



Jemena Limited

Submission on NSW Pipelines and Gas Supply Legislation Amendments_Consultation Paper



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Legislation Amendments_Consultation Paper

Contact Person

Jacques Commarmond
Risk and Assurance Specialist
Ph: [REDACTED]
[REDACTED]

Jemena Limited

ABN 95 052 167 405
Level 9-15, 99 Walker Street
North Sydney NSW 2060

Postal Address

PO Box 1220
North Sydney NSW 2060
Ph: (02) 9867 7000
Fax: (02) 9867 7010

Table of contents

1.	Introduction	1
2.	Offences and Penalties.....	3
2.1	Proposed updated penalties and additional continuing offences to ensure sufficient deterrence of breaches.....	3
2.2	New provisions are proposed to be introduced with related offences and penalties to ensure sufficient deterrence of breaches.....	5
2.3	Proposed increases to local court penalty limits to reflect proposed update penalties.....	6
3.	Investigative Powers.....	7
3.1	Harmonise government inspector powers of entry across the Pipelines and Gas Supply Acts.....	7
3.2	Expand investigative powers for government inspectors under the Pipelines and Gas Supply Acts	8
3.3	New offences and penalties are proposed to support the expanded government inspector authority	10
4.	Modernise enforcement to issue penalty infringement notices.....	12
5.	Decommissioning and abandonment requirements	13
6.	Other changes proposed	14

1. Introduction

Jemena has prepared this submission in response to the DCCEEW consultation paper “NSW Pipelines and Gas Supply Legislation Amendments” (August 2024). Jemena understands the primary objective is 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.

Further details are contained within this submission. However, in summary, Jemena’s response to the six areas of proposed change is:

1. **Expanded inspector powers.** Jemena generally understands the DCCEEW drivers for increased powers for inspectors, including the move for consistency across various regulatory instruments. Jemena notes that inspection powers must be fit for purpose, provide clarity as to accountability across the regulatory instruments (and departments) and scope of the powers must be unambiguous. Jemena awaits the draft of the specific legislative change in order to provide further targeted response.
2. **Update of penalties.** Jemena concurs with the DCCEEW that the current penalty regime requires an update to ensure the penalties remain *appropriately dissuasive*. Jemena has made specific commentary in the body of the submission.
3. **Introduction of Penalty Infringement Notices (PIN) and show cause notices.** Jemena concurs with the introduction of PIN and show cause for appropriate offences. Jemena has made specific commentary in the body of the submission.
4. **Local Court Penalties.** Jemena concurs with the DCCEEW that the local court penalty regime requires an update to ensure the penalties remain *appropriately dissuasive*. Jemena has made specific commentary in the body of the submission.
5. **End-of-life infrastructure management.** Jemena generally understands the DCCEEW drivers for proposals related to the end-of-life management of gas infrastructure. Jemena notes there is a considerable lack of specific information in the proposal and awaits the RIS in order to provide further commentary.
6. **Additional refinements.** Jemena notes a series of other miscellaneous changes and we are unclear as to the reasoning and drivers for some of these changes. Jemena has attempted to comment on the information within its submission, however, Jemena awaits the draft of the specific legislative change in order to provide any meaningful response.

In the review of the information supplied, Jemena has referenced the following sources:

- Consultative paper published at [NSW Pipelines and Gas Supply Legislation Amendments](#).
- *Gas Supply Act 1996* (NSW) – [View - NSW legislation](#)
- *Pipelines Act 1967* (NSW) – [View - NSW 5](#)
- *Petroleum and Gas (Production and Safety) Act 2004* (Qld) – [Petroleum and Gas \(Production and Safety\) Act 2004 - Queensland Legislation - Queensland Government](#)
- *Gas Supply (Safety and Network Management) Regulation 2022* (NSW) – [Gas Supply \(Safety and Network Management\) Regulation 2022 - NSW Legislation](#)
- *Electricity Supply Act 1995* (NSW) – [Electricity Supply Act 1995 No 94 - NSW Legislation](#)
- *Electricity Supply Act 1994* (Qld) – [Electricity Act 1994 - Queensland Legislation - Queensland Government](#)

- *Electricity Corporations (Restructuring and Disposal) Act 1999* (SA) – [Electricity Corporations \(Restructuring and Disposal\) Act 1999 | South Australian Legislation](#)

2. Offences and Penalties

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

1. We are seeking your feedback on the proposed changes to penalty units. Are the proposed penalties appropriate? If no, which penalty specifically and why? In your feedback, please ensure you cite which Act and section the penalty relates to.

