

# City of Newcastle Gas and Coke Company's Incorporation Act 1866 (Private Act)

[1866-cng]



New South Wales

## Status Information

### Currency of version

Repealed version for 1 January 1985 to 10 October 2002 (accessed 18 July 2024 at 2:18)

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### Provisions in force

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

### Notes—

- **Repeal**

The Act was repealed by the [AGL Corporate Conversion Act 2002 No 16](#), sec 15 (2) (a) with effect from 11.10.2002 (the conversion day specified under sec 13 (1) of that Act).

### 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](#).

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# City of Newcastle Gas and Coke Company's Incorporation Act 1866 (Private Act)



New South Wales

An Act to Incorporate the City of Newcastle Gas and Coke Company (Limited).

## Preamble

**WHEREAS** a Joint Stock Company called “The City of Newcastle Gas and Coke Company (Limited)” has been lately established at Newcastle in the Colony of New South Wales under and subject to the rules regulations restrictions and provisions contained in a certain Deed of Settlement bearing date the eighteenth day of June in the year of our Lord one thousand eight hundred and sixty-six purporting to be the Deed of Settlement of the said Company And whereas by the said Deed of Settlement the several parties hereto have respectively and mutually covenanted and agreed that they whilst holding shares in the said Company should be and continue until dissolved under the provisions in that behalf therein contained a Joint Stock Company or partnership under the name and style of “The City of Newcastle Gas and Coke Company (Limited)” for the purpose of creating and establishing and exercising a business for the purpose of producing inflammable air or gas from coal oil tar pitch or other material and for lighting and supplying with gas all public and private places roads streets and buildings within the town of Newcastle and suburbs and also for manufacturing selling and disposing of all and every product refuse and residuum to be obtained from the material used by the said Company in such business and for the said purposes to purchase or lease lands offices and buildings and make erect sink lay place and fix such retorts gasometers meters receivers cisterns engines machines cuts drains sewers watercourses pipes reservoirs and buildings of such construction and in such manner as shall be deemed necessary and proper for the purpose of carrying the objects of the said Company into execution And whereas by the said Deed of Settlement it was further agreed that the capital of the said Company should consist of ten thousand pounds to be contributed in five thousand shares of two pounds each and of such further sum or sums to be raised by the creation allotment and sale of new shares of the like amount as therein provided And whereas by the said Deed of Settlement provision has been made for the payment of dividends and bonuses and for the disposal and application of the profits and also for the due management of the affairs of the said Company And whereas the said Company is desirous of being incorporated and it is expedient that it should be incorporated accordingly but subject to the provisions hereinafter contained:

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

## **1 Company incorporated**

Such and so many persons as have already become or may in the manner provided by and subject to the rules regulations and provisions contained in the Deed of Settlement become proprietors of shares of or in the capital for the time being of the said Company shall for the purposes aforesaid but subject nevertheless to the conditions restrictions regulations and provisions hereinafter contained be one body politic and corporate in name and in deed by the name of "The City of Newcastle Gas and Coke Company (Limited)" and by that name shall and may sue any person or persons body or bodies politic or corporate whether a member or members of the said corporation or not and may sue and be sued implead and be impleaded in all Courts whatsoever at Law or in Equity and may prefer lay or prosecute any indictment information and prosecution against any person or persons whomsoever for any stealing embezzlement fraud forgery crime or offence and in all indictments informations and prosecutions it shall be lawful to state the money and goods effects bills notes securities or other property of the said Company to be the money goods effects bills notes securities or other property of the said Corporation and to designate the said Company or co-partnership by its corporate name whenever for the purpose of any allegation of any intent to defraud or otherwise howsoever such designation shall be necessary and the said Corporation shall have perpetual succession with a common seal which may be altered varied and changed from time to time at the pleasure of the said Corporation.

### **1A Change of name of body politic and corporate**

- (1) As from the commencement of the *Newcastle Gas Company Limited Act 1971*:
  - (a) the name of the body politic and corporate incorporated by section one of this Act shall be the "Newcastle Gas Company Limited",
  - (b) a reference in any Act or other instrument (including the deed of settlement referred to in this Act) to The City of Newcastle Gas and Coke Company (Limited) shall be read and construed as a reference to the Newcastle Gas Company Limited.
- (2) Nothing contained in the *Newcastle Gas Company Limited Act 1971*, shall prejudice or affect in any way the continuity of the body politic and corporate incorporated by section one of this Act.
- (3) The alteration of name effected by subsection one of this section shall not:
  - (a) affect any property, powers, rights, authorities, duties, functions, liabilities or obligations of the body politic and corporate incorporated by section one of this Act, or

(b) render defective any legal or other proceedings instituted or to be instituted by or against that body politic and corporate,

and any legal or other proceedings may be continued or commenced by or against that body politic and corporate by the name of the Newcastle Gas Company Limited that might have been continued or commenced by or against that body politic and corporate by the name of The City of Newcastle Gas and Coke Company (Limited).

