

Crown Minerals Amendment Act 2013 Amendment Bill

Government Bill

Explanatory note

General policy statement

The Crown Minerals Amendment Act 2013 Amendment Bill amends the Crown Minerals Amendment Act 2013 (the **principal Act**) to modify the capability requirements for certain specified applicants for exploration permits, and to correct errors and omissions that have become apparent in the principal Act.

Applicants for Tier 1 permits for exploration that are offered for tender may elect to have their application dealt with on the basis that they are only required to meet capability, health and safety, and environmental requirements for work under the permit up to the date they commit to exploration drilling.

New section 29A of the Crown Minerals Act 1991 (as inserted by the principal Act) currently refers to proposed work programmes that comprise committed work (work that a permit holder will be bound to do if a permit is granted) and contingent work (work that will only be done if a permit holder commits to do it at a “commit or surrender point”). If a permit holder does not commit to doing contingent work, the permit holder must surrender the permit at that point. For petroleum exploration, drilling exploration wells is normally contingent work. From the Crown’s perspective, drilling wells is a key objective of exploration and is necessary to identify deposits of pet-

roleum, as is made clear in the definition of exploration in the Crown Minerals Act 1991.

An applicant for a Tier 1 permit for exploration who does not have the expertise or financial ability to undertake exploration drilling activities will be able to be granted a permit on a conditional basis. If the permit is granted, the permit holder will be required to undertake the committed work (which, in the case of petroleum exploration, normally consists of seismic survey work and subsequent data processing) and must then,—

- based on the results of that work, negotiate to sell all or part of its permit to another company on the basis, for example, that that company (the **farminee**) will be the operator of the permit and the new permit holder will make the decision on whether to undertake exploration drilling at the applicable commit or surrender point (a **farmout**); or
- build its own capability to do the contingent work so that it can commit to do that further work itself.

This will provide a different route by which investment can occur in Crown mineral exploration. In the case of petroleum, the Crown will get the benefit of the data acquired irrespective of whether the permit holder is able to find a farminee, and the risk that the acreage may remain undeveloped can be managed through tight permit conditions. Ultimately, if no farmout occurs, or if the permit holder does not build its own capability to do the work, the permit must be surrendered.

It is proposed that these provisions not be limited to petroleum, but cover all Tier 1 minerals where exploration permits are allocated via a public tender process.

There are checks and balances in the Crown Minerals Act 1991 to ensure that any new operator or permit participant is assessed before coming onto a permit. For example, new section 41 of that Act (as replaced by the principal Act) deals with the consent required to transfer an interest in a permit. New section 41C of that Act (as inserted by the principal Act) deals with the consent required for a proposed new operator. These processes will enable many of the factors that are considered when a permit is granted to be assessed at that stage. In addition, the Minister will have to be satisfied, prior to the date on which the holder of the permit must commit to exploration drilling, that the permit holder (including any incoming party) will meet all

the requirements of new section 29A of that Act (as inserted by the principal Act) as well. This will avoid the concern that companies may try to avoid meeting the health and safety or environmental tests that apply to other applicants for exploration permits.

Matters in the Bill in relation to which errors or omissions will be corrected include—

- the definition of underground gas storage facility:
- the definition of offshore area:
- references to reserves being changed to resources:
- extensions to existing petroleum permits:
- addition of platinum group metals to the list of mineral types with the same Tier 1 thresholds as for gold and silver:
- clarification of the application of the Crown Minerals Act 1991 to existing privileges (granted after that Act came into effect):
- clarification of the proprietary status of permits acquired by the Crown:
- references to a dwellinghouse.

The Act will also make minor changes consequential on the policy decisions described above.

Regulatory impact statement

The Ministry of Business, Innovation, and Employment produced regulatory impact statements in July and August 2012. The Ministry of Business, Innovation, and Employment and the Department of Conservation produced joint regulatory impact statements in July 2010 and August 2012. These regulatory impact statements were produced to help inform the main policy decisions taken by the Government relating to the contents of the Crown Minerals Amendment Act 2013, which is amended by this Bill.

A copy of these regulatory impact statements can be found at—

- <http://www.med.govt.nz/sectors-industries/natural-resources/oil-and-gas/review-of-the-crown-minerals-act-regime>
- <http://www.treasury.govt.nz/publications/information-releases/ris>

Clause by clause analysis

Clause 1 is the Title clause.

