



NEW ZEALAND COUNCIL OF TRADE UNIONS
Te Kauae Kaimahi

**Submission of the
New Zealand Council of Trade Unions
Te Kauae Kaimahi**

to the

Commerce Committee

on

**Supplementary Order Paper No 152 to the
Crown Minerals (Permitting and Crown Land) Bill**

P O Box 6645
Wellington
January 2013

1. Summary of recommendations

- 1.1. Every worker's life is equally valuable. The distinction between Tier 1 and Tier 2 permit holders is unjustified in relation to health and safety obligations. Ongoing obligations are considerably more important than initial obligations under the Health and Safety in Employment Act 1992. Compliance with the Hazardous Substances and New Organisms Act 1996 should also be required. The CTU therefore recommends that proposed section 33AA is amended as follows:

33AA Exercise of permit conditional on clearance from Health and Safety Regulator

- (1) The Health and Safety Regulator must be satisfied that a permit holder is able to meet all requirements of the Health and Safety in Employment Act 1992 and associated regulations and the Hazardous Substances and New Organisms Act 1996 and associated regulations on an on-going basis before an activity is commenced under a Tier 1 permit or a Tier 2 permit. Activity must not be commenced until-
- (a) the Health and Safety Regulator is satisfied that the requirements of both Acts and their regulations have been met and can be met on an on-going basis; and
 - (b) the Health and Safety Regulator has advised the chief executive that it is so satisfied; and
 - (c) the chief executive has notified the permit holder of the regulator's advice.
- (2) This section applies to activities commenced or recommenced after the commencement of this section.
- 1.2. Annual review meetings are a useful idea but should be compulsory for all permit holders and mandatorily discuss health and safety issues. The Health and Safety Regulator (including representatives from the High Hazards Inspectorate), health and safety representatives and unions should all be invited to attend.

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- 1.3. A separate meeting to discuss health and safety issues should be held by the Regulator, the health and safety representatives and the unions in the lead-up to the review meeting.
- 1.4. To emphasise the importance of health and system in the permit process the CTU also recommends the following changes:
 - New section 29A(2)(b)(iii) should include reference to failure to comply with “health and safety obligations” along with the generic reference to “rights.”
 - New section 29A(2)(c) should include “and regulations” after “Acts” to make the obligation to follow the regulations clear also.

2. Introduction

- 2.1. This submission is made on behalf of the 36 unions affiliated to the New Zealand Council of Trade Unions Te Kauae Kaimahi (CTU). With 350,000 members, the CTU is the one of the largest democratic organisations in New Zealand.
- 2.2. The CTU acknowledges Te Tiriti o Waitangi as the founding document of Aotearoa New Zealand and formally acknowledges this through Te Rūnanga o Ngā Kaimahi Māori o Aotearoa (Te Rūnanga) the Māori arm of Te Kauae Kaimahi (CTU) which represents approximately 60,000 Māori workers.
- 2.3. As the collective voice of workers, unions have a critical role in ensuring health and safety. This is recognised by International Labour Organisation Convention 155 on Occupational Health and Safety which mandates consultation between unions (through the CTU), employers (through Business New Zealand) and the Government in the design and implementation of health and safety law.
- 2.4. The CTU has a long-standing commitment to and expertise in occupational safety and health both as the representative body for the majority of union members in New Zealand and as the representative workers’ body to the International Labour Organisation (‘the ILO’). As a signatory to ILO

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Convention 155, the Government is required to consult with the CTU (and Business New Zealand) to “formulate, implement and periodically review a coherent national policy on occupational safety, occupational health and the working environment” (Article 4).

2.5. The CTU welcomes the opportunity to submit on this Bill. We have restricted our comments to the matters raised in Hon Phil Heatley’s Supplementary Order Paper 152. This does not connote agreement or disagreement with the other proposed provisions.

2.6. The CTU is supportive of the aims of the Supplementary Order Paper and greater alignment between health and safety and the permitting process. We have two key concerns with the Bill as currently proposed:

2.6.1. We do not believe that differential imposition of health and safety obligations based on the proposed permit tier system is logical or safe.

2.6.2. Annual review meetings are potentially a valuable forum but the proposed language of the Bill is insufficiently directive given the failings of regulation emphasised in the Pike River tragedy. These meetings must be effective to safeguard worker safety (along with other important issues such as environmental protection and iwi engagement).

2.7. We also recommend drafting changes to emphasise the importance of health and safety considerations in the mining and drilling sectors. We cannot allow another Pike River or Deep Water Horizon tragedy to occur.

3. Pike River

3.1. In the preface to its report, the Royal Commission on the Pike River Coal Mine Tragedy (‘the Royal Commission’) states:¹

The 29 men who died follow a long line of other people who have perished in New Zealand mines over the previous 130 years. This, sadly, is the 12th commission of inquiry into coal mining disasters in New Zealand. This suggests that as a country we fail to learn from the past. ...

¹ Royal Commission on the Pike River Coal Mine Tragedy, preface

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The lessons from the Pike River tragedy must not be forgotten. New Zealand needs to make urgent legislative, structural and attitudinal changes if future tragedies are to be avoided. Government, industry and workers need to work together. That would be the best way to show respect for the 29 men who never returned home on 19 November 2010, and for their loved ones who continue to suffer.

3.2. As the Royal Commission notes:²

New Zealand's rate of work-related injury and fatality is far above that of the best performing countries. The rate is about one third greater than Australia's. Country-specific differences in industry and hazards may account for some differences in terms of performance, but it is clear that New Zealand performs poorly.

