

# Gas Industry (Further Amendment) Bill

## EXPLANATORY MEMORANDUM

### PART 1—PRELIMINARY

- Clause 1 states the purpose of the Act.
- Clause 2 provides for the commencement of the Act.

### PART 2—GAS INDUSTRY ACT 1994

- Clause 3 states that in the Act, the **Gas Industry Act 1994** is called the Principal Act.
- Clause 4 sub-clause (1) inserts several new definitions in the Principal Act, repeals the definitions of "domestic customer" and "domestic tariff" and amends the definitions of "gas", "gas company", "gas corporation" and "transmission pipeline". Clause 4 also amends section 4 of the Principal Act by inserting the words "or any provision of this Act" after "this Act".
- sub-clause (2) inserts new sub-sections (2), (3) and (4) in section 5 of the Principal Act. The new-sections allow certain new gas distribution pipelines and gas transmission pipelines to form part of the gas distribution system or the gas transmission system by agreement between VENCORP and the relevant gas distribution company or gas transmission company. They also allow certain distribution and transmission pipelines to be declared by Order of the Governor in Council not to be part of the gas distribution system or gas transmission system, respectively.
- Clause 5 inserts new sections 5A and 5B in the Principal Act which, respectively, authorise the Governor in Council, by Order published in the Government Gazette, to declare certain persons to be gas companies for the purposes of the Act and authorise the Minister, on the recommendation of VENCORP, to nominate certain persons as market participants for the purposes of Part 4A of the Principal Act.
- Clause 6 amends section 6 of the Principal Act by substituting references to statutory gas companies for the references to GTC and GASCOR.
- Clause 7 inserts new sections 6A, 6B and 6C in the Principal Act.

Section 6A authorises the Governor in Council, by Order published in the Government Gazette, to declare that particular references in the Principal Act or other Acts to a gas company do not include reference to a specified gas distribution company, gas retailer or gas transmission company.

Section 6B defines the term non-franchise customer for the purposes of the Principal Act.

Section 6C defines the term supply point for the purposes of the Principal Act.

- Clause 8 inserts new section 6D in the Principal Act. Section 6D provides for the conferral of functions on the ACCC under the Principal Act and certain instruments to be made under the Principal Act.
- Clause 9 inserts new sections 8A and 8B in the Principal Act. Section 8A provides that the new Parts 4A and 4B are relevant legislation and that the gas industry is a regulated industry for the purposes of the **Office of the Regulator General Act 1994**. Section 8B sets out the objectives of the Office of the Regulator General under the new Parts 4A and 4B of the Principal Act.
- Clause 10 inserts "STATUTORY" before "GAS" in the heading to Part 2 of the Principal Act.
- Clause 11 inserts a new Division 2A in Part 2 of the Principal Act. The new Division 2A establishes Victorian Energy Networks Corporation (also referred to in the Act as VENCORP), provides for the constitution and appointment of its board and sets out its functions and powers. VENCORP's powers include a power to give certain directions to gas market participants, a failure to comply with which constitutes an offence.
- Clause 12 inserts a new section 16F(2)(c) in the Principal Act which limits the number of directors of VENCORP who may have a material personal interest in a person that holds a licence under section 162 of the **Electricity Industry Act 1993**.
- Clause 13 inserts "statutory" before "gas" in the heading to Division 3 of Part 2 of the Principal Act.
- Clause 14 substitutes a new section 17 in the Principal Act which applies the provisions of Schedule 1 of the Principal Act to VENCORP, subject to certain exceptions.
- Clause 15 substitutes a new Part 3 in the Principal Act. The new Part 3 contains limitations on the liability of gas retailers, gas transmission companies and gas distribution companies, subject in each case to the terms of any agreement varying or excluding the provisions setting out those limitations on liability.

The limitations on liability contained in the new Part 3 do not affect the liability of the gas companies under the **Gas Safety Act 1997**.

Clause 16 repeals sections 47 and 48 of the Principal Act.

Clause 17 inserts a new Part 4A and a new Part 4B in the Principal Act dealing, respectively, with regulation of the gas industry and third party access.

Division 1 of the new Part 4A authorises the Governor in Council, by Order published in the Government Gazette, to regulate certain tariffs and charges relating to the sale, distribution and transmission of gas. The Order may be enforced as if it were a determination made by the Office of the Regulator General under the **Office of the Regulator General Act 1994** and sections 35 and 36 of that Act apply to the Order for that purpose.

Division 2 of the new Part 4A provides for the licensing of gas distribution companies and gas retailers. The provision of services by means of a distribution pipeline and the sale of gas by retail are prohibited unless the person engaging in those activities holds a licence or is exempt from the requirement to hold the licence. Exemptions may be granted by the Governor in Council. Division 2 sets out the requirements for licence applications, the determination of licence applications, the terms and conditions on which licences may be issued or which are to be included in licences, procedures for the variation, revocation or transfer of licences, the publication in the Government Gazette of notices in relation to those matters, provisions for the appointment of an administrator to a licensee in certain circumstances and transitional provisions. Division 2 also authorises the publication of tariffs and terms and conditions of sale of gas by gas retailers.

