

# AGL Corporate Conversion Act 2002 No 16

[2002-16]



New South Wales

## Status Information

### Currency of version

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### Provisions in force

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

### Notes—

- **Editorial note**

The Parliamentary Counsel's Office is progressively updating certain formatting styles in versions of NSW in force legislation published from 29 July 2019. For example, colons are being replaced by em-dashes. Text of the legislation is not affected.

This version has been updated.

### Authorisation

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# AGL Corporate Conversion Act 2002 No 16



New South Wales

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# AGL Corporate Conversion Act 2002 No 16



New South Wales

An Act to provide for The Australian Gas Light Company to be constituted as a body corporate and to enable it to seek registration as a company under the [Corporations Act 2001](#) of the Commonwealth; to make further provision in respect of shareholding limits in relation to the Company; to repeal and amend consequentially various Acts and other legislation; and for other purposes.

## Part 1 Preliminary

### 1 Name of Act

This Act is the [AGL Corporate Conversion Act 2002](#).

### 2 Commencement

This Act commences on the date of assent to this Act.

### 3 Objects

The objects of this Act are as follows—

- (a) to constitute AGL as a body corporate under the law of New South Wales with a modern corporate structure,
- (b) to authorise AGL, once incorporated, to apply to be registered as a public company limited by shares under the [Corporations Act 2001](#) of the Commonwealth,
- (c) to amend the [Gas Industry Restructuring Act 1986](#) to remove the 5% limit on shareholdings in AGL on its registration as a public company and, pending the removal of that limit, to strengthen the provisions relating to the enforcement of that limit.

### 4 Definitions

(1) In this Act—

**AGL** means the company of proprietors known by the name “The Australian Gas Light Company” that was originally established by the *Australian Gas Light Company Act 1837*.

**AGL legislation** means the legislation referred to in section 15 (1).

**ASIC** means the Australian Securities and Investments Commission.

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

**ASX Listing Rule** means a Listing Rule of the Australian Stock Exchange Limited.

**board or managerial office** has the same meaning as it has in section 9 of the [Corporations Act 2001](#) of the Commonwealth.

**company limited by shares** means a body corporate, whose principle, or one of whose principles, is that the liability of its member or members is limited to the amount (if any) unpaid on the shares respectively held by the member or members.

**compliance certificate** means a certificate issued by the Minister under section 32 certifying that the provisions of this Act have been complied with concerning the transfer of corporatised AGL's incorporation to the [Corporations Act 2001](#) of the Commonwealth.

**constitution** means—

(a) in relation to AGL, the following—

- (i) the AGL legislation,
- (ii) the provisions of the [Gas Industry Restructuring Act 1986](#) relating to AGL as in force at the relevant time before the conversion day,
- (iii) any by-laws or resolutions relating to AGL made under that legislation or Act, and

(b) in relation to corporatised AGL, the constitution of corporatised AGL as in force from time to time, and

(c) in relation to registered AGL, the constitution of registered AGL as in force from time to time.

**conversion day** means the day specified by the Minister in a conversion order as the day on which AGL is to be constituted as a body corporate under this Act.

**conversion order** means an order made by the Minister under section 13 specifying a conversion day.

**conversion resolution**—see section 8.

**Corporations legislation** means the Corporations legislation to which Part 1.1A of the *Corporations Act 2001* of the Commonwealth applies.

**corporatised AGL** means AGL after it is constituted as a body corporate under this Act.

**instrument** means an instrument (other than this Act or an instrument made under this Act) or any other document that creates, modifies or extinguishes rights or liabilities (or would do so if lodged, filed or registered in accordance with any law), and includes any judgment, order, process or other instrument issued by a court or tribunal.

**Note—**

The *Interpretation Act 1987* provides that a reference in an Act to **document** means any record of information, and includes—

- (a) anything on which there is writing, or
- (b) anything on which there are marks, figures, symbols or perforations having a meaning for persons qualified to interpret them, or
- (c) anything from which sounds, images or writings can be reproduced with or without the aid of anything else, or
- (d) a map, plan, drawing or photograph.

**invalidity order**—see section 11 (1).

**liabilities** means any liabilities, debts or obligations (whether present or future, whether vested or contingent and whether personal or assignable).

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

**preserved resolution**—see section 5.

**proprietors** of AGL means persons who are proprietors of AGL under the constitution of AGL.

**registered AGL** means corporatised AGL after it is registered as a public company limited by shares under Part 5B.1 of the *Corporations Act 2001* of the Commonwealth.

**registration day** means the day on which corporatised AGL is registered as a public company limited by shares under Part 5B.1 of the *Corporations Act 2001* of the Commonwealth.

**Editorial note—**

Registration day: 11.10.2002. For further information see the Australian Securities and Investments Commission website at <http://www.asic.gov.au>.

**registration resolution**—see section 9.



**rights** means any rights, powers, privileges or immunities (whether present or future, whether vested or contingent and whether personal or assignable).

**Secretary** of AGL means the person holding office as the Secretary of AGL from time to time under the constitution of AGL.

- (2) If this Act provides for an event or other thing to occur on the conversion day or registration day, that event or thing is taken to occur at the beginning of the day that is the conversion day or registration day. However, if the conversion day is the same day as the registration day, any event or other thing to occur on the registration day is taken to have occurred immediately after any event or other thing to occur on the conversion day.
- (3) A reference in this Act to the *Australian Gas Light Company Act 1837* is a reference to 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.
- (4) Words and expressions used in this Act have the same meanings as in section 9 of the [Corporations Act 2001](#) of the Commonwealth, except in so far as they are defined differently in this Act or the context or subject-matter otherwise indicates or requires.
- (5) This Act is intended to have extraterritorial application in so far as the legislative powers of the State permit.
- (6) Notes included in this Act do not form part of this Act.

## 5 Preserved resolutions

- (1) In this Act—

**consolidated published constitution** means the publication entitled *The Australian Gas Light Company: Constituent documents*, ISBN 0-9580690-0-X, published by AGL in March 2002.

**preserved resolution** means any of the following resolutions of the proprietors of AGL that was in force under the constitution of AGL immediately before the conversion day—

- (a) the resolution referred to in the consolidated published constitution as R1/1985 relating to non-executive directors’ retiring allowances,
- (b) the resolution referred to in the consolidated published constitution as R5A/1987 relating to the AGL Management Share Plan,
- (c) the resolution referred to in the consolidated published constitution as R1/1988

relating to the AGL Employee Share Plan,

- (d) the resolution referred to in the consolidated published constitution as R8/1992 relating to the AGL Share Investment Plan,
- (e) the resolution referred to in the consolidated published constitution as R3/1997 relating to the AGL Share Reward Plan,
- (f) the resolution referred to in the consolidated published constitution as R4/1997 relating to the AGL Share Purchase Plan,
- (g) the resolution referred to in the consolidated published constitution as R5/1997 relating to the AGL Share Loan Plan,
- (h) the resolution referred to in the consolidated published constitution as R1/1998 relating to The Australian Gas Light Company Dividend Re-investment Plan,
- (i) the resolution referred to in the consolidated published constitution as R1/2000 relating to remuneration of non-executive directors,
- (j) such other resolutions of the proprietors of AGL as may be prescribed by the regulations.

- (2) A regulation referred to in subsection (1) (j) may be made before, on or after the conversion day.

## **6 (Repealed)**

## **Part 2 Overview of the corporatisation and registration of AGL as a public company**

### **7 Summary of the steps involved in corporatisation and registration of AGL as a company**

- (1) The conversion of AGL into an incorporated public company limited by shares will involve the following two steps—

#### **Conversion of AGL into a body corporate**

The first step will be to convert AGL into a body corporate under State law. Currently, AGL is an unincorporated company of proprietors that was originally established by the *Australian Gas Light Company Act 1837*.

#### **Registration of corporatised AGL as a company**

The second step will be to enable corporatised AGL to seek registration as a public company limited by shares under Part 5B.1 of the *Corporations Act 2001* of the Commonwealth.

- (2) The following is a summary of the steps involved in the conversion of AGL into a body corporate under State law—

### **Conversion resolution**

The proprietors of AGL must pass a conversion resolution at a general meeting of AGL in accordance with Division 1 of Part 3 that approves both the conversion of AGL into a body corporate and a new constitution for that body corporate.

