

Petroleum regulatory changes and challenges

DAVID COULL



The petroleum industry is undergoing a significant transition period which is likely to continue through 2011. By David Coull, partner in the Wellington office of Bell Gully and who specialises in corporate and resources law.

THE PETROLEUM INDUSTRY is currently undergoing a significant transition period which is likely to continue through 2011. The current Government continued its focus throughout 2010 on the petroleum industry (and the resources sector more generally) as a vehicle for making a significant contribution towards the country's economic growth and development. It has been successful in attracting two significant new overseas entrants into the New Zealand oil and gas industry (Anadarko and Petrobras) and has continued with the implementation of its work programme contained in the Petroleum Action Plan that was first announced by the Minister of Energy and Resources in November 2009.

The Petroleum Action Plan builds on the earlier review work commissioned by the Government that was undertaken to assess the robustness of New Zealand's regulatory and taxation regime against international benchmarks (the AUPEC report) and possible options to further develop the petroleum sector (the McDouall Stuart report). A reasonable amount of progress has been made against the stated objectives of the Petroleum Action Plan. These include:

- The continuation of the Government's offshore seismic acquisition programme (which has been an important factor in attracting interest in New Zealand as an exploration destination);
- The agency review work that was undertaken throughout 2010 and resulted in the announcement by the Minister of Energy and Resources at the 2010 Petroleum Conference of the proposed enlargement of the Crown Minerals division of the Ministry of Economic Development and the establishment of an advisory board to oversee Crown Minerals;

- The contract recently awarded to GNS Science under which it is to deliver the Petroleum Exploration and Geosciences Initiative project over the next two years (which project will fund 14 inter-related work streams to evaluate and upgrade knowledge about the Taranaki region); and
- The release of the discussion document relating to petroleum reserves reporting and the likely resulting changes which are expected to lead to more detailed reserves data being made available.

These initiatives are to be welcomed as part of an overall work programme intended to ensure that the petroleum sector makes a significant contribution to the country's economic growth.

From a legal and regulatory perspective, the most significant work stream forming part of the Petroleum Action Plan is the review of the Crown Minerals Act 1991. A discussion paper was released in August 2010 which set out proposed amendments to the Act and invited industry participants to make submissions on those proposals. The review of the Crown Minerals Act is also to be welcomed as it responds to concerns voiced by industry for several years that it was indeed time to undertake a review of the petroleum and minerals legislation.

The August 2010 discussion paper commented that the proposed legislative reforms were not intended to fundamentally change the statutory framework for managing Crown-owned minerals. Although it is beyond the scope of this article to examine the proposed changes in detail, the following areas of particular significance to industry participants are to be addressed as part of the review:



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- The streamlining and simplification of the ministerial review and consent process for permit transfers and dealings;
- Addressing non-conventional activities such as underground coal gasification and methane hydrates;
- Introducing more flexibility in relation to the term of exploration permits; and
- Refining information reporting requirements and requirements relating to the filing and release of data.

The discussion document also identifies more contentious areas that are likely to give rise to debate within industry and with the Ministry of Economic Development. These include the proposed changes to the ability of permit holders to obtain subsequent permits under section 32 of the Crown Minerals Act and the proposed strengthening of penalties for non-compliance and the introduction of enhanced audit powers (although the intended scope of these proposed changes is not yet clear).

In addition to the matters identified above, a number of significant permitting and operational matters are to be addressed as part of the review of the various minerals programmes that is foreshadowed in the discussion document. The industry will no doubt await this second phase review work with considerable interest given the direct impact it is likely to have on the operational and commercial activities of permit holders.

It is clear from the brief reflections above that it is currently a time of significant regulatory and other change for the petroleum industry in New Zealand. What is not yet that well appreciated is the extent of regulatory reform that is being undertaken by other government ministries that will also impact on operations in the petroleum sector. These include:

- The establishment of the Environmental Protection Authority. The stated purpose of the Authority is to manage the regulation of New Zealand's environment and natural and physical resources – it will likely have a central role in the management and regulation of petroleum operations undertaken onshore and offshore;

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- The implications of the changes that will result from the proposed enactment of the Marine and Coastal Area (Takutai Moana) Bill;
- Specific regulations relating to petroleum and other operations and activities to be undertaken inside New Zealand's exclusive economic zone but outside the 12 nautical mile limit;
- The review work currently being undertaken to review offshore HSE regulation against international best practice; and
- The work currently being undertaken by Maritime NZ in relation to the decommissioning of offshore facilities and also the review of New Zealand's marine oil spill response capability.

There are also a number of other related work streams being undertaken not included in the list above.

The key point looking forward into 2011 to take away from developments in 2010 is the need for the Government and industry alike to ensure the various proposed regulatory changes respond to identified concerns and issues and are implemented in a timely, coherent and coordinated manner. It is safe to say that, if this can be achieved, New Zealand will become a more attractive destination for international oil and gas exploration and production investment.