

Explanatory Note on Consultation Draft of Seabed Minerals Bill 2019

General policy

The purpose of this Bill is to enable the effective and responsible management of the seabed minerals of the Cook Islands in a way that also—

- (a) is consistent with international rules and principles recognised by the Cook Islands:
- (b) provides a stable, effective, and efficient regulatory framework:
- (c) promotes transparent, informed, co-operative, and consultative decision-making:
- (d) seeks to maximise the benefits of seabed mineral activities for present and future generations of Cook Islanders.

In order to achieve its purpose, this Bill, among other things—

- (e) replaces the existing legal framework (the Seabed Minerals Act 2009) with a streamlined legal framework:
- (f) creates an improved regulatory system and continues to provide for a responsible Authority to license, monitor, and manage the Cook Islands involvement with seabed mineral activities:
- (g) continues the register of titles and provides for the registration of dealings and interests in titles:
- (h) provides for interaction between this Act and national law relating to environmental impact assessments, project permitting, and environmental management:
- (i) provides for the payment of royalties or other revenues derived under this Act, into a sovereign wealth fund, and the payment of fees:
- (j) provides for the management of information.

Contents of the Bill

Part 1 sets out preliminary matters. A notable clause is *clause 7* which requires persons making decisions under the new Act to apply the UN convention of the law of the sea as well as other regional and international agreements.

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Part 2 continues the Seabed Minerals Authority (the Authority) and creates a new Seabed Minerals Advisory Committee whose role is to assist the Authority by providing community and stakeholders perspectives.

Part 3 sets out rules for the allocation of areas for seabed minerals activities within the Cook Islands national jurisdiction. These rules are similar to those in the comparable provisions of the Seabed Minerals Act 2009. However, various provisions currently located in the Seabed Minerals (Prospecting and Exploration) Regulations 2015 are elevated from those regulations into this Bill because of their importance (for example *clauses 32 to 34*).

Part 4 sets out the rules for granting prospecting permits and exploration and mining licences. The regime regarding rights of retention arising from an exploration licence (*clause 63*) are simpler than the comparable provisions in the Seabed Minerals Act 2009, and there are new provisions clarifying the interface between the seabed minerals regime and the Environment Act 2003 (*see clause 74*). Finally, a number of important provisions from the Seabed Minerals (Prospecting and Exploration) Regulations 2015, (for example *clauses 49, 53, and 59*), are included in this part because their importance is such that they should be included in primary legislation rather than regulations.

Part 5 sets out the duties of permit holders, titleholders and licensees.

Part 6 sets out the financial arrangements for permit holders, title holders and licensees. This part also contains more detail than the Seabed Minerals Act 2009 about the management of the sovereign wealth fund, which is to be created from royalty payments by title holders.

Part 7 sets out the enforcement powers of the Authority. These powers are included in primary legislation, rather than regulations, to facilitate parliamentary scrutiny of whether the provisions strike the right balance between the need to ensure the seabed minerals regime is enforceable and the legitimate rights and interests of permit holders, title holders, and licensees.

Part 8 deals with miscellaneous provisions.

Part 9 sets out rules about seabed mining in the international seabed area.

Part 10 sets out transitional and savings provisions.

Schedule 1 sets out amendments to other Acts. The amendments to the Environment Act 2003 make changes to the provisions constituting the permitting authority and also to section 36 of that Act (which describes when project permits are required).

Schedule 2 sets out the general duties of title holders. This includes the requirement to apply the precautionary approach and employ best environmental practice.