Table 2–1: Question 1: Response

(Note a copy of the legislative clauses for this table is in

Act	Clause	Appropriate	Commentary
Pipelines Act	11	Yes	Jemena's preference is for continuing penalties to be subject to the maximum amount.
	54	Yes	
	59	Yes	
	60	Yes	Jemena notes that the level of penalty has increased by 500 times the current level, however, in relative terms to other suggested penalties appears consistent.
	60A	Yes	
	63	Yes	
	64	Yes	Considering the direct repair and rectification costs for unlawful damage may extend into the millions of dollars, potentially a higher maximum could be considered. Also include an express right to recovery or a provision that requires the person to compensate the operator for quantifiable loss and damage caused.
Gas Supply Act	5	Yes	Jemena notes that there is no distinction between corporations and individuals – it may be appropriate to have a distinction.
	34	Yes	Jemena does not own or operate any LPG or other fuel networks, however, recommends consistency in penalty units as recommended.
	64C(1)	Yes	Jemena notes the extreme increase in penalty from 20 penalty units to 5000 penalty units for corporations and 1000 for individuals. While we welcome increased penalties, this step increase is extreme
	64C(3)	Yes	
	64D	Yes	Considering the direct repair and rectification costs for unlawful damage may extend into the millions of dollars, potentially a higher maximum could be considered.

Act	Clause	Appropriate	Commentary
	65	Yes	Also include an express right to recovery or a provision that requires the person to compensate the operator for the costs of gas taken.
	66	No	Considering the potential damage, we suggest a higher maximum penalty and note that it could be subject to continuing penalty. Also include an express right to recovery or a provision that requires the person to compensate the operator for the costs of gas taken. [REDACTED]
	67	Yes	
	68	Yes	
	69	Yes	
	70	Yes	
	71	Yes	
	72	Yes	This could be subject to a continuing penalty.
	76A	No	Compliance must be subject to any lawful or reasonable excuse, please insert "a person must not, without reasonable excuse, refuse or fail to comply with such a request".

Additional response commentary:

Jemena notes that other penalty sections are to be relocated into regulatory instruments which will be the subject of further consultation.

2. *Of the proposed continuing offences and their penalties, are these appropriate? If not, which provision specifically and why?*

Table 2–2: Question 3: Response

Act	Clause	Appropriate	Commentary
Pipelines Act	11	Yes	
	59	Yes	
	60A	Yes	
	63	Yes	
Gas Supply Act	5	Yes	
	34	Yes	
	65	Yes	
	66	No	Considering the potential damage, we suggest a higher maximum penalty and note that it could be subject to continuing penalty.
	76A	Yes	Provided there is a reference to reasonable excuse. Insert: "a person must not, without reasonable excuse, refuse or fail to comply with such a request"

3. For the continuing penalties proposes to apply for a persisting offence, should there be a maximum? If yes, what should this maximum be?

Table 2–3: Question 3: Response

Act	Clause	Maximum	Commentary
Pipelines Act	11	As per noted maximum	The maximum should be the same as or higher than the overall maximum
	59	500 PU	
	60A	As per noted maximum	The maximum should be the same as or higher than the overall maximum
	63	As per noted maximum	The maximum should be the same as or higher than the overall maximum
Gas Supply Act	5	As per noted maximum	The maximum should be the same as or higher than the overall maximum
	34	As per noted maximum	The maximum should be the same as or higher than the overall maximum
	65	As per noted maximum	The maximum should be the same as or higher than the overall maximum
	66	As per noted maximum	The maximum should be the same as or higher than the overall maximum
	76A	2000 – corp 100 – individ.	The maximum should be the same as or higher than the overall maximum

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

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?