### **Order specifying conversion day**

The Minister makes a conversion order under section 13 specifying the day on which AGL is to be constituted as a body corporate under this Act.

### **AGL constituted as body corporate**

AGL will be constituted as a body corporate with the name “The Australian Gas Light Company” on the conversion day as provided by Part 4. Existing legislation relating to the constitution of AGL and related gas companies will be repealed on that day.

- (3) The following is a summary of the steps involved in enabling corporatised AGL to be registered as a public company limited by shares under Part 5B.1 of the [Corporations Act 2001](#) of the Commonwealth—

#### **Registration resolution**

The proprietors of AGL or the members of corporatised AGL must pass a registration resolution at a general meeting of AGL or corporatised AGL (as the case may be) in accordance with Division 2 of Part 3 that resolves that corporatised AGL be registered as a public company limited by shares under the [Corporations Act 2001](#) of the Commonwealth.

#### **Compliance certificate**

The Minister issues a compliance certificate under section 32 to the effect that the provisions of this Act concerning the transfer of corporatised AGL’s incorporation have been complied with.

#### **Application for registration as public company**

Corporatised AGL makes an application to ASIC under Part 5B.1 of the [Corporations Act 2001](#) of the Commonwealth to be registered as a public company limited by shares.

#### **Registration as public company limited by shares**

Corporatised AGL is registered by ASIC under Part 5B.1 of the [Corporations Act 2001](#) of the Commonwealth as a public company limited by shares.

- (4) This section does not affect the meaning or interpretation of any provision of this Act that it summarises.

## Part 3 Conversion and registration resolutions

### Division 1 Conversion resolutions

#### 8 What is a conversion resolution?

- (1) For the purposes of this Act, a **conversion resolution** is a resolution passed in accordance with this section by the proprietors of AGL at a general meeting of AGL that—
  - (a) resolves that AGL be constituted as a body corporate under this Act, and
  - (b) approves a constitution for AGL on its conversion into a body corporate.
- (2) A constitution approved by a conversion resolution may contain any matter that could be included in the constitution of a public company limited by shares under the [Corporations Act 2001](#) of the Commonwealth.
- (3) A resolution is passed in accordance with this section only if—
  - (a) the resolution is passed by at least 50% of the votes cast by the proprietors of AGL (whether present in person or by proxy) who are eligible to vote at the general meeting, and
  - (b) subject to paragraph (a)—the general meeting at which the resolution is put is called and held in accordance with the constitution of AGL.
- (4) A conversion resolution may form part of a composite resolution that, among other things (if any), includes a registration resolution.
- (5) A conversion resolution may be expressed to be subject to such conditions as may be specified in the resolution. If a conversion resolution is subject to any such conditions, it does not have effect as a conversion resolution for the purposes of any provision of this Act (other than this section) until the conditions are satisfied.
- (6) A resolution passed by the proprietors of AGL before the date of assent to this Act that would have been a conversion resolution for the purposes of this section if it had been in force at the time the resolution was passed is taken to be a conversion resolution for the purposes of this section.
- (7) Nothing in this Act prevents a further proposal for the conversion of AGL into a body corporate being put to the proprietors of AGL if a previously proposed conversion resolution was not passed or was declared to be invalid by order of the Supreme Court under section 11.

## Division 2 Registration resolutions

### 9 What is a registration resolution?

- (1) For the purposes of this Act, a **registration resolution** is a resolution passed in accordance with this section by the proprietors of AGL at a general meeting of AGL or by the members of corporatised AGL at a general meeting of corporatised AGL (as the case may be) that resolves that corporatised AGL be registered as a public company limited by shares under the [Corporations Act 2001](#) of the Commonwealth.
- (2) A resolution is passed in accordance with this section only if—
  - (a) the resolution is passed by at least 50% of the votes cast by the proprietors of AGL or members of corporatised AGL (whether present in person or by proxy) who are eligible to vote at the general meeting, and
  - (b) subject to paragraph (a)—the general meeting at which the resolution is put is called and held in accordance with the constitution of AGL or corporatised AGL (as the case may be).
- (3) A registration resolution may, but need not, be passed at the same general meeting at which a conversion resolution is passed.
- (4) A registration resolution may form part of a composite resolution that, among other things (if any), includes a conversion resolution.
- (5) A registration resolution may be expressed to be subject to such conditions as may be specified in the resolution. If a registration resolution is subject to any such conditions, it does not have effect as a registration resolution for the purposes of any provision of this Act (other than this section) until the conditions are satisfied.
- (6) The members of corporatised AGL will be taken on and after the conversion date to have consented to the transfer of corporatised AGL's incorporation in accordance with the terms of a registration resolution passed by the proprietors of AGL unless a further resolution passed in accordance with this section revoking the registration resolution is passed by those members before the registration day.

**Note—**

Section 14 provides that corporatised AGL is a continuation of, and the same legal entity as, AGL. Also, section 18 (1) (b) provides that a person who, immediately before the conversion date, was a proprietor of AGL is taken to be a member of corporatised AGL.

- (7) If a further resolution revoking a registration resolution is passed by the members of corporatised AGL as referred to in subsection (6), the registration resolution ceases to have effect as a registration resolution for the purposes of this Act.
- (8) A resolution passed by the proprietors of AGL before the date of assent to this Act that would have been a registration resolution for the purposes of this section if it had

been in force at the time the resolution was passed is taken to be a registration resolution for the purposes of this section.

- (9) Nothing in this Act prevents a further proposal for a registration resolution being put to the proprietors of AGL or members of corporatised AGL if—
- (a) a previously proposed registration resolution was not passed or was declared to be invalid by order of the Supreme Court under section 11, or
  - (b) an application for registration under Part 5B.1 of the *Corporations Act 2001* of the Commonwealth was not made by corporatised AGL within the prescribed period applicable to the resolution under section 31.

## **Division 3 Judicial review of conversion and registration resolutions**

### **10 Application of this Division**

This Division applies to the following resolutions (***applicable resolutions***)—

- (a) any conversion resolution or purported conversion resolution,
- (b) any registration resolution or purported registration resolution.

### **11 Irregularities concerning conversion and registration resolutions**

- (1) **Procedural irregularity does not invalidate resolution without court order** An applicable resolution is not invalidated because of any procedural irregularity unless, on an application made under this section, the Supreme Court by order declares the resolution to be invalid (an ***invalidity order***).
- (2) **Who may apply for invalidity order** An application to the Supreme Court for an invalidity order under this section may be made only if no fewer than 200 persons who were eligible to vote at the meeting at which the applicable resolution was passed make the application.
- (3) **Time for application for order** Such an application can only be made to the Supreme Court within—
- (a) if the resolution was passed before the date of assent to this Act—the period of 7 days commencing on the date of assent to this Act, or
  - (b) if the resolution was passed on or after the date of assent to this Act—the period of one month commencing on the date of the passing of the resolution.
- (4) **Parties to an application** The parties to any such application are as follows—
- (a) the applicants,
  - (b) AGL or corporatised AGL (as the case may be),

(c) the Minister.

- (5) **When Supreme Court may make invalidity order** The Supreme Court must not make an invalidity order unless it is of the opinion that—
- (a) the irregularity was not, or was not the result of, an accidental omission or non-receipt of a notice required under the constitution of AGL or corporatised AGL (as the case may be), and
  - (b) the irregularity has caused or may cause substantial injustice.
- (6) **Supreme Court may enjoin Minister from making conversion order or issuing compliance certificate** The Supreme Court may, of its own motion or on the application of a party to an application for an invalidity order in relation to an applicable resolution, make an order that enjoins the Minister from making a conversion order or issuing a compliance certificate (as the case may be) in relation to the resolution until the application for the invalidity order is determined by the Court.
- (7) **Minister may make conversion order or issue compliance certificate if not enjoined** The Minister may make a conversion order or issue a compliance certificate in relation to an applicable resolution even if it is the subject of an application for an invalidity order, unless the Minister is enjoined from doing so under subsection (6). Any such order or certificate is to be treated in the proceedings for the invalidity order as having the same effect as it would have had if no application for the invalidity order had been made.