## **2 Deed of Settlement confirmed**

The several laws rules regulations clauses and agreements contained in the said Deed of Settlement or to be made under or by virtue or in pursuance thereof shall be deemed and considered to be and shall be the by-laws for the time being of the said Corporation save and except in so far as any of them are or shall be or may be altered varied or repealed by or are or shall be or may be inconsistent or incompatible with or repugnant to any of the provisions of this Act or of any of the Laws or Statutes now or hereafter to be in force in the said Colony but no rule or by-law shall on any account or pretence whatsoever be made by the said Corporation either under or by virtue of the said Deed of Settlement or of this Act in opposition to the general scope or true intent and meaning of this Act or of any of the Laws or Statutes in force in the said Colony.

## **3 Increase of capital**

It shall be lawful for the said Corporation from time to time to extend or increase its capital for the time being by the creation and disposal of new shares in the manner specified and set forth and subject to the rules regulations and provisions contained in the said Deed of Settlement.

## **4 Capital and shares to be personalty**

The capital or joint stock for the time being and all the funds and property of the said Corporation and the several shares therein and the profits and advantages to be derived therefrom shall be and be deemed to be personal estate and be transmissible accordingly subject to the regulations of the said Deed of Settlement.

## **5 Trusts or equitable interests affecting shares**

The Corporation shall not be bound in any manner by any trusts or equitable interests or demands affecting any shares of the capital standing in the name of any person as the ostensible proprietor thereof or be required to take any notice of such trusts or equitable interests or demands but the receipt of the person in whose name the shares shall stand in the books of the said Corporation shall notwithstanding such trusts or equitable interests or demands and notice thereof to the said Corporation be a good valid and conclusive discharge to the Corporation for or in respect of any dividend or for money payable by the said Corporation in respect of such shares and a transfer of the said shares in accordance with the regulations in that behalf contained in the said Deed of Settlement by the person in whose name such shares shall so stand shall notwithstanding as

aforesaid be binding and conclusive as far as may concern the said Corporation against all persons claiming by virtue of such trusts or equitable interests or demands Provided always that nothing herein contained shall be deemed or taken to interfere with or abridge the right and power of a Court of Equity to restrain the payment of any such dividend or other money payable thereafter by the Corporation in respect of any such shares or the transfer thereafter of any such shares or to direct the payment of such dividends or other money by the Corporation or the transfer of such shares by the person in whose name they may stand to such other person as such Court may think fit.

## **6 Power to hold lands**

It shall be lawful for the said Corporation any Statute or Law to the contrary notwithstanding to purchase take hold and enjoy to them and their successors for any estate term or interest all such houses offices buildings lands and hereditaments as may be necessary or proper for the purpose of managing and conducting and carrying on the affairs concerns and business of the said Corporation and to sell convey assign assure lease and otherwise dispose of or act in respect of such houses offices buildings lands and hereditaments as occasion may require for the purposes of the said Corporation.

## **7 Conveyance to the Corporation**

It shall be lawful for all persons who are or shall be otherwise competent so to do to grant sell alien convey demise assign and dispose of unto and to the use of the said Corporation and their successors for the purposes aforesaid or any of them any such houses offices lands hereditaments and other real estate whatsoever as aforesaid accordingly.

## **8 Dividend from the profits**

No dividend or bonus shall in any case be declared or paid out of the subscribers capital for the time being of the said Company or otherwise than out of the declared surplus capital net gains and profits of the business.

## **9 Actions or suits for calls**

In any action or suit to be brought by the said Corporation against any proprietor of any shares in the capital of the said Corporation to recover any sum of money due and payable to the said Corporation for or by reason of any call or the arrears thereof made by virtue of this Act or of the said Deed of Settlement it shall be sufficient for the Corporation to declare and allege that the defendant being the proprietor of such or so many shares in the capital of the said Corporation is indebted to the said Corporation in such sum of money (as the call in arrears shall amount to) for such call of such sum of money upon such share or so many shares belonging to the said defendant whereby an action hath accrued to the said Corporation without setting forth any special matter and on the trial of such action or suit it shall not be necessary to prove the appointment of Directors who made such call or any other matter except that the defendant at the time of making such call was a holder or proprietor of one or more share or shares in the capital of the said

Corporation and that such call or calls was or were in fact made and such notice thereof and of the time fixed for the payment thereof given as directed by the said Deed of Settlement and the said Corporation shall thereupon be entitled to recover what shall appear due upon each call with interest thereon.

