Crown Minerals Amendment Bill 2001

Government Bill

As reported from the Commerce Committee

Commentary

Recommendation

The Commerce Committee has examined the Crown Minerals Amendment Bill and recommends that the bill be passed with the amendments shown.

Summary

Government members support the principle behind this bill, which is to improve the management and allocation of rights to Crown-owned minerals and to address issues that have arisen concerning the transition from the previous regime under the Mining Act 1971 and the Coal Mines Act 1979 to the regime under the Crown Minerals Act 1991 (the principal Act). We considered a number of changes to the bill and Government members recommend the following:

- that new section 36(5A) be amended to ensure it is clear all permits subject to an application for extension of duration will continue until the application is determined
- that clauses 22 and 23 be amended to take into account the 19 September 2002 announcement, by the Associate Minister of Energy, which announced the Government's intention to propose amendments to this bill to remove the right to apply for a new licence or variation to the term of an existing licence from that date

- that the Court's final judgement in the proceedings *Glenharrow Holdings Limited v The Attorney-General and Te Runanga O Ngai Tahu* be protected and that any decision regarding this litigation be applied to any application made prior to 5 pm on 19 September 2002 for a new mining licence under section 77 of the Mining Act 1971 or section 48 of the Coal Mines Act 1979 or an extension of duration of a mining privilege under section 103D of the Mining Act 1971
- that 'with the consent of the permit holder' be omitted from new section 91A, inserted by clause 19.

Background

The Act applies only to minerals owned by the Crown. [1] The principal Act, which is administered by the Ministry of Economic Development, prescribes rights, obligations and processes in respect of the mining of Crown-owned minerals, including access to both private and Crown land. It does not apply to privately-owned minerals. The principal Act repealed the Mining Act 1971, the Coal Mines Act 1979, and the Petroleum Act 1937. When these Acts were repealed the intention was that existing mining licences would not be able to be renewed or extended and that when they expired, licence holders would have to comply with the requirements of the principal Act. However, a Court decision in *Glenharrow Holdings Limited v The Attorney General* [2] held that the principal Act did not extinguish the right of mining licence holders to apply for a new mining licence or to extend the term of a mining licence as a variation to the conditions. A subsequent decision has since clarified that there is no power to grant new mining licences. However, those decisions are now subject to appeal.

The bill removes the doubt as to whether the right exists for a new mining licence to be granted, or for the term of a licence to be extended, under the old Acts. It makes explicit that there is no entitlement for compensation. The bill will also ensure that repealed legislation is not perpetuated and protects landowners.

[1] See Long Title of the Act: An Act to restate and reform the law relating to the management of Crown owned minerals.
[2] [2001] 1 NZLR 578.

Glenharrow Holdings Limited litigation

In 2000, Acting Chief Justice Heron held that the principal Act did not extinguish the right of mining licence holders to apply for a new mining licence and that licence holders could still extend the term of a mining licence. While Acting Chief Justice Heron held that Glenharrow Holdings Limited (Glenharrow) had the right to apply for a new licence, he expressly left open the question of whether a new licence or extension should be granted.

Glenharrow initiated further proceedings against the Crown in the High Court to determine the obligations of the Crown when considering Glenharrow's applications for extension and renewal. Justice Chisholm disagreed, in the second *Glenharrow* decision, [3] with the proposition that mining licence holders continue to have a right to be granted a new licence for the following reasons:

- if the court applied Glenharrow's interpretation, this would mean mining licences can be perpetually renewed
- the language used in section 77(2) of the Mining Act 1971 suggests the Minister has the right to decline an application suggesting that there is no automatic right of renewal
- the concept that a new licence can be granted is not reconcilable with the scheme of the principal Act and the Ngai Tahu (Pounamu Vesting) Act 1997, particularly the transitional provisions.

