

**GAS AND ELECTRICITY (AMENDMENT) BILL 1985**

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**EXPLANATORY NOTE**

**(This Explanatory Note relates to this Bill as introduced into Parliament)**

The object of this Bill is to amend the Gas and Electricity Act 1935 so as—

- (a) to provide for a restructuring of the gas industry in New South Wales for the benefit of gas consumers whereby The Australian Gas Light Company ("AGL") will transfer so much of its undertaking as relates to gas activities to gas companies which are wholly owned subsidiaries of AGL and which will then engage only in gas activities;
- (b) to require AGL to pay \$134,000,000 to its subsidiary gas companies and to require that money to be used to prevent rises in gas prices;
- (c) to provide for the application of excess profits of gas companies towards reducing gas prices;
- (d) to empower the Minister to enter into agreements with AGL and certain gas companies where the agreements will provide benefits for gas consumers, will be conducive to the efficient functioning of the gas industry or will otherwise be in the public interest;
- (e) to place restrictions, in the interests of gas consumers, on certain gas companies in relation to—
  - (i) the activities which may be carried on by those companies;
  - (ii) the disposal of assets by those companies;
  - (iii) transactions between those companies;
  - (iv) the giving of financial assistance by those companies to other companies; and
  - (v) the capital structure of those companies;
- (f) to extend the powers of AGL so that, generally, AGL will have the powers of a company under the Companies (New South Wales) Code;

- (g) to apply certain provisions of the Companies (New South Wales) Code and Securities Industry (New South Wales) Code to AGL and to certain gas companies to which those provisions would not otherwise apply;
- (h) to empower the Minister to appoint a person to be a director of a subsidiary gas company of AGL; and
- (i) to make certain other amendments.

The Bill also makes certain savings and transitional provisions.

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Clause 1 specifies the short title of the proposed Act.

Clause 2 provides that the proposed Act will, with minor exceptions, commence on a day or days to be appointed by the Governor-in-Council.

Clause 3 defines the Principal Act.

Clause 4 is a formal provision which gives effect to the Schedule of amendments.

Clause 5 continues the application of the Principal Act in its present form to AGL until a date to be appointed by the Governor-in-Council, so that the current provisions will apply until the restructuring of AGL is completed.

Clause 6 repeals certain uncommenced provisions of the Gas and Electricity (Amendment) Act 1982 whereby provisions establishing a Natural Gas Development Support Account were to be inserted into the Principal Act.

Schedule 1 (1) is a formal amendment which repeals the provision of the Principal Act which deals with its arrangement.

Schedule 1 (2) omits an interpretative provision which is no longer applicable.

Schedule 1 (3) (a) omits, inter alia, the definition of "standard rate of dividend" which will no longer be of application to most gas companies and effects minor amendments by way of statute law revision to other definitions.

Schedule 1 (3) (b) defines "function" to include power, authority and duty.

Schedule 1 (4) renames Division 1 of Part III of the Principal Act.

Schedule 1 (5) substitutes section 6 of the Principal Act and inserts proposed sections 6A-6H into the Principal Act:

