PETROLEUM (ONSHORE) AMENDMENT BILL 2013

Bill introduced on motion by Mr Chris Hartcher, read a first time and printed.

Second Reading

Mr CHRIS HARTCHER (Terrigal—Minister for Resources and Energy, Special Minister of State, and Minister for the Central Coast) [12.57 p.m.]: I move:

That this bill be now read a second time.

The Petroleum (Onshore) Amendment Bill 2013 strengthens and clarifies the compliance and enforcement framework of the Petroleum (Onshore) Act 1991. The bill also establishes a framework for the release of environmental information, and enables a code of practice for land access to be established by regulation. The Petroleum (Onshore) Act provides the regulatory framework for the responsible exploration and extraction of petroleum products in New South Wales. The Act provides for a system of titles for exploration, assessment and production activities.

Before I turn to the amendments in the bill, it is important that we note the gas supply issues that New South Wales will soon face. Currently, New South Wales produces just 5 per cent of the gas it needs for energy purposes. This means New South Wales is dependent on other States for its gas supplies. New South Wales gas supply contracts are due to expire from 2014.

Many gas producers from other States are unlikely to renew their contracts with supply companies operating in New South Wales because they have contracted their gas to the export market. The gas contracts that are renewed will therefore come with much higher prices. Security of gas supply is essential for a vibrant economy and for maintaining the thousands of local businesses that rely upon gas in New South Wales, which currently produces only 5 per cent of its gas needs. With supply from other States heading overseas, it is important for New South Wales to source its gas, as far as possible, from domestic sources. We know that New South Wales has extensive reserves of gas from coal seams that have been estimated at 511 billion cubic metres, which is enough to provide over one million homes with energy for more than a century. At the same time, it is critical that exploration and production of all petroleum products is carried out in a way that ensures the health and safety of the community and protection of all aspects of the environment.

To ensure that community concerns are addressed, the Government has developed the most rigorous requirements in Australia for the petroleum industry. Today we are making sure that the petroleum industry will be held accountable if it does not meet its obligations, particularly its environmental obligations. The bill is one aspect of the work being done by this Government to build community confidence and provide certainty for industry. Not only do we expect industry to operate in accordance with best practice, but also we expect that the industry is regulated in accordance with best practice. To this end, significant work is being

undertaken by my department to build a cleaner and more robust compliance and enforcement practice to implement the framework in the bill. It involves the complete overhaul and modernisation of the department's compliance and enforcement policies, processes and procedures. Likewise, a training program has been implemented for the department's inspectors and other authorised officers. The program ensures that they are properly equipped to apply the expanded enforcement powers in this bill in a consistent manner.

I turn now to a more detailed consideration of the provisions in the bill: first, the bulk of the amendments that strengthen and extend the compliance and enforcement provisions in the Act. A key power for ensuring immediate compliance with the requirements of the Act is the ability to issue a direction. The Petroleum (Onshore) Act currently has limited powers for directions to be given. They cover only compliance with a condition of title and the removal of petroleum plants when a title has ended. The bill extends and considerably strengthens these direction powers in keeping with the greater powers in the Mining Act. It does this by expanding the range of issues for which directions can be given. The bill proposes that directions can be issued for any adverse impact or risk of one that petroleum industries may have on any aspect of the environment. Directions can also be issued to conserve the environment or to prevent control or mitigate any harm to it. They can also be used to rehabilitate land that is, or could be, affected by activities under the title.

In bringing direction provisions across from the Mining Act, one change will be made to both Acts. Currently, before a direction can be given under the Mining Act, prior notice must be given of the proposed direction. However, under the Water Management Act 2000, the Mine Health and Safety Act 2004 and the Protection of the Environment Operations Act 1997, no such notice is required. The amendments therefore specify that prior notice of a direction is no longer required in the Mining Act or the Petroleum (Onshore) Act unless the direction relates to the suspension of operations. At the same time, titleholders are being given the right to challenge the merits of a direction in court under both Acts, except when the direction relates to the suspension of operations. Currently, under the Petroleum (Onshore) Act the Minister can suspend operations for certain contraventions after giving written notice and allowing the titleholder to make representations. This requirement for written notice in relation to suspension of operations will be maintained, making it unnecessary to give the titleholders a merits challenge.

