

Serial 245
Energy Pipelines Amendment Bill 2000
Mr Manzie

**A BILL
for
AN ACT**

to amend the *Energy Pipelines Act*



NORTHERN TERRITORY OF AUSTRALIA
ENERGY PIPELINES AMENDMENT ACT 2000

No. of 2000

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SCHEDULE



NORTHERN TERRITORY OF AUSTRALIA

No. of 2000

AN ACT

to amend the *Energy Pipelines Act*

[Assented to 2000]
[Second reading 2000]

The Legislative Assembly of the Northern Territory enacts as follows:

1. Short title

This Act may be cited as the *Energy Pipelines Amendment Act 2000*.

2. Commencement

This Act comes into operation on the date fixed by the Administrator by notice in the *Gazette*.

3. Principal Act

The *Energy Pipelines Act* is in this Act referred to as the Principal Act.

4. Long title

The long title of the Principal Act is amended by omitting "and maintenance of" and substituting ", maintenance and cessation of use or abandonment of".

5. Interpretation

Section 3 of the Principal Act is amended by inserting in the definition of "pipeline" in subsection (1) "that has or have a maximum allowable operating pressure greater than 1050 kilopascals or a hoop stress (being a circumferential stress arising from internal pressure) that is less than 20 % of the specified minimum yield stress specified in the manufacturing standard with which the pipe complies and that are" after "system of pipes".

6. Application etc.

Section 4 of the Principal Act is amended by inserting in subsection (1)(c) "agricultural," after "business," (twice occurring).

7. Application for licence

Section 13 of the Principal Act is amended –

(a) by inserting after subsection (2)(c)(i)(A) the following:

"(BA) the land that is proposed by the applicant to be the licence area;

"(BB) the corridor of land, 25 m wide, extending for 12.5 m on either side of the route of the proposed pipeline specified under subparagraph (A);";

(b) by inserting after subsection (2)(d) the following:

"(da) shall specify –

(i) the name and address of each person whose operations on or interest in the land shown in the plan under paragraph (c) in accordance with paragraph (c)(i)(BB) may be affected by the operation of section 66 if the pipeline to which the application relates were to be constructed; and

(ii) the agreement or arrangement, if any, made between the applicant and a person referred to in subparagraph (i) in relation to the person's operations and interests;";

(c) by omitting from subsection (4) "notice" and substituting "a notice in the prescribed form"; and

(d) by adding at the end of subsection (4)(b) "and each person whose operations on or interest in the land shown in the plan under subsection (2)(c)(i)(BB) may be affected by the operation of section 66 if the pipeline to which the application relates were to be constructed".

8. Renewal of licence

Section 16 of the Principal Act is amended by inserting after subsection (3) the following:

"(3A) The Minister may, on receiving an application under this section, renew the licence to which the application relates.

"(3B) The Minister may renew a licence under subsection (3A) subject to the conditions to which the licence was subject immediately before the renewal, or those conditions varied, omitted or added to as the Minister thinks fit and specifies on the renewed licence.

"(3C) Before renewing a licence on additional or varied conditions, the Minister must consult with the licensee and have regard to representations made by the licensee in relation to the proposed additional or varied conditions."

9. Variation of conditions of licence etc.

Section 20 of the Principal Act is amended—

- (a) by omitting from subsection (2) "An application" and substituting "Subject to subsection (2A), an application"; and
- (b) by inserting after subsection (2) the following:

"(2A) The Minister may waive the fee payable under subsection (2)."

10. Licence fees

Section 30 of the Principal Act is amended by inserting in subsection (1) "of \$100 or, if the fee calculated in accordance with the following formula would be higher, the licence fee" after "licence fee".

11. Heading to Part IV

The heading to Part IV of the Principal Act is amended by omitting "AND OPERATION" and substituting ", OPERATION AND MAINTENANCE".

12. Pipeline crossing water

Section 36 of the Principal Act is amended by omitting all the words from and including "a manner—" and substituting "a manner that the construction and the pipeline as constructed will not unreasonably affect or impede anything or anyone lawfully using that water.

Penalty: 50 penalty units."

13. New section

The Principal Act is amended by inserting after section 37 the following:

"37A. Abandonment of pipeline

"(1) The owner of a pipeline who intends to abandon the pipeline must, not later than 3 months after there ceases to be a licence in force in relation to the pipeline, apply to the Minister in writing for approval to abandon the pipeline.

Penalty: In the case of a natural person – 20 penalty units.

