Petroleum (Onshore) Amendment Bill 2013 (Proof)

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PETROLEUM (ONSHORE) AMENDMENT BILL 2013

Second Reading

The Hon. DUNCAN GAY (Minister for Roads and Ports) [9.14 p.m.]: I move:

That this bill be now read a second time.

The Petroleum (Onshore) Act 1991 provides the regulatory framework for the responsible exploration and extraction of petroleum products in New South Wales. The Petroleum (Onshore) Amendment Bill 2013 strengthens and clarifies the compliance and enforcement framework of the Act. The bill also strengthens landholder rights, establishes a framework for the release of environmental information and enables codes of practice to be established by regulation. Security of gas supply is essential for a vibrant economy and maintaining the high standard of living we enjoy in this State. We know that New South Wales has extensive reserves of coal seam gas.

These reserves have been estimated a 511 billion cubic metres, which is enough gas to provide more than a million homes with energy for more than a century. At the same time the way in which the exploration for and production of petroleum products is carried out is critically important. Exploration and production must be done in a way that ensures the health and safety of the community and the protection of the environment. The Government has already developed the most rigorous obligations in Australia to ensure that the petroleum industry meets these expectations. Today we are ensuring that the petroleum industry will be held accountable if it does not meet its obligations, particularly its environmental obligations. Importantly, we are also ensuring that the rights of landholders are appropriately strengthened.

Members may recall that stakeholders concerns were raised following the passage of the bill through the other House in June this year. In response to those concerns the Government was clear that the bill would only proceed when a broad consensus was reached. The Land and Water Commissioner was given the task of bringing together all stakeholders to work on the development of the bill. The commissioner arranged briefings and discussions with the six key representative groups of landholders. These included NSW Farmers, the NSW Irrigators Council, Cotton Australia, the NSW Wine Industry Association, the Australian Petroleum Production and Exploration Association [APPEA] and the Hunter Thoroughbred Industry Breeders Association.

The stakeholder engagement process took place over a six-month period. That was six months of examining the bill and its proposals in detail, and working constructively together to develop solutions and improvements to the bill. The process, which was overseen by the Land and Water Commissioner, allowed stakeholders to voice concerns and work together to develop the improvements that will be addressed in Government amendments to the bill. It is important to note that the process was a success because the stakeholders recognise that the bill contains significant benefits and protections for landholders. Those benefits and protections need to be brought into law.

The consensus that the Land and Water Commissioner has facilitated has been reached on several bases. The first basis is that the Government will move amendments to the bill to reflect the clarifications and improvements identified by the stakeholders. I will outline these important changes in a moment. The second basis is that the stakeholders will have another opportunity as part of the review of the Petroleum (Onshore) Act to consider the arbitration framework in the Act. This will give stakeholders the opportunity to see how the proposals before the House work in practice. The review was committed to as part of the Government's response to this Chamber's inquiry into coal seam gas.

Third, the commissioner will continue to facilitate discussions between the Government and the landholding stakeholder groups on the issue of landholder liability. These discussions will consider the scope of the landholder immunity that currently exists in the Petroleum (Onshore) Act. I take this opportunity to thank the Land and Water Commissioner, Mr Jock Laurie, for his work in facilitating this consensus and to thank the

participating stakeholder groups. These groups are NSW Farmers, Cotton Australia, NSW Wine Industry Association, NSW Irrigators Council, the Hunter Thoroughbred Industry Breeders Association, which was also representing the NSW Thoroughbred Breeders Association, and the Australian Petroleum Production and Exploration Association. I understand that some discussions were robust, but ultimately productive. The outcomes are clear evidence of this.

I return now to the matters that will be addressed through the Government amendments. The first issue of concern to stakeholders was clarifying what could be done under an environmental assessment permit. There were concerns that this permit would provide a backdoor for titleholders to explore for or even produce petroleum products. That is simply not the case. An environment assessment permit cannot be used to construct pilot gas wells. This permit only allows environmental monitoring, including regional baseline monitoring and data collection. This includes activities like carrying out flora or fauna studies, or water monitoring. This information needs to be collected in order to understand the impacts of a proposed activity as part of the environmental assessment process.

In order to make it clear what cannot be done under an environmental assessment permit, a note will be included in the Act to clarify that a permit does not allow prospecting or mining. Further, a permit applicant will be required to seek the landholder's consent to go onto the land before applying for a permit. As well, to underscore how important it is to comply with permit conditions, the penalty for not complying will increase from the proposed five penalty units to 2,000 penalty units. In addition, the Government is preparing a policy that provides clarification of the circumstances in which permits will be granted. The permit provisions will not be commenced until that policy is ready. This will provide all those involved with a clear understanding of what a permit allows and how the process will work.

