

Gas and Fuel Corporation (Repeal) Act 1995

No. 31 of 1995

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SCHEDULE 1

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Victoria

No. 31 of 1995

Gas and Fuel Corporation (Repeal) Act 1995

[Assented to 6 June 1995]

The Parliament of Victoria enacts as follows:

PART 1—PRELIMINARY

1. Purpose

The purpose of this Act is to provide for the winding up of the Gas and Fuel Corporation of Victoria.

2. Commencement

- (1) Part 1 comes into operation on the day on which this Act receives the Royal Assent.
- (2) Sections 34, 35 (1) and 44 (4), (5) and (6) are deemed to have come into operation on 20 December 1994.

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- (3) Section 44 (2) comes into operation on a day to be proclaimed.
- (4) Subject to sub-section (5), the remaining provisions of this Act come into operation on a day or days to be proclaimed.
- (5) If a provision referred to in sub-section (4) does not come into operation within the period of 12 months beginning on, and including, the day on which this Act receives the Royal Assent, it comes into operation on the first day after the end of that period.

3. Definitions

In this Act—

“Administrator” means the Administrator appointed under Part 4 of the **Electricity Industry Act 1993**;

“gas company” means GASCOR or the Gas Transmission Corporation established under the **Gas Industry Act 1994**;

“Gas Property”, in relation to SEC, has the same meaning as in section 85 (2) of the **State Electricity Commission Act 1958**;

“GFCV” has the same meaning as Corporation has in the **Gas and Fuel Corporation Act 1958**;

“instrument” includes a document and an oral agreement;

“liabilities” means all liabilities, duties and obligations, whether actual, contingent or prospective;

“property” means any legal or equitable estate or interest (whether present or future and whether vested or contingent) in real or personal property of any description;

“rights” means all rights, powers, privileges and immunities, whether actual, contingent or prospective;

“SEC” means the State Electricity Commission of Victoria;

“settlement day” means the day on which Part 2 comes into operation;

“transfer day” means the day on which Part 3 comes into operation.

4. *Crown to be bound*

This Act binds the Crown, not only in right of Victoria but also, so far as the legislative power of the Parliament permits, the Crown in all its other capacities.

5. *Extra-territorial operation*

It is the intention of the Parliament that the operation of this Act should, as far as possible, include operation in relation to the following—

- (a) land situated outside Victoria, whether in or outside Australia;
- (b) things situated outside Victoria, whether in or outside Australia;
- (c) acts, transactions and matters done, entered into or occurring outside Victoria, whether in or outside Australia;
- (d) things, acts, transactions and matters (wherever situated, done, entered into or occurring) that would, apart from this Act, be governed or otherwise affected by the law of the Commonwealth, another State, a Territory or a foreign country.

PART 2—PREFERENCE SHAREHOLDERS

6. *Return of capital*

- (1) On the settlement day, GFCV—

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- (a) is liable to pay, within 30 days after that day, to each holder of the 6% "B" Preference Shares in GFCV, by way of return of capital and all arrears of dividend, whether earned or declared or not, a sum of \$2.30 in respect of each such share held by the holder; and
 - (b) is liable to pay, within 30 days after that day, to each holder of the 4% Preference Shares in GFCV, by way of return of capital and all arrears of dividend whether earned or declared or not—
 - (i) a sum of \$2 in respect of each such share held by the holder; and
 - (ii) a sum equal to the dividends accrued on those shares as at the settlement day.
- (2) On the day after the settlement day—
- (a) the liability of GFCV in respect of its Preference Shares (other than its liability under sub-section (1)) is extinguished; and
 - (b) the Preference Shares in GFCV are cancelled.
- (3) In sub-section (1), a reference to a holder of shares does not include a reference to the State, the Treasurer or a person who is the holder of the shares on behalf of the State.

PART 3—TRANSFER OF PROPERTY TO SEC

7. Definition

In this Part—

"GFCV instrument" means an instrument (including a legislative instrument other than this Act and regulations under this Act) subsisting immediately before the transfer day—

- (a) to which GFCV was a party; or
- (b) that was given to or in favour of GFCV; or
- (c) that refers to GFCV; or

(d) under which—

- (i) money is, or may become, payable to or by GFCV; or
- (ii) other property is to be, or may become liable to be, transferred to or by GFCV—

but does not include—

- (e) an agreement, contract or document referred to in Schedule 2 or 4 to the **Gas Industry Act 1994**; or
- (f) an instrument under which property or rights are vested in, or liabilities become liabilities of, GTC or GASCOR by reason of section 65 or 66 of that Act.

8. *Transfer of GFCV property to SEC and dissolution of GFCV*

On the transfer day—

- (a) all property and rights of GFCV, wherever located, vest in SEC subject to the encumbrances (if any) to which they were subject immediately before so vesting; and
- (b) all liabilities of GFCV, wherever located (other than a liability arising because of the operation of section 14B of the **Gas and Fuel Corporation Act 1958**) become liabilities of SEC; and
- (c) GFCV is dissolved.

9. *Substitution of party to agreement*

Where, under section 8, the rights and liabilities of GFCV under an agreement vest in, or become liabilities of, SEC—

- (a) SEC becomes, on the transfer day, a party to the agreement in place of GFCV; and

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- (b) on and after the transfer day, the agreement has effect as if SEC had always been a party to the agreement.

10. *GFCV instruments*

Each GFCV instrument continues to have effect according to its tenor on and after the transfer day as if a reference in the instrument to GFCV were a reference to SEC.

