose that the definition of coal in the Act be amended to exclude oil shale. This will mean that any current or future coal permits will no longer apply to oil shale. The effect on current permit holders is expected to be negligible as it is understood no current holders of permits for coal are targeting oil shale. There are fewer than 20 permits that include rights to prospect and explore for oil shale. NZP&M will contact these permit holders directly.

Other matters raised

113 A number of issues were raised by submitters that were outside of the scope of the review. There was a general desire from industry submitters for the Government to facilitate a broad public debate about the benefits of minerals and petroleum extraction. The government is taking action to stimulate this debate by improving the availability of information to the public in order to encourage a mature debate, implementing processes that allow for earlier and better public engagement in competitive tender processes, and engaging in a more collaborative manner with local government. NZP&M is also encouraging permit holders to engage with iwi and local communities.

114 A number of industry submitters commented that they would like to see a review of the broader tax arrangements for the petroleum industry, in particular as these affect incentives for new entrants.

115 Industry submitters also commented on issues relating to getting access to land, particularly Crown conservation land outside of Schedule 4. Many noted that delays in obtaining access arrangements can impact on permit holders' ability to meet their work programme commitments.

116 A number of submitters raised concerns with encouraging extraction of carbon-based minerals and petroleum, citing climate change effects. Many of the individual submitters also expressed opposition to hydraulic fracturing ('fracking') and deep sea oil drilling. Some wanted a prohibition on new prospecting, exploration and mining on all conservation land.

Next steps

117 I propose that drafting instructions be issued to Parliamentary Counsel Office for the drafting of a bill to give effect to the proposals in this paper.

118 I propose that the Minister of Energy and Resources, in consultation with any Minister with a portfolio interest in a specific matter, be given the power to approve any further technical matters as may be required for inclusion in the bill or the draft minerals programmes and regulations to ensure the legislation accurately reflects the policy intent of these proposals.

119 I intend to report back to Cabinet Legislation Committee seeking approval to introduce the bill in August 2012. I also intend to seek Cabinet's approval to release draft minerals programmes for consultation in August 2012.

120 I propose that the amendment bill include the ability to deem the revised minerals programmes as having complied with the consultation requirements. This will enable the amended Act and minerals programmes to take effect simultaneously.

Consultation

121 The Ministry of Economic Development undertook consultation on the discussion paper *Review of the Crown Minerals Act 1991 Regime* in March and April 2012; 168 submissions were received. The subsequent paper, *Transitional arrangements for existing permit holders*, was released in May 2012.

122 The following agencies have been consulted on the proposals in this paper: The Treasury, Ministry for the Environment, Environmental Protection Authority, Ministry of Transport, Maritime New Zealand, Department of Labour, Department of Internal Affairs, Inland Revenue Department, Ministry of Justice, Ministry of Foreign Affairs and Trade, Department of Conservation, Ministry for Primary Industries, Te Puni Kōkiri. The Department of Prime Minister and Cabinet has been informed of the proposals.

Financial Implications

123 There are no financial implications.

Human Rights

124 The Ministry of Economic Development will work with the Ministry of Justice during the drafting of legislation to consider consistency of the proposals with the Human Rights Act 1993 and the Bill of Rights Act 1990.

Legislative Implications

125 These proposals seek amendments to the Crown Minerals Act 1991. An amendment bill is included in the 2012 legislation programme as Category 3 (to be passed if possible in 2012).

Regulatory Impact Analysis

126 The Regulatory Impact Analysis (RIA) requirements apply to the proposal in this paper and a Regulatory Impact Statement (RIS) has been prepared and is attached.

127 The Regulatory Impact Analysis Team (RIAT) has reviewed the RIS prepared by the Ministry of Economic Development and associated supporting material, and considers that the information and analysis summarised in the RIS partially meets the quality assurance criteria.

128 The RIS clearly sets out the problem and objectives, and describes the impacts of the different proposals for change, in terms of cost reductions for industry and government. It also includes the results of the consultation process. However, the stated overall benefit of the package is based on the assumption that it will produce a 2.5% increase in annual royalty revenues, which cannot be derived from the individual proposals. In addition, some of the proposals do not include analysis of a full range of feasible options. Consequently, while the RIS supports the decisions to be taken on the individual changes, it cannot provide assurance that the package as a whole will deliver the expected benefits, nor that it will deliver the highest level of net benefit.

