



9 November 2021

Hon Dr Megan Woods  
Minister  
Parliament Buildings  
Wellington 6160

Via email - [megan.woods@parliament.govt.nz](mailto:megan.woods@parliament.govt.nz)

Dear Minister

### **Comments on the Crown Minerals (Decommissioning and Other Matters) Amendment Bill**

We are aware the select committee is due to report back to the House in mid-November on the Crown Minerals (Decommissioning and Other Matters) Amendment Bill (the Bill).

We missed the opportunity to submit to the Select Committee and I am writing to share our concerns about elements of the Bill. We support the intent of the Bill but are concerned about director liability and potentially unintended consequences such as deterring capable, experienced directors from serving.

The IoD has over 10,000 members and is committed to raising governance standards in all areas of New Zealand business and to society and we want to ensure the right settings are in place to support our nation's directors to contribute to a fair and sustainable future for New Zealand powered by best practice governance.

*The proposed director liability regime is overly onerous*

When designing a regulatory regime, it is important that the director liability settings are proportionate and reasonable to the issues the regime is designed to address.

The Bill entails a somewhat novel approach to New Zealand's director liability regime, with the introduction of trailing or perpetual liability that creates civil liabilities and criminal offences for failure to meet obligations that did not exist at the time the licence or permit was obtained. In addition, the regime includes a wide threshold for criminal liability that holds directors accountable for actions that are potentially totally beyond their control.

While we support the intent of the Bill to ensure the holder of the permit or licence fulfils its obligations around decommissioning assets, we see elements of the regime as being overly onerous and disproportionate to the issues the regime is designed to address. Instead, we think the issues could be addressed through the other mechanisms contained within the Bill such as financial securities, stricter monitoring of the financial strength of permit holders and compulsory field development plans.

We are concerned the current proposals have strong potential to deter responsible directors from taking on a

role within the oil and gas sectors. In addition, the concept of perpetual liability could potentially be used as a precedent for other situations.

*The governance settings are important for attracting and retaining quality directors*

We believe introducing a director liability regime that could hold a director accountable for decades after being on a board, both civilly and criminally, could deter directors from accepting the mandate of directorship in the first place and negatively impact governance settings for New Zealand.

The role of the board and the need for skilled and capable directors are more important now than ever in leading our organisations. In particular, it's vital that the oil and gas sectors attract and retain skilled, experienced and responsible directors to govern the process of decommissioning and to lead us toward a sustainable future.

While accountability is critical to strong corporate governance, it's important that we get the settings right. A regime that is perceived as too harsh, even if it works in practice, could have a detrimental effect on the ability to attract and retain quality directors to important leadership positions. We need highly skilled, experienced and responsible individuals stepping up to serve.

I note that in 2019 and 2020, 40% of directors in our Director Sentiment Survey said that the scope of director responsibilities is more likely to deter them from taking on governance roles. This was higher for directors of listed companies (46%).

*Directors' duties and responsibilities need to be considered within a broader context*

The role and responsibilities of directors are expanding with new laws targeting directors personally. In addition, there is greater accountability with active regulators and liquidators and the growth in litigation funding. While D&O insurance is even more important within this context, getting sufficient coverage at a reasonable price is becoming more difficult. We are concerned additional responsibilities that are onerous will only worsen the situation.

We therefore think any changes to director liability should be considered very carefully and considered within the New Zealand context particularly given the small director talent pool.

It is essential that New Zealand gets this right for the various stakeholders and also for governance and the country as a whole. We therefore support any proposed changes being considered within the context of broader company law reform to ensure the overall and combined settings are appropriate.

We appreciate the opportunity to provide feedback on behalf of our members and I would be happy to discuss any of these issues with you.

Kind regards



**Kirsten (KP) Patterson**

Chief Executive