2 November 2012

Commerce Committee Secretariat
Parliament Buildings
WELLINGTON 6011

Dear Sir/Madam

Submission on the Crown Minerals (Permitting and Crown Land) Bill

Details

This submission on the *Crown Minerals (Permitting and Crown Land) Bill* ("the Bill") is from the Petroleum Exploration and Production Association of New Zealand ("PEPANZ").

We wish to appear before the committee to speak to our submission.

I can be contacted at 04 472 1994 and david.robinson@pepanz.com

PEPANZ represents private sector companies which hold petroleum exploration and mining permits, service companies and individuals working in the industry. PEPANZ members account for more than 95% of New Zealand's hydrocarbon production.

Submission

Overarching comments

PEPANZ's focus in policy matters is ensuring New Zealand has a high-quality and stable regulatory environment to attract and retain quality investment in petroleum exploration and production. We support high standards and strict rules, which give industry and New Zealanders confidence. We value stability and consistency of application.

PEPANZ supports the objectives of the Crown Minerals Act Review and aims of the Bill, namely:

- encouraging the development of Crown owned minerals so they contribute more to New Zealand's economic development; and
- streamlining and simplifying the permitting regime where appropriate, making it better able to deal with future developments; and
- ensuring that better co-ordination of regulatory agencies can contribute to stringent health, safety, and environmental standards in exploration and production activities.

Notable improvements from the industry's perspective include: potentially longer timeframes for exploration permits of up to 15 years; addressing some of the issues with section 41; and including a purpose statement in the Act. The increased formal interface between industry and the regulator through yearly meetings and the coordination with environmental and safety regulators, is welcomed.

However there are concerns with the long term workability of some aspects of the Bill such as the substantial reduction in the flexibility of permit administration. We have particular concerns with the potential impacts of some changes on the rights of existing permit holders.

Risks associated with the less flexible approach to permit management

PEPANZ recognises the fundamental importance of ensuring permit holders carry through on permit commitments so acreage is worked. The approach proposed in the Bill provides much less flexibility in amending permit conditions. Permit holders substantially, but not fully, complying with their permits could have permits revoked or removed. Having lost the permit, this will count against them in obtaining future permits. The new provisions are unnecessarily harsh from industry's perspective.

The regime must recognise that petroleum exploration in New Zealand, particularly offshore, is expensive by reason of our remote location, and generally seasonal – such that operations offshore are usually restricted to summer months. Reducing costs to a reasonable level requires inter-company co-operation, which is unnecessary in many other jurisdictions (such as rig sharing). This brings an additional complication in terms of timing. Reducing flexibility makes it harder to achieve such cooperation. We make specific comments on this issue in relation to clauses 24 and 26.

Need for transitional provisions for existing permits

We have particular concerns with the potential impacts of some changes on the rights of existing permit holders. Permits are awarded under particular conditions of the regime at that time and companies have a legitimate expectation that the rules under which they operate will not be altered unilaterally. Having certainty in the rules that apply to an operation, and to obtaining subsequent rights, is an essential element in ensuring investment certainty.

Key changes in the Bill, such as the inability to extend petroleum exploration permits other than for appraisal (section 35(4)), would have a major impact on the rights of existing permit holders and permits issued under Blocks Offer 2012. PEPANZ does not believe this is the policy intent, but as the provisions of the Act will override the provisions of the superseded Minerals Programme for Petroleum ("MPP") the transitional provisions such as proposed section 115B are insufficient to prevent this effect. There is more than one way in which this particular problem could be solved, including exempting existing permits from the current provisions, or providing specific provisions to address the transition of permits. We have made specific comments on this below in relation to clauses

The new requirement to designate an operator for each permit who is one of the permit participants, is also incompatible with the longstanding arrangements in place for some existing permits and licences. PEPANZ considers this unacceptable and unnecessary. We have provided further comments and solutions to this below in relation to clauses 17 and 51.

Clause by clause comments

Clauses 1 to 5

No comment

Clause 6

PEPANZ supports including a purpose section in the Act.

We also support the initial clause of the new section 1A: "The purpose of this Act is to promote prospecting for, exploration for, and mining of Crown-owned minerals for the benefit of New Zealand".

However the "by providing for" which follows this text restricts the purpose of the Act to a narrow focus, largely, to optimise the royalty stream to the Crown, and to streamline the Crown's administration of the regime. We consider this undermines, and partially contradicts, the first part of the purpose statement, which is about development of minerals and petroleum for New Zealand's benefit, not just for those benefits that would accrue to the Crown. Wider benefits include employment, energy security, balance of payments, regional development, the development of technical skills and technology, and geological data acquisition.

