



COVERSHEET

Minister	Hon Shane Jones	Portfolio	Resources
Title of Cabinet paper	Crown Minerals Amendment Bill 2024 – Further policy decisions	Date to be published	31 July 2025

List of documents that have been proactively released

Date	Title	Author
27 March 2025	Crown Minerals Amendment Bill 2024 – Further policy decisions	Office of Minister for Resources
2 April 2025	Crown Minerals Amendment Bill 2024 – Further policy decisions ECO-25-MIN-0047 Minute	Cabinet Office
24 March 2025	Annex to Regulatory Impact Statement: Amendments to the Crown Minerals Act 1991 relating to petroleum exploration and mining	MBIE

Information redacted

YES

Any information redacted in this document is redacted in accordance with MBIE's policy on Proactive Release and is labelled with the reason for redaction. This may include information that would be redacted if this information was requested under Official Information Act 1982. Where this is the case, the reasons for withholding information are listed below. Where information has been withheld, no public interest has been identified that would outweigh the reasons for withholding it.

Some information has been withheld for the reasons of commercial information and free and frank opinions.

Annex to Regulatory Impact Statement: Amendments to the Crown Minerals Act 1991 relating to petroleum exploration and mining

Purpose of Document	
Decision sought:	<i>Cabinet policy approval</i>
Advising agencies:	<i>Ministry of Business, Innovation and Employment (MBIE)</i>
Proposing Ministers:	<i>Minister for Resources</i>
Date finalised:	<i>24 March 2025</i>
Background / Context	
<p>This is an Annex to the Regulatory Impact Assessment (RIA): <i>Amendments to the Crown Minerals Act 1991 relating to petroleum exploration and mining</i>, which was finalised on 15 May 2024.¹ This RIA sought policy decisions to amend the Crown Minerals Act 1991 (CMA).</p> <p>Petroleum exploration and mining permit holders under the CMA and licence holders under the Petroleum Act 1937 (collectively in this paper, “permit holders”) are obliged to carry out and meet the cost of decommissioning and obtain and maintain financial securities for the performance of this obligation. This protects private landowners and the Crown from the cost of decommissioning petroleum infrastructure, if a permit holder fails to do so. A permit holder can be made up of one or more “permit participants”, each with an undivided interest (a “participating interest”) in a petroleum permit or licence (collectively in this paper, “permits”). Each permit holder has a “permit operator” who is the permit participant responsible for the day-to-day management of activities under the permit.</p> <p>The Crown Minerals Amendment Bill 2024 (the Bill) is currently before Parliament. It includes amendments to the petroleum decommissioning provisions, in particular, the provision that makes former permit holders and participants (henceforth in this paper, “permit holders”) liable for decommissioning costs². This is called trailing liability, and it exists only to the extent that the current permit holder fails to decommission or meet the costs, and only for petroleum infrastructure and wells that were in place when the permit was transferred. The Bill amends this provision so that ‘trailing liability’ only attaches to the immediately prior permit holder and no further back.</p> <p>Update as at March 2025</p> <p>This Annex was initially prepared prior to Cabinet agreement, in November 2024, to amend the Bill to extend liability for decommissioning costs to certain persons with controlling interests, automatically by statute (Option 3 below) [CAB-24-MIN-0439.01]. An</p>	

¹ <https://www.mbie.govt.nz/dmsdocument/28877-regulatory-impact-statement-amendments-to-the-crown-minerals-act-1991-relating-to-petroleum-exploration-and-mining-proactiverelease-pdf>

² Only the current permit holder has the obligation to decommission.

Amendment Paper was introduced prior to the Committee of the whole House stage [CAB-24-MIN-0450] and is now incorporated into the Bill currently awaiting third reading.

Following direction from the Minister, a Cabinet paper seeking an alternative method to extend decommissioning costs will be considered by the Cabinet Economic Policy Committee. This Annex has now been updated to reflect additional options under consideration.

