

GAS AND ELECTRICITY (AMENDMENT) ACT 1985 No. 225

New South Wales



ANNO TRICESIMO QUARTO

ELIZABETHÆ II REGINÆ

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Act No. 225, 1985

An Act to amend the Gas and Electricity Act 1935 to provide for the restructuring of the gas industry in New South Wales, to make further provision for the regulation of gas companies, and in other respects; and for other purposes. [Assented to, 12th December, 1985.]

Gas and Electricity (Amendment) 1985

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:

Short title

1. This Act may be cited as the "Gas and Electricity (Amendment) Act 1985".

Commencement

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

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

Principal Act

3. The Gas and Electricity Act 1935 is referred to in this Act as the Principal Act.

Amendment of Act No. 42, 1935

4. The Principal Act is amended in the manner set forth in Schedule 1.

Continued application of Principal Act to A.G.L.

5. Until a day appointed under this section by the Governor and notified by proclamation published in the Gazette, the Principal Act continues to apply, as in force immediately before the date of assent to this Act, to and in respect of The Australian Gas Light Company, but nothing in this section affects any obligation of that company to comply with that Act, as amended by this Act.

Repeal—Natural Gas Development Support Account

6. Items (1) (b) and (18) of Schedule 1 to the Gas and Electricity (Amendment) Act 1982 are repealed.

Gas and Electricity (Amendment) 1985

SCHEDULE 1

(Sec. 4)

AMENDMENTS TO THE PRINCIPAL ACT

(1) Section 1 (3)—

Omit the subsection.

(2) Section 2 (4)—

Omit the subsection.

(3) (a) Section 3, definitions of "Regulation", "Standard price", "Subsidiary"—

Omit the definitions of "Standard price" or "standard prices", "Standard rate of dividend", "Subsidiary", insert instead:

"Regulation" means a regulation made under this Act;

"Standard price", in relation to gas supplied by a gas company, means a price notified in an order under section 12 which is in force and applicable to the gas company;

"Subsidiary", in relation to The Australian Gas Light Company or a gas company, means a corporation which is deemed by section 7 of the Companies (New South Wales) Code to be a subsidiary of The Australian Gas Light Company or the gas company, as the case may be (or which would be so deemed were The Australian Gas Light Company and all gas companies corporations within the meaning of that Code), but does not include any corporation so deemed which is declared for the time being not to be a subsidiary of The Australian Gas Light Company or the gas company by an order made by the Minister and published in the Gazette.

(b) Section 3 (2)—

At the end of section 3, insert:

Gas and Electricity (Amendment) 1985

SCHEDULE 1—*continued*

AMENDMENTS TO THE PRINCIPAL ACT—*continued*

(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.

(4) Part III, Division 1, heading—

Omit the heading, insert instead:

DIVISION 1—*Special provisions applicable to The Australian Gas Light Company and certain gas companies*

(5) Sections 6–6H—

Omit section 6, insert instead:

Interpretation

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

Gas and Electricity (Amendment) 1985

SCHEDULE 1—*continued*

AMENDMENTS TO THE PRINCIPAL ACT—*continued*

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

- (a) any activity carried on for or in connection with the manufacture, production, distribution or supply of gas;
- (b) without limiting the generality of paragraph (a), any activity relating to—
 - (i) the drainage of methane gas from coal seams;
 - (ii) the storage of gas;
 - (iii) the development of technology for the efficient supply and distribution of gas; or
 - (iv) the investment of funds in connection with any other activity specified in this paragraph or an activity specified in paragraph (a), carried on with the consent of the Minister under paragraph (c) or (d) or prescribed under paragraph (f);
- (c) any activity relating to exploration for gas (either within or outside the State), but only where the activity is carried on with the written consent of the Minister granted on the application of the gas company;
- (d) any activity (other than an activity specified in paragraph (a) or (b), carried on with the consent of the Minister under paragraph (c) or prescribed under paragraph (f)) carried on with the written consent of the Minister granted on the application of the gas company;

Gas and Electricity (Amendment) 1985

SCHEDULE 1—*continued*

AMENDMENTS TO THE PRINCIPAL ACT—*continued*

- (e) the investment of surplus funds of the gas company—
 - (i) in accordance with and subject to the Trustee Act 1925; or
 - (ii) in such other manner as may be prescribed; or
- (f) any activity prescribed as a gas activity for the purposes of this paragraph;

“gas company” means—

- (a) a gas company specified in Schedule 1, whether or not it is a subsidiary of The Australian Gas Light Company; and
- (b) a gas company, as defined in section 3 (1), which is not specified in Schedule 1 but which is a subsidiary of The Australian Gas Light Company;

“gas consumer” means a person, other than another gas company, to whom a gas company supplies gas;

“Tariff Stabilisation Account”, in relation to a gas company, means the Tariff Stabilisation Account kept by the company pursuant to section 12H;

“the Code” means the Companies (New South Wales) Code;

“undertaking” includes assets.

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

(3) Expressions used in this Division shall, unless the contrary intention appears, have the same meanings respectively as they have in the Code.