Table 2–4: Question 4: Response

Act	Clause	Appropriate	Commentary
Pipelines Act	Introduction of BYDA requirements similar to current Gas Supply Act	Yes	
	Notification of damage similar to Gas Supply Act	Yes	

Act	Clause	Appropriate	Commentary
Gas Supply Act	Damaging gas network assets	Yes	Jemena supports this in principle but query how this relates to existing section 66 of the Gas Supply Act. Further, in relation to both, we believe there is a need to ensure that, in addition to any Magistrates Court proceedings, there is a right to recovery of damages without obtaining conviction. Please insert a clarificatory provision that the person must compensate for any quantifiable loss or damage.
	Compliance with government inspectors' direction in relation to third party network damage	Yes	Jemena supports this. [REDACTED]

5. *Of the proposed continuing offences and their penalties, are these appropriate? If not, which provision specifically and why?*

Table 2–5: Question 5: Response

Act	Clause	Appropriate	Commentary
Pipelines Act	Introduction of BYDA requirements similar to current Gas Supply Act	Yes	
	Notification of damage similar to Gas Supply Act	Yes	
Gas Supply Act	Damaging gas network assets	Yes	
	Compliance with government inspectors' direction in relation to third party network damage	Yes	

2.3 Proposed increases to local court penalty limits to reflect proposed update penalties.

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

Table 2–6: Question 5: Response

Act	Clause	Appropriate	Commentary
Both	Increase of local court penalty limits	Yes	Additionally, we seek clarification that the operator has a right to recover loss or damage without obtaining a conviction.

3. Investigative Powers

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

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?*

Response:

At this stage of the consultation process, Jemena does not have enough information to make informed commentary. Jemena does consider that the following principles should apply to the appointment and exercising of inspectors:

- Although the general aspects or role of inspectors for Gas Distribution and Pipelines should be consistent, the actual functions and competency of the inspectors will differ due to the nature of the different assets;
- The increased powers should be reviewed and made consistent with other states such as Victoria and Queensland;
- The framework should allow for the collaborative approach to any investigation;
- Where related to asset owners, the functions of inspecting or investigating should be restricted to the monitoring and enforcing compliance with the safety aspects of safety management systems;
- The inspectors should be cognisant of the operations and other obligations on asset owners and operators;
- There needs to be clarity and consistency for the powers of inspection across the asset supply chain:
 - inspection of pipelines;
 - inspection of distribution systems;
 - inspection of customer pipeline systems,

and regard had to the respective regulatory obligations pertaining to each.

- Consider where an incident is a safety incident relevant to these Acts and when it may be a safety incident which is already regulated by SafeWork NSW.

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?*

Response:

Jemena notes that the powers are limited to the access to consumer services and the reading of gas meters. Does this include the ability to inspect and obtain the meters and additionally the ancillary equipment and components related to the meter sets, including the fittings, valves and regulators? Jemena would consider that the inspectors should have the powers to undertake remedial activities to ensure any safety-related issues are identified.

How does DCCEEW anticipate executing these powers for internal meters?

How will this apply for any consumer services inside a building and embedded networks?

How are these powers interrelated to the powers of Inspectors who are currently appointed by NSW Office of Fair Trading. How will any conflicts be resolved?

9. *Are there any other aspects of government inspector powers or access to premises that you believe should be considered in this consultation?*

Response:

Jemena would recommend that the powers of inspectors be consistent with other jurisdictions. Jemena has recently been involved in an emergency investigation process in Queensland under the *Petroleum and Gas (Production and Safety) Act 2004*, whereby inspectors have a number of 'Powers of entry' under sections 743 and 744. These powers are well defined and written to facilitate a collaborative approach between parties with a number of practical steps included such as consent being sought, identification being made and effective communications being provided. The Queensland regulator exercised these powers in a pragmatic and cooperative manner ensuring a beneficial outcome for all parties. This Act also protects a person from complying with a requirement if the person has a reasonable excuse (see for example section 756). Jemena welcomes similar protections.

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

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?*

Response:

Jemena's comments in Q7 extend to the answer to this question.

Jemena additionally notes the commentary on '*entry on suspicion of a possible incident*'. Jemena awaits a copy of the draft legislative clauses in order to understand the mechanics and extent of this potential expansion of powers.

11. *Do you agree with the proposal to enable inspectors to direct network operators to ensure the safety of gas networks and pipeline infrastructure? How can this authority be effectively balanced with industry needs and public safety concerns?*

Response:

Jemena notes the '*proposal to enable inspectors to direct network operators to ensure the safety of gas networks and pipeline infrastructure*'.

Jemena awaits a copy of the draft legislative clauses in order to understand the mechanics and extent of this potential expansion of powers.