The Explanatory Note to this Bill says: "the various amendments made by this Bill have the aims of – encouraging the development of Crown-owned minerals so they contribute more to New Zealand's economic development; and streamlining and simplifying the permitting regime where appropriate … and ensuring that better co-ordination of regulatory agencies can contribute to stringent health, safety, and environmental standards in exploration and production activities".

The purpose statement also appears too narrow to be consistent with the proposed amendments to section 5, which includes among the Minister's functions: "(e) to collect and disclose information in connection with mineral reserves and mineral production in order to – (i) promote informed investment decisions about mineral exploration and production; and (ii) improve the working of related markets". As currently written, it would seem the Minister will only be able to carry out these functions if they provide for "efficient allocation of rights", "effective management and regulation of … those rights", and "a fair, financial return to the Crown".

That is surely a much more narrow focus than that envisaged in the Explanatory Note to the Bill. All of these various issues could be resolved simply by replacing the word "by" with the word "while".

Recommendation: replace the word "by" with the word "while" at the end of the initial part of the purpose statement.

Clause 7

No comment

Clause 8

Support. PEPANZ notes that removing the phrase "in the same or an adjacent area" from the existing definition of "petroleum" would expand the scope of coverage of underground gas storage facilities to those located anywhere in New Zealand and not just close to the point of petroleum extraction.

Clause 9

No comment

Clause 10 – amended section 5 - functions of Minister

There should be a reference to "prospecting" in the functions of the minister (proposed new section 5(e)(i)).

PEPANZ supports the intent of proposed section 5(e)(ii), noting that its application must respect the rights of permit holders to commercial confidentiality.

Recommendation: include a reference to "prospecting" in new section 5(e)(i).

Clauses 11 - 14

Support

Clause 15

New section 12

PEPANZ supports section 12 being reworked to more simply express the purpose of the minerals programmes.

New section 13

A draft MPP has been recently released for consultation and the industry has had some opportunity to consider this whilst also considering this Bill. However, this MPP is only draft and may be changed before it is finalised. Furthermore a subsequent Government could make fundamental changes to the MPPs that could have unfavourable effects on permit holders. This matters because key rights such as the detail of policy on entitlement to subsequent permits are contained in the MPP.

Regardless of the level of comfort with the proposed MPP being consulted on currently, forcing permit holders automatically onto the current MPP and in future enabling changes to the MPP to have immediate effect on existing permits inherently reduces investment certainty (noting that section 115B only applies to permits in force when the amended Act comes into force). PEPANZ is not convinced that the administrative efficiency benefits of reducing the number of MPPs outweighs the loss of investment certainty for existing and potential future permit holders. PEPANZ's preference is that moving to a different MPP should remain voluntary.

An alternative approach would be to further limit under the Act what can be provided in a MPP so uncertainty and commercial risks for permit holders associated with potential future changes to MPPs are reduced.

Recommendation: redraft section 13 so that moving to a new MPP is voluntary for permit holders.

Drafting comment: include a cross-reference to new section 115B (provisions relating to mineral programmes) as this alters the application of new section 13 for existing permit holders.

Amended section 19

We support the MPPs being made a regulation for the purposes of the *Regulations (Disallowance) Act 1989*.

Clause 16

Amended section 25

The ability of section 25 to enable the grant of petroleum permits beyond the limits of the territorial sea (12 nautical miles from shore) currently relies on section 4(1)(a) of the *Continental Shelf Act 1964*, which expands the definition of "land" under the Act to included seabed in the continental shelf. This is however not referenced in the Act. The definition of "land" in section 2(1) of the *Crown Minerals Act* should either be expanded to clearly include seabed to the limits of the continental shelf or an explicit cross reference to this provision of the *Continental Shelf Act* included.

Proposed section 25(2)(b) provides that the minister may grant a permit to any persons subject to section 5A(3) of the *Continental Shelf Act*, which in turn applies to "every permit granted under section 25 of the *Crown Minerals Act* in respect of the exploration or prospecting for or the mining of petroleum in the seabed and subsoil of the continental shelf beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured." The proposed cross references in the Bill appear circular. A reference to

5A(3)of the *Continental Shelf Act* exists in current section 25 of the Act although the drafting is different. PEPANZ recognises the purpose of this may relate to clarifying ministerial responsibility, nonetheless we suggest consideration is given to making the drafting of this clause as clear as possible.

Recommendation: amend the definition of "land" in the Crown Minerals Act to explicitly include seabed to the limits of the continental shelf or include a cross-reference to section 4(1)(a) of the Continental Shelf Act 1964.

Clause 17

New section 27

Petroleum can exist in different forms in different strata, such as conventional petroleum at deeper levels and methane hydrates in shallower areas close to the seabed. This was explicitly recognised in paragraph 160 of the then Ministry of Economic Development's discussion paper *Review of the Crown Minerals Act 1991 Regime, Discussion paper, March 2012* (the "discussion paper"). PEPANZ supports the potential for petroleum permits applying to petroleum existing in different phases or strata, as provided in proposed section 27(3), as this could for example enable these two different resources to be prospected and explored for separately in the same physical area.

