

## Privacy Commissioner's submission to the Economic Development, Science, and Innovation Committee on the Crown Minerals (Decommissioning and Other Matters) Amendment Bill

### Executive summary

1. Include a provision allowing the Chief Executive to withhold any information either required to be made available under s 90(6) to (8) or that may be published under (8A) if it could unduly interfere with the privacy of an individual.

### Introduction

2. Thank you for inviting me to submit on the Crown Minerals (Decommissioning and Other Matters) Amendment Bill ("**Bill**") which amends the Crown Minerals Act 1991 ("**Principal Act**").
3. The Privacy Act 2020 ("**Privacy Act**") governs agencies' collection, retention, use and disclosure of individuals' personal information. Under the Privacy Act, one of my functions as Privacy Commissioner is to examine proposed legislation that may affect people's privacy. As such, I make the following comments.

### Response to the invitation to submit

4. Thank you for seeking my opinion on the new information gathering powers under cls 89ZA, 89ZC, 89ZD, 89ZR, and 89ZS of the Bill. These provisions allow the Minister to require a permit holder to provide financial information to assess a permit holder's capability to meet the costs of decommissioning petroleum infrastructure and wells. The Government is concerned that, in the event of a petroleum company's financial default, there is a risk that the Crown or other third parties will have to carry out and fund decommissioning.
5. My opinion was sought on the basis that permit holders can be both legal persons (e.g., limited liability companies) and natural persons (individuals). The Privacy Act does not protect information about companies, but it does protect individuals. However, the issue that an individual could be a permit holder is a theoretical one. This is because it is highly improbable that an individual would expose themselves to personal liability potentially in the hundreds of millions of dollars. Therefore, I will not focus on this issue.
6. However, I would take this opportunity to submit on another matter, specifically, the relationship between ss 90 and 90A of the Principal Act and cl 19 of the Bill which proposes to insert subs (8A) into s 90.

### Overview of ss 90, 90A, and cl 19

7. Section 90 of the Principal Act provides that permit holders must keep detailed records and reports in respect of all prospecting, exploration, mining, and decommissioning activities they conduct. The Chief Executive can collect this information under a number of different sections which are stated in one place at s 90A(1) of the Principal Act (but also see cl 20 of the Bill).<sup>1</sup>
8. Subsections (6) to (8) of s 90 provide that the Chief Executive must make the information available to any person who requests it on payment of a reasonable charge at the expiry of

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<sup>1</sup> Crown Minerals Act, s 90A; Crown Minerals (Decommissioning and Other Matters) Amendment Bill, cl 20.

certain periods and upon the occurrence of certain events.<sup>2</sup> In addition to the conditions in subss (6) to (8), the Chief Executive's ability to disclose is subject to s 90A of the Principal Act which sets out some limitations on the Minister or Chief Executive disclosing this information.<sup>3</sup>

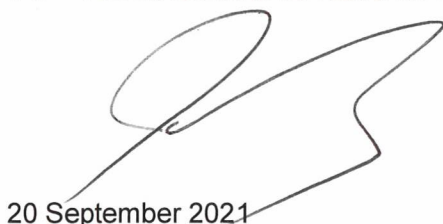
9. Clause 19 of the Bill proposes to insert subs (8A) into s 90 which would give the Chief Executive the discretion to publish any of this information on the internet, provided that the right conditions under subss (6) to (8) are met (and they are not prevented by s 90A).
10. Overall, the pertinent information is commercial in nature, but there is a reasonable likelihood that it could contain the personal information of contracted professionals and permit holders' employees. Because of the contentious nature of permit holders' activities in the eyes of some members of the public, there is at least a credible risk that individuals' personal information caught up in records that are published under subs (8A) or made available under subs (6) to (8) may be easily collected and misused in way that could harm them.
11. This Bill's Departmental Disclosure Statement indicates officials' intention that the Privacy Act applies to disclosures under this Act.<sup>4</sup> This is reassuring; but the Privacy Act would not necessarily prevent the Chief Executive from disclosing the pertinent personal information under subss (6) to (8) of s 90 and the proposed subs (8A). This is because disclosure is or would be a purpose for which the information was collected or a directly related purpose. In these circumstances, a bespoke privacy protection is desirable to give effect to the intention to protect individual privacy.

## Recommendation

12. The Committee should conclude that a provision should be included to allow the Chief Executive to withhold any information that is either—
  - 12.1. required to be made available under s 90(6) to (8); or
  - 12.2. that may be published on the internet under the proposed (8A) if it could unduly interfere with the privacy of an individual.<sup>5</sup>
13. Practically speaking, this might mean that a document is either not made available at all, or that it is made available with redactions.

## Conclusion

14. I do not seek to be heard on my submission but can appear is that would be of assistance.



20 September 2021

**John Edwards – Privacy Commissioner**

<sup>2</sup> Crown Minerals Act 1991, s 90.

<sup>3</sup> For example, see Crown Minerals Act, s 90A(1)(a).

<sup>4</sup> See para 3.5 of the Department Disclosure Statement: Crown Minerals (Decommissioning and Other Matters) Bill.

<sup>5</sup> For examples of similar provisions, see the Parole Act 2002, ss 50, 50B, 107K and 107O.