

GAS ACT 1986 No. 213

NEW SOUTH WALES



TABLE OF PROVISIONS

PART 1—PRELIMINARY

1. Short title
2. Commencement
3. Interpretation
4. Reticulation of gas
5. Application of Act
6. Application of Australian Gas Light Company Act 1837
7. Small gas companies

PART 2—LICENCES AND APPROVALS

8. Interpretation
9. Licences—reticulation of gas
10. Approvals—supply of gas by local authority
11. Grant of licence
12. Automatic grant of further licence
13. Refusal to grant licence
14. Conditions—licences and approvals
15. Particulars to be furnished
16. Fees
17. Assessment of fees
18. Surrender of licences
19. Records to be kept
20. Certain agreements unlawful

PART 3—STRUCTURE OF THE GAS INDUSTRY

DIVISION 1—*Transfer of The Australian Gas Light Company's gas undertaking*

21. Interpretation
22. Transfer of A.G.L. gas undertaking
23. Transferee
24. Mode of transfer
25. Orders to facilitate transfer

26. Stamp duty
27. Evidence of transfer by order
28. Effect of orders on third parties, etc.
29. Transfer of powers of A.G.L.
30. A.G.L. not to carry on certain gas activities

DIVISION 2—*Future operation of the industry*

31. Extension of powers of A.G.L. and certain gas companies
32. Certain gas companies to engage only in gas activities
33. Prohibition of new activities of gas companies
34. Board inquiry into variation of activities
35. *Special provisions—certain directions*
36. Notice of substantial decrease or cessation of gas activities
37. Agreements with the gas industry
38. Provisions of Companies and Securities Industry Codes to apply to A.G.L. and gas companies
39. Liability of shareholders of A.G.L., Newcastle Gas Co.

PART 4—THE AUSTRALIAN GAS LIGHT COMPANY—SPECIAL PROVISIONS

40. Shareholding—interpretation
41. Maximum shareholding in A.G.L.
42. Approvals
43. Notice of suspected contravention
44. Directions concerning approved shareholdings
45. Powers of Minister to deal with contravention
46. Powers of A.G.L.
47. Payment of deferred dividend, etc.
48. Forfeiture of shares required to be disposed of
49. Power of Authority to deal with shares
50. Information concerning shareholding
51. *Directors—special provisions*
52. Additional director appointed by Minister
53. Voting rights of proprietors
54. Resolutions concerning management
55. Restrictions on dealings in shares of gas companies
56. Separation and self-containment of gas companies

PART 5—REGULATION OF GAS COMPANIES

DIVISION 1—*General operations and management*

57. Disposal of certain assets prohibited
58. Approval required for certain restructuring
59. Approval required for superannuation schemes
60. Board to inquire before approval given
61. Dealings and arrangements involving gas companies— ordinary commercial terms
62. Determination by Board for reduction of profit
63. Financial assistance by gas companies
64. Duty of directors to gas consumers
65. Minister may appoint director of gas company
66. Appointed directors—consultation, powers

DIVISION 2—*Financial affairs*

67. Depreciation
68. Variation of depreciation arrangements
69. Other expenditure chargeable to revenue
70. Tariff Stabilisation Account
71. Effect of Tariff Stabilisation Account
72. Protection of Tariff Stabilisation Account on winding up
73. Payments to Tariff Stabilisation Account
74. Excess profit of gas company
75. Treatment of excess profit
76. Calculation of reasonable profit of gas companies
77. Capital structure of gas companies
78. Restriction on dividends of gas companies

DIVISION 3—*Accounts, audit and information*

79. Additional record keeping requirements
80. Audit of accounts
81. Minister may commission inquiries, audits of affairs
82. Protection of inspectors, etc.
83. Authority's power to obtain information

PART 6—BOARDS OF INQUIRY

84. Constitution of Boards
85. Subject-matter of inquiry
86. Powers of Boards
87. Matters to be taken into account
88. Report by Board
89. Rights of Authority where Board appointed
90. Copy of report to gas company
91. Costs of inquiry

PART 7—PRICES, CHARGES AND CONDITIONS FOR SUPPLY OF GAS

92. Maximum gas prices
93. Maximum gas prices—Albury
94. Other charges and conditions
95. Inquiry into gas prices, charges and conditions of supply
96. Maximum gas price inquiry—other than local authority
97. Maximum gas price inquiry—local authority
98. Other charges and conditions—inquiry
99. Recommendations by Board
100. Fixing of gas prices and prohibition of other charges and conditions
101. Formula for gas prices
102. Local authorities and small gas companies—notice of gas price rises

PART 8—SUPPLY OF GAS

DIVISION 1—*Method of supply*

103. Gas supply to be metered
104. Meters, etc.
105. Hiring of pre-payment meters
106. Meter reading evidence of supply

- 107. Application for supply
- 108. Power to refuse supply
- 109. Certain costs to be paid by person supplied
- 110. Interest on deposits
- 111. Discontinuance of supply for offence
- 112. Discontinuance of supply for failure to pay
- 113. Liability of gas companies—interference with supply

DIVISION 2—*Standards for gas*

- 114. Standards of supply
- 115. Prescription of different standards
- 116. Testing

DIVISION 3—*Maintenance*

- 117. Installation and maintenance standards
- 118. Maintenance of gas distribution system
- 119. Report as to maintenance and safety

DIVISION 4—*Inspection and powers of entry*

- 120. Interpretation
- 121. Inspectors
- 122. Powers of inspection
- 123. Method of giving direction to gas company
- 124. Death, injury or damage involving gas
- 125. Entry to discontinue supply
- 126. Entry to residential premises—special provisions
- 127. Search warrants
- 128. Offences

DIVISION 5—*Protection of reticulation system*

- 129. Interference with meters, etc.
- 130. Damage to reticulation system
- 131. Recovery of damages by gas company

PART 9—MISCELLANEOUS

- 132. Secrecy
- 133. State Energy Research and Development Fund
- 134. Application of Fund
- 135. Service of documents
- 136. General offence
- 137. Injunctions—compliance with Act
- 138. Proceedings for offences
- 139. Regulations
- 140. Savings and transitional provisions

SCHEDULE 1—GAS COMPANIES

SCHEDULE 2—MEMBERSHIP AND PROCEDURE OF BOARDS OF INQUIRY

SCHEDULE 3—SAVINGS AND TRANSITIONAL PROVISIONS

GAS ACT 1986 No. 213

NEW SOUTH WALES



Act No. 213, 1986

An Act to make provision with respect to the supply and consumption of gas and the regulation of gas companies; and for other purposes. [Assented to 23 December 1986]

See also Gas and Electricity (Gas Repeal) Amendment Act 1986; Miscellaneous Acts (Gas) Amendment 1986; Search Warrants (Gas) Amendment Act 1986.

Gas 1986

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:

PART 1
PRELIMINARY

Short title

1. This Act may be cited as the "Gas Act 1986".

Commencement

2. (1) Sections 1 and 2 shall commence on the date of assent to this Act.

(2) Except as provided by subsection (1), this Act shall commence on such day or days as may be appointed by the Governor and notified by proclamation published in the Gazette.

Interpretation

3. (1) In this Act, except in so far as the context or subject-matter otherwise indicates or requires—

"accounting records" includes invoices, receipts, orders for the payment of money, bills of exchange, cheques, promissory notes, vouchers and other documents of prime entry and also includes such working papers and other documents as are necessary to explain the methods and calculations by which accounts are made up;

"Authority" means the Energy Authority of New South Wales constituted under section 6 of the Energy Authority Act 1976;

"Board" means a Board of Inquiry constituted under this Act;

"consumer" means a person, other than a gas company, to whom a gas company supplies gas;

"Fund" means the State Energy Research and Development Fund established by section 133;

“gas” means—

- (a) a combustible gas capable of being used to supply lighting, heating or motive power, including such a gas which is known as town gas, manufactured gas, natural gas, tempered natural gas, simulated natural gas, processed natural gas, methane gas or mine gas;
- (b) liquefied petroleum gas, as defined in section 2 of the Liquefied Petroleum Gas Act 1961, including tempered liquefied petroleum gas; or
- (c) any other substance which is prescribed as gas for the purposes of this Act;

“gas activity” means a primary or secondary gas activity;

“gas company” means any body corporate or other person (including a local authority) which or who engages in the reticulation of gas;

“inspector” means an inspector appointed under section 121;

“licence” means a licence to engage in the reticulation of gas granted under Part 2 and in force;

“licensee” means the holder of a licence;

“local authority” means a council within the meaning of the Local Government Act 1919, a county council within the meaning of that Act or an urban committee established under Part XXVII of that Act;

“primary gas activity” means any activity carried on for or in connection with the manufacture, production, distribution or supply of gas, including the storage of gas and the drainage of methane gas from coal seams, but does not include a secondary gas activity;

“records” includes books, accounts, minutes, registers, deeds, documents and any other sources of information compiled, recorded or stored in written form, on microfilm, by electronic process or in any other manner;

“regulation” means a regulation made under this Act;

“reticulation system”, in relation to a gas company, means the apparatus, equipment, pipes and fittings used or capable of being used by the gas company in connection with the manufacture, production, distribution, supply or storage of gas by the gas company;

Gas 1986

“secondary gas activity”, in relation to a company, means—

- (a) the development of technology for the efficient supply and distribution of gas;
- (b) any activity of which the Minister has approved in writing on the application of the company, including exploration for gas within or outside the State;
- (c) any activity prescribed as a secondary gas activity;
- (d) the investment of funds in connection with a primary gas activity or any activity included in paragraphs (a)–(c); or
- (e) the investment of surplus funds of the company in accordance with the Trustee Act 1925 or in such other manner as may be prescribed;

“Tariff Stabilisation Account”, in relation to a gas company, means the Tariff Stabilisation Account kept by the company under section 70.

(2) In this Act—

- (a) a reference to a function includes a reference to a power, authority and duty; and
- (b) a reference to the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.

(3) Expressions used in this Act shall, unless the contrary intention appears, have the same meanings respectively as they have in the Companies (New South Wales) Code.

(4) For the purposes of this Act (including the application or use for interpretative purposes by or under this Act of a provision of the Companies (New South Wales) Code or the Companies (Acquisition of Shares) (New South Wales) Code), The Australian Gas Light Company and all gas companies shall be deemed to be companies within the meanings of those Codes.

(5) The Act passed in 1837 entitled “An Act for lighting with Gas the Town of Sydney in the Colony of New South Wales and to enable certain persons associated under the name style and firm of ‘The Australian Gas Light Company’ to sue and be sued in the name of the Secretary for the time being of the said Company and for other purposes therein mentioned”, as amended by subsequent Acts, may be cited as the “Australian Gas Light Company Act 1837”.

Reticulation of gas

4. (1) For the purposes of this Act, a person engages in the reticulation of gas if—

- (a) the person supplies or distributes gas to another person by means of a pipe or system of pipes for lighting, heating, motive power or any other purpose; and
- (b) the person is not an exempt supplier or distributor of gas.

(2) A person is an exempt supplier or distributor of gas if—

- (a) the person is acting on behalf of the Crown;
- (b) the person supplies or distributes gas to no more than 5 consumers;
- (c) each person to whom the person supplies or distributes gas also supplies or distributes gas to other persons; or
- (d) all the gas which the person supplies or distributes is a by-product of an industrial manufacturing process, being a process the primary purpose of which is not the production of gas.

Application of Act

5. (1) This Act applies only to and in respect of gas supplied by means of a pipe or system of pipes, other than gas declared by the regulations (whether by reference to the circumstances in which the gas is supplied or otherwise) to be exempt from the operation of this Act.

(2) Where the provisions of this Act are inconsistent with the provisions of any other Act in relation to any matter to or in respect of which this Act applies, the provisions of this Act prevail.

(3) The Governor may, by order published in the Gazette, exempt from the operation of all or specified provisions of this Act, any gas company which is a local authority or any person operating under a franchise granted under the Local Government Act 1919, and the exemption has effect accordingly.

Application of Australian Gas Light Company Act 1837

6. A provision of this Act applicable to The Australian Gas Light Company applies notwithstanding the Australian Gas Light Company Act 1837, unless the provision otherwise indicates or requires.

Gas 1986

Small gas companies

7. (1) In this Act, a reference to a small gas company is a reference to a gas company which is not a local authority and which is not a gas company listed in Schedule 1.

