

# Gas Industry Restructuring Act 1986 No 213

[1986-213]



New South Wales

## Status Information

### Currency of version

Historical version for 16 May 2002 to 10 October 2002 (accessed 27 November 2024 at 3:09)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **Previously named**  
Gas Act 1986
- **Does not include amendments by**  
[Gas Supply Act 1996 No 38](#), Sch 1.7 [10] (to the extent to which it repeals sec 70 (except sec 70 (2) (b)) (not commenced)  
[AGL Corporate Conversion Act 2002 No 16](#), sec 34 (4) (the repeal of Part 4 is to be proclaimed on or after the “registration day” as defined in the [AGL Corporate Conversion Act 2002](#)) and Sch 2 (the amendments are to have effect on the “conversion day” as defined in the [AGL Corporate Conversion Act 2002](#))

### Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

File last modified 22 May 2002

# Gas Industry Restructuring Act 1986 No 213



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# Gas Industry Restructuring Act 1986 No 213



New South Wales

An Act to make provision with respect to the supply and consumption of gas and the regulation of gas distributors; and for other purposes.

## Part 1 Preliminary

### 1 Name of Act

This Act is the *Gas Industry Restructuring Act 1986*.

### 2 Commencement

- (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.

### 3 Interpretation

- (1) In this Act:

**Corporation** means the Energy Corporation of New South Wales constituted under the *Energy Administration Act 1987*.

- (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) Unless a contrary intention appears, expressions used in this Act have the same meanings respectively as they have in the *Corporations Act 2001* of the Commonwealth.

- (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 *Corporations Act 2001* of the Commonwealth), The Australian Gas Light Company and all gas distributors that are

subsidiaries of The Australian Gas Light Company are taken to be companies within the meaning of the *Corporations Act 2001* of the Commonwealth.

(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*”.

(6) Notes included in this Act do not form part of this Act.

#### **4, 5 (Repealed)**

#### **6 Application of *Australian Gas Light Company Act 1837***

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.

#### **7 (Repealed)**

### **Part 2**

#### **8-20 (Repealed)**

### **Part 3 Structure of the gas industry**

#### **Division 1 Transfer of The Australian Gas Light Company’s gas undertaking**

##### **21 Definitions**

(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.

##### **22 Transfer of AGL gas undertaking**

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

- (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.

### **23 Transferee**

- (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 *Corporations Act 2001* of the Commonwealth, or
  - (b) a company listed in Schedule 1.

### **24 Mode of transfer**

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

### **25 Orders to facilitate transfer**

- (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.

## **26 Stamp duty**

- (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.

## **27 Evidence of transfer by order**

- (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.

## **28 Effect of orders on third parties etc**

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

## **29 Transfer of powers of AGL**

- (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.

### **30 (Repealed)**

## **Division 2 Future operation of the industry**

### **31 Extension of powers of AGL and certain gas companies**

- (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 *Corporations Act 2001* of the Commonwealth.
- (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*.

### **32-37 (Repealed)**

### **38 Application of Corporations legislation to AGL and its subsidiaries**

- (1) Subject to this Act, AGL and any relevant gas distributor are declared to be applied Corporations legislation matters for the purposes of Part 3 of the *Corporations (Ancillary Provisions) Act 2001* in relation to non-applicable Commonwealth provisions,

subject to the following modifications:

- (a) a reference to a company includes a reference to AGL and a relevant gas distributor,
- (b) AGL is not required to use the word “Limited” in its name despite anything to the contrary in Part 2B.6 of the *Corporations Act 2001* of the Commonwealth,
- (c) such other modifications (within the meaning of Part 3 of the *Corporations (Ancillary Provisions) Act 2001*) as may be prescribed by the regulations.

