

Passed by both Houses



New South Wales

Energy Legislation Amendment (Infrastructure Protection) Bill 2009

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I certify that this public bill, which originated in the Legislative Assembly, has finally passed the Legislative Council and the Legislative Assembly of New South Wales.

*Clerk of the Legislative Assembly.
Legislative Assembly,
Sydney, , 2009*



New South Wales

Energy Legislation Amendment (Infrastructure Protection) Bill 2009

Act No , 2009

An Act 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; and for other purposes.

I have examined this bill and find it to correspond in all respects with the bill as finally passed by both Houses.

Assistant Speaker of the Legislative Assembly.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Energy Legislation Amendment (Infrastructure Protection) Act 2009*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

Schedule 1 Amendment of Electricity Supply Act 1995 No 94

[1] Section 49A

Insert after section 49:

49A Excavation work affecting electricity works

- (1) This section applies if a network operator has reasonable cause to believe that the carrying out or proposed carrying out of excavation work in, on or near its electricity works:
 - (a) could destroy, damage or interfere with those works, or
 - (b) could make those works become a potential cause of bush fire or a potential risk to public safety.
- (2) In those circumstances, a network operator may serve a written notice on the person carrying out or proposing to carry out the excavation work requiring the person:
 - (a) to modify the excavation work, or
 - (b) not to carry out the excavation work, but only if the network operator is of the opinion that modifying the excavation work will not be effective in preventing the destruction or damage of, or interference with, the electricity works concerned or in preventing those works becoming a potential cause of bush fire or a potential risk to public safety.
- (3) A notice under subsection (2) must specify the excavation work that is to be modified or not carried out.
- (4) A network operator may recover the following costs in a court of competent jurisdiction as a debt owed to it by a person who carried out excavation work the subject of a notice under subsection (2):
 - (a) the costs incurred in replacing any of the network operator's electricity works destroyed by the excavation work,
 - (b) the costs incurred in repairing any damage to the network operator's electricity works caused by the excavation work,
 - (c) the costs incurred in remedying or mitigating any interference with the network operator's electricity works caused by the excavation work.

- (5) A network operator may apply for an injunction to prevent the carrying out of excavation work in, on or near its electricity works.
- (6) A network operator may take action under this section even if the person carrying out the excavation work owns or occupies the land in, on or over which the network operator's electricity works are situated.

[2] Section 54 Powers of entry

Insert at the end of section 54 (1) (f):

, or

- (g) monitoring any excavation work in accordance with regulations under section 63Z, or
- (h) exercising any function conferred on the network operator by section 49 or 49A.

[3] Part 5E

Insert after Part 5D:

Part 5E Protection of underground electricity power lines

63X Definitions

In this Part, *designated information provider* means:

- (a) Dial Before You Dig NSW/ACT Incorporated, or
- (b) if another person or body is prescribed by the regulations for the purposes of this definition, that other person or body.

63Y Provision of information on underground electricity power lines by network operators

- (1) It is a condition of a distribution network service provider's licence that the distribution network service provider must:
 - (a) be a member of the designated information provider, and
 - (b) comply with any obligations imposed by that membership.
- (2) The regulations may make provision for or with respect to the provision of information by network operators in respect of underground electricity power lines, including (but not limited to) the provision of such information in connection with a request for information under section 63Z.

63Z Requirements in relation to carrying out of certain excavation work

- (1) A person must not commence to carry out excavation work to which this section applies, or authorise such excavation work to be commenced, unless the person has first:
- (a) contacted the designated information provider and requested information as to the location and type of any underground electricity power lines in the vicinity of the proposed work, and
 - (b) complied with any reasonable procedures of the designated information provider as to the manner of contacting the designated information provider and the information to be provided by the person in connection with the person's request for information, and
 - (c) allowed a reasonable period for the requested information to be provided.

Maximum penalty: 20 penalty units.

- (2) Subsection (1) does not require a person to whom that subsection applies to comply with the requirements of that subsection in relation to excavation work if another person to whom that subsection applies has already complied with those requirements in relation to that excavation work.
- (3) A person must not carry out excavation work to which this section applies, or authorise such excavation work to be carried out, unless the person has ensured that any requirements of the regulations in relation to the carrying out of the work are complied with.