**Note—**

Section 13 (5) provides that a conversion order is conclusive evidence in any proceedings before a court or tribunal that all the requirements of this Act have been complied with concerning the conversion of AGL into a body corporate. Similarly, section 32 (4) provides that a compliance certificate is conclusive evidence in any proceedings before a court or tribunal that all the requirements of this Act have been complied with concerning the transfer of the incorporation of corporatised AGL to the *Corporations Act 2001* of the Commonwealth as a public company limited by shares.

- (8) **Effect of invalidity order on conversion orders or compliance certificates** If the Supreme Court makes an invalidity order in relation to an applicable resolution—
- (a) in the case of a conversion resolution or purported conversion resolution—the Minister cannot make a conversion order in relation to the resolution, and
  - (b) in the case of a registration resolution or purported registration resolution—the Minister cannot issue a compliance certificate in relation to the resolution.
- (9) **Rules of court may be made** Rules of court (not inconsistent with this Act or the regulations) may be made under the *Supreme Court Act 1970* for the purposes of this section. This subsection does not limit the rule-making powers conferred by the *Supreme Court Act 1970*.

(10) **Meaning of procedural irregularity** In this section, a reference to a procedural irregularity includes a reference to—

- (a) any defect, irregularity or deficiency of notice or time, and
- (b) any miscalculation of voting entitlements.

## **Part 4 Conversion of AGL into body corporate**

### **Division 1 Constitution of AGL as a body corporate**

#### **12 AGL constituted as body corporate on conversion day**

- (1) On the conversion day, AGL is constituted as a body corporate by this Act with the corporate name of “The Australian Gas Light Company”.
- (2) The body corporate constituted by this Act is a company limited by shares.

**Note—**

This Part makes provision in relation to the corporate structure of corporatised AGL and its assets, rights and liabilities. It also applies certain provisions of the Corporations legislation to corporatised AGL as if it were a public company limited by shares.

#### **13 Order specifying conversion day**

- (1) The Minister may, by order published in the Gazette, specify a day on which AGL is to be constituted as a body corporate under this Act (the **conversion day**).

**Editorial note—**

Day AGL specified to be constituted as a body corporate: 11.10.2002. See order published in Gazette No 163 of 4.10.2002, p 8622.

- (2) The Minister may make an order under this section on the application of AGL only if the Minister is satisfied that—
  - (a) a conversion resolution has been passed by the proprietors of AGL in accordance with the provisions of this Act, and
  - (b) the period specified in section 11 for the making of an application for an invalidity order in respect of the resolution has expired, and
  - (c) an invalidity order has not been made by the Supreme Court under section 11 in respect of the resolution.
- (3) The day specified in an order under this section must be no earlier than the day on which the order is published in the Gazette.
- (4) An order under this section cannot be challenged, reviewed or called into question in proceedings before any court or tribunal.



- (5) An order under this section is conclusive evidence in any proceedings before a court or tribunal that all the requirements of this Act have been complied with concerning the conversion of AGL into a body corporate.
- (6) The Minister cannot make an order under this section in relation to a conversion resolution if the Minister is enjoined from doing so by the Supreme Court under section 11 (6).

**Note—**

Section 11 (7) provides that the Minister may make a conversion order in relation to a conversion resolution even if it is the subject of an application for an invalidity order, unless the Minister is enjoined from doing so under section 11 (6).

## **Division 2 Provisions consequent on conversion of AGL into body corporate**

### **Subdivision 1 General**

#### **14 Corporatised AGL is continuation of AGL**

- (1) Subject to the provisions of this Part and to the fullest extent possible, corporatised AGL is taken for all purposes, including the rules of private international law, to be a continuation of the same company, and the same legal entity, as AGL.
- (2) Without limiting subsection (1), the conversion of AGL into a body corporate by this Act does not constitute a dissolution or termination of AGL. Accordingly, AGL is not required to wind up its affairs or pay its liabilities and distribute its assets as a result of the operation of this Act.

#### **15 (Repealed)**

### **Subdivision 2 Specific transitional matters**

#### **16 Assets, rights and liabilities of AGL taken to be assets, rights and liabilities of corporatised AGL**

- (1) The provisions of Schedule 3 apply to AGL's assets, rights and liabilities on and from the conversion day.

**Note—**

Schedule 3 makes provision for AGL's assets, rights and liabilities to become the assets, rights and liabilities of corporatised AGL.

- (2) In this section—

***AGL's assets, rights and liabilities*** means—

- (a) the assets of AGL—

- (i) vested in the Secretary of AGL on behalf of AGL (whether under the AGL legislation or otherwise), or
- (ii) purportedly vested in the name of AGL instead of the Secretary of AGL, immediately before the conversion day, and
- (b) any right or liability of AGL, and
- (c) any right or liability enforceable by or against the Secretary of AGL under the AGL legislation or otherwise in his or her capacity as Secretary of AGL.

**Note—**

The AGL legislation provides for the real and personal property of AGL to be vested in the Secretary of AGL.

**17 Preserved resolutions of AGL to continue to have effect after conversion day**

- (1) Any preserved resolution continues to have effect on and after the conversion day as if it were a resolution of the members of corporatised AGL passed on the conversion day in relation to corporatised AGL, with such modifications as are necessary or that are prescribed by the regulations.
- (2) A regulation referred to in subsection (1) may be made before, on or after the conversion day.
- (3) If a regulation referred to in paragraph (j) of the definition of **preserved resolution** in section 5 (1) is made after the conversion day but before the registration day in relation to a resolution of the proprietors of AGL, subsection (1) is taken to have applied to that resolution on and from the conversion day.
- (4) If a regulation modifying a preserved resolution referred to in subsection (1) is made after the conversion day but before the registration day, subsection (1) is taken to have applied to that resolution in its modified form on and from the conversion day.
- (5) A preserved resolution has no effect to the extent to which it is inconsistent with this Act or any provision of the constitution of corporatised AGL.
- (6) A preserved resolution may be varied or revoked by resolution of the members of corporatised AGL, subject to any applicable provisions of any law or the constitution of corporatised AGL.

**18 Share capital and shareholdings in corporatised AGL**

- (1) On the conversion day—
  - (a) subject to Schedule 4, the amount of share capital of corporatised AGL is taken to be the same as the total issued share capital of AGL immediately before the conversion day and the share capital is taken to be comprised of the same number

of shares as AGL had on issue immediately before the conversion day, and

- (b) a person who, immediately before the conversion day, was a proprietor of AGL is taken to be a member of corporatised AGL, and
- (c) each person who, immediately before the conversion day, held shares in AGL under the constitution of AGL is taken to hold the same number of ordinary shares in corporatised AGL as the person held in AGL and is taken to have acquired them at the same time as the person acquired the shares in AGL, and
- (d) any amount on any of the shares of AGL that was unpaid immediately before the conversion day is taken to be an amount that is unpaid on the corresponding shares in corporatised AGL, and
- (e) the provisions of Schedule 4 have effect in relation to shares in AGL that had a par value immediately before the conversion day.

- (2) This section has effect subject to the provisions of the constitution of corporatised AGL and Division 3.

#### **19 Officers and employees of AGL taken to be officers and employees of corporatised AGL**

- (1) Any person who, immediately before the conversion day, was an officer of AGL is taken on and after that day—
  - (a) to hold the same, or the corresponding, office in corporatised AGL, and
  - (b) to hold that office on the same terms and conditions as the office the person held in AGL immediately before that day.
- (2) Any person who, immediately before the conversion day, was an employee of AGL is taken on or after that day to be an employee of corporatised AGL on the same terms and conditions as under the person's contract of employment with AGL immediately before that day.
- (3) The terms and conditions of employment of any employee referred to in subsection (2) may, after the conversion day, be changed in the same way as they could have been before the conversion day.
- (4) The service with AGL of an employee referred to in subsection (2) is taken to be service with corporatised AGL for all purposes and the employee's accrued entitlements with AGL are taken to be accrued entitlements with corporatised AGL.
- (5) An employee referred to in subsection (2) is not entitled to payment (including, without limitation, any payment in lieu of leave or any damages or other compensation, whether under legislation, contract or otherwise) arising out of, or resulting from, the operation of this Act.

