

# Gas Industry Bill

## EXPLANATORY MEMORANDUM

The Bill provides for the restructuring of the Gas and Fuel Corporation of Victoria (“GFCV”) and the amendment of the **Gas and Fuel Corporation Act 1958**. Restructuring is achieved by establishing two new statutory corporations (Part 2), Gas Transmission Corporation (“GTC”) and GASCOR (which are described in the Bill as “gas companies”).

The Bill identifies certain specified property, rights and liabilities which are to be retained by GFCV (Schedule 3). Of the remaining property, rights and liabilities of GFCV, shares in GFE Resources Ltd will vest in the Treasurer (Clause 64), the property, rights and liabilities described in Schedule 2 will be transferred to GTC and the balance of GFCV’s property, rights and liabilities will be transferred to GASCOR. All GFCV staff are to be employed by GASCOR (Part 8).

GFCV will remain in existence and provision has been made to ensure that dividends will be paid on all preference shares and that GFCV will have funds available for this purpose (Clause 108).

### PART 1—PRELIMINARY

*Clause 1* sets out the purpose of the Act.

*Clause 2* provides for the commencement of the Act.

*Clause 3* sets out the definitions for the Act.

*Clause 4* sets out a method for declaring any gaseous fuel not to be gas for the purposes of the Act.

*Clause 5* sets out a method for declaring a pipeline to be a transmission pipeline or not to be a transmission pipeline.

*Clause 6* sets out the method of determining whether a body corporate is a subsidiary of a gas company.

*Clause 7* provides that the Act binds the Crown.

*Clause 8* determines the extra-territorial operation of the Act.

### PART 2—GAS COMPANIES

This Part provides for the establishment of GTC, which is to be responsible for the transmission of gas, and GASCOR, which is to be responsible for the distribution of gas. The Bill provides for each gas company to be managed by a board of directors. Procedural matters relating to each board are set out in Schedule 1.

#### Division 1—Gas Transmission Corporation

*Clause 9* provides for the establishment of GTC.

*Clause 10* provides that GTC is a public authority but does not represent the Crown.

*Clause 11* sets out the functions and powers of GTC.

*Clause 12* restricts GTC's authority to trade in gas.

### **Division 2—GASCOR**

*Clause 13* provides for the establishment of GASCOR.

*Clause 14* provides that GASCOR is a public authority but does not represent the Crown.

*Clause 15* sets out the functions and powers of GASCOR.

*Clause 16* permits GASCOR to carry on business under the name "Gas and Fuel".

### **Division 3—Provisions applying to gas companies**

*Clause 17* provides that Schedule 1 applies to each gas company.

*Clause 18* provides that a gas company has the powers conferred on it by the **Borrowing and Investment Powers Act 1987**.

*Clause 19* provides for payments to be made where an order is made under section 36D (1) or 36E (1) of the **Treasury Corporation of Victoria Act 1992**.

*Clause 20* provides for relationships between gas companies and other Government departments and local authorities.

### **Division 4—General**

This Division imposes a number of obligations on gas companies and their directors which are similar to those imposed on State Business Corporations by the **State Owned Enterprises Act 1992**.

*Clause 21* sets out the duties of directors of gas companies.

*Clause 22* provides that the gas company or the Minister may bring an action against a director who contravenes clause 21.

*Clause 23* provides for the Treasurer and the Minister to give written directions to the board of a gas company.

*Clause 24* provides that a gas company does not have power to make a loan to a director.

*Clause 25* provides that a gas company does not have power to exempt or indemnify a director from liabilities that would otherwise attach to the director in respect of negligence and certain other defaults in relation to the gas company.

*Clause 26* requires the board of each gas company to prepare a corporate plan each year and deals with its contents (including a statement of corporate intent).

*Clause 27* sets out the contents of each statement of corporate intent.

*Clause 28* authorises the Governor in Council to direct the board of a gas company to perform functions considered to be in the public interest.

*Clause 29* requires gas companies to pay dividends to the State.

*Clause 30* requires the board of a gas company to give the Treasurer such information as the Treasurer requires.

*Clause 31* specifies certain matters to be included in a gas company's annual report.