12. *What additional factors should be considered in the process of taking custody of incident sites to ensure thorough investigations?*

Response:

Jemena notes the proposed changes may change or augment the current provisions around the 'custody of incident sites'. Jemena would anticipate:

- b) The jurisdictional control of sites will vary subject to the nature and extent of the incident (noting also many elements of gas infrastructure are on public land);
- c) Any site custody arrangement would need to ensure the ongoing safety of people and safety and reliability of the infrastructure;
- d) Any site custody arrangement would not hinder, where appropriate, any repair or remediation;
- e) Any site custody arrangement would not hinder any incident or emergency response requirements for that site.

Jemena awaits a copy of the draft legislative clauses in order to understand the mechanics and extent of this potential custody of incident sites.

13. *Are the specific concerns or considerations regarding the custody and ownership of failure reports and data by government inspectors?*

Response:

While Jemena seeks to cooperate with government at all times, we would welcome provisions that protect confidential and privileged information as well as a clarificatory provision that refers to reasonable excuse, such as "a person must not, without reasonable excuse, refuse or fail to comply with such a request". It should be clear that the rights to claim legal professional privilege or privilege against self-incrimination prevail over inspectors' rights to require production of documents.

14. *Should the 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 those powers are used responsibly?*

Response:

Jemena supports the power of inspectors to disconnect gas supply for safety reasons and issue related orders during emergencies. Jemena presumes this relates to the disconnection of customers from the network and Jemena would expect any legislative change would recognise the following:

- a) Although any safety concern must have primacy, any disconnection process must recognise the future reconnection process and ensure appropriate change management and records are maintained. Jemena maintains systems for the tracking and ongoing management of activities related to its infrastructure and would require the information to ensure that these systems are not compromised.
- b) Where these proposed powers relate to an individual customer premise, there is a minimal level of complexity with respect to the maintenance of records or the reconnection process. However, where greater levels of customers are involved, any legislative intervention including orders must recognise the increased level of complexity, including the potential for specialist knowledge, assurance of competency and equipment if operating gas distribution assets (with the exception of meter control valves (MCVs)).

Jemena (and retailers) would need to be informed to ensure correct response to any disconnection of a customer (or customers) under these powers. How is the information recorded, and how does the asset owner / operator have knowledge of what was done?

Jemena would anticipate that the DCCEEW inspectors would be restricted in their letters of appointment to ensure there are adequate safeguards with respect to these powers.

15. *Are there any other aspects of investigative powers that you believe should be considered in this consultation?*

Response:

Jemena would seek to ensure any investigation process is robust, transparent and collaborative.

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

16. *We are seeking your feedback on the proposed 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?*

Table 3–1: Question 5: Response

Act	Clause	Appropriate	Commentary
Pipelines Act	Failure to return certificates upon ceasing to be a government inspector	Yes	
	Penalties would apply to individuals who fail to provide accurate information, assistance, or furnish requested documents		Provided there is a reference to reasonable excuse. Insert: "a person must not, without reasonable excuse, refuse or fail to comply with such a request"
	Failure to comply with directions issued by government inspectors...		Provided there is a reference to reasonable excuse. Insert: "a person must not, without reasonable excuse, refuse or fail to comply with such a request"
Gas Supply Act	Failure to return certificates upon ceasing to be a government inspector	Yes	
	Penalties would apply to individuals who fail to provide accurate information, assistance, or furnish requested documents		Provided there is a reference to reasonable excuse. Insert: "a person must not, without reasonable excuse, refuse or fail to comply with such a request"
	Failure to comply with directions issued by government inspectors...		Provided there is a reference to reasonable excuse. Insert: "a person must not, without reasonable excuse, refuse or fail to comply with such a request"

17. *Are there any other offences or regulatory gaps related to pipelines and gas supply that should be addressed through penalties?*

Response:

- Stopping our people or our representatives from undertaking their roles with respect to the safety of the assets? Is this covered anywhere?
- Jemena suggests that where there are increased and substantial penalties, the relevant rights and obligations that might give rise to such penalties are clearly expressed and unequivocal [REDACTED]

4. Modernise enforcement to issue penalty infringement notices

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?*

Response:

Jemena supports the ability for government inspectors to issue PINs and show cause notices. However, additional information is sought such as:

- What will be the trigger and mechanism?
- Is there a process for an operator to respond to a show cause prior to receipt of a penalty notice?
- Can Jemena representatives provide information as a secondary source?
- Can enforceable undertakings be introduced as a potential remedy for offences?