- (6) Nothing in this section affects the continued application of any industrial instrument under the *Industrial Relations Act 1996* to the employment of an employee referred to in subsection (2).

## **20 Contracts and arrangements with AGL**

- (1) On and after the conversion day, corporatised AGL is entitled to the benefit and subject to the burden of, and taken to be a party to, any contract or arrangement entered into by AGL (or by a person on behalf of AGL) with any person and having force immediately before the conversion day.
- (2) Nothing in this section limits the operation of section 19.

## **21 Construction of references to AGL and AGL legislation**

- (1) On and after the conversion day, a reference in any instrument (other than the *Gas Industry Restructuring Act 1986*) to—
- (a) AGL, or
  - (b) the Secretary of AGL (but only when acting on behalf of AGL),
- is to be read as including a reference to corporatised AGL.
- (2) A reference in any instrument (other than an Act or an instrument made under an Act) to any AGL legislation is to be read on and after the conversion day as including a reference to this Act.
- (3) Nothing in this section limits the operation of clause 2 (1) (f) of Schedule 3.

## **22 Accounts of corporatised AGL**

- (1) Subject to section 18 (1) (e) and Schedule 4, the financial position of corporatised AGL on the conversion day is taken to be the same as the financial position of AGL immediately before the conversion day.
- (2) In particular, the following provisions must be applied when preparing or auditing any financial report (including any financial statement) of corporatised AGL on or after the conversion day or any economic entity of which corporatised AGL is the parent entity—
- (a) corporatised AGL is to be treated on and after the conversion day as being the same entity as AGL immediately before the conversion day,
  - (b) the opening balances in the financial reports of corporatised AGL on the conversion day (if any such reports are prepared) are to be treated as being the same as the closing balances in the financial reports of AGL immediately before the conversion day,

- (c) corporatised AGL is to be treated as being the parent entity of each economic entity of which AGL is the parent entity immediately before the conversion day, and the existence of that economic entity is to be treated as being continuous from immediately before the conversion day,
  - (d) the opening balances in the financial reports of each economic entity of which corporatised AGL is the parent entity on the conversion day (if any such reports are prepared) are to be treated as being the same as the closing balances in the financial reports of that entity immediately before the conversion day.
- (3) The provisions of subsections (1) and (2) are declared to be Corporations legislation displacement provisions for the purposes of section 5G of the *Corporations Act 2001* of the Commonwealth in relation to the provisions of Chapter 2M of that Act.

**Note—**

Section 5G of the *Corporations Act 2001* of the Commonwealth provides that if a State law declares a provision of a State law to be a Corporations legislation displacement provision, any provision of the Corporations legislation with which the State provision would otherwise be inconsistent does not apply to the extent necessary to avoid the inconsistency.

- (4) In this section, the expressions **economic entity**, **entity** and **parent entity** have the same meanings as they have in Accounting Standard AASB 1024: *Consolidated Accounts* made by the Australian Accounting Standards Board (as in force from time to time).

### **23 Auditor of AGL**

The auditor of AGL immediately before the conversion day is taken to be the auditor of corporatised AGL on the conversion day.

### **24 Effect on proceedings**

Nothing in this Part renders defective any legal proceedings by or against AGL or its proprietors (whether or not those proceedings are commenced using the name of the Secretary of AGL).

### **25 Subdivision does not limit section 14**

Nothing in this Subdivision limits the generality of section 14.

## **Division 3 Application of Corporations legislation to corporatised AGL**

### **26 Application of Corporations legislation concerning companies to corporatised AGL**

- (1) **Application of section** This section applies certain provisions of the Corporations legislation relating to companies to corporatised AGL as a matter of State law. These provisions will not extend to corporatised AGL as a law of the Commonwealth until corporatised AGL is registered as a company under the *Corporations Act 2001* of the Commonwealth.

- (2) **Application of non-applicable provisions of Corporations legislation** Subject to this Act, corporatised AGL is declared to be an applied Corporations legislation matter for the purposes of Part 3 of the *Corporations (Ancillary Provisions) Act 2001* in relation to the non-applicable Commonwealth provisions, subject to the following modifications—
- (a) the non-applicable Commonwealth provisions apply to corporatised AGL as if it were a public company limited by shares,
  - (b) the constitution of corporatised AGL on the conversion day is the constitution approved by the conversion resolution,
  - (c) the members, share capital and shareholders of corporatised AGL on the conversion day are as provided by section 18 and Schedule 4,
  - (d) the auditor of corporatised AGL referred to in section 23 is taken to have been duly appointed at a general meeting of the members of corporatised AGL as its auditor on the conversion day for the purposes of section 327 of the *Corporations Act 2001* of the Commonwealth,
  - (e) the financial position and financial reports of corporatised AGL on the conversion day are taken to be as specified in section 22,
  - (f) a benefit given to a person holding a board or managerial office in corporatised AGL on or after the conversion day in accordance with the terms of a preserved resolution is taken to be a benefit that has been approved under section 200E of the *Corporations Act 2001* of the Commonwealth for the purposes of Division 2 of Part 2D.2 of that Act,
  - (g) any remuneration that is paid to a director of corporatised AGL on or after the conversion day in accordance with the terms of a preserved resolution is taken to have been determined by resolution of corporatised AGL for the purposes of section 202A of the *Corporations Act 2001* of the Commonwealth (or any provision of the constitution of corporatised AGL dealing with the remuneration of directors),
  - (h) any financial assistance to acquire shares in corporatised AGL that is given by corporatised AGL on or after the conversion day in accordance with the terms of a preserved resolution is taken to be assistance that has been approved under section 260B of the *Corporations Act 2001* of the Commonwealth,
  - (i) without limiting paragraph (h)—an employee share scheme approved by a preserved resolution is taken to be a scheme that has been duly approved for the purposes of section 260C (4) of the *Corporations Act 2001* of the Commonwealth,
  - (j) 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,
  - (k) the non-applicable Commonwealth provisions have effect subject to the provisions

of the *Gas Industry Restructuring Act 1986* relating to corporatised AGL,

- (l) 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.

- (3) **Conferral of functions on ASIC** The regulations may provide for ASIC to exercise a function under any provision of the Corporations legislation that is the subject of the declaration under subsection (2), but only if—
- (a) ASIC 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) ASIC is authorised to exercise that function under section 11 of the *Australian Securities and Investments Commission Act 2001* of the Commonwealth.
- (4) **Effect of regulation under subsection (3)** Section 17 of the *Corporations (Ancillary Provisions) Act 2001* has effect in relation to a regulation under subsection (3) as if subsection (2) had expressly made provision for ASIC to exercise the functions concerned.
- (5) **When section ceases to apply** Subsections (1)–(4) cease to apply to corporatised AGL on the registration day. However, nothing in this subsection affects the previous operation of this section in relation to corporatised AGL.
- (6) **Definitions** In this section—

**benefit** means a benefit for the purposes of Division 2 of Part 2D.2 of the *Corporations Act 2001* of the Commonwealth.

**financial assistance** means financial assistance for the purposes of Part 2J.3 of the *Corporations Act 2001* of the Commonwealth.

**non-applicable Commonwealth provisions** means provisions of the Corporations legislation that would apply to corporatised AGL or any other matter as a law of the Commonwealth if corporatised AGL were registered as a public company limited by

shares under the *Corporations Act 2001* of the Commonwealth.

## **27 Application of certain ASX Listing Rules to corporatised AGL**

- (1) Corporatised AGL is authorised to (and may) issue or agree to issue shares in corporatised AGL despite anything to the contrary in ASX Listing Rule 7.1 if, assuming the following, the issue or agreement would not have contravened that Rule on the day it occurred—
  - (a) the members of corporatised AGL passed all of the preserved resolutions that were still in force by operation of section 17 at the time of the issue or agreement,
  - (b) the date on which each such preserved resolution was passed by the members of corporatised AGL was the date on which each resolution was originally passed by the proprietors of AGL,
  - (c) without limiting section 14, corporatised AGL was the same company of proprietors as AGL.
- (2) Corporatised AGL is authorised to pay remuneration payable to non-executive directors of corporatised AGL and its wholly owned subsidiaries in accordance with any preserved resolution despite anything to the contrary in ASX Listing Rule 10.17 if, assuming the following, the payment would not have contravened that Rule on the day it occurred—
  - (a) the members of corporatised AGL passed the resolution on the date on which the resolution was originally passed by the proprietors of AGL,
  - (b) without limiting section 14, corporatised AGL was the same company of proprietors as AGL.
- (3) The provisions of subsections (1) and (2) are declared to be Corporations legislation displacement provisions for the purposes of section 5G of the *Corporations Act 2001* of the Commonwealth in relation to the provisions of sections 793B and 793C of the *Corporations Act 2001* of the Commonwealth.