As PEPANZ has noted in submissions previously to the Ministry of Economic Development, we consider a significant amount of further work needs to be done in relation to the technical and HSE issues which may arise if methane hydrate activity and conventional petroleum activities are undertaken in the same land area. We support the development of policy on methane hydrates, but suggest government exercises caution so as not to delay or impede the exploration for, and development of, conventional petroleum resources in the intervening period. We will provide more comments on this in our submission on the draft MPP.

Recommendation: replace "any" in proposed 27(2) with "on such", as is provided in the comparable current provision, section 25(1).

New section 27A

We support in principle the requirement for each permit to have an operator but not the requirement that the operator must always be a "permit participant", which means they must hold a share of the permit. This would preclude 3rd party operators, including joint venture operator companies, with no share in the permit.

PEPANZ does not understand the policy rationale for non-permit participants being excluded from operatorship in all circumstances. This proposal creates two issues. Firstly it reduces the flexibility in configuring future permit operations. Secondly it cuts directly across longstanding arrangements in place for some significant existing fields.

Operatorship is an issue that the permit holders should decide amongst themselves. They must have flexibility to manage their operations through a third-party service company or by a joint venture company that itself holds no permit interests. In all cases, the permit holders remain legally responsible to NZPM for the conduct of operations and for any consequences of those operations. Furthermore it is proposed that the relevant capabilities of the operator is assessed under section 29A(2)(c).

Some significant existing fields are operated by a joint venture operator who is not a permit participant within the proposed definition of the Act. This operator, Shell Todd Oil Services Limited (STOS), has successfully operated fields since the 1960's and currently operates the Maui, Kapuni and Pohokura fields,

three of New Zealand's four largest gas producing fields, on behalf of the various joint venture permit holders. Requiring the permit holders of these fields, and STOS itself, to reconfigure their longstanding commercial arrangements to meet this newly imposed requirement is inappropriate and derives no apparent benefit.

Recommendation: redraft proposed section 27A to allow for operators that are not permit participants.

New section 29A

PEPANZ does not support the potential requirement to estimate the total work MPP expenditure as provided in 29A(1)(b). We recognise this carries over from the current minerals MPP but rationale of ranking bids on the basis of estimated expenditure is not apparent. There is a risk that estimates may be inaccurate and there could also be an incentive to inflate estimates as presumably this would be considered preferable by the government. The Minister should consider what is proposed in a work MPP rather than an applicant's estimate of what it might cost. A more expensive work MPP is not necessarily a more effective or appropriate work MPP for the relevant acreage. We recommend that the proposed 29A(1)(b) be deleted.

Requiring the operator to "have" the "capability and systems…." risks limiting the potential for smaller operators to take on Tier 1 permits, which includes all petroleum permits. The ability of smaller players to take on acreage and undertake early stage activities such as seismic surveying while seeking farm-ins from other players is fundamental to a vibrant industry and is common both here and overseas. It is also important that in many cases specialist capability is contracted in, even by larger players. We recommend "have" is replaced with "have or have access to" to recognise this.

We support the intent of 29A(3)(d) but are unaware of the regulation making power in the current Act or the Bill that would allow for processes under other Acts to be "specified".

Recommendation: delete proposed clause 29A(1)(b).

Clause 19 – amended section 30

Permit holders having an exclusive right to prospect, explore for or mine a mineral in a given area is a fundamental part of the Act. The rationale for the amendments to section 30 proposed in clause 19 are not obvious and do not appear to be traversed in Cabinet papers.

What is currently drafted would represent a reduction of exclusivity of permit holders rights by removing the consent right currently afforded to the original permit holder in section 30(8) and enabling exclusivity to be undermined by a MPP rather than just the permit. We assume this change is intended to apply to allow overlapping non-exclusive petroleum prospecting permits as proposed in paragraphs 89 – 90 of the discussion paper. If this is not the case then PEPANZ's concern is that the change means a Minister, by way of a MPP (which is a regulation – not primary legislation), could fetter existing exclusive rights in any manner they chose to.

If this purpose is solely to allow overlapping non-exclusive petroleum prospecting permits then the amendments should be narrowed to address this only, rather than opening up a potentially limitless erosion of exclusivity. We also consider that even in the case of non-exclusive petroleum prospecting permits, consent from the existing permit holder should be required to avoid interference with their operations and particularly in the case of onshore, their stakeholder relationships.

Recommendations:

- **narrow proposed section 30(7) to apply only to prospecting permits (for petroleum); and**
- **consent of existing permit holders is required [as currently provided in section 30(8)].**

Clause 20

Support

Clause 21

New section 33

We support the concept of "good industry practice", noting it has evolved from the current good exploration and mining practice.