Justice Chisholm held that the Minister of Energy was not able to grant a new mining licence under section 77 of the Mining Act 1971 following the repeal of that Act. Justice Chisholm also determined that the definition of 'existing privilege' not only referred to a licence granted under the Mining Act 1971 but one that also must have been in force immediately before the date of the commencement of the principal Act. The effect of the second judgment is that there is now a court order saying the Minister of Energy cannot grant a new mining licence to Glenharrow. Glenharrow have appealed the decision in relation to section 77 of the Mining Act 1971. Ngai Tahu have appealed the decision in relation to section 103D of the Mining Act 1971.

[3] *Glenharrow Holdings Limited v Attorney General and Te Runanga o Ngai Tahu* HC WN CP242/00, 2 October 2002.

Pounamu and Ngai Tahu

Crown-owned pounamu was transferred to Ngai Tahu in 1997 as part of the Crown's interim settlement of their historical Treaty claims. The Minister of Energy, through the Ngai Tahu (Pounamu Vesting) Act 1997, implemented the pounamu requirements of the settlement. The Act includes a specific provision that existing privileges, and the rights and obligations of holders of existing privileges are not affected by the vesting. It also provides that all royalties paid to the Crown in respect of pounamu must be passed on to Ngai Tahu.

Specific references to new mining licences were not expressly referred to in the Ngai Tahu (Pounamu Vesting) Act 1997, as it was considered that new licences could not be issued. In the first *Glenharrow* decision the Court ruled Glenharrow had a right to apply for a new licence under the Mining Act 1971.

In the second *Glenharrow* decision Justice Chisholm said that Ngai Tahu does not have the power to veto the variation application. However, Ngai Tahu does have the power to lodge an objection with the Environment Court once the variation application has been notified. He concluded that Ministers of Energy and Conservation can consult Ngai Tahu and take Ngai Tahu's views into account, but that Ministers will need to keep in mind the policy of the Mining Act 1971, which is that the land in question and the minerals underlying it are open for mining.

Land access for minerals and coal

Under the repealed legislation a miner accessing Crown-owned minerals on privately-owned land did not require the permission of the landowner, except in limited circumstances. If the landowner would not grant access, a miner could apply to the Minister to open the land. Landowners could obtain compensation for loss or damage resulting from the miner's right of access. The regime gave mining a privileged position and landowners were not well protected under the old legislation.

The granting of a permit under the principal Act does not confer on the permit holder an automatic right of access to any land. Prior to commencing prospecting, exploration or mining activities a permit holder must reach an appropriate land access arrangement with the landowner and/or occupier (except for minimum impact activities). The land access provisions for mineral and coal provide owners and

occupiers of land with complete veto rights over land access, subject only to the power to be granted by an Order in Council. [4]

Some members of the minerals industry believe that the current land access provisions give too much power to landowners. One submitter advocated the availability of a compulsory arbitration procedure in all cases where the landowner refuses to allow exploration or mining on their land. Government members consider that such an amendment to the land access requirements for minerals and coal would represent a substantial revision of the rights of landowners. This would also be a significant departure from the objectives of the Resource Management Law Review. During that review a conscious decision was made to place more emphasis on the rights of landowners and for the treatment of minerals to be brought into line with the treatment of other land use.

Extension of duration of permits

In order to ensure that exploration permit holders cannot avoid the requirement to relinquish 50 percent of their permit area on renewal, clause 5 of the bill inserts a new subsection (4A) into section 36 of the principal Act. [5]

An application for extension of duration can be made right up to the expiry of the permit. Section 36 of the principal Act requires that the application be processed while the permit is still current. In the past a special interim extension has been granted. However, after new section 36(4A) is added this will no longer be possible. To address this, clause 5 of the bill adds a new subsection (5A) into section 36 of the principal Act to provide that 'a permit that is the subject of an application for an extension of duration continues in force until the Minister determines the application.'

The purpose of clause 5 is to ensure that whenever there is an application to extend the duration of a permit, the permit will continue until a decision is made on the application. The way the bill is currently worded makes it unclear whether the new subsection (5A) applies to applications for extensions of duration under section 37 as well as section 36.

