

Submission | Reviewing the Crown Minerals Act 1991
discussion paper

8 October 2010

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

To whom it may concern,

Please find attached the Sustainable Future Institute's submission on the above discussion paper. The Institute has significant concerns over the proposals contained in the 'Reviewing the Crown Minerals Act 1991 discussion paper'.

Importantly, we acknowledge that the Institute is not an expert in law relating to mineral and petroleum exploration, nor is it well versed in the technical aspects of this sector. For this reason, we do not address the specific technical questions raised by the Ministry of Economic Development. However, we hope you will find our approach useful. Our Institute is committed to ensuring government pursues integrated, long-term thinking, and that decision-making processes are transparent, decision-makers can be held accountable and those harmed can gain justice.

The Institute also wishes to appear before the committee to speak to this submission. Our contact details are provided below.

Kind regards,

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Chief Executive

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About Sustainable Future Institute

The Sustainable Future Institute, founded in 2004, is an independent think tank specialising in research and policy analysis. Our purpose is to produce timely, complete and well-researched information focused on New Zealand's long-term future.

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Introduction

Before investing public funds in this initiative, the government, in addition to completing an initial economic assessment, should undertake an initial environmental impact assessment (EIA). The Institute also has concerns around the quality and timeliness of public information, the level of analysis and clarity over the ongoing process.

The New Zealand government, as owner of all mineral deposits on Crown land, has a responsibility to provide independent, thorough and timely information to all New Zealanders, both in their role as (i) owner/occupier and as (ii) the representative of the public good for current and future generations of New Zealanders. Undertaking both roles places an additional onus on government to deliver high levels of transparency and accountability. Of particular concern in the discussion paper is the encouragement to companies to seek economic gain without sufficient consideration of all associated economic, social and environmental impacts.

Of further concern is the quality of information being relied upon, the quality of the process being followed and the level of independence of information providers and decision-makers. For this reason, we ask that the terms of reference of any reports be carefully scrutinised in regards to accountability and independence and that any such information relied upon is made public to enable a high level of transparency.

Secondly, we ask that a thorough analysis of the risks, costs and benefits associated with the review of the minerals management regime be undertaken. Pivotal to such an assessment is the need for comprehensive engagement with a wide range of stakeholders.

What follows is a discussion of (i) our general concerns, (ii) our specific concerns and then (iii) our response to selected submission questions. Where possible, we have made suggestions as to how the process and outcomes could be improved.

(i) General Concerns

The Institute has significant concerns over the proposals contained in the 'Reviewing the Crown Minerals Act 1991 discussion paper', in particular that:

1. The purpose, and therefore the focus of this paper, is solely on economic growth (in other words an integrated approach is not taken);
2. The policy and decision making process is not always transparent and does not appear to be based on underlying principles;
3. The paper does not identify nor discuss the implications of proposals in terms of risks, costs and benefits, and does not take into consideration the precautionary approach.
4. There remains a lack of clarity over who is accountable for these decisions; particularly if things go wrong and current or future generations wish to raise questions about the reasoning and quality of the outcomes from these proposals. For example, what forms of remedy are available to those who deserve to be compensated for harm done?

For these reasons, we believe:

- (i) Regulations need to adopt a holistic approach, broader than a sole economic focus, for the long-term public good;
- (ii) Regulatory bodies have a leadership role; they should actively support and encourage best practice in the industry through requiring entities to attain to the highest standard of operation. Government does not encourage this best practice through legislation based solely upon economic growth. Entities should

- be supported in moving beyond a rule-based approach, and encouraged to provide voluntary company records, environmental reports, health and safety information and financial reports through integrated annual reporting;
- (iii) Regulatory bodies (such as MED, MfE, and the EPA) should work together to actively pursue a much more integrated approach to regulation than is currently employed; and
 - (iv) Regulatory policy should always take into consideration emerging trends, possible risks and upcoming opportunities; in other words, an effective public policy is one that takes a long-term view.

As a result we make the following suggestions:

1. **A Central Comprehensive Register for the Petroleum and Mining Industry**
Ultimately, the Institute would like to see a central register established for all significant companies (see the Institute's [submission](#) to MED on the Review of Securities Law: Discussion Paper, September 2010). We consider the petroleum and mining industry is 'significant', and as such believe the first step would be for MED to prepare a register of each entity's company records, financial reports, health and safety record, licenses, copies of any agreements signed by government, and their environmental record (both in New Zealand and overseas). New Zealanders deserve to know who is mining in New Zealand. We believe this will reduce compliance costs, drive better public policy, provide more clarity (and benchmarking) for companies and ensure the market is more informed and therefore operates more effectively. Finally, this would create a best practice culture; all of which delivers the optimal outcome for this country.
2. **A Central Government Register for Discussion Papers 'out for' Public Consultation**
Improvements need to be made to ensure effective consultation takes place with regard to discussion documents published by government departments. The current 'department-specific' approach is reliant on members of the public hearing about a discussion document through the press or other means, and then managing to find the document on one of a number of possible websites; this is problematic.

The Institute would like to raise the idea of the establishment of a government website that lists 'all discussion papers open for public feedback', ideally with links to the relevant government departments and ministries. We consider this a simple and cost-effective solution that would lead to a more effective process and improved transparency; one in which government agencies would have the benefit of an increased range of diverse opinions and innovative solutions.