#### **10 Share Register to be evidence of ownership**

The share register of the said Company shall at all times be prima facie evidence to shew who are the proprietors for the time being of the capital thereof and the number and amount of shares held by each proprietor

#### **11 Contracts etc under the Deed of Settlement before Act**

Nothing herein contained shall prejudice or be deemed to prejudice any call made or any compact or other act deed matter or thing entered into made or done by the said Company prior or under or by virtue of the said Deed of Settlement before this Act shall come into operation but the same call contract act deed matter or thing shall be as valid and effectual to all intents and purposes as if this Act had not been passed and may be enforced in like manner as if the said Company had been incorporated before the said call contract act deed matter or thing had been entered into and done.

#### **12 Liability of shareholders**

In the event of the assets of the said Company being insufficient to meet its engagements then and in that case the shareholders shall be responsible to the extent of twice the amount of their subscribed shares only (that is to say) for the amount subscribed and for a further additional amount equal thereto.

#### **13 Custody and use of corporate seal**

The Directors for the time being shall have the custody of the common seal of the said Corporation and the form thereof and all other matters relating thereto shall from time to time be determined by the Board of Directors in the same manner as is provided in and by the said Deed of Settlement for the determination of other matters by the Board of Directors and the Directors present at a Board of Directors of the said Corporation shall have power to use such common seal for the affairs and concerns of the said Corporation and under such seal to authorize and empower any person without such seal to execute any deeds and to do all or any such other matters and things as may be required to be executed and done on behalf of the said Corporation in conformity with the provisions of the said Deed of Settlement and of this Act but it shall not be necessary to use the said seal in respect of any of the ordinary business of the said Corporation or for the appointment of an attorney or solicitor for the prosecution of any action suit or proceeding.

#### **14 Retirement and election of Directors**

The Directors of the said Corporation appointed under the said Deed of Settlement shall



go out of office in the manner provided by the Deed of Settlement and vacancies in the Board of Directors shall be filled up at the times and in the manner provided by the said Deed of Settlement and shall otherwise be subject to the several provisions therein in that behalf contained.

#### **15 Power to borrow money on mortgage or debenture**

It shall and may be lawful for the Directors of the said Corporation in pursuance of a resolution to that effect to be passed at any special general meeting of the shareholders to be called for the purpose from time to time to borrow upon mortgage of the property of the said Corporation or upon debentures chargeable on such property issued under the hands of any two of the Directors named in such resolution any sum or sums of money not exceeding in the whole an amount equal to the paid up capital of the Company Provided always that the shareholders present at any such meeting either in person or by proxy specially given for the occasion shall hold shares representing not less than one-third of the paid up capital of the Company.

#### **15A Further powers relating to gas production etc**

Subject to the [Gas and Electricity Act 1935](#), the Corporation may, in addition to its other powers under this Act relating to the production and supply of gas, produce, supply, distribute or dispose of, at any place within the Hunter Valley of New South Wales or at any other place approved from time to time by the Minister, gas, including natural gas and liquefied petroleum gas as defined in section 2 of the [Liquefied Petroleum Gas Act 1961](#).

#### **16 Power to erect gasometers break up roads streets etc**

The said Corporation is hereby fully authorized and empowered by its servants contractors agents workmen and others from time to time to make erect sink lay place and fit such retorts gasometers meters receivers cisterns engines machines cuts drains sewers watercourses pipes reservoirs buildings and other works and devices of such construction and in such manner as the said Corporation shall think necessary or proper for the purpose of carrying out the operations of the said Corporation and also to break up the soil and pavement of any highway street road way lane passage or other public place or thoroughfare or of any road way thoroughfare or place dedicated to or used by the public as such or any part or parts thereof and to erect posts pillars lamps lamp-irons and other apparatus in the same highways streets roads ways lanes passages and other thoroughfares and places against any wall or walls erected on or adjoining to any of them and to dig and sink trenches and drains and to lay mains and pipes and put stop-cocks siphons plugs or branches from such mains or pipes in under across or along such highways streets roads ways lanes passages and other thoroughfares and places and also with such consent as hereinafter mentioned to do the like in under across or along any private roads ways lanes passages buildings and places And from time to time to cut stop remove alter repair replace and relay such main-pipes stop-cocks siphons plugs branches or other apparatus Provided always that nothing herein contained shall be deemed to authorize the said Corporation its contractors agents or workmen to enter into or upon

any private lands buildings or places for any of the purposes aforesaid or thereon to carry out any of the operations of the said Corporation without the previous consent of the occupiers thereof.

