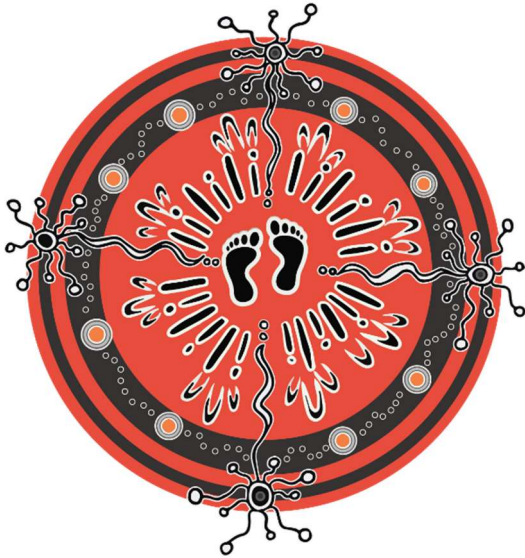


NSW Pipelines and Gas Supply Legislation Amendments

Consultation Paper

August 2024

Acknowledgement of Country



Department of Climate Change, Energy, the Environment and Water acknowledges the traditional custodians of the land and pays respect to Elders past, present and future.

We recognise Australian Aboriginal and Torres Strait Islander peoples' unique cultural and spiritual relationships to place and their rich contribution to society.

Artist and designer Nikita Ridgeway from Aboriginal design agency – Boss Lady Creative Designs, created the People and Community symbol.

NSW Pipelines and Gas Supply Legislation Amendments

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1 Summary

The New South Wales (NSW) Government is reviewing aspects of the *NSW Pipelines Act 1967* (Pipelines Act) and *NSW Gas Supply Act 1996* (Gas Supply Act) with the aim of enhancing governance, safety, and operational efficiency.

The primary objectives of these proposed changes are to improve the management and oversight of pipeline and gas network infrastructure, including end-of-life operations, and to modernise the regulatory framework, ensuring that the regulatory environment remains effective and responsive to existing industry and public needs. The key changes proposed include:

- Expanding inspector powers for investigation purposes, in line with similar provisions in the *NSW Protection of the Environment Operations Act 1997* (POEO Act). It is proposed to increase inspector powers to include:
 - powers to require information or records from any person for the purposes of assisting an investigation,
 - expanded powers of entry and search of premises, and
 - powers to question and identify persons for investigation purposes.
- The update of penalties to ensure they remain appropriately dissuasive, including introduction of continuing offences with recurring accumulating penalties for ongoing non-compliance for certain offences.
- The introduction of penalty infringement and show cause notices to align with comparable energy legislation.
- Increases to local court penalty limits to ensure that updated penalties can be awarded to an appropriate updated limit in local court jurisdictions.
- Improved governance of end-of-life gas supply and pipeline operations and infrastructure management.
- Additional refinements to streamline and strengthen the NSW pipeline and gas supply regulatory framework, ensuring alignment with industry standards, clarity in responsibilities and enhanced operational effectiveness.

A significant benefit of the proposed updates is to enable the regulatory framework to better respond to the ongoing energy transition. The introduction of renewable fuels, such as hydrogen and biofuels, into the network necessitates regulatory adjustments to ensure infrastructure is capable of safely handling these new energy sources. Renewable fuels may have different characteristics and requirements compared to traditional fossil fuels, making it crucial for regulations to adapt accordingly to maintain safety and operational integrity.

As pipelines age and technology develops, there may be a growing need to safely decommission and retire infrastructure. This requires a regulatory framework that effectively manages the lifecycle of infrastructure, including decommissioning processes, to mitigate risks and ensure environmental and public safety.

The proposals contained in this consultation paper, including the proposed penalty updates, have been considered against similar provisions and penalties that are in force in other Australian state jurisdictions as well as in other NSW energy legislation, such as the *Electricity Supply Act 1995* (Electricity Supply Act). The proposed increases will ensure that the penalties in NSW's Pipelines and Gas Supply Acts are consistent with other penalties in similar legislation.

By ensuring that the pipelines and gas supply regulatory frameworks are adaptable to these evolving energy needs, the proposals contained in this consultation paper aims to maintain the framework's relevance and effectiveness in supporting industry needs, public safety, and the broader goals of the energy transition.

This consultation paper invites feedback on the proposed changes to the Pipelines and Gas Supply Acts. Your feedback will inform future amendments to these Acts.

Future action

The proposals contained in this paper will require amendments to the Pipelines and Gas Supply Acts. Should the legislative amendments be approved by NSW Parliament, this will be followed by changes to the *Pipelines Regulation 2023* (Pipelines Regulation) and *Gas Supply (Safety and Network Management) Regulation 2022* (Gas Supply Regulation) in 2025. Any proposed changes to the Regulations will also be consulted on, including alongside a draft exposure Regulation.

