



LEGISLATION ADVISORY COMMITTEE

PO Box 180
Wellington 6401

Phone 04 494 9897

Fax 04 494 9859

www.justice.govt.nz/lac

Email LAC@justice.govt.nz

01 November 2012

Chair
Commerce Committee
Parliament Buildings
P O Box 18 041
WELLINGTON 6160

Dear Chair

CROWN MINERALS (PERMITTING AND CROWN LAND) BILL 70-1

Introduction

1. The Legislation Advisory Committee was established to provide advice to the Government on good legislative practice, legislative proposals, and public law issues. It has produced, and updates, Guidelines on the Process and Content of Legislation as appropriate benchmarks for legislation, which have been adopted by Cabinet.
2. The terms of reference of the LAC include:
 - to scrutinise and make submissions to the appropriate body on aspects of Bills introduced into Parliament that affect public law or raise public law issues;
 - to help improve the quality of law-making by attempting to ensure that legislation gives clear effect to government policy, ensuring that legislative proposals conform with the LAC Guidelines, and discouraging the promotion of unnecessary legislation.

Nature of the submission

3. The Committee has three points.

Understandable and accessible legislation

4. Clause 24 proposes to amend section 36 of the Act, which relates to changes to an existing permit. This includes changes to extend the date by which work must be carried out.
5. New section 36(4C) will provide that if the permit holder applies to change the permit in the way described above, the permit holder does not contravene the condition that the permit holder has applied to change if the date for compliance occurs while the application for change is under consideration by the Minister, but does contravene the permit from the date on which the condition should have been complied with if the application is declined. This is unclear and likely to be confusing for applicants. Applicants will not know in advance whether the application will be declined or granted, and therefore whether they need to comply with the condition applied to be changed.
6. It may be preferable for the section to provide that if an application to change the date for compliance is unsuccessful and the date for compliance occurs while the application for change is being considered, the unsuccessful applicant has a duty to comply with the condition as soon as possible after the decision is made.

Relationship to existing law

7. There are ambiguities in the relationship of the non-disclosure provisions (seemingly intended to prevent commercially sensitive information) with the Official Information Act.
8. In proposed section 90AA(1), there are strong restrictions on disclosure of information provided to the Minister, chief executive, or enforcement officers under several other sections. This is subject to some exceptions, including 90AA(1)(e), that “disclosure is required by another enactment”. This creates a very ambiguous interface with the Official Information Act, which would apply to some of the sorts of information provided and requires disclosure by default unless the grounds for non-disclosure are made out. The same issues arise in relation to proposed new section 90D(5).
9. In contrast, in proposed new section 18(5), it is stated that despite the provisions of the Official Information Act, the Minister may refuse to disclose submissions if satisfied that the refusal is necessary to avoid serious offence to Maori or avoid disclosure of the location of wahi tapu. This is carried through from the existing provisions in the Act. It would be preferable if the provisions in proposed section 90AA and 90D were similarly explicit and clarified the extent to which the restriction on disclosure applied despite the Official Information Act (and vice versa).

Delegation of legislative power

10. Minerals programmes will come into effect on date specified in the order of approval by the Governor-General and will be regulations for the purposes of the Regulations (Disallowance) Act 1989, but not for the purposes of the Acts

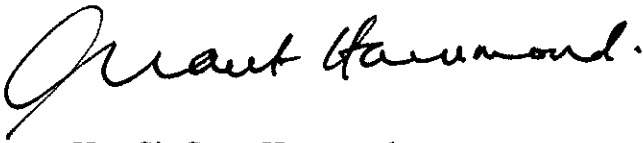
and Regulations Publication Act 1989 (section 19). The minerals programmes are a core aspect of the new permitting regime, and will have a much greater role than they currently do.

11. However there is no longer any requirement for periodic review of the minerals programme once in place. The current Act requires review every 10 years. Given the significance of the minerals programmes in filling out the detail of the permitting regime, it may be preferable to require that these be reviewed and updated after a certain period of time.

Conclusion

12. Thank you for taking the time to consider the Committee's submission. The Committee does not wish to be heard on this submission.

Yours sincerely

A handwritten signature in black ink that reads "Grant Hammond". The signature is written in a cursive, flowing style.

Hon Sir Grant Hammond
Chair