In the case of a body corporate – 100 penalty units.

"(2) The Minister may, after receiving an application under subsection (1), by notice to the owner, approve, or refuse to approve, the abandonment of the pipeline specified in the notice on the conditions, if any, specified in the notice.

"(3) An owner of a pipeline may only abandon the pipeline in accordance with –

- (a) the prescribed standards; and
- (b) the conditions, if any, specified in the notice under subsection (2).

Penalty: In the case of a natural person – 10 penalty units and 2 penalty units for each day during which the offence continues.

In the case of a body corporate – 50 penalty units and 10 penalty units for each day during which the offence continues."

14. Consent to commencement or resumption of operations or testing of pipeline

Section 38 of the Principal Act is amended –

- (a) by omitting from subsection (1) "have an energy-producing hydro-carbon introduced into it for the purpose of testing the pipeline" and substituting "be tested";
- (b) by omitting from subsection (1A) "section (1)" and substituting "subsection (1)"; and
- (c) by omitting subsection (3) and substituting the following:

"(3) A person must not –

- (a) test a pipeline;

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- (b) allow the introduction of an energy-producing hydro-carbon into a pipeline referred to in subsection (1A); or
- (c) operate a pipeline referred to in subsection (1A),

except in accordance with a consent granted under this section.

Penalty: In the case of a natural person – 200 penalty units.

In the case of a body corporate – 1000 penalty units."

15. New section

The Principal Act is amended by inserting after section 38 the following:

"38A. Statutory restrictions for purposes of *Real Property Act*

"(1) The Minister cannot consent under section 38(1A) to the commencement of operations in relation to a pipeline unless the licensee has provided to the Minister –

- (a) detailed drawings of the pipeline as constructed, indicating where the pipeline is located and the 25 m wide corridor referred to in section 66 in relation to the pipeline, that are suitable for incorporation into a memorandum to be given by the Minister under subsection (2); and
- (b) evidence that the licensee has given notice to each person whose operations on or interest in the land shown in the detailed drawings may be affected by the operation of section 66 of the nature of the restrictions that are placed on the use or occupation or any dealing with the land.

"(2) The Minister must, within 60 days after receiving information supplied under subsection (1), lodge with the Registrar-General a memorandum under section 191B of the *Real Property Act* in relation to the land referred to in subsection (1)(a)."

16. Register of licences

Section 44 of the Principal Act is amended by inserting after subsection (1) the following:

"(1A) The register may be kept –

- (a) in the form or combination of forms;
- (b) on the medium or combination of mediums, including but not limited to a computer, micro film or paper; and

(c) in the manner,
that the Minister thinks fit."

17. New Part

The Principal Act is amended by inserting after Part V the following:

"PART VA – ENVIRONMENTAL MANAGEMENT

"Division 1 – General environmental offences

"58A. Application

"This Part does not apply in relation to a substance that is prescribed under the *Waste Management and Pollution Control Act* to be an ozone-depleting substance.

"58B. Interpretation

"(1) In this Part, unless the contrary intention appears –

'contaminant' means a solid, liquid or gas or any combination of those substances and includes –

- (a) noise, odour and heat;
- (b) a prescribed substance or prescribed class of substances; and
- (c) a substance having a prescribed property or prescribed class of properties;

'environment' means land, air, water, organisms and ecosystems and includes –

- (a) the well-being of humans;
- (b) structures made or modified by humans;
- (c) the amenity values of an area; and
- (d) economic, cultural and social conditions;

'environmental harm' means –

- (a) any harm to or adverse effect on the environment; or
- (b) any potential harm (including the risk of harm and future harm) to or potential adverse effect on the environment,

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of any degree or duration and includes environmental nuisance;

'environmental nuisance', in relation to land, means –

- (a) an adverse effect on the amenity of the land caused by noise, smoke, dust, fumes or odour; or
- (b) an unsightly or offensive condition on the land;

'land' includes water and air on, above or under land;

'material environmental harm' means environmental harm that –

- (a) is not trivial or negligible in nature;
- (b) consists of an environmental nuisance of a high impact or on a wide scale;
- (c) results, or is likely to result, in not more than \$50,000 or the prescribed amount (whichever is greater) being spent in taking appropriate action to prevent or minimise the environmental harm or rehabilitate the environment; or
- (d) results in actual or potential loss or damage to the value of not more than \$50,000 or the prescribed amount (whichever is greater);

'serious environmental harm' means environmental harm that is more serious than material environmental harm and includes environmental harm that –