Proposed phased approach of amendments and consultation

| Pipelines and Gas Supply Acts | Pipelines Regulation | Gas Supply Regulation |
|-------------------------------|----------------------|-----------------------|
| Q4 2024 | Q1 2025 | Q2 2025 |

2 Consultation process

2.1 Making a submission

You can provide your submission by email in an 'accessible' format to energy.consult@dpie.nsw.gov.au. Accessibility is about making documents more easily available to members of the public who have some form of impairment (visual, physical, cognitive). More information on how you can make your submission accessible is available on the WebAIM website.

The closing date for submissions is COB Tuesday, 10 September 2024.

2.2 Release of submissions

All uploaded submissions will be publicly available on the Have Your Say website. If you do not want your personal details or part of your submission published, please state this clearly in your submission and tell us why. Automatically generated confidentiality statements are not sufficient.

Submissions may be referred to in a report on the outcome of the consultation, however any anonymous submissions will be referred to as such.

Please note, even if you state that you do not wish us to publish certain information, we may need to release that information by law. For example, to comply with the *Government Information (Public Access) Act 2009*.

3 Purpose of this consultation

This consultation paper seeks your views on proposed changes to the laws that regulate pipelines and gas networks in NSW, covering the following legislation:

- *Pipelines Act 1967* and
- *Gas Supply Act 1996*.

These laws regulate the safe and reliable supply and distribution of gas and the safe construction and operation of pipelines in NSW.

The NSW Pipelines and Gas Supply Acts feature robust licensing systems and provisions for authorised network and pipeline operators. The laws support the safe construction, maintenance, operation and environmental management of pipelines, while promoting reliable gas supply, consumer protection, and efficient market operations across NSW.

Furthermore, the NSW gas safety and technical regulator has identified areas for improvement in the gas network regulatory framework.

This consultation paper outlines proposed changes to the current legislation for NSW pipelines and gas networks aimed at enhancing public safety and network integrity, and seeks feedback on the following:

- Improved governance of end-of-life gas supply and pipeline operations and infrastructure management
- The expansion of government inspector powers for incident investigation to align with other similar legislation
- The update of penalties to ensure they remain appropriately dissuasive, including introduction of continuing offences with recurring accumulating penalties for ongoing non-compliance for certain offences
- The introduction of penalty infringement and show cause notices to align with comparable energy legislation
- Additional refinements to streamline and strengthen the NSW pipeline and gas supply regulatory framework, ensuring alignment with industry standards, clarity in responsibilities and enhanced operational effectiveness

This consultation paper provides an opportunity for existing pipeline licensees, gas network operators, industry and the community to provide input into the review of the proposed changes across the NSW Pipelines Act and Gas Supply Act. Your feedback will help us to ensure the legislation continues to reflect the needs of industry and the community.

The *Pipelines Regulation 2023* (Pipelines Regulation) and *Gas Supply (Safety and Network Management) Regulation 2022* (Gas Supply Regulation) are not in scope for this consultation paper. Changes to these regulations will be consulted on separately.

4 Background

4.1 NSW Pipelines Act 1967

The Pipelines Act came into force by proclamation on 27 December 1968. The Act's primary objective is to govern the development and safe operation of pipelines in NSW.

Under the Pipelines Act, the NSW Government licenses the construction and operation of cross-country transmission pipelines. In general, the licensing process can involve these stages:

- Stage 1: Authority to Survey (Optional)
 - Allows access to lands to investigate pipeline routes and undertake any necessary survey works, which can include but is not limited to supporting route selection, engineering, environmental, geotechnical and heritage considerations for the proposed pipeline.
 - The Authority to Survey is granted by the Minister for Energy and is subject to conditions.
- Stage 2: Licence
 - Allows construction of the licensed pipeline within the project approval area.
 - The NSW Minister for Energy determines if a licence is granted.
 - A licence may be varied upon application to the Minister.
- Stage 3: Consent to Operate
 - The consent to operate is granted by the NSW Minister for Energy following assessment by the NSW Department of Climate Change, Energy, the Environment and Water (the Department) that the pipeline can operate safely.

The Department performs regulatory functions to monitor safety and technical aspects of pipeline operation, construction and maintenance in NSW on behalf of the Minister for Energy.

There are currently 32 pipelines licensed to operate under the Pipelines Act. Thirty one of these pipelines convey either gas or petroleum products. One licensed pipeline conveys water.

NSW licensed pipelines can be separated into two categories:

1. Hydrocarbon pipelines (these contain ethylene, ethane, natural gas and petroleum products);
and
2. Other pipelines (this category currently includes one water pipeline).

Most licensed pipelines in NSW transport single and multi-phase hydrocarbons. These pipelines operate at high pressure transporting large quantities of energy that can be highly flammable.

