

TASMANIA

**GAS PIPELINES PLANNING AND SAFETY
(MISCELLANEOUS AMENDMENTS) BILL
2002**

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**GAS PIPELINES PLANNING AND SAFETY
(MISCELLANEOUS AMENDMENTS) BILL
2002**

*(Brought in by the Minister for Economic Development,
Energy and Resources, the Honourable Paul Anthony
Lennon)*

A BILL FOR

**An Act to amend the *Gas Pipelines Act 2000*, *Land
Acquisition Act 1993*, *Land Use Planning and
Approvals Act 1993* and *Water Management Act 1999***

Be it enacted by His Excellency the Governor of Tasmania,
by and with the advice and consent of the Legislative
Council and House of Assembly, in Parliament assembled,
as follows:

PART 1 – PRELIMINARY

Short title

1. This Act may be cited as the *Gas Pipelines Planning
and Safety (Miscellaneous Amendments) Act 2002*.

Commencement

2. This Act commences on the day on which this Act
receives the Royal Assent.

PART 2 – GAS PIPELINES ACT 2000 AMENDED

Principal Act

3. In this Part, the *Gas Pipelines Act 2000** is referred to as the Principal Act.

Section 47 amended (Requirement for safety and operating plan for pipelines)

4. Section 47(3) of the Principal Act is amended by omitting “facility” and substituting “pipeline”.

Part 3, Division 4 inserted

5. After section 70 of the Principal Act, the following Division is inserted in Part 3:

Division 4 – Pipeline planning corridors

Interpretation

70A. In this Division –

“**affected pipeline**” means the pipeline in respect of which a pipeline planning corridor has been declared under this Division;

“**appeal**” means an appeal to the Tribunal under Division 3 of Part 4 of the *Land Use Planning and Approvals Act 1993*;

*No. 91 of 2000

“AS 2885” means AS 2885 Pipelines - Gas and liquid petroleum published by the Standards Association of Australia, as in force from time to time (including any code or standard having effect under that standard);

“condition” includes restriction;

“discretionary development” means a development or use to which section 57 of the *Land Use Planning and Approvals Act 1993* applies;

“permitted development” means a development or use to which section 58 of the *Land Use Planning and Approvals Act 1993* applies;

“pipeline licensee”, for a pipeline planning corridor, means the holder of a pipeline licence for the affected pipeline;

“pipeline planning corridor” means a planning corridor declared by an order in force under section 70B(1);

“planning authority” means a planning authority within the meaning of the *Land Use Planning and Approvals Act 1993*;

“safety condition” means a condition imposed on a permit for a permitted or discretionary development in order to apply, adopt or otherwise give effect to a safety requirement contained in AS 2885.

Declaration of pipeline planning corridors

70B. (1) To limit potential impacts on the risk profile of a proposed or existing pipeline the Minister may, by order, declare a planning corridor in respect of that pipeline.

(2) In determining the width of the pipeline planning corridor the Minister may have regard to AS 2885.

(3) The Minister may revoke an order under subsection (1) at any time and must do so without delay if he or she becomes aware that –

- (a) in the case of an order for a proposed pipeline, the pipeline will never be constructed or made operational; or
- (b) in the case of an order for an existing pipeline, the pipeline has been dismantled or has ceased permanently to be operational.

(4) The Minister is to cause notice of the declaration of a pipeline planning corridor to be given to the Assessment Committee for Dam Construction constituted under section 138 of the *Water Management Act 1999*.

Effect of declarations: permitted development applications

70C. (1) If application is made for a permit for a permitted development wholly or partly within a pipeline planning corridor –

- (a) the relevant planning authority must give the pipeline licensee notice of the

application and, subject to the time constraints of section 58(2) of the *Land Use Planning and Approvals Act 1993*, at least 14 days in which to advise the authority on the proposed development; and

- (b) the pipeline licensee may, within that period, give the planning authority such advice on the application as the pipeline licensee thinks fit and in so doing may recommend that the permit be granted subject to safety conditions specified in the advice.