**Note—**

Part 3 of the *Corporations (Ancillary Provisions) Act 2001* provides for the application of provisions of the *Corporations Act 2001* and Part 3 of the *Australian Securities and Investments Commission Act 2001* of the Commonwealth as laws of the State in respect of any matter declared by a law of the State (whether with or without modification) to be an applied Corporations legislation matter for the purposes of that Part in relation to those Commonwealth provisions. Section 14 (2) of the *Corporations (Ancillary Provisions) Act 2001* ensures that a declaration made for the purposes of Part 3 of that Act only operates to apply a provision of the Corporations legislation to a matter as a law of the State if that provision does not already apply to the matter as a law of the Commonwealth. If a provision referred to in a declaration already applies as a law of the Commonwealth, nothing in the declaration will affect its continued operation as a law of the Commonwealth.

- (2) Subsection (1) does not extend to any AGL matter.
- (3) Any AGL matter is declared to be an excluded matter for the purposes of section 5F of the *Corporations Act 2001* of the Commonwealth in relation to the whole of the Corporations legislation.

**Note—**

Section 5F of the *Corporations Act 2001* of the Commonwealth provides that if a State law declares a matter to be an excluded matter for the purposes of that section in relation to all or part of the Corporations legislation of the Commonwealth, then the provisions that are the subject of the declaration will not apply in relation to that matter in the State concerned.

- (4) The regulations may declare any matter relating to AGL or a relevant gas distributor (including any matter dealt with by or under Part 4) to be an excluded matter for the purposes of section 5F of the *Corporations Act 2001* of the Commonwealth in relation to:
  - (a) the whole of the Corporations legislation, or
  - (b) a specified provision of the Corporations legislation, or
  - (c) the Corporations legislation other than a specified provision, or
  - (d) the Corporations legislation other than to a specified extent.
- (5) The regulations may provide for the Australian Securities and Investments Commission to exercise a function under any provision of the Corporations legislation

that is the subject of the declaration under subsection (1), but only if:

- (a) the Australian Securities and Investments Commission is to exercise that function pursuant to an agreement of the kind referred to in section 11 (8) or (9A) (b) of the *Australian Securities and Investments Commission Act 2001* of the Commonwealth, and
  - (b) the Australian Securities and Investments Commission is authorised to exercise that function under section 11 of the *Australian Securities and Investments Commission Act 2001* of the Commonwealth.
- (6) Section 17 of the *Corporations (Ancillary Provisions) Act 2001* has effect in relation to a regulation under subsection (5) as if subsection (1) had expressly made provision for the Australian Securities and Investments Commission to exercise the functions concerned.
- (7) In this section:

**AGL** means The Australian Gas Light Company.

**AGL matter** means a matter to the extent that it is dealt with by section 8, 10-13, 16, 17 or 19-42 of the *Australian Gas Light Company Act 1837*.

**matter** includes act, omission, body, person or thing.

**non-applicable Commonwealth provisions** means provisions of the Corporations legislation that do not apply to a matter as a law of the Commonwealth.

**relevant gas distributor** means a gas distributor that is a wholly owned subsidiary of AGL.

### **39 Liability of shareholders of AGL, Newcastle Gas Co**

- (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

### 40 Shareholding—interpretation

- (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.
- (2A) It is declared that the provisions of this Part that refer to, or apply to a matter, provisions of the *Companies (New South Wales) Code* or the *Companies (Acquisition of Shares) (New South Wales) Code* have effect (and are taken at all times on or after their commencement to have had effect) according to their tenor and despite any provision of the *Corporations (New South Wales) Act 1990* or the applicable provisions (as defined in that Act) of the State.
- (2B) Expressions used in this Part have, unless the contrary intention appears, the same meanings respectively as they have in the *Companies (New South Wales) Code*.
- (2C) For the purposes of this Act (including the application or use for interpretative purposes by or under this Part 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 distributors that are subsidiaries of The Australian Gas Light Company are taken to be companies within the meanings of those Codes.
- (3) In this Part, The Australian Gas Light Company is referred to as **the Company**.
- (4) In this Part, a reference to a **realised capital gain** in relation to a share is a reference to any capital gain realised by the shareholder on the disposition of the share less any tax paid or payable by the shareholder in respect of that gain under a law of this State or the Commonwealth.

