

Submission by



to the

Economic Development, Science and Innovation Select Committee

on the

Crown Minerals (Decommissioning and Other Matters) Amendment Bill

19 August 2021

PO Box 1925
Wellington
Ph: 04 496 6562
Mob: 021 375 061

CROWN MINERALS (DECOMMISSIONING AND OTHER MATTERS) AMENDMENT BILL – SUBMISSION BY BUSINESSNZ¹

INTRODUCTION

1. BusinessNZ and the BusinessNZ Energy Council (BEC) welcome the opportunity to provide feedback on the Crown Minerals (Decommissioning and Other Matters) Amendment Bill (“the Bill”).
2. This Bill seeks to establish a statutory obligation to decommission, provide for monitoring to improve regulatory oversight, ensure financial security is provided and expand the current enforcement provisions as well as incorporating other minor and technical improvements.
3. We acknowledge the risk to the Crown and other third parties of potentially having to undertake and fund decommissioning activities and recognise efforts to strengthen provisions of the Crown Mineral Act to help mitigate this risk.
4. While we acknowledge the Government’s commitment to creating a low-emissions economy, and the consequences for the oil and gas sector, we note the important role these fuels are expected to play in our energy transition. Careful consideration must be made to ensure infrastructure is available and the required investment to maintain critical infrastructure is made to enable a successful transition balancing energy sustainability, energy security and energy affordability.
5. While we accept some changes may be required to strengthen decommissioning provisions, we note the proposed Bill introduces multiple layers of requirements, some of which may not reduce the risk of failure to undertake or fund decommissioning, but will increase costs and deter investment. Our main concern is the introduction of perpetual liabilities.
6. This submission focuses on the broader commercial implications, providing some general comments, followed by further comments on key clauses.
7. Members have been consulted in preparing this submission. Given the diversity of our membership, some members will have specific issues they wish to comment on in more detail. We have encouraged members to make their own submissions raising those issues specific to their areas of interest. This submission is not confidential.

GENERAL COMMENTS

8. Our primary concern with the Bill is with some clauses which effectively introduce perpetual liabilities for permit or licence holders. Clause 89M and 89T aims to hold permit and licence holders liable for meeting the costs of decommissioning even if they transfer out of a permit, if the new permit holder fails to carry out and fund decommissioning. These further obligations create perpetual liabilities. The relevant clauses and our recommendations are discussed in the following section.
9. We note the proposed changes introduce multiple layers of requirements to address the risk of failing to undertake and fund decommissioning activities including:
 - Obligations to carry out decommissioning activities,
 - Requirements to maintain the financial security to do so,
 - Provisions to monitor and assess financial capability,
 - Provisions to monitor and enforce obligations,
 - Penalties (both civil and criminal) for failure to meet these obligations.

¹ Background information on BusinessNZ and the BusinessNZ Energy Council is attached as Appendix One.

10. While we accept changes to clarify permit or licence holders' decommissioning responsibilities, we note each additional requirement will add cost to business, as well as the agency responsible for overseeing those requirements. Given the multiple layers of requirements, we believe some of the proposed changes will introduce costs without reducing the perceived decommissioning risks.
11. Further to this, the proposed changes also require permit or licence holders to make payments towards the cost of any post-decommissioning work. As the Bill's explanatory note states "*the costs of decommissioning activities are substantial.*" Under the current drafting the Minister has the discretion to determine the amount to be paid, in accordance with some prescribed criteria, and when.
12. We question what work may be deemed necessary under these provisions. We note the Ministry of Business, Innovation and Employment are currently consulting on proposed regulations to support the Bill, including the criteria to assess post-decommissioning risks which will be used to determine amounts payable. Given the potentially substantial costs involved, this uncertainty creates sovereign risk for those seeking to operate in New Zealand and is likely to discourage future investment.

SPECIFIC COMMENTS ON KEY CLAUSES

13. This section provides further comments on key clauses in the Bill.

Part 2: Amendments to other Parts of principal Act Subpart 2 – Decommissioning of petroleum infrastructure and wells

Clause 89M Further obligations on transferors and transferees

14. Clause 89M aims to hold permit and licence holders liable for meeting the costs of decommissioning **petroleum infrastructure** even if they transfer out of a permit, if the new permit holder fails to carry out and fund decommissioning. These further obligations create perpetual liabilities.
15. We note this option was not publicly consulted on. We would have expected a full and genuine consultation on any such issue, particularly given the potential to adversely impact on current or future permit and license holders. The failure to do so creates further uncertainty in a sector which is already facing significant uncertainty.
16. In our view, this clause is not required as several other measures have been introduced to address the risk of failure to cover decommissioning costs including the requirement to hold financial security, the Minister's right to review financial capability and the Minister's approval over transfers under section 41. Any transferee seeking to acquire an interest must demonstrate financial capability, the minister must approve the transfer, and the Minister has the right to collect information to assess financial capability. With these measures in place the situation should not arise where a transferee is unable to meet the costs of decommissioning.
17. These obligations interfere with existing commercial arrangements and undermine existing property rights. The change will require further work for those seeking to transfer permits or licences, creating a barrier for transfers to occur. Transferors and transferees would need to factor any ongoing liabilities into any divestment or investment decisions, likely slowing any future transfer of interests. Transferors are unfairly burdened as they are likely to have to accept a lower offer for assets to offset the potentially higher decommissioning costs imposed and may still be liable to meet decommissioning costs in future.
18. Creating such barriers to transferring interests and the associated liabilities means property rights are no longer divestible. Clearly defined and divestible property rights are a fundamental part of any market economy. Where rights are restricted, the incentive to invest is severely weakened.

