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Parliament Buildings
Wellington

Submission: Questions Arising from the Regulatory Responsibility Bill

1. INTRODUCTION

The Petroleum Exploration and Production Association of New Zealand (PEPANZ) welcomes the opportunity to comment on the paper entitled *Questions Arising from the Regulatory Responsibility Bill* (referred to as 'the paper').

PEPANZ strongly supports moves to progress a Regulatory Responsibility Bill (RRB) and believe the RRB is at a stage of development where it should proceed.

2. THE NEED FOR A REGULATORY RESPONSIBILITY BILL

Do you agree that the quality of legislation (Acts, statutory regulations, tertiary legislation) in New Zealand is often not as good as it could or should be? If so, what do you see as the main problems with quality, and the main causes of those problems?

Do you agree that existing parliamentary and administrative processes are unlikely to be sufficient to encourage substantial improvements in the quality of legislation? Please explain the reasons for your view.

Overall Views

PEPANZ agrees with both of the above questions. The quality of legislation in New Zealand could be improved. Existing parliamentary and administrative processes do not always deliver quality legislation.

Given that New Zealand continues to slip further behind regarding key international comparisons such as GDP per capita, improving our performance in legislative and regulatory development is vital. If we were to compare ourselves with our closest economic neighbour, the goal of catching up to Australia by 2025 is becoming further out of reach under the status quo.

While New Zealand's is in a relatively good position regarding its ranking in some regulation/compliance international studies (for example the Fraser Institute report on the petroleum industry ranks us at 18th), we need to grab and expand upon any advantage we can get to ensure New Zealand improves its competitive position. Addressing the quality of regulation is certainly one primary area which will assist in that regard.

Existing Processes for Consultation

PEPANZ regularly submits on a range of issues that have impacts on the petroleum development community, whether these are in the form of Bills, discussion documents/papers etc. Often the process of legislative development is neither transparent, nor conducive to good policy outcomes.

Our concerns about existing regulatory processes extend to discussion documents. If proper regulatory process is not taken into account, the recommendations from discussion documents can effectively be turned into legislation, even when substantive numbers of submitters have argued against certain recommendations.

To illustrate the poor regulatory processes that are often embedded in discussion documents/papers, a recent discussion document on the review of Schedule 4 of the Crown Minerals Act outlined various proposals for reform of access to land for exploration.

The final outcome was that decisions were made in respect of access to Marine Reserves which will negatively impact on petroleum exploration, a proposal that was not even canvassed in the original discussion paper.

Another example was legislation passed in 2008 banning new thermal power generation. This was done with little consideration of the consequences to investment in exploration.

Current practices are simply not up to the mark in terms of ensuring changes to legislation or the introduction of new legislation is of a standard that leads to good policy outcomes. Further measures are required to improve the quality of such legislation at the point of introduction.

3. THE NATURE AND SCOPE OF THE BILL

Do you agree that systematic testing of legislation against a set of established principles will help improve regulatory quality?

Yes. There should be a process for systematic testing of regulation, as the examination of regulation needs to be regular and comprehensive if it is to be successful.

One way is to test against a set of established principles (such as those outlined in the RRB). Another possibility is a review by government. At a broad level, we would agree that such reviews should occur in some shape or form. However, there can be potential drawbacks to Government Review. Reviews can often be ad hoc, and there is the potential for bias in the review process from both within a government department and even at a Ministerial level.

There may be vested interests within a department that need to be recognised, as well as a need to incorporate Ministerial views. While we would expect any departmental review to produce an unbiased and informed decision, there will always be questions surrounding this approach given many government departments often have large regulatory budgets.

Also, a significant problem with regulatory reviews is that governments often get 'tired' after a certain time has passed as more pressing political issues often get in the way. This can be exacerbated if a review requires greater resources to ensure it is carried out properly. A government may feel increased resources may be better used elsewhere for political gains that are more instantaneous.

While we would want to see regulatory reviews of various forms take place, PEPANZ believes a more systematic approach such as the RRB provides the opportunity for comprehensive coverage.

The Taskforce considered that all levels of legislation (i.e. primary, secondary, and tertiary) should be tested against a set of principles. What levels of legislation do you think would benefit from such testing?

PEPANZ's general view is that the net for improving the quality of regulation should be wider, rather than limited to a specific section of the broad legislative process. We welcome the stance of the Taskforce in broadening the definition of legislation to cover all products of legislation. There are many instances where the passing of regulations without a proper regulatory process has been just as damaging to growth as the passing of a Bill before Parliament.

4. THE EFFECTIVENESS AND IMPACT OF THE BILL

Are the courts the best external body to assess the consistency of legislation with the principles set out in the Taskforce's Bill? If not, what other bodies might fulfil this role?