Amendments will align the Mining Act and the Petroleum (Onshore) Act so that, in the case of suspensions, both Acts provide for written notice and titleholder representations. Together, the amendments on directions are a robust means of ensuring prompt industry compliance and protection of the environment while giving titleholders a fair process to seek review. In addition, the New South Wales Government announced an audit of all petroleum operations and records within the State. The purpose of an audit is to provide information on compliance with title obligations, such as conditions or legislation or codes of practice. The audits will also enable assessment of how activities on the title can be improved to protect the environment. The Act has therefore been amended to provide for audits by incorporating the

voluntary and mandatory audit provisions of the Mining Act.

Amendments are also proposed to the powers of inspectors. The inspection provisions in the Petroleum (Onshore) Act are limited and are also not considered sufficiently robust to provide inspectors with the statutory backing required. Inspectors must have sufficient powers to carry out their work effectively and to ensure compliance. The proposed amendments will provide a sound basis for this to happen. The existing provisions will therefore be replaced with the far more extensive provisions in the Mining Act. Inspectors will have greater powers to obtain information and to gather a wider range of material for investigation. They will be able to enter premises where there is proposed or suspected exploration or production activities, or where documentation about these activities may be kept. However, where an inspector wishes to enter a residence, the permission of the occupier or a search warrant will be required. Inspectors will also be able to require answers from a person whom they reasonably suspect of knowing about an offence.

Further, a corporation can be required to nominate a representative to answer questions and these will bind the corporation. The legislation will provide for particular circumstances where not answering questions or furnishing records is not an offence. It will also include the circumstances where answers are not admissible in criminal proceedings. The legislation backs up the strong powers of inspectors with offences for failing to comply with requirements without a lawful excuse or a wilful delay or obstruction. The strongest penalties possible will be imposed in these circumstances. The penalty for corporations will be $1.1 million and $220,000 for individuals. Industry must know that compliance is not a choice.

More thorough investigations can be conducted as a result of amending the Act to provide for new powers for inspectors. This will help not only to build sound evidence around offences and to develop effective cases where prosecution is appropriate, but also to ensure industry compliance. Currently, the Petroleum (Onshore) Act does not provide for offences for all acts of non-compliance. This issue has been rectified through amendments that bring the offence provisions of the Act into line with those of the Mining Act. New offences include failure to comply with requirements for royalty returns and failing to make a royalty payment. They will also include failure to comply with audit provisions. For the first time, strict liability offences will be introduced for providing false or misleading information or records. However, a person will have the defence of honest and reasonable mistake available to them. The bill also introduces continuing offences and penalties consistent with the Mining Act. This means that each day a titleholder continues mining in breach of the Act, a further penalty amount is imposed. For the first time the bill includes in the Act a general regulation-making power to prescribe penalty notice offences and the penalty amounts.

The bill goes further to introduce offence provisions. The Petroleum (Onshore) Act is limited in its offence provisions for corporations. New provisions are proposed, consistent with the Council of Australian Governments agreed principles for the assessment of directors' liabilities and the existing corporate offence provisions in the Mining Act. The corporation offence provisions include that directors or managers are no longer automatically criminally

liable for an offence by a corporation, but a director or manager can be prosecuted as an accessory to an offence by a corporation, for example, by aiding the commission of an offence. An executive liability offence will also be introduced. That relates to where a corporation contravenes a condition of title or fails to comply with a direction. Directors and managers may be liable for these offences and, in effect, may be taken to have committed the offence. However, the prosecution will have to prove the offence was committed by the director or manager. These extensive amendment proposals will ensure that the petroleum industry is a responsible corporate citizen in New South Wales.

The amendments in this bill also increase penalties in line with those in the Mining Act. Some penalties were increased in the 2012 amendments to the Petroleum (Onshore) Act, and it is not proposed to change those provisions. Other penalties will be increased considerably. Where a direction is not complied with, the bill provides for a maximum penalty of 10,000 penalty units, or $1.1 million. This penalty will be a powerful deterrent to non-compliance for any member of the petroleum industry. Strong penalties will also be imposed for the offences of failing to comply with requirements without a lawful excuse or for wilful delay or obstruction of an inspector. For corporations, the penalty will be $1.1 million and for individuals, $220,000. The offence of a person with an official capacity under the Act having a beneficial interest in a petroleum title will be updated and mirrored in the Mining Act. The penalty for this offence will increase from the present 200 penalty units, or $22,000, under the Petroleum (Onshore) Act to 2,000 units, or $220,000, under both Acts.

