

8 October 2010

Crown Minerals Act Review
Ministry of Economic Development
PO Box 1473
Wellington 6140

Dear Sir/Madam

Submission: Crown Minerals Act Review

Introduction

1. The Petroleum Exploration and Production Association of New Zealand (the "Association") is an incorporated society, operating as a trade association, to promote the interests of companies actively involved in petroleum exploration and production in New Zealand and services companies offering technical and other business support to the sector. Most of the major E&P companies operating in New Zealand are members of PEPANZ. PEPANZ's mission is to promote a legislative, administrative, economic and social framework which efficiently and effectively facilitates safe, environmentally responsible and profitable oil and gas exploration, development and production.

Review of the Act

2. The Association welcomes the opportunity to comment on the proposed review of the Crown Minerals Act 1991 (the "Act") and the proposals set out in the August 2010 Discussion Paper entitled "Reviewing the Crown Minerals Act 1991" (the "discussion paper").
3. The Association records that some of the proposals set out in the discussion paper have previously been raised by the Association for discussion with the Minister of Energy and Resources and officials from the Crown Minerals division of the Ministry of Economic Development ("MED").
4. The Association would like to make three overarching comments. These overarching comments are intended to provide some background to the Association's detailed submissions on aspects of the discussion paper, as set out below.

Interrelationship with the Minerals Programmes

5. It is clear from the discussion paper that many of the proposed reforms to the Act and the policies underlying it will be implemented by way of amendments to the various Minerals Programmes. This is evident both from the express statements in the discussion paper that certain of the issues raised in it will be dealt with in the second stage review to be undertaken during the first part of 2011 and also by implication from many of the other points raised in the discussion document (which will clearly necessitate changes to the various Minerals Programmes).

6. The Association is aware there has been criticism in some quarters of the two phase approach the MED is taking to the review of the legislative framework. Given the timeframes officials are working to in order to complete this review, the Association does not necessarily disagree with a two phase approach to the review work. In particular, the Association supports MED officials moving with appropriate speed to ensure the proposed reforms are enacted on a timely basis.
7. However, the Association cautions that it is very important for the MED to ensure any reforms to the Act and the Minerals Programmes:
 - are consistent and coherent from a policy point of view;
 - provide certainty and transparency for industry participants going forward; and
 - respond to the issues and concerns articulated by industry participants (including PEPANZ) over the last five or six years.
8. If this necessitates revisions to the timetable that has been proposed to give effect to the amendments then so be it – the Association’s view is that it is critically important to ensure the changes to the Act (and various Minerals Programmes) are appropriate and fully considered in light of operational and industry practices and that all relevant stakeholders are fully consulted throughout the process. It is also important that any changes to the Act are fully integrated with any proposed changes to the various Minerals Programmes and that the timetable for the proposed reforms allows for that to occur. We also note it is important that any changes to the Act and the Minerals Programmes have effect at the same time in order to avoid any unintended legislative gaps.
9. A related point is that given the significance of the likely changes to the various Minerals Programmes, the Association suggests there should be particular focus on the preparation of, and consultation on, the discussion document for the changes to the Minerals Programme. The discussion paper proposes a 40 day consultation period (see page 41). The Association does not believe a 40 day consultation period is likely to be sufficient. The relevant policy and permit allocation and management issues are not straightforward and have an important operational component. It is also likely industry participants will have different views in relation to some of the issues that arise in the context of the Minerals Programme review. The Association believes there should be sufficient time allowed for industry to consider and submit on the various issues raised (and their implications). The Association therefore suggests the proposed consultation period be at least 40 working days. We also note that a 40 working day consultation period would reflect the requirements of section 17(2) of the Act which enables submissions to be made at any time within 40 working days after public notification of the draft (i.e., revised) Minerals Programme under section 16 of the Act.
10. The Association believes it is important the MED has the opportunity to fully understand and appreciate the various issues (and their implications) from industry’s perspective. The Association reiterates it is willing (and would appreciate the opportunity) to meet with MED officials responsible for the Minerals Programme review work and also Crown

Minerals' officials who will have day-to-day responsibility for administration of the relevant Minerals Programmes to outline and discuss industry's perspectives on these issues.

11. Finally, we would like to briefly comment on the manner in which any revised Minerals Programme is to be written. The Association favours the more discursive style of the existing Minerals Programme for Petroleum (2005) rather than the more legislation-based style recently adopted in the context of the Minerals Programme for Minerals (Excluding Petroleum) 2008. The Association also notes the upcoming review of the Minerals Programme for Petroleum provides the ideal opportunity for some of the inadvertent duplication and inconsistencies contained in the Minerals Programme for Petroleum (2005) to be corrected.

Detail of some proposals

12. Many of the proposals are relatively general in nature. The Association has therefore found it difficult to meaningfully canvass the views of its members in relation to some of those issues. In particular, this has included the proposals relating to underground coal gasification and methane hydrates (to the extent changes to the Act are required in respect of them), compliance matters (paragraphs 10 to 16), data requirements (paragraph 18) and financial return to the Crown (paragraph 20).
13. The Association therefore requests the opportunity to engage with the MED, prior to any amending legislation being introduced into Parliament, in relation to the detail of any amendments to the Act that may be proposed as a result of the consultation and submission process. The Association believes it is well placed to assist MED officials to work through the detail of any proposals in these areas once officials have had the opportunity to consider any submissions made on these issues and develop a more detailed policy basis for any amendments to the Act.