- (a) is irreversible or otherwise of a high impact or on a wide scale;
- (b) damages an aspect of the environment that is of a high conservation value, high cultural value or high community value or is of special significance;
- (c) results or is likely to result in more than \$50,000 or the prescribed amount (whichever is greater) being spent in taking appropriate action to prevent or minimise the environmental harm or rehabilitate the environment; or
- (d) results in actual or potential loss or damage to the value of more than \$50,000 or the prescribed amount (whichever is greater);

'waste material' means –

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- (a) a solid, liquid or gas; or
- (b) a mixture of those substances,

that is left over, surplus or is an unwanted by-product and includes a prescribed substance or class of substances.

"(2) For the purposes of this Part, loss, in relation to an act or failure to act, includes the reasonable costs and expenses that would be incurred in taking all reasonable and practicable measures –

- (a) to prevent or mitigate environmental harm caused by or resulting from the act or failure to act; and
- (b) to make good environmental harm resulting from the act or failure to act.

"(3) For the purposes of this Part, environmental harm may be caused by an act or failure to act whether the harm –

- (a) is caused directly or indirectly or is a direct or indirect result of the act or failure to act; or
- (b) results from, or is caused by, the act or failure to act alone or from the combined effects of the act or failure to act and other factors.

"58C. General environmental offences

"(1) A person must not, during the conduct of an operation authorised under this Act, intentionally do an act, or fail to do an act, that causes the release of a contaminant or waste from a pipeline if –

- (a) he or she knows, or ought reasonably be expected to know, that serious environmental harm or material environmental harm will or might result from the release of the contaminant or waste; and
- (b) the contaminant or waste causes serious environmental harm to land all of which is within one kilometre of the pipeline.

Penalty: environmental offence level 1.

"(2) A person must not, during the conduct of an operation authorised under this Act, do an act, or fail to do an act, that causes the release of a contaminant or waste from a pipeline if –

- (a) he or she knows, or ought reasonably be expected to know, that serious environmental harm or material environmental harm will or might result from the release of the contaminant or waste; and

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- (b) the contaminant or waste causes serious environmental harm to land all of which is within one kilometre of the pipeline.

Penalty: environmental offence level 2.

"(3) A person must not, during the conduct of an operation authorised under this Act, intentionally do an act, or fail to do an act, that causes the release of a contaminant or waste from a pipeline if—

- (a) he or she knows, or ought reasonably be expected to know, that serious environmental harm or material environmental harm will or might result from the release of the contaminant or waste; and
- (b) the contaminant or waste causes material environmental harm to land all of which is within one kilometre of a pipeline.

Penalty: environmental offence level 2.

"(4) A person must not, during the conduct of an operation authorised under this Act, do an act, or fail to do an act, that causes the release of a contaminant or waste from a pipeline if—

- (a) he or she knows, or ought reasonably be expected to know, that serious environmental harm or material environmental harm will or might result from the release of the contaminant or waste; and
- (b) the contaminant or waste causes material environmental harm to land all of which is within one kilometre of the pipeline.

Penalty: environmental offence level 3.

"(5) A person must not, during the conduct of an operation authorised under this Act, do an act, or fail to do an act, that causes the release of a contaminant or waste from a pipeline, if the contaminant or waste causes an environmental nuisance to land all of which is within one kilometre of the pipeline.

Penalty: environmental offence level 4.

"58D. Defences to general environmental offences

"(1) It is a defence to a prosecution for an offence against section 58C if it is proved that the act or failure to act was authorised under an Act.

"(2) It is a defence to a prosecution for an offence against section 58C if it is proved that the alleged offence did not result from a failure on the defendant's part to exercise reasonable diligence.

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"(3) It is a defence to a prosecution for an offence against section 58C in relation to a particular contaminant or waste material if it is proved the defendant complied with—

- (a) a provision of an environment protection objective within the meaning of the *Waste Management and Pollution Control Act*; or
- (b) a condition of an approval, permit, lease, licence or authorisation under an Act,

that fixed maximum allowable levels for the particular contaminant or waste material.

"58E. Alternative verdicts available

"In a proceeding for an offence against—

- (a) section 58C(1) — the person charged with the offence may be found guilty alternatively of an offence against section 58C (2), (3), (4) or (5);
- (b) section 58C(2) — the person charged with the offence may be found guilty alternatively of an offence against section 58C(3), (4) or (5);
- (c) section 58C(3) — the person charged with the offence may be found guilty alternatively of an offence against section 58C(4) or (5); or
- (d) section 58C(4) — the person charged with the offence may be found guilty alternatively of an offence against section 58C(5).