(2) The Minister may constitute a Board to inquire into whether it would be in the interests of consumers for a small gas company to be listed in Schedule 1 so as to be made subject to those provisions of this Act which apply only to gas companies listed in that Schedule.

(3) If the Board recommends that it would be in the interests of consumers, the Minister may recommend to the Governor that the gas company be listed in Schedule 1.

(4) The Governor may then amend Schedule 1 by regulation so as to list the gas company in that Schedule.

PART 2**LICENCES AND APPROVALS****Interpretation**

8. (1) In this Part—

“intrastate gas reticulation” means the business of engaging in the reticulation of gas in the course of intrastate trade;

“person” includes local authority;

“relevant period”, in relation to a licence, means the period of 12 months that ended on 31 December that last preceded the day on and from which the licence, if granted, would be in force.

(2) In this Part, a reference to intrastate trade is a reference to trade carried on in the State which is not trade or commerce among the States within the meaning of section 92 of the Constitution of the Commonwealth.

Licences—reticulation of gas

9. (1) A person shall not carry on intrastate gas reticulation unless the person is the holder of a licence granted under this Part which is in force.

Penalty: \$20,000.

Gas 1986

(2) The holder of a licence shall not contravene any condition to which the licence is subject.

Penalty: \$20,000.

(3) This section does not apply to a licensee under the Pipelines Act 1967 in respect of the supply of gas to a gas company which holds a licence under this Part.

Approvals—supply of gas by local authority

10. A local authority shall not—

- (a) establish or acquire a trading undertaking referred to in section 418 (1) (b) or (l) of the Local Government Act 1919;
- (b) enter into an agreement to supply or take a supply of gas in bulk to or from any person by means of a pipe or system of pipes; or
- (c) grant or renew permission to any person to supply gas to the public within its area,

except with the approval in writing of the Minister and in accordance with any conditions to which the approval is from time to time subject.

Penalty: \$5,000.

Grant of licence

11. (1) The Minister may grant a licence to carry on intrastate gas reticulation to a person who—

- (a) applies to the Minister, in a form approved by the Minister, for the licence;
- (b) forwards to the Authority any particulars required by the Authority to be furnished under section 15; and
- (c) pays the fee assessed by the Authority as being payable under section 16.

(2) A licence shall be in force on and from the day specified in the licence as the date from which the licence commences until, unless it ceases to have effect sooner, 31 March next following that day.

Gas 1986

Automatic grant of further licence

12. (1) A licensee may apply under this section for the grant of a licence ("the further licence") to be in force from the expiration of the licence ("the current licence") already held by the licensee.

(2) The application is made if the licensee—

- (a) furnishes to the Authority any particulars required by the Authority to be furnished under section 15; and
- (b) pays the fee assessed by the Authority as being payable under section 16 for the further licence.

(3) If a licensee applies under this section, the current licence shall be deemed to be the further licence and shall be deemed to have been granted under section 11 with effect from the expiration of the current licence.

(4) This section does not operate if, before the expiration of the current licence, the Minister informs the applicant that the Minister proposes to refuse to grant the further licence.

Refusal to grant licence

13. (1) If the Minister refuses to grant a licence, the Minister shall inform the applicant in writing giving reasons for the refusal and refund any fee paid by the applicant.

(2) Before refusing to grant a licence to an applicant who currently holds a licence, the Minister shall—

- (a) inform the applicant in writing giving reasons for the proposed refusal; and
- (b) give the applicant a reasonable opportunity (not less than 12 months) to rectify any matter on which the proposed refusal is based.

(3) If an applicant for a licence currently holds a licence, the current licence continues in force until the application is granted or refused.

Conditions—licences and approvals

14. (1) The Minister may grant a licence or an approval under this Part either unconditionally or subject to conditions.

(2) The conditions may include but are not limited to—

- (a) a condition restricting the supply or distribution of gas to a specified region or area; and
- (b) a condition requiring the supply of gas throughout the whole or a specified part of a specified region or area.

(3) The conditions to which a licence or an approval is from time to time subject may be varied, revoked or added to by the Minister by instrument in writing signed by the Minister and served on the holder of the licence or approval.

(4) A licence or an approval shall not be made subject to a condition unless—

- (a) the condition is not inconsistent with the terms of any agreement in writing between the Minister and the gas company concerned, whether entered into before or after the commencement of this section; or
- (b) in the absence of such an agreement, the condition is, in the Minister's opinion, not inconsistent with the efficient operation of the gas company.

Particulars to be furnished

15. (1) The Authority may at any time require a person who is carrying on or has carried on intrastate gas reticulation to furnish to the Authority in writing—

- (a) specified particulars with respect to the sale of gas by the person; and
- (b) a certificate signed by a person registered as a public accountant under the Public Accountants Registration Act 1945 certifying that the particulars furnished are correct.

(2) The requirement shall be made in writing and served on the person and shall specify a reasonable time within which it is to be complied with.

(3) The person shall comply with the requirement.

Penalty: \$20,000.

Gas 1986

Fees

16. (1) The fee to be paid for a licence by a local authority or a small gas company is \$100.

(2) The fee to be paid for a licence by a gas company which is listed in Schedule 1 is \$100 together with the amount calculated under subsection (3).

(3) The calculated amount is 0.5 per cent of the revenue (if any) derived by the company from the sale of gas during the relevant period in the course of intrastate gas reticulation.

(4) In calculating that revenue, the following shall be disregarded:

- (a)** any gas sold by the applicant for delivery and consumption outside the State;
- (b)** any gas sold by the applicant to a person who is carrying on intrastate gas reticulation.

Assessment of fees

17. (1) On application by a person, the Authority shall as soon as practicable assess the fee payable by the person for a licence and advise the person of the fee assessed.

(2) Where the Authority is of the opinion that it is unable for any reason to accurately assess the fee payable for a licence, the fee payable is an amount assessed by the Authority as being just and reasonable in the circumstances of the case.

(3) In making that assessment, the Authority shall have regard to the gas that in the opinion of the Authority was sold by the applicant during the relevant period and the relevant principles of assessing fees under section 16.

(4) If an applicant for the assessment of a fee currently holds a licence, the current licence shall, if it would otherwise have expired, continue in force for 1 month after the Authority informs the applicant of the fee assessed.

Surrender of licences

18. A licensee may, by notice in writing to the Minister, surrender the licence and the licence then ceases to be in force.

Records to be kept

19. A person who carries on intrastate gas reticulation shall keep such records as may be prescribed containing such particulars as may be prescribed relating to the sale of gas and shall preserve each record for a period of 5 years after the last entry was made in it.

Penalty: \$10,000.

Certain agreements unlawful

20. A gas company shall not enter into an agreement with another gas company which is inconsistent with the terms of a licence granted to either company and in force under this Part or with any conditions to which the licence is subject.

PART 3**STRUCTURE OF THE GAS INDUSTRY****DIVISION 1—*Transfer of The Australian Gas Light Company's gas undertaking*****Interpretation**

21. (1) In this Division—

“the transfer provisions” means this Division and sections 6A and 6B of the Gas and Electricity Act 1935 (that is, the repealed provisions of that Act which correspond to this Division);

“undertaking” includes assets and other property.

(2) In this Division, a reference to the undertaking of The Australian Gas Light Company includes a reference to any assets and other property of, or held in trust for or on behalf of, The Australian Gas Light Company.

Transfer of A.G.L. gas undertaking

22. (1) The Australian Gas Light Company shall transfer its gas undertaking.

Gas 1986

(2) The company's gas undertaking is that part of the company's undertaking which was reasonably necessary for the purpose of carrying on its primary gas activities before 1 January 1986.

(3) The company is not required to transfer a particular part of its gas undertaking if the Minister so directs by order in writing at the request of the company.

Transferee

23. (1) The transfer shall be to one or, with the written consent of the Minister, to more than one wholly owned subsidiary of The Australian Gas Light Company.

(2) Each subsidiary to which a transfer is effected shall be—

- (a) a company under the Companies (New South Wales) Code; or
- (b) a company listed in Schedule 1.

Mode of transfer

24. (1) The transfer shall be effected in such manner and on such terms as the Minister and The Australian Gas Light Company agree in writing.

(2) The manner and terms of transfer shall not financially disadvantage consumers.

(3) Transfer includes make available for the benefit of the transferee on a continuing basis by means of a lease or licence or otherwise.

Orders to facilitate transfer

25. (1) For the purpose of facilitating the transfer of the company's gas undertaking, the Minister may make orders under this section.

(2) An order may be made only at the request of the company.

(3) An order may direct that—

- (a) property of the company vests in the subsidiary without the need for any conveyance, transfer, assignment or assurance; and

(b) property of the company vests either subject to or free from any liability associated with the property, or any mortgage, charge, lien or other security or encumbrance to which the property was subject immediately before its transfer.

(4) An order may direct that a specified contract or agreement, or a specified class of contracts or agreements, which is binding on or enforceable by or against the company is binding on or enforceable by or against the subsidiary instead of the company.

(5) An order has effect according to its tenor.

Stamp duty

26. (1) The Minister shall not make an order under section 25 unless satisfied that acceptable arrangements have been made for the payment to the Crown of the amount of stamp duty forgone.

(2) The amount of stamp duty forgone is the amount of stamp duty that would have been payable if the property transferred by the order had been transferred by instrument in writing executed by the parties to the transfer.

Evidence of transfer by order

27. (1) The Minister may issue a certificate as to the vesting of property of the company effected by an order of the Minister.

(2) The certificate is evidence of the matter certified in favour of the Registrar-General and any other person registering or certifying title to land or having the function of examining or receiving evidence as to the title to land.

Effect of orders on third parties, etc.

28. (1) The Minister shall not make an order under section 25 unless satisfied that it will not materially prejudice any person, except a person who consents to the order being made.

(2) Nothing effected by an order of the Minister shall be regarded—

(a) as a breach of contract or confidence or otherwise as a civil wrong;
or

Gas 1986

- (b) as a breach of any contractual provision prohibiting, restricting or regulating the assignment or transfer of property or the disclosure of information.

Transfer of powers of A.G.L.

29. (1) After the transfer under the transfer provisions of part of the gas undertaking of The Australian Gas Light Company to a subsidiary, the subsidiary is empowered to exercise the company's relevant gas functions.

(2) The company's relevant gas functions are functions conferred on the company by or under an Act for the purpose of enabling the company to carry on a gas activity.

(3) After the transfer, the company shall not exercise its relevant gas functions to the extent that they relate to the part of the gas undertaking transferred, unless otherwise authorised by the Minister.

(4) The Minister's authorisation shall be by order in writing and shall be given only if the Minister is satisfied that it would be impracticable or undesirable for the company not to exercise the function.

(5) The company shall exercise the authorised function for the benefit of the subsidiary authorised to exercise that function.

A.G.L. not to carry on certain gas activities

30. (1) After the transfer of so much of the gas undertaking of The Australian Gas Light Company as is required to be transferred under the transfer provisions, the company shall not carry on a primary gas activity in the State.

Penalty: \$10,000.

(2) Subsection (1) does not apply—

- (a) to the extent (if any) that the regulations provide; or
- (b) so as to prevent the exercise of a function with the authority of the Minister under section 29.

DIVISION 2—*Future operation of the industry***Extension of powers of A.G.L. and certain gas companies**

31. (1) The Australian Gas Light Company, Newcastle Gas Company Limited, City of Goulburn Gas and Coke Company (Limited) and Wollongong Gas Limited have the rights, powers and privileges of a natural person and such additional rights, powers and privileges as are conferred on a company by the Companies (New South Wales) Code.

(2) Nothing in a company's relevant Act prohibits or restricts the exercise of a power by the company or limits the exercise of a power by the company to the pursuit of the objects of the company under the relevant Act.

(3) Any act, matter or thing done or purporting to have been done by a company before the commencement of this section which would, if done after that commencement, have been validly done is validated.

(4) Notwithstanding the provisions of a company's relevant Act, the company is authorised to do any act or thing necessary for or reasonably incidental to engaging in the reticulation of gas if authorised to do so under this Act.

(5) In this section—

“relevant Act” means—

- (a) in relation to The Australian Gas Light Company—the Australian Gas Light Company Act 1837;
- (b) in relation to Newcastle Gas Company Limited—The City of Newcastle Gas and Coke Company's Incorporation Act 1866;
- (c) in relation to the City of Goulburn Gas and Coke Company (Limited)—The City of Goulburn Gas and Coke Company's Incorporation Act; and
- (d) in relation to Wollongong Gas Limited—the Wollongong Gas-light Company (Limited) Act of 1883.