Consistency with Government Statement on Regulation

129 I have considered the analysis and advice of my officials, as summarised in the attached Regulatory Impact Statement and I am satisfied that, aside from the risks, uncertainties and caveats already noted in this Cabinet paper, the regulatory proposals recommended in this paper:

a. Are required in the public interest.

b. Will deliver the highest net benefits of the practical options available.

c. Are consistent with our commitments in the Government Statement on Regulation.

Publicity

130 There will be a high level of public interest in these proposals and associated decisions, I therefore propose proactively release at an appropriate time:

a. This paper and associated Cabinet decisions.

b. All the submissions received on the discussion paper.

131 Key messages and FAQs will be prepared by the Ministry of Economic Development in support of this release. The release will be subject to consideration of any information that would be withheld if the information had been requested under the Official Information Act 1982.

Recommendations

The Minister of Energy and Resources recommends that the Committee:

1 **Note** that on 20 February 2012 Cabinet agreed to the release of the discussion paper, *Review of the Crown Minerals Act 1991 Regime* [CAB Min (12) 5/7]

2 **Note** the review of the CMA regime is one of a number of related reform processes intended to ensure that the regulatory system for petroleum and minerals works effectively as a whole

Purpose statement

3 **Agree** that the Act include a purpose statement along the following lines:

3.1 "the purpose of the Act is to promote development of Crown owned minerals for the benefit of New Zealand by:

3.1.1 providing for the efficient allocation of rights to prospect for, explore for, and mine Crown owned minerals

3.1.2 providing for the efficient regulation of the exercise of those rights

3.1.3 ensuring a fair financial return to the Crown for its minerals"

A two-tiered system for permit management

4 **Agree** that the Act distinguish between "Tier 1" and "Tier 2" operations and specify which provisions will apply to Tier 1 operations and/or Tier 2 operations

5 **Agree** that Tier 1 include:

5.1 Petroleum

5.2 Hard rock gold and silver

5.3 Coal

5.4 Ironsand

5.5 Metallic minerals

5.6 Underground operations

5.7 Offshore operations

5.8 Operations that would otherwise be Tier 2, but exceed a size threshold set in a Schedule to the Act

6 **Agree** that Tier 2 permits comprise all other permits, and operations that would otherwise be Tier 1, but are below a size threshold set in a Schedule to the Act

7 **Agree** that the size thresholds between Tier 1 and Tier 2 set in the Schedule may be amended by Order in Council on the recommendation of the Minister of Energy and Resources

Health, safety and environmental matters

8 **Agree** that the Act provide that the Minister must not grant a Tier 1 exploration permit if the Minister is not satisfied that the applicant is likely to meet the expected health, safety and environmental requirements under other legislation for the activities proposed under the permit

9 **Agree** the Act enable the Minister to require a Tier 1 permit holder to attend a review meeting once a year with New Zealand Petroleum & Minerals (NZP&M), and that other regulatory agencies with a function in relation to the permit may attend some or all of a meeting

10 **Agree** the Act require each permit to have a designated 'operator' who is responsible for the day-to-day management of the permit

Use of information provided by permit holder

11 **Agree** the Act provide that all information supplied or disclosed to, or obtained by a person performing functions or exercising any power under the Act must be kept confidential unless:

11.1 the information is available to the public under any enactment, or otherwise would be

11.2 consent is given by the person to whom the information relates or the person to whom the information or document is confidential

11.3 the publication or disclosure is for the purposes of the performance or exercise of any function, power, or duty under the Act

12 **Agree** that the Act set out the circumstances under which the Chief Executive and Ministers with functions under the Act will be able to provide information to other agencies with health, safety and environmental functions under other statutes, if it is considered the information will assist them in carrying out their functions in relation to a permit or permit application

Engagement with iwi on Crown minerals

15 **Agree** that Tier 1 permit holders be required to report the details of engagement they have undertaken with affected iwi on an annual basis (whilst regulations may be made determining which, if any, other categories of permit holders should report on engagement they have undertaken with iwi).