*Gas and Electricity (Amendment) 1985*SCHEDULE 1—*continued*AMENDMENTS TO THE PRINCIPAL ACT—*continued***Transfer of A.G.L. gas undertaking**

6A. (1) Not later than 9 months (or such longer period as the Minister approves in writing) after the commencement of this section, The Australian Gas Light Company shall in accordance with this Division transfer or cause to be transferred to one or, with the written consent of the Minister, more than one wholly owned subsidiary of that company that part of the undertaking of that company which was reasonably necessary for the purpose of the carrying on of gas activities by that company within the State as at that commencement.

(2) Subsection (1) does not apply to such part of the undertaking of The Australian Gas Light Company as the Minister may at the request of that company direct by order in writing.

(3) The reference in subsection (1) to a wholly owned subsidiary of The Australian Gas Light Company is a reference to such a subsidiary which—

(a) is a company incorporated or deemed to be incorporated under the Code or under any corresponding previous law of the State, within the meaning of the Code; or

(b) is a gas company specified in Schedule 1.

(4) The Australian Gas Light Company shall ensure that the total of shareholders' funds (not including the Tariff Stabilisation Account) of all gas companies which are subsidiaries of that company, other than gas companies specified in Schedule 1, is \$47,000,000 as at the completion of the transfer of so much of that company's undertaking as is required to be transferred under this section.

(5) In this section—

“transfer to” includes make available for the benefit of, whether by entering into arrangements for a lease or licence or otherwise.

SCHEDULE 1—*continued*AMENDMENTS TO THE PRINCIPAL ACT—*continued***Manner and terms of transfer**

6B. (1) A transfer of any part of the undertaking of The Australian Gas Light Company to a subsidiary of that company under section 6A shall be effected in such manner and on such terms as the Minister and The Australian Gas Light Company have agreed in writing (whether before or after the commencement of this section), being a manner and terms which will not financially disadvantage gas consumers of The Australian Gas Light Company or a gas company.

(2) For the purpose of facilitating the transfer of any part of the undertaking of The Australian Gas Light Company to a subsidiary of that company under section 6A, the Minister may, subject to subsection (1), at the request of The Australian Gas Light Company and by order published in the Gazette, direct that—

- (a) property of The Australian Gas Light Company specified in the order vests in the subsidiary without the need for any conveyance, transfer, assignment or assurance and 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 the order takes effect; or
- (b) any contract or agreement, or any contract or agreement of a class, specified in the order which was entered into by The Australian Gas Light Company (whether alone or with any other person) before, and which is in effect immediately before, the order takes effect shall, to the extent that the contract or agreement was binding on and enforceable by, against or in favour of The Australian Gas Light Company, be binding on and enforceable by, against or in favour of the subsidiary as fully and effectually in every respect as if, instead of The Australian Gas Light Company, the subsidiary had been the person by whom the contract or agreement was entered into,

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SCHEDULE 1—*continued*

AMENDMENTS TO THE PRINCIPAL ACT—*continued*

and any such order has effect according to its tenor.

(3) The Minister shall not make an order under subsection (2) directing the vesting of property unless the Minister is satisfied that acceptable arrangements have been made for the payment to the Crown of the amount which would have been payable by way of stamp duty if the property had been transferred by an instrument in writing executed by the parties to the transfer.

(4) A certificate of the Minister as to the vesting of property by reason of an order by the Minister under subsection (2) is evidence of the matter so certified in favour of the Registrar-General and any other person registering or certifying title to land or having the power or duty to examine or receive evidence as to the title to land.

(5) Nothing effected by or under an order of the Minister under subsection (2)—

- (a) shall be regarded as a breach of contract or confidence or otherwise as a civil wrong; or
- (b) shall be regarded as a breach of any contractual provision prohibiting, restricting or regulating the assignment or transfer of any property or the disclosure of any information.

(6) The Minister shall not make an order under subsection (2) unless satisfied that the effect of the order will not be materially prejudicial to any person, except a person who consents to the making of the order.

Transfer of powers of A.G.L.

6C. (1) After the transfer of any part of the undertaking of The Australian Gas Light Company pursuant to section 6A, being a part which was necessary for the purpose of the carrying on of a gas activity, a function conferred on The Australian Gas Light Company by or under the Australian Gas Light Company Act 1837 for the purpose of enabling the carrying on of that activity—

Gas and Electricity (Amendment) 1985

SCHEDULE 1—*continued*AMENDMENTS TO THE PRINCIPAL ACT—*continued*

- (a) shall not be exercised by The Australian Gas Light Company for the purpose of carrying on an activity referred to in paragraph (a) or (b) (i) or (ii) of the definition of “gas activity” in section 6 (1), except with the authority of the Minister granted by an order in force under subsection (2); and
- (b) may be exercised for the purpose of carrying on a gas activity by a gas company to which that part of that undertaking was transferred pursuant to section 6A.

(2) Where the Minister is satisfied that it would be impracticable or undesirable for The Australian Gas Light Company not to exercise a function referred to in subsection (1), the Minister may authorise The Australian Gas Light Company by order in writing to exercise the function.

(3) A function exercised by The Australian Gas Light Company pursuant to an authorisation under subsection (2) shall be exercised for the benefit of the gas company authorised to exercise the function by subsection (1) (b).

(4) Subsection (1) does not affect any requirement for the approval of the Minister under section 20A to the carrying on of a gas activity by a gas company.