We do not see the value of applying "good industry practice" to the performance of activities as proposed in new section 33(1)(b). The Minister is already required to consider whether the work programme is consistent with "good industry practice" before issuing the permit (refer new section 29A(2)(a)(iii). Applying the same concept to activities undertaken under that work programme overuses the concept and risks confusion. It is inherently subjective and it is not clear what means would be used for judging whether this requirement was being adhered to, and the consequences of not adhering to it.

We recommend new section 33(1)(b) is removed with the focus remaining on compliance with the conditions of the permit (which need to be consistent with "good industry practice"), the Act and regulations. The Act already sets out a comprehensive set of obligations permit holders must comply with and these should be adequate to ensure its obligations are discharged in accordance with good industry practice, when read alongside other applicable legislation. If there are any deficiencies in these obligations they should be addressed with further specific provisions rather than a general catchall which creates unnecessary uncertainty for permit holders.

We support the intent of new section 33(1)(e) but recommend changes to the drafting. What "co-operating with…for the purpose of compliance with the conditions of the permit" would mean in practice is not clear. If compliance with a condition of a permit required drilling a well, would this mean the permit holder should work with the government to drill the well? We assume the intent is for permit holders to generally co-operate with the Minister, chief executive and enforcement officers in relation to the administration of the Act and in relation to whether the permit holder has complied with condition of their permit.

Recommendation: in relation to permit conditions, "co-operate on compliance" in 33(1)(b) should be replaced with "co-operate on assessing or verifying compliance" or similar.

New section 33A

PEPANZ supports the intent of new section 33A(1). In terms of drafting the wording "whose *rohe* includes the area of the permit" is not particularly clear as a permit area and *rohe* are unlikely to cover the same area, either overlapping each other, or one fitting within the area of the other.

Recommendation: the Committee consider how to make the drafting of 33A(1) clearer.

New section 33B

We support the general intent of this clause. We recommend the section clearly acknowledges that a single meeting could, if agreed between the relevant permit holders and the chief executive, address more than one permit. This could enable the most effective and efficient engagement between the regulator and permit holders.

We note that whilst it could be inferred who the "appropriate minister" would be, it is not a defined term. We recommend this clause is redrafted, or the term defined, to make it clearer who the "appropriate minister" is rather than relying on the text in the subsequent bracket, and other parts of the Bill, to infer its meaning.

Recommendation: redraft to clarify "appropriate minister".

Clause 22

Amended section 35
PEPANZ supports most aspects of section 35 but questions the proposed inability to extend exploration permits other than for appraisal as prescribed in 35(4). In future the proposed maximum permit term for exploration will be up to 15 years with the actual permit timeframe to be set by way of bidding round documents. There appears to be no ability to extend an exploration term beyond the maximum set, even in extenuating circumstances.

Examples of such circumstances include: if a marine consent is necessary for an activity late in the permit term and it is appealed and takes two years to get a marine consent, or a drilling activity has equipment failure and you lose a season of drilling, or you are part of a drilling club and others ahead of you take longer to drill their commitments and your drilling is delayed. It seems desirable both for the government and the permit holder to have some flexibility on limited grounds to extend permit duration for exploration purposes.

The inability to extend exploration permits other than for appraisal as prescribed in 35(4) is a particular issue for existing permits, or permits issued in Blocks Offer 2012, that were issued with only a five year duration. The inability to extend these permits due to 35(4) would represent a major loss of rights to existing permit holders. We understand this is not the policy intent but a by-product of the new approach to permits and the potential 15 year timeframe for exploration permits rendering extensions less necessary.

There are multiple ways of addressing this problem. The simplest is to exempt petroleum exploration permits issued before these amendments come into force (which would include permits issued in Blocks Offer 2012) from the limitation imposed by 35(4). This would preserve the rights of existing permit holders and mean they could apply to extend the five year term for up to five more years pursuant to the provisions of the current MPP (2005 version).

Recommendations:

- **consider amending section 35 to retain some flexibility to extend permit duration for exploration permits on limited grounds; and**
- **exempt petroleum exploration permits issued before these amendments come into force (which would include permits issued in Blocks Offer 2012) from the limitation imposed by 35(4).**

New section 35A
Support

New section 35B
No comment, not relevant to petroleum.

New section 35C
We consider that relinquishment obligations should only be imposed at the grant of a permit and not simply on the basis of a change to a permit.

We recommend the maximum required relinquishment be retained at 50% as currently and as proposed in the Ministry's discussion paper. Where a permit holder has identified leads and prospects across large sections or the full permit area, it is not in the Crown's best interest to have to wait for someone else to take that acreage up in a subsequent blocks offer and carry out its own exploration programme before those leads and prospects are developed.

