PEPANZ
PETROLEUM EXPLORATION & PRODUCTION ASSOCIATION OF NEW ZEALAND

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Committee Secretariat
Economic Development, Science and Innovation Committee
Parliament Buildings
Wellington

PEPANZ Submission: Crown Minerals Amendment Bill

Introduction

This document constitutes the Petroleum Exploration and Production Association of New Zealand's (PEPANZ) submission in respect of *the Crown Minerals Amendment Bill* (Bill number 47-1), which was introduced to the House of Representatives on 5 April 2018.

PEPANZ represents private sector companies holding petroleum exploration and mining permits, service companies and individuals working in the industry.

Submission

We support enabling departmental officials to draft Mineral Programmes

1. We support the proposal that minerals programmes are not legislative instruments on the understanding that this simply means departmental officials can draft amendments without needing to use the Parliamentary Counsel Office. That is, we understand that this change has no constitutional significance and does not change the legal weight of the minerals programmes.

We support the Bill in granting the Minister a consenting role for changes of control for both permit operators and permit participants

2. We agree with the logic which underpins having a prior consent regime for changes of control. Such an approach is broadly consistent with how the existing provisions have been applied by the Crown and within industry. We believe there is benefit, in terms of certainty and consistency of treatment, of having the two regimes (as they separately apply to Petroleum Mining Licences and Petroleum Mining Permits) broadly aligned.
3. Where either a permit participant or permit operator undergoes a change of control, the change of control regime should require the prior consent of the Minister, and the change of control ought not to proceed unless and until that consent is obtained. We support the bill in that regard because we do not think the current distinction between consent requirements between permit operators and permit participants is appropriate or warranted.

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4. Accordingly, the proposed provisions relating to a change of control of the permit operators should continue to incorporate prior notification and prior consent requirements.

It should be made explicit that a change of control cannot be given effect to until Ministerial consent is obtained

5. The provision requiring ministerial consent should also expressly state that no change of control is to be given effect until the consent is obtained. That would provide a strong incentive for compliance.

Notification of failure to obtain Ministerial consent is redundant

6. Under the Bill, with prior ministerial discretion required, New Section 41AB(5) is redundant and should be removed. In any case, it is unlikely to be effective because in the event of a party contravening new Section 41AB(2) that is simply an enforcement issue. It is unclear as to why a separate notification period is needed given the person would already in breach if in that situation.

The revocation option should be repealed as unnecessarily and also problematic

7. We support aligning the change of control of permit participants with the Act's current provisions for change of control of operator. Accordingly, we propose that:
    a. the revocation provision is *not* imposed in relation to a change of control of permit participants, and
    b. that the revocation provision is *repealed* from the provisions relating to a change of control of permit operators.
8. With the proposed shift to pre-approval for all changes of control, we further consider that the associated revocation option (in New Section 41AF) is unnecessary and problematic, and should be repealed accordingly. We recommend that the corresponding revocation provision in current section 41A is also repealed.
9. Under our recommendation that a change of control cannot be given effect until consent is obtained, revocation is redundant because the tests that revocation relate to would have already been fully assessed in when the Minister assessed an application for a change of control.
10. In addition, revocation of a permit would affect *all* permit participants in a joint venture by removing their permit rights but on the basis of the fault of only one permit participant. That would represent a significant harm to those permit participants, and would likely lead to legal action from affected permit participants.

The three month time period may be too long and also unnecessary

11. New Section 41AC(1)(b) proposes that applications are made three months before the date on which the proposed change of control takes effect, but this may be problematic. Often change of control transactions need to progress faster than that, so a set timeframe may unnecessarily frustrate the underlying financial transaction.
12. We suggest that it is an unnecessary frustration because if the regime requires prior Ministerial consent as proposed, then a specified time period is not in fact necessary (because it cannot happen until the Ministerial consent is first obtained).

The requirement for the applicant to describe its 10 largest shareholders may not always be workable

13. New Section 41AC(3) requires that the "shareholders or members who hold the 10 largest numbers of equity securities" are named. In the case of a hostile takeover, the hostile acquirer may not have access to the top 10 shareholders (the company itself would from the registry, but practice may vary in other jurisdictions if it is a hostile situation and the target did not cooperate to provide the list). To avoid this situation, we suggest the section requires the list of the top 10 shareholder if it is publicly available to the acquirer available and able to be disclosed.

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14. In addition, the company ownership may not have visibility at all because the information may be held behind a nominee company, and in the case of a company that has a major shareholder the top 10 shareholders might be very small. By way of example, in one company operating in New Zealand, six of the top ten companies hold less than 1% each.
15. It may be worth adding to New Section 41AC(3) a provision that only substantial shareholders must be named (defined as say persons that hold of over 5%).

The Minister should be granted discretion to determine that an agreement does not give rise to a change of control

16. It would also be useful, given there can be uncertainties as to whether any particular transaction may constitute a change of control as defined, to allow the Crown the ability, similar to what it can do under paragraph 12.10(9)(c) of the Petroleum Programme, to determine that an agreement does not give rise to a change of control and to notify the permit holder accordingly. Ultimately, the permit holder needs to make that assessment, but having that provision apply to a change of control situation is appropriate (and protects the Crown's interests).

The wording in New Section 41AE(1)(b) needs to be made clearer

17. Section 41AE(2)(b) states that the Minister must be satisfied that applicant is likely to have "...*the capability and systems that are likely to be required to meet the health and safety requirements of the Health and Safety at Work Act 2015 and the Maritime Transport Act 1994."*
18. We understand this is meant to specify that the capability assessment is in relation to the health and safety requirements of the Health and Safety Act, and the health and safety requirements (but not environmental requirements) of the Maritime Transport Act.
19. The wording currently reads as if all Maritime Transport Act obligations are relevant to the assessment, i.e. not just the environmental obligations. We suggest inserting "of", so it reads "health and safety requirements of the Health and Safety at Work Act 2015 and of the Maritime Transport Act 1994."
20. We support how this section is specific about the legislation that is covered by the capability assessment, and consider that this could also be brought into Current Section 29A(2)(d) and any other relevant provisions. This would achieve consistency.