The Pipelines Act seeks to protect public safety, promote responsible infrastructure development and facilitate the reliable and sustainable transport of resources essential to the state's economy, including those crucial for the ongoing renewable energy transition.

The objectives of the Pipelines Act include regulating the construction, operation, and maintenance of pipelines within NSW. The Act ensures that pipelines are built and managed safely and efficiently, considering environmental impacts and public safety. It provides a framework for granting licenses and authorities for pipeline construction and operation, ensuring compliance with specified conditions and standards. Additionally, the Act aims to prevent and address any potential issues related to the waste or escape of substances from pipelines and to protect property and public interests during the establishment and operation of pipeline infrastructure.

4.2 NSW Gas Supply Act 1996

The Gas Supply Act was introduced to regulate and oversee the supply and distribution of gas across the state, ensuring safety, reliability, and fair market practices. Under this legislation, the NSW Government licenses gas suppliers and distributors, overseeing compliance with stringent safety standards and consumer protections.

NSW gas network operators consist of:

- Authorised reticulators, who are the owners of the natural gas networks; and
- Licensed distributors of liquefied petroleum gas networks.

Under the Gas Supply Act, a natural gas network operator must hold a 'Reticulator's Authorisation'. Operators of gas networks that carry gases other than natural gas need a 'Distributor's Licence'.

The Department performs regulatory functions to monitor safety and technical aspects of gas supply and distribution in NSW on behalf of the Minister for Energy.

The main objectives of the Gas Supply Act as expressed in its provisions are:

- a) To encourage the development of a competitive market in gas, promoting efficient use of gas and delivering a safe and reliable supply of gas in compliance with the principles of ecologically sustainable development,
- b) To regulate gas reticulation and gas supply, protecting the interests of customers,
- c) To facilitate the continuity of supply of natural gas to customers,
- d) To promote the safe use of gas.

The Pipelines and Gas Supply Act objectives complement each other by providing a clear regulatory framework for a critical part of the NSW energy sector, that is, both the physical infrastructure and the supply of crucial substances such as gas. The Pipelines Act focusses on the physical integrity and safe construction and management of pipelines. Meanwhile, the Gas Supply Act emphasises market efficiency, customer protection, and the safe use of gas. Together, these Acts ensure that the infrastructure and supply of crucial substances such as gas are managed in a way that is safe,

sustainable, and efficient for NSW. This integrated approach safeguards public and environmental interests and promotes the development of a competitive and reliable energy market. Similar guiding objectives are reflected in the pipeline and gas supply regulations of other Australian states, such as Victoria, Queensland, and South Australia.

5 Offences and penalties

A fine is a monetary penalty and is typically identified in the Acts and Regulations in terms of penalty units. A fine can be imposed by a Court if it is specified as a penalty for an offence.

A penalty unit is defined in section 17 of the *NSW Crimes (Sentencing and Procedure) Act 1999* and is currently set as \$110 per penalty unit. This amount is not indexed for inflation, unlike in other states, such as Victoria and Queensland.

Across both the Pipelines Act and Gas Supply Act, various offences are associated with penalties of differing amounts. Some penalties have not been updated for more than 20 years and remain as low as 10 penalty units (equivalent to a \$1,100 fine).

Other states have also implemented similar provisions and offences for pipeline and gas supply regulation within their respective jurisdictions. These provisions feature common themes in safe construction, operation and maintenance, licensing and compliance, establishing protocols for emergency and incident response, requiring reporting and investigation of accidents and addressing issues (gas leaks, ruptures and environmental impacts). It is important that penalty provisions are up to date to encourage a culture of compliance and support public safety.

5.1 Proposed updated penalties and additional continuing offences to ensure sufficient deterrence of breaches

The proposed penalty units listed below have been benchmarked against similar penalties in other jurisdictions in Australia as well as with other NSW energy legislation, such as the Electricity Supply Act. The proposed increases will ensure that the penalties in NSW's Pipelines and Gas Supply Acts are consistent with other penalties in similar legislation.

Please note that, when comparing penalty unit penalties across jurisdictions, the monetary value of each jurisdiction's penalty unit is different, including whether they are indexed for inflation:

- In NSW, one penalty unit is \$110 and penalty units remain fixed.
- In Victoria, one penalty unit is \$197.59 (as of 1 July 2024) and is indexed annually.
- In Queensland, one penalty unit is \$161.30 (as of 1 July 2024) and is indexed annually.

Indexation of penalty units is beyond the scope of this review. As such, there is no proposal to index the penalties listed below.

