

# Gas And Fuel Corporation (Repeal) Bill

## EXPLANATORY MEMORANDUM

### BACKGROUND

The main purpose of the Bill is to dissolve the Gas and Fuel Corporation of Victoria (“GFCV”) (Part 3), and repay capital to preference shareholders (Part 2). The Bill repeals the **Gas and Fuel Corporation Act 1958**, and transfers residual assets and liabilities of the GFCV to the State Electricity Commission of Victoria (“SEC”). The Bill requires that SEC maintain separate funds for electricity related assets and liabilities and gas related assets and liabilities, and makes other consequential amendments to the **State Electricity Commission Act 1958**.

The Bill also makes some amendments to the **Gas Industry Act 1994** to enable GTC to employ its own staff rather than rely on contractual arrangements with GASCOR, to clarify certain matters and to re-enact provisions of the Gas and Fuel Corporation Act which are still relevant to GASCOR and GTC.

The Bill consists of six parts:

Part 1 of the Bill states its purpose, provides for its commencement and sets out definitions;

Part 2 of the Bill provides for the return of capital to preference shareholders;

Part 3 of the Bill provides for property, rights and liabilities of GFCV to vest in SEC; and for GFCV to be dissolved. Part 3 also contains mechanical provisions to facilitate the necessary property transfers;

Part 4 of the Bill provides for gas property of SEC to be transferred to the State or the gas companies (GASCOR and GTC) by means of an allocation statement;

Part 5 of the Bill includes a general saving provision that things done under it are not to be regarded as placing any person in breach of any provision or agreement; and

Part 6 of the Bill deals with consequential amendments to the **Gas Industry Act 1994**, the repeal of **Gas and Fuel Corporation Act 1958** and consequential amendments to the **State Electricity Commission Act 1958**.

### CLAUSE NOTES

#### 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* provides that the Act binds the Crown.

*Clause 5* determines the extra-territorial operation of the Act.

## **PART 2—PREFERENCE SHAREHOLDERS**

*Clause 6* provides for the return of capital and arrears of dividends to the 6% and 4% preference shareholders in GFCV, and for the cancellation of those shares.

## **PART 3—TRANSFER OF THE PROPERTY TO SEC**

*Clause 7* sets out the definitions for this Part.

*Clause 8* provides for all property, rights and liabilities of GFCV to be transferred to SEC, and for the dissolution of GFCV.

*Clause 9* provides for the substitution of SEC in place of GFCV under an agreement transferred under this Part.

*Clause 10* provides for the continuing effect of GFCV instruments as if a reference in the instrument to GFCV were a reference to SEC.

*Clause 11* provides for the continuation of proceedings to which GFCV was a party.

*Clause 12* provides for the transfer of interests in land.

*Clause 13* requires the Registrar of Titles to make amendments to the Register that are necessary because of the operation of this Part.

*Clause 14* exempts acts and transactions under this Part from stamp duty and other taxes.

*Clause 15* sets out the admissibility of evidence in relation to the interests of GFCV.

## **PART 4—TRANSFER OF GAS PROPERTY FROM SEC**

This Part provides for the transfer of gas property from SEC to the State, GTC and GASCOR through the preparation of an allocation statement.

### **Division 1—Preliminary**

*Clause 16* sets out the definitions for this Part.

*Clause 17* provides that this Part is to have effect despite anything to the contrary in the **State Electricity Commission Act 1958**.

### **Division 2—Direction to SEC to Allocate Gas Property**

*Clause 18* provides for the Minister to 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, to the State or to any two or more of the gas companies and the State in accordance with the direction. The SEC is obliged to prepare an allocation statement.

### **Division 3—Transfer by Allocation**

*Clause 19* provides that on the relevant date property, rights and liabilities allocated in an allocation statement vest in the transferee or become liabilities of the transferee in accordance with the statement.

*Clause 20* 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 SEC was entitled in respect of liabilities immediately before they ceased to be liabilities of SEC vest in the transferee.

#### **Division 4—General**

*Clause 21* provides for the issuing of a certificate by the Administrator of SEC as conclusive evidence of the vesting or transfer of property, rights or liabilities.

*Clause 22* provides for the substitution of a transferee in place of SEC under an agreement transferred under this Part.

*Clause 23* provides for the continuing effect of SEC instruments as if a reference in the instrument to SEC were a reference to the transferee.

*Clause 24* provides for the continuation of proceedings to which SEC was a party.

*Clause 25* provides for the transfer of interests in land.

*Clause 26* requires the Registrar of Titles to make amendments to the Register that are necessary because of the operation of this Part.

*Clause 27* exempts acts and transactions under this Part from stamp duty and other taxes.

*Clause 28* sets out the admissibility of evidence in relation to former SEC property.

#### **Division 5—Rights as Between Transferees**

*Clause 29* provides, on an interim basis, for each transferee to exercise rights and privileges in relation to former SEC property.

### **PART 5—GENERAL**

*Clause 30* provides that nothing effected by this Act or suffered under this Act is to be regarded as having specified consequences under any Act or law or provision in any agreement, arrangement or understanding. The clause also prevents the validity of any act or transaction of GFCV or its chief executive officer or SEC or its Administrator being called into question in any proceedings on the grounds that the provisions 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**

*Clause 31* provides for the progressive repeal of the **Gas and Fuel Corporation Act 1958**.