Permit durations and relinquishments

16 **Agree** the Act set out the following maximum permit durations:

16.1 four years for mineral prospecting permits

16.2 ten years for mineral exploration permits

16.3 15 years for petroleum exploration permits

17 **Agree** the Act provide the ability for the following relinquishment obligations to be imposed as permit conditions:

17.1 mineral prospecting permits may have up to two relinquishment obligations, not exceeding 50% of the original permit area

17.2 mineral exploration permits and petroleum exploration permits may have up to two relinquishment obligations, not exceeding 75% of the original permit

Royalties

18 **Note** the Minister of Energy and Resources intends to release for public consultation a discussion paper on mineral royalty rates for Tier 1 minerals in August 2012

Compliance mechanisms

19 **Agree** that compliance mechanisms in the Act include:

19.1 updating the enforcement functions and search provisions and aligning these with the provisions in the Search and Surveillance Act 2012

19.2 providing for the Chief Executive to conduct audits for the purpose of ensuring compliance with royalty payment requirements, or any requirements to keep records

19.3 providing the ability to require information from a permit holder for the purposes of ascertaining compliance

19.4 providing that royalty returns may be amended or assessed by the Chief Executive if they are considered to be inaccurate or incomplete, while also providing for objections and appeals in relation to these provisions

19.5 applying interest to unpaid money at the rate set out in the Tax Administration Act 1994

19.6 the addition of a new offence if a person knowingly provides altered, false, incomplete, or misleading information, with the penalty for this offence set at $600,000

19.7 increasing the existing penalties for offences so they are on par in real, inflation adjusted terms with the maximum amounts established in 1991, from $10,000 to $15,000 and from $200,000 to $300,000

Different policies and procedures for minerals occurring in different circumstance

20 **Agree** that the Act clarify that different policies and procedures in a minerals programme can be applied to a mineral occurring in different circumstances

Continental Shelf Act 1964

21 **Agree** that the Continental Shelf Act 1964 be amended to import the minerals provisions of the Crown Minerals Act for all new Continental Shelf Licence applications

Transitional arrangements and grandfathering

22 **Note** that in May 2012, Cabinet approved the release of a subsequent discussion paper, *Review of the Crown Minerals Act 1991 Regime: Transitional arrangements for existing permit holders*, which set out three options for transitioning current permit holders, and called for submissions by 8 June 2012 [EGI Min (12) 8/10]

23 **Agree** that:

23.1 For introduction purposes, the Bill grandfather current permits to the provisions of their current minerals programmes until a permit holder applies for a change of permit conditions or a new permit, or choses to opt in to the new regime, whichever comes first

23.2 The Select Committee be invited to give particular consideration to transition issues in the light of submissions, since at that time submitters will have seen the proposed new minerals programmes

24 **Agree** that the proposals relating to compliance mechanisms, use of information, Tier 1 and Tier 2 distinctions for the purposes of reporting requirements, and the Tier 1 requirements of annual meetings and having to have an operator, will apply to continuing "existing privileges" granted under previous acts

Mining on conservation land

25 **Note** that in July 2010, the Government decided on seven matters relating to public conservation land in response to public feedback on the Schedule 4 stocktake [ECC Min(10)10/4], and three of those decisions require an amendment to the Act (the automatic inclusion of equivalent land to Schedule 4, a new economic significance criterion, and joint decision-making on land access arrangements)

26 **Note** that options for public notification of significant applications to mine on public conservation land will be considered as part of a separate Cabinet submission

27 **Agree** that conservation land described by clauses 1 to 7 in Schedule 4 cannot be removed from Schedule 4 by Order in Council

Other amendments

28 **Agree** to the technical amendments to the Act as set out in Annex 1 of this paper

29 **Agree** that 'oil shale' be removed from the definition of 'coal' in the Act, thereby re-classifying it as 'petroleum'

Next steps

30 **Note** that many of the proposals of the CMA review are matters for the minerals programmes made under the Act, and the Minister of Energy and Resources will seek Cabinet's approval to release draft minerals programmes for consultation by August 2012

31 **Agree** that the Act include the ability to deem the revised minerals programmes as having complied with the consultation requirements

32 **Agree** that Parliamentary Counsel Office be issued drafting instructions for the drafting of a bill to implement the proposals set out in these recommendations

33 **Authorise** the Minister of Energy and Resources, in consultation with any Minister with a portfolio interest in a specific matter, to make decisions, consistent with the overall policy decisions in this paper, on any issues which arise during the drafting process

34 **Note** the Minister of Energy and Resources intends to release, subject to consideration of any information that would be withheld if the information had been requested under the Official Information Act 1982:

34.1 this paper and associated Cabinet decisions

34.2 all the submissions received on the discussion paper

35 **Invite** the Minister of Energy and Resources to report back to Cabinet Legislation Committee with a draft bill for introduction to the House.