Problem definition

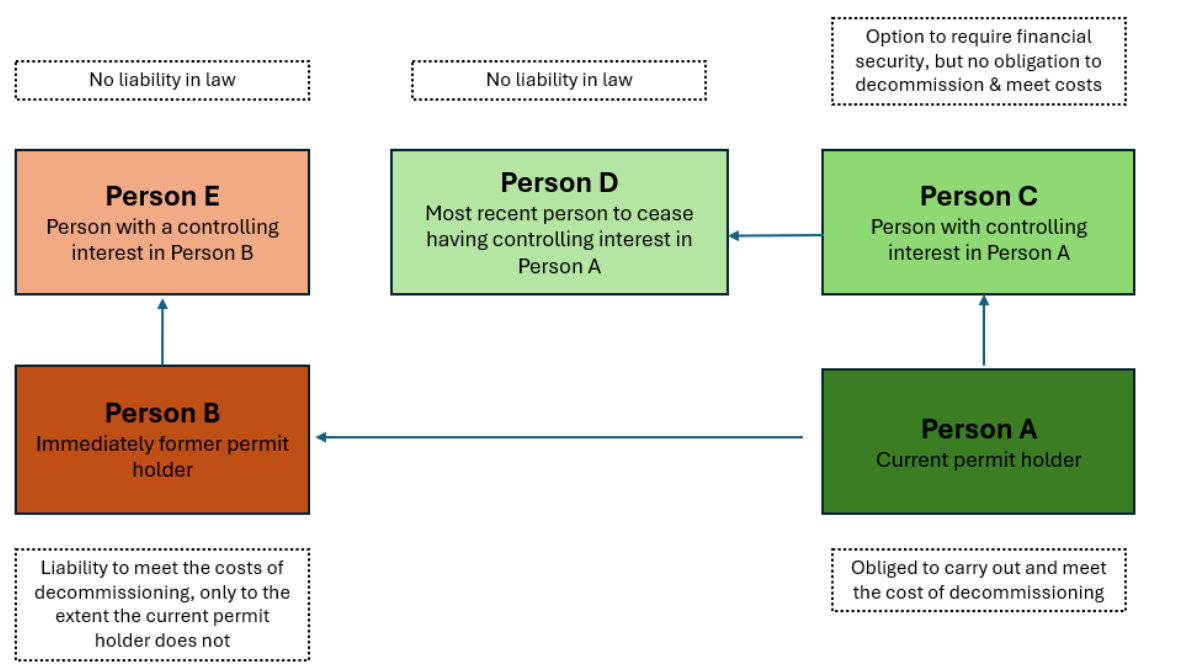
Submitters on the Bill to the Select Committee raised concerns about a potential loophole with the trailing liability provision.

Under the CMA, permits can change hands in two ways – directly through transferring the permit or indirectly through a change of control of a permit participant. A change of control is where a person obtains the power (whether directly or indirectly) to exercise 50 per cent or more of voting rights in the corporate body that holds the permit participant (for example, through a share sale).

A permit transfer requires Ministerial consent. A change of control in a permit operator, if it occurs without the Minister’s prior consent, is a contravention of the CMA. Under both processes, the Minister must be satisfied that (among other things) the new permit holder or transferee is highly likely to comply with the decommissioning obligations under the CMA. Change of control in a permit participant do not require Ministerial consent but only Ministerial notification, which must include a statement from the permit participant that it has the financial capability to meet its obligations under the permit. The Minister may revoke a permit if a permit participant fails to notify the Minister or if the Minister is not satisfied that following the change of control, the permit holder has the financial capability to meets its obligations under the permit.

However, the decommissioning trailing liability provisions only apply to transfers of permits (from Person B to Person A) and not to changes of control of the permit operator or permit participant (Person D to Person C - see diagram below).

Decommissioning liability following permit transfers or change of control



Submitters raised concerns that this could lead to the industry structuring businesses and transactions in a way that avoids trailing liability for decommissioning i.e., by selling shares in an entity rather than transferring the permit. If this happens, the Crown's only risk mitigation tool will be the decommissioning financial securities that the permit holder must provide. There will be no 'former permit holder' to trail.

This may lead to the decision maker under the CMA taking a more conservative approach to change of control applications or to decisions on an acceptable financial security arrangement for decommissioning. In either case, this may have a chilling impact on investment in our existing fields, contrary to the Government's policy objectives.

What is the proposed policy change?

There are five potential options to address the problem:

- **Option 1:** Maintain the status quo (the Crown Minerals Amendment Bill as introduced)
- **Option 2:** Partially extend liability by statute, in the context of change of control only
- **Option 3:** Extend liability by statute (introduced to the Bill through an Amendment Paper prior to Committee of the Whole House)
- **(Preferred) Option 4:** Extending liability by Ministerial discretion at point of approving transfers/changes of control
- **Option 5:** Broad Ministerial discretion to apply liability at any point

Following further policy work and engagement with the sector, Options 4 and 5 have been added through this updated Annex.