Division 3 of the new Part 4A authorises the Governor in Council, on the recommendation of the Minister, to make rules (**MSO Rules**) regulating the operation of a market for gas, the activities of market participants and the operation of gas transmission systems. Division 3 also makes provision for enforcement of the MSO Rules by the imposition of civil penalties the issue of injunctions, provision for actions for damages and declaratory relief.

Division 1 of the new Part 4B authorises the Governor in Council, on the recommendation of the Minister, by Order published in the Government Gazette to establish an Access Code with respect to third party access to transmission pipelines and distribution pipelines for natural gas. Division 2 makes provision for the arbitration of access disputes arising under the Access Code. Division 3 provides for the enforcement of the Access Code and makes provision for civil penalties, injunctions, actions for damages and declaratory

relief. Division 4 provides for administrative appeals against certain decisions made by the ACCC or the ORG under the Access Code. Division 5 prohibits certain persons from engaging in conduct for the purpose of preventing or hindering the access of another person to a service provided by means of certain distribution and transmission pipelines.

- Clause 18 substitutes a new section 50 in the Principal Act which authorises the gas companies to enter into agreements with each other relating to the operation, use and construction of pipelines and the exercise of rights and compliance with obligations in respect of that operation, use or construction.
- Clause 19 amends sections 51 and 51A of the Principal Act which provide, respectively, for the compulsory acquisition of land and easements by the Minister on the recommendation of a gas distribution company or gas transmission company.
- Clause 20 amends section 52 of the Principal Act by limiting the exemption from municipal rates contained in that section to the public gas companies.
- Clause 21 amends section 53 of the Principal Act so as to provide that the powers conferred by that section may be exercised by a gas distribution company or gas transmission company and that the exercise of those powers are subject to any land access code issued by the ORG under the **Office of the Regulator General Act 1994**.
- Clause 22 amends section 54 of the Principal Act by providing that the powers conferred by that section may be exercised by a gas distribution company or gas transmission company and that those powers are subject to any land access code issued by the ORG under the **Office of the Regulator General Act 1994**.
- Clause 23 substitutes a new section 57 of the Principal Act which prohibits persons from obstructing, hindering or interfering with certain actions by a gas company or the board or an officer or employee of the gas company.
- Clause 24 amends sections 58, 59 and 60 of the Principal Act by substituting references to relevant gas companies for references to GTC and GASCOR.
- Clause 25 inserts a new section 60A in the Principal Act which authorises a gas company to require easements for the use of the company where a proposal for sub-division or consolidation of land is referred to the gas company under the **Planning and Environment Act 1987**. The rights conferred by the easement are subject to any land access code applying in relation to the exercise of those rights issued by ORG under the **Office of the Regulator General 1984**.

- Clause 26 amends section 61 of the Principal Act by substituting a reference to GASCOR or GTC for the reference to a gas company and by inserting the words "or powers" after "functions" in section 61(1)(b).
- Clause 27 amends Part 6B of the Principal Act so as to extend the provisions of that part to certain new contracts or arrangements and certain new gas retailers.
- Clause 28 amends Part 7 of the Principal Act so as to authorise an allocation statement made under that part to allocate property, rights and liabilities to a person or persons nominated in writing by the Minister and makes other miscellaneous amendments.
- Clause 29 inserts new sections 83A and 83B in the Principal Act. The new section 83A provides for interim arrangements to be made between transferees of former gas corporation property concerning the use of that property prior to 31 December 1988. The new section 83B makes provision with respect to the use by a gas company of easements to which another gas company is entitled and provides for the payment of reasonable charges for that use.
- Clause 30 amends Part 8 of the Principal Act by inserting a reference in section 84 to subsidiaries of GASCOR or GTC, by substituting the term "governing rules" for the term "trust deed" in section 82E(2), by further amending section 87E to provide that certain sections in Part 8 shall form part of the governing rules of the Gas and Fuel Superannuation Fund and by including a reference to subsidiaries in section 87F(4)(b).
- Clause 31 inserts a new Part 8A in the Principal Act which provides for the transfer of staff of GASCOR and GTC to new employers and for the preservation of the entitlements and benefits of the transferred staff on transfer to the new employer.
- Clause 32 inserts new sections 88A, 88B and 88C in the Principal Act. Section 88A authorises the Treasurer and the Minister, acting jointly, to give directions to the board of the public gas companies and requires the board to comply with the direction.
- Section 88B provides for the responsibilities and entitlements of public gas companies with respect to certain financial obligations to the Treasury Corporation of Victoria which are allocated to the public gas companies under Part 7 of the Principal Act.
- Section 88C requires the gas companies to confer and co-operate with government departments and local authorities when exercising any rights, powers or authorities or discharging any duties.