Hon Phil Heatley
Minister of Energy and Resources

_____ /_____ /_____

Annex 1: Proposed technical amendments to the Act

The following proposals were explained in the discussion paper and are intended to be progressed.

1 **A: Purpose of permits:** I propose that the legislation include sections setting out the purpose of prospecting, exploration, and mining permits.

2 **B: Functions of the Minister and Chief Executive:** I propose that the functions of the Minister as set out in the legislation be amended, and the legislation also set out functions of the Chief Executive. In line with current practice, the functions of the Minister will be to:

- a. attract permit applications
- b. grant permits, grant changes to permits, and revoke permits
- c. prepare minerals programmes
- d. cooperate with other regulatory agencies
- e. collect and disclose information in connection with geology and geophysical structures, crown mineral reserves and crown mineral production in order to:
  - i. promote informed investment decisions
  - ii. improve the working of related markets.

3 The Chief Executive's functions will be to:

- a. in respect of permits or the Act:
  - i. monitor compliance
  - ii. investigate conduct that constitutes or may constitute a contravention of a permit
  - iii. enforce
- b. keep a register of permit holders
- c. advise the Minister
- d. cooperate with other regulatory agencies.

4 **C: Methods of allocating permits and Minister's considerations:** I propose that the Act set out that the Minister grants permits as the result of either: a public tender; an application initiated by an applicant; or a subsequent right application under section 32 (which sets out the rights of permit holders to subsequent permits). I propose the legislation also set out required information and considerations for the Minister in granting a permit. For instance, it will provide that the Minister must not grant a permit unless a work programme has been supplied to the Minister, along with any other information required by the Minister.

5 Before granting a permit the Minister must be satisfied that:

- a. the proposed work programme is consistent with:
  - i. the purpose of the Act
  - ii. the purpose of the permit which has been applied for

iii. good industry practice with respect to prospecting, exploration or mining (as applicable)

b. the applicant will comply with the conditions of, and give proper effect to, any permit granted; in considering this the Minister will take into account:

i. the applicant's technical capability to carry out the proposed work programme

ii. the applicant's financial ability to carry out the proposed work programme and pay any monies owed to the Crown

iii. any relevant information on the applicant's compliance with other rights to prospect, explore and mine in New Zealand or internationally.

6 Before granting a permit the Minister must consider:

a. any international obligations directly relating to prospecting, exploring, or mining under the permit sought, that do not relate to health, safety and environmental matters (these matters are addressed in other legislation)

b. any evidence that the applicant will be unable to obtain an agreement to access land that relates to the permit.

7 **D: Reservation of acreage:** Where the Minister wishes to allocate exploration rights to Tier 1 minerals over an area via competitive tender, it is necessary to reserve the acreage from other allocation methods for a period of time. This is currently set out in section 3.9(2) of the Minerals Programme for Minerals (Excluding Petroleum). It is considered more appropriate for this provision to be placed in the Act rather than the minerals programme. This would bring it into line with other powers of reservation that the Minister has. I therefore propose to amend the Act accordingly.

8 **E: Crown participation in permits**: Currently section 25(2) of the Act provides that the permits may be granted with conditions specifying that Crown shall be entitled to participate in the activity under the permit or any subsequent permit. This provision was relevant at the time of enactment in 1991 as the Crown retained an interest as part of the royalty regime for petroleum. The royalty regime for petroleum was changed in 1995 and it is not proposed to return to the former royalty regime; therefore it is unlikely that this provision would ever be used in future. Retention of this provision may contribute to inaccurate sovereign risk assessments by potential new investors; therefore I propose removal of this provision.

