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Crown Minerals Amendment Bill 2018

Submissions by the Environment and Conservation Organisations of NZ Inc

1. Introduction

The Environment and Conservation Organisations of NZ (ECO) is the national alliance of about 48 groups with a concern for the environment and conservation. Some of these member bodies are themselves federations or multiple groups. Many are area-based, some are focused on specific species or activities or impacts.

ECO has followed issues of conservation and environmental management and practice, law and policy since its formation in 1971-2. We have member groups from all around New Zealand. We have a long standing interest in and engagement with the systems, institutions, incentives and drivers of activities and impacts on the environment and appropriate public policy responses.

ECO has long been interested in minerals and petroleum management, and in law that is efficient, fair and takes account of social and environmental consequences and implications, as well as those for business and the economy.

We support Te Tiriti o Waitangi, and ensuring that the "voice" of the environment is heard.

This Submission was prepared by ECO's Improved Environmental Management and Law/ Mining working group. It draws on input from member bodies and other sources.

ECO wishes to be heard in making this submission. Please contact the ECO Office at eco@eco.org.nz or 04 385-7545 to make arrangements. Since some members of our delegation may need to travel to attend a hearing, we will need at least a week's notice, preferably more, of any hearing.

2. General Points

ECO is disappointed but not surprised that by its own account, MBIE did not consult with ECO or any other environmental group in the preparation of this Bill. Their Departmental Disclosure statement reveals that they consulted within government, and with minerals industry advocates and operatives, but not with any other interests, despite they portrayal of their consultation as being with "key stakeholders".

We support fair, clear, careful and effective law and regulation of activities with substantial impacts. We are exasperated and disappointed that the NZ Petroleum and Minerals (NZP&M) still thinks it is ok to ignore New Zealand civil society non-business organisations with a strong and long-standing interest in resource and minerals management, but happily consults with just economic interests. We suggest that the amendments made to the Purpose of the Bill by the previous government, reinforces a long-standing tendency of NZP&M to being "captured' by the industry**. Thus we suggest that the Purpose of the CMA be amended to remove the "promotion" of minerals activity.**

2 Submissions on the 2018 Amendment Bill

ECO supports several of the amendments proposed to the Crown Minerals Act in this 2018 Bill, but considers that some aspects need further thought and changes to what is proposed in the Bill.

Part 1 – Amendments to Parts 1 -1b of principal Act

Clause 4 – Section 8 amended –Restrictions on prospecting or exploring for, or mining Crown Owned Minerals.

ECO is unclear why there is no apparent explanation in the Explanatory Notes about the import and consequences of the changes made in Clause 4.

In our view it is unreasonable to have no requirement for any access agreement when the land is in or on the continental shelf. We submit that Section 3(a) be deleted from both Section 53 and 54 of the Principal Act, so that land in or on the Continental Shelf must also be the subject of access agreements.

Clause 5 Section 19 amended, (Issue of minerals programmes)
ECO Opposes the amendments to Section 19(3) as drafted, and submits that most of the new 19(3)(a) be accepted, but that a minerals programme should be a legislative instrument and **should be drafted by the PCO.**

Thus we submit that the new proposed Section 19(3) be amended as follows:
19(3)(a) – delete the "but" after the word "Act;"

19(3) (b) delete the word "not", so that the text is clear that minerals programmes ***are*** legislative instruments;

19(3)(c) delete the word "not" so that the minerals programmes are to be drafted by the PCO.

Our reasons for our position are that the PCO's standard formatting, publication and provision for access to the text apply to minerals programmes. Further, we would think that professional oversight and peer review of proposals from NZP&M are important to the quality of minerals programmes.

We submit that the locating of drafting and publication of the minerals programmes with the PCO is important and desirable.