11. *Proceedings*

- (1) Where, immediately before the transfer day, proceedings (including arbitration proceedings) to which GFCV was a party were pending or existing in any court or tribunal, then, on and after the transfer day, SEC is substituted for GFCV as a party to the proceedings and has the same rights in the proceedings as GFCV had.
- (2) Sub-section (1) does not apply to proceedings relating to former gas corporation property within the meaning of section 63 of the **Gas Industry Act 1994**.

12. *Interests in land*

Without prejudice to the generality of this Part and despite anything to the contrary in any other Act or law, if, immediately before the transfer day, GFCV is the registered proprietor of an interest in land under the **Transfer of Land Act 1958**, on and after the transfer day—

- (a) SEC is to be taken to be the registered proprietor of that interest in land; and
- (b) SEC has the same rights and remedies in respect of that interest as GFCV had.

13. *Amendment of Register*

- (1) The Registrar of Titles, on being requested to do so and on delivery of any relevant certificate of title or

instrument, must make any amendments in the Register that are necessary because of the operation of this Act.

- (2) The Registrar-General must make all entries on the records of enrolment of any Crown grant and on any memorial relating to land that are necessary because of the operation of this Part.
- (3) If any land vested under this Part is not Crown land and is not under the operation of the **Transfer of Land Act 1958**, SEC must, as soon as practicable after the land vests in accordance with this Part, cause a memorial of the certificate of the Administrator (that complies with Part 1 of the **Property Law Act 1958**) to be delivered to the office of the Registrar-General and, for the purposes of that Part, that certificate must be taken to be an instrument affecting land.

14. Taxes

No stamp duty or other tax is chargeable under any Act in respect of anything effected by or done under this Part or in respect of any act or transaction connected with or necessary to be done by reason of this Part, including a transaction entered into or an instrument made, executed, lodged or given.

15. Evidence

- (1) Documentary or other evidence that would have been admissible for or against the interests of GFCV if this Part had not been enacted, is admissible for or against the interests of SEC.
- (2) Division 3A of Part III of the **Evidence Act 1958** continues to apply with respect to the books of account of GFCV and to entries made in those books of account before the transfer day.
- (3) In sub-section (2), "books of account" has the same meaning as in Division 3A of Part III of the **Evidence Act 1958**.

PART 4—TRANSFER OF GAS PROPERTY FROM SEC

Division 1—Preliminary

16. *Definitions*

(1) In this Part—

“**SEC instrument**” means an instrument (including a legislative instrument other than this Act) subsisting immediately before the relevant date—

- (a) to which the SEC was a party; or
- (b) that was given to or in favour of SEC; or
- (c) that refers to SEC; or
- (d) under which—
 - (i) money is, or may become, payable to or by SEC; or
 - (ii) other property is to be, or may become liable to be, transferred to or by SEC.

“**former SEC property**” means property, rights or liabilities of SEC that, under this Part, have vested in, or become liabilities of, a gas company or the State;

“**relevant date**”, in relation to an allocation statement under section 18 or property, rights or liabilities allocated under such an allocation statement means the date fixed by the Minister under sub-section (2) for the purposes of that statement;

“**transferee**”, in relation to former SEC property, means a gas company or the State or 2 or more of the gas companies and the State to which the property has been transferred under this Part.

- (2) The Minister may, by notice published in the Government Gazette fix the relevant date for the purposes of an allocation statement under section 18.

17. Part to have effect despite State Electricity Commission Act 1958

This Part has effect despite anything to the contrary in the **State Electricity Commission Act 1958**.

Division 2—Direction to SEC to allocate Gas Property

18. Minister may direct transfer of property

- (1) The Minister may give a direction in writing to SEC directing it to transfer property, rights and liabilities of a specified kind from the Gas Property of SEC to a gas company or to the State or to any 2 or more of the gas companies and the State in accordance with the direction.
- (2) Within 3 months after receiving a direction under sub-section (1), SEC must give to the Minister a statement approved by the Minister relating to the property, rights and liabilities of SEC to which the direction relates, as at a date specified by the Minister for the purposes of this section.
- (3) A statement under this section—
 - (a) must allocate the property, rights and liabilities of SEC shown in the statement in accordance with the directions of the Minister; and
 - (b) must be signed by the Administrator.
- (4) If a statement under this section is approved by the Treasurer and the Minister—
 - (a) the Treasurer and the Minister must sign the statement; and
 - (b) the statement is an allocation statement for the purposes of this Part.
- (5) The Treasurer and the Minister may at any time direct SEC to amend a statement given to them under this section as specified in the direction.

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- (6) An allocation statement under this section may be amended by writing signed by the Treasurer and the Minister.
- (7) In this section, “statement” and “allocation statement” include a statement or allocation statement amended in accordance with this section.

Division 3—Transfer by allocation

19. *Property transferred in accordance with direction*

On the relevant date—

- (a) all property and rights of SEC wherever located, that are allocated under an allocation statement in accordance with a direction of the Minister under section 18, vest in a gas company or the State or 2 or more of the gas companies and the State in accordance with the statement; and
- (b) all liabilities of SEC, wherever located, that are allocated under an allocation statement in accordance with a direction of the Minister under section 18 become liabilities of a gas company or the State or 2 or more of the gas companies and the State in accordance with the statement.

20. *Allocation of property etc. subject to encumbrances*

Unless an allocation statement under this Part otherwise provides, where, under this Part—

- (a) property and rights vest in; or
- (b) liabilities become liabilities of—

a transferee in accordance with a direction under section 18—

- (c) the property and rights so vested are subject to the encumbrances (if any) to which they were subject immediately before so vesting; and
- (d) the rights to which SEC was entitled in respect of those liabilities immediately before they

ceased to be liabilities of SEC vest in the transferee.