### **17 Contracts for supply of gas and compensation to owners of premises**

It shall be lawful for the said Corporation to contract with any persons (whether incorporate or individual) for supplying with gas any such person or persons or any streets ways lanes passages manufactories shops warehouses public or private houses buildings and places and for such purpose from time to time to lay down carry fit up connect and furnish any pipe branch or burner lamp meter or other apparatus from or in connection with any main-pipe or to lay down any new main which for such purposes may be required Provided always that in all cases (where it is not otherwise expressly stipulated and agreed) the said Corporation its contractors workmen or agents shall at its own expense on the expiration or determination of any tenancy of any occupier so giving consent as aforesaid or on nonpayment of the sums payable by the owner or occupier of any building tenement or place for gas supplied thereto at any time within twelve months from such expiration determination or default or within fourteen days after notice in writing for that purpose from or on behalf of the owner or succeeding occupier of such building tenement or place shall have been received by the said Corporation enter into and upon such building tenement or place and remove take and carry away or cause to be removed taken or carried away any pipe burner lamp meter or apparatus which shall have been placed and introduced by the said Corporation therein and repair and make good such portions of such building tenement or place as may be damaged or defaced by such removal And in case the said Corporation shall neglect so to do for fourteen days after receipt of such notice it shall be lawful for such owner or succeeding occupier (provided free and reasonable access has been given to the agents servants and workmen of the said Corporation for the purpose aforesaid) to remove or cause to be removed all such pipes burners lamps meters or apparatus and to repair and make good the damages and defacements to the said building tenements or place caused thereby the reasonable costs and charges attending which shall immediately be paid by the said Corporation to the owner or occupier making such repairs as aforesaid and in default of such sum being paid by the said Corporation within three days after demand thereof in writing made at the offices of the said Corporation it shall be lawful for the said owner or occupier or his or her agent to make complaint thereof before any Justice who may cause a summons to be issued in the usual form calling on the said Corporation to shew cause before the nearest Local Court for the district in which such building tenement or place is situated why such demand has not been satisfied And if the said Corporation fails to shew cause accordingly it shall be lawful for the sitting Justices to order or award payment of the demand or any part thereof to such complainant together with such costs and satisfaction for his expense and trouble as to them may seem meet and such order or award to enforce by distress Provided also that if any owner or occupier of any building tenement or place or any person acting for him shall refuse reasonable access to the contractors agents workmen or servants of the said Corporation for the purpose of removing any such pipe burner

meter or apparatus placed or introduced into any such building tenement or place by the said Corporation or shall prevent or obstruct such removal then the said owner occupier or person acting for him shall immediately make payment to the said Corporation for such pipe burner meter or apparatus And in default of his so doing within three days after demand thereof made at the said building tenement or place or the residence of the party it shall be lawful for the said Corporation to make complaint thereof before any Justice of the Peace who may cause to be issued a summons to the person so making default calling on him to shew cause before a Local Court for the district where the building tenements or place is situated why he refuses to pay such demand And thereupon the said Court shall proceed to the adjudication and enforcement of such demand in the manner in this clause set forth And if any person shall place or lay any pipe to communicate with any main-pipe meter or other apparatus already laid placed or erected by the said Corporation or shall use additional burners or burners of larger dimensions or of other kind or description than that he has contracted to pay for or shall supply any person with any of the gas supplied to him by the said Corporation without the consent in writing of the said Corporation first obtained or if any person shall want only or maliciously hinder or interrupt the contractors workmen agents or servants of the said Corporation in legally doing or performing any of the works aforesaid or in exercising the powers and authorities by this Act given or if any person shall wilfully negligently or accidentally do or cause to be done any injury or damage to any of the buildings machinery pipes burners lamps meters or apparatus of the said Corporation or remove the same or cause a waste or improper use of gas supplied by the said Corporation it shall be lawful for the said Corporation to make complaint thereof before any Justice of the Peace who may cause to be issued a summons to the person so offending to appear before a Local Court for the district where such offence shall be committed and being thereof lawfully convicted such person shall forfeit and pay to the said Corporation any sum not exceeding ten dollars over and above all damages done and over and above all costs to be ascertained by such Court and to be enforced in the manner in this clause before set forth And all proceedings under this Act not herein expressly provided for shall be regulated and conducted in accordance with the powers of the law in force for the time being respecting summary proceedings before Justices of the Peace and all such provisions shall so far as the same are applicable be enforced and observed in all proceedings under this Act not herein expressly provided for.

