



Moomba-Sydney Pipeline System Sale Act 1994

No. 70 of 1994

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Moomba-Sydney Pipeline System Sale Act 1994

No. 70 of 1994

**An Act relating to the sale of the Moomba-Sydney pipeline
system, and for related purposes**

[Assented to 10 June 1994]

The Parliament of Australia enacts:

PART 1—PRELIMINARY

Division 1—Short title and commencement

Short title

1. This Act may be cited as the *Moomba-Sydney Pipeline System Sale Act 1994*.

Commencement

2.(1) Sections 1, 2, 3, 4, 6 and 7 commence on the day on which this Act receives the Royal Assent.

(2) Subject to subsection (3), the remaining provisions of this Act commence on the sale day.

(3) If:

(a) the Commonwealth and Newco do not enter into an agreement on the sale day for the sale of the Moomba-Sydney pipeline system by the Commonwealth; or

(b) if the agreement is entered into but Newco does not pay the Commonwealth the amount it is required to pay the Commonwealth on the sale day under the agreement;

the remaining provisions of this Act are taken never to have commenced.

Division 2— Definitions and binding the Crown

Definitions

3.(1) In this Act, unless the contrary intention appears:

“AGL” means The Australian Gas Light Company;

“asset” means:

(a) any legal or equitable estate or interest in real or personal property, including a contingent or prospective one; and

(b) any right, privilege or immunity, including a contingent or prospective one;

but does not include a Commonwealth record under the *Archives Act 1983*;

“asset purchase agreement” means the agreement made between the Commonwealth and Newco on the sale day for the sale of the Moomba-Sydney pipeline system;

“authorised person” means:

(a) the Minister; or

(b) a person authorised by the Minister, in writing, for the purposes of this Act;

“Authority” means the Pipeline Authority established by the *Pipeline Authority Act 1973*;

“Authority instrument” means an instrument that is specified in Schedule 3 to the asset purchase agreement;

“award” has the same meaning as in the *Industrial Relations Act 1988*;

“Commonwealth-AGL agreement” means the agreement made between the Commonwealth and AGL on 18 November 1993 in relation to the sale of the Moomba-Sydney pipeline system;

“Commonwealth-guaranteed debt” means a debt and any other related obligations whose performance is guaranteed by the Commonwealth;

“DFRDB Act” means the *Defence Force Retirement and Death Benefits Act 1973*;

“dual destination instrument” means an Authority or Pacenco instrument, that relates to a dual destination interest;

“dual destination interest” means an easement or other right in relation to land, that is specified in the easement agreement;

“easement agreement” means the agreement made between the Commonwealth and Newco on the sale day in relation to their ownership as tenants in common of all dual destination interests;

“instrument” includes a document but does not include a Commonwealth legislative instrument other than an instrument under the *Lands Acquisition Act 1955*, the *Lands Acquisition Act 1989* or the *Industrial Relations Act 1988*;

“land” means:

(a) a legal or equitable estate or interest in land; or

(b) a right, power or privilege in relation to land;

“liabilities” means liabilities and duties, including contingent or prospective ones;

“Long Service Leave Act” means the *Long Service Leave (Commonwealth Employees) Act 1976* as in force immediately before the sale day;

“Maternity Leave Act” means the *Maternity Leave (Commonwealth Employees) Act 1973*;

“Newco” means the body corporate nominated under section 6;

“Newco body” means Newco or a Newco subsidiary;

“Pacenco” means Pacenco Proprietary Limited (A.C.N. 060 349 948);

“Pacenco instrument” means an instrument that is specified in Schedule 4 to the asset purchase agreement;

“petroleum” means any of the following, whether in a gaseous, liquid or solid state:

(a) any naturally occurring hydrocarbon;

(b) any naturally occurring mixture of hydrocarbons;

(c) any naturally occurring mixture of one or more hydrocarbons and one or more of the following:

(i) hydrogen sulphide;

(ii) nitrogen;

(iii) helium;

(iv) carbon dioxide;

(d) any hydrocarbon or mixture of hydrocarbons produced by refining a substance referred to in paragraph (a), (b) or (c);

(e) any mixture of a hydrocarbon or hydrocarbons so produced with another substance or other substances;

“post-sale transferee” means a staff member of the Authority who becomes employed by Newco under subsection 57(2) or 60(2);

“**sale day**” has the meaning given by subsection 4(1);

“**share**”, in relation to a body corporate, means a share in the body corporate’s share capital;

“**SRC Act**” means the *Safety, Rehabilitation and Compensation Act 1988*;

“**staff member of the Authority**” means a person who is an officer (other than a director) or employee of the Authority;

“**staff transfer agreement**” means the agreement made between:

- (a) AGL on its own behalf and on behalf of other prospective buyers of shares in Newco; and
- (b) the unions who represent the staff of the Authority; and
- (c) the Authority;

before the sale day in relation to the transfer of staff to Newco;

“**transferring staff member**” means a staff member of the Authority who becomes employed by Newco under subsection 8(2).

(2) For the purposes of this Act, the question whether a body corporate is a subsidiary of another body corporate is to be determined under the Corporations Law.

The sale day

4.(1) The sale day is 30 June 1994 or such other day as the Commonwealth and AGL agree to in writing for the purposes of the Commonwealth-AGL agreement.

(2) The Minister must, by notice in the *Gazette*, notify the sale day within 14 days after the sale day.

Act binds the Crown

5.(1) This Act binds the Crown in right of the Commonwealth, each of the States, the Australian Capital Territory and the Northern Territory.

(2) This Act does not make the Crown liable to be prosecuted for an offence.

PART 2—TRANSFERS ETC. OF ASSETS ETC. TO NEWCO AND THE COMMONWEALTH

Division 1—Transfer of certain assets etc. relating to the Moomba-Sydney pipeline system from the Authority and Pacenco to Newco

Subdivision A—Nomination of Newco

Nomination of Newco

6. Before the sale day, the Minister must, by notice in the *Gazette*, nominate a body corporate for the purposes of this Act.

Subdivision B—Certain staff members of the Authority to become employees of Newco

Staff member of the Authority may consent to being employed by Newco

7.(1) This section applies to each staff member of the Authority who receives a Newco employment offer at least 15 days before the sale day. For this purpose, “**Newco employment offer**” means an offer of employment with Newco beginning on the sale day that is made by AGL on its own behalf and on behalf of other prospective buyers of shares in Newco.

(2) The staff member may consent to being employed by Newco by notice in writing given to the Chief Executive Officer of the Authority within 2 weeks after the staff member receives the offer of employment.

(3) The staff member may revoke his or her consent at any time before the sale day by notice in writing given to the Chief Executive Officer of the Authority.

Certain staff members of the Authority to become employees of Newco

8.(1) This section applies to each staff member of the Authority who:

- (a) has consented to being employed by Newco under section 7; and
- (b) has not revoked his or her consent before the sale day; and
- (c) was a staff member of the Authority immediately before the sale day.

(2) On the sale day, the staff member:

- (a) ceases, by force of this section, to be an officer or employee of the Authority; and
- (b) becomes an employee of Newco, by force of this section, on the same terms and conditions that applied to the staff member immediately before the sale day because of an award.

(3) This section has effect subject to sections 9 and 10.

Subdivision not to affect certain matters relating to transferring staff members

9.(1) On and after the sale day, this section has effect for the purposes of applying a law or award to Newco’s employment of a transferring staff member.

(2) The service of the transferring staff member as an employee of Newco is to be regarded for all purposes as having been continuous with his or her service, immediately before the sale day, as an officer or employee of the Authority.

(3) The transferring staff member is to be regarded, on the sale day, as having:

Moomba-Sydney Pipeline System Sale No. 70, 1994

- (a) accrued an entitlement to Long Service Leave Act benefits, recreation leave benefits and sickness leave benefits; and
- (b) an entitlement to recognition by Newco of years of service in connection with that employment;

that is equivalent to the entitlement that the person had as an officer or employee of the Authority, immediately before the sale day.

(4) The transferring staff member is not entitled to receive any payment or other benefit by reason only of having ceased to be an officer or employee of the Authority because of this Act.

Variation of terms and conditions of employment

10.(1) This Subdivision does not prevent the terms and conditions of a transferring staff member's employment on or after the sale day from being varied:

- (a) in accordance with those terms and conditions; or
- (b) by or under a law (including another provision of this Act), award, determination or agreement.

(2) In this section:

“vary”, in relation to terms and conditions, includes:

- (a) omitting any of those terms and conditions; or
- (b) adding to those terms and conditions; or
- (c) substituting new terms or conditions for any of those terms and conditions.

Transferring staff member not to be eligible for re-appointment under the *Public Service Act 1922*

11. Paragraph 87N(2)(c) of the *Public Service Act 1922* does not apply to a transferring staff member.

Subdivision C—Transfer of certain assets etc. relating to the Moomba-Sydney pipeline system business from the Authority and Pacenco to Newco

Certain assets and liabilities of the Authority and Pacenco to become assets and liabilities of Newco

12.(1) By force of this section, all assets of the Authority or Pacenco specified in Schedule 1 to the asset purchase agreement cease to be assets of the Authority or Pacenco and become assets of Newco on the sale day.

(2) By force of this section, all liabilities of the Authority or Pacenco specified in Schedule 2 to the asset purchase agreement cease to be liabilities of the Authority or Pacenco and become liabilities of Newco on the sale day.

References in certain instruments to the Authority or Pacenco to be references to Newco on and after the sale day

13.(1) An Authority instrument continues to have effect on and after the sale day as if a reference in the instrument to the Authority were a reference to Newco.

(2) A Pacenco instrument continues to have effect on and after the sale day as if a reference in the instrument to Pacenco were a reference to Newco.

Division 2—Provisions relating to the transfer of dual destination interests to the Commonwealth and Newco

Dual destination interests become assets of Newco and the Commonwealth

14.(1) By force of this section, all dual destination interests:

- (a) cease to be assets of the Authority or Pacenco; and
- (b) become assets in which Newco and the Commonwealth each have a half interest as tenants in common;

on the sale day.

(2) Newco is to hold all jointly transferring interests on the terms and conditions that apply to the interests under the easement agreement.

Dual destination instruments that do not create easements

15. A dual destination instrument that does not create an easement continues to have effect, on and after the sale day, as if a reference in the instrument to the Authority or Pacenco were a reference to Newco and the Commonwealth jointly.

Dual destination instruments that create easements

16.(1) This section applies to a dual destination instrument that creates an easement in favour of the Authority or Pacenco.

(2) The dual destination instrument continues in effect subject to subsections (3) and (4).

(3) On and after the sale day, the dual destination instrument has effect as if the easement were an easement in favour of Newco and the Commonwealth jointly that allows Newco and the Commonwealth jointly, Newco or the Commonwealth at any time to:

- (a) construct, maintain or operate pipelines or parts of pipelines that are owned by Newco, the Commonwealth or any other person; and
- (b) licence or otherwise permit any other person to construct, maintain or operate pipelines or parts of pipelines that are owned by any person;

that are to be used, or are used, for the carriage of petroleum, in trade or commerce, between a point in a State and a point in another State or Territory.

(4) Any easement rights created by the dual destination instrument are taken to be rights of Newco and the Commonwealth jointly.

(5) This section does not limit the power of Newco and the Commonwealth to enter into an agreement with each other that governs the exercise of any rights by Newco or the Commonwealth under a jointly owned easement.

Division 3—Transfer to the Commonwealth of certain assets and liabilities and provisions relating to certain obligations of the Authority or Pacenco

Transfer to the Commonwealth of easements of the Authority or Pacenco that are not specified in the easement agreement

17. By force of this section, all easements of the Authority or Pacenco that are not specified in the easement agreement:

- (a) cease to be assets of the Authority or Pacenco; and
- (b) become assets of the Commonwealth;

on the sale day.

Instruments relating to the easements of the Authority or Pacenco that are not specified in the easement agreement

18.(1) Subject to subsections (2) and (3), an instrument relating to an easement of the Authority or Pacenco that is not specified in the easement agreement continues to have effect, on and after the sale day, as if a reference in the instrument to the Authority or Pacenco were a reference to the Commonwealth.

(2) On and after the sale day, an instrument referred to in subsection (1) has effect as if the easement were an easement in favour of the Commonwealth at any time to:

- (a) construct, maintain and operate pipelines or parts of pipelines that are owned by the Commonwealth; or
- (b) licence or otherwise permit any other person to construct, maintain or operate pipelines or parts of pipelines that are owned by that other person or any other person;

that are to be used, or are used, for the carriage of petroleum, in trade or commerce, between a point in a State and a point in another State or Territory.