Areas not addressed in the discussion paper

14. The discussion paper identifies (at paragraphs 3, 5.9 and 5.10 of Part 1) a number of areas that are not being addressed as part of the current review. The Association agrees those areas should be dealt with separately from the review of the Act and Minerals Programme.
15. Although a number of areas have been specifically excluded from the scope of the review, a number of the issues that the Association has previously raised with Crown Minerals have not been excluded from the scope of the review or addressed in the discussion paper. The Association is unclear as to whether this has been a conscious decision by the MED. Nevertheless, the Association believes the following areas should be addressed as part of the review of the Minerals Programme (and, if it is necessary to amend the Act, then the Act is amended accordingly):
 - retention leases ought to be introduced so as to ensure maximum recovery of the available petroleum resource. Retention leases are a common feature of most other jurisdictions which compete for the exploration expenditure of international

companies and the Association believes there is benefit in retention leases being introduced into New Zealand's legislative framework;

- clear policies and regulations relating to unconventional petroleum operations (such as, for example, coal seam gas and shale gas operations) which reflect how those operations are undertaken in New Zealand. The Association expects this will require changes to the Minerals Programme for Petroleum and also to the Crown Minerals (Petroleum) Regulations 2007 (especially in relation to reporting);
- provision for the grant of separate permits for different strata and a clear policy framework for the administration of such permits. Including provision for strata titles is consistent with the objectives of the review (see, specifically, the objectives listed in paragraphs 2.1(b) to (d) of Part 1 of the discussion paper). It is also consistent with the objectives of maximising the flexibility for permit holders to structure their arrangements as they think best and providing investment certainty and clarity for industry participants. The Association therefore suggests that provision for strata titles should be included as part of the overall legislative framework (i.e., in both the Act and the Minerals Programme for Petroleum as appropriate). We note the Association is aware that one member of the Association does not consider strata titles should be introduced; and
- the provisions relating to unitisation in the Minerals Programme for Petroleum need to be strengthened and made more detailed. Much of the detailed work has already been undertaken (and consulted upon) in the context of the draft practice statement Crown Minerals has previously released (but which was not taken forward or included in the Minerals Programme for Petroleum). The Association will comment in more detail on this aspect as part of its submissions on the second phase of the review.

Specific questions on which feedback is sought

The Association sets out its comments below:

1. Do you have any comments on the objectives of the review? (please refer to page 9 of the discussion paper)

The Association broadly supports the objectives of the review as listed in paragraph 2.1 of the discussion paper. The Association would, however, suggest it be made clear that a key objective is ensuring New Zealand is an attractive investment destination for companies undertaking exploration, development and production activity.

In addition to the stated objectives, the Association considers the review should clearly and expressly state that ensuring appropriate flexibility for permit holder arrangements, ensuring investment certainty, clarity and transparency for industry participants and ensuring the optimum economic recovery of hydrocarbons are fundamental objectives (and the various proposals should reflect these objectives). These objectives are consistent with stated Government policy in relation to the New Zealand petroleum sector and encouraging investment in it. They are also consistent with the objectives specified in the November

2009 Petroleum Action Plan (including the objective of promoting New Zealand's petroleum sector as an attractive investment option for international and domestic capital).

The Association notes that the objective stated in paragraph 2.1(b) of the discussion paper (i.e., encouraging the development of Crown-owned minerals resources to contribute to New Zealand's economic development) could on one view be broad enough to cover the additional objectives raised by the Association. However, to ensure clarity, the Association believes these additional objectives (as identified above) should be specifically stated (assuming, of course, the MED agrees with them). That will then provide a clear basis on which to progress the various substantive amendments to the Act and Minerals Programmes.

If the MED does not agree with the additional objectives (or the refinements to the stated objectives in the discussion paper) the Association proposes, we would appreciate the opportunity to engage in a dialogue with MED officials so as to enable the Association to understand the reasons for any divergence of view.

2. Should the CMA have a purpose statement? (refer to page 17)

Although the Association believes the purpose of the Act is readily ascertainable on its face and the Courts do not appear to have had any difficulty in ascertaining the purpose of various provisions (see, for example, *Greymouth Gas v Attorney General*), the Association has no objection to the inclusion of a purpose statement.

3. Do you have any comments on the proposed content of the purpose statement? (refer to page 17)

The Association believes considerable care is required here. It will be important to ensure that the purpose statement is not drawn in terms which are too narrow.

The first two bullet points in paragraph 1.2(b) of the discussion paper simply re-state the purposes which underlie the policies and procedures which section 12 of the Act requires are reflected in Minerals Programmes (see also section 2.10 of the Minerals Programme for Petroleum (2005)). The Association does not disagree that those purposes also underlie the provisions of the Act. That said, the Association would recommend that the purpose of ensuring a fair financial return to the Crown needs to be balanced against ensuring that New Zealand's petroleum regime will attract investment and enable developments to proceed in a timely manner. This should be clearly stated in any purpose statement. The Association also considers that optimising the economic recovery of hydrocarbons in accordance with good exploration and mining practice should be included in the purpose statement.

In relation to the last two bullet points of paragraph 1.2(b) of the discussion paper, the Association agrees those stated purposes generally underlie the Act and should be retained in the purpose statement (assuming, of course, the substantive amendments to the Act and the Minerals Programmes continue to reflect those purposes).

