



Western Australia

## **Petroleum Pipelines Act 1969**

Compare between:

[01 Mar 2008, 03-d0-08] and [01 Sep 2009, 03-e0-03]



Western Australia

## **Petroleum Pipelines Act 1969**

**An Act relating to the construction, operation and maintenance of pipelines for the conveyance of petroleum and for purposes connected therewith.**

## **Part I — Preliminary**

**1. Short title**

This Act may be cited as the *Petroleum Pipelines Act 1969*<sup>1</sup>.

**2. Commencement**

This Act shall come into operation on a date to be fixed by proclamation<sup>1</sup>.

[3. Deleted by No. 12 of 1990 s. 120.]

**4. Interpretation**

(1) In this Act, unless the contrary intention appears —

***approved*** means approved by the Minister;

***inspector*** means a person appointed an inspector under this Act;

***licence*** means a current licence granted under this Act authorising the construction and operation of a pipeline;

***licence area*** in relation to a licence means the lands specified in the licence as being that area;

***licensee*** means a person who is the registered holder of a licence;

***owner*** in relation to —

- (a) land other than Crown land or land owned by or vested in the Crown or a public authority, includes every person who jointly or severally, whether at law or in equity —
  - (i) is entitled to the land for an estate of freehold in possession;
  - (ii) is a person to whom the Crown has lawfully contracted to transfer the land in fee simple under the *Land Administration Act 1997*, or any other Act;

- (iii) is entitled to receive, or is in receipt of, or if the land were let would be entitled to receive the rents and profits thereof, whether as beneficial owner, trustee, mortgagee in possession, or otherwise;
- (b) Crown land and land owned by or vested in the Crown, means the Crown;
- (c) land owned by or vested in a public authority, means that public authority,

and

*owned* and like expressions have a corresponding meaning;

*partly cancelled* in relation to a licence means cancelled as to part of the pipeline the subject of the licence;

*petroleum* means —

- (a) any naturally occurring hydrocarbon, whether in a gaseous, liquid or solid state;
- (b) any naturally occurring mixture of hydrocarbons, whether in a gaseous, liquid or solid state; or
- (c) any naturally occurring mixture of one or more hydrocarbons, whether in a gaseous, liquid or solid state, and any one or more of the following, that is to say, hydrogen, sulphide, nitrogen, helium and carbon dioxide,

and includes any petroleum as defined by paragraph (a), (b) or (c) of this definition that has been returned to a natural reservoir;

*pipeline* means a pipe or system of pipes used or intended to be used for the conveyance of petroleum; and includes all structures for protecting or supporting a pipeline and all loading terminals, works and buildings and all fittings, pumps, tanks, storage tanks, appurtenances and appliances and any facility, or any facility of a class, which is declared for the time being under section 5 to be a pipeline facility for the purposes of this Act used in connection with a pipeline, but does not include —

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- (a) a pipeline as defined in the *Petroleum (Submerged Lands) Act 1982*;
- (b) a pipeline that is used —
  - (i) for the conveyance of petroleum from the well head to a tank or separator or for the collection of petroleum within the area in which it is produced or recovered;
  - (ii) for returning petroleum to a natural reservoir;
  - (iii) for the conveyance of petroleum for use for the purpose of petroleum exploration operations or operations for the recovery of petroleum;
  - (iv) for the conveyance of petroleum that is to be flared or vented;
- (c) a pipeline constructed or to be constructed under the authority of any Act, other than this Act;
- (d) a pipeline constructed or to be constructed by a public authority;
- (da) a pipeline that is part of a distribution system as defined in the *Energy Coordination Act 1994*;
- (e) a pipeline constructed or to be constructed on land used for residential, business, agricultural, commercial or industrial purposes, designed for use solely for the residential, business, agricultural, commercial or industrial purposes carried on on that land and situated wholly within the boundaries of that land;
- (f) a pipeline or a pipeline of a class declared for the time being under section 5 not to be a pipeline for the purposes of this Act;

**public authority** means —

- (a) a Minister of the Crown acting in his official capacity under an Act;
- (b) a State instrumentality; or
- (c) any body —

- (i) which is established under an Act;
- (ii) which administers or carries out any social service or public utility for the benefit of the State; and
- (iii) which is declared for the time being under section 5 to be a public authority for the purposes of this Act;

**register** means the register referred to in section 43;

**registered holder** in relation to a licence means the person whose name is for the time being shown in the register as being the holder of the licence;

**the Minister for Lands** means the Minister of the Crown to whom the Governor has for the time being committed the administration of the *Land Administration Act 1997*;

**the relinquished area** means in relation to a licence that —

- (a) has expired or been wholly cancelled — the licence area; and
- (b) has been partly cancelled — that part of the licence area on which is situated the part of the pipeline as to which the licence was partly cancelled;

**wholly cancelled** in relation to a licence means cancelled as to the whole of the pipeline the subject of the licence.

- (2) In this Act, a reference —
- (a) to a pipeline on any land, includes a reference to a pipeline in, under, through, across or above the surface of the land;
  - (b) to a pipeline, includes a reference to part of a pipeline;
  - (c) to a licence, includes a reference to a licence as varied under this Act.

*[Section 4 amended by No. 12 of 1990 s. 121; No. 28 of 1994 s. 64; No. 73 of 1994 s. 4; No. 31 of 1997 s. 77(1) and 141; No. 20 of 1999 s. 10(5).]*

**5. Power of Minister to make certain declarations for interpretation purposes**

- (1) The Minister may by order —
- (a) declare —
    - (i) a facility, or a facility of a class, specified in the order to be a pipeline facility;
    - (ii) a pipeline, or a pipeline of a class, specified in the order not to be a pipeline; or
    - (iii) a body which is referred to in paragraph (c) of the definition of “public authority” in section 4(1) and which is specified in the order to be a public authority,for the purposes of this Act; or
  - (b) repeal an order made under this subsection.
- (2) An order made under subsection (1) has legislative effect for the purposes of the definition of “subsidiary legislation” in section 5 of the *Interpretation Act 1984*.
- (3) A declaration of the kind referred to in subsection (1)(a)(i) may be made so as to have retrospective effect.

*[Section 5 inserted by No. 12 of 1990<sup>2</sup> s. 122.]*



## **Part II — Licences and acquisition of land and rights over land**

### **5A. Restriction on operation of this Part**

This Part has effect subject to sections 90 and 92 of the *Gas Pipelines Access (Western Australia) Act 1998*.

*[Section 5A inserted by No. 65 of 1998 s. 89.]*

### **6. Construction etc. of pipelines**

- (1) A person shall not —
  - (a) commence, or continue the construction of a pipeline; or
  - (b) alter or reconstruct a pipeline,except under and in pursuance of a licence.
- (2) A person shall not operate a pipeline —
  - (a) except under and in pursuance of a licence; and
  - (b) unless he has obtained the consent of the Minister under section 36 to the commencement or resumption, as the case may be, of operations and commences or resumes operations in accordance with the conditions, if any, specified in the instrument of consent.
- (3) It is not an offence against this section —
  - (a) if, in an emergency in which there is a likelihood of loss or injury, or for the purpose of maintaining a pipeline in good order and repair, a person does an act to avoid the loss or injury or to maintain the pipeline in good order and repair and —
    - (i) as soon as practicable notifies the Minister of the act done; and
    - (ii) complies with any directions given to him by the Minister;or

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- (b) if a person does an act in compliance with a direction under this Act or the regulations.

Penalty: \$50 000 or imprisonment for 5 years, or both.

*[Section 6 amended by No. 12 of 1990 s. 123.]*

**7. Power of Minister to authorise entry**

- (1) The Minister may, on an application being made to him in that behalf by a person who proposes to apply for a licence, authorise in writing either specially or generally —

- (a) that person to enter, from time to time, during the day time, upon any land within an area specified in the authority; and
- (b) that person to so enter with such assistants and such equipment and materials as he thinks fit,

for the purpose of making surveys and preliminary investigations in respect of the construction of the pipeline to which the licence for which he proposes to apply will relate.

- (2) Any person so authorised may do all things that he considers necessary for the purpose of the survey and investigation, including the drilling or digging of holes and the affixing and setting up of such pegs, marks or poles as may be required.
- (3) Before entry on any land is made for the purposes of this section any person authorised in that behalf under this section, shall, if practicable, give reasonable notice to the owner or occupier of the land of his intention to enter thereon and shall, if required by the owner or occupier, produce the authority under which he claims to enter or has entered on the land.
- (4) Any damage to the land caused by any such person shall be repaired as soon as practicable and the land restored, so far as possible, to its former condition.
- (5) A person who —

- (a) without lawful authority removes, destroys or alters any peg, mark, pole, or other thing used for the purpose of any survey or investigation made or in the course of being made under this section;
- (b) wilfully damages or destroys or otherwise interferes with any such peg, mark, pole or other thing; or
- (c) wilfully obstructs or interferes with any person lawfully engaged in connection with any such survey or investigation,

commits an offence against this Act.

Penalty: \$1 000.

- (6) Every person having any estate or interest in land entered upon under the authority of this section and injuriously affected or suffering any damage thereby, is entitled to full compensation, the amount thereof to be as agreed between the person making the entry and the person claiming compensation, or, failing agreement, to be determined by a court of competent jurisdiction.

*[Section 7 amended by No. 12 of 1990 s. 124.]*

**8. Application for a licence**

- (1) An application for a licence —
  - (a) shall be made in the approved form;
  - (b) shall be made in the approved manner;
  - (c) shall be accompanied by particulars of —
    - (i) the design and construction of the proposed pipeline;
    - (ii) the provisions for cathodic protection of the proposed pipeline;
    - (iii) the size and capacity of the proposed pipeline;

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- (iv) the proposals of the applicant for work and expenditure in respect of the construction of the proposed pipeline;
- (v) the technical qualifications of the applicant and of his employees;
- (vi) the technical advice available to the applicant;
- (vii) the financial resources available to the applicant;
- (d) shall be accompanied by a plan, drawn to an approved scale —
  - (i) showing the route of the proposed pipeline;
  - (ii) showing the situation of any proposed pumping and compression stations, terminal facilities and other permanent appurtenances of a substantial nature intended to be used in connection with the operation of the proposed pipeline;
  - (iii) showing the lands, if any proposed to be used for the purposes of gaining access to the proposed pipeline; and
  - (iv) on which shall be identified the lands or easements over lands referred to in paragraph (f);
- (e) shall be accompanied by particulars of any agreements entered into or proposed to be entered into, by the applicant for the acquisition by him of, or of easements over, the lands shown in the plan, referred to in paragraph (d);
- (f) shall specify, in relation to each part of the proposed pipeline, particulars of the lands, or the easements over lands, acquired or agreed to be acquired, or in respect of which the applicant will need to acquire for the purpose of constructing and operating the proposed pipeline or gaining access thereto;
- (g) shall be accompanied by any agreements entered into, or proposed to be entered into, by the applicant for or in

relation to the supply or conveyance of petroleum by means of the proposed pipeline;

- (h) shall be accompanied by copies of the notifications caused to be served in accordance with the provisions of subsection (3);
  - (i) may set out any other matter that the applicant wishes the Minister to consider; and
  - (j) shall be accompanied by the prescribed application fee.
- (2) The Minister may, at any time, by instrument in writing served on the applicant, require him to furnish to the Minister, within the time specified in the instrument, further information in writing in connection with his application.
- (3) At the time of making the application the applicant —
- (a) shall notify the local government of each district in which any part of the proposed pipeline is intended to be situated, that an application has been made; and
  - (b) shall notify each owner and each occupier, if any, of any land over which any part of the pipeline referred to in the application is to be constructed, that an application has been made.
- (4) The Minister, at the expense of the applicant, shall, as soon as practicable, publish —
- (a) in the *Government Gazette*;
  - (b) in a daily newspaper circulating generally in the State; and
  - (c) in such other newspapers as the Minister considers necessary which circulate in the districts in which the proposed pipeline is intended to be situated,

a notice that he has received the application and that a map showing the proposed route of the pipeline may be examined at the place or places and at the times specified in the notice.

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- (5) The Minister may direct the applicant to inform such other persons as the Minister considers necessary that the application has been made.
- (6) An application and each of the documents accompanying it shall be submitted in quadruplicate.

*[Section 8 amended by No. 12 of 1990 s. 125; No. 28 of 1994 s. 77; No. 14 of 1996 s. 4.]*

**9. Refusal of licence**

- (1) The Minister may refuse an application made under section 8(1), but such an application shall not be refused unless —
  - (a) the Minister has, by instrument in writing served on the applicant, given not less than 90 days' notice of his intention to refuse the application;
  - (b) the Minister has served a copy of the instrument on such other persons, if any, as he thinks fit;
  - (c) the Minister has, in the instrument —
    - (i) given particulars of the reason for the intention; and
    - (ii) specified a date on or before which the applicant or a person on whom a copy of the instrument is served may, by instrument in writing served on the Minister, submit any matters that he wishes the Minister to consider;and
  - (d) the Minister has taken into account particulars of any matters so submitted on or before the specified date.

*[(2) deleted]*

*[Section 9 amended by No. 28 of 1994 s. 65.]*

**10. Grant of licence**

(1) Where —

(a) a person makes an application in accordance with section 8 and the Minister is satisfied that the applicant has made provision or given security to the satisfaction of the Minister for the payment —

(i) of all compensation payable in respect of any land or easement over any land to be taken by compulsory acquisition;

(ii) of all charges and expenses necessary for or incidental to the compulsory acquisition of that land or easement;

and

(b) a period of 28 days has elapsed since the date on which the last of the notifications required to be given by section 8(3) was given,

the Minister may, after taking into consideration any representations made to him with respect to the proposed pipeline, and in particular the matters referred to in subsection (2), grant to the applicant a licence in respect of the proposed pipeline and cause to be published in the *Government Gazette* a notice that the licence has been granted.

(2) In considering any such application the Minister shall generally have regard to —

(a) the public interest;

(b) the financial ability of the applicant to construct, operate and maintain the proposed pipeline;

(c) whether the construction of the proposed pipeline on the lands specified in the application would contravene any planning scheme under the *Planning and Development Act 2005*; and

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- (d) whether the construction and operation of the proposed pipeline on the lands specified in the application would be unsuitable by reason of the proposed pipeline being likely to interfere unnecessarily with improvements, improved land, flora, fauna or scenic attractions or for any other reason that the Minister thinks sufficient.

*[Section 10 amended by No. 28 of 1994 s. 66; No. 38 of 2005 s. 15.]*

*[10A. Deleted by No. 52 of 1995 s. 43.]*

**11. Renewal of licence**

- (1) A licensee may from time to time make an application for the renewal of the licence.
- (2) An application for the renewal of a licence —
- (a) shall, subject to subsection (3), be made not less than 6 months before the day the licence ceases to be in force;
  - (b) shall be made in the approved form;
  - (c) shall be made in the approved manner; and
  - (d) shall be accompanied by the prescribed fee.
- (3) The Minister may, for reasons he thinks sufficient, receive an application for the renewal of a licence less than 6 months before it ceases to be in force, but not in any case after, the day on which the licence ceases to be in force.
- (4) An application for the renewal of a licence shall be submitted in quadruplicate.
- (5) The Minister may refuse an application for the renewal of a licence but such an application shall not be refused unless —
- (a) the Minister has, by instrument in writing served on the licensee, given not less than 90 days' notice of his intention to refuse the application;



- (b) the Minister has served a copy of the instrument on such other persons, if any, as he thinks fit;
  - (c) the Minister has in the instrument —
    - (i) given particulars of the reasons for the intention; and
    - (ii) specified a date on or before which the licensee or a person on whom a copy of the instrument is served may, by instrument in writing served on the Minister, submit any matters that he wishes the Minister to consider;
- and
- (d) the Minister has taken into account particulars of any matters submitted to him on or before the specified date.

*[(6) deleted]*

(7) Where —

- (a) an application for the renewal of a licence is made under this section; and
- (b) the licence ceases to be in force before the application is granted or refused,

the licence shall be deemed to continue in force in all respects until the application is granted or refused.

*[Section 11 amended by No. 28 of 1994 s. 67 and 77.]*

## **12. Conditions of licence**

- (1) A licence may be granted subject to such conditions as the Minister thinks fit and specifies in the licence.
- (2) The conditions referred to in subsection (1) may include a condition that the licensee shall complete the construction of, and commence to operate, the pipeline within the period specified in the licence.

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- (3) Subject to subsection (4), the licence is subject to a condition that the licensee shall not commence or cause to be commenced the construction of the proposed pipeline specified therein over any part of the licence area unless he has first acquired all the lands in that part of the licence area or a lease, licence or other authority over the lands and acquired and registered all such easements over those lands as are necessary for him to lawfully construct that pipeline over those lands or part thereof and to have the right of access thereto.
- (4) Where the Minister is satisfied that the licensee has acquired any such easement and is unable to register it, through circumstances beyond his control, the licensee, with the prior consent in writing of the Minister, may, pending the registration of the easement, commence or cause to be commenced the construction of the proposed pipeline over the land to which the easement relates, on such terms and conditions relating to the registration of the easement as the Minister thinks fit and specifies in the instrument of consent.

*[Section 12 amended by No. 42 of 1970 s. 2; No. 10 of 1983 s. 3; No. 12 of 1990 s. 126; No. 28 of 1994 s. 68.]*

**13. Security**

- (1) A security referred to in section 10 —
  - (a) shall be given in such manner and form as are approved by the Minister; and
  - (b) may, subject to that approval, be by cash deposit or other such method as the Minister allows or partly by cash deposit and partly by such other method as the Minister allows.
- (2) A security given in accordance with a form approved by the Minister, although it is not sealed, binds the person subscribing to it as if it were sealed.
- (3) Whenever a security referred to in section 10 is put in suit, the production of the security without further proof entitles the

Minister to judgment against the person appearing to have executed the security, for the amount of his stated liability or for such lesser amount as is claimed, unless that person proves compliance with the conditions of the security or that the security was not executed by him or release or satisfaction.

- (4) If it appears to the court that a noncompliance with a condition of a security under this Act has occurred, the security shall not be deemed to have been discharged or invalidated and the subscriber shall not be deemed to have been released or discharged from liability, by reason of —
- (a) any extension of time or other concession;
  - (b) any consent to, or acquiescence in, a previous noncompliance with a condition; or
  - (c) any failure to bring suit against the subscriber upon the occurrence of a previous noncompliance with the condition.
- (5) If there are several subscribers to the security, they are bound, unless the security otherwise provides, jointly and severally and for the full amount.
- (6) A security referred to in section 10 may be sued on if the subscriber fails to make any payment referred to in section 10(1).

*[Section 13 amended by No. 28 of 1994 s. 69.]*

**14. Term and form of licence**

- (1) A licence —
- (a) not being a renewal of a licence, comes into force on the day specified for the purpose in the licence; and
  - (b) being a renewal of a licence, comes into force on the day after the day on which the last previous licence in respect of the same pipeline ceases to be in force,

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and subject to this Act, remains in force for such period commencing on that day and not exceeding 21 years as may be specified in the licence.

- (2) A licence shall be in the form approved.

*[Section 14 amended by No. 28 of 1994 s. 77.]*

**15. Variation of licence on application by licensee**

- (1) A licensee may, at any time, by instrument in writing served on the Minister, apply for the variation of a licence other than a variation with respect to the licence area.

- (2) An application under this section —

- (a) shall be in the approved form;
- (b) shall be accompanied by particulars of the proposed variation;
- (c) shall specify the reasons for the proposed variation; and
- (d) shall be accompanied by the prescribed fee.

- (3) The Minister may, at any time, by notice in writing served on a person who has made an application under this section, require him to furnish within a time specified in the notice further information in connection with his application.

- (4) The Minister may —

- (a) give notice of an application under this section to such persons, if any, as he thinks fit; and
- (b) specify a period within which each person to whom notice is so given may submit to the Minister in writing any matters that he wishes to be considered in connection with the application.

- (5) After considering particulars of any matters submitted to him under subsection (4), the Minister may vary the licence to such extent as he thinks necessary or may refuse to vary the licence.

*[Section 15 amended by No. 28 of 1994 s. 77.]*

**16. Power of Governor to grant easements etc. over Crown land**

Notwithstanding anything to the contrary contained in any Act or in any licence, proclamation, reservation, declaration or dedication of or with respect to any unalienated Crown land, the Governor, on the recommendation of the Minister for Lands, may, upon such terms and conditions, and subject to the payment of such fee as the Governor thinks fit, grant to a licensee any lease, easement, licence or other authority necessary or expedient to enable the licensee —

- (a) to construct the pipeline specified in the licensee's licence over any such Crown land; and
- (b) to operate, inspect, maintain and repair that pipeline.

**17. Power of public authority to grant easements etc.**

Notwithstanding anything contained to the contrary in any Act or rule of law or its constitution, any public authority may, upon such terms and conditions as are agreed upon by such authority and a licensee, and if the Governor so determines shall, upon such terms and conditions as the Governor may impose, grant to the licensee a lease, easement, licence or other authority of the kind referred to in section 16 of or over —

- (a) any land vested in or owned by the public authority; or
- (b) any land under the care and management of the public authority,

necessary or expedient to enable the licensee —

- (c) to construct the pipeline specified in the licensee's licence; and
- (d) to operate, inspect, maintain and repair that pipeline.

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**18. Authority to make arrangements and agreements for easements**

- (1) For the purposes of exercising the authority conferred on him by a licence, the licensee may —
  - (a) make such arrangements and enter into such contracts not inconsistent with this Act or with the licence as he considers necessary;
  - (b) agree with the owner of an estate or interest in land for the purchase or other acquisition of any right, interest or easement in or upon the land, and the terms upon which any such right or interest may be used or exercised or any such easement enjoyed.
- (2) Notwithstanding any Act or rule of law to the contrary, any company, body or authority has power to enter into and carry out any arrangement, contract or agreement referred to in subsection (1).

**19. Taking of land or easement over land for the purposes of or incidental to construction or operation of pipeline**

- (1) Subject to subsection (2), for the purpose of carrying out any function authorised by a licence or any other function necessary for the efficient operation of the pipeline in respect of which the licence is granted or necessarily incidental to the operation of the pipeline, the Minister may, on the application of the licensee and at his expense in all things, take under Part 9 of the *Land Administration Act 1997*, as if for a public work within the meaning of the *Public Works Act 1902*, any land or any easement over any land whether for the time being subsisting or not.
- (2) Subsection (1) does not apply unless the Minister is satisfied that the licensee, after making reasonable attempts to do so, has been unable to acquire the land or easement over the land by agreement with the owner thereof.

- (3) For the purposes of giving effect to this section —
- (a) the word **land** in Part 9 of the *Land Administration Act 1997* shall be construed as including an easement over land;
  - (b) on the taking of the land or easement over the land under this section, the land or easement, as the case may be, shall vest in the licensee and all proceedings subsequent thereto in respect of compensation, or otherwise for the purpose of complying with Parts 9 and 10 of the *Land Administration Act 1997*, shall be taken against the licensee, who shall be deemed to be the respondent and shall be liable in respect of the taking to the same extent as the Minister administering that Act would have been liable if the taking had been for the purpose of a public work.
- (4) Where an easement is acquired or taken over any land pursuant to this Act a description of the easement and a notification that it has been so taken, together with a plan showing the location of the easement over that land, shall, if the easement is over land —
- (a) that is under the operation of the *Transfer of Land Act 1893* or *Land Administration Act 1997*, be sent by the licensee to the Registrar of Titles, who shall duly record on the document of title relating to the land a statement or entry thereof; or
  - (b) that is not under the operation of that Act, be sent by the licensee to the Registrar of Deeds, who shall, by memorial in the Register of Deeds, duly record the notification of the easement.

[Section 19 amended by No. 31 of 1997 s. 77(2)-(4) and 142.]