### 41 Maximum shareholding in AGL

- (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: 5,000 penalty units.
- (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.

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

#### **42 Approvals**

- (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.

#### **43 Notice of suspected contravention**

- (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: 100 penalty units.
- (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.

#### **44 Directions concerning approved shareholdings**

- (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 distributor 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 distributor 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.

#### **45 Powers of Minister to deal with contravention**

- (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.
- (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.
- (2A) An order that directs a person to dispose of the shares may also direct that the person pay to the Corporation any realised capital gain on the shares.
- (2B) If a person is directed under subsection (2A) to pay to the Corporation any realised capital gain on shares, that amount becomes a debt due to the Corporation on the date on which the direction is given that is recoverable in a court of competent jurisdiction.
- (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: 500 penalty units.

#### **46 Powers of AGL**

- (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.

#### **47 Payment of deferred dividend etc**

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.

#### **48 Forfeiture of shares required to be disposed of**

- (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 Corporation.
- (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 Corporation.

#### **49 Power of Corporation to deal with shares**

- (1) Where shares vest in the Corporation, the Corporation 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 Corporation and the Company agree.
- (3) The Corporation:
  - (a) is entitled to retain 5 per cent of the proceeds of sale as commission, and
  - (b) if there is a realised capital gain and it is greater than the amount of the commission, is entitled to retain the amount of that gain on the shares less the amount of the commission, and
  - (c) must pay the rest of the proceeds together with any other sum due to the Corporation in respect of the shares to the person who was the registered holder of the shares immediately before they vested in the Corporation.
- (4) Out of the commission and realised capital gain (if any) retained, the Corporation 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 and realised capital gain (if any) shall be paid into the Consolidated Fund.
- (6) Except for the purposes of this section, the Corporation shall not exercise any rights attached to shares while they are vested in the Corporation.

#### **50 Information concerning shareholding**

- (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 500 penalty units.
- (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.

#### **50A Minister may require Company to furnish certain shareholding information**

- (1) The Minister may at any time require the Company to furnish the Minister with such information contained in its Share Register or concerning shareholdings in it as may be required by the Minister.
- (2) The requirement must:
- (a) be in writing, and
  - (b) be served on the Company, and
  - (c) specify the manner in which and the time within which the information is to be furnished.

- (3) The Company must comply with any requirement under this section.

Maximum penalty (subsection (3)): 500 penalty units.

- (4) It is a defence to a prosecution for an offence under subsection (3) if the Company satisfies the court that it was not within the Company's power to comply with the requirement.

#### **51 Directors—special provisions**

- (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*.

## **52 (Repealed)**

## **53 Voting rights of proprietors**

- (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,
  - (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.

## **54 Resolutions concerning management**

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 constitution of a company under the *Corporations Act 2001* of the Commonwealth.

## **55 Restrictions on dealings in shares of gas distributors**

- (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 distributor, and
  - (b) shall ensure that any such subsidiary does not issue shares otherwise than to the Company.

Penalty: 500 penalty units.

(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.

#### **56 Minister may obtain expert advice concerning prohibited shareholdings**

(1) The Minister may obtain advice from any person or body that the Minister considers has relevant expertise to assist the Minister in exercising a function under this Part.

(2) The Minister may take any such advice into account in exercising a function under this Part.

#### **56A Statements from Company concerning monitoring of Share Register**

(1) In this section:

**post-enactment period** means the period commencing on the date of assent to the [AGL Corporate Conversion Act 2002](#) and ending on the registration day within the meaning of that Act (inclusive).

**pre-enactment period** means the period commencing on 2 April 2001 and ending on the day immediately before the date of assent to the [AGL Corporate Conversion Act 2002](#) (inclusive).

(2) The Company must, within 7 days after the end of the pre-enactment period:

(a) examine the Share Register of the Company for the pre-enactment period, and

(b) provide the Minister with a written statement that:

(i) states whether, following that examination, the Company suspects that any

person may have contravened section 41 during the pre-enactment period, and

- (ii) gives details of any such suspected contravention (including details of any suspected contravention previously notified to the Minister under section 43 (1)).