Maximum penalty: 20 penalty units.

- (4) The regulations may make provision for or with respect to the following:
- (a) prescribing requirements in relation to the carrying out of excavation work to which this section applies,
 - (b) requiring notification to be given to a specified person or body, or person or body of a specified class, in relation to the carrying out of excavation work to which this section applies,
 - (c) the monitoring of excavation work to which this section applies,
 - (d) what constitutes reasonable procedures for the purposes of subsection (1),

(e) what constitutes a reasonable period for requested information to be provided for the purposes of subsection (1).

(5) This section applies to excavation work in an area, and of a kind, prescribed by the regulations.

63ZA Notification of damage to underground electricity power lines

(1) A person must, as soon as practicable after becoming aware that any action of the person or any action authorised by the person has damaged an underground electricity power line, notify the network operator that owns the power line of the damage.

Maximum penalty: 20 penalty units.

(2) The regulations may make provision for the manner in which a person must notify for the purposes of subsection (1).

(3) Subsection (1) does not require a person to notify the network operator of the damage concerned if another person to whom that subsection applies has already notified the network operator of the damage.

63ZB Orders for costs, expenses and compensation at time offence proved

(1) This section applies where a court convicts a person of an offence against this Part or section 65.

(2) The court may, if it appears to the court that a network operator has, by reason of the commission of the offence:

(a) suffered loss or damage to its electricity works, or

(b) incurred costs and expenses in preventing or mitigating, or in attempting to prevent or mitigate, any such loss or damage,

order the offender to pay to the network operator the costs and expenses so incurred, or compensation for the loss or damage so suffered, as the case may be, in such amount as is fixed by the order.

(3) A court may not make an order under subsection (2) for the payment of an amount that exceeds the amount for which an order may be made by the court when exercising jurisdiction under the *Civil Procedure Act 2005*. An order made by the court is enforceable as if it were an order made by the court when exercising jurisdiction under that Act.

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- (4) Orders may be made under this section in addition to any penalty that may be imposed or any other action that may be taken in relation to the offence concerned.
- (5) Orders may be made under this section regardless of whether any penalty is imposed, or other action taken, in relation to the offence concerned.
- (6) In this section:
the court means the court that convicts a person of the offence concerned.
the offender means the person who is convicted of the offence.

63ZC Civil liability of designated information provider

- (1) This section applies to the following persons:
- (a) the designated information provider, any officer or employee of the designated information provider or any person acting on behalf of the designated information provider,
 - (b) a network operator, any officer or employee of the network operator or any person acting on behalf of the network operator.
- (2) A person to whom this section applies does not incur any civil monetary liability for any act or omission in connection with a request for information under section 63Z or the provision of information in compliance or purported compliance with the regulations under section 63Y unless the act or omission is done or made in bad faith or through negligence.
- (3) The civil monetary liability for an act or omission of a kind referred to in subsection (2) done or made through negligence may not exceed the maximum amount prescribed by the regulations.
- (4) For the purposes of subsection (3), the regulations may:
- (a) prescribe maximum amounts that are limited in their application to persons, events, circumstances, losses or periods specified in the regulations, and
 - (b) prescribe maximum amounts that vary in their application according to the persons to whom or the events, circumstances, losses or periods to which they are expressed to apply, and
 - (c) prescribe the manner in which a maximum amount is to be divided amongst claimants.

- (5) A person to whom this section applies may enter into an agreement with another person varying or excluding the operation of a provision of this section and, to the extent of that agreement, that provision does not apply.
- (6) This section does not apply to any liability of an officer or employee of a person to whom this section applies to the person.
- (7) In this section:
civil monetary liability means liability to pay damages or compensation or any other amount in a civil proceeding, but does not include the costs of proceedings.

[4] Section 65 Interference with electricity works

Omit the matter relating to the maximum penalty. Insert instead:

Maximum penalty:

- (a) in the case of a corporation—4,000 penalty units, or
- (b) in any other case—200 penalty units or imprisonment for 5 years (or both).