Option 1: Maintain the status quo

Option 1 would mean relying on the financial security arrangement already in place, or updating it to ensure the Crown's risk exposure to any decommissioning costs is managed. This could include, for example, seeking a parent company guarantee from the new parent i.e., the new majority shareholder or a related person of the parent, in combination with another, liquid form of security from the permit participant itself.

This option would not allow the Crown to fully ensure that it has a robust trailing liability arrangement in place with the previous owner. As indicated in the problem definition above, potentially risk-averse financial security decisions may have implications for investment activity in the upstream sector. Furthermore, if sale of shares become the only way in which permits change hands in the future, the decommissioning trailing liability provisions in the CMA become redundant.

Liability for decommissioning costs would fall on:

- The current permit holder (Person A)
- The immediately former permit holder (Person B)

The person(s) with a controlling interest in the current permit holder (Person C) could be liable through the financial security arrangements.

Option 2: Partially extend liability by statute, in the context of change of control only

Option 2 would involve extending liability for decommissioning costs to cover the immediately previous person(s) with a controlling interest³ in the current permit holder. For consistency with a permit transfer scenario, Option 2 would also extend liability for decommissioning costs to cover the person(s) with a controlling interest in the immediately *former* permit holder.

Option 2 also extends the existing pecuniary penalties⁴ and criminal liability⁵ provisions to all those who become liable for decommissioning costs.

Liability for decommissioning costs would fall on:

- The current permit holder (Person A)
- The immediately former permit holder (Person B)
- The person(s) who most recently ceased having controlling interest in the current permit holder (Person D)
- The person(s) with a controlling interest in the immediately former permit holder (Person E)

Person C could be liable through the financial security arrangements.

While Option 2 fixes the loophole, it would result in an unusual outcome. If the current permit holder fails to decommission or pay for it and the financial security is insufficient, the entities that directly benefited from the permit, (the person(s) with a controlling interest of the current permit holder) are not liable in law. The Crown would instead need to approach former parties, including the person(s) who most recently had a controlling interest of the current permit holder, which could be considered unreasonable.

³ Meaning the power (whether directly or indirectly, and alone or acting together with others) to exercise, or control the exercise of, 50 per cent or more of the voting rights in a corporate body.

⁴ Pecuniary penalties are available for up to \$500,000 (for an individual) or the greater of \$10 million, or 3 times the commercial gain from contravening the relevant provision, or 10% of turnover if the commercial gain cannot be ascertained (for a body corporate).

⁵ Up to 2 years imprisonment, or a fine not exceeding \$1 million, or both (for an individual), or a fine not exceeding \$10 million or 3 times the cost of decommissioning.

Option 3: Extend liability by statute

Option 3 would build on Option 2 and also extend liability under the CMA to cover a person with a controlling interest in the current permit holder. This option addresses the unusual outcome that could occur in Option 2 (described above).

Liability for decommissioning costs would fall on:

- The current permit holder (Person A)
- The immediately former permit holder (Person B)
- The person(s) with a controlling interest in the current or immediately former permit holder (Person C and Person E)
- The person(s) who most recently had a controlling interest in the current permit holder (Person D)

This option was preferred in the Annex supporting the November Cabinet Paper.

Option 4: Extending liability by Ministerial discretion, at point of approving transfers/changes of control

Option 4 gives the Minister the discretion to determine whether or not those with an interest in a permit are required to remain 'on the hook' following a transfer or change of control. The discretion would hook into ministerial approvals of relevant transactions in the CMA, where a person with an interest in a permit is 'exiting' (ie no longer having an interest), either through a permit transfer, or change of control.

When approving certain transactions, the Minister could require outgoing interests to provide a guarantee that they will meet relevant decommissioning costs, in the event permit holders, financial securities, and previous permit holders are insufficient to meet decommissioning costs.

The decisions where this discretion could be applied are Ministerial approval of:

- Transfer of interest in a permit
- Change of control of a permit operator
- Change of control of a permit participant (for petroleum permits only) (this requires a change to the Act to introduce a ministerial approval, currently any change of control only requires notification to the Minister)

Currently, changes of control under the CMA focus on the incoming interest, ie approval is only required when a new person obtains control. However, there could be situations where a person with control sells its shares, but no one obtains control (eg a person with 60 per cent shareholding sells its shares to two people, with 30 per cent each). To ensure there is oversight of relevant outgoing interests, a change to the Act is also needed to require Ministerial approval where the outgoing interest ceases to have control.