Division 4—General

21. Certificate of Administrator

- (1) A certificate signed by the Administrator certifying that property, rights or liabilities of SEC specified in the certificate have been vested in or become liabilities of the transferee is, unless revoked under sub-section (2), conclusive evidence—
 - (a) that the property, rights or liabilities have been so vested or become liabilities of the transferee; and
 - (b) that the property or rights vested in or became the liabilities of the transferee on the relevant date.
- (2) If the Treasurer and the Minister so direct the Administrator in writing, the Administrator must revoke a certificate given under sub-section (1) by issuing another certificate or certificates in place of the first certificate.
- (3) The Administrator—
 - (a) must keep a register of certificates issued under this section; and
 - (b) must make the register reasonably available for inspection by a transferee or other interested person.

22. Substitution of party to agreement

Where the rights and liabilities of SEC under an agreement vest in, or become liabilities of a transferee in accordance with an allocation statement under this Part—

- (a) the transferee becomes, on the relevant date, a party to the agreement in place of SEC; and

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- (b) on and after the relevant date, the agreement has effect as if the transferee had always been a party to the agreement.

23. SEC instruments

Each SEC instrument relating to former SEC property continues to have effect according to its tenor on and after the relevant date in relation to that property as if a reference in the instrument to SEC were a reference to the transferee.

24. Proceedings

If, immediately before the relevant date, proceedings relating to former SEC property (including arbitration proceedings) to which SEC was a party were pending or existing in any court or tribunal, then, on and after that date, the transferee is substituted for SEC as a party to the proceedings and has the same rights in the proceedings as SEC had.

25. Interests in land

Without prejudice to the generality of this Part and despite anything to the contrary in any other Act or law, if, immediately before the relevant date, SEC is, in relation to former SEC property, the registered proprietor of an interest in land under the **Transfer of Land Act 1958**, then on and after that date—

- (a) the transferee is to be taken to be the registered proprietor of that interest in land; and
- (b) the transferee has the same rights and remedies in respect of that interest as SEC had.

26. Amendment of Register

- (1) The Registrar of Titles, on being requested to do so and on delivery of any relevant certificate of title or instrument and certificate of the Administrator, must

make any amendments in the Register that are necessary because of the operation of this Part.

- (2) The Registrar-General must make all entries on the records of enrolment of any Crown grant and on any memorial relating to land that are necessary because of the operation of this Part.
- (3) If any land vested under this Part is not Crown land and is not under the operation of the **Transfer of Land Act 1958**, the transferee of the former SEC property, must, as soon as practicable after the land vests in accordance with this Part, cause a memorial of the certificate of the Administrator (that complies with Part 1 of the **Property Law Act 1958**) to be delivered to the office of the Registrar-General and, for the purposes of that Part, that certificate must be taken to be an instrument affecting land.

27. Taxes

No stamp duty or other tax is chargeable under any Act in respect of anything effected by or done under this Part or in respect of any act or transaction connected with or necessary to be done by reason of this Part, including a transaction entered into or an instrument made, executed, lodged or given, for the purpose of, or connected with the transfer of property, rights or liabilities of SEC.

28. Evidence

- (1) Documentary or other evidence that would have been admissible for or against the interests of SEC in relation to former SEC property if this Part had not been enacted, is admissible for or against the interests of the transferee.
- (2) Division 3A of Part III of the **Evidence Act 1958** continues to apply with respect to the books of account of SEC and to entries made in those books of account before the relevant date, whether or not they relate to former SEC property.

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- (3) In sub-section (2), “**books of account**” has the same meaning as in Division 3A of Part III of the **Evidence Act 1958**.

Division 5—Rights as between transferees

29. Interim arrangements

- (1) At any time before 1 January 1997, each transferee of former SEC property (“**the new body**”)—
- (a) may, subject to any agreement to the contrary, exercise such rights and privileges (including access to goods and services) in relation to former SEC property that has become property of another transferee as are reasonably necessary to enable the new body to carry out its functions in a manner similar to the manner in which GFCV carried out corresponding functions before the date on which this Act received the Royal Assent; and
 - (b) must, subject to any agreement to the contrary—
 - (i) permit any other transferee to exercise such rights and privileges in relation to former SEC property that has become property of the new body; and
 - (ii) make available to each other transferee such goods and services as are available from that former SEC property—as are reasonably necessary to enable the other transferee to carry out its functions in a manner similar to the manner in which GFCV carried out corresponding functions before the date on which this Act received the Royal Assent.
- (2) A transferee of former SEC property must pay such reasonable charges for the exercise of rights and privileges under sub-section (1) (a) in respect of former SEC property of another transferee as are determined by the other transferee and agreed between the parties or, if the other transferee

determines charges and there is no agreement, as are determined by the Minister.