### **Note—**

Section 5G of the *Corporations Act 2001* of the Commonwealth provides that if a State law declares a provision of a State law to be a Corporations legislation displacement provision, any provision of the Corporations legislation with which the State provision would otherwise be inconsistent does not apply to the extent necessary to avoid the inconsistency.

- (4) Subsections (1)–(3) cease to apply to corporatised AGL on the registration day. However, nothing in this subsection affects the previous operation of this section in relation to corporatised AGL.

## **28 Corporatised AGL authorised to issue public documents and negotiable instruments**



**with AGL's existing ARBN**

- (1) Corporatised AGL is authorised to publish or sign in any place any public document or negotiable instrument even if the document or instrument does not comply with section 601DE (1) (b) of the *Corporations Act 2001* of the Commonwealth if—
  - (a) the expression “Australian Registered Body Number” or “ARBN” followed by AGL’s existing ARBN is set out instead of the information specified by section 601DE (1) (b), and
  - (b) the other provisions of section 601DE are complied with.
- (2) Subsection (1) is declared to be a Corporations legislation displacement provision for the purposes of section 5G of the *Corporations Act 2001* of the Commonwealth in relation to the provisions of section 601DE of that Act.

**Note—**

Section 5G (4) of the *Corporations Act 2001* of the Commonwealth provides that a provision of the Corporations legislation does not—

- (a) prohibit the doing of an act, or
- (b) impose a liability (whether civil or criminal) for doing an act,

if a provision of a law of a State or Territory specifically authorises or requires the doing of that act.

However, section 5G (3) of that Act provides that section 5G will only apply to a provision of a law of a State or Territory enacted after the commencement of that Act if a law of the State or Territory declares the provision to be a Corporations legislation displacement provision for the purposes of that section.

- (3) Subsections (1) and (2) cease to apply to corporatised AGL on the registration day. However, nothing in this subsection affects the previous operation of this section in relation to corporatised AGL.
- (4) In this section, **AGL's existing ARBN** means the ARBN of AGL immediately before the conversion day.

**29 (Repealed)**

**30 Changes to corporate structure of corporatised AGL permitted**

Nothing in this Part prevents corporatised AGL on or after the conversion day from—

- (a) altering or replacing its constitution, or
- (b) changing its corporate name, or
- (c) appointing or removing an auditor, or
- (d) altering its share capital, or
- (e) removing or appointing officers, or

- (f) dismissing or employing employees, or
- (g) otherwise altering its corporate structure,

in accordance with the provisions of the Corporations legislation applicable to it by virtue of this Division or otherwise.

## **Part 5 Registration of corporatised AGL as a public company**

### **Division 1 Authorisation to transfer incorporation**

#### **31 Corporatised AGL may apply to be registered as a public company under [Corporations Act 2001](#)**

- (1) Corporatised AGL may apply to ASIC for corporatised AGL to be registered under Part 5B.1 of the [Corporations Act 2001](#) of the Commonwealth as a public company limited by shares, but only if a compliance certificate is issued by the Minister.
- (2) AGL may make an application for the purposes of subsection (1) if the registration resolution in respect of which the compliance certificate is issued was passed by the proprietors of AGL rather than the members of corporatised AGL. In that event, corporatised AGL is taken to have made the application on the conversion date.
- (3) An application under subsection (1) must be made—
  - (a) subject to subsection (4), in accordance with the provisions of section 601BC of the [Corporations Act 2001](#) of the Commonwealth, and
  - (b) within the prescribed period applicable to the registration resolution.
- (4) Corporatised AGL is authorised to make an application under subsection (1) without stating the information specified in section 601BC (2) (e), (l) or (m) of the [Corporations Act 2001](#) of the Commonwealth.
- (5) Subsection (4) is declared to be a Corporations legislation displacement provision for the purposes of section 5G of the [Corporations Act 2001](#) of the Commonwealth in relation to the provisions of section 601BC of that Act.

**Note—**

Section 5G (4) of the [Corporations Act 2001](#) of the Commonwealth provides that a provision of the Corporations legislation does not—

- (a) prohibit the doing of an act, or
- (b) impose a liability (whether civil or criminal) for doing an act,

if a provision of a law of a State or Territory specifically authorises or requires the doing of that act.

However, section 5G (3) of that Act provides that section 5G will only apply to a provision of a law of a State or Territory enacted after the commencement of that Act if a law of the State or Territory declares the provision to be a Corporations legislation displacement provision for the purposes of that section.

- (6) For the purposes of section 601BC (8) (d) of the *Corporations Act 2001* of the Commonwealth, corporatised AGL is authorised by this Act to transfer its incorporation in accordance with this Act.
- (7) In this section—
- prescribed period**, in relation to a registration resolution, means—
- (a) if the resolution was passed before the date of assent to this Act (and except as provided by paragraph (c))—the period of 12 months commencing on the date of assent to this Act (or such other period as may be prescribed by the regulations, whether before or after the 12 month period expires), or
  - (b) if the resolution is passed on or after the date of assent to this Act (and except as provided by paragraph (c))—the period of 12 months (or such other period as may be prescribed by the regulations, whether before or after the resolution is passed or before or after the 12 month period expires) commencing on the day on which the resolution is passed, or
  - (c) if an application for an invalidity order under section 11 is duly made but is refused or withdrawn after the end of the period referred to in paragraph (a) or (b) that is applicable to the resolution—the period of one month commencing on the date on which the application is finally determined or withdrawn (as the case may be).

## Division 2 Compliance certificate

### 32 Minister may issue compliance certificate

- (1) The Minister may issue a compliance certificate to AGL or corporatised AGL that certifies that the provisions of this Act have been complied with concerning the transfer of the incorporation of corporatised AGL to the *Corporations Act 2001* of the Commonwealth if the Minister is satisfied that—
  - (a) a registration resolution has been passed, and
  - (b) the period specified in section 11 for the making of an application for an invalidity order in respect of the resolution has expired, and
  - (c) an invalidity order has not been made by the Supreme Court under section 11 in respect of the resolution.
- (2) The Minister is to provide ASIC with a copy of the compliance certificate issued under this section as soon as practicable after it is issued to AGL or corporatised AGL. However, a failure to provide such a copy does not affect the validity of the certificate.
- (3) A compliance certificate issued under this section cannot be challenged, reviewed or called into question in proceedings before any court or tribunal.

- (4) A compliance certificate issued under this section is conclusive evidence in any proceedings before a court or tribunal that all the requirements of this Act have been complied with concerning the transfer of the incorporation of corporatised AGL to the *Corporations Act 2001* of the Commonwealth as a public company limited by shares.
- (5) The Minister cannot issue a certificate under this section in relation to a registration resolution if the Minister is enjoined from doing so by the Supreme Court under section 11 (6).

**Note—**

Section 11 (7) provides that the Minister may issue a compliance certificate in relation to a registration resolution even if it is the subject of an application for an invalidity order, unless the Minister is enjoined from doing so under section 11 (6).

## **Division 3 Provisions consequent on transfer of incorporation of corporatised AGL**

### **33 Registered AGL is continuation of corporatised AGL**

- (1) Section 601BM of the *Corporations Act 2001* of the Commonwealth makes provision for the legal consequences of the registration of a body corporate as a company under Part 5B.1 of that Act.

