

11 October 2018

Deborah Russell
Chairperson
Environment Committee
c/- Committee Secretariat
By email to en@parliament.govt.nz

Dear Ms Russell,

Submission on the Crown Minerals (Petroleum) Amendment Bill

1. This is a submission by the Major Electricity Users' Group (MEUG) on the Crown Minerals (Petroleum) Amendment Bill (hereafter referred to as "the Bill").¹
2. The appendix to this submission lists member companies of MEUG and key statistics such as number of employees and contribution to GDP and export revenues.
3. MEUG members have been consulted in the preparation of this submission. This submission is not confidential. Some members may make separate submissions.
4. MEUG members have an interest in this Bill because of the:
 - direct effects on the electricity sector with higher risks to security of supply and greater probability of higher spot electricity prices when supply is stressed;
 - indirect negative impact on the economy and hence the impact on their domestic product and service markets; and
 - risk of the decision-making processes leading to the introduction of this Bill being repeated in other sectors.

MEUG opposes the Bill

5. MEUG opposes immediate passage of the Bill because:
 - the risk of material detriment to New Zealanders is greater than any benefits likely to be achieved;
 - the proposed amendments will not achieve the stated aim of reducing global emissions; and
 - other options can be considered to meet the policy objectives of government.
6. The following two sections discuss each of these points.

¹ Document URL <http://www.legislation.govt.nz/bill/government/2018/0105/latest/096be8ed817cf4ca.pdf>

7. This submission concludes with sections on:
- the decision-making process leading to this Bill must not be repeated; and
 - our request to appear before the committee to speak to this submission.

There is a higher risk of material detriment to New Zealanders than any benefit

8. As a policy focused business-association MEUG has significant experience in considering cost-benefit-analysis (CBA) by public sector organisations (primarily MBIE), independent Crown entities (e.g. the Commerce Commission, the Electricity Authority and the NZ Productivity Commission) and Crown agents (e.g. EECA). We have seen very good, very poor and average grade CBA.
9. The Regulatory Impact Statement (RIS) prepared by MBIE is, in our view a sound, robust and very good CBA.² We are impressed by the detail and sophistication of the models used and discussed in the 54-page RIS. When considering policy options there is no such thing as a perfect forecast of future events and scenarios that can give absolute certainty. The MBIE RIS uses best practice techniques of probability weighted scenarios compared to a counterfactual where there is no change to the Crown Minerals Act 1991. Where outcomes are not quantified the RIS gives a narrative on the likely direction of change. Namely whether changes are likely to lead to benefits or costs to New Zealanders.
10. There is no doubt, in our view, that New Zealanders will be worse off with implementing the provisions of the Bill compared to making no changes at this time to the Crown Minerals Act 1991. The possible range of outcomes if the Bill is enacted, just for the subset of the impact on government revenues, is significant at between minus \$1.2 billion and minus \$23.5 billion with a mid-point of minus \$7.9 billion (all values in real-terms at a 3% discount rate over the period 2018 to 2050).
11. The most important non-quantified effect discussed in the RIS is a commentary on the effect on global climate change outcomes. The RIS states:
- “The transfer of production to other countries that have higher emissions footprints may result in an increase in global greenhouse gas emissions, although the timing and scale of this impact are uncertain.”
12. MEUG notes MBIE have couched this advice with a qualifier that global greenhouse gas emissions “may” increase and the effect and timing are “uncertain”. MEUG agrees this is reasonable because without analysis definitive views on quantum effects and timing cannot be stated. The direction though of likely effects is clear. Passage of the Bill is more likely to increase global greenhouse gas emissions than reduce emissions. Several critics of the RIS have rebutted this assessment by MBIE. MEUG has not seen any evidence by those parties to reject MBIE’s view that there will be heightened risk of greater global greenhouse gas emissions with passage of the Bill.
13. MEUG agrees with many commentators that business confidence has been shaken by this policy change. Where New Zealand had previously been regarded as a safe, stable country in which to invest, the spectre of sovereign risk now hangs over major investment decisions. These detriments are over and above the effect on the governments fiscal position discussed above.

² Document URL <https://www.mbie.govt.nz/info-services/sectors-industries/natural-resources/oil-and-gas/overview-crown-minerals-act-regime/pdf-document-library/regulatory-impact-statement-proposed-changes-to-the-crown-minerals-amendment-act-1991.pdf>



14. In relation to the narrow scope of the effect on the New Zealand electricity sector MEUG notes an outcome of the Bill will be a more supply constrained gas market. That in turn will increase gas prices and hence future gas costs for back-up gas fired thermal generation. That will lead to both:
 - an increase in electricity spot prices when the market is stressed, and back-up gas-fired thermal generation is needed; and
 - over time an increase in average retail prices to recover the higher occasional peakier spot prices, negatively impacting households and vulnerable consumers.
15. In an extreme scenario the gas market may become so constrained or inflexible that there is insufficient gas available as back-up when needed and either:
 - coal-fired power stations, if available, meet the need for back-up generation; or
 - planned rolling-black-outs will be required for some consumers to maintain supply to most consumers until non-thermal supply increases, for example with sufficient rainfall into lake catchments and/or calm weather changing to windy conditions. To be clear we do not envisage any scenario arising from this Bill where all New Zealand would lose supply but there is a heightened risk there will need to be planned rolling-black-outs for some parts of New Zealand if gas-fired back-up generation were not available.

