

COMMENTS

GOVERNMENT REGULATION OF CONSTRUCTION AND OPERATION OF HYDROCARBON PIPELINES

Along with the emergence of the petroleum industry in Australia came the development of a new form of transportation requiring legislative regulation. The accompanying chart provides a comparison of some of the more important features of the legislation of the States and the Commonwealth regulating the construction and operation of pipelines conveying hydrocarbons. With the exception of Queensland, all the legislative activity in this area has taken place within the last ten years, taking either the form of specific pipeline legislation or amendment of general petroleum legislation. The legislation of New South Wales and Victoria covers pipelines conveying any substance but is considered here only in so far as it relates to the carriage of hydrocarbons. In addition, the petroleum legislation of the States and the Commonwealth, governing the exploration and exploitation of petroleum resources in offshore areas, includes a system of licensing for the construction and operation of pipelines in each offshore adjacent area.

There are two government pipeline authorities, the Pipeline Authority of South Australia and the Commonwealth Pipeline Authority. The former was originally constituted to construct and operate pipelines for the conveyance of natural gas and derivatives; in 1974 its scope was enlarged to cover the construction and operation of pipelines conveying petroleum. In 1977 the power was conferred on the Authority, within a prescribed area, to acquire and deal with an interest or share in exploration and production titles granted under laws of any State or Territory or the Commonwealth. The Authority is subject to the general pipeline legislation of the State unless exempted therefrom by proclamation of the Governor.

By way of contrast, the role of the Commonwealth Pipeline Authority is not merely the construction and operation of pipelines, but to attempt to provide a means of integrating on a national scale the carriage of hydrocarbons from Australian petroleum pools, in offshore or onshore areas, to centres of population. As a corollary to this scheme, the Authority's functions include trading rights to buy and sell hydrocarbons, the securing of a supply of natural gas at a uniform price throughout Australia and the securing of reserves to meet the long term needs of the

Australian people. The first major undertaking of the Authority was the completion of the Moomba-Sydney natural gas pipeline. The Authority is not subject to the provisions of the Petroleum (Submerged) Lands Act.

In Victoria the Gas and Fuel Corporation, a government instrumentality, has assumed the powers and functions of the former Victorian Pipelines Commission, which include the power to construct, maintain and operate pipelines for the conveyance of hydrocarbons, buy and sell hydrocarbons and act as a common carrier of hydrocarbons.

Throughout Australia the legislation is uniform in that to construct and operate a pipeline a licence must first be obtained from the appropriate authority. In all other aspects the legislation is notable for the diversity of requirements. Initial authorization of routes in some States is subject to public scrutiny by advertisement and hearing of objections. Provisions allowing the cancellation of the licence as to the whole of the pipeline or part thereof, or requiring variation of the route, are included in the legislation of two States and the offshore legislation.

Of importance to producers are the provisions imposing obligations to convey hydrocarbons on the licensee. Only the offshore legislation and the Queensland legislation allow for the imposition on the licensee of the status of common carrier. All the other States allow for a variety of directions to convey to be given to the licensee, the Western Australian provision being of dubious value as it allows the licensee to retain priority for the carriage of his own petroleum.

As to the future there are two alternatives open to legislators, namely Government ownership and regulation or Government regulation of private operators. The trend in Australia has been in favour of the former. However, it remains to be seen whether the Government will be successful in divesting itself of the construction and operation activities of the Pipeline Authority. Should the model of regulation as opposed to ownership be adopted, experience in the United States and Canada has demonstrated that the areas in which our legislation is inadequate [in particular, common carrier provisions and government fixing of rates of carriage] have given rise to problems of large dimensions.

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PIPELINES LEGISLATION IN AUSTRALIA

	SOUTH AUSTRALIA		QUEENSLAND	WESTERN AUSTRALIA	NEW SOUTH WALES
Legislation	Petroleum Act 1940-1967 Petroleum (Submerged Lands) Act 1967-1974*	Pipeline Authority Act 1967-1977	Petroleum Act 1923-1967 Petroleum (Submerged Lands) Act 1967-1975*	Petroleum Pipeline Act 1969-1975 Petroleum (Submerged Lands) Act 1967*	Pipeline Act 1967-1976 Petroleum (Submerged Lands) Act 1967*
Scope of Legislation	1. (a) private operators and statutory corporations 2. pipelines conveying petroleum	1. (b) government pipeline authority 2. pipelines conveying petroleum	1. private operators and statutory corporations 2. pipelines conveying petroleum	1. private operators and statutory corporations 2. pipelines conveying petroleum	1. private operators and statutory corporations 2. pipelines conveying anything
Allocation Method	Application by any person — granted by Administrative discretion	not applicable	Application by any person — granted by Administrative discretion	Application by any person — granted by Administrative discretion	Application by any person — granted by Administrative discretion
Basic Rights Structure	One stage: Licence to construct and operate	as for 1. (a)	One stage: Licence to construct and operate (note permission to enter land for preliminary investigations)	One stage: Licence to construct and operate (note authority to enter land for preliminary investigation)	Two stages: (1) permit: to survey lands to determine route of pipeline (2) licence: to construct and operate. Only available to permit holder — granted at Governor's discretion
Route Authorization and Environment Controls	Minister must consider any private or public interest affected. Right of objection to Petroleum Advisory Committee	Route must be approved by Governor	Route as specified in licence	Comprehensive scheme for advertisement and hearing of objections. Minister may give directions for changes in route or position of pipeline	Comprehensive scheme for advertisement and hearing of objections. Governor may cancel licence as to whole or part of the pipeline in the public interest