Section 65 of the Pipelines Act provides that continuing offences can have additional penalties as specified in relevant provisions of the Act and regulations. The same provision is proposed to be added to the Gas Supply Act to enable the same power. Additional continuing offence penalties

across both the Pipelines Act and Gas Supply Act are proposed to be introduced as indicated alongside proposed penalty updates below. These additional continuing offence penalties aim to dissuade ongoing non-compliance effectively.

The rationale behind introducing these new continuing offence penalties is to enhance compliance by serving as a stronger deterrent against non-compliance, ensuring adherence to legal requirements. Introducing a provision in the Gas Supply Act to prescribe continuing offences will bring this legislation into line with the Pipelines Act and create a cohesive regulatory framework. This alignment promotes uniform enforcement practices and simplifies compliance obligations.

Proposed amendments to Pipelines Act penalty units

| Clauses to be amended | Current penalties | Proposed penalties |
|-----------------------|---|---|
| 11 | Maximum penalty – <ul style="list-style-type: none"> • 2,000 penalty units for corporations • 400 penalty units for individuals | Maximum penalty – <ul style="list-style-type: none"> • 10,000 penalty units for corporations • 5,000 penalty units for individuals Maximum penalty for each day that the offence continues – <ul style="list-style-type: none"> • 1,000 penalty units for a corporation • 500 penalty units for individuals |
| 54 | Imprisonment for a period of 2 years for individuals | Maximum penalty – <ul style="list-style-type: none"> • 2,000 penalty units for corporations • 500 penalty units for individuals and/or 2 years imprisonment |
| 59 | Maximum penalty – 10 units | Maximum penalty – 100 units Maximum penalty for each day that the offence continues – 10 units |
| 60 | Maximum penalty – 10 units | Maximum penalty – <ul style="list-style-type: none"> • 5,000 penalty units for corporations • 1,000 penalty units for individuals |
| 60A | Maximum penalty – <ul style="list-style-type: none"> • 150 penalty units for corporations • 30 penalty units for individuals | Maximum penalty – <ul style="list-style-type: none"> • 10,000 penalty units for corporations • 5,000 penalty units for individuals Maximum penalty for each day that the offence continues – <ul style="list-style-type: none"> • 1,000 penalty units for a corporation • 500 penalty units for individuals |

| Clauses to be amended | Current penalties | Proposed penalties |
|-----------------------|---|---|
| 63 | From section 117 of the <i>Crimes Act 1900</i> : Imprisonment for a period of 5 years | Maximum penalty – <ul style="list-style-type: none"> 2,000 penalty units for corporations 500 penalty units for individuals and/or 5 years imprisonment Maximum penalty for each day that the offence continues – <ul style="list-style-type: none"> 200 penalty units for a corporation 50 penalty units for individuals |
| 64 | Maximum penalty for an individual of either: <ul style="list-style-type: none"> i) 20 penalty units and/or imprisonment for a period of 1 year, or ii) Imprisonment for a period of 5 years | Maximum penalty – <ul style="list-style-type: none"> 10,000 penalty units for corporations 5,000 penalty units for individuals and/or 5 years imprisonment |

Proposed amendments to Gas Supply Act penalty units

| Clauses to be amended | Current penalties | Proposed penalties |
|-----------------------|---|---|
| 5, 34 | Maximum penalty – 5,000 penalty units | No change to maximum penalty of 5,000 penalty units In addition, maximum penalty for each day that the offence continues – 500 penalty units |
| 64C(1) & (3), 64D | Maximum penalty – 20 penalty units | Maximum penalty – <ul style="list-style-type: none"> 5,000 penalty units for corporations 1,000 penalty units for individuals |
| 65 | Maximum penalty – <ul style="list-style-type: none"> 2,000 penalty units for corporations 100 penalty units for individuals | Maximum penalty – <ul style="list-style-type: none"> 2,000 penalty units for corporations 500 penalty units for individuals Maximum penalty for each day that the offence continues – <ul style="list-style-type: none"> 200 penalty units for a corporation 50 penalty units for individuals |

| Clauses to be amended | Current penalties | Proposed penalties |
|-----------------------|---|--|
| 66 | Maximum penalty – <ul style="list-style-type: none"> • 4,000 penalty units for corporations • 200 penalty units or imprisonment for 5 years (or both) for individuals | Maximum penalty – <ul style="list-style-type: none"> • 5,000 penalty units for corporations • 1,000 penalty units or imprisonment for 5 years (or both) for individuals |
| 67, 68, 69, 70, 71 | Maximum penalty – <ul style="list-style-type: none"> • 2,000 penalty units for corporations • 100 penalty units for individuals | Maximum penalty – <ul style="list-style-type: none"> • 5,000 penalty units for corporations • 1,000 penalty units for individuals |
| 72 | Maximum penalty – <ul style="list-style-type: none"> • 500 penalty units for corporations • 50 penalty units for individuals | Maximum penalty – <ul style="list-style-type: none"> • 5,000 penalty units for corporations • 1,000 penalty units for individuals |
| 76A | Maximum penalty – <ul style="list-style-type: none"> • 2,000 penalty units for corporations • 100 penalty units for individuals | No change to maximum penalty – <ul style="list-style-type: none"> • 2,000 penalty units for corporations • 100 penalty units for individuals <p>In addition, maximum penalty for each day that the offence continues –</p> <ul style="list-style-type: none"> • 200 penalty units for a corporation • 10 penalty units for individuals |