- (a) Currently section 6 provides for the calculation of standard rates of dividend of gas companies for use in determining the price chargeable for gas. There will now be no restriction on the dividend payable by most gas companies and the price of gas will be calculated on the basis that a gas company is restricted to earning no more than a reasonable profit (proposed section 12k). As proposed to be substituted, section 6 defines certain expressions for the purposes of Division 1 of Part III of the Principal Act. An important definition is that of "gas activity" which means, generally, any activity carried on for or in connection with, or which is reasonably incidental to, the manufacture, production, distribution or supply of gas. The expression "gas company" is defined so that Division 1 of Part III of the Principal Act (sections 6-12N) will apply only to a gas company which is a subsidiary of AGL.
- (b) Proposed section 6A requires AGL to transfer so much of its undertaking as relates to the carrying on of gas activities to wholly owned subsidiaries of AGL.
- (c) Proposed section 6B requires the transfer of AGL's gas undertaking to be effected in a manner and on terms which will not financially disadvantage gas consumers. The Minister is empowered to make orders for the vesting of assets and the novation of contracts to facilitate such a transfer.
- (d) Proposed section 6C transfers from AGL functions relating to gas activities conferred on AGL by the Australian Gas Light Company Act 1837 to the subsidiaries of AGL to which the gas undertaking of AGL is transferred. Provision is however made for the retention of functions by AGL where the Minister is satisfied that their transfer would be impracticable or undesirable.
- (e) Proposed section 6D prohibits AGL carrying on gas activities after its gas undertaking is transferred under proposed section 6A unless the activity relates to a function retained by AGL pursuant to proposed section 6C.
- (f) Proposed section 6E extends the powers of AGL and certain other gas companies so that, generally, AGL and those gas companies will have the powers of a company under the Companies (New South Wales) Code (i.e. all the powers of a natural person).
- (g) Proposed section 6F prohibits a gas company from engaging in any activity other than a gas activity.
- (h) Proposed section 6G empowers the Minister to prohibit a gas company from engaging in any new gas activity or, if a board so recommends, to prohibit a gas company substantially changing the manner in which or the extent to which it carries on a gas activity if it would not be in the interests of gas consumers or would otherwise not be in the public interest. A "new activity" is defined to mean any gas activity other than one which the Minister and the gas company concerned agree is appropriate to be carried on by the company.

- (i) Proposed section 6H empowers the Minister to enter into agreements, on behalf of the Crown, with gas companies if the agreements provide benefits for gas consumers, are conducive to the efficient functioning of the gas industry or are otherwise in the public interest. Such agreements may provide for the payment of money to the Crown by gas companies. The proposed section specifically authorises gas companies to enter into such agreements and validates any such agreement entered into before the commencement of the proposed section.

Schedule 1 (6) omits a provision which authorised gas companies to establish a special purposes account for certain purposes as the accounting practices of gas companies will now be required to conform to generally accepted accounting principles (proposed section 12J).

Schedule 1 (7) permits the Minister to vary the current permissible rate of depreciation on gas company assets from 3 per cent by order published in the Gazette. Depreciation rates fixed by order are required to be based on the physical and economic life of assets.

Schedule 1 (8) repeals section 10 of the Principal Act which allowed gas companies to establish a general reserve to ensure the payment of standard rates of dividend since the restrictions on gas companies which limit dividends to standard rates of dividend will be lifted by the proposed Act.

Schedule 1 (9) is consequential on the repeal of provisions pursuant to Schedule 1 (6) and (8).

Schedule 1 (10) omits a provision which imposed restrictions on the accounting practices of gas companies since that requirement will be replaced by a requirement that those practices conform to generally accepted accounting principles (proposed section 12J).

Schedule 1 (11) (a) requires the Minister to constitute a board of inquiry into the price which may be charged for gas by a gas company as soon as practicable after a request by the gas company to do so.

Schedule 1 (11) (b) and (c) replace the concept of "standard rate of dividend" with that of "reasonable profit" (calculated in accordance with proposed section 12K) as the basis for the calculation of prices which may be charged for gas by gas companies.

Schedule 1 (11) (d) is consequential on the repeal effected by Schedule 1 (6).

Schedule 1 (11) (e) alters the provision whereby a board of inquiry into gas prices allows for a reasonable sum for contingencies to be excluded from the calculation of a gas company's profit by providing that the amount so allowed is to be an amount equal to half of the amount calculated as the reasonable profit of the company, rather than being calculated on the basis of the standard rate of dividend which will no longer be applicable.

Schedule 1 (11) (f) requires the Minister to constitute a board of inquiry into the price chargeable for gas by a gas company not more than 2 years after the previous inquiry, unless the Minister and the gas company otherwise agree.