#### **18 Materials of roads etc broken up to be replaced**

When and so often as the said Corporation its contractors agents or workmen shall have broken up or removed any pavement stone or other material of any highway road street way lane passage or other public place or thoroughfare or of any road way through-fare or place dedicated to or used by the public as such the said Corporation shall make all reasonable despatch in performance of the work to be done and shall on completion of such work forthwith carry away all rubbish and waste or surplus material and to reinstate each pavement stone or other material and render such highway road street way lane passage or other place as nearly as possible in the same condition as it was in previously to the disturbance thereof And during the continuance of such work and until such

reinstatement to set up barriers and keep lamps or fires burning at night in order to prevent accidents And also when and so often as any gas pitch waste liquid or other things shall escape or flow from any pipe receiver or drain so as to contaminate the air or water and render the same unhealthy or offensive it shall be lawful for any person to give notice thereof in writing to the said Corporation who shall immediately take the most speedy and effectual measures to remedy and prevent the same And if the said Corporation shall make default in any of the matters so required by it to be performed it shall be lawful for any person to lodge complaint thereof before any Justice of the Peace who may summon the said Corporation before the nearest Local Court and on proof of such default the said Local Court shall order and direct that the same shall be done by the said Corporation within a reasonable time to be named by such Court and in default of compliance with such order any Justice of the Peace on proof thereof and on proof that the complainant or any other person has performed the said work so to be done and of the costs charges and expenses attending the same shall issue a distress warrant against the goods and chattels of the said Corporation for any amount not exceeding the said charges and expenses and the costs of prosecuting such complaint to be paid to the person performing the said work as aforesaid.

#### **19 Remedy for the recovery of rents**

And in case any body or bodies corporate commissioners trustees surveyors or any other person or persons who shall contract with the said Corporation or agree to take or shall take or use and enjoy the gas of the said Corporation either in private dwellings shops inns taverns or other buildings or manufactories grounds or premises or otherwise shall refuse or neglect for the space of twenty-one days after demand to pay the sum or sums of money then due under their his or her contract for the same to the said Corporation according to the terms and stipulations of the said respective parties with the said Corporation it shall be lawful for the said Corporation to make complaint thereof before any Justice of the Peace who may issue a summons to the party so refusing or neglecting to pay as aforesaid calling on him to shew cause before a Local Court for the Local Court district in which such building tenement or place is situated why he refuses to pay such sum or sums And thereupon the said Court shall proceed to the adjudication and enforcement of the said demand and costs charges and expenses incurred in the prosecution thereof by distress and sale of the goods and chattels of the person so neglecting or refusing to pay the same rendering the surplus if any to such person or persons so neglecting or refusing And it shall also be lawful for the said Corporation to cut off and take away the supply of gas from the house or houses inn tavern shop manufactory warehouse or other buildings premises or places of every such person so making default in payment of such sum or sums of money then due by his her or their contract to the said Corporation for the space of twenty-one days after such demand as aforesaid and thenceforth to discontinue the supply of gas contracted for with the said Corporation by such person or persons.

## **20 Appeal**

Any person may appeal from the judgment or conviction of the said Local Court under this Act in the form and manner set forth in the Act of Council fifth William Fourth number twenty-two.

## **21 Indictment for nuisance**

Nothing in this Act contained shall be construed to prevent any person from indicting or otherwise proceeding against the said Corporation for nuisance or otherwise in respect of the works or means used or employed by the said Corporation in exercising the privileges hereby on it conferred nor shall anything herein contained limit restrict or in any manner affect the right of any municipality or of any other person or Company hereafter empowered by the Legislature to supply gas to the said City of Newcastle or to exercise any powers which it may be deemed expedient or necessary to grant for that purpose.

## **22 Act to be deemed a Public Act**

This Act shall be deemed and taken to be a Public Act and shall be taken judicial notice of as such by the Judges of the Supreme Court of New South Wales and by all other Judges Justices and others within the Colony of New South Wales and its dependencies without being specially pleaded and the same whenever cited shall be sufficiently described as the *City of Newcastle Gas and Coke Company's Incorporation Act 1866*.