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**20. Application of s. 195 of the *Land Administration Act 1997* to easements for pipelines etc.**

- (1) The provisions of section 195 of the *Land Administration Act 1997* apply to and in respect of easements in favour of a licensee acquired under any of the provisions of this Act for the purpose of the construction, maintenance and use of pipelines, for any purpose incidental to any such purpose, and for the purpose of access to pipelines in the same manner as they apply to easements in favour of the Crown.
- (2) For the purposes of subsection (1), an instrument does not create an easement in favour of, or operate to transfer an easement to, a licensee unless —
  - (a) it is expressed to create the easement in favour of, or to transfer the easement to, a licensee; and
  - (b) it bears a certificate by the Minister to that effect.
- (3) Where a licence —
  - (a) expires;
  - (b) is surrendered as to the whole or a part of the pipeline in respect of which it is in force;
  - (c) is cancelled as to the whole or a part of the pipeline in respect of which it is in force,the Minister shall notify in writing forthwith the Registrar of Titles or the Registrar of Deeds of the fact, according to whether the licence area or the part thereof on which is situated the whole or part of the pipeline as to which the licence has expired or was wholly or partly surrendered or cancelled —
  - (d) is under the operation of the *Transfer of Land Act 1893* or the *Land Administration Act 1997*; or
  - (e) is alienated from the Crown but is not under the operation of the *Transfer of Land Act 1893*.
- (4) On receipt of the notification pursuant to subsection (3), the Registrar of Titles or Registrar of Deeds, as the case may be,



shall duly record the notification or cause it to be recorded; and thereupon any easement that has been recorded under section 19(4) over the licence area or the part thereof to which the notification relates, is, by force of this Act, extinguished and no compensation is payable in respect thereof.

- (5)(a) Where a transfer of a licence is registered under section 44, the Minister shall notify forthwith in writing the Registrar of Titles or Registrar of Deeds.
- (b) Upon receipt of such notification the Registrar of Titles or Registrar of Deeds shall duly record on the document of title, in the Register of Deeds or in the appropriate register, as the case requires, that any easement that has been recorded under section 19(4) thereon or therein over the licence area or part thereof, has been transferred to the registered holder and thereupon, by force of this Act, the easement vests in the registered holder.
- (6)(a) Any person in possession of any deed, certificate or other instrument evidencing the title to any land over which any such easement as is referred to in subsection (4) is registered shall, upon receiving notice from the Registrar of Titles or Registrar of Deeds, deliver up to him such deed, certificate or instrument for the purpose of recording the extinguishment of the easement or the vesting of it in the registered holder, pursuant to this section, as the case may require.
- (b) A person who fails to so deliver up any such deed, certificate or instrument after receiving a notice to do so is guilty of an offence against this Act.
- Penalty: \$500.

*[Section 20 amended by No. 12 of 1990 s. 127; No. 31 of 1997 s. 77(5)-(8).]*

**21. Directions as to the conveyance of petroleum**

(1) Where —

- (a) a person, by instrument in writing served on a licensee, requests the licensee to enter into an agreement for the conveyance of petroleum through the pipeline specified in that licensee's licence; and
- (b) that person and the licensee do not, within a period of 3 months after the instrument is served on the licensee, enter into such an agreement,

that person may apply to the Minister for a direction under this section.

(2) An application under this section —

- (a) shall be in the approved form;
- (b) shall be made in the approved manner; and
- (c) shall set out the matters that the applicant wishes the Minister to consider in relation to the application.

(3) The Minister —

- (a) shall serve notice of the application on the licensee;
- (b) may serve notice of the application on such other persons, if any, as he thinks fit; and
- (c) shall specify in any such notice a date on or before which the licensee or any other person on whom a notice is served may submit to the Minister in writing any matters that he wishes the Minister to consider in connection with the application.

(4) After considering any matters submitted to him under subsection (3) on or before the specified date and such matters as he thinks relevant, the Minister, by an instrument in writing served on the licensee and the applicant —

- (a) may give to the licensee, to the applicant and to any other person lawfully entitled to use the pipeline, such

directions as he thinks appropriate for or in relation to the use of the pipeline by the licensee, the applicant and any such other person; or

- (b) may refuse the application.
- (5) Without limiting the generality of subsection (4), directions under paragraph (a) of that subsection may include directions as to the amounts to be paid to the licensee by the applicant and any other person lawfully entitled to use the pipeline but any such direction shall be subject to the licensee's right to convey its own petroleum through the pipeline in priority to any other petroleum to be so conveyed.
- (6) A person to whom a direction is given under subsection (4) shall comply with the direction.  
Penalty: \$10 000.
- (7) This section does not apply to a Code pipeline within the meaning of the Gas Pipelines Access (Western Australia) Law for which there is an approved Access Arrangement under that Law.

*[Section 21 amended by No. 12 of 1990 s. 128; No. 28 of 1994 s. 77; No. 65 of 1998 s. 89.]*

## **22. Exemptions**

- (1) Where —
- (a) a licence is, under this Act, to be deemed to continue in force until the Minister grants, or refuses to grant, the renewal of the licence;
  - (b) a licence is varied under section 15;
  - (c) a licensee enters into an agreement referred to in section 21;
  - (d) a licence is cancelled as to part of the pipeline in respect of which it is in force;

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- (e) a licensee applies by instrument in writing served on the Minister, for a variation or suspension of, or exemption from compliance with, any of the conditions to which the licence is subject; or
- (f) the Minister, under this Act or the regulations, gives a direction or consent to a licensee,

the Minister may, at any time, by instrument in writing served on the licensee, vary or suspend, or exempt the licensee from compliance with, any of the conditions to which the licence is subject, upon such conditions, if any, as the Minister determines and specifies in the instrument.

- (1a) Subsection (1)(c) does not apply to the licensee under a licence in respect of a Code pipeline within the meaning of the Gas Pipelines Access (Western Australia) Law for which there is an approved Access Arrangement under that Law.
- (2) Nothing in subsection (1) empowers the Minister to alter the term of a licence.

*[Section 22 amended by No. 65 of 1998 s. 89.]*

**23. Surrender of licence**

- (1) A licensee may, at any time, by instrument in writing served on the Minister, apply for consent to surrender his licence as to the whole or a part of the pipeline in respect of which it is in force.
- (2) Subject to subsection (3), a consent, under subsection (1), to the surrender of a licence shall not be given unless the licensee —
  - (a) has paid all amounts payable by him under this Act or has made arrangements which are satisfactory to the Minister for the payment of those amounts;
  - (b) has complied with the conditions to which the licence is subject and with the provisions of this Act and of the regulations;

- (c) has, where the Minister, by an instrument in writing served on the licensee, has required him to do so, caused to be published in such newspapers as may be specified in the instrument, notice of the licensee's intention to apply for consent to surrender the licence as to the whole or a part of the pipeline in respect of which it is in force and has in that notice specified a date not being earlier than one month after publication of the notice on or before which any person having an interest in any land in the licence area may, by instrument in writing served on the Minister, submit any matters that he wishes to be considered in connection with the application for the consent; and
  - (d) has, to the extent that he is required to do so by the Minister and to the satisfaction of the Minister, removed or caused to be removed from the area to which the surrender relates, property brought into that area by any person engaged or concerned in the operations authorised by the licence, or has made arrangements that are satisfactory to the Minister for the removal or disposal of that property.
- (3) Where a licensee has not complied with the conditions to which the licence is subject and with the provisions of this Act and of the regulations, the Minister may give his consent to the surrender of a licence under subsection (1) if he is satisfied that, although the licensee has not so complied, special circumstances exist that justify the giving of consent to the surrender.
- (4) Where the Minister consents to an application under subsection (1), the applicant may, by instrument in writing served on the Minister, surrender the licence accordingly.

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**24. Cancellation of licences for breach of conditions, the Act or regulations or non-payment of amounts due**

- (1) Where a licensee —
- (a) has not complied with a condition to which the licence is subject;
  - (b) has not complied with a provision of this Act or of the regulations; or
  - (c) has not paid any amount payable by him under this Act within a period of 3 months after the day on which the amount became payable,

the Minister may, on that ground, by instrument in writing served on the licensee, cancel the licence as to the whole or a part of the pipeline in respect of which it is in force.

- (2) A licence shall not, under subsection (1), be cancelled as mentioned in that subsection on a ground referred to in that subsection unless —
- (a) the Minister has, by instrument in writing served on the licensee, given not less than one month's notice of his intention so to cancel the licence on that ground;
  - (b) the Minister has served a copy of the instrument on such other persons, if any, as he thinks fit;
  - (c) the Minister has, in the instrument, specified a date on or before which the licensee or any person on whom a copy of the instrument is served may, by instrument in writing served on the Minister, submit any matters that he wishes to be considered in connection with the cancellation of the licence;
  - (d) the Minister has caused to be published in such newspapers as he thinks fit, notice of his intention so to cancel the licence on that ground and has, in that notice, specified a date on or before which any person having an interest in any land in the licence area may submit any

matters that he wishes to be considered in connection with the cancellation of the licence; and

- (e) the Minister has taken into account —
  - (i) any action taken by the licensee to remove that ground or to prevent the recurrence of similar grounds; and
  - (ii) particulars of any matters submitted under paragraph (c) on or before the date specified under that paragraph or under paragraph (d) on or before the date specified under that paragraph.

**25. Change in position or route of pipeline**

- (1) The Minister may —
  - (a) at the request of —
    - (i) a Minister or a Minister of State of the Commonwealth; or
    - (ii) a body established by a law of the State or of the Commonwealth;
  - and
  - (b) if, in his opinion, it is in the public interest so to do and the Minister or body making the request has given security, to the satisfaction of the Minister, for the payment of any amount payable to a licensee under subsection (5),

by instrument in writing served on the licensee, direct the licensee to make such changes in the route or position of the licensee's pipeline as are specified in the instrument.

- (2) A person to whom a direction is given under subsection (1) shall comply with the direction.

Penalty: \$50 000 or imprisonment for 5 years, or both.

- (3) Where the Minister gives a direction under subsection (1) and the licensee to whom the direction is given complies with the

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direction, the licensee may bring an action in the Supreme Court against the Minister or body making the request.

- (4) The Supreme Court shall hear the action and shall determine whether it is just that the whole or a portion of the reasonable cost of complying with the direction ought to be paid to the plaintiff by the defendant.
- (5) If the Supreme Court determines that it is just that such a payment ought to be made, the Supreme Court shall determine the amount of the payment and give judgment accordingly.

*[Section 25 amended by No. 12 of 1990 s. 129.]*

**26. Cancellation of licences not affected by other provisions**

- (1) A licence may be wholly cancelled or partly cancelled on the ground that the licensee has not complied with a provision of this Act or of the regulations notwithstanding that he has been convicted of an offence by reason of his failure to comply with the provision.
- (2) A person who was the registered holder of a licence that has been wholly cancelled, or is the registered holder of a licence that has been partly cancelled, on the ground that he has not complied with a provision of this Act or of the regulations, may be convicted of an offence by reason of his failure to comply with the provision, notwithstanding that the licence has been so cancelled.
- (3) A licence may be wholly cancelled or partly cancelled on the ground that the licensee has not paid an amount payable by him under this Act within a period of 3 months after the day on which the amount became payable, notwithstanding that judgment for the amount has been obtained or that the amount, or any part of the amount, has been paid or recovered.
- (4) A person who was the registered holder of a licence that has been wholly cancelled, or is the registered holder of a licence that has been partly cancelled on the ground that he has not paid



an amount payable by him under this Act within a period of 3 months after the day on which the amount became payable, continues to be liable to pay that amount together with any additional amount payable by reason of late payment of that amount, notwithstanding that the licence has been so cancelled.

**27. Removal of property etc. by licensee**

- (1) Where a licence has been wholly cancelled or partly cancelled, or has expired, the Minister may, by instrument in writing served on the person who was, or is, as the case may be, the licensee, direct that person to do either or both of the following things —
  - (a) remove or cause to be removed from the relinquished area all property, or any property specified in the instrument, that was brought into that area by any person engaged or concerned in the operations authorised by the licence or make arrangements that are satisfactory to the Minister for the removal or disposal of that property and to make good, to the satisfaction of the Minister, any damage to the relinquished area caused by the removal of the property; and
  - (b) make good, to the satisfaction of the Minister, any damage to the relinquished area caused by any person engaged or concerned in those operations or caused by the removal of any property, pursuant to a direction referred to in paragraph (a), otherwise than in the manner specified in the direction.
- (2) The Minister may, by instrument in writing served on a licensee, direct him to do either or both of the following things —
  - (a) remove or cause to be removed from the licence area all property or any property specified in the instrument, that was brought into that area by any person engaged or concerned in the operations authorised by the licence or make arrangements that are satisfactory to the Minister for the removal or disposal of that property and to make

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good, to the satisfaction of the Minister, any damage to the licence area caused by the removal of the property; and

- (b) make good, to the satisfaction of the Minister, any damage to the licence area caused by any person engaged or concerned in those operations or caused by the removal of any property, pursuant to a direction referred to in paragraph (a), otherwise than in the manner specified in the direction.
- (3) A direction under subsection (1)(a) or (2)(a) may specify the manner in which the property, or any of the property specified in the direction, shall be removed.
- (4) A person to whom a direction is given under either subsection (1) or (2) shall comply with the direction —
- (a) in the case of a direction given under subsection (1) — within the period specified in the instrument by which the direction was given; or
  - (b) in the case of a direction given under subsection (2) — on or before the date of expiration of the licence.

Penalty: \$10 000.

*[Section 27 amended by No. 12 of 1990 s. 130.]*

**28. Powers of Minister where direction not complied with**

- (1) Where a licence has been wholly cancelled or partly cancelled, or has expired, and —
- (a) a direction referred to in section 27(1)(a) or (2)(a) for the removal of property from the relinquished area has not been complied with, the Minister may, by instrument published in the *Government Gazette*, direct that the owner or owners of the property shall remove it from that area within the period specified in the instrument and shall serve a copy of the instrument on each person

- whom he believes to be an owner of that property or part of that property;
- (b) a direction referred to in section 27(1)(a) or (2)(a) for the removal of property from the relinquished area has been complied with, but any damage to the relinquished area or to the licence area, as the case may be, caused by the removal of the property has not been made good to the satisfaction of the Minister, the Minister may make good the damage in such manner as he thinks fit; or
  - (c) a direction referred to in section 27(1)(b) or (2)(b) has not been complied with, the Minister may do all or any of the things required by the direction to be done.
- (2) Where any property has not been removed from the relinquished area in accordance with a direction under subsection (1)(a), the Minister may do all or any of the following things —
- (a) remove, in such manner as he thinks fit, all or any of that property from the relinquished area concerned;
  - (b) dispose of, in such a manner as he thinks fit, all or any of that property; and
  - (c) if he has served a copy of the instrument by which the direction was given on a person whom he believed to be the owner of that property or part of that property, sell, by public auction or otherwise, as he thinks fit, all or any part of that property that belongs, or that he believes to belong, to that person.
- (3) The Minister may deduct from the proceeds of a sale under subsection (2) of property that belongs, or that he believes to belong, to a particular person —
- (a) all or any part of any costs and expenses incurred by him under that subsection in relation to that property;
  - (b) all or any part of any costs and expenses incurred by him in relation to the doing of any thing required by a direction under section 27(1)(b) or (2)(b) to be done by that person;

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- (c) all or any part of any fees or amounts due and payable under this Act by that person.
- (4) Costs and expenses incurred by the Minister under subsection (2) —
  - (a) if incurred in relation to the removal, disposal or sale of property or the making good of damage caused by the removal of property, are a debt due by the owner of the property to the Crown; or
  - (b) if incurred in relation to the doing of any thing required by a direction under section 27(1)(b) or (2)(b), are a debt due by the person to whom the direction was given to the Crown,

and, to the extent to which they are not recovered under subsection (3), are recoverable in a court of competent jurisdiction.

- (5) Subject to subsection (4), no action lies in respect of the removal, disposal or sale of property under this section.

**29. Licence fees**

- (1) There is payable to the Minister by a licensee, in respect of each year of the term of a licence, a licence fee of the prescribed amount in respect of each kilometre or portion of a kilometre of the length of the pipeline on the first day of that year.
- (2) A fee referred to in subsection (1) is payable within one month after —
  - (a) in the case of the first year of the term of the licence the day on which that term commenced; and
  - (b) in the case of a year of the term of a licence other than the first — the anniversary of that day.

*[Section 29 amended by No. 94 of 1972 s. 4 (as amended by No. 42 of 1975); No. 10 of 1983 s. 4; No. 12 of 1990 s. 131.]*

**30. Penalty for late payment**

Where the liability of a licensee to pay a fee referred to in section 29 is not discharged at or before the time when the fee is payable, there is payable to the Minister by the licensee an additional amount calculated at the rate of one-third of 1% per day upon the amount of the fee from time to time when the fee became payable until it is paid.

**31. Fees and penalties debts due to the Crown**

A fee under section 29, or an amount payable under section 30, is a debt due by the licensee to the Crown and is recoverable in a court of competent jurisdiction.

**32. Certain written laws not to apply to licensed pipelines**

The provisions of —

- (a) local laws made under the *Local Government Act 1995* in relation to —
  - (i) the keeping, carrying, handling and storage of dangerous things; or
  - (ii) the use, management and maintenance of thoroughfares;
- (b) the *Dangerous Goods Safety Act 2004*,

do not apply to or in respect of a pipeline the construction or operation of which is authorised by a licence.

*[Section 32 inserted by No. 12 of 1990 s. 132; amended by No. 14 of 1996 s. 4; No. 7 of 2004 s. 70.]*

*[Part IIA (s. 32A-32H) deleted by No. 52 of 1995 s. 44.]*

## **Part III — Construction and operation of pipeline**

### **33. Construction to be along authorised route**

A pipeline shall be constructed along the route authorised in the licence in respect of that pipeline, subject to deviation from that route within the limits of lateral deviation authorised by the Minister.

### **34. Construction to be in accordance with prescribed standards etc.**

- (1) Notwithstanding any other requirements in this Part, a pipeline shall be constructed in accordance with such standards, specifications and conditions as are prescribed and such further standards, specifications and conditions as are stated or included in the licence in respect of that pipeline.
- (2) Where there is conflict between any standard or specification as prescribed and a standard or specification stated or included in the licence in respect of a pipeline, the latter prevails.

### **35. Ceasing to operate pipeline**

- (1) Except with the consent in writing of the Minister and subject to compliance with such conditions, if any, as are specified in the instrument of consent, a licensee shall operate continuously the pipeline specified in his licence.

Penalty: \$50 000 or imprisonment for 5 years, or both.

- (2) It is not an offence against subsection (1) if the failure of the licensee to operate the pipeline continuously —
  - (a) was in the ordinary course of operating the pipeline;
  - (b) was for the purpose of repairing or maintaining the pipeline; or
  - (c) was in an emergency in which there was a likelihood of loss or injury.

*[Section 35 amended by No. 12 of 1990 s. 133.]*

**36. Consent to commencement or resumption of pipeline operations**

- (1) The Minister, on application in writing served on him —
- (a) by a licensee whose pipeline has not previously been in operation; or
  - (b) by a licensee who has ceased to operate the pipeline specified in his licence,

may, if he is of the opinion that the pipeline may be operated with safety, by instrument in writing served on the licensee, consent to the commencement or resumption, as the case may be, of operations.

- (2) A consent under subsection (1) may be given subject to such conditions, if any, as the Minister thinks fit and specifies in the instrument of consent.

**36A. Work practices**

A licensee shall operate the pipeline specified in the licence of which he is the registered holder in a proper and workmanlike manner and shall secure the safety, health and welfare of persons engaged in operations in connection with the pipeline.  
Penalty: \$10 000.

*[Section 36A inserted by No. 28 of 1994 s. 70.]*

**37. Waste or escape of substances from pipeline**

A licensee shall not permit or suffer the waste or escape of any substance from the pipeline specified in the licence of which he is the registered holder.

Penalty: \$10 000.

*[Section 37 amended by No. 12 of 1990 s. 134.]*

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**37A. Conditions relating to insurance**

- (1) A licensee must maintain, as directed by the Minister from time to time, insurance against expenses or liabilities or specified things arising in connection with, or as a result of, the carrying out of work, or the doing of any other thing, under the licence, including expenses of complying with directions with respect to the clean-up or other remedying of the effects of the escape of petroleum.
- (2) Where —
  - (a) a licence was in force immediately before the commencement of section 71 of the *Acts Amendment (Petroleum) Act 1994*<sup>1</sup>;
  - (b) the Minister has required the registered holder to maintain insurance under subsection (1); and
  - (c) the Minister is satisfied that the required insurance is in effect,

the Minister shall issue a certificate to the effect that he is so satisfied.

- (3) Where the Minister issues a certificate under subsection (2), any security in force in relation to the licence, being a security that was required under this Act before the commencement of section 71 of the *Acts Amendment (Petroleum) Act 1994*<sup>1</sup>, is discharged.
- (4) The discharge of a security under subsection (3) has no effect on any liability arising under or in relation to the security before its discharge.

*[Section 37A inserted by No. 28 of 1994 s. 71.]*

**38. Marking route of pipeline and maintenance etc. of property**

A licensee —



- (a) shall mark and keep marked in such manner as may be approved, the route of the pipeline specified in the licence of which he is the registered holder;
- (b) shall maintain the pipeline in good condition and repair; and
- (c) shall remove from the licence area all structures, equipment and other property that are neither being used nor will be used in connection with the operation of the pipeline.

Penalty: \$10 000.

*[Section 38 amended by No. 12 of 1990 s. 135; No. 28 of 1994 s. 77.]*

**39. Where pipeline crosses agricultural land**

- (1) Where a pipeline enters or crosses agricultural land the licensee shall, at his expense, forthwith after the completion of the construction of that part of the pipeline that so enters or crosses, restore the land to enable it to be used as far as practicable for the purposes for which it was used immediately before that construction.
- (2) Where the licensee fails to restore the land, as required by subsection (1), a person entitled to an interest in the land may restore the land and recover from the licensee in any court of competent jurisdiction the expenses reasonably incurred in carrying out that restoration.
- (3) Any expenses so recovered do not affect any right to compensation that such person as is referred to in subsection (2) or any other person may have under this Act, in respect of that land.
- (4) The Minister may, at any time on the request of a person entitled to an interest in the land, include among the conditions of the licence such conditions as he considers necessary to

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ensure that the land is maintained in a suitable condition and that noxious weeds and vermin are controlled.

**40. Where route of pipeline crosses any water**

Where the route of a pipeline is such that the pipeline passes over or under any waters, the pipeline shall be constructed over or under those waters in such a manner —

- (a) that the construction will not affect or impede anything or anyone reasonably using those waters;  
and
- (b) that all reasonable steps are taken to avoid pollution of those waters.

Penalty: \$10 000.

*[Section 40 amended by No. 12 of 1990 s. 136.]*

**41. Directions**

- (1) The Minister may, by instrument in writing served on a licensee, give to the licensee direction as to any matter with respect to which regulations may be made under this Act.
- (2) A direction given under this section to a licensee applies to the licensee and may also be expressed to apply to —
  - (a) a class of persons specified in the direction, being a class constituted by or included in one or both of the following classes of persons —
    - (i) servants or agents of, or persons acting on behalf of, the licensee;
    - (ii) persons performing work or services, whether directly or indirectly, for the licensee;
  - or
  - (b) any person (not being a person to whom the direction applies otherwise than in accordance with this paragraph) who is in the State for any reason touching,

concerning, arising out of or connected with the construction, operation or maintenance of a pipeline, or is in, on, above, below or in the vicinity of a vessel, aircraft, structure or installation, or equipment or other property, that is in the State for a reason of that kind,

and, where a direction so expressed is given, the direction shall be deemed to apply to each person included in that specified class or to each person who is in the State as mentioned in paragraph (b), as the case may be.

- (3) Where a direction under this section applies to a licensee and to a person referred in subsection (2)(a), the licensee shall cause a copy of the instrument by which the direction was given to be given to that other person or to be exhibited at a prominent position at a place in the State frequented by that other person.  
Penalty: \$5 000.
- (4) Where a direction under this section applies to a licensee and to a person referred to in subsection (2)(b), the licensee shall cause a copy of the instrument by which the direction was given to be exhibited at a prominent position at a place in the State.  
Penalty: \$5 000.
- (5) Where a direction under this section applies to a licensee and to a person referred to in subsection (2)(b), the Minister may, by notice in writing given to the licensee, require the licensee to cause to be displayed at such places in the State, and in such manner, as are specified in the notice, copies of the instrument by which the direction was given, and the licensee shall comply with that requirement.  
Penalty: \$5 000.
- (6) A direction under this section has effect and shall be complied with notwithstanding any previous direction under this section.
- (7) Section 67(1a) and (1b) applies in relation to directions made under this section in like manner as that section applies to the regulations.