Clause 6 Section 28A amended (Declaration that permits not to be issued or extended for specified land for specified period)

ECO submits that the **proposed new Section 28A (1) (a) and (b) be amended by the insertion after the phrase "specified land" the words "and or classes of land",** or words to that effect. This will streamline the Act and reduce transactions costs by

removing the need to name each piece of land since the designation or class of land can be used instead, saving much tedious delineation and specification.

Re the proposed new S28A(1A)(a), we cannot see why the Minister should have to only consider the purpose of the Crown Minerals Act, given that there will be joint decision making with other landowners and land-holding ministers, and that there may be other pressing public interest reasons for not allowing minerals permits in particular places, times etc. **Thus we propose the deletion of S28A(1A)(a) and any counterpart in the principal Act.**

S28A 2 (c) An application in a novel place, stratum or for a novel method, may legitimately trigger concerns that there should be of the kind envisaged in 28A(2)(c). For this and other reasons, we submit that it would be a good idea to **delete S28A(4)(a),** which prevents the minister from refusing a permit application in the category subject to the Gazette notice if it has been applied for, even if not processed.

S 28A(2)(d)(ii) of the principal Act. We are not supportive of there being a time limit to the period of a declaration of closure of land, activity type, etc, and for permit denial. Thus we suggest that while S28A is being amended, subsection 2(d)(ii) of that section be deleted. There is no clear rationale for its presence.

S28(3) – We consider that the Minister should have the power to restrict the term of duration of any extension of time of the renewed permit. We suggest that such time extension be limited to 3 years.

S**28A (4)(a)** puts the private applicant interest too far above the possible public interest that motivates the Ministerial notice. In our view, the Minister should be able to disallow applications if they are made prior to the notice, so long as they have not been processed and resolved. Thus **subsection 28A 4(a) should be deleted from the principle Act.**

Clause 7 Section 39 amended (Revocation or transfer of permit)
In general ECO supports these provisions although some of the time constraints may be rather tight. It is entirely reasonable that the Minister should be informed of changes of control and that this be done in good time, with the Minister having the right of revocation.

We do **have concerns that permit holders must be held to decommissioning, decontamination and restoration plans, provisions and conditions even when a permit is relinquished or revoked.**

Clause 8 New sections 41AA to 41AF inserted

41AA Meaning of change of control of permit participant or guarantor

41AB Change of control of permit operator of Tier 1 permit

41AC Application for consent for change of control

41AD Minister may require information or documents to be supplied

41AE When Minister may consent to change of control of permit operator

41AF Revocation of permit if change of control made without consent

Clause 9 Section 41A amended (Change of control of permit participants)

Clause 10 Section 41D amended (General provisions relating to transfers, dealings, and changes of permit operator).

In general ECO also supports these provisions in Clauses 8-10, although some of the time constraints may be rather tight. Again, it is entirely reasonable that the Minister should be informed of changes of control and that this be done in good time, with the Minister having the right of revocation.

We are unsure what the meaning of the text in 41AA2b, "a person who acts, or is accustomed to acting, in accordance with the wishes of Person A" means. What does "accustomed to act" mean in terms of this context?

We note relevant commentary by the NZ Law Commission that draws attention to situations where prior notice may be difficult – such as a hostile takeover or the death of a permit holder.

We particularly support the various provisions that require any transferer and transferee to show that the transferee has the capacity, capability and financial resources to comply with the conditions of the permit.

New Point:
Biosecurity implications of minimum impact activities. In relation to the principle Act:
Section 49 Entry on land for minimum impact activity
Section 50 Entry on special classes of land for minimum impact activity
Section 51 Entry on Maori land for minimum impact activity

ECO draws the attention of the Select Committee to these provisions in the principal Act. We are painfully aware of the potential for the spread of kauri die back, myrtle rust and other pathogens and weeds by the entry onto land of contaminated footwear, sampling, drilling and earthmoving and other equipment as well as vehicles. We consider that, since there is no environmental approval process, the Select Committee and the officials would be advised to impose here strict requirements for biosecurity controls and health and safety controls.