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

6D. (1) After the transfer in accordance with section 6A of so much of the undertaking of The Australian Gas Light Company as was reasonably necessary for the purpose of the carrying on of gas activities by that company, that company shall not carry on any activity referred to in paragraph (a) or (b) (i) or (ii) of the definition of “gas activity” in section 6 (1).

Gas and Electricity (Amendment) 1985

SCHEDULE 1—*continued*

AMENDMENTS TO THE PRINCIPAL ACT—*continued*

Penalty: \$10,000.

(2) Subsection (1) does not apply to The Australian Gas Light Company—

- (a) to the extent (if any) that the regulations so provide; or
- (b) so as to prevent the exercise of a function by that company with the authority of the Minister granted by an order in force under section 6C.

Extension of powers of A.G.L. and certain gas companies

6E. (1) Subject to this Act, The Australian Gas Light Company, Newcastle Gas Company Limited, the 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 Code.

(2) Nothing in a relevant Act prohibits or restricts the exercise of a power by The Australian Gas Light Company or a gas company referred to in subsection (1) or limits the exercise of a power by the company to the pursuit of the objects of the company as specified in that relevant Act.

(3) Any act, matter or thing done or purporting to have been done by The Australian Gas Light Company or a gas company referred to in subsection (1) before the commencement of this section which would, if done after that commencement, have been validly done shall, to the extent (if any) of any invalidity, be deemed to have been, and be deemed always to have been, validly done.

(4) In subsection (2)—

“relevant Act” means—

SCHEDULE 1—*continued*AMENDMENTS TO THE PRINCIPAL ACT—*continued*

- (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.

Gas company to engage only in gas activities

6F. (1) A gas company shall not carry on any activity except a gas activity.

Penalty: \$10,000.

(2) Where 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.

(3) This section commences 9 months, or such longer period as may be prescribed, after the commencement of section 6A.

Minister may prohibit certain activities of gas companies

6G. (1) Where the Minister is satisfied that the carrying on of a new activity by a gas company is not in the interests of gas consumers, or otherwise not in the public interest, the Minister may, by order in writing served on the gas company, direct the gas company not to carry on the activity.

(2) In this section—

*Gas and Electricity (Amendment) 1985*SCHEDULE 1—*continued*AMENDMENTS TO THE PRINCIPAL ACT—*continued*

“new activity”, in relation to a gas company, means a gas activity other than a gas activity which the Minister and the gas company agree in writing (whether before or after the commencement of this section) is an appropriate gas activity to be carried on by the gas company.

(3) Where the Minister is satisfied, on the recommendation of a board, that a variation in the manner in which or an increase in the extent to which an activity is carried on by a gas company is or would be a substantial variation or increase and is not or would not be in the interests of gas consumers, the Minister may, by order in writing served on the gas company, direct the gas company not to carry on the activity in that varied manner or to that increased extent.

(4) An order under this section which requires a gas company—

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

shall not take effect until 3 months (or such longer period as may be specified in the order) after the order is served on the company and 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 service of the order, if performance of those obligations would otherwise result in a failure to comply with the order.

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

Penalty: \$10,000.

(6) An order shall not be served on a gas company under this section in relation to the prohibition of an activity or the manner in which or the extent to which an activity is permitted—

*Gas and Electricity (Amendment) 1985*SCHEDULE 1—*continued*AMENDMENTS TO THE PRINCIPAL ACT—*continued*

- (a) until at least 60 days have elapsed after the Minister has caused a notice in writing to be served on the gas company informing the gas company of the Minister's intention to serve the order and inviting submissions in writing from the gas company as to why the order should not be made; and
 - (b) until after the Minister has considered any such submission made by the gas company within that 60 day period.
- (7) An order under this section has effect notwithstanding section 22A.
- (8) The Minister is not prevented from causing an order to be served on a gas company under this section in relation to the prohibition of an activity by reason only that the gas company is permitted to carry on the activity by an approval in force under section 20A.
- (9) Nothing in this section affects any requirement under section 20A for the approval of the Minister to the carrying on of a new activity by a gas company.

Agreements for restructuring of the gas industry

6H. (1) The Minister may, on behalf of the Crown, enter into any agreement in writing with The Australian Gas Light Company or a gas company if the Minister is of the opinion that the agreement—

- (a) provides benefits for consumers of gas;
 - (b) is conducive to the efficient functioning of the gas industry; or
 - (c) is otherwise in the public interest.
- (2) An agreement entered into under subsection (1) may provide for the payment of money to the Crown by a gas company which is a party to the agreement, whether by way of a single payment or by periodic payments, or both.

Gas and Electricity (Amendment) 1985

SCHEDULE 1—*continued*

AMENDMENTS TO THE PRINCIPAL ACT—*continued*

(3) The Minister may take proceedings for the recovery of any money payable to the Crown under an agreement entered into under subsection (1).

(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 an agreement under this section entered into by the Minister, take into account any failure by the gas company to perform its obligations under the terms of the agreement.

(5) Any agreement—

(a) entered into or purporting to have been entered into by the Minister before the commencement of this section; and

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

shall be deemed to have been, and shall be deemed always to have been, validly entered into.

(6) 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 an agreement as referred to in subsection (1).

(7) An agreement entered into under subsection (1) is lawful notwithstanding that the consideration for any payment required to be made under the agreement may be the granting of an approval to do anything for which approval is required under this Act.