### **PART 3—TRANSMISSION AND DISTRIBUTION OF GAS**

This Part provides for the setting of tariffs and terms and conditions of supply (clause 32) and imposes a number of obligations on GASCOR in relation to the supply of gas and contains provisions governing the relationship with customers.

*Clause 32* provides for the fixing of tariffs and terms and conditions of supply of a gas company.

*Clause 33* requires GASCOR to calculate charges and render accounts in the prescribed manner.

*Clause 34* requires customers to give GASCOR 48 hours' notice before quitting premises.

*Clause 35* restricts GASCOR's rights to disconnect domestic customers for failing to pay accounts.

*Clause 36* provides for the adjustment of a customer's account by GASCOR where gas has been supplied at an incorrect tariff.

*Clause 37* confers on a domestic customer a right of appeal where the customer is dissatisfied with a determination of GASCOR in relation to an adjustment of the customer's account.

*Clause 38* sets out the circumstances in which GASCOR must supply gas.

*Clause 39* confers on GTC an exclusive right to convey gas in Victoria through transmission pipelines and an exclusive right on GASCOR to convey gas in Victoria through distribution pipelines.

*Clause 40* provides a mechanism for the Governor in Council to authorise a person other than GTC to convey gas through transmission pipelines and a person other than GASCOR to convey gas through distribution pipelines in a specified area or for a specified purpose.

*Clause 41* imposes certain obligations on GTC in favour of GASCOR in relation to the conveyance of gas through transmission pipelines.

*Clause 42* provides a means for meters installed at premises of domestic customers to be tested.

*Clause 43* requires GASCOR to notify a customer of the period for which it considers a meter has been defective.

*Clause 44* provides a means for dealing with overcharging as a result of a defective meter.

*Clause 45* provides a means for dealing with undercharging as a result of a defective meter.

#### **PART 4—TECHNICAL REGULATION**

*Clause 46* requires gas supplied by a gas company in a prescribed area to meet certain standards and other requirements.

*Clause 47* imposes certain requirements on a gas company in relation to meters it installs.

*Clause 48* requires GASCOR to take certain steps if it intends to retain meters in a meter family in service after the end of the initial life of that meter family.

#### **PART 5—PROPERTY AND WORKS**

*Clause 49* provides that certain pipelines are not part of land.

*Clause 50* authorises a gas company to enter into agreements with one or more other gas corporations relating to the operation and use of pipelines and the exercise of associated rights.

*Clause 51* authorises a gas company to compulsorily acquire land with the approval of the Minister.

*Clause 52* provides that certain property will not be rateable under the **Local Government Act 1989**.

*Clause 53* confers certain powers on gas companies in relation to works and undertakings.

*Clause 54* authorises a gas company to open and break up roads.

*Clause 55* creates an offence for a person to wilfully obstruct the construction or operation of a pipeline or to interfere with associated works.

*Clause 56* creates an offence for a person to excavate or perform other conduct which uncovers or exposes any pipeline owned or operated by a gas company or to wilfully or negligently break, injure, open or tamper with any pipeline operated by a gas company.

*Clause 57* creates an offence for a person to obstruct, hinder or interfere with a gas company or certain other persons in entering premises or in performing anything they are empowered or required to do under the Act.

*Clause 58* makes certain conduct relating to transmission pipelines and other fittings an offence and authorises GTC to recover damages.

*Clause 59* makes certain conduct relating to certain equipment of GASCOR an offence and authorises GASCOR to recover damages and discontinue supply. The clause also contains certain evidentiary provisions relating to meters.

*Clause 60* creates an offence for a person to retain or use any property of GASCOR except in accordance with the authority of GASCOR.

## **PART 6—STATUTORY EASEMENTS**

*Clause 61* deems certain easements, rights and privileges of a gas company to be an easement vested in the gas company and appurtenant to all land vested in the gas company and provides for certain of such easements to become appurtenant to particular land if that land is disposed of by the gas company.

*Clause 62* deals with easements over land held by Crown licensees or lessees.

