

and a new Act has been passed revoking their rights under the Mining Act's is considered unjust. Clause 5 of the Bill states "NOT WITHSTANDING ANYTHING IN THE CROWN MINERALS ACT 1991, THE MINISTER OF ENERGY SHALL NOT GRANT ANY - (b) MINING PRIVILEGE PURSUANT TO AN APPLICATION TO WHICH SECTION OF THAT ACT APPLIES"

Because some applications under the Mining Act 1971 fall into the category provided under Section 112, subsection (1)(b) these specific applications do not apply to the Crown Minerals Act 1991 and should be treated as stipulated in that Act. Because Clause 5 refers to the statement "NOT WITHSTANDING ANYTHING IN THE CROWN MINERALS ACT 1991", then it must be accepted that Section (1)(b) does not apply. Any other application that does apply to the Crown Minerals Act 1991, as referred to in Clause 5 should also be exempt from Clause 5 pursuant to the wording "NOT WITHSTANDING ANYTHING IN THE CROWN MINERALS ACT 1991" Reference is herein provided for this, under Section 3 of the said Act. ACT TO BIND THE CROWN - "THIS ACT SHALL BIND THE CROWN."

Clause 5 EXISTING APPLICATIONS PURSUANT TO THE CROWN MINERALS ACT 1991

The Clause by Clause Analysis of the Bill, page (iii), Clause 5, states in part - "PROHIBITS THE GRANTING OF PERMITS UNDER SECTION 32 OF THE CROWN MINERALS ACT 1991" and yet the BILL, page 4, Clause 5, states in part "(a) PERMIT PURSUANT TO AN APPLICATION MADE UNDER SECTION 23.

If Clause 5(a), legislates that the Minister shall not grant a Permit pursuant to an application made before the commencement of the proposed Ngai Tahu (Pounamu Vesting) Act, then we question the existence of current legislation that has enabled the Minister not to grant those applications for permits and mining privileges that he has had before him since 1989.

Because Clause 5 specifically relates to the revokement of all applications and related granting of permits or mining privileges we must object to this Clause on the grounds that that Clause states - "NOT WITHSTANDING ANYTHING IN THE CROWN MINERALS ACT 1991" and therefore if the Bill is enacted, then subsequent to it's content including the relevant amendments to the Crown Minerals Act 1991, applicants will not have any recourse as they presently have under the Acts 1971 and 1991 in which to base their objections and individual claims for adequate compensation.

At present we consider the Crown Minerals Act 1991 to be binding to the Crown in respect to the existing legislation that allows for any person to apply and be granted without prejudice a permit or mining privilege pertaining to Crown minerals on Crown land. This will not be the case if this Bill is passed in it's present form.

(iii) CONCLUSIONS

1. The majority of our members are not in opposition to the general concept of the Ngai Tahu (Pounamu Vesting) Bill. Although many members do object to the vesting of the entire Crown owned pounamu resource.
2. All considerations included in the Bill and its policies are advantageously made in favour of the Crown and Te Runanga O Ngai Tahu. The Crown's intentional disregard to the matters raised in this Submission is considered unjust and inexcusable given that the resource also belongs to all New Zealanders.
3. As the Mining Act 1971 and the Crown Minerals Act 1991 are the only legal means through which persons can obtain access to these minerals, any change to these after applications have previously been made should include legislation or policy that address adequate compensation for damages or losses incurred.
4. In individual cases applicants have newly discovered, Pounamu reserves worth many millions of dollars and have expended much of their time, money and efforts in the long process leading to the grant of a permit or mining privilege. To have their claims to these discoveries revoked by the Crown by the enactment of this Bill would be extremely damaging.
5. We also query why the Minerals Programme (October 1996) was issued prior to an enactment of the 'Pounamu Vesting Bill'. Policy decisions pertaining to the Pounamu minerals should not be included in that Minerals Programme until legislation in accordance with the Crown Minerals Act 1991 justifies it.

The Minerals Programme states that the policy of not allowing prospecting, exploration or mining of Pounamu is in accordance with the Deed of 'On Account' Settlement made between the Crown and Te Runanga O Ngai Tahu on 14 JUNE 1996.

6. Since 1990, our members have requested the mandate the Minister of Energy has had to substantiate withholding the grant of mining privileges. Finally in 1996 we were advised by the Minister that a Moratorium was the reason. We therefore conclude that this Deed of 'On Account' Settlement is the Moratorium.

If that is so, then previous to the date of this moratorium the Minister allegedly may have withheld the issue of mining privileges without a mandate to do so. We also query the legality of this Moratorium in relevance to the Mining Act 1971 which does not include reference to the Principles of the Treaty of Waitangi.

It is our opinion therefore that until this Ngai Tahu (Pounamu Vesting) Bill is enacted, the Crown has not a mandate to withhold or revoke applications or the issue of mining privileges or permits for the pounamu minerals.

7. As some of our members are presently the legitimate claimants or applicants to the resource under the Mining Act 1971 and the Crown Minerals Act 1991 and respectively have been accorded priority rights to their claims, it cannot be morally or legally justified that any other persons remove those rights without firstly obtaining authority or surrender of those rights from the claimants in accordance with the said Acts.

Applicants have accordingly made claim over a specific Crown owned mineral or minerals, while these claims are statutory then before the Crown may vest that mineral to other persons they should have to satisfy the legitimate existing claimant of that mineral on the same land.

The Ngai Tahu (Pounamu Vesting) Bill clearly provides the legislation both in policy and mandate to facilitate these general transactions but do not recognise the existing legitimate claimants to the resource. It is understood that previous documentation relating to meetings between the Crown and Ngai Tahu do confirm that emphasis be placed on legislation that would deter existing claimants the right to the resource and compensation.

8. Until the Crown address the matters raised in this Submission or adequately provide compensation based on individual merits, then members of our organisations will continue to oppose this Bill in it's present form.