Note that there are some additional offences that currently exist in the Pipelines Act that were agreed to be relocated to the regulation by Parliament in June 2024 under the *Energy Legislation Amendment (Clean Energy Future) Act 2024*. The purpose of the relocation of the offences and their associated penalties is to allow outdated penalty units to be updated to be brought into line with other energy legislation and regularly reviewed without requiring amendments to the Act. There are no proposed amendments to the penalties for these offences in this consultation round.

The sections in question are 5B, 21A, 23, 24, 26, 28, 38 and 46 in the Pipelines Act. Any suggested penalty updates will be consulted on in future along with other proposed amendments to the Pipelines and Gas Supply Regulations. Once the offences and their penalties are relocated to the Pipelines Regulation, these offences will be deleted from the Pipelines Act concurrently.

Key questions

1. We are seeking your feedback on the proposed changes to penalty units. Are the proposed penalties appropriate? If not, which penalty specifically and why? In your feedback, please ensure you cite which Act and section the penalty relates to.
2. Of the proposed continuing offences and their penalties, are these appropriate? If not, which provision specifically and why?
3. For the continuing penalties proposed to apply for a persisting offence, should there be a maximum? If yes, what should this maximum be?

5.2 New provisions are proposed to be introduced with related offences and penalties to ensure sufficient deterrence of breaches

New provisions and offences are proposed to be introduced as listed below, partly to support alignment and consistency with similar legislation and support public safety.

Proposed new provisions for introduction in the Pipelines Act

| Clause to be introduced | Proposed new provision and offence | Rationale |
|--|--|--|
| Requirements in relation to carrying out of certain excavation work | Replicate section 64C from the Gas Supply Act and 63Z from the Electricity Supply Act. Maximum penalty – <ul style="list-style-type: none">• 5,000 penalty units for a corporation• 1,000 penalty units for individuals | For consistent (dial) Before You Dig requirements for pipelines. Maximum penalty is proposed to align with the proposed penalty units for section 64C in the Gas Supply Act above. |
| Notification of damage to underground pipelines | Replicate section 64D from the Gas Supply Act and 63ZA from the Electricity Supply Act. Maximum penalty – <ul style="list-style-type: none">• 5,000 penalty units for a corporation• 1,000 penalty units for individuals | For consistent notification of damage requirements for pipelines. Maximum penalty is proposed to align with suggested increases in penalty units for section 64D in the Gas Supply Act above. |

Proposed new provisions for introduction in the Gas Supply Act

| Clause to be introduced | Proposed new provision and offence | Rationale |
|--|--|--|
| Damaging gas network assets | <p>Replicate section 64 from the Pipelines Act.</p> <p>Maximum penalty –</p> <ul style="list-style-type: none"> • 10,000 penalty units for a corporation • 5,000 penalty units and/or 5 years imprisonment for individuals | <p>To make damage to network assets without network operator approval an offence, consistent with offences for pipelines.</p> <p>Maximum penalty is proposed to align with suggested increases for section 64 in the Pipelines Act above.</p> |
| Compliance with government inspector directions in relation to third party network damage | <p>Introduce powers for government inspectors to make directions to prevent third party damage to network assets and make it an offence for any failure to comply (with penalties to deter non-compliance). This authority may be exercised when a government inspector is made aware of an issue by a network operator.</p> <p>Maximum penalty –</p> <ul style="list-style-type: none"> • 5,000 penalty units for a corporation • 1,000 penalty units for individuals <p>Maximum penalty for each day that the offence continues –</p> <ul style="list-style-type: none"> • 500 penalty units for a corporation • 100 penalty units for individuals | <p>Third party damage to gas networks has been an ongoing issue. With increased presence of more flammable renewable gases (for example, hydrogen) in pipelines in the future from the energy transition, this will become a greater issue with critical risks to public safety.</p> <p>Maximum penalty is proposed to align with the proposed penalties for sections 67-71 of the Gas Supply Act above.</p> |

Note that further new provisions with associated offences related to various topics, such as investigation powers, are addressed in the respective sections below.

Key questions

4. We are seeking your feedback on the proposed new provisions for the Pipelines and Gas Supply Acts respectively, with related offences and penalties. Are the provisions, offences and penalties appropriate? If not, which provision specifically and why?
5. Of the proposed continuing offences and their penalties, are these appropriate? If not, which provision specifically and why?

