

replacement with a new authorisation. There are various other consequential amendments flowing from these more significant changes to the TPA.

Part 3 of the Act establishes the powers and functions of certain administrative bodies and State Ministers under the national scheme and deals with a number of jurisdictional issues. The Gas Pipelines Access law imposes certain conduct obligations, the breach of which gives rise to civil penalties and provides for certain persons to apply for court orders in respect of civil penalty provisions. Jurisdiction in relation to these matters is conferred on the Federal Court. It is also intended that the Administrative Decisions (Judicial Review) Act 1977 ("ADJR") will apply to certain decisions of Commonwealth administrative bodies under the national scheme. To that end, the Act provides that decisions of these bodies are taken to be decisions reviewable under the ADJR.

NEW SOUTH WALES

GAS PIPELINES ACCESS (NEW SOUTH WALES) ACT 1998*

On 2 June 1998, the New South Wales Parliament passed the *Gas Pipelines Access (New South Wales) Act 1998* in accordance with the requirements of the agreement of the Council of Australian Governments concerning Natural Gas Pipelines dated 7 November 1997.

That Act implements in NSW the *National Third Party Access Code for Natural Gas Pipelines Systems* (the *Code*), and follows the passing of similar legislation in South Australia, Queensland and Victoria.

The Code establishes a framework for third party access to natural gas pipelines with the purpose, amongst other things, to facilitate the development and operation of a national market for natural gas and to prevent abuse of monopoly power in the ownership and operation of gas pipelines. It provides to third parties a right of access to gas pipelines on conditions that are fair and reasonable.

Under the Code, gas pipeline owners are required to lodge with the relevant regulator (the ACCC for transmission pipelines and the Independent Pricing and Regulatory Tribunal in NSW for distribution pipelines) an access arrangement for approval, outlining the general policies and basic terms and conditions which apply to third party access to the pipeline (including reference tariffs), although parties may agree terms different to the access arrangement. The Code also establishes a procedure for the arbitration of access disputes.

NSW PETROLEUM (ONSHORE) AMENDMENT ACT 1998⁺

The above Act makes a number of amendments to the NSW Petroleum (Onshore) Act 1991 (Act). The major changes are set out below.

- I. On the grant of a petroleum title or while a petroleum title is in force but not subject to a condition requiring security, the Minister may impose a condition requiring the holder of the title to give security for the fulfilment of the holder's obligations under the Act in respect of that title

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and to maintain that security until those obligations are fulfilled or no longer apply. The Minister also has the power to vary that condition at any time by varying the amount and form of security required to be given and maintained.

- II. Any security given can be forfeited to the Crown if the holder of the petroleum title fails to fulfil the obligations imposed under or arising under the Act in relation to the title. Money realised from the forfeiture of security is to be applied for the purpose of fulfilling those obligations.
- III. Time periods for applying for renewals of petroleum titles have been varied. For a special prospecting authority or an exploration licence, a renewal application needs to be made not earlier than 2 months and not later than 1 month before the authority or licence ceases to have effect. In the case of any other petroleum title, the renewal application needs to be made not earlier than five years and not later than one year (or if the term of the title is for one year or less, not earlier than 2 months and not later than 1 month) before the title ceases to have effect. It is also made clear that the Minister may renew the petroleum title or refuse the renewal application.
- IV. The Minister may include rehabilitation obligations in the conditions of petroleum titles. Such conditions are to be in a form approved by the Commissioner of the Soil Conservation Service and are to be imposed only after consultation with the Director General of National Parks and Wildlife.
- V. A more detailed procedure has been added for the making of an application for the approval for the transfer of a petroleum title and for the handling of that application, which is similar to the procedure under the NSW Mining Act 1992. The Minister may approve the transfer or refuse the application. In approving the transfer the Minister may direct that any conditions of the title be amended or that further conditions be included. Once the Minister has approved an application for a transfer then the transferor or transferee of the petroleum title may apply for registration of the transfer. Upon registration, the transferee becomes the holder of the title and the title becomes subject to any amended conditions or further conditions referred to any direction given by the Minister at the time of approval of the transfer of the title.
- VI. A person claiming a legal or equitable interest in a petroleum title may lodge a caveat directing the Director-General not to register any transfer of the petroleum title other than in accordance with the caveat. A caveat remains in force for a period of 3 months and while it is in force a transfer of the petroleum title may not be registered otherwise than pursuant to an order of the NSW Supreme Court. On the expiration of that 3 month period, any transfer of the petroleum title can be registered unless, before the expiration of that period, the Director-General is served with an order of the Supreme Court prohibiting the Director-General from registering the transfer.
- VII. The Director-General is required to keep a register of legal and equitable interests in petroleum titles. Any person claiming such an interest may apply for registration of the interest. The registration of the interest is not evidence of the existence of the interest but for the purposes of any legal proceedings concerning a petroleum title, a registered interest has priority over an interest that is not registered and an earlier registered interest has priority over a later registered interest.
- VIII. The holder of a petroleum title is liable to pay compensation for loss caused or likely to be caused by the exercise of rights under the petroleum title. A number of categories of damage are set out in section 109(1) of the Act including loss caused by: damage to the surface of land and to

improvements on the land; deprivation of the possession or use of the surface; destruction or loss or injury to stock on land; and all consequential damages. The consequential damage category has been limited to damage consequential on any of the matters listed in the other categories in section 109(1).

NSW MINES INSPECTION AMENDMENT ACT 1998

The above Act makes a number of amendments to the NSW Mines Inspection Act 1901 what relates to all mines other than coal mines. The major changes are set out below.

- I. The concept of a mine manager has been replaced with the concept of a general manager and a production manager. The owner of a mine must ensure that at all times there is a general manager of the mine. That person is nominated by the owner and approved by the chief inspector. That person must have relevant qualifications. An existing mine manager is taken to be a general manager of the mine under the transitional provisions but the approval of the chief inspector is still required for that person.
- II. The general manager of a mine must reside in its vicinity and is responsible for the daily supervision, control and management of the mine.
- III. There is a new definition of mine which means any above ground or under ground site where exploration for or extraction of, metals and minerals takes place and includes adjoining treatment facilities, adjoining waste treatment facilities, adjoining ready mix concrete or bitumen hot mix plants, any part of the site where environmental rehabilitation is being carried on, any abandoned mine, any place where operations for the care, security and maintenance of the site have been carried out during any time when mining operations at the site have been suspended and any place where restoration, decommissioning or abandonment operations of the site are being carried out.
- IV. The general manager must ensure that the production operations at the mine are supervised by a person who is qualified to be a production manager. The general manager and production manager can be the same person if that person has all required qualifications.
- V. Provisions are made for the appointment of an acting general manager and for the grant of production manager permits by the chief inspector of mines.
- VI. Production managers are required to undertake prescribed professional training and to keep records of the training undertaken and to produce records on demand to any inspector.
- VII. Blasting operations can only be undertaken by a person who is a qualified shotfirer or a person who belongs to a class of persons authorised by the general rules to carry out blasting operations.
- VIII. The owner or general manager of a mine (which employs twenty or more persons or which employs a lower number of persons if the chief inspector has advised the general manager in writing that section 41 applies to the mine) must before the commencement of any mining