

Gas and Fuel Corporation (Heatane Gas) Act 1993

No. 88 of 1993

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Victoria

No. 88 of 1993

Gas and Fuel Corporation (Heatane Gas) Act 1993

[Assented to 16 November 1993]

Preamble

As part of the transfer of the Heatane gas business of the Gas and Fuel Corporation of Victoria, it is necessary to provide for the transfer of a pipeline extending from Dandenong to Hastings, Long Island Point and Crib Point and for the continued operation of another pipeline over part of the same route that is to be retained by the Corporation, and for certain rights, privileges and obligations over land in connection with those pipelines.

The Parliament of Victoria enacts as follows:

1. Purpose

The purposes of this Act are—

- (a) to provide for the transfer of a pipeline in connection with the transfer of the Heatane gas

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business of the Gas and Fuel Corporation of Victoria, and for another pipeline which is to be retained by that Corporation, and for certain rights, privileges and obligations over land in connection with those pipelines; and

- (b) to amend the **Gas and Fuel Corporation Act 1958** concerning the creation of easements in favour of that Corporation.

2. Commencement

This Act comes into operation on the day on which it receives the Royal Assent.

3. Definitions

- (1) In this Act—

“**appointed day**” means the day on which an Order under section 11 comes into operation;

“**Central Plan Office**” means the Central Plan Office under the **Survey Co-ordination Act 1958**;

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

“**Corporation pipeline**” means a pipeline, other than the Heatane pipeline, that is located within the land shown by parallel broken lines and described as an easement in the plans referred to in Schedule 2 and that immediately before the appointed day the Corporation is permitted to own and use under the **Pipelines Act 1967**;

“**Elgas**” means Elgas Reticulation Pty. Ltd., a company within the meaning of the **Corporations Law**;

“**Heatane pipeline**” means the 100 millimetre nominal bore pipeline that—

- (a) is located within the land shown by parallel broken lines and described as an easement in the plans referred to in Schedule 2; and

(b) immediately before the appointed day the Corporation is permitted to own and use under the **Pipelines Act 1967**;

“pipeline” includes valves, apparatus, equipment, cathodic protection works and other works associated with a pipeline;

“Plan” means a plan lodged at the Central Plan Office;

“statutory covenant” means the obligations referred to in section 12 (g) as varied and in force from time to time;

“statutory easement” means the easement created by section 12 (c) as varied and in force from time to time.

(2) A reference in this Act to—

(a) the statement lodged under section 9 is a reference to that statement as varied from time to time under section 16; and

(b) the agreement lodged under section 9 is a reference to that agreement as varied from time to time under section 16.

4. Interpretation of plans

(1) The Plan referred to in Schedule 1 shows, by solid black line, the route of the Corporation pipeline and the Heatane pipeline.

(2) The Plans referred to in Schedule 2 describe, by reference to the route of the Corporation pipeline and the Heatane pipeline, the land to be burdened by the statutory easement, and show that land by parallel broken lines.

5. Act to be read with Gas and Fuel Corporation Act

This Act must be read as one with the **Gas and Fuel Corporation Act 1958**.

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6. Act to bind the Crown

This Act binds the Crown in right of the State of Victoria.

7. Pipelines are not part of land

The Corporation pipeline and the Heatane pipeline are not part of the land through which they run, and are personal property.

8. Transfer of Heatane pipeline

- (1) The Corporation may transfer ownership of the Heatane pipeline to Elgas on any terms agreed between the Corporation and Elgas.
- (2) The transfer has no effect unless and until approved by the Governor in Council by Order under section 11.
- (3) Section 15 applies to any subsequent transfer of the ownership of the Heatane pipeline.

9. Documents to be lodged before statutory easement created

- (1) The Corporation and Elgas may jointly prepare a written statement specifying—
 - (a) the rights to be given to the persons for the time being entitled to the benefit of the statutory easement; and
 - (b) the obligations to be imposed on the owners for the time being of land to be burdened by the statutory easement in respect of the easement and the pipelines within it; and
 - (c) the obligations of the persons for the time being entitled to the benefit of the statutory easement with respect to the use of the easement and the protection of the land burdened by it.
- (2) The Corporation and Elgas may enter into a written agreement relating to the Corporation pipeline and the Heatane pipeline, which may include provision for all or any of the following—

- (a) the use of the statutory easement;
 - (b) their respective rights and obligations in relation to the benefit of the easement;
 - (c) the taking of proceedings in relation to that easement.
- (3) The Corporation must lodge a copy of the statement and agreement—
- (a) with the Minister; and
 - (b) at the Central Plan Office.
- (4) Production of a copy of the statement or agreement lodged under sub-section (3) (a) or (b) is conclusive proof of the existence and contents of the original.