**Note—**

Section 601BM of the *Corporations Act 2001* of the Commonwealth provides that the registration of a body as a company under Part 5B.1 of that Act does not—

- (a) create a new legal entity, or
  - (b) affect the body's existing property, rights or obligations (except as against the members of the body in their capacity as members), or
  - (c) render defective any legal proceedings by or against the body or its members.
- (2) A reference in any instrument to corporatised AGL (including a reference to corporatised AGL arising from the operation of section 21) is to be read on and after the registration day as including a reference to registered AGL.

### **34 Part 4 of *Gas Industry Restructuring Act 1986* ceases to have effect on registration day**

- (1) The provisions of Part 4 (other than section 56A) of the *Gas Industry Restructuring Act 1986* cease to apply on the registration day in relation to matters arising on or after that day.
- (2) Section 30 of the *Interpretation Act 1987* is taken to apply to subsection (1) in the same way as it would have applied to subsection (1) if it had repealed the provisions of Part 4 of the *Gas Industry Restructuring Act 1986*.

**Note—**

Section 30 of the *Interpretation Act 1987* provides that the repeal of an Act or statutory rule does not,

among other things, affect the previous operation of the Act or statutory rule or anything duly suffered, done or commenced under the Act or statutory rule or affect any right, privilege, obligation or liability acquired, accrued or incurred under the Act or statutory rule.

- (3) Without limiting subsection (2), nothing in subsection (1) prevents the continued application to matters arising before the registration day of any provisions of Part 4 of the *Gas Industry Restructuring Act 1986* relating to compliance or enforcement.
- (4) The Governor may, by proclamation published on the NSW legislation website, repeal Part 4 of the *Gas Industry Restructuring Act 1986* on or after the registration day.

### **35 Registered AGL is authorised to use existing name**

- (1) Registered AGL is authorised to use the name “The Australian Gas Light Company” as its corporate name without the word “Limited” being included in that name.
- (2) Nothing in subsection (1) prevents registered AGL from changing its name in accordance with the provisions of the *Corporations Act 2001* of the Commonwealth to include the word “Limited” in its name.
- (3) Subsection (1) has effect for only so long as registered AGL retains the name “The Australian Gas Light Company”.
- (4) Subsection (1) is declared to be a Corporations legislation displacement provision for the purposes of section 5G of the *Corporations Act 2001* of the Commonwealth in relation to the provisions of Part 2B.6 of that Act.

#### **Note—**

Section 5G (6) of the *Corporations Act 2001* of the Commonwealth provides that the provisions of Part 2B.6 and Part 5B.3 of that Act (which relate to the use of names) do not—

- (a) prohibit a company or other body from using a name if the use of the name is expressly provided for, or authorised by, a provision of a law of a State or Territory, or
- (b) require a company or other body to use a word as part of its name if the company or body is expressly authorised not to use that word by a provision of a law of a State or Territory.

However, section 5G (3) of that Act provides that section 5G will only apply to a provision of a law of a State or Territory enacted after the commencement of that Act if a law of the State or Territory declares the provision to be a Corporations legislation displacement provision for the purposes of that section.

### **36 Registered AGL authorised to issue public documents and negotiable instruments with AGL's existing ARBN**

- (1) Registered AGL is authorised to publish or sign in any place any public document or negotiable instrument even if the document or instrument does not comply with section 153 (2) of the *Corporations Act 2001* of the Commonwealth if—
  - (a) the expression “Australian Registered Body Number” or “ARBN” followed by AGL’s existing ARBN is set out instead of the expression “Australian Company Number”

followed by its ACN as specified by section 153 (2) of the *Corporations Act 2001* of the Commonwealth and the other provisions of section 153 are complied with, or

(b) AGL's existing ARBN is set out instead of its ACN as specified by section 153 (2) of the *Corporations Act 2001* of the Commonwealth and the other provisions of section 153 are complied with.

(2) Without limiting subsection (1), registered AGL is authorised to set out AGL's existing ARBN instead of its ACN in its annual returns under section 348 of the *Corporations Act 2001* of the Commonwealth.

(3) Subsections (1) and (2) are declared to be Corporations legislation displacement provisions for the purposes of section 5G of the *Corporations Act 2001* of the Commonwealth in relation to—

(a) in the case of subsection (1)—the provisions of section 153 (2) of that Act, and

(b) in the case of subsection (2)—the provisions of section 348 of that Act.

**Note—**

Section 5G (4) of the *Corporations Act 2001* of the Commonwealth provides that a provision of the Corporations legislation does not—

(a) prohibit the doing of an act, or

(b) impose a liability (whether civil or criminal) for doing an act,

if a provision of a law of a State or Territory specifically authorises or requires the doing of that act.

However, section 5G (3) of that Act provides that section 5G will only apply to a provision of a law of a State or Territory enacted after the commencement of that Act if a law of the State or Territory declares the provision to be a Corporations legislation displacement provision for the purposes of that section.

(4) Subsection (1) (a) and, to the extent that it relates to that paragraph, subsection (3) cease to have effect on the expiry of the period of 2 years commencing on the registration day. However, nothing in this subsection affects the previous operation of this section.

(5) In this section, **AGL's existing ARBN** means the ARBN of AGL immediately before the conversion day.

### **37 Certain preserved resolutions continue in effect after registration day**

(1) Any preserved resolution (other than a preserved resolution that is revoked by the members of corporatised AGL before the registration day) that continues in force under section 17 immediately before the registration day continues to have effect on and after the registration day as if it were a resolution of the members of registered AGL passed on the registration day in relation to registered AGL, with such modifications as are necessary or that are prescribed by the regulations.

- (2) A regulation referred to in subsection (1) may be made before, on or after the registration day.
- (3) If a regulation referred to in paragraph (j) of the definition of **preserved resolution** in section 5 (1) is made after the registration day in relation to a resolution of the proprietors of AGL, subsection (1) is taken to have applied to that resolution on and from the registration day.
- (4) If a regulation modifying a preserved resolution referred to in subsection (1) is made after the registration day, subsection (1) is taken to have applied to that resolution in its modified form on and from the registration day.
- (5) A preserved resolution to which subsection (1) applies may be varied or revoked by resolution of the members of registered AGL, subject to any applicable provisions of any law or the constitution of registered AGL.
- (6) Subsection (1) ceases to apply to any preserved resolution that is revoked on or after the registration day.

**38 Certain benefits and financial assistance given by registered AGL under a preserved resolution authorised**

- (1) Registered AGL is authorised on and after the registration day to give a person holding a board or managerial office in relation to registered AGL a benefit in accordance with the terms of any preserved resolution to which section 37 (1) applies.
- (2) Registered AGL is authorised to pay remuneration to a director of registered AGL on or after the registration day in accordance with the terms of any preserved resolution to which section 37 (1) applies.
- (3) Registered AGL is authorised to give financial assistance to a person to acquire shares in registered AGL on or after the registration day in accordance with the terms of any preserved resolution to which section 37 (1) applies (including any assistance given in accordance with the terms of any employee share scheme approved by any such resolution).
- (4) Subsections (1), (2) and (3) are declared to be Corporations legislation displacement provisions for the purposes of section 5G of the *Corporations Act 2001* of the Commonwealth in relation to—
  - (a) in the case of subsection (1)—the provisions of Part 2D.2 of that Act, and
  - (b) in the case of subsection (2)—the provisions of Part 2D.3 of that Act, and
  - (c) in the case of subsection (3)—the provisions of Part 2J.3 of that Act.

**Note—**

Section 5G (4) of the *Corporations Act 2001* of the Commonwealth provides that a provision of the

Corporations legislation does not—

- (a) prohibit the doing of an act, or
- (b) impose a liability (whether civil or criminal) for doing an act,

if a provision of a law of a State or Territory specifically authorises or requires the doing of that act.

However, section 5G (3) of that Act provides that section 5G will only apply to a provision of a law of a State or Territory enacted after the commencement of that Act if a law of the State or Territory declares the provision to be a Corporations legislation displacement provision for the purposes of that section.

(5) In this section—

**benefit** means a benefit for the purposes of Division 2 of Part 2D.2 of the *Corporations Act 2001* of the Commonwealth.

**financial assistance** means financial assistance for the purposes of Part 2J.3 of the *Corporations Act 2001* of the Commonwealth.

