

30 June 2022

Resource Markets team
Building, Resources and Markets
Ministry of Business, Innovation and Employment
Wellington

By email: resource.markets.policy@mbie.govt.nz

RE: Exposure Draft of the Crown Minerals (Petroleum) Amendment Regulations 2022

1 Introduction

- 1.1 The New Zealand Law Society | Te Kāhui Ture o Aotearoa (**Law Society**) welcomes the opportunity to provide feedback on the *Exposure draft of the Crown Minerals (Petroleum) Amendment Regulations 2022 (proposed Regulations)* which seek to give effect to the Crown Minerals (Decommissioning and Other Matters) Amendment Act 2021.¹
- 1.2 The Law Society does not seek to comment on the policy rationale behind the changes or the technical requirements. Instead, our feedback focusses on areas where the drafting may be improved, and issues which impact the workability of the proposed Regulations.
- 1.3 This submission has been prepared with the assistance of the Law Society’s Environmental Law Committee.²

2 Definitions (new regulation 37A)

- 2.1 New regulation 37A defines the terms “competent person” and “independent”. These definitions set out the characteristics or criteria required to be considered an “independent” and “competent person”, but do not specify who determines whether those characteristics or criteria are met.
- 2.2 We note that new regulations 37G and 37K require decommissioning plans and cost estimates to be prepared or reviewed by a “*competent and independent person approved by the chief executive*”. For clarity and consistency, the definitions of “competent person” and “independent” could refer to the person being accepted as such by the chief executive (similar to the way “independently qualified person” is defined in the Building Act 2004).³

¹ Last year, the Law Society made a submission on the Crown Minerals (Decommissioning and Other Matters) Amendment Bill. A copy of that submission is available on the Law Society’s website: <https://www.lawsociety.org.nz/assets/Law-Reform-Submissions/Crown-Minerals-Decommissioning-and-Other-Mat.pdf>.

² More information regarding this committee is available on the Law Society’s website: <https://www.lawsociety.org.nz/branches-sections-and-groups/law-reform-committees/environmental-law-committee/>.

³ See section 7(1).

2.3 The Law Society also questions whether it is necessary to include the level of detail currently provided in the definition of “independent”. While the definition seeks to give guidance as to the meaning of ‘independent’, the broad and subjective nature of the criteria may undermine that purpose. Given the assessment of independence necessarily depends on the particular facts, and given the term has a well-understood meaning in common law, it may be more appropriate to delete this definition, and to simply define the phrase “competent and independent person”. This would also better reflect the usage of the phrase “competent and independent person” throughout the balance of the proposed Regulations.

3 Timing of submission of field development plans (new regulation 37C(a)(ii))

3.1 New regulation 37C(a)(ii) requires field development plans to be submitted within a certain period after “*the addition of, or changes to petroleum infrastructure*”. It is not entirely clear what the term “changes” covers in this context. As currently worded, this could potentially capture routine maintenance and replacement of parts of this infrastructure. If that is not the intention, the Law Society suggests that further clarification be provided as to the intended scope of the term “changes”.

4 Submission of asset registers and decommissioning plans following a change in asset ownership (new regulations 37E(b)(iii), 37H(a)(v) and 37L(a)(vi))

4.1 New regulation 37E(b)(iii) requires a licence or permit holder to submit an asset register within three months of “any change in asset ownership”. If a licence or permit holder is publicly listed, this provision could potentially capture any change in shareholding (including any minor changes). If that is not the intention, consideration should be given to rewording this provision to clarify what a “change in asset ownership” means.

4.2 These comments also apply to new regulations 37H(a)(v) and 37L(a)(vi).

5 Information requirements relating to decommissioning plans (new regulation 37F(i))

5.1 New regulation 37F sets out the minimum information requirements relating to decommissioning plans. New regulation 37F(i) currently requires:

a summary (including timetables) of any planned engagement with iwi and hapū—

- (i) whose rohe includes some or all of the relevant permit or licence area; or
- (ii) who otherwise may be affected by the proposed decommissioning activities.