The Association recommends that a detailed analysis of the existing Act (as it is proposed to be amended by the changes to the Act proposed under the review) is undertaken once the

review process is substantially complete to ensure that the proposed purpose statement does in fact fairly and accurately reflect the underlying legislative and policy purposes.

4. Do you have any comment on the proposal to clarify that underground coal gasification is managed under the coal mining regime through the MPM? (refer to page 18)

No.

How does the MED propose addressing any issues that arise where activities covered by two separate minerals programmes may conflict with each other, (for example, coal bed methane extraction and UCG?)

5. Do you have any comments on the requirement for a clearer policy framework around allocation and management of coal permits utilising UCG technologies? (refer to page 18)

The discussion paper does not identify what clarifications or improvements need to be made to the policy framework for the allocation and management of coal permits which utilise UCG technology. Accordingly, it is difficult to make any meaningful comment except to say the Association believes that where the existing policy framework for the allocation and management of permits is not clear then it should be improved/clarified. As these matters are most likely to be dealt with in the second phase of the review relating to the various Minerals Programmes, the Association requests that the public consultation paper to be prepared as part of the Minerals Programme review specifically identifies the areas in respect of which it is considered further policy clarification is required.

6. Do you have any comments on the proposal to clarify that methane hydrates are petroleum? (refer to page 18)

No. The Association supports the clarification.

7. Do you think that methane hydrate activities could be carried out in the same land area as other permit activities (such as conventional petroleum exploration)? (refer to page 18)

The Association believes that a significant amount of further work needs to be done in relation to the technical and HSE issues that may arise if methane hydrate activity and conventional petroleum activities are undertaken in the same land area, and that this work needs to be undertaken before meaningful policy can be included in the Minerals Programme in relation to granting overlapping permits for methane hydrates and conventional petroleum activities in the same land area.

Despite advances in the understanding of the formation of gas hydrates, the Association is of the view that the means of commercially recovering gas from hydrates is far from proven. In light of this, we support the development of policy on methane hydrates, but suggest the MED exercise caution so as not to delay or impede the exploration for and development of conventional petroleum resources in the intervening period. In this regard, the Association would not support policy developments which allow areas to be permitted on an exclusive basis where the work programme targets methane hydrate activity to the exclusion of

conventional petroleum activities. Any such policy would be contrary to the express objectives of the review work currently being undertaken.

8. Do you think there should be a new class of permit for research/scientific activities and spec surveys? (refer to page 19)

The Association does not believe it is necessary to create new classes of permits for this purpose. Rather, the Association believes the existing types of permits (prospecting and exploration) are sufficient for the kinds of activity contemplated but that the policy framework in the Minerals Programme for Petroleum should make it clear that permits of the relevant type can be granted specifically for research/scientific activities or non-exclusive (or “speculative”) seismic surveys.

The Act and/or Minerals Programme for Petroleum could expressly provide for the Crown to have flexibility in relation to permit conditions and work programmes (with the relevant policy considerations relating to the manner in which any additional discretion conferred on the Minister is to be exercised clearly outlined in the Minerals Programme).

The Association also believes that:

- a permit may be granted for research/scientific activities or non-exclusive seismic surveys over acreage which is already the subject of an existing prospecting, exploration or mining licence or permit – although there are differing views within the Association as to whether there should be a requirement that consent of the licence or permit holder must first be obtained; and
- the duration of any permit granted for research/scientific activities or non-exclusive seismic surveys should be short. This will normally be the case for non-exclusive seismic surveys and the Association believes it should also be the case for permits granted for research/scientific activities. In other words, there is no point in having acreage not able to be worked by E&P companies simply because scientific research is being undertaken in respect of it.

9. If so, how do you think data disclosure should be treated under such permits? (refer to page 19)

As noted above, the Association doubts it is necessary for a new permit class to be created to accommodate commercial seismic surveys and believes the same data filing and confidentiality requirements should apply to permits which govern commercial seismic surveys as apply to all other permits.

If the confidentiality period is too long, it could stifle the ability of third parties to get the data and use it in connection with exploration activity. If the confidentiality period is too short, then seismic boat owners will not be incentivised to shoot survey data for commercial sale as there will be no market for the data (i.e., why would an explorer pay for data if it was to become open file in (say) three or six months?).

The Association is not uncomfortable that data acquired by a seismic boat owner for commercial sale should be treated on the same basis as other data acquired by permit holders. If a third party wants access to the relevant data before the expiry of the five year statutory period, it is always open to that third party to make arrangements to purchase the relevant data. There has, however, been some discussion that the confidentiality period for seismic data acquired for commercial sale could (consistent with international practice) be a longer period (for example, 8 to 10 years) to provide the best possible incentives to encourage seismic operators to come to New Zealand to shoot seismic data for commercial sale.

The Association also considers that where the Government acquires seismic data from a commercial seismic operator then that data should be available to all industry participants as soon as reasonably practicable.

10. Do you have any comment on the role of the Crown in monitoring and managing underground gas storage activities? (refer to page 19)

A distinction needs to be drawn between management of the actual storage operations and the role of the Crown once gas is extracted from a reservoir. The Association considers the Crown should have responsibility for monitoring and managing underground gas storage activities within the framework of the Act and the Minerals Programme for Petroleum but that once gas is extracted then such gas is owned by the permit holder and the Crown has no further role in the management of that gas or how it is dealt with (subject of course to the proper payment of royalties and associated reporting obligations).