"Division 2 — Liabilities of employers, employees etc.

"58F. Actions etc. of employee or agent of body corporate are those of body corporate

"(1) If in proceedings for an offence against this Part it is necessary to establish the state of mind of a body corporate in relation to particular conduct, it is sufficient to show—

- (a) that the conduct was engaged in by a director, manager, employee or agent of the body corporate within the scope of his or her actual or apparent authority; and
- (b) that the director, manager, employee or agent had the relevant state of mind.

"(2) For the purposes of a prosecution for an offence against this Part, conduct engaged in on behalf of a body corporate by a director, manager,

employee or agent of the body corporate within the scope of his or her actual or apparent authority is taken to have been engaged in also by the body corporate.

"(3) For the purposes of this section, a reference to engaging in conduct is to be read as including a reference to failing or refusing to engage in conduct.

"58G. Director may be liable for offence of body corporate

"(1) If a body corporate commits an offence against this Part, every person who is a director of or who is concerned in the management of the body corporate is to be taken to have committed the same offence.

"(2) It is a defence to a prosecution for an offence committed by virtue of subsection (1) if the defendant establishes that –

- (a) the body corporate had under this Part a defence to the offence that the defendant is, apart from this section, to be taken to have committed;
- (b) the act or omission that constituted the offence took place without the defendant's authority, permission or consent;
- (c) the defendant did not know, and ought not reasonably be expected to have known, that the offence was to be or was being committed and took all reasonable steps to prevent or stop the commission of the offence; or
- (d) the defendant could not by the exercise of reasonable diligence have prevented the commission of the offence by the body corporate.

"(3) A person may be proceeded against and found guilty under a provision in pursuance of subsection (1) whether or not the body corporate has been proceeded against or found guilty under the provision.

"(4) Despite anything in this Part or the *Environmental Offences and Penalties Act*, a person is not liable to be punished by imprisonment for an offence if the person would not have been found guilty of the offence except for subsection (1).

"58H. Liability for managers, employees and agents

"(1) For the purposes of a prosecution for an offence against this Part, conduct engaged in on behalf of a person other than a body corporate (in this section called the 'employer') by a manager, employee or agent of the person within the scope of his or her actual or apparent authority is taken to have been engaged in also by the employer.

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"(2) An employer may be proceeded against and found guilty under a provision in pursuance of subsection (1), whether or not the manager, employee or agent has been proceeded against or found guilty of an offence against that provision.

"(3) It is a defence to a prosecution for an offence committed by virtue of subsection (1) if the defendant establishes that –

- (a) the person who committed the offence that the defendant is to be taken to have committed under subsection (1) had, under this Act, a defence to the offence that the defendant is, apart from this subsection, to be taken to have committed;
- (b) the act or omission that constituted the offence took place without the defendant's authority, permission or consent;
- (c) the defendant did not know, and ought not reasonably be expected to have known, the offence was to be or was being committed and took all reasonable steps to prevent or stop the commission of the offence or a similar offence; or
- (d) the defendant could not by the exercise of reasonable diligence have prevented the commission of the offence by the person who committed the offence.

"(4) Despite anything in this Act or the *Environmental Offences and Penalties Act*, a person is not liable to be punished by imprisonment for an offence if the person would not have been found guilty of the offence except for subsection (1).

"(5) For the purposes of this section, a reference to engaging in conduct is to be read as including a reference to failing or refusing to engage in conduct."

18. New section

The Principal Act is amended by inserting after section 59 the following:

"59A. Licensee not required to own pipeline

"Nothing in this Act is to be taken to imply that the holder of a licence in relation to a pipeline must be the owner of the pipeline."

19. Powers of inspectors

Section 64 of the Principal Act is amended –

- (a) by adding at the end of subsection (2) the following:

"Penalty: In the case of a natural person – 50 penalty units.

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In the case of a body corporate – 250 penalty units."; and

- (b) by omitting from subsection (3) "Penalty for an offence against this section: \$1,000" and substituting the following:

"Penalty: In the case of a natural person – 500 penalty units.

In the case of a body corporate – 2500 penalty units."