(6) Section 7—

Omit the section.

(7) (a) Section 8—

Omit “three per centum”, insert instead “the appropriate percentage”.

SCHEDULE 1—*continued*AMENDMENTS TO THE PRINCIPAL ACT—*continued*

(b) Section 8 (2)–(4)—

At the end of section 8, insert:

(2) In subsection (1)—

“appropriate percentage”, in relation to the depreciation of any manufacturing and distributing plant, building or equipment, means—

(a) unless a rate is specified by an order in force under paragraph (b)—3 per cent; or

(b) such rate as may be specified by the Minister from time to time by order published in the Gazette in relation to that plant, building or equipment or in relation to a class of plant, buildings or equipment to which that plant, building or equipment belongs.

(3) The Minister shall initially specify rates of depreciation pursuant to subsection (2) (b) within 90 days after the commencement of this section.

(4) Rates of depreciation specified by the Minister by order under subsection (2) (b) shall be based on the physical and economic life of the asset concerned.

(8) Section 10—

Omit the section.

(9) Section 10A (1)—

Omit “7, 8 or 10” wherever occurring, insert instead “8”.

(10) Section 11—

Omit the section.

(11) (a) Section 12 (2) (a)—

Omit “may, at the request”, insert instead “shall, as soon as practicable after a request”.

Gas and Electricity (Amendment) 1985

SCHEDULE 1—*continued*

AMENDMENTS TO THE PRINCIPAL ACT—*continued*

(b) Section 12 (2) (a)—

After “company” where secondly occurring, insert “to those gas consumers to whom standard prices apply”.

(c) Section 12 (2) (a)—

Omit “to pay the standard rates of dividend”, insert instead “to make a reasonable profit (being a profit calculated in accordance with section 12k)”.

(d) Section 12 (2) (a) (ii) (a)—

Omit the paragraph.

(e) Section 12 (2) (a) (iii)—

Omit the subparagraph, insert instead:

(iii) a reasonable sum for contingencies, not exceeding an amount equal to half of the amount calculated in accordance with section 12k as the reasonable profit of the company for the previous financial year.

(f) Section 12 (2AA)—

After section 12 (2), insert:

(2AA) Unless the Minister and a gas company otherwise agree in writing, the Minister shall constitute a board under subsection (2) (a) to inquire into the price or prices which may be charged for gas by the company not more than 2 years after the last determination was made under this section in respect of that price or those prices.

SCHEDULE 1—*continued*AMENDMENTS TO THE PRINCIPAL ACT—*continued*

(g) Section 12 (2A) (d)–(d4)—

Omit section 12 (2A) (d), insert instead:

- (d) any amount paid or payable by the company to the Crown under an agreement referred to in section 6H;
- (d1) the projected revenue of the company from gas supplied for industrial purposes to consumers to whom standard prices do not apply;
- (d2) the efficiency of operation, past performance, interaction with related companies and proposed expenditure of the gas company;
- (d3) such other matters as The Australian Gas Light Company and the Minister have agreed in writing (whether before or after the commencement of this paragraph) are appropriate for the purpose of enabling the effect of the Tariff Stabilisation Account to be taken into account;
- (d4) any reasonable expenditure by the gas company, and reasonable provision for future expenditure by the gas company, in connection with the carrying on of its activities, being expenditure not required to be taken into consideration under any other provision of this subsection;

(h) Section 12 (7)—

After section 12 (6), insert:

(7) Within 30 days after a board communicates to the Minister a determination or report relating to a gas company pursuant to this section, the Minister shall make a copy of the determination or report available to the gas company.

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SCHEDULE 1—*continued*AMENDMENTS TO THE PRINCIPAL ACT—*continued*

(12) Sections 12A–12N—

After section 12, insert:

Disposal of certain assets prohibited

12A. (1) Except with the written consent of the Minister, a gas company shall not realise or dispose of an asset or assets if the realisation or disposal would significantly impair the continuing ability of the company to carry on the gas activities carried on by it before the realisation or disposal.

Penalty: \$10,000.

(2) In subsection (1)—

“dispose of”, in relation to an asset of a gas company, 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;
- (c) distribute the asset to a shareholder of a gas company, 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, not being a charge over the asset created for the purpose of obtaining financial accommodation.

Dealings involving gas companies—ordinary commercial terms

12B. (1) All dealings between gas companies, or between a gas company and The Australian Gas Light Company or a subsidiary of The Australian Gas Light Company, shall be effected in good faith and, unless the Minister otherwise approves in writing in respect of any particular dealing, on ordinary commercial terms which do not reflect the fact that the companies are related.

SCHEDULE 1—*continued*AMENDMENTS TO THE PRINCIPAL ACT—*continued*

(2) Where a board constituted for the purposes of an inquiry under section 12 is satisfied that a dealing was effected by a gas company in contravention of subsection (1), the board shall—

- (a) take into account as a benefit having accrued to the gas company any benefit which would reasonably have accrued to the gas company had the dealing not been effected in contravention of subsection (1); and
- (b) ignore any detriment which the company would not reasonably have suffered had the dealing not been effected in contravention of subsection (1),

and shall determine by what amount, if any, the profit of the gas company has been or is likely to be reduced as a consequence of that contravention.