(3) Any easement rights created by an instrument referred to in subsection (2) are taken to be rights of the Commonwealth.

Commonwealth-guaranteed debts of the Authority become debts of the Commonwealth

19.(1) By force of this section, all Commonwealth-guaranteed debts of the Authority cease to be obligations of the Authority and become obligations of the Commonwealth on the sale day.

(2) The Treasurer may authorise the payment of money to discharge the Commonwealth-guaranteed debts that become obligations of the Commonwealth, whether by ending those obligations or otherwise.

(3) The Consolidated Revenue Fund is appropriated for payments under this section.

Instruments relating to Commonwealth-guaranteed debts

20. An instrument relating to a Commonwealth-guaranteed debt of the Authority continues to have effect, on and after the sale day, as if a reference in the instrument to the Authority were a reference to the Commonwealth.

Commonwealth and Authority liable to pay certain amounts in relation to Commonwealth-guaranteed debts

21.(1) On the sale day:

- (a)** the Commonwealth becomes liable to pay to the Authority an amount equal to the Commonwealth-guaranteed debts of the Authority on the sale day; and
- (b)** the Authority becomes liable to pay to the Commonwealth an amount equal to the Commonwealth-guaranteed debts of the Authority on that day.

(2) The amount payable under paragraph (1)(a) is to be set-off against the amount payable under paragraph (1)(b).

(3) The Consolidated Revenue Fund is appropriated for payments under paragraph (1)(a).

Commonwealth liable to pay an amount to the Authority equal to Authority's debts to the Commonwealth and set-off of debts

22.(1) On the sale day the Commonwealth becomes liable to pay to the Authority an amount equal to the Authority's debt to the Commonwealth on that day.

(2) The amount payable under subsection (1) is to be set-off against the Authority's debt to the Commonwealth.

(3) The Consolidated Revenue Fund is appropriated for payments under this section.

Cancellation of debts owed by Pacenco to the Authority

23. By force of this section, all debts owed by Pacenco to the Authority on the sale day are cancelled on that day.

Division 4—Exemption from State and Territory stamp duties

Exemption from certain State and Territory stamp duties

24.(1) No stamp duty is payable under a law of a State or Territory in respect of an exempt matter or anything connected with an exempt matter.

(2) An authorised person may, by signed writing, certify that:

- (a)** a specified matter or thing is an exempt matter; or
- (b)** a specified thing was done in connection with a specified exempt matter.

(3) In all courts and for all purposes, a certificate under subsection (2) is evidence of the matter stated in the certificate.

(4) A document that appears to be a certificate under subsection (2) is taken to be such a certificate and to have been properly given unless the contrary is established.

(5) In this section:

“exempt matter” means:

- (a)** assets and liabilities ceasing to be assets and liabilities of the Authority and Pacenco under section 12 and becoming assets and liabilities of Newco under that section; or
- (b)** dual destination interests ceasing to be assets of the Authority and Pacenco under section 14 and becoming assets of the Commonwealth and Newco under that section; or
- (c)** Commonwealth-guaranteed debts ceasing to be obligations of the Authority under section 19 and becoming obligations of the Commonwealth under that section; or
- (d)** the operation of this Part in any other respect.

Division 5—Miscellaneous provisions relating to the transfer of assets etc. under Divisions 1, 2 and 3

Certificates in relation to interests in land

25.(1) This section applies if:

- (a)** land becomes land of Newco, the Commonwealth or Newco and the Commonwealth jointly under this Part; and
- (b)** there is lodged with a land registration official a certificate that:
 - (i)** is signed by an authorised person; and
 - (ii)** identifies the land, whether by reference to a map or otherwise; and
 - (iii)** states that the land has become land of Newco, the Commonwealth or of Newco and the Commonwealth jointly under this Part.

(2) The land registration official may:

- (a) register the matter in the same way in which dealings in land of that kind are registered; and
- (b) deal with, and give effect to, the certificate.

(3) A document that appears to be a certificate under subsection (1) is taken to be such a certificate and to have been properly given unless the contrary is established.

(4) In this section:

“land registration official” means the Registrar of Titles or other proper officer of the State or Territory in which the land is situated.

Certificates in relation to other assets

26.(1) This section applies if:

- (a) an asset becomes an asset of Newco under this Part; and
- (b) there is lodged with an assets official a certificate that:
 - (i) is signed by an authorised person; and
 - (ii) identifies the asset; and
 - (iii) states that the asset has, under this Part, become an asset of Newco.

(2) The assets official may:

- (a) deal with, and give effect to, the certificate as if the certificate were a proper and appropriate instrument for transactions in relation to assets of that kind; and
- (b) make such entries in the register as are necessary having regard to the effect of section 12.

(3) A document that appears to be a certificate under subsection (1) is taken to be such a certificate and to have been properly given unless the contrary is established.

(4) In this section:

“assets official” means a person or authority who, under the law of the Commonwealth or of a State or Territory, has responsibility for keeping a register in relation to assets of the kind concerned.

Ending of certain rights that restrict the transfer of the Moomba-Sydney pipeline system

27.(1) All veto rights are terminated on the sale day by force of this section.

(2) In this section:

“Authority agreement” means an agreement:

- (a) to which the Authority is a party; and
- (b) was in operation immediately before the sale day;

“Moomba-Sydney pipeline” means any pipeline transferred to Newco under section 12;

“veto rights” means any rights that a person (**“the contractor”**) has under an Authority agreement that, apart from this section, would have the effect of preventing the transfer of the ownership or control of a Moomba-Sydney pipeline from the Authority or any other person who owns or controls such a pipeline to another person without the consent of the contractor.

Authority, Pacenco and Commonwealth to take steps necessary to carry out transfers

28. The Authority, Pacenco and the Commonwealth must take the steps that are necessary to ensure that this Part is fully effective, and in particular, in relation to its operation outside Australia.

Extraterritorial operation of Subdivision

29. This Part extends to:

- (a) things situated outside Australia; and
- (b) things happening outside Australia; and
- (c) things that are governed or otherwise affected by the law of a foreign country.

Part to have effect in spite of laws and agreements prohibiting transfer etc.

30.(1) This Part has effect, and must be given effect to, in spite of anything in:

- (a) any other law of the Commonwealth or any law of a State or Territory; or
- (b) any instrument.

(2) Without limiting subsection (1), if, apart from this section, the consent of a person would be necessary in order to give effect to this Part in a particular respect, the consent is taken to have been given.

Compensation for acquisition of property

31.(1) If:

- (a) this Part would result in an acquisition of property; and
- (b) this Part would not be valid, apart from this section, because a particular person has not been compensated;

the Commonwealth must pay that person:

- (c) a reasonable amount of compensation agreed on between the person and the Commonwealth; or
- (d) failing agreement—a reasonable amount of compensation determined by a court of competent jurisdiction.

(2) Any damages or compensation recovered, or other remedy given, in a proceeding begun otherwise than under this section must be taken into account in assessing compensation payable in a proceeding begun under this section and arising out of the same event or transaction.

(3) In this section, “**acquisition of property**” has the same meaning as in paragraph 51(xxxi) of the Constitution.

**PART 3—TRANSITIONAL AND SAVING PROVISIONS IN
RESPECT OF EMPLOYEES OF NEWCO THAT RELATE TO
THE SALE OF SHARES IN NEWCO BY THE
COMMONWEALTH**

*Division 1—Certain staff members of the Authority taken to have
resigned*

Certain staff members of the Authority taken to have resigned

32.(1) This section applies to a staff member of the Authority:

- (a) who was eligible to consent under subsection 7(2) and who has not done so; or
- (b) who consented under subsection 7(2) but revoked that consent under subsection 7(3).

(2) Subject to subsection (3), the staff member is, for all purposes, taken to have resigned from the staff member’s appointment or engagement under the *Pipeline Authority Act 1973*. The resignation takes effect at the time determined in writing in relation to the staff member by an authorised person for the purposes of this section.

(3) Subsection (2) does not apply to a staff member of the Authority who notifies the Chief Executive Officer of the Authority in writing that the staff member:

- (a) is not consenting under subsection 7(2); or
- (b) is revoking his or her consent under subsection 7(3);

because he or she believes that the terms and conditions of employment, taken as a whole, that would apply to the staff member on and after the sale day are not equivalent to the terms and conditions of employment, taken as a whole, applying to the staff member immediately before the sale day.

(4) If:

- (a) a staff member:

- (i) has not consented under subsection 7(2); or
 - (ii) has revoked his or her consent under subsection 7(3); and
- (b) the terms and conditions of employment, taken as a whole, that would apply to the staff member on and after the sale day are not equivalent to the terms and conditions of employment, taken as a whole, applying to the staff member immediately before the sale day;

Newco may make a second offer of employment with Newco under subsection 59(1).

(5) If:

(a) a staff member:

- (i) has not consented under subsection 7(2); or
 - (ii) has revoked his or her consent under subsection 7(3); and
- (b) the terms and conditions of employment, taken as a whole, that would apply to the staff member on and after the sale day are equivalent to the terms and conditions of employment, taken as a whole, applying to the staff member immediately before the sale day;

Newco must make a second offer of employment with Newco under subsection 59(1) that is the same terms and conditions as the offer under subsection 7(1).

(6) For the purposes of subsections (4) and (5), the question of whether terms and conditions of employment, taken as a whole, are equivalent, is to be determined in accordance with the staff transfer agreement.

(7) If an authorised person makes a determination under subsection (2), the authorised person must give the staff member a copy of the determination as soon as practicable after it is made.

Division 2—Transitional and saving provisions in relation to long service leave

Definitions

33.(1) Unless the contrary intention appears, expressions used in this Division that are also used in the Long Service Leave Act have the same respective meanings as in that Act.

(2) In this Division:

“combined service period”, in relation to an employee, means the total of:

- (a) the period that is, immediately before the sale day, the employee’s period of service for the purposes of the Long Service Leave Act; and
- (b) the period, beginning on the sale day, during which the employee continues to be an employee of a Newco body;

“employee” includes a person employed in a full-time or a part-time capacity;

“law” means:

- (a) a law of the Commonwealth or of a State or Territory; or
- (b) regulations or any other instrument (other than an award, determination or industrial agreement) made under such a law;

“post-sale long service leave rights”, in relation to an employee, means any long service leave rights an employee acquires, on or after the sale day, under an award, determination, industrial agreement or law (other than this Act).

Long service leave for employees with less than 10 years service

Note: This section provides that, in certain circumstances, a Newco body may grant long service leave to an employee whose period of service for the purposes of the Long Service Leave Act was less than 10 years.

34.(1) This section applies to a person:

- (a) who became an employee of Newco on the sale day under section 8; and
- (b) whose period of service for the purposes of the Long Service Leave Act immediately before the sale day was less than 10 years.

(2) This section does not apply in relation to an employee who stops being an employee of a Newco body by dying.

Note: Section 36 covers employees who die.

(3) If, on and after the sale day, the employee continues to be employed by a Newco body until his or her combined service period is at least 10 years, the Newco body may grant the employee long service leave on full salary for a period up to the employee’s long service leave credit under subsection 37(1).

(4) If:

- (a) the employee stops being an employee of a Newco body, on or after reaching the minimum retiring age, or because of retrenchment; and
- (b) the employee’s combined service period at the time when he or she stops being an employee of the Newco body is at least one year;

the Newco body may grant the employee long service leave on full salary for a period up to the employee’s long service leave credit under subsection 37(1).

(5) If a period of long service leave may be granted to an employee under subsection (3) or (4), the Newco body may, if the employee asks in writing, grant the employee long service leave on half salary for a period not exceeding twice the first-mentioned period.

(6) Long service leave granted in the circumstances set out in subsection (4) is to be taken so as to end immediately before the employee stops being an employee.

(7) For the purposes of this section, the rate of salary to be used in working out the full salary of an employee is the rate that would apply to the employee under section 3 of the Long Service Leave Act if:

- (a) that section applied to the employee; and
- (b) for the expression “section 16 or 17” in that section there were substituted the expression “section 34 of the *Moomba-Sydney Pipeline System Sale Act 1994*”.

Payments in lieu of long service leave for employees with less than 10 years service

Note: This section provides that, in certain circumstances, a Newco body must pay an amount in respect of long service leave to an employee who has not used all of his or her long service leave credit by taking long service leave under section 34.

35.(1) This section applies to a person:

- (a) who became an employee of Newco on the sale day under section 8; and
- (b) whose period of service for the purposes of the Long Service Leave Act immediately before the sale day was less than 10 years.