(2) If the pipeline licensee gives such advice, the planning authority –

- (a) may have regard to the advice in determining the application; and
- (b) may, without limiting its discretion but subject to paragraph (c), grant the permit subject to any safety condition recommended by the pipeline licensee (with or without modification); and
- (c) must not grant the permit subject to a condition that conflicts with any condition contained in the safety and operating plan certified under section 47(3) for the affected pipeline.

(3) If the planning authority decides to grant the permit subject to a safety condition and the applicant lodges an appeal against that decision –

- (a) the planning authority must give the pipeline licensee notice of the appeal; and

- (b) the pipeline licensee is, for the purposes of section 14 of the *Resource Management and Planning Appeal Tribunal Act 1993*, taken to be a person whose interests are affected by the decision and who has a proper interest in the subject matter of the appeal.

(4) If the Tribunal is satisfied on hearing the appeal that the safety condition –

- (a) was recommended to the planning authority by the pipeline licensee; and
- (b) is in the same or essentially the same terms as the pipeline licensee recommended; and
- (c) exceeds the requirements of AS 2885 as in force when the effected pipeline was constructed; and
- (d) has added to the cost of the development –

the Tribunal is (if it is appropriate to do so having regard to its decision on the appeal) to order that the pipeline licensee reimburse the applicant for the additional cost or such part of the additional cost as the Tribunal determines is fair in the circumstances.

Effect of declarations: discretionary development applications

70D. (1) If application is made for a permit for a discretionary development wholly or partly within a pipeline planning corridor –

- (a) the relevant planning authority must, when notice of the application is given under section 57 of the *Land Use Planning and Approvals Act 1993*, refer the application to the pipeline licensee; and
- (b) the pipeline licensee may, within the 14 day or further representation period allowed under section 57(5) of the *Land Use Planning and Approvals Act 1993*, give the planning authority such advice on the application as it thinks fit and in so doing may recommend that, if granted, the permit should be made subject to safety conditions specified in the advice.

(2) If the pipeline licensee fails to give any such advice, the planning authority may determine the application without further reference to the pipeline licensee.

(3) If the pipeline licensee gives any such advice –

- (a) the planning authority is to have regard to the advice in determining the application; and
- (b) the advice is taken to be a representation made under section 57(5) of the *Land Use Planning and Approvals Act 1993* in relation to the application; and
- (c) the planning authority may, without limiting its discretion in the event it approves the application but subject to paragraph (d), grant the permit subject

to any safety condition recommended by the pipeline licensee (with or without modification); and

- (d) the planning authority must not grant the permit subject to a condition that conflicts with any condition contained in the safety and operating plan certified under section 47(3) for the affected pipeline.

(4) If the permit is granted subject to a safety condition and the Tribunal is satisfied on an appeal against that safety condition that it –

- (a) was recommended to the planning authority by the pipeline licensee; and
- (b) is in the same or essentially the same terms as the pipeline licensee recommended; and
- (c) exceeds the requirements of AS 2885 as in force when the affected pipeline was constructed; and
- (d) has added to the cost of the development –

the Tribunal may (if it is appropriate to do so having regard to its decision on the appeal) order that the pipeline licensee reimburse the applicant for the additional cost or such part of the additional cost as the Tribunal determines is fair in the circumstances.

(5) Section 57(2) of the *Land Use Planning and Approvals Act 1993* does not apply to an application referred to in subsection (1).

(6) When a planning authority complies with section 57(7) of the *Land Use Planning and*

Approvals Act 1993 for an application referred to in subsection (1), it must also serve notice of its decision on the pipeline licensee whether or not the pipeline licensee has given it advice on the application.

(7) The failure of a planning authority to comply with subsection (1) for a development application does not invalidate a permit for the development but, in any such case, the pipeline licensee has the same right of appeal against the grant of the permit as a person who made representations in relation to the application.

