

# THE LEGAL ENVIRONMENT FOR PETROLEUM EXPLORATION: AN OVERVIEW

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The New Zealand Legal System is broadly similar to the other common law systems derived from English law, with many local modifications. The rights to explore for and take petroleum are governed by the Petroleum Act and administrative procedures under that Act.

Explorers and service companies from within New Zealand and overseas have a choice of business structures and organisations, including companies, partnerships and joint ventures. The relevant differences and features are explained, including comments on doing business in New Zealand from overseas.

The commercial legal environment includes regulation of trade practices and competition, Overseas Investment Commission requirements, taxation obligations (including income tax, employee taxes, fringe benefit tax, goods and services tax and contractor withholding taxes), the Accident Compensation regime and operational requirements relating to transport and communication systems. The paper provides an introduction to the business and operational effects of these legal requirements. Some aspects are covered more fully by complementary papers presented to the conference.

## INTRODUCTION

My aim in this paper is to provide an overview of the New Zealand legal environment as it affects petroleum explorers and their operations in New Zealand. Necessarily, a paper of this nature can only be a summary, but it is intended to identify some of the commonly encountered requirements and restrictions and some suggestions for avoiding or minimising their effects. As with other aspects of an exploration project, the delay, expenses or uncertainties arising from the legal regime can best be minimised by timely planning and co-ordination of the technical, supply, financial and legal elements of the project.

I include some comments on the regime which applies to overseas companies or investors doing business in New Zealand. These comments should also be helpful for those domiciled within New Zealand, in their understanding of some of the problems which may face co-venturers or contractors from overseas.

The paper deals with the following general headings:

- (a) An outline of the New Zealand legal system (as it affects petroleum exploration).
- (b) A summary of the types of business structures and organisations recognised under New Zealand law.
- (c) A more detailed consideration of significant legal requirements and restrictions governing petroleum exploration.
- (d) Some comments on the prospects for the future.

## NEW ZEALAND LEGAL SYSTEM

The New Zealand legal system has its origins in the laws of England and still has a great deal in common with the

common law systems of England, the Commonwealth (particularly Australia and Canada) and the United States of America.

Naturally, although the system and the broad rules are similar to those of other jurisdictions, there are many matters of detail and local modifications introduced by statute; that is, by Act of the New Zealand Parliament, which consists of the elected representatives of the people.

Subsidiary to the statutes there is more detailed law, contained in Regulations and Orders in Council. These are public, legally binding documents, introduced by the Government of the day without parliamentary debate.

At a less formal level, but commonly having the force of law, is a whole range of political or administrative regulatory powers for the grant, and conditions, of licences, consents or approvals.

All of these elements are present in the petroleum exploration regime. The Petroleum Act was first passed in 1937 and has been considerably amended since. That Act determines the ownership of petroleum in a natural reservoir and certain rights which may be granted to licensees to explore for and mine that petroleum. The Petroleum Regulations govern in some detail the operational conditions within which exploration must be conducted. The whole regime of the conditions to be attached to licences, work programme requirements, Crown participation and even the determination of whether or not to offer or grant a licence are matters of political and administrative determination.

Certain activities may fall within the jurisdiction of one or more specialist tribunals, such as local authorities (City, County or District Councils, Regional Councils) or the Planning Tribunal under the Town and Country Planning Act, local Water Boards or Catchment Authorities under the Water and Soil Conservation Act or the Arbitration Court under the Labour Relations Act.

## BUSINESS STRUCTURES AND ORGANISATIONS

As might be expected, business organisations and arrangements in New Zealand correspond closely to those in similar jurisdictions overseas. There are some particular provisions for regulating investments and operations in New Zealand by non-New Zealand participants.

### Companies

A company may be incorporated in New Zealand under the Companies Act 1955 with at least two shareholders. The liability of the shareholders may be limited to the capital of the company (which need be only nominal). If the company is formed for mining purposes it may be a *no liability* company, which means that the shareholders cannot be compelled to pay up the full value of their shares.

A private company (having 2 to 25 members), need not make public its accounts nor have them audited, unless 25% or more of the voting power is controlled by companies incorporated or persons normally resident outside New Zealand.

Although companies incorporated before 1983 might be limited in the scope of their powers and objects, the present legislation permits a company to exercise all the powers and functions of a natural person.