Certain gas companies to engage only in gas activities

32. (1) A gas company listed in Schedule 1 shall not carry on any activity except a gas activity.

Penalty: \$10,000.

Gas 1986

(2) If a subsidiary of a gas company carries on an activity which is not a gas activity (whether within or outside the State), the gas company shall, for the purposes of subsection (1), be deemed to have carried on that activity.

Prohibition of new activities of gas companies

33. (1) If the Minister is satisfied that the carrying on of a new activity by a gas company (other than a local authority) is not in the interests of consumers, or is not in the public interest, the Minister may direct the gas company in writing not to carry on the activity.

(2) A new activity is any gas activity except one which the Minister and the gas company concerned agree in writing (whether before or after the commencement of this section) is appropriate to be carried on by the gas company.

(3) The gas company shall comply with the direction.

Penalty: \$10,000.

Board inquiry into variation of activities

34. (1) If the Minister is satisfied that a gas company has made or is proposing to make a substantial variation in the manner in which or a substantial increase in the extent to which an activity is carried on by the company, the Minister may constitute a Board to inquire whether the variation or increase is in the interests of consumers.

(2) If the Board reports that the variation or increase is not in the interests of consumers, the Minister may direct the gas company in writing not to carry on the activity in that varied manner or to that increased extent.

(3) The gas company shall comply with the direction.

Penalty: \$10,000.

Special provisions—certain directions

35. (1) If a direction under this Part requires a gas company—

- (a) to stop carrying on an activity;
- (b) to vary the manner in which an activity is carried on; or
- (c) to reduce the extent to which an activity is carried on,

Gas 1986

it shall not take effect until 3 months (or such longer period as may be specified in the direction) after it is served on the company.

(2) The direction shall be made subject to conditions which permit the performance of reasonable obligations under any agreement entered into by the company in good faith before the direction is given.

(3) The direction shall not be given until—

- (a) at least 60 days have elapsed after the Minister has advised the company in writing of the Minister's intention to give the direction and invited written submissions as to why the direction should not be given; and
- (b) after the Minister has considered any such submission made by the company within that 60 day period.

Notice of substantial decrease or cessation of gas activities

36. (1) Where it is practicable to do so, a gas company shall give the Minister at least 12 months' notice in writing of a substantial decrease in the extent of, or a cessation of, its activities in the State in the course of engaging in the reticulation of gas.

Penalty: \$10,000.

(2) That notice is not required to be given if the Minister so approves in writing in a particular case.

Agreements with the gas industry

37. (1) The Minister may, on behalf of the Crown, enter into any agreement in writing with a gas company or a related corporation of a gas company if the Minister is of the opinion that the agreement—

- (a) provides benefits for consumers;
- (b) is conducive to the efficient functioning of the gas industry; or
- (c) is in the public interest.

(2) The agreement may provide for the payment of money to the Crown by the gas company or related corporation, whether by way of a single payment or by periodic payments, or both.

(3) The Minister may take proceedings for the recovery of any money payable to the Crown under the agreement.

Gas 1986

(4) The Minister and a Board shall, in exercising any function under this Act in relation to a gas company which is a party to such an agreement, take into account any failure by the gas company to perform its obligations under the terms of the agreement.

(5) The Australian Gas Light Company and any gas company shall be deemed to have, and shall be deemed always to have had, the power to enter into such an agreement.

(6) The agreement is lawful even if the consideration for any payment required to be made under the agreement is the granting of a licence to do anything for which a licence is required under this Act.

Provisions of Companies and Securities Industry Codes to apply to A.G.L. and gas companies

38. (1) The provisions of the Companies (New South Wales) Code and the Securities Industry (New South Wales) Code, other than such of those provisions as may be prescribed by the regulations, apply to and in respect of The Australian Gas Light Company and to all gas companies.

(2) Those provisions so apply subject to this Act and with such modifications as may be prescribed by the regulations.

(3) Those provisions do not apply to The Australian Gas Light Company in so far as they deal with any matter or thing dealt with by section 8, 10—13, 16, 17 or 19—42 of the Australian Gas Light Company Act 1837 and those provisions of that Act continue to apply to The Australian Gas Light Company.

(4) A reference in this section to a provision of a Code includes a reference to any regulation or other instrument in force under the provision.

Liability of shareholders of A.G.L., Newcastle Gas Co.

39. (1) This section applies—

- (a) to The Australian Gas Light Company and the Newcastle Gas Company Limited; and
- (b) notwithstanding the provisions of any memorandum or articles of association.

(2) The liability of a member or past member of a company to which this section applies to contribute to the property of the company on a winding up of the company does not exceed the amount (if any) unpaid on the shares in respect of which the member is liable as a present or past member.

PART 4

THE AUSTRALIAN GAS LIGHT COMPANY—SPECIAL PROVISIONS

Shareholding—interpretation

40. (1) For the purposes of this Part, a person holds shares in The Australian Gas Light Company if the person would, for the purposes of the Companies (Acquisition of Shares) (New South Wales) Code, be regarded as being entitled to the shares.

(2) The expressions “shareholder” and “shareholding” have a corresponding meaning.

(3) In this Part, The Australian Gas Light Company is referred to as “the Company”.

Maximum shareholding in A.G.L.

41. (1) A person may hold shares in the Company which represent up to, but shall not knowingly hold shares which represent more than, 5 per cent of its issued share capital.

Penalty: \$10,000.

(2) The Minister may approve in writing of a person holding a specified greater proportion of the issued share capital of the Company and a person who holds shares in accordance with the approval does not contravene this section.

(3) This section applies to the exclusion of any provision of the Australian Gas Light Company Act 1837 or of any by-law or resolution made or passed under that Act concerning the maximum shareholding in the Company.

Gas 1986

(4) This section applies to a shareholding whether it commenced before, on or after the commencement of this section.

Approvals

42. (1) The Minister shall not approve of a shareholding unless the Company consents.

(2) With the consent of the Company, the Minister may—

(a) give the approval subject to conditions; and

(b) at any time vary, add to or revoke the conditions to which the approval is subject by notice in writing to the shareholder and the Company.

(3) The approval may be revoked by the Minister at any time by notice in writing to the shareholder and the Company.

Notice of suspected contravention

43. (1) Where the Company suspects that a person is contravening section 41, the Company shall immediately notify the Minister giving details of the suspected contravention.

Penalty: \$2,000.

(2) Before a transfer of shares in the Company is registered, a director or the secretary of the Company may require the transferee to make a statutory declaration under this section.

(3) The declaration shall be to the effect that registration of the transfer will not result in a contravention of section 41 by the transferee or by a person who is or who would thereby become associated with the transferee (within the meaning of the Companies (New South Wales) Code).

(4) If the transferee fails to comply with the requirement, the Company may refuse to register the transfer.

Directions concerning approved shareholdings

44. (1) If the Minister grants an approval for a shareholding in the Company of greater than 5 per cent of its issued share capital, the Minister may by notice in writing to the shareholder and the Company give any one or more of the following directions:

- (a) a direction which prohibits, limits or otherwise restricts the exercise of any voting rights attached to the shares;
- (b) a direction vesting voting rights attached to some or all of the shares in any person, including the Minister;
- (c) a direction which provides that a specified person who is associated (within the meaning of the Companies (New South Wales) Code) with the shareholder in relation to the exercise of any voting rights attached to the shares is not qualified to be a director of the Company or of any of its gas company subsidiaries;
- (d) a direction which provides that not more than a specified number of persons who are so associated are qualified to be directors of the Company or of any of its gas company subsidiaries.

(2) A direction concerning voting rights attached to shares may relate to any shares in the shareholding except shares representing 5 per cent of the issued share capital of the Company.

(3) A direction—

- (a) may be given when the approval is given or subsequently; and
- (b) may be varied or revoked by the Minister at any time by notice in writing to the shareholder concerned and the Company.

(4) A direction shall not be given, varied or revoked without the consent of the Company.

(5) A direction has effect according to its tenor but only while the approval to which it relates is in force.

Powers of Minister to deal with contravention

45. (1) Where the Minister is satisfied that a person holds shares in the Company in contravention of section 41, the Minister may by order in writing served on the person require the contravention to be remedied.

Gas 1986

(2) The order shall direct the person to remedy the contravention within a specified period, whether by disposing of shares or by other specified means.

(3) If the person fails to comply with the order, the Minister may—

- (a) by order in writing served on the Company, direct the Company not to make payment or to defer making payment of a dividend or other sum payable in respect of the shares; and
- (b) by order in writing served on any other person, direct the person, for the purpose of securing compliance with an order under this section, to do or refrain from doing a specified act.

(4) An order affecting the dividend or other sums payable in respect of shares may relate to any shares in the shareholding except those which represent 5 per cent of the issued share capital of the Company.

(5) A person shall comply with an order under this section.

Penalty: \$10,000.

Powers of A.G.L.

46. (1) When the Company is aware that a shareholding is a contravention of section 41, voting rights attached to the shares are restricted by this section.

(2) The voting rights attached to shares comprising the shareholding may be exercised only in respect of that part of the shareholding which represents not more than 5 per cent of the issued share capital of the Company.

(3) On the application of the Company, the Supreme Court may make any order which the Minister is empowered to make under section 45.

(4) The Company shall give the Minister at least 30 days' notice in writing before applying to the Supreme Court unless the Minister waives the requirement for notice in a particular case.

(5) An order of the Supreme Court operates to the exclusion of any order of the Minister with which it would be inconsistent.

Payment of deferred dividend, etc.

47. Payment of a dividend or other sum ordered by the Minister or the Supreme Court to be deferred shall be deferred only until the contravention to which the order relates is remedied or for such shorter period as may be specified in the order.

Forfeiture of shares required to be disposed of

48. (1) Where a person fails to comply with an order of the Minister to remedy a contravention of the shareholding limitation, the Minister may by order in writing served on the Company direct that specified shares in the Company held by the person vest in the Authority.

(2) The order has effect accordingly and no stamp duty is payable on the order.

(3) The order may vest only so many shares as may be necessary to remedy the contravention and in making the order the Minister shall give effect to any reasonable request of the shareholder as to which shares are to be vested in the Authority.

Power of Authority to deal with shares

49. (1) Where shares vest in the Authority, the Authority shall sell the shares.

(2) The sale shall be effected by public auction, public tender or private contract and in such manner, for such consideration and upon such terms and conditions as the Authority and the Company agree.

(3) The Authority is entitled to retain 5 per cent of the proceeds of sale as commission and shall pay the rest of the proceeds together with any other sum due to the Authority in respect of the shares to the person who was the registered holder of the shares immediately before they vested in the Authority.

(4) Out of the commission retained, the Authority is entitled to retain the reasonable costs and expenses incurred by it in and as incidental to the sale.

(5) The rest of the commission shall be paid into the Consolidated Fund.

Gas 1986

(6) Except for the purposes of this section, the Authority shall not exercise any rights attached to shares while they are vested in the Authority.

Information concerning shareholding

50. (1) If the Minister believes on reasonable grounds that a person (including a person outside the State) has information concerning the level of and any beneficial interest in a shareholding in the Company, the Minister may require the person to furnish that information to the Minister.

(2) The requirement shall be made in writing and served on the person and shall specify the manner in which and the time within which the information is to be furnished.

(3) If the person is a corporation, the Minister may also make the requirement of a person who is or has been an officer or employee of, or an agent, banker, solicitor, auditor or other person acting in any capacity for or on behalf of, the corporation.

(4) Unless the person satisfies the court that it is not within the person's power to comply with it, a person who fails to comply with the requirement is guilty of an offence and liable to a penalty not exceeding \$10,000.

(5) The Minister is entitled to rely on the failure of a person to comply with a requirement to furnish information concerning a shareholding as evidence, in the absence of evidence to the contrary, that the shareholding is a contravention of section 41.

(6) The Minister shall supply details to the Company of any information obtained by the Minister under this section.

Directors—special provisions

51. (1) The proprietors of the Company may, by resolution passed at a general meeting of the Company—

- (a) alter the number of directors of the Company, but so that the number of directors shall not exceed 9;
- (b) provide for the election, retirement, qualification and disqualification of directors; and
- (c) provide for the remuneration of directors.

(2) A power conferred by the Australian Gas Light Company Act 1837—

(a) to direct the secretary of the Company to dispose of land or other property; or

(b) to consent to the purchase or disposal of land or other property by the secretary of the Company,

may be exercised by any 2 or more directors of the Company even though that Act requires the power to be exercised by more than 2 directors.

