

19 October 2021

Ministry of Business, Innovation and Employment  
via email: [resource.markets.policy@mbie.govt.nz](mailto:resource.markets.policy@mbie.govt.nz)

## Submission on the Proposed infringement offence regulations under the Crown Minerals (Decommissioning and Other Matters) Amendment Bill

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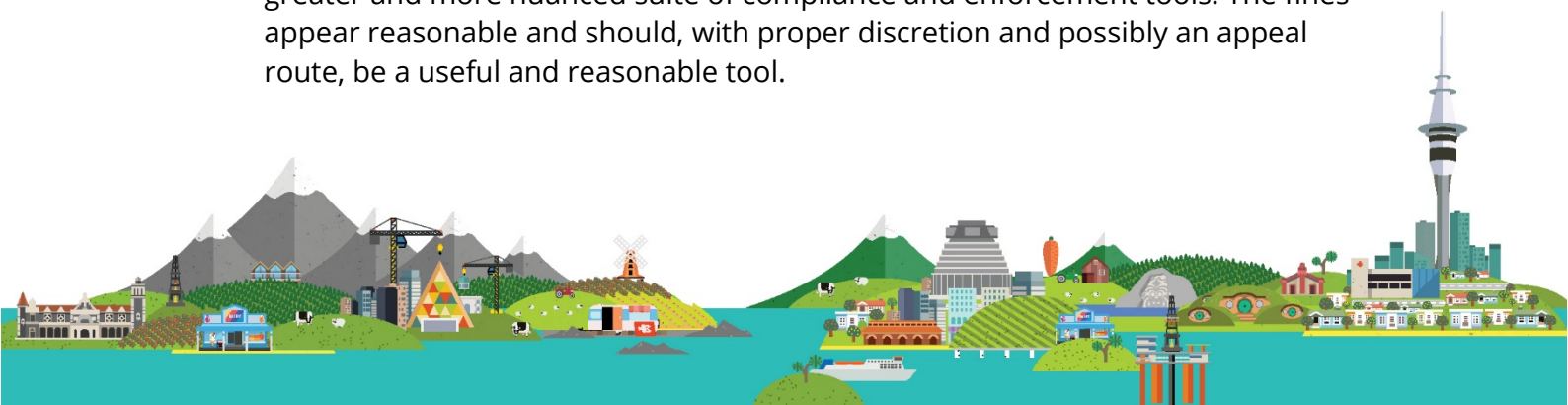
### Introduction

1. Energy Resources Aotearoa represents people and firms in the energy resources sector, from explorers and producers to distributors and users of natural resources like oil, LPG, natural gas and hydrogen.
2. This document constitutes Energy Resources Aotearoa's submission to MBIE on the *Proposed infringement offence regulations under the Crown Minerals (Decommissioning and Other Matters) Amendment Bill* consultation document, released for comment on 28 September 2021.
3. We make general some comments on the proposals before answering specific questions at the end.

### Submission

#### *Overarching comments*

4. We recognise the importance of compliance with the Crown Minerals regime, and our upstream members have a strong compliance focus and place significant value on their corporate reputations. As stated in our submission in January 2020 on the *Review of the Crown Minerals Act 1991*, we support the Crown obtaining a greater and more nuanced suite of compliance and enforcement tools. The fines appear reasonable and should, with proper discretion and possibly an appeal route, be a useful and reasonable tool.



5. It is also important to recognise and factor in the broader regulatory and commercial contexts (both domestic and international) that policy decisions are made in, even when they are relatively discrete such as the current proposals. That context includes a general lack of investment confidence and a sector that feels it is being targeted with fuel-specific public policy aimed at phasing it out. Although not intended to be a criticism of the regulations on which we are now commenting, the perception of increased restrictiveness is something that officials should at least bear in mind when undertaking its analysis and subsequent policy recommendations on the details of the revised compliance framework.

#### *Operational policy*

6. We consider it important that MBIE devises sound operational policy and practices to ensure the wise use of the new powers by compliance officers. This would support exercising powers only when warranted and should recognise that circumstances may, on occasion, provide a reasonable justification for technical non-compliance (such as material health and safety issues, for example).
7. At least as part of bedding in the new regime, operational policy should promote the issuance of letters inviting an explanation of non-compliance before proceeding with formal penalties.

#### *A mechanism for appeal/objection*

8. We note our surprise that the proposed regulatory regime does not appear to include any specific ability to challenge notices or make appeals (beyond a judicial review). Although the penalties themselves are not excessive, for petroleum operators the problem is more the record of non-compliance, so a route to object would be useful. As a matter of natural justice and sound public policy design, an appeal route would likely have merit. We note that the Health and Safety at Work Act 2015 establishes its own framework for 'appealable decisions'.
9. We note that the *Legislation Guidelines 2021* refer to appeal processes, saying:

"Where a public body or agency makes a decision affecting a person's rights or interests, that person should generally be able to have the decision reviewed in some way"<sup>1</sup>
10. The currently proposed regime does not provide a right of appeal, and as stated in the *Legislation Guidelines*:

"A right of judicial review exists unless excluded by legislation. A right of appeal however will only exist if legislation provides for it"<sup>2</sup>

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<sup>1</sup> Page 139, Chapter 28 of the *Legislation Guidelines 2021*. <http://www.idac.org.nz/assets/documents/LDAC-Legislation-Guidelines-2021-edition.pdf>

<sup>2</sup> Ibid.

*A mechanism for extending the due date of information*

11. Although possibly out the scope of what is possible to dictate in regulations, we provide a comment on a final matter. It may be useful if there is a regulatory mechanism allowing a permit holder to request an extension to the delivery of information, particularly of complex information requiring multiple inputs.

**Responses to specific questions in the discussion document**

***Proposed infringement offences***

**QUESTION 1:** Do you agree with the infringement offences we have identified? If not, why not?

Yes

**QUESTION 1A:** Are there other infringement offences that you consider should be included? If so, please explain what they are and why.

No.

***Proposed infringement fees***

**QUESTION 2:** Do you agree that these are the correct options to consider? If not, why not?

Yes. The range of options appears sufficient, and the proposed tools are used in other domestic regimes.

**QUESTION 2A:** Are there other options we have not considered? If there are, can you please elaborate?

No, the range of options are reasonable.

### *Analysis of the options*

**QUESTION 3:** Do you agree with our impact analysis? If not, please explain.

Broadly, yes.

The impact analysis in the discussion document does not define the “pluses and minuses” through a reference key (for example, is two pluses the maximum score or not?).

Strictly, although the criteria are useful touchstones, regulations should only be imposed where the net public or social benefits exceeds the costs.

As outlined in our submission on the Crown Minerals (Decommissioning and Other Matters) Amendment Bill, best practice is outlined in the Treasury Guide to Social Cost Benefit Analysis.

### *Preferred option*

**QUESTION 4:** Do you agree with our preferred option? If not, please explain.

Yes. This provides reasonable nuance and promotes case-by-case decisions.