11. Do you think there should be a new class of permit for underground gas storage activities? (refer to page 19)

Consistent with the approach taken in relation to research/scientific operations and commercial seismic surveys, it is not considered necessary to have a new permit class for underground gas storage operations – a petroleum mining permit with conditions which reflect the nature of the activities being undertaken would be sufficient. Although the Act and the Minerals Programme for Petroleum expressly contemplate underground gas storage operations, it would be beneficial for the Minerals Programme for Petroleum to provide for underground gas storage activities in more detail.

12. Do you think that underground gas storage activities could be carried out in the same land area as other permit activities (such as petroleum exploration)? (refer to page 19)

Yes.

13. Do you have any comments on the proposal to remove permit requirements for small-scale gold activities in river and lake beds and coastal marine areas? (refer to page 20)

No.

14. Do you have any comments on the proposals to amend sections 15 and 16 of the CMA, which deal with contents of minerals programmes and public notice? (refer to page 20)

The discussion paper does not provide enough detail as to what amendments are proposed to section 15 so the Association cannot comment in any detail on the proposed amendments. The Association requests that this detail is provided so as to enable the Association to make a meaningful submission on this issue.

A proposal is also made that Chapter 7 (relating to royalties) is removed from the Minerals Programme for Petroleum and dealt with by way of regulations. The Association opposes any such change. Royalty matters should be dealt with in the Minerals Programme together with the various other policies and provisions relating to permit allocation and management. The Association cannot see any good purpose or reason for having royalty matters separately dealt with in regulations. On the contrary, the consultation requirements that apply in relation to changes to the Minerals Programmes are especially important in the case of royalty obligations as they go to the fundamental economic basis for any E&P investment in New Zealand.

The Association agrees it is sensible for drafting and other minor changes to Minerals Programmes to be made without going through a public consultation process (although there should be a sufficient period of prior public notice (for example, three months).

15. Do you think that having the most recent minerals programme apply to all permits will make the regime more consistent and easier to operate in? (refer to page 21)

The Association believes its members have made significant investment decisions based on the policies and content of current and pre-existing Minerals Programmes which apply to them. A mandatory requirement to move to a new Minerals Programme would introduce a perception of an increased level of sovereign risk and may have a detrimental impact on current and future investments made by those companies.

Historically, permit holders have had the option to transfer to more recent Minerals Programmes if they see benefit in doing so but cannot be forced to be the subject of a new Minerals Programme. The Association suggests that the option to transfer to a new Minerals Programme be maintained, but that this should be at the permit holder's election rather than a compulsory requirement.

The Association is not aware of any difficulties permit holders have encountered where they are subject to the requirements of more than one Minerals Programme and believe maintaining the status quo is important to ensure continued investment certainty and transparency. The Association also doubts that having more than one applicable Minerals Programme is likely to make the Crown's administration of the permitting regime more cumbersome or time consuming.

16. Do you have any other suggestions for improving the consistency of the regime and the ease of operating within it? (refer to page 21)

The Association believes that ensuring the applicable regime is consistent, transparent and easy to operate within are important objectives and most (if not all) of the points made by the Association in this submission are directed towards ensuring those objectives are met.

17. Do you have any comments on the proposal to remove the matters specified in sections 24(2) to (6) to the particular block offer notice? (refer to page 21)

The Association is not sure as to the MED's underlying concern with sections 24(2) to (6). They appear to serve a useful purpose by virtue of setting out in the Act the basic framework for a Blocks Offer, and they are not onerous or complex provisions for the Crown to comply with. Please could the MED clarify why it is proposed to repeal those sections so as to enable the Association to comment more meaningfully on the proposal?

18. Do you agree with the proposal to remove section 28 of the CMA and state the policy on the granting of prospecting permits in the minerals programs? (refer to page 22)

Yes.

19. Do you agree with the proposal to remove section 36(2) from the CMA and deal with considerations for granting an extension of land or minerals in the minerals programs? (refer to page 22)

Yes.

20. Do you agree with the proposal to remove sections 37 and 36(4), (4A) and (5) from the CMA and deal with considerations for granting extensions of duration of permits in the minerals programmes? (refer to page 22)

The Association is opposed to this proposal unless considerably more detail is provided as to precisely what changes are proposed. At present, the Act provides for prospecting, exploration and mining permit durations to be extended and sets out the expected maximum periods in respect of any extensions of permit duration.

The Association believes it is very important the Act continues to expressly provide for the extension of the duration of permits in appropriate circumstances. The Association therefore opposes the proposal that sections 37 and 36(4),(4A) and (5) of the Act be removed in their entirety from the Act and dealt with in the applicable Minerals Programmes.

That said (and subject to the points below), the Association does not object to more of the detailed policies and procedures relating to permit duration extensions being included in the Minerals Programme provided the Act expressly provides (in sufficient detail) for the ability of permit holders to seek permit duration extensions and the general parameters within which such permit duration extensions are available.

The Association believes that very careful consideration needs to be given to any substantive changes to sections 35, 36 and 37 of the Act (and in particular in relation to the availability of permit extensions and the basis on which they are to be considered and, if appropriate, granted) as these sections set out fundamental aspects of the New Zealand permitting system which directly impact on exploration and production activities and investment decisions. Any changes which make less certain or transparent the ability of industry participants to obtain permit duration extensions in appropriate circumstances would be inconsistent with the objectives of the review and the Association strongly opposes any such changes being made.

