

# Legal and Regulatory Changes Affecting New Zealand's Resources Sector

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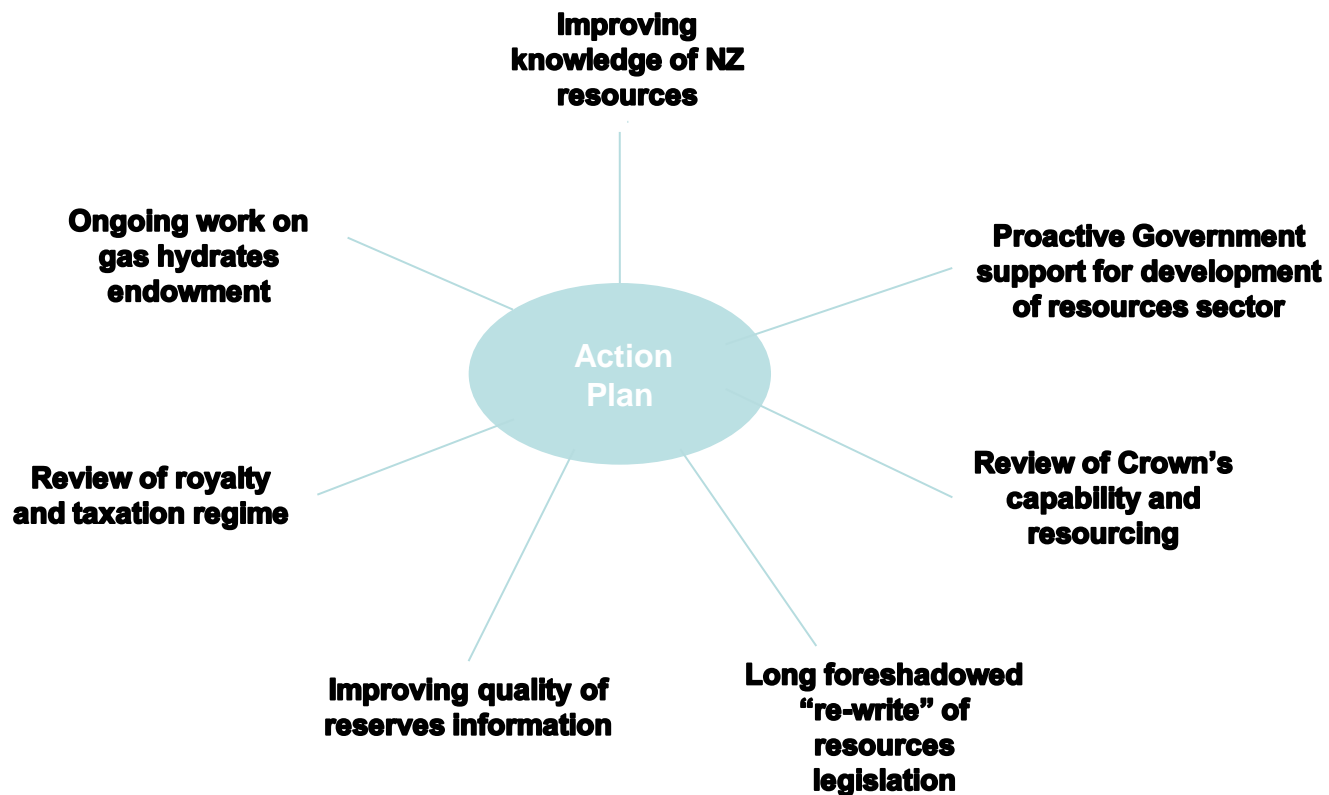
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**Bell Gully**

# Introduction

- Government initiatives to create the “right” regulatory environment
- Review of the Crown Minerals Act
  - assessment of likely changes to the Crown Minerals Act
  - interaction with Minerals Programmes
  - what has not been addressed in the review
  - current status of the review
- Other key regulatory/policy issues affecting the resources sector