(3) Where a board determines under subsection (2) that the profit of a gas 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 such year, or over such years, as is specified in the direction.

(4) A direction of a board under subsection (3) as to the reduction of the reasonable profit of a gas company shall give effect to any reasonable submission in writing to the board by the gas company as to the apportionment of the reduction over a number of years.

(5) Where, pursuant to subsection (3), a board directs that the reasonable profit of a gas company for a particular year is to be reduced by an amount, the reasonable profit of the company for that year, calculated in accordance with section 12k, shall, for the purposes of sections 12 and 12j, be reduced by that amount.

Financial assistance by gas companies

12c. (1) A gas company shall not, whether directly or indirectly, give any financial assistance to any holding company of the gas company unless the financial assistance is given in compliance with section 12B (1) and will result directly in the giving of financial assistance to the gas company which is of benefit to the gas company.

Gas and Electricity (Amendment) 1985

SCHEDULE 1—*continued*

AMENDMENTS TO THE PRINCIPAL ACT—*continued*

(2) In subsection (1), a reference to the giving of financial assistance to the holding company of a gas company includes a reference—

(a) to 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 that holding company.

(3) Subsection (1) does not prevent the giving of financial assistance by way of the provision of security for, or the guaranteeing of, a loan where, and to the extent that, the loan was made before the commencement of this section.

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

12D. (1) Subject to this section, 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 a gas company which is not a company within the meaning of those Codes in the same manner as those provisions would so apply if The Australian Gas Light Company and each such gas company were companies within the meaning of those Codes.

(2) The provisions of a Code applying as referred to in subsection (1) so apply with such modifications as may be prescribed by the regulations.

(3) Nothing in this section affects the application of the provisions of the Codes referred to in subsection (1) to a gas company which is a company within the meaning of those Codes.

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SCHEDULE 1—*continued*AMENDMENTS TO THE PRINCIPAL ACT—*continued*

(4) A provision of a Code applying as referred to in subsection (1) does not apply to The Australian Gas Light Company in so far as the provision deals 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, as amended by subsequent Acts, and those provisions of that Act, as so amended, continue to apply to The Australian Gas Light Company.

(5) 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.

Additional accounting requirements for gas companies

12E. (1) The Minister may, by instrument in writing served on a gas company, direct the company to make and keep such accounting records and make such reports to the Minister concerning the activities of the company as the Minister specifies in the instrument, and the company shall comply with the direction.

Penalty: \$10,000.

(2) A requirement under subsection (1) to make and keep accounting records or make reports is in addition to and not in derogation of any applicable requirement of the Codes referred to in section 12D.

Duty of directors to gas consumers

12F. It is the duty of the directors of a gas company to consider the interests of gas consumers as well as the interests of shareholders of the company.

Minister may appoint director of gas company

12G. (1) The Minister may, by order in writing, appoint a person to be a director of one or more than one gas company.

(2) The appointment of one person only may be made under subsection (1) so as to be in force at any particular time.

Gas and Electricity (Amendment) 1985

SCHEDULE 1—*continued*AMENDMENTS TO THE PRINCIPAL ACT—*continued*

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

(4) The Minister may, from time to time, appoint a person to act in the office of director of a gas company during the illness or absence of a person appointed as director of the gas company under subsection (1), and the person, while so acting, shall be deemed to be the person appointed as director under that subsection.

(5) The provisions of any memorandum or articles of association of a gas company do not apply to or in respect of a person appointed as a director by the Minister to the extent (if any) that those provisions would prevent the person holding office as, and exercising the functions of, director during the term of the appointment.

(6) A person appointed as a director of a gas company by the Minister shall have and may exercise all the functions of a director of the gas company.

Tariff Stabilisation Account

12H. (1) A gas company shall establish and maintain in its accounts a separate account to be called the Tariff Stabilisation Account.

(2) There shall be posted to the credit of 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 12I; and
- (b) any other amount required by this Act to be credited to that account.

Gas and Electricity (Amendment) 1985

SCHEDULE 1—*continued*

AMENDMENTS TO THE PRINCIPAL ACT—*continued*

(3) A board constituted under section 12 to inquire into the gas price or gas 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 consideration as revenue of the company, in accordance with the written directions of the Minister to the board, the amount which, pursuant to subsection (4), the company is regarded as earning on the amount standing to the credit of the Tariff Stabilisation Account of the company; and
- (b) take that amount into consideration as an expense of the company.

(4) For the purposes of subsection (3), a gas company shall be regarded as earning, 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, 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 for the purposes of subsection (3) or, where there is more than one such initial rate, the higher or highest of those rates.

(5) A direction may be given by the Minister to a board under subsection (3) which has the effect of benefiting classes of gas consumers differently.

(6) In a winding up of a gas company, there shall be paid, in accordance with the directions of the Governor under subsection (7), out of any property of the company remaining after satisfaction of the debts and liabilities of the company and the costs, charges and expenses of the winding up, an amount equal to the balance standing to the credit of 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 the property so remaining.

*Gas and Electricity (Amendment) 1985*SCHEDULE 1—*continued*AMENDMENTS TO THE PRINCIPAL ACT—*continued*

(7) The Governor may direct payment of the whole or any part of an amount under subsection (6) to one or more than one gas company for crediting to the Tariff Stabilisation Account of the or, if more than one, of each gas company.