By way of an initial comment, the Association considers that:

- there is considerable merit in enabling the Crown and permit holders to have flexibility in relation to the duration of an initial term exploration permit and a subsequent second term exploration permit (and we comment on this aspect in more detail in our submission on Question 23 below); and
- there should also be flexibility in relation to the requirement that 50% of the acreage which is the subject of an initial term exploration permit is to be surrendered when the permit holder seeks a second term exploration permit. In some cases (e.g. frontier or deepwater acreage), it may not be appropriate (due to, for example, the cost of exploring the entire permit area or the availability of the necessary equipment in New Zealand) for the permit holder to have to surrender half the permit area at the end of the first term.

A related (and important) point is that the Act and/or the Minerals programme should specify the applicable policies and procedures that will be applied by the Minister in determining the duration of initial term exploration permits and how much acreage (if any) is to be surrendered when moving to a second term exploration permit. This will help to ensure certainty and transparency for permit holders and also that all permit holders are treated on a consistent and equal basis.

The Association requests that further detail as to precisely what is proposed in relation to sections 35, 36 and 37 of the Act is made available to industry as soon as possible and in advance of any amending legislation being introduced into Parliament so as to enable industry to assess precisely what changes are proposed to the ability of permit holders to obtain permit duration extensions and to the duration of permits generally.

21. Do you agree with the proposal to remove the ‘specified discovery’ provisions from the CMA and deal with these matters in the conditions of the permit? (refer to page 22)

It is not clear to the Association from the discussion document precisely what is proposed in relation to the specified discovery provisions. It seems these provisions are necessary as they set up the legislative framework for permits which are granted to enable the mining of a specific discovery to be extended (or a new permit granted) where a further discovery is made in the same permit area. In practice, we understand the way this is achieved is for there to be an amendment to the permit conditions and/or the work programme.

The Association is therefore unclear as to why it is thought necessary to remove the provisions set out in sections 30(4) to (6) of the Act and have the permit conditions themselves deal with the changes to permits and/or work programmes that may be necessary to address further discoveries in the permit area. The Association would appreciate clarification on this aspect and would like the opportunity to engage with the MED on this issue once that clarification is provided.

The Association also notes that:

- it does not consider it appropriate to deal with these issues simply on a case by case basis. Clear policies and procedures need to be set out in the Act and/or Minerals Programme in order to provide certainty and transparency for industry participants; and
- it would not support any proposal that sought to remove the rights of a permit holder to receive a mining permit for a further discovery as encapsulated in sections 30(5) and (6). These are important rights which provide permit holders with certainty in relation to their investment decisions. The Association believes they must be retained in the Act and/or the Minerals Programme and would be grateful for confirmation that this is the intention.

22. Do you have any comments on the proposed change to section 30(8) and the benefits of retaining the power to grant overlapping permits for a common mineral? (refer to page 23)

Section 30(8) should be retained in its current form. The Association does not support limiting this section by requiring the grant of overlapping permits to be at the discretion of the Minister. This limits the flexibility available to permit holders to structure their arrangements as they see fit. We also note that the Crown's interests are adequately protected by virtue of the requirement for the Minister to approve work programmes for all new permits. In addition, the Association strongly opposes any proposal to repeal this section as appears to be suggested in paragraph 9.5 of the discussion paper.

23. Do you think it is desirable to increase the Minister's discretion in determining permit duration? (refer to page 23)

The Association limits its response to this Question to petroleum permits and does not address minerals permits.

Subject to the matters raised below, the Association agrees with the comments made in the discussion paper that the Crown should have the ability to be flexible in terms of the initial duration of exploration permits.

In addition, the Association notes that:

- the Minerals Programme should specify the "standard" exploration permit durations for different categories or locations of exploration activity (and onshore, offshore and frontier seem to be reasonable starting categories);

- an appropriate maximum duration for petroleum exploration permits should be specified. The Association believes that further industry consultation is required in order to determine what this maximum period should be;
- in order to ensure certainty and transparency for all industry participants, the Minerals Programme should clearly specify the policies and considerations the Minister will apply to determine the appropriate permit duration when an application for a permit is made (i.e. the circumstances that will inform a decision as to whether a particular permit should have a shorter or longer duration than the “standard” permit duration for a particular category of exploration activity);
- the durations proposed in paragraph 9.6 of the discussion document may be too “blunt”. What we mean by this comment is that although it is very likely to be the case that frontier exploration activity will take longer and be more involved than onshore or near shore exploration, it is not always the case that all onshore exploration can be done quickly (i.e. within four years or less). This will depend on a variety of factors such as permit location, prior work undertaken, access to facilities and the existing knowledge of the permit area. These considerations could usefully be reflected in the Minerals Programme as suggested above;
- there should also be appropriate flexibility for permit holders in terms of the timing of the work programme obligations required under the exploration permit (irrespective of how long the actual permit duration is); and
- it would like to discuss with Crown Minerals the general expectation that an exploration well be drilled within the first term of an exploration permit (as is often reflected in first term work programmes). While this may often be appropriate, there will be certain permits where it is not consistent with good exploration and mining practice to have this type of commitment (especially where the initial G&G work does not support a drill decision in (say) Year 4 or 5 of an exploration permit).

These considerations also directly relate to the comment the Association has made in response to Question 20 that there should be flexibility in relation to the requirement that 50% of the acreage which is the subject of an initial term exploration permit be surrendered when the permit holder seeks a second term exploration permit. This issue, and issues relating to permit duration and permit duration extensions, need to be considered together and as an integrated whole in order to achieve the optimal approach for both the Crown and industry participants.