(3) Expressions used in this section shall have the same meanings respectively as they have in the Conveyancing Act 1919.

Additional director appointed by Minister

52. (1) The Minister may appoint a person to be a director of the Company.

(2) Only one such appointment may be made to be in force at any particular time.

(3) A director appointed by the Minister shall not hold office as director later than 31 December 1987 or such later date as may be approved or further approved by the proprietors of the Company by resolution passed at a general meeting of the Company.

(4) During the appointment, the appointed director shall have and may exercise all the functions of director, notwithstanding provision made by or under the Australian Gas Light Company Act 1837 or any memorandum or articles of association.

(5) The appointed director is in addition to the number of directors otherwise authorised to be appointed.

Voting rights of proprietors

53. (1) A proprietor of the Company at a general or special meeting of the Company shall have the right of voting either personally or by proxy in the following manner:

(a) for every 5 shares or part thereof of which the proprietor is the registered holder up to 100 shares—1 vote;

(b) for every 10 shares or part thereof beyond the first 100 shares up to 200 shares—1 vote;

Gas 1986

(c) for every 25 shares or part thereof beyond the first 200 shares up to one-fourth of the total shares issued by the Company—1 vote.

(2) A proprietor of the Company may vote as proxy for any number of other proprietors and has the same number of votes as proxy as the other proprietors would have had if personally present.

(3) A corporation which is a proprietor may appoint as its proxy one of its officers, even though the officer is not a proprietor of the Company.

Resolutions concerning management

54. The proprietors of the Company may, by resolution passed at a general meeting of the Company, do or authorise to be done anything which—

- (a) relates to the internal working and regulation of the Company and its business;
- (b) is not part of the objects of the Company; and
- (c) could be authorised or covered by the articles of association of a company under the Companies (New South Wales) Code.

Restrictions on dealings in shares of gas companies

55. (1) Unless the Minister otherwise approves in writing, the Company—

- (a) shall not transfer any shares in a subsidiary of the Company which is a gas company; and
- (b) shall ensure that any such subsidiary does not issue shares otherwise than to the Company.

Penalty: \$10,000.

(2) This section does not apply—

- (a) to a transfer of shares held by the Company in a subsidiary of the Company by way of the creation of a charge or other security over the shares; or
- (b) to the issue by a subsidiary of the Company of redeemable preference shares,

if the transfer or issue is effected in good faith and in the ordinary course of business for the purpose of obtaining financial accommodation.

(3) In this section—

“transfer”, in relation to a share, means—

- (a) sell, transfer, assign or convey the share, whether or not for consideration;
- (b) create a mortgage, charge, lien or other security or encumbrance over the share;
- (c) make a declaration of trust in relation to the share; or
- (d) create any other interest in the share in favour of another person.

Separation and self-containment of gas companies

56. The Company shall ensure that there is such separation of the management and control of the subsidiaries of the Company as will cause each subsidiary which is a gas company to be as self-contained as is reasonably practicable and cost effective.

PART 5**REGULATION OF GAS COMPANIES****DIVISION 1—*General operations and management*****Disposal of certain assets prohibited**

57. (1) Except in accordance with the written approval of the Minister, a gas company or a related corporation of a gas company shall not realise or dispose of an asset or assets if to do so would significantly impair the continuing ability of the gas company to carry on the gas activities carried on by it.

Penalty: \$10,000.

(2) In subsection (1)—

“dispose of”, in relation to an asset, means—

- (a) sell, transfer, assign or convey the asset, whether or not for consideration;
- (b) make a declaration of trust in relation to the asset;

Gas 1986

- (c) distribute the asset to a shareholder, whether by way of payment of dividend, reduction of capital, return of capital on a winding up or otherwise; or
- (d) create an interest in the asset in favour of another person, except a charge over the asset created for the purpose of obtaining financial accommodation.

Approval required for certain restructuring

58. (1) Except in accordance with the written approval of the Minister, a gas company (other than a local authority) shall not enter into or give effect to any agreement for—

- (a) the purchase of the assets and undertaking of another gas company;
- (b) the joint working of any gas companies; or
- (c) the amalgamation of any gas companies.

(2) The approval may be granted subject to conditions, including conditions concerning—

- (a) the capital of any amalgamated gas companies;
- (b) the vesting of the property and rights of any purchased or amalgamated gas companies; and
- (c) matters consequential on or incidental to the purchase, joint working or amalgamation.

Approval required for superannuation schemes

59. (1) Except in accordance with the written approval of the Minister, a gas company (other than a local authority) shall not—

- (a) establish any scheme for the superannuation of employees of the company; or
- (b) alter the operation of any such superannuation scheme whether in operation at the commencement of this section or established after that commencement.

(2) A gas company may, if authorised by the approval, set aside sufficient funds from suspense accounts or reserves to establish the superannuation scheme, and provide funds for the support of the scheme, as an expense properly chargeable to revenue.

Board to inquire before approval given

60. (1) The Minister shall not grant, or impose conditions on, an approval under section 58 or 59—

- (a) unless a Board constituted for the purpose has inquired into the matter and reported that the grant of the approval or the imposition of the conditions is desirable; or
- (b) in the case of any matter referred to in section 58, unless the Board has so reported or the grant of the approval or the imposition of the conditions is, in the opinion of the Minister, in the public interest.

(2) The Minister shall constitute a Board for the purpose of inquiring into any matter referred to in section 59 if requested to do so by the New South Wales Branch of the Federated Gas Employees' Industrial Union or the gas company concerned.

(3) If as a result of that inquiry the Board recommends to the Minister that any action of the kind referred to in section 59 should be taken by a gas company, the Minister may direct the gas company to take that action and the gas company shall comply.

Dealings and arrangements involving gas companies—ordinary commercial terms

61. (1) All dealings between a gas company (other than a local authority) and a related corporation shall be effected—

- (a) in good faith; and
- (b) unless the Minister otherwise approves in writing in respect of a particular dealing or class of dealings, on ordinary commercial terms which do not reflect the fact that the companies are related.

(2) If a Board undertaking an inquiry concerning a gas company is satisfied that a dealing was effected or an arrangement was entered into by the gas company in contravention of this section, the Board shall, if directed to do so by the Minister and in the manner required by the Minister—

- (a) take into account as a benefit having accrued to the gas company any benefit which would reasonably have accrued to the company had the contravention not occurred; and
- (b) ignore any detriment which the company would not reasonably have suffered, or any costs which the company would not have incurred, had the contravention not occurred.

Gas 1986

Determination by Board for reduction of profit

62. (1) The Board shall then determine by what amount, if any, the profit of the gas company has been or is likely to be reduced as a consequence of the contravention.

(2) If the Board determines that the profit of the company has been or is likely to be reduced by a certain amount, the Board shall direct that the reasonable profit of the gas company is to be reduced by that amount for a year, or over a number of years, specified in the direction.

(3) A direction for the reduction of the reasonable profit of a gas company shall take into account any reasonable submission in writing to the Board by the gas company as to the apportionment of the reduction over a number of years.

(4) A direction for the reduction of the reasonable profit of a gas company shall have effect accordingly for the purposes of the calculation of that profit under section 76.

Financial assistance by gas companies

63. (1) A gas company shall not, whether directly or indirectly, give any financial assistance to any related corporation unless the financial assistance—

- (a) is given in compliance with section 61; and
- (b) will result directly in the giving of financial assistance to the gas company which is of benefit to the gas company.

(2) Financial assistance to a related corporation includes—

- (a) the giving of financial assistance by means of the making of a loan, the giving of a guarantee, the provision of security, the release of an obligation or the forgiving of a debt or otherwise; and
- (b) the giving of financial assistance to a person who gives financial assistance to the related corporation.

(3) This section does not prevent the giving of financial assistance by way of the provision of security for, or the guaranteeing of, a loan where, and only to the extent that, the loan was made before the commencement of this section.

Duty of directors to gas consumers

64. It is the duty of the directors of a gas company to consider the interests of consumers as well as the interests of shareholders of the company.

Minister may appoint director of gas company

65. (1) The Minister may appoint a person to be a director of a gas company subsidiary of The Australian Gas Light Company.

(2) The Minister may also appoint a person nominated by the Labor Council of New South Wales to be a director of a gas company subsidiary of The Australian Gas Light Company.

(3) The appointment of one person only may be in force under subsection (1) at any particular time, unless The Australian Gas Light Company otherwise agrees.

(4) The appointment of one person only may be in force under subsection (2) at any particular time in respect of any one gas company.

(5) An appointee under subsection (1) or (2) may be appointed director of more than one gas company.

(6) An appointment shall be made by order in writing served on the gas company or gas companies concerned.

Appointed directors—consultation, powers

66. (1) The Minister shall not appoint a person to be a director of a gas company unless the Minister has given The Australian Gas Light Company at least 21 days' notice of the Minister's intention to make the appointment and considered any submission made during the period by The Australian Gas Light Company as to the acceptability of that person for appointment as director.

(2) During the appointment, the appointed director shall have and may exercise all the functions of director, notwithstanding provision made by or under any memorandum or articles of association or any Act providing for the incorporation or formation of the gas company.

(3) The appointed director is in addition to the number of directors of a gas company otherwise authorised to be appointed.

DIVISION 2—*Financial affairs***Depreciation**

67. (1) Except as permitted by the regulations, a gas company (other than a local authority) shall not charge against the revenue of the company any sum by way of depreciation of the manufacturing or distributing plant, buildings or equipment of the company.

(2) The regulations may—

- (a) provide for the method and the rate of depreciation allowable under this section; and
- (b) provide for different methods and rates of depreciation to apply to different classes of property.

(3) Rates of depreciation set by the regulations in respect of property of the company acquired after 30 June 1986 must be based on the physical and economic life of the property concerned.

Variation of depreciation arrangements

68. (1) The Minister may, by order published in the Gazette, direct that section 67 does not apply to a specified gas company or applies to the gas company with such modifications as may be specified.

(2) The order—

- (a) may be made subject to conditions;
- (b) may be made only at the request of the gas company concerned;
- (c) may not be revoked until at least 1 year after the Minister has given the gas company concerned notice in writing of the Minister's intention to revoke the order; and
- (d) has effect according to its tenor.

Other expenditure chargeable to revenue

69. (1) A gas company may, as an expenditure properly chargeable to revenue—

- (a) join or become a member of and subscribe or give donations to any association, corporation or society, the objects of which are or include—
 - (i) the promotion and development of the gas industry in its various branches; or
 - (ii) the stimulation of invention and research in respect of the gas industry in its various branches;
- (b) give donations or contributions to universities, technical colleges, schools or similar institutions for the purpose of carrying out research or other activities for the advancement of knowledge relating to the gas industry in its various branches; and
- (c) give support to associations or other bodies engaged in work which will be of benefit to the gas industry.

(2) This section has effect notwithstanding the provisions of any Act, deed of settlement, memorandum or articles of association.

Tariff Stabilisation Account

70. (1) A gas company which is a subsidiary of The Australian Gas Light Company shall establish and maintain in its accounts a separate account to be called the Tariff Stabilisation Account.

(2) There shall be credited to the Tariff Stabilisation Account of a gas company—

- (a) amounts equal to the payments received by the gas company from The Australian Gas Light Company under section 73; and
- (b) any other amount required by this Act to be credited to that account.

Gas 1986

Effect of Tariff Stabilisation Account

71. (1) A Board constituted to inquire into the maximum gas price or prices which may be charged by a gas company shall—

- (a) for the purpose of preventing or limiting an increase in that gas price or those gas prices, take into account as revenue of the company the amount which the company is regarded as earning on the amount credited to the Tariff Stabilisation Account of the company; and
- (b) take that amount into account as an expense of the company.

(2) The gas company shall be regarded as earning an appropriate return, during any particular period, on the projected average of the closing monthly balances during that period of the amount standing to the credit of the Tariff Stabilisation Account of the company.

(3) The appropriate rate of return is a return at a rate which is the initial rate of yield on Commonwealth Treasury Bonds or Commonwealth Inscribed Stock first issued for public subscription most recently before the calculation of that return is made.

(4) Where there is more than one such initial rate, the appropriate rate of return is the higher or highest of those rates.

(5) The Board shall comply with the directions of the Minister as to how the amount is to be taken into account as revenue of the company.

(6) The Minister's directions may have the effect of benefiting different classes of consumers differently.

