



New South Wales

# Petroleum (Onshore) Amendment Bill 2013

## Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

## Overview of Bill

The object of this Bill is to amend the *Petroleum (Onshore) Act 1991* (the *Petroleum Act*), the *Mining Act 1992* (the *Mining Act*) and other Acts as follows:

- (a) to increase penalties for offences relating to mining for petroleum without authority and certain other offences and to revise other offences so that corresponding offences relating to petroleum mining and other mining are in similar terms,
- (b) to enable directions relating to compliance with conditions of petroleum titles and addressing adverse environmental impacts of mining for petroleum to be given and to provide for enforcement of such conditions and appeals against directions,
- (c) to provide for audits of prospecting or mining for petroleum,
- (d) to extend the legal costs that the holders of mining authorities or petroleum titles must pay for landholders relating to arrangements for access to land and to make other provision with respect to access to land by holders of petroleum titles and to make other provision with respect to arrangements for access to land,

- (e) to make it an offence for the holder of a petroleum title to fail to pay royalty,
- (f) to enable the publication of certain environmental information,
- (g) to provide for the appointment of, and to confer inspection and other investigation powers equivalent to those conferred under the Mining Act on, inspectors under the Petroleum Act and to provide for permits for entry onto land the subject of a petroleum title in other circumstances,
- (h) to insert various offences relating to enforcement of the Petroleum Act and the enforcement of rights under, and conditions of, petroleum titles,
- (i) to make existing and new offences relating to the provision of false or misleading information under the Petroleum Act and the Mining Act offences of strict liability,
- (j) to insert other provisions relating to offences under the Petroleum Act, consistent with the Mining Act, including provisions about continuing offences, proceedings for offences, enabling orders to be made requiring offenders to make monetary payments and also enabling restraining orders to be made against the property of offenders against whom payment orders are sought,
- (k) to provide for the ongoing effect of notices given under the Petroleum Act and the Mining Act and of conditions of petroleum titles, authorisations and permits,
- (l) to make other amendments to the Mining Act, consistent with amendments to the Petroleum Act, including the removal of the power to suspend a mining authorisation for contravention of an access arrangement,
- (m) to validate certain appointments,
- (n) to make other minor and consequential amendments and enact savings and transitional provisions consequent on the enactment of the proposed Act.

## Outline of provisions

**Clause 1** sets out the name (also called the short title) of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act on a day or days to be proclaimed.

## **Schedule 1      Amendment of Petroleum (Onshore) Act 1991 No 84**

### **Penalty increases and changes**

**Schedule 1 [2]** imposes a daily penalty of \$110,000 (for a corporation) and \$22,000 (for a natural person) for the offence of mining petroleum other than in accordance with a petroleum title.

### **Suspension of petroleum titles**

**Schedule 1 [3]** enables the Minister to suspend operations under a petroleum title if there is a contravention of a direction, a condition of the title or an agreement or assessment relating to the payment of compensation and replaces existing provisions relating to suspension.

**Schedule 1 [4]** enables the Minister to extend the 6-month maximum period for the suspension of conditions of petroleum titles in particular cases.

### **Access arrangements**

**Schedule 1 [5]** makes a consequential amendment.

**Schedule 1 [6]** requires an access arrangement to require the holder of a prospecting title to pay a specified amount for the reasonable legal costs of the landholder for negotiating and making the arrangement and until the arrangement is executed (other than any arbitration costs). The Director-General of the Department of Trade and Investment, Regional Infrastructure and Services (the *Director-General*) may specify the maximum amount of legal costs payable by order published in the Gazette with the concurrence of the NSW Farmers Association and the Australian Petroleum Production and Exploration Association Limited. A greater amount for legal costs may be included in the access arrangement. Currently, only legal costs of initial advice about an arrangement may be recovered and provision for legal costs is not required to be included in the access arrangement unless the landowner requests it.

The amendment also enables regulations to be made prescribing an access code relating to access to land by the holder of a prospecting title and the carrying out of activities on that land by the holder. If the code designates provisions as mandatory provisions, those provisions prevail over any inconsistent provisions of an access arrangement, except where the arrangement imposes more stringent obligations on the holder. An access arrangement may expressly exclude or vary the mandatory provisions.

**Schedule 1 [7]** enables holders of petroleum titles to carry out seismic surveys on public roads without having to obtain the consent of adjoining land owners.