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- (8) A direction under this section has effect and shall be complied with notwithstanding anything in the regulations.
- (9) A person to whom a direction is given, or to whom a direction is expressed to apply, shall comply with the direction.

Penalty: \$10 000.

- (10) Where —
- (a) a direction given under this section applies to a licensee and another person and that other person is prosecuted for an offence against subsection (9) in relation to that direction; and
- (b) the person adduces evidence that the person did not know, and could not reasonably be expected to have known, of the existence of the direction,

the person shall not be convicted of the offence unless the prosecutor proves that the person knew, or could reasonably be expected to have known, of the existence of the direction.

*[Section 41 amended by No. 12 of 1990 s. 137; No. 28 of 1994 s. 72.]*

**42. Compliance with directions**

- (1) Where a person does not comply with a direction given or applicable to the person under this Act or the regulations the Minister may do all or any of the things required by the direction to be done.
- (2) Costs and expenses incurred by the Minister under subsection (1) in relation to a direction are a debt due by the person to whom the direction was given or was applicable to the State and are recoverable in a court of competent jurisdiction.
- (3) Where —
- (a) a direction given under section 41 applies to a licensee and another person and an action under subsection (2)

relating to the direction is brought against that other person; and

- (b) the person adduces evidence that the person did not know, and could not reasonably be expected to have known, of the existence of the direction,

the person is not liable under subsection (2) unless the plaintiff proves that the person knew, or could reasonably be expected to have known, of the existence of the direction.

- (4) It is a defence if a person charged with failing to comply with a direction given or applicable to the person under this Act or under the regulations, or a defendant in an action under subsection (2), proves that that person took all reasonable steps to comply with the direction.

*[Section 42 inserted by No. 28 of 1994 s. 73.]*

## **Part IV — Registration of licences and related instruments**

### **43. Register of licences to be kept**

- (1) For the purposes of this Part, the Minister shall keep a register of licences.
- (2) The Minister shall enter or cause to be entered in the register a memorial in respect of each licence —
  - (a) specifying the name of the holder of the licence;
  - (b) setting out an accurate description (including a map) of the licence area, the route of the pipeline authorised by the licence and the situation of any fittings, pumps, tanks, storage tanks, appurtenances and appliances and facilities referred to in the definition of “pipeline” in section 4(1) used or to be used in connection with the pipeline;
  - (c) specifying the term of the licence;
  - (d) setting out such other matters as are required by this Part to be entered in the register; and
  - (e) setting out such further matters relating to the licensee or to the terms and conditions of the licence as the Minister thinks proper and expedient in the public interest.
- (3) The Minister shall cause to be entered in the register a memorial —
  - (a) of any instrument varying, cancelling, surrendering or otherwise affecting a licence;
  - (b) of any instrument varying or revoking an instrument referred to in paragraph (a); and
  - (c) of the expiration of a licence.
- (4) It is a sufficient compliance with the requirements of subsection (2) or (3) if the Minister causes a copy of the licence or instrument to be entered in the register.

*[(5) deleted]*

- (6) The Minister shall endorse on the memorial or copy of the licence or instrument a memorandum of the date upon which the memorial or copy was entered in the register.

*[Section 43 amended by No. 12 of 1990 s. 138.]*

**44. Approval and registration of transfers**

- (1) A transfer of a licence is of no force until it has been approved by the Minister and an instrument of transfer is registered as provided by this section.
- (2) Where it is desired that a licence be transferred, one of the parties to the proposed transfer may make an application in writing to the Minister for approval of the transfer.
- (3) An application for approval of a transfer of a licence shall be accompanied by —
- (a) an instrument of transfer in the prescribed form executed by the registered holder or, if there are 2 or more registered holders, by each registered holder and by the transferee or, if there are 2 or more transferees, by each transferee;
  - (b) in a case where the transferee or one or more of the transferees is not a registered holder or are not registered holders of the licence, an instrument setting out —
    - (i) the technical qualifications of that transferee or those transferees;
    - (ii) details of the technical advice that is or will be available to that transferee or those transferees; and
    - (iii) details of the financial resources that are or will be available to that transferee or those transferees;
- and

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- (c) one copy of the application and of the instrument referred to in paragraph (a).
- (4) The Minister shall not approve the transfer of a licence unless the application was lodged with the Minister within 3 months after the day on which the party who last executed the instrument of transfer so executed the instrument of transfer or within such longer period as the Minister, in special circumstances, allows.
- (5) Where an application for approval of a transfer is made in accordance with this section, the Minister shall enter a memorandum in the register of the date on which the application was lodged and may make such other notation in the register as the Minister considers appropriate.
- (6) The Minister shall consider each application for approval of the transfer of a licence and determine whether to approve the transfer.
- (7) Where an application for approval of the transfer of a licence is made in accordance with this section, the Minister shall, by notice in writing served on the person who made the application, inform the person of the decision of the Minister.
- [(8) deleted]*
- (9) Where the Minister approves the transfer of a licence, the Minister shall forthwith endorse on the instrument of transfer and on one copy of the instrument a memorandum of approval and shall, on payment of the prescribed fee, enter in the register a memorandum of the transfer and the name of the transferee or of each transferee.
- (10) Upon the entry in the register of a memorandum of the transfer of a licence and of the name of the transferee or each transferee in accordance with subsection (9) —
  - (a) the transfer shall be deemed to be registered; and



- (b) the transferee becomes the registered holder, or the transferees become the registered holders, of the licence.
- (11) Where the Minister refuses to approve the transfer of a title, the Minister shall make a notation of the refusal in the register.
- (12) Where a transfer is registered —
  - (a) the copy of the instrument of transfer endorsed with the memorandum of approval shall be retained by the Minister and made available for inspection in accordance with this Division; and
  - (b) the instrument of transfer endorsed with the memorandum of approval shall be returned to the person who lodged the application for approval of the transfer.
- (13) The mere execution of an instrument of transfer of a licence creates no interest in the licence.

*[Section 44 inserted by No. 12 of 1990<sup>3</sup> s. 139; amended by No. 28 of 1994 s. 74.]*

**45. Entries in register on devolution of rights of registered holder**

- (1) A person upon whom the rights of a registered holder of a licence have devolved by operation of law may apply in writing to the Minister to have his name entered in the register as the holder of the licence.
- (2) Where the Minister is satisfied that the interests of the holder have devolved upon the applicant by operation of law, the Minister may, on payment of the prescribed fee, cause the name of the applicant to be entered in the register as the holder of the licence.
- (3) Where a company that is the registered holder of a particular licence has changed its name, it may apply in writing to the Minister to have its new name substituted for its previous name in the register in relation to that licence and, if —

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- (a) the Minister is satisfied that the company has so changed its name; and
- (b) the company has paid the prescribed fee,

the Minister shall make the necessary alterations in the register.

*[Section 45 amended by No. 10 of 1983 s. 6; No. 12 of 1990 s. 140.]*

*[46. Deleted by No. 12 of 1990 s. 141.]*

**47. Approval of dealings creating etc. interests etc. in existing licences**

- (1) This section applies to a dealing that would, but for subsection (2), have one or more of the following effects —
  - (a) the creation or assignment of an interest in an existing licence;
  - (b) the creation or assignment of a right (conditional or otherwise) to the assignment of an interest in an existing licence;
  - (c) the determining of the manner in which persons may exercise the rights conferred by, or comply with the obligations imposed by or the conditions of, an existing licence (including the exercise of those rights or the compliance with those obligations or conditions under cooperative arrangements for the recovery of petroleum);
  - (d) the creation or assignment of —
    - (i) an interest in relation to an existing licence, being an interest known as an overriding royalty interest, a production payment, a net profits interest or a carried interest; or
    - (ii) any other interest that is similar to an interest referred to in subparagraph (i), being an interest relating to petroleum produced from operations authorised by an existing licence or relating to

revenue derived as a result of the carrying out of operations of that kind;

- (e) the creation or assignment of an option (conditional or otherwise) to enter into a dealing, being a dealing that has one or more of the effects referred to in paragraphs (a), (b), (c) and (d);
- (f) the creation or assignment of a right (conditional or otherwise) to enter into a dealing, being a dealing that has one or more of the effects referred to in paragraphs (a), (b), (c) and (d);
- (g) the alteration or termination of a dealing, being a dealing that has one or more of the effects referred to in paragraphs (a), (b), (c), (d), (e) and (f),

but this section does not apply to a transfer to which section 44 applies.

- (2) A dealing to which this section applies is of no force in so far as the dealing would, but for this subsection, have an effect of a kind referred to in subsection (1) in relation to a particular licence until —
  - (a) the dealing, in so far as it relates to that licence, has been approved by the Minister; and
  - (b) an entry has been made in the register in relation to the dealing by the Minister in accordance with subsection (12).
- (3) A party to a dealing to which this section applies may lodge with the Minister —
  - (a) in a case where the dealing relates to only one licence, an application in writing for approval by the Minister of the dealing; or
  - (b) in any other case, a separate application in writing for approval by the Minister of the dealing in relation to each licence to which the dealing relates.

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- (4) An application under subsection (3) for approval of a dealing —
- (a) shall be accompanied by the instrument evidencing the dealing or, if that instrument has already been lodged with the Minister for the purposes of another application, a copy of that instrument; and
  - (b) may be accompanied by an instrument setting out such particulars (if any) as are prescribed for the purposes of an application for approval of a dealing of that kind.
- (4a) An application under subsection (3) for approval of a dealing shall be accompanied by 2 copies of —
- (a) the application;
  - (b) the instrument referred to in subsection (4)(a); and
  - (c) any instrument lodged for the purposes of subsection (4)(b).
- (5) Subject to subsection (6), the Minister shall not approve a dealing unless the application for approval of the dealing is lodged with the Minister within 3 months after the day on which the party who last executed the instrument evidencing the dealing so executed the instrument or such longer period as the Minister, in special circumstances, allows.
- (6) Where a dealing relating to a licence was, immediately before the licence came into existence, a dealing referred to in section 47A(1), the Minister shall not approve the dealing unless —
- (a) a provisional application for approval of the dealing was lodged in accordance with section 47A(1); or
  - (b) an application for approval of the dealing is lodged with the Minister in accordance with this section within 3 months after the day on which the licence came into existence or such longer period as the Minister, in special circumstances, allows.

- (7) Where a dealing to which this section applies forms a part of the issue of a series of debentures, all of the dealings constituting the issue of that series of debentures shall, for the purposes of this section, be taken to be one dealing.
- (8) Where a dealing to which this section applies (including a dealing referred to in subsection (7)) creates a charge over some or all of the assets of a body corporate, the person lodging the application for approval of the dealing shall be deemed to have complied with subsection (4)(a), and with subsection (4a) in so far as that subsection requires 2 copies of the document referred to in paragraph (4)(a) to accompany the application, if the person lodges with the application 3 copies of each document required to be lodged with the Australian Securities and Investments Commission relating to the creation of that charge pursuant to section 263 of the *Corporations Act 2001* of the Commonwealth.
- (9) On receipt of an application made under this section, the Minister shall enter a memorandum in the register of the date on which the application was lodged and may make such other notation in the register as the Minister considers appropriate.
- (10) The Minister may approve or refuse to approve a dealing to which this section applies in so far as the dealing relates to a particular licence.
- (11) The Minister shall, by notice in writing served on the person who made an application for approval of a dealing, inform the person of the decision of the Minister.
- (12) If the Minister approves a dealing, the Minister shall endorse on the original instrument evidencing the dealing and on one copy of that instrument or, if the original instrument was not lodged with the application, on 2 of the copies of that instrument a memorandum of approval and, on payment of the prescribed fee, make an entry of the approval of the dealing in the register on the memorial relating to, or on the copy of, the licence in respect of which the approval is sought.

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- (13) Where an entry is made in the register in relation to a dealing in accordance with subsection (12) —
- (a) if the dealing was approved before the commencement of section 141 of the *Acts Amendment (Petroleum) Act 1990*<sup>1</sup> or the application for approval of the dealing was not accompanied by an instrument for the purpose of subsection (4)(b), one copy of the instrument evidencing the dealing endorsed with a memorandum of approval shall be retained by the Minister and made available for inspection in accordance with this Part;
  - (b) if the application for approval of the dealing was accompanied by an instrument for the purpose of subsection (4)(b), a copy of that instrument endorsed with a copy of the memorandum of approval of the dealing shall be retained by the Minister and made available for inspection in accordance with this Part but a copy of the instrument evidencing the dealing shall not be so made available; and
  - (c) the original instrument evidencing the dealing, or a copy of the original instrument, as the case requires, endorsed with a memorandum of approval and the instrument (if any) lodged for the purpose of subsection (4)(b) shall be returned to the person who made the application for approval.
- (13a) The approval of a dealing or the making of an entry in the register in relation to a dealing is not rendered ineffective by any failure to comply, in relation to the application for approval of the dealing, with the requirements of this section.
- (14) Where the Minister refuses to approve a dealing, the Minister shall make a notation of the refusal in the register.
- (15) In this section, *charge* and *debenture* have the same respective meanings as they have for the purposes of the *Corporations Act 2001* of the Commonwealth.

*[Section 47 inserted by No. 12 of 1990<sup>4</sup> s. 141; amended by No. 20 of 2003 s. 36.]*

**47A. Approval of dealings in future interests etc.**

- (1) Where 2 or more persons enter into a dealing relating to a licence that may come into existence in the future and that dealing would, if the licence came into existence, become a dealing to which section 47 applies, a person who is a party to the dealing may, during the prescribed period in relation to the licence, lodge with the Minister —
- (a) in a case where the dealing relates to only one licence that may come into existence in the future, a provisional application in writing for approval by the Minister of the dealing; or
  - (b) in any other case, a separate provisional application in writing for approval by the Minister of the dealing in relation to each licence that may come into existence in the future and to which the dealing relates.
- (2) Section 47(4), (7) and (8) applies to a provisional application lodged under subsection (1) as if that provisional application were an application lodged under section 47(3).
- (3) Where —
- (a) the licence to which a dealing referred to in subsection (1) relates comes into existence; and
  - (b) upon that licence coming into existence, the dealing becomes a dealing to which section 47 applies,
- the provisional application lodged under subsection (1) in relation to the dealing shall be treated as if it were an application lodged under section 47(3) on the day on which that licence came into existence.
- (4) A reference in subsection (1) to the prescribed period, in relation to a licence, is a reference to the period —

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- (a) commencing on the day of service of an instrument informing the applicant for the licence that the Minister is prepared to grant the licence; and
- (b) ending on the day on which the licence comes into existence.

*[Section 47A inserted by No. 12 of 1990<sup>4</sup> s. 141.]*

**48. True consideration to be shown**

A person who is a party to a transfer referred to in section 44, a dealing to which section 47 applies or a dealing referred to in section 47A(1) shall not lodge with the Minister —

- (a) an instrument of transfer;
- (b) an instrument evidencing the dealing; or
- (c) an instrument of the kind referred to in section 47(4)(b),

that contains a statement relating to the consideration for the transfer or dealing, or to any other fact or circumstance affecting the amount of the fee payable in respect of the transfer or dealing under this Act, being a statement that is, to the knowledge of the person, false or misleading in a material particular.

Penalty: \$10 000.

*[Section 48 inserted by No. 12 of 1990 s. 142.]*

**49. Minister not concerned with certain matters**

Neither the Minister nor a person acting under the direction or authority of the Minister is concerned with the effect in law of any instrument lodged with the Minister in pursuance of this Part, nor does the approval of a transfer or dealing give to the transfer or dealing any force, effect or validity that the transfer or dealing would not have had if this Part had not been enacted.

*[Section 49 amended by No. 12 of 1990 s. 143.]*



**50. Power of Minister to require information as to proposed dealings**

- (1) The Minister may require the person lodging an application for approval of a transfer or dealing or a provisional application for approval of a dealing under this Part to furnish to him in writing such information concerning the transfer or dealing as the Minister considers necessary or advisable.
- (1a) The Minister may require a person who is a party to a dealing approved by the Minister under section 47 to furnish to the Minister a statement in writing setting out such information concerning alterations in the interests or rights existing in relation to the licence to which the approved dealing relates as the Minister considers necessary or advisable.
- (1b) The Minister may require a person making an application under section 45(1) or (3) or 53A(2) to furnish to the Minister in writing such information concerning the matter to which the application relates as the Minister considers necessary or advisable.
- (1c) A person shall not fail or refuse to comply with a requirement given to the person under subsection (1), (1a) or (1b).  
Penalty: \$5 000.
- (2) A person who is so required to furnish information shall not furnish information that is false or misleading in a material particular.  
Penalty: \$5 000.

*[Section 50 amended by No. 12 of 1990 s. 144.]*

**51. Production and inspection of books, records and documents**

- (1) The Minister may require any person to produce to him or make available for inspection by him or any person specified by him any books, records, documents, maps or plans in the possession or under the control of the first-mentioned person and relating to

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a transfer or dealing in relation to which approval is sought under this Part.

- (1a) The Minister may require any person to produce to the Minister or to make available for inspection by the Minister any documents in the possession or under the control of that person and relating to an application made to the Minister under section 45(1) or (3) or 53A(2).
- (2) A person shall not fail or refuse to comply with any requirement given to him under subsection (1) or (1a).

Penalty: \$5 000.

*[Section 51 amended by No. 12 of 1990 s. 145.]*

**52. Inspection of register and documents**

- (1) The register and all instruments or copies of instruments subject to inspection under this Part shall at all convenient times be open for inspection by any person upon payment of the prescribed fee.

*[(2) deleted]*

*[Section 52 amended by No. 12 of 1990 s. 146.]*

**53. Evidentiary provisions**

- (1) The register shall be received by all courts and tribunals as evidence of all matters required or authorised by this Part to be entered in the register.
- (2) The Minister may, on payment of the prescribed fee, supply copies of or extracts from the register or of or from any instrument lodged with him under this Part certified by writing under his hand, and a copy or extract so certified is admissible in writing in all courts and proceedings without further proof or production of the original.
- (3) The Minister may, on payment of the prescribed fee by instrument in writing under his hand, certify that an entry,

matter or thing required or permitted by or under this Part to be made or done has or has not, as the case may be, been made or done and such a certificate is evidence in all courts and proceedings of the statements contained in the certificate.

**53A. Minister may make corrections to register**

- (1) The Minister may alter the register for the purposes of correcting a clerical error or an obvious defect in the register.
- (2) Subject to subsection (3), the Minister may, on application being made in writing to the Minister by a person or of the Minister's own motion, make such entries in the register as the Minister considers appropriate for the purposes of ensuring that the register accurately records the interests and rights existing in relation to a licence.
- (3) Where the Minister proposes to make an entry in the register in accordance with subsection (2), the Minister shall cause to be published in the *Gazette* a notice —
  - (a) setting out the terms of the entry that the Minister proposes to make in the register; and
  - (b) inviting interested persons to give to the Minister, by such day as is specified in the notice, being a day not earlier than 45 days after the publication of the notice, submissions in writing relating to the making of the entry.
- (4) Where submissions are, in accordance with a notice under subsection (3), given to the Minister in relation to the proposed making of an entry in the register, the Minister shall —
  - (a) take those submissions into account before making an entry in the register; and
  - (b) after making an entry in the register, cause to be published in the *Gazette* a notice setting out the terms of the entry.

*[Section 53A inserted by No. 12 of 1990 s. 147.]*

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**54. Reviews**

- (1) A person aggrieved by —
- (a) the omission of an entry from the register;
  - (b) an entry made in the register without sufficient cause;
  - (c) an entry wrongly existing in the register; or
  - (d) an error or defect in an entry in the register,

may apply to the State Administrative Tribunal in its original jurisdiction for such order as the Tribunal thinks fit directing the rectification of the register.

- (2) The Tribunal may, in proceedings under this section, decide any question that it is necessary or expedient to decide in connection with the rectification of the register.
- (3) Notice of an application under this section shall be given to the Minister, who may appear and be heard and who shall appear, if so directed by the Tribunal.
- (4) An office copy of an order made by the Tribunal may be served on the Minister, and the Minister shall, upon receipt of the order, rectify the register accordingly.

*[Section 54 amended by No. 55 of 2004 s. 921.]*

**55. Minister not liable to certain actions**

Subject to section 54, neither the Minister nor a person acting under the direction or authority of the Minister is liable to an action, suit or proceeding for or in respect of an act or matter in good faith done or omitted to be done in exercise or purported exercise of any power or authority conferred by this Part.

*[Section 55 amended by No. 12 of 1990<sup>5</sup> s. 148.]*

**56. Offences**

A person who wilfully —

- (a) makes, causes to be made or concurs in making a false entry in the register; or
- (b) produces or tenders in evidence a document falsely purporting to be a copy of or extract from an entry in the register or of or from an instrument lodged with the Minister under this Part,

commits an offence and is liable to a penalty of \$5 000.

*[Section 56 amended by No. 12 of 1990 s. 149.]*

## **Part V — Miscellaneous**

### **57. Pipelines to remain property of owner**

- (1) Notwithstanding any Act or rule of law to the contrary, any pipeline constructed under the authority of this Act shall remain the property of the licensee whether or not the pipeline is affixed to any land and whether or not the licence granted in respect of the pipeline has been wholly or partly cancelled.
- (2) The licensee, in maintaining or operating any pipeline in respect of which a licence is issued under this Act, shall do as little damage as is possible and shall make full compensation to the owner of, and any party having an interest in, land for any damage sustained by them in consequence of the exercise of any power by the licensee in maintaining or operating the pipeline, and the compensation shall in default of agreement between the licensee, the owner or other party, be determined by a court of competent jurisdiction.

### **58. Notices of grants etc. of licences to be published**

The Minister shall cause to be published in the *Government Gazette* such particulars as he thinks fit of the grant, grant of the renewal, variation, surrender or expiration of a licence.

### **59. Judicial notice**

- (1) All courts, tribunals and persons acting judicially shall take judicial notice of the signature of a person —
  - (a) who is, or has been, the Minister or a delegate of the Minister; or
  - (b) who has been the Under Secretary or the Principal Registrar,

and of the fact that that person is, or has been, the Minister, a delegate of the Minister, the Under Secretary or the Principal Registrar, as the case requires.

- (2) In subsection (1) —  
*Principal Registrar*<sup>6</sup> and *Under Secretary*<sup>6</sup> have the same respective meanings as they had before the commencement of section 150 of the *Acts Amendment (Petroleum) Act 1990*<sup>1</sup>.  
*[Section 59 inserted by No. 12 of 1990 s. 150; amended by No. 28 of 1994 s. 75.]*

**60. Address for service**

Every licensee shall forward to the Minister an address for service of any notice, order or direction under this Act.

**60A. Service of documents on 2 or more licensees**

- (1) Where there are 2 or more registered holders of a licence, those registered holders shall, by notice in writing signed by each of them and served on the Minister, nominate one of the registered holders as being the person on whom documents relating to the licence that are required or permitted by this Act to be served may be served.
- (2) Subject to subsections (3) and (4), where —
- (a) a document relating to a licence is required or permitted by this Act to be served on the registered holder;
  - (b) there are 2 or more registered holders of the licence; and
  - (c) the document is served on a person in respect of whom a nomination under subsection (1) is in force in relation to the licence,

the document shall be deemed to have been served on each of those registered holders.

- (3) Where —
- (a) a person has been nominated under subsection (1) in relation to a licence; and
  - (b) one of the registered holders of the licence, by notice in writing served on the Minister, revokes that nomination,

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that nomination ceases to be in force and the registered holders of the licence shall forthwith make a fresh nomination under subsection (1) in relation to the licence.

- (4) Where —
- (a) a person has been nominated under subsection (1) in relation to a licence; and
  - (b) the person so nominated ceases to be one of the registered holders of the licence,

that nomination ceases to be in force and, if 2 or more registered holders of the licence remain, those holders shall forthwith make a fresh nomination under subsection (1) in relation to the licence.