In your feedback, please ensure you cite which Act and section the provision relates to.

5.3 Proposed increases to local court penalty limits to reflect the proposed updated penalties

Currently, the maximum fine a local court can impose for offences prosecuted in that jurisdiction under both the Pipelines and Gas Supply Acts is 50 penalty units for individuals and 100 penalty units for corporations. It is proposed to increase this limit to 1,000 penalty units for individuals and 2,000 penalty units for corporations. This will ensure that the proposed new and updated penalties outlined in this paper are able to be awarded to an appropriate updated limit in local court jurisdictions.

Key question

6. Are the proposed increases to local court penalty limits appropriate? If not, why?

In your feedback, please ensure you cite which Act the feedback relates to.

6 Investigation powers

It is proposed to strengthen the government inspector powers under the Pipelines and Gas Supply Acts in response to increasing incidents of gas leaks, ruptures and explosions in NSW. Existing government inspector powers for pipelines and gas regulation in NSW are limited, lacking investigative authority to retrieve and test failed pipelines materials and ensure appropriate corrective actions are reported on or undertaken. These limitations hinder effective and timely incident investigations, posing risks to public safety and regulatory confidence.

It is proposed that government inspector powers of entry are made consistent across the Pipelines and Gas Supply Acts and expanded to include entry on suspicion of a possible incident. It is also proposed that investigative powers for government inspectors are expanded as detailed below, and penalties with offences are introduced accordingly.

Currently, government inspectors are appointed NSW public sector employees who have received appropriate certification in government investigations and possess the necessary technical and specialist knowledge related to pipelines and gas supply operations and infrastructure.

Jurisdictional comparison

The current scope of government inspector powers in NSW are limited and outdated, and contrasts with the powers available in other jurisdictions' legislation, such as Queensland and South Australia. These additional powers would allow for swift, safe and transparent resolution of similar gas pipeline incidents, such as in Queensland, where broader powers facilitated the resolution of industry gas pipeline fire incidents within months. The NSW legislation governing government inspector powers is older and has not been updated to align with the broader powers available in other jurisdictions. This outdated framework limits NSW's ability to take custody of incident sites or directly retrieve materials from failed pipelines or gas networks. This limitation is increasingly impacting the ability to identify causes of failure for future mitigation efforts. These powers also

contrast with those that are broadly available in other NSW legislation, such as the *NSW Protection of the Environment Operations Act 1997* and *Electricity Supply Act*.

It is proposed to harmonise NSW's pipelines and gas regulatory framework with similar legislation. They will empower government inspectors to secure incident sites, direct remediation activities, and seize materials for comprehensive testing and inspection to determine the causes of failure.

Harmonise government inspector powers of entry across the Pipelines and Gas Supply Acts

Currently, the Gas Supply Act grants government inspectors broader powers of entry compared to the Pipelines Act. However while government inspectors under the Gas Supply Act can enter any premises, they lack the authority to test and inspect materials or take samples. It is proposed that these powers are aligned between both Acts.

Additionally, it is proposed to expand government inspector powers of entry to include entry to any place to align this authority with that of similar legislation in other jurisdictions. Access to residential premises, however, is proposed to be limited to:

- easement access and necessary related access to reach those easements for pipelines, and
- access to consumer services (as defined in the legislation) and to read gas meters for gas networks.

Related to the above, it is proposed that the current ability for network operators to apply for a warrant of entry under section 64 of the Gas Supply Act is extended to allow government inspectors to do the same under both the Pipelines Act and Gas Supply Act.

Key questions

7. Do you have any concerns or foresee any issues with government inspectors being granted additional powers to test, inspect materials, or take samples under the Pipelines and Gas Supply Acts?
8. What potential impacts or concerns do you foresee regarding the proposed limitation of residential premises access? Should there be any exceptions or additional considerations for specific circumstances (e.g., emergencies, public safety concerns) when accessing residential premises?
9. Are there any other aspects of government inspector powers or access to premises that you believe should be considered in this consultation?

In your feedback, please ensure you cite which Act and section the provision relates to.

Expand investigative powers for government inspectors under the Pipelines and Gas Supply Acts

Proposed enhancements to investigative powers include granting government inspectors the authority to inspect materials to determine the causes of failures in pipelines and gas networks. Inspectors would also be empowered to seize materials for custody, ensuring comprehensive investigations. Inspectors would assume ownership of failure reports and data to facilitate thorough regulatory oversight and analysis, with provisions for obtaining necessary assistance during investigations.