PART 5—GENERAL

30. *Validity of things done under this Act*

- (1) Nothing effected by this Act or suffered under this Act—
 - (a) is to be regarded as placing any person in breach of contract or confidence or as otherwise making any of them guilty of a civil wrong; or
 - (b) is subject to compliance with or is to be regarded as placing any person in breach of or as constituting a default under any Act or other law or any provision in any agreement, arrangement or understanding including, without limiting the generality of the foregoing, any provision prohibiting, restricting or regulating the assignment or transfer of any property or right or the disclosure of any information; or
 - (c) is to be regarded as fulfilling any condition which allows a person to exercise a power, right or remedy in respect of or to terminate any agreement or obligation; or
 - (d) is to be regarded as giving rise to any remedy for a party to a contract or an instrument or as causing or permitting the termination of any contract or instrument because of a change in the beneficial or legal ownership of any property, right or liability; or
 - (e) is to be regarded as causing any contract or instrument to be void or otherwise unenforceable; or
 - (f) is to be regarded as frustrating any contract; or
 - (g) releases any surety or other obligee wholly or in part from any obligation.
- (2) The validity of any act or transaction of GFCV or its chief executive officer or SEC or the Administrator

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must not be called in question in any proceedings on the ground that any provision of this Act or the **Gas and Fuel Corporation Act 1958** or the **State Electricity Commission Act 1958** had not been complied with.

PART 6—CONSEQUENTIAL AMENDMENTS

Division 1—Gas and Fuel Corporation Act 1958

31. *Repeal of Gas and Fuel Corporation Act 1958*

- (1) Parts I, II and III, Division 7 of Part V and the Second Schedule of the **Gas and Fuel Corporation Act 1958** are repealed.
- (2) Division 6 of Part V of the **Gas and Fuel Corporation Act 1958** is repealed.
- (3) Division 9 of Part V of the **Gas and Fuel Corporation Act 1958** is repealed.
- (4) The remaining provisions of the **Gas and Fuel Corporation Act 1958** are repealed.

Division 2—Gas Industry Act 1994

32. *Trading in gas*

After section 12 (2) of the **Gas Industry Act 1994** insert—

- “(3) Sub-section (1) does not prohibit the sale or disposal by GTC of gas contained in a storage facility acquired by GTC for the main purpose of the storage of gas by GTC if the gas sold or disposed of was contained in the facility at the time of the acquisition of the facility.”.

33. Amendment of sections 25 and 26

- (1) In section 25 of the **Gas Industry Act 1994**, for “any negligence, default, breach of duty” substitute “a wilful breach of duty”.
- (2) In section 26 (3) of the **Gas Industry Act 1994**, for paragraphs (b) and (c) substitute—
 - “(b) a business plan containing such information as the Treasurer or the Minister requires;
 - (c) financial statements containing such information as the Treasurer requires.”

34. New section 32A inserted

After section 32 of the **Gas Industry Act 1994** insert—

“32A. Bulk hot water installations

GASCOR may supply gas to a customer for the purposes of a bulk hot water installation used by the customer on terms and conditions approved by the Minister.”

35. Amendment of sections 38 and 39

- (1) After section 38 (4) of the **Gas Industry Act 1994** insert—
 - “(5) Despite anything to the contrary in this or any other Act or in any contract, GASCOR is not liable to any penalty or damages for failing to supply gas if the failure arises out of any accident or cause beyond the control of GASCOR.”
- (2) In section 39 (3) of the **Gas Industry Act 1994**, after “1958” insert “or section 42 of the **Gas and Fuel Corporation (Repeal) Act 1995**”.

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36. New section 39A inserted

After section 39 of the Gas Industry Act 1994 insert—

“39A. Exemption from liability to transmit or convey gas

Despite anything to the contrary in section 39—

- (a) GTC is not liable to any penalty or damages for failing to convey gas through transmission pipelines; and
- (b) GASCOR is not liable to any penalty or damages for failing to convey gas through distribution pipelines—

if the failure arises out of any accident or cause beyond the control of GTC or GASCOR, as the case requires.”

37. Amendment of sections 41, 59 and 61

(1) In the Gas Industry Act 1994—

- (a) in section 41 (2) (b), after “1958” insert “or section 42 of the Gas and Fuel Corporation (Repeal) Act 1995”;
- (b) in section 59 (2), for “licensee” substitute “GASCOR”.

(2) After section 61 (1) of the Gas Industry Act 1994 insert—

“(1A) The easement existing immediately before the commencement of section 37 (2) of the Gas and Fuel Corporation (Repeal) Act 1995 over the land described in certificate of title volume 8758 folio 144 and appurtenant to the land described in certificate of title volume 7512 folio 120 is, by force of this section, an easement vested in GTC and appurtenant to all land vested in GTC from time to time.”

- (3) In section 61 (2) of the **Gas Industry Act 1994**, after “sub-section (1)” insert “or (1A)”.

38. New sections 62A to 62E inserted

“62A. Agreement for easement

- (1) SEC and GTC may enter into a written agreement relating to the creation of a proposed easement for the benefit of GTC for the route of a pipeline over the land vested or to be vested in SEC and described in certificates of title volume 9478 folio 435 and volume 7512 folio 120.
- (2) The agreement must specify—
- (a) the route of the pipeline by reference to a plan included in the agreement;
 - (b) the rights to be given to the person for the time being entitled to the benefit of the proposed easement;
 - (c) the obligations to be imposed on the owner for the time being of—
 - (i) the land to be burdened by the proposed easement; or
 - (ii) the pipeline;
 - (d) the obligations to be imposed on the person for the time being entitled to the benefit of the proposed easement with respect to the use of the easement and protection of the land burdened by it.
- (3) SEC and GTC must lodge a copy of an agreement under sub-section (1) with the Minister and at the Central Plan Office.
- (4) Production of a copy of an agreement lodged under sub-section (3) is

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conclusive proof of the existence and contents of the original.

62B. Statutory easement

The Governor in Council, on the recommendation of the Minister, may by Order published in the Government Gazette approve an agreement made and lodged under section 62A.