Duration of Rights	21 years: renewals of 21 years as of right	as for 1. (a)	as stated in licence	21 years: renewals of 21 years at discretion of Minister	(1) permit: as specified therein renewals at discretion of Minister (2) licence: 21 years — renewals of 21 years at Governor's discretion
Land Acquisition	Licensee may with approval of Minister compulsorily acquire land. Governor may grant rights over Crown land	Authority may with approval of Governor compulsorily acquire land. Governor may grant rights over Crown land	Governor may grant interest in Crown land. Co-ordinator of Public Works may resume any other land	Governor may grant interest over any land	Governor may grant interest over any land
Government Charges	\$20 per mile per annum.	as for 1. (a)	as stated in licence	\$20 per annum per mile	(1) permit: nil (2) licence: \$20 per annum per mile
Obligation to Carry	Minister may direct licensee to convey petroleum of petroleum production licensee	as for 1. (a)	Governor-in-Council may declare that licensee is a common carrier	Minister may direct licensee to carry any persons petroleum. Licensee retains priority of carriage for own petroleum	Minister may give such directions as he thinks appropriate for use of pipeline
Regulation of Charges	Minister may impose terms in default of agreement between parties	as for 1. (a)	If owner or operator of Pipeline is petroleum exploration permittee or petroleum production licensee or holder of an authority to prospect he must convey at reasonable rates	Minister may give such directions to licensee as he thinks appropriate	Minister may give licensee such directions as he thinks appropriate for use of pipeline

*See Commonwealth 1(a).

PIPELINES LEGISLATION IN AUSTRALIA

	NORTHERN TERRITORY	VICTORIA	COMMONWEALTH	
Legislation	Petroleum (Prospecting and Mining) Ordinance 1954-1968	Pipeline Act 1967-1971 Petroleum (Submerged Lands) Act 1967*	Petroleum (Submerged Lands) Act 1967-1973	Pipeline Authority Act 1973
Scope of Legislation	1. petroleum production lessee 2. pipelines conveying petroleum	1. private operators and statutory corporations 2. pipeline conveying anything	1. (a) private operators and statutory corporations 2. pipelines conveying petroleum	1. (b) Government pipeline authority 2. pipelines conveying petroleum
Allocation Method	Application by production lessee granted by Administrative discretion	Application by any person — granted by Administrative discretion	Application by any person — granted by Administrative discretion	not applicable
Basic Rights Structure	not applicable	Two stages: (1) permit: to own and use (2) licence: to construct and operate. Only available to permittee as of right	One stage: Licence to construct and operate	not applicable
Route Authorization and Environment Controls	Route as prescribed	Advertisement of application and route. Allowance for objections.	Publication at discretion of Designated Authority. Designated Authority may cancel licence as to whole or part of pipeline in public interest	Authority must consider ecological and environmental factors in constructing pipeline

Duration of Rights	as prescribed	(1) permit: as determined by Minister. Renewals as of right for period as determined by Minister (2) licence: remaining in force for period of permit and any renewal thereof	21 years: renewals of 21 years as of right	not applicable
Land Acquisition	Administrator may grant interest over any land	Governor-in-Council may grant interest in Crown land or land held by public Authority Licensee may compulsorily acquire interest in private land with permission of the Minister	not applicable	Pipeline Authority may compulsorily acquire any land
Government Charges	as prescribed	\$12.50 per annum per kilometre for pipeline operators licence	\$20 per mile per annum	not applicable
Obligation to Carry	no provision	Minister may direct licensee to convey any authorized thing	Designated Authority may direct licensee to be a common carrier	no provision
Regulation of Charges	no provision	Minister may give directions if parties fail to agree	no provision	no provision

*See Commonwealth 1(a).