In addition, it is proposed that existing powers under section 73 of the Gas Supply Act be expanded to allow inspectors to disconnect gas supplies for safety reasons and issue related orders. A new proposed provision would enable inspectors to direct network operators to make gas network and pipeline infrastructure safe, enhancing regulatory control and response capabilities. Inspectors would also gain the power to require information and documents pertinent to their investigations from gas network operators, pipeline licensees and relevant parties.

Furthermore, it is proposed that government inspectors would be able to take custody of incident sites, enabling prompt and thorough examination following pipeline and gas network incidents. These reforms aim to modernise and strengthen NSW's regulatory framework for pipelines and gas supply, ensuring alignment with best practices while enhancing safety, transparency, and regulatory effectiveness.

Key questions

10. Do you have any concerns or foresee any issues with expanding government inspectors' authority for investigative purposes as outlined above? If yes, which power specifically and why?
11. Do you agree with the proposal to enable inspectors to direct network operators to ensure the safety of gas network and pipeline infrastructure? How can this authority be effectively balanced with industry needs and public safety concerns?
12. What additional factors should be considered in the process of taking custody of incident sites to ensure thorough investigations?
13. Are there specific concerns or considerations regarding the custody and ownership of failure reports and data by government inspectors?
14. Should government inspectors be empowered to disconnect gas supplies for safety reasons and issue related orders during emergencies? What safeguards should be in place to ensure these powers are used responsibly?
15. Are there any other aspects of investigation powers that you believe should be considered in this consultation?

In your feedback, please ensure you cite which Act and section the provision relates to.

New offences and penalties are proposed to support the expanded government inspector authority

| Proposed offence and rationale | Current penalty | Proposed penalty |
|---|--|--|
| Failure to return certificates upon ceasing to be a government inspector would be an offence aimed at ensuring proper management of inspector credentials and accountability. | Pipelines Act (section 59): Maximum penalty – 10 penalty units Gas Supply Act: No current penalties | (As covered in section 6.1) Maximum penalty – 100 penalty units Maximum penalty for each day that the offence continues – 10 units |
| Penalties would apply to individuals who fail to provide accurate information, assistance, or furnish | Pipelines Act (section 60): | Maximum penalty – |

| Proposed offence and rationale | Current penalty | Proposed penalty |
|---|---|--|
| requested documents to government inspectors. This offence aims to uphold transparency and cooperation in regulatory investigations. | Maximum penalty – 10 penalty units Gas Supply Act: No current penalties | <ul style="list-style-type: none"> • 5,000 penalty units for corporations • 1,000 penalty units for individuals |
| Failure to comply with directions issued by government inspectors, such as requests for the seizure of materials, remedial actions to address safety hazards, or unlawfully interfering with government inspectors during their duties, would also incur penalties. These measures are intended to strengthen accountability, deter non-compliance, and ensure the effectiveness of regulatory oversight in NSW's pipelines and gas supply sector. They aim to align with best practices, enhance safety measures, and maintain transparency in regulatory enforcement. | No current penalties in the Pipelines or Gas Supply Acts | Maximum penalty – <ul style="list-style-type: none"> • 5,000 penalty units for corporations • 1,000 penalty units for individuals Maximum penalty for each day that the offence continues – <ul style="list-style-type: none"> • 500 penalty units for a corporation • 100 penalty units for individuals |

Key questions

16. We are seeking your feedback on the proposed new punishable offences into the Pipelines and Gas Supply Acts. Are the offences and penalties appropriate? Do you anticipate any challenges with applications of the provisions in practice?
17. Are there any other offences or regulatory gaps related to pipelines and gas supply that should be addressed through penalties?

In your feedback, please ensure you cite which Act and section the provision relates to.

7 Modernised enforcement to issue penalty infringement notices

The issuance of penalty infringement notices (PINs) and show cause notices in legislation refers to formal mechanisms used to address regulatory breaches and enforce compliance. PINs are typically issued for specified offences, providing an efficient way to address minor infractions without resorting to formal court proceedings. Show cause notices, on the other hand, require recipients to explain why certain regulatory actions or penalties should not be imposed, allowing for due process and a chance to respond before further enforcement actions are taken.

In NSW pipelines and gas supply legislation, these enforcement tools are currently not available. This contrasts with the approach in electricity supply legislation in NSW, where such notices are utilised effectively to address minor infractions swiftly and efficiently.

The absence of PINs and show cause notices in the NSW pipelines and gas supply regulatory framework hinders compliance and enforcement. Without these mechanisms, regulatory breaches often require cumbersome court proceedings for resolution. This process can be lengthy and resource-intensive, potentially resulting in penalties not being imposed in cases of breaches. Such inefficiencies can undermine the intended regulatory framework, posing risks to public safety and hindering effective enforcement of policy objectives.

The proposed PIN issuance powers will ensure the NSW pipelines and gas supply regulatory framework aligns with similar authority available in other NSW legislation, such as the *Electricity Supply Act*, *Protection of the Environment Operations Act 1997* and the *Water Industry Competition Act 2006*.

