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**Caution:** This Digest was prepared to assist consideration of the Bill by members of Parliament. It has no official status. Although every effort has been made to ensure accuracy, it should not be taken as a complete or authoritative guide to the Bill. Other sources should be consulted to determine the subsequent official status of the Bill.

**Purpose**

The Bill amends the Crown Minerals Act 1991 (the CMA), the Conservation Act 1987, the Continental Shelf Act 1964, the Reserves Act 1977 and the Wildlife Act 1953. It has the aims of:

- "encouraging the development of Crown owned minerals so that they contribute more to New Zealand’s economic development;

- "streamlining and simplifying the permitting regime where appropriate, making it better able to deal with future developments; and

- ensuring that better co-ordination of regulatory agencies can contribute to stringent health, safety, and environmental standards in exploration and production activities.

To this end, the stated purpose of the Bill is to promote prospecting for, exploration for, and mining of Crown owned minerals for the benefit of New Zealand, by providing for:

- "the efficient allocation of rights to prospect for, explore for, and mine Crown owned minerals;

- "the effective management and regulation of the exercise of those rights; and
• “a fair financial return to the Crown for its minerals”.

Background

The Bill changes the present permit system into a two-tiered system of:

• complex, higher-return petroleum and mineral activities (Tier 1) (subject to more complex procedures); and

• smaller industrial, small business, and hobby mineral operations (Tier 2) (subject to less complex procedures).

The Bill changes the law in relation to issuing permits and health, safety, and environmental regulatory requirements for Tier 1 by providing for an initial assessment of health, safety, and environmental capability. The chief executive may require permit holders to be subject to annual review. The intention is also to focus “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”. The Bill has information sharing provisions amongst government agencies and with “external advisers” and the confidentiality of information.

“The Bill enhances existing compliance mechanisms, increasing the penalties for offences above the rates set in 1991, and limiting the current scope that a permit holder has to avoid revocation of its permit. This is complemented by increasing maximum permit durations and allowing greater flexibility in government oversight of work programmes. These changes are designed to focus attention on delivery of key activities that generate potential value to New Zealand.

“The Bill provides for permit holders to report on the engagement they have undertaken with affected iwi to recognise the importance of maintaining positive working relationships at a local level. This will be complemented by further operational changes that seek to strengthen the relationship between the Crown and iwi, and between operators and iwi.

“The Bill provides for the transition of current permit holders to the amended permitting regime in a staged manner over a period of 5 years to address the current complexity of the regime created by maintaining multiple minerals programmes. This will ensure consistency in application of the regime and reduce administrative efforts by both the Crown and permit holders.

“The Bill amends the Continental Shelf Act 1964 by importing the minerals provisions of the CMA for all new Continental Shelf Act 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. Regulation of environmental effects would fall under the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012.

“The Bill provides for automatic inclusion of certain areas into Schedule 4 of the CMA and updates the process for approval of mineral-related access arrangements over Crown land. The Bill makes amendments to the Conservation Act 1987, Reserves Act 1977, and Wildlife Act 1953 to provide for this.

“It is intended that the Bill will be divided into the following 5 Bills at the committee of the whole House stage:

• the Crown Minerals Amendment Bill (Part 1 and Schedules 1-3);

• the Conservation Amendment Bill (Part 2);


2 Ibid.
• the Continental Shelf Amendment Bill (Part 3);
• the Reserves Amendment Bill (Part 4);
• the Wildlife Amendment Bill (Part 5).  

A regulatory impact statement: http://www.treasury.govt.nz/publications/informationreleases/ris

Main changes

Supplementary Order Paper 152

The bar-2 Bill incorporates generally the contents of Supplementary Order Paper 152 released on 27 November 2012. The SOP proposed 15 amendments to the bill to implement recommendations in the report of the Royal Commission of Inquiry on the Pike River Coal Mine Tragedy seeking amendments in relation to health and safety matters in the permit allocation and management provisions of the Act.