5.2 The Law Society has some concerns regarding this provision:

- (a) First, the word “timetables” connotes a degree of detail that may not be available at the time a decommissioning plan is developed. It may be more appropriate to require such information to be provided just prior to the submission of a decommissioning plan, or during the decommissioning process.
- (b) Second, the inclusion of the word “or” between (i) and (ii), implies this provision is to be read disjunctively. In other words, the permit or licence holder could plan to engage with iwi and hapū from the area, or with iwi and hapū who are not from the area, and still meet the requirements under this provision. In order to ensure

consistency with the principles of Te Tiriti o Waitangi, which recognise the importance of the ancestral connection of Māori with their lands and waterways, the Law Society considers this provision should be reworded to clarify that the summary:

- (i) *must* include planned engagement with all iwi and hapū whose rohe extends into the relevant permit or licence area, and
- (ii) may also include engagement with other iwi and hapū outside the relevant permit or licence area, who may be affected by the proposed decommissioning activities.

6 Preparation and review of decommissioning plans and cost estimates (new regulations 37G and 37K)

6.1 New regulations 37G and 37K require decommissioning plans and cost estimates to be developed or reviewed by a competent and independent person. However, the headings presently refer only to the requirement to ‘review’ such plans and estimates. We therefore suggest redrafting the relevant headings to better reflect the scope of these provisions. An appropriate heading could be “Competent and independent person to prepare or review decommissioning [plan/cost estimate]”.

6.2 The Law Society also considers that the wording of these provisions could be simplified as follows:

- (1) A permit or licence holder must engage a competent and independent person approved by the chief executive to prepare or review its decommissioning [plan/cost estimate].
- (2) The decommissioning [plan/cost estimate] must include:
 - (i) a statement of any assumptions made; and
 - (ii) whether the competent and independent person considers those assumptions to be reasonable.

7 Standards to be met by decommissioning cost estimate (new regulation 37J(b))

7.1 There appears to be a typographical error in new regulation 37J(b). It currently reads “*if decommissioning will occur no more than 3 years of the preparation of the cost estimate...*”. The Law Society queries whether there is a word missing, or if the first “of” should instead be “after”.

8 Requirement to resubmit decommissioning cost estimate (new regulation 37L(b)(i))

8.1 New regulation 37L(b)(i) requires a permit or licence holder to resubmit a decommissioning cost estimate to the chief executive if the overall decommissioning costs have changed by 20% or greater. It is unclear how licence and permit holders are expected to know when this provision is triggered (unless they are under a separate obligation to review and report on potential decommissioning costs at set time periods, for example, through their annual accounts).

8.2 The regulations could clarify when this obligation is triggered, for example, by stating that the requirement to resubmit arises not more than 6 months after the “*licence or permit*”

holder becomes aware that the overall estimated decommissioning costs have increased or decreased by 20% or more”.

9 Statements of completion (new regulations 37M(2)(b)-(f))

- 9.1 New regulations 37M(2)(b)-(f) set out what a statement of completion must include, and contain references to “*a description (in summary form) of*” various matters. These words could be replaced with the words “a summary of”.

10 Supporting information statements (new regulation 37N(2))

- 10.1 New regulation 37N(2) requires a person who signs a supporting information statement to state that they have maintained, and will maintain, the financial capability to carry out and meet the costs of the decommissioning, or to meet their decommissioning obligations. For readability, it may be appropriate to change the word “state” to “confirm”.

11 Provision of additional financial information (new regulation 41A(1))

- 11.1 New regulation 41A(1) requires a permit or licence holder to supply certain additional financial information. At present, it includes a requirement for information to be supplied on the “first occasion” by 31 March 2023. It may be helpful to clarify that this particular requirement only applies to persons holding permits or licences at the time the proposed regulations come into effect.

12 Next steps

- 12.1 We would be happy to discuss this feedback further if that would be helpful. Please feel free to contact me via the Law Society’s Law Reform & Advocacy Advisor, Nilu Ariyaratne (Nilu.Ariyaratne@lawsociety.org.nz).

Nāku noa, nā



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