As noted above, the Association would like to emphasise its view that any increased discretion conferred on the Minister must be exercised in accordance with Minerals Programme requirements which clearly specify the policies and considerations the Minister will apply to determine the appropriate permit durations when an application for a permit is made.

24. Do you think a tiered approach to permit duration for different exploration conditions is appropriate? (refer to page 23)

Yes.

25. Do you think that delays in work programme activities resulting from delays in obtaining consents can appropriately be dealt with by a change of conditions application? (refer to page 23)

No. The Association considers that section 35(2) serves an important purpose and should be retained. The Association also disagrees that the utility of the provision is quite limited in practice. In the event a required consent is not able to be obtained on or prior to the commencement date of the permit (despite the efforts of the permit holder to do so), it is appropriate that the commencement date of the permit should be delayed by a corresponding period.

If this is not the case, then the permit holder will be unnecessarily (and unfairly) penalised in terms of the amount of time it has to complete its work programme that has been agreed with the Crown. The ability to obtain a deferral of the commencement date will become increasingly significant (in both legal and practical terms) with the likely introduction of more involved consenting regimes (especially for offshore operations) which will potentially require more third party consultation.

It is not the case that any delay in obtaining consents can be addressed in the same manner by a change of conditions for the permit. While a change of conditions application can defer or reshuffle work programme obligations, they cannot extend the duration of the permit or otherwise allow the permit holder more time under the permit in order to “catch-up” on time lost due to a delay in obtaining consents. This is precisely what section 35(2) seeks to achieve and is an important protection for permit holders (and the Crown).

Rather than repealing section 35(2), the Association recommends that the scope of section 35(2) should be broadened to apply to extended force majeure events which delay a permit holder from undertaking operations rather than just applying to delays caused by consenting issues. Such an extension of section 35(2) would be consistent with the objectives of the review by encouraging the development of the Crown’s petroleum estate and also providing additional certainty for permit holders that they will not lose their permits (or have issues in respect of their permits) due to events which are genuinely beyond their control.

26. Do you have any comments on the proposed clarification of s32 (subsequent rights)? (refer to page 24)

The Association strongly disagrees with the proposal set out in paragraph 9.8.

The ability of a permit holder to be granted a subsequent permit (subject, of course, to meeting the requirements of section 32) is a fundamental aspect of the permitting regime. Assuming the permit holder will give effect to the permit and proposes a satisfactory work programme, the permit holder has some certainty (or at least confidence) that it will be granted a subsequent permit. This provides a key commercial rationale for the permit holder spending potentially very large sums of money at the exploration stage. If the permit holder only has a right to apply for a subsequent permit in priority to others it will have no

such certainty and therefore will be much more reluctant to spend significant sums at the exploration stage. This would result in a reduction in the overall level of exploration and mining activity undertaken in New Zealand. Far from being a clarification of the existing position, the proposed change is a fundamental (and, from the perspective of permit holders, adverse) change to the basis which underlies the permitting regime in New Zealand.

Looking at the matter from the Crown's perspective, each of the relevant limbs of section 32 is expressly subject to sections 22, 27 and 43. These sections provide more than sufficient protection to ensure the efficient allocation of permits and that the Crown receives a fair financial return. Specifically, a subsequent permit may not be granted if the permit holder cannot show it will comply with the permit conditions and give proper effect to the permit (section 27) and that the Minister is satisfied with and approves the work programme proposed by the permit holder (section 43). These provisions would enable the Minister to decline to grant a subsequent permit in circumstances where the Minister had concerns about a particular permit holder and/or the adequacy of the proposed work programme.

The Association urges the MED to reconsider the proposed changes to subsequent permit rights. It holds a very real concern that, if enacted, the proposal will have a chilling effect on the level of exploration and mining activity undertaken in New Zealand (not dissimilar to the effect of the recently repealed 10 year moratorium on gas fired power stations). The Association also considers this proposal to be fundamentally inconsistent with the objectives of the review stated in paragraph 2.1 of Part 1 of the discussion paper (especially in relation to encouraging the development of New Zealand's Crown-owned resources) and also the overarching goal of providing a certain and stable investment environment.

The Association would like to stress the significance of this issue from an industry perspective, and in particular the significant adverse effect any amelioration of the existing rights permit holders have to obtain subsequent permits will have on the level of investment in exploration activity in New Zealand (and therefore on the level of the financial return to the Crown from its minerals estate). The Association strongly recommends that the proposed clarification of section 32 does not proceed.

The Association supports the proposal set out in paragraph 9.9 that section 32 is amended to make it clear the underlying permit remains in force while any application under section 32 is considered – as noted in the discussion paper, section 32 should be consistent with section 36(5A) in this regard.

27. Do you have any comments on the proposed repeal of sections 43 and 44 of the CMA? (refer to page 24)

The Association disagrees with the proposal set out in paragraph 9.10.

The approval of work programmes is a fundamental part of the overall permitting regime and it is appropriate that the framework for the approval (or the withholding of approval) for work programmes is set out in the Act. However, the Association does not disagree with having more detail as to the policies underlying these sections and how they are to be applied in practice set out in the Minerals Programme (as is currently the case).