### **Environmental and other directions to holders or former holders of petroleum titles**

**Schedule 1 [8]** inserts proposed Division 3 of Part 6. The proposed Division contains provisions based on Division 3 of Part 11 of the Mining Act. The provisions of the proposed Division do the following:

- (a) confer power on the Director-General or an inspector to direct a holder or former holder of a petroleum title to carry out conditions of the title or to take various actions relating to addressing the environmental impact of activities under the title, including land or water rehabilitation. A direction may be revoked or varied and an administrative fee is payable by a person given a direction,

- (b) make it an offence to fail to comply with a direction and provide that a direction does not affect any other liability,
- (c) empower the Minister to give effect to a direction that is not complied with and to recover the costs of giving effect to that direction from the person subject to the direction,
- (d) provide that prior notice is not required to be given to any affected person before a direction is given,
- (e) provide for an appeal against a direction to the Land and Environment Court.

#### **Audits of petroleum prospecting or mining**

**Schedule 1 [9]** inserts proposed Division 5 of Part 6. The proposed Division contains provisions based on Division 6 of Part 11 of the Mining Act. The provisions of the proposed Division do the following:

- (a) describe the nature of an audit and provide for regulations to be made with respect to the accreditation of auditors and the carrying out of audits,
- (b) enable the Director-General to impose mandatory audit conditions on petroleum titles,
- (c) provide for certification of an audit report,
- (d) make it an offence (of strict liability) to provide false or misleading information to an auditor or in an audit report and also make it an offence for an auditor not to include in an audit information that is materially relevant,
- (e) require information to be supplied for audit purposes even if it may incriminate the person concerned and authorise the use of information contained in an audit for the purposes of planning and environment protection legislation,
- (f) provide for voluntary audits, including the protection of documents prepared for the purposes of a voluntary audit.

#### **Payment of royalty**

**Schedule 1 [10]** makes it an offence to fail to pay royalty as required under the Petroleum Act and enables the Minister to charge interest on the amount of any unpaid royalty.

#### **Powers of inspectors**

**Schedule 1 [11]** replaces the provisions relating to inspectors with a new Part based on Part 12 of the Mining Act. The proposed Part sets out powers that may be used by inspectors for compliance and general administrative purposes, including the following:

- (a) powers to issue notices to require information or records relating to the administration of the Petroleum Act,

- (b) powers to enter premises where prospecting or mining for petroleum is being carried out,
- (c) powers that may be exercised at premises entered by inspectors,
- (d) powers to use other persons for assistance and to require assistance to be given,
- (e) powers to require answers to questions and attendance for that purpose and a power to require persons to provide their name and address,
- (f) powers to inspect and test articles.

The proposed Part also provides for the issue of permits by the Minister to other persons to enter land for other purposes, including to carry out rehabilitation works and environmental works, remove petroleum plant, do surveys, take samples and examine possible encroachments on roads or railways.

The proposed Part also makes it an offence to neglect or fail to comply with a requirement of an inspector, to wilfully delay or obstruct an inspector or to impersonate an inspector.

**Schedule 1 [13]** enables the Director-General to appoint inspectors for the purposes of the Petroleum Act and provides for the issue and use of identification cards by inspectors.

#### **Environmental information**

**Schedule 1 [14]** inserts proposed Division 1 of Part 13. The proposed Division enables the Director-General to publish environmental information about the impact of petroleum prospecting and mining activities obtained by the Director-General, except where the Director-General is notified by the person who provides the information that publication is likely to cause the person a substantial commercial disadvantage. Despite this, the Director-General may publish information the subject of a notification if satisfied that it is in the public interest to do so.

**Schedule 1 [15]** makes a consequential amendment.

#### **Offences and enforcement**

**Schedule 1 [16]** inserts proposed Part 13A. The proposed Part contains provisions based on Part 17A of the Mining Act. The provisions of the proposed Part do the following:

- (a) make it an offence, without reasonable excuse, to obstruct, hinder or resist inspectors and other specified persons in the exercise of a function under the Petroleum Act or to obstruct the holder of a petroleum title in doing an act authorised under the Petroleum Act,
- (b) make it an offence (of strict liability) to provide false or misleading information in connection with an application or when furnishing information in response to other requirements under the Petroleum Act,
- (c) make each holder of a petroleum title guilty of an offence if a condition of the title is contravened and provide for defences, including a defence for a holder