### Overseas companies

Companies incorporated in overseas jurisdictions are generally recognised as legal entities in New Zealand. A company which is incorporated overseas and wishes to establish a branch or a place of business in New Zealand must register with the Registrar of Companies and provide certified copies of the constitutional documents of the company and details of its directors, secretary and any other officers. It must also provide the name and address of a person who is resident in New Zealand to accept the service of notices on behalf of the company. The company must file with the Registrar each year a full financial statement and a separate financial statement for its New Zealand activities. The statements must in general be audited.

### Overseas persons

For the purposes of the Overseas Investment Act and Overseas Investment Regulations, any person who is not a New Zealand resident and any company in which 25% or more of the voting capital is held or controlled by persons or companies overseas, will be an *overseas person*.

Before an overseas person can establish or carry on business in New Zealand, purchase any business in New Zealand, takeover any New Zealand company or take up shares to be issued by any New Zealand company to the extent that the company would itself become an overseas person, the consent of the Minister of Finance must first be obtained. Recent changes to the Overseas Investment Regulations have raised the threshold for some consent requirements.

Those and the requirements of the Overseas Investment Act are referred to later.

### Partnership

A *partnership* is the relationship which subsists between persons carrying on a business in common with a view to profit. The consequences of that relationship, as between the parties themselves and with respect to persons outside the arrangement, are governed by the Partnership Act 1908.

I mention partnerships because they are a popular business structure, they do sometimes exist where the partners do not intend to be in partnership and considerable care needs to be taken in petroleum exploration projects to ensure that a partnership is not inadvertently created.

The existence of a partnership, therefore the legal consequences, will be determined not merely by the intention of the parties but by the facts, the way in which they conduct themselves and whether or not the relationship fits into the definition.

The most important consequences, for present purposes, are:

- (a) The partners are jointly and severally liable for all obligations of the partnership (that is, their obligations are not limited to a percentage interest in the enterprise, but may be unlimited).
- (b) Any partner may bind all of the other partners in obligations to outsiders, even though between the partners there is no authority to do so.
- (c) A partnership is recognised as an entity for taxation purposes. It is not required to pay income tax but is required to file tax returns showing the net taxable income of the partnership and the distribution of it to the individual partners.

### Joint venture

The expression *joint venture* is widely used to describe the contractual arrangements which are commonly entered into between participants in a petroleum exploration or mining project. In New Zealand most of the joint venture agreements are based upon the British National Oil Company model used in the North Sea, although there have been a number of other sources.

Notwithstanding their popularity, and the perceptions held by those in the petroleum industry and in other businesses about the nature of a joint venture, the concept is not explicitly recognised as a legal entity or a standard legal relationship.

Because it is not governed by an existing set of legal rules, unlike a partnership or a company, the terms of a joint venture are undefined except to the extent that the parties choose to define them. That is the purpose, of course, of the joint venture agreement.

This paper does not deal in depth with joint ventures. The topic is more fully covered in a separate paper to be delivered to this conference, and that paper includes other references. For completeness of this overview a few of the main points are mentioned.

There are some important characteristics which should be adhered to in the establishment and operation of a joint venture, which include:

- (a) The arrangement is not intended to be a partnership, because the parties generally wish to avoid the consequences of being in partnership (i.e., joint and several liability; the apparent capacity of any one partner to bind all partners; the need for detailed taxation accounts which implies identical arrangements for claiming expenses).
- (b) The parties generally participate in defined proportions and agree to hold assets and bear liabilities as tenants in common in those proportions.
- (c) The collective enterprise is not intended to merely produce a profit, but to produce a specific asset (petroleum) which then becomes the property of the participants in shares.
- (d) The participants should not be described, and particularly should not be held out to others, as partners. Instead, the opportunity should be taken to make it clear to contractors that, although there are several participants, the relationship between them is not a partnership.

The expression *joint venture* is found in several statutes, including the Ministry of Energy Act 1977, the Commerce Act 1986 and the Goods and Services Tax Act 1986. However, none of those statutes gives any guide as to the meaning of the term.

### Licensees

I refer briefly to the status of named licensees to whom a prospecting or mining licence is granted, because it appears that the legal position of the licensees is not always correctly reflected in the way in which the interests are referred to.