The Association also notes there is insufficient detail set out in the discussion paper as to precisely what is proposed. Is it intended there will be any substantive changes to section 43 and 44 if they are moved to the Minerals Programme? Section 43 (in particular) contains some very important provisions for permit holders, including a requirement for the work programme approval decision to be made within six months, specifying the grounds on which approval can be withheld (see section 43(2)(b)) and providing the permit holder with the ability to submit a modified work programme. Any change to these provisions and entitlements for permit holders is inconsistent with the objectives of the review as identified in paragraph 2.1 of the discussion paper and also with the important objective of providing investment certainty for permit holders.

The Association does not support the proposed removal of the ability of permit holders to seek to refer to arbitration any decision by the Minister to withhold approval of a work programme. Again, this is a key entitlement and protection for permit holders - the Association does not understand its proposed removal in light of the objectives of the review (and the discussion document does not provide any rationale as to why it should be removed). On the contrary, the Association is of the view that an arbitration mechanism is a very useful procedure that could facilitate the resolution of any divergence of views between the Minister and a permit holder as to a proposed work programme and the basis on which Ministerial approval has been withheld. The ability to resolve issues in this way is likely to prevent any unintended decline in the amount of E&P activity undertaken in New Zealand should satisfactory work programmes not be able to be initially agreed.

28. Do you have any comments on the proposals to better manage non-compliance? (refer to page 25)

This is an important area of the Act and Minerals Programme. The discussion paper does not provide sufficient detail as to the nature or the extent of the changes proposed nor the rationale or concerns that have triggered these proposals being included in the discussion paper. Accordingly, the Association is not able to provide a meaningful submission on a proposal to increase penalties when the proposed levels of the new penalties are not specified or even identified in general terms.

As far as we are aware, there has been no suggestion the Crown does not currently have sufficient powers under the Act to fully address any non-compliance. The Association also considers these proposals to be inconsistent with the objectives of the review as set out in paragraph 2.1 of the discussion paper and also reflected in the November 2009 Petroleum Action Plan. This is particularly the case given the discussion paper does not identify particular concerns or evidence/experience that the current provisions are inadequate to address permit compliance.

The Association requests that the MED provide more information on, and the rationale for, the proposals which address permit non-compliance so as to enable the Association to comment in a meaningful way. The Association would be very happy to meet with MED officials to discuss these matters once further detail is provided and also to gain a better understanding as to how these proposals are consistent with underlying objectives of the review.

29. Do you have any comments on this proposal to simplify the requirements for s41 transfers and dealings? (refer to page 26)

The Association supports the fundamental proposal that permit transfers and assignments require Ministerial consent but that other permit dealings should not require Ministerial consent.

Section 41 has been a cause of considerable uncertainty for industry participants and the Association fully supports the proposal described above to address these uncertainties.

In addition to the fundamental proposal described above, the Association comments as follows:

- section 41 should be expressly clear as to whether upstream changes of control require Ministerial consent – the Association’s initial view is that such changes of control should require Ministerial consent (although further work needs to be done as to whether this requirement should apply to changes of control in public companies);
- the Association is not aware of any reason why agreements which give effect to permit dealings need to be lodged with the Crown – we would be grateful if the MED could clarify why this is thought to be necessary;
- the existing Form 3 requirement should be removed – it ought to be sufficient if other parties comprising the permit holder are notified of any transfer (such being consistent with the requirements of most modern JVOAs); and
- the Association can understand why the Crown may seek to increase its reliance on bonds in connection with permit transfers in order to secure decommissioning obligations but cautions that such increased use for companies other than small or less credit worthy permit holders (or those without an established operating history in New Zealand or overseas) will have the effect of deterring investment in developing New Zealand’s petroleum resource. This result is not consistent with the objectives of the review.

The Association believes it is important that each of these matters is addressed in order to provide certainty for industry participants.

In order to provide further certainty, the Association recommends there should be a timeframe specified in the Act within which a Ministerial consent application must be determined (assuming, of course, that a complete application which fully responds to the relevant statutory decision making criteria is made and the fee payment requirements of the legislation are met). This would add considerably to industry confidence that transactions could be executed efficiently and with less risk or uncertainty and delay than is currently the case.

30. Do you have any comments on the proposal to review reporting requirements, in particular, for mining permits? (refer to page 27)

The Association cannot meaningfully comment on this proposal unless detail is provided as to what particular further information will be required from mining permit holders (see in particular paragraph 18.2 of the discussion paper).

In general terms, the Association considers the Crown receives an appropriate level of information from permit holders (especially if the recently proposed changes to petroleum the reporting requirements for petroleum reserves are enacted in the manner proposed by the MED). Does the MED have in mind any additional requirements over and above more detailed reserves reporting?

The Association does not have a strong view either way as to whether raw data should become open file after three years or whether it should remain at five years as is currently the case, and it expects individual members may make submissions in respect of this issue. The Association does suggest, however, that if there is to be a difference in the confidentiality period between raw and interpreted data then it should be very clear precisely what constitutes “raw data” and what constitutes “interpreted data”.

31. Do you have any comment on the proposal to repeal section 42A(2)? (refer to page 27)

The Association agrees the section should be repealed.

Authorisations under section 42A of the Act should not be granted on a case by case basis as is proposed in the discussion document. Rather, they should be granted in accordance with clear criteria specified in the relevant Minerals Programme. This is necessary to ensure certainty and transparency.

32. Do you consider that data acquired over adjacent unpermitted acreage (other than reasonable line tails) should be made available immediately or subject to a period of confidentiality? (refer to page 27)

We assume the MED’s intention is to introduce a new provision in the Act addressing the requirement to file data acquired over adjacent unpermitted acreage given the proposal to repeal section 42A(2)? If this is not the case, there would be no clear obligation to file such data with the Crown and therefore confidentiality would not be an issue.