(2) This section does not apply in relation to an employee who stops being an employee of a Newco body by dying.

Note: Section 36 covers employees who die.

(3) Subject to subsection (6), if the employee stops being an employee of a Newco body on or after the day on which his or her combined service period reaches 10 years, the Newco body must pay him or her an amount equal to full salary in respect of his or her long service leave credit under subsection 37(2).

(4) Subject to subsection (6), if:

- (a) the employee stops being an employee of a Newco body, on or after reaching the minimum retiring age, or because of retrenchment; and
- (b) at that time the employee’s combined service period is at least one year;

the Newco body must pay him or her an amount equal to full salary in respect of his or her long service leave credit under subsection 37(2).

(5) Subject to subsection (6), if:

- (a) the employee stops being an employee of a Newco body; and
- (b) the Newco body is satisfied that the employee left the Newco body because of ill-health that justified his or her so leaving; and
- (c) when the employee left, his or her combined service period was at least one year;

the Newco body must pay him or her an amount equal to full salary in respect of his or her long service leave credit under subsection 37(2).

(6) An employee may, by signed writing given to a Newco body before the employee stops being an employee of the Newco body:

- (a) ask the Newco body not to make a payment to the employee under this section; or
- (b) ask the Newco body to make a payment under subsection (3), (4) or (5) of a specified amount that is less than the amount that would otherwise be payable under that subsection.

(7) The Newco body must comply with the request made under subsection (6).

(8) For the purposes of this section, the rate of salary to be used in working out the full salary of an employee is the rate that would apply to the employee under section 21 of the Long Service Leave Act if:

- (a) that section applied to the employee; and
- (b) for the expression “sections 16 and 17” in that section there were substituted the expression “section 35 of the *Moomba-Sydney Pipeline System Sale Act 1994*”.

Payments on the death of an employee

36.(1) This section applies to a person who was an employee of the Authority immediately before the sale day if, at that time, the employee’s period of service for the purposes of the Long Service Leave Act was less than 10 years.

(2) If, on or after the sale day, the employee died and immediately before his or her death:

- (a) the employee was an employee of a Newco body; and
- (b) the employee’s combined service period was at least one year; and
- (c) the employee had one or more dependants;

the Newco body must make a payment to a dependant or to 2 or more dependants of the employee.

(3) The total amount of the payment or payments is the amount that would have been payable to the employee under section 35 if, on the day of his or her death, the employee had instead stopped being an employee of the Newco body on or after reaching the minimum retiring age.

(4) If subsection (2) applies, section 23 of the Long Service Leave Act has effect as if:

- (a) that section applied to an employee of a Newco body; and
- (b) a reference in that section to the approving authority were a reference to the Newco body; and
- (c) for the expression “this Act” in that section there were substituted the expression “section 36 of the *Moomba-Sydney Pipeline System Sale Act 1994*”; and

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- (d) for the expression “subsection 16(7) or 17(5)” there were substituted the expression “section 36 of the *Moomba-Sydney Pipeline System Sale Act 1994*”.

Employee’s long service leave credit for the purposes of sections 34 and 35

37.(1) For the purposes of section 34, an employee’s long service leave credit is equal to the long service leave credit that the employee would have under the Long Service Leave Act for the period:

- (a) beginning when the employee began his or her period of service; and
(b) ending on the sale day;

if the employee had been retrenched on the sale day.

(2) For the purposes of section 35, an employee’s long service leave credit is the employee’s long service leave credit worked out under subsection (1) reduced by any long service leave credit used under section 34.

Division not to affect an employee’s post-sale long service leave rights

38. To avoid doubt, it is declared that this Division does not affect an employee’s post-sale long service leave rights in relation to service on and after the sale day.

Saving—Long Service Leave Act

39.(1) This section applies to an employee of the Authority whose period of service under the Long Service Leave Act was at least 10 years immediately before the sale day.

(2) Even though the employee ceases to be employed in Government Service for the purposes of the Long Service Leave Act, the employee’s accrued rights under that Act continue if the employee becomes an employee of Newco on the sale day. However, the employee is not entitled to receive any payment because he or she ceases to be in Government Service.

(3) The Long Service Leave Act has effect on and after the sale day in relation to the employee as if Newco were an approving authority for the purposes of that Act.

Division 3—Transitional and saving provisions relating to the Safety, Rehabilitation and Compensation Act 1988

Interpretation

40. Unless the contrary intention appears, expressions used in this Division that are also used in the SRC Act have the same respective meanings as in that Act.

Transitional provisions relating to the SRC Act that relate to certain Newco body employees

41.(1) This section applies to an employee of a Newco body who was an employee of the Authority immediately before the sale day.

(2) The SRC Act continues to apply, on and after the sale day, in relation to:

- (a) injuries suffered by the employee before the sale day; and
- (b) loss of, or damage to, property incurred by the employee before the sale day.

Commonwealth liable to meet certain SRC Act liabilities and to be taken to be the employer in certain circumstances under the SRC Act

42. On and after the sale day, the Commonwealth:

- (a) is liable to pay the liabilities of the Authority under section 128A of the SRC Act; and
- (b) is taken to have been the employer of the employees of the Authority before the sale day for the purposes of the SRC Act.

Division 4—Transitional and saving provisions in relation to superannuation and other retirement benefits

Saving—deferred benefits under the *Superannuation Act 1922*

43.(1) This section applies to an employee of a Newco body if, immediately before the sale day, the employee was:

- (a) a staff member of the Authority or the Chief Executive Officer of the Authority; and
- (b) a person to whom deferred benefits were applicable under section 119W of the *Superannuation Act 1922*.

(2) For the purposes of Division 3 of Part XA of the *Superannuation Act 1922*, the employee is taken to continue in public employment on and after the sale day while the employee continues to be employed by a Newco body.

(3) This section is subject to Division 3 of Part XA of the *Superannuation Act 1922*.

Saving—deferred benefits under the *Superannuation Act 1976*

44.(1) This section applies to an employee of a Newco body if, immediately before the sale day, the employee was:

- (a) a staff member of the Authority or the Chief Executive Officer of the Authority; and
- (b) a person to whom deferred benefits were applicable under section 139 of the *Superannuation Act 1976*.

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(2) For the purposes of Division 3 of Part IX of the *Superannuation Act 1976*, the employee is taken to continue in public employment on and after the sale day while the employee continues to be employed by a Newco body.

(3) This section is subject to Division 3 of Part IX of the *Superannuation Act 1976*.

Contribution day for the purposes of the *Superannuation Act 1976*

45. If the sale day is 30 June 1994, then, for the purposes of the *Superannuation Act 1976*, 29 June 1994 is taken to be a contribution day in relation to a transferring staff member for the purposes of that Act.

Saving—deferred benefits under the DFRDB Act

46.(1) This section applies to an employee of a Newco body if, immediately before the sale day, the employee was:

- (a) a staff member of the Authority or the Chief Executive Officer of the Authority; and
- (b) a person to whom deferred benefits were applicable under section 78 of the DFRDB Act.

(2) For the purposes of Division 3 of Part IX of the DFRDB Act, the employee is taken to continue in public employment on and after the sale day while the employee continues to be employed by a Newco body.

(3) This section is subject to Division 3 of Part IX of the DFRDB Act.

Division 5—Other transitional and saving provisions

Transitional maternity leave provisions for maternity leave beginning after the sale day

47.(1) This section applies if:

- (a) immediately before the sale day, a person was a female staff member of the Authority; and
- (b) the person becomes a Newco employee under section 8; and
- (c) within 12 months after the sale day, the person would have been entitled to begin leave granted under the Maternity Leave Act if the person had continued to be a staff member.

(2) On and after the sale day, the Maternity Leave Act continues to apply to the person in relation to the confinement in respect of which she would have been entitled to leave as if Newco were a prescribed authority for the purposes of that Act.

Transitional maternity leave provisions for staff members of the Authority who are on maternity leave immediately before the sale day

48.(1) This section applies if:

- (a) immediately before the sale day, a person was a female staff member of the Authority who was on leave granted under the Maternity Leave Act; and
- (b) the person becomes a Newco employee under section 8; and
- (c) the person would have continued to have been entitled to have continued on that leave, on and after the sale day, if the person had continued to be a staff member.

(2) On and after the sale day, the Maternity Leave Act continues to apply to the person in relation to the confinement in respect of which the leave was granted as if Newco were a prescribed authority for the purposes of that Act.

Cessation of mobility rights

49.(1) If Division 2 or 3 of Part IV of the *Public Service Act 1922* applied to:

- (a) a transferring staff member immediately before the sale day; or
- (b) a staff member of the Authority who is taken to have resigned under subsection 32(2);

then:

- (c) that Division stops applying to the transferring staff member or the staff member on the sale day; and
- (d) the transferring staff member or the staff member stops being an officer of the Australian Public Service.

(2) If Division 4 of Part IV of the *Public Service Act 1922* applied to:

- (a) a transferring staff member immediately before the sale day; or
- (b) a staff member of the Authority who is taken to have resigned under subsection 32(2):

then:

- (c) the *Officers' Rights Declaration Act 1928* and Division 4 of Part IV of the *Public Service Act 1922* stop applying to the transferring staff member or the staff member on the sale day; and
- (d) the transferring staff member or the staff member stops being an officer of the Australian Public Service.

**PART 4—OTHER PROVISIONS RELATING TO THE SALE OF
SHARES IN NEWCO BY THE COMMONWEALTH**

Transitional provision relating to the *Crimes (Superannuation Benefits) Act 1989*

50.(1) Subject to this section, if:

- (a) a person who is an employee of the Authority before the sale day committed a corruption offence while such an employee; and
- (b) the person becomes an employee of Newco on the sale day under section 8;

then, on and after the sale day, the *Crimes (Superannuation Benefits) Act 1989* continues to apply in relation to the person in respect of the offence as if a Newco body were a Commonwealth authority.

(2) A superannuation order may not be made under the *Crimes (Superannuation Benefits) Act 1989* in relation to employer contributions or benefits paid or payable to a superannuation scheme by a Newco body after the sale day.

(3) In spite of paragraph 19(3)(d) of the *Crimes (Superannuation Benefits) Act 1989*, an order under that paragraph may only specify that an amount paid into the Consolidated Revenue Fund before the sale day by or on behalf of the Authority belongs to the Commonwealth.

(4) If:

- (a) a person who was an employee of the Authority immediately before the sale day committed a corruption offence while such an employee; and
- (b) the person was paid benefits before, on or after the sale day, out of the Consolidated Revenue Fund;

then, in spite of paragraph 19(4)(b) of the *Crimes (Superannuation Benefits) Act 1989*, an order under that paragraph may only specify that an amount equal to the total benefits paid out of the Consolidated Revenue Fund be paid to the Commonwealth.

(5) A superannuation scheme in relation to which employer contributions or benefits are paid or payable by a Newco body is not a superannuation scheme for the purposes of the *Crimes (Superannuation Benefits) Act 1989* in respect of a corruption offence committed by a person after the sale day.

(6) Unless the contrary intention appears, expressions used in this section that are also used in the *Crimes (Superannuation Benefits) Act 1989* have the same respective meanings as in that Act.

Commonwealth payment to Newco

51.(1) The Minister for Finance may, on the Commonwealth's behalf, make payments to Newco in accordance with the asset purchase agreement.

(2) The Consolidated Revenue Fund is appropriated for payments under subsection (1).

(3) The total amount of any payments under subsection (1) must not exceed \$6,500,000.

Newco not to be taken to be established by the Commonwealth

52.(1) On and after the sale day, Newco is not taken for the purposes of any law to be established by the Commonwealth unless a law expressly provides otherwise.

(2) In this section:

“law” means:

- (a) an Act of the Commonwealth or of a State or Territory; and
- (b) regulations or another instrument made under such an Act.

Exemption from State and Territory stamp duties

53.(1) No stamp duty is payable under a law of a State or Territory in respect of an exempt matter or anything connected with an exempt matter.

(2) An authorised person may in writing certify that:

- (a) a specified matter or thing is an exempt matter; or
- (b) a specified thing was done in connection with a specified exempt matter.

(3) In all courts and for all purposes, a certificate under subsection (2) is evidence of the matter stated in the certificate.

(4) A document that appears to be a certificate under subsection (2) is taken to be such a certificate and to have been properly given unless the contrary is established.

(5) In this section:

“exempt matter” means:

- (a) the transfer of shares in Newco by the Commonwealth to another person; or
- (b) the receipt of money (whether on or after the sale day) by the Commonwealth from persons who are, on or after the sale day, buying shares in Newco.