[5] Section 65 (2)–(4)

Insert at the end of section 65:

- (2) An offence under this section that is committed by an individual is an indictable offence.
- (3) Chapter 5 of the *Criminal Procedure Act 1986* (which relates to the summary disposal of certain indictable offences unless an election is made to proceed on indictment) applies to and in respect of an indictable offence under this section.
- (4) Section 102 does not apply to an indictable offence under this section.
Note. Offences by corporations are to be dealt with summarily (see section 102 (1) and (2)).

[6] Section 100A

Insert after section 100:

100A Personal liability of authorised officers of network operators

- (1) A matter or thing done or omitted to be done by an authorised officer appointed by a network operator does not, if the matter or thing was done or omitted in good faith for the purpose of exercising a function under this Act, subject any such officer personally to any action, liability, claim or demand.

- (2) However, any such liability attaches instead to the network operator concerned.

[7] Section 106 Regulations

Insert “, 63Y, 63Z” after “16” in section 106 (2).

[8] Schedule 6 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

*Energy Legislation Amendment (Infrastructure Protection)
Act 2009*

[9] Schedule 6

Insert at the end of Schedule 6 with appropriate Part and clause numbering:

**Part Provisions consequent on enactment of
Energy Legislation Amendment
(Infrastructure Protection) Act 2009**

Application of certain provisions

- (1) In this clause, *amending Act* means the *Energy Legislation Amendment (Infrastructure Protection) Act 2009*.
- (2) Section 63Y (1) (as inserted by the amending Act) applies to licences whether or not granted before, on or after the commencement of that subsection.
- (3) A provision of section 63ZB or 65 (2)–(4) (as inserted by the amending Act) applies to offences committed on or after the commencement of that provision.
- (4) Section 63ZC (as inserted by the amending Act) applies to acts or omissions done or made on or after the commencement of that section.

Schedule 2 Amendment of Gas Supply Act 1996 No 38

[1] Section 50A

Insert after section 50:

50A Excavation work affecting gas works

- (1) This section applies if a network operator has reasonable cause to believe that the carrying out or proposed carrying out of excavation work in, on or near its gas works:
 - (a) could destroy, damage or interfere with those works, or
 - (b) could make those works become a potential risk to public safety.
- (2) In those circumstances, a network operator may serve a written notice on the person carrying out or proposing to carry out the excavation work requiring the person:
 - (a) to modify the excavation work, or
 - (b) not to carry out the excavation work, but only if the network operator is of the opinion that modifying the excavation work will not be effective in preventing the destruction or damage of, or interference with, the gas works concerned or in preventing those works becoming a potential risk to public safety.
- (3) A notice under subsection (2) must specify the excavation work that is to be modified or not carried out.
- (4) A network operator may recover the following costs in a court of competent jurisdiction as a debt owed to it by a person who carried out excavation work the subject of a notice under subsection (2):
 - (a) the costs incurred in replacing any of the network operator's gas works destroyed by the excavation work,
 - (b) the costs incurred in repairing any damage to the network operator's gas works caused by the excavation work,
 - (c) the costs incurred in remedying or mitigating any interference with the network operator's gas works caused by the excavation work.
- (5) A network operator may apply for an injunction to prevent the carrying out of excavation work in, on or near its gas works.

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- (6) A network operator may take action under this section even if the person carrying out the excavation work owns or occupies the land in, on or over which the network operator's gas works are situated.

[2] Section 55 Powers of entry

Insert at the end of section 55 (1) (e):

, or

- (f) monitoring any excavation work in accordance with regulations under section 64C, or
- (g) exercising any function conferred on the network operator by section 50 or 50A.

[3] Part 4A

Insert after Part 4:

Part 4A Protection of underground gas pipelines

64A Definitions

In this Part, *designated information provider* means:

- (a) Dial Before You Dig NSW/ACT Incorporated, or
- (b) if another person or body is prescribed by the regulations for the purposes of this definition, that other person or body.