62C. Effect of order

By force of this section, on and from the commencement of an Order under section 62B—

- (a) an easement is created over the land described in certificates of title volume 9478 folio 435 and volume 7512 folio 120 (in this section called “the statutory easement”);
- (b) the owner for the time being of the pipeline referred to in the agreement to which the order relates is entitled to the benefit of the statutory easement; and
- (c) the creation of the statutory easement—
 - (i) gives to the persons entitled to the benefit of the statutory easement the rights; and
 - (ii) imposes on the persons entitled to the benefit of the statutory easement the obligations—

specified in the agreement to which the Order relates; and

- (d) the owners for the time being of the land burdened by the statutory easement may enforce the

obligations referred to in paragraph (c) (ii) as if the persons entitled to the benefit of the statutory easement had entered into an agreement with each of those owners containing those obligations; and

(e) the burden of any obligation on an owner of the land referred to in paragraph (a) (whether positive or negative)—

(i) runs with that land; and

(ii) may be enforced by the persons for the time being entitled to the benefit of the statutory easement against that owner or that owner's successors in title; and

(f) the agreement to which the Order relates—

(i) governs the rights and obligations of the persons for the time being entitled to the benefit of the statutory easement in respect of each other; and

(ii) binds each person who becomes entitled to the benefit of the statutory easement as if that person had entered into the agreement on becoming so entitled.

62d. *Certain rules about easements not to apply*

A statutory easement referred to in section 62c has effect—

(a) even though there is no land benefited or capable of being benefited by it; and

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- (b) even though it may burden land owned or occupied by a person entitled to the benefit of it; and
- (c) despite any other Act or rule of law to the contrary.

62E. Amendment of Register

- (1) On being requested to do so by GTC, the Registrar of Titles must record on the relevant folios of the Register under the **Transfer of Land Act 1958** that the land in the folio is subject to the easement and obligations created by an Order under section 62C and must make any other amendments to the Register that are necessary because of the Order.
- (2) GTC must make the request under sub-section (1) as soon as possible after the commencement of an Order under section 62C and must give the Registrar a copy of the Order.”.

39. New Part 6A inserted

After Part 6 of the **Gas Industry Act 1994** insert—

“PART 6A—GAS SUPPLY EMERGENCY PROVISIONS

62F. Proclamation that Part applies

- (1) If it appears to the Governor in Council that from any cause the available supply of gas is or is likely to become less than is sufficient for the reasonable requirements of the community, the Governor in Council may by proclamation declare that this Part is to apply.

- (2) The proclamation must be published in the Government Gazette.
- (3) The proclamation takes effect on the date of its publication.
- (4) The Governor in Council may at any time revoke a proclamation.

62G. Powers of Minister

- (1) While a proclamation is in force, the Minister may give any directions that the Minister thinks necessary to ensure the safe and sure supply of gas.
- (2) Without limiting sub-section (1), the Minister may by notice in writing do all or any of the following—
 - (a) give any directions that are necessary to control, direct, restrict or prohibit the production, supply, distribution, sale, use or consumption of gas;
 - (b) direct a person who extracts, produces, transmits or distributes gas to extract it for or produce it, transmit it or distribute it to a person specified in the direction;
 - (c) direct a person to comply with any terms and conditions relating to the extraction, production, supply, distribution, sale, use or consumption of gas the Minister determines;
 - (d) direct a person to whom gas is provided or transmitted to accept the gas so provided or transmitted;
 - (e) direct persons and bodies to carry out any work required to ensure the production, distribution or flow of gas;

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- (f) direct what services must be maintained and upon what terms and conditions they must operate;
- (g) direct persons and bodies to operate and maintain services to the extent and upon the terms specified in the direction;
- (h) direct at what times and places and upon what terms and conditions and in what manner services may be used or availed of;
- (i) prohibit the operation or use of services except, if so specified in the prohibition, with the consent of the Minister;
- (j) requisition the use of property of any kind which is used or may be used for or in connection with the operation or maintenance of any service;
- (k) provide for or control, by direction, prohibition or requisition, the operation, use, disposal, distribution, storage, repair, upkeep and maintenance of any property or commodity used or which may be used for or in connection with any service;
- (l) by notice in writing authorise a person specified in the notice to enter any land, building or structure used for or in connection with the provision of services;
- (m) provide, by direction, prohibition or requisition, for any matter or thing incidental to the carrying into effect of the powers referred to in this section.

- (3) A direction, prohibition or requisition—
- (a) may be made so as to apply to or have operation throughout the whole or any part of Victoria; and
 - (b) may be made so as to operate for any period or periods or for any time or times or for any occasion or occasions specified in the direction; and
 - (c) may be of general operation or of specially limited operation according to any specified times, places, circumstances, conditions or restrictions; and
 - (d) takes effect at the time specified in the direction, prohibition or requisition; and
 - (e) has effect as if enacted in this Act.
- (4) A direction, prohibition or requisition must be published in the Government Gazette as soon as possible after it is made.
- (5) The Minister may at any time revoke a direction, prohibition or requisition.
- (6) The expiry or revocation of a direction, prohibition or requisition does not affect—
- (a) the previous operation of the direction, prohibition or requisition; or
 - (b) the validity of any action taken under the direction, prohibition or requisition; or
 - (c) any penalty or punishment incurred in respect of any contravention of or failure to comply with the direction, prohibition or requisition or any proceeding or remedy in

respect of such a penalty or punishment.