This option allows for those who have (or have had) interest in a permit holder, and therefore benefited financially (ie parent companies and shareholders), to contribute to the cost of decommissioning, in the event those with the obligation under the Act, and the financial securities, fail. This option relies on commercial arrangements, rather than

imposing statutory obligations (and associated offences) for contributing to the cost of decommissioning. However, it does include a new pecuniary penalty for outgoing controlling interests, if they undertake a change of control without Ministerial approval. A pecuniary penalty (based on existing pecuniary penalties in the CMA) would be a significant deterrent to prevent transactions occurring without prior Ministerial approval.

There may be situations where a related body corporate of the outgoing interest is the more appropriate person to have 'on the hook'. Therefore, it also allows for the discretion to be applied to related parties. Related parties are captured in both the Australian and United Kingdom decommissioning regimes. In this instance, the definition of related bodies corporate would be similar to section 50 of the Australian Corporations Act 2001. There, a body corporate is defined as:

- A holding company of another body corporate, or
- A subsidiary of another body corporate, or
- A subsidiary of a holding company of another body corporate.

This option provides some certainty for sector participants and their related parties, as to when trailing liability might be applied. If following a transfer or change of control, if the Minister did not require any outgoing interest (or related party) to remain 'on the hook' through an outgoing guarantee, there would be no ability to require this at a later date.

Liability for decommissioning costs would fall on:

- The current permit holder (Person A)
- The former permit holder (Person B)

Any liability on Persons C, D and E (and any related parties) would be determined by the Minister at the point of approving the relevant transaction.

Option 5: Broad Ministerial discretion to extend liability

Option 5 builds on Option 4, by creating a broad discretion power, but not limited to specific decision-points. The Minister would have the ability, at any point (in practice likely to be at the point the permit holder defaults on decommissioning obligations), to apply liability for decommissioning costs to:

- Person(s) with controlling interest in the current permit holder
- Person(s) with controlling interest in the former permit holder
- Previous person(s) that had controlling interest in the current or former permit holder
- Any related parties of the above persons.

However, Option 5 differs from Option 4 in that it would require a power for the Minister to impose liability by notice, as opposed to attaching ongoing liability as a condition of approving a permit transfer/change of control. It would therefore be appropriate for the Act to also apply penalties for non-payment, at the point the decommissioning costs are needed.

Liability for decommissioning costs would fall on:

- The current permit holder (Person A)
- The former permit holder (Person B)

Any liability on Persons C, D and E (and any related parties) could be imposed by the Minister at any point (in practice, likely to occur at point of failure to decommission).

This option most closely aligns with the decommissioning regimes for offshore oil and gas, in Australia and the UK.

Australia and the United Kingdom can 'trail' liability to a broader set of persons

In both Australia and the United Kingdom, legislation enables decision makers to 'trail' offshore decommissioning liability to a range of persons. In the United Kingdom, this includes parent companies or other associated body corporate, but only if the decision-maker is not satisfied that adequate arrangements (including financial arrangements) have been made by others to ensure that decommissioning will be carried out.⁶

In Australia, the decision-maker can issue a 'remedial direction' to decommission to any of the following:

- A related body corporate of the current registered holder of the permit, lease or licence
- Any former registered holder of the permit, lease or licence
- A person who was a 'related body corporate' of any former registered holder of the permit, lease or licence
- A 'related person' in relation to the title.⁷

Analysis of options

Annex One provides an overview of who is made liable for decommissioning costs by each option.

Each option has been given a rating against a set of criteria specific for this problem (see **Annex Two**). The criteria are:

⁶ See section 31(1) of the Petroleum Act 1998.

⁷ 'Related person' is determined on the basis of them being capable of significantly benefiting financially or has significantly benefited financially from the activities authorised by the title, and/or is or has been in a position to influence compliance with obligations under the Offshore Petroleum and Greenhouse Gas Storage Act 2006, and/or acts or has acted jointly with the current or former titleholder in relation to activities authorised by the title.

- **Compatibility** – fit with existing scheme of the CMA (including changes being made through the Bill)
- **Flexibility** – ability to apply liability to match circumstances, while allowing for the various ways permit ownership can be structured
- **Fairness**: those who benefited financially from a permit pay for decommissioning, ie does it ‘capture’ the right persons
- **Certainty** – clarity for industry participants as to whether they will be held liable, and clarity for government that decommissioning costs will be covered
- **Alignment** – how consistent it is with international best practice / the UK and Australian offshore regimes.

The criteria are equally weighted, with the exception of ‘fairness’, as this is the primary consideration and rationale for the change (ie to ensure the Crown is not left with the cost of decommissioning).