# November 2009 Action Plan





# Crown Minerals Act review

- Discussion paper released late August 2010
- Original intention was to review the Act and then focus on the Minerals Programmes and Regulations
- Main objectives
  - encourage development of Crown's mineral resources to contribute to NZ's economic development
  - make the regime better able to deal with future developments and requirements
  - streamline and simplify the existing regime
- In December 2010, the Minister announced the review would be undertaken as a single package



# Outside the scope of the review

- Discussion paper identifies specific areas not intended to be covered:
  - Marine and Coastal Area Act 2011
  - Schedule 4
  - no review of extent of Crown ownership of minerals
- Environmental regulation
  - separate policy workstream
- Approach likely reflects the Schedule 4 experience and the Government's desire to avoid "hot button" issues

# Overall assessment

- Discussion paper says not intended to fundamentally change framework for managing Crown-owned minerals
- Overall much of what is proposed is sensible...but:
  - some of the key proposals provide only a very general outline of what is proposed
  - a few of the proposals potentially undercut investment certainty and their implications will need to be carefully considered
  - also significant is what is coming under the Minerals Programme review – many of the key issues parked for now
  - lack of specific focus on minerals sector and the unique impact of the changes on the minerals sector

# Permit-related matters

- Mostly to be dealt with in Minerals Programme review
- Right to subsequent permits not automatic
  - potentially significant for investment certainty
  - permit holders explore with expectation that will be able to mine a deposit/discovery
- Removal of right to arbitrate work programme if Minister refuses to approve it
- Removal of ability to defer the permit commencement date if delays in obtaining consents

# Section 41 of the Act

- Section 41 requires certain kinds of agreements to receive Ministerial consent (e.g., permit transfers, product sale agreements, royalty agreements)
- Difficulties with section 41 approvals are well known
  - delay, uncertain scope, practical difficulties
- Proposals to simplify section 41 therefore welcome
- Areas of concern or not addressed include
  - clarification of scope – especially share deals/changes of control
  - statutory timeframe for approval of transfer