A second issue related to the arbitration provisions in the Act. Currently a landholder cannot have legal representation in an access arrangement arbitration unless all the parties and the arbitrator agree. The Premier announced at the NSW Farmers conference in July that all parties to an arbitration should have the right to legal representation. The Premier also announced that the only exception would be if a landholder decided he or she did not wish to have legal representation. In this case none of the parties will be able to have legal representation. These changes will help to ensure balance is maintained between the parties during arbitration.

A third concern related to seismic surveys on public roads. Currently, the Act requires the consent of adjacent landholders in certain circumstances before seismic surveys can be carried out on these roads. The bill proposed to remove the need to obtain this consent given the short term and low impact nature of the activity. For the purpose of seismic surveys, government amendments will define "roads" to ensure that so-called paper roads are excluded. These are Crown roads that appear on maps but in reality are not used, and in many instances have not even been constructed. In practise those roads often look as though they are part of a landholder's property.

While not to be included in legislation, it has been agreed that those wishing to conduct a seismic survey must give notice to affected landholders. Notice must allow sufficient time for landholders to prepare, for example, to move stock if necessary. This requirement will become a condition of approval for a survey. A regulation-making power for making a Code of Practice for Land Access was also included in the bill. Government amendments include a new, broader code-making power. This will enable additional codes to be prescribed by regulation to be complied with by all titleholders. This is a more robust and effective way of imposing these requirements on titleholders. Before the Code of Practice for Land Access is prescribed in regulation, it will be released for public consultation. This consultation period will start this week for four weeks. To give all stakeholders a chance to consider these amendments debate will be adjourned on this bill until a later date.

I will now address the broader legislative basis that ensures landholders are not disadvantaged when making access arrangements with titleholders. Land access arrangements provide for the circumstances in which titleholders can access land and undertake exploration. They set conditions for how and when access is to occur, and the types of activities and work that are to take place. These arrangements clearly recognise the rights of landholders to conduct their activities free from unreasonable interference or disturbance. Mandatory requirements in the Code of Practice for Land Access will become mandatory clauses in an access agreement. To provide flexibility in what are essentially private arrangements, the bill provides 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 breach of the requirements of an access arrangement. These provisions were decided by stakeholders before the recent stakeholder negotiations. They 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 for a landholder seeking initial advice before negotiating an access arrangement. But a landholder may need access to further legal advice in the course of making the arrangement.

The amendments in the bill 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 where negotiations are initiated, up to the making of the arrangement, or when an arbitrator is appointed when agreement is not reached. The obligation will now be a statutory requirement and must be included in an access arrangement. Failure to pay the costs 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 they can obtain legal advice to help ensure an outcome that is in their best interests.

The community has expressed a particular need for environmental information so that it can better understand the significance of any proposed or ongoing activity. I note that the Act already has provisions for the release of information generally. The amendments in the bill provide for additional provisions to release environmental information. The amendments will enable the department, at its discretion, to make this information publicly available as soon as it is received. However, in practise, 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.

At the beginning I mentioned that one of the aims of the amendments is to hold the petroleum titleholder accountable if it does not meet its obligations. The bill strengthens and extends the compliance and enforcement provisions in the Act. The 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 very limited powers for directions to be given. The bill extends and strengthens these direction powers considerably 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 industry activities may have on any aspect of the environment.

As well, directions can be issued to conserve the environment or to prevent, control or mitigate any harm to it. They also can be issued to rehabilitate land or water 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 under the Mining Act, before a direction can be given 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 Act 1997 no such notice is required. Therefore, the amendments 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 have been given the right to challenge the merits of a direction in court under both Acts.

However, there is an exception when the direction relates to the suspension of operations. Currently under the Petroleum (Onshore) Act, the Minister can suspend operations for certain contraventions after having given written notice and allowing the titleholder to make representations. 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 of means of ensuring prompt industry compliance while giving titleholders a fair process by which to seek review. Audits provide information on compliance with all title obligations. Auditing petroleum operations and records is an effective means of ensuring that the industry is complying with requirements. It also enables an assessment of how activities on the title can be improved to protect the environment. Therefore, the bill provides for audits by incorporating the voluntary and mandatory audit provisions of the Mining Act.