Recommendations:

- **remove 35C(1)(b); and**
- **replace "75%" with "50%" in 35(3)(a).**

In relation to proposed new section 35C(5)(b)it is not clear why the Minister would be required to take into account matters in (a) and (b) when the Minister must approve the area to be relinquished.

In relation to proposed new section 35C(6)making the permit holder responsible if they apply but don't get approval only seems logical if the minister has a discretion under 35C(5)(b), which they don't. Conversely making the permit holder potentially liable to a breach of permit conditions on the basis of the outcome of a discretionary decision of the Minister would be inappropriate.

Recommendation: that a permit holder be required to apply for relinquishment in accordance with this section.

Clause 23

No comment

Clause 24 - Amended Section 36

PEPANZ has a number of concerns with the significant proposed amendments to section 36 of the Act. We support the objective of improving permit management and avoiding changes of conditions and extensions of time being used as a means of avoiding doing work. However, there are risks with the inflexible approach being proposed that we consider should be mitigated through amendments to the provisions in the Bill.

There are general risks with this approach to permits issued in the future. There are more severe impacts on existing permit holders and on permits issued under the current Act, for example those issued in Blocks Offer 2012.

Section 36(3)

As drafted, proposed 36(3) places a limit on when extensions of duration of mining permits and exploration permits can be applied – namely no later than 6 months from expiry of the permit. We consider this reasonable in relation to mining permits, noting the Minister can choose to accept an application closer to the time of permit expiry should "compelling reasons" exist for doing so.

In relation to appraisal extensions for exploration permits (section 35A) it is not apparent why this 6 month time limit is imposed. An appraisal extension is only relevant where a discovery has been made. Given that drilling often takes place towards the end of an exploration permit, it is quite possible a discovery could be made within six 6 months of expiry. This would sensibly be considered a "compelling reason" and therefore fall within 36(4) but having to rely on this discretion creates unhelpful and unnecessary uncertainty for operators.

Recommendation: presuming that "an extension to a mining permit" in 36(3) is intended to be an extension of time rather than land, then this should be clarified by including "of duration" after the words "under subsection (1)(b) for an extension".

Section 36(4A) and 36(4B)
Proposed sections 36(4A) and (4B) concern the deadlines for applications to change permits other than extensions of time of mining or exploration permits. PEPANZ does not understand the rationale or benefit of requiring that an application under proposed 36(4B) must be received by a date not later than 30 days before the date of expiry of the permit, or 30 days before the specified date by which the specified work must be done.

We appreciate the intent of this amendment is to ensure applications to change permits are received in good time. However placing an arbitrary deadline on the submission of applications out-of-time seems unnecessary when the criteria for whether an out-of-time application under 36(4A) can be received is whether the Minister is satisfied that there are compelling reasons why subsection (4A) could not be complied with.

The proposed provisions risk the situation where a permit holder reasonably expects to comply with a condition 30 days before it is due but then, for unforeseen reasons, is unable to and then has no ability to amend the permit and therefore breaches a condition of the permit. This could lead to both revocation of the permit and subsequently count against the company/s involved. This is a serious issue. We recommend the words "(which date must be not later than 30 days before the date of expiry of the permit or 30 days before the specified date by which the specified work must be done)" be deleted from section 36(4B). We consider this would be consistent with Cabinet policy decisions, which do not include the 30 day limit.

There should be ability to amend permit conditions in some circumstances close to the point at which the condition falls due. Inability to do so could cause issues to anyone looking to undertake activity near the end of a permit as illustrated in the following example.

> *Operator A has almost completed a seismic survey with 30 days left to the point at which it must be completed to comply with a condition under the permit. The seismic vessel then encounters mechanical problems, has to return to port, and is unable to complete the survey before the condition falls due under the permit. It is too late to apply for an extension of duration of the permit under section 36(4B) even though there are compelling reasons as there is no discretion to the Minister as it is less than 30 days before the specified work must be done. Operator A is now at risk of having the permit revoked and the consequences that flow from this.*

PEPANZ is not clear what benefit is derived through limiting the flexibility of the Minister to this extent. The rationale option for a prudent operator in this situation would be to apply for a change of conditions even if they consider it unlikely they will need it. This will create additional, and arguably unnecessary, processing for the Ministry.

Section 36(4D)
Proposed section 36(4D) limits extension of time of exploration permits to appraisal extensions. We realise the government is intending to adopt a different approach to exploration permits, with longer timeframes being a part of this. However this clause will also apply to existing permits with shorter timeframes. Whilst now there are reasonable expectations of a five year exploration permit being extended for another five years this will no longer be possible. This is a major adverse outcome for permit holders in that situation.

