

NSW Pipelines and Gas Supply Act proposed amendments 2024 – response to consultation feedback

The Department of Climate Change, Energy, the Environment and Water (DCCEEW) released the Consultation Paper for the proposed amendments to the NSW *Pipelines Act 1967* (Pipelines Act) and *Gas Supply Act 1996* (GS Act) on 21 August 2024, with the consultation period closing on 10 September 2024.

In total, five submissions were received, with one submission being partially confidential. We thank respondents for their participation and feedback.

Consultation feedback overview

In general, consultation submissions were supportive of the changes, underlying rationale and intended objective to enhance the governance, safety and operational efficiency of the pipelines and gas network infrastructure and operations in NSW. Broad feedback themes included:

- adding recovery rights for damaged and decommissioned assets;
- queries on interactions between similar provisions and offences;
- ensuring clarity and consistency of proposed investigation powers and decommissioning and abandonment requirements with other regulatory frameworks;
- queries on change management and communication for regulatory directions; and
- allowing for reasonable excuse defences and other safeguards for the provision of information.

More detailed information on stakeholder feedback and our specific responses is provided below.

Updates to penalties and additional continuing offences

Stakeholders provided feedback regarding the proposed penalty updates, including continuing offences. Subsequently, changes have been made to the following proposed penalties.

Legislation and section	Revised proposal	Consultation Paper proposal
Pipelines Act, section 60A	Maximum penalty – 5,000 penalty units for corporations and 1,000 penalty units for individuals	Maximum penalty – 10,000 penalty units for corporations and 5,000 penalty units for individuals
GS Act, section 64C	Maximum penalty – 2,000 penalty units for corporations and 400 penalty units for individuals	Maximum penalty – 5,000 penalty units for corporations and 1,000 penalty units for individuals

To retain consistency with other NSW legislation, such as the *Protection of the Environment Operations Act 1997*, continuing offences will not have an overall penalty limit.

Third party damage to pipelines and gas infrastructure

Stakeholders sought clarification on the new offence for third party damage to gas works in the GS Act and how it may duplicate the existing obligation inhibiting interference of gas works in the GS Act. In response to this feedback, we combined the offences provisions.

Stakeholders suggested the inclusion of recovery and compensation rights to a network operator or licensee for loss and damage caused to pipelines or gas infrastructure. This issue is a civil matter. Therefore, we have not incorporated legislative amendments.

Expanded investigation powers

Stakeholders also raised the risk of overlap between two proposed new offences under investigation powers, namely the failure to comply with directions and the failure to provide reasonable assistance. In response, we will combine these offences.

Stakeholders suggested consideration of some principles to apply to various elements of proposed investigation powers, such as:

- the appointment and exercise of inspectors' functions should recognise differentiation in functions and competencies due to the different nature of pipelines and gas assets;
- proposed new powers should align with those in other jurisdictions; and
- any investigation process should occur robustly, transparently and collaboratively.

A key objective in the development and finalisation of the proposed changes to the Pipelines and GS Acts was to achieve alignment and harmonisation with similar regulatory frameworks. We have considered the new provisions for investigation powers and the proposed penalty updates against similar provisions and penalties in force in other state jurisdictions as well as in similar NSW legislation, such as the *Electricity Supply Act 1995*.

The current regulatory approach that recognises the value of collaboration, and prioritises this, is not intended to change. DCCEEW, as the NSW pipelines and gas safety and technical regulator, will continue to prioritise working with licensees and network operators in the first instance to find solutions for compliance. However, for the avoidance of doubt, in the event of any dispute, we have inserted a provision into the final proposed Bill to clarify that government inspectors' decisions will take precedence over gas industry inspectors under the GS Act.

Feedback was also raised for inclusion of a reasonable excuse defence for failure to provide and furnish information. This feedback was not accepted and a safeguard provision has been included to clarify that a person is not excused from this requirement due to possible incrimination or liability. This is because any request for information would be driven by safety considerations and aims to ensure that a consistent approach is maintained with other NSW legislation such as the *Protection of the Environment Operations Act 1997*.

Additionally, in the context of gas networks, stakeholders queried how the powers in residential premises relating to consumer services and gas meters would be exercised. The added investigation powers will enable government inspectors to inspect and seize meter sets and conduct 'make-safe' activities if necessary for safety purposes. The intention is to exercise these powers predominantly when there is evidence that meter sets have the potential to create a risk to public safety or after the occurrence of a hazardous event. It is also anticipated that the powers will be exercised in collaboration with parties such as property owners and occupiers, strata managers and other law enforcement officers as applicable and depending on specific circumstances of an investigation.

In terms of how these powers interrelate with powers of inspectors in Building Commission NSW (under the *Gas and Electricity (Consumer Safety) Act 2017*), the scope of legislative coverage under the GS Act specifically extends to gas meters that could sit inside residential property, such as apartment buildings. We acknowledge that there are interfaces with other government agencies in these scenarios, such as the Department of Customer Service, and DCCEEW will continue to work with these agencies where legislative provisions intersect.

New abilities to issue penalty infringement and show cause notices

Stakeholders were supportive of the introduction of penalty infringement notices (PINs) and show cause notices. Queries were also raised on how the process would work, and in response, any issuance of PINs is intended to follow standard processes, similar to other legislation such as the *NSW Electricity Supply Act 1995*, including triggers and procedures to respond to a show cause notice. During the issuance of PINs, government inspectors would not rely on any secondary sources to determine if a breach of the legislation has occurred. At this point in time, we will not introduce enforceable undertakings as an alternative remedy for offences.

Introduction of decommissioning and abandonment regulatory making powers

Overall, stakeholders were strongly supportive of the proposed regulation relating to the decommissioning and abandonment of pipelines and gas network infrastructure. Several considerations were raised including:

- Minimum requirements for safety, consumer protections, environmental and rehabilitation and timeframes for submission;
- Retention of plans and sharing of information with Before You Dig Australia, including in cases of liquidation or receivership of an entity that owns a decommissioned or abandoned asset;
- Alignment of definitions and concepts with other regulatory and technical frameworks; and
- Differentiation of requirements for asset-specific needs and specificities

We have noted these considerations. The legislative amendments for decommissioning and abandonment will not go into this level of detail as they are meant to only add a regulatory making power. Where relevant, we will consider this feedback in the development of regulations and guidelines in the future. For the avoidance of doubt, there is no intention that DCCEEW or any other NSW government agency will be responsible for decommissioned or abandoned assets, including for information provision obligations.

Other changes proposed

Stakeholders noted that detailed feedback could not be provided on the proposed update to the definition of pipelines in the Pipelines Act without an exposure Bill and that they additionally await the draft data collection guidelines to be able to provide the same. Stakeholders were supportive of the removal of the duplicative requirement for re-lodgement of a plan of the lands to which a pipeline application relates.

Next Steps

Thank you for taking the time to provide your invaluable feedback. The Bill is being finalised and is planned to be introduced in Parliament before the end of 2024.

Work is also underway for amendments to the *Pipelines Regulation 2023* and *Gas Supply (Safety and Network Management) Regulation 2022* with public consultation planned in early 2025. These vital changes will modernise outdated pipelines and gas network legislation and ultimately 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.