64B Provision of information on underground gas pipelines by network operators

- (1) It is a condition of a distributor's licence that the distributor must:
- (a) be a member of the designated information provider, and
- (b) comply with any obligations imposed by that membership.
- (2) It is a condition of a reticulator's authorisation that the reticulator must:
- (a) be a member of the designated information provider, and
- (b) comply with any obligations imposed by that membership.
- (3) The regulations may make provision for or with respect to the provision of information by network operators in respect of underground gas pipelines, including (but not limited to) the provision of such information in connection with a request for information under section 64C.

64C Requirements in relation to carrying out of certain excavation work

- (1) A person must not commence to carry out excavation work to which this section applies, or authorise such excavation work to be commenced, unless the person has first:
- (a) contacted the designated information provider and requested information as to the location and type of any underground gas pipelines in the vicinity of the proposed work, and
 - (b) complied with any reasonable procedures of the designated information provider as to the manner of contacting the designated information provider and the information to be provided by the person in connection with the person's request for information, and
 - (c) allowed a reasonable period for the requested information to be provided.

Maximum penalty: 20 penalty units.

- (2) Subsection (1) does not require a person to whom that subsection applies to comply with the requirements of that subsection in relation to excavation work if another person to whom that subsection applies has already complied with those requirements in relation to that excavation work.
- (3) A person must not carry out excavation work to which this section applies, or authorise such excavation work to be carried out, unless the person has ensured that any requirements of the regulations in relation to the carrying out of the work are complied with.

Maximum penalty: 20 penalty units.

- (4) The regulations may make provision for or with respect to the following:
- (a) prescribing requirements in relation to the carrying out of excavation work to which this section applies,
 - (b) requiring notification to be given to a specified person or body, or person or body of a specified class, in relation to the carrying out of excavation work to which this section applies,
 - (c) the monitoring of excavation work to which this section applies,
 - (d) what constitutes reasonable procedures for the purposes of subsection (1),

(e) what constitutes a reasonable period for requested information to be provided for the purposes of subsection (1).

(5) This section applies to excavation work in an area, and of a kind, prescribed by the regulations.

64D Notification of damage to underground gas pipelines

(1) A person must, as soon as practicable after becoming aware that any action of the person or any action authorised by the person has damaged an underground gas pipeline, notify the network operator that owns the pipeline of the damage.

Maximum penalty: 20 penalty units.

(2) The regulations may make provision for the manner in which a person must notify for the purposes of subsection (1).

(3) Subsection (1) does not require a person to notify the network operator of the damage concerned if another person to whom that subsection applies has already notified the network operator of the damage.

64E Orders for costs, expenses and compensation at time offence proved

(1) This section applies where a court convicts a person of an offence against this Part or section 66.

(2) The court may, if it appears to the court that a network operator has, by reason of the commission of the offence:

(a) suffered loss or damage to its gas works, or

(b) incurred costs and expenses in preventing or mitigating, or in attempting to prevent or mitigate, any such loss or damage,

order the offender to pay to the network operator the costs and expenses so incurred, or compensation for the loss or damage so suffered, as the case may be, in such amount as is fixed by the order.

(3) A court may not make an order under subsection (2) for the payment of an amount that exceeds the amount for which an order may be made by the court when exercising jurisdiction under the *Civil Procedure Act 2005*. An order made by the court is enforceable as if it were an order made by the court when exercising jurisdiction under that Act.

- (4) Orders may be made under this section in addition to any penalty that may be imposed or any other action that may be taken in relation to the offence concerned.
- (5) Orders may be made under this section regardless of whether any penalty is imposed, or other action taken, in relation to the offence concerned.
- (6) In this section:
 - the court* means the court that convicts a person of the offence concerned.
 - the offender* means the person who is convicted of the offence.

64F Civil liability of designated information provider

- (1) This section applies to the following persons:
 - (a) the designated information provider, any officer or employee of the designated information provider or any person acting on behalf of the designated information provider,
 - (b) a network operator, any officer or employee of the network operator or any person acting on behalf of the network operator.
- (2) A person to whom this section applies does not incur any civil monetary liability for any act or omission in connection with a request for information under section 64C or the provision of information in compliance or purported compliance with the regulations under section 64B unless the act or omission is done or made in bad faith or through negligence.
- (3) The civil monetary liability for an act or omission of a kind referred to in subsection (2) done or made through negligence may not exceed the maximum amount prescribed by the regulations.
- (4) For the purposes of subsection (3), the regulations may:
 - (a) prescribe maximum amounts that are limited in their application to persons, events, circumstances, losses or periods specified in the regulations, and
 - (b) prescribe maximum amounts that vary in their application according to the persons to whom or the events, circumstances, losses or periods to which they are expressed to apply, and
 - (c) prescribe the manner in which a maximum amount is to be divided amongst claimants.