(ii) Specific Concerns

The Institute has three specific concerns:

1. **Ensure the purpose is broader than just economic**
The focus on economic gains implies only the economic impacts will be assessed. We are a strong advocate of an environmental impact assessment sitting alongside any economic impact assessment. Further, Figure 1 (attached) outlines the different stages in the assessment process, in that the government needs to investigate the costs, times, and outcomes within each stage. Analysts should look closely at the outcomes in terms of benefits to New Zealand in the long-term. In other words, if international companies are making the profit and

there is minimal benefit for New Zealanders, this investment should not be pursued.

2. Provide more clarity over the decision making process

This leads us to the following suggestions:

(i) Consider the long-term view

We ask government to consider the long-term view. Future governments may want to regulate for the protection of minerals, so there is a real opportunity to make the purpose broader and more useful for future generations – both in terms of improving accountability and transparency.

(ii) Regular reporting back on the Petroleum Action Plan

If government wishes to pursue changes to regulations based solely upon economic growth there must be significant clarity concerning why the government sees this investment as worthwhile. Regular public reporting on the Petroleum Action Plan should be undertaken so that progress can be monitored and assessed by all New Zealanders.

(iii) Independence of those advocating for changes to regulations governing New Zealand's petroleum and minerals (from mineral investors)

To prevent possible conflicts of interest occurring, information collectors and information users must be different organisations. In other words there must be no vested interests, otherwise the independence of the information, and any subsequent decisions based on this information, could be called into question.

3. Provide more information to the public on the risks, costs, benefits and Information, Process and Decision Making

We discuss each in turn:

A: Risks

Economic, environmental, social and cultural risks have been inadequately assessed and insufficiently understood to ensure a robust decision on an issue of high national importance. Limitations and controls to manage any risks for both current and future New Zealanders have not been explored.

B: Costs

The costs of pollution and potential drops of revenue in other areas such as tourism have not been identified and valued. The cost to the integrity of New Zealand's 100% Pure image and our ability to claim a premium on the marketing of our exported products and services have not been assessed. Long-term costs associated with mineral extraction, pollution and amenity value of the impacted environment have not been quantified.

C: Benefits

We believe the benefits have not been sufficiently identified, quantified or explored over substantial time frames in the discussion document. Potential economic profits and who they will benefit have not been adequately stated. The extent to which these profits will stay in New Zealand or be accrued to overseas investors needs to be addressed. Benefits should be assessed over longer time frames to ensure decisions are being made with future generations in mind. Non economic benefits to our country also need to be assessed and given due weight.

D: Information, Process and Decision Making

Of high concern is the transparency of information made publicly available throughout the consultation process. Questions around conflicts of interest, independence of information providers and the quality and purpose of the information provided need to be openly addressed to ensure stakeholders are accurately informed; as well as to encourage engagement and satisfaction in the standard of consultation and resulting decisions. New Zealanders need to be informed to enable them to choose whether or not to be involved in the policy process.

(iii) Responses to selected submission questions

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

Amendments to the Crown Minerals Act have been proposed to encourage economic growth. Sustainable economic development should be considered in relation to environmental, social and other opposing economic impacts (i.e. on New Zealand's tourism industry and clean green image in international markets). Focusing on economic gain in isolation of the above impacts places a large risk on New Zealand's economy and well-being.

2. Should the CMA have a purpose statement? (discussion paper page 17)

The review of the New Zealand minerals management regime states that it seeks to align the regulatory regime with an economic growth agenda and regulatory reform agenda. Without considering these agendas alongside social and environmental costs, benefits and risks, the purpose of the review shows poor process and overall strategy. The CMA should have a purpose statement, but one which does not focus on economic growth in isolation of all other impacts.

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

An appropriate purpose statement for the CMA would address all issues of economic, environmental, social and cultural benefits, costs and risks.

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

No there is no validation for the Minister of Energy and Resources to hold discretion in determining permit duration. The Minister of Conservation is proficient to act alone in making these decisions. Streamlining and simplifying the regime to reduce the necessary cost for mining companies can result in grave consequences of reduced environmental compliance. The Minister of Energy and Resources should not be involved in this process. The Minister would be conflicted if he was involved in this process as inherent to the portfolio is the requirement to promote activities such as mining. The responsible Minister, being the land-holding Minister, should hold the discretion to determine permit duration.

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

The current regime is not satisfactory for the development of petroleum resources from exploration to production. The Crown Minerals Act does not deal with environmental considerations. By assigning all environmental regulatory responsibility to a separate piece of legislation (the RMA) inconsistencies and oversights are likely to occur.

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

The Institute opposes the objectives of the review, and as such does not wish to comment on whether the proposed changes will meet these objectives.

Summary

The Petroleum Action Plan sets out seven key actions which government is prioritising to “ensure New Zealand is a highly attractive global destination for petroleum exploration and production investment”. This direction in policy will have major impacts on New Zealand’s highest producing economic sector, agriculture, and our second highest earning sector, tourism. Government claims that the petroleum and minerals sector has the greatest potential to contribute to New Zealand’s economic performance; it also has the potential to produce highly detrimental effects to both our economy and environment.

Good governance requires good processes. Effective public policy is developed with consideration of any possible impacts across all economic, social, environmental and cultural sectors. Evidence based policy assesses all risks, costs and benefits over substantial time frames. An integrated approach is achieved through cross agency interaction, coordinated legislation and regular reporting requirements. Proficient policy and quality decisions are reached by transparent and accountable consultation processes and decision-making. New Zealanders deserve all of the above.

The purpose of the review is not in the best interests of New Zealanders and our future generations.

Figure 1: Stages in the Assessment Process