Ending the Authority's liability under the *Commonwealth Borrowing Levy Act 1987*

54.(1) Subject to subsection (2), the Authority is not liable on and after the sale day to pay an amount of levy imposed by the *Commonwealth Borrowing Levy Act 1987* on a borrowing undertaken before the sale day.

(2) Subsection (1) does not apply in relation to an amount of levy that was paid or payable before the sale day.

Ending the Authority's liability under the *Commonwealth Guarantees (Charges) Act 1987*

55.(1) Subject to subsection (2), the Authority is not liable, on and after the sale day, to pay an amount of charge under the repealed *Commonwealth Guarantees (Charges) Act 1987*, as that Act continues to apply.

(2) Subsection (1) does not apply in relation to an amount of charge that was paid or payable before the sale day.

PART 5—POST-SALE DAY STAFF PROVISIONS

Transfer time

56.(1) The “**transfer time**” for a staff member of the Authority for the purposes of this Part is the time the Commonwealth and Newco agree to in writing for the purposes of this section.

(2) If the Commonwealth and Newco agree, the transfer time may be revoked or varied.

Staff members who receive a Newco employment offer after sale day

57.(1) This section applies to each staff member of the Authority who receives a post-sale Newco employment offer. For this purpose, “**post-sale Newco employment offer**” means an initial offer of employment with Newco beginning at the transfer time that is made by Newco after the sale day but before 15 October 1994.

(2) The staff member may consent to being employed by Newco by notice in writing given to the Chief Executive Officer of the Authority within 2 weeks after the staff member receives the offer of employment.

(3) The staff member may revoke his or her consent at any time before the staff member's transfer time by notice in writing given to the Chief Executive Officer of the Authority.

Certain staff members of the Authority who received a Newco employment offer under section 57 taken to have resigned

58.(1) This section applies to a staff member of the Authority:

- (a) who was eligible to consent under subsection 57(2) but has not done so; or
- (b) who consented under subsection 57(2) but revoked that consent under subsection 57(3).

(2) Subject to subsection (3), the staff member is, for all purposes, taken to have resigned from the staff member's appointment or engagement under the *Pipeline Authority Act 1973*. The resignation takes effect at the time determined in writing in relation to the staff member by an authorised person for the purposes of this section.

Note: A person does not come within paragraph 87N(2)(c) of the *Public Service Act 1922* if the person's employment with a public authority is terminated because of the person's resignation.

(3) Subsection (2) does not apply to a staff member of the Authority who notifies the Chief Executive Officer of the Authority in writing that the staff member:

- (a) is not consenting under subsection 57(2); or
- (b) is revoking his or her consent under subsection 57(3);

because he or she believes that the terms and conditions of employment, taken as a whole, that would apply to the staff member on and after his or her transfer time are not equivalent to the terms and conditions of employment, taken as a whole, applying to the staff member immediately before his or her transfer time.

(4) If:

(a) a staff member:

- (i) has not consented under subsection 57(2); or
- (ii) has revoked his or her consent under subsection 57(3); and

(b) the terms and conditions of employment, taken as a whole, that would apply to the staff member on and after his or her transfer time are not equivalent to the terms and conditions of employment, taken as a whole, applying to the staff member immediately before his or her transfer time;

Newco may make a second offer of employment with Newco under subsection 59(1).

(5) If:

(a) a staff member:

- (i) has not consented under subsection 57(2); or
- (ii) has revoked his or her consent under subsection 57(3); and

(b) the terms and conditions of employment, taken as a whole, that would apply to the staff member on and after the sale day are equivalent to the terms and conditions of employment, taken as a whole, applying to the staff member immediately before the sale day;

Newco must make a second offer of employment with Newco under subsection 59(1) that is the same terms and conditions as the offer under subsection 57(1).

(6) For the purposes of subsections (4) and (5), the question of whether terms and conditions of employment, taken as a whole, are equivalent, is to be determined in accordance with the staff transfer agreement.

(7) If an authorised person makes a determination under subsection (2), the authorised person must give the staff member a copy of the determination as soon as practicable after it is made.

Staff members who receive a second Newco employment offer may consent to being employed by Newco after the sale day

59.(1) This section applies to each staff member of the Authority covered by section 32 or 58 who receives a second Newco employment offer. For this purpose, “second Newco employment offer” means an offer of employment with Newco beginning at the transfer time that is made after the sale day but at least 8 days before 31 December 1994.

(2) The staff member may consent to being employed by Newco by notice in writing given to the Chief Executive Officer of the Authority within a week after the staff member receives the second offer of employment.

(3) The staff member may revoke his or her consent at any time before his or her transfer time by notice in writing given to the Chief Executive Officer of the Authority.

Certain staff members of the Authority to become employees of Newco

60.(1) This section applies to each staff member of the Authority who:

- (a) has consented to being employed by Newco under section 57 or 59; and
- (b) has not revoked his or her consent before his or her transfer time; and
- (c) was a staff member of the Authority immediately before his or her transfer time.

(2) At the staff member’s transfer time, the staff member:

- (a) ceases, by force of this section, to be an officer or employee of the Authority; and
- (b) becomes an employee of Newco, by force of this section, on the same terms and conditions that applied to the staff member immediately before his or her transfer time because of an award.

(3) This section has effect subject to sections 61 and 62.

Part not to affect certain matters relating to transferring staff members

61.(1) On and after a staff member’s transfer time, this section has effect for the purposes of applying a law or award to Newco’s employment of a post-sale transferee.

(2) The service of the post-sale transferee as an employee of Newco is to be regarded for all purposes as having been continuous with his or her service, immediately before the sale day, as an officer or employee of the Authority.

(3) The post-sale transferee is to be regarded, immediately after his or her transfer time, as having:

- (a) accrued an entitlement to Long Service Leave Act benefits, recreation leave benefits and sickness leave benefits; and
- (b) an entitlement to recognition by Newco of years of service in connection with that employment;

that is equivalent to the entitlement that the person had as an officer or employee of the Authority, immediately before his or her transfer time.

(4) The post-sale transferee is not entitled to receive any payment or other benefit by reason only of having ceased to be an officer or employee of the Authority because of this Act.

Variation of terms and conditions of employment

62.(1) Neither section 60 nor 61 prevents the terms and conditions of a post-sale transferee's employment after his or her transfer time from being varied:

- (a) in accordance with those terms and conditions; or
- (b) by or under a law (including another provision of this Part), award or determination or agreement.

(2) In this section:

“vary”, in relation to terms and conditions, includes:

- (a) omitting any of those terms and conditions; or
- (b) adding to those terms and conditions; or
- (c) substituting new terms or conditions for any of those terms and conditions.

Post-sale transferee not to be eligible for re-appointment under the *Public Service Act 1922*

63. Paragraph 87N(2)(c) of the *Public Service Act 1922* does not apply to a post-sale transferee.

Certain staff members of the Authority taken to have resigned

64.(1) This section applies to a staff member of the Authority:

- (a) who was eligible to consent under subsection 59(2) and who has not done so; or
- (b) who consented under subsection 59(2) but revoked that consent under subsection 59(3).

(2) Subject to subsection (3), the staff member is, for all purposes, taken to have resigned from his or her appointment or engagement under the *Pipeline Authority Act 1973*. The resignation takes effect at the time determined in writing in relation to the staff member by an authorised person for the purposes of this section.

Note: A person does not come within paragraph 87N(2)(c) of the *Public Service Act 1922* if the person's employment with a public authority is terminated because of the person's resignation.

(3) Subsection (2) does not apply to a staff member who does not consent under subsection 59(2), or has revoked his or her consent under subsection 59(3), because the terms and conditions of employment, taken as a whole, that would apply to the staff member on and after his or her transfer time have been determined not to be equivalent in accordance with the staff transfer agreement to the terms and conditions of employment, taken as a whole, applying to the staff member immediately before his or her transfer time.

Application of other transitional and saving provisions

65.(1) A specified provision applies to a post-sale transferee as if:

- (a) for the expression "sale day" (wherever occurring) in the specified provision there were substituted the expression "staff member's transfer time"; and
- (b) for the expression "transferring staff member" (wherever occurring) in the specified provision there were substituted the expression "post-sale transferee"; and
- (c) for the expression "staff member" (wherever occurring) in the specified provision (other than where the specified provision is section 43, 44, 46, 47, 48 or 49) there were substituted the expression "transferee"; and
- (d) if the specified provision is paragraph 34(1)(a), 35(1)(a), 47(1)(b) or 48(1)(b)—for the expression "section 8" in those paragraphs there were substituted the expression "section 60"; and
- (e) if the specified provision is paragraph 49(1)(b) or (2)(b)—for the expression "subsection 32(2)" in those paragraphs there were substituted the expression "section 58 or 64".

(2) In this section:

"specified provision" means section 33, 34, 35, 36, 37, 38, 39, 40, 41, 43, 44, 46, 47, 48, 49 or 50.

**PART 6—REGULATORY PROVISIONS RELATING TO THE
MOOMBA-SYDNEY PIPELINE SYSTEM**

Division 1—Preliminary

Definitions

66.(1) In this Part, unless the contrary intention appears:

“access dispute” means an access dispute notified under subsection 75(1) or (4);

“associate member of the PSA” has the same meaning as “associate member” in the *Prices Surveillance Act 1983*;

“controlling distributor”, in relation to a Moomba operator, means:

(a) a body corporate that:

(i) has a substantial degree of power in the market for the supply of gas to end users of gas in New South Wales; and

(ii) controls the Moomba operator or is a related body corporate of a body corporate that controls the Moomba operator (other than the Moomba operator); or

(b) a related body corporate of a body corporate covered by paragraph (a) (other than the Moomba operator);

“director” has the same meaning as in the Corporations Law;

“Federal Court” means the Federal Court of Australia;

“gas” means any petroleum gas, including any petroleum gas that liquefies under pressure;

“haulage service” means the service of hauling gas in a Moomba pipeline;

“member of the PSA” has the same meaning as “member” in the *Prices Surveillance Act 1983*;

“member of the staff of the PSA” means:

(a) a member of the staff of the PSA referred to in subsection 41(1) of the *Prices Surveillance Act 1983*; or

(b) a person engaged by the PSA under subsection 42(1) of that Act;

“Moomba operator” means a trading entity that owns or operates a Moomba pipeline;

“Moomba pipeline” means:

(a) any pipeline transferred to Newco by section 12; and

(b) any addition to a Moomba pipeline if, immediately after the addition was completed, it was owned by a trading entity that, immediately before completion, owned the Moomba pipeline to which the addition was connected;

“officer” has the same meaning as in the Corporations Law;

“parties to an arbitration” has the meaning given by section 89;

“pipeline” means:

- (a) a pipeline for the haulage of gas; and
- (b) any part of such a pipeline;

together with any associated equipment or structures;

“PSA” means the Prices Surveillance Authority established by the *Prices Surveillance Act 1983*;

“PSA Chairperson” means the Chairman of the PSA;

“related body corporate” has the same meaning as in the Corporations Law;

“spare capacity” has the meaning given by section 67;

“TPC” means the Trade Practices Commission established by the *Trade Practices Act 1974*;

“TPC Chairperson” means the Chairman of the TPC;

“TPC Deputy Chairperson” means the Deputy Chairman of the TPC;

“TPC member” means:

- (a) the TPC Chairperson; and
- (b) the TPC Deputy Chairperson; and
- (c) a member of the TPC other than the TPC Chairperson or the TPC Deputy Chairperson; and
- (d) an associate member of the TPC;

“trading corporation” means a trading corporation within the meaning of paragraph 51(xx) of the Constitution;

“trading entity” means:

- (a) a trading corporation; or
- (b) 2 or more trading corporations in a joint venture;

“Tribunal” means the Trade Practices Tribunal established by the *Trade Practices Act 1974*.

(2) For the purposes of this Part, a person is bound by a determination made under this Part if section 103 requires the person not to contravene the determination.

(3) A reference in this Part to engaging in conduct includes a reference to failing or refusing to do an act or thing.

Interpretation—meaning of “spare capacity”

67.(1) At a particular time a pipeline has spare capacity for the purposes of this Part if the Moomba operator concerned is not actually using the total capacity of the pipeline to provide haulage services at that time.

(2) Subsection (1) applies even if the Moomba operator concerned has entered into contracts to provide haulage services where those haulage services, if provided, would use all the capacity of the pipeline or more of the capacity of the pipeline than is actually used from time to time.

