Supplementary Analysis Report: Amendments to the Crown Minerals Act 1991 decommissioning regime

Purpose of Document	
Decision sought/taken:	*Supplementary Analysis produced to support an amendment to the Crown Minerals Act 1991, through the Crown Minerals Amendment Bill 2024*
Advising agencies:	*The Ministry for Business, Innovation and Employment*
Proposing Ministers:	*Minister for Resources*
Date finalised:	*16 June 2025*

Summary

The Crown Minerals Amendment Bill 2024 (the Bill) was introduced to Parliament in September 2024. In November 2024, Cabinet agreed to further changes to the Crown Minerals Act 1991 (CMA) to close a gap identified in the petroleum decommissioning regime. The changes assigned liability to those with controlling interests in petroleum permit participants automatically in statute. These changes were introduced through an Amendment Paper and are part of the Bill awaiting third reading.

In April 2025, Cabinet took further decisions, to take a more discretionary approach to assigning liability for petroleum decommissioning costs. The new approach allows for liability for petroleum decommissioning costs to be assigned by ministerial discretion at the point of approving certain transactions (changes of control or permit transfers). The discretion applies to both the permit holder[1] or permit participant, and those with controlling interests, when they exit the permit. The approach means the removal of automatic trailing liability.

The Regulatory Impact Analysis provided to Cabinet in April 2025 did not consider replacing automatic trailing liability for former permit holders with a discretionary approach. This Supplementary Analysis considers the impact of Cabinet's decision.

Background/Context

The Crown Minerals Amendment Act 2021 introduced a comprehensive, risk-based decommissioning regime to the CMA. It imposed decommissioning obligations on current petroleum permit holders, including an obligation to decommission wells or infrastructure, and the requirement to obtain and maintain financial securities as security for the performance of their obligations in the event they fail to carry out or meet the cost of decommissioning.

If a permit holder fails to meet their decommissioning obligations, liability can flow back to former permit holders. The most recent permit holder is the first to be liable, and then the previous permit holder, and so on.[2] This is referred to as 'trailing liability', and former

[1] Any reference to 'permit holder' also includes licence holder, or person with a participating interest in a permit or licence.

[2] To date, only one transfer has occurred since the introduction of the decommissioning regime in 2021.

permit holders are liable for the cost[3] to decommission wells and infrastructure in place at the time they transferred out of the permit. Trailing liability is only intended to be used as a last resort after other safeguards, including financial securities, are unable to be accessed or are insufficient.

The Bill, as introduced, made changes to the decommissioning regime including limiting trailing liability to the immediately former permit holder. This change was intended to provide greater certainty to the industry, in terms of when a former permit holder would be held liable after they exited a permit, and was one of a number of measures to encourage new entrants into the market. A Regulatory Impact Statement for changes to the CMA[4] was prepared prior to Cabinet approvals and assessed the change to limit trailing liability.

Problem definition

During the select committee stage of the Bill, a gap was identified in the decommissioning regime where trailing liability applies when a permit is transferred, but not when there is a 'change of control'[5], ie a parent company of a permit holder sells their shares in the permit holder. In these instances, the permit is held by the same party, so there is no 'former' permit holder to trail.

This raised concerns that this could lead to the industry structuring businesses and transactions in a way that avoids trailing liability for decommissioning, ie by selling shares in an entity rather than transferring a permit. If this happens, the Crown's only risk mitigation tool will be the decommissioning financial securities that the permit holder must provide. Though the Crown is not liable for decommissioning under the CMA, the health, safety and environmental risks coupled with the significant costs mean there may be some expectation that the Crown steps in and assumes responsibility, if a permit holder fails to decommission.

Objective

The objective of the further changes to the Bill are to ensure that the overall objectives of the decommissioning regime are met, which are reducing fiscal risks for the Crown, and ensuring those who have benefitted economically from oil and gas wells and infrastructure are responsible for decommissioning or meeting the cost of decommissioning.

The intention is to strike a balance between increasing investor confidence in the New Zealand oil and gas market and protecting the Crown from significant fiscal risk. This aligns with the primary objective of the Bill, which is to ensure a secure and affordable supply of gas as a transition fuel.