- who was not associated with the person who contravened the condition and took all reasonable steps to prevent the contravention,
- (d) provide for the circumstances where the directors of a corporation will be liable for an offence when a corporation that is a holder of a petroleum title contravenes a direction by the Director-General or a condition of a petroleum title held by a corporation is contravened,
  - (e) provide for the operation of continuing offences,
  - (f) provide for proceedings for offences to be instituted in the Local Court or the Land and Environment Court (for certain specified offences) and limit the penalty that may be imposed for an offence if proceedings are taken in the Local Court,
  - (g) provide for a 3 year period within which proceedings for an offence may be taken,
  - (h) enable penalty notices to be issued for offences prescribed by the regulations,
  - (i) enable a restraining order to be made that prevents the property of a person from being disposed of if, as a result of proceedings for an offence commenced against the person, the person may be liable to pay an amount for costs for expenses or compensation. If an order is made, a charge will be created over property subject to the order and the costs of registering a charge or lodging a caveat are recoverable from the affected person. It will be an offence to knowingly contravene a restraining order,
  - (j) enable a court to make additional orders where an offence against the Petroleum Act or regulations under that Act is found to be proved, including orders requiring payment of costs and expenses of the Crown or a public authority in connection with remedying or preventing environmental harm caused by the commission of the offence,
  - (k) provide for prima facie evidence of certain matters under the Petroleum Act to be provided in court proceedings by certificate of the Director-General.

### **Miscellaneous**

**Schedule 1 [1]** inserts definitions.

**Schedule 1 [12]** inserts a note about the obligation to pay compensation under the Petroleum Act.

**Schedule 1 [17]** updates the offence prohibiting persons who hold office in an official capacity for the purposes of the Petroleum Act from holding directly or indirectly a beneficial interest in a petroleum title. The provision does not prevent the Director-General from being the holder of an exploration licence on behalf of the Crown.

**Schedule 1 [18]** makes a consequential amendment. The amendment also provides for notices given and conditions imposed on petroleum titles under the Petroleum Act to have continuing effect during any period in which they are not complied with and

have not been revoked (whether or not any specified period for compliance has expired).

**Schedule 1 [19]** inserts savings and transitional provisions consequent on the enactment of the proposed Act.

## **Schedule 2 Amendment of other Acts**

### **Schedule 2.1 Coal Mine Health and Safety Act 2002 No 129**

**Schedule 2.1** validates the appointment of certain persons.

### **Schedule 2.2 Fines Act 1996 No 99**

**Schedule 2.2** updates a reference to the penalty notice provision of the Petroleum Act.

### **Schedule 2.3 Mining Act 1992 No 29**

**Schedule 2.3 [1]** enables holders of exploration licences to carry out seismic surveys on public roads without having to obtain the consent of adjoining land owners.

**Schedule 2.3 [2]** enables holders of assessment leases to carry out seismic surveys on public roads without having to obtain the consent of adjoining land owners.

**Schedule 2.3 [4]** requires an access arrangement to require the holder of a prospecting title to pay a specified amount for the reasonable legal costs of the landholder for negotiating and making the arrangement and until the arrangement is executed (other than any arbitration costs). The Director-General may specify the maximum amount of legal costs payable by order published in the Gazette with the concurrence of the NSW Farmers Association and the NSW Minerals Council. A greater amount for legal costs may be included in the access arrangement. Currently, only legal costs of initial advice about an agreement may be recovered and provision for legal costs is not required to be included in the access arrangement unless the landowner requests it. **Schedule 2.3 [3]** makes a consequential amendment.

**Schedule 2.3 [5]** removes the power of the Director-General to suspend operations under an authorisation on the ground that there has been a contravention of an access arrangement.

**Schedule 2.3 [6]** corrects an incorrect reference.

**Schedule 2.3 [7]** provides for an appeal to the Land and Environment Court against an environmental or rehabilitation direction given by the Director-General or an inspector to the holder of an authorisation.

**Schedule 2.3 [8]** makes it clear that prior notice is not required to be given of an environmental or rehabilitation direction given to the holder of an authorisation.

**Schedule 2.3 [9]** updates references to provisions of the *Environmental Planning and Assessment Act 1979* that relate to the effect of approvals under the Petroleum Act.