Schedule 1 (11) (g) adds the following matters to the list of matters required to be taken into account by a board of inquiry into the price chargeable for gas by a gas company:

- (a) any amount payable by the gas company under an agreement with the Minister pursuant to proposed section 6H;
- (b) projected revenue from industrial consumers of gas;
- (c) the efficiency, past performance, interaction with related companies and proposed expenditure of the company;
- (d) such matters as the Minister and AGL agree will enable the effect of the Tariff Stabilisation Account to be taken into account; and
- (e) any other reasonable expenditure incurred in carrying on gas activities and reasonable provision for future expenditure.

Schedule 1 (11) (h) requires the Minister to make available to a gas company a determination of a board of inquiry in relation to the price chargeable for gas by the company within 30 days after the Minister receives the determination.

Schedule 1 (12) inserts proposed sections 12A–12N into the Principal Act:

- (a) Proposed section 12A prohibits a gas company from disposing of assets if disposal would significantly impair the continuing ability of the gas company to carry on the gas activities carried on by the company before disposal of the assets.
- (b) Proposed section 12B requires transactions between gas companies or between gas companies and AGL or its subsidiaries to be at arm's length unless the Minister otherwise approves and requires a board of inquiry to take into account any breach of the requirement in determining gas prices. Where a board determines that the profit of a gas company has been reduced as a result of a transaction which breached the proposed section, the board is required to reduce the reasonable profit which the gas company is permitted to earn for the purpose of calculating gas prices.
- (c) Proposed section 12C prohibits a gas company giving financial assistance to the holding company of that gas company unless the transaction is at arm's length and will result in the giving of financial assistance to the gas company which is of benefit to the gas company.
- (d) Proposed section 12D applies the provisions of the Companies (New South Wales) Code and Securities Industry (New South Wales) Code to AGL and any gas company to which those provisions would not otherwise apply. Provisions of those Codes do not apply to AGL to the extent that they overlap with certain provisions of the Australian Gas Light Company Act 1837.
- (e) Proposed section 12E requires gas companies to keep such additional accounting records and make such additional accounting reports as the Minister may direct.
- (f) Proposed section 12F imposes, as an additional duty on directors of a gas company, a duty to consider the interests of gas consumers.

- (g) Proposed section 12G empowers the Minister, after consultation with AGL, to appoint a person to be a director of a gas company.
- (h) Proposed section 12H requires a gas company to establish a Tariff Stabilisation Account ("TSA") in the accounts of the company. For the purpose of calculating gas prices, the company is regarded as earning a specified rate of income on the balance in the TSA. Those earnings are required to be used to prevent or limit increases in gas prices in such manner as the Minister directs.
- (i) Proposed section 12I requires AGL to fund the TSA of a gas company by direct payments to the company. The total amount to the credit of the TSA of all gas companies is required to be \$70,000,000 between the commencement of the proposed section and 1 January 1988 and \$134,000,000 thereafter. Each gas company is also required to credit half of any realised capital profit to the company's TSA.
- (j) Proposed section 12J requires that, where a gas company's profit is more than a reasonable profit (calculated in accordance with proposed section 12K), the excess is to be applied to reduce the price payable by consumers for gas. Where a board of inquiry certifies that a particular amount of excess profit is due to gains in efficiency, half of that amount may be retained by the company as profit.
- (k) Proposed section 12K provides for the calculation of the reasonable profit of a gas company on the basis of a return on shareholders' funds at a rate which is 2 per cent above the long-term bond rate or 3 per cent above that rate where the gas company is involved in the exploration for, and development and bulk carriage of, natural gas.
- (l) Proposed section 12L prohibits a gas company from increasing equity capital if the increase would result in the ratio of debt to debt plus equity being less than 60 per cent.
- (m) Proposed section 12M prohibits a gas company from paying a dividend out of unrealised capital profits.
- (n) Proposed section 12N restricts the transfer and issue of shares in a gas company so as to ensure that the gas company remains a wholly owned subsidiary of AGL.