Under the Petroleum Act the licensees are jointly and severally liable for all obligations under the licence, which means that each licensee may be held fully responsible for those obligations. The licensees usually agree between themselves that they will bear those obligations in defined shares. However, in the absence of some agreement between the licensees, there is no foundation for suggesting that the licence and the obligations under it are held in percentage interests.

Even if agreement is reached as between the licensees that they hold specified percentage interests in the rights and obligations under the joint venture agreement and in any petroleum produced, those are arrangements between themselves and do not prevail over the Act as to the Licence obligations. The references to the respective percentage interests of licensees (which can be seen in the press, the Ministry's own records and publications and even on the licence itself) have no basis under the Petroleum Act and are merely adopted as a matter of convenience to reflect the arrangements reached between the parties.

### SIGNIFICANT LEGAL REQUIREMENTS AND RESTRICTIONS GOVERNING PETROLEUM EXPLORATION

Although petroleum exploration is primarily governed by the Petroleum Act and by Regulations and administrative decisions taken under that Act, those participating in exploration are also governed by the law of New Zealand as it affects their particular activities. Without attempting to deal with every issue, it should be helpful to indicate some of those which experience suggests are likely to lead to extra

delay or expense (often the same thing), particularly if they are not anticipated.

### Petroleum Act, 1937

No person may prospect or mine for petroleum except pursuant to a prospecting licence (PPL) or a mining licence (PML) granted under Section 4 of the Petroleum Act. The licensing regime is described in the Ministry's\* own publications and by Professor D.E. Fisher, (Fisher, 1986). The power to grant a petroleum prospecting licence (or not), and to whom, lies completely in the discretion of the Minister of Energy. Thus, the first step for an applicant is to persuade the Ministry and then the Minister that it should be granted a licence over the area which it wishes to prospect. In practice, the Minister invites applications at intervals for identified blocks, but an application could be made for any area of New Zealand not already under licence. If the Minister is willing to grant a licence over the area, the main consideration on any application will be whether the work programme proposed is acceptable to the Minister (and there may be competing applicants) and whether the applicant has the ability to carry out the work programme.

Persuading the Minister (or the Ministry) of the merits of the work programme may be something of an obstacle, but it is worth considering some comparisons. For example, to explore for or extract geothermal fluid, which is a topical source of energy, a similar application may be made to the Minister, who may grant a licence in his discretion. However, encroaching upon a geothermal reservoir will affect natural water or produce a run-off into natural water, which requires the consent of the local Water Board. That consent will often require public notification and possibly a hearing. Another example is the case of minerals under the Mining Act. Prospecting under that Act requires a public notification procedure which can lead to objections, public hearings and the consequent delays and uncertainties.

In addition to the need to negotiate a work programme with the Ministry, there are a number of uncertainties about the terms of a PPL. The Minister has a right to specify on the grant of a PPL that the Crown shall be entitled to participate in prospecting or mining. The manner in which the Crown has exercised that right has changed over recent years. The present policy as published is that the Crown will take up to an 11% interest in any licence issued. The interest will be non-contributory during prospecting and may at some future point be sold. The policy raises a considerable number of uncertainties, for example:

- (a) As the licensees are joint and several, no decision can be taken by the licensees except unanimously (even though the Crown is not contributing).
- (b) While the Crown holds a right to participate, not exercised, the other parties do not know the precise extent of their participating interest in any discovery.
- (c) If the Crown has a free right of alienation then the other licensees have no rights of pre-emption for that share and may find it sold to a third party with whom they do not wish to be involved, and whom they certainly do not wish to carry through an exploration programme.

Current practice is that the Minister will set out in the PPL, when it is granted, a brief statement of the terms of the Minister's participation. In recent licences, the Minister has retained an 11% carried interest during exploration, with a

\*now Ministry of Commerce

right to participate as a contributing party in any development under a Petroleum Mining Licence.

In addition to the Crown's right of participation, the Crown requires a deposit or bond and a payment of regular fees for the duration of the PPL. There is also provision for a Crown royalty (a percentage of the production out of any mining licence, limited to that specified in the PPL) based on the petroleum produced, valued at a point to be determined by the Minister.

Apart from the cost to the explorer of the imposts, the impact on potential revenues is uncertain so long as the point of assessment of the royalty is undetermined, though it may be fair to say that there are much greater uncertainties in the projection of petroleum revenues.

Explorers, being optimists, need to consider the consequences of a discovery. That will entitle the licensees to the grant of a petroleum mining licence on terms and conditions to be specified in the Minister's discretion (but not including anything inconsistent with the conditions in the prospecting licence).