Protection of Tariff Stabilisation Account on winding up

72. (1) In a winding up of a gas company, there shall be paid out of the surplus property of the company an amount equal to the balance credited to the Tariff Stabilisation Account of the gas company immediately before the commencement of the winding up, or so much of that amount as is capable of being paid out of that surplus property.

(2) The surplus property of the company is the property remaining after satisfaction of the debts and liabilities of the company and the costs, charges and expenses of the winding up.

(3) The amount shall be paid into the Tariff Stabilisation Account of a gas company or gas companies, as directed by the Governor.

Payments to Tariff Stabilisation Account

73. (1) The Australian Gas Light Company shall pay in cash to such of its subsidiary gas companies as the Minister approves in writing, for crediting to the Tariff Stabilisation Accounts of those companies, such amounts as may be required under this section.

(2) The amounts to be transferred are the amounts necessary to ensure that the aggregate of the balances standing to the credit of those accounts is—

- (a) between the commencement of this section and 1 January 1988—at least \$70,000,000; and
- (b) on and after 1 January 1988—at least \$134,000,000.

(3) The amount payable is payable without consideration and is not refundable.

(4) A gas company shall credit to the Tariff Stabilisation Account of the company half of the increase in the capital profits on assets (being assets realised after 31 December 1985) occurring since 31 December 1985 or the date of acquisition by the company (whichever is the later) less any relevant income tax payable.

Excess profit of gas company

74. (1) If the profit of a gas company listed in Schedule 1 for any financial year of the company is greater than the reasonable profit of the gas company for that financial year, the excess profit shall be credited by the company to an Equalisation Account.

(2) The profit of a gas company is the profit after providing for all expenses properly chargeable to revenue in accordance with generally accepted accounting principles.

(3) The profit of the gas company includes the consolidated profits of the company and of its subsidiaries but does not include capital profits.

(4) The reasonable profit of a gas company is the profit calculated under section 76.

Gas 1986

Treatment of excess profit

75. (1) A Board constituted to inquire into the maximum price to be charged for gas by a gas company shall determine and report to the Minister whether and how much of any excess profit credited to an Equalisation Account is attributable to gains in efficiency in the carrying on of the company's activities.

(2) As soon as practicable after that determination—

- (a) half of any amount reported as attributable to gains in efficiency may be dealt with by the company as, and shall form part of, unappropriated profits of the company; and
- (b) the remainder of that amount shall be applied in accordance with the directions of the Board for or towards the cost of reducing the prices payable for gas by consumers.

(3) Except as provided by this section, an amount credited to an Equalisation Account as excess profit does not form part of the unappropriated profits of the company for the purpose of calculating the reasonable profit of the company under section 76.

Calculation of reasonable profit of gas companies

76. (1) For the purposes of this Act, the reasonable profit of a gas company for any financial year of the company is the amount which is equivalent to a return on shareholders' funds at a rate which is—

- (a) except as provided by paragraph (b)—2 per cent per annum higher than the long-term bond rate in relation to that year; or
- (b) where the gas company is involved in exploration for, and bulk carriage of, natural gas in the State—3 per cent per annum higher than the long-term bond rate in relation to that year.

(2) In this section—

“appropriate capital profit amount” means—

- (a) in the case of a gas company subsidiary of The Australian Gas Light Company, the total of—
 - (i) realised and unrealised capital profits of the company as at 31 December 1985; and

(ii) half of the increase in the capital profits on assets (being assets realised after 31 December 1985) occurring since 31 December 1985 or the date of acquisition by the company (whichever is the later) less any relevant income tax payable;
or

(b) in the case of any other gas company—the increase in the capital profits on assets (being assets realised after the company was first granted a licence under Part 2) occurring since the company was first granted a licence or the date of acquisition by the company (whichever is the later) less any relevant income tax payable;

“long-term bond rate”, in relation to any financial year of a gas company, means the initial rate of yield on Commonwealth Treasury Bonds or Commonwealth Inscribed Stock first issued for public subscription most recently before the beginning of that year or, where there is more than one such initial rate, the higher or highest of those rates;

“shareholders’ funds”, in relation to a financial year of a gas company, means the amount which is the sum of—

- (a) the average of the total amounts paid up on the issued share capital of the company at the end of each month during that year;
- (b) the average of the amounts credited to the share premium reserve account of the company at the end of each month during that year;
- (c) unappropriated profits of the company at the beginning of that year; and
- (d) the appropriate capital profit amount,

but does not include any amount credited to the Tariff Stabilisation Account of the company.

Capital structure of gas companies

77. (1) A gas company listed in Schedule 1 shall not increase the non-redeemable equity capital of the company if the increase would result in the gearing ratio of the company being less than 60 per cent.

Penalty: \$10,000.

Gas 1986

(2) The gearing ratio of a gas company is the ratio, expressed as a percentage, calculated in accordance with the following formula:

$$\frac{L}{L + E}$$

where—

L = the total amount of loan capital of the gas company; and

E = the total amount of non-redeemable equity capital of the gas company.

(3) For the purposes of the calculation—

“loan capital” includes the capitalised value of financial leases and financial accommodation in any form (including redeemable preference share capital), other than credit extended by trade creditors;

“non-redeemable equity capital”, in relation to a gas company, means the amount which is the sum of—

- (a) the amount paid up on the issued share capital of the company;
- (b) the amount standing to the credit of the share premium reserve account of the company;
- (c) the unappropriated profits of the company at the end of the previous financial year;
- (d) the appropriate capital profit amount of the company (as defined in section 76); and
- (e) the amount credited to the Tariff Stabilisation Account of the company.

(4) For the purposes of the calculation, the capitalised value of financial leases shall be determined in accordance with generally accepted accounting principles.

(5) This section does not prevent The Australian Gas Light Company from making a payment to the Tariff Stabilisation Account of a gas company and the gas company shall not be in breach of this section by reason only of the making of the payment.

Restriction on dividends of gas companies

78. A gas company shall not distribute by way of dividend to shareholders any profit of the company attributable to unrealised capital profits.

DIVISION 3—*Accounts, audit and information***Additional record keeping requirements**

79. (1) The Authority may direct a gas company in writing to make and keep specified records (including accounting records) and to provide specified reports to the Authority, concerning the activities of the company.

(2) The company shall comply with the direction.

Penalty: \$10,000.

Audit of accounts

80. (1) The Auditor-General shall, at the request of the Minister, audit or inspect, and report to the Minister on, the accounting records of a gas company or any subsidiary of a gas company.

(2) The Minister may appoint an appropriately qualified person to audit or inspect, and report to the Minister on, the accounting records of a gas company or any subsidiary of a gas company.

(3) The Auditor-General, a person appointed by the Auditor-General for the purpose or a person appointed by the Minister is for the purpose of exercising any functions under this section entitled to inspect the accounting records of the gas company or subsidiary.

(4) The gas company or subsidiary concerned shall provide all reasonable assistance for the effective exercise of those functions.

(5) A person shall not wilfully obstruct or delay a person exercising a function under this section.

Penalty: \$2,000.

Minister may commission inquiries, audits of affairs

81. (1) The Minister may appoint a person to inquire into or to carry out an audit of the affairs of any gas company or any related corporation of a gas company.

(2) To the extent that it relates to a related corporation of a gas company, the inquiry or audit may relate only to the relationship or interaction which the corporation has with the gas company.

Gas 1986

- (3) The person appointed may, for the purposes of the inquiry or audit—
- (a) inspect and take copies of or extracts from any records (including accounting records) of a company to which the inquiry or audit relates; and
 - (b) require any person concerned in the management of such a company to furnish information and answer questions relating to the affairs of the company.
- (4) A person shall not—
- (a) refuse or fail without lawful excuse to allow the appointed person access to records to which the person is entitled;
 - (b) refuse or fail without lawful excuse to furnish information or answer questions, as required by the person; or
 - (c) wilfully obstruct or delay the appointed person when exercising a function under this section.

Penalty: \$2,000.

(5) If the Minister so directs, part or all of the reasonable costs of and incidental to the inquiry or audit are payable by the company or companies concerned, in such proportions as the Minister directs.

(6) Any amount payable by a company is recoverable by the Minister in a court of competent jurisdiction as a debt due to the Crown.

Protection of inspectors, etc.

82. A person exercising functions under section 80 or 81 has qualified privilege in proceedings for defamation in respect of any statement that the person makes orally or in writing in the course of the exercise of those functions.

Authority's power to obtain information

- 83. (1)** The Authority may require a gas company—
- (a) to disclose to the Authority specified information relating to the operations of the company or its relationship and interaction with any of its related corporations; or
 - (b) to forward to the Authority specified records (including accounting records), or copies of or extracts from specified records, required to be kept by the company by or under this Act or any other law.

(2) The Authority may require a related corporation of a gas company to disclose to the Authority specified information concerning the relationship and interaction between the corporation and the gas company.

(3) A requirement under this section shall be made in writing and served on the company or corporation and shall specify the manner in which and the time within which the requirement is to be complied with.

(4) Unless the company or corporation satisfies the court that it is not within its power to comply with the requirement, a company or corporation which fails to comply with the requirement is guilty of an offence and liable to a penalty not exceeding \$2,000.

PART 6

BOARDS OF INQUIRY

Constitution of Boards

84. (1) The Minister may, from time to time, constitute a Board of Inquiry to undertake an inquiry for the purposes of this Act.

(2) A Board shall have and may exercise the functions conferred or imposed on it by or under this or any other Act.

(3) Schedule 2 has effect with respect to the members of a Board and the procedure of a Board.

Subject-matter of inquiry

85. (1) The Minister may constitute a Board to undertake an inquiry for the purpose of advising or making recommendations to the Minister on—

- (a) any matter which concerns or is incidental to the operations of a gas company or the interests of consumers; or
- (b) any other matter authorised by this Act to be the subject of an inquiry by a Board.

(2) The inquiry may relate to one or more than one subject-matter and to one or more than one gas company.

Gas 1986

(3) An inquiry shall not concern a related corporation of a gas company which is not itself a gas company except to the extent that it concerns the relationship and interaction between the corporation and the gas company.

Powers of Boards

86. (1) For the purposes of an inquiry by a Board under this Act—

- (a) the chairperson of the Board shall have the functions, protections and immunities conferred on a chairman of a Royal Commission by Division 1 of Part II of the Royal Commissions Act 1923; and
- (b) a member of a Board shall have the functions, protections and immunities conferred on a commissioner by that Division.

(2) The Royal Commissions Act 1923 (except section 13 and Division 2 of Part II) applies to and in respect of an inquiry by a Board under this Act.

Matters to be taken into account

87. (1) In making an inquiry, the Board shall—

- (a) consider any matter which the Minister requires the Board to consider; and
- (b) consider any other matter required by this Act to be considered.

(2) The Board may also consider any matter which in the Board's opinion is incidental to or has a significant bearing on the subject-matter of the inquiry.

(3) During an inquiry, the Board may seek a direction or decision from the Minister on any interim finding or recommendation of the Board and shall proceed with the inquiry in accordance with the Minister's direction or decision.

Report by Board

88. (1) A Board shall undertake the inquiry for which it is constituted and report to the Minister in writing on the inquiry.

(2) The report shall specify the matters considered and determined by the Board together with its findings, advice and recommendations.

(3) The report shall—

- (a) provide reasons for the Board's findings, advice and recommendations;
- (b) provide details of the way in which matters required to be considered by the Board, and other matters, were considered; and
- (c) provide details of any other matter concerning the inquiry which the Board considers to be relevant to the report.

(4) The report may present the Board's advice and recommendations in the form of options for the decision of the Minister.

Rights of Authority where Board appointed

89. (1) A Board shall forward to the Authority a copy of any documentary information which comes into the Board's possession in connection with an inquiry by the Board.

(2) That information includes submissions made to the Board and a record of evidence given before the Board.

(3) The Authority is entitled to appear and be represented at any hearing of a Board, including a hearing held in camera.

Copy of report to gas company

90. Within 30 days after a Board reports to the Minister on an inquiry relating to a gas company, the Minister shall make a copy of the report available to the gas company.

Costs of inquiry

91. (1) The costs of and incidental to any inquiry by a Board, including the fees of the members of a Board, shall be paid by the parties to the inquiry in such proportions as the Board may direct.

(2) The Board may recover those costs in a court of competent jurisdiction as a debt due to the Crown.