19. *What additional factors should be considered in the issuance of PINs and proposed ability to show cause?*

Response:

Jemena would seek to ensure that, in a similar way 'Certificates of Compliance' are copied to asset owners / operators, to ensure transparent and appropriate response and to ensure there is no duplication or confusion in any rectification of the reason for the PIN or show cause notices.

5. Decommissioning and abandonment requirements

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?

Response:

These potential amendments to the Pipelines Act and Gas Supply Act are of particular interest to Jemena. Jemena is aware of the potential for future changes in the gas networks, including the potential for sections or segments of the existing gas infrastructure to no longer transport “gas” or “natural gas” as defined in clause 5 and 6 of the *Gas Supply (Safety and Network Management) Regulation 2022*. (However, any augmentation to regulatory instruments related to decommissioning or abandonment must take into consideration:

- Relationship to other regulatory instruments / frameworks – the technical requirements for decommissioning or abandonment need to be constructed and exercised to ensure they do not impinge on commercial outcomes for asset owners nor are in conflict with frameworks set through economic regulatory instruments.
- Alignment of definitions and concepts. Other regulatory and technical frameworks have commenced processes for clarifying and aligning definitions of terms such as decommissioning, abandonment, disconnection, permanent disconnection, abolishment, etc. Jemena would seek to ensure that there is consistency across the various frameworks.
- In order to ensure any technical considerations are aligned with *best practice and enhancing safety, transparency, and regulatory effectiveness*, Jemena would recommend that technical requirements for disconnection and abandonment are embodied into the relevant Australian Standards (the AS4645 and AS 2885 suite) to ensure alignment with best practices and consistency across markets.
- As you would be aware, decommissioning and/or abandonment is asset-specific, it would need to differentiate between Licensed Pipelines, unlicensed pipelines, assets in easements; assets on public land; assets in private land; gas distribution assets; environmental circumstances; and assets that have the potential for re-purposing.
- The current level of detail is insufficient to make any further informed response. Jemena awaits a copy of the draft legislative clauses in order to understand the mechanics and extent of these potential amendments.

21. What are the practical considerations to include in pipeline suspension and abandonment plans?

Response:

- Refer to the response to Q20.

6. Other changes proposed

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?

Response:

Proposed Changes in the Pipelines Act.

- i) Jemena understands that DCCEEW has identified an issue with one of the current definitions. Jemena is unable to ascertain the issue nor any implications for any change that may be proposed. Jemena awaits a copy of the draft legislative clauses in order to understand the mechanics and extent of this definitional change.
- ii) Jemena understands that the amendment to section 20(1) will remove unnecessary duplication and would agree with the proposal to clarify and expediate this process.

Proposed Changes in the Gas Supply Act. In general, Jemena awaits a copy of the draft guidelines to be developed by DCCEEW in order to understand the mechanics and extent of this potential change to data collection. As with any data collection or reporting, Jemena would support the need for consistent business rules adopted for performance metrics across the various regulatory jurisdictions, State and Commonwealth. As you are aware, Jemena already has emission reporting obligations to other jurisdictions, and there is a definite need to ensure there is consistency in approach to ensure efficient and effective reporting. The intention and the reason for the collection of data must also be transparent to ensure that the data is not used in a manner that is not consistent with its collection.

- i. Measure metering error Is the DCCEEW looking at individual meters for billing purposes, families of meters for aged replacement programs or is it for the purpose of understanding overall metering errors for, say, fugitive emission management? The intent and reason will need to be clarified in order for Jemena to provide any meaningful response.
- ii. Account for leaks due to network maintenance. The intent and reason will need to be clarified in order for Jemena to provide any meaningful response.
- iii. Reporting intentional gas releases during operations and maintenance. The intent and reason will need to be clarified in order for Jemena to provide any meaningful response, especially as this appears to overlap with (ii) above.
- iv. Documenting gas releases caused by incidents at periodic intervals. As you are aware, Jemena already reports information related to gas releases from incidents, we await further information as to how the current process would be augmented.

Further provision for disconnection by inspectors. As outlined earlier, Jemena would support any inspection processes that leads to a safer outcome for customers, the public and Jemena employees. We would seek to understand how this would vary from current powers available to Inspectors of the Office of Fair Trading and as outlined earlier would seek to ensure that Jemena (and the retailers) are informed to ensure appropriate response.