*[Section 60A inserted by No. 12 of 1990 s. 151.]*

**61. Power of Minister to delegate powers and functions**

- (1) The Minister may —
- (a) delegate to any officer of the Department of Mines at Perth in the State all or any of his powers and functions under this Act or the regulations, other than this power of delegation; and
  - (b) vary or revoke a delegation given by him.
- (2) A power or function delegated by the Minister may be exercised or performed by the delegate —
- (a) in accordance with the instrument of delegation; and
  - (b) if the exercise of the power or the performance of the function is dependent upon the opinion, belief or state of mind of the Minister in relation to a matter — upon the opinion, belief or state of mind of the delegate in relation to that matter.
- (3) A delegation under this section does not prevent the exercise of a power or the performance of the function by the Minister.



- (4) In subsection (1)(a) —  
***the Department of Mines***<sup>7</sup> means the department principally assisting the Minister in the administration of this Act.

*[Section 61 amended by No. 12 of 1990 s. 152.]*

**62. Inspectors**

- (1) The Minister may, by instrument in writing, appoint a person to be an inspector for the purposes of this Act and the regulations.
- (2) The Minister may furnish to an inspector a certificate stating that he is an inspector for the purposes of this Act and the regulations.
- (3) Where the appointment of a person under this section expires or is revoked, that person shall forthwith surrender the certificate furnished to him under this section to the Minister or, if the Minister, by instrument in writing served on that person, specifies another person to whom the certificate is to be surrendered, to that other person.

Penalty: \$500.

*[Section 62 amended by No. 12 of 1990 s. 153.]*

**63. Powers of inspectors**

- (1) For the purposes of this Act and the regulations, an inspector, at all reasonable times and on production of the certificate furnished to him under section 62 —
- (a) may enter any licence area;
  - (b) may inspect and test any pipeline;
  - (c) may take samples of any substance being conveyed by a pipeline; and
  - (d) may require a licensee, or any other person who has the custody of any books, records, documents, maps or plans relating to a pipeline or proposed pipeline to produce to him those books, records, documents, maps

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or plans and may inspect, take extracts from and make copies of any of those books, records, documents, maps or plans.

- (2) A person who is the occupier or person in charge of any building, structure or place shall provide an inspector with all reasonable facilities and assistance for the effective exercise of his powers under this section.
- (3) A person shall not, without reasonable excuse, obstruct or hinder an inspector in the exercise of his powers under this section.

Penalty: \$5 000.

*[Section 63 amended by No. 12 of 1990 s. 154.]*

**64. Theft of petroleum from pipeline**

A person who maliciously or fraudulently —

- (a) abstracts;
- (b) causes to be wasted or diverted; or
- (c) consumes or uses,

any petroleum being conveyed by means of a pipeline, is guilty of stealing and punishable accordingly.

**65. Damaging etc. pipelines**

A person who unlawfully damages a pipeline or interferes with the operation of a pipeline is guilty of an offence and is liable to a penalty of \$50 000 or imprisonment for 5 years, or both.

*[Section 65 amended by No. 12 of 1990 s. 155.]*

**66. Continuing offences**

- (1) Where an offence is committed by a person by reason of his failure to comply, within the period specified in a direction given to him under this Act or the regulations, with the requirements specified in the direction, the offence, for the

purposes of subsection (3), shall be deemed to continue so long as any requirement specified in the direction remains undone, notwithstanding that the period has elapsed.

- (2) Where an offence is committed by a person by reason of his failure to comply with a provision of this Act or the regulations, the offence, for the purposes of subsection (3), shall be deemed to continue so long as that failure continues, notwithstanding that any period within which the act was required to be done has elapsed.
- (3) Where, under either subsection (1) or (2), an offence is deemed to continue, the person who committed the offence commits an additional offence against this Act on each day during which the offence is deemed to continue and is liable, upon conviction for such an additional offence, to a fine not exceeding \$10 000.

*[Section 66 amended by No. 12 of 1990 s. 156.]*

**66A. Persons concerned in commission of offences**

Without limiting section 7 of *The Criminal Code*, a person who by act or omission is in any way directly or indirectly knowingly concerned in the commission of any offence under this Act or the regulations shall be deemed to have committed that offence and shall be punishable accordingly.

*[Section 66A inserted by No. 12 of 1990 s. 157.]*

**66B. Crimes and other offences**

- (1) If the penalty provided for an offence under this Act is or includes imprisonment, the offence is a crime.
- (2) Summary conviction penalty: for an offence referred to in subsection (1) — imprisonment for 2 years or a fine of \$10 000 or both.
- (3) Unless the contrary intention appears, an offence under this Act, other than a crime, is punishable summarily.

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*[Section 66B inserted by No. 4 of 2004 s. 58.]*

**66C. Orders for forfeiture in respect of certain offences**

- (1) Where a person is convicted by the Supreme Court of an offence against section 6 the Court may, in addition to imposing a penalty, make one or more of the following orders —
  - (a) an order for the forfeiture of specified equipment used in the commission of the offence; and
  - (b) an order —
    - (i) for the forfeiture of specified petroleum conveyed through a pipeline in the course of the commission of the offence;
    - (ii) for the payment by that person to the State of an amount equal to the proceeds of the sale of specified petroleum so conveyed; or
    - (iii) for the payment by that person to the State of an amount equal to the value at the well-head, assessed by the Court, of the quantity, so assessed, of petroleum so conveyed or for the payment of such part of that amount as the Court, having regard to all the circumstances, thinks fit.
- (2) Where the Court is satisfied that an order made under subsection (1)(b)(i) cannot, for any reason, be enforced, the Court may, upon the application of the person by whom the proceedings were brought, set aside the order and make either of the orders referred to in subsection (1)(b)(ii) or (iii).
- (3) The Court may, before making an order under this section, require notice to be given to, and hear, such persons as the Court thinks fit.

*[Section 66C inserted by No. 12 of 1990 s. 157.]*

**66D. Disposal of forfeited goods**

Goods in respect of which an order is made under section 66C shall be dealt with as the Attorney General directs and, pending his direction, may be detained in such custody as the Supreme Court directs.

*[Section 66D inserted by No. 12 of 1990 s. 157.]*

**67. Regulations**

- (1) The Governor may make regulations for or with respect to —
  - (a) the construction, maintenance and operation of pipelines and the safety measures to be taken in respect thereof;
  - (b) the inspection of pipelines and the cost of any such inspection;
  - (c) the keeping of registers under this Act;
  - (d) the escape of substances from a pipeline;
  - (e) providing for the marking of the location of pipelines;
  - (f) the prevention of damage to any land used for the construction or operation of pipelines;
  - (g) all matters that by this Act are required or permitted to be prescribed or are necessary or convenient to be prescribed for carrying out or giving effect to this Act and for the due administration thereof.
- (1a) The regulations may make provision in relation to a matter by applying, adopting or incorporating, with or without modification, a code of practice or standard contained in an instrument (including an instrument issued or made outside Australia), as in force or existing at the time when the regulations take effect or as in force or existing from time to time, being a code of practice or standard that is relevant to that matter.
- (1b) The regulations may prohibit the doing of an act or thing either unconditionally or subject to conditions, including conditions

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requiring the grant, as prescribed by the regulations, of the consent or approval of a person specified in the regulations.

- (2) The regulations may provide, in respect of an offence against the regulations, for the imposition of —
- (a) a fine not exceeding \$10 000; or
  - (b) a fine not exceeding that amount for each day on which the offence occurs.

*[Section 67 amended by No. 12 of 1990 s. 158; No. 28 of 1994 s. 76.]*

**Notes**

<sup>1</sup> This is a compilation of the *Petroleum Pipelines Act 1969* and includes the amendments made by the other written laws referred to in the following table<sup>1a, 8, 9, 12, 16</sup>. The table also contains information about any reprint.

**Compilation table**

<b>Short title</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>
<i>Petroleum Pipelines Act 1969</i>	112 of 1969	28 Nov 1969	12 Dec 1969 (see s. 2 and <i>Gazette</i> 12 Dec 1969 p. 4002)
<i>Petroleum Pipelines Act Amendment Act 1970</i>	42 of 1970	23 Sep 1970	23 Sep 1970
<i>Metric Conversion Act 1972</i>	94 of 1972 (as amended by No. 42 of 1975 s. 3)	4 Dec 1972	Relevant amendments (see Fourth Sch. <sup>10</sup> ) took effect on 28 Nov 1975 (see s. 4(2) and <i>Gazette</i> 28 Nov 1975 p. 4352)
<i>Petroleum Pipelines Amendment Act 1983</i>	10 of 1983	7 Oct 1983	11 Nov 1983 (see s. 2 and <i>Gazette</i> 11 Nov 1983 p. 4503)
<i>Acts Amendment (Petroleum) Act 1990</i> Pt. III <sup>2-5</sup>	12 of 1990	31 Jul 1990	s. 132: 12 Dec 1969 (see s. 2(2)); s. 120-131 and 133-158: 1 Oct 1990 (see s. 2(1) and <i>Gazette</i> 28 Sep 1990 p. 5099)
<b>Reprint of the <i>Petroleum Pipelines Act 1969</i> as at 19 Feb 1992</b> (includes amendments listed above)			
<i>Land (Titles and Traditional Usage) Act 1993</i> s. 45	21 of 1993	2 Dec 1993	2 Dec 1993 (see s. 2)
<i>Acts Amendment (Petroleum) Act 1994</i> Pt. 4	28 of 1994	29 Jun 1994	22 Jul 1994 (see s. 2 and <i>Gazette</i> 22 Jul 1994 p. 3728)
<i>Statutes (Repeals and Minor Amendments) Act 1994</i> s. 4	73 of 1994	9 Dec 1994	9 Dec 1994 (see s. 2)
<i>Acts Amendment and Repeal (Native Title) Act 1995</i> Pt. 9	52 of 1995	24 Nov 1995	9 Dec 1995 (see s. 2 and <i>Gazette</i> 8 Dec 1995 p. 5935)

**Petroleum Pipelines Act 1969**

<b>Short title</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>
<i>Local Government (Consequential Amendments) Act 1996</i> s. 4	14 of 1996	28 Jun 1996	1 Jul 1996 (see s. 2)
<i>Acts Amendment (Land Administration) Act 1997</i> Pt. 50 and s. 141 and 142	31 of 1997	3 Oct 1997	30 Mar 1998 (see s. 2 and <i>Gazette</i> 27 Mar 1998 p. 1765)
<i>Gas Pipelines Access (Western Australia) Act 1998</i> s. 89	65 of 1998	15 Jan 1999	9 Feb 1999 (see s. 2 and <i>Gazette</i> 8 Feb 1999 p. 441)
<i>Energy Coordination Amendment Act 1999</i> s. 10(5)	20 of 1999	24 Jun 1999	16 Oct 1999 (see s. 2 and <i>Gazette</i> 15 Oct 1999 p. 4865)
<b>Reprint of the <i>Petroleum Pipelines Act 1969</i> as at 12 May 2000</b> (includes amendments listed above)			
<i>Corporations (Consequential Amendments) Act (No. 2) 2003</i> Pt. 16	20 of 2003	23 Apr 2003	15 Jul 2001 (see s. 2(1) and <i>Cwlth Gazette</i> 13 Jul 2001 No. S285)
<i>Criminal Code Amendment Act 2004</i> s. 58	4 of 2004	23 Apr 2004	21 May 2004 (see s. 2)
<i>Dangerous Goods Safety Act 2004</i> s. 70	7 of 2004	10 Jun 2004	1 Mar 2008 (see s. 2 and <i>Gazette</i> 29 Feb 2008 p. 669)
<i>State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004</i> Pt. 2 Div. 99 <sup>11</sup>	55 of 2004	24 Nov 2004	1 Jan 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7130)
<i>Planning and Development (Consequential and Transitional Provisions) Act 2005</i> s. 15	38 of 2005	12 Dec 2005	9 Apr 2006 (see s. 2(2) and <i>Gazette</i> 21 Mar 2006 p. 1078)
<b>Reprint 3: The <i>Petroleum Pipelines Act 1969</i> as at 7 Jul 2006</b> (includes amendments listed above, except those in the <i>Dangerous Goods Safety Act 2004</i> s. 70)			

<sup>1a</sup> On the date as at which this compilation was prepared, provisions referred to in the following table had not come into operation and were therefore not included in



this compilation. For the text of the provisions see the endnotes referred to in the table.

**Provisions that have not come into operation**

Short title	Number and year	Assent	Commencement
<i>Native Title (State Provisions) Act 1999</i> s. 7.3 <sup>13</sup>	60 of 1999	10 Jan 2000	Operative on earliest of commencement of Pt. 2 (except s. 2.2), Pt. 3 (except s. 3.1) and Pt. 4
<i>Petroleum Legislation Amendment and Repeal Act 2005</i> Pt. 3 <sup>15, 16</sup>	13 of 2005	1 Sep 2005	To be proclaimed (see s. 2)
<i>Petroleum Amendment Act 2007</i> s. 102	35 of 2007	21 Dec 2007	See <sup>16</sup>
<a href="#"><u>National Gas Access (WA) Act 2009</u></a> s. 72 <sup>17</sup>	<a href="#"><u>16 of 2009</u></a>	<a href="#"><u>1 Sep 2009</u></a>	<a href="#"><u>To be proclaimed (see s. 2(b))</u></a>

<sup>2</sup> The *Acts Amendment (Petroleum) Act 1990* s. 122(2) reads as follows:

“

- (2) A declaration made under —
  - (a) section 5(1)(a) of the principal Act before its repeal and substitution by this section and in force immediately before the commencement of this section shall on that commencement be deemed to have been made under section 5(1)(a)(iii); or
  - (b) section 5(1)(b) of the principal Act before its repeal and substitution by this section and in force immediately before the commencement of this section shall on that commencement be deemed to have been made under section 5(1)(a)(ii),
 of the principal Act as substituted by this section.

”.

<sup>3</sup> The *Acts Amendment (Petroleum) Act 1990* s. 139(2), (3) and (4) reads as follows:

“

- (2) Section 44 of the principal Act as amended by this Act applies in relation to applications for approval of transfers of licences lodged after the commencement of this section.

- (3) Notwithstanding the repeal of section 44 of the principal Act effected by subsection (1), that section continues to apply in relation to applications for approval of transfers of licences lodged before the commencement of this section.
- (4) A transfer approved and registered under section 44 of the principal Act shall be deemed to have been approved and registered under section 44 of the principal Act as amended by this Act.

”.

<sup>4</sup> The *Acts Amendment (Petroleum) Act 1990* s. 141(2)-(7) reads as follows:

“

- (2) Subject to this section, sections 47 and 47A of the principal Act as amended by this Act apply in relation to dealings evidenced by instruments executed after the commencement of this section.
- (3) A party to an instrument to which section 47 of the principal Act applied, being an instrument that had not been approved under that section of that Act, may, if the instrument evidences a dealing —
  - (a) to which section 47 of the principal Act as amended by this Act would, if the instrument had been executed after the commencement of this section, apply; and
  - (b) that relates to a licence that was in existence at the time of execution of the instrument,

make an application in writing, within 12 months after the commencement of this section, to the Minister for approval of the dealing.

- (4) Where —
  - (a) before the commencement of this section, 2 or more persons entered into a dealing relating to a licence that was not in existence at the time of execution of the instrument evidencing the dealing;
  - (b) that dealing would, if the instrument evidencing the dealing had been executed after the commencement of this section, be a dealing referred to in subsection 47A(1) of the principal Act as amended by this Act; and
  - (c) that licence has come, or comes, into existence,a party to the dealing may make an application in writing within —
  - (d) in a case where that licence came into existence before the commencement of this section, 12 months after that commencement; or

- (e) in any other case, 3 months after that licence comes into existence,  
to the Minister for approval of the dealing.
- (5) Section 47 of the principal Act as amended by this Act (other than subsections (5) and (6) of that section) applies to a dealing in respect of which an application is made under subsection (3) or (4) of this section.
- (6) If, when the first regulations made for the purposes of section 47(4)(b) of the principal Act, as amended by this Act, take effect, an application for approval of a dealing has been made but the Minister has neither approved nor refused to approve the dealing —
  - (a) the Minister shall give to the applicant written notice that the applicant is entitled to lodge an instrument for the purpose of section 47(4)(b) in relation to the application;
  - (b) the applicant may lodge an instrument for the purpose of section 47(4)(b);
  - (c) the application shall not be dealt with by the Minister until after the end of 30 days after the day on which notice is given for the purpose of paragraph (a); and
  - (d) where the applicant lodges an instrument under paragraph (b), the applicant shall lodge with the instrument 2 copies of the instrument.
- (7) An instrument lodged under subsection (6) shall be taken, for the purposes of section 47(13) of the principal Act, as amended by this Act, to have accompanied the application when the application was lodged.

”.

<sup>5</sup> The *Acts Amendment (Petroleum) Act 1990* s. 148(2) reads as follows:

“

- (2) Notwithstanding the amendment of section 55 of the principal Act by this section, neither a person who was the Principal Registrar within the meaning of the principal Act before the commencement of this section nor a person who acted under the direction or authority of that Principal Registrar before that commencement is liable to an action, suit or proceeding for or in respect of an act or matter in good faith done or omitted to be done in exercise or purported exercise of any power or authority conferred by Part IV of the principal Act.

”.

<sup>6</sup> As at the date this compilation was prepared, these offices of the Department of Mines no longer exist (see also note 7).

<sup>7</sup> Under the *Alteration of Statutory Designations Order 2003* a reference in a written law to the Department of Mines is, unless the contrary is intended, to be read and construed as a reference to the Department of Industry and Resources.

<sup>8</sup> The *Petroleum Pipelines Act 1969* is affected by the *Dampier to Bunbury Pipeline Act 1997* Sch. 4 Div. 8 which reads as follows:

“

**Division 8 — Petroleum Pipelines Act 1969**

**38. Act applies to DBNGP**

- (1) Any pipeline in the privatised DBNGP system is a pipeline for the purposes of the principal Act despite the exceptions to the definition of “pipeline” in that Act.
- (2) At the pipeline transfer time —
  - (a) the DBNGP owner, as defined in section 46 of this Act, becomes, and is to be registered as, the holder of a licence granted under the principal Act the term, conditions, and other details of which are as determined by the Minister responsible for the administration of the principal Act; and
  - (b) consent to the operation of the pipelines in the privatised DBNGP system is to be regarded as having been given under section 36 of the principal Act.
- (3) Subsection (2)(b) does not remove the requirement for consent under section 36 of the principal Act to be obtained in any other circumstance in which the principal Act requires it.

**39. Section 7 (power of Minister to authorise entry)**

The power given by section 7(1) of the principal Act to the Minister referred to in that provision is not to be exercised in respect of land in the DBNGP corridor, as defined in section 27 of this Act, until the DBNGP Land Access Minister, as defined in that section, has been consulted.

**40. Section 8 (application for licence)**

Obtaining rights under section 34 of this Act in respect of land or being approved under subsection (3) of that section as the nominee of the holder of those rights is to be regarded, for the purposes of section 8(1)(f) of the principal Act, as acquiring the land.

**41. Section 12 (conditions of licence)**

For the purposes of section 12(3) of the principal Act —

- (a) rights conferred under section 34 of this Act in respect of land are capable of being a sufficient authority over the land; and
- (b) becoming the holder of those rights or the holder's nominee approved under section 34(3) of this Act is a sufficient acquisition of those rights.

**42. Section 21 (access provisions)**

Section 21 of the principal Act does not apply to the privatised DBNGP system.

**43. Section 27 (removal of property)**

- (1) For the purpose of enabling a direction to be given in an instrument under section 27 of the principal Act to a licence holder, property of the licence holder or a nominee of the licence holder approved under section 34(3) of this Act that —
  - (a) was assigned under Part 3 of this Act to the property holder or a person through whom the property holder took the property; and
  - (b) is in the DBNGP corridor as defined in section 27 of this Act,

may be specified in the instrument as if it had been brought there by a person engaged or concerned in the operations authorised by the licence.

- (2) In this clause —

*licence holder* means a person who is or was the holder of a licence under the principal Act;

*property holder* means the licence holder or a nominee of the licence holder approved under section 34(3) of this Act.

**44. Section 34 (pipeline standards, specifications, and conditions)**

- (1) Any pipeline that was part of the corporation's DBNGP system is to be taken, for the purposes of the principal Act, to have been constructed in accordance with any standards, specifications, and conditions prescribed under that Act.
- (2) A licence under the principal Act cannot impose any standards, specifications, or conditions in respect of a pipeline described in subclause (1) except to the extent that they relate to the operation or maintenance of the pipeline.

”.

<sup>9</sup> The amendment by the *Statutes (Repeals and Minor Amendments) Act 2000* s. 30 is not included because of an error in the reference to the provision to be amended.

<sup>10</sup> The Fourth Schedule was inserted by the *Metric Conversion Act Amendment Act 1975*.

<sup>11</sup> The *State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004* Pt. 5, the *State Administrative Tribunal Act 2004* s. 167 and 169, and the *State Administrative Tribunal Regulations 2004* r. 28 and 42 deal with certain transitional issues some of which may be relevant for this Act.

<sup>12</sup> The amendment in the *Petroleum Safety Act 1999* Sch. 2 that was to amend this Act was repealed by the *Petroleum Legislation Amendment and Repeal Act 2005* s. 51 before the amendment came into operation.

<sup>13</sup> On the date as at which this compilation was prepared, the *Native Title (State Provisions) Act 1999* s. 7.3, which gives effect to Sch. 2, had not come into operation. It reads as follows:

“

**7.3. Consequential amendments**

Schedule 2 has effect.

”

Schedule 2 Div. 8 reads as follows:

“

**Schedule 2 — Consequential amendments**

[s. 7.3]

**Division 8 — Petroleum Pipelines Act 1969**

**58. The Act amended**

The amendments in this Division are to the *Petroleum Pipelines Act 1969*.

**59. Section 10A inserted**

After section 10 the following section is inserted —

“

**10A. Licence not to affect native title**

(1) A licence is not to be taken to authorise the licensee or any other person to do any act that affects native title.

(2) In subsection (1) —

*affects* and *native title* have the meanings given to them respectively by sections 227 and 223 of the *Native Title Act 1993* of the Commonwealth.

60. **Section 19 amended**

After section 19(1) the following subsection is inserted —

“

- (1a) Where the taking of land or an easement in land under subsection (1) is a Part 2 act, a Part 3 act or Part 4 act within the meaning of the *Native Title (State Provisions) Act 1999*, the operation of that subsection is subject to section 2.6, 3.5 or 4.3, as the case may be, of that Act.

”

”

<sup>14</sup> Footnote no longer applicable.

<sup>15</sup> On the date as at which this compilation was prepared, the *Petroleum Legislation Amendment and Repeal Act 2005* Pt. 3 had not come into operation. It reads as follows:

“

**Part 3 — Petroleum Pipelines Act 1969**

18. **The Act amended**

The amendments in this Part are to the *Petroleum Pipelines Act 1969*.

19. **Section 4 amended**

Section 4(1) is amended by inserting in the appropriate alphabetical positions the following definitions —

“

**listed OSH law** means —

- (a) section 65;
- (b) Schedule 1;
- (c) a regulation made for the purposes of Schedule 1;
- (d) a regulation made for the purposes of section 56B; or
- (e) any other written law relating to occupational safety and health matters that is prescribed for the purposes of this paragraph;

**other protected person** means a person who is at or near a place where a pipeline operation is being carried on at the invitation of, or with the express or implied consent of —

- (a) the licensee for the pipeline operation; or
- (b) a person in control of a part of the pipeline operation;

*pipeline operation* means an operation —

- (a) in connection with the construction, operation, inspection (by a person other than an inspector), maintenance or repair of a pipeline; and
- (b) carried out on land that is specified in any licence as licence area;

”.

**20. Section 5AA inserted**

After section 5 the following section is inserted in Part 1 —

“

**5AA. Disapplication of State occupational safety and health laws**

- (1) The prescribed occupational safety and health laws do not apply in relation to —
  - (a) a pipeline operation; or
  - (b) a person engaged in a pipeline operation or any other protected person.

- (2) In this section —

*prescribed occupational safety and health laws* means any laws of the State relating to occupational safety and health (whether or not they also relate to other matters) that are prescribed by the regulations for the purposes of this section.

”.

**21. Section 36A amended**

Section 36A is amended by deleting “and shall secure the safety, health and welfare of persons engaged in operations in connection with the pipeline”.

**22. Section 55 repealed**

Section 55 is repealed.