Options to address the problem

Options to address the identified problem were assessed in an Annex to the original Regulatory Impact Statement for changes to the CMA[6]. The Annex was prepared in October 2024, ahead of Cabinet decisions on how to address the gap in the decommissioning regime.

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[3] The obligation to undertake decommissioning sits with the permit or licence holder.

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

[5] When a person (or more than one person acting together) obtains the power (directly or indirectly) to exercise 50 per cent or more of the voting rights in the corporate body that is the permit holder or the permit participant.

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

In November 2024, Cabinet approved the release of an Amendment Paper to amend the Bill, to extend liability for decommissioning costs to [CAB-24-MIN-0439.01 and CAB-24-MIN-0450 refers]:

- a person with a controlling interest in a permit holder
- the immediately previous person that had a controlling interest in the current permit holder
- a person with a controlling interest in the immediately previous permit holder, at the time of transfer.

The Amendment Paper was released on 18 November 2024, prior to the committee of the whole House stage, and is now part of the Bill currently awaiting third reading.

Cabinet made subsequent decisions in April 2025 to instead take a more flexible, discretionary approach to extend liability for decommissioning costs. Cabinet agreed to the following framework for decommissioning responsibilities [ECO-25-MIN-0047]:

- Permit holders' liability is set in the CMA (as in the Bill).
- Parent companies or shareholders of current permit holders' contribution to decommissioning costs could be considered as part of determining an appropriate financial security, eg by providing a parent company guarantee (allowed for in the Bill).
- Removal of automatic trailing liability for the immediately former permit holder.
- As part of approving certain transactions (changes of control and permit transfers), the Minister for Resources and Minister of Finance would have discretion to require an outgoing interest[7] or related party to provide a guarantee that they will meet relevant decommissioning costs in the event the permit holder does not meet those costs, and the financial security is insufficient.

As with any exercise of discretion, there is a chance of judicial review. Some protection is given by the Amendment Paper providing that decisions will be informed by a range of considerations, for example the estimated costs of decommissioning, the permit's proximity in time to decommissioning and any existing financial security arrangements. We also expect the regulator will develop guidance to guide the exercise of this discretion, which will mitigate against the risk of it being used inconsistently.

An updated Annex to the original Regulatory Impact Statement was prepared in March 2025, ahead of Cabinet consideration of assigning liability by Ministerial discretion. The Annex was updated to capture the option of Ministerial discretion, but the scope remained limited to options that allow liability for decommissioning costs to be applied to those with controlling interests. It did not consider an option to change to how liability is assigned to former permit holders, given the identified problem related specifically to changes of control (ie the transactions not currently captured by trailing liability).

Because removing automatic trailing liability for immediately former permit holders was not included in the updated Annex, MBIE agreed with the Ministry for Regulation to provide supplementary analysis on this change, before Cabinet approves the introduction of the Amendment Paper.

We consider this to be an extension of the preferred option 4 in the updated Annex (Extending liability by Ministerial discretion, at point of approving certain transactions). The

[7] 'Outgoing interest' includes the permit holder or any persons or bodies corporate that have an interest in a permit holder, whose interest is removed either through a permit transfer or change of control.

options analysis in Annex Two of the updated Annex (March 2025) therefore still stands, with the option being expanded to include assigning liability to former permit holders.

This Supplementary Analysis Report therefore considers the impact of the decision to replace automatic liability for immediately former permit holders (as per the current Bill), with Ministerial discretion.

Additional costs and benefits of this option

Costs to the Crown

There are no immediate additional costs of the proposed approach, relative to taking no action. It is feasible that, in exercising their discretion in a given case, Ministers could consider that no outgoing guarantee is necessary or desirable. This could result in future costs to the Crown, if at the point of decommissioning the current permit holder fails to undertake and complete decommissioning, and financial securities are not sufficient to cover any remaining costs.

Any fiscal risk to the Crown could be considered at the time the decision is made to require an outgoing guarantee. This decision is to be made jointly between the Minister for Resources and the Minister of Finance. The joint Ministers would need to be comfortable with any risk that remains, if the decision is made not to require an outgoing guarantee.