[4] Section 66 of the principal Act gives the Governor-General the power to declare, by Order in Council, that an arbitrator must determine an access arrangement between the permit holder and the owner/occupier on the grounds of public interest.

[5] Section 4A states that 'the duration of an exploration permit must not be changed under this section and may only be changed under section 37.'

Government members recommend that new subsection (5A) be amended to ensure that it is clear that all permits that are subject to an application for extension of duration will continue until the application is determined.

Variations and new licences

Clause 22 of the bill repeals and replaces section 111 of the Act. The new section removes the right of current mining licence holders to apply for new mining licences under the now repealed Mining Act 1971 and the Coal Mines Act 1979. Clause 23 inserts new section 111A, which removes the right to vary the term of a mining licence under the Mining Act 1971. On 19 September 2002 the Government announced a policy decision to propose amendments to the bill so that the removal of the right to apply for a new licence or a variation to the term of an existing licence will take effect as of 5 pm on 19 September 2002. Government members recommend that new section 111, substituted by clause 22, be amended.

Government members also recommend that clause 23, which inserts new section 111A, be amended. The amendments do not affect applications that were received before this date. These applications will continue to be processed under the Mining Act 1971 and the Coal Mines Act 1979.

In addition to this amendment Government members were concerned that the Court's final judgment in the proceedings *Glenharrow Holdings Limited v The Attorney-General and Te Runanga O Ngai Tahu* [6] be protected. Government members recommend that any decision regarding this litigation be applied to any application for an extension of duration of a mining privilege filed prior to 5 pm on 19 September 2002, under section 103D of the Mining Act 1971, and any application for a new mining licence filed prior to 5 pm on 19 September 2002, under section 77 of the Mining Act 1971 and section 48 of the Coal Mines Act 1979.

Correction of errors or omissions

Clause 19 inserts a new section 91A into the principal Act. This section allows the Secretary of Commerce to correct any clerical error or omission in a permit document that was made by the Ministry of Economic Development. Government members recommend that 'with the consent of the permit holder' be omitted, as it is

[6] Filed in the High Court of New Zealand at Wellington under CP 242/00.

unnecessary since the error can only be of a clerical nature and in a document created by the Ministry.

New Zealand National Party and ACT New Zealand minority view

The National and ACT Parties will not be supporting the passage of this bill for the following reasons:

The bill is essentially constructed around a recent High Court decision concerning the transition from the previous regime under the Mining Act 1971 and the Coal Mines Act 1979 to the regime under the Crown Minerals Act 1991.

It is our view that in the face of *Glenharrow Holdings Limited v The Attorney General* [2001] 1 NZLR 578, the decision upheld property rights held by miners who had gained licences under the Mining Act 1971. It further made it clear that those licensees were able to continue to apply for extensions to their licences of the Mining Act 1971.

While we appreciate that the bill does protect the court-won gains of Glenharrow and a number of others who applied for an extension of their licences prior to the decree issued by the Honourable Harry Duynhoven in which he stated applicants miners with current permits who did not apply for an renewal or extension prior to 5 pm on the 19th September 2002 would have their rights expunged by this retrospective legislation.

It is strongly our view that for some time now Crown Minerals have inappropriately advised those who held licences under the 1971 Act that they could only continue their operations if they sought a permit under the 1991 Act when the *Glenharrow* case makes it clear that is not correct.

Our concern is that there are many licence holders who have allowed their licences to lapse over the past 10 or more years because they accepted the advice of Crown Minerals. It seems to the New Zealand National Party and ACT New Zealand that they have been deprived of a property right that they at all times held.

It is also clear to us that no government could have intended the Crown Minerals Act 1971, which it has been stated many times passed through Parliament almost in tandem with the Resource Management Act 1991, would end up being a bill that virtually prevented expansion of the mining industry in New Zealand.

We accept that landowners should have the right of granting access to mining operations. We do not believe though that such access should be unreasonably withheld. We further note that most of the

mining permit applications are for activity on lands currently administered by the Department of Conservation.