Clause 2 is the commencement clause. This Bill comes into force on the day after the date on which it receives the Royal assent.

Clause 3 provides that this Bill amends the Crown Minerals Amendment Act 2013 (the **principal Act**).

Pursuant to the Crown Minerals Amendment Act 2013 Commencement Order 2013, the principal Act will come into force on 24 May 2013. Accordingly, this Bill must come into force on or before that date in order for it to be effective.

Part 1

Amendments concerning applications under public tender for conditional exploration permits

Clause 4 amends the principal Act by inserting *new section 20A*, which will amend section 24 of the Crown Minerals Act 1991. Section 24 provides for the allocation of permits by tender. This amendment will insert a requirement that each tender include—

- an application that complies with *new section 29A(1)* (as inserted by the principal Act) and sufficient information for the Minister to satisfy himself or herself of the matters set out in *new section 29A(2)* or the matters required by *new section 29B*, as the case may be; and
- if the tender is to be considered in accordance with *new section 29B*, a statement to that effect.

It also clarifies that, even though a permit may be allocated by public tender, it must be assessed in accordance with *new section 29A* or, if applicable, *new section 29B* (see *clause 5*).

Clause 5 amends section 24 of the principal Act by inserting *new section 29B*, which sets out an application process for Tier 1 permits for exploration that are offered for allocation by tender under section 24(1) of the Crown Minerals Act 1991. The normal application process under *new section 29A* (as inserted by the principal Act) requires the Minister to be satisfied about a number of things before granting a permit. *New section 29B* provides that, in certain specified circumstances, the Minister need only be satisfied about those

things in relation to work that will be undertaken up to a certain point in the work programme for the proposed permit that is applied for. Work cannot be undertaken after that point in the work programme, unless, before that point is reached, the Minister is satisfied of all of the things in new section 29A in relation to that work, and the permit holder has committed, in accordance with the permit, to drilling for exploration purposes.

Clause 6 amends section 43 of the principal Act to clarify that the authority in new section 90E(3) to provide information obtained in accordance with new section 29A(2)(d) applies regardless of whether that information was obtained under section 24, new section 29A, or *new section 29B*.

Part 2 Other amendments

Clause 7 amends 2 definitions that will be inserted in section 2 of the Crown Minerals Act 1991 by section 9 of the principal Act.

The new definition of existing privilege is amended by removing a restriction that means that the definition applies only to privileges, licences, authorisations, agreements, and other similar rights that were in force at the close of 30 September 1991. This restriction would mean that any of those rights that had been applied for and were being considered at the close of 30 September 1991, and were then subsequently granted, would not be included in the new definition of existing privilege. Those rights should be included in the definition.

Clause 7 amends the definition accordingly.

The new definition of underground gas storage facility is replaced to remove the requirement in the definition that petroleum that is injected into a reservoir for storage must have been mined from land outside the area of the permit in which the reservoir is situated.

Clause 8 makes a minor amendment to new section 5(e) of the Crown Minerals Act 1991, as inserted by section 12 of the principal Act. It replaces a reference to reserves with resources. All references to mineral reserves are being replaced with a reference to mineral resources.

Clause 9 amends new section 33C of the Crown Minerals Act 1991, as inserted by section 26 of the principal Act. New section 33C requires each Tier 1 permit holder to provide to the Minister an annual report of the holder's engagement with iwi or hapū. *Clause 9* inserts

a *new subsection (4)* in new section 33C that provides that the first report must relate to the period of 12 months ending with 31 December 2014.

Clause 10 amends section 32 of the principal Act, which in turn amends section 40 of the Crown Minerals Act 1991. Section 40 deals with the surrender of permits to the Crown. The amendment in *clause 10* provides that upon surrender, a permit vests in the Crown as if it were personal property, rather than becoming the property of the Minister (as is currently provided).

Clause 11 amends new section 41C of the Crown Minerals Act 1991, as inserted by section 33 of the principal Act, in order to widen the tense of a phrase that is used in new section 41C.