Payments to Tariff Stabilisation Account

12i. (1) The Australian Gas Light Company shall pay in cash to such gas companies as the Minister approves in writing, for crediting to the Tariff Stabilisation Accounts of those companies, such amounts as may be necessary to ensure that the aggregate of the amounts 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.

(2) The amount payable under subsection (1) is payable without consideration and is not refundable.

(3) A gas company shall credit to the Tariff Stabilisation Account of the company half of so much of the profit of the company for any year as is realised capital profit accumulated after the commencement of this section.

Excess profit of gas company

12j. (1) Where during any financial year of a gas company the profit of the company for that year (after providing for all expenses properly chargeable to revenue in accordance with generally accepted accounting principles) is greater than the reasonable profit of the gas company for that financial year, calculated in accordance with section 12k, the excess profit shall be credited by the company to an Equalisation Account and dealt with in accordance with this section.

(2) For the purposes of subsection (1), the profit of a gas company—

- (a) includes the consolidated profits of the company and of its subsidiaries; and
- (b) does not include capital profits.

SCHEDULE 1—*continued*AMENDMENTS TO THE PRINCIPAL ACT—*continued*

(3) A board of inquiry constituted for the purpose of an inquiry under section 12 into the price or prices which may be charged by a gas company for gas shall, where any amount stands to the credit of an Equalisation Account as excess profit of the company under subsection (1), determine and certify to the Minister whether any, and if so what amount, of that excess profit is attributable to gains in efficiency in the carrying on of the company's activities.

(4) As soon as practicable after a determination by a board under subsection (3) in relation to an amount standing to the credit of an Equalisation Account of a gas company—

- (a) half of any amount determined and certified to the Minister under that subsection 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 the amount standing to the credit of that account shall be applied in accordance with the directions of the board for or towards the cost of reducing the prices payable for gas by gas consumers.

(5) Except as provided by subsection (4) (a), amounts standing to the credit of an Equalisation Account of a gas company pursuant to subsection (1) do not form part of the unappropriated profits of the company for the purpose of calculating the reasonable profit of the company in accordance with section 12k.

Calculation of reasonable profit of gas companies

12k. (1) For the purposes of this Division, 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

Gas and Electricity (Amendment) 1985

SCHEDULE 1—*continued*

AMENDMENTS TO THE PRINCIPAL ACT—*continued*

(b) where the gas company is involved in exploration for, and the development 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 subsection (1)—

“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 aggregate of—

- (a) the average of the total amounts paid up on the issued share capital of the company as at the end of each month during that year;
- (b) the average of the amounts standing to the credit of 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;
- (d) the total of realised and unrealised capital profits on assets of the company which were assets of the company immediately before the commencement of this section; and
- (e) half of the realised capital profits of the company accumulated after the commencement of this section,

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

SCHEDULE 1—*continued*AMENDMENTS TO THE PRINCIPAL ACT—*continued***Capital structure of gas companies**

12L. (1) A gas company 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.

(2) For the purposes of this section, 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 a calculation under subsection (2)—

“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 shareholders’ funds of the gas company (as defined in section 12K) and any amount standing to the credit of the Tariff Stabilisation Account of the company.

(4) The capitalised value of financial leases is to be determined for the purpose of the calculation of the loan capital of a gas company under this section in accordance with generally accepted accounting principles.

Gas and Electricity (Amendment) 1985

SCHEDULE 1—*continued*AMENDMENTS TO THE PRINCIPAL ACT—*continued*

(5) Where section 12I requires The Australian Gas Light Company to make a payment to a gas company to be credited to the Tariff Stabilisation Account of the company which would result in the gas company being in breach of this section, this section does not prevent The Australian Gas Light Company from making the payment 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

12M. A gas company shall not distribute by way of dividend to shareholders any profit of the company attributable to unrealised capital profits.

Restrictions on dealings in shares of gas companies

12N. (1) Unless the Minister otherwise consents in writing, The Australian Gas Light Company—

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

Penalty: \$10,000.

(2) Subsection (1) does not apply—

- (a) to a transfer of shares held by The Australian Gas Light Company in a subsidiary of that 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 Australian Gas Light Company of redeemable preference shares,

where 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—

SCHEDULE 1—*continued*AMENDMENTS TO THE PRINCIPAL ACT—*continued*

“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.

(13) Section 13—

Omit the section, insert instead:

Maximum shareholding in A.G.L.

13. (1) Notwithstanding any provision of the Australian Gas Light Company Act 1837, or of any by-law or resolution made or passed under that Act, a person may hold shares in The Australian Gas Light Company which represent up to, but shall not knowingly hold shares which represent more than, 5 per cent (or such greater proportion as the Minister may approve in writing at the request of that company) of the issued share capital of that company.

Penalty: \$10,000.

(2) Subsection (1) does not prevent a person from holding shares after the commencement of this section which represent the same proportion of the issued share capital of The Australian Gas Light Company as the proportion represented by the shares held by the person immediately before that commencement.

(3) Where the Minister is satisfied that a person holds shares in The Australian Gas Light Company in contravention of this section, the Minister may, by order in writing served on the person, direct the person to dispose of, within the period specified in the order, so many of those shares as may be necessary to remedy that contravention, and the person shall comply with that order.

