



LEGISLATION DESIGN AND ADVISORY COMMITTEE

10 October 2018

Deborah Russell MP
Environment Committee
Parliament Buildings
Wellington

Dear Ms Russell

Crown Minerals (Petroleum) Amendment Bill

1. The Legislation Design and Advisory Committee (LDAC) was established by the Attorney-General in June 2015 to improve the quality and effectiveness of legislation. LDAC provides advice on design, framework, constitutional, and public law issues arising out of legislative proposals. It is responsible for the *Legislation Guidelines* (2018 edition), which have been adopted by Cabinet.
2. In particular, LDAC's terms of reference include these dual roles:
 - a. providing advice to departments in the initial stages of developing legislation when legislative proposals are being prepared; and
 - b. through its External Subcommittee, scrutinising and making representations to the appropriate body or person on aspects of bills that raise matters of particular public law concern.
3. The External Subcommittee of LDAC referred to in paragraph 2b above is comprised of independent advisers, from outside Government, who have been appointed by the Attorney-General. Under LDAC's mandate, the External Subcommittee is empowered to review and make submissions on bills as introduced, usually those that were not reviewed by LDAC prior to their introduction.¹
4. The Crown Minerals (Petroleum) Amendment Bill was not considered by LDAC prior to introduction. The External Subcommittee has therefore reviewed it and wishes to make the attached submission.

¹ Legislation bids identify whether Bills will be referred to LDAC for design advice before introduction. This is determined when Cabinet settles the Legislation Programme. Generally, significant or complicated legislative proposals are referred to LDAC before introduction. Other legislative proposals with basic framework/design issues, matters relating to instrument choice, issues relating to consistency with fundamental legal and constitutional principles, matters under the *Legislation Guidelines*, or with the ability to impact the coherence of the statute book may also be suitable for referral to LDAC.

5. Thank you for taking the time to consider the Subcommittee's submission.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'P. Rishworth', with a stylized, wavy flourish extending to the right.

Paul Rishworth QC

Chairperson

Legislation Design and Advisory Committee



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Dear Ms Russell

Crown Minerals (Petroleum) Amendment Bill

1. The Legislation Design and Advisory External Subcommittee has been given a mandate by Cabinet to review introduced Bills against the *Legislation Guidelines* (2018 edition) (**Guidelines**). The Guidelines have been adopted by Cabinet as the government's key point of reference for assessing whether draft legislation is well designed and accords with fundamental legal and constitutional principles. Our focus is not on policy, but rather on legislative design and the consistency of a Bill with the principles contained in the Guidelines.
2. Our submission is directed at the lack of full pre-introduction consultation. This is generally undesirable, for reasons outlined below. To help address any potential issues we recommend that the time for public submissions be extended.
3. We do not submit on the policy underlying the Bill.

Why is consultation important?

4. We appreciate that the Environment Committee is familiar with the purposes of consultation, but it is still important for us to touch on them, particularly given the issue of inadequate consultation has arisen in the context of this Bill.
5. The Guidelines recognise that public consultation is vital to ensuring that the Government has all the information it requires to make good law.²
6. It helps to ensure the legitimacy of the legislation in the eyes of the public and those affected. An effective consultation programme can increase public acceptance of the legislation, increase compliance with it and lower the administration costs of implementing and enforcing it.³

² *Legislation Guidelines* (2018 edition), chapter 2.5.

³ *Legislation Guidelines* (2018 edition), chapter 2.5

7. It is the means by which the need for legislation or at least its shape is determined. This is so even when, as is the case here, a Government has already set the objectives. In such a case it helps to ensure that the legislation is tailored to meet those objectives through an appropriate process.
8. As the Committee appreciates, when a bill is to be introduced consultation commonly occurs at two stages: first, prior to the introduction of a bill and then secondly after introduction, for example by select committee processes. Each stage is important.
9. Time and care taken at the first stage can reduce the issues which arise at the second stage. It can also result in the introduction of a bill which is likely to receive greater acceptance.
10. Those consulted pre-introduction often include legislative and subject matter experts, industry, consumers and interest groups, and often the wider public. Post-introduction consultation usually includes a public submission process.
11. In each case, to ensure that the benefits outlined above are realised, both stages must combine to mean that consultation is robust, meaningful and effective.

The consultation with the Bill

12. The Bill carries potential for significant environmental, economic and societal impact. Some will view those impacts as positive, and others less so. But the point is the Bill is not minor in its intended effect.
13. Importantly, it is not urgent, in the sense traditionally thought of when usual legislative processes are curtailed. There is no suggestion that an extra week or two in the legislative process would have a major adverse effect.
14. It seems that pre-introduction consultation for the Bill was limited to a significant degree. This is reflected by the Departmental Disclosure Statement, which includes the Treasury Regulatory Quality Team's review of the Regulatory Impact Analysis. It states:

"[D]ue to time limitations and analytical constraints arising from Cabinet's previous decisions, MBIE did not consult the petroleum industry and the public on the proposals. As such, it is not possible to be confident that all potential impacts have been identified. The consultation criterion has therefore not been satisfactorily addressed."
15. As is evident from a reading of that extract, the limitations and constraints carry potential for adverse impacts, including adversely impacting on confidence in the legislative process. It is unlikely that they can be fully cured by the current committee process, due to the limited submissions timeframe.
16. The background documents provided publicly with the Bill do not contain a sufficient explanation of why such time limitations and analytical constraints were imposed. The fact

that a political decision has been made cannot be equated with meaning that pre-introduction consultation ought to be tightly circumscribed. Were that so, many bills would have little pre-introduction consultation.

Recommendation to extend submission time

17. We **recommend** that the Environment Committee extend the public submission time for this Bill to help ensure that stakeholders and the wider public have a better opportunity to have input into this Bill and that all relevant issues are identified.
18. Thank you for considering our submission. We do not wish to be heard in person.

Yours sincerely

Prof Geoff McLay

A handwritten signature in black ink, appearing to read 'G McLay', written in a cursive style.

**Chairperson
Legislation Design and Advisory External Subcommittee**