Assuming it is intended to address this technical issue, the Association’s view is that any data acquired over adjacent unpermitted acreage should be filed with the Crown and remain confidential for the same period of time as the data from the permitted acreage with which it was acquired. This has the advantage of simplicity and certainty. The Association believes these requirements should apply to all permit holders and that exceptions being granted on a case by case basis is neither desirable nor appropriate.

33. Do you have any comment on the proposal to add in the CMA a general power for the Minister to reserve land and minerals from allocation? (refer to page 27)

At this stage, the Association does not support this proposal.

The Association considers the entire permit allocation methodology set out in the Minerals Programme for Petroleum (2005) requires a “ground-up” review along the lines the Association has previously discussed with Crown Minerals.

In other words, the Association believes there is little point in simply addressing one aspect of the allocation regime that is of particular interest or concern to the Crown. It is necessary that an integrated suite of proposals is developed with input from industry. Such an approach will ensure the most stable and predictable allocation framework.

The Association looks forward to working with the MED on this crucially important work stream in connection with the second part of the review work to be undertaken.

34. Do you think that the current regime is satisfactory for the development of petroleum resources from exploration to production? (refer to page 28)

Yes.

In relation to the proposal in paragraph 21.2(a) of the discussion paper, the Association strongly disagrees with a discovery triggering a development timeframe – all discoveries will be different and the permit holder and the Minister (via the work programme approval process) should determine how best to develop the discovery having regard to good exploration and mining practice as is required under the Act and the Minerals Programme. Imposing an arbitrary statutory timeframe could lead to the “forced” development of the resource in a manner inconsistent with good exploration and mining practice and also in a manner that does not maximise the recovery of petroleum and the financial return to the Crown.

In relation to the proposal in paragraph 21.2(b) of the discussion paper, the Minerals Programme largely covers these matters by virtue of the process which governs the grant of a mining permit. Is the MED seeking to address an additional matter or concern?

35. Are there benefits in, once a discovery has been made, carrying out activities under a different class of permit (eg an “Appraisal Permit” or a “Development and Production Permit”)? If so, why? (refer to page 28)

The Association does not support having separate appraisal, development and production permits. Each stage of the development can be addressed separately (and revisited if necessary) in the work programme granted under the mining permit. Is there a specific issue or concern the MED is seeking to address by virtue of this proposal?

36. Do you think the Government should consider adopting a ‘retention lease’ model for non-economic discoveries? If so, why? (refer to page 28)

Yes. Retention leases allow a field to be retained by the company that made the discovery. However, there needs to be provision for adequate ongoing permit reviews to ensure the criteria for deeming a discovery non-economic remain valid after the passage of time (and if they do not then the relevant discovery must be developed within a reasonable period of time or the permit surrendered). For example, in Australia, the retention permit regime generally operates on a five year cycle with retention permit holders being required to submit an open book economic development plan before the end of the fifth year in order to determine whether it is appropriate for the retention lease arrangement to continue. The Association would support a similar approach in New Zealand.

The Association also envisages there would be some kind of work programme under the retention lease (for example, economic analysis and field studies) to ensure appropriate monitoring and management of the discovery until it was able to be economically developed. Finally, the Association recommends that the retention lease should only relate to the area of the particular discovery rather than a broader permit area (so as to ensure that only the minimum amount of acreage was the subject of the retention lease, with the remaining area once again being available for allocation).

37. Do you think that, on the whole, the changes proposed in this discussion paper will meet the objectives of the review if implemented? (refer to page 29)

The Association believes that although some aspects of the proposed reforms will meet the identified objectives, this is not the case with all the proposals (many of which appear to seek to address issues of particular interest or concern to the Crown rather than appropriately balancing the Crown’s interest as owner of the petroleum resource against the need to create the optimal investment environment for E&P companies (and thereby encouraging the actual development of the resource by those E&P companies)). This imbalance can be addressed by adopting the various submissions and suggestions made in this document which would (in the Association’s view) effectively redress this perceived imbalance and achieve the objectives of the review.

The Association also notes that given many of the issues raised in the discussion document will require further policy and detail/drafting work to be undertaken in the context of the Minerals Programme review. Much of this detail cannot be known at this stage and it is therefore difficult for the Association to express a concluded view on the Question posed.

38. Do you have any comments on the proposed changes to the definitions? (refer to page 30)

No.

39. Do you think it would be preferable to use definitions (eg the definition of “petroleum”) that are used by industry (such as the Petroleum Resources Management System)? (refer to page 30)

Yes.

It is desirable that all defined terms are used on a consistent basis throughout all relevant legislation.

40. Do you have any comments on the proposal to clarify the rights of the Crown to carry out data acquisition activities? (refer to page 34)

The Association supports this proposed change.

Concluding comments

The Association would like to express its appreciation for the opportunity to submit in respect of the changes proposed in the discussion paper.

In summary, the Association considers it to be important that the changes to the Act and Minerals Programme take effect as an integrated whole having regard to the objectives identified in this submission and that those changes are directed towards ensuring investment certainty, clarity and transparency for participants in the industry.

Please do not hesitate to contact me or the Chairman of the Association should you wish to discuss any aspect of this submission in more detail.

Yours sincerely

John Pfahlert
Executive Officer