

Legal update - Crown Minerals Amendment Act 2013

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A wide range of changes to petroleum and mining law came into force on Friday 24 May 2013, with amendments to five different statutes, new Minerals Programmes, and new Regulations.

The Crown Minerals (Permitting and Crown Land) Bill, an omnibus bill, was introduced to amend the Crown Minerals Act 1991, the Conservation Act 1987, the Continental Shelf Act 1964, the Reserve Act 1977 and the Wildlife Act 1953. The key changes to the Acts are discussed in more detail below.

The Crown Minerals Amendment Act 2013, which came into force on Friday 24 May 2013, makes a wide range of changes to the Crown Minerals Act 1991 (the Act). The changes are aimed at supporting the government's desire to encourage investment in petroleum and minerals exploration and development, while ensuring that operators meet high health, safety and environmental standards.

The key changes to the Act include:

- A new purpose statement
- A two-tiered system for permit management
- Health, safety and environmental assessments
- Engagement with iwi on Crown-owned minerals
- Changes to permit duration and relinquishment mechanisms
- Clarifying the status of minerals programmes
- Public notification of certain access arrangements.

An Act with a purpose

The Act includes a new purpose statement, being to promote prospecting, exploration and mining of Crown-owned minerals for the benefit of New Zealand. The key elements are to provide for the efficient allocation and management of, and fair financial return from, the development of Crown-owned minerals. The purpose statement also emphasises the importance of "good industry practice", which incorporates ongoing compliance with health and safety and environmental legislation.

A two-tiered system for permit management

A distinction has been introduced between:

- High risk and higher-return Tier 1 petroleum and mineral operations which include oil and gas, hard rock gold and silver, coal and ironsand and emerging phosphate and sulphide minerals; and
- Lower-return industrial mineral Tier 2 operations which include alluvial gold, aggregate and limestone and other operations such as clay and diatomite.

New Zealand Petroleum & Minerals (NZP&M) will focus on Tier 1 activities and will provide a more hands-on and coordinated regulatory regime. The chief executive may require the holder of a Tier 1 permit to attend an annual review of its work programme with the Ministry, and any relevant regulatory agency, to monitor permit holders' progress against work programme commitment. NZP&M will also focus regulatory effort onto those responsible for the day-to-day management activities and away from those permit holders with only a financial interest in a permit.

While these changes are intended to focus the government's monitoring and regulatory efforts on the most significant and high risk projects, there is a tension with the government's aim to encourage exploration and mining. Tier 1 projects are also the highest value projects and usually attract highly experienced operators. If managed sensibly the new permit management system will add value, but the government needs to take care that it does not add unnecessary costs.

In contrast, Tier 2 operations will be subject to a simpler and more streamlined regime with reduced compliance costs.

Health, safety and environmental assessments

The health, safety and environmental issues relating to prospecting, exploration and mining activities will continue to be regulated under separate legislation. However, an initial assessment of applicants' health, safety and environmental policies and capabilities will be undertaken for all applications for Tier 1 activities. The assessment will relate to compliance with the Health and Safety in Employment Act 1992, Maritime Transport Act 1994, Resource Management Act 1991 and the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012. For large companies bidding for multiple permits, this change could mean multiple assessments are required.

This change will encourage early assessment of health and safety issues and, to a lesser degree, environmental effects. The intent is to make the whole permitting and consenting process more efficient, but the government agencies will need to take care that the initial assessment does unnecessarily add costs to the application process and duplicate other regulatory processes.

Iwi engagement on crown minerals

The Act will now provide for both Tier 1 and Tier 2 permit holders to report annually to the Minister on the permit holder's engagement with iwi and hapū whose rohe includes some or all of the permit area. Although there is no statutory requirement for permit holders to consult with iwi and hapū, this is clearly expected. This further reinforces the desirability of building and maintaining positive ongoing relationships with local iwi and hapū (and to keep records of that relationship).

Permit duration and relinquishment

Amendments to the Act have significantly increased the duration of the prospecting and exploration permit for petroleum and other minerals:

Type of permit	Previous duration	Current duration
Prospecting	2 years (with possible extension to 4 years)	4 years (no extension possible)
Exploration (petroleum)	5 years (with possible extension to 10 years)	15 years (appraisal extension possible)
Exploration (minerals other than petroleum)	5 years (with possible extension to 10 years)	10 years (appraisal extension possible)
Mining	40 years (with possible extension)	40 years (appraisal extension possible)

To encourage prompt prospecting and competition, and to increase the availability of land for new permits, the Minister may, no more than twice in relation to a permit, impose a condition requiring the permit holder of Tier 1 activities to relinquish a portion of the permit area at a specified time:

Type of permit	Maximum portion of the permit area to be relinquished
Prospecting	50%
Exploration (petroleum)	75%
Exploration (minerals other than petroleum)	50%

Purpose and legal status of minerals programmes clarified

The Act now clarifies the purpose of the Minerals Programmes, their legal status and the process that must be followed in their preparation.