Gas and Electricity (Amendment) 1985

SCHEDULE 1—*continued*

AMENDMENTS TO THE PRINCIPAL ACT—*continued*

(4) Where a person holds shares in The Australian Gas Light Company in contravention of this section, the Supreme Court may, on the application of the Minister or The Australian Gas Light Company, make one or more of the following orders:

- (a) an order restraining the exercise of any voting or other rights attached to the shares;
- (b) an order that any exercise of the voting or other rights attached to the shares be disregarded;
- (c) for the purpose of securing compliance with any direction of the Minister under subsection (3), an order directing any specified person to do or refrain from doing a specified act.

(5) For the purposes of this section, 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, were The Australian Gas Light Company a company within the meaning of that Code.

(14) (a) Section 14 (1)—

Omit “(other than a local authority) not included in Schedule 1”, insert instead “(other than a local authority or a gas company, within the meaning of Division 1 of Part III)”.

(b) Section 14 (2A) (c)—

Omit the paragraph.

(c) Section 14 (6)--(8)—

Omit section 14 (6), insert instead:

(6) In this section—

Gas and Electricity (Amendment) 1985

SCHEDULE 1—*continued*

AMENDMENTS TO THE PRINCIPAL ACT—*continued*

“standard rate of dividend”, in relation to a gas company,
means—

(a) except where an approval of the Minister under subsection (8) has effect—

(i) in relation to the ordinary share capital of the company, the rate specified in subsection (7) (a); and

(ii) in relation to the preference capital of the company, the rate specified in subsection (7) (b); or

(b) where an approval of the Minister under subsection (8) has effect in relation to the company—the increased rate approved in accordance with that subsection.

(7) For the purposes of this section, the standard rate of dividend of a gas company is a dividend at the following rate:

(a) on the ordinary share capital of the company—in respect of every \$100 actually paid up or issued as paid up of that capital, a rate being \$2 above—

(i) where, during the period of 4 months preceding 1 March in the year commencing 1 January in which the dividend is declared, Commonwealth Treasury Bonds were, or Commonwealth Inscribed Stock was, first issued for public subscription—the initial rate of yield on that issue or, where there was more than one such first issue during that 4 month period, the initial rate of yield on the issue that had the longer or longest period to maturity at the date of first issue; or

Gas and Electricity (Amendment) 1985

SCHEDULE 1—*continued*

AMENDMENTS TO THE PRINCIPAL ACT—*continued*

(ii) where, during the period of 4 months preceding 1 March in the year commencing 1 January in which the dividend is declared, there was no first issue of Commonwealth Treasury Bonds or Commonwealth Inscribed Stock for public subscription—the initial rate of yield on the first such issue most recently made before that 4 month period;

(b) on the preference capital of the company—in respect of every \$100 actually paid up or issued as paid up of that capital, a rate of \$5.50.

(8) Should a gas company be unable to obtain share capital at par, the standard rates of dividend on that capital may, upon the recommendation of a board, be increased to rates approved by the Minister in an order in writing and the increased rates shall be the standard rates of dividend on that capital for the purposes of this section.

(15) (a) Section 16 (2A) (c)—

Omit the paragraph.

(b) Section 16 (4)—

Omit “included in Schedule 1”, insert instead “which is a gas company, within the meaning of Division 1 of Part III,”.

(16) Section 20 (2)—

After “authority”, insert “or a gas company, within the meaning of Division 1 of Part III”.

(17) Section 20A (6), (7)—

Omit the subsections, insert instead:

*Gas and Electricity (Amendment) 1985*SCHEDULE 1—*continued*AMENDMENTS TO THE PRINCIPAL ACT—*continued*

(6) An approval granted to a gas company under subsection (1) shall not be made subject to a condition unless—

(a) the condition is not inconsistent with the terms of any agreement entered into by the Minister with the gas company pursuant to section 6H and in force, or any other agreement in force in writing between the Minister and the gas company concerning such a condition, whether entered into before or after the commencement of this subsection; or

(b) if no agreement is in force as referred to in paragraph (a), in the opinion of the Minister the condition is not inconsistent with the efficient operation of the gas company.

(7) An approval may be granted under subsection (1) to a gas company on the basis that it is in replacement for another approval in force under that subsection in respect of the gas company and, in any such case, the approval so granted replaces the other approval.

(18) (a) Section 22 (1) (b)—

After “revenue;”, insert “and”.

(b) Section 22 (1) (d)—

Omit the paragraph.

(c) Section 22 (4)—

After section 22 (3), insert:

(4) An authorisation is not required under subsection (1) in respect of an agreement referred to in subsection (1) (a) where the Minister so directs in writing on being satisfied that the agreement is in the public interest and in the interests of gas consumers.

(19) (a) Section 34 (1), proviso—

Omit the proviso.

Gas and Electricity (Amendment) 1985

SCHEDULE 1—*continued*

AMENDMENTS TO THE PRINCIPAL ACT—*continued*

(b) Section 34 (2), (3)—

Omit the subsections, insert instead:

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

(a) to direct the Secretary of The Australian Gas Light 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 that company,

may be exercised by any 2 or more directors of that company notwithstanding that that Act requires the power to be exercised by more than 2 directors.

(3) Expressions used in subsection (2) shall have the same meanings respectively as they have in the Conveyancing Act 1919.