We recommend this limitation on extending exploration permits only apply to new permits (i.e. those issued after these provisions come into force).

What "compelling reasons" might be in 36(4) and 36(4B) is not readily apparent. We recommend this is defined, or further expanded upon, in the Act and/or the MPP to give some guidance to industry on when this be might be invoked.

Recommendation: clarify the meaning and interpretation of "compelling reasons" in the Act and/or the MPP.

Clause 25 – new sections 37 and 38

PEPANZ notes that the new sections 37 and 38 are substantially different in scope and content from the current sections of the Act and therefore represent entirely new provisions. It was these clauses that allowed an exploration permit to be extended, and addressed the issue of where a permit holder had "substantially complied" with the conditions of the permit in the context of application to change conditions or extend a permit, both of which will be removed from the Act.

New section 37

PEPANZ notes that this provision has been implemented differently from the proposed review of production permits outlined in the Ministry's discussion document (refer paragraphs 147 to 152), which we supported. Substantial differences include applying it to existing permits as well as new permits (refer paragraph 151) and introducing the idea of assessment by an "independent expert". Despite the potential commercial implications to a permit holder of this power being exercised, and the differences to what was consulted on, it is addressed in the Cabinet paper as only a "technical change" with the rationale not discussed. It was not mentioned in the associated regulatory impact statement at all.

The proposed provisions in section 37 do not provide explicit recognition of the specific facts of the case, given that "good industry practice", which is the proposed point of reference, refers only to "similar" circumstances. We recommend 37(3) be amended to make clear, as outlined in 37(2) that the specific circumstances of the field should be considered. The commercial implications of an independent expert determining changes to the work programme for a petroleum mining permit could be significant and should be made on the basis of the specific circumstances.

In relation to proposed section 37(5) specifically, it would seem the "independent expert" would need to be a technical specialist such as a reservoir engineer although there may also be legal issues relating to proper process. The President of the New Zealand Law Society would not be particularly well positioned to appoint a technical expert. We recommend consideration is given to whether the independent expert could also be appointed by a relevant professional body.

Recommendation: the Committee give consideration to the most appropriate bodies for appointing the independent expert.

New section 38

Given that "determination by an independent expert" of conditions applying to a mining permit is potentially very significant power, which could impose considerable costs on the permit holder, it would be appropriate for the permit holder to be able have a hearing with the independent expert.

PEPANZ supports the costs being borne equally by permit holders and the minister as provided for in proposed amended section 38(9).

Recommendation: amend proposed 38(1) to enable the permit holder to be heard by the independent expert.

Clause 26 – amended section 39

The removal of "making reasonable efforts to comply" from the existing section 39 makes the proposed section potentially much stricter on permit holders who fail to comply with a permit condition for whatever reason. PEPANZ recognises that the current "reasonable efforts" is a flexible test and there may be good reasons to take a more rigid approach to requiring compliance with the conditions in permits.

The proposed change of considering solely whether a condition has been breached with no ability to consider the circumstances entirely is a substantial change. In tandem, with the less flexible approach to changing permit conditions under the proposed amendments to section 36, this is a much stricter approach to permit administration. It gives little, if any, flexibility to the Crown and increases risks for permit holders. We understand this regime is envisaged to work with a new type of permit with fewer commitments, but will apply equally to current permits with more numerous conditions issued under a more accommodating legislative regime.

The proposed option of removing the ability to consider the circumstances entirely is not the only possible option. Instead section 39 could simply be amended to impose a higher subjective test such as "best endeavours". This would allow NZPM to take a new stricter approach to permit compliance but still retain some flexibility, recognising there can be legitimate reasons why competent operators fail to meet permit conditions in some circumstances.

We recognise the Bill includes an ability [39(6)(a] to appeal a decision to revoke a permit but this is limited to points of law only. Given the strictness and simplicity of the test in section 39, has a condition being contravened, this appeal right is not likely to provide much ability to challenge a minister's decision to revoke a permit.

PEPANZ does not agree with the inclusion of 39(1)(c) which allows the Minister to revoke a permit upon the change of control of a permit participant if the requirement of the proposed new section 41A(6) have not been met to the Minister's satisfaction. For the reasons elaborated on below, in relation to proposed section 41A itself, it is inappropriate that this is a revocation event, and so we recommend proposed clause 39(1)(c) is deleted.

Recommendations:

- **amend proposed clause 39(1) to enable some consideration of relevant circumstances pertaining to a breach of a permit condition before a permit can be revoked; and**
- **delete proposed clause 39(1)(c).**

Clause 27 – Amended section 40

Support

Clause 28 – Amended section 41 and new sections 41A to 41D

Amended section 41
Support

New section 41A

PEPANZ does not understand the policy rationale for section 41A and does not see why a change of control of a permit participant itself, or an entity that provides a guarantee for a permit participant, should automatically trigger a requirement for Ministerial consent. This is an unnecessary fetter on corporate permit participants' rights to organise their affairs as they see fit and may create complexities where permits are held by multiple permit participants whose joint venture agreements may not have been structured to deal with such circumstances adequately. We do not consider this fits with the objectives of streamlining and simplifying the permitting regime.