In addition to increasing penalties for offences, the bill amends provisions for proceedings for an offence by extending the time within which they must commence. This will be three years from the date of the offence or the date on which evidence of the alleged offence first came to the attention of an authorised officer. The Mining Act will also be amended to provide for the same time limit. In the case of indictable offences under either Act, there will continue to be no time limit for the commencement of proceedings. In addition to the new offences, the amendments also expand the range of orders that a court can make where proceedings are on foot or an offence is proved. Further, they give the department the ability to provide certain evidence by way of a certificate. To allow time to deal with community and landholder access issues, the bill proposes that the Minister have the power to suspend a condition of title at the titleholder's request for longer than six months. Such flexibility would also allow time for companies to adapt to the changed regulatory and investment environment.

I now turn to the second set of amendments in the bill. These amendments ensure that landholders are not disadvantaged in making access arrangements with titleholders. Land access arrangements provide a framework through which titleholders can access land and undertake exploration. It sets conditions for how and when access is to occur and the types of activities and work that are to take place. The purpose of land access arrangements is to ensure that exploration can occur in an organised and systematic way. At the same time, they clearly recognise the rights of landholders to conduct their activities free from unreasonable interference or disturbance.

The bill provides for a code of practice for land access to be made by regulation. New South Wales Farmers and the Australian Petroleum Production and Exploration Association are in agreement on how this can be done. Mandatory requirements in a code will become mandatory clauses in an access agreement. To provide flexibility in what are essentially private arrangements, the amendments provide that, if both parties agree, they can opt out of the mandatory requirements. These amendments will ensure appropriate minimum standards for access arrangements. They will also provide the necessary flexibility to tailor an arrangement to suit individual circumstances. Landholders will retain the ability to stop titleholders from entering their property where there is a proven breach of the requirements of an access arrangement. The provisions of this important code demonstrate clearly what can be achieved when parties with different interests are prepared to come to the table and reach workable agreements.

The Act already provides for reimbursement to a landholder seeking initial advice before negotiating an access arrangement. However, a landholder may need access to further legal advice in the course of making the arrangement. The amendments meet this need by providing for the titleholder to meet the landholder's reasonable legal costs in negotiating and making an access arrangement. This obligation will apply to a landholder's costs from the point at which negotiations are initiated up to the making of the arrangement, or when an arbitrator is appointed if agreement is not reached. The obligation will now be a statutory requirement and must be included in an access arrangement. Failure to pay the fees will be deemed a breach of an access arrangement, where one has been made, and landholders will be able to deny titleholders access to their land. These changes will provide reassurance to landholders when negotiating access arrangements. They will know that legal advice is available to help ensure an outcome that is in their best interests.

Members of the community have expressed a particular need for environmental information so that they can better understand the significance of any proposed or ongoing activity. I note that the Act already has a regime for the release of information generally. The amendments provide for a separate regime for environmental information. The amendments in the bill will enable the department, at its discretion, to make this information publicly available as soon as it is received. However, in practice, it is intended that the department will readily release it. A claim can be made not to release the information because it could cause substantial commercial disadvantage. However, the director general will have the power to override this if the information is considered to be in the public interest.

A final amendment, to both the Mining Act and the Petroleum (Onshore) Act will reduce unnecessary red tape for titleholders. Currently, the consent of adjacent landholders is required to carry out seismic surveys on public roads. The bill provides that if an access arrangement is made with the owner of the public road the titleholder may undertake a survey without the landholders' consent. This amendment makes good sense because the impact of the survey on the adjacent landholders is negligible. The amendments in the bill provide for a much stronger regulatory framework for the petroleum industry in New South Wales. They will contribute to sound environmental management and ensure that appropriate compliance

and enforcement measures are available. They will help to balance the rights of landholders and titleholders. This bill ensures that New South Wales will have the most rigorous industry requirements in the country for petroleum activities. I commend the bill to the House.

Debate adjourned on motion by Mr Ron Hoenig and set down as an order of the day for a future day.