(3) The amount of the spare capacity at any time is the difference between:

- (a) the total capacity of the pipeline at that time; and
- (b) the capacity actually used at that time to provide:
 - (i) haulage services; and
 - (ii) fuel gas used for the operation of the pipeline.

Conduct by directors, servants or agents

68.(1) If, in a proceeding under this Part in respect of conduct engaged in by a body corporate, it is necessary to establish the state of mind of the body corporate in relation to particular conduct, it is sufficient to show:

- (a) that the conduct was engaged in by a director, servant or agent of the body corporate within the scope of his or her actual or apparent authority; and
- (b) that the director, servant or agent had the state of mind.

(2) Any conduct engaged in on behalf of a body corporate:

- (a) by a director, servant or agent of the body corporate within the scope of the person's actual or apparent authority; or
- (b) by any other person at the direction or with the consent or agreement (whether express or implied) of a director, servant or agent of the body corporate, if the giving of the direction, consent or agreement is within the scope of the actual or apparent authority of the director, servant or agent;

is taken for the purposes of this Part to have been engaged in also by the body corporate unless the body corporate establishes that the body corporate took reasonable precautions and exercised due diligence to avoid the conduct.

(3) If, in a proceeding under this Part in respect of conduct engaged in by an individual, it is necessary to establish the state of mind of the individual, it is sufficient to show:

- (a) that the conduct was engaged in by a servant or agent of the individual within the scope of his or her actual or apparent authority; and
- (b) that the servant or agent had the relevant state of mind.

(4) Conduct engaged in on behalf of an individual:

- (a) by a servant or agent of the individual within the scope of the actual or apparent authority of the servant or agent; or
- (b) by any other person at the direction or with the consent or agreement (whether express or implied) of a servant or agent of the individual, if the giving of the direction, consent or agreement is within the scope of the actual or apparent authority of the servant or agent;

is taken, for the purposes of this Part, to have been engaged in also by that individual unless that individual establishes that he or she took reasonable precautions and exercised due diligence to avoid the conduct.

(5) If:

- (a) an individual is convicted of an offence; and
- (b) the individual would not have been convicted of the offence if subsections (3) and (4) had not been enacted;

the individual is not liable to be punished by imprisonment for that offence.

(6) A reference in subsection (1) or (3) to the state of mind of a person includes a reference to:

- (a) the knowledge, intention, opinion, belief or purpose of the person; and
- (b) the person's reasons for the intention, opinion, belief or purpose.

(7) A reference in this section to engaging in conduct includes a reference to failing or refusing to engage in conduct.

Other provisions that relate to proving purpose

69.(1) For the purposes of this Part, a person is taken to have engaged or to engage in conduct for a particular purpose or a particular reason if:

- (a) the person engaged, or engages, in the conduct for purposes including that purpose or for reasons including that reason; and
- (b) that purpose or reason was or is a substantial purpose or reason for engaging in the conduct.

(2) Without limiting the manner in which the purpose of a person may be established for the purposes of subsection (1), the person may be taken to have engaged in conduct for a purpose referred to in subsection (1) even though, after all the evidence has been considered, the existence of that purpose is ascertainable only by inference from the conduct of the person or from other relevant circumstances.

Part not to apply so as to exceed Commonwealth power

70.(1) Unless the contrary intention appears, if a provision of this Part:

- (a) would, apart from this section, have an invalid application; but
- (b) also has at least one valid application;

it is the Parliament's intention that the provision is not to have the invalid application, but is to have every valid application.

(2) Despite subsection (1), the provision is not to have a particular valid application if:

- (a) apart from this section, it is clear, taking into account the provision's context and the purpose or object underlying this Part, that the provision was intended to have that valid application only if every invalid application, or a particular invalid application, of the provision had also been within the Commonwealth's legislative power; or
- (b) the provision's operation in relation to that valid application would be different in a substantial respect from what would have been its operation in relation to that valid application if every invalid application of the provision had been within the Commonwealth's legislative power.

(3) Subsection (2) does not limit the cases where a contrary intention may be taken to appear for the purposes of subsection (1).

(4) This section applies to a provision of this Part, whether enacted before, at or after the commencement of this section.

(5) In this section:

“application” means an application in relation to:

- (a) one or more particular persons, things, matters, places, circumstances or cases; or
- (b) one or more classes (however defined or determined) of persons, things, matters, places, circumstances or cases;

“invalid application”, in relation to a provision, means an application because of which the provision exceeds the Commonwealth's legislative power;

“valid application”, in relation to a provision, means an application that, if it were the provision's only application, would be within the Commonwealth's legislative power.

***Division 2—Restrictions relating to the Moomba pipeline
and a Moomba operator***

Moomba pipeline may only be owned and operated by a trading entity

71.(1) A person other than a trading entity must not own or operate a Moomba pipeline if:

- (a) the pipeline is a pipeline that is used for hauling gas from:
 - (i) Moomba in South Australia; or
 - (ii) a point in another State (other than New South Wales) or a Territory;

to a point in New South Wales or the Australian Capital Territory; or

- (b) the pipeline is a part of the pipeline referred to in paragraph (a).

(2) Paragraph (1)(b) does not apply to the ownership or operation of a Moomba pipeline for the haulage of gas if:

- (a) the Moomba pipeline is located entirely in one State or Territory; and
- (b) the gas is produced in the State or Territory; and
- (c) the gas is introduced into the pipeline within the State or Territory; and
- (d) the gas is delivered to a point within the State or Territory.

(3) An agreement is of no effect if it is entered into in breach of subsection (1).

Restrictions applying to a Moomba operator

72.(1) A Moomba operator must not carry on a business other than the business of doing either or both of the following:

- (a) designing, constructing, maintaining, operating or owning pipelines for the haulage of gas;
- (b) providing consultancy and haulage support services in relation to designing, constructing, maintaining or operating pipelines for the haulage of gas.

(2) A Moomba operator must:

- (a) ensure that none of its officers (other than a validly appointed non-executive director) is also an officer of a controlling distributor who manages or takes part in any other way in the business activities of the distributor that relate to the haulage or supply of gas in New South Wales or the Australian Capital Territory; and
- (b) ensure that none of its consultants is also an officer of a controlling distributor who manages or takes part in any other way in the business activities of the distributor that relate to the haulage or supply of gas in New South Wales or the Australian Capital Territory; and
- (c) maintain its records in such a way that information relating to its Moomba pipeline business can readily be extracted; and
- (d) ensure that confidential information in its records that relate to its Moomba pipeline business (other than shared technical information) is not made available to a controlling distributor.

(3) Paragraph (2)(b) does not apply to a Moomba operator if:

- (a) the operator has applied in writing to the TPC for the TPC's approval to the operator engaging an officer of a controlling distributor to provide particular services; and
- (b) the TPC approves in writing the engaging of the officer to provide those services.

(4) An approval may be:

- (a) subject to terms and conditions specified in the approval; or
- (b) limited to a period specified in the approval.

(5) The TPC may revoke an approval, by notice in writing given to the operator, if it is satisfied that the terms and conditions of the approval are not being complied with by the operator.

(6) In this section:

“**consultant**” means a person who is engaged to provide services;

“**shared technical information**” means information relating to the operation of the Moomba pipeline that it is necessary for the Moomba operator to provide to a haulage services customer to enable the safe and efficient supply of haulage services to that customer.

Division 3—Access to the Moomba pipeline

Moomba operator etc. must not prevent or hinder access

73. A Moomba operator or a related body corporate of the Moomba operator must not engage in conduct that has the purpose of preventing or hindering the provision of haulage services to a person in New South Wales or the Australian Capital Territory.

Access to the Moomba pipeline

74.(1) A Moomba operator who operates a Moomba pipeline must, subject to this Part, supply haulage services by means of that pipeline to any other person who wants those haulage services supplied. The haulage services are to be supplied on terms and conditions agreed between the operator and the other person, or if agreement on the terms and conditions cannot be reached, on terms and conditions determined by the TPC under this Part.

(2) The only rights arising in respect of the failure of the Moomba operator and the person who wants haulage services supplied to agree on the supply of haulage services are the rights to notify the TPC under subsections 75(1) and (6).

Access disputes

75.(1) If a Moomba operator and any other person are unable to agree on any of the following matters the operator or the other person may notify the TPC that an access dispute exists:

- (a) the existence of spare capacity in a Moomba pipeline sufficient to provide the services requested;
- (b) the interconnection of a pipeline to a Moomba pipeline;

- (c) increasing the capacity of a Moomba pipeline operated by the operator;
- (d) terms and conditions (including the haulage charge) for the supply of haulage services by the operator that uses the whole or part of the spare capacity or increased capacity in a Moomba pipeline.

(2) If a Moomba operator intends to enter into an agreement with a person to supply haulage services, the operator must give a notice to any other person who is a party to an agreement with the operator for the supply of haulage services advising:

- (a) that the operator intends entering into the agreement; and
- (b) a reasonable estimate of the amount of spare capacity that would be used under the proposed agreement.

(3) Subsection (2) does not apply to a spot sales agreement.

(4) If subsection (2) applies to a Moomba operator, the operator must not enter into the agreement unless:

- (a) all the persons given a notice under subsection (2) agree; or
- (b) at the end of the period of 21 days after the giving of the notice, no person has notified the TPC under subsection (6).

(5) An agreement is of no effect if it is entered into:

- (a) without the giving of a notice in accordance with subsection (2); or
- (b) in breach of subsection (4).

(6) A person who has been given a notice under subsection (2) may notify the TPC that an access dispute exists.

(7) A notice under subsection (1) or (6) must specify the matter in dispute.

(8) A notice under subsection (1), (2) or (6) must be in writing.

(9) In this section:

“spot sales agreement” means an agreement under which all those haulage services are to be provided within 3 months after the agreement is made.

Procedure on receipt of notification of an access dispute

76.(1) If a Moomba operator or another person notifies the TPC of an access dispute, the TPC must give a written notice of the dispute to:

- (a) a person who could have notified the TPC of the dispute under subsection 75(1) but did not do so; and
- (b) any other person who:
 - (i) is a party to an agreement for the supply of haulage services in relation to the Moomba pipeline that is the subject matter of the dispute; or

- (ii) is bound by a determination in relation to the Moomba pipeline that is the subject matter of the dispute; or
- (iii) is a party to an access dispute in respect of which a determination has not been made.

(2) The TPC must give the notice as soon as practicable after the TPC is notified of the access dispute.

Withdrawal of notification

77.(1) A person who has notified the TPC under section 75 may withdraw that notification at any time before a determination is made by the TPC.

(2) If a person withdraws a notification under subsection (1), the person is taken, for the purposes of this Part, not to have notified the TPC.

Division 4—Arbitration of access disputes

Subdivision A—TPC objectives and arbitration powers

TPC objectives

78. The TPC must, in carrying out its functions under this Part, pursue the objective of providing a mechanism of arbitration that is fair, economical, informal and quick.

Functions of TPC

79. The TPC has the function of arbitrating access disputes under this Part.

TPC arbitration powers

80.(1) If the TPC arbitrates an access dispute, it must make a written determination about the matter to which the arbitration relates.

- (2) A determination must:
 - (a) specify the Moomba pipeline concerned; and
 - (b) if paragraph 75(1)(a) or subsection 75(6) applies—set out the volume of any spare capacity and the method used for working out that volume of spare capacity; and
 - (c) if paragraph 75(1)(b) applies—set out the terms and conditions on which the pipeline is to be interconnected to the Moomba pipeline; and
 - (d) if paragraph 75(1)(c) applies—set out the terms and conditions on which the Moomba operator is to increase the capacity of the Moomba pipeline; and

- (e) if the TPC determines that the Moomba operator is to supply haulage services to a person—set out the terms and conditions (including the haulage charge) on which the operator is to supply the haulage services; and
 - (f) set out the reasons for the determination.
- (3) The TPC must not make a determination, that would deprive a person (“**the contractor**”) of:
- (a) the contractor’s right to require the Moomba operator to supply haulage services sufficient to enable AGL to exercise AGL’s Schedule entitlements; or
 - (b) the contractor’s right to require the Moomba operator to supply haulage services that are sufficient to enable the contractor to exercise or fulfil the contractor’s Schedule rights or obligations; or
 - (c) the contractor’s right to require the Moomba operator to supply haulage services that are sufficient to enable the contractor to meet its obligations to supply the actual gas requirements of its customers under negotiated contracts entered into before notice of the dispute was given to the TPC under subsection 75(1) or (6); or
 - (d) the contractor’s right to require the Moomba operator to supply haulage services sufficient to enable the contractor to meet the reasonably anticipated requirements of the contractor’s tariff customers taking into account abnormal seasonal variations.
- (4) The TPC must not make a determination that would deprive a capacity increaser of the right to require the Moomba operator to supply haulage services, up to the amount of the increase in capacity, that are sufficient to enable the increaser to meet:
- (a) the increaser’s own actual gas haulage requirements; and
 - (b) the increaser’s obligations to supply the actual gas requirements of the increaser’s customers under contracts entered into before notice of the dispute was given to the TPC under subsection 75(1) or (6).
- (5) The TPC must not make a determination that requires the Moomba operator to bear any of the costs of establishing and maintaining the increased capacity of the Moomba pipeline.
- (6) The terms and conditions set out under paragraph (2)(e) must only relate to such of the following as are appropriate in the particular case:
- (a) the appropriate period for the provision of haulage services by the Moomba operator;
 - (b) delivery points;
 - (c) the interconnection of pipelines;
 - (d) the increase in capacity;

- (e) the haulage charge;
- (f) any other matters that are reasonably necessary to deal with for the purposes of the provision of haulage services;
- (g) matters incidental to a matter of a kind referred to in a preceding paragraph.