Gas 1986

PART 7

PRICES, CHARGES AND CONDITIONS FOR SUPPLY OF GAS

Maximum gas prices

92. A gas company shall not charge for gas supplied to a consumer at a price which is greater than the relevant maximum price (if any) fixed under this Part.

Maximum gas prices—Albury

93. (1) The Albury Gas Company Limited may, while it is a subsidiary of the Gas and Fuel Corporation of Victoria, charge for gas supplied by it to a consumer at a price which is greater than the relevant maximum price.

(2) The price charged shall not exceed the corresponding price charged for gas supplied by the Gas and Fuel Corporation of Victoria to consumers in the metropolitan area of Melbourne, Victoria.

(3) The Albury Gas Company Limited is not entitled to charge a greater price until it has notified the Minister in writing of its intention to do so.

Other charges and conditions

94. (1) A gas company shall not make any other charge for or in connection with the supply of gas by it to consumers if—

- (a) the charge is prohibited by an order of the Governor under this Part; or
- (b) the charge is greater than the maximum fixed for the type of charge by an order of the Governor under this Part.

(2) A gas company shall not impose a condition in respect of the supply of gas by it to consumers if the condition is prohibited by an order of the Governor under this Part.

Inquiry into gas prices, charges and conditions of supply

95. (1) The Minister may at any time constitute a Board to inquire into either or both of the following:

- (a) the maximum price or prices to be charged for gas supplied by a gas company to consumers;
- (b) the other charges or conditions which may be made or imposed by a gas company in respect of the supply of gas to consumers.

(2) The Minister shall constitute a Board for that purpose as soon as practicable after receiving a written request from the gas company to do so.

(3) The Minister shall constitute a Board to inquire into the maximum price to be charged for gas supplied by a gas company to consumers not later than 2 years after the price was last fixed, unless the Minister and the company agree to defer the inquiry.

Maximum gas price inquiry—other than local authority

96. (1) In an inquiry into the maximum gas price or prices to be charged for gas by a gas company (other than a local authority) the Board shall determine that price or those prices by—

- (a) calculating the price or prices necessary to be charged for gas supplied by the company to consumers to enable the company to make a reasonable profit (calculated under section 76); and
- (b) increasing the price or prices calculated by the appropriate contingency allowance.

(2) The appropriate contingency allowance is an amount which makes provision for—

- (a) the likelihood that some consumers will be charged for gas at a price which is less than the price calculated under subsection (1) (a); and
- (b) the likelihood that gas prices will vary due to the need for prices to remain competitive following changes in market conditions not provided for in the terms and conditions of supply.

(3) In making the inquiry, the Board shall make provision for—

- (a) interest payable on loans;
- (b) expenses properly chargeable to revenue in accordance with generally accepted accounting principles;
- (c) depreciation allowable under this Act;
- (d) a reasonable sum for contingencies, not exceeding an amount equal to half of the amount calculated under section 76 as the reasonable profit of the company for the previous year;
- (e) any amount paid or payable by the company to the Crown under an agreement referred to in section 37; and

Gas 1986

- (f) any other reasonable expenditure by the company, and reasonable provision for future expenditure by the company, in connection with the carrying on of its activities.
- (4) In making the inquiry, the Board shall take into account—
- (a) the projected revenue of the company from all sources;
 - (b) the terms of and any conditions imposed on a licence granted to the company under Part 2;
 - (c) the past performance, efficiency of operation, interaction with related corporations and proposed expenditure of the company;
 - (d) such other matters as The Australian Gas Light Company and the Minister have agreed in writing are appropriate for the purpose of enabling the effect of the Tariff Stabilisation Account to be taken into account;
 - (e) such other matters which the company is authorised or required to do by or under this Act or the regulations and which, in the opinion of the Board, are relevant to the subject-matter of the inquiry; and
 - (f) any other matter authorised or required to be considered by this Act.

Maximum gas price inquiry—local authority

97. (1) This section applies to an inquiry by a Board into the maximum price or prices to be charged by a local authority for gas supplied to consumers.

(2) The Board shall inquire as to the price or prices which would, if charged by the local authority for gas supplied to consumers, enable it to—

- (a) pay all interest on loans lawfully raised for the purposes of the undertaking;
- (b) pay all expenses properly chargeable to revenue from the undertaking including a sum by way of depreciation at such a rate upon the depreciating assets in use by the local authority for the purposes of the undertaking as the Board may determine;
- (c) provide a reasonable reserve for contingencies; and
- (d) make such provision for any sinking fund or reserve as the Board may determine.

(3) The Board shall take into account the projected revenue of the gas company from all sources.

Other charges and conditions—inquiry

98. (1) In the case of an inquiry into the other charges or conditions which may be made or imposed, the Board shall inquire as to the charges and conditions which are reasonable in all the circumstances of the case.

(2) In making the inquiry, the Board shall take into account—

- (a) the need for charges which will facilitate the recovery of reasonable costs;
- (b) the desirability of conditions which are consistent with the efficient management of both gas resources and the company's reticulation system;
- (c) the need to ensure that the company is able to comply with contractual obligations to suppliers of gas; and
- (d) any other matter authorised or required to be considered by this Act.

Recommendations by Board

99. (1) In making its recommendations as to appropriate maximum gas prices, other charges and conditions, the Board may differentiate between different classes of consumers and may make different recommendations in respect of some or all of those classes.

(2) Without limiting the Board's power to differentiate between classes of consumers, the Board may differentiate on the basis of—

- (a) the use to which gas supplied to consumers is put;
- (b) the area in which gas is supplied;
- (c) the quantity of gas supplied;
- (d) the time pattern of gas consumption; and
- (e) the conditions of supply.

(3) The Board may also recommend a formula to be used to ascertain a maximum gas price according to any principles or conditions, and at the times or after the intervals, specified in the recommendation.

Gas 1986

Fixing of gas prices and prohibition of other charges and conditions

100. (1) If the Minister considers it appropriate to do so following a report of a Board on the matter, the Minister may recommend that the Governor by order—

- (a) fix a price as the maximum gas price applicable to a gas company in respect of all or a particular class of consumers;
- (b) prohibit a gas company from imposing a specified condition or type of condition or from making a specified charge or type of charge; or
- (c) fix the maximum amount of a specified charge or type of charge to be made by a gas company.

(2) The recommendation of the Minister may be made only in accordance with the report of the Board.

(3) The Governor may, by order published in the Gazette, make the order recommended and it has effect accordingly.

(4) In the case of a local authority or a small gas company, the Minister may direct in writing that a relevant maximum gas price fixed under this Part which would otherwise be applicable to a gas company ceases to apply to the company and the direction has effect accordingly.

Formula for gas prices

101. (1) If a Board has recommended a formula under which a relevant maximum gas price may be ascertained, the Governor may on the recommendation of the Minister, by order published in the Gazette, notify the formula and direct that the relevant maximum price shall be the price calculated in accordance with the formula and the terms of the order.

(2) The gas company concerned shall calculate the maximum price applicable in accordance with the order and shall submit a statement to the Authority showing the price calculated and detailing the method of calculation.

(3) If the Authority certifies to the gas company that the price has been correctly calculated, the price is thereby fixed as the relevant maximum price.

Local authorities and small gas companies—notice of gas price rises

102. A gas company which is a local authority or a small gas company shall not increase the price which it charges a consumer for gas (whether or not a maximum price has been fixed under this Part) unless it has given the Minister at least 30 days' notice in writing of the increase.

PART 8**SUPPLY OF GAS****DIVISION 1—Method of supply****Gas supply to be metered**

103. (1) A gas company shall not supply gas to any person (except another gas company) otherwise than through a metering device supplied by the gas company.

(2) A person (except a gas company) shall not take gas from a gas company otherwise than through a metering device supplied by the gas company.

(3) This section does not apply in a particular case if in the special circumstances of the case the Authority grants exemption in writing and any conditions to which the exemption is subject (including conditions as to the payment of charges) are complied with.

Penalty: \$5,000.

Meters, etc.

104. A gas company shall not supply or install a metering device for measuring the quantity of gas supplied to a consumer unless the device complies with the requirements of the regulations.

Penalty: \$5,000.

Hiring of pre-payment meters

105. (1) A gas company may hire to a person a pre-payment metering device and fittings at a rate not exceeding the rate fixed by the Authority from time to time and notified to the gas company in writing.

Gas 1986

(2) The rate fixed shall be sufficient to enable the gas company to recover—

- (a) the reasonable cost to the company of supplying, installing, maintaining, repairing and inspecting the device and fittings and collecting from the device; and
- (b) all other reasonable costs incurred by the company in connection with the device and fittings.

Meter reading evidence of supply

106. (1) Evidence of the indication of a metering device supplied by a gas company as to the quantity of gas which has passed through the meter is admissible in any proceedings.

(2) Unless evidence is given to the contrary, the quantity indicated shall be presumed to be correct.

Application for supply

107. (1) A person who occupies premises on land a boundary of which is not more than 20 metres from an appropriate gas main of a company authorised under this Act to supply gas to the premises may, by notice in writing specifying the premises, require the gas company to supply gas to the premises.

(2) An appropriate gas main is a main which carries gas at a pressure not exceeding 210 kilopascals or at such other pressure as may be prescribed.

(3) The notice shall specify a day not earlier than 45 days after the giving of the notice when the supply is required to commence.

(4) The gas company shall, not later than the day indicated, connect the premises to the gas company's reticulation system and, subject to this Act, commence and continue to supply gas to the premises.

Penalty: \$1,000.

Power to refuse supply

108. A gas company is not required to connect a gas supply to premises or to supply premises with gas if—

- (a) the person who made the requirement has not complied with a request of the company—
 - (i) to give a written undertaking to the company to take and pay for the supply for at least 12 months; or
 - (ii) to give the company security for the amount which may become payable by the person for the supply or for the proportion of the cost of laying pipes payable by the person under section 109;
- (b) the person who made the requirement or to whom the gas is supplied owes money to the gas company for or in connection with the supply of gas by the company; or
- (c) the pipes, fittings, appliances or other apparatus used or to be used in connection with the supply or consumption of gas on the premises are, in the opinion of the company, unsafe.

Certain costs to be paid by person supplied

109. A person who requires a gas company to supply premises with gas is liable to pay the gas company—

- (a) the reasonable cost of the pipes required to be laid on the premises for the purposes of giving the supply; and
- (b) the reasonable cost of pipes which are laid to connect the premises with the gas reticulation system of the company and which are not on the premises, not including the first 10 metres of those pipes.

Interest on deposits

110. (1) If a person is required by a gas company to give a cash deposit as security for a supply of gas or the rental of a meter or other apparatus in connection with a supply of gas, the person is entitled to be paid by the company interest on the deposit in accordance with the regulations.

(2) The rate of interest is the rate payable for the time being by the Commonwealth Savings Bank of Australia on a savings bank deposit at call of the same amount.

Gas 1986

Discontinuance of supply for offence

111. If a person contravenes section 128, 129 or 130, the gas company may discontinue the supply of gas to the person until the person remedies the contravention.

Discontinuance of supply for failure to pay

112. (1) Where a person fails to pay an amount to a gas company for or in connection with the supply of gas by the company, the company may, after giving the person reasonable notice of its intention to do so, discontinue the supply of gas to the person.

(2) The company shall reconnect the supply when the amount owed and the reasonable expenses of the company in disconnecting and reconnecting the supply are paid.

Liability of gas companies—interference with supply

113. (1) If a gas company fails to maintain a supply of gas or the supply of gas by a gas company is otherwise interfered with, the company is protected under this section if the cause is—

- (a) compliance by the gas company with a requirement made by or under this Act; or
- (b) anything not within the control of the gas company.

(2) The company is not guilty of an offence against this Act or the regulations in respect of the failure or interference and is not liable to any person in respect of damage suffered by the person which was caused by the failure or interference.

(3) Where the failure or interference is caused by maintenance (including repair) of a gas company's reticulation system required by or under this Act, this section does not relieve the company from liability to a person unless the company gives the person reasonable notice that the failure or interference will occur.

(4) Notice of the failure or interference is not required in the case of an emergency.

DIVISION 2—*Standards for gas***Standards of supply**

114. (1) A gas company shall not supply gas to a consumer unless it complies with the standards prescribed by the regulations.

Penalty: \$2,000.

(2) Prescribed standards for gas may relate to—

- (a) heating value;
- (b) relative density;
- (c) pressure of supply;
- (d) composition and purity; and
- (e) any other quality or characteristic of gas or its supply.