Officials have been unable to advise the committee if and when the Department of Conservation has ever granted access to its lands for the purposes of mining since 1991. We do not consider it appropriate that the mining industry in New Zealand can, on the one hand, seek and be granted a permit by one government agency, only to have the practical application of that permit prevented by another.

Accordingly, we do not believe this bill satisfactorily deals with the difficulties that the mining industry has in reaching a fair compromise between those who would lock New Zealand up permanently and deny all rights for mining operations and those who believe that the sustainable mining of minerals, in conjunction with good environmental practice, is appropriate and can significantly contribute to economic growth in this country.

We believe this piece of legislation, which has been time consuming and we are sure costly, reacts to a particular situation without consideration of what that particular court decision could mean for the entire mining industry. The bill it seems to us is an inappropriate amendment to the Crown Minerals Act 1991 and accordingly will not have our support.

Appendix

Committee process

The Crown Minerals Amendment Bill was referred to the committee on 18 December 2001. The closing date for submissions was 28 February 2002. The committee received and considered 20 submissions from interested groups and individuals. The committee heard 11 submissions. Our consideration took five hours and 33 minutes; the previous committee's consideration took three hours and one minute. The committee received advice from the Ministry of Economic Development.

Committee membership

Mark Peck (Chairperson)
Gerry Brownlee (Deputy Chairperson)
Brent Catchpole
Darren Hughes
David Parker
Hon Richard Prebble
HV Ross Robertson
Hon Maurice Williamson

Key to symbols used in reprinted bill

As reported from a select committee

Struck out (majority) Subject to this Act,	Text struck out by a majority
New (majority) Subject to this Act,	Text inserted by a majority
⟨*Subject to this Act,*⟩	Words struck out by a majority
⟨Subject to this Act,⟩	Words inserted by a majority

Hon Harry Duynhoven

Crown Minerals Amendment Bill 2001

Government Bill

Contents

The Parliament of New Zealand enacts as follows:

1 Title

(1) This Act is the Crown Minerals Amendment Act **2001**.

(2) In this Act, the Crown Minerals Act 1991[1] is called "the principal Act".

[1] 1991 No 70

2 Commencement

This Act comes into force on the day after the date on which it receives the Royal assent.

Part 1
Amendments relating to Crown owned minerals

3 Interpretation

Section 2 of the principal Act is amended by omitting from paragraph (a) of the definition of **occupier** the words "(other than minimum impact activity)".

4 New section 25A inserted

The principal Act is amended by inserting, after section 25, the following section:

"25A **Record of permit**

"(1) On the granting of a permit, the Secretary must forward 1 copy of the permit to the permit holder.

"(2) The Secretary must also forward 1 copy of the permit to the Registrar of the Māori Land Court if the permit was granted in respect of Māori land.

"(3) On receipt of a copy of a permit under **subsection (2)**, the Registrar of the Māori Land Court must enter in his or her records the particulars of the permit."

5 Change to permit

(1) Section 36(1) of the principal Act is amended—

(a) by omitting the expression "section 38", and substituting the words "sections 37 and 38"; and

(b) by inserting, after the words "permit relates,", the words "or decrease the minerals to which the permit relates,"; and

(c) by omitting the words "a certificate of change of conditions or a certificate of extension, as the case may be", and substituting the words "a certificate of change to the permit".

(2) Section 36 of the principal Act is amended by repealing subsection (4), and substituting the following subsections:

"(4) The duration of a prospecting permit may not be changed under this section to any date that is more than 4 years from the commencement date of the permit.

"(4A) The duration of an exploration permit must not be changed under this section and may only be changed under section 37."

(3) Section 36 is amended by inserting, after subsection (5), the following subsections:

"(5A) A permit that is the subject of an application for an extension of duration 〈under this section or section 37〉 continues in force until the Minister determines the application.

"(5B) On the granting of a certificate of change in relation to a permit, the Secretary must forward 1 copy of the certificate of change to the permit holder.

