

Energy Legislation Amendment (Infrastructure Protection) Act 2009

Regulations – Final Version following 1st Round stakeholder consultation

Background

The *Energy Legislation Amendment (Infrastructure Protection) Act 2009* provides for the protection of electricity and gas infrastructure by:

- Requiring Network Operators to belong to a Designated Information Provider such as Dial Before You Dig;
- Enabling Regulations to be made in relation to the provision of information by Network Operators relating to underground electricity power lines and gas pipelines;
- Making it an offence for a person to carry out certain Excavation work without:
 - contacting the Designated Information Provider to obtain information as to the location and type of underground electricity power lines or gas pipelines in the vicinity of the proposed work;
 - waiting a reasonable period for the information to be provided; and
 - complying with the requirements of the Regulations in relation to the carrying out of excavation work.
- Requiring any damage to underground electricity power lines or gas pipelines during excavation work to be reported to the network operator; and
- Empowering network operators to stop dangerous excavation works.

The operational detail of these new provisions is to be prescribed in Regulations made under the *Electricity Supply Act 1995* and the *Gas Supply Act 1996*.

Consultation

Industry & Investment NSW concluded its first round of consultation with identified key stakeholders from the electricity, gas and construction industries. Meetings were held with a number of those stakeholders while others chose to provide written submissions. Not all stakeholders responded to the invitation to consult.

This final version of the scoping document is based on a balance of the inputs received from various stakeholders and will form the basis for drafting of the proposed Regulations.

The draft Regulations will be released for further consultation with interested stakeholders.

Proposed Regulations

Electricity

1) Definitions

<i>Designated Information Provider</i>	Dial Before You Dig NSW/ACT Incorporated
<i>Department</i>	Industry & Investment NSW
<i>Director-General</i>	Director-General of Industry & Investment NSW
<i>Enquiry</i>	An enquiry made by a person to the Designated Information Provider, in a form prescribed by the Designated Information Provider, in relation to works being proposed at an adequately defined location
<i>Emergency work</i>	Means work to: rectify or prevent imminent danger to human life or physical injury rectify or prevent imminent or continuing damage to or destruction of property or the environment rectify or prevent an unscheduled outage which has or is likely to have a significant impact on a distribution network
<i>Excavating</i>	The movement or placement of soil or other surface materials by removing, boring or forcing objects into the ground or surface of the earth
<i>Excavation work</i>	Work involving the penetration of the ground or surface of the earth by any object including but not limited to rock and other ground anchors, stakes, tools and reinforcing materials, and all works involving the movement or placement of soil or other surface materials by removing, boring or forcing objects into the ground or surface of the earth.
<i>Guide</i>	Working near Underground Assets, a Guide published by WorkCover NSW in 2007
<i>Hand excavation</i>	A method of Excavating using tools in which no power source supplements or replaces manual effort, including but not limited to shovels, picks and mattocks, but excluding jackhammers, spaders and the like and any hammering, driving or forcing stakes, probes and the like into the ground with other than hand pressure.

Vacuum extraction

A method of Excavating using water or air aided by vacuum excavation to achieve non-destructive excavation

2) Provision of information on underground electricity power lines by Network Operators (section 63Y(2))

- (a) Information to be dispatched within the timeframe specified in the response time advertised by the Designated Information Provider
- (b) Information to be in a form that can be interpreted by a person with the competencies listed in the Guide
- (c) Information to include all specific requirements of the Network Operator in relation to the proposed works
- (d) Information to include emergency contact details in relation to the Network Operator's assets
- (e) Information to include any of the Network Operator's requirements in relation to the notification of damage to assets
- (f) Network operator to provide its most accurate and up to date information.
- (g) Network operators may advise of a requirement for a stand-by person to be present during the Excavation works.

3) Requirements in relation to carrying out of certain Excavation works (section 63Z(4))

- (a) Persons planning to carry out Excavation works shall:
 - i. Ensure that plans and specific requirements obtained in response to an Enquiry are not more than 20 business days old before the Excavation work commences
 - ii. Familiarise themselves with the sections of the Guide relevant to the work to be carried out and the identified underground assets
 - iii. Take into account the specific requirements provided by any Network Operator in response to the Enquiry
 - iv. Contact any Network Operator which has requested prior notification, within the time period specified of the planned commencement of work
 - v. Ensure the works are planned and executed in accordance with all of the identified requirements
 - vi. Not cut into conduits, ducts, etc associated with underground electricity power lines exposed in the excavation, unless under the supervision of the Network Operator or its authorised representative
- (b) Where the Network Operator has advised of a requirement for a stand-by person to be present, a minimum of two clear business days notice of the intent to commence works must be provided
- (c) If the Network Operator is unable to provide the stand-by person within the notice period, the person may commence with the Excavation work to be performed in conformance with the Guide and all other remaining requirements of the Network Operator obtained in response to the Enquiry

