NEW ZEALAND LAW SOCIETY

NZLS EST 1869

Crown Minerals (Petroleum) Amendment Bill 2018

09/10/2018

Submission on the Crown Minerals (Petroleum) Amendment Bill 2018

1. Introduction

1.1. The New Zealand Law Society welcomes the opportunity to comment on the Crown Minerals (Petroleum) Amendment Bill 2018 (Bill).

1.2. This submission identifies a legal issue with the Bill regarding the application of the Bill to existing applications (clause 24).

1.3. The Law Society does not seek to be heard but is happy to work with officials advising the committee on drafting changes should that be of assistance.

2. Overview of the Bill

2.1. The purpose of the amendments proposed in the Bill is to give effect to the Government's 12 April 2018 announcement that:

(a) no new offshore petroleum exploration permits will be granted;

(b) new onshore petroleum permits will be available only in the Taranaki onshore region;

(c) the rights of existing permit holders – including to convert an exploration permit into a mining permit will be honoured.

2.2. The Bill also sets out how applications for permits lodged and legal proceedings in train before the Bill comes into force will be treated.

2.3. As a general observation, the Law Society notes the Bill has progressed through the House at a faster rate than normal. The Bill was introduced on Tuesday 25 September and passed its first reading on Wednesday 26 September. Following an urgent motion in the House on the select committee process, a shortened select committee deadline was passed which has left the public with only two weeks to make a submission on the Bill. Although the public have been provided an opportunity to comment, the Committee may wish to consider whether the public has been fully consulted and it has been sufficiently informed in the time available.

3. Treatment of existing applications – clause 24 of the Schedule

3.1. Clause 9 of the Bill inserts a new Part 2 into Schedule 1 of the Act. The provisions of this Part are set out in the Schedule to the Bill.

3.2. Clause 24 of the Schedule sets out how existing petroleum permit applications are to be treated. This clause states:

24 Existing applications for permits for petroleum determined in accordance with Act as amended

(1) *Any application that was lodged or submitted, but not determined, before the commencement of the Amendment Act—*

(a) *is treated as having been withdrawn; and*

(b) *is treated as having been re-lodged or re-submitted (but only if, and to the extent that, the application is in respect of land in the onshore Taranaki*

region) immediately after the commencement of the Amendment Act; and

(c) *must be determined in accordance with this Act as in force immediately after the commencement of the Amendment Act.*

(2) *Subclause (1) applies despite anything to the contrary in this Act.*

3.3. This clause reverses the current situation where, under clause 6 of Schedule 1 to the Act, applications for petroleum exploration permits are determined using the provisions in force at the time the application was lodged and prior to any amendment.

3.4. The Law Society considers that there are two issues with this amendment.

Retrospectivity

3.5. The key issue is that while the change applies prospectively, it is retrospective in effect. Legislation should generally have prospective and not retrospective effect.[1] Clause 24 breaches a legitimate expectation that existing applications for petroleum permits will be determined according to the law in force at the time the application was lodged.

3.6. The Law Society acknowledges that the Act already provides for some limited retrospective effect in clause 5(2)(a) of Schedule 1, although this appears to relate to changes to permits, transfers etc, rather than to new or pending applications for petroleum exploration permits.

3.7. It is acknowledged that the strength of the presumption against retrospective legislation depends on context. While Parliament has the power to pass such legislation, good reasons are required to justify such a departure in order to avoid infringing the rule of law.

3.8. Other environmental legislation - such as the Resource Management Act 1991 (clause 8(3) of Schedule 12) and the Exclusive Economic Zone and Continental Shelf (Environmental Effects Act) 2012 (clause 1(1) of Schedule 1) - require that all pending applications be dealt with and determined as if amendment legislation had not been made. As noted above, this is currently the position with petroleum exploration permits under the Act via clause 6 of Schedule 1. Neither the Bill nor the Regulatory Impact Statement (RIS) provide any reason for the departure from the retrospective rule so as to uphold the rule of law and why a similar position to existing legislation has not been adopted in this Bill.

Conflict between cl 6 and 24

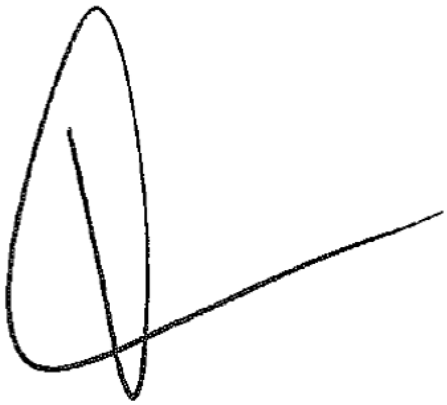
3.9. If clause 24 is to remain, there is a prima facie conflict between clause 6 of Schedule 1 to the Act (which is not proposed to be amended) and clause 24 of the Schedule to the Bill. While the Bill proposes a mechanism to resolve this conflict, (through clause 24(2) declaring it applies notwithstanding anything else to the contrary in the Act), the Bill could be redrafted

[1] Legislation Advisory Committee *Guidelines – Guidelines on Process and Content of Legislation* at 4.7 (2018 edition), chapter 11 and s 7 of the Interpretation Act 1999.

so that there is no such conflict. This could occur, for example, through making a change to clause 6 of Schedule 1 in the Act itself.

Recommendation

3.10. The Law Society recommends that further consideration be given to whether it is necessary and appropriate for clause 24 to have retrospective effect and how this may impact on the rule of law.



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