3.3. The Royal Commission makes 16 key recommendations relating to health and safety regulation in coal mines specifically and more generally. The CTU endorses these findings though we would go further in several respects. Much of the discussion of the Commission's findings belongs in another forum but we note that recommendations 3 and 4 apply directly to the consenting process:³

Recommendation 3:

Regulators need to collaborate to ensure that health and safety is considered as early as possible and before permits are issued.

Recommendation 4:

The Crown minerals regime should be changed to ensure that health and safety is an integral part of permit allocation and monitoring:

- The proposals in *Review of the Crown Minerals Act* are endorsed.
- Mining permits should have a general condition requiring the need for compliance with the Health and Safety in Employment Act 1992 and regulations.
- The Ministry of Business, Innovation and Employment should provide information to prospective permit holders on health and safety laws and regulations.

² Ibid, chapter 18, p 248

³ Ibid, recommendations p 37

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- The ministry should review the information required from applicants for mining permits and the way in which it assesses applications against the criteria in the minerals programme.

3.4. The current health and safety system is not fit for purpose (particularly in relation to underground mining). We note the comments on the Royal Commission regarding the lack of capacity and ineffectiveness of the Health and Safety Regulator. The CTU provided detailed submissions to both the Royal Commission on the Pike River Tragedy and the Independent Health and Safety Taskforce: In these submissions we recommended the creation of a specialist Independent Crown Entity with a tripartite governance structure. Our submissions are available at:

- <http://union.org.nz/policy/pike-river-submission-phase-4-0>; and
- <http://union.org.nz/sites/union.org.nz/files/CTU%20Submission%20to%20Health%20and%20Safety%20Taskforce.pdf>

4. Differential health and safety treatment on the basis of permit type

- 4.1. Our most significant disagreement with the Bill as a whole is the differential treatment of an applicant's health and safety obligations under Tier 1 and Tier 2 permits.
- 4.2. We do not agree that applying economic thresholds of expected work programme costs, expected royalties or annual production thresholds is appropriate to determine workers' rights to safety. These thresholds do not work as a proxy for the risk to which workers will be exposed.
- 4.3. The changes as drafted would be to say to a miner who works in a mine that produces 195,000 tonnes of coal yearly that their safety is worth less than the safety of a miner working in a mine that produces 205,000 tonnes of coal. The Health and Safety Regulator does not need to warrant that the mining can be safely done under proposed clause 33AA. The workers fall into a gap in the system. The Pike River tragedy has shown the perils of hands-off regulation.

- 4.4. Evidence of ability to comply with the Hazardous Substances and New Organisms Act 1996 and associated regulations should also be required.
- 4.5. The Health and Safety Regulator should also be convinced that the permit holder has the capacity to meet their on-going responsibilities as to health and safety and hazardous substances. Continuous effective management of hazards is at least as important as set up of initial systems.
- 4.6. The CTU recommends that proposed clause 33AA be amended so that it applies to all permits issued. We recommend the following amendment to clause 33AA:

33AA Exercise of permit conditional on clearance from Health and Safety Regulator

- (1) The Health and Safety Regulator must be satisfied that a permit holder is able to meet all requirements of the Health and Safety in Employment Act 1992 and associated regulations and the Hazardous Substances and New Organisms Act 1996 and associated regulations on an on-going basis before an activity is commenced under a Tier 1 permit or a Tier 2 permit. Activity must not be commenced until-
 - (a) the Health and Safety Regulator is satisfied that the requirements of both Acts and their regulations have been met and can be met on an on-going basis; and
 - (b) the Health and Safety Regulator has advised the chief executive that it is so satisfied; and
 - (c) the chief executive has notified the permit holder of the regulator's advice.
- (2) This section applies to activities commenced or recommenced under after the commencement of this section.

5. Annual Review Meetings

- 5.1. We note the proposal to introduce annual review meetings for holders of Tier 1 permits. These meeting have the potential to be a valuable forum.
- 5.2. Given the failure of light-handed (many would say hands-off) regulation in the mining industry in general and Pike River in particular, the CTU does not support the proposed exclusion of Tier 2 permit holders from both existing

reporting requirements and the proposed annual review meetings. This is misguided and Tier 2 permit holders should be required to attend review meetings.

- 5.3. As drafted proposed section 33B states “the chief executive may require the holders of Tier 1 permits to attend... a review meeting...” We are concerned that the language is overly permissive in relation to both the chief executive and the permit holder. We believe that the annual meeting ought to be mandatory and the section amended to reflect this.
- 5.4. Given the critical importance of health and safety in mining and mineral extraction, the CTU recommends that the attendance of the Health and Safety Regulator (including representatives of the High Hazard Unit inspectorate), on-site unions and health and safety representatives should also be mandatory at these meetings.
- 5.5. The CTU recommends a new section introducing a requirement that the Health and Safety Regulator meets with site health and safety representatives and any unions representing the workers involved in order to discuss any issues (and review incident reports) prior to the annual review meeting. This meeting would facilitate informed, proactive review of health and safety issues.

6. Amendments regarding permit approval process

- 6.1. In relation to the permit approval process under proposed section 29A we propose the following amendments:
 - New section 29A(2)(b)(iii) should include reference to failure to comply with “health and safety obligations” along with the generic reference to ‘rights.’
 - New section 29A(2)(c) should include “and regulations” after “Acts” to make the obligation to follow the regulations clear also.

7. Conclusion

- 7.1. The CTU welcomes the opportunity to submit on the Bill as amended. We believe that it is incumbent on the Government, industry, unions and workers to improve our safety record in these areas. Workers deserve nothing less.