The Minister has wide powers to withhold approval to a proposed programme, if he is satisfied that it will be contrary to recognised good oil field practice or contrary to the national interest. Although there is a dispute procedure for resolving arguments about good oil field practice, the Minister has the final word on what is the national interest. The Minister may also postpone the development of a petroleum discovery in the national interest.

While there are certainly compensation provisions which enable the participants to recover their expenditure with some interest, those rights are not calculated to console an explorer who has made a commercial discovery, after the statistically justified number of dry holes, only to be deprived of the premium.

Even if the development proceeds, the Minister may direct that the petroleum from it be refined and processed in New Zealand if that is in the national interest. The general compensation provisions in Section 39 of the Act provide that the licensee "shall be entitled to full compensation for all loss... suffered by him". The history of such compensation provisions in New Zealand, and of disputes arising out of them with the Crown, does not suggest that the developer would be likely to get its compensation quickly nor be satisfied at the end of the proceedings that it has achieved the same returns as if it had been able to sell the petroleum on the open market.

Under Section 47E of the Act, every Licensee must keep records and provide reports and information to the Ministry or the NZ Geological Survey. Formerly that information was on closed file for five years and could not be disclosed without the consent of the licensee. However, Section 47E(5) was changed by the Official Information Amendment Act in 1987 so that it now provides that all information furnished by a licensee must be provided to any person on request, after five years or termination of the licence. There is nothing except the Official Information Act itself to prevent disclosure being made sooner, with no need for any notice to or consent of the licensee.

The main ground for the government withholding information is that it is commercially sensitive. The only step that licensees can take is to ensure that all sensitive information furnished under the Act is marked *Commercial - Confidential*, and to hope that officials will be sympathetic to the requirements of the industry.

The Petroleum Act sets out a range of rights and obligations incidental to the holding of a PPL or a PML. These include, for example, provisions for unitisation, the petroleum inspectorate and for licence interests to be transferred with the prior consent of the Minister. There is also a code for the approval and regulation of pipelines.

### **Land access**

Neither a PPL nor a PML gives unimpeded right of access to the land (whether onshore or offshore) included within the boundaries of the licence. In the case of privately owned land, the land owner is entitled to notice, and access rights may not be exercised until a compensation agreement has been negotiated or, if agreement cannot be reached, compensation has been determined under the statutory procedures. In the case of land administered by the Crown or by local authorities as public land of various categories, including the territorial sea and the continental shelf, the consent of the appropriate Minister is also required. In practice this may be time consuming, particularly with reserves (National Parks, State Reserves) and land administered by local authorities or other bodies outside the relevant government department.

### **Physical and social environment**

In recent years the legislative frame-work for the protection of New Zealand's unique flora and fauna, its relatively pollution-free environment and features of cultural and historical value to both the relatively recent European immigrants and the much older Maori civilisation have been subject to considerable scrutiny and revision. Participants in an exploration project, and more so in a development project, must be prepared to expend considerable resources in time and funds to understand the environment in which operations will be conducted, and to ensure that all of the necessary consents are sought and conditions met. This paper merely touches on these topics, as they are being covered more fully by others.

The physical environment will be protected by the Water and Soil Conservation Act (rights to take, use or discharge into natural water), Maritime Pollution Act (discharges and pollution in sea), Clean Air Act (air pollution), several Statutes relating to noise, historic places, archaeological sites and reserves and a miscellany of Statutes and local Regulations relating to such matters as waste disposals, toxic substances, reserves both maritime and on land, foreshores, fisheries and protected trees.

The cultural and spiritual values and traditions of the Maori people are receiving increasing statutory and political recognition. The principles of the Treaty of Waitangi, entered into between representatives of the Maori people and of the British Sovereign in 1840, have in relatively recent times been given statutory significance. Those principles are now recognised in the Treaty of Waitangi Act 1975, the State Owned Enterprises Act 1986, the Conservation Act 1987 and the Environment Act 1987 and others.

Many petroleum explorers have in the past made a practice of consulting the interested Maori groups to ensure that their interests were not transgressed, to seek their advice on the naming of wells and to lift the *tapu* (or spiritual prohibition on interference) from the area of operations. Clearly both local and overseas contractors will need to plan early, take care and seek suitable guidance on these matters in the future.