(3) A gas company may only be convicted of one offence in respect of all contraventions of this section relating to a particular prescribed standard on any one day.

Prescription of different standards

115. Standards for gas may be prescribed so as—

- (a) to apply generally or be limited in application by reference to specified exceptions or factors; or
- (b) to apply differently according to different factors of a specified kind.

Testing

116. (1) For the purpose of determining compliance with this Act, the qualities and characteristics of gas and its supply shall be determined in accordance with the regulations.

(2) A gas company shall provide and maintain in good condition at its premises, or such other place as the Authority may approve, the apparatus required by the regulations for the purpose of the testing of gas.

Gas 1986

DIVISION 3—*Maintenance***Installation and maintenance standards**

117. A person who carries out work in the course of installing, maintaining, altering or repairing any apparatus, equipment, pipe, fitting, appliance or other thing used, or designed or intended for use, in or in connection with the distribution, supply, storage or consumption of gas shall carry out that work—

- (a) in accordance with such of the provisions of this Act and the regulations as relate to the carrying out of that work; and
- (b) competently and with due regard to safety.

Maintenance of gas distribution system

118. A gas company which operates a gas manufacturing and distribution system shall—

- (a) maintain engineering records of the system which are, in the opinion of the Authority, adequate;
- (b) carry out a comprehensive programme for the maintenance of the system and review that programme at least once every 12 months; and
- (c) ensure that the system is operated and maintained in accordance with the regulations.

Report as to maintenance and safety

119. (1) A gas company shall, before 31 March in each year, forward to the Authority a maintenance and safety report in the prescribed form, relating to the period of 12 months ending on 31 December immediately preceding that 31 March.

(2) The report shall review the activities of the gas company in relation to the maintenance of, and the safety practices carried out in relation to, plant and equipment used in the manufacture, production, distribution, supply or storage of gas by the company.

(3) The report shall be accompanied by the prescribed fee.

DIVISION 4—*Inspection and powers of entry***Interpretation**

120. In this Division—

“inspector” means a government inspector or a company inspector appointed under this Division;

“relevant gas activity” means—

- (a) in relation to the functions of a government inspector—the manufacture, production, distribution, supply, storage or consumption of gas; or
- (b) in relation to the functions of a company inspector—the supply, storage or consumption of gas supplied by the company.

Inspectors

121. (1) The Minister administering section 31 (powers of inspectors) of the Dangerous Goods Act 1975 may appoint a person as an inspector (“a government inspector”) to carry out inspections for the purposes of this Division.

(2) That Minister shall issue to a government inspector a certificate of authority in the prescribed form.

(3) A gas company may appoint any officer or employee of the company as an inspector (“a company inspector”) to carry out inspections for the purposes of this Division.

(4) The gas company shall issue to a company inspector a certificate of authority in a form approved by the Authority.

(5) An inspector exercising or proposing to exercise a function under this Act on or in any land, premises or place shall, on request, produce the inspector’s certificate of authority to a person apparently in charge there.

Powers of inspection

122. (1) An inspector may enter and remain on or in any land, premises or place which is or are, or which the inspector believes on reasonable grounds is or are, being used in connection with a relevant gas activity.

Gas 1986

- (2) While there, the inspector may—
- (a) search for, and inspect and test, any apparatus, equipment, pipes, fittings and appliances used or capable of being used in connection with a relevant gas activity;
 - (b) take, without payment, samples of any substance which the inspector believes on reasonable grounds to be gas for the purpose of examining and testing the samples;
 - (c) in the case of a government inspector only, search for and inspect, or require a person found there to produce, any record relating to a relevant gas activity and take copies of or extracts from the record;
 - (d) require any person found there to furnish information and (in the case of a government inspector only) answer questions relating to the operation and maintenance of apparatus, equipment, pipes, fittings and appliances found there and used or capable of being used in connection with a relevant gas activity; and
 - (e) if the inspector believes on reasonable grounds that it is necessary to do so to prevent the death of or injury to a person or damage to property, give a direction to a person (including a gas company) concerning the operation of, or any work being carried out in connection with, any gas plant or equipment.

Method of giving direction to gas company

123. (1) A government inspector may give a direction under section 122 to a gas company—

- (a) by giving the direction by instrument in writing served on the gas company;
- (b) by giving the direction to a person nominated for the purpose by the gas company, being a nomination of which the Minister administering section 31 (powers of inspectors) of the Dangerous Goods Act 1975 has been informed in writing; or
- (c) where no such nomination is in force or it is not reasonably practicable for the inspector to give the direction to a person so nominated—by giving the direction to any officer or employee of the gas company apparently charged with the operation or maintenance of the plant or equipment to which the direction relates.

(2) The direction to a person may be given orally or in writing and may be given by telephone, telex, radio or any other communication device.

Death, injury or damage involving gas

124. Where a government inspector is satisfied on reasonable grounds that the death of or injury to a person, or damage to property, has occurred on or in any land, premises or place and that gas was involved in that death, injury or damage, the inspector may enter the land, premises or place and there make inquiries concerning that death, injury or damage.

Entry to discontinue supply

125. (1) A company inspector may enter any land, premises or place for the purpose of discontinuing the company's supply of gas to a person under section 111 or 112 (discontinuance of supply for offence or failure to pay).

(2) While there, the inspector may do all things reasonably necessary to discontinue the supply.

Entry to residential premises—special provisions

126. An inspector is not entitled to enter that part of any premises which is being used for residential purposes, except—

- (a) with the consent of the occupier of that part;
- (b) pursuant to a search warrant issued under section 127; or
- (c) where the inspector believes on reasonable grounds that there is an imminent danger of the death of or injury to a person or substantial damage to property.

Search warrants

127. (1) In this section, "authorised justice" means—

- (a) a Magistrate; or
- (b) a justice of the peace employed in the Local Courts Administration, Attorney General's Department.

(2) An inspector may apply to an authorised justice for the issue of a search warrant in respect of premises—

- (a) if the inspector believes on reasonable grounds that any apparatus, equipment, pipe, fitting or appliance on the premises which is used or capable of being used in connection with a relevant gas activity is unsafe; or

Gas 1986

(b) in the case of a company inspector, if satisfied that the company is entitled to discontinue the supply of gas to a person on the premises under section 111 or 112 (discontinuance of supply for offence or failure to pay).

(3) An authorised justice to whom the application is made may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising an inspector to enter the premises and there to exercise any functions of the inspector under this Division.

(4) Part III of the Search Warrants Act 1985 applies to a search warrant issued under this section.

Offences

128. (1) A person shall not—

- (a) wilfully obstruct or delay an inspector who is exercising a function under this Act; or
- (b) fail without lawful excuse to comply with a requirement made or a direction given by an inspector under this Act.

(2) Where an inspector enters any land, premises or place occupied by a gas company, the gas company shall provide the inspector with all reasonable assistance for the effective exercise of the inspector's functions under this Division.

Penalty: \$1,000.

*DIVISION 5—Protection of reticulation system***Interference with meters, etc.**

129. (1) A person shall not alter or interfere with the index of a metering device supplied by a gas company, except in the course of inspecting, maintaining or repairing the meter with the approval of the gas company.

(2) A person shall not prevent a meter supplied by a gas company from correctly registering the quantity of gas supplied through it.

(3) A person shall not fraudulently abstract, cause to be wasted or diverted, consume or use gas supplied by a gas company.

(4) The existence of any artificial means by which—

(a) a metering device supplied by a gas company has been altered or interfered with; or

(b) gas has been abstracted, wasted, diverted, consumed or used,

is evidence, in the absence of evidence to the contrary, that a person who has custody or control of any metering device, pipe, fitting, appliance or apparatus concerned is guilty of a contravention of this section.

Penalty: \$2,000 or imprisonment for 12 months, or both.

Damage to reticulation system

130. (1) A person shall not wilfully or by culpable negligence damage or otherwise interfere with—

(a) any part of the gas reticulation system of a gas company; or

(b) any metering device or gas regulator, or seal affixed to a metering device or gas regulator, supplied by a gas company.

Penalty: \$2,000 or imprisonment for 12 months, or both.

(2) This section does not apply to anything done with the approval of the gas company.

Recovery of damages by gas company

131. (1) If a person contravenes section 129 or 130, the gas company concerned is entitled to recover \$50 from the person for each contravention in addition to any damage suffered by the company as a result of the contravention.

(2) That entitlement is in addition to and not in derogation of any other right of or remedy available to the gas company in respect of the contravention.

Gas 1986

PART 9

MISCELLANEOUS

Secrecy

132. A person shall not disclose any information obtained in connection with the administration or execution of this Act unless that disclosure is made—

- (a) with the consent of the person from whom the information was obtained;
- (b) in connection with the administration or execution of this Act;
- (c) for the purposes of any legal proceedings arising out of this Act or of any report of those proceedings;
- (d) with the written consent of the Minister given after consultation with the person from whom the information was obtained;
- (e) when the information is otherwise publicly available; or
- (f) with other lawful excuse.

Penalty: \$5,000.

State Energy Research and Development Fund

133. (1) There shall be a fund to be known as the State Energy Research and Development Fund.

(2) There shall be paid into the Fund—

- (a) fees paid under Part 2 by persons to whom licences to carry on gas reticulation are granted; and
- (b) income accruing from the investment or re-investment of money under this section, or otherwise accruing to the Fund.

(3) There shall be paid out of the Fund such amounts as are authorised under this Part or the regulations to be paid from the Fund.

(4) The Fund shall, subject to this Part and the regulations, be under the direction, control and management of the Authority.

(5) Subject to any directions by the Treasurer, the Authority may invest and re-invest or otherwise use or employ the Fund in such investments as may be determined from time to time by the Authority.

(6) Any such investment may at any time be realised, hypothecated or otherwise dealt with or disposed of in whole or in part by the Authority.

Application of Fund

134. (1) There shall be applied from the Fund such amounts as the Minister may direct for or with respect to—

- (a) research concerning, and the development of, energy resources for the State; and
- (b) such other purposes as may be prescribed in connection with the supply and use of energy resources for the State, and related technological development.

(2) The regulations may make provision for or with respect to the application of the Fund.

Service of documents

135. A document may be served on a person for the purposes of this Act—

- (a) in the case of a natural person—by delivering the document personally to the person or by serving it by post; or
- (b) in the case of a company (including The Australian Gas Light Company)—in the manner provided by section 528 of the Companies (New South Wales) Code.

General offence

136. A person who contravenes a provision of this Act is guilty of an offence and, except where some other penalty is specifically provided, is liable—

- (a) in the case of a natural person—to a penalty not exceeding \$500; or
- (b) in any other case—to a penalty not exceeding \$2,000.

Injunctions—compliance with Act

137. (1) Where a company has contravened, is contravening or is proposing to contravene this Act, the Supreme Court may, on the application of the Minister, grant an injunction—

- (a) restraining the company from doing so; or

Gas 1986

(b) requiring the company to do any act or thing necessary to avoid or remedy the contravention.

(2) The Court may, before considering the application, grant an interim injunction restraining a company from engaging in conduct pending the determination of the application.

(3) The Court may rescind or vary such an injunction or interim injunction.

(4) If the Minister makes an application for an injunction under this section, the Court shall not require the Minister or any other person, as a condition of granting an interim injunction, to give any undertaking as to damages.

(5) If the Court has power under this section to grant an injunction, the Court may, either in addition to or in substitution for the grant of the injunction, order the company to pay damages to any person or to the Crown.

(6) In this section, a reference to a company is a reference to The Australian Gas Light Company or a gas company.

Proceedings for offences

138. (1) Proceedings for an offence against this Act or the regulations may be taken before a Local Court constituted by a Magistrate sitting alone or before the Supreme Court in its summary jurisdiction.

(2) If proceedings for the offence are brought in a Local Court, the maximum penalty that the court may impose is \$5,000 or the maximum penalty provided by this Act or the regulations in respect of the offence, whichever is the lesser.

(3) If proceedings for the offence are brought in the Supreme Court, the Supreme Court may impose a penalty not exceeding the maximum penalty provided by this Act or the regulations in respect of the offence.