Schedule 1 (13) substitutes section 13 of the Principal Act. Section 13 currently imposes restrictions on the issue of shares by AGL and 2 of its existing subsidiaries. Omission of the restrictions is consistent with the application of the Companies (New South Wales) Code and the Securities Industry (New South Wales) Code to AGL and its subsidiaries under proposed section 12D. Section 13 in its proposed new form will replace the current 2 per cent limitation on individual shareholdings in AGL (under by-laws pursuant to AGL's 1837 Act) with a 5 per cent limitation which may be waived by the Minister.

Schedule 1 (14) (a) and (15) (b) are consequential on amendments which apply Division 1 of Part III of the Principal Act to all gas company subsidiaries of AGL, not just those specified in Schedule 1 to the Principal Act.

Schedule 1 (14) (b) and (15) (a) are consequential on the repeal proposed to be effected by clause 6.

Schedule 1 (14) (c) substitutes section 14 (6) of the Principal Act and inserts proposed section 14 (7) and (8). Section 14 (6) currently provides for the continued application of standard rates of dividend to a gas company after the company is transferred to Schedule 1 to the Principal Act. Standard rates of dividend will not be applicable to gas companies specified in that Schedule after the amendments to be effected by Schedule 1 (5). As proposed to be substituted, section 14 (6) and proposed section 14 (7) and (8) make provision for the determination of standard rates of dividend for gas companies to which those rates will still be relevant, i.e. gas companies other than local authorities, companies specified in Schedule 1 to the Principal Act and other gas company subsidiaries of AGL. The provisions for determination of a standard rate of dividend are the same as those currently applicable to all gas companies under section 6 of the Principal Act.

Schedule 1 (16) disappplies to gas company subsidiaries of AGL a provision which confers power on gas companies to raise additional capital and loan money and consolidate and divide share capital. The provision is no longer necessary in the case of AGL subsidiaries which will have those powers as a result of the application of the Companies (New South Wales) Code.

Schedule 1 (17) requires that an approval granted to a gas company in respect of gas activities shall be made only subject to a condition which is not inconsistent with an agreement between the Minister and the gas company or, where there is no such agreement, which is not inconsistent with the efficient operation of the gas company. Power is also given to replace current approvals with new approvals.

Schedule 1 (18) (a) and (b) delete the requirement for an inquiry into a proposal for the transfer by AGL from the fidelity fund of AGL to a superannuation fund.

Schedule 1 (18) (c) permits the Minister to waive the requirement for a board of inquiry to inquire into proposed transfers of assets and undertakings by gas companies.

Schedule 1 (19) (a) omits the requirement that certain resolutions of AGL be confirmed at a subsequent general meeting of AGL.

Schedule 1 (19) (b) omits a provision which restricted certain powers of AGL and inserts instead a provision which enables 2 or more directors of AGL to direct the disposal and acquisition of property by AGL. Under AGL's 1837 Act, that power could only be exercised by 3 and, in some cases, 5 or more directors.

Schedule 1 (20) inserts proposed section 82A which empowers the Minister to apply to the Supreme Court for injunctions to prevent contraventions of and to enforce compliance with the Principal Act.

Schedule 1 (21) updates the provision dealing with the court which is to hear proceedings for offences and places an upper limit of \$5,000 on the penalty which may be imposed by a Local Court for an offence against the Principal Act. The Supreme Court is empowered to impose higher penalties.

Schedule 1 (22) inserts proposed section 84 into the Principal Act which gives effect to the proposed Schedule of savings and transitional provisions.

Schedule 1 (23) and (25) are consequential on AGL ceasing to be a gas company and also effect amendments by way of statute law revision.

Schedule 1 (24) inserts a Schedule of savings and transitional provisions as Schedule 2 to the Principal Act.

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