- (d) On completion of the Excavation works, persons shall:
- i. Follow any specific requirements of the Network Operator provided in response to the Enquiry
 - ii. Reinstate any underground electricity power lines covering or other covering materials that were in place prior to the commencement of the Excavation work
 - iii. Replace any previous backfill materials removed during the Excavation work with identical, or as near as possible to identical, backfill materials
 - iv. Ensure the excavation is backfilled with materials that do not damage the exposed underground electricity power lines
 - v. Ensure backfill materials are placed into the excavation in a manner that avoids placing excessive loads on the underground electricity power lines, and
 - vi. Avoid exposing the underground electricity power lines to excessive loads from compaction equipment

4) Notification of damage to underground electricity power lines (section 63ZA(2))

- (a) Persons who damage underground electricity power lines during an excavation should immediately notify the Network Operator using the emergency contact number provided in response to the Enquiry
- (b) If that number is not known, the person should use the publicly advertised emergency contact number from the telephone directory to contact the Network Operator.

5) Limitation of liability (section 63ZC(1))

- (a) The civil liability of the Designated Information Provider shall be limited to \$10 million

6) Exclusions from the definition of Excavation Works

- (a) Using earth moving machinery to a depth of less than 150 mm
- (b) Mechanical ploughing for agricultural purposes in rural zoned areas to a depth of less than 250mm
- (c) Hand excavation to a depth of less than 300mm
- (d) Excavation works conducted solely by Vacuum extraction
- (e) The owners or agents of owners of underground services including electricity, gas, water, sewerage and telecommunications may carry out Hand excavation immediately over or adjacent to that owner's service as a means to assist in determining the exact location, integrity of or identifying leaks in those services.

7) Emergency work

- (a) The need to carry out Emergency work does not diminish the responsibility of persons to do everything that is reasonable and practical that is within their power to avoid damaging underground electricity power lines
- (b) For the work carried out in the immediate response to the report of an apparent emergency, persons should, prior to commencing Emergency work, make observations at the proposed excavation site in an attempt to identify

the possibility of underground electricity power lines. Indicators might include, but are not necessarily limited to:

- i. Electric substations, transformers, cubicles or connection pillars
 - ii. Conduits on electricity power poles between the overhead conductors and into the ground;
 - iii. Marker posts or signs;
 - iv. Manhole or pit covers adjacent to the excavation site; and
 - v. Surface evidence of previous excavation work at the location.
- (c) Where observations suggest the possible existence of underground electricity power lines, attempts should be made to contact the relevant Network Operator on the published emergency contact numbers for advice.
 - (d) Persons should carry out Excavation works carefully and constantly observe the excavation for marker tapes, cable cover slabs, bedding sands or other indicators of previous Excavation works at the location.
 - (e) The person is obliged to contact the relevant Network Operator if underground electricity cables or associated conduits or ducting are encountered. Advice should be sought from the relevant Network Operator before proceeding with Excavation works if such indicators are discovered.
 - (f) The person is obliged to advise the relevant Network Operator if underground electricity cables are struck and damaged.
 - (g) Any subsequent remediation works undertaken at the site of the emergency, following the Emergency work, must be carried out in conformance with the requirements of this Regulation relating to Excavation work.
 - (h) Also reference the Guide

Gas

1) Definitions

<i>Designated Information Provider</i>	Dial Before You Dig NSW/ACT Incorporated
<i>Department</i>	Industry & Investment NSW
<i>Director-General</i>	Director-General of Industry & Investment NSW
<i>Enquiry</i>	An enquiry made by a person to the Designated Information Provider, in a form prescribed by the Designated Information Provider, in relation to works being proposed at an adequately defined location
<i>Emergency work</i>	Means work to: rectify or prevent imminent danger to human life or physical injury rectify or prevent imminent or continuing damage to or destruction of property or the environment rectify or prevent an unscheduled outage which has or is likely to have a significant impact on a distribution network
<i>Excavating</i>	The movement or placement of soil or other surface materials by removing, boring or forcing objects into the ground or surface of the earth
<i>Excavation work</i>	Work involving the penetration of the ground or surface of the earth by any object including but not limited to rock and other ground anchors, stakes, tools and reinforcing materials, and all works involving the movement or placement of soil or other surface materials by removing, boring or forcing objects into the ground or surface of the earth.
<i>Guide</i>	Working near Underground Assets, a Guide published by WorkCover NSW in 2007
<i>Hand excavation</i>	A method of Excavating using tools in which no power source supplements or replaces manual effort, including but not limited to shovels, picks and mattocks, but excluding jackhammers, spaders and the like and any hammering, driving or forcing stakes, probes and the like into the ground with other than hand pressure.
<i>Vacuum extraction</i>	A method of Excavating using water or air aided by vacuum excavation to achieve non-destructive excavation

2) Provision of information on underground gas pipelines by Network Operators (section 64B)

- (a) Information to be dispatched within the timeframe specified in the response time advertised by the Designated Information Provider
- (b) Information to be in a form that can be interpreted by a person with the competencies listed in the Guide
- (c) Information to include all specific requirements of the Network Operator in relation to the proposed works
- (d) Information to include emergency contact details in relation to the Network Operator's assets
- (e) Information to include any of the Network Operator's requirements in relation to the notification of damage to assets
- (f) Network operator to provide its most accurate and up to date information.
- (g) Network operators may advise of a requirement for a stand-by person to be present during the Excavation works.