Maximum penalty: 100 penalty units.

(3) The Company must, within 7 days after the end of the post-enactment period:

- (a) examine the Share Register of the Company for the post-enactment period, and
- (b) provide the Minister with a written statement that:

- (i) states whether, following that examination, the Company suspects that any person may have contravened section 41 during the post-enactment period, and
- (ii) gives details of any such suspected contravention (including details of any suspected contravention previously notified to the Minister under section 43 (1)).

Maximum penalty: 100 penalty units.

#### **56B Application of Corporations legislation to this Part**

- (1) Any relevant matter is declared to be an excluded matter for the purposes of section 5F of the *Corporations Act 2001* of the Commonwealth in relation to the whole of the Corporations legislation to which Part 1.1A of that Act applies.
- (2) In this section:

***matter*** includes act, omission, body, person or thing.

***relevant matter*** means any matter that is prohibited, required, authorised or permitted by or under this Part.

#### **56C Amendments made by *AGL Corporate Conversion Act 2002* apply to matters occurring on or after 2 April 2001**

- (1) The amendments made to this Part by Schedule 1 to the *AGL Corporate Conversion Act 2002* extend to matters occurring on or after 2 April 2001 as if those amendments had been in force at the relevant time.
- (2) In this section:

***matter*** includes act, omission, body, person or thing.

## **Part 5**

## 57-69 (Repealed)

### 70 Gas Customers Reserve Account

- (1) A gas distributor which is a subsidiary of The Australian Gas Light Company is to establish and maintain in its accounts a separate account to be called the Gas Customers Reserve Account.
- (2) There is to be credited to the Gas Customers Reserve Account of a gas distributor:
  - (a) the amount standing to the credit of the Tariff Stabilisation Account of the distributor immediately before the substitution of this section by the [Gas \(Amendment\) Act 1990](#), and
  - (b) (Repealed)
  - (c) any other amount required by this Act to be credited to the Gas Customers Reserve Account.

## Part 5A Transfer of rights and liabilities under customer supply contracts

### 71 Definitions

In this Part:

**asset** means any legal or equitable estate or interest (whether present or future and whether vested or contingent) in real or personal property of any description (including money), and includes securities choses in action and documents.

**gas** has the same meaning as in the [Gas Supply Act 1996](#).

**gas supply arrangement** means a contract, agreement or other arrangement for the supply of gas.

**liability** means any liability, debt or obligation (whether present or future and whether vested or contingent).

**right** means any right, power, privilege or immunity (whether present or future and whether vested or contingent).

**section 72 order** means an order in force under section 72.

**transferee company** means AGL Retail Energy Limited (ACN 074 839 464), AGL Retail Energy (Contract Sales) Limited (ACN 076 092 067) or AGL Wholesale Energy Limited (ACN 074 821 720).

**transferor company** means AGL Gas Networks Limited (ACN 003 004 322).

## **72 Minister may direct transfer of gas supply arrangements**

- (1) The Minister may, by order published in the Gazette, direct that:
  - (a) any gas supply arrangement under which the transferor company supplies gas to any other person or body, and
  - (b) any gas owned by the transferor company, and
  - (c) any other asset, right or liability of the transferor company that, in the opinion of the Minister, is related to any such gas supply arrangement or gas,be transferred from the transferor company to such transferee company as is specified in the order.
- (2) Such an order:
  - (a) may relate to:
    - (i) any particular gas supply arrangement, gas or other asset, right or liability, or
    - (ii) any particular class of gas supply arrangement, gas or other asset, right or liability, and
  - (b) may be made on such terms and conditions as are specified in the order.
- (3) This section expires on 1 July 1999.