#### **Division 2—Gas Industry Act 1994**

*Clause 32* amends section 12 of the **Gas Industry Act 1994** by inserting a new sub-section (3). The new sub-section (3) provides that section 12 (1) does not prohibit the

sale of gas by GTC where the gas is contained in a storage facility acquired by GTC for the main purpose of gas storage.

*Clause 33* amends section 25 and 26 (3) of the **Gas Industry Act 1994**. Section 25 sets out the circumstances in which a gas company may indemnify a director of that company, and section 26 (3) requires a gas company to submit a business plan and financial statements containing such information as the Treasurer or the Minister requires.

*Clause 34* inserts a new section 32A into the **Gas Industry Act 1994**. The new section 32A provides that GASCOR may supply gas for the purposes of a bulk hot water installation on terms and conditions approved by the Minister.

*Clause 35* amends section 38 of the **Gas Industry Act 1994** by inserting a new sub-section (5) which provides that GASCOR is not liable for a failure to supply gas if the failure arises out of a cause beyond its control. The clause also makes a consequential amendment to section 39 of the **Gas Industry Act 1994**.

*Clause 36* inserts a new section 39A into the **Gas Industry Act 1994**. The new section 39A provides that GTC or GASCOR is not liable for a failure to convey gas if the failure arises out of a cause beyond the control of GTC or GASCOR.

*Clause 37* makes consequential amendments to sections 41 and 59 of the **Gas Industry Act 1994** and inserts a new sub-section (1A) into section 61 of the **Gas Industry Act 1994** which clarifies the effect of that section in relation to an easement vested in GTC.

*Clause 38* inserts new sections 62A–62E into the **Gas Industry Act 1994**. The new sections provide that SEC and GTC may enter into an agreement relating to the creation of an easement for the benefit of a pipeline operated by GTC (section 62A), that the Governor-in-Council may approve such an agreement (section 62B), that a statutory easement is created (section 62C), that certain rules about easements do not apply to such an easement (section 62D) and that the Registrar of Titles make the necessary amendments to the Register that are required because of the operation of these sections (section 62E).

*Clause 39* inserts a new Part 6A into the **Gas Industry Act 1994**, containing gas supply emergency provisions. The new Part provides for the application of these provisions by order of the Governor-in-Council (section 62F), specifies the powers of the Minister while a proclamation is in force (section 62G), requires compliance with Ministerial directions (section 62H), provides for a power of delegation (section 62I), creates certain offences (section 62J), requires judicial notice of certain things (section 62K) and provides for immunity from suit for any damage, loss or injury because of the operation of this Part (section 62L).

*Clause 40* inserts a new section 87 (3) into the **Gas Industry Act 1994** which requires the trustees of the Gas and Fuel Superannuation Fund to ensure that separate accounting records are kept in relation to the benefits and contributions of the persons employed by each gas company.

*Clause 41* inserts new sections 87A and 87B into the **Gas Industry Act 1994**. The new section 87A preserves the rights of former GASCOR staff who accept an offer of employment made by GTC before 31 December 1996. New section 87B makes provision for the superannuation rights of such employees.

*Clause 42* inserts a new section 90A into the **Gas Industry Act 1994**. The new section 90A provides that neither the **Gas Industry Act 1994** nor this Act nor the repeal of section 102 of the **Gas and Fuel Corporation Act 1958** varies any rights referred to in section 102 of the **Gas and Fuel Corporation Act 1958**.

*Clause 43* inserts a new section 96A into the **Gas Industry Act 1994**. The new section 96A clarifies the power of a gas company to prosecute for offences under the **Gas Industry Act 1994**.

*Clause 44* makes certain further consequential amendments to the **Gas Industry Act 1994**. Clause 44 (1) (b) requires the SEC to prepare the reports and financial statements of GFCV for the financial year ending on 30 June 1995.

### **Division 3—State Electricity Commission Act 1958**

*Clause 45* inserts further definitions into the **State Electricity Commission Act 1958**.

*Clause 46* substitutes new sections for existing sections 12A and 12B of the **State Electricity Commission Act 1958**. The new section 12A provides for the general functions and powers of the SEC. The new section 12B provides for the functions and powers of the SEC in relation to gas.

*Clause 47* makes certain consequential amendments to the **State Electricity Commission Act 1958**.

*Clause 48* inserts new sections 83, 84, 85 and 85A into the **State Electricity Commission Act 1958**. New section 83 provides for the establishment of an Electricity Fund of the SEC. New section 84 provides for the establishment of a Gas Fund of the SEC. New section 85 defines the electricity property and the gas property of the SEC. New section 85A requires the SEC to prepare separate accounts, statements and reports in relation to its electricity and gas property.

*Clause 49* makes certain consequential amendments to sections 85B and 85C of the **State Electricity Commission Act 1958**.

*Clause 50* inserts a new section 85CA into the **State Electricity Commission Act 1958**. The new section 85CA requires that if an amount is paid by the Treasurer under section 85B (1) (b) of the **State Electricity Commission Act 1958** or if the Treasurer provides an amount to the SEC for payment to the Gas Fund to enable the SEC to carry out its gas functions or meet its liabilities in respect of the Gas Fund, the Treasurer may require each gas company to pay such part of such an amount into the Consolidated Fund as the Treasurer determines.

*Clause 51* makes further consequential amendments to the **State Electricity Commission Act 1958**.

### **Division 4—Amendments of other Acts**

*Clause 52* provides that the Acts specified in Schedule 1 will be amended as specified in Schedule 1.

## **SCHEDULE 1**

### **Consequential Amendments**

This schedule sets out the consequential amendments to other Acts.