

Crown Minerals (Petroleum) Amendment Bill

Government Bill

Explanatory note

General policy statement

The Crown Minerals (Petroleum) Amendment Bill contains amendments to the Crown Minerals Act 1991 (the **CMA**), administered by the Ministry of Business, Innovation, and Employment.

The amendments in the Bill give effect to the Government's announcement made on 12 April 2018 relating to offshore petroleum permitting.

The Bill provides that—

- new petroleum prospecting, exploration, and mining permits will be available only in the onshore Taranaki region (which is defined in the Bill); and
- new onshore petroleum exploration permit holders will be able to access conservation land only for minimum impact activities, but will still be able to carry out activities below that land in accordance with section 57 of the CMA; and
- future offshore petroleum mining permits may be granted only as a subsequent right to offshore petroleum exploration permits that existed before the Bill comes into force.

The Bill also sets out how existing rights, privileges, applications for permits, and legal proceedings (relating to petroleum permits) are affected by the changes to the CMA, as follows:

- permits for petroleum that exist immediately before this Bill comes into force will continue to have effect in accordance with the CMA as it was prior to this Bill coming into force. This means, for example, that the holder of an exploration permit for petroleum could apply to surrender that permit and exchange it for a mining permit for petroleum under section 32 of the CMA, or apply to extend the land to which the permit applies to land outside the onshore Taranaki region under section 36 of the CMA:

- existing privileges (which are privileges granted under previous legislation, such as the Petroleum Act 1937) will continue to be treated in accordance with the CMA as it was prior to this Bill coming into force:
- an application for a permit for petroleum that has been lodged or submitted but not determined before this Bill comes into force is deemed to be withdrawn. That application is then deemed to be re-lodged or re-submitted for land in the onshore Taranaki region only, and must be determined in accordance with the CMA as it is after amendment by this Bill:
- this Bill also provides that an existing proceeding between Greymouth Gas Turangi Limited and the Minister of Energy and Resources may be continued, heard, and determined, or settled, in accordance with the CMA as it is before amendment by this Bill.

Departmental disclosure statement

The Ministry of Business, Innovation, and Employment is required to prepare a disclosure statement to assist with the scrutiny of this Bill. The disclosure statement provides access to information about the policy development of the Bill and identifies any significant or unusual legislative features of the Bill.

A copy of the statement can be found at <http://legislation.govt.nz/disclosure.aspx?type=bill&subtype=government&year=2018&no=105>

Regulatory impact assessment

The Ministry of Business, Innovation and Employment produced a regulatory impact assessment on 3 September 2018 to help inform the main policy decisions taken by the Government relating to the contents of this Bill.

A copy of this regulatory impact assessment can be found at—

- <https://www.mbie.govt.nz/info-services/sectors-industries/natural-resources/oil-and-gas/overview-crown-minerals-act-regime/pdf-document-library/regulatory-impact-statement-proposed-changes-to-the-crown-minerals-amendment-act-1991.pdf>
- <http://www.treasury.govt.nz/publications/informationreleases/ria>

Clause by clause analysis

Clause 1 is the Title clause.

Clause 2 relates to commencement. This Act comes into force on the day after it receives the Royal assent.

Clause 3 states that the Crown Minerals Act 1991 is the principal Act amended by this Bill.

Part 1

Substantive provisions

Clause 4 amends section 2 of the principal Act, which defines certain terms used in that Act. A new definition of onshore Taranaki region is added to section 2. This definition is used in the clauses that follow to set the geographical boundaries within which future permits for petroleum may be granted.

Clause 5 amends section 23A of the principal Act, which provides for applications for permits under the Act. Section 23A provides that any person or persons may apply to the chief executive for a permit in respect of a mineral in land (whether or not there is a minerals programme for the mineral). This clause inserts *new subsection (2)*.