Regulations

139. (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) Without limiting the generality of subsection (1), the Governor may make regulations—

- (a) for or with respect to the design, construction, operation, testing and maintenance of plant, apparatus, equipment, pipes and fittings used for the manufacture or distribution of gas;
- (b) for the control of the installation, alteration, repair, connection and disconnection of gas metering devices, pipes, fittings, appliances and apparatus (including the control of persons carrying out or employing others to carry out that work);
- (c) for the testing, stamping and examination of gas metering devices, and the fees to be charged for the purpose;
- (d) conferring upon a gas company power to refuse or discontinue a supply of gas where the conditions of the supply or use are dangerous to life, health or property, and regulating the exercise of the power;
- (e) prescribing the procedure at inquiries of a Board, the payment of the costs (including witnesses' expenses) of those inquiries and the fees payable to members of a Board;
- (f) prescribing the fees payable in respect of the exercise of any functions of an inspector under this Act;
- (g) prescribing the qualifications of inspectors;
- (h) for or with respect to the recording and compilation of information and the keeping of records (including accounting records) by gas companies and their subsidiaries, the particulars to be entered in and the manner of keeping those records;
- (i) requiring the furnishing of information, particulars, returns and statistics by gas companies and their subsidiaries, the time and manner of furnishing and the manner of verification of that information and those particulars, returns and statistics;
- (j) prohibiting the carrying out of gasfitting work of any class or description otherwise than by a person who—
 - (i) is the holder of a licence or certificate of registration granted under the Plumbers, Gasfitters and Drainers Act 1979 in relation to which gasfitting work of that class or description is authorised work within the meaning of that Act; or

Gas 1986

- (ii) does so under the immediate supervision of the holder of such a licence;
 - (k) prohibiting a person from knowingly employing another to carry out gasfitting work of any class or description unless that other person—
 - (i) is the holder of a licence or certificate of registration granted under the Plumbers, Gasfitters and Drainers Act 1979 in relation to which gasfitting work of that class or description is authorised work within the meaning of that Act; or
 - (ii) does so under the immediate supervision of the holder of such a licence; and
 - (l) prescribing the fees and charges to be charged by a gas company for the inspection, testing and repair of a consumer's gas installation.
- (3) Regulations made under subsection (2) (a) or (b) may—
- (a) adopt, either wholly or in part or by reference—
 - (i) any standards, rules, codes or specifications (whether or not as in force from time to time) made or published by any specified person or body; or
 - (ii) any standards, rules, codes or specifications approved by the Minister and published in the Gazette (whether before or after the commencement of this section) together with any subsequent amendments so approved and published;
 - (b) provide for a standard approved by the Authority to be the standard applicable in respect of a particular matter; and
 - (c) provide that specified work shall not be carried out except by a person who is an employee of a gas company authorised by the gas company for the purpose or who holds a specified licence or qualification which is appropriate to the type of work concerned.
- (4) A provision of a regulation may—
- (a) apply generally or be limited in its application by reference to specified exceptions or factors;
 - (b) apply differently according to different factors of a specified kind; or
 - (c) authorise any matter or thing to be from time to time determined, applied or regulated by any specified person or body,
- or may do any combination of those things.

(5) A regulation may create an offence punishable by a penalty not exceeding \$2,000.

Savings and transitional provisions

140. Schedule 3 has effect.

SCHEDULE 1

(Sec. 7)

GAS COMPANIES

AGL Sydney Limited

AGL Western Limited

City of Goulburn Gas and Coke Company (Limited)

Newcastle Gas Company Limited

Wollongong Gas Limited

SCHEDULE 2

(Sec. 84)

MEMBERSHIP AND PROCEDURE OF BOARDS OF INQUIRY

Membership of Boards

1. (1) A Board shall consist of 3 members appointed by the Governor of whom—

- (a) one shall be a person nominated by the Minister;
- (b) one shall be a person nominated by the gas company or gas companies concerned in the subject-matter of the inquiry to be undertaken by the Board; and
- (c) one, who shall be chairperson of the Board, shall be a person nominated as agreed on by the Minister and the gas company or gas companies or, in the absence of agreement, shall be a person nominated by the Minister.

(2) If no person, or no person able or willing to act as a member of the Board, is within the prescribed time nominated by the gas company or gas companies concerned, the Minister may nominate the person and that person shall be deemed to have been nominated by the gas company or gas companies.

(3) If no gas company is concerned in the subject-matter of the inquiry, the 3 members to be appointed shall be nominated by the Minister.

*Gas 1986*SCHEDULE 2—*continued*MEMBERSHIP AND PROCEDURE OF BOARDS OF INQUIRY—*continued***Acting members**

2. (1) The person or body entitled to nominate a person as a member of a Board may nominate a person to act in the office of the member during the illness or absence of the member.

(2) While acting, that person shall have and may exercise all the functions of the member and shall be deemed to be a member of the Board.

(3) No act, determination or proceeding of a Board shall be invalid by reason only that at the time of the act, determination or proceeding there is a vacancy in the office of a member of the Board.

General procedure

3. The procedure for—

- (a) the calling of meetings of a Board;
- (b) the convening of inquiries and hearings by a Board; and
- (c) the conduct of business at those meetings, inquiries and hearings,

shall, subject to this Act, be as determined by the Board.

Quorum

4. The quorum for a meeting of a Board is 2 members.

Voting

5. (1) A decision supported by a majority of the votes cast at a meeting of a Board at which a quorum is present shall be the decision of the Board.

(2) The chairperson has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

(3) Where at any meeting of a Board at which the chairperson of the Board is not present there is an equality of votes on any matter, determination of the matter shall be postponed until a meeting at which the chairperson is present.

Protection of members

6. No matter or thing done by a Board, any member of a Board or any person acting under the direction of a Board shall, if the matter or thing was done in good faith for the purpose of executing this or any other Act, subject a member or a person so acting personally to any action, liability, claim or demand.

SCHEDULE 3

(Sec. 140)

SAVINGS AND TRANSITIONAL PROVISIONS

Interpretation

1. In this Schedule—

“the 1935 Act” means the Gas and Electricity Act 1935 as in force immediately before the commencement of the Gas and Electricity (Gas Repeal) Amendment Act 1986.

No further application of 1935 Act to A.G.L.

2. Section 5 (continued application of Principal Act to A.G.L.) of the Gas and Electricity (Amendment) Act 1985 is repealed.

Exemption of gas companies from Act

3. An exemption in force under section 2 (3) of the 1935 Act immediately before the commencement of section 5 (3) of this Act shall, on that commencement, be deemed to be an exemption granted under section 5 (3).

Orders to facilitate transfer of A.G.L. gas undertaking

4. An order made under section 6B (2) of the 1935 Act and in force immediately before the commencement of section 25 shall, on that commencement, be deemed to have been made under section 25.

Licences to carry on gas reticulation

5. (1) This clause applies to a person who, immediately before the commencement of section 9, was the subject of an approval of the Minister under section 20A (1) of the 1935 Act.

(2) On the commencement of section 9, a person to whom this clause applies shall be deemed to have been granted a licence under Part 2 to carry on intrastate gas reticulation.

(3) The licence shall be deemed to have been granted subject to the conditions (if any) to which the approval under section 20A of the 1935 Act was subject immediately before the commencement of section 9.

Approvals for local government undertakings

6. On the commencement of section 10, an approval in force under section 20A (1A) of the 1935 Act immediately before that commencement shall be deemed to have been given under section 10.

Validation in respect of approved shareholdings in A.G.L.

7. (1) This clause applies to a person who holds shares in The Australian Gas Light Company if the shareholding—

- (a) existed as at 1 January 1986; and
- (b) is approved by the Minister under section 41.

*Gas 1986*SCHEDULE 3—*continued*SAVINGS AND TRANSITIONAL PROVISIONS—*continued*

(2) Shares in The Australian Gas Light Company held or purportedly held by a person to whom this clause applies shall for all purposes be deemed to have been validly held by the person before the approval takes effect.

(3) For the purpose of the validation of the exercise of voting rights attached to shares, this clause operates only to deem shares to have been validly held to the extent that the shares represent not more than 5 per cent of the issued share capital of the company.

(4) This clause applies only to shares held by the person as at the date specified by the Minister for the purpose in the approval of the shareholding.

Existing shareholdings—approvals, directions

8. (1) This clause applies to a shareholding in The Australian Gas Light Company which existed as at 1 January 1986.

(2) The consent of The Australian Gas Light Company is not required for the following:

- (a) the Minister's approval under section 41 of a shareholding to which this clause applies;
- (b) the imposition of conditions under section 42 on the approval at the time it is given;
- (c) the giving of directions under section 44 in relation to the approval at the time it is given.

(3) The Minister shall not effect any variation of, addition to or revocation of conditions imposed under section 42 or directions given under section 44, in relation to a shareholding to which this clause applies, unless—

- (a) The Australian Gas Light Company consents to it; or
- (b) the proprietors of that company do not disapprove of it.

(4) The proprietors of the company shall be deemed not to disapprove of the variation, addition or revocation if—

- (a) the Minister gives the company notice in writing of the proposed variation, addition or revocation; and
- (b) during the period of 3 months after notice is given, no resolution disapproving it is passed at a general meeting of the company.

Existing shareholdings—voting rights

9. (1) This clause applies to a shareholding in The Australian Gas Light Company which existed as at 1 January 1986.

SCHEDULE 3—*continued***SAVINGS AND TRANSITIONAL PROVISIONS—*continued***

(2) A direction shall not be given by the Minister under section 44 relating to the voting rights attached to shares in a shareholding to which this clause applies except to provide that—

- (a) voting rights attached to the shares may be exercised only in respect of that part of the shareholding which represents not more than 5 per cent of the issued share capital of the company; and
- (b) the Minister is entitled to exercise voting rights in respect of any remaining part of the shareholding, up to the number of shares which represents not more than 5 per cent of the issued share capital of the company.

(3) The Minister is entitled to exercise those voting rights only during the period ending on 1 January 1989 unless the Minister extends that period.

(4) The Minister may extend or further extend that period, on each occasion for as long as the Minister thinks appropriate, only if the Minister is satisfied that significant problems exist in the relationship between the shareholder and the company.

Maximum gas prices, formulas and other charges

10. (1) On the commencement of section 92, a standard price in force under the 1935 Act immediately before that commencement in respect of gas supplied by a gas company to a consumer shall be deemed to have been fixed under this Act as the relevant maximum price for gas so supplied.

(2) On the commencement of section 101, a formula in force under the 1935 Act for determining a standard price for gas shall be deemed to have been notified under that section as the formula for calculating the corresponding relevant maximum price.

Depreciation

11. (1) Until regulations are made under section 67 providing for the depreciation allowable to a gas company in respect of particular property of the company, sections 8 and 10A (including any notice under section 10A) of the 1935 Act continue to apply for the purpose of determining the depreciation allowable on that property.

(2) While sections 8 and 10A of the 1935 Act continue to apply in a case, section 67 does not apply in that case.

Inquiry by Board

12. A Board constituted under the 1935 Act before the commencement of Part 6 shall complete the inquiry for which it was constituted, and exercise its other functions, in accordance with the 1935 Act.

Agreements with the gas industry

13. (1) An agreement—

- (a) entered into or purportedly entered into by the Minister before the commencement of section 37; and

*Gas 1986*SCHEDULE 3—*continued*SAVINGS AND TRANSITIONAL PROVISIONS—*continued*

(b) which would, if entered into after that commencement, have been validly entered into.

is validated.

(2) An agreement entered into under section 6H of the 1935 Act and in force immediately before the commencement of section 37 shall, on that commencement, be deemed to have been entered into under section 37.

Inspectors

14. An inspector appointed under section 25 of the 1935 Act whose appointment is in force immediately before the commencement of section 121 is, on that commencement, deemed to have been appointed as a government inspector under this Act.

Regulations under repealed Act

15. A regulation in force under the 1935 Act immediately before the commencement of this clause is, on that commencement, deemed to have been made under this Act.

Liability for costs of audit, etc., already carried out

16. Section 81 (5) applies in respect of an inquiry or audit of the kind referred to in section 81 even though the inquiry or audit was carried out wholly or partly before the commencement of that section.

Regulations of a savings or transitional nature

17. (1) The Governor may make regulations containing other provisions of a savings or transitional nature consequent on the enactment of this Act.

(2) A provision referred to in subclause (1) may take effect as from the date of assent to this Act or a later date.

(3) To the extent to which a provision referred to in subclause (1) takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as—

- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication in the Gazette; or
- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication in the Gazette.

SCHEDULE 3—*continued*

SAVINGS AND TRANSITIONAL PROVISIONS—*continued*

(4) A provision referred to in subclause (1) shall, if the regulations expressly so provide, have effect notwithstanding the other clauses of this Schedule.