Clause 12 makes minor amendments to new sections 90A and 90B of the Crown Minerals Act 1991, as inserted by section 43 of the principal Act. It corrects a number of cross-references in new section 90A(1), and replaces 2 references to reserves with resources in new section 90B. All references to mineral reserves are being replaced with a reference to mineral resources.

Clause 13 makes minor amendments to new sections 99B and 99E of the Crown Minerals Act 1991, as inserted by section 52 of the principal Act. It corrects a reference to dwellinghouse in new section 99B, and replaces a reference to reserves with resources in new section 99E. All references to mineral reserves are being replaced with a reference to mineral resources.

Clause 14 replaces the new definition of offshore area in new section 101A of the Crown Minerals Act 1991, as inserted by section 55 of the principal Act. The new definition makes it clear that the offshore area includes any area that is within the territorial sea, within the exclusive economic zone, or on or above the continental shelf, regardless of whether those areas overlap with each other.

Clause 15 corrects a cross-reference in new section 105D of the Crown Minerals Act 1991, as inserted by section 58 of the principal Act.

Clause 16 makes a number of amendments to Schedule 1 of the principal Act, which inserts a new Schedule 1 in the Crown Minerals Act 1991. New Schedule 1 sets out transitional and savings provisions.

Clause 16(1) replaces the Part 1 heading of new Schedule 1 to include missing text.

Clause 16(2) replaces clause 7 of new Schedule 1 in order to widen its application so that it covers exploration permits for petroleum that are granted in relation to applications that are pending under the Crown Minerals Act 1991 when the principal Act comes into force on 24 May 2013, as well as existing exploration permits for petroleum.

Clause 16(3) amends clause 12 of new Schedule 1 by inserting a *new subclause (5)* that has general application to all references to existing privileges in the Crown Minerals Act 1991. This new subclause ensures that those references are interpreted correctly and are not limited by subclause (1) of clause 12.

Clause 16(4) replaces clause 13(3) of new Schedule 1 to ensure that the change of permit operator provisions in new section 41C apply, with modifications, to existing privileges and the holders of those privileges.

Clause 16(5) amends clause 14(1) of new Schedule 1 by adding references to further sections of the Crown Minerals Act 1991 that must be applied to existing privileges as if the existing privileges were permits, and to holders of the privileges as if they were permit holders.

Clause 16(6) amends clause 18 of new Schedule 1 by adding a reference to authorisations, agreements, and rights under the Iron and Steel Industry Act 1959 (each of which is an existing privilege). Holders of these existing privileges have to provide information in accordance with the Crown Minerals Act 1991. Adding this reference makes it clear that they do not have to continue to meet the data and reporting requirements of the Iron and Steel Industry Act 1959 as well.

Clause 17 amends Schedule 3 of the principal Act, which inserts a new Schedule 5 into the Crown Minerals Act 1991. New Schedule 5 sets out the thresholds for Tier 1 and Tier 2 activities by specifying thresholds for different types of minerals. *Clause 17* inserts platinum group metals and the thresholds that apply to them into new Schedule 5, as well as new definitions of metallic mineral and platinum group metals.

Clause 18 amends Schedule 4 to remove a consequential amendment that is made to section 40(2) of the Crown Minerals Act 1991. After the Bill amends the principal Act, that change will be made by sec-

tion 32(2) of the principal Act (*see clause 10*), so the consequential amendment is no longer required.

Clause 19 amends Schedule 5 of the principal Act, which sets out consequential amendments to other Acts. This clause corrects a reference to dwellinghouse that is to be inserted in the Search and Surveillance Act 2012.

Hon Simon Bridges

Crown Minerals Amendment Act 2013 Amendment Bill

Government Bill

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The Parliament of New Zealand enacts as follows:

- 1 Title**
This Act is the Crown Minerals Amendment Act 2013 Amendment Act **2013**.
- 2 Commencement** 5
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 Amendment Act 2013 (the **principal Act**). 10

Part 1
Amendments concerning applications
under public tender for conditional
exploration permits