20. Threat to pipeline

Section 66 of the Principal Act is amended –

- (a) by omitting from subsection (1)(a) "the surface of";
(b) by omitting from subsection (1) all the words after "guilty of an offence. and substituting the following:

"Penalty: In the case of an offence against paragraph (a) committed by a natural person – 200 penalty units or 5 years imprisonment.

In the case of an offence against paragraph (a) committed by a body corporate – 1000 penalty units.

In the case of an offence against paragraph (b) committed by a natural person – 100 penalty units or 6 months imprisonment.

In the case of an offence against paragraph (b) committed by a body corporate – 500 penalty units.";

- (c) by omitting from subsection (2) "Penalty: \$10,000 or imprisonment for 5 years." and substituting the following:

"Penalty: In the case of a natural person – 200 penalty units or 5 years imprisonment.

In the case of a body corporate – 1000 penalty units."; and

- (d) by adding at the end the following:

"(3) A person must not lay or detonate explosives on land within a licence corridor except with the consent of the Minister or the licensee of the pipeline that is within the licence corridor.

Penalty: In the case of a natural person – 50 penalty units or 2 years imprisonment.

In the case of a body corporate – 200 penalty units.

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"(4) For the purposes of subsection (3), 'licence corridor' means a corridor 64 m in width having as its centre line an imaginary line connecting markers erected in accordance with directions given under section 40, or as prescribed, marking the position of a pipeline in respect of which a licence is in force.

"(5) A person must not within 200 m of a pipeline in relation to which a licence is in force –

- (a) drop or drag an anchor; or
- (b) perform an action that could damage the pipeline,

except with the consent of the licensee of the pipeline, an inspector, the Minister or a delegate of the Minister.

Penalty: In the case of a natural person – 100 penalty units.

In the case of a body corporate – 500 penalty units."

21. Further amendments

The Principal Act is further amended as set out in the Schedule.

SCHEDULE

Section 21

Provision	Amendment	
	Omit	Substitute
Section 12(1)	"\$5,000."	"In the case of a natural person – 200 penalty units. In the case of a body corporate – 1000 penalty units."
Section 12(2)	"\$5,000."	"In the case of a natural person – 200 penalty units. In the case of a body corporate – 1000 penalty

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		units."
Section 15A(6)	"\$5,000."	"In the case of a natural person – 200 penalty units. In the case of a body corporate – 1000 penalty units."
Section 26(2)	"\$5,000."	"In the case of a natural person – 200 penalty units. In the case of a body corporate – 1000 penalty units."
Section 28(4)	"\$5,000."	"In the case of a natural person – 200 penalty units. In the case of a body corporate – 1000 penalty units."
Section 37(1)	"\$5,000."	"In the case of a natural person – 200 penalty units. In the case of a body corporate – 1000 penalty units."
Section 39	"\$5,000."	"In the case of a natural person – 200 penalty units. In the case of a body corporate – 1000 penalty units."
Section 40(3)	"\$5,000."	"In the case of a natural person – 200 penalty units. In the case of a body corporate – 1000 penalty units."

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		units."
Section 42(6)	"\$1,000 and \$1,000 for each day during which the offence continues."	"In the case of a natural person – 40 penalty units and 2 penalty units for each day during which the offence continues. In the case of a body corporate – 200 penalty units and 10 penalty units for each day during which the offence continues."
Section 43(10)	"\$1,000 and \$1,000 for each day during which the offence continues."	"In the case of a natural person – 40 penalty units and 2 penalty units for each day during which the offence continues. In the case of a body corporate – 200 penalty units and 10 penalty units for each day during which the offence continues."
Section 50	"\$5,000."	"100 penalty units."
Section 52(2)	"\$2,000."	"In the case of a natural person – 200 penalty units. In the case of a body corporate – 1000 penalty units."
Section 53(2)	"\$2,000."	"In the case of a natural person – 10 penalty units. In the case of a body corporate – 100 penalty units."
Section 58	"Penalty: Imprisonment for 2 years"	"Penalty: In the case of a natural person – 500

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		penalty units or 2 years imprisonment.
		In the case of a body corporate – 2500 penalty units."
Section 63(3)	"\$200."	"20 penalty units."
Section 64A(2)	"\$10,000"	"In the case of a natural person – 200 penalty units or 5 years imprisonment.
		In the case of a body corporate – 1000 penalty units."
Section 67(3)	"\$5,000"	"10 per cent of the maximum penalty for the offence"
Section 68(3)(a) and (b)	"\$1,000"	"In the case of a natural person – 200 penalty units.
		In the case of a body corporate – 1000 penalty units."