## **PART 7—TRANSFER OF PROPERTY OF GFCV**

This Part provides for the transfer of GFCV's property rights and liabilities to the Treasurer, GTC and GASCOR. Certain property, rights and liabilities which are described in Schedule 3 will be retained by GFCV. The property to be transferred to the Treasurer and the gas companies will vest in the transferee and liabilities transferred to the gas companies will become liabilities of the transferee on the commencement of the relevant provision (clauses 64, 65 and 66). *Clause 67* provides for GASCOR to be the successor in law of GFCV with the intent that the doctrine of universal succession will apply.

There is also provision for property rights and liabilities to be transferred by a gas company to another gas company, GFCV, the State or any two or more of them (*clause 68*) through the preparation of an allocation statement. On the relevant date, all property rights and liabilities allocated under an allocation statement will be transferred to the transferee. Provision is made on an interim basis for each transferee to exercise rights and privileges in relation to former gas corporation property and for each gas company to each exercise rights and privileges relating to easements to which the other gas company is entitled (clauses 82 and 83).

### **Division 1—Preliminary**

*Clause 63* sets out the definitions for this Part.

### **Division 2—Transfer by operation of Act**

*Clause 64* provides for GFCV's property and rights in any share in or loan to GFE Resources Ltd to vest in the Treasurer subject to any liabilities.

*Clause 65* provides for property, rights and liabilities of GFCV described in Schedule 2 (but not including property, rights and liabilities referred to in Schedules 3 or 4) to vest in or become liabilities of GTC.

*Clause 66* provides for all property, rights and liabilities of GFCV, including property, rights and liabilities referred to in Schedule 4 but not including property, rights and liabilities described in Schedules 2 and 3, to vest in or become liabilities of GASCOR.

*Clause 67* provides that GASCOR is the successor in law of GFCV except in relation to retained property, rights and liabilities of GFCV referred to in Schedule 3 and except as otherwise provided in the Act or the **Gas and Fuel Corporation Act 1958**.

### **Division 3—Direction to allocate property**

*Clause 68* provides for the Minister to give a direction in writing to a gas company directing it to transfer property, rights and liabilities of a specified kind to another gas company, to GFCV, to the State or any two or more of the gas corporations and the State in accordance with the direction. The gas company is obliged to prepare an allocation statement.

### **Division 4—Transfer by allocation**

*Clause 69* provides that on the relevant date property, rights and liabilities allocated under an allocation statement vest in the transferee or become liabilities of the transferee in accordance with the statement.

*Clause 70* provides that unless an allocation statement otherwise provides property and rights vest subject to any encumbrances to which they were subject before vesting and the rights to which the transferor was entitled in respect of liabilities immediately before they cease to be liabilities of the transferor vest in the transferee.

### **Division 5—General**

*Clause 71* provides for the issuing of a certificate by the chief executive officer of a gas corporation as conclusive evidence of the vesting, transfer or allocation of property, rights or liabilities.

*Clause 72* concerns the application of the **Pipelines Act 1967**. It ensures that the Pipelines Act 1967 does not hinder the operation of this Act but applies to the future operation of pipelines, or portions of pipelines, transferred under Part 7.

*Clause 73* sets out the basis on which property, rights and liabilities transferred under this Part are to be valued.

*Clause 74* provides for the substitution of a transferee in place of a transferor under an agreement transferred under this Part.

*Clause 75* provides for the continuing effect of former gas corporation instruments (other than certain specified ones) relating to former gas corporation property.

*Clause 76* provides that certain agreements, contracts or documents are to continue to have effect as if a reference to GFCV were a reference to GASCOR.

*Clause 77* provides for the continuation of proceedings relating to former gas corporation property to which the transferor was a party.

*Clause 78* provides for the transfer of interests in land.

*Clause 79* requires the Registrar of Titles to make amendments to the Register that are necessary because of the operation of this Part.

*Clause 80* exempts acts and transactions under this Part from stamp duty and other taxes.

*Clause 81* sets out the admissibility of evidence in relation to former gas corporation property.

## **Division 6—Rights as between transferees**

*Clause 82* provides, on an interim basis, for each transferee to exercise rights and privileges in relation to former gas corporation property.

*Clause 83* authorises each gas company to exercise rights and privileges in respect of easements to which the other gas company is entitled.

## **PART 8—STAFF**

*Clause 84* sets out definitions for this Part.