The suitability of potential permit participants to obtain an interest in a permit forms part of the assessment undertaken by officials either on application for the permit, or on transfer of a permit interest under section 41. If during the course of this assessment NZPM forms the view that control of the permit participant is of critical importance to its suitability to hold the permit interest, they would have the option to make Ministerial consent to a future change of control of that permit participant a condition to the grant or transfer (as the case may be). Given these existing controls PEPANZ's view is that new section 41A is unnecessary and should be removed.

Should this provision be retained, two changes are required to make it more workable and reduce the uncertainty it could create.

First there is a risk a permit participant could breach the requirements of this provision inadvertently due to changes in ownership of a parent company. This is a particular risk for international companies where there is a possibility for corporate transactions to occur up the chain and removed from New Zealand. Given the dire consequence of permit revocation there must be provision for Ministerial discretion to accept a late notification. If any sanction is required, a fine would be more appropriate for lateness.

Second, proposed 41A(6) would enable the minister to revoke a permit if the minister is not satisfied the permit holder is capable of meetings its final obligations following the change in control. However the minister is not required to consent the change of control, it's merely a notification, and so there is no certainty that the minister won't subsequently seek to revoke the permit. Furthermore there is no deadline attached with doing so. This creates uncertainty and, if exercised, would obviously have severe implications for all permit participants and not just the one subject to the change of control. Our strong preference for addressing this issue is simply to remove this proposed section. However, to make it more workable and reduce the uncertainty, it would be necessary to define how and when this power might be exercised.

Recommendation: delete proposed section 41A.

New section 41B

PEPANZ supports the scope of the Ministerial consent for dealings under proposed section 41B being narrowed compared with the current section 41. We support the requirement for Ministerial consent to 'dealings' (sales agreements for petroleum or minerals) which affect the proceeds of production, because of the potential effect on royalties.

PEPANZ's view is that 41B as currently drafted, which requires Ministerial consent for any agreement where the term of the agreement is for 12 months or longer (even if it is at arms-length and at a fair market price(4(b)), is unnecessary and, more importantly, does not reflect policy decisions on this matter. It is the nature of the contract that is salient, not the duration. The proposed approach in the Bill does not reflect the approach and rationale for Ministerial consent for dealings as outlined in the discussion paper. More importantly it is inconsistent with Cabinet decisions which agreed "that the Minister of Energy and

Resources will only need to consent to 'dealings' (sales agreements for petroleum and minerals) which are not at arms-length or not at fair market prices."

PEPANZ assumes the intention is to use 41B(4)(b) to get hold of long-term gas sales contracts as was proposed in paragraphs 438 to 441 of the discussion paper. We consider using the 41B consent to "dealing" is an inappropriate mechanism for requiring these contracts from permit holders.

Recommendation: redraft 41B(4) so that only dealings that are not at arms-length or at a fair market price require Ministerial consent.

New section 41C
PEPANZ does not understand how the assessment of an application to change the permit operator set out in section 41(C)(3) is intended to operate in practice and notes that it goes beyond what was proposed in the discussion paper at paragraph 53:

> "The CMA regime currently treats all holders of a permit equally, whether they are responsible for day-to-day management of activities under the permit or not. However, typically, one party – the operator – will undertake or manage activities including seismic surveys and well drilling on behalf of all of the permit holders. The proposed distinction is designed to require operators to demonstrate the relevant HSE capabilities."

We presume the intent is to capture the requirements pertaining to the capability of the proposed new permit operator, including the HSE requirements set out in the proposed section 29A(2)(c). As drafted it could include a wider set of requirements that were less appropriate and implies a virtual de novo assessment of the permit. We consider this excessive and inappropriate. It would be inappropriate if for example a change of operator required a fresh assessment of the work programme in accordance with section 29A(2)(a). The only matters that should be relevant to a change of operator, given that transfers of interests in a permit and financial capability issues are separately dealt with under section 41, are technical capability and HSE capabilities, the latter of which are already covered by proposed section 41C(4).

Recommendation: add the words "…in so far as the relate to the technical capability of the proposed new permit operator…" after the words "…Act relating to…" in section 41(C)(3).

New section 41D
Support in principle. We note there is a risk that 41D(3) could impact some joint venture arrangements.

Clause 29

Support

Clause 30

No comment, not relevant to petroleum.

Clauses 31 and 32

PEPANZ supports this provision and the requirement for the Crown to consider a range of factors when deciding on access to Crown land to recognise the different interests in the surface and subsurface.