9 **F: Minerals programmes:** Currently the Act provides that the "relevant minerals programme" will apply to a particular permit and the Minister must apply the Act "in a manner consistent" with the applicable minerals programme. In broad terms, the "relevant minerals programme" is the one that existed at the time an initial permit is granted, and continues to apply to the initial permit (and any subsequent permits granted under s 32) even if the minerals programme is superseded by a new or revised programme.

10 I propose that the Act clarify:

a. the purpose of a minerals programme is to set out how the Minister or the Chief Executive will apply the Act in respect of any Crown owned mineral that the programme applies to

b. the minerals programme is binding on the Minister and the Chief Executive

c. the Minister may change a programme from time to time

d. the latest minerals programme applies to all permits for the minerals it relates to, subject to the transitional provisions.

11 **G: Removing requirement for statements of reasons for provisions in minerals programmes:** The Act currently requires minerals programmes to contain statements of the reasons for and against specific policy positions being adopted. I propose the Act be amended to remove the requirement to include statements of reasons.

12 **H: Notification requirements for draft minerals programmes:** I propose, as set out in the discussion paper, that the notification procedures for draft minerals programmes, and any proposed changes to those programmes, be simplified. Currently the Act requires three stages of notification, I propose that this be reduced to two stages: firstly public notification of a draft programme (or draft changes to an existing programme), and notification of a final decision once it is promulgated. I also propose to remove the requirement to review and replace a minerals programme every ten years; programmes should be reviewed and amended on a case-by-case basis as required.

13 **I: Changes to permits:** I propose that the Act provide that any applications for changes to a permit must be received at least 90 days prior to the end of the permit, or the commitment date for the specified work to which the change application relates, unless the Minister considers there are compelling reasons the 90 day requirement could not be met. This proposal is intended to address concerns that applications for changes to permits are being made as a means of avoiding non-compliance with permit conditions.

14 **J: Royalty returns and payments:** Currently section 34 of the Act provides that permits may include conditions requiring the payment of money to the Crown for the rights given by the permit, and any minerals obtained by the permit holder; however the Act does not contain further detail on permit holders' obligations with regards to royalty payments. I propose that the Act be amended to expressly provide that a permit holder required to submit royalty returns and pay royalties must do so by the due date set out in a minerals programme or the conditions of a permit.

15 I propose that Tier 2 operations that do not meet the royalty threshold do not need to submit a royalty return; they will still need to keep records and still be liable to pay royalties if over a minimum revenue threshold. This will reduce reporting requirements for approximately 500-600 permit holders.

16 **K: Removing permitting requirements in certain small Crown-owned areas:** In some instances small parcels of Crown-owned minerals can be located within larger tracts of private mineral resources. Such areas can occur, for example, because a stopped road crosses a mineral deposit. Because such operations fall under the requirements of the Act, they produce excessive paperwork, costs and delays with minimal benefit to the Crown or the permit holder. The discussion paper set out a proposal to exclude from the permitting requirements of the Act any Crown-owned Tier 2 minerals located on a stopped legal road which passes through an area of otherwise privately-owned minerals. I propose to proceed with this proposal as set out in the discussion paper.

17 **L: Gold fossicking areas on non-Crown owned land:** The Act currently provides that Crown-owned land can be designated as a "gold fossicking area". In these areas, prospecting, exploring, of mining for gold in a gold fossicking area by means of hand held machinery does not require a permit. I propose the Act provide a similar ability for the Minister to designate areas of non-Crown owned land as gold fossicking areas, at the request of the landowner. This would allow private landowners such as local councils to identify areas to allow gold fossicking without permits (as would ordinarily be the case as gold is a Crown owned mineral). This will enable the Minister to provide fee and reporting exemptions for public good fossicking operations that are not on Crown owned land.

18 **M: Expert Determination:** I propose the legislation set out that the Minister may grant a permit including conditions providing that certain technical matters under the permit that cannot be agreed between the permit holder and the Minister can be determined through binding expert determination.

19 I intend that the minerals programmes will set out the details of when, or for what, the Minister is likely to want determination mechanisms in a permit (for example, amending a work programme in the light of new information on petroleum field performance).

20 **N: Making available information in reports and records:** Information provided in reports and records is publically available after five years. I propose the following exceptions:

a. Information that must be provided by the holder of a petroleum prospecting permit (PPP) will be made available 15 years after it is obtained by the permit holder.

b. Information provided by any petroleum permit holder that is information that is provided in accordance with a PPP (including summaries, interpretations, or models derived from information provided under a PPP). This information is made available 15 years after the information was first obtained under a PPP.