**23. Part IVA inserted**

After section 56 the following Part is inserted —

“

**Part IVA — Occupational safety and health**

**56A. Occupational safety and health**

Schedule 1 has effect.



**56B. Regulations relating to occupational safety and health**

- (1) The regulations may make provision in relation to —
  - (a) the occupational safety and health of a person engaged in a pipeline operation; or
  - (b) the safety and health of any other protected person.
- (2) Without limiting subsection (1), regulations for the purpose of that subsection may —
  - (a) require a person who is carrying on a pipeline operation to establish and maintain a system of management to secure —
    - (i) the occupational safety and health of a person engaged in a pipeline operation; or
    - (ii) the safety and health of any other protected person;
  - and
  - (b) specify requirements with which the system must comply.

**56C. Minister's occupational safety and health functions**

- (1) The Minister has the following functions —
  - (a) to promote the occupational safety and health of persons engaged in pipeline operations;
  - (b) to develop and implement effective monitoring and enforcement strategies to secure compliance by persons with their occupational safety and health obligations under this Act;
  - (c) to investigate accidents, occurrences and circumstances that affect, or have the potential to affect, the occupational safety and health of persons engaged in pipeline operations;
  - (d) to advise persons, either on the Minister's own initiative or on request, on occupational safety and health matters relating to pipeline operations.
- (2) The Minister has power to do all things necessary or convenient to be done for or in connection with the performance of the Minister's functions.

”.

**24. Section 61 amended**

- (1) Section 61(1)(a) is amended by deleting “Department of Mines at Perth in the State” and inserting instead —

“

department of the Public Service principally assisting in the administration of this Act

”.

- (2) Section 61(4) is repealed.

**25. Section 62 amended**

- (1) Section 62(1) is amended by deleting “the purposes of this Act and the regulations.” and inserting instead —

“

such or all of the purposes of this Act as are specified in the instrument of appointment.

”.

- (2) Section 62(2) is amended by deleting “he is an inspector for the purposes of this Act and the regulations.” and inserting instead —

“

the person is an inspector for the purposes specified in the certificate.

”.

**26. Section 63 amended**

Section 63(1) is amended by deleting “and the regulations,” and inserting instead —

“

, but without affecting the powers of an inspector under Schedule 1,

”.

**27. Section 63A inserted**

After section 63 the following section is inserted —

“

**63A. Protection from liability for wrongdoing**

- (1) An action in tort does not lie against a person for anything that the person has done, in good faith, in the performance or purported performance of a function under this Act.
- (2) The protection given by subsection (1) applies even though the thing done as described in that subsection may have been capable of being done whether or not this Act had been enacted.
- (3) Despite subsection (1), the State is not relieved of any liability that it might have for another person having done anything as described in that subsection.
- (4) In this section a reference to the doing of anything includes a reference to the omission to do anything.

”

**28. Section 65 replaced**

Section 65 is repealed and the following section is inserted instead —

“

**65. Interfering with pipeline operation**

A person must not intentionally or recklessly —

- (a) cause damage to, or interfere with, any pipeline; or
- (b) interfere with any pipeline operation.

Penalty: imprisonment for 10 years.

”

**29. Sections 66BA and 66BB inserted and transitional provision**

- (1) After section 66B the following sections are inserted —

“

**66BA. Time for bringing proceedings for offences against this Act (including the regulations)**

A proceeding for an offence against this Act may be brought at any time.

**66BB. Evidentiary matters**

- (1) In a proceeding for an offence against this Act an averment in the complaint that at a particular time —
  - (a) a particular operation was a pipeline operation;

- (b) a particular person was the licensee for a pipeline operation;
- (c) a particular person was in control of a particular part of a pipeline operation;
- (d) a particular person was an employer who carried on a pipeline operation;
- (e) a particular person was an employer of a particular person or particular persons engaged in a pipeline operation;
- (f) a particular person was an employee or inspector,

is to be taken to have been proved in the absence of evidence to the contrary.

- (2) In a proceeding for an offence against this Act, proof is not required as to any of the following matters, unless evidence is given to the contrary —
  - (a) a delegation under section 61 by the Minister of a power or function;
  - (b) the authority of any person to institute a proceeding for an offence against this Act other than an offence against a listed OSH law;
  - (c) the authority of an inspector to institute a proceeding for an offence against a listed OSH law.
- (3) In a proceeding for an offence against this Act, production of a copy of —
  - (a) a code of practice;
  - (b) an Australian Standard; or
  - (c) an Australian/New Zealand Standard,

purporting to be certified by the CEO to be a true copy as at any date or during any period is, without proof of the signature of the CEO, sufficient evidence of the contents of the code of practice or Standard as at that date or during that period.

- (4) In subsection (3) —
  - Australian Standard** means a document having that title published by Standards Australia;
  - Australian/New Zealand Standard** means a document having that title jointly published by Standards Australia and the Standards Council of New Zealand;
  - CEO** means the chief executive officer of the department of the Public Service principally assisting in the administration of this Act.

”.

- (2) Section 51 of the *Justices Act 1902* as in force immediately before the commencement of subsection (1) applies to an offence against the *Petroleum Pipelines Act 1969* committed before that commencement as if subsection (1) had not been enacted.

**30. Section 67 amended**

- (1) After section 67(1)(f) the following paragraphs are inserted —

“

- (fa) fees in relation to pipeline safety audits or other services provided by the Minister;
- (fb) any transitional matter arising out of the amendments made to this Act by the *Petroleum Legislation Amendment and Repeal Act 2005*;

”.

- (2) After section 67(1b) the following subsection is inserted —

“

- (1c) The regulations under this section may adopt or apply, with or without modification, any regulation made under the *Petroleum Act 1967*<sup>16</sup>, the *Petroleum (Submerged Lands) Act 1982* or the Commonwealth Act as defined in that Act, that is in force or existing at the time when the regulations under this section take effect or as in force or existing from time to time.

”.

**31. Various sections amended to delete “or the regulations” (*Interpretation Act 1984* s. 46)**

The provisions set out in the Table to this section are amended by deleting “or the regulations” in each case.

**Table**

s. 6(3)(b)	s. 61
s. 22(1)(f)	s. 66(1) and (2)
s. 42(1)	s. 66A

**32. Schedule 1 inserted**

After section 67 the following Schedule is inserted —

“

**Schedule 1 — Occupational safety and health**

[s. 56A]

**Division 1 — Introduction**

**1. Objects**

The objects of this Schedule are, in relation to pipeline operations —

- (a) to secure the occupational safety and health of persons engaged in those operations;
- (b) to protect persons in the vicinity of those operations at the invitation of, or with the express or implied consent of, the licensees for, or persons in control of a part of, those operations from risks to safety and health arising out of those operations;
- (c) to ensure that expert advice is available on occupational safety and health matters in relation to those operations;
- (d) to promote an occupational environment for members of the workforce engaged in those operations that is adapted to their needs relating to safety and health; and
- (e) to foster a consultative relationship between all relevant persons concerning the safety and health of members of the workforce engaged in those operations.

**2. Simplified outline**

The following is a simplified outline of this Schedule —

- This Schedule sets up a scheme to regulate occupational safety and health matters relating to pipeline operations.
- Occupational safety and health duties are imposed on the following —
  - (a) the licensee for a pipeline operation;
  - (b) a person in control of any part of a pipeline operation;
  - (c) an employer;
  - (d) a manufacturer of plant, or a substance, for use in a pipeline operation;
  - (e) a supplier of a pipeline, or of any plant or substance, for use in a pipeline operation;
  - (f) a person who constructs or installs a pipeline, or any plant, for use in a pipeline operation;
  - (g) a person engaged in a pipeline operation.
- A group of members of the workforce engaged in a pipeline operation may be established as a designated work group.

- The members of a designated work group may select a safety and health representative for that designated work group.
- The safety and health representative may exercise certain powers for the purpose of promoting or ensuring the occupational safety and health of group members.
- An inspector may conduct an inspection —
  - (a) to ascertain whether a listed OSH law is being complied with;
  - (b) concerning a contravention or a possible contravention of a listed OSH law; or
  - (c) concerning an accident or dangerous occurrence that has happened at or near a place at which a pipeline operation is carried on.
- The licensee for a pipeline operation must report to the Minister accidents and dangerous occurrences arising out of the pipeline operation.

3. **Definitions**

In this Schedule —

**accident** includes the contraction of a disease;

**contract** includes an arrangement or understanding;

**contractor** has the meaning given by clause 6;

**dangerous occurrence** means an occurrence declared by the regulations to be a dangerous occurrence for the purposes of this definition;

**designated work group** means —

- (a) a group of members of the workforce engaged in a pipeline operation that is established as a designated work group under clause 17 or 18; or
- (b) that group as varied in accordance with clause 19 or 20;

**employee**, in relation to an employer, means an employee of that employer;

**employer** means an employer who carries on a pipeline operation;

**group member**, in relation to a designated work group for a pipeline operation, means a person who is —

- (a) a member of the workforce engaged in that operation;  
and
- (b) included in that designated work group;

**improvement notice** means an improvement notice issued under clause 60(1);

**inspection** means an inspection conducted under Division 4 and includes an investigation or inquiry;

**licensee**, in relation to a pipeline operation, means the registered holder of the licence granted in respect of that operation;

**licensee's representative** means a person present at a workplace in compliance with the obligations imposed on the licensee by clause 4;

**member of the workforce**, in relation to a pipeline operation, means a natural person who is engaged in the operation, whether —

- (a) as an employee of the licensee or of another person; or
- (b) as a contractor of the licensee or of another person;

**own** includes own jointly and own in part;

**plant** includes any machinery, equipment or tool, or any component;

**premises** includes the following —

- (a) a structure or building;
- (b) a place (whether or not enclosed or built on);
- (c) a part of a thing referred to in paragraph (a) or (b);

**prohibition notice** means a prohibition notice issued under clause 58(1);

**registered organisation** means an organisation —

- (a) within the meaning of the *Workplace Relations Act 1996* of the Commonwealth; or
- (b) as defined in section 7(1) of the *Industrial Relations Act 1979*;

**regulated business premises** means —

- (a) a place where a pipeline operation is carried on; or
- (b) premises that are —
  - (i) occupied by a person who is the licensee for a pipeline operation; and
  - (ii) used, or proposed to be used, wholly or principally in connection with a pipeline operation;

**regulations** means regulations made for the purposes of this Schedule;

**Tribunal** has the meaning given to that term in the *Occupational Safety and Health Act 1984* section 51G(2);

**work** means work that is directly or indirectly related to a pipeline operation;



*workforce representative* means —

- (a) in relation to a person who is a member of the workforce engaged in a pipeline operation — a registered organisation of which that person is a member, if the person is qualified to be a member of that organisation because of the work the person performs in relation to the pipeline operation; or
- (b) in relation to a designated work group or a proposed designated work group — a registered organisation of which a person who is, or who is likely to be, in the work group is a member, if the person is qualified to be a member of that organisation because of the work the person performs, or will perform, in relation to the pipeline operation as a member of the group;

*work group employer*, in relation to a designated work group in relation to a pipeline operation, means an employer of one or more group members, but does not include the licensee for the pipeline operation;

*workplace*, in relation to a pipeline operation, means the whole place where the pipeline operation is carried on or any part of a place where the pipeline operation is carried on.

**4. Licensee must ensure presence of licensee's representative**

- (1) The licensee for a pipeline operation must ensure that, at all times when one or more natural persons are engaged in the pipeline operation, there is present at the workplace a natural person (the *licensee's representative*) who has day to day management and control of the pipeline operation.

Penalty: \$5 500.

- (2) The licensee for a pipeline operation must ensure that the name of the licensee's representative is displayed in a prominent place at the workplace.

Penalty: \$5 500.

- (3) Subclause (1) does not imply that, if the licensee is a natural person, the licensee's representative may not be, from time to time, the licensee.

**5. Safety and health of persons using an accommodation amenity**

For the avoidance of doubt, a reference in this Schedule to the occupational safety and health of a person includes a reference to the safety and health of a person using an accommodation amenity provided for the accommodation of persons engaged in a pipeline operation.

**6. Contractor**

For the purposes of this Schedule, a natural person is taken to be a “contractor” of another person (the *relevant person*) if the natural person is engaged in a pipeline operation under a contract for services between —

- (a) the relevant person; and
- (b) either —
  - (i) the natural person; or
  - (ii) the employer of the natural person.

**Division 2 — Occupational safety and health**

**Subdivision 1 — Duties relating to occupational safety and health**

**7. Duties of licensee**

- (1) The licensee for a pipeline operation must take all reasonably practicable steps to ensure that the pipeline operation is carried out in a manner that is safe and without risk to the health of persons engaged in the pipeline operation or other protected persons.  
Penalty: \$110 000.
- (2) Without limiting the generality of subclause (1), the licensee for a pipeline operation must —
  - (a) provide and maintain a physical environment at the place where the pipeline operation is carried out that is safe and without risk to health;
  - (b) provide and maintain adequate amenities for the safety and health of all members of the workforce engaged in the pipeline operation;
  - (c) ensure that any plant, equipment, materials and substances for use in the pipeline operation are safe and without risk to health;
  - (d) implement and maintain systems of work in relation to the pipeline operation that are safe and without risk to health;
  - (e) implement and maintain appropriate procedures and equipment for the control of, and response to, emergencies arising out of the pipeline operation;
  - (f) provide all members of the workforce, in appropriate languages, with the information, instruction, training and supervision necessary for them to carry out their activities in a manner that does not adversely affect the occupational safety and health of persons engaged in the pipeline operation;

- (g) monitor the occupational safety and health of all members of the workforce and keep records of that monitoring;
- (h) provide appropriate medical and first aid services at the places at which a pipeline operation is carried on; and
- (i) develop, in consultation with members of the workforce and workforce representatives, a policy relating to occupational safety and health that —
  - (i) will enable the licensee and the members of the workforce to cooperate effectively in promoting and developing measures to ensure the occupational safety and health of persons engaged in the pipeline operation;
  - (ii) will provide adequate mechanisms for reviewing the effectiveness of the measures; and
  - (iii) provides for the making of an agreement that complies with subclauses (4) and (5).

Penalty: \$110 000.

- (3) Subclause (2)(i) does not require the licensee for a pipeline operation to engage in consultations with a workforce representative unless a member of the workforce engaged in the pipeline operation has requested the workforce representative to be involved in those consultations.
- (4) The agreement referred to in subclause (2)(i)(iii) must be between —
  - (a) on the one hand — the licensee; and
  - (b) on the other hand —
    - (i) the members of the workforce; and
    - (ii) if a member of the workforce engaged in the pipeline operation has requested a workforce representative in relation to the member to be a party to that agreement — that workforce representative.
- (5) The agreement referred to in subclause (2)(i)(iii) must provide appropriate mechanisms for continuing consultation between —
  - (a) on the one hand — the licensee; and
  - (b) on the other hand —
    - (i) the members of the workforce; and
    - (ii) if a member of the workforce engaged in the pipeline operation has requested a workforce representative in relation to the member to be

involved in consultations on a particular occasion — that workforce representative.

- (6) The agreement may provide for any other matters agreed between the parties to it.

**8. Duties of persons in control of parts of pipeline operation**

- (1) A person who is in control of any part of a pipeline operation must take all reasonably practicable steps to ensure that that part of the pipeline operation is carried out in a manner that is safe and without risk to the health of persons engaged in the pipeline operation or other protected persons.

Penalty: \$110 000.

- (2) Without limiting the generality of subclause (1), a person who is in control of any part of a pipeline operation must —

- (a) ensure that the physical environment at the place where that part of the pipeline operation is carried out is safe and without risk to health;
- (b) ensure that any plant, equipment, materials and substances for use in that part of the pipeline operation are safe and without risk to health;
- (c) implement and maintain systems of work in relation to that part of the pipeline operation that are safe and without risk to health;
- (d) ensure a means of access to, and egress from the place where that part of the pipeline operation is carried out is safe and without risk to health; and
- (e) provide all members of the workforce engaged in that part of the pipeline operation in appropriate languages, with the information, instruction, training and supervision necessary for them to carry out their work in a manner that is safe and without risk to health.

Penalty: \$110 000.

**9. Duties of employers**

- (1) An employer must take all reasonably practicable steps to protect the safety and health of employees engaged in a pipeline operation.

Penalty: \$110 000.

- (2) Without limiting the generality of subclause (1), an employer must —

- (a) provide and maintain a working environment that is safe for employees and without risk to their health;
- (b) ensure that any plant, equipment, materials and substances for use in connection with the employees' work are safe and without risk to health;
- (c) implement and maintain systems of work that are safe and without risk to health;
- (d) provide a means of access to, and egress from, the employees' work location that is safe and without risk to health; and
- (e) provide the employees, in appropriate languages, with the information, instruction, training and supervision necessary for them to carry out their work in a manner that is safe and without risk to health.

Penalty: \$110 000.

- (3) A person has, in respect of a contractor of that person, the same obligations that an employer has under subclauses (1) and (2) in respect of an employee of that employer, but only in relation to —
  - (a) matters over which the first-mentioned person has control; or
  - (b) matters over which —
    - (i) the first-mentioned person would have had control apart from express provision to the contrary in a contract; and
    - (ii) the first-mentioned person would, in the circumstances, usually be expected to have had control.
- (4) An employer must take all reasonable steps to —
  - (a) monitor the safety and health of employees; and
  - (b) keep records of that monitoring.

Penalty: \$110 000.

- (5) An employer must take all reasonably practicable steps to ensure that —
  - (a) work that is undertaken by the employer's employees is carried out in a manner that is safe and without risk to the health of persons engaged in the pipeline operation or other protected persons; and
  - (b) the employer's system of work is operated in a manner that is safe and without risk to the health of persons

engaged in the pipeline operation or other protected persons.

Penalty: \$22 000.

**10. Duties of manufacturers in relation to plant and substances**

(1) A manufacturer of any plant that the manufacturer knows or ought reasonably to expect will be used by members of the workforce engaged in a pipeline operation must take all reasonably practicable steps —

- (a) to ensure that the plant is so designed and constructed as to be, when properly used, safe and without risk to health;
- (b) to carry out, or cause to be carried out, the research, testing and examination necessary in order to discover, and to eliminate or minimise, any risk to safety or health that may arise from the use of the plant; and
- (c) to make available, in connection with the use of the plant in a pipeline operation, adequate written information about —
  - (i) the use for which it is designed and has been tested;
  - (ii) details of its design and construction; and
  - (iii) any conditions necessary to ensure that, when put to the use for which it was designed and tested, it will be safe and without risk to health.

Penalty: \$22 000.

(2) A manufacturer of any substance that the manufacturer knows or ought reasonably to expect will be used by members of the workforce engaged in a pipeline operation must take all reasonably practicable steps —

- (a) to ensure that the substance is so manufactured as to be, when properly used, safe and without risk to health;
- (b) to carry out, or cause to be carried out, the research, testing and examination necessary to discover, and to eliminate or minimise, any risk to safety or health that may arise from the use of the substance; and
- (c) to make available, in connection with the use of the substance in a pipeline operation, adequate written information concerning —
  - (i) the use for which it is manufactured and has been tested;
  - (ii) details of its composition;

- (iii) any conditions necessary to ensure that, when put to the use for which it was manufactured and tested, it will be safe and without risk to health; and
- (iv) the first aid and medical procedures that should be followed if the substance causes injury.

Penalty: \$22 000.

- (3) If —
  - (a) plant or a substance is imported into Australia by a person who is not its manufacturer; and
  - (b) at the time of the importation, the manufacturer of the plant or substance does not have a place of business in Australia,

the first-mentioned person is taken, for the purposes of this clause, to be the manufacturer of the plant or substance.

- (4) This clause does not affect the operation of any other law of this State that imposes an obligation on a manufacturer in respect of defective goods or in respect of information to be supplied in relation to goods.

#### **11. Duties of suppliers of pipelines, plant and substances**

- (1) A supplier of a pipeline, or of any plant or substance, that the supplier ought reasonably to expect will be used by members of the workforce engaged in a pipeline operation, must take all reasonably practicable steps —
  - (a) to ensure that, at the time of supply, the pipeline, or the plant or substance, is in such condition as to be, when properly used, safe and without risk to health;
  - (b) to carry out, or cause to be carried out, the research, testing and examination necessary to discover, and to eliminate or minimise, any risk to safety or health that may arise from the condition of the pipeline, plant or substance; and
  - (c) to make available —
    - (i) in the case of a pipeline — to the licensee for the pipeline operation; and
    - (ii) in the case of plant or substance — to the person to whom the plant or substance is supplied, adequate written information, in connection with the use of the pipeline, plant or substance (as the case requires) about —

- (iii) the condition of the pipeline, plant or substance at the time of supply;
- (iv) any risk to the safety and health of members of the workforce engaged in a pipeline operation to which the condition of the pipeline, plant or substance may give rise unless it is properly used;
- (v) the steps that need to be taken in order to eliminate that risk; and
- (vi) in the case of a substance — the first aid and medical procedures that should be followed if the condition of the substance causes injury to a member of the workforce engaged in a pipeline operation.

Penalty: \$22 000.

- (2) For the purposes of subclause (1), if a person (the ***ostensible supplier***) supplies to a person either a pipeline, or any plant or substance, that is for use by members of the workforce engaged in a pipeline operation, and the ostensible supplier —
  - (a) carries on the business of financing the acquisition or the use of goods by other persons;
  - (b) has, in the course of that business, acquired an interest in the pipeline, or in the plant or substance, from another person (the ***actual supplier***), solely for the purpose of financing its acquisition by, or its provision to, the person to whom it is finally supplied; and
  - (c) has not taken possession of the pipeline, plant or substance, or has taken possession of the pipeline, plant or substance solely for the purpose of passing possession of the pipeline, plant or substance to the person to whom it is finally supplied,a reference in subclause (1) to a supplier is, in relation to the pipeline, plant or substance referred to in this subclause, to be read as a reference to the actual supplier and not as a reference to the ostensible supplier.
- (3) This clause does not affect the operation of any other law of this State that imposes an obligation in respect of the sale or supply of goods or in respect of the information to be supplied in relation to goods.



**12. Duties of persons constructing pipelines or installing plant**

- (1) A person who constructs or installs a pipeline, or erects or installs any plant, for use in a pipeline operation, must take all reasonably practicable steps to ensure that the pipeline or plant is not erected or installed in such a way that it is unsafe or constitutes a risk to safety or health.

Penalty: \$22 000.

- (2) This clause does not affect the operation of any other law of this State that imposes an obligation in respect of the erection or installation of structures or goods or the supply of services.

**13. Duties of persons in relation to occupational safety and health**

- (1) A person engaged in a pipeline operation must, at all times, take all reasonably practicable steps —

- (a) to ensure that the person does not take any action, or make any omission, that creates a risk, or increases an existing risk, to —

- (i) the occupational safety and health of that person; or  
(ii) the safety and health of any other protected person;

- (b) in respect of any obligation imposed on the licensee or on any other person under a listed OSH law — to cooperate with the licensee or that other person to the extent necessary to enable the licensee or that other person to fulfil that obligation; and

- (c) to use equipment that is —

- (i) supplied to the person by the licensee, an employer of the person or any other person having control of the pipeline operation (the *equipment supplier*); and  
(ii) necessary to protect the occupational safety and health of the person, or the safety and health of any other person engaged in the pipeline operation or protected person,

in accordance with any instructions given by the equipment supplier, consistent with the safe and proper use of the equipment.

Penalty: \$5 500.

- (2) Despite subclause (1), the choice or manner of use, or choice and manner of use, of equipment of the kind referred to in

subclause (1)(c)(ii) is a matter that may be, consistently with each listed OSH law —

- (a) agreed on between the equipment supplier and any relevant safety and health representative; or
  - (b) agreed on by a safety and health committee.
- (3) If an agreement of the kind referred to in subclause (2)(a) or (b) provides a process for choosing equipment of a particular kind that is to be provided by the equipment supplier, action must not be taken against a person for failure to use equipment of that kind that is so provided unless the equipment has been chosen in accordance with that process.
- (4) If an agreement of the kind referred to in subclause (2)(a) or (b) provides a process for determining the manner of use of equipment of a particular kind, action must not be taken against a person for failure to use, in the manner required by the equipment supplier, equipment of that kind that is so provided unless the manner has been determined in accordance with that process.