Clause 33

No comment

Clauses 34 and 35

Support

Clause 36 - amended section 90A

PEPANZ has concerns with the width of powers proposed for officials to require the production of information in connection with mineral reserves and mineral production under the proposed section 90A. The qualifications to the information officials can require set out in the discussion paper should be reflected at a high level in the Act.

Recommendation: replace proposed section 90A(1) with the following: "Every holder of a permit must provide to the chief executive such information and supporting materials as are reasonably requested to support and validate mineral reserves and mineral production that is prescribed as information that must be provided under this section."

Clauses 37 to 41

Support

Clauses 42 and 43

No comment, not relevant to petroleum.

Clause 44

New provisions 99A-99K contain significant new powers in relation to enforcement, information disclosure and audit. PEPANZ supports that, as a Crown resource, the Crown needs strong enforcement and audit rights to protect its financial return from the petroleum resource. However, we are concerned the proposed regime could result in increased costs to petroleum permit holders. We refer, for example, to proposed section 99D which provides that the chief executive may appoint an independent auditor to carry out an audit, at the permit holder's cost. The permit holder presumably has no visibility or control of such costs as the auditor will be engaged by the chief executive. This could be a significant cost, particularly as it is unlikely NZPM will have the requisite expertise and resources to carry out the audit without the assistance of an independent auditor.

PEPANZ considers the drafting of proposed clause 99D(2)(b) would be improved if the chief executive was required to "appoint" an independent auditor rather than "approve" them. This change would make the clause consistent with the next clause.

Recommendation: replace "approve" in proposed 99D(2)(b) with "appoint".

New section 99E

PEPANZ considers that proposed clause 99E(2)(a) should explicitly include the qualification that "any commercial agreement or agreements to which a permit participant is a party", includes only those agreements relevant to the permit in question or the administration of the Act. This is addressed in the preceding 99E(1) but should be explicitly referenced in 99E(2)(b).

Recommendation: amend clause 99E(2)(a) to include the qualification that "any commercial agreement or agreements to which a permit participant is a party", includes only those agreements relevant to the permit in question or the administration of the Act.

New section 99H

PEPANZ supports the intent of 99H but is concerned that there appears to be no limitation in 99H(1) on how far the Crown can go back when determining a royalty return to be incorrect. A limitation appears appropriate in ensuring the Crown undertakes regular and timely reviews as well as limiting the exposure of the permit holder. A limitation for amending past returns in a similar way to those rules contained in the *Tax Administration Act 1994* could be appropriate. In short, these regulations place a statute bar on amending returns more than 4 years past the end of the period in question unless there appears to be false or misleading information or behaviour or the taxpayer consents, in which case the statute bar does not apply.

Recommendation: the Committee imposes a limitation on how far back in time a royalty return can be reviewed.

New section 99J

PEPANZ supports the introduction of a disputes process and brings the royalty legislation more in line with tax legislation.

The proposed timeframes are not as generous as those in place for income tax. For income tax purposes, taxpayers have four months to object to an assessment made by the Commissioner of Inland Revenue. As proposed, petroleum miners will only have 20 working days to object to a royalty assessment. In addition, the Crown only has 20 working days to give the disputant the opportunity to be heard and respond (in the income tax scenario, the response period is 2 months). This may result is responses that have not been fully considered. We suggest consideration is given to extending these timeframes.

Recommendation: the Committee consider the workability of the proposed timeframes in proposed section 99J.

Clauses 45 to 48

Support

Clause 49

PEPANZ supports providing that the royalty regime that would apply to a permit, including subsequent permits, is the regime in force under regulation at the time the initial permit is granted as proposed in section 105A(3). This gives certainty to permit holders on a key aspect of the regime.

Clause 50

Support

Clause 51

New section 115A

As we have outlined above in relation to section 27A, applying the operator requirement to existing permits and existing privileges creates a requirement that conflicts with existing joint venture arrangements.

Recommendation: amend new section 27A to allow third party or joint venture operators.

New section 115B

Further to our comments on amended section 13 above. We do not support 115B(3)(a) and (b). Compelling permit holders to move to a new MPP due simply to a (potentially minor) change in conditions is arbitrary and may create perverse incentives. Permit holders should only transfer to a new MPP if they choose to, as

was the case when they first received their permits. Key elements of the regime are provided in the MPP and these are factored in to original investment decisions and commitments made when taking on or buying into a permit. Arbitrary changes can signal sovereign risk, which is something New Zealand must avoid.

Recommendation: remove 115B(3)(a) and (b).

Clauses 52 to 74

No comment

Schedule 1

No comment

Schedule 2

No comment, not relevant to petroleum.

Schedule 3

Support

Yours sincerely

David Robinson
Chief Executive