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- (5) A person to whom this section applies may enter into an agreement with another person varying or excluding the operation of a provision of this section and, to the extent of that agreement, that provision does not apply.
 - (6) This section does not apply to any liability of an officer or employee of a person to whom this section applies to the person.
 - (7) In this section:
civil monetary liability means liability to pay damages or compensation or any other amount in a civil proceeding, but does not include the costs of proceedings.

[4] Section 66 Interference with gas works

Omit the matter relating to the maximum penalty. Insert instead:

Maximum penalty:

- (a) in the case of a corporation—4,000 penalty units, or
- (b) in any other case—200 penalty units or imprisonment for 5 years (or both).

[5] Section 66 (2)–(4)

Insert at the end of section 66:

- (2) An offence under this section that is committed by an individual is an indictable offence.
- (3) Chapter 5 of the *Criminal Procedure Act 1986* (which relates to the summary disposal of certain indictable offences unless an election is made to proceed on indictment) applies to and in respect of an indictable offence under this section.
- (4) Section 81 does not apply to an indictable offence under this section.

Note. Offences by corporations are to be dealt with summarily (see section 81 (1) and (2)).

[6] Section 79A

Insert after section 79:

79A Personal liability of gas industry inspectors of network operators

- (1) A matter or thing done or omitted to be done by a gas industry inspector appointed by a network operator does not, if the matter or thing was done or omitted in good faith for the purpose of exercising a function under this Act, subject any such inspector personally to any action, liability, claim or demand.

- (2) However, any such liability attaches instead to the network operator concerned.

[7] Section 83 Regulations

Insert after section 83 (5A):

- (5B) The regulations may, either unconditionally or subject to conditions, exempt:
- (a) any specified person or class of persons, or
 - (b) any specified matter or class of matters,
- from the operation of any one or more of sections 64B and 64C.

[8] Schedule 2 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

Energy Legislation Amendment (Infrastructure Protection) Act 2009

[9] Schedule 2

Insert at the end of Schedule 2 with appropriate Part and clause numbering:

Part Provisions consequent on enactment of Energy Legislation Amendment (Infrastructure Protection) Act 2009

Application of certain provisions

- (1) In this clause, *amending Act* means the *Energy Legislation Amendment (Infrastructure Protection) Act 2009*.
- (2) Section 64B (1) (as inserted by the amending Act) applies to licences whether or not granted before, on or after the commencement of that subsection.
- (3) Section 64B (2) (as inserted by the amending Act) applies to authorisations whether or not granted before, on or after the commencement of that subsection.
- (4) A provision of section 64E or 66 (2)–(4) (as inserted by the amending Act) applies to offences committed on or after the commencement of that provision.
- (5) Section 64F (as inserted by the amending Act) applies to acts or omissions done or made on or after the commencement of that section.

Schedule 3 Amendment of Criminal Procedure Act 1986 No 209

[1] Section 268 Maximum penalties for Table 2 offences

Insert after section 268 (2) (m):

- (n) for an offence under section 65 of the *Electricity Supply Act 1995*—in the case of an individual, imprisonment for 2 years, or a fine of 100 penalty units (or both),
- (o) for an offence under section 66 of the *Gas Supply Act 1996*—in the case of an individual, imprisonment for 2 years, or a fine of 100 penalty units (or both).

[2] Schedule 1 Indictable offences triable summarily

Insert at the end of Table 2 in Schedule 1 with appropriate Part and clause numbering:

Part Offences relating to underground electricity power lines and gas pipelines

Electricity Supply Act 1995

An offence under section 65 of the *Electricity Supply Act 1995* committed by an individual.

Gas Supply Act 1996

An offence under section 66 of the *Gas Supply Act 1996* committed by an individual.