Amendments also are proposed to inspectors' powers. Inspection provisions in the Petroleum (Onshore) Act are limited. They are not considered sufficiently robust to provide inspectors with the statutory backing they need for their work. Inspectors must have sufficient powers by which to carry out their work effectively and to ensure compliance. Therefore, existing provisions will be replaced by far more extensive provisions of the Mining Act. Inspectors will have greater powers by which to obtain information and to gather a much wider range of material for an investigation. For instance, inspectors will be able to enter premises to obtain evidence. However, they must obtain the permission of the occupier or obtain a search warrant to enter a residence.

Inspectors also will be able to require answers from a person whom they reasonably suspect of knowing about an offence. A corporation can be required to nominate a representative to answer questions, and those will bind the corporation. The legislation also will provide for circumstances when not answering questions or furnishing records is not an offence. It also will include the circumstances in which answers are not admissible in criminal proceedings. The legislation backs up these strong inspectors' powers with offences for failing to comply with requirements without lawful excuse or for wilful delay or obstruction. The strongest penalties possible will be imposed in those circumstances. For corporations the penalty will be $1.1 million and for individuals $220,000.

Industry must know that compliance is not a choice. By amending the Act to provide for new inspectors' powers, much more thorough investigations will be able to be conducted. This will help to build sound evidence around offences and to develop effective cases when a prosecution is appropriate. It also will contribute to industry compliance. Currently, the Petroleum (Onshore) Act does not provide for offences for all acts of non-compliance. This issue is being 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 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 that are consistent with the Mining Act. This means that for each day a titleholder continues in breach, a further penalty amount is imposed. The bill goes further in introducing offence provisions. The Act is limited in its offence provisions for corporations. New provisions will be introduced for the assessment of directors' liabilities. The provisions will be consistent with the New South Wales Miscellaneous Act Amendment (Directors' Liability) Act 2011.

> The amendments also include increases in penalties in line with those that apply under the Mining Act. Some penalties were increased in the 2012 amendments to the Petroleum (Onshore) Act and changes are not proposed for those. When a direction is not complied with, penalties will increase to a maximum of 10,000 penalty units, or $1.1 million. This will be a powerful deterrent to non-compliance for any member of the petroleum industry. Strong penalties also will be imposed for the offences of failing to comply with requirements without lawful excuse or for wilful delay or obstruction of an inspector. For corporations, the penalty will be $1.1 million and for individuals the penalty will be $220,000.

The bill also extends the time for commencing proceedings for an offence under both the Mining Act and the Petroleum (Onshore) Act. This will be three years from the date of the offence or the date on which evidence of the alleged offence came to the attention of an officer. In the case of indictable offences, 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 when proceedings are on foot or an offence is proved. So far I have focused on the amendments in the bill to improve industry compliance with regulatory requirements.

The bill contains a proposal for a different sort of suspension from that which I discussed earlier. Currently, at a titleholder's request, the Minister can suspend conditions of a title for up to six months. The Minister also can be asked to vary a work program under a title. Industry has requested greater flexibility regarding work program obligations to allow for time to deal with community and landholder access issues. To meet this need the bill proposes that the Minister has the power to suspend a condition of title, at the titleholder's request, for longer than six months.

The Hon. Jeremy Buckingham: Longer than six months now. That is new.

The Hon. DUNCAN GAY: This bill is just 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, we also expect that the industry is regulated in accordance with best practice. To achieve this, NSW Trade and Investment is building a clearer and more robust compliance and enforcement practice to fully implement the bill's provisions. This task involves a complete overhaul and modernisation of the department's compliance and enforcement policies, processes and procedures. The amendments in the bill provide for a much stronger regulatory framework for the petroleum industry in New South Wales. When interested people understand the clarifications and changes that have been incorporated, it is hoped that they will realise that this is a good outcome.

The Hon. Jeremy Buckingham: It is a shocking outcome and you know it. This is an old speech. You should have got the new and amended version.

DEPUTY-PRESIDENT (The Hon. Trevor Khan): Order! If the Hon. Jeremy Buckingham continues he will be called to order.

The Hon. DUNCAN GAY: It is a package of many measures which largely reflect the wishes of landholders to have a greater say. In totality, this is a win for landholders. They will have clearer and more effective protections than exist now. It is far better to move on these now, together with a code, than wait for the proposed review of the Act, which may not see further change before 2015. The amendments will contribute to sound environmental management and ensure appropriate compliance and enforcement measures are available. They will help balance the rights of landholders and titleholders. They strongly support this State's claim that it has the most rigorous industry requirements in the country for petroleum activities. To give all stakeholders a chance to consider these amendments, debate on this bill will be adjourned until a later date. I commend the bill to the House.

Debate adjourned on motion by the Hon. Lynda Voltz and set down as an order of the day for a future day.