The May 2024 Regulatory Impact Statement for changes to the CMA noted that decommissioning costs vary by the type of mining field, Commercial Information It also noted that, given multiple uncertainties involved, it had not been possible to reliably assess the potential increase in exposure to the Crown from the change to limit trailing liability to the immediately former permit holder. Most of these uncertainties are also relevant here, being:

- the likelihood and scale of a financial security failing or being insufficient in a given case
- the nature of the field involved in the default (small vs large, offshore vs onshore)
- at what point in time decommissioning eventuates (exploration vs production).

The difference with this option is there would be no liable persons by virtue of the automatic application of the statute against whom enforcement provisions could be used.

Though it is not possible to reliably assess the potential increase in exposure to the Crown at this point, the joint Ministers will be able to assess the circumstances of any future transfer, including any potential exposure to the Crown if an outgoing guarantee is not required, and exercise their discretion accordingly.

Costs to former permit holders and related parties

There are no immediate additional costs for existing former permit holders. There could be costs for future former permit holders (or related parties), in the event that joint Ministers decide to require an outgoing guarantee and it is called upon. These costs are difficult to quantify, due to:

- the variation in costs for decommissioning (as noted above)
- the ability for the outgoing guarantee to cover up to the maximum costs to decommission infrastructure in place at the point the former permit holder transfers out

- any financial securities in place, that would be exhausted before the outgoing guarantee is called upon.

How the former permit holder, or related party, prepares to fund the guarantee if it is called upon may be set within the terms of the outgoing guarantee. The discretionary approach is intended to be flexible and be able to be tailored for the circumstances of the permit and the parties involved in the transfer or change of control. If the outgoing person or related party does not agree to the terms of a requested guarantee, they can decline to undergo the transaction, or the Minister may withhold consent to the transaction.

The guarantee will only be called on in the event the current permit holder fails to fulfil their obligation to undertake and pay for decommissioning, and the financial securities are insufficient.

Discretion does introduce uncertainty for permit holders when they transfer out of a permit; however, following a permit transfer if the Ministers decide not to require an outgoing guarantee, the former permit holder will have certainty that liability will not be imposed on them at a later date. Note that this differs from other jurisdictions including Australia, where liability can be imposed on a range of persons by a remedial notice at the point of a failure of a party to meet their decommissioning obligations.

Benefits

Trailing liability in its current form provides greater certainty, but has limitations. There may be challenges around enforcement, for example if companies restructure to avoid trailing liability. Limiting trailing liability to the immediately former permit holder (as per the Bill) also limits the number of former permit holders that can be held liable in the event of failure to decommission.

Outgoing guarantees could be required by more than one outgoing person or related party. This is broader than just the immediately former permit holder and, while potentially less certain than the automatic statutory application of liability, can provide more flexibility to tailor who is liable depending on the circumstances of each situation. There will be a contractual agreement for the guarantee between the Crown and the outgoing person or related party. Depending on the terms of any guarantee, a contractual agreement could reduce the risk of companies restructuring to avoid liability. For example, an agreement could require the outgoing party to inform the Crown of any change in ownership structure and provide for amendments to the guarantee based on the change of ownership. A guarantee could also be structured to ensure it is enforceable in overseas jurisdictions in the event an outgoing person (based overseas) is in breach of the agreement.

Though the Updated Annex considered the benefits of Ministerial discretion for assigning liability to persons with controlling interests, the same benefits also apply to the use of Ministerial discretion for assigning liability to former permit holders. Benefits include providing flexibility for the circumstances of the transfer, permit and company structures to be considered when determining where liability should lie.

Consultation

MBIE engaged with key stakeholders in New Zealand's oil and gas sector on the proposed changes to assigning liability for decommissioning costs. Meetings with key stakeholders took place from January 2025, and a consultation draft of the Amendment Paper was shared (in confidence) in May and June, given the technical nature of the drafting. Feedback received was incorporated to improve the workability of the drafting.

The sector has been clear that their preference is for no trailing liability in the CMA. They consider it adds significant costs and reduces the likelihood new entrants will come into the New Zealand market.