62H. *Compliance with directions etc. of Minister*

- (1) Every body and every person to which or to whom any direction, prohibition or requisition is addressed or directed under this Part must comply with the direction, prohibition or requisition.
- (2) A direction, prohibition or requisition may be addressed or directed to bodies and persons generally or particularly, in writing or verbally, by publication or advertisement or by any other means or in any other manner which appear or appears to the Minister to be practicable, appropriate or expedient in the circumstances.

62I. *Delegation of powers and functions by Minister*

The Minister may by instrument delegate to any person all or any of the Minister's powers and functions under this Part (except this power of delegation) in relation to any matter or class of matters or part of Victoria specified in the instrument of delegation.

62J. *Offences*

Any person who contravenes or fails to comply with a direction, prohibition or requisition made under section 62G is guilty of an offence and liable to—

- (a) a penalty of not more than 5 penalty units; and
- (b) in the case of a continuing offence, a further penalty of not more than 1

penalty unit for each day on which the offence is continued after the conviction or order of any court.

62K. *Judicial notice*

All courts and tribunals must take judicial notice of any proclamation, direction, prohibition or requisition made, given or imposed under this Part.

62L. *Immunity from suit*

A person acting in the execution of this Part or any proclamation, direction, prohibition or requisition under this Part is not liable to any action, claim or demand on account of any damage, loss or injury sustained or alleged to be sustained because of the operation of this Part or of anything done or purporting to be done under this Part or any proclamation, direction, prohibition or requisition under this Part.”

40. *Superannuation*

After section 87 (2) of the **Gas Industry Act 1994**
insert—

“(3) The trustees of the Gas and Fuel Superannuation Fund must ensure that separate accounting records are kept in relation to the benefits and contributions of the persons employed by each gas company.”

41. *New sections 87A and 87B inserted*

After section 87 of the **Gas Industry Act 1994**
insert—

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“87A. Rights of former GASCOR staff

If, before 31 December 1996, an employee of GASCOR accepts an offer of employment made by GTC—

- (a) the employee is to be regarded as having accrued an entitlement to benefits, in connection with his or her employment by GTC, that is equivalent to the entitlement that he or she had accrued, as an employee of GASCOR, immediately before the commencement of the person's employment by GTC; and
- (b) the service of the employee as an employee of GTC is to be regarded for all purposes as having been continuous with the service of the employee, immediately before the commencement of the employment by GTC, as an employee of GASCOR; and
- (c) the employee is not entitled to receive any payment or other benefit by reason only of having ceased to be an employee of GASCOR.

87B. Superannuation of former GASCOR Staff

- (1) In this section, “**former GASCOR employee**” means a person who, as an employee of GASCOR, accepted before 31 December 1996 an offer of employment made by GTC.
- (2) A former GASCOR employee who, immediately before becoming an employee of GTC was a member of the Gas and Fuel Superannuation Fund—

- (a) continues, on and after becoming such an employee, to be a member of the Fund for so long as he or she continues to be employed by GTC or until ceasing to be a member as provided in the trust deed of the Fund;
 - (b) is not entitled to receive any payment or other benefit by reason only of having ceased to be an employee of GASCOR, despite any provision of the trust deed of the Fund;
 - (c) is entitled to payments and other benefits as if GTC had been the employer at all times since the former GASCOR employee last became a member of the Fund.
- (3) On and after the commencement of this section, the trust deed of the Gas and Fuel Superannuation Fund has effect as if it were amended to the extent necessary to give effect to sub-section (2)."

42. *New section 90A inserted*

After section 90 of the **Gas Industry Act 1994** insert—

"90A. *Saving of contracts*

Neither this Act, nor the **Gas and Fuel Corporation (Repeal) Act 1995** nor the repeal of section 102 of the **Gas and Fuel Corporation Act 1958** varies any rights referred to in that section."

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43. New section 96A inserted

After section 96 of the **Gas Industry Act 1994** insert—

“96A. Proceedings for offences

- (1) A person authorised by a gas company either generally or in a particular case to bring proceedings for an offence against this Act or the regulations may bring those proceedings.
- (2) If proceedings referred to in sub-section (1) are brought by a person authorised to do so, the proceedings may be conducted by any other person authorised by the gas company to bring proceedings of that kind.
- (3) All courts must take judicial notice of the fact that a person is authorised by a gas company to bring proceedings referred to in sub-section (1) or conduct proceedings under sub-section (2), as the case requires.”

44. Further amendment of Gas Industry Act 1994

(1) In the **Gas Industry Act 1994**—

(a) in section 103 (2)—

- (i) after “GFCV” insert “and, after the commencement of section 44 of the **Gas and Fuel Corporation (Repeal) Act 1995**, the State Electricity Commission of Victoria”; and
- (ii) after “gas companies” (where secondly occurring) insert “and the State Electricity Commission of Victoria”; and
- (iii) after “sub-section (1)” insert “and section 104”;

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- (b) in section 104 for "GFCV must prepare its reports and financial statements for the year ending on 30 June 1995 as if" substitute "the reports and financial statements of GFCV for the year ending on 30 June 1995 must be prepared by the State Electricity Commission of Victoria and must be so prepared as if".
- (2) Section 105 of the **Gas Industry Act 1994** is repealed.
- (3) In the **Gas Industry Act 1994**—
- (a) Part 11 is repealed;
- (b) Part 12 is repealed.
- (4) In Schedule 2 to the **Gas Industry Act 1994**, in clause 3 (a), under the heading "**Freehold Properties**", after the item referring to Yarragon insert—
- | | | | |
|------------|--------------------------|------|------|
| "Dandenong | Dandenong-Frankston Road | 5734 | 772 |
| Drouin | Gardners/Holman Road | 8127 | 442 |
| Longford | Garretts Road | 8812 | 119 |
| | | 9468 | 244" |
- (5) In Schedule 2 to the **Gas Industry Act 1994**, in clause 3 (b), under the heading "**Properties leased from other Parties**" after the last item, insert—
- | | | | |
|------------|----------|--------|---------------------|
| "Moe South | Pipeline | 1/9/93 | M Rosato, Coalville |
| | | Annual | Road, Moe South" |
- (6) In Schedule 4 to the **Gas Industry Act 1994**, in Part A, after clause 1, insert—
- "1A. Franchise Agreement dated 15 March 1969 between Esso, Hematite and GFCV."
- (7) Schedule 5 to the **Gas Industry Act 1994** is repealed.