Orders of Tribunal

70E. (1) In making an order under section 70C(4), or in determining whether to make an order under section 70D(4) and in making any such order, the Tribunal is to have regard to –

- (a) whether or not the future land use and development considerations applicable to pipeline design and construction under AS 2885, as in force when the affected pipeline was designed, were taken into account in the design and construction of the affected pipeline; and
- (b) whether any compensation has been paid or awarded under the *Land Acquisition Act 1993* or *Major Infrastructure Development Approvals Act 1999* to the owners or former owners of land affected by the proposed development and, if so, the amount paid or awarded.

(2) An order of the Tribunal under section 70C(4) or section 70D(4) is enforceable in the same manner as a judgment of a court of competent jurisdiction.

(3) The power of the Tribunal to make an order under section 70C(4) or section 70D(4) on an appeal under the *Land Use Planning and Approvals Act 1993* is in addition to any other power that it may exercise on the appeal.

Effect of declarations: minor amendments of permits

70F. A planning authority must, in making any determination under section 56(2)(b) of the *Land Use Planning and Approvals Act 1993*, have regard to the safety of any affected pipeline.

Effect of declarations: compensation and land acquisition

70G. (1) Except for any costs or compensation that may be ordered to be paid pursuant to –

- (a) section 70C(4) or section 70D(4); or
- (b) section 279A(2) or (3) of the *Water Management Act 1999* –

the declaration of a pipeline planning corridor does not entitle a person to claim or recover compensation under this or any other Act for any loss or detriment that the person may suffer in consequence of the declaration.

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(2) The declaration of a pipeline planning corridor over any land does not constitute injurious affection of that land or any other land for the purposes of the *Land Acquisition Act 1993*, *Major Infrastructure Development Approvals Act 1999* or any other Act.

Section 92 repealed

6. Section 92 of the Principal Act is repealed.

PART 3 – LAND ACQUISITION ACT 1993 AMENDED**Principal Act**

7. In this Part, the *Land Acquisition Act 1993** is referred to as the Principal Act.

Section 27 amended (Basis of compensation)

8. Section 27(1) of the Principal Act is amended by inserting after paragraph (f) the following paragraph:

- (fa) whether, under any other Act, the claimant or a former owner of the subject land has been paid or awarded any compensation or compensatory costs in connection with the authorised purposes for which it is being acquired;

*No. 23 of 1993

**PART 4 – LAND USE PLANNING AND APPROVALS
ACT 1993 AMENDED**

Principal Act

9. In this Part, the *Land Use Planning and Approvals Act 1993** is referred to as the Principal Act.

Section 20 amended (What can a planning scheme provide for?)

10. Section 20(1) of the Principal Act is amended as follows:

- (a) by omitting from paragraph (d) “prepared.” and substituting “prepared; and”;
- (b) by inserting the following paragraph after paragraph (d):
 - (e) must have regard to the safety requirements set out in the standards prescribed under the *Gas Pipelines Act 2000*.

Section 32 amended (Requirements for preparation of amendments)

11. Section 32(1) of the Principal Act is amended as follows:

- (a) by omitting from paragraph (c) “land.” and substituting “land; and”;

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	(b)	by inserting the following paragraph after paragraph (c):	
		(d) must have regard to the safety requirements set out in the standards prescribed under the <i>Gas Pipelines Act 2000</i> .	

**PART 5 – WATER MANAGEMENT ACT 1999
AMENDED**

Principal Act

12. In this Part, the *Water Management Act 1999** is referred to as the Principal Act.

Section 3 amended (Interpretation)

13. Section 3(1) of the Principal Act is amended by inserting after the definition of “person” the following definitions:

“pipeline licensee” has the same meaning as in Division 4 of Part 3 of the *Gas Pipelines Act 2000*;

“pipeline planning corridor” has the same meaning as in Division 4 of Part 3 of the *Gas Pipelines Act 2000*;

Section 144 amended (Delegation of grant of permit)

14. Section 144 of the Principal Act is amended by omitting subsection (3) and substituting the following subsection:

(3) Subsection (1) does not apply in respect of –

(a) a dam that may have a significant adverse impact on another person; or

*No. 45 of 1999

- (b) a dam that may cause material or serious environmental harm; or
- (c) unless the Assessment Committee has the written consent of the pipeline licensee to the delegation, a dam that is wholly or partly within a pipeline planning corridor.