PEPANZ believes there are minimal options for identifying an alternative external body better placed to assess the consistency of legislation with the principles set out in the Bill than the courts. The only other option of any note might be the upcoming New Zealand Productivity Commission (NZPC), given its mandate for regulatory investigations and productivity focus. Overall, while we would not object if a credible and robust alternative was promoted, we would favour the courts as the best external body to make assessments.

5. CLARIFICATIONS ON THE REGULATORY RESPONSIBILITY BILL & POTENTIAL ALTERNATIVE MECHANISMS

Are there any other aspects of the Regulatory Responsibility Bill that you consider could be clarified or improved?

The Taskforce's Regulatory Responsibility Bill suggests one set of measures for improving regulatory quality in New Zealand. Given your answers to the questions outlined above, can you think of any possible measures not suggested by the Taskforce that might help improve regulatory quality? These measures may be supplementary to the Taskforce's suggestions or in place of some or all of them. Please explain the reasons for your views.

Process for the Regulatory Responsibility Bill

In our opinion the Bill has been through adequate consultation, will have a strong positive effect on the quality of regulation, and should proceed. There is nothing preventing elements of the RRB which for whatever reason create issues in the future from being rectified, especially when the exact problems are better understood. This is another reason why a 5-yearly review of the RRB needs to take place so that any unintended consequences can be outlined and improved upon.

Regulatory Responsibility Bill – Part of the Solution

In our view the Government should undertake the following course of action:

- An independent government body is established that oversees all regulatory practices. This body effectively becomes a 'Gate Keeper' for regulation and legislation;
- The introduction of a Regulatory Responsibility Bill;
- All proposed Bills and regulations have a cover sheet attached that provides an identification of the purpose of the regulation and pass/fail mark by the independent government body regarding the impact the proposals will have in terms of regulatory burden;
- Sunset clauses are introduced so that all regulations and legislation are reviewed,
- Regulatory Impact Statements and Business Compliance Cost Statements are attached to all Private Members' Bills, and there is further exploration of other areas where these could be included

Less Regulation vs Quality of Regulation

As paragraph 1.2 of the Taskforce's report states, *'The taskforce is satisfied of two principal points: first, as matters of both principle and practicability, there can and should be less regulation and better legislation...'* While we understand the general thrust of this statement, we urge caution in respect to the idea of 'less regulation' as an end in itself.

Decreasing the number of regulations often carries with it the notion of specific target setting for regulatory change. While we support the stipulation of a clearly defined outcome at the beginning of any process or task, the idea of reaching a specified target can end up creating perverse outcomes as it becomes a means to an end, with the target taking attention away from the process getting there.

For example, say a target of reducing the number of regulations in existence by 20% over three years was introduced. Simply reducing the number of regulations by that amount may have minimal economic benefits if only redundant legislation was taken out to obtain 'easy runs on the board'. If, however, a comprehensive review took place that put a stronger focus on those pieces of regulation that were causing the greatest issues for business, subsequent changes may mean only 5% of regulation was altered or withdrawn, but had a far stronger positive outcome. Again, while we support a defined outcome, introducing targets can often be a fraught path to take.

The notion of how best to handle reducing the number of regulations in New Zealand means avoiding policy practices often adopted offshore that typically mirror a "one-in, one-out" approach. PEPANZ rejects this type of approach. Improving the quality of regulation is not about balancing the number of regulations in existence. It is about improving the quality of regulation.

If the introduction of a new regulation means the subsequent removal of another, then we would argue why wasn't the removed regulation eliminated in the first place? Why has it taken the introduction of a new regulation before an inadequate one was removed? Simply put, any

improvement in regulation should automatically involve the modification and removal of inadequate regulation, and the introduction of any new regulation should involve a high threshold test.

Extension of Regulatory Responsibility Bill to Local Government

Paragraph 1.30 of the Taskforce paper briefly mentioned the principles of responsible regulation are of equal application to local government legislative activities. However, the Taskforce did not specifically consider whether the mechanisms proposed in the Bill should be applied in such a way. Instead, it recommended that further work be undertaken to address the issue of how best to ensure quality legislation at a local government level, with a view to reporting recommendations as part of the first 5-yearly review of the Bill.

PEPANZ agrees that future work needs to be carried out regarding local government regulation. Significant changes to the Local Government Act in 2001 giving local governments the power of general competency led local authorities to view their activities as needing to be managed to '*promote their social, economic, cultural, and environmental well-being in the present and for the future*'.

This meant many well-meaning local authorities undertook activities or imposed interventions that either duplicated or were at cross-purposes to national economic, social, and environmental policies. Therefore, a line must be drawn between what is sensible to handle on a national basis and what should be handled at a local level. The extension of a RRB to the local government area would certainly be a step in the right direction.

Sincerely

John Pfahlert
Executive Officer