

22 March 2018

Hon David Parker, Attorney-General

Consistency with the New Zealand Bill of Rights Act 1990: Crown Minerals Amendment Bill

Purpose

1. We have considered whether the Crown Minerals Amendment Bill ('the Bill') is consistent with the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990 ('the Bill of Rights Act').
2. We have not yet received a final version of the Bill. This advice has been prepared with the latest version of the Bill (PCO 20546/3.0). We will provide you with further advice if the final version of the Bill includes amendments that affect the conclusions in this advice.
3. We have concluded that the Bill appears to be consistent with the rights and freedoms affirmed in the Bill of Rights Act. In reaching that conclusion, we have considered the consistency of the Bill with s 27(1) (right to the observance of the principles of natural justice). Our analysis is set out below.

The Bill

4. The Bill amends the Crown Minerals Act 1991 ('the Act') to improve the efficiency and effectiveness of the permitting regime.
5. The Bill:
 - a. provides that minerals programmes continue to be disallowable instruments under the Legislation Act 2012 but are not legislative instruments for the purposes of that Act and do not need to be drafted by the Parliamentary Counsel Office;
 - b. clarifies that an extension of the duration of a permit cannot be denied as a result of a declaration under s 28A of the Act, but an extension to the land area of a permit can be denied as a result of a declaration;
 - c. clarifies the processes and timeframes relating to revocation of a permit following a change of control of a permit holder;
 - d. changes the permit classification for authorisations of geophysical surveys on land adjacent to the land to which a permit relates;
 - e. clarifies that an access arrangement is needed for access to Schedule 4 land (land to which access restrictions apply) for minimum impact activities;
 - f. clarifies which Ministers enter into access arrangements in respect of Crown land and land in the common marine and coastal area;

- g. allows delegation of the Minister's powers in relation to licences granted under the Mining Act 1971;
- h. clarifies the applicable royalty calculations for certain permits granted before February 2008; and
- i. clarifies that changes made to minerals programmes as a consequence of the legislative changes made by the Bill are exempt from the public notification and submission requirements that would apply to any amendment of a minerals programme by the Minister.

Consistency of the Bill with the Bill of Rights Act

Section 27(1) – right to the observance of the principles of natural justice

- 6. Section 27(1) of the Bill of Rights Act affirms that every person has the right to the observance of the principles of natural justice by any tribunal or other public authority which has the power to make a determination in respect of that person's rights, obligations, or interests protected or recognised by law.
- 7. Under the Act, the Minister may recommend changes to minerals programmes. Proposed changes must be publicly notified, and the Minister must receive and consider any submissions that are made in relation to the proposed changes. The Bill provides that any changes to minerals programmes consequent on the legislative amendments in the Bill are exempt from the notification and submission process. We understand that minerals programmes will be affected to the extent that they refer to or reproduce legislative provisions that are amended by the Bill.
- 8. We considered whether this provision engages the rights under s 27(1). In our view, it does not. This is because the legislative amendments to minerals programmes proposed by this Bill are not determinations in respect of a particular person's rights, obligations, or interests protected or recognised by law. Rather, they are the result of a policy decision of general application. Accordingly, s 27(1) does not apply.

Conclusion

- 9. We have concluded that the Bill appears to be consistent with the rights and freedoms affirmed in the Bill of Rights Act.

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