10. Plans—statutory easement

- (1) At any time before the making of an Order under section 11, the Surveyor-General may cause to be prepared and may sign substitute plans for all or any of the plans referred to in Schedule 1 or 2 or for any part of the land described in those plans, if the Surveyor-General considers this necessary to correct any defect in the boundaries or description, or for the better identification, of the land to be burdened by the statutory easement.
- (2) A substitute plan referred to in sub-section (1)—
- (a) may only be prepared at the request of and in consultation with the Corporation and Elgas; and
 - (b) may be based on plans prepared by the Corporation when constructing the Corporation pipeline or the Heatane pipeline, without a survey being conducted.
- (3) Without delay after signing a substitute plan the Surveyor-General must—
- (a) lodge the plan at the Central Plan Office; and
 - (b) lodge a copy of the plan with the Minister.
- (4) If a plan has been substituted for all or any part of the land in a plan referred to in Schedule 1 or 2, a reference

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to that plan in this Act, to the extent that it relates to the land in the substitute plan, must be taken to be a reference to that substitute plan.

11. Approval of easement covenant and transfer

- (1) On the Minister's recommendation the Governor in Council, by Order published in the Government Gazette, may—
 - (a) approve the statement and agreement lodged under section 9; and
 - (b) specify the land to be burdened by the statutory easement by reference to the plans referred to in Schedule 1 and 2; and
 - (c) approve the transfer of the Heatane pipeline to Elgas on the terms and conditions agreed between the Corporation and Elgas.
- (2) An Order under sub-section (1) comes into operation on the date of publication of the Order in the Government Gazette or on any later day specified in the Order.

12. Effect of Order

By force of this section, on and from the appointed day—

- (a) any easement, right or privilege for pipeline purposes—
 - (i) existing immediately before the appointed day; and
 - (ii) in favour of the Corporation or land owned by or vested in the Corporation; and
 - (iii) relating to the land to be burdened by the statutory easement—
is extinguished; and
- (b) any restrictive covenant—
 - (i) existing immediately before the appointed day; and

- (ii) in favour of the Corporation or land owned by or vested in the Corporation; and
- (iii) relating to an easement, right or privilege extinguished by paragraph (a)—
is discharged; and
- (c) an easement is created over the land specified in the Order under section 11; and
- (d) the owner for the time being of the Corporation pipeline and the owner for the time being of the Heatane pipeline are entitled to the benefit of the statutory easement; and
- (e) the creation of the statutory easement gives to the persons entitled to the benefit of the easement the rights specified in the statement lodged under section 9; and
- (f) the creation of the statutory easement imposes on the persons entitled to the benefit of the easement the obligations specified in the statement lodged under section 9, and the owners for the time being of the land burdened by the easement may enforce those obligations as if the persons so entitled had entered into an agreement with each of those owners containing those obligations; and
- (g) the burden of any obligation on an owner of land (whether positive or negative) specified in the statement lodged under section 9—
 - (i) runs with that land; and
 - (ii) may be enforced against that owner or that owner's successor in title as if that owner had agreed to be bound by it and as if it were a restrictive covenant; and
 - (iii) may be enforced by the persons for the time being entitled to the benefit of the statutory easement; and
- (h) in relation to the statutory easement, the agreement lodged under section 9 governs the rights and obligations of the persons for the time being entitled to the benefit of the easement in respect of each other; and

- (i) the agreement lodged under section 9 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; and
- (j) the ownership of the Heatane pipeline is transferred to Elgas.

13. *Responsibilities to cease in certain circumstances*

- (1) If a restrictive covenant discharged by section 12 is also a term of a contract, that term ceases to have effect by force of this section on the discharge of the covenant.
- (2) If a person bound by an agreement lodged under section 9 ceases to be the owner of the Corporation pipeline or the Heatane pipeline, the agreement ceases to bind that person.
- (3) Sub-sections (1) and (2) do not affect the previous operation of a covenant or agreement or any right or liability resulting from that previous operation.

14. *Certain rules about easements and covenants not to apply*

The statutory easement and statutory covenant have effect—

- (a) even though there is no land benefited or capable of being benefited by them; and
- (b) even though they may burden land owned or occupied by a person entitled to the benefit of the easement or covenant; and
- (c) even though they may affect Crown land or land owned or occupied by a public authority; and
- (d) even though any of the land burdened by them may be reserved Crown land a public highway or road; and
- (e) despite any other Act or rule of law to the contrary.