New subsection (2) provides that—

- applications cannot be made under section 23A for an exploration permit for petroleum. Section 24 is referenced, however, because that section provides a process by which tenders for those types of permits may be accepted; and
- applications for a prospecting permit for petroleum, or a mining permit for petroleum under section 23A, can be made only in respect of land that is in the onshore Taranaki region; and
- the chief executive of the administering department must not accept any application for a permit for petroleum for land that is outside the onshore Taranaki region.

New subsection (2) applies despite anything to the contrary in the principal Act, including section 1A (which states the purpose of the Act), and sections 25(1)(b)(i) and 32. Section 1A provides that the purpose of the Act is to promote prospecting for, exploration for, and mining of Crown owned minerals for the benefit of New Zealand. As the changes contained in *new subsection (2)* will curtail the ability to apply for permits for petroleum under section 23A, it is necessary to ensure that *new subsection (2)* has full operative effect.

Clause 6 amends section 24 of the principal Act, which enables the Minister to offer to allocate permits by way of a public tender (a **block offer**). A tender can relate to any Crown minerals in any place. This clause inserts *new subsection (5A)*.

New subsection (5A) concerns offers of permits for petroleum that are made under section 24(1) of the principal Act. It provides that—

- offers of permits for petroleum can be made only in respect of land that is in the onshore Taranaki region; and
- the Minister must not accept any tender for a permit for petroleum for land that is outside the onshore Taranaki region; and
- a tender for a permit for petroleum must be made in accordance with an offer under section 24 of the principal Act, if such an offer is made.

New subsection (5A) applies despite anything to the contrary in the principal Act, including section 1A (which states the purpose of the Act). Section 1A provides that

the purpose of the Act is to promote prospecting for, exploration for, and mining of Crown owned minerals for the benefit of New Zealand. As the changes contained in *new subsection (5A)* will limit block offers to land in the onshore Taranaki region, it is necessary to ensure that *new subsection (5A)* has full operative effect.

Clause 7 amends section 36 of the principal Act by inserting *new subsection (2A)*. Section 36 enables the Minister to change a permit at any time during the currency of the permit. One of the changes that can be made is to extend the land to which the permit relates.

New subsection (2A) provides that the land to which a permit for petroleum relates cannot be extended outside the onshore Taranaki region. This is necessary to ensure that the power in section 36 of the principal Act cannot be used to change permits for petroleum granted under section 23A or 24 to include land that is outside the onshore Taranaki region.

Clause 8 inserts *new section 50A*. Sections 49 to 52 of the principal Act provide an ability for people to access land to carry out minimum impact activities in connection with a prospecting, petroleum, or mining permit (minimum impact activity is defined in section 2 of the principal Act). Sections 53 to 80 provide an ability for people to access land for activities other than minimum impact activities.

New section 50A provides that only minimum impact activities may be carried out in connection with a permit for petroleum on Taranaki conservation land (which is land in the onshore Taranaki region that is held or managed under the Conservation Act 1987 or under an Act listed in Schedule 1 of that Act). This restriction does not prevent a permit holder from prospecting, exploring, or mining below the surface of Taranaki conservation land (as is permitted by section 57 of the principal Act). However, no permit holder (or employee, agent, or contractor of a permit holder) may enter Taranaki conservation land for a purpose other than carrying out minimum impact activities, or activities below the surface of the land.

New section 50A applies despite anything to the contrary in the principal Act, including section 1A (which states the purpose of the Act) and sections 53 to 80. Section 1A provides that the purpose of the Act is to promote prospecting for, exploration for, and mining of Crown owned minerals for the benefit of New Zealand. As the changes contained in *new section 50A* will confine the right to prospect, explore, and mine on Taranaki conservation land, it is necessary to ensure that *new section 50A* has full operative effect.

Part 2

Further provisions

Clause 9 amends Schedule 1 of the principal Act, which contains savings and transitional provisions. This clause inserts *new Part 2* in Schedule 1 to provide savings and transitional matters arising out of this Bill. The new provisions are set out in the *Schedule* of this Bill.

New clause 22 defines certain terms used in *new Part 2*.