"(5C) If the certificate of change is for an extension of land to which a permit relates and that extension of land was granted in respect of Māori land, the Secretary must also forward 1 copy of the certificate to the Registrar of the Māori Land Court.

"(5D) On receiving a copy of a certificate of change under **subsection (5C)**, the Registrar of the Māori Land Court must enter in his or her records the particulars of that certificate."

6 Revocation of permit

Section 39 of the principal Act is amended by adding the following subsection:

"(9) Subsection (8) applies only to permits granted before the commencement of the Crown Minerals Amendment Act **2001**."

7 Surrender of permit

Section 40 of the principal Act is amended by inserting, after subsection (9), the following subsection:

"(9A) Subsection (9) applies only to permits granted before the commencement of the Crown Minerals Amendment Act **2001**."

8 Transfers and other dealings with permits

Section 41 of the principal Act is amended—

(a) by repealing subsection (7); and

(b) by omitting from subsection (8) the words "in respect of petroleum"; and

(c) by repealing subsections (9) to (13).

9 Unit development

(1) Section 46(1) of the principal Act is amended—

(a) by inserting in paragraph (a), after the words "2 or more permits", the words "or existing privileges"; and

(b) by inserting in paragraph (b), after the words "all relevant permit", the words "or existing privilege"; and

(c) by inserting in paragraph (b), after the words "whose permits", the words "or existing privileges"; and

(d) by inserting, after the words "one or more of the permit", the words "or existing privilege"; and

(e) by inserting, after the words "all the permit", the words "or existing privilege"; and

(f) by inserting, after the words "as a unit by the permit", the words "or existing privilege".

(2) Section 46(3) is amended by inserting, after the words "the permit" in both places where they appear, the words "or existing privilege".

(3) Section 46(4) is amended by inserting, after the words "the permit" in both places where they appear, the words "or existing privilege".

10 Section 81 repealed

Section 81 of the principal Act is repealed.

11 Section 82 repealed

Section 82 of the principal Act is repealed.

12 Entry of permit and access particulars acts as notice only

Section 84 of the principal Act is amended by adding, as subsection (2), the following subsection:

"(2) This section does not apply to particulars of a permit granted after the commencement of the Crown Minerals Amendment Act **2001**."

13 Land Transfer Act 1952 not to limit or affect rights under permits or rights of access

Section 85 of the principal Act is amended by adding, as subsection (2), the following subsection:

"(2) This section does not apply to particulars of a permit granted after the commencement of the Crown Minerals Amendment Act **2001**."

14 Notation of mineral ownership on land titles

(1) Section 86(3) of the principal Act is amended by repealing paragraph (b).

(2) Section 86(5) of the principal Act is amended by omitting the words ", copies of a permit or certificate of extension, or instrument, as the case may be", and substituting the words "or instrument".

15 Certified copies of permits, certificates, and other documents to be evidence

(1) The heading to section 87 of the principal Act is amended by omitting the words "**permits, certificates, and other**".

(2) Section 87(1) of the principal Act is amended by omitting the words "permit or other".

(3) Section 87(2) of the principal Act is amended by omitting the words "original permit or other".

16 Recorded documents to be open for search

Section 88 of the principal Act is amended by omitting the words "permit or other".

17 Revision of records

Section 89 of the principal Act is amended by adding, as subsection (2), the following subsection:

"(2) This section applies only to permits lodged before the commencement of the Crown Minerals Amendment Act **2001**."

18 Reports to Secretary

Section 90 of the principal Act is amended by inserting, after subsection (7), the following subsection:

"(7A) Nothing in subsection (4) or subsection (7) requires the Secretary to send or make available any records, reports, information, or returns relating to the calculation and payment of royalties by permit holders."

19 New section 91A inserted

The principal Act is amended by inserting, after section 91, the following section:

"91A **Correction of errors or omissions**

The Secretary may⟨, *with the consent of the permit holder,*⟩ correct any clerical error or omission in a permit document that was made by the department of State that is for the time being responsible for the administration of this Act."