15. Pipelines

- (1) On the appointed day—
 - (a) Elgas is deemed to be the holder of a permit under the **Pipelines Act 1967** to own and use and a licence under that Act to operate the Heatane pipeline on the terms and conditions and for the period specified in the order under section 11; and
 - (b) any permits or licences for the Heatane pipeline held by the Corporation under the **Pipelines Act 1967** are cancelled by force of this section.
- (2) An order under section 11 may specify the terms, conditions and period of a permit or licence referred to in sub-section (1) (a), and those terms and conditions and that period must be the same as those in the cancelled permits and licences referred to in sub-section (1) (b).
- (3) As soon as practicable after the appointed day, the Minister must issue to Elgas permit and licence documents that comply with sub-section (1) (a).
- (4) As soon as practicable after the appointed day the Minister must amend any permits or licences held under the **Pipelines Act 1967** by the Corporation for the Corporation pipeline so that the part of the authorised route shown in them and also included in the statutory easement accords with the route shown in the plan referred to in Schedule 1.
- (5) The **Pipelines Act 1967** does not apply to—
 - (a) a permit or licence referred to in sub-section (1) (a); or
 - (b) the issue, under sub-section (3), of a permit or licence document; or
 - (c) the amendment of a permit or licence under sub-section (4); or
 - (d) the cancellation of a permit or licence by force of sub-section (1) (b).

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- (6) Subject to sub-section (7), the **Pipelines Act 1967** applies on and from the appointed day to—
- (a) the renewal, transfer, amendment or cancellation of a permit or licence referred to in sub-section (1) (a), and to any new permit or licence issued on or after the expiry of that permit or licence; and
 - (b) the renewal, transfer, amendment or cancellation of a permit or licence referred to in sub-section (4) and to any new permit or licence issued on or after the expiry of that permit or licence; and
 - (c) the transfer of an interest in the Corporation pipeline or the Heatane pipeline, other than a transfer under this Act; and
 - (d) the construction, reconstruction, alteration, repair, maintenance, operation and use of the Corporation pipeline and the Heatane pipeline.
- (7) The authorised route specified in a permit or licence referred to in sub-section (6) cannot be varied under the **Pipelines Act 1967** unless at the same time the statutory easement is also varied.

16. Variation of easement covenant or agreement

- (1) The persons for the time being bound by an agreement lodged under section 9 may vary it by further agreement.
- (2) The persons for the time being entitled to the benefit of the statutory easement or statutory covenant may jointly prepare an instrument of variation of that easement or covenant.
- (3) The owner for the time being of the Corporation pipeline, the owner for the time being of the Heatane pipeline and the owner for the time being of any land burdened by the statutory easement or statutory covenant may, by agreement, vary—
 - (a) an obligation of the owners of those pipelines referred to in section 12 (f); or

(b) that easement or covenant—

to the extent that it relates to that land.

- (4) At the request of and in consultation with the persons who enter into an agreement under sub-section (1) or (3) or prepare an instrument under sub-section (2), the Surveyor-General may cause to be prepared and may sign any plans for the purposes of the variation, including substitute plans for all or any part of the land covered by the statutory easement.
- (5) Those plans—
- (a) may be based on information supplied by the persons who requested their preparation, without a survey being conducted; and
 - (b) must be lodged by the Surveyor-General at the Central Plan Office.
- (6) An easement or covenant must not be varied under this section so that it burdens other land unless—
- (a) the variation occurs in conjunction with a change (in accordance with the **Pipelines Act 1967**) in the authorised route of the Corporation pipeline or the Elgas pipeline and the variation—
 - (i) is made with the agreement of the owners of the land affected; or
 - (ii) is authorised by an Act other than this Act; or
 - (b) the instrument of variation states that the variation is made to correct—
 - (i) an error or omission; or
 - (ii) a defect found on survey; or
 - (iii) a discrepancy between the actual route and the route shown on the plan referred to in Schedule 1—
in relation to the route of the Corporation pipeline or the Heatane pipeline.
- (7) The persons who enter into an agreement or prepare an instrument under this section must lodge a copy of it with the Minister and at the Central Plan Office.

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- (8) An agreement under sub-section (1) or (3) or an instrument under sub-section (2) has no effect unless and until a copy is lodged at the Central Plan Office under this section.
- (9) The production of a copy of an agreement or instrument lodged under sub-section (7) is conclusive proof of the existence and contents of the original.
- (10) Despite anything to the contrary in any other Act or law, the statutory easement or the statutory covenant created by this Act cannot be varied except in accordance with this section.

17. Other easements and rights not affected

- (1) Subject to section 12 (a) and (b), the creation or variation of the statutory easement or the statutory covenant does not affect—
 - (a) any other easement, right, privilege, interest or obligation existing over the land burdened by the easement or covenant; or
 - (b) the use of the land burdened by that easement or covenant in a way that is consistent with the easement or covenant; or
 - (c) the creation of any other easement, right, privilege, interest or obligation over the land burdened by the easement and covenant, if that creation is authorised by law; or
 - (d) any agreement existing immediately before the appointed day and relating to the transmission of substances through the Corporation pipeline or the Heatane pipeline.
- (2) If immediately before the appointed day there existed between the Corporation and an owner of land which, on and from that day, is to be land burdened by the statutory easement, an agreement in writing about access to that land by the Corporation or the use of that land by the owner, that agreement—
 - (a) is not extinguished by this Act; and

- (b) has effect as if made in relation to the statutory easement.