Section 145 amended (Notice of application not required for certain dams)

15. Section 145 of the Principal Act is amended by omitting subsection (2) and substituting the following subsection:

(2) Subsection (1) does not apply to –

- (a) any such dam that may have a significant adverse impact on another person; or
- (b) any such dam that may cause material or serious environmental harm; or
- (c) unless the Assessment Committee has the written consent of the pipeline licensee to the making of the determination, any such dam that is wholly or partly within a pipeline planning corridor.

Section 149 amended (Notice of application for permit)

16. Section 149(1) of the Principal Act is amended as follows:

- (a) by omitting from paragraph (b) “situated.” and substituting “situated; and”;
- (b) by inserting the following paragraph after paragraph (b):
 - (c) if the proposed dam works are wholly or partly within a pipeline planning corridor, notify the person licensed under the *Gas Pipelines Act 2000* to operate the pipeline in the pipeline planning corridor.

Section 155 amended (Information to be provided)

17. Section 155(2) of the Principal Act is amended by omitting paragraph (g) and substituting the following paragraphs:

- (g) a pipeline planning corridor; or
- (h) likely effects on other persons –

Section 158 amended (Refusal of application for permit)

18. Section 158(1) of the Principal Act is amended by inserting after paragraph (d) the following paragraph:

- (da) if the proposed dam works are wholly or partly within a pipeline planning corridor and are likely to compromise the safety or safe operation of the pipeline in the pipeline planning corridor; or

Section 279A inserted

19. After section 279 of the Principal Act, the following section is inserted in Division 2:

Compensatory orders for gas pipeline safety detriments

279A. (1) In this section –

“appeal” means an appeal to the Appeal Tribunal –

- (a) by a pipeline licensee against the grant of a permit; or
- (b) by an applicant against the refusal to grant a permit;

“permit” means a permit under Part 8 to undertake dam works;

“representations”, in relation to a permit, means representations made to the Assessment Committee on the application for the permit.

(2) If the Appeal Tribunal’s determination on an appeal will result in a permit being granted subject to conditions designed to ensure the safety or safe operation of a pipeline in a pipeline planning corridor and the Appeal Tribunal is satisfied that –

- (a) the conditions are the same or substantially the same as conditions that were recommended by the pipeline licensee in representations; and
- (b) the conditions will add to the cost of the dam works; and

- (c) the pipeline licensee knew or reasonably ought to have known of the applicant's need or intention to undertake the dam works before the pipeline was constructed –

the Appeal Tribunal may, in addition to any other power it may exercise on the appeal, order that the pipeline licensee reimburse the applicant for the additional cost or such part of the additional cost as the Appeal Tribunal determines is fair in the circumstances.

(3) If the Appeal Tribunal's determination on an appeal will result in an applicant not being granted a permit and the Appeal Tribunal is satisfied that –

- (a) the sole or principal reason why the permit is not being granted is the acceptance of representations made by a pipeline licensee that the proposed dam works would or may compromise the safety or safe operation of a pipeline in a pipeline planning corridor; and
- (b) the applicant will suffer a loss or detriment as a consequence of not being granted the permit; and
- (c) the pipeline licensee knew or reasonably ought to have known of the applicant's need or intention to undertake the dam works before the pipeline was constructed –

the Appeal Tribunal may, in addition to any other power that it may exercise on the appeal, order that the pipeline licensee pay the applicant such amount by way of compensation for the loss or detriment as

the Appeal Tribunal determines is fair in the circumstances.

(4) In determining whether to make an order under subsection (2) or (3), and in making any such order, the Appeal Tribunal is to have regard to whether any compensation has been paid or awarded under the *Land Acquisition Act 1993* or *Major Infrastructure Development Approvals Act 1999* to the applicant and, if so, the amount paid or awarded.

(5) An order of the Appeal Tribunal under subsection (2) or (3) is enforceable in the same manner as a judgment of a court of competent jurisdiction.