Industrial relations is another matter on which local guidance needs to be sought. There is a legal framework which provides for such matters as the minimum levels of manning on vessels in New Zealand waters and the numbers and qualifications of personnel in a range of occupations. In addition, although not strictly legal matters, there are detailed codes of practice (formal and otherwise) which govern the relationships between employers, employees and unions. In respect of these matters there is really no substitute for extensive local experience. Operators which do not have that experience are best advised to seek the guidance of those who do.

Other New Zealand resources, particularly in construction industries relevant to a development, may be promoted for economic or social reasons. Generally, there is no difficulty importing resources which are not available in New Zealand, but it may be necessary to investigate the local market so that the need for imports can be demonstrated.

#### **Overseas Investment Commission requirements**

Any *overseas person* as that term has already been described, must obtain consent from the Overseas Investment Commission before he or she can:

- (a) Establish or carry on a business in New Zealand where total establishment and operating costs are expected to exceed \$10 million.
- (b) Acquire 25% or more of a New Zealand company, where the consideration for the share transfer or the value of the offeree's assets exceed \$10 million.
- (c) Acquire assets in New Zealand where the total consideration payable is more than \$10 million.

Consent is also required for any investment which results in the overseas person controlling 25% or more of the entity which is to carry on business in, and any acquisition of assets for use in, *sensitive* sectors (broadcasting, commercial fishing or on rural land). The \$10 million threshold does not apply.

There is no specific limit on the percentage of overseas investment which will be permitted in an exploration project. The policy may vary from time to time, but at the present permits an almost unrestricted participation in exploration by overseas explorers who can demonstrate an acceptable level of technical and financial competence. In most cases the original consent will only extend to development if the applicant can show that the extension is justified. Even New Zealand explorers should understand that, if they wish to farm-out licence interests or contract operational work to overseas persons, those persons will not be entitled to carry on business in New Zealand without the necessary consents.

It is open to argument that the mere ownership of an interest in a PPL is not carrying on business, so that consent for merely owning a licence interest may not be required.

However, the pragmatic view is that, since the consent is not normally difficult to obtain and is likely to be a prerequisite to participation in any development, then the consent should be applied for at an early stage.

#### **Trade practices and competition**

In the last few years, New Zealand legislation relating to competition law and restricted trade practices has been amended and much new material introduced. The regime is now very similar to that in Australia, and thus has a lot in common with North America. The main statutes are the Commerce Act 1986 and the Fair Trading Act 1986. The Commerce Commission is a specialist investigating authority and tribunal charged with a range of administrative and enforcement functions under both Acts.

The Commerce Act prohibits the entering into or giving effect to contracts, arrangements or understandings which substantially lessen competition in a market. Exclusionary provisions in contracts, arrangements or understandings (generally collective boycotts by traders or suppliers directed at other traders or groups of traders) are also prohibited.

Collective price fixing arrangements are deemed to substantially lessen competition, and are thus prohibited under the more general provisions. There are exceptions for prices fixed within a joint venture or a joint buying and production arrangement.

The above practices can be authorised by the Commerce Commission if a countervailing public benefit is shown. However, resale price maintenance is also prohibited and cannot be authorised.

The Commerce Act also prohibits a company which has a dominant position in the market from using that position for the purpose of:

- (a) Restricting entry into a market.
- (b) Preventing or deterring competitive conduct in a market.
- (c) Eliminating persons from a market.

The Commerce Commission must be notified of any merger or takeover proposal involving combined assets of over \$100 million (unless the assets of the minor participant(s) are less than \$5 million, soon to be increased to \$15 million). The Commission may grant a clearance to the transaction if it would not lead to or strengthen a dominant position in a market. It may grant an authorisation if a dominant position would be created or strengthened, but with countervailing public benefits.

The Fair Trading Act 1986 consolidated and revised the law on misleading advertising. It also prohibits misleading or deceptive conduct and false or misleading representations about goods or services. In addition, certain specific unfair trade practices are identified and prohibited, such as *bait* advertising, where goods advertised are not available for supply, and use of physical force or coercion in the supply of goods and services.

Most breaches of the Fair Trading Act do not require an intention to deceive or mislead; the fact or likelihood of doing so will be a breach. Remedies may be sought by consumers or other traders, or initiated by the Commerce Commission.

