



New South Wales

Energy Legislation Amendment (Infrastructure Protection) Bill 2009

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 *Electricity Supply Act 1995* and the *Gas Supply Act 1996* to make further provision for the protection of electricity and gas infrastructure.

The Bill amends the *Electricity Supply Act 1995* (the ***Electricity Act***) and the *Gas Supply Act 1996* (the ***Gas Act***):

- (a) to enable network operators to require persons carrying out excavation work near electricity works or gas works to modify or cease the work if the excavation work would cause damage to or interfere with the electricity or gas works, and
 - (b) to enable network operators to recover compensation for damage to electricity works and gas works in certain circumstances, and
 - (c) to place a condition on licences and authorisations held by network operators that they belong to a designated information provider, and
 - (d) to enable regulations to be made in relation to the provision by network operators of information relating to underground electricity power lines and underground gas pipelines, and
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- (e) to make it an offence for a person to carry out certain excavation work without first contacting a designated information provider to obtain information as to the location and type of underground electricity power lines or underground gas pipelines in the vicinity of the proposed work, and
- (f) to make it an offence for a person to carry out certain excavation work in contravention of the requirements of the regulations in relation to the carrying out of the excavation work, and
- (g) to make it an offence for a person to fail to notify a network operator after becoming aware that the person's actions have caused damage to the operator's underground electricity power lines or underground gas pipelines, and
- (h) to increase the penalties for the offence of unauthorised interference with electricity works or gas works.

The Bill also makes consequential amendments to the *Criminal Procedure Act 1986*.

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 Electricity Supply Act 1995 No 94

Schedule 1 [1] inserts proposed section 49A into the Electricity Act to enable a network operator to require a person who is carrying out or proposing to carry out excavation work in, on or near the operator's electricity works to modify the excavation work or not carry it out. The section will only apply in circumstances where the network operator has reasonable cause to believe that the excavation work could damage or interfere with the electricity works or make them a bush fire hazard or a risk to public safety. If the network operator has made such a requirement, the operator may recover the costs in relation to the destruction of, damage to or interference with the electricity works caused by the carrying out of the excavation work. The proposed section also enables a network operator to seek an injunction to prevent the carrying out of the excavation work. Existing section 49 of the Electricity Act contains similar provisions in relation to structures or things that are in, on or near electricity works.

Schedule 1 [2] amends section 54 of the Electricity Act which specifies the purposes for which an authorised officer of a network operator may enter premises. The proposed amendment extends those purposes to include the monitoring of excavation work in accordance with regulations under proposed section 63Z and exercising any function under section 49 or proposed section 49A.

Schedule 1 [3] inserts proposed Part 5E into the Electricity Act. The proposed Part consists of the following sections:

Proposed section 63X defines a *designated information provider* for the purposes of the proposed Part. It means Dial Before You Dig NSW/ACT Incorporated or another person or body prescribed by the regulations.

Proposed section 63Y makes it a condition of a distribution network service provider's licence that the service provider be a member of the designated information provider and comply with the obligations imposed by that membership. The proposed section also enables regulations to be made as to the provision of information by network operators in relation to underground electricity power lines.

Proposed section 63Z makes it an offence for a person to commence to carry out excavation work to which the proposed section applies or authorise such work to be commenced unless the person has contacted the designated information provider to request information as to the location and type of any underground electricity power lines in the vicinity of the proposed work, has complied with reasonable procedures of the designated information provider to enable that information to be provided and has waited a reasonable period for the information to be provided. Regulations will be able to be made prescribing what constitutes reasonable procedures and a reasonable waiting period.

The proposed section also makes it an offence for a person carrying out excavation work to which the proposed section applies, or authorising it to be carried out, not to comply with the requirements of the regulations in relation to the carrying out of the work. Regulations will also be able to be made requiring notification of excavation work and enabling monitoring of excavation work by network operators.

The proposed section will apply to excavation work in an area, and of a kind, prescribed by the regulations.

Proposed section 63ZA makes it an offence for a person to fail to notify a network operator as soon as practicable after becoming aware that the person's actions or actions authorised by the person have damaged the network operator's underground electricity power lines.

Proposed section 63ZB enables a court to order a person who has been convicted of an offence against the proposed Part or existing section 65 to repay costs and expenses incurred by a network operator in relation to its electricity works as a result of the commission of the offence.

Proposed section 63ZC provides that the designated information provider, a network operator, their officers or employees and persons acting on their behalf, do not incur any civil monetary liability for acts or omissions in connection with requests for information under proposed section 63Z and the provision of information in compliance with regulations under proposed section 63Y unless the acts or omissions were done or made in bad faith or negligently. The civil monetary liability for negligent acts or omissions is not to exceed the prescribed maximum

amount. A person to whom the proposed section applies may enter into an agreement with another person varying or excluding the operation of a provision of the proposed section.

Schedule 1 [4] amends section 65 of the Electricity Act to increase the maximum penalty for unauthorised interference with electricity works to 4,000 penalty units in the case of a corporation and 200 penalty units or imprisonment for 5 years (or both) in any other case.

Schedule 1 [5] amends section 65 of the Electricity Act to provide that the offence of unauthorised interference with electricity works if committed by an individual is an indictable offence which may be dealt with summarily in accordance with Chapter 5 of the *Criminal Procedure Act 1986*.

Schedule 1 [6] inserts proposed section 100A into the Electricity Act to exclude authorised officers appointed by a network operator from personal liability for the exercise in good faith of their functions under that Act. Any such liability will attach instead to the network operator.