3) Requirements in relation to carrying out of certain Excavation works (section 64C)

- (a) Persons planning to carry out Excavation works shall:
 - i. Ensure that plans and specific requirements obtained in response to an Enquiry are not more than 20 business days old before the Excavation work commences
 - ii. Familiarise themselves with the sections of the Guide relevant to the work to be carried out and the identified underground assets
 - iii. Takes into account the specific requirements provided by any Network Operator in response to the Enquiry
 - iv. Contact any Network Operator which has requested prior notification, within the time period specified of the planned commencement of work
 - v. Ensure the works are planned and executed in accordance with all of the identified requirements
 - vi. Not cut into conduits, ducts, etc associated with underground gas pipelines exposed in the excavation, unless under the supervision of the Network Operator or its authorised representative
- (b) Where the Network Operator has advised of a requirement for a stand-by person to be present, a minimum of two clear business days notice of the intent to commence works must be provided

If the Network Operator is unable to provide the stand-by person within the notice period, the person may commence Excavating with the Excavation work to be performed in conformance with the Guide and all other remaining requirements of the Network Operator obtained in response to the Enquiry

- (c) On completion of the Excavation works, persons shall:
 - i. Follow any specific requirements of the Network Operator provided in response to the Enquiry
 - ii. Reinstate any underground gas pipelines covering or other covering materials that were in place prior to the commencement of the Excavation work
 - iii. Replace any previous backfill materials removed during the Excavation work with identical, or as near as possible to identical, backfill materials
 - iv. Ensure the excavation is backfilled with materials that do not damage the exposed underground gas pipelines
 - v. Ensure backfill materials are placed into the excavation in a manner that avoids placing excessive loads on the underground gas pipelines
 - o Avoid exposing the underground gas pipelines to excessive loads from compaction equipment

4) Notification of damage to underground gas pipelines (section 64D)

- (a) Persons who damage underground gas pipelines during an excavation should immediately notify the Network Operator using the emergency contact number provided in response to the Enquiry
- (b) If that number is not known, the person should use the publicly advertised emergency contact number from the telephone directory to contact the Network Operator.

5) Limitation of liability (section 64F)

- (a) The civil liability of the Designated Information Provider shall be limited to \$10 million.

6) Exclusions

- (a) Using earth moving machinery to a depth of less than 150 mm
- (b) Mechanical ploughing for agricultural purposes in rural zoned areas to a depth of less than 250mm
- (c) Use of hand tools to a depth of less than 300mm
- (d) Excavation works conducted solely by Vacuum extraction
- (e) The owners or agents of owners of underground services including electricity, gas, water, sewerage and telecommunications may carry out Hand excavation immediately over or adjacent to that owner's service as a means to assist in determining the exact location, integrity of or identifying leaks in those services.

7) Emergency work from the definition of Excavation Works

- (a) The need to carry out emergency work does not diminish the responsibility of persons to do everything that is reasonable and practical that is within their power to avoid damaging underground gas pipelines
- (b) For the work carried out in the immediate response following the reporting of an apparent emergency, persons should make observations at the proposed excavation site in an attempt to identify the possibility of underground gas pipelines. Indicators might include, but are not necessarily limited to:

- i. Gas meter sets
 - ii. Marker posts or signs;
 - iii. Manhole or pit covers adjacent to the excavation site; and
 - iv. Surface evidence of previous Excavation work at the location.
- (c) Where observations suggest the possible existence of underground gas pipelines, attempts should be made to contact the relevant Network Operator on the published emergency contact numbers for advice.
- (d) Persons should carry out Excavation works carefully and constantly observe the excavation for marker tapes, cover slabs, bedding sands or other indicators of previous Excavation works at the location.
- (e) The person is obliged to contact the relevant Network Operator if underground gas pipelines or associated conduits or ducting are encountered. Advice should be sought from the Network Operator before proceeding with Excavation works if such indicators are discovered.
- (f) The person is obliged to advise the relevant Network Operator if underground gas pipelines are struck and damaged.
- (g) Any subsequent remediation works undertaken at the site of the emergency, following the initial Emergency work, must be carried out in accordance with the requirements of the Regulation relating to Excavation work.
- (h) Also reference the Guide