Other options can be considered to meet the policy objectives of government

16. The purpose of the Bill is to give effect to the Government's announcement made on 12 April 2018 relating to offshore petroleum permitting.³ The Prime Minister's media statement on 12 April described the policy intention of the announcement as⁴:

"The Coalition Government is taking an important step to address climate change and create a clean, green and sustainable future for New Zealand."
17. As discussed in paragraphs 11 and 12 of this submission we agree with the MBIE RIS that the effect of implementing this policy by passing the Bill is likely to increase global greenhouse gas emissions.
18. MEUG suggests that there are other options for changes to how the Crown Minerals Act 1991 operates to better align with the suite of steps the Government is taking to address climate change and to create a clean, green and sustainable future for New Zealand. As we discuss in the next section a joined-up package of policies is needed. Consideration of changes to the Crown Minerals Act 1991 should be part of that package. Two options could be considered by the select committee:
 - the committee could recommend consideration of the Bill be deferred until other key legislation on climate change, primarily the Zero Carbon Bill, are considered to ensure alignment (MEUG preferred option); or
 - the committee could recommend the Bill not proceed.
19. As noted in paragraph 5 MEUG opposes immediate passage of the Bill. Should the committee decide to recommend enactment then MEUG objects to the provisions in the Bill

³ The Bill, explanatory note, p1.

⁴ <https://www.beehive.govt.nz/release/planning-future-no-new-offshore-oil-and-gas-exploration-permits>

that retrospectively amend parties' rights in terms of permit applications already lodged or submitted (proposed new clause 24).⁵

20. Retrospective legislation is, in our view, to be avoided because:
- it is constitutionally repugnant to go back in time to change people's pre-existing rights, privileges and property in all but the most compelling cases
 - of its chilling effect on investment decision-making.
21. The retrospective provisions in the Bill may look to be seemingly small or at least have a narrowly scoped effect on a few parties but that does not change the principle involved, nor the effect Parliamentary willingness to pass retrospective legislation has on investment.

The decision-making process leading to this Bill must not be repeated

22. The decisions announced on 12 April 2018 that "there will be no further offshore oil and gas exploration permits granted" and "this year's block offer will be limited to onshore acreage in Taranaki alone" were made without a robust assessment of costs and benefits, RIS or any consultation.⁶ Given the importance of the energy sector to the economy and the potential magnitude of the effect of this decision on the economy as a whole, such an important decision should have been informed by a robust RIS and extensive consultation. Subsequently MBIE's RIS has shown the outcomes of the decision will be contrary to those expected by Ministers. That is New Zealanders' welfare and global greenhouse emissions will be worse.
23. The decision-making process fell well short of that expected given the wide-scale effects and uncertainty and reputational harm created by the decision.
24. The lack of consultation and a RIS before decisions were made may have been contrary to systems and processes put in place to ensure informed decision-making, such as the consultation and RIS requirements set out in the Cabinet manual. Compounding the poor-process up to 12 April 2018 have been two further problems:
- the urgency with which this Bill is being considered by the select committee despite the magnitude of the effects on the economy; and
 - the poor experience MEUG and other parties had in seeking information on the 12 April announcements, which has highlighted the limitations of the Official Information Act as a means of ensuring transparency and accountability.
25. MEUG is concerned that similar poor processes leading to key Cabinet decisions and subsequently legislative changes may be used for other important policies affecting the energy sector such as:
- the Zero Carbon Bill including decisions arising from Government consideration of recommendations from the NZ Productivity Commission and the Interim Climate Change Committee
 - ETS changes enacted with amendments to the Climate Change Response Act 2002
 - any legislative changes arising from recommendations by the Minister following the Expert Advisory Panel report into the Electricity Price Review.

⁵ The proposed retrospective provisions in the Bill were highlighted in the MBIE Departmental disclosure statement of 18 September 2018, paragraphs 4.3 and 4.8, refer <http://disclosure.legislation.govt.nz/assets/disclosures/bill-government-2018-105.pdf>

⁶ Ibid for quotes from the Prime Ministers media statement of 12 April 2018.

We request to appear before the committee to speak to this submission

26. We wish to appear before the Committee to speak to this submission. Representing MEUG will be myself and Ralph Matthes, Executive Director. Please contact Mr Matthes on ralph@meug.co.nz or M 0274 760 500 for arrangements.

Yours sincerely

A handwritten signature in black ink, appearing to read "John Harbord". The signature is fluid and cursive, with the first name "John" and the last name "Harbord" clearly distinguishable.

John Harbord
Chair



Appendix: List of MEUG members and key statistics

A list of MEUG members is set out in the table below.

The six largest industrial members are connected directly to the national transmission grid.

All members, apart from the Aluminium Smelter (majority owner Rio Tinto), have sites directly connected to local distribution networks.

Seven members have on-site co-generation and are marked with an asterisk.

More than 900 GWh pa (more than \$80m pa cost)	Between 200-700 GWh pa (between \$20m to \$80m pa cost)	Less than 200 GWh pa (less than \$20m pa)
Rio Tinto NZ Steel* Oji Fibre Solutions* Fonterra*	Pan Pac Forest Products* Norske Skog Tasman* Refining NZ Progressive Enterprises Winstone Pulp Oceana Gold	Whakatane Mill O-I New Zealand Ravensdown* Lion Cold Storage Nelson
Industry group members are Business NZ and the Wood Processors & Manufacturers Association of NZ		

Collectively MEUG members:

- Use 28% of all New Zealand's electricity.
- Pay approximately \$900 million per year in total delivered electricity charges.
- Contribute \$11 billion per year to GDP.
- Earn approximately \$30 billion per year in export revenues.
- Employee 25,000 direct employees.