Division 3—State Electricity Commission Act 1958

45. Definitions

In section 3 (1) of the **State Electricity Commission Act 1958** insert the following definitions—

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“**Electricity Fund**” means the Fund established under section 83;

“**gas company**” means GASCOR or the Gas Transmission Corporation established under the **Gas Industry Act 1994**;

“**Gas Fund**” means the Fund established under section 84.

46. New sections 12A and 12B substituted

For sections 12A and 12B of the **State Electricity Commission Act 1958** substitute—

“12A. General functions and powers

(1) The general functions of the Commission are—

(a) to carry out the functions conferred on it by the **Loy Yang B Act 1992**;

(b) to carry out the functions conferred on it by an agreement, contract or document referred to in Schedule 3 of the **Electricity Industry Act 1993**;

(c) to administer and deal with excluded property within the meaning of the **Electricity Industry Act 1993** and property and rights vested in, or liabilities acquired by, the Commission under that Act;

(d) to acquire, dispose of or trade in electricity;

(e) with the approval of the Treasurer, to acquire or dispose of real or personal property, other than property forming part of the gas property referred to in section 85 (2), whether or not for purposes

connected with other functions referred to in this sub-section;

- (f) to carry out such other functions as are conferred on the Commission by this or any other Act.
- (2) The Commission may do all things necessary or convenient to be done for, or in connection with, the performance of its functions under sub-section (1).
- (3) The Commission—
- (a) may promote, form or participate in partnerships, trusts, unincorporated joint ventures and other arrangements for the carrying out of its functions and powers under this section; and
 - (b) may facilitate and assist any person, joint venture, partnership, trust or body to perform any act that is consistent with, or conducive to, the fulfilment of the Commission's functions under sub-section (1).

12B. Functions and powers in relation to gas

- (1) The functions of the Commission in relation to gas are—
- (a) to carry out the functions conferred on it by the **Gas and Fuel Corporation (Repeal) Act 1995**;
 - (b) to administer and deal with property and rights vested in, or liabilities acquired by, the Commission under the **Gas and Fuel Corporation (Repeal) Act 1995**;
 - (c) to acquire and dispose of real or personal property relating to its functions under this section;

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- (d) to carry out such other functions in relation to gas as are conferred on the Commission by this or any other Act.
- (2) The Commission may do all things necessary or convenient to be done for, or in connection with, the performance of its functions under sub-section (1).
- (3) The Commission—
 - (a) may promote, form or participate in partnerships, trusts, unincorporated joint ventures and other arrangements for the carrying out of its functions and powers under this section; and
 - (b) may facilitate and assist any person, joint venture, partnership, trust or body to perform any act that is consistent with, or conducive to, the fulfilment of the Commission's functions under sub-section (1).”.

47. Amendment of section 82A

In section 82A of the **State Electricity Commission Act 1958**—

- (a) in sub-section (1) after “transferred” insert “from the Electricity Fund”;
- (b) in sub-section (2A) after “transferred” insert “from the Electricity Fund”;
- (c) in sub-section (2A) for “12A (c)” substitute “12A (1) (e)”;
- (d) in sub-section (3), after “financial statements” insert “of the Electricity Fund”.

48. New sections 83, 84, 85 and 85A inserted

After section 82A of the State Electricity Commission Act 1958 insert—

“83. Electricity Fund

- (1) The Commission must establish a fund to be called the “Electricity Fund”.
- (2) There shall be paid into the Electricity Fund—
 - (a) all money of the Commission held by or on behalf of the Commission immediately before the commencement of section 48 of the **Gas and Fuel Corporation (Repeal) Act 1995**;
 - (b) all money received by the Commission in respect of, or in connection with, the carrying out of its functions, other than its functions under section 12B;
 - (c) all income from the investment of money in the Fund and the proceeds of sale of any such investment;
 - (d) all financial accommodation obtained by the Commission in relation to its functions, other than its functions under section 12B;
 - (e) all other money that the Commission receives for payment into the Electricity Fund or in respect of the electricity property within the meaning of section 85 (1).
- (3) There shall be paid out of the Electricity Fund—

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(a) all amounts payable by the Commission in respect of its functions, other than its functions under section 12B; and

(b) all costs and expenses incurred by the Commission in relation to its functions, other than its functions under section 12B—

and no other amounts, costs or expenses whatsoever.

84. Gas Fund

(1) The Commission must establish a fund to be called the "Gas Fund".

(2) There shall be paid into the Gas Fund—

(a) all money received by the Commission in respect of, or in connection with, the carrying out of its functions under section 12B;

(b) all income from the investment of money in the Fund and the proceeds of sale of any such investment;

(c) all financial accommodation obtained by the Commission in relation to its functions under section 12B;

(e) all other money that the Commission receives for payment into the Gas Fund or in respect of the gas property within the meaning of section 85 (2).