**14. Reliance on information supplied or results of research**

- (1) For the purpose of the application of clause 7, 8 or 9 to the use of plant or a substance, a person on whom an obligation is imposed under any of those clauses is regarded as having taken reasonably practicable steps as required by the relevant clause, in relation to the use of the plant or substance, to the extent that —
- (a) the person ensured, so far as practicable, that its use was in accordance with the information supplied by the manufacturer or the supplier of the plant or substance relating to occupational safety and health in its use; and
  - (b) it was reasonable for the person to rely on that information.
- (2) For the purpose of the application of clause 10 or 11 to carrying out research, testing and examining a pipeline, or any plant or substance, a person on whom an obligation is imposed under either of those clauses is regarded as having taken reasonably practicable steps as required by the relevant clause, in relation to carrying out research, testing and examining the pipeline, plant or substance, to the extent that —
- (a) the research, testing or examination has already been carried out by or on behalf of someone else; and
  - (b) it was reasonable for the person to rely on that research, testing or examination.

- (3) For the purpose of the application of clause 12 to the construction of a pipeline or the erection or installation of plant for use in a pipeline operation, a person on whom an obligation is imposed under that clause is regarded as having taken reasonably practicable steps as required by that clause to the extent that —
- (a) the person ensured, so far as is reasonably practicable, that the construction of the pipeline, or the erection or installation of the plant, was —
    - (i) in accordance with information supplied by the manufacturer or supplier of the pipeline or plant relating to its erection or its installation; and
    - (ii) consistent with the occupational safety and health of persons engaged in the pipeline operation;
  - and
  - (b) it was reasonable for the person to rely on that information.
- (4) Nothing in this clause limits the generality of what constitutes reasonably practicable steps as required by clause 7, 8, 9, 10, 11 or 12.

**Subdivision 2 — Regulations relating to occupational safety and health**

**15. Regulations relating to occupational safety and health**

- (1) The regulations may make provision relating to any matter affecting, or likely to affect, the occupational safety and health of persons engaged in a pipeline operation.
- (2) Regulations made for the purposes of subclause (1) may make provision for any or all of the following —
  - (a) prohibiting or restricting the performance of all work or specified work in relation to a pipeline operation;
  - (b) prohibiting or restricting the use of all plant or specified plant in a pipeline operation;
  - (c) prohibiting or restricting the carrying out of all processes or a specified process in a pipeline operation;
  - (d) prohibiting or restricting the storage or use of all substances or specified substances in a pipeline operation;
  - (e) specifying the form in which information required to be made available under clause 10(1)(c) or 11(1)(c) is to be so made available;

- (f) prohibiting, except in accordance with licences granted under the regulations, the use of specified plant or specified substances in a pipeline operation;
- (g) providing for —
  - (i) the issue, variation, renewal, transfer, suspension and cancellation of those licences; and
  - (ii) the conditions to which the licences may be subject;
- (h) regulating the maintenance and testing of plant for use in a pipeline operation;
- (i) regulating the labelling or marking of substances for use in a pipeline operation;
- (j) regulating the transport of specified plant or specified substances for use in a pipeline operation;
- (k) prohibiting the performance, in relation to a pipeline operation, of specified activities or work except —
  - (i) by persons who satisfy requirements of the regulations as to qualifications, training or experience; or
  - (ii) under the supervision specified in the regulations;
- (l) requiring specified action to avoid accidents or dangerous occurrences;
- (m) providing for, or prohibiting, specified action in the event of accidents or dangerous occurrences;
- (n) providing for the employment of persons to perform specified duties relating to the maintenance of occupational safety and health in relation to a pipeline operation;
- (o) regulating the provision and use, in a pipeline operation, of protective clothing and equipment, safety equipment and rescue equipment;
- (p) providing for monitoring the health of members of the workforce engaged in a pipeline operation and the conditions at a place at which a pipeline operation is carried out;
- (q) requiring employers to keep records of matters related to the occupational safety and health of employees;

- (r) providing for the provision of first aid equipment and amenities at a place at which a pipeline operation is carried out.

### **Division 3 — Workplace arrangements**

#### **Subdivision 1 — Introduction**

#### **16. Simplified outline**

The following is a simplified outline of this Subdivision —

- A group of members of the workforce engaged in a pipeline operation may be established as a designated work group.
- The members of a designated work group may select a safety and health representative for that designated work group.
- The safety and health representative may exercise certain powers for the purpose of promoting or ensuring the occupational safety and health of group members.
- A safety and health committee may be established in relation to the members of the workforce engaged in a pipeline operation.
- The main function of a safety and health committee is to assist the licensee in relation to occupational safety and health matters.

#### **Subdivision 2 — Designated work groups**

#### **17. Establishment of designated work groups by request**

- (1) A request to the licensee for a pipeline operation to enter into consultations to establish designated work groups in relation to the members of the workforce engaged in the pipeline operation may be made by —
  - (a) any member of the workforce; or
  - (b) if a member of the workforce requests a workforce representative in relation to the member to make the request to the licensee — that workforce representative.
- (2) The licensee for a pipeline operation must, within 14 days after receiving a request under subclause (1), enter into consultations with —
  - (a) if any member of the workforce made a request to establish designated work groups —
    - (i) that member of the workforce;
    - (ii) if that member requests that the licensee enter into consultations with a workforce

- representative in relation to the member — that workforce representative; and
    - (iii) each employer (if any) of members of the workforce;
  - and
  - (b) if a workforce representative made a request to establish designated work groups —
    - (i) if a member of the workforce requests that the licensee enter into consultations with that workforce representative — that workforce representative; and
    - (ii) each employer of members of the workforce.
  - (3) Within 14 days after the completion of consultations about the establishment of the designated work groups, the licensee must, by notifying the members of the workforce, establish the designated work groups in accordance with the outcome of the consultations.

**18. Establishment of designated work groups at initiative of licensee**

- (1) If, at any time, the licensee for a pipeline operation considers that designated work groups should be established, the licensee must enter into consultations with —
  - (a) all members of the workforce;
  - (b) if a member of the workforce requests that the licensee enter into consultations with a workforce representative in relation to the member — that workforce representative; and
  - (c) each employer (if any) of members of the workforce.
- (2) Within 14 days after the completion of consultations about the establishment of the designated work groups, the licensee must, by notifying the members of the workforce, establish the designated work groups in accordance with the outcome of the consultations.

**19. Variation of designated work groups by request**

- (1) A request to the licensee for a pipeline operation to enter into consultations to vary designated work groups that have already been established in relation to the members of the workforce engaged in the pipeline operation may be made by —
  - (a) any member of the workforce; or
  - (b) if a member of the workforce requests a workforce representative in relation to the member to make the request to the licensee — that workforce representative.

- (2) The licensee for a pipeline operation must, within 14 days after receiving a request under subclause (1), enter into consultations with —
- (a) if any member of the workforce made a request to vary designated work groups —
    - (i) that member of the workforce;
    - (ii) the safety and health representative of each designated work group affected by the proposed variation; and
    - (iii) each work group employer (if any) in relation to each designated work group affected by the proposed variation;
  - and
  - (b) if a workforce representative made a request to vary designated work groups —
    - (i) if a member of a designated work group affected by the proposed variation requests that the licensee enter into consultations with that workforce representative in relation to the group — that workforce representative;
    - (ii) the safety and health representative of each designated work group affected by the proposed variation; and
    - (iii) each work group employer (if any) in relation to each designated work group affected by the proposed variation.
- (3) If —
- (a) consultations take place about the variation of designated work groups that have already been established; and
  - (b) as a result of the consultations, it has been determined that the variation of some or all of those designated work groups is justified,

then, within 14 days after the completion of the consultations, the licensee must, by notifying the members of the workforce who are affected by the variation, vary the designated work groups in accordance with the outcome of the consultations.

**20. Variation of designated work groups at initiative of licensee**

- (1) If the licensee for a pipeline operation believes the designated work groups should be varied, the licensee may, at any time, enter into consultations about the variations with —

- (a) the safety and health representative of each of the designated work groups affected by the proposed variation;
  - (b) if a member of a designated work group affected by the proposed variation requests that the licensee enter into consultations with that workforce representative in relation to the group — that workforce representative; and
  - (c) each work group employer (if any) in relation to each designated work group affected by the proposed variation.
- (2) If —
- (a) consultations take place about the variation of designated work groups that have already been established; and
  - (b) as a result of the consultations, it has been determined that the variation of some or all of those designated work groups is justified,

then, within 14 days after the completion of the consultations, the licensee must, by notifying the members of the workforce who are affected by the variation, vary the designated work groups in accordance with the outcome of the consultations.

**21. Referral of disagreement to reviewing authority**

- (1) If, in the course of consultations under clause 17, 18, 19 or 20, there is a disagreement between any of the parties to the consultation about the manner of establishing or varying a designated work group, any party may, for the purpose of facilitating that consultation, refer the matter of disagreement to the reviewing authority.
- (2) The party referring the matter to the reviewing authority must give notice of the referral to all the other parties to the disagreement.
- (3) The reviewing authority is to —
  - (a) resolve the matter of the disagreement referred to the reviewing authority; and
  - (b) notify all parties to the disagreement of the decision.
- (4) If the matter of a disagreement is referred to the reviewing authority, the parties to the disagreement must complete the consultation in accordance with the resolution of that matter by the reviewing authority.
- (5) In this clause —



*reviewing authority* means a person prescribed by the regulations to be a reviewing authority for the purposes of this clause.

**22. Manner of grouping members of the workforce**

- (1) Consultations about the establishment or variation of a designated work group must be directed principally at the determination of the manner of grouping members of the workforce —
  - (a) that best and most conveniently enables their interests relating to occupational safety and health to be represented and safeguarded; and
  - (b) that best takes account of the need for any safety and health representative selected for that designated work group to be accessible to each group member.
- (2) The parties to the consultations must have regard, in particular, to —
  - (a) the number of members of the workforce engaged in the pipeline operation to which the consultation relates;
  - (b) the nature of each type of work performed by those members;
  - (c) the number and grouping of those members who perform the same or similar types of work;
  - (d) the workplaces where each type of work is performed;
  - (e) the nature of any risks to safety and health at each of those workplaces; and
  - (f) any overtime or shift working arrangement in relation to the pipeline operation.
- (3) The designated work groups must be established or varied in such a way that, so far as practicable, each of the members of the workforce engaged in a pipeline operation is in a designated work group.
- (4) All the members of the workforce engaged in a pipeline operation may be in one designated work group.

**Subdivision 3 — Safety and health representatives**

**23. Selection of safety and health representatives**

- (1) One safety and health representative may be selected for each designated work group.
- (2) A person is not eligible for selection as the safety and health representative for a designated work group unless the person is a member of the workforce included in the group.

- (3) A person is taken to have been selected as the safety and health representative for a designated work group if —
  - (a) all the members of the workforce in the group unanimously agree to the selection; or
  - (b) the person is elected as the safety and health representative of the group in accordance with clause 24.

**24. Election of safety and health representatives**

- (1) If —
  - (a) there is a vacancy in the office of safety and health representative for a designated work group; and
  - (b) within a reasonable time after the vacancy occurs, a person has not been selected under clause 23(3)(a),the licensee for the pipeline operation must invite nominations from all group members for election as the safety and health representative of the group.
- (2) If the office of safety and health representative is vacant and the licensee has not invited nominations within a further reasonable time that is no later than 6 months after the vacancy occurred, the Minister may direct the licensee to do so.
- (3) If there is more than one candidate for election at the close of the nomination period, the licensee must conduct, or arrange for the conduct of, an election at the licensee's expense.
- (4) An election conducted or arranged to be conducted under subclause (3) must be conducted in accordance with regulations made for the purposes of this subclause if this is requested by the lesser of —
  - (a) 100 members of the workforce normally in the designated work group; or
  - (b) a majority of the members of the workforce normally in the designated work group.
- (5) If there is only one candidate for election at the close of the nomination period, that person is taken to have been elected.
- (6) A person cannot be a candidate in the election if he or she is disqualified under clause 30.
- (7) All the members of the workforce in the designated work group are entitled to vote in the election.
- (8) A licensee conducting or arranging for the conduct of an election under this clause must comply with any relevant directions issued by the Minister.

**25. List of safety and health representatives**

The licensee for a pipeline operation must —

- (a) prepare and keep up to date a list of all the safety and health representatives of designated work groups comprising members of the workforce engaged in the pipeline operation; and
- (b) ensure that the list is available for inspection, at all reasonable times, by —
  - (i) the members of the workforce engaged in the pipeline operation; and
  - (ii) inspectors.

**26. Members of designated work group must be notified of selection etc. of safety and health representative**

The licensee for a pipeline operation must —

- (a) notify members of a designated work group in relation to the pipeline operation of a vacancy in the office of safety and health representative for the designated work group within a reasonable time after the vacancy arises; and
- (b) notify those members of the name of any person selected (whether under clause 23(3)(a) or (b)) as safety and health representative for the designated work group within a reasonable time after the selection is made.

**27. Term of office**

- (1) A safety and health representative for a designated work group holds office —
  - (a) if, in consultations that took place under clause 17, 18, 19 or 20, the parties to the consultations agreed to the period for which the safety and health representative for the group was to hold office — for that period; or
  - (b) if paragraph (a) does not apply — for 2 years.
- (2) The term of office of a safety and health representative begins at the start of the day on which he or she was selected.
- (3) Nothing in this clause prevents a safety and health representative from being selected for further terms of office.

**28. Training of safety and health representatives**

- (1) A safety and health representative for a designated work group must undertake a course of training relating to occupational safety and health that is accredited by the Minister for the purposes of this clause.

- (2) The licensee for the pipeline operation concerned must permit the representative to take any time off work, without loss of remuneration or other entitlements, that is necessary to undertake the training.
- (3) If a person other than the licensee is the employer of the representative, that person must permit the representative to take any time off work, without loss of remuneration or other entitlements, that is necessary to undertake the training.

**29. Resignation etc. of safety and health representatives**

- (1) A person ceases to be the safety and health representative for the designated work group if —
  - (a) the person resigns as the safety and health representative;
  - (b) the person ceases to be a group member of that designated work group;
  - (c) the person's term of office expires without the person having been selected, under clause 23, to be the safety and health representative for the designated work group for a further term; or
  - (d) the person is disqualified under clause 30.
- (2) A person may resign as the safety and health representative for a designated work group by notice in writing delivered to the licensee and to each work group employer.
- (3) If a person resigns as the safety and health representative for a designated work group, the person must notify the resignation to the group members.
- (4) If a person has ceased to be the safety and health representative for a designated work group because of subclause (1)(b), the person must notify in writing —
  - (a) the group members; and
  - (b) the licensee and each work group employer,that the person has ceased to be the safety and health representative for that designated work group.

**30. Disqualification of safety and health representatives**

- (1) An application for the disqualification of a safety and health representative for a designated work group may be made to the Tribunal by —
  - (a) the licensee;
  - (b) a work group employer; or

- (c) at the request of a group member of the designated work group — a workforce representative in relation to the designated work group.
- (2) An application under subclause (1) may be made on either or both of the following grounds —
  - (a) that action taken by the representative in the exercise or purported exercise of a power under clause 32(1) or any other provision of this Schedule was taken —
    - (i) with the intention of causing harm to the licensee or work group employer or to an undertaking of the licensee or work group employer; or
    - (ii) unreasonably, capriciously or not for the purpose for which the power was conferred on the representative;
  - (b) that the representative has intentionally used, or disclosed to another person, for a purpose that is not connected with the exercise of a power of a safety and health representative, information acquired from the licensee or work group employer.
- (3) On an application under subclause (1), the Tribunal may disqualify the representative, for a specified period not exceeding 5 years, from being a safety and health representative for any designated work group, if the Tribunal is satisfied that the representative has acted in a manner referred to in subclause (2).
- (4) In making a decision under subclause (3), the Tribunal must have regard to —
  - (a) the harm (if any) that was caused to the licensee or work group employer or to an undertaking of the licensee or work group employer as a result of the action of the representative;
  - (b) the past record of the representative in exercising the powers of a safety and health representative;
  - (c) the effect (if any) on the public interest of the action of the representative; and
  - (d) any other matters the Tribunal thinks relevant.

**31. Deputy safety and health representatives**

- (1) One deputy safety and health representative may be selected for each designated work group for which a safety and health representative has been selected.

- (2) A deputy safety and health representative is to be selected in the same way as a safety and health representative under clause 23.
- (3) If the safety and health representative for a designated work group —
  - (a) ceases to be the safety and health representative; or
  - (b) is unable (because of absence or for any other reason) to exercise the powers of a safety and health representative,then —
  - (c) the powers may be exercised by the deputy safety and health representative (if any) for the group; and
  - (d) this Schedule (other than this clause) applies in relation to the deputy safety and health representative accordingly.

**32. Powers of safety and health representatives**

- (1) A safety and health representative for a designated work group may, for the purpose of promoting or ensuring the safety and health at a workplace of the group members —
  - (a) do all or any of the following —
    - (i) inspect the whole or any part of the workplace if there has, in the immediate past, been an accident or a dangerous occurrence at the workplace, or if there is an immediate threat of such an accident or dangerous occurrence;
    - (ii) inspect the whole or any part of the workplace if the safety and health representative has given reasonable notice of the inspection to the licensee's representative and to any other person having immediate control of the workplace;
    - (iii) make a request to an inspector or to the Minister that an inspection be conducted at the workplace;
    - (iv) accompany an inspector during any inspection at the workplace by the inspector (whether or not the inspection is being conducted as a result of a request made by the safety and health representative);
    - (v) if there is no safety and health committee in respect of the members of the workforce engaged in the pipeline operation — represent group members in consultations with the licensee and any work group employer about the

- development, implementation and review of measures to ensure the safety and health of those members at the workplace;
  - (vi) if a safety and health committee has been established in respect of the members of the workforce engaged in the pipeline operation — examine any of the records of that committee;
  - (b) investigate complaints made by any group member to the safety and health representative about the safety and health of any of the members of the workforce (whether in the group or not);
  - (c) with the consent of a group member, be present at any interview about safety and health at work between that member and —
    - (i) an inspector;
    - (ii) the licensee or a person representing the licensee; or
    - (iii) a work group employer or a person representing that employer;
  - (d) obtain access to any information under the control of the licensee or any work group employer —
    - (i) relating to risks to the safety and health of any group member; and
    - (ii) relating to the safety and health of any group member;
  - and
  - (e) issue provisional improvement notices in accordance with clause 36.
- (2) Subclause (1)(d)(ii) has effect subject to clause 34.
- 33. Assistance by consultant**
- (1) A safety and health representative for a designated work group is entitled, in the exercise of his or her powers, to be assisted by a consultant.
- (2) A safety and health representative for a designated work group may —
- (a) be assisted by a consultant at a workplace at which work is performed; or
  - (b) provide to a consultant information that has been provided to the safety and health representative by a group member under clause 32(1)(d),

only if the licensee or the Minister has, in writing, agreed to the provision of that assistance at that workplace or the provision of that information, as the case may be.

- (3) Neither the licensee nor any workplace employer becomes, because of the agreement under subclause (2) to the provision of assistance by a consultant, liable for any remuneration or other expenses incurred in connection with the consultant's activities.
- (4) If a safety and health representative for a designated work group is being assisted by a consultant, the consultant is entitled to be present with the representative at any interview, about safety and health at work, between a group member and —
  - (a) an inspector; or
  - (b) the licensee or any work group employer or a person representing the licensee or that employer,

if, and only if, the group member consents to the presence of the consultant.

**34. Information**

- (1) Neither —
  - (a) a safety and health representative; nor
  - (b) a consultant assisting a safety and health representative,is entitled, under clause 32(1)(d)(ii), to have access to information in respect of which a group member is entitled to claim, and does claim, legal professional privilege.
- (2) Neither —
  - (a) a safety and health representative; nor
  - (b) a consultant assisting a safety and health representative,is entitled, under clause 32(1)(d)(ii), to have access to information of a confidential medical nature relating to a person who is or was a group member unless —
  - (c) the person has delivered to the licensee or any work group employer a written authority permitting the safety and health representative, or the safety and health representative and the consultant, as the case requires, to have access to the information; or
  - (d) the information is in a form that does not identify the person or enable the identity of the person to be discovered.

**35. Obligations and liabilities of safety and health representatives**

This Schedule does not —



- (a) impose an obligation on a person to exercise any power conferred on the person because the person is a safety and health representative; or
- (b) render a person liable in civil proceedings because of —
  - (i) a failure to exercise such a power; or
  - (ii) the way such a power was exercised.

**36. Provisional improvement notices**

- (1) If —
  - (a) a safety and health representative for a designated work group believes, on reasonable grounds, that a person —
    - (i) is contravening a listed OSH law; or
    - (ii) has contravened a provision of a listed OSH law and is likely to contravene that provision again;
  - and
  - (b) the contravention affects or may affect one or more group members,

the representative must consult with the person supervising the relevant activity in an attempt to reach agreement on rectifying the contravention or preventing the likely contravention.
- (2) If, in the safety and health representative's opinion, agreement is not reached within a reasonable time, the safety and health representative may issue a provisional improvement notice to any or each person (a *responsible person*) responsible for the contravention.
- (3) If a responsible person is the licensee, the improvement notice may be issued to the licensee by giving it to the licensee's representative.
- (4) If it is not practicable to issue the notice to a responsible person (other than the licensee or the supervisor) by giving it to that responsible person —
  - (a) the notice may be issued to that responsible person by giving it to the person who for the time being is, or may reasonably be presumed to be, on behalf of the responsible person, in charge of the activity to which the notice relates; and
  - (b) if the notice is so issued, a copy of the notice must be given to the responsible person as soon as practicable afterwards.
- (5) The notice must —

- (a) specify the contravention that, in the safety and health representative's opinion, is occurring or is likely to occur, and set out the reasons for that opinion; and
- (b) specify a period that —
  - (i) is not less than 7 days beginning on the day after the notice is issued; and
  - (ii) is, in the representative's opinion, reasonable, within which the responsible person is to take action necessary to prevent any further contravention or to prevent the likely contravention, as the case may be.
- (6) The notice may specify action that the responsible person is to take during the period specified in the notice.
- (7) If, in the safety and health representative's opinion, it is appropriate to do so, the representative may, in writing and before the end of the period, extend the period specified in the notice.
- (8) On issuing the notice, the safety and health representative must give a copy of the notice to —
  - (a) if the licensee is not a responsible person — the licensee;
  - (b) each work group employer other than a work group employer who is a responsible person;
  - (c) if the supervisor is not a responsible person — the supervisor; and
  - (d) if the notice relates to any plant, substance or thing that is owned by a person other than a responsible person or a person to whom a copy of the notice is given under paragraph (a), (b) or (c) — that owner.

**37. Effect of provisional improvement notice**

- (1) Within 7 days after a notice is issued under clause 36 —
  - (a) the responsible person; or
  - (b) any other person, to whom a copy of the notice has been given under clause 36(8),may request an inspector for an inspection of the matter to be conducted.
- (2) On the request being made, the operation of the notice is suspended pending the determination of the matter by an inspector.
- (3) As soon as possible after a request is made, an inspection must be conducted of the work that is the subject of the disagreement, and the inspector conducting the inspection must —

- (a) confirm, vary or cancel the notice and notify the responsible person and any person to whom a copy of the notice has been given under clause 36(8) accordingly; and
  - (b) make decisions, and exercise powers, under Division 4, as the inspector considers necessary in relation to the work.
- (4) If the inspector varies a notice, the notice as so varied has effect —
  - (a) so far as the notice concerns obligations imposed on the responsible person that are unaffected by the variation — as if the notice as so varied resumed effect on the day of the variation; and
  - (b) so far as the notice concerns new obligations imposed by virtue of the variation — as if the notice as so varied were a new notice issued on the day of the variation.
- (5) If the notice is issued to a responsible person, the responsible person must —
  - (a) notify each group member who is affected by the notice of the fact of the issue of the notice; and
  - (b) until the notice ceases to have effect, cause a copy of the notice to be displayed at or near each workplace at which the work that is the subject of the notice is being performed.
- (6) The notice ceases to have effect if —
  - (a) it is cancelled by an inspector or by the safety and health representative; or
  - (b) the responsible person —
    - (i) takes the action, if any, specified in the notice; or
    - (ii) if no action is so specified — takes the action necessary to prevent the further contravention, or likely contravention, concerned.
- (7) The responsible person —
  - (a) must ensure that, to the extent that the notice relates to any matter over which the person has control, the notice is complied with; and
  - (b) must take reasonable steps to inform the safety and health representative who issued the notice of the action taken to comply with the notice.