As noted above, an option similar to Option 3 was preferred in the earlier version of this Annex. Option 3 was developed under significant time constraints. Subsequent policy work from December to February led us to identify two further options and provided time for more substantial analysis of the impacts of the options.

Following this analysis, MBIE now recommends Option 4 as best meeting the Government’s objectives. It allows for those who financially benefited from a permit to be held liable, at the point they ‘exit’ a permit. Notably, it provides flexibility for the circumstances of the transfer, permit and company structures to be taken into account in determining where liability should lie.

Although Option 5 provides for the ability to impose liability on the same group of persons, we consider this approach does not align with the existing CMA regime, and the changes in the Bill to limit trailing liability to the immediately previous permit holder that transferred out of a permit. Additionally, Option 5 would create a large amount of uncertainty for the sector at a time when the Government’s objective is to improve investment confidence in gas production.

Implementation, monitoring, evaluation and review

The preferred option will need to be implemented through changes to the CMA. The changes are intended to take effect immediately, prospectively, and with no transitional arrangements. It is intended that implementation will be completed using existing resources. It will require building on existing processes, for example ensuring the regulator has sufficient information from permit holders and participants before making a decision. It will also involve communications out to the sector, so they are aware of the changes.

Changes to the Minerals Programme for Petroleum will need to be made. The Programmes are considered secondary legislation that interpret the CMA. The Programmes have specific consultation requirements, as set out in the CMA, including public notice and submissions requirements. There is currently a process underway to update the Minerals Programmes, to align with changes being made through the Bill, as well as earlier legislative changes that had not yet been incorporated. Any further changes made through an Amendment Paper will be incorporated into this process. It is intended the new Programmes come into force as soon as possible following the passing of the Bill. The proposed changes will be monitored to gauge their impact on permit transfers, mergers and acquisitions and further investment in the upstream petroleum sector. This will include whether any potential transfers or changes of control are not completed, and whether the failure to complete the transaction is due to these changes. However, it is difficult to assess whether these changes have any impact on any transfers or changes of

control being considered, ie new participants indicating an interest in buying or taking over control of a permit.

What impact will this have?

This will impose liability on outgoing interests (or their related parties), only if they agree to provide a guarantee at the point of sale or transfer. If the Minister determines that a guarantee is required and an agreement cannot be reached, permit holders or controlling interests will be impacted by the sale or transfer not being approved.

We consider that the impacts on outgoing interests and their related parties are reasonable, given that permit holding entities are often limited liability subsidiaries of their larger, more financially capable parents.

For the Crown and other third parties who may be responsible for decommissioning if a permit holder fails to decommission or pay for it, the broader range of liable persons is likely to reduce the risk of this occurring.

Consultation

Following the Committee of the Whole House in November 2024, MBIE has engaged with key stakeholders in New Zealand's oil and gas sector. Industry noted strong opposition to Option 3 (currently in the Bill). They raised two primary issues:

- Extending liability to all persons with controlling interest 'pierces the corporate veil', in a way which they consider undermines the foundation of the Companies Act 1993 and common business practices
- Imposition of liability on all exiting and existing persons with a controlling interest is a statutory overreach which allows no flexibility to meet the circumstances of the case (ie there is no discretion to apply liability on a case-by-case basis).

MBIE has held several meetings with key stakeholders from December 2024 to March 2025, to hear their concerns and has shared in confidence an outline of Option 4, as an alternative. The meetings provided an opportunity to hear initial feedback from the sector, and MBIE also accepted any written feedback in the days following any meetings. Industry stakeholders generally are against the concept of trailing liability, and so against its extension. They are largely in support of this more flexible means of applying it rather than its blanket application through statute, though consider this discretion should also apply to trailing liability currently applied by statute to the former permit holder. MBIE has factored in this feedback when assessing which option would most appropriately meet the stated objectives.

In the time available, MBIE has not carried out further consultation with iwi and hapū on the proposed changes. However, consultation with iwi and hapū in 2024 on the other decommissioning-related changes in the Bill highlighted support for a robust decommissioning regime. The proposed changes are likely to strengthen the decommissioning regime, compared to the Bill as introduced.

MBIE will continue its engagement with the petroleum industry and with iwi and hapū through the implementation of the preferred option.

Responsible Manager(s)



Hannah Keat

Manager Resource Policy, Resource Markets

Ministry of Business, Innovation and Employment

24 March 2025

Quality Assurance

Reviewing Agency:	Ministry of Business, Innovation and Employment
Panel Assessment & Comment:	The Regulatory Impact Statement titled “Annex to Regulatory Impact Statement: Amendments to the Crown Minerals Act 1991 relating to petroleum exploration and mining” has been reviewed by a MBIE Quality Assurance panel who consider that it meets the RIS QA criteria.