## **73 Vesting of gas supply arrangements in transferee**

- (1) When any gas supply arrangement, gas or other asset, right or liability is transferred by a section 72 order, the following provisions have effect:
  - (a) any such gas or other asset vests in the transferee company by virtue of this section and without the need for any conveyance, transfer, assignment or assurance,
  - (b) any such right or liability, and any right or liability of the transferor company under or in connection with:
    - (i) any such gas supply arrangement, or
    - (ii) any such gas, or
    - (iii) any such other asset,becomes, by virtue of this section, the right or liability of the transferee company,
  - (c) all proceedings relating to:
    - (i) any such gas supply arrangement, or

(ii) any such gas, or

(iii) any such other asset, right or liability,

that were commenced before the transfer by or against the transferor company or a predecessor of the transferor company and pending immediately before the transfer are taken to be proceedings pending by or against the transferee company,

(d) any act, matter or thing that was done or omitted to be done in relation to:

(i) any such gas supply arrangement, or

(ii) any such gas, or

(iii) any such other asset, right or liability,

before the transfer by, to or in respect of the transferor company is (to the extent to which that act, matter or thing has any force or effect) taken to have been done or omitted by, to or in respect of the transferee company.

(2) The operation of this section is not to be regarded:

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

(b) as a breach of any contractual provision prohibiting, restricting or regulating the assignment or transfer of:

(i) any gas supply arrangement, or

(ii) any gas, or

(iii) any other asset, right or liability, or

(c) as giving rise to any remedy by a party to an instrument, or as causing or permitting the termination of any instrument, because of a change in the beneficial or legal ownership of:

(i) any gas supply arrangement, or

(ii) any gas, or

(iii) any other asset, right or liability.

(3) The operation of this section is not to be regarded as an event of default under any contract or other instrument.

(4) A transfer is subject to the terms and conditions of the section 72 order by which it is effected.

- (5) No compensation is payable to any person or body in connection with a transfer effected by a section 72 order except to the extent (if any) to which the order so provides.

#### **74 Date of vesting**

A section 72 order takes effect on the date specified in the order.

#### **75 Stamp duty**

Stamp duty is not chargeable for or in respect of:

- (a) a transfer effected by a section 72 order, or
- (b) anything certified by the Minister as having been done in consequence of such a transfer.

#### **76 Confirmation of vesting**

- (1) The Minister may, by notice in writing, confirm a transfer of:
- (a) a particular gas supply arrangement or a particular class of gas supply arrangement, or
  - (b) particular gas or a particular class of gas, or
  - (c) a particular asset, right or liability or a particular class of asset, right or liability, by operation of this Part.
- (2) Such a notice is conclusive evidence of that transfer.

#### **77-83 (Repealed)**

### **Parts 6-8**

#### **84-131 (Repealed)**

### **Part 9 Miscellaneous**

#### **132 Secrecy**

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: 200 penalty units.

### **133, 134 (Repealed)**

### **135 Service of documents**

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 or a registered body (including The Australian Gas Light Company) under the *Corporations Act 2001* of the Commonwealth—in the manner provided by section 109X or 601CX of that Act respectively. .

### **136, 137 (Repealed)**

### **138 Proceedings for offences**

- (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 monetary penalty that the court may impose is 100 penalty units or the maximum monetary 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.

### **139 Regulations**

- (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)–(6) (Repealed)

### **140 Savings and transitional provisions**

Schedule 3 has effect.

## Schedule 1 Gas distributors

(Sections 12, 23)

AGL Sydney Limited

AGL Western Limited

City of Goulburn Gas and Coke Company (Limited)

Newcastle Gas Company Limited

Wollongong Gas Limited

## Schedules 2, 2A (Repealed)

## Schedule 3 Savings and transitional provisions

(Section 140)

### Part 1 General

#### 1 Definition

In this Part:

**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*.

#### 2 No further application of 1935 Act to AGL

Section 5 (continued application of Principal Act to AGL) of the *Gas and Electricity (Amendment) Act 1985* is repealed.

#### 3 Exemption of gas companies from Act

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).

#### 4 Orders to facilitate transfer of AGL gas undertaking

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.

#### 5 Licences to carry on gas reticulation

(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.

## **6 Approvals for local government undertakings**

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.

## **7 Validation in respect of approved shareholdings in AGL**

- (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.
- (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.