(7) In making a determination under subsection (1), the TPC must have regard to the following matters:

- (a) the legitimate business interests of the Moomba operator;
- (b) the public benefit including the benefit in having competitive markets;
- (c) any relevant technical issues relating to the capacity of the Moomba pipeline or increasing the capacity of the Moomba pipeline;
- (d) the interests of other persons who have agreed to acquire haulage services from the Moomba operator, including the actual haulage service requirements of such persons;
- (e) the interests of other persons who acquire haulage services from the Moomba operator under a determination under this section;
- (f) any national regime for third party access to essential facilities.

(8) Any amendment to the supply agreement on or after the sale day does not affect the operation of this section.

(9) The TPC must give a copy of its determination under subsection (1) to the parties to the arbitration on the day it makes the determination.

(10) In this section:

“capacity increaser” means a person (other than the Moomba operator) who has borne or is bearing the cost of increasing the capacity of the Moomba pipeline;

“Moomba gas” means gas that has been hauled by a Moomba pipeline;

“negotiated contract” means a contract for the supply of at least 10 terajoules of Moomba gas per year to or on behalf of an end user;

“Schedule entitlements” means any rights under the supply agreement to acquire gas up to the volumes worked out using Schedules A and C to the supply agreement in accordance with the agreement;

“Schedule rights or obligations” means any rights or obligations under the supply agreement to supply gas up to the volumes worked out using Schedules A and C to the supply agreement in accordance with the agreement;

“supply agreement” means the agreement made between Alliance Petroleum Australia No Liability, Basin Oil No Liability, Bridge Oil No Liability, Delhi International Oil Corporation, Pursuit Oil No Liability, Reef

Oil No Liability, Santos Limited, Total Exploration Australia Proprietary Limited, Vamgas No Liability and The Australian Gas Light Company on 26 May 1971 as in force immediately before the sale day;

“tariff customer” means a gas user who is supplied with less than 10 terajoules of Moomba gas per year by a person who carries on the business of supplying gas.

Period within which TPC to make its determination

81.(1) Subject to subsection (2), if the TPC does not make a determination in relation to the arbitration of an access dispute within the allowable period, then the TPC is to be taken to have made a determination at the end of that period, refusing to require the Moomba operator to provide haulage services to the person who wanted haulage services provided. The **“allowable period”** is:

- (a) 60 days from the end of the 21 day period referred to in section 88 (**“the 60 day period”**); or
- (b) if the TPC, before the end of the 60 day period, gives to a party to the arbitration, a notice under section 95—the period consisting of the 60 day period increased by the number of days in the period beginning on the day on which the notice is given to the party and ending on the day on which the party gives to the TPC the information or additional documents.

(2) If the parties to an arbitration notify the TPC in writing before the end of the period referred to in subsection (1) that the parties agree to the TPC taking a specified longer period for making the determination in relation to the access dispute, subsection (3) applies.

(3) The period for the purposes of subsection (1) is taken to be the period notified under subsection (2).

Operation of determinations

82.(1) If a party to an arbitration does not apply, under section 105, to the Tribunal for a review of the determination of the TPC in relation to the access dispute, the determination has effect 21 days after the making of the determination.

(2) If a party to an arbitration applies, under section 105, to the Tribunal for a review of the determination of the TPC in relation to the access dispute, the determination is of no effect until the Tribunal makes its determination under section 107.

Constitution of TPC for conduct of arbitration

83. For the purposes of a particular arbitration, the TPC is to be constituted by 2 or more TPC members nominated in writing by the TPC Chairperson.

Presiding member

84.(1) The TPC Chairperson is, subject to subsection (2), to preside at an arbitration.

(2) If the TPC Chairperson is not a member of the TPC as constituted under section 83 in relation to a particular arbitration, the TPC Chairperson must nominate a TPC member to preside at the arbitration.

Reconstitution of TPC

85.(1) This section applies if a TPC member who is one of the TPC members who constitute the TPC for the purposes of a particular arbitration:

- (a) stops being a TPC member; or
- (b) for any reason, is not available for the purpose of the arbitration.

(2) The TPC Chairperson must either:

- (a) direct that the TPC is to be constituted for the purposes of finishing the arbitration by the remaining TPC member or members; or
- (b) direct that the TPC is to be constituted for that purpose by the remaining TPC member or members together with another TPC member or members.

(3) If a direction under subsection (2) is given, the TPC as constituted in accordance with the direction must continue and finish the arbitration and may, for that purpose, have regard to any record of the proceedings of the arbitration made by the TPC as previously constituted.

(4) In exercising powers under this section, the TPC Chairperson must have regard to the objectives set out in section 78.

Determination of questions

86. If the TPC is constituted for an arbitration by 2 or more TPC members, any question before the TPC is to be decided:

- (a) unless paragraph (b) applies—according to the opinion of the majority of those members; or
- (b) if the members are evenly divided on the question—according to the opinion of the TPC member who is presiding.

Disclosure of TPC interests by members

87.(1) If a TPC member other than the TPC Chairperson is taking part, or is to take part, in a particular arbitration and the member has or acquires any pecuniary interest that could conflict with the proper performance of his or her functions in relation to the arbitration:

- (a) the member must disclose the interest to the TPC Chairperson; and
- (b) the member must not take part, or continue to take part, in the arbitration if:

- (i) the TPC Chairperson gives a direction under paragraph (2)(a) in relation to the matter; or
- (ii) all of the persons concerned in the arbitration do not consent to the member taking part in the arbitration.

(2) If the TPC Chairperson becomes aware that a TPC member is taking part, or is to take part, in a particular arbitration and that the member has in relation to the particular arbitration such an interest:

- (a) if the TPC Chairperson considers that the TPC member should not take part, or should not continue to take part, in the arbitration—the TPC Chairperson must give a direction to the member accordingly; or
- (b) in any other case—the TPC Chairperson must cause the interest of the member to be disclosed to the parties to the arbitration.

Subdivision B—Preliminary matters

TPC to arbitrate if access dispute not settled within 21 days

88. If an access dispute is unable to be settled within 21 days after the TPC receives notification of the dispute, the TPC must, subject to the provisions of this Part, proceed to arbitrate the dispute.

Parties to arbitration

89. The parties to the arbitration of an access dispute are:

- (a) the Moomba operator; and
- (b) if the person who notified the TPC under subsection 75(1) is the Moomba operator—the person who could have notified the TPC under subsection 75(1) but did not do so; and
- (c) if the person who notified the TPC under section 75 is a person other than the Moomba operator—that person; and
- (d) any person who:
 - (i) is a party to an agreement with the Moomba operator currently in force in relation to the supply of haulage services using the pipeline; and
 - (ii) the TPC thinks ought to be made a party to the arbitration; and
- (e) any person who:
 - (i) is bound by a determination under section 80 that relates to the Moomba pipeline; and
 - (ii) the TPC thinks ought to be made a party to the arbitration; and
- (f) any person who:
 - (i) has applied to the TPC to be a party to the arbitration; and
 - (ii) the TPC thinks ought to be made a party to the arbitration.

TPC to notify parties that it must arbitrate the dispute

90. After the end of the 21 day period referred to in section 88, the TPC must notify the parties to the access dispute that, subject to this Part, it is required to arbitrate the dispute under this Part.

TPC may decide not to arbitrate a dispute if subject matter of dispute is trivial etc.

91.(1) The TPC may, in writing, terminate an arbitration if it thinks:

- (a) the subject matter of the dispute is trivial, misconceived or lacking in substance; or
- (b) that the person who notified the dispute has not engaged in negotiations in good faith.

(2) If the TPC decides not to arbitrate the dispute, the person who notified the dispute is taken to have withdrawn the notification under section 77.

TPC not to arbitrate an access dispute if subject matter of dispute is subject of Federal Court proceedings brought under section 114

92. The TPC must not arbitrate an access dispute if the TPC or any other person has begun a proceeding in the Federal Court under section 114 in relation to the same subject matter.

Right to representation

93. In arbitration proceedings before the TPC under this Part:

- (a) an individual may appear in person; and
- (b) an individual may be represented by an employee of the individual approved by the TPC; and
- (c) a body corporate may be represented by an employee, or a director or other officer, of the body corporate approved by the TPC; and
- (d) any person may be represented by a barrister or a solicitor of the Supreme Court of a State or Territory or of the High Court.

Giving of relevant documents to TPC

94. A party to an arbitration may give the TPC a copy of all documents or parts of documents that are in the party's possession or under the control of the party and are considered by the party to be relevant to the access dispute.

Power to obtain information and documents

95.(1) If the TPC has reason to believe that a person is capable of giving information or producing additional documents relevant to an access dispute, the TPC or the TPC Chairperson may, by written notice to the person

signed by the TPC Chairperson or any TPC member nominated by the TPC Chairperson, require the person at such place, and within such period or on such date and at such time, as are stated in the notice:

- (a) to give to the TPC, by writing signed by the person or, if the person is a body corporate, by a competent officer of the body corporate, any such information; or
- (b) to produce to the TPC such documents or copies of such documents as are stated in the notice.

(2) If documents (whether originals or copies) are produced to the TPC, the TPC:

- (a) may take possession of, and make copies of, and take extracts from, the documents; and
- (b) may keep the documents for as long as is necessary for the purpose of arbitrating the access dispute.

(3) A person must not:

- (a) without reasonable excuse, contravene a notice under subsection (1) to the extent that the person is capable of complying with it; or
- (b) in purported compliance with such a notice, knowingly or recklessly give information that is false or misleading in a material particular.

Penalty for a contravention of this subsection: 30 penalty units.

Subdivision C—Arbitration hearings

Procedure of TPC

96.(1) The TPC, in an arbitration hearing about an access dispute:

- (a) is not bound by technicalities, legal forms or rules of evidence; and
- (b) must act as speedily as a proper consideration of the dispute allows, having regard to the objectives in section 78 and the need to carefully and quickly inquire into and investigate the dispute and all matters affecting the merits, and fair settlement, of the dispute; and
- (c) may inform itself of any matter relevant to the dispute in any way it thinks appropriate.

(2) The TPC may determine the periods that are reasonably necessary for the fair and adequate presentation of the respective cases of the parties to an access dispute, and may require that the cases be presented within those periods.

(3) The TPC may require evidence or argument to be presented in writing, and may decide the matters on which it will hear oral evidence or argument.

(4) The TPC may determine that an arbitration hearing is to be conducted by:

- (a) telephone; or
- (b) closed circuit television; or
- (c) any other means of communication.

Hearing to be in private

97.(1) Subject to subsection (2), an arbitration hearing for an access dispute is to be in private.

(2) If the parties to an arbitration hearing agree, an arbitration hearing or part of an arbitration hearing may be conducted in public.

(3) The presiding TPC member may give directions as to the persons who may be present at an arbitration hearing conducted in private.

(4) In giving directions under subsection (3), the presiding TPC member must have regard to the wishes of the parties and the need for commercial confidentiality.

(5) Directions under subsection (3) must be in writing.

Power to take evidence on oath or affirmation

98.(1) The TPC may take evidence on oath or affirmation and for that purpose a member of the TPC may administer an oath or affirmation.

(2) The presiding TPC member may summon a person to appear before the TPC to give evidence and to produce such documents (if any) as are referred to in the summons.