21 **O: Work programme compliance:** Section 39 of the Act provides for the Minister to initiate the revocation of a permit if a permit holder is not making "reasonable efforts" to comply with the Act, the regulations or the specific conditions of their permit. I propose to remove the current ability for permit holders to stave off non-compliance by demonstrating a "reasonable effort" to comply rather than actual compliance.

22 **P: Obligation to cooperate:** I propose the Act include a provision requiring a permit holder to cooperate with the Minister, the Chief Executive, and any enforcement officer.

23 **Q: Obligation to keep records:** I propose the Act require permit holders to keep records for two years after the end of the permit, or for at least seven years after the year to which they relate, whichever is longer.

24 **R: Transfers and dealings:** Section 41 of the Act prohibits permit holders or any other person from transferring permits or entering into agreements that affect the ownership of permits or production under permits without the Minister's consent.

25 In order to reduce administrative burden, I propose that for certain classes of these agreements, consent will be deemed to be granted unless the Minister advises the permit holder otherwise.

26 Officials are giving further consideration to:

a. for which agreements deemed consent is appropriate

b. whether certain types of transfers and dealings may be identified for which consent would not be required

c. whether the “approve, unless special circumstances exist” test is appropriate and what any alternative may be.

27 I propose the Act be amended to clarify the process for transferring permits in the event of death, bankruptcy, or liquidation of a permit holder.

28 **S: Licences issued under the Mining Act 1971 and the Coal Mines Act 1979:** I propose to amend section 110A of the Act to ensure that licence holders under the Coal Mines Act 1979 and Mining Act 1971 are required to comply with the data and reporting requirements of the CMA regime. This will bring reporting requirements for licences issued under Coal Mines Act 1979 and Mining Act 1971 into line with those issued under the Petroleum Act 1937.

Annex 2: List of proposals set out in the discussion paper *Review of the Crown Minerals Act 1991 Regime*

Health, safety and environmental matters

1. Include an assessment of applicants' HSE policies, capability and record in the initial stages of the permit allocation process.
2. Introduce a requirement for an annual review of the work programme for oil and gas permits, and certain higher-risk mineral activities.
3. Focus regulatory effort on those responsible for day-to-day management of activities by differentiating 'operators' from other permit holders.

Iwi engagement on Crown minerals

4. The government proposes working directly with iwi to develop specific options to ensure that:
    a. iwi are confident that they have the opportunity to input their local knowledge to Crown decisions on petroleum and minerals policy and permits.
    b. there are clear opportunities for iwi to participate through investment in the minerals sector from an economic development perspective.

Petroleum

5. Increase the confidentiality period for Petroleum Prospecting Permits (PPPs).
6. Allow PPPs to be granted over lands under permit.
7. Allow more flexible permit timeframes for exploration.
8. Change the current six-monthly activity and expenditure reporting timeframes to annual timeframes.
9. Introduce annual work programme reviews for new permits; and invite regulating agencies to participate.
10. Manage compliance with work programme obligations in a more flexible manner. Specifically, all work programme obligations which relate to a specific phase of exploration would be set with a due date of the last day of that phase.
11. Introduce a three-phase exploration permit system (nine, 12 or 15 years for onshore, near shore and deepwater frontier respectively) whereby each permit would be subject to satisfactory completion of the work programme.
12. Require a primary work programme, covering the geological and geophysical phase, to be submitted with the permit application, along with a secondary programme for the subsequent prospect delineation and drilling phases of the permit.
13. Limit the ability to increase the area under a permit to situations where oil and gas discoveries are made that extend beyond the boundaries of a permit and into unpermitted land.
14. Introduce a more focused approach to the appraisal of oil and gas discoveries. It is also proposed that permit holders be required to notify the Ministry as soon as practicable once a discovery is made.
15. Issue new mining permits subject to a review of actual production data against the initial production forecasts.
16. Develop a new Minerals Programme for Petroleum with separate parts for each mineral to better provide for future resources and technology developments.
17. Align royalty and activity reporting requirements on a calendar year basis.