Despite this position, those consulted preferred Ministerial discretion to the current Act and approach in the Bill.

Targeted consultation was limited to those directly impacted by the proposed change, ie key sector participants whom an outgoing guarantee may be required from. MBIE has not consulted with iwi and hapū on the proposed change. Iwi and hapū were consulted on the proposal to limit trailing liability to the immediately previous permit holder in 2024. Feedback included general support for a robust decommissioning regime, as well as a specific comment opposing limiting trailing liability to the most immediately prior permit holder.

Delivering an option

How will the new arrangements be implemented?

The policy will be implemented through changes to the CMA, and it is intended to take effect immediately. Changes to the Minerals Programme for Petroleum will need to be made. These will be incorporated into the updates being made to the Programmes, to align with the Bill. These are intended to take effect shortly after commencement of the Bill. Operational policy will also need to be developed for the regulator (New Zealand Petroleum & Minerals), to make assessments and provide advice to the joint Ministers on whether to require an outgoing guarantee.

Key stakeholders have been consulted on the changes and wider communication to the sector is planned as soon as the Bill is passed. Permit transfers are not a common transaction; as noted above only one has been consented to since the introduction of the decommissioning regime in 2021, and a further 5 applications have been submitted, but withdrawn, during that same period. We consider that this approach is sufficient to inform stakeholders with notice of the changes to how liability may be applied following permit transfers.

Transitional arrangements

Only one permit transfer has been consented since the introduction of trailing liability in 2021; this means that there is one former permit participant that trailing liability currently applies to. In this instance, it is proposed that the existing trailing liability will remain until the permit undergoes a subsequent transaction (after commencement). At that point, the new law will apply. The Minister for Resources and Minister of Finance will consider whether an exiting permit holder, or a related party, is required to provide an outgoing guarantee as part of approving the transfer.

We are not aware of any open applications for permit transfers. If any applications for a permit transfer are received after 13 March 2025, but not determined before commencement, the new law will apply to those permit transfer applications. This is because the sector has been on notice of the proposed changes being made through the Amendment Paper since 13 March[8], when targeted engagement was undertaken. This

[8] On 13 March 2025, MBIE shared with key industry stakeholders the detail of the proposed Ministerial discretion for change of control transactions, and on 14 April 2025 MBIE confirmed with them that the discretion would also apply to permit transfers. No applications have been received for permit transfers between these two dates.

arrangement is beneficial to the sector, as they oppose trailing liability automatically applying at the point of transfer.

How will the new arrangements be monitored, evaluated and reviewed?

As with the Ministerial discretion for transactions related to changes of control (detailed in the Updated Annex), this change will be monitored to gauge its impact on the sector, specifically the impact on permit transfers and further investment in the upstream petroleum sector. The intention is that this change will work alongside other changes to the CMA, to incentivise further investment in the New Zealand petroleum sector. An internal monitor of permit transfers will allow for an assessment as to whether the discretion to consider an outgoing guarantee at the point of approving transfers has any impact on further investment in a permit.

The intention is for the contractual agreement underpinning any outgoing guarantee, if required, to allow for reviews at certain points, for example when there is a subsequent transfer or change of control of the permit or change in company structure of the person who provided the outgoing guarantee. The need for these reviews is to prevent any failure of the guarantees at the point they may be called upon. However, the nature of these reviews will be set in the contractual arrangements, as opposed to the CMA.

Responsible Manager

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Resource Markets

Ministry of Business, Innovation and Employment

16 June 2025

Quality Assurance

Reviewing Agency:	Ministry of Business, Innovation and Employment
Panel Assessment & Comment:	A Quality Assurance Panel from MBIE has reviewed the Supplementary Analysis Report "Amendments to the Crown Minerals Act 1991 decommissioning regime". The Panel consider the information and impact analysis summarised in the SAR partially meets the Quality Assurance criteria. The panel consider the SAR would benefit from: further analysis of the guardrails to support Ministerial discretion to address any risk/perception of risk of regulatory capture and to ensure discretion is exercised in a consistent manner; and consultation on the proposed changes, particularly with iwi and hapū.