*Clause 85* provides for the transfer of GFCV employees to GASCOR and sets out the effect of the transfer including employment on the same terms and conditions, the retention of accrued entitlements to benefits and the continuity of service. The clause also provides that a transferred employee is not entitled to receive any payment or benefit by reason only of having ceased to be an employee of GFCV.

*Clause 86* sets out the effect of the transfer on the future terms and conditions of employment of transferred employees.

*Clause 87* provides for transferred employees who were members of the Gas and Fuel Corporation Superannuation Fund to continue to be members and to be entitled to payments and other benefits as if GASCOR had been the employer. The clause provides that a transferred employee is not entitled to receive any payment or benefit by reason only of having ceased to be an employee of GFCV because of this Act. The clause provides that the trust deed of the Superannuation Fund has effect as if the reference to GFCV in the definition of “Corporation” for the purposes of the trust deed were a reference to GASCOR and as if the trust deed were amended to give effect to these provisions.

## **PART 9—GENERAL**

*Clause 88* permits the Minister or Treasurer to delegate any of the Minister’s or Treasurer’s functions or powers under this Act.

*Clause 89* provides that nothing effected or to be effected by or done or suffered under this Act is to be regarded as having specified consequences under any Act or law or obligation or any provision in any contract, instrument, agreement, arrangement or understanding. References to “contract” in this clause include each agreement, contract and document referred to in Schedule 4. This clause also prevents the validity of any act or transaction of a gas corporation being called into question in any proceedings on the grounds that the provisions of this Act or the **Gas and Fuel Corporation Act 1958** had not been complied with.

*Clause 90* authorises GTC to act under certain agreements and instruments in place of GFCV or GASCOR.

*Clause 91* imposes obligations on gas companies to give identification cards to certain officers and employees.

*Clause 92* permits an officer or employee of a gas company to enter certain premises to inspect gas fittings or to find out the quantity of gas consumed, supplied or transmitted.

*Clause 93* confers a power of entry for the purpose of ensuring the security or safety of a pipeline when an emergency occurs near a pipeline used by a gas company for the conveyance of gas and permits the conveyance of gas to be stopped. The clause also provides that a gas company is not liable to any penalty or damages for failing to convey or supply gas if the failure arises out of any accidental cause beyond the control of the gas company.

*Clause 94* provides that a person concerned in or taking part in the management of a body corporate may be charged with the same offence as the body corporate and each may be convicted of the offence.

*Clause 95* provides for service of documents on a gas company.

*Clause 96* provides that a document issued or purporting to be issued by a gas company and purporting to have been signed by the chief executive officer of the gas company is evidence that the document was issued by the gas company.

*Clause 97* provides a method of proof in any legal proceedings by GASCOR that a party is the owner or occupier of premises and the consumer of gas supplied to the premises.

*Clause 98* provides for evidence that a meter has been tested or sealed in the prescribed manner.

*Clause 99* provides for service of notices on customers by a gas company.

*Clause 100* empowers the Treasurer to guarantee amounts payable by a gas company under clause 19 (1) and financial accommodation provided to a gas company or GFE Resources Limited.

*Clause 101* provides that regulations may provide for the authorisation of acts or things for the purposes of Part IV of the Trade Practices Act 1974 (Cth).

*Clause 102* enables the Governor in Council to make regulations relating to the Act.

## **PART 10—TRANSITIONAL**

*Clause 103* provides that a gas company must prepare reports and financial statements for the year ended 30 June 1995 as if the operations of GFCV or another gas company for that year and associated with the property, rights and liabilities of GFCV or another gas company that at 30 June 1995 are property and rights vested in or liabilities of the gas company had been operations of the gas company.

*Clause 104* provides that GFCV must prepare its reports and financial statements for the year ended 30 June 1995 as if Part 7 had come into operation on 1 July 1994.

*Clause 105* provides that certain regulations made under the **Gas and Fuel Corporation Act 1958** have effect as if made under this Act and the **Gas and Fuel Corporation Act 1958**.

## **PART 11—AMENDMENT OF GAS AND FUEL CORPORATION ACT 1958**

*Clause 106* provides that the **Gas and Fuel Corporation Act 1958** (“GFCV Act”) is the Principal Act in this Part.