19. As we have experienced over the last two years, investments have been delayed or abandoned because of uncertainty of existing and future regulatory arrangements. This has had effect of decreasing diversity and security of energy supply and potentially increasing energy prices.
20. This is particularly concerning as the oil and gas sector are expected to play an important and ongoing role in supporting the transition to a low-emissions economy as highlighted by the Climate Change Commission's recent advice to government².
21. Furthermore, this clause sets a poor precedent, not just within the sector, but for other businesses who face decommissioning costs or manage environmental risks. We can think of no other situation in New Zealand where a business is legitimately sold, and the seller is responsible for any liabilities which might be accrued by the new owner. This is a fundamental change to how business transactions work. It will create significant uncertainty, have a chilling effect on investment and will make New Zealand a less attractive place to invest or do business.

We recommend that:

Clause 89M be amended to remove further obligations on transferors

Clause 89N Exceptions to sections 89K and 89L

22. Clause 89N states that transferors are only liable to carry out decommissioning or meet costs if, or to the extent that those costs are not met by permit holders or licence holders.
23. In our view, decommissioning costs should not be borne by former permit or licence holders as outlined above and this clause should be removed.

Associated Clauses 89K, 89L, 89P, 89O

24. Clauses 89K and 89L set out the obligations for transferors and transferees to decommission petroleum infrastructure for permit holders and licence holders respectively, Clause 89O specifies the timing of those obligations, and Clause 89P sets out rules for joint and several liability where a permit or licence holder is 2 or more persons.
25. These clauses should be amended to remove further obligations on transferors as outlined above.

We recommend that:

Clause 89N be removed and clauses 89K, 89L, 89O, 89P be amended to limit obligations to current permit and licence holders

Clause 89T Further obligations on transferors and transferees

26. As with Clause 89M, Clause 89T aims to hold permit and licence holders liable for meeting the costs of decommissioning **in relation to wells** even if they transfer out of a permit, if the new permit holder fails to carry out and fund decommissioning. These further obligations create perpetual liabilities.
27. We do not support this clause for the reasons outlined above.

We recommend that:

Clause 89T be amended to remove further obligations on transferors

Associated Clauses 89U, 89R, 89S, 89V, 89W

28. Like clause 89N, Clause 89U states that transferors are only liable to carry out decommissioning or meet costs if, or to the extent that, those costs are not met by permit holders or licence holders.
29. In our view, decommissioning costs should not be borne by former permit or licence holders as outlined above and this clause should be removed.

² Climate Change Commission, Ināia tonu nei: a low emissions future for Aotearoa, p69.

30. As with clauses 89K, 89L, 89O and 89P in regard to petroleum infrastructure, Clauses 89R, 89S set out the obligations for transferors and transferees to decommission wells for permit holders and licence holders respectively, Clause 89V specifies the timing of those obligations, and Clause 89W sets out rules for joint and several liability where a permit or licence holder is 2 or more persons.

31. These clauses should be amended to remove further obligations on transferors as outlined above.

We recommend that:

Clause 89U be removed and clauses 89R, 89S, 89V, 89W be amended to limit obligations to current permit and licence holders

Appendix One - Background information on BusinessNZ

BusinessNZ is New Zealand's largest business advocacy body, representing:

- Regional business groups [EMA](#), [Business Central](#), [Canterbury Employers' Chamber of Commerce](#), and [Employers Otago Southland](#)
- [Major Companies Group](#) of New Zealand's largest businesses
- [Gold Group](#) of medium sized businesses
- [Affiliated Industries Group](#) of national industry associations
- [ExportNZ](#) representing New Zealand exporting enterprises
- [ManufacturingNZ](#) representing New Zealand manufacturing enterprises
- [Sustainable Business Council](#) of enterprises leading sustainable business practice
- [BusinessNZ Energy Council](#) of enterprises leading sustainable energy production and use
- [Buy NZ Made](#) representing producers, retailers and consumers of New Zealand-made goods

BusinessNZ is able to tap into the views of over 76,000 employers and businesses, ranging from the smallest to the largest and reflecting the make-up of the New Zealand economy.

In addition to advocacy and services for enterprise, BusinessNZ contributes to Government, tripartite working parties and international bodies including the International Labour Organisation ([ILO](#)), the International Organisation of Employers ([IOE](#)) and the Business and Industry Advisory Council ([BIAC](#)) to the Organisation for Economic Cooperation and Development ([OECD](#)).



The [BusinessNZ Energy Council \(BEC\)](#) is a group of New Zealand's peak energy sector organisations taking a leading role in creating a sustainable energy future. BEC is a division of BusinessNZ, New Zealand's largest business advocacy group. BEC is a member of the [World Energy Council \(WEC\)](#). BEC members are a cross-section of leading energy sector businesses, government and research organisations. Together with its members BEC is shaping the energy agenda for New Zealand.

Our vision is to support New Zealand's economic wellbeing through the active promotion of the sustainable development and use of energy, domestically and globally. With that goal in mind, BEC is shaping the debate through leadership, influence and advocacy.