The Minerals Programmes and associated regulations set out how the Act is administered and applied:

- The Minerals Programmes set out the policies and procedures followed for the allocation of mineral resources. The programmes set out, amongst other things, specific requirements for consultation with iwi and hapū and defined areas of land of particular importance to iwi and hapū, which are excluded from the operation of the programme or are not to be included in any permit
- The regulations set out the requirements to be met by permit holders.

The Act now makes it clear that where inconsistency arises between a Minerals Programme and the Act, or any of the regulations, the Act or regulation will prevail. More detail on the Minerals Programmes is below.

Public notice of certain access arrangements

If an application is made for an access arrangement for mining on conservation land, the Minister of Conservation must now determine whether or not the proposed activities are "significant mining activities". The Minister must have regard to (amongst other things) the effects the activities are likely to have on conservation values. If the Minister of Conservation considers that the proposed mining activities are significant, he or she must ensure that the application is publicly notified.

Following notification, the Director-General of Conservation sends a recommendation and summary of comments received to the Minister of Conservation and to the Minister of Energy and Resources. Those two Ministers jointly decide whether to enter into an access arrangement. This joint decision-making on access to Crown land is also a new requirement. The Ministers are required to take into account, in addition to the previously listed matters, the direct net economic and other benefits of the proposed activity in relation to which the access arrangement is sought).

Regulations

The following regulations have been amended pursuant to the Crown Minerals Act 1991 and the changes came into force on Friday 24 May 2013:

- Crown Minerals (Petroleum) Regulations 2007 specifying information permit/licence holders must supply has been amended by the Crown Minerals (Petroleum) Amendment Regulations 2013
- Crown Minerals (Minerals and Coal) Regulations 2007 has been amended by the Crown Minerals (Minerals Other than Petroleum) Amendment Regulations 2013.

The following new regulations also came into force on Friday 24 May 2013:

- [Crown Minerals \(Royalties for Petroleum\) Regulations 2013](#) setting out rates and provisions for the payment of royalties on petroleum production from initial permits granted after 24 May 2013. They also set out royalty statement and royalty return requirements for all petroleum permit holders
- [Crown Minerals \(Royalties for Minerals Other than Petroleum\) Regulations 2013](#).

Minerals Programmes

The Petroleum Programme 2013 and the Minerals Programme 2013 came into force on Friday 24 May 2013, providing further context and giving operational effect to the Act. The new programmes set out, in relation to petroleum or minerals, how the Minister of Energy and Resources and the Chief Executive of the Ministry of Business, Innovation and Employment will:

- Have regard to the principles of the Treaty of Waitangi (Te Tiriti o Waitangi) for the purposes of each programme
- Exercise specified powers and discretions such as granting and the making of changes to permits
- Interpret and apply specific provisions in the Act or regulations made under the Act.

Current permits granted under a previous programme will continue to be managed under that programme until a change to the permit is requested or the permit holder opts into the new programme.

Other related legislation that came into force on Friday 24 May 2013

Four other Acts have also been amended. These are the Conservation Act 1987, the Continental Shelf Act 1964, the Reserves Act 1977 and the Wildlife Act 1953.

The Continental Shelf Act 1964 (CSA) was amended by importing the minerals provisions of the Crown Minerals Act for all new licence applications under the CSA regime. This brings the CSA regime for minerals into alignment with the current practice for petroleum in the exclusive economic zone and continental shelf. The environmental effects are now regulated under the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012.

The Conservation Act 1987, Reserve Act 1977 and Wildlife Act 1953 were amended to provide for automatic inclusion of certain areas into Schedule 4 of the Act and to update the process of mineral-related access arrangements over Crown land. Land acquiring a certain status under the Conservation Act 1987 will now automatically be included in Schedule 4 of the Crown Minerals

Act 1991.

Previously the Minister of Conservation was permitted to declare land to be of a certain status under the Conservation Act 1987. However this process is now performed by the Governor-General by Order in Council.

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