### 39 Application of certain ASX Listing Rules to registered AGL

- (1) Registered AGL is authorised to (and may) issue or agree to issue shares in registered AGL despite anything to the contrary in ASX Listing Rule 7.1 if, assuming the following, the issue or agreement would not have contravened that Rule on the day it occurred—
  - (a) the members of registered AGL passed all of the preserved resolutions to which section 37 (1) applies that were still in force at the time of the issue or agreement,
  - (b) the date on which each such preserved resolution was passed by the members of registered AGL was the date on which each resolution was originally passed by the proprietors of AGL,
  - (c) without limiting sections 14 and 33, registered AGL was the same company of proprietors as AGL.
- (2) Registered AGL is authorised to pay remuneration payable to non-executive directors of registered AGL and its wholly owned subsidiaries in accordance with any preserved resolution to which section 37 (1) applies despite anything to the contrary in ASX Listing Rule 10.17 if, assuming the following, the payment would not have contravened that Rule on the day it occurred—
  - (a) the members of registered AGL passed the resolution on the date on which the resolution was originally passed by the proprietors of AGL,
  - (b) without limiting sections 14 and 33, registered AGL was the same company of proprietors as AGL.
- (3) The provisions of subsections (1) and (2) are declared to be Corporations legislation displacement provisions for the purposes of section 5G of the *Corporations Act 2001* of the Commonwealth in relation to the provisions of sections 793B and 793C of the



*Corporations Act 2001* of the Commonwealth.

**Note—**

Section 5G of the *Corporations Act 2001* of the Commonwealth provides that if a State law declares a provision of a State law to be a Corporations legislation displacement provision, any provision of the Corporations legislation with which the State provision would otherwise be inconsistent does not apply to the extent necessary to avoid the inconsistency.

**40 Auditor and accounts of registered AGL**

- (1) The auditor of corporatised AGL immediately before the registration day continues to be the auditor of registered AGL on the registration day.
- (2) Registered AGL is authorised to hold the first annual general meeting that occurs after the registration day without at that meeting appointing a person or persons, firm or firms, or a person or persons and a firm or firms, as auditor or auditors of the company.
- (3) The auditor of registered AGL referred to in subsection (1) is authorised to hold office until death or removal or resignation from office in accordance with section 329 of the *Corporations Act 2001* of the Commonwealth or until ceasing to be capable of acting as auditor by reason of section 324 (1) or (2) of that Act.
- (4) Subsections (2) and (3) are declared to be Corporations legislation displacement provisions for the purposes of section 5G of the *Corporations Act 2001* of the Commonwealth in relation to the provisions of section 327 of that Act.

**Note—**

Section 5G (4) of the *Corporations Act 2001* of the Commonwealth provides that a provision of the Corporations legislation does not—

- (a) prohibit the doing of an act, or
- (b) impose a liability (whether civil or criminal) for doing an act,

if a provision of a law of a State or Territory specifically authorises or requires the doing of that act.

However, section 5G (3) of that Act provides that section 5G will only apply to a provision of a law of a State or Territory enacted after the commencement of that Act if a law of the State or Territory declares the provision to be a Corporations legislation displacement provision for the purposes of that section.

- (5) Nothing in this Part affects the continued application of section 22 to the financial position and financial reports of corporatised AGL after it becomes registered AGL.

**41 Use of amount standing to credit of share premium reserve**

- (1) Registered AGL is authorised on and after the registration day to use an amount of share capital equal to the amount standing to the credit of AGL's share premium reserve immediately before the conversion day referred to in clause 6 of Schedule 4 in accordance with the provisions of that clause.

- (2) Subsection (1) is declared to be a Corporations legislation displacement provision for the purposes of section 5G of the *Corporations Act 2001* of the Commonwealth in relation to the provisions of sections 254K and 256D of the *Corporations Act 2001* of the Commonwealth.

**Note—**

Section 5G (4) of the *Corporations Act 2001* of the Commonwealth provides that a provision of the Corporations legislation does not—

- (a) prohibit the doing of an act, or
- (b) impose a liability (whether civil or criminal) for doing an act,

if a provision of a law of a State or Territory specifically authorises or requires the doing of that act.

However, section 5G (3) of that Act provides that section 5G will only apply to a provision of a law of a State or Territory enacted after the commencement of that Act if a law of the State or Territory declares the provision to be a Corporations legislation displacement provision for the purposes of that section.

## **42 Exclusion of Corporations legislation that applies to registered AGL as federal law**

- (1) **Application of section** This section enables the regulations to exclude the operation of provisions of the Corporations legislation that would otherwise apply to registered AGL (or a matter relating to registered AGL) as a law of the Commonwealth.
- (2) **Declarations under section 5F of *Corporations Act 2001*** The regulations may declare any matter relating to registered AGL (other than a declared matter) 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 that legislation, or
  - (c) that legislation other than a specified provision, or
  - (d) that legislation otherwise than to a specified extent.

**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, the provisions that are the subject of the declaration will not apply in relation to that matter in the State concerned.

- (3) **Declarations under section 5G of *Corporations Act 2001*** The regulations may declare any provision of this Act relating to registered AGL (other than a declared provision) to be a Corporations legislation displacement provision for the purposes of section 5G of the *Corporations Act 2001* of the Commonwealth (either generally or specifically in relation to a provision of the Corporations legislation).

**Note—**

Section 5G of the *Corporations Act 2001* of the Commonwealth provides that if a State law declares a provision of a State law to be a Corporations legislation displacement provision, any provision of the Corporations legislation with which the State provision would otherwise be inconsistent does not apply to the extent necessary to avoid the inconsistency.

(4) **Definitions** In this section—

**declared matter** means a matter that is declared to be an excluded matter for the purposes of section 5F of the *Corporations Act 2001* of the Commonwealth by another provision of this Act.

**declared provision** means a provision of this Act that is declared to be a Corporations legislation displacement provision for the purposes of section 5G of the *Corporations Act 2001* of the Commonwealth by another provision of this Act.

## Part 6 Miscellaneous

### 43 Regulations

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.

### 44 Effect of this Act on contracts, instruments and related matters

The operation of this Act (and, in particular, Schedule 3) is not to be regarded as—

- (a) a breach of contract or confidence or otherwise as a civil wrong, or
- (b) a breach of any instrument (including, without limitation, any provision prohibiting, restricting or regulating the assignment or transfer of assets or liabilities), or
- (c) an event of default under any contract or other instrument, or
- (d) giving rise to any remedy by a party to a contract or other instrument, or as causing or permitting the termination of, or exercise of rights under, any contract or other instrument.

### 45 Exemption from State tax

(1) In this section—

**exempt matter** means any of the following—

- (a) the conversion of AGL into a body corporate by operation of this Act,
- (b) the vesting in corporatised AGL on the conversion day of any assets by operation of this Act, including, without limitation, any instrument executed only for a purpose ancillary to or consequential on the operation of Schedule 3,
- (c) the conferring or imposition on corporatised AGL on the conversion day of any

rights or liabilities by operation of this Act, including, without limitation, any instrument executed only for a purpose ancillary to or consequential on the operation of Schedule 3,

- (d) the registration of corporatised AGL as a company under Part 5B.1 of the *Corporations Act 2001* of the Commonwealth,
- (e) such other matters in connection with this Act as may be prescribed by the regulations.

**State tax** means application or registration fees, stamp duty or any other tax, duty, fee or charge imposed by any Act or law of the State.

- (2) State tax is not payable in relation to—
  - (a) an exempt matter, or
  - (b) anything done because of, or for a purpose connected with or arising out of, an exempt matter.

#### **46 (Repealed)**

#### **47 Savings, transitional and other provisions**

Schedule 6 has effect.

### **Schedules 1, 2 (Repealed)**

## **Schedule 3 Existing assets, rights and liabilities to belong to corporatised AGL**

(Section 16 (1))

### **1 Application and interpretation**

This Schedule applies to AGL's assets, rights and liabilities (within the meaning of section 16).