(20) Section 82A—

After section 82, insert:

Injunctions—compliance with Act

82A. (1) Where a company has engaged, is engaged or is proposing to engage in any conduct that constituted, constitutes or would constitute a contravention of this Act, the Supreme Court may, on the application of the Minister, grant an injunction restraining the company from engaging in that conduct and, if in the opinion of the Supreme Court it is desirable to do so, requiring the company to do any act or thing.

(2) Where a company has refused or failed, is refusing or failing, or is proposing to refuse or fail, to do any act or thing that the company is required to do by or under this Act, the Supreme Court may, on the application of the Minister, grant an injunction requiring the company to do that act or thing.

SCHEDULE 1—*continued*AMENDMENTS TO THE PRINCIPAL ACT—*continued*

(3) Where an application is made to the Supreme Court for an injunction under subsection (1), the Court may, if in its opinion it is desirable to do so, before considering the application, grant an interim injunction restraining a company from engaging in conduct of the kind referred to in that subsection pending the determination of the application.

(4) The Supreme Court may rescind or vary an injunction granted under subsection (1), (2) or (3).

(5) The power of the Supreme Court to grant an injunction under subsection (1) or (3) may be exercised—

(a) if the Court is satisfied that the company has engaged in conduct of that kind—whether or not it appears to the Court that the company intends to engage, or to continue to engage, in conduct of that kind; or

(b) if it appears to the Court that, in the event of the injunction not being granted, it is likely that the company will engage in conduct of that kind—whether or not the company has previously engaged in conduct of that kind and whether or not there would be an imminent danger of substantial damage to any person if the company were to engage in conduct of that kind.

(6) Where an application is made to the Supreme Court for the grant of an injunction requiring a company to do a particular act or thing, the power of the Supreme Court to grant the injunction may be exercised—

(a) if the Court is satisfied that the company has refused or failed to do that act or thing—whether or not it appears to the Court that the company intends to refuse or fail again, or to continue to refuse or fail, to do that act or thing; or

Gas and Electricity (Amendment) 1985

SCHEDULE 1—*continued*

AMENDMENTS TO THE PRINCIPAL ACT—*continued*

(b) if it appears to the Court that, in the event that an injunction is not granted, it is likely that the company will refuse or fail to do that act or thing—whether or not the company has previously refused or failed to do that act or thing and whether or not there is an imminent danger of substantial damage to any person if the company refuses or fails to do that act or thing.

(7) Where 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.

(8) Where the Supreme Court has power under this section to grant an injunction restraining a company from engaging in particular conduct, or requiring a company to do a particular act or thing, the Supreme 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.

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

(21) Section 83 (2)–(4)—

Omit section 83 (2), insert instead:

(2) 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.

Gas and Electricity (Amendment) 1985

SCHEDULE 1—*continued*

AMENDMENTS TO THE PRINCIPAL ACT—*continued*

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

(4) If proceedings for such an 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.

(22) Section 84—

After section 83, insert:

Savings and transitional provisions

84. Schedule 2 has effect.

(23) Schedule 1—

Omit the Schedule, insert instead:

SCHEDULE 1

(Sec. 6)

Newcastle Gas Company Limited
City of Goulburn Gas and Coke Company (Limited)
Wollongong Gas Limited

*Gas and Electricity (Amendment) 1985*SCHEDULE 1—*continued*AMENDMENTS TO THE PRINCIPAL ACT—*continued*

(24) Schedule 2—

Before Schedule 3, insert:

SCHEDULE 2

(Sec. 84)

SAVINGS AND TRANSITIONAL PROVISIONS

Saving—subsidiary gas companies

1. Any company which was, immediately before the commencement of Schedule 1 (3) (a) to the Gas and Electricity (Amendment) Act 1985, excluded by the Minister from the definition of "Subsidiary" in section 3 shall, on that commencement, be deemed to be excluded from that definition, as amended by that Act, by an order made by the Minister, subject to the power of the Minister to rescind, revoke, alter or vary the order.

Transitional—special purposes account

2. Any amount which as at 1 January 1986 was standing to the credit of a special purposes account of a body specified in Schedule 1 (as in force immediately before the date of assent to the Gas and Electricity (Amendment) Act 1985) pursuant to section 7 shall, after the commencement of Schedule 1 (6) to that Act, be transferred to the unappropriated profits of the body.

Transitional—standard prices

3. Where the undertaking of a gas company was transferred to the gas company by The Australian Gas Light Company, the standard price applicable to gas supplied in connection with that undertaking by the gas company shall be, for the purposes of section 12 and until a standard price is determined in respect of that gas under that section, deemed to be the standard price which would have been applicable to that gas had it been supplied by The Australian Gas Light Company.

(25) (a) Schedule 7—

Omit "The Australian Gas Light Company.", insert instead "A gas company, within the meaning of Division 1 of Part III .".

Gas and Electricity (Amendment) 1985

SCHEDULE 1—*continued*

AMENDMENTS TO THE PRINCIPAL ACT—*continued*

(b) Schedule 7—

Omit the following:

Broken Hill & Suburban Gas Coy. Limited.

The North Shore Gas Company Limited.

(c) Schedule 7—

Omit “Wollongong Gas Light Coy. Limited.”, insert instead
“Wollongong Gas Limited.”.