- 4 New section 20A inserted (Section 24 amended (Allocation by public tender))** 5
After section 20, insert:
“20A Section 24 amended (Allocation by public tender)
“(1) After section 24(2)(c), insert:
 “(ca) that each tender must include an application that complies with section 29A(1) and be accompanied by sufficient information in relation to the permit offered for the Minister to satisfy himself or herself of the matters set out in section 29A(2) or the matters required under **section 29B**, as the case may be; and 10
 “(cb) that, if the tender is to be considered in accordance with **section 29B**, the tender must include a statement to that effect; and”. 15
“(2) After section 24(4), insert:
 “(4A) To avoid doubt, tenders must be assessed by the Minister in accordance with this section and the criteria in section 29A or in **section 29B**, as the case may be.’ ” 20
- 5 Section 24 amended (New section 29A and cross-heading inserted)**
(1) In the heading to section 24 replace “**section 29A**” with “**sections 29A and 29B**”. 25
(2) In section 24, after new section 29A(4), insert:
“(5) This section is subject to **section 29B**.”
(3) In section 24, after new section 29A, insert:
“29B Process for considering application under public tender for conditional exploration permit 30
“(1) This section applies if—
 “(a) a Tier 1 permit for exploration is offered for allocation by public tender under section 24(1); and

- “(b) a tender made in response to the offer under section 24(1) states that it is to be considered in accordance with this section; and
- “(c) the proposed work programme provided with the tender contains an exploration drilling committal date. 5
- “(2) If this section applies, the Minister must, when considering whether to grant the permit to the tenderer, be satisfied of the matters set out in section 29A(2)(b) and (d) only in relation to work that will be undertaken before the exploration drilling committal date. 10
- “(3) If a permit is granted in accordance with this section,—
- “(a) work cannot be undertaken after the exploration drilling committal date unless, before that date,—
- “(i) the Minister has, upon application by the permit holder, satisfied himself or herself of the matters set out in section 29A(2)(b) and (d) in relation to that work; and 15
- “(ii) the permit holder has committed, in accordance with the permit, to drilling for exploration purposes; and 20
- “(b) the requirements of **paragraph (a)** are a condition of the permit.
- “(4) For the purposes of **subsection (3)**,—
- “(a) section 29A(3) and (4) apply for the purposes of the Minister satisfying himself or herself; and 25
- “(b) section 29A(2) to (4) must be read with all necessary modifications.
- “(5) In this section,—
- “**exploration drilling committal date** means the point in a work programme at which a permit holder must commit to drilling for exploration purposes or surrender the permit 30
- “**work** means work to be undertaken under a work programme for a permit.”
- 6 Section 43 amended (Sections 90 and 90A and cross-heading above section 90 replaced) 35**
- In section 43, new section 90E(3)(a), after “29A(2)(d)”, insert “(whether obtained under section 24, 29A, or **29B**)”.

Part 2
Other amendments

- 7 Section 9 amended (Section 2 amended (Interpretation))**
- (1) In section 9(1), definition of **existing privilege**, delete “that were in force at the close of 30 September 1991”. 5
- (2) In section 9(1), replace the definition of **underground gas storage facility** with:
“**underground gas storage facility** means a natural reservoir into which petroleum is injected in a gaseous state for subsequent extraction”. 10
- 8 Section 12 amended (Section 5 replaced (Functions of Minister of Energy))**
In section 12, new section 5(e), replace “reserves” with “resources”.
- 9 Section 26 amended (Section 33 replaced (Permit holder to comply with permit and this Act))** 15
In section 26, after new section 33C(3), insert:
“(4) The first report to be provided under subsection (1) must relate to the period of 12 months ending with 31 December 2014.”
- 10 Section 32 amended (Section 40 amended (Surrender of permit))** 20
- (1) Replace section 32(2) with:
- “(2) Replace section 40(2) with:
“(2) Unless the Minister considers it is in the interests of the Crown to acquire the permit for the purposes of reallocation or otherwise (in which case the permit vests in the Crown as if it were personal property), the surrender— 25
“(a) must be accepted by the chief executive if everything is in order and, in the case of a partial surrender, the Minister has approved the area to be surrendered under subsection (7A); and 30
“(b) takes effect when the chief executive accepts it.” ”
- (2) In section 32(4), new section 40(3), replace “becomes the property of the Minister” with “vests in the Crown”.