## **8 Existing shareholdings—approvals, directions**

- (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.

#### **9 Existing shareholdings—voting rights**

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

#### **10 Maximum gas prices, formulas and other charges**

- (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.

### **11 Depreciation**

- (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.

### **12 Inquiry by Board**

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.

### **13 Agreements with the gas industry**

- (1) An agreement:
  - (a) entered into or purportedly entered into by the Minister before the commencement of section 37, and
  - (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.

### **14 Inspectors**

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.

### **15 Regulations under repealed Act**

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.

### **16 Liability for costs of audit etc already carried out**

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.

### **17 Regulations of a savings or transitional nature**

- (1) The Governor may make regulations containing provisions of a savings or transitional nature consequent on the enactment of the following Acts:
  - (a) *Gas Act 1986*,
  - (b) *Gas (Amendment) Act 1990*,
  - (c) *Gas Supply Act 1996*.
  - (d) *AGL Corporate Conversion Act 2002*, but only to the extent that it amends this Act.
- (2) A provision referred to in subclause (1) may take effect as from the date of assent to the Act consequent on the enactment of which it is made 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.
- (4) A provision referred to in subclause (1) shall, if the regulations expressly so provide, have effect notwithstanding the other clauses of this Schedule.

## **Part 2 Gas (Amendment) Act 1990**

### **18 References to “former” provisions**

In this Part:

- (a) a reference to a “former” provision of this Act is a reference to the provision as in force immediately before its substitution, repeal or amendment (as appropriate) by the *Gas (Amendment) Act 1990*, and
- (b) a reference to the “substitution”, “repeal” or “amendment” of the provision is a reference to its substitution, repeal or amendment, respectively, by the *Gas (Amendment) Act 1990*.

## **19 Former licence holders entitled to authorisation**

- (1) A person who held a licence in force under former Part 2 immediately before the substitution of that Part is entitled to be granted an authorisation, on such terms and subject to such conditions as the Minister thinks fit, with effect from the substitution of that Part.
- (2) Section 11 (Procedure for granting authorisation) does not apply, but the other provisions of Part 2 do apply, to the granting of such an authorisation.

## **20 Payment of fees**

Any fee payable under former section 16 immediately before its substitution remains payable despite the substitution of that section.

## **21 Transfer of State Energy Research and Development Fund**

- (1) The balance (including any investments) standing to the credit of the State Energy Research and Development Fund under former section 133 immediately before its repeal is to be transferred to the fund of that name under section 35A of the *Energy Administration Act 1987*.
- (2) Any amounts that became due and payable to the Fund before the repeal of former section 133 but which are unpaid on that repeal become due and payable to the Corporation under section 35B of the *Energy Administration Act 1987* and can be recovered accordingly.

## **22 Completion of audits etc already commenced**

- (1) Former sections 80 and 81 are to be regarded as continuing in force, despite their repeal, for the purposes of:
  - (a) the completion of any audit, inspection or inquiry commenced under either of those sections before their repeal, and
  - (b) matters incidental to any such audit, inspection or inquiry, including the recovery of costs of and incidental to them.
- (2) Section 82 continues to apply to a person who exercised functions under former section 81.

## **23 Tariff Stabilisation Account**

Substituted section 70 (2) (b) does not require an amount to be credited to the Gas Customers Reserve Account of a gas distributor if the amount had already been credited to its Tariff Stabilisation Account under former section 73 (4).

## **24 Equalisation Account**

Of the amount standing to the credit of a gas distributor's Equalisation Account immediately before the repeal of former section 74:

- (a) half is to be credited to the gas distributor's Gas Customers Reserve Account, and
- (b) the other half can be dealt with as the gas distributor sees fit.

## **25 Removal of exemption—exempt supplier or distributor**

The Minister is not to take action under section 4 (3) in relation to a person who was an exempt supplier or distributor of gas immediately before the commencement of that subsection unless after that commencement a substantial change occurs in the activities carried on by the person in the course of engaging in the reticulation of gas.