- (8) For the purposes of clause 64, if the inspector confirms or varies the notice, the inspector is taken to have decided, under clause 60, to issue an improvement notice in those terms.

**38. Duties of the licensee and other employers in relation to safety and health representatives**

- (1) The licensee for a pipeline operation, in relation to which a designated work group having a safety and health representative has been established, must —
- (a) on being requested to do so by the representative, consult with the representative on the implementation of changes at any workplace at which some or all of the group members perform work, being changes that may affect their safety and health;
  - (b) in relation to a workplace at which some or all of the group members perform work —
    - (i) permit the representative to make any inspection of the workplace that the representative is entitled to make in accordance with clause 32(1)(a)(i) and to accompany an inspector during an inspection at the workplace by the inspector; and
    - (ii) if there is no safety and health committee in respect of the members of the workforce — on being requested to do so by the representative, consult with the representative about the development, implementation and review of measures to ensure the safety and health of group members;
  - (c) permit the representative to be present at any interview at which the representative is entitled to be present under clause 32(1)(c);
  - (d) provide to the representative access to any information to which the representative is entitled to obtain access under clause 32(1)(d)(i) or (ii) and to which access has been requested;
  - (e) permit the representative to take any time off work, without loss of remuneration or other entitlements, that is necessary to exercise the powers of a safety and health representative; and
  - (f) provide the representative with access to any amenities that are —
    - (i) prescribed for the purposes of this paragraph; or

- (ii) necessary for the purposes of exercising the powers of a safety and health representative.
- (2) Subclause (1)(d) has effect subject to subclauses (3) and (4).
- (3) The licensee must not permit a safety and health representative in relation to a designated work group to have access to information that —
  - (a) is of a confidential medical nature under the control of the licensee; and
  - (b) relates to a person who is or was a group member,unless —
  - (c) the person has delivered to the employer a written authority permitting the representative to have access to the information; or
  - (d) the information is in a form that does not identify the person or enable the identity of the person to be discovered.
- (4) The licensee is not required to give a safety and health representative access to any information in respect of which the licensee is entitled to claim, and does claim, legal professional privilege.
- (5) The duties imposed by this clause on the licensee in respect of the safety and health representative for a designated work group apply equally, to the extent that the matters to which the duties relate are within the control of a work group employer or of a supervisor of particular work, to that employer and to that supervisor.

**Subdivision 4 — Safety and health committees**

**39. Safety and health committees**

- (1) A safety and health committee must be established in relation to the members of the workforce engaged in a pipeline operation if —
  - (a) the number of those members normally engaged in the pipeline operation is not less than 50 (whether or not those members are all at work in relation to the pipeline operation at the same time);
  - (b) the members of the workforce are included in one or more designated work groups; and
  - (c) the licensee is requested to establish the committee by the safety and health representative for the designated work group or for one of the designated work groups.
- (2) The safety and health committee consists of —

- (a) the number of members specified in an agreement reached between the licensee and the members of the workforce; or
  - (b) if there is no such agreement — an equal number of —
    - (i) members, chosen by the members of the workforce, to represent the interests of members of the workforce; and
    - (ii) members, chosen by the licensee, to represent the interests of the licensee and the employer (other than the licensee) of members of the workforce.
- (3) The agreement referred to in subclause (2)(a) may —
- (a) specify the persons who are to be members to represent the interests of the licensee and employers (other than the licensee) of members of the workforce; and
  - (b) provide for the way in which persons who are to be members to represent the interests of members of the workforce are to be chosen.
- (4) If regulations made for the purposes of this clause specify procedures for the selection of persons as members of safety and health committees to represent the interests of members of the workforce, an agreement referred to in subclause (2)(a) must not provide for members to be chosen in a way inconsistent with the regulations.
- (5) A safety and health committee must hold a meeting at least once every 3 months.
- (6) The procedure at meetings of a safety and health committee must, except to the extent provided for by the regulations, be the procedure agreed upon by the committee.
- (7) A safety and health committee must cause minutes of its meetings to be kept, and must retain those minutes for a period of not less than 3 years.
- (8) This clause does not prevent a licensee from establishing, in consultation with registered unions or any other persons, committees concerned with occupational safety and health in relation to undertakings carried on by the licensee.

**40. Functions of safety and health committees**

- (1) A safety and health committee has the following functions —
  - (a) to assist the licensee for the pipeline operation concerned —

- (i) to develop and implement measures designed to protect; and
    - (ii) to review and update measures used to protect, the safety and health at work of members of the workforce;
  - (b) to facilitate cooperation between the licensee for the pipeline operation, employers (other than the licensee) of members of the workforce, and members of the workforce, in relation to occupational safety and health matters;
  - (c) to assist the licensee to disseminate among members of the workforce, in appropriate languages, information relating to safety and health at work;
  - (d) any prescribed functions;
  - (e) any other functions that are agreed between the licensee and the safety and health committee.
- (2) A safety and health committee has power to do all things necessary or convenient to be done for, or in connection with, the performance of its functions.
- (3) This Schedule does not —
- (a) impose an obligation on a person to do any act, because the person is a member of a safety and health committee, in connection with the performance of a function conferred on the committee; or
  - (b) render such a person liable in civil proceedings because of —
    - (i) a failure to do such an act; or
    - (ii) the manner in which such an act was done.

**41. Duties of the licensee and other employers in relation to safety and health committees**

- (1) If there is a safety and health committee, the licensee and any employer (other than the licensee) of a member of the workforce must —
- (a) make available to the committee any information possessed by the licensee or that employer relating to risks to safety and health to members of the workforce; and
  - (b) permit any member of the committee who is a member of the workforce to take time off work, without loss of remuneration or other entitlements, as is necessary for the

member adequately to participate in the performance by the committee of its functions.

- (2) Subclause (1)(a) has effect subject to subclauses (3) and (4).
- (3) The licensee or any employer (other than the licensee) of a member of the workforce must not make available to a safety and health committee information of a confidential nature relating to a person who is or was a member of the workforce, unless —
  - (a) the person has authorised the information to be made available to the committee; or
  - (b) the information is in a form that does not identify the person or enable the identity of the person to be discovered.
- (4) The licensee or any employer (other than the licensee) of a member of the workforce is not required to make available to a safety and health committee any information in respect of which the licensee or employer is entitled to claim, and does claim, legal professional privilege.

**Subdivision 5 — Emergency procedures**

**42. Action by safety and health representatives**

- (1) If a safety and health representative for a designated work group has reasonable cause to believe that there is an imminent and serious danger to the safety or health of any person engaged in the pipeline operation or any other protected person unless a group member or group members cease to perform particular work, the representative must —
  - (a) inform a person (a *supervisor*) supervising the group member or group members in the performance of the work of the danger; or
  - (b) if no supervisor can be contacted immediately —
    - (i) direct the group member or group members to cease, in a safe manner, to perform the work; and
    - (ii) as soon as practicable, inform a supervisor that the direction has been given.
- (2) If a supervisor is informed under subclause (1)(a) of a danger to the safety or health of a person engaged in the pipeline operation or any other protected person, the supervisor must take the action he or she thinks appropriate to remove that danger, which may include directing a group member or group members to cease, in a safe manner, to perform the work.



- (3) If —
- (a) a safety and health representative has informed a supervisor under subclause (1)(a) of a danger; and
  - (b) the representative has reasonable cause to believe that, despite any action taken by the supervisor in accordance with subclause (2), there continues to be an imminent and serious danger to the safety or health of a person engaged in the pipeline operation or any other protected person unless the group member or group members cease to perform particular work,
- the representative must —
- (c) direct the group member or group members to cease, in a safe manner, to perform the work; and
  - (d) as soon as practicable, inform the supervisor that the direction has been given.
- (4) If —
- (a) a safety and health representative gives a direction under subclause (1)(b), but is unable to agree with a supervisor whom the representative has informed under that subclause that there is a need for a direction under that subclause; or
  - (b) a safety and health representative gives a direction under subclause (3)(c),
- the representative or the supervisor may request an inspector that an inspection be conducted of the work that is the subject of the direction.
- (5) As soon as possible after a request is made, an inspection must be conducted of the work that is the subject of the direction, and the inspector conducting the inspection must make decisions, and exercise powers, under Division 4 as the inspector considers necessary in relation to the work.
- (6) This clause does not limit the power of a safety and health representative under clause 32(1)(a)(iii) to request an inspector that an inspection be conducted at the workplace.

**43. Directions to perform other work**

If —

- (a) a group member who is an employee has ceased to perform work, in accordance with the direction of a safety and health representative under clause 42(1)(b) or (3)(c); and

- (b) the cessation of work does not continue after —
  - (i) the safety and health representative has agreed with a person supervising work at the workplace where the work was being performed that the cessation of work was not, or is no longer, necessary; or
  - (ii) an inspector has, under clause 42(5), made a decision to the effect that the employee should perform the work,

the employer may direct the employee to perform suitable alternative work, and the employee is to be taken, for all purposes, to be required to perform that other work under the terms and conditions of the employee's employment.

#### **Subdivision 6 — Exemptions**

#### **44. Exemptions**

- (1) The Minister may, in accordance with the regulations, make a written order exempting a specified person or class of person from any or all of the provisions of this Division (other than this clause).
- (2) The Minister must not make an order under subclause (1) unless the Minister is satisfied on reasonable grounds that it is impracticable for the person to comply with the provision or provisions.

#### **Division 4 — Inspections**

##### **Subdivision 1 — Introduction**

#### **45. Simplified outline**

The following is a simplified outline of this Division —

- An inspector may conduct an inspection —
  - (a) to ascertain whether a listed OSH law is being complied with;
  - (b) concerning a contravention or a possible contravention of a listed OSH law; or
  - (c) concerning an accident or dangerous occurrence that has arisen out of a pipeline operation.
- An inspector may issue a prohibition notice to the licensee for a pipeline operation in order to remove an immediate threat to the safety and health of any person.

- An inspector may issue an improvement notice specifying action that is to be taken to prevent contravention of a listed OSH law.
- An inspector must prepare a report about an inspection and give the report to the Minister.

**46. Powers, functions and duties of inspectors**

- (1) An inspector has the powers, functions and duties conferred or imposed by each listed OSH law.
- (2) The Minister may give written directions specifying the manner in which, and the conditions subject to which, powers conferred on inspectors by a listed OSH law are to be exercised. If the Minister does so, the powers of inspectors must be exercised in accordance with those directions.
- (3) The Minister may, by notice in writing, impose restrictions, not inconsistent with any direction in force under subclause (2), on the powers that are conferred on a particular inspector by a listed OSH law. If the Minister does so, the powers of the inspector are taken to have been restricted accordingly.

**Subdivision 2 — Inspections**

**47. Inspections**

- (1) An inspector may, at any time, conduct an inspection —
  - (a) to ascertain whether a requirement of, or any requirement properly made under, a listed OSH law is being complied with;
  - (b) concerning a contravention or a possible contravention of a listed OSH law; or
  - (c) concerning an accident or dangerous occurrence that has arisen out of a pipeline operation.
- (2) The Minister may direct an inspector to conduct an inspection —
  - (a) to ascertain whether a requirement of, or any requirement properly made under, a listed OSH law is being complied with;
  - (b) concerning a contravention or a possible contravention of a listed OSH law; or
  - (c) concerning an accident or dangerous occurrence that has arisen out of a pipeline operation,

and the inspector must, unless the Minister revokes the direction, conduct an inspection accordingly.

**Subdivision 3 — Powers of inspectors in relation to the conduct of inspections**

**48. Powers of entry and search — places at which pipeline operations are carried on**

- (1) An inspector may, for the purposes of an inspection, at any reasonable time during the day or night —
- (a) enter the place at which a pipeline operation is carried on and to which the inspection relates and do all or any of the following —
    - (i) search the place;
    - (ii) inspect, examine, take measurements of, or conduct tests concerning, any workplace, pipeline, plant, substance or thing at the place;
    - (iii) take photographs of, make video recordings of, or make sketches of, any workplace, pipeline, plant, substance or thing at the place;
    - (iv) inspect, take extracts from, or make copies of, any documents at the place that the inspector has reasonable grounds to believe relate, or are likely to relate, to the subject matter of the inspection;
- and
- (b) inspect the subsoil in the vicinity of the place to which the inspection relates.
- (2) Immediately on entering a place at which a pipeline operation is carried on for the purposes of an inspection, an inspector must take reasonable steps to notify the purpose of entering the place to —
- (a) the licensee's representative; and
  - (b) if there is a safety and health representative for a designated work group having a group member likely to be affected by the matter the subject of the inspection — that representative,
- and must, on being requested to do so by the person referred to in paragraph (a) or (b), produce for inspection by that person —
- (c) the inspector's certificate of appointment under section 62(2);
  - (d) a copy of the Minister's written direction (if any) to conduct the inspection; and
  - (e) a copy of the restrictions (if any) imposed on the powers of the inspector under clause 46(3).

- (3) If there is a safety and health representative for a designated work group having a group member likely to be affected by the matter the subject of the inspection, the inspector must afford the safety and health representative a reasonable opportunity to consult on the matter the subject of the inspection.

**49. Powers of entry and search — regulated business premises (other than places where pipeline operations carried on)**

- (1) An inspector may, for the purposes of an inspection —
- (a) at any reasonable time, enter any regulated business premises (other than a place at which a pipeline operation is carried on) if the inspector has reasonable grounds to believe that there are likely to be at those premises documents that relate to a pipeline operation that is a subject of the inspection; and
  - (b) search for, inspect, take extracts from, or make copies of, any such documents at those premises.
- (2) Immediately on entering premises referred to in subclause (1), an inspector must take reasonable steps to notify the purpose of the entry to the occupier of those premises, and must, on being requested to do so by the occupier, produce for inspection by the occupier —
- (a) the inspector's certificate of appointment under section 62(2);
  - (b) a copy of the Minister's written direction (if any) to conduct the inspection; and
  - (c) a copy of the restrictions (if any) imposed on the powers of the inspector under clause 46(3).

**50. Powers of entry and search — premises (other than regulated business premises)**

- (1) An inspector may, for the purposes of an inspection —
- (a) enter any premises (other than regulated business premises) if the inspector has reasonable grounds to believe that there are likely to be at those premises documents that relate to a pipeline operation that is the subject of the inspection; and
  - (b) search for, inspect, take extracts from, or make copies of, any such documents at those premises.

- (2) An inspector may exercise the powers referred to in subclause (1) to enter premises only —
  - (a) if the premises are not a residence —
    - (i) in accordance with a warrant under clause 51;  
and
    - (ii) with the consent of the occupier of the premises;
  - or
  - (b) if the premises are a residence — with the consent of the occupier of the premises.
- (3) Immediately on entering premises referred to in subclause (1), an inspector must —
  - (a) take reasonable steps to notify the purpose of the entry to the occupier of those premises;
  - (b) take reasonable steps to produce, for inspection by the occupier, the inspector's certificate of appointment under section 62(2); and
  - (c) on being requested to do so by the occupier, produce, for inspection by the occupier —
    - (i) a copy of the Minister's written direction (if any) to conduct the inspection; and
    - (ii) a copy of the restrictions (if any) imposed on the powers of the inspector under clause 46(3).
- (4) If —
  - (a) an inspector enters premises in accordance with a warrant under clause 51; and
  - (b) the occupier of the premises is present at the premises,the inspector must make a copy of the warrant available to the occupier.
- (5) Before obtaining the consent of a person as mentioned in subclause (2)(a) or (b), an inspector must inform the person that —
  - (a) the person may refuse consent; and
  - (b) the consent may be withdrawn.
- (6) The consent of a person is not effective for the purposes of subclause (2) unless the consent is voluntary.

**51. Warrant to enter premises (other than regulated business premises)**

- (1) An inspector may apply to a magistrate for a warrant authorising the inspector, with any assistance as the inspector thinks

necessary, to exercise the powers referred to in clause 50(1) in relation to particular premises (other than a residence).

- (2) The application must be supported by evidence on oath (whether oral or by affidavit) that sets out the grounds on which the inspector is applying for the warrant.
- (3) If the magistrate is satisfied that there are reasonable grounds for issuing the warrant, the magistrate may issue the warrant.
- (4) A warrant issued under subclause (3) must state —
  - (a) the name of the inspector;
  - (b) whether the inspection may be carried out at any time or only during specified hours of the day;
  - (c) the day on which the warrant ceases to have effect; and
  - (d) the purposes for which the warrant is issued.
- (5) The day specified under subclause (4)(c) is not to be more than 7 days after the day on which the warrant is issued.
- (6) The purposes specified under subclause (4)(d) must include the identification of the premises in relation to which the warrant is issued.

**52. Obstructing or hindering inspector**

A person must not, without reasonable excuse, obstruct or hinder an inspector in the exercise of an inspector's powers under clause 48, 49 or 50.

Penalty: \$5 500.

**53. Power to require assistance and information**

- (1) An inspector may, to the extent that it is reasonably necessary to do so in connection with the conduct of an inspection, require —
  - (a) the licensee for a pipeline operation;
  - (b) the person in charge of a pipeline operation;
  - (c) a member of the workforce engaged in a pipeline operation; or
  - (d) any person representing a person referred to in paragraph (a) or (b),

to provide the inspector with reasonable assistance and amenities —

- (e) that is or are reasonably connected with the conduct of the inspection in relation to the pipeline operation; or
- (f) for the effective exercise of the inspector's powers under this Schedule in connection with the conduct of the inspection in relation to the pipeline operation.

- (2) The reasonable assistance referred to in subclause (1) includes, so far as the licensee for a pipeline operation is concerned —
  - (a) appropriate transport for the inspector to and from the place to be inspected and for any equipment required by the inspector, or any article of which the inspector has taken possession; and
  - (b) reasonable accommodation and means of subsistence while the inspector is at the place to be inspected.
- (3) A person must not fail, without reasonable excuse, to comply with a requirement under this clause.  
Penalty: \$3 300 or imprisonment for 6 months or both.

**54. Power to require the answering of questions and the production of documents or articles**

- (1) If —
  - (a) an inspector believes on reasonable grounds that a person is capable of answering a question that is reasonably connected with the conduct of an inspection; and
  - (b) the person is —
    - (i) the licensee for a pipeline operation;
    - (ii) the person in charge of a pipeline operation;
    - (iii) a member of the workforce engaged in a pipeline operation; or
    - (iv) any person representing a person referred to in subparagraph (i) or (ii),the inspector may, to the extent that it is reasonably necessary to do so in connection with the conduct of the inspection, require the person to answer the question put by the inspector.
- (2) If, at the time when a requirement under subclause (1) is imposed on a person, the person is not physically present on regulated business premises, the person is not obliged to comply with the requirement unless the requirement —
  - (a) is in writing;
  - (b) specifies the day on or before which the question is to be answered (being at least 14 days after the day on which the requirement is imposed); and
  - (c) is accompanied by a statement to the effect that a failure to comply with the requirement is an offence.
- (3) If —



- (a) an inspector believes on reasonable grounds that a person is capable of producing a document or article that is reasonably connected with the conduct of an inspection; and
- (b) the person is —
  - (i) the licensee for a pipeline operation;
  - (ii) the person in charge of a pipeline operation;
  - (iii) a member of the workforce engaged in a pipeline operation; or
  - (iv) any person representing a person referred to in subparagraph (i) or (ii),

the inspector may, to the extent that it is reasonably necessary to do so in connection with the conduct of the inspection, require the person to produce the document or article.

- (4) If, at the time when a requirement under subclause (3) is imposed on a person, the person is not physically present on regulated business premises, the person is not obliged to comply with the requirement unless the requirement —
  - (a) is in writing;
  - (b) specifies the day on or before which the document or article is to be produced (being at least 14 days after the day on which the requirement is imposed); and
  - (c) is accompanied by a statement to the effect that a failure to comply with the requirement is an offence.
- (5) A person must not —
  - (a) fail, without reasonable excuse, to comply with a requirement under this clause; or
  - (b) in purported compliance with a requirement under this clause, give information that is false or misleading in a material particular.

Penalty: \$3 300 or imprisonment for 6 months or both.

**55. Privilege against self-incrimination**

- (1) A person is not excused from answering a question or producing a document or article when required to do so under clause 54 on the ground that the answer to the question, or the production of the document or article, may tend to incriminate the person or make the person liable to a penalty.
- (2) However —
  - (a) the answer given or document or article produced;

- (b) answering the question or producing the document or article; or
- (c) any information, document or thing obtained as a direct or indirect consequence of the answering of the question or the production of the document or article,

is not admissible in evidence against the person —

- (d) in any civil proceedings; or
- (e) in any criminal proceedings other than proceedings for an offence against clause 54.

**56. Power to take possession of plant, take samples of substances etc.**

- (1) In conducting an inspection, an inspector may, to the extent that it is reasonably necessary for the purposes of inspecting, examining, taking measurements of or conducting tests concerning, any plant, substance or thing at a place at which a pipeline operation is carried out in connection with the inspection —
  - (a) take possession of the plant, substance or thing and remove it from the place; or
  - (b) take a sample of the substance or thing and remove that sample from the place.
- (2) On taking possession of plant, a substance or a thing, or taking a sample of a substance or thing, the inspector must, by notice in writing, inform —
  - (a) the licensee for the pipeline operation;
  - (b) if the plant, substance or thing is used for the performance of work by an employer of a member or members of the workforce engaged in the pipeline operation other than the licensee for the pipeline operation — that employer;
  - (c) if the plant, substance or thing is owned by a person other than a person mentioned in paragraph (a) or (b) — that person; and
  - (d) if there is a safety and health representative for a designated work group that includes a member of the workforce who is affected by the matter to which the inspection relates — that representative,of the taking of possession or the taking of the sample, as the case may be, and the reasons for it.
- (3) If the inspector gives the notice to the licensee for the pipeline operation to which the inspection relates, the licensee's

representative must cause the notice to be displayed in a prominent place at the workplace from which the plant, substance or thing was removed.

- (4) If the inspector takes possession of plant, a substance or a thing at a workplace for the purpose of inspecting, examining, taking measurements of or conducting tests concerning, the plant, substance or thing, the inspector must —
  - (a) ensure that the inspection, examination, measuring or testing is conducted as soon as practicable; and
  - (b) return it to the workplace as soon as practicable afterwards.
- (5) As soon as practicable after completing any such inspection, examination, measurement or testing, the inspector must give a written statement setting out the results to each person whom the inspector is required to notify under subclause (2).

**57. Power to direct that workplace etc. not be disturbed**

- (1) An inspector may give a direction under subclause (2) if, in conducting an inspection, the inspector has reasonable grounds to believe that it is reasonably necessary to do so in order to —
  - (a) remove an immediate threat to the safety or health of any person; or
  - (b) allow the inspection, examination or taking of measurements of, or conducting of tests concerning, a pipeline, or any plant, substance or thing, for use in a pipeline operation.
- (2) If subclause (1) applies, the inspector may direct, by written notice given to the licensee's representative, that the licensee must ensure that —
  - (a) a particular workplace; or
  - (b) particular plant, or a particular substance or thing,not be disturbed for a period specified in the direction.
- (3) The period specified in the direction must be a period that the inspector has reasonable grounds to believe is necessary in order to remove the threat or to allow the inspection, examination, measuring or testing to take place.
- (4) The direction may be renewed by another direction in the same terms.
- (5) If an inspector gives a notice to the licensee's representative under subclause (2), the licensee's representative must cause the notice to be displayed in a prominent place at the workplace —

- (a) that is to be left undisturbed; or
  - (b) where the plant, substance or thing that is to be left undisturbed is located.
- (6) As soon as practicable after giving the direction, the inspector must take reasonable steps to notify —
- (a) if the workplace, plant, substance or thing to which the direction relates is owned by a person other than the licensee for the pipeline operation — that person; and
  - (b) if there is a safety and health representative for a designated work group that includes a group member performing work —
    - (i) at a workplace; or
    - (ii) involving the plant, substance or thing, to which the direction relates — that representative,
- of the direction and the reasons for giving it.
- (7) The licensee for a pipeline operation to which a direction concerning a workplace, plant, substance or a thing relates must ensure that the direction is complied with.  
Penalty: \$27 500.
- (8) A direction under subclause (2) must be accompanied by a statement setting out the reasons for the direction.