Particular powers of TPC

99. Subject to any other provision of this Part, or the regulations, the TPC may, for the purposes of an access dispute:

- (a) give a direction in the course of, or for the purposes of, the arbitration hearing; and
- (b) hear and determine the arbitration hearing in the absence of a person who has been summonsed or served with a notice to appear; and
- (c) sit at any place; and
- (d) adjourn to any time and place; and
- (e) refer any matter to an expert and accept the expert's report as evidence; and
- (f) generally give all such directions, and do all such things, as are necessary or expedient for the speedy hearing and determination of the access dispute.

Party may request TPC to treat material as confidential

100.(1) A party to an arbitration hearing may:

- (a) inform the TPC that, in the party's opinion a specified part of a document contains confidential commercial information; and
 - (b) request the TPC not to give a copy of that part to another party.
 - (2) On receiving a request, the TPC must:
 - (a) inform the other party or parties that the request has been made and of the general nature of the matters to which the relevant part of the document relates; and
 - (b) ask the other party or parties whether there is any objection to the TPC complying with the request.
 - (3) If there is an objection to the TPC complying with a request, the party objecting may inform the TPC of its objection and of the reasons for it.
 - (4) After considering:
 - (a) a request; and
 - (b) any objection; and
 - (c) any further submissions that any party has made in relation to the request;
- the TPC may decide not to give to the other party or parties a copy of so much of the document as contains confidential commercial information that the TPC thinks should not be so given.

Non-party may request TPC to treat information etc. as confidential

- 101.(1)** A person who:
- (a) is not a party to an arbitration; and
 - (b) has given information or produced a document under section 95;
- may:
- (c) inform the TPC that in the person's opinion specified information is confidential information or a specified part of a document contains confidential commercial information; and
 - (d) request the TPC not to give that information or give a copy of that part of the document to a party to the arbitration.
 - (2) On receiving a request, the TPC must:
 - (a) inform the parties to the arbitration that the request has been made and of the general nature of the information or the matters to which the relevant part of the document relates; and
 - (b) ask the parties whether there is any objection to the TPC complying with the request.
 - (3) If there is an objection to the TPC complying with the request, the party objecting may inform the TPC of its objection and of the reasons for it.

(4) After considering:

- (a) a request; and
- (b) any objection; and
- (c) any further submissions that any party has made in relation to the request;

the TPC may decide not to give the parties the confidential commercial information or a copy of so much of the document as contains confidential commercial information that the TPC thinks should not be so given.

Consent determinations

102. If:

- (a) the parties to an arbitration consent to a proposed determination; and
- (b) the TPC is satisfied that the determination is the appropriate one in all the circumstances;

the TPC may make the determination in the terms proposed.

Parties to an arbitration not to contravene determination

103.(1) A party to an arbitration must not contravene a determination made in the arbitration.

(2) The only right arising in respect of a contravention of subsection (1) is the right of a party to an arbitration to make an application under section 115.

Subdivision D—Variation of determinations

Variation of determinations

104.(1) A determination made under section 80 may, with the approval of the TPC, be varied if all the parties to the arbitration agree.

(2) If the parties to an arbitration are unable to agree on whether to vary a determination, or on how to vary it, then the Moomba operator and each other party to the arbitration may notify an access dispute under subsection 75(6).

(3) If an access dispute is notified to the TPC because of subsection (2), and the TPC thinks that:

- (a) there is no sufficient reason why the current determination should not continue to have effect in its present form; or
- (b) the notification is trivial, vexatious, misconceived or lacking in substance;

the TPC may decide not to arbitrate the dispute or not to make a determination in relation to the dispute.

- (4) For the purposes of subsection (3), the TPC must have regard to:
 - (a) how long it is since the determination was made, or last varied; and
 - (b) the nature of the matters in dispute; and
 - (c) such other matters as the TPC thinks relevant.
- (5) If the TPC decides not to arbitrate the dispute or not to make a determination in relation to the dispute, the person who notified the dispute is taken to have withdrawn the notification under section 77.

Division 5—Review by Tribunal of determinations of the TPC

Applications for review

105.(1) A party to an arbitration who is dissatisfied with a determination by the TPC under section 80 may apply to the Tribunal for a review of the determination.

- (2) An application for review must be:
 - (a) made within 21 days of the TPC making its determination; and
 - (b) in writing.

Tribunal review to be merits review

106. A review by the Tribunal is a re-hearing of the access dispute and Division 4 of this Part (other than sections 81, 82, 84, 85, 86, 87, 88 and 90) and sections 141 to 143 apply in relation to the Tribunal as if:

- (a) a reference to the TPC were a reference to the Tribunal; and
- (b) a reference to the TPC Chairperson were a reference to the President of the Tribunal.

Functions and powers of the Tribunal

107. On a review of a determination by the TPC under section 80, the Tribunal:

- (a) must make a written determination affirming, setting aside or varying the determination of the TPC; and
- (b) may, for the review, perform all the functions and exercise all of the powers of the TPC.

Time period for review of TPC determinations

108.(1) If a party to an arbitration applies for a review of a determination under section 105, the Tribunal must make its determination on the review within 60 days after receiving the application for review (“**the 60 day period**”).

- (2) The 60 day period does not apply if:
 - (a) the Tribunal, having obtained the views of all the parties to the arbitration, thinks that the matter cannot be dealt with properly within the 60 day period, either because of its complexity or because of other special circumstances; or

- (b) all the parties to the arbitration agree that the 60 day period should not apply to the review and the Tribunal thinks it appropriate that in the circumstances the 60 day period should not apply.

Determination of Tribunal taken to be determination of TPC

109.(1) A determination by the Tribunal affirming, setting aside or varying a determination of the TPC under section 80 is, for the purposes of this Part other than this Division or section 82, taken to be a determination by the TPC.

(2) A determination by the Tribunal has effect from when the determination is made.

TPC to give Tribunal certain information

110. For the purposes of a review by the Tribunal, the member of the Tribunal presiding at the review may require the TPC to give such information, make such reports and provide such other assistance to the Tribunal as the member specifies.

Regulations as to certain matters

111. The regulations may make provision:

- (a) in relation to the constitution of the Tribunal; and
- (b) in relation to the arrangement of the business of the Tribunal; and
- (c) in relation to the disclosure of interests by members of the Tribunal; and
- (d) for determining questions before the Tribunal and questions that arise during a review; and
- (e) in relation to evidence and procedure.

Division 6—Enforcement and remedies

Interpretation

112. A reference in this Division to a person involved in a contravention of a determination or provision is a reference to a person who has:

- (a) aided, abetted, counselled or procured the contravention; or
- (b) induced the contravention, whether through threats or promises or otherwise; or
- (c) been in any way (directly or indirectly) knowingly concerned in or a party to the contravention; or
- (d) conspired with others to effect the contravention.

Enforcement of sections 71 and 72 and regulations under section 130

113. If the Federal Court is satisfied, on the application of the TPC, that a person has engaged, is engaging, or is proposing to engage in conduct constituting a contravention of section 71 or 72 or a regulation under section 130, the Court may make all or any of the following orders:

- (a) an order granting an injunction on such terms as the Court thinks appropriate:
 - (i) restraining the person from engaging in the conduct; or
 - (ii) if the conduct involves refusing or failing to do something—requiring the person to do that thing;
- (b) an order that the Court thinks appropriate directing the person to compensate a person who has suffered loss or damage as a result of the contravention;
- (c) any other order that the Court thinks appropriate.

Enforcement of sections 73 and 136 and subsection 129(1)

114.(1) If the Federal Court is satisfied, on the application of the TPC or any other person, that a Moomba operator or a related body corporate of the Moomba operator has engaged, is engaging, or is proposing to engage in conduct constituting a contravention of section 73 or 136 or subsection 129(1), the Court may make all or any of the following orders:

- (a) an order granting an injunction on such terms as the Court thinks appropriate:
 - (i) restraining the operator or related body corporate from engaging in the conduct; or
 - (ii) if the conduct involves refusing or failing to do something—requiring the operator or related body corporate to do that thing;
- (b) an order that the Court thinks appropriate directing the operator or related body corporate to compensate a person who has suffered loss or damage as a result of the contravention;
- (c) any other order that the Court thinks appropriate.

(2) The TPC or a party to an access dispute must not make an application under this section in relation to conduct that is the subject of an access dispute that has been notified to the TPC under section 75 and which has not been finally determined.

Enforcement of determinations under section 80

115. If the Federal Court is satisfied, on the application of a party to an arbitration, that another party to an arbitration has engaged, is engaging, or is proposing to engage in conduct constituting a contravention of the determination made in the arbitration, the Court may make all or any of the following orders:

- (a) an order granting an injunction on such terms as the Court thinks appropriate:
 - (i) restraining the other party from engaging in the conduct; or

- (ii) if the conduct involves refusing or failing to do something—
requiring the other party to do that thing;
- (b) an order that the Court thinks appropriate directing the other party to compensate the applicant for loss or damage suffered as a result of the contravention;
- (c) any other order that the Court thinks appropriate.

Other orders

116. If the Federal Court has power under section 113, 114 or 115 to grant an injunction restraining a person from engaging in particular conduct, or requiring a person to do anything, the Court may make such other orders (including granting an injunction) as it thinks appropriate against any other person who was involved in the contravention concerned.

Consent injunctions

117. On an application for an injunction under section 113, 114 or 115, the Federal Court may, if the Court thinks it appropriate, grant an injunction by consent of all of the parties to the proceedings, whether or not the Court is satisfied that the section applies.

Interim injunctions

118. If the Federal Court thinks it is appropriate to do so, the Federal Court may grant an interim injunction pending determination of an application under sections 113 to 116.

Discharge or variation of injunction or other order

119.(1) The Federal Court may discharge or vary an injunction granted under sections 113 to 116.

(2) The Federal Court may discharge or vary an order granted under sections 113 to 116.

Factors relevant to the granting of a restraining injunction

120. The power of the Federal Court to grant an injunction restraining a person from engaging in conduct may be exercised whether or not:

- (a) it appears to the Court that the person intends to engage again, or to continue to engage, in conduct of that kind; or
- (b) the person has previously engaged in conduct of that kind; or
- (c) there is an imminent danger of substantial damage to any person if the first-mentioned person engages in conduct of that kind.

Factors relevant to the granting of a mandatory injunction

121. The power of the Federal Court to grant an injunction requiring a person to do an act or thing may be exercised whether or not:

- (a) it appears to the Court that the person intends to refuse or fail again, or to continue to refuse or fail, to do that thing; or
- (b) the person has previously refused or failed to do that thing; or
- (c) there is an imminent danger of substantial damage to any person if the first-mentioned person refused or failed to do that thing.

Undertakings as to damages unnecessary in certain circumstances

122. If the TPC makes an application to the Federal Court for an injunction under section 113 or 114, the Court must not require the TPC or any other person, as a condition of granting an interim injunction, to give any undertakings as to damages.

Enforcement of undertakings

123.(1) The TPC may accept a written undertaking given by a person for the purposes of this section in connection with a matter in relation to which the TPC has a power or function under this Part.

(2) The person may withdraw or vary the undertaking at any time, but only with the consent of the TPC.

(3) If the TPC thinks that the person who gave the undertaking has breached any of its terms, the TPC may apply to the Federal Court for an order under subsection **(4)**.

(4) If the Federal Court is satisfied that the person has breached a term of the undertaking, the Court may make all or any of the following orders:

- (a) an order directing the person to comply with that term of the undertaking;
- (b) an order directing the person to pay to the Commonwealth an amount up to the amount of any financial benefit that the person has obtained directly or indirectly and that is reasonably attributable to the breach;
- (c) any order that the Court thinks appropriate directing the person to compensate any other person who has suffered loss or damage as a result of the breach;
- (d) any other order that the Court thinks appropriate.

Powers of Federal Court where non-compliance with TPC requirements

124.(1) This section applies if the TPC is satisfied that a person has, without reasonable excuse, failed to comply with a requirement made under section 95.

(2) The TPC may by writing certify the failure to the Federal Court.

(3) If the TPC does so, the Federal Court may inquire into the case and may order the person to comply with the requirement as specified in the order.

Jurisdiction of courts

125. The Federal Court has jurisdiction with respect to the matters arising under this Part and that jurisdiction is exclusive of the jurisdiction of all other courts, other than the jurisdiction of the High Court under section 95 of the Constitution.

Division 7—Appeals

Appeals to Federal Court from determinations of the Tribunal

126.(1) A party to an arbitration may appeal to the Federal Court, on a question of law, from the determination of the Tribunal under section 107.

