Crown Minerals (Permitting and Crown Land) Bill

The Government introduced the Crown Minerals (Permitting and Crown Land) Bill to the House on 20 September 2012. The Bill contains a major overhaul of the regulatory regime affecting Crown-owned minerals. This Bill has been referred to the Commerce Select Committee, and submissions need to be made by 2 November 2012. Please get in touch with us so we can help you understand the Bill's implications and assist you with a submission if necessary.

New Minerals Programmes for both petroleum and other minerals are also being prepared, and these will likely emerge in 2013.

The Bill forms part of the National Government's Business Growth Agenda and Petroleum Action Plan. It is designed to:

- Encourage the development of Crown-owned minerals so that they contribute more to New Zealand's economic development;
- Streamline and simplify the minerals permitting regime where appropriate; and
- Ensure that better coordination of regulatory agencies can contribute to stringent health, safety and environmental standards in exploration and production activities.

The Bill contains a lot of detail which the exploration and mining industry needs to pay close attention to. At the same time, the new Minerals Programmes, which have yet to be released for comment, will be important documents as they will contain much of the "nuts and bolts" of the regime.

The following provisions in the Bill warrant particular note:

- A new section establishing the *purpose* of the Crown Minerals Act (currently the Act has no stated purpose). The new proposed purpose is:

  …to promote prospecting for, exploration for, and mining of Crown-owned minerals for the benefit of New Zealand, by providing for –

  (a) the efficient allocation of rights to prospect for, explore for, and mine Crown-owned minerals; and
  (b) the effective management and regulation of the exercise of those rights; and
  (c) a fair financial return to the Crown for its minerals.

  The new purpose of the principal Act is accompanied by an expansion of the functions of the responsible Minister (formerly the Minister of Energy) to include functions to attract permit applications and to collect and disclose information in connection with mineral reserves and production in order to promote informed investment decisions and to improve the working of related markets.

  The above changes can be seen as an indication of the Government's intention to shift the function of the Crown Minerals Act away from purely a regulatory regime which operates independently of economic policy to one which is designed to actively promote further investment in the sector. However, we expect the mining industry and others interested in the potential of the sector may well consider that the new purpose of the Act does not go far enough. The efficient allocation of permits and their effective management, and obtaining a fair return to the Crown via royalty payments are all important matters to which the legislation is properly directed, but they are only a subset of the matters to which the Minister and New Zealand Petroleum and Minerals need to give their attention if the Government's objectives for the sector are to be realised.

- The Bill introduces a 2-tiered system for permit management into the Crown Minerals Act 1991. This will distinguish between the relatively small number of complex, higher-return petroleum and mineral activities (referred to as Tier 1) and the larger number of lower-return industrial, small business, and hobby mineral operations (referred to as Tier 2). Tier 1 activities will be subject to a more hands-on, co-ordinated management and regulatory regime, and Tier 2 to a simpler and more streamlined management regime.

  We think this change makes sense in principle, but it will be interesting to see whether the thresholds proposed in the Bill for escalation from Tier 2 to Tier 1 status are appropriate in the eyes of the mining industry. In particular, the total work programme expenditure for exploration permits and the annual royalty income for gold and silver mining permits will be closely examined.

- The Bill introduces a new requirement that before issuing a permit for Tier 1 activity the Minister must be satisfied that the applicant/operator is likely to have the capability and systems required to meet relevant health, safety and environmental requirements of other legislation. The Government has been clear in stating that this requirement is not intended to duplicate the processes under these other statues (such as the Health and Safety in Employment Act and the Resource Management Act) but whether or not this is so will depend on the information requirement set out in the new Minerals Programmes.

- Detailed changes to the term and information/work programme requirements for different classes of permits are proposed. These include provisions for appraisal extensions of exploration permits. Further detail will be contained in the Minerals Programmes, but miners should pay close attention to these provisions. The Bill does not make express provision for the management of multiple permits held by one entity on a portfolio basis, and this is likely to be seen as a shortcoming by some in the mining sector.

- Provision to change the royalty regime by regulation is included. While the new royalty regime the Government proposes is being delayed while changes to the income tax regime are also being considered, one aspect the Bill does address is the transition from existing to new Minerals Programmes. Generally, when an existing permit is varied or a subsequent permit obtained, the permit will migrate to the new Minerals Programme, but the existing royalty regime will not change. In other words, under the Government's proposal all existing royalty regimes which apply to issued permits will continue, even where the Minerals Programme under which the royalty regime was established ceases to exist.

- The provisions concerning assess to Crown land (including non-excluded conservation land) receive a significant overhaul in line with previous Government decisions. Applications for access to Crown land for significant mining activities will be publically notified and interested persons will have a right to make submissions as is the case for proposals to undertake significant non-mining activities on conservation land. Access decisions in respect of conservation land will now be made jointly by the Minister of Conservation and the Minister responsible for administration of the Crown Minerals Act, and the Ministers will be required to consider not only the effects on conservation values, but also "the economic and other benefits of the proposed activity in relation to which the access arrangement is sought" in coming to a more balanced decision as to whether access should be granted, and if so on what terms.

- The granting of rights to prospect, explore, or mine for minerals on the continental shelf is dealt with under the Continental Shelf Act 1964. This Bill aligns the processes in that Act and the Crown Minerals Act 1991.

  The Bill amends the Continental Shelf Act 1964 by importing the minerals provisions of the Crown Minerals Act 1991 for all new Continental Shelf Act licence applications to bring the Continental Shelf Act regime for minerals into alignment with the current practice for petroleum in the exclusive economic zone and continental shelf. Regulation of environmental effects would fall under the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012.

- The Bill amends the Conservation Act 1987, Reserves Act 1977 and the Wildlife Act 1953 to provide for automatic inclusion of certain areas into Schedule 4 of the Crown Minerals Act 1991.

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