Clause 11 Section 42A amended (Authorisation of geophysical surveys on adjacent land)

ECO opposes this amendment. We can see it is convenient for the mining industry, but to issue a permit to do prospecting, exploration or mining on adjacent land in the name of authorising geophysical surveys, is unreasonable. Such permits carry with them a whole range of entitlements that go well beyond geophysical surveys. The removal in the proposed new S42A of the provision in the principal Act in the existing 42A(2) that limits the effect to a prospecting permit, is totally unfair and unreasonable. We reject this and think it is a substantive change, and should be subject to an RIS and not put into a Bill that feigns being minor and technical.

Our submission is that Clause 11 should be opposed and withdrawn.

Clauses 12 & 13 Section 53 and 54 amended – (Access to land for minerals).

ECO submits that the S 53(3)a and S54(3)a and the reference to land in the common marine and coastal area (in subsection 3 in each case) should be deleted. We think it unreasonable that there be no access agreement under the CMA for activities on the Continental Shelf and in the common marine and coastal area.

Clause 14 S54A new section (Access to Schedule 4 land) & Clause 17 Section 61 amended (Access arrangements in respect of Crown land and land in common marine and coastal areas.

ECO considers that the grounds for access to Schedule 4 land must remain minimal and only for situations of emergency or in relation to tiny areas. We note the restriction in the principal Act S61(1A) to small areas of complete removal of vegetation, but this provision does not cover impacts in the marine environment. ECO Submits that a similar restriction in S61(1A) should apply to clearance or impacts on the benthos – the life on the seafloor.

For consistency's sake, we propose an amendment be drafted and adopted to S61(1A) to limit impacts on the benthos to the same area constraints as in paragraphs (a) and (b).

Clause 18 Section 100 amended – Offences; Clause 19 Section 101 amended (penalties).

ECO notes here the comments of the NZ Law Commission on these sections.

Part 2 – Amendments to Schedules of principal Act

Clause 20 – Schedule 1 amended.
ECO disagrees that the low (or in some cases zero) royalty regimes be limited to those in the originally applicable Minerals Programme. This is taking certainty for the industry far too far and in effect robs New Zealand of revenues. **The principal Act should be amended to make it clear that there will be regular reviews with potential increases in royalties – say every 5 years.**

We recommend that the clause and subclauses proposed in Clause 20 to freeze royalty payments and to demand that the Crown repay royalties paid, be deleted from this Bill. Instead, the Crown's right to increase royalties should be asserted in an amendment to the Act.

Clause 20, Schedule 1 amended
Clause (2) which amends Clause 12(2) with the insertion of (2A)

ECO is concerned that this proposal would enable the Minister to delegate decisions on exiting permits under an obsolete statute to officials. ECO considers after nearly 30 years that it is well overdue for these permits to be moved fully under the Crown Minerals Act and the Resource Management Act. This sub-clause should be deleted.

Clause 21 - Schedule 4 Amended

If we understand this correctly, and there is no guidance in the Explanatory Notes, we consider that new s54A is an improvement on s53(3) and 54(3) in Schedule 4 because limited impact activities are precluded by s54A. We are seeking further advice on this change.

Some Suggestions :

We believe that greater explanation of the changes proposed would have been helpful.

We also recommend to the Select Committee that the PCO Office be asked to provide Bills, not only in the form normally presented as for this one, but also as the principal Act marked up with track changes to show what is deleted, what is inserted and other changes such as moves. We think that would make it much clearer for all submitters and save a good deal of time for everyone. Otherwise, everyone considering a Bill has to do some version of that for themselves. We recommend that MPs ask the Speaker or other officers of Parliament to make this service available to submitters – and MPs and others considering a Bill as a matter of course.

Thank you for the opportunity to make submissions on this Bill.

Yours sincerely,

Catherine Wallace, Co-chair of ECO and the Improved Environmental Management and law team of ECO NZ