

The Treasury

State Owned Enterprises Amendment Act 2012 (Solid Energy New Zealand Limited) Commencement Order 2019 Information Release

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Date: **10 December 2019**

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Information Withheld

No information has been withheld.

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State Owned Enterprises Amendment Act 2012 (Solid Energy New Zealand Limited) Commencement Order 2019

Proposal

1. This paper seeks authorisation for the submission to the Executive Council of the State-Owned Enterprises Amendment Act 2012 (Solid Energy New Zealand Limited) Commencement Order 2019.

Background

2. Solid Energy New Zealand Limited (SENZ), a State Owned Enterprise (SOE) went into liquidation in June 2019 and was removed from the New Zealand Companies Register on 2 August 2019.
3. The State-Owned Enterprises Amendment Act 2012 (No 44) (the Amendment Act) provides for the removal of SENZ from schedules 1 and 2 of the State Owned Enterprises Act 1986 (the SOE Act). The Amendment Act received royal assent on 29 June 2012.

The SOE Amendment Act

4. The Amendment Act was designed to allow SENZ along with Genesis Energy Limited, Meridian Energy Limited and Mighty River Power Limited (later renamed Mercury NZ Limited) to be removed from the SOE Act and added to the Public Finance Act 1989 as a Mixed-Ownership-Model Company (MOM).
5. As SENZ no longer exists, the second stage, a shift to a MOM, is not required.

The Commencement Order

6. The Order in Council (Order) provides for the commencement of the following provisions of the Amendment Act:
 - 6.1. Section 4(4), repealing SENZ from Schedule 1 of the SOE Act
 - 6.2. Section 5(4), repealing SENZ from Schedule 2 of the SOE Act
 - 6.3. Section 6(5), repealing SENZ from Schedule 1, Part 2 of the Ombudsmen Act 1975.
 - 6.4. Section 7(2), repealing SENZ from Schedule 1 of the Official Information Act 1982.
 - 6.5. Section 10(4), repealing SENZ from Schedule 36, Part A of the Income Tax Act 2007.

7. Paragraph 6 above omits sections 8(5) and 11(4) of the Amendment Act. Those sections relate to the insertion of SENZ into Schedule 5 of the Public Finance Act 1989 and Schedule 36, Part B of the Income Tax Act respectively. Those sections of the Amendment Act should not be brought into force, as SENZ has been removed from the register of companies and is now defunct.
8. Removing a company from Schedules 1 and 2 of the SOE Act from 20 December 2019 generally means:
 - 8.1. that the company will not be required to produce a statement of corporate intent
 - 8.2. Ministers will no longer have the power to require the provision of any information in respect of the company
 - 8.3. the company will no longer be subject to s 4 of the SOE Act, which includes the good employer and social responsibility provisions
 - 8.4. Ministers will no longer have power of direction under the SOE Act.
9. As SENZ was liquidated in June 2019 and removed from the New Zealand companies register in August 2019, the above has not been occurring for some time and therefore no real change will be noticed with the removal of SENZ from the SOE Act.

The 28 day rule

10. The Order will come into force on 20 December 2019, following notification in the *New Zealand Gazette* on 19 December 2019.
11. The 28-day rule generally applies to regulations made by Orders, reflecting the principle that the law should be publicly available and capable of being ascertained before it comes into force. However, in my view, the rationale for the rule does not apply to this Order as it merely amends the relevant legislation to reflect the fact SENZ was liquidated in June 2019 and removed from the New Zealand Companies Register in August 2019. In my view, the exception to the 28-day rule in paragraph 7.97(a) of the Cabinet Manual applies - "where a regulation has little or no effect on the public". The 28-day rule was waived for the Mighty River Power, Meridian and Genesis Orders.
12. I therefore, recommend that Cabinet agree to a waiver to the 28-day rule so that the order can come into effect before 28 days after which it is published in the *New Zealand Gazette*.

Consultation

13. At the time of development, the Amendment Act was widely consulted on at a national level and with Maori at a series of consultative hui. No consultation is required for the current Order.

Financial Implications

14. There are no financial implications for this proposal.

Legislative Implications

15. The draft Order was certified by PCO as being in order for submission to Cabinet.
16. There are no grounds for the Regulations Review Committee to draw the Order to the attention of the House under Standing Order 319.

Impact Analysis

17. The Regulatory Quality Team at the Treasury has determined that the regulatory decisions sought in this paper are exempt from the requirement to provide a Regulatory Impact Assessment, as they have no impacts on businesses, individuals or not for profit entities.

Human Rights, Gender and Disability implications

18. There are no human rights, gender or disability implications arising from this proposal.

Publicity

19. The commencement order will be publicly notified in the *New Zealand Gazette* on 19 December 2019.
20. I do not consider any further media statements are required.

Proactive Release

21. I intend to proactively release this Cabinet paper in full following final decisions being taken by Cabinet.

Recommendations

22. I recommend that the Cabinet Legislation Committee:

1. **note** that the State-Owned Enterprise Amendment Act 2012 (No 44) (the Amendment Act) received royal assent on 29 June 2012 and provides for Solid Energy New Zealand Limited (SENZ) to be removed from the State-Owned Enterprises Act 1986 (the SOE Act) via an Order in Council (Order);
2. **note** that the Amendment Act allows the provisions relating to different companies to be brought into force at different time;
3. **note** that the effect of the Amendment Act (SENZ) Commencement Order 2019 is to bring certain provisions of the Amendment Act relating to SENZ into force
4. **note** that the Commencement Order brings the following provisions from the Amendment Act relating to SENZ into force on 13 December 2019:
 - 4.1. Section 4(4), repealing Solid Energy from Schedule 1 of the State-Owned Enterprises Act 1986.
 - 4.2. Section 5(4), repealing Solid Energy from Schedule 2 of the State-Owned Enterprises Act 1986.
 - 4.3. Section 6(5), repealing Solid Energy from Schedule 1, Part 2 of the Ombudsmen Act 1975.
 - 4.4. Section 7(2), repealing Solid Energy from Schedule 1 of the Official Information Act 1982.
 - 4.5. Section 10(4), repealing Solid Energy from Schedule 36, Part A of the Income Tax Act 2007.
5. **note** the rationale for the 28 day rule does not apply to the Order;
6. **agree** to a waiver for the 28 day rule;
7. **authorise** the submission of the Order to Executive Council on Monday 16 December 2019; and
8. **note** that following execution in the Executive Council, the Order will be gazetted in the *New Zealand Gazette* on 19 December 2019 and come into effect on 20 December 2019.

Authorised for lodgement
Rt Hon Winston Peters
Minister for State Owned Enterprises