- Clause 33 amends section 89 of the Principal Act by inserting a reference to Part 7 of the Principal Act in place of the references to Schedule 2 and Schedule 4, amends sections 95, 96 and 96A by limiting the application of those sections to statutory gas companies and amends section 97 by substituting references to gas distribution companies or gas retailers for the references to GASCOR. Clause 33 also repeals sections 98 and 99 of the Principal Act.
- Clause 34 substitutes a new section 100 in the Principal Act which authorises the Treasurer to guarantee the obligations of the public gas companies. Clause 34 also amends section 100(3) of the Principal Act by substituting a reference to a public gas company for the reference to a gas company or GFE Resources Limited.
- Clause 35 amends section 101 of the Principal Act by inserting a reference to the Competition Code within the meaning of the **Competition Policy Reform (Victoria) Act 1995**.
- Clause 36 inserts a new section 101A in the Principal Act which provides that a public gas company is not, and is not eligible to be declared to be, an agency or prescribed authority within the meaning of the **Freedom of Information Act 1982**.
- Clause 37 amends section 102(1) of the Principal Act by repealing several paragraphs from that section which authorise the making of regulations under the Act. Clause 37 also inserts new sub-sections (1A) and (1B) in section 102 of the Principal Act which authorise the making of regulations to specify that certain regulatory provisions or conduct provisions of the MSO Rules or the Access Code are civil penalty provisions and permits the regulations to prescribe amounts not exceeding \$100 000 that may be determined by a court to be payable for contravention of the prescribed civil penalty provisions.
- Clause 38 inserts new sections 104A and 104B in the Principal Act. Section 104A requires GASCOR and persons to whom property, rights and liabilities of GASCOR have been transferred under Part 7 to prepare their accounts for the year beginning on 1 July 1997 (or a later year nominated by the Minister) as if the operations of GASCOR relating to the transferred property, rights and liabilities had been operations of the transferee.

Section 104B contains an equivalent provision with respect to GTC and persons to whom property, rights and liabilities of GTC have been transferred under Part 7.

- Clause 39 inserts a new section 104C in the Principal Act which provides for the repeal of the **Public Authorities (Contributions) Act 1996**.
- Clause 40 inserts new Parts 13A and 13B in the Principal Act. Part 13A provides for the transfer of property, rights, liabilities and staff of public gas companies nominated by the Minister to other persons and provides for the preservation of the entitlements and benefits of transferred staff.
- Part 13B inserts new sections 115R and 115S in the Principal Act which, respectively, authorise the Treasurer to be a party to an agreement for the sale or disposal of shares in, or property of, public gas companies and provides that the **Freedom of Information Act 1982** does not apply to certain documents which disclose information about the identity of persons expressing an interest in purchasing, or making an offer to purchase, any shares in a public gas company or any property or rights of such a company or the terms of any such expression of interest or offer.
- Clause 41 inserts a new Schedule 1A in the Principal Act which sets out the terms of easements created in favour of the gas companies by virtue of the operation of the new section 60A.

### **PART 3—AMENDMENT OF OTHER ACTS**

- Clause 42 amends the **Borrowing and Investment Powers Act 1978** by inserting a reference to VENCorp in Schedule 1 to that Act and omitting item 26 in Schedule 1 to that Act.
- Clause 43 amends section 32(2) of the **Country Fire Authority Act 1958** by substituting reference to a gas distribution company or gas transmission company within the meaning of the Principal Act for the reference to a gas company within the meaning of that Act or a person authorised under section 40 of that Act.
- Clause 44 makes miscellaneous amendments to the **Electricity Industry (Further Miscellaneous Amendment) Act 1997**.
- Clause 45 amends the definition of essential services in section 3 of the **Essential Services Act 1958** by substituting a reference to a gas company within the meaning of the Principal Act for the references to GTC and GASCOR.
- Clause 46 amends the definition of public authority in section 3 of the **Historic Buildings Act 1981** by substituting reference to a public gas company within the meaning of the Principal Act for the references to GTC and GASCOR.

- Clause 47 amends the definition of public authority in section 3 of the **Melbourne City Link Act 1995** by substituting reference to a public gas company within the meaning of the Principal Act for the reference to the persons described in paragraphs (c) and (d) of that definition.
- Clause 48 inserts a new section 17(6) in the **Pipelines Act 1967** which provides that sections 17(3) and (4) of that Act do not apply in relation to the conveyance of gas through a pipeline if the Principal Act applies in relation to third party access to that pipeline.
- Clause 49 amends section 4(1) of the **Public Authorities (Dividends) Act 1983** by inserting a reference to VENCORP after paragraph (ab) of that section.
- Clause 50 substitutes a new definition of gas company in section 3(1) of the **State Electricity Commission Act 1958**.
- Clause 51 amends section 88A(3) of the **State Owned Enterprises Act 1992** by inserting a reference in that section to a company all the shares in which are held by or on behalf of the State or a statutory corporation.
- Clause 52 amends the definition of public authority in section 36A of the **Treasury Corporation of Victoria Act 1992** by inserting reference to a public gas company within the meaning of the Principal Act.