# Compliance



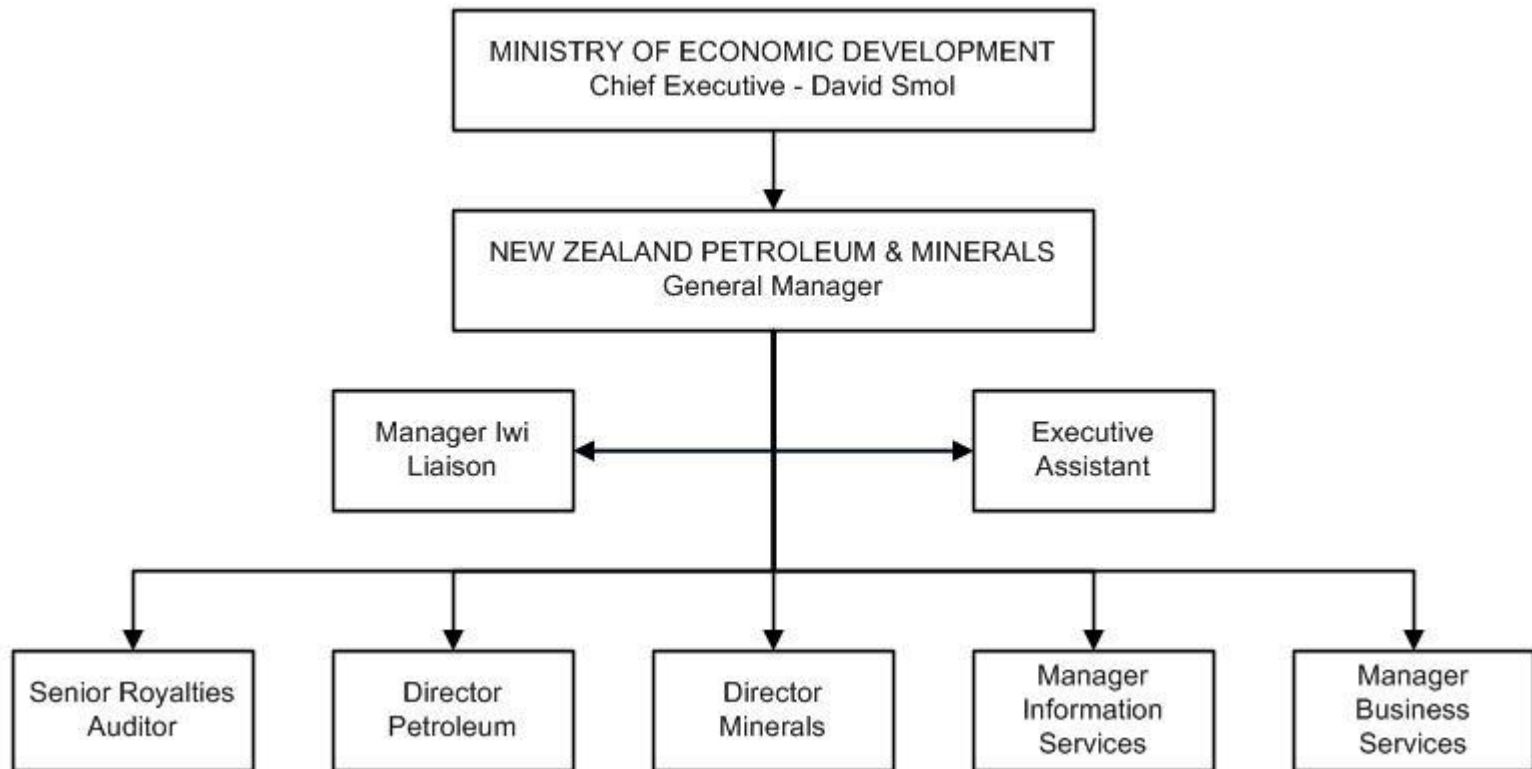
- Strengthening of penalties for non-compliance
- Interest and penalties on late payment of fees/royalties
- Increased document inspection and audit rights
  - similar to existing tax legislation
- Royalties to be specified in regulations rather than MPP
  - extent of any changes are not clear
- Proposals difficult to assess as they are quite general



# The Regulator

- Previously the Crown Minerals division of the MED
- Government undertook a review of Crown Minerals capability
- Resulted in a restructuring of Crown Minerals
- New business unit (NZP&M) with increased capacity and capability
- Expectation was a more commercial focus to facilitate development of the Crown's mineral estate
- New Group Manager and Business Unit leaders

# New NZP&M organisational structure



# NZP&M focus on compliance

- Particular focus on the substance of new industry entrants and their financial and technical capability
- Our recent experience has been an increased focus by NZP&M on permit compliance and ensuring permit holders are meeting permit obligations in a timely manner
- Has involved NZP&M taking permit revocation proceedings (including through the Courts) - recent decision in *Tui Trust Mining v Minister of Energy*
- An increase in Official Information Act requests seeking information about process NZP&M has followed to award permits and change permit conditions

# Other current policy initiatives/influences

- Significant amount of regulatory change
- Need for coordination between Government agencies
- Marine and Coastal Area Act
- New EEZ legislation
  - increased ability for third parties to influence
  - risk of potential serious delays if not well handled
- Establishment of EPA (will regulate EEZ activities)
- Review of offshore HSE requirements against international best practice

# Other current policy initiatives/influences.

- **Royal Commission**
  - review of underground coal mining legislation
  - H&S requirements and relationship to environmental legislation
- **Department of Conservation**
  - establishment of new marine reserves (note these will effectively be closed to exploration/mining)
  - marine mammal seismic guidelines (regulations?)
  - new approach for Conservation Management Strategies
- **Recent influences**
  - well organized protest movement
  - significance of iwi for resources projects

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# Questions

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