Part 2
Amendments to transitional provisions relating to minerals

20 Existing privileges to continue

Section 107(2) of the principal Act is amended by inserting, after the expression "section 111(2)", the words "or **section 111A**".

21 Administration of existing privileges

Section 108 of the principal Act is amended by adding the following subsection:

"(9) Despite section 107(1)(c), the functions, powers, and duties—

"(a) that before the commencement of this Act would have been exercisable by an inspector and that would have arisen in respect of an existing privilege, or of any condition of an existing privilege, or of any provisions of an Act that relate to an existing privilege; and

"(b) that concern matters that are not within the functions of a local authority under section 30 or section 31 of the Resource Management Act 1991 or an inspector under section 29(1) of the Health and Safety in Employment Act 1992—

are exercisable by the Secretary, and the provisions of the Act relating to the existing privilege, with all the necessary modifications, apply accordingly."

22 New section 111 substituted

The principal Act is amended by repealing section 111, and substituting the following section:

"111 **Right to new permits**

"(1) If, after ⟨*the date of commencement of the Crown Minerals Amendment Act* **2001**⟩ ⟨5 pm on 19 September 2002⟩, a holder of an existing privilege makes an application ⟨*in respect of Crown owned minerals*⟩ to which any of the enactments specified in **subsection (2)** would have applied if this Act or the Crown Minerals Amendment Act **2001** had not been enacted, then, despite section 107,—

"(a) the Acts specified in **subsection (2)** do not apply in respect of the application; but

"(b) this Act (including, in particular, section 32) applies in respect of the application ⟨for Crown owned minerals⟩ as if the existing privilege were a minerals permit of the appropriate kind.

"(2) The enactments for the purposes of **subsection (1)** are—

"(a) sections 57A, 68, and 77 of the Mining Act 1971:

"(b) sections 40 and 48 of the Coal Mines Act 1979:

"(c) section 11 of the Petroleum Act 1937."

New (majority)

"(3) The rights of any person who has made an application referred to in this section before 5 pm on 19 September 2002 must be determined under the final judgment, decision, or order given or made (including any appeal) in the proceedings *Glenharrow Holdings Limited* v *The Attorney-General and Te Runanga O Ngai Tahu* (filed in the High Court of New Zealand at Wellington under CP 242/00)."

Struck out (majority)

23 New section 111A inserted

The principal Act is amended by inserting, after section 111, the following section:

"111A **No application under section 103D of Mining Act 1971 for extension of duration of mining privilege**

A holder of a mining privilege under the Mining Act 1971 is not entitled to apply for a variation of conditions under section 103D of that Act if the application is for the extension of the duration of the mining privilege."

New (majority)

23 New section 111A inserted

The principal Act is amended by inserting, after section 111, the following section:

"111A **No application under section 103D of Mining Act 1971 for extension of duration of mining privilege**

"(1) No extension of the duration of a mining privilege may be granted on an application for a variation of conditions under section 103D of the Mining Act 1971 made after 5 pm on 19 September 2002.

"(2) The rights of any person who has made an application for an extension of duration of a mining privilege under section 103D of the Mining Act 1971 before 5 pm on 19 September 2002 must be determined under the final judgment, decision, or order given or made (including any appeal) in the proceedings in *Glenharrow Holdings Limited* v *The Attorney-General and Te Runanga O Ngai Tahu* (filed in the High Court of New Zealand at Wellington under CP 242/00)."

24 New section 119A inserted

The principal Act is amended by inserting, after section 119, the following section:

"119A **No compensation**

No person is entitled to compensation from the Crown in respect of any losses arising from—

"(a) the loss of the right to apply for a new mining licence under section 77 of the Mining Act 1971:

"(b) the loss of the right to apply for a new coal mining licence under section 48 of the Coal Mines Act 1979:

"(c) the loss of the right to apply for an extension to the duration ⟨*of the term*⟩ of a mining privilege under section 103D of the Mining Act 1971 ⟨*in accordance with* ***section 111A***⟩."

Legislative history

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