PIN amounts are intended to be set in the order of 15% of the corresponding penalties for each offence, ensuring that enforcement measures are proportional while providing a deterrent effect against non-compliance. Proposed PIN amounts will be consulted on in future along with other updates to the Pipelines and Gas Supply Regulations.

PINs are proposed to be issued by existing government inspectors.

Key questions

18. Do you have any concerns or foresee any issues with the proposed ability for government inspectors to issue PINs for more efficient enforcement as outlined above?
19. What additional factors should be considered in the issuance of PINs and proposed ability to show cause?

In your feedback, please ensure you cite which Act the provision relates to.

8 Decommissioning and abandonment requirements

The Department has identified an opportunity to clarify expectations surrounding the suspension and abandonment of pipeline and gas network infrastructure. It is proposed that the NSW Pipelines and Gas Supply Acts be amended to grant additional regulatory powers for establishing and enforcing these requirements.

Pipeline and gas network decommissioning have significant implications for customers and connections. Current minimum notice timeframes for licensees or network operators intending to permanently reduce or cease activities in their distribution districts are inadequate to properly address safety and customer transfer issues.

The proposed changes are designed to enhance safety standards if parts of the existing NSW pipeline and gas network require decommissioning.

Clarified requirements for pipeline and gas network suspension and abandonment

The proposed definition for decommissioning (also referred to as suspension) involves the temporary stoppage of pipeline and gas network operations, while abandonment signifies the permanent cessation of operations. Abandonment is intended to address permanent remediation activities, distinct from ongoing maintenance and remediation during active operations.

In terms of changes to legislation, regulatory making power is proposed to be added to enable more detailed requirements to be prescribed in the future in regulations as relates to decommissioning and abandonment of pipelines and gas networks operations and infrastructure. For example, including requirements for submitting a decommissioning plan and an abandonment plan before seeking to surrender a licence for pipelines and authorisation for gas networks.

The enhancement to the NSW pipelines and gas supply legislation aims to clarify expectations around the decommissioning and abandonment of pipeline and gas network infrastructure. This reform aims to modernise and strengthen the regulatory framework for pipeline and gas network decommissioning and abandonment in NSW, ensuring alignment with best practices and enhancing safety, transparency, and regulatory effectiveness.

Additionally, as relates to gas networks only, it is proposed existing authorised or licensed network operators must provide notification prior to ceasing the operation of their network infrastructure.

Key questions

20. Do you have any concerns or foresee any issues with the proposed regulation making power for pipelines and gas network decommissioning and abandonment requirements? If yes, why?
21. What are some practical considerations to include in pipeline suspension and abandonment plans?

In your feedback, please ensure you cite which Act the provision relates to.

9 Other changes proposed

A number of miscellaneous changes are proposed to be made across the Pipelines and Gas Supply Acts to streamline their operation and to remove duplication. These include:

Proposed changes in the Pipelines Act

The definition of pipelines that carry gas or fuel substances is proposed to be updated to align with the AS 2885 pipeline industry standards definition. This suggested change addresses increasing incidents where pipelines are proposed to be licensed to an arbitrary point before the endpoint, which is contrary to policy intent. The existing pipeline definition for all other substances will continue to apply.

Additionally, an amendment to section 20(1) is proposed regarding requirements for re-lodgement of a plan of the lands relevant to a pipeline licensee application. It is proposed to clarify that the Minister only needs to cause plans to be lodged if they have not already been submitted to the NSW Office of the Registrar General. This proposed change aims to remove unnecessary duplication of work and simplify the process.

Proposed changes in the Gas Supply Act

Data collection authority is proposed to be expanded to require private network operators to submit data and the methodology used in its preparation, consistent with guidelines to be developed by the Department. This aims to enhance gas network safety and reliability and to fulfil the Minister's obligations for emissions reporting. This will be enabled by requiring data to be reflected in reports and for these reports to be lodged.

The guidelines will specify how private network operators must submit data and methodologies for:

- Measure metering error,
- Account for leaks due to network maintenance,
- Reporting intentional gas releases during operations and maintenance,
- Documenting gas releases caused by incidents at periodic intervals.

Data sharing ability is not proposed.

Furthermore, a new provision is proposed to be added for government inspectors to carry out disconnection of a gas supply in circumstances where the government inspector considers the gas is being supplied or consumed in an unsafe manner. Should this power be exercised, the government inspector must as soon as practicable provide written notice to the occupier of the disconnected premises.

Key questions

22. We are seeking your feedback on the proposed changes listed in this section. Do you foresee any concerns or issues with any of the suggested amendments? If yes, which suggested change specifically and why?

In your feedback, please ensure you cite which Act and section the provision relates to.