18. Amendment of records relating to title

- (1) On being requested to do so by a person for the time being entitled to the benefit of a statutory easement or statutory covenant, the Registrar of Titles must record on any relevant folio of the Register under the **Transfer of Land Act 1958** that the land in the folio is subject to an easement and covenant created by this Act or that the statutory easement or statutory covenant is varied, as the case requires, and must also make any other amendments to the Register that are necessary because of the operation of this Act.
- (2) The request must—
 - (a) specify the reference numbers given at the Central Plan Office to the plans, statements, instruments or agreements relevant to the request; and
 - (b) specify the folios of the Register to which the request relates; and
 - (c) specify the amendments to the Register that the Registrar is requested to make; and
 - (d) in the case of the creation of the statutory easement and statutory covenant, be made without delay after the coming into operation of the Order under section 11 and be accompanied by a copy of that Order; and
 - (e) in the case of a variation of the statutory easement or statutory covenant, be made without delay after a copy of the relevant agreement or instrument under section 16 is lodged at the Central Plan Office and be accompanied by a copy of that instrument or agreement.
- (3) A recording in the Register authorised by this section may be made without the production of any relevant consent or certificate of title and without requiring a plan of survey, or production of any other instrument, or the giving of any other notice.

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- (4) If any land to which an Order under section 11 or an instrument or agreement under section 16 applies is not Crown land and is not under the operation of the **Transfer of Land Act 1958**, a person entitled to the benefit of the statutory easement or statutory covenant must, as soon as practicable after the Order comes into operation or a copy of the instrument or agreement is lodged at the Central Plan Office (as the case requires), deliver a memorial of the Order, instrument or agreement (that complies with Part 1 of the **Property Law Act 1958**) to the office of the Registrar-General, and for the purposes of that Part that Order, instrument or agreement must be taken to be an instrument affecting land.
- (5) For the purposes of section 7 (4) of the **Property Law Act 1958** production of a copy of the Government Gazette containing an Order under section 11 must be taken to be production of the original Order.

19. Easement and covenant not breach of agreement

The extinguishment by this Act of an easement, right, privilege or covenant, the creation or variation by this Act of a statutory easement or statutory covenant, and the exercise of rights attaching to a statutory easement created by this Act do not constitute a breach of any agreement, arrangement or understanding existing immediately before the appointed day between a person entitled to the benefit of the easement, right, privilege or covenant so extinguished or created and a person whose land is burdened by it.

20. No compensation payable in certain circumstances

No compensation is payable by the Crown, the Corporation or Elgas in respect of the extinguishment, creation or variation by this Act of an interest, right, privilege or obligation over land.

21. *New section 30AA inserted in Gas and Fuel Corporation Act*

After section 30 of the Gas and Fuel Corporation Act 1958 insert—

“30AA. *Easement not required to benefit land*

An easement or a right which would, if there were land of the Corporation benefited or capable of being benefited by it, be an easement, acquired by the Corporation (whether before or after the commencement of this section) is deemed to be and always to have been an easement, even though (either when it was created or since then) there is or was no land of the Corporation benefited or capable of being benefited by that easement or right.”

No. 6290.
Reprinted to
No. 29/1988.
Subsequently
amended by
Nos 38/1988,
6/1989,
18/1990,
81/1989 and
94/1990.

22. *Supreme Court—Limitation of jurisdiction*

It is the intention of this section to alter or vary section 85 of the Constitution Act 1975 to the extent necessary to prevent the Supreme Court entertaining actions for compensation in circumstances in which no compensation is payable by virtue of section 20.

Sch. 1

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SCHEDULES

SCHEDULE 1

Section 4

**ROUTE OF THE CORPORATION PIPELINE AND THE
HEATANE PIPELINE**

Plan No. LEGL93/206

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SCHEDULE 2

Section 3

LAND BURDENED BY THE STATUTORY EASEMENT

Plans Numbered LEGL93/207

NOTES

1. Minister's second reading speech—

Legislative Assembly: 7 October 1993

Legislative Council: 24 October 1993

2. The long title for the Bill for this Act was "A Bill to facilitate the transfer of certain pipelines in connection with the transfer and operation of the Heatane gas business of the Gas and Fuel Corporation of Victoria, to amend the Gas and Fuel Corporation Act 1958 and for other purposes."

3. Constitution Act 1975:

Section 85 (5) statement:

Legislative Assembly: 7 October 1993

Legislative Council: 27 October 1993

Absolute majorities:

Legislative Assembly: 26 October 1993

Legislative Council: 9 November 1993

4. Section headings appear in bold italics and are not part of the Act. (See Interpretation of Legislation Act 1984.)