(3) There shall be paid out of the Gas Fund—

(a) all amounts payable by the Commission in respect of its functions under section 12B; and

- (b) all costs and expenses incurred by the Commission in relation to those functions—

and no other amounts, costs or expenses whatsoever.

85. *Electricity property and gas property*

- (1) The assets and liabilities of the Electricity Fund and the property, rights and liabilities of the Commission relating to its functions, other than its functions under section 12B, are the electricity property of the Commission.
- (2) The assets and liabilities of the Gas Fund and the property, rights and liabilities of the Commission relating to its functions under section 12B are the gas property of the Commission.

85A. *Separate accounts and statements of electricity and gas property*

- (1) The Commission must ensure that the accounts and records of its transactions and affairs show separately—
 - (a) the transactions and affairs relating to its electricity property within the meaning of section 85 (1); and
 - (b) the transactions and affairs relating to its gas property within the meaning of section 85 (2).
- (2) The Commission must, in each annual report under the **Financial Management Act 1994** show separately—
 - (a) its report of operations for the financial year relating to its functions, other than its functions under section 12B; and

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(b) its report of operations for the financial year relating to its functions under section 12B.

(3) The Commission must, in its financial statements under the **Financial Management Act 1994**, show separately—

(a) the statements in respect of the electricity property within the meaning of section 85 (1); and

(b) the statements in respect of the gas property within the meaning of section 85 (2).”.

49. Amendment of sections 85B and 85C

(1) In section 85B (1) of the **State Electricity Commission Act 1958**, for “obligations or liabilities of the Commission” substitute—

“(a) obligations or liabilities of the Commission in relation to its functions, other than its functions under section 12B; or

(b) obligations or liabilities of the Commission in relation to its functions under section 12B.”.

(2) In section 85C of the **State Electricity Commission Act 1958**, for “section 85B” substitute “section 85B (1) (a)”.

50. New section 85CA inserted in State Electricity Commission Act 1958

After section 85C of the **State Electricity Commission Act 1958** insert—

“**85CA. Gas companies liable to reimburse the State**

(1) If an amount is paid by the Treasurer under section 85B (1) (b), each gas company must pay to the Treasurer for payment into the Consolidated Fund

such part of that amount as the Treasurer determines is payable by that company.

- (2) If the Treasurer, from money available for the purpose, provides an amount to the Commission for payment to the Gas Fund to enable the Commission to carry out its functions under section 12B or meet its liabilities in respect of the Gas Fund, the Treasurer may require each gas company to pay such part of that amount to the Treasurer for payment into the Consolidated Fund as the Treasurer determines is payable by that company.
- (3) A gas company must comply with a requirement made of it under this section.”

51. Amendment of sections 85D and 101

In the State Electricity Commission Act 1958—

- (a) in section 85D (1), after “contract” insert “in relation to any of its functions under this Act”;
- (b) in section 101 (1), after “assets” insert “forming part of the electricity property within the meaning of section 85 (1)”.

Division 4—Amendment of other Acts

52. Consequential amendments

An Act specified in the heading to an item in Schedule 1 is amended, on commencement of that item or a provision of that item, as set out in that item or provision.

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SCHEDULE 1

Consequential amendments

1. *Borrowing and Investment Powers Act 1987*

1.1 In section 11A (2), paragraph (a) is repealed.

1.2 In section 11A (3), paragraph (a) is repealed.

1.3 In Schedule 1, omit item 4.

2. *Building Control (Plumbers Gasfitters and Drainers) Act 1987*

In section 85 (1), in the definition of "prescribed authority", paragraph (a) is repealed.

3. *Dangerous Goods Act 1985*

In section 9 (e), omit "or the supply by reticulation of gas to which Part V of the Gas and Fuel Corporation Act 1958".

4. *Energy Consumption Levy Act 1982*

4.1 In section 5 (1) (e), omit "Gas and Fuel Corporation of Victoria".

4.2 In section 12 (8), after "Gas and Fuel Corporation (Supply) Regulations 1988" insert "or in regulations made under the Gas Industry Act 1994".

5. *Essential Services Act 1958*

In section 3, omit "the Gas and Fuel Corporation of Victoria,".

6. *Historic Buildings Act 1981*

In section 3, in the definition of "public authority", omit "the Gas and Fuel Corporation of Victoria,".

7. *National Parks Act 1975*

In section 3 (2), omit "the Gas and Fuel Corporation of Victoria".

8. *Port of Melbourne Authority Act 1958*

In section 100 (2) (f) omit "the Gas and Fuel Corporation of Victoria".

9. *Public Authorities (Dividends) Act 1983*

In section 4 (1), in the definition of "public authority", paragraph (a) is repealed.

10. *Treasury Corporation of Victoria Act 1992*

10.1 In section 36A, in the definition of "public authority", omit "Gas and Fuel Corporation of Victoria".

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10.2 In Schedule 1, omit—

“Gas and Fuel Corporation of Victoria Gas and Fuel Corporation Act 1958”.

NOTES

1. *Minister's second reading speech—*
Legislative Assembly: 27 April 1995
Legislative Council: 23 May 1995
2. The long title for the Bill for this Act was “A Bill to provide for the winding up of the Gas and Fuel Corporation of Victoria, to repeal the **Gas and Fuel Corporation Act 1958**, to amend the **State Electricity Commission Act 1958** and for other purposes.”.
3. Section headings appear in bold italics and are not part of the Act. (See **Interpretation of Legislation Act 1984**.)