Determining Tier 1 or Tier 2

The bar-2 Bill requires the Minister to estimate exploration expenditure, annual royalties, or annual production as appropriate over a 5-year permit period to determine whether permits should be Tier 1 or Tier 2 (Part 1, Clause 9, amending New Section 2B of the CMA).

Minerals programmes

The Bill provides for minerals programmes apply to all permits that are subject to the programme. The bar-2 Bill sets out how the Crown would have regard to the principles of the Treaty of Waitangi in accordance with Section 4 of the Act (which provides that all persons exercising functions and powers under the CMA must have regard to the principles of the Treaty of Waitangi (Te Tiriti o Waitangi)).

Comment

“The minerals programmes are an appropriate vehicle for setting out detailed expectations regarding iwi engagement reports and consultation on permit decisions. This would allow more flexibility as to the kind of engagement, depending on the activity envisaged under each permit, and the preferences of the iwi and hapū concerned”.

Minister’s discretion to grant permits

The bar-2 Bill provides greater explanation of the breadth of the Minister’s discretion to grant a permit and states that the Minister is not obliged to grant a permit to any person or persons unless obliged to do so by Section 32 (headed: “Rights of permit holder to subsequent permits”). The bar-2 Bill also provides that the permit may be subject to any conditions that the Minister may impose, as the Minister thinks fit, including authorising the prospecting or exploration for, or mining of, a mineral only:

- in particular circumstances;
- by means of a particular method; or
- if the mineral occurs in a particular state, place, phase, or stratum (Part 1, Clause 16, substituting Section 25 of the CMA).

3 Ibid.
Health and safety

Minister must be satisfied of certain matters before granting a permit

The bar-2 Bill provides that the Minister must be satisfied that an applicant for a permit is likely to comply with the work programme for the permit and the Minister must seek the views of the Health and Safety Regulator (i.e. “the department that, with the authority of the Prime Minister, is responsible for the administration of the Health and Safety in Employment Act 1992”) before granting a Tier 1 permit for exploration or mining. The Minister must also consider an applicant’s record of compliance with its obligations in relation to reporting and the payment of fees and royalties before granting a permit (Part 1, Clause 18, amending New Section 29A).

Compliance with health and safety legislation

The bar-2 Bill makes compliance with health and safety legislation a requirement for any permit holder (Part 1, Clause 21, amending New Section 33(1)(a)).

Comment
Such non-compliance will therefore be grounds for enforcement action under the CMA.

Regulator must be satisfied before activities commenced

The bar-2 Bill provides that that permit holders may not commence activities under the CMA before the Health and Safety Regulator had given any required approval or consent under the Health and Safety in Employment Act 1992 or regulations made under that Act (Part 1, Clause 21, amending New Section 33AA).

Penalties

The bar-2 Bill increases the maximum penalties: those which were to be increased from $200,000 to $300,000 are instead increased to $400,000; those which were to be increased from $10,000 to $15,000 are instead increased to $20,000; and those which were to be increased from $1,000 to $1,500 are instead increased to $2000. In respect of the new offence created by the Bill which is to knowingly provide altered, false, incomplete, or misleading information (including royalty returns) to the chief executive or any other person in respect of a matter or thing under the CMA or regulations, the maximum penalty would be $800,000 (instead of the $600,000 in the Bill as introduced (Part 1, Clause 46, amending Section 101 of the Act; Clause 45(1), amending Section 100 of the CMA by inserting new subsection (3A)).

Incorporation of material in regulations

The bar-2 Bill allows, and sets out the process for, incorporating material by reference into regulations (Part 1, Clause 49, amending New Sections 105B and 105C).

Comment
The Commentary of the Select Committee gives, as an example of such material that could be incorporated, a classification system. “These new sections mirror equivalent provisions in the Legislation Act 2012 (with the exception of any incorporated financial reporting standards made under the Financial Reporting Act 1993. The latest version of these standards will apply, and their incorporation does not require consultation, as public consultation on the standards has already occurred under the Financial Reporting Act)”\(^5\).

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\(^5\) Ibid., p. 12.