Tier 1 minerals

18. Apply the same relinquishment principles that exist for exploration permits to prospecting permits. This would introduce a requirement for permit holders to relinquish 25% of the area under permit when an extension of duration is sought.
19. Allow two one-year extensions at the conclusion of the first two-year term of the prospecting permit, provided that at least 25% of the original permit area is relinquished at each application.
20. Provide clearer expectations about reasonable prospecting permit sizes.
21. Set benchmarks for floor and cap exploration permit sizes for different mineral classes and locations.
22. Introduce a targeted prequalification process for certain Tier 1 mineral activities.
23. Introduce a "cool-off" period in the Newly Available Acreage (NAA) timetable.
24. Extend the length of the NAA tender window.
25. Improve the management regime for Tier 1 minerals by introducing more proactive permit management, using the change of conditions provisions in a more focused way, and requiring firmer adherence to a smaller number of commitment deadlines.
26. Amend the policies and procedures relating to work programme management so new permit holders for Tier 1 minerals adhere to a firm set of work commitments over several distinct phases of the exploration permit.
27. Retain the 50% relinquishment mechanism within the mineral exploration permit regime, subject to the minimum size of the exploration permit not being less than a fixed amount.
28. Require a Land Mineral Status (LMS) report be submitted as part of the application process.
29. Annual face-to-face work programme mining review meetings should be introduced.
30. Raise the threshold for Extensions of Land to "indicated" resource.
31. Include underground coal gasification in the definition of coal mining.

Tier 2 minerals

32. Provide an explicit policy to decline applications for prospecting permits for alluvial gold, industrial rock and building stones, and other low-value minerals.
33. Introduce gateway assessment criteria to allow a quick decision to be made as to whether the application merits a fuller and more considered assessment.
34. Implement changes to the minerals programme to specify that miners of Tier 2 minerals would be subject to some, but not all, of the assessment criteria that Tier 1 miners are subject to.
35. Cap the permit duration for all Tier 2 mining operations, with rights of renewal if the mineral resource is not depleted in the initial permit term.
36. Delineate unpermitted areas that have alluvial minerals, and undertake proactive consultation with relevant iwi groups about appropriate areas to include in new permits.
37. Exempt all permit holders that do not meet the royalty threshold from submitting royalty returns.
38. Place a maximum permit size of 50 hectares for hobby and recreation operations and up to 200 hectares for other Tier 2 minerals.
39. Exclude any Crown-owned Tier 2 minerals located on land that is an existing or stopped legal road, or that is on a bed of a river or stream or a marginal strip, which pass through an area of otherwise privately-owned minerals.

40. Develop a better system for dealing with small-medium alluvial gold mining operations over areas which have already been permitted. There would be a preference for an option to amend the minerals programme so that consent of the prior permit holder is sufficient.

Royalties

41. Formally review the royalty rates for Tier 1 minerals against criteria for fairness and international competitiveness.
42. Investigate how royalty administration, assessment and collection might be improved.

Other matters

43. Include a purpose statement in the Act.
44. Import the minerals provisions of the CMA into the Continental Shelf Act 1964 for all new Continental Shelf Licence applications.
45. Place section 3.9(2) of the Minerals Programme for Minerals in the Act where it fits more appropriately.
46. Amend section 110A of the Act to ensure that licence holders under the Coal Mines Act 1979 and Mining Act 1971 are required to comply with the data and reporting requirements of the CMA regime.
47. Amend the Act to clarify how and when the Crown can use information provided by applicants and permit holders.
48. Extend the definition of "production unit" so that it also covers permits which are being worked on together and are held by related parties.
49. Simplify notification procedures for draft minerals programmes, and any proposed changes to those programmes, by removing the requirement under section 17(6).
50. Amend the Act to address situations where data is collected over multiple adjacent permits and is not released when one of the permits is surrendered.
51. Remove redundant clauses of the Act, including section 15(1)(e), which states the reasons for and against adopting policy positions in the minerals programmes; and section 25(2), which permits participation in permitted activities, subject to the Crown's entitlement.
52. Amend section 15(2) of the Act to clarify that different policies and procedures in a minerals programme can be applied to minerals occurring in different circumstances.
53. Change the existing procedures for permit transfers and dealings so that parties can assume that Ministerial consent is not required, unless advised to the contrary within 40 working days of a proposed transfer or dealing being notified to the Ministry.
54. Resolving potentially conflicting rights under different minerals programmes.
55. Amend section 41(3) of the Act which deals with transfers and dealings so that it better distinguishes between operator and non-operator applications.
56. Clarify section 41 by removing the reference to "special circumstances".