### **2 Vesting etc of assets, rights and liabilities of AGL in corporatised AGL**

- (1) On and from the conversion day, the following provisions have effect (both in New South Wales and as provided by section 4 (5)) in relation to any assets, rights or liabilities to which this Schedule applies—
  - (a) the assets to which this Schedule applies vest in corporatised AGL by virtue of this clause—
    - (i) without the need for any further conveyance, transfer, assignment or assurance, and

- (ii) free of any estate or interest that any proprietor of AGL may have had in the assets immediately before the conversion day by reason of being a proprietor of AGL,
  - (b) the rights to which this Schedule applies become by virtue of this clause the rights of corporatised AGL and may be exercised without regard to any fetters on the exercise of those rights that were enforceable by the proprietors of AGL immediately before the conversion day by reason of being proprietors of AGL,
  - (c) the liabilities to which this Schedule applies become by virtue of this clause the liabilities of corporatised AGL,
  - (d) all proceedings pending immediately before the conversion day relating to the assets, rights or liabilities to which this Schedule applies by or against AGL or a predecessor of AGL are taken to be proceedings pending by or against corporatised AGL,
  - (e) any act, matter or thing done or omitted to be done in relation to the assets, rights or liabilities to which this Schedule applies before the conversion day by, to or in respect of AGL or a predecessor of AGL is (to the extent to which that act, matter or thing has any force or effect) taken to have been done or omitted to be done by, to or in respect of corporatised AGL,
  - (f) a reference in any instrument to AGL or the Secretary of AGL while acting on behalf of AGL is (to the extent to which it relates to those assets, rights or liabilities) to be read as including a reference to corporatised AGL.
- (2) No attornment to corporatised AGL by a lessee from AGL is required.
  - (3) No compensation is payable to any person or body in connection with the operation of this Schedule in respect of any asset, right or liability.

### **3 Confirmation of vesting**

- (1) The Minister may, by notice in writing, confirm that particular assets, rights or liabilities have become the assets, rights or liabilities of corporatised AGL by operation of this Schedule.
- (2) Such a notice is conclusive evidence of that fact.

### **4 Assets, rights and liabilities outside of New South Wales**

- (1) If any asset to which this Schedule applies—
  - (a) is vested in the former Secretary under the law of an external jurisdiction immediately before the conversion day, and
  - (b) does not, despite clause 2 (1) (a), become vested in corporatised AGL under the

law of that jurisdiction,

the former Secretary—

- (c) subject to paragraph (d), holds that asset, for the purposes of the law of New South Wales, in trust for the sole benefit of corporatised AGL until such time as the asset becomes vested in corporatised AGL under the law of the external jurisdiction or the trust is otherwise terminated, and
- (d) if it is possible for the former Secretary to vest the asset in corporatised AGL under the law of that external jurisdiction by effecting a conveyance, transfer, assignment or assurance and corporatised AGL directs it—must, in accordance with any such direction, effect any such conveyance, transfer, assignment or assurance.

**Note—**

For example, paragraph (d) enables corporatised AGL to direct that the legal title to an asset be transferred to it as the beneficial owner of the asset.

- (2) The trust created by subclause (1) (c) is to be treated, for all purposes, as if it was a bare trust declared by the former Secretary *inter vivos*.

**Note—**

The general law relating to the law of trusts applies to the trust created by subclause (1) (c).

- (3) Corporatised AGL is the person nominated by this Act for the purposes of appointing a new trustee under Division 1 of Part 2 of the [Trustee Act 1925](#) in respect of the trust created by subclause (1) (c).

**Note—**

The provisions of Division 1 of Part 2 of the [Trustee Act 1925](#) provide for the appointment and removal of trustees.

- (4) If any right to which this Schedule applies—

- (a) is exercisable by the former Secretary under the law of an external jurisdiction, and

- (b) does not, despite clause 2 (1) (b), become a right of corporatised AGL on or after the conversion day under the law of that jurisdiction,

the former Secretary (or any person entitled to exercise the right instead of the former Secretary) must exercise that right in accordance with any directions given by corporatised AGL from time to time.

- (5) If any liability to which this Schedule applies—

- (a) is a liability enforceable against the former Secretary of AGL under the law of an external jurisdiction, and

(b) does not, despite clause 2 (1) (c), become a liability of corporatised AGL on or after the conversion day under the law of that jurisdiction,

the former Secretary (or, if the former Secretary is deceased, the estate of the former Secretary) is entitled to be indemnified by corporatised AGL against the liability.

(6) In this clause—

**external jurisdiction** means any of the following—

- (a) a State (other than New South Wales),
- (b) a Territory,
- (c) the Commonwealth,
- (d) a jurisdiction outside of Australia.

**former Secretary** means the person who held office as Secretary of AGL immediately before the conversion day.

## Schedule 4 Provisions relating to par value shares on or after conversion day

(Sections 18 (1) (e), 26 (2) (c) and 41)

### 1 Interpretation

(1) In this Schedule—

**applied Corporations Act** means the provisions of the [Corporations Act 2001](#) of the Commonwealth that are applied to corporatised AGL by section 26 of this Act.

**converted share** means a share in the capital of AGL within the meaning of the constitution of AGL that, by operation of section 18 of this Act, is converted into a share in the capital of corporatised AGL.

**share premium reserve** means the Share Premium Reserve of AGL maintained under the constitution of AGL immediately before the conversion day.

(2) The provisions of this Schedule apply to corporatised AGL instead of the provisions of section 601BQ of the applied Corporations Act.

### 2 Corporatised AGL shares to have no par value

On and after the conversion day, section 254C of the applied Corporations Act applies to converted shares as well as to shares issued on or after that day.

**Note—**

Section 254C of the applied Corporations Act provides that the shares of a company have no par value.

### **3 Share capital—references to amount paid on shares issued before conversion day**

For the purposes of the operation of the applied Corporations Act on and after the conversion day in relation to a converted share—

- (a) the amount paid on the share is the sum of all amounts paid to AGL or corporatised AGL at any time for the share (but not including any premium), and
- (b) the amount unpaid on the share is the difference between the issue price of the share (but not including any premium) and the amount paid on the share (see paragraph (a)).

### **4 Share capital—calls on partly-paid shares**

The liability of an AGL shareholder or corporatised AGL shareholder for calls in respect of money unpaid on converted shares (whether on account of the par value of the shares or by way of premium) is not affected by the share ceasing to have a par value.

### **5 Share capital—transfer of money in share premium reserve into the share capital account**

On the conversion day, any amount standing to the credit of AGL's share premium reserve becomes part of corporatised AGL's share capital.

### **6 Share capital—use of amount standing to credit of share premium reserve**

Corporatised AGL may use any amount of share capital equal to the amount standing to the credit of AGL's share premium reserve immediately before the conversion day—

- (a) to provide for the premium payable on redemption of debentures or converted shares that are redeemable preference shares issued before the conversion day, or
- (b) to write off—
  - (i) the preliminary expenses of AGL incurred before the conversion day, or
  - (ii) expenses incurred, payments made, or discounts allowed, on or before the conversion day, in respect of any issue of shares in, or debentures of, AGL.

### **7 Share capital—references in pre-commencement contracts and other documents to par value**

(1) This clause applies for the purpose of interpreting and applying on or after the conversion day—

- (a) a contract entered into before that day, or
- (b) a trust deed or other document executed before that day.

(2) A reference to the par value of a share is taken to be a reference to—



- (a) if the share is a converted share—the par value of the share immediately before the conversion day, or
- (b) if the share is issued on or after the conversion day but AGL shares of the same class were on issue immediately before that day—the par value that the share would have had if it had been issued then, or
- (c) if the share is issued on or after the conversion day and AGL shares of the same class were not on issue immediately before that day—the par value determined by the directors.

A reference to share premium is taken to be a reference to any residual share capital in relation to the share.

- (3) A reference to a right to a return of capital on a share is taken to be a reference to a right to a return of capital of a value equal to the amount paid in respect of the share's par value.
- (4) A reference to the aggregate par value of AGL or corporatised AGL's issued share capital is taken to be a reference to the aggregate par value of AGL's share capital as it existed immediately before the conversion day and—
  - (a) increased to take account of the par value of any shares issued on or after that day, and
  - (b) reduced to take account of the par value of any shares cancelled on or after that day.

## **Schedule 5 (Repealed)**

## **Schedule 6 Savings, transitional and other provisions**

(Section 47)

### **1 Regulations**

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts—
  - this Act
- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision 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, 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.