New clause 23 preserves existing permits for petroleum by specifying that any such permit that exists before this Bill comes into force continues to have effect in accordance with the principal Act as it is before it is amended by this Bill. Of particular note is the fact that sections 32, 36, 39, and 40 of the principal Act continue to apply.

The effect of the continued operation of section 32 is that it allows an existing prospecting permit to be exchanged for an exploration permit, and an existing exploration permit to be exchanged for a mining permit. As these are existing permits, they could be outside the onshore Taranaki region.

The effect of the continued operation of section 36 is that it enables changes to be made to an existing permit for petroleum, including extending the land to which the permit relates. As a consequence, existing permits for petroleum could be extended to land that is outside the onshore Taranaki region.

The effect of the continued operation of section 39 is that the Minister may revoke an existing permit for petroleum, or transfer that permit to the Minister. If the Minister transfers that permit, the Minister may offer it (or any share in it) for sale by public tender under section 24 of the principal Act (as if this Bill had not been enacted) or otherwise. As a consequence, existing permits for petroleum in respect of land that is outside the onshore Taranaki region could be offered for sale.

Similarly, under section 40, an existing permit may be surrendered to the Crown and the Crown may acquire that permit for the purposes of reallocation or otherwise. As a consequence, existing permits for petroleum in respect of land that is outside the onshore Taranaki region could be reallocated.

New clause 24 concerns an application for a permit for petroleum that is lodged or submitted, but not determined, before this Bill comes into force. Any such application is treated as having been withdrawn, and re-lodged or re-submitted (but only if, and to the extent that, it applies to land in the onshore Taranaki region) after this Bill comes into force. The application must then be considered and determined in accordance with the principal Act as it will be after it has been amended by this Bill. Accordingly, any permit that is granted as a consequence of an application that is lodged before this Bill comes into force can only be in relation to land in the onshore Taranaki region.

New clause 25 concerns existing privileges, which are privileges, licences, and other rights that existed before the principal Act came into force (and are defined in section 2 of the principal Act). *New clause 25* provides that nothing in this Bill affects existing privileges.

New clause 26 saves the proceedings in the High Court between Greymouth Gas Turangi Limited and the Minister of Energy and Resources. These proceedings may be continued, heard, and determined, or settled, as if this Bill had not been enacted.

New clause 27 concerns changes to minerals programmes. Sections 17 and 18 of the principal Act set out a process that must be followed if changes are made to a minerals programme. *New clause 27* provides that the process set out in those sections does not apply to a change to a minerals programme that needs to be made because of the amendments made to the principal Act by this Bill.

Hon Dr Megan Woods

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Schedule

4

New Part 2 inserted into Schedule 1

The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Crown Minerals (Petroleum) Amendment Act **2018**.

2 Commencement

This Act comes into force on the day after the date on which it receives the Royal assent.

3 Principal Act

This Act amends the Crown Minerals Act 1991 (the **principal Act**). 5

Part 1 Substantive provisions

4 Section 2 amended (Interpretation)

In section 2(1), insert in its appropriate alphabetical order:

onshore Taranaki region means the Taranaki Region as constituted by clause 4 of the Local Government (Taranaki Region) Reorganisation Order 1989, but excludes any part of that region that is offshore 10

5 Section 23A amended (Application for permits)

In section 23A, insert as subsection (2):

- (2) However,— 15
- (a) a person may not apply under this section for an exploration permit for petroleum (but *see* **section 24(1) and (5A)**):
 - (b) a person may apply under this section for a prospecting permit for petroleum, or a mining permit for petroleum, in respect of any land in the onshore Taranaki region only: 20
 - (c) the chief executive must not accept an application for a permit for petroleum in respect of any land outside the onshore Taranaki region:
 - (d) this subsection applies despite anything to the contrary in this Act (including sections 1A, 25(1)(b)(i), and 32).