Petroleum data and reporting

57. Add new regulations to ensure that the Ministry is notified about relevant activities by permit holders.
58. Amend regulations requiring survey and drilling notices to be provided to the Ministry to additionally require proposed names for surveys or wells to be included in the notice.
59. Reduce the six-monthly reporting timeframes for petroleum permit holders to annual timeframes and align with royalty reporting dates.

60. Amend the expenditure reporting regulation to clarify that annual expenditure totals are required for the items listed in the expenditure report regulation.
61. Amend the prospecting and exploration regulations to include, for each well, any well stimulation activities carried out and their purpose.
62. Amend the supply deadline for a number of reports and records to better reflect the reasonable timeframes required for permit holders to be able to supply certain information to the Ministry.
63. Amend the well completion reporting regulation to additionally require permit holders to report on any well stimulation activities that are undertaken down hole.
64. Remove the core analysis and microfossil record regulations and include the requirement to supply these records as clauses in the well completion regulation.
65. Amend regulation 45 so that the relevant schedule also requires daily drilling reports to include details of any workover activities and well stimulation that have been undertaken in the relevant reporting period.
66. Amend the petroleum regulations to improve the quality of published information on gas reserves as well as that provided by industry to government about the Crown's petroleum resources.
67. Streamline section 41 of the CMA by placing a specific requirement in the annual expenditure reports to the Ministry.
68. Adopt a consistent approach to the use of individual regulations and schedules when the next regulations are made.
69. Publish annual production data on a well-by-well basis.
70. Make survey and well header information publicly available immediately.

Mineral data and reporting

71. Enhance requirements for reserve and resource reporting, and increase penalties for non-compliance.
72. Streamline the annual exploration summary reporting requirements.
73. Extend regulation 33(1) to require a permit holder to supply all reports and records created in the past year about any prospecting, exploration and mining activities undertaken in relation to their respective permits.
74. Amend regulation part 8 of Schedule 4 to improve the annual reporting requirements for mining activities (more detail about proposed changes provided in this section).
75. Amend regulation 39 to cover all alluvial gold, aggregate and other Tier 2 mineral mining permit holders.
76. Include a clause in regulation 39 which states that, upon request by the Secretary, permit holders must submit the proposed location, extent, direction of mining, and period of mine operation in the next year, including appropriate maps and plans.

Annex 3: The Crown Minerals Act regime

1 The Crown Minerals Act 1991 (the Act) sits atop the government's minerals programmes and the regulations, which together regulate the exploration and production of Crown-owned minerals. They are collectively known as the CMA regime.

2 All Crown-owned minerals are subject to the CMA regime. Crown minerals include:

- All petroleum, gold, silver and uranium, wherever they exist in their natural state.
- Almost all minerals that exist on Crown-owned land.
- Certain minerals which have been reserved in favour of the Crown on land which has since been sold.
- The Act, the ancillary minerals programmes and associated regulations each serve a different purpose in the regulation of prospecting, exploration and production activities that relate to Crown-owned minerals.

3 The Act provides for:

- The issuing of minerals programmes, which set out the policies and procedures for the allocation and management of rights over Crown-owned minerals.
- Payment of royalties to the Crown in exchange for those rights.
- The conditions on which permits to prospect for, explore for, and mine Crown-owned minerals may be granted.
- The collection and disclosure of information from permit holders by the Crown regarding the minerals estate.
- Rules for entry onto land to prospect for, explore for, and mine Crown-owned minerals.

4 Minerals programmes establish:

- Specific policies, procedures and provisions to provide for the efficient allocation of rights over Crown-owned minerals
- Royalty regimes and rates.
- Policies and considerations that the Minister will take into account in exercising his or her powers and functions under the Act.
- Specific requirements for consultation with iwi and hapū, including the matters which must be consulted on and the principles of such consultation.

5 Regulations provide specific requirements for:

- Application processes.
- Reporting and notification obligations.
- Fees payable.