Schedule 1 [7] amends section 106 of the Electricity Act to enable the regulations to provide for exemptions from the provisions of proposed sections 63Y and 63Z.

Schedule 1 [8] and [9] amend Schedule 6 to the Electricity Act to enable regulations to be made of a savings or transitional nature consequent on the enactment of the proposed Act and to include certain specific savings and transitional provisions.

Schedule 2 Amendment of Gas Supply Act 1996 No 38

Schedule 2 [1] inserts proposed section 50A into the Gas Act to enable a network operator to require a person who is carrying out or proposing to carry out excavation work in, on or near the operator's gas works to modify the excavation work or not carry it out. The section will only apply in circumstances where the network operator has reasonable cause to believe that the excavation work could damage or interfere with the gas works or make them a risk to public safety. If the network operator has made such a requirement, the operator may recover the costs in relation to the destruction of, damage to or interference with the gas works caused by the carrying out of the excavation work. The proposed section also enables a network operator to seek an injunction to prevent the carrying out of the excavation work. Existing section 50 of the Gas Act contains similar provisions in relation to structures or things that are in, on or near gas works.

Schedule 2 [2] amends section 55 of the Gas Act which specifies the purposes for which an inspector of a network operator may enter premises. The proposed amendment extends those purposes to include the monitoring of excavation work in accordance with regulations under proposed section 64C and exercising any function under section 50 or proposed section 50A.

Schedule 2 [3] inserts proposed Part 4A into the Gas Act. The proposed Part consists of the following sections:

Proposed section 64A defines a *designated information provider* for the purposes of the proposed Part. It means Dial Before You Dig NSW/ACT Incorporated or another person or body prescribed by the regulations.

Proposed section 64B makes it a condition of a distributor's licence and a reticulator's authorisation that the distributor or reticulator be a member of the designated information provider and comply with the obligations imposed by that membership. The proposed section also enables regulations to be made as to the provision of information by network operators in relation to underground gas pipelines.

Proposed section 64C makes it an offence for a person to commence to carry out excavation work to which the proposed section applies or authorise such work to be commenced unless the person has contacted the designated information provider to request information as to the location and type of any underground gas pipelines in the vicinity of the proposed work, has complied with reasonable procedures of the designated information provider to enable that information to be provided and has waited a reasonable period for the information to be provided. Regulations will be able to be made prescribing what constitutes reasonable procedures and a reasonable waiting period.

The proposed section also makes it an offence for a person carrying out excavation work to which the proposed section applies, or authorising it to be carried out, not to comply with the requirements of the regulations in relation to the carrying out of the work. Regulations will also be able to be made requiring notification of excavation work and enabling monitoring of excavation work by network operators.

The proposed section will apply to excavation work in an area, and of a kind, prescribed by the regulations.

Proposed section 64D makes it an offence for a person to fail to notify a network operator as soon as practicable after becoming aware that the person's actions or actions authorised by the person have damaged the network operator's underground gas pipelines.

Proposed section 64E enables a court to order a person who has been convicted of an offence against the proposed Part or existing section 66 to repay costs and expenses incurred by a network operator in relation to its gas works as a result of the commission of the offence.

Proposed section 64F provides that the designated information provider, a network operator, their officers or employees and persons acting on their behalf, do not incur any civil monetary liability for acts or omissions in connection with requests for information under proposed section 64C and the provision of information in compliance with regulations under proposed section 64B unless the acts or omissions were done or made in bad faith or negligently. The civil monetary liability for negligent acts or omissions is not to exceed the prescribed maximum amount. A

person to whom the proposed section applies may enter into an agreement with another person varying or excluding the operation of a provision of the proposed section.

Schedule 2 [4] amends section 66 of the Gas Act to increase the maximum penalty for unauthorised interference with gas works to 4,000 penalty units in the case of a corporation and 200 penalty units or imprisonment for 5 years (or both) in any other case.

Schedule 2 [5] amends section 66 of the Gas Act to provide that the offence of unauthorised interference with gas works if committed by an individual is an indictable offence which may be dealt with summarily in accordance with Chapter 5 of the *Criminal Procedure Act 1986*.

Schedule 2 [6] inserts proposed section 79A into the Gas Act to exclude inspectors appointed by a network operator from personal liability for the exercise in good faith of their functions under that Act. Any such liability will attach instead to the network operator.

Schedule 2 [7] amends section 83 of the Gas Act to enable the regulations to provide for exemptions from the provisions of proposed sections 64B and 64C.

Schedule 2 [8] and [9] amend Schedule 2 to the Gas Act to enable regulations to be made of a savings or transitional nature consequent on the enactment of the proposed Act and to include certain specific savings and transitional provisions.

Schedule 3 Amendment of Criminal Procedure Act 1986 No 209

Schedule 3 [1] amends section 268 of the *Criminal Procedure Act 1986* to provide the maximum penalties for offences under section 65 of the *Electricity Supply Act 1995* and section 66 of the *Gas Supply Act 1996* when dealt with summarily.

Schedule 3 [2] amends Table 2 in Schedule 1 to the *Criminal Procedure Act 1986* to include offences under section 65 of the *Electricity Supply Act 1995* and section 66 of the *Gas Supply Act 1996*. The effect of the amendment is that such an offence will be able to be dealt with summarily rather than on indictment unless the prosecutor elects otherwise.