

Response to the proposed Crown Minerals Amendment Bill

1 October 2024

Clarus welcomes the opportunity to submit this response to Parliament's Economic Development, Science and Innovation Select Committee on the proposed *Crown Minerals Amendment Bill*.

Overall, we support the intention of the bill. Our submission relates to the decommissioning regime under the Crown Minerals Act 1991.

Our Flexgas business owns the Ahuroa underground gas storage facility and its associated permit under the Crown Minerals Act. Ahuroa is New Zealand's only gas storage facility. Flexgas customers store their natural gas at Ahuroa and this supports New Zealand's energy security by providing fuel to operate gas-fired electricity generation when other sources are unavailable. Gas remains an important part of New Zealand's energy mix. With increasing electricity prices and unreliable/inclement weather conditions it is clear gas remains critical to supporting our country's variable renewable electricity supply.

There is no confidential information in this submission. We would like to make an oral submission to the Economic Development, Science and Innovation Select Committee. Of the two dates available, we would prefer to make our oral submission on Monday 7 October 2024 (due to availability of key staff at such short notice).

Decommissioning regime

Criminal liability for directors

The bill makes no changes to the criminal liability for directors in relation to decommissioning. The offence is for a director to do an act, fail to act, or engage in a course of conduct knowing that the act, failure to act, or course of conduct will result in a failure of the company of which they are a director not being able to meet its decommissioning obligations.¹

We recommend that this criminal liability should be removed. If complete removal is not an option, we have recommended superior alternatives to the existing requirements. Our rationale is set out below.

Criminal liability for directors should be removed

This criminal liability is imposed on directors of the permit holder and the most recent permit holder. Criminal liability applies where a company has sold an asset. In that case, the directors of the former permit holder have no ability to control the activities of the asset's new owner. This holds former directors personally liable for the acts and omissions of subsequent directors and potentially after the relevant body corporate ceases to own the asset. This has a chilling effect on the ability to companies to attract and retain directors. Our Flexgas business has had difficulty attracting directors to its board because of this personal liability.

This criminal liability is contrary to the intentions behind the decommissioning regime in the Crown Minerals Act and the proposed bill. If the desired outcome is to ensure that oil and gas assets are decommissioned prudently, perpetuating a situation where experienced and astute directors are unwilling to take on directorships of oil and gas companies impedes this.

Accordingly, we recommend this criminal liability be removed.

¹ Section 89ZZX, Crown Minerals Act



If there is no appetite to remove criminal liability, its scope should be reviewed

The scope of the current criminal liability is very wide, with the result that the offence may apply to breaches that are not egregious. As an alternative, we suggest that the threshold for criminal liability should be narrowed and a threshold similar to that in section 44 of the Health and Safety at Work Act 2015 be adopted, i.e. that directors must 'exercise due diligence to ensure that the company complies with the [decommissioning obligations]'.

This change would both:

- bring the standard required of directors in line with existing health and safety legislation meaning that directors can consider one standard across both health and safety and decommissioning obligations
- contain an appropriate standard for directors to be held to.

This change would support the stated intention of the bill.

If some criminal liability is retained, the prohibition on indemnifying directors should be removed

Section 89ZZZA of the Crown Minerals Act prohibits indemnifying directors for pecuniary costs, or the costs of defending any civil proceedings. This prohibition:

- has a chilling effect on the ability to attract and retain competent directors
- is broader than other similar prohibitions. For example, section 29 of the Health and Safety at Work Act prohibits indemnification for the liability to pay a fine or infringement fee, but not the costs of defending any civil proceedings.

If some level of criminal liability on directors is retained, we recommend removing the prohibition on the ability to indemnify directors for criminal liability. Alternatively, allowing directors to be indemnified against the costs of defending any proceedings would align director liabilities with the Health and Safety at Work Act.

The bill should specify how security for decommissioning costs must be provided

While the Crown Minerals (Decommissioning and Other Matters) Amendment Act 2021 became law in December 2021, the regulations required to establish how financial security must be provided are still not in place. Flexgas management have held a number of meetings with MBIE officials to understand what form of security is likely to be required and when the regulations are likely to be in place. However, no certainty has been provided.

This bill creates an opportunity to provide certainty as to the form, priority and proportion of financial security to be provided. Without this certainty, prudent operators are forced to retain high security. This capital could be more efficiently used elsewhere. In addition, new entrants that could be interested in investing in oil and gas in New Zealand are not given the certainty they need as to form and level of security required (which forms a key part of those investment decisions). Given the proposed bill is intended to promote petroleum exploration, providing this certainty would help to attract investment from those that wish to continue operation and decommission relevant assets.

The proposed perpetual liability for post-decommissioning should not proceed

The bill removes the requirement to provide payment or financial security to cover post-decommissioning costs and replaces this with a perpetual liability for any wells and infrastructure left in situ.

If the requirement for upfront financial security is removed for post-decommissioning costs, there may be real issues for the Crown with pursuing a vendor of an asset if they have exited New Zealand. If a sale of the relevant permit interest has occurred, this then leaves that previous owner exposed due to the trailing liability.

We have concerns with the proposed perpetual liability regime and how that would work in practice, and think the existing security-through-escrow for post-decommissioning costs was a better approach.



Who we are

Clarus is one of New Zealand's largest energy groups. Whether it's transmission, distribution, supply or storage of energy, the companies within the Clarus group service over half a million homes and businesses of all sizes around New Zealand.

Firstgas connects natural gas to homes, businesses, and large industry. Across the North Island, we own more than 2,500 km of high-pressure gas transmission pipelines and 4,800 km of gas distribution networks. Through our transmission and distribution networks, we connect over 300,000 homes and businesses to gas.

Flexgas owns and operates Taranaki's recently expanded underground Ahuroa gas storage facility. This sort of storage can offer an important source of flexibility to the electricity system at periods of peak demand, supporting security of electricity supply as New Zealand moves to higher levels of intermittent wind, hydro and solar generation.

Rockgas is New Zealand's largest LPG retail supplier, providing fast and reliable service through a national network of branches and franchises.

Firstlight Network is the lines company supplying electricity to the Tairāwhiti and Wairoa region, responsible for keeping the lights on across 12,000 square kilometres of the East Coast.

First Renewables delivers renewable energy solutions, integrating renewable gas and electricity, to meet the needs of energy consumers across Aotearoa New Zealand from local communities to energy-intensive industries.

Firstgas

rockgas

Flexgas

Firstlightnetwork

 **FirstRenewables**