Annex One: Comparison of options - liability for decommissioning

Persons	Option 1: Status quo	Option 2: Partially extend liability by statute, for change of control only	Option 3: Extend liability by statute	Option 4: Extending liability by Ministerial discretion, at point of approving certain transactions	Option 5: Broad Ministerial discretion
Person A	Obligation to decommission and costs (in statute)				
Person B	Costs only (and only to the extent the current permit holder does not) (in statute)				
Person C	Option to provide financial security, but no obligation to decommission & meet costs	Option to provide financial security, but no obligation to decommission & meet costs	Costs only (in statute) Only to the extent the current permit holder does not	Option to provide financial security, but no obligation to decommission & meet costs	Ministerial discretion at any point, and option to provide financial security.
Person D	No liability in statute	Costs only (in statute) Only to the extent the current permit holder does not	Costs only (in statute) Only to the extent the current permit holder does not	Ministerial discretion at point of approving change of control	Ministerial discretion at any point
Person E	No liability in statute	Costs only (in statute) Only to the extent the current permit holder does not	Costs only (in statute) Only to the extent the current permit holder does not	Ministerial discretion at point of approving change of control	Ministerial discretion at any point
Related parties	No liability in statute			Ministerial discretion at point of approving transfer/change of control	Ministerial discretion at any point

Annex Two: Options rating against criteria

Criteria	Option 1 - Status Quo	Option 2: Partially extend liability for decommissioning costs by statute, for change of control only	Option 3: Extend liability by statute	Option 4: Extending liability by Ministerial discretion, at point of approving certain transactions	Option 5: Broad Ministerial discretion
Compatibility <i>Fit with existing scheme of the CMA, including changes being made through the Bill</i>	0	- New obligations & associated penalties for decommissioning costs for broader range of persons. Not consistent with CMA framework – where rights & obligations are imposed on permit holders only.	- New obligations & associated penalties for decommissioning costs for broader range of persons Not consistent with CMA framework – where rights & obligations are imposed on permit holders only.	+ Aligns closely with existing ministerial approvals. New obligation and penalty for relevant transactions (changes of control). Extends liability beyond permit holders & participants, but through agreement (transaction not approved if Minister determines outgoing guarantee required, and no agreement reached)	- New obligations & associated penalties for decommissioning costs for broader range of persons (potentially). Does not align with change being made in the Bill to limit trailing liability to most recent permit holder who transferred out.
Flexibility <i>Ability to apply liability to match circumstances, while</i>	0	0 Allows for some ways permit ownership can be structured, but not	0 Allows for some ways permit ownership can be structured, but not	+ Allows for consideration of ownership structure,	++ Allows for consideration of ownership structure,

<i>allowing for the various ways permit ownership can be structured</i>		able to take into account circumstances.	able to take into account circumstances	and circumstances (only at the time of transfer).	and ability to respond to any change in circumstance.
Fairness (higher weighting) <i>Those who benefited financially from a permit pay for decommissioning, ie does it 'capture' the right persons</i>	0	+ Closes current gap in decommissioning regime, but does so in a blanket way and creates unusual situation (former controlling interests liable, but not current controlling interests)	++ Closes gap and allows both current and former controlling interests to be liable (in event of default by permit holder) but does so in a blanket way	++++ Allows for 'capture' of appropriate persons, including related parties	++++ Allows for 'capture' of appropriate persons, including related parties.
Certainty <i>Clarity for industry participants as to whether they will be held liable, and clarity for government that decommissioning costs will be covered</i>	0	++ Clear in the Act who would be held liable, in event of default by permit holder.	++ Clear in the Act who would be held liable, in event of default by permit holder.	- Clarity only at the point of sale/transfer. Potential for guarantee not to be required at point of transaction.	- No certainty until liability applied, likely at point of default.
Alignment <i>How consistent is it with international best practice (UK and</i>	0	- Australia & UK empower Ministers to use discretion to impose decommissioning	- Australia & UK empower Ministers to use discretion to impose decommissioning	+ Uses discretion, as per Australia & UK, but not as broad.	++ Most closely aligns with Australia & UK.

<i>Australian offshore regimes)?</i>		obligations. Not as broad as either regime	obligations. Not as broad as either regime		
Total	0	+	++	++++++	++++++