*Clause 107* repeals section 2 and sub-section 3 (3) of the GFCV Act and substitutes a new definition of “gas” in section 3.

*Clause 108* inserts new sections 14A and 14B in the GFCV Act. The new section 14A requires GFCV to pay dividends to preference shareholders whether or not from profits and whether or not there are profits of GFCV. The new section 14B provides a guarantee by the Government of Victoria in favour of GFCV of amounts to enable it to perform its obligations to preference shareholders under the new section 14A and its memorandum and articles of association to the extent that funds are not otherwise available to GFCV.

*Clause 109* inserts new sections 19, 19A and 19B in the GFCV Act. The new section 19 will permit the Treasurer, at his discretion, to guarantee, indemnify or otherwise support the performance, satisfaction or discharge of obligations or liabilities of GFCV other than an obligation or liability to which the new section 14B applies. The new section 19A will oblige each gas company to reimburse the Treasurer for such part of the amount paid by the Treasurer under the new section 19 as the Treasurer in his discretion determines is payable by that gas company. The new section 19B permits the Treasurer, at his discretion, to require each gas company to pay such part as the Treasurer determines of amounts provided by the Treasurer to GFCV to enable it to carry out its obligations or meet its liabilities.

*Clause 110* provides for the repeal of certain provisions of the GFCV Act.

*Clause 111* inserts a new section 30AB in the GFCV Act under which certain easements, rights or privileges are deemed to be easements vested in GFCV and appurtenant to the land vested in GFCV from time to time. The new section provides that in some circumstances, certain easements will become and remain appurtenant to the land to which it was originally expressed to be or was granted as being appurtenant except where GFCV indicates otherwise at the time it conveys or transfers that land or unless schedules 2, 3 or 4 of the Act expressly provide that the easement is not required for the accommodation of that land or any part of it. This will enable GFCV’s easements to be transferred to the gas companies regardless of how the dominant tenements are dealt with.

*Clause 112* provides for further amendments of the GFCV Act.

## **PART 12—CONSEQUENTIAL AMENDMENTS OF OTHER ACTS**

*Clause 113* amends the **Borrowing and Investment Powers Act 1987**.

*Clause 114* provides that the Acts specified in Schedule 5 will be amended as specified in Schedule 5.

## **PART 13—TREASURY CORPORATION OF VICTORIA**

*Clause 115* provides for a deemed deferral of the assumption of certain liabilities under GFCV financial obligations by the Treasury Corporation of Victoria.

### **SCHEDULE 1**

#### **Provisions applying to gas companies**

*Paragraph 1* sets out the powers of delegation of a gas company.

*Paragraph 2* sets out the number of directors on the board of a gas company and provides for the board to be responsible for management of the affairs of the gas company and to exercise the powers of the gas company.

*Paragraph 3* sets out the constitution of the board of a gas company.

*Paragraph 4* provides for the appointment of directors of a gas company.

*Paragraph 5* provides for the terms and conditions of appointment of directors of a gas company.

*Paragraph 6* provides for the appointment of a chief executive officer of a gas company.

*Paragraph 7* provides for vacancies, resignations and removals from office of directors of a gas company.

*Paragraph 8* provides for the validity of the acts or decisions of the board of a gas company.

*Paragraph 9* sets out provisions relating to meetings of the board of a gas company.

*Paragraph 10* provides for the passing of resolutions without a meeting of directors of a gas company.

*Paragraph 11* deals with the disclosure of interests by directors of a gas company.

## **SCHEDULE 2**

### **Property, rights and liabilities of GFCV to be transferred to GTC**

This schedule sets out property, rights and liabilities which are to be vested in GTC.

## **SCHEDULE 3**

### **Retained property, rights and liabilities of GFCV**

This schedule sets out property, rights and liabilities which are being retained by GFCV.

## **SCHEDULE 4**

### **Certain property, rights and liabilities transferred to GASCOR**

This schedule sets out certain agreements, contracts or documents and certain easements that are not to be included in the property, rights and liabilities referred to in Schedule 2 and which are to be transferred to GASCOR.

## **SCHEDULE 5**

### **Consequential amendments**

This schedule sets out the consequential amendments to other Acts.