- 11 Section 33 amended (Section 41 replaced (Transfers and other dealings with permits))**
In section 33, new section 41C(3)(b)(i), replace “have been met” with “have been, or are likely to be, met”.
- 12 Section 43 amended (Sections 90 and 90A and cross-heading above section 90 replaced)** 5
(1) In section 43, new section 90A(1), replace “sections 23A, 24, 32, 35, 35A, 36, 41, 41A, 41B, 41C, 61B, 61C, 90, and 99F” with “sections 23A, 24, 32, 33A to 33D, 35, 35A, 36 to 38, 41 to 41C, 42, 42A, 46, 61, 61B, 61C, 90, 99E, and 99F”. 10
(2) In section 43, heading to new section 90B, replace “reserves” with “resources”.
(3) In section 43, new section 90B(1), replace “reserves” with “resources”.
- 13 Section 52 amended (New sections 99A to 99M and cross-headings inserted)** 15
(1) In section 52, new section 99B(1), replace “dwelling house” with “dwellinghouse”.
(2) In section 52, new section 99E(1)(a), replace “reserves” with “resources”. 20
- 14 Section 55 amended (New sections 101A to 101C inserted)**
In section 55, new section 101A, replace the definition of **off-shore area** with:
“**offshore area** means any area that is—
“(a) within the territorial sea; or 25
“(b) within the exclusive economic zone; or
“(c) on or above the continental shelf”.
- 15 Section 58 amended (New sections 105A to 105D inserted)**
In section 58, new section 105D(6), replace “105C(1)” with “105C(1)(a)”. 30
- 16 Schedule 1 amended**
(1) In Schedule 1, new Schedule 1, replace the Part 1 heading with:

**“Part 1
“Provisions relating to Crown Minerals
Amendment Act 2013”.**

- (2) In Schedule 1, new Schedule 1, replace clause 7 with:
- “7 **Petroleum exploration permit holders’ rights to extension of duration of permit** 5
- “(1) Despite new section 35(4), a specified permit may be extended—
- “(a) for a period not exceeding 15 years from the commencement date of the permit in accordance with new section 36(1) to (4); and 10
- “(b) under new section 35A.
- “(2) In this clause, **specified permit** means—
- “(a) a permit granted in respect of an application to which clause 6 applies; and 15
- “(b) an existing exploration permit for petroleum.”
- (3) In Schedule 1, new Schedule 1, after clause 12(4), insert:
- “(5) Despite subclause (1), a section of the principal Act (whether a new or an old section) applies to each existing privilege, in the manner provided in the section, if the section in whole or in part expressly relates to or provides for an existing privilege.” 20
- (4) In Schedule 1, new Schedule 1, replace clause 13(3) with:
- “(3) For the purposes of the principal Act, the person notified to the Minister is, on and from the date of notification, the permit operator for the existing privilege, unless the permit operator is subsequently changed in accordance with new section 41C. 25
- “(4) For the purposes of **subclause (3)**, new section 41C applies to each existing privilege—
- “(a) as if the existing privilege were a permit and the holder of the privilege a permit holder and, for the purpose of that section, new sections 2B to 2D also apply: 30
- “(b) but the person proposed to become the new operator may be someone other than a holder of the existing privilege.”
- (5) In Schedule 1, new Schedule 1, clause 14(1), replace “33A and 33B” with “33A, 33B, 90D, and 90E”. 35
- (6) In Schedule 1, new Schedule 1, after clause 18(1)(b), insert:

“(c) an authorisation given, an agreement entered into, or a grant of rights under the Iron and Steel Industry Act 1959, or an existing right referred to in section 5 of that Act.”

- 17 Schedule 3 amended** 5
- (1) In Schedule 3, new Schedule 5, after the item relating to metallic mineral, insert:
Platinum group metals \$1,250,000 \$50,000 –
- (2) In Schedule 3, new Schedule 5, after the table, insert:
In this Schedule,—
“**metallic mineral** does not include gold, silver, ironsand, or platinum group metals
“**platinum group metals** means iridium, osmium, palladium, platinum, rhodium, and ruthenium.” 10
- 18 Schedule 4 amended**
- In Schedule 4, item relating to section 40, replace “40(2), (8), (9), and (10)” with “40(8), (9), and (10)”. 15
- 19 Schedule 5 amended**
- In Schedule 5, item relating to the Search and Surveillance Act 2012 (2012 No 24), replace “dwelling house” with “dwelling-house”. 20
-