## Taxation

Taxation of course is everywhere. The income tax regime is dealt with more fully elsewhere, and is still unsettled. However, there are other aspects of taxation which justify a few brief comments on what are essentially operational rather than commercial matters.

Every employer in New Zealand must deduct from wages paid to employees a proper amount of tax and forward the amount to the Inland Revenue Department. If the employee claims not to be liable to tax in New Zealand, then that should be verified.

Payments to overseas contractors providing services in New Zealand will be subject to overseas contractors' withholding tax. The person paying the contractor must withhold 15% of the contract payment and forward it to the Inland Revenue Department. It should be understood that this is not a final tax, and in very many cases is far in excess of the overseas contractor's tax liability in New Zealand. It is held by the Inland Revenue Department as a credit against the contractor's ultimate tax liability, and if that liability is less than the amount held, the contractor can claim the excess back. Most contractors can in fact procure exemption certificates from the Inland Revenue Department and those engaging them should endeavour to ensure that this procedure is adopted. There is certainly no justification, as some contractors would suggest, for simply adding 15% onto the contract charges as if that were a final tax.

In recent years the introduction of a withholding tax on contract payments to resident contractors has been mooted. However, implementation of this proposal has been delayed for further consideration of the method of administration. It is not certain that such a tax would be administered in the same way as the non-resident contractors withholding tax.

Goods and Services Tax (GST) at 12.5% is payable on the supply of goods or services within New Zealand. It is a relatively uncomplicated value added tax, and business tax payers can claim back the GST content of their purchases of goods and services. The supply in New Zealand of almost all goods and services, except wages, salaries and certain financial services, is subject to GST. In the nature of things, most exploration participants purchase more in the way of goods and services than they sell. Thus it will generally be in their interests, if expenditures are at all significant, to register early (before the expenditure is incurred) with a monthly (the shortest) return period, in order to maximise the cash flow benefits to be obtained out of the refunds.

GST is payable on goods imported into New Zealand, at the time of import, unless the importer participates in the deferred payment scheme operated by the Customs Department. This scheme permits payment of GST on imports to be deferred for several weeks, so that if the timing is well managed, the payment may not be due to Customs until the refund from the Inland Revenue Department is available.

For joint venture operations, the Inland Revenue Department currently takes the view that most petroleum industry joint ventures are not registerable as separate registered persons for GST purposes. The explanation is that the joint venture does not, and does not expect to, supply goods or services. If any petroleum found is owned by the participants, and traded by them separately, then the joint

venture is not selling or supplying petroleum. Each participant must register for GST purposes and the Operator, as their agent, accounts for the GST component of income and expenditure to the participants. They are then free to apply for refunds in their own way and must account to the IRD for any GST collected on their behalf by the Operator.

Stamp duty is payable on conveyances of certain property. Assignments of interests in petroleum licences attract duty of 40 cents per \$100.00 of consideration or value of the property transferred.

## Accident Compensation

The Accident Compensation Scheme which operates in New Zealand is something of a novelty for overseas explorers and contractors. No action can be brought within New Zealand for death or personal injury arising out of an accident. Compensation is paid to accident victims and medical and support expenses paid. Employers are required to participate by providing details to the Accident Compensation Corporation of their employees and by paying levies into the fund.

It must be appreciated that the Accident Compensation Act applies only within New Zealand. If an accident victim can bring a suit in some other jurisdiction and persuade the Courts in that jurisdiction that some other law should apply, then the domestic legislation in New Zealand would not necessarily bar the claim. That is really not a matter of New Zealand law but a warning against cancelling all workers compensation insurances on the reputation of our Accident Compensation Scheme.

## Other operational requirements

In undertaking exploration operations there are a range of other legal requirements to be met. The requirements of the Petroleum Act and Regulations can be summarised as an obligation to keep the Ministry informed and get its consent to proposed operations. In addition the following matters come to mind:

- (a) Permits from Telecom Corporation for the use of communication facilities.
- (b) Consent of Ministry of Transport for shipping movements.
- (c) Consent of Airways Corporation of NZ Limited (formerly Civil Aviation Division, Ministry of Transport) for helicopter movements and landing pads.
- (d) Notice to Fisheries Division of Ministry of Agriculture and Fisheries, for movements in the vicinity of fishing grounds.
- (e) Import licensing and customs arrangements for the importation of supplies.
- (f) Immigration formalities for bringing in expatriate workers.