**58. Power to issue prohibition notices**

- (1) If, having conducted an inspection, an inspector is satisfied on reasonable grounds that it is reasonably necessary to issue a prohibition notice to the licensee for a pipeline operation in order to remove an immediate threat to the safety or health of any person, the inspector may issue a prohibition notice, in writing, to the licensee.
- (2) The notice must be issued to the licensee by giving it to the licensee's representative.
- (3) The notice must —
  - (a) specify the activity in respect of which, in the inspector's opinion, the threat to safety or health has arisen, and set out the reasons for that opinion; and
  - (b) either —
    - (i) direct the licensee to ensure that the activity is not engaged in; or
    - (ii) direct the licensee to ensure that the activity is not engaged in in a specified manner.

- (4) A specified manner may relate to any one or more of the following —
  - (a) any workplace, or part of a workplace, at which the activity is not to be engaged in;
  - (b) any plant or substance that is not to be used in connection with the activity;
  - (c) any procedure that is not to be followed in connection with the activity.
- (5) The notice may specify action that may be taken to satisfy an inspector that adequate action has been taken to remove the threat to safety and health.
- (6) The licensee's representative must —
  - (a) give a copy of the notice to each safety and health representative (if any) for any designated work group having group members performing work that is affected by the notice; and
  - (b) cause a copy of the notice to be displayed at a prominent place at or near each workplace at which that work is performed.
- (7) If the notice relates to any workplace, plant, substance or thing that is owned by a person other than the licensee, the inspector must, upon issuing the notice, give a copy of the notice to that person.

**59. Compliance with prohibition notice**

- (1) A licensee must ensure that a prohibition notice issued to the licensee is complied with.  
Penalty: \$27 500.
- (2) If an inspector is satisfied that action taken by the licensee to remove the threat to safety and health in respect of which the notice was issued is not adequate, the inspector must inform the licensee accordingly.
- (3) A prohibition notice ceases to have effect when an inspector notifies the licensee that the inspector is satisfied that the licensee has taken adequate action to remove the threat to safety or health.
- (4) In making a decision under subclause (2), an inspector may exercise any of the powers of an inspector conducting an inspection that the inspector considers necessary for the purposes of making the decision.

**60. Power to issue improvement notices**

- (1) If, in conducting an inspection, an inspector believes on reasonable grounds that a person —
  - (a) is contravening a listed OSH law; or
  - (b) has contravened a provision of a listed OSH law and is likely to contravene that provision again,the inspector may issue an improvement notice, in writing, to the person (the *responsible person*).
- (2) If the responsible person is the licensee, the improvement notice may be issued to the licensee by giving it to the licensee's representative.
- (3) If the responsible person is an employer (other than the licensee) of members of the workforce, but it is not practicable to give the notice to that employer —
  - (a) the improvement notice may be issued to the employer by giving it to the licensee's representative; and
  - (b) if the notice is so issued — the licensee must ensure that a copy of the notice is given to the employer as soon as practicable afterwards.
- (4) The notice —
  - (a) must specify the contravention that the inspector believes is occurring or is likely to occur, and set out the reasons for that belief;
  - (b) must specify a reasonable period within which the responsible person is to take the action necessary to prevent any further contravention or to prevent the likely contravention, as the case may be; and
  - (c) may specify action that the responsible person is to take during the period specified in the notice.
- (5) If the inspector believes on reasonable grounds that it is appropriate to do so, the inspector may, in writing and before the end of the period, extend the period specified in the notice.
- (6) If an improvement notice is issued to an employer (other than the licensee) of members of the workforce in circumstances other than the circumstance referred to in subclause (3), the employer must immediately ensure that a copy of the notice is given to the licensee's representative.
- (7) If a notice is issued to the licensee or to an employer (other than the licensee) of members of the workforce, the licensee's representative must —

- (a) give a copy of the notice to each safety and health representative for a designated work group having group members performing work that is affected by the notice; and
  - (b) cause a copy of the notice to be displayed in a prominent place at or near each workplace at which the work is being performed.
- (8) On issuing a notice, the inspector must give a copy of the notice to —
- (a) if the notice is —
    - (i) given to a member of the workforce who is an employee; and
    - (ii) in connection with work performed by the employee,  
the employer of that employee;
  - (b) if the notice relates to any workplace, plant, substance or thing that is owned by a person other than —
    - (i) a responsible person; or
    - (ii) a person who is an employer referred to in paragraph (a),  
that owner; and
  - (c) if the notice is issued to a person who owns any workplace, plant, substance or thing, because of which a contravention of a listed OSH law has occurred or is likely to occur —
    - (i) the licensee for the pipeline operation; and
    - (ii) if the employer of employees who work in that workplace or who use that plant, substance or thing is a person other than the licensee — that employer.

**61. Compliance with improvement notice**

A person to whom an improvement notice is issued must comply with it to the extent that the notice relates to any matter over which the person has control.

Penalty: \$11 000.

**62. Notices not to be tampered with or removed**

- (1) A person must not, without reasonable excuse, tamper with any notice that has been displayed under clause 56(3), 57(5), 58(6) or 60(7) while that notice is so displayed.

- (2) If a notice has been displayed under clause 56(3), a person must not, without reasonable excuse, remove the notice until the plant or thing to which the notice relates is returned to the workplace from which it was removed.
  - (3) If a notice has been displayed under clause 57(5), 58(6) or 60(7), a person must not, without reasonable excuse, remove the notice before it has ceased to have effect.
- Penalty applicable to subclauses (1), (2) and (3): \$11 000.

**Subdivision 4 — Reports on inspections**

**63. Reports on inspections**

- (1) If an inspector has conducted an inspection, the inspector must, as soon as practicable, prepare a written report relating to the inspection and give the report to the Minister.
- (2) The report must include —
  - (a) the inspector's conclusions from conducting the inspection and the reasons for those conclusions;
  - (b) any recommendations that the inspector wishes to make arising from the inspection; and
  - (c) any other prescribed matters.
- (3) As soon as practicable after receiving the report, the Minister must give a copy of the report, together with any written comments that the Minister wishes to make —
  - (a) to the licensee for the pipeline operation to which the report relates;
  - (b) if the report relates to activities performed by an employee of another person — that other person; and
  - (c) if the report relates to any plant, substance or thing owned by another person — that other person.
- (4) The Minister may, in writing, request the licensee or any other person to whom the report is given to provide to the Minister, within a reasonable period specified in the request, details of —
  - (a) any action proposed to be taken as a result of the conclusions or recommendations contained in the report; and
  - (b) if a notice has been issued under clause 58 or 60 in relation to work being performed for the licensee or that other person — any action taken, or proposed to be taken, in respect of that notice,



and the licensee or that other person must comply with the request.

- (5) As soon as practicable after receiving a report, the licensee for the pipeline operation must give a copy of the report, together with any written comment made by the Minister on the report —
- (a) if there is at least one safety and health committee in respect of some or all of the members of the workforce — to each such committee; and
  - (b) if there is no such committee in respect of some or all of the members of the workforce, but some or all of those members (in respect of which there is no such committee) are in at least one designated work group for which there is a safety and health representative — to each such safety and health representative.

**Subdivision 5 — Reviews of inspectors' decisions**

**64. Reviews of inspectors' decisions**

- (1) If an inspector, in conducting an inspection or having conducted an inspection —
- (a) decides, under clause 37, to confirm or vary a provisional improvement notice;
  - (b) decides, under clause 56, to take possession of plant, a substance or a thing at a workplace;
  - (c) decides, under clause 57, to direct that a workplace, a part of a workplace, plant, a substance or a thing not be disturbed;
  - (d) decides, under clause 58, to issue a prohibition notice;
  - (e) decides, under clause 59, that the licensee for a pipeline operation to whom a prohibition notice has been issued has not taken adequate action to remove the threat to safety and health that caused the notice to be issued; or
  - (f) decides, under clause 60, to issue an improvement notice,
- a person referred to in subclause (2) may apply in writing to the reviewing authority for a review of the decision.
- (2) The following persons may apply for a review of a decision, as is relevant to the case —
- (a) the licensee for the pipeline operation or any employer (other than the licensee) who is affected by the decision;
  - (b) a person to whom a notice has been issued under clause 36(2) or 60(1);
  - (c) the safety and health representative for a designated work group having a group member affected by the decision;

- (d) a workforce representative in relation to the designated work group that includes a group member who is affected by the decision and who has requested the workforce representative to apply for a review of the decision;
  - (e) if there is no such designated work group, and a member of the workforce affected by the decision has requested a workforce representative in relation to the member to apply for a review of the decision — that workforce representative;
  - (f) a person who owns any workplace, plant, substance or thing to which the decision referred to in subclause (1)(a), (b), (c) or (f) relates.
- (3) If an inspector, having conducted an inspection —
- (a) decides under clause 37 to cancel a provisional improvement notice; or
  - (b) decides under clause 59 that the licensee for a pipeline operation to whom a prohibition notice has been issued has taken adequate action to remove the threat to safety and health that caused the notice to be issued,
- the following persons may apply in writing to the reviewing authority for a review of the decision —
- (c) the safety and health representative for a designated work group having a group member affected by the decision;
  - (d) a workforce representative in relation to the designated work group that includes a group member who is affected by the decision and who has requested the workforce representative to apply for the review;
  - (e) if there is no such designated work group, and a member of the workforce affected by the decision has requested a workforce representative in relation to the member to apply for the review — that workforce representative.
- (4) An application under subclause (2) or (3) must be made —
- (a) not later than 7 days after the day on which the person applying received notice of the inspector's decision; or
  - (b) within such further period as the reviewing authority may allow.
- (5) A person, other than the operator of the pipeline operation concerned, who applies for a review of a decision must, as soon as is practicable, give a copy of the application to the operator.
- Penalty: \$5 000.

- (6) The reviewing authority is to give notice in writing of the decision on the reference and the reasons for the decision to —
  - (a) the person who referred the matter for review; and
  - (b) if that person is not the operator of the pipeline operation concerned, to the operator.
- (7) Subject to this clause, applying for a review of a decision does not affect the operation of the decision or prevent the taking of action to implement that decision, except to the extent that the reviewing authority makes an order to the contrary.
- (8) If the decision to be reviewed is a decision under clause 60 to issue an improvement notice, the operation of the notice is suspended pending determination of the review, except to the extent that the reviewing authority makes an order to the contrary.
- (9) If the decision to be reviewed is a decision of an inspector under clause 37 to confirm or vary a provisional improvement notice whose operation has been suspended pending the inspection of the matter to which the notice relates, the operation of the notice is further suspended pending determination of the review, except to the extent that the reviewing authority makes an order to the contrary.
- (10) In this clause —  
*reviewing authority* means a person prescribed by the regulations to be a reviewing authority for the purposes of this clause.

**65. Powers of reviewing authority on review**

- (1) On a review of a decision under clause 64, the reviewing authority may —
  - (a) affirm the decision;
  - (b) affirm the decision with such modifications as the reviewing authority considers appropriate; or
  - (c) revoke the decision and make such other decision with respect to the matter as the reviewing authority thinks fit,and the decision has effect or, as the case may be, ceases to have effect accordingly.
- (2) If —
  - (a) the decision being reviewed is a decision under clause 56 to take possession of plant, a substance or a thing at a workplace; and
  - (b) the decision is not affirmed,

the inspector who made the decision must ensure that, to the extent that the decision is not affirmed, the plant, substance or thing is returned to the workplace as soon as practicable.

**Division 5 — Referrals to the Tribunal**

**66. Decision may be referred to Tribunal**

- (1) If a person given notice of a decision under clause 21(3)(b) or 64(6) is not satisfied with the reviewing authority's decision under that section, the person may refer the decision to the Tribunal for further review.
- (2) A reference under subclause (1) must be made —
  - (a) not later than 7 days after the day on which the person received notice of the decision; or
  - (b) within such further period as the Tribunal may allow.
- (3) A person, other than the operator of the pipeline operation concerned, who refers a matter for review under this clause must, as soon as is practicable, give a copy of the duly completed prescribed form to the operator.  
Penalty applicable to subclause (3): \$5 000.

**67. Determination by Tribunal**

- (1) On a reference under clause 66, the Tribunal is to inquire into the circumstances relating to the decision, and may —
  - (a) affirm the decision of the reviewing authority;
  - (b) affirm the decision of the reviewing authority with such modifications as the Tribunal considers appropriate; or
  - (c) revoke the decision of the reviewing authority and make such other decision with respect to the notice as the Tribunal thinks fit,and the decision has effect or, as the case may be, ceases to have effect accordingly.
- (2) A review under this clause —
  - (a) is to be in the nature of a rehearing; and
  - (b) is to be completed by the Tribunal as quickly as is practicable.
- (3) The Tribunal is to give notice in writing of its decision on the reference and the reasons for the decision to —
  - (a) the person who referred the matter for review; and
  - (b) if that person is not the operator of the pipeline operation concerned, to the operator.

**68. Effect of pending review by Tribunal**

- (1) Subject to this clause, a reference to the Tribunal for further review of a decision does not affect the operation of the decision or prevent the taking of action to implement that decision, except to the extent that the Tribunal makes an order to the contrary.
- (2) If the decision to be reviewed concerns a decision under clause 60 to issue an improvement notice, the operation of the notice is suspended pending determination of the review, except to the extent that the Tribunal makes an order to the contrary.
- (3) If the decision to be reviewed concerns a decision of an inspector under clause 37 to confirm or vary a provisional improvement notice whose operation has been suspended pending the inspection of the matter to which the notice relates, the operation of the notice is further suspended pending determination of the review, except to the extent that the Tribunal makes an order to the contrary.

**69. Jurisdiction of Tribunal**

- (1) This clause applies where —
  - (a) under clause 66 a matter is referred to the Tribunal; or
  - (b) under clause 30 an application is made to the Tribunal.
- (2) Where this clause applies —
  - (a) the matter or application may be heard and determined; and
  - (b) a determination made by the Tribunal on the matter or application has effect, and may be appealed against and enforced,as if it were —
  - (c) a matter in respect of which jurisdiction is conferred on the Tribunal by Part VIB of the *Occupational Safety and Health Act 1984*; or
  - (d) a determination made for the purposes of that Part.
- (3) The provisions of —
  - (a) Part VIB of the *Occupational Safety and Health Act 1984*; and
  - (b) the *Industrial Relations Act 1979* applied by that Part,have effect for the purposes of this clause with all necessary changes.
- (4) In the operation of subclause (3), section 51J(1) of the *Occupational Safety and Health Act 1984* has effect as if it were

expressed to apply where a matter has been referred to the Tribunal under clause 66 in relation to a decision made under clause 21.

**Division 6 — General**

**70. Notifying and reporting accidents and dangerous occurrences**

- (1) If, arising from a pipeline operation, there is —
- (a) an accident that causes the death of, or serious personal injury to, any person;
  - (b) an accident that causes a member of the workforce to be incapacitated from performing work for a period prescribed for the purposes of this paragraph; or
  - (c) a dangerous occurrence,

the licensee must, in accordance with the regulations, give the Minister notice of, and a report about, the accident or dangerous occurrence.

Penalty: \$5 000.

- (2) Regulations made for the purposes of subclause (1) (other than regulations made for the purpose of subclause (1)(b)) may prescribe —
- (a) the time within which, and the manner in which, notice of an accident or dangerous occurrence is to be given, and the form of the notice; and
  - (b) the time within which, and the manner in which, a report of an accident or dangerous occurrence is to be given, and the form of the report.
- (3) Subclause (2) does not limit regulations that may be made for the purposes of subclause (1).

**71. Records of accidents and dangerous occurrences to be kept**

- (1) The licensee for a pipeline operation must maintain, in accordance with the regulations, a record of each accident or dangerous occurrence in respect of which the licensee is required by clause 67 to notify the Minister.
- (2) Regulations made for the purposes of subclause (1) may prescribe —
- (a) the nature of the contents of a record maintained under this clause; and
  - (b) the period for which the record must be retained.
- (3) Subclause (2) does not limit regulations that may be made for the purposes of subclause (1).

**72. Codes of practice**

- (1) The regulations may prescribe codes of practice for the purpose of providing practical guidance to licensees for pipeline operations and employers (other than licensees) of members of the workforce engaged in pipeline operations.
- (2) A person is not liable in any civil or criminal proceedings for contravening a code of practice.

**73. Use of codes of practice in proceedings**

- (1) This clause applies if, in any proceedings for an offence against a listed OSH law, it is alleged that a person contravened a provision of a listed OSH law in relation to which a code of practice was in effect at the time of the alleged contravention.
- (2) The code of practice is admissible in evidence in those proceedings.
- (3) If the court is satisfied, in relation to any matter which it is necessary for the prosecution to prove in order to establish the alleged contravention, that —
  - (a) any provision of the code of practice is relevant to that matter; and
  - (b) the person failed at any material time to comply with that provision of the code of practice,

that matter is treated as proved unless the court is satisfied that in respect of that matter the person complied with that provision of the listed OSH law otherwise than by complying with the code of practice.

**74. Interference etc. with equipment etc.**

A person must not, without reasonable excuse, do anything that results in the interference with, or the rendering ineffective of, any protective equipment or safety device provided for the occupational safety and health of members of the workforce engaged in a pipeline operation if the person knew (or ought reasonably to have known) that the equipment or device was protective equipment or a safety device.

Penalty: \$3 300 or imprisonment for 6 months or both.

**75. No charges to be levied on members of workforce**

The licensee for a pipeline operation or an employer (other than the licensee) of members of the workforce engaged in a pipeline operation must not levy, or permit to be levied, on a member of the workforce any charge in respect of anything done or provided in accordance with a listed OSH law in order to ensure the

occupational safety and health of persons engaged in the pipeline operation or any other protected persons.

Penalty: \$27 500.

**76. Victimisation**

- (1) An employer (whether the licensee or another person) must not —
- (a) dismiss an employee;
  - (b) perform an act that results in injury to an employee in his or her employment;
  - (c) perform an act that prejudicially alters the employee's position (whether by deducting or withholding remuneration or by any other means); or
  - (d) threaten to do any of those things,

because the employee —

- (e) has complained or proposes to complain about a matter concerning the safety or health of employees at work;
- (f) has assisted or proposes to assist, by giving information or otherwise, the conduct of an inspection; or
- (g) has ceased, or proposes to cease, to perform work, in accordance with a direction by a safety and health representative under clause 42(1)(b) or (3)(c), and the cessation or proposed cessation does not continue after —
  - (i) the safety and health representative has agreed with a person supervising the work that the cessation or proposed cessation was not, or is no longer, necessary; or
  - (ii) an inspector has, under clause 42(5), made a decision that has the effect that the employee should perform the work.

Penalty: \$27 500.

- (2) In proceedings for an offence against subclause (1), if all the relevant facts and circumstances, other than the reason for an action alleged in the charge, are proved, the defendant has the onus of establishing that the action was not taken for that reason.

**77. Institution of prosecutions**

- (1) Proceedings for an offence against a listed OSH law may be instituted by an inspector but an inspector is not to be personally responsible for any costs incurred by or awarded against the



inspector in connection with any proceeding for an offence against a listed OSH law.

- (2) A safety and health representative for a designated work group may request an inspector to institute proceedings for an offence against a listed OSH law in relation to the occurrence of an act or omission if—
  - (a) a period of 6 months has elapsed since the act or omission occurred;
  - (b) the safety and health representative considers that the occurrence of the act or omission constitutes an offence against a listed OSH law; and
  - (c) proceedings in respect of the offence have not been instituted.
- (3) A workforce representative in relation to a designated work group may request an inspector to institute proceedings for an offence against a listed OSH law in relation to the occurrence of an act or omission if—
  - (a) a period of 6 months has elapsed since the act or omission occurred;
  - (b) the workforce representative considers that the occurrence of the act or omission constitutes an offence against a listed OSH law;
  - (c) proceedings in respect of the offence have not been instituted; and
  - (d) a group member included in the group requests the workforce representative to request an inspector to institute the proceedings.
- (4) A request under subclause (2) or (3) must be in writing.
- (5) An inspector must, within 3 months after receiving the request, advise the safety and health representative or the workforce representative, as the case may be, whether proceedings under subclause (1) have been or will be instituted, and, if not, give reasons why not.

**78. Conduct of directors, employees and agents**

- (1) This clause has effect for the purposes of a proceeding for an offence against a listed OSH law.
- (2) If 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, employee or agent of the body corporate within the scope of actual or apparent authority; and
  - (b) that the director, employee or agent had the state of mind.
- (3) Any conduct engaged in on behalf of a body corporate by a director, employee or agent of the body corporate within the scope of actual or apparent authority is taken to have been engaged in also by the body corporate unless it establishes that it took reasonable precautions and exercised due diligence to avoid the conduct.
- (4) If it is necessary to establish the state of mind of a natural person in relation to particular conduct, it is sufficient to show —
  - (a) that the conduct was engaged in by an employee or agent of the natural person within the scope of actual or apparent authority; and
  - (b) that the employee or agent had the state of mind.
- (5) Any conduct engaged in on behalf of a natural person by an employee or agent of the natural person within the scope of actual or apparent authority is taken to have been engaged in also by the natural person unless the natural person establishes that he or she took reasonable precautions and exercised due diligence to avoid the conduct.
- (6) If —
  - (a) a natural person is found guilty of an offence; and
  - (b) he or she would not have been found guilty of the offence if subclauses (4) and (5) had not been enacted,he or she is not liable to be punished by imprisonment for that offence.
- (7) A reference in subclause (2) or (4) to the state of mind of a person includes a reference to —
  - (a) the person's knowledge, intention, opinion, belief or purpose; and
  - (b) the person's reasons for the intention, opinion, belief or purpose.

**79. Act not to give rise to other liabilities etc.**

This Schedule does not —

- (a) confer a right of action in any civil proceeding in respect of any contravention of a listed OSH law; or
- (b) confer a defence to an action in any civil proceeding or otherwise affect a right of action in any civil proceeding.

**80. Circumstances preventing compliance may be defence to prosecution**

It is a defence to a prosecution for a contravention of a listed OSH law if the defendant proves that it was not practicable to comply with it because of an emergency prevailing at the relevant time.

**81. Regulations — general**

- (1) The regulations may prescribe any of the following —
- (a) procedures for the selection of persons, under clause 39, as members of safety and health committees, to represent the interests of members of the workforce engaged in a pipeline operation;
  - (b) procedures to be followed at meetings of safety and health committees;
  - (c) the manner in which notices are to be served under this Schedule or the regulations;
  - (d) the practice and procedure to be followed in relation to the review of decisions under clause 21 or 64 by reviewing authorities;
  - (e) forms for the purposes of this Schedule or the regulations.

- (2) If the Minister is satisfied that —
- (a) a power, function or duty is conferred or imposed on a person under a law of this State or the Commonwealth; and
  - (b) the proper exercise of the power or performance of the function or duty is or would be prevented by this Schedule or a provision of this Schedule,

regulations made for the purposes of this subclause may declare that this Schedule, or the provision, as the case may be, does not apply to that person, or does not apply to that person in the circumstances specified in the regulations.

- (3) Regulations made for the purposes of subclause (2) do not remain in force for longer than 5 years after they commence, but this subclause does not prevent the making of further regulations of the same substance.
- (4) In subclause (2) —  
**this Schedule** includes regulations made for the purposes of this Schedule.

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<sup>16</sup> When the *Petroleum Legislation Amendment and Repeal Act 2005* s. 30(2) commences and inserts the *Petroleum Pipelines Act 1969* s. 67(1c) the new s. 67(1c) will be amended by the *Petroleum Amendment Act 2007* s. 102 which was proclaimed to come into operation on 19 Jan 2008 (see s. 2(2) and *Gazette* 18 Jan 2008 p. 147) but can have no effect until the new s. 67(1c) is inserted.

<sup>17</sup> On the date as at which this compilation was prepared, the *National Gas Access (WA) Act 2009* s. 72 had not come into operation. It reads as follows:

**72. *Petroleum Pipelines Act 1969 amended***

(1) This section amends the *Petroleum Pipelines Act 1969*.

(2) Delete section 5A.