(2) An appeal by a person under subsection (1) is to be instituted:

- (a)** not later than the 28th day after the day on which the determination of the Tribunal is made or within such further period as the Federal Court (whether before or after the end of that day) allows; and
- (b)** in accordance with the Rules of Court made under the *Federal Court of Australia Act 1976*.

(3) The Federal Court is to hear and determine the appeal and may make such order as it thinks appropriate.

(4) The orders that may be made by the Federal Court on appeal include but are not limited to:

- (a)** an order affirming or setting aside the determination of the Tribunal; and
- (b)** an order remitting the matter to be determined again by the Tribunal in accordance with the directions of the Federal Court.

Operation and implementation of a determination that is subject to appeal

127.(1) Subject to this section, the bringing of an appeal to the Federal Court from a determination of the Tribunal does not affect the operation of the determination or prevent the taking of action to implement the determination.

(2) If an appeal is brought to the Federal Court from a determination of the Tribunal, the Federal Court or a judge of the Federal Court may make such orders staying or otherwise affecting the operation or implementation of the determination of the Tribunal as the Federal Court or judge thinks appropriate to secure the effectiveness of the hearing and determination of the appeal.

(3) If an order is in force under subsection (2) (including an order previously varied under this subsection), the Federal Court or a judge of the Federal Court may make an order varying or revoking the first-mentioned order.

(4) An order in force under subsection (2) (including an order previously varied under subsection (3)):

(a) is subject to such conditions as are specified in the order; and

(b) has effect until:

(i) the end of any period for the operation of the order that is specified in the order; or

(ii) the giving of a decision on the appeal;

whichever is earlier.

Sending of documents to, and return of documents by, the Federal Court

128. If an appeal is instituted in the Federal Court:

(a) the Tribunal must send to the Federal Court all documents that were before the Tribunal in connection with the matter to which the appeal relates; and

(b) at the conclusion of the proceedings before the Federal Court in relation to the appeal, the Federal Court must return the documents to the Tribunal.

Division 8—Provision of information on haulage charges etc.

Haulage charges etc. to be given on request

129.(1) If a person asks the Moomba operator in writing for information about the prices for hauling gas in a Moomba pipeline operated by the operator, the operator must give the person a written statement within the 21 day period:

(a) specifying the haulage charges that the operator would charge the person for hauling a quantity of gas specified by the person between points specified by the person; and

(b) explaining any pricing principles or other terms and conditions that would apply to the haulage of gas referred to in paragraph (a).

(2) The Moomba operator may charge the person a reasonable fee for giving the information.

(3) In this section:

“**21 day period**” means the 21 day period after the Moomba operator is asked for information under subsection (1).

Publishing of information by Moomba operator

130.(1) The regulations may require a Moomba operator to publish or otherwise make available information about the supply of haulage services by the operator.

(2) The information that the regulations may require an operator to publish or otherwise make available under subsection (1) includes, but is not limited to, the following:

- (a) the policies for determining haulage tariffs;
- (b) the policies for the allocation of costs to different types of haulage services;
- (c) an indicative haulage charge structure for the supply of different types of haulage services;
- (d) a reasonable estimate of the amount of spare capacity and the method used to measure it.

PSA to monitor haulage charges

131. The PSA has the function of monitoring the haulage charges in relation to the provision of haulage services by a Moomba operator.

Information to be supplied to the PSA

132.(1) Subject to subsection (2), the PSA Chairperson may, by written notice, ask a Moomba operator to:

- (a) give the PSA in accordance with the notice, by writing signed on behalf of the operator, such information in relation to the affairs of the operator as is so specified; or
- (b) produce to the PSA, in accordance with the notice, such documents in relation to the affairs of the operator as are so specified.

(2) The PSA Chairperson may only ask for information or documents which are related to the supply of haulage services by the Moomba operator.

(3) A notice under subsection (1) must specify a reasonable time for complying with it.

(4) A Moomba operator must not:

- (a) without reasonable excuse, contravene a notice under subsection (1) to the extent that the operator is capable of complying with it; or
- (b) in purported compliance with such a notice, knowingly or recklessly give information that is false or misleading.

Penalty for a contravention of this subsection: 30 penalty units.

Reports etc. to be given to PSA if any transactions are not at arm's length

133.(1) This section applies if a Moomba operator enters into a transaction during a financial year that is not an arm's length transaction.

(2) The Moomba operator must give the PSA a report prepared under this section within the time prescribed by the regulations.

Penalty: 60 penalty units.

(3) The report must set out the information shown in the Moomba operator's financial statements and reports for the financial year, changed as set out in subsection (4).

(4) The information included in the report must be changed so that the amount of a transaction that was not at arm's length is shown as the amount that would have been the amount of the transaction if the parties to the transaction had been dealing with each other at arm's length.

(5) The report is to identify the changes made because of subsection (4).

(6) In this section:

“financial statements and reports” means the financial statements and reports that are required to be laid before the annual general meeting of a company because of section 316 of the Corporations Law.

Confidential information

134. If:

(a) a Moomba operator claims that information given, or contained in a report or other document given, by the operator under section 132 or 133 is information the disclosure of which would damage the competitive position of the operator; and

(b) the PSA thinks that the claim is justified and does not think that disclosure of the information is necessary in the public interest;

the PSA must take all reasonable steps to ensure that the information is not, without the consent of the operator, disclosed by the PSA to a person other than:

(c) a member or associate member of the PSA; or

(d) a member of the staff of the PSA who receives the information in the course of his or her duties.

PSA to report to Treasurer

135. The PSA:

(a) must give the Treasurer a report of its monitoring of haulage charges in relation to the provision of haulage services by a Moomba operator within 30 days after 30 June each year; and

(b) may give the Treasurer a report about such haulage charges at such other times as the PSA thinks appropriate.

Certain information to be supplied to the TPC

136. If a Moomba operator decreases the amount of haulage services provided under a determination to a party to the determination because those services are actually required by a person whose rights are covered by subsection 80(3) or (4), the Moomba operator must give the TPC and each

party to the determination a written notice informing the TPC and each party of the details of the circumstances giving rise to the decrease in the provision of haulage services. The notice must be given within 7 days of the time when the decrease happens.

Division 9 —Miscellaneous

Compensation for acquisition of property

137.(1) If:

- (a) a determination under section 80 would result in an acquisition of property; and
- (b) the determination would not be valid, apart from this section, because a particular person has not been compensated;

the Commonwealth must pay that person:

- (c) a reasonable amount of compensation agreed on between the person and the Commonwealth; or
- (d) failing agreement—a reasonable amount of compensation determined by a court of competent jurisdiction.

(2) Any damages or compensation recovered, or other remedy, in a proceeding begun otherwise than under this section must be taken into account in assessing compensation payable in a proceeding begun under this section and arising out of the same event or transaction.

(3) In this section, “**acquisition of property**” has the same meaning as in paragraph 51(xxxi) of the Constitution.

Commonwealth to pay compensation for the ending of certain contractual rights

138.(1) The Minister for Finance may, on the Commonwealth’s behalf, enter into a written agreement on the sale day with a person under which the Commonwealth agrees to compensate the person for the ending of any of the person’s contractual rights in relation to the Moomba pipeline that existed immediately before the commencement of this section.

(2) The Consolidated Revenue Fund is appropriated for compensation payments under an agreement entered into under subsection (1).

TPC approval of certain agreements for the supply of haulage services

139.(1) An agreement (other than the Gas Transportation Agreement) entered into after the commencement of this section between:

- (a) a Moomba operator or a related body corporate of the operator; and
- (b) a controlling distributor of the Moomba operator or a related body corporate of the controlling distributor;

in relation to the supply of haulage services by the operator is of no effect until approved by the TPC. The approval may be given either before or after the agreement is made.

(2) The TPC must not refuse to approve an agreement or a proposed agreement covered by subsection (1) unless the TPC thinks the agreement would be likely to have the effect of substantially lessening, preventing or hindering competition.

(3) If the TPC has not made a decision to approve or refuse to approve an agreement or a proposed agreement within 2 months after being given the agreement or the proposed agreement, the TPC is taken to have approved the agreement or the proposed agreement.

(4) A decision of the TPC to approve or refuse to approve an agreement or a proposed agreement must be notified in writing to the party to the agreement or proposed agreement who sought the approval as soon as practicable after the decision is made.

(5) In this section:

“**Gas Transportation Agreement**” means the agreement entered into by Newco and AGL Sydney Ltd on the sale day in relation to the provision of haulage services by Newco.

Part not to limit Part IV of the *Trade Practices Act 1974*

140. This Part does not limit the operation of Part IV of the *Trade Practices Act 1974*.

Failure of witness to attend

141. A person served, as prescribed, with a summons to appear as a witness before the TPC must not, without reasonable excuse:

- (a) fail to attend as required by the summons; or
- (b) fail to appear and report himself or herself from day to day unless excused, or released from further attendance, by a member of the TPC.

Penalty: 60 penalty units.

Refusal to be sworn or to answer questions

142.(1) A person appearing as a witness before the TPC must not, without reasonable excuse:

- (a) refuse or fail to be sworn or to make an affirmation; or
- (b) refuse or fail to answer a question that the person is required to answer by the TPC; or
- (c) refuse or fail to produce a document that he or she was required to produce by a summons under this Part served on him or her as prescribed.

Penalty: 60 penalty units.

(2) For the purposes of subsection (1), it is a reasonable excuse for a person:

- (a) to refuse or fail to answer a question because the answer to the question may tend to incriminate him or her; or
- (b) to refuse or fail to produce a document because the production of the document may tend to incriminate him or her.

Intimidation etc.

143. A person must not:

- (a) threaten, intimidate or coerce another person; or
- (b) cause or procure damage, loss or disadvantage to another person;

because that other person:

- (c) proposes to furnish or has furnished information, or proposes to produce or has produced documents, to the TPC; or
- (d) proposes to appear or has appeared as a witness before the TPC.

Penalty: Imprisonment for 12 months.

Criminal proceedings

144. Criminal proceedings may only be brought against a person for a contravention of a provision of this Act if this Act provides a penalty for a contravention of the provision.

Application of Part to joint ventures

145.(1) If a Moomba operator consists of 2 or more trading corporations participating in a joint venture, the following provisions apply.

(2) If this Part requires or permits something to be done by the Moomba operator, the thing may be done by one of the trading corporations on behalf of the operator.

(3) If a provision of this Part refers to a body corporate controlling the Moomba operator, the provision is to apply as if the provision referred to controlling any of the trading corporations.

(4) If a provision of this Part refers to a related body corporate of the Moomba operator, the provision is to apply as if the provision referred to a related body corporate of any of the trading corporations.

(5) If a provision of this Part refers to the Moomba operator bearing any costs, the provision is to apply as if the provision referred to any of the trading corporations bearing any costs.

(6) If a provision of this Part refers to the Moomba operator doing something, the provision is to apply as if the provision referred to:

- (a) one of the trading corporations doing the thing on behalf of the joint venture; or

(b) 2 or more of the trading corporations doing the thing jointly on behalf of the joint venture.

(7) If:

(a) a provision of this Part requires the Moomba operator to do something, or prohibits the operator doing something; and

(b) a contravention of the provision is an offence;

the provision is to apply as if a reference to the Moomba operator were a reference to any person responsible for the day to day management and control of the joint venture.

(8) If:

(a) a provision of this Part requires a Moomba operator to do something, or prohibits an operator doing something; and

(b) a contravention of the provision is not a criminal offence;

the provision is to apply as if the reference to an operator were a reference to each trading corporation participating in the joint venture and any other person responsible for the day to day management and control of the joint venture.

Application of Part to trading entities

146. If a provision of this Part refers to a trading entity owning a thing the provision is to apply as if the provision referred to:

(a) one of the trading corporations owning the thing; or

(b) 2 or more of the trading corporations owning the thing jointly.

PART 7—AMENDMENTS OF THE PIPELINE AUTHORITY ACT 1973

Principal Act

147. In this Part, “**Principal Act**” means the *Pipeline Authority Act 1973*¹.

Interpretation

148. Section 3 of the Principal Act is amended:

(a) by omitting “petroleum” from paragraph (a) of the definition of “associated equipment and structures” in subsection (1) and substituting “gas”;

(b) by omitting “petroleum” from the definition of “pipeline” in subsection (1) and substituting “gas”;

(c) by omitting “petroleum” from the definition of “tank station” in subsection (1) and substituting “gas”;

(d) by omitting “petroleum” from the definition of “valve station” in subsection (1) and substituting “gas”;

- (e) by omitting the definition of “part-time director” from subsection (1) and substituting the following