## COMMENT: THE 1990s AND BEYOND

In recent years explorers in New Zealand have been subject to considerable uncertainty as to the Government's intentions in several major areas, namely:

- (a) In October 1984, shortly after the Labour Government was elected, a review of the Petroleum Exploration and Mining Regime and the extent and method of Crown participation was announced. The results of that policy review were published in December 1985.
- (b) The initial announcement also indicated that the tax

regime as it applied to petroleum mining and exploration would be reviewed. Little if anything followed that announcement until the issue of the consultative document in January 1987. There have been several subsequent proposals, but the position is still unresolved.

- (c) The Resource Management Law Reform (RMLR) proposals, of which various versions have been announced during the past two years, have still not been settled with certainty nor introduced as legislation.
- (d) The proposals on Resource Allocation and Rent Recovery were published by the Ministry of Energy earlier this year. They were written in terms apparently applying to petroleum but of doubtful relevance to the industry in this country. Their publication is a further source of uncertainty.

In view of the long lead times and considerable sums of capital involved in petroleum exploration and mining, it seems an unnecessary discouragement, to those with the resources to undertake further work, that they cannot rely on the certainty of a consistent legal and taxation regime for the duration of an exploration programme.

Under the presently published licensing regime, the Government intends to exercise its right under the Petroleum Act to participate in any licence. The Minister has an option to acquire an interest as licensee in any discovery at no cost. As a joint licensee, the Minister would have a veto on collective decisions. It has been suggested that the Crown's interest would be saleable, but that does not recognise any rights of the other licensees.

The future tax regime and its implementation date are still uncertain. It will certainly differ from the past and will most likely, in the name of *competitive neutrality* be distinctly disadvantageous to explorers by comparison with the regimes in other countries and with the regime as it applies to businesses with lower risks and shorter business cycles.

There is also a high degree of uncertainty about the rules relating to environmental matters. There are already several recent statutes which are less than clear and therefore less predictable in scope. It is clear, whatever the scope of existing and future statutes, that any operations will be open to scrutiny by a range of interest groups with the potential to subject a project to lengthy and expensive litigation and delays.

There is no doubt at all that the concerns expressed by many of the special interest groups are well founded and that such projects as the current extensive review of resource management law should provide needed improvements in the quality of consideration of environmental and cultural concerns. There is equally no doubt that these concerns will continue to have a significant impact on the implementation of any project in the future. That impact can best be

minimised by considering, early in the planning process, the physical and social consequences of the project and the legal and practical steps that are available to the explorer to keep the project proceeding in an acceptable form.

The cost of petroleum exploration in New Zealand seems unlikely to diminish. There is a strong propensity for the so-called *user pays* principle to result in central and local governments and ad hoc bodies levying special charges against exploration and development projects, ostensibly to meet the cost of supporting the project. Some of these levies seem to bear a rather tenuous link with the projects and to be levied in circumstances where the facilities would otherwise be provided (if necessary), by central or local government funding. These levies are of course additional to the royalties provided for under the licence, the significant licence fees payable under the Petroleum Act and the taxes payable to central Government.

## CONCLUSION

There is a wide range of legal requirements which regulate the petroleum exploration industry in New Zealand at present, and these will undergo a continuous process of change.

Some of these requirements give rise to delays, uncertainties and expense, and others serve primarily to regulate the industry and facilitate the safe and efficient investigation of New Zealand's petroleum resources.

In general these requirements have been implemented with the intention of reflecting the social and economic policies of successive governments and the current level of knowledge and technology. These will also change over time. Although it is only conjecture to suggest what those changes will bring, the trend seems to be for a greater degree of social control and a higher level of taxation.

It is not clear whether the legal regime in New Zealand is any more difficult than elsewhere, although the difficulties arise in different ways. The most effective means for explorers or contractors to minimise the adverse impact upon exploration of the legal requirements is to ensure that they have current information available to the organisation; whether internally, through experience, or externally, by employing advisors or contractors who are familiar with the industry and with local conditions. These include not only the 'professional' advisers, but those in fields such as industrial relations and employment, customs and suppliers of a range of goods and services.

## REFERENCE

FISHER, D.E., 1986: Petroleum Licensing in New Zealand. (1986/87) 6, *Oil & Gas Law & Taxation Review*, ESC Publishing Limited, Oxford, pp. 151-157.