

3 November 2022

Hon David Parker, Attorney-General

Consistency with the New Zealand Bill of Rights Act 1990: Crown Minerals Amendment Bill

Purpose

1. We have considered whether the Crown Minerals Amendment Bill (the Bill) is consistent with the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990 (the Bill of Rights Act).
2. We have not yet received a final version of the Bill. This advice has been prepared in relation to the latest version of the Bill (PCO 23507/5.0). We will provide you with further advice if the final version includes amendments that affect the conclusions in this advice.
3. We have concluded that the Bill appears to be consistent with the rights and freedoms affirmed in the Bill of Rights Act. In reaching that conclusion, we have considered the consistency of the Bill with s 14 (freedom of expression). Our analysis is set out below.

The Bill

4. The Bill amends the Crown Minerals Act 1991 (the principal Act). The principal Act sets out the legislative framework for issuing permits to prospect, explore, and mine for Crown-owned minerals within New Zealand.
5. The amendments in the Bill aim to:
 - a. enable a more flexible approach to the management and allocation of rights to Crown-owned minerals, including increasing discretion as to the timing and frequency of future block offers for allocating petroleum exploration permits in onshore Taranaki;
 - b. improve permit/licence holder and permit applicant engagement with hapū and iwi; and
 - c. clarify decommissioning-related provisions.
6. The proposals are part of the Government's wider work programme under a 10-year Resource Strategy designed to drive a shift towards a 'world leading environmentally and socially responsible petroleum and minerals sector that delivers affordable and secure resources, for the benefit of current and future New Zealanders'.¹

¹ Ministry of Business, Innovation and Employment *A Minerals and Petroleum Resource Strategy for Aotearoa New Zealand: 2019–2029* (November 2019).

Consistency of the Bill with the Bill of Rights Act

Section 14 – Freedom of expression

7. Section 14 of the Bill of Rights Act affirms the right to freedom of expression. This includes the freedom to seek, receive, and impart information and opinions of any kind and in any form. This right has been interpreted as including the right not to be compelled to say certain things or provide certain information.²
8. Clauses 12 and 13 of the Bill introduce minimum process and content requirements for iwi engagement reports in regulations and providing affected hapū and iwi with opportunities to review such reports. While the principal Act requires iwi engagement reports from permit/licence holders,³ the content of these reports is not specified.
9. Where a provision is found to limit a particular right or freedom, it may nevertheless be consistent with the Bill of Rights Act if it can be considered a reasonable limit that is demonstrably justified in a free and democratic society, under s 5 of that Act. Justification under s 5 occurs where the limit seeks to achieve, and is rationally connected to, a sufficiently important objective; impairs the right or freedom no more than reasonably necessary to achieve the objective; and is otherwise in proportion to the importance of the objective.⁴
10. The requirement to provide information is rationally connected to the objective of encouraging permit/licence holder accountability for their relationships with hapū and iwi. Engagement is discretionary for hapū and iwi, and permit/licence holders will not face disadvantages in instances where hapū and iwi choose not to engage.
11. We consider that the limit on the right is no more than is reasonably necessary and proportionate to achieve the Bill's objective. The information provision requirements are similar to those already in place and are consistent with the requirement to provide information in regulatory contexts.
12. We therefore consider the limit to be justified under s 5 of the Bill of Rights Act.

Conclusion

13. We have concluded that the Bill appears to be consistent with the rights and freedoms affirmed in the Bill of Rights Act.



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² See, for example, *Slaight Communications v Davidson* 59 DLR (4th) 416; *Wooley v Maynard* 430 US 705 (1977).

³ Where the permit/licence relates to a high-value or high-risk permit, which includes all petroleum permits, underground operations, and offshore minerals permits.

⁴ *Hansen v R* [2007] NZSC 7, [2007] 3 NZLR 1 at [123].