6 Section 24 amended (Allocation by public tender) 25

After section 24(5), insert:

- (5A) The following provisions apply to offers of permits for petroleum under subsection (1):
- (a) an offer may be made in respect of any land in the onshore Taranaki region only: 30
 - (b) the Minister must not accept a tender for a permit for petroleum in respect of any land outside the onshore Taranaki region:
 - (c) a person may submit a tender for a permit for petroleum only in accordance with an offer (if any) made in accordance with this section:

(d) this subsection applies despite anything to the contrary in this Act (including section 1A).

7 Section 36 amended (Change to permit)

After section 36(2), insert:

(2A) However, the land to which a permit for petroleum relates cannot be extended to include any land outside the onshore Taranaki region. 5

8 New section 50A inserted (Restricted access to Taranaki conservation land)

After section 50, insert:

50A Restricted access to Taranaki conservation land 10

(1) No permit holder (or employee, agent, or contractor of a permit holder) may enter Taranaki conservation land for a purpose in connection with a permit for petroleum other than as set out in sections 49 and 50 (carrying out a minimum impact activity).

(2) **Subsection (1)** applies despite anything to the contrary in this Act (including sections 1A and 53 to 80). 15

(3) However, this section does not prevent prospecting, exploration, or mining carried out below the surface of Taranaki conservation land in accordance with section 57.

(4) In this section, **Taranaki conservation land** means land in the onshore Taranaki region that is held or managed— 20

(a) under the Conservation Act 1987; or

(b) under an Act listed in Schedule 1 of that Act.

Part 2

Further provisions 25

9 Schedule 1 amended

In Schedule 1, after clause 21, insert the **Part 2** set out in the **Schedule** of this Act.

Schedule
New Part 2 inserted into Schedule 1

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Part 2		
Provisions relating to Crown Minerals (Petroleum) Amendment Act 2018		5
22	Interpretation	
	In Part 2 of this schedule,—	
	Amendment Act means the Crown Minerals (Petroleum) Amendment Act 2018	10
	application means—	
	(a) an application for a permit for petroleum lodged by a person under section 23A:	
	(b) a tender for a permit for petroleum submitted in response to a public tender process under section 24.	15
Subpart 1—Existing permits for petroleum and existing applications for permits for petroleum		
23	Existing permits for petroleum unaffected	
	A permit for petroleum that existed immediately before the commencement of the Amendment Act continues to have effect—	20
	(a) in accordance with this Act (including sections 32, 36, 39, and 40) as in force immediately before the commencement of the Amendment Act; and	
	(b) according to its terms (including any conditions to which the permit is subject immediately before the commencement of the Amendment Act).	25
24	Existing applications for permits for petroleum determined in accordance with Act as amended	
(1)	Any application that was lodged or submitted, but not determined, before the commencement of the Amendment Act—	
	(a) is treated as having been withdrawn; and	30
	(b) is treated as having been re-lodged or re-submitted (but only if, and to the extent that, the application is in respect of land in the onshore Taranaki region) immediately after the commencement of the Amendment Act; and	

	(c) must be determined in accordance with this Act as in force immediately after the commencement of the Amendment Act.	
(2)	Subclause (1) applies despite anything to the contrary in this Act.	
	Subpart 2—Other matters unaffected	
25	Existing privileges unaffected	5
(1)	The Amendment Act does not affect existing privileges (<i>see</i> section 2).	
(2)	This Act continues to have effect for the purpose of subclause (1) as if it had not been amended by the Amendment Act.	
26	Specified proceedings unaffected	
	The proceedings in the High Court between Greymouth Gas Turangi Limited and the Minister of Energy and Resources (CIV 2018-458-237) may be continued, heard, and determined, or settled, as if the Amendment Act (other than this clause) had not been enacted.	10
	Subpart 3— Consequential amendments to minerals programme	
27	Consequential amendments to minerals programme	15
	Nothing in sections 17 and 18 of this Act applies to a change to a minerals programme if the change is consequential on the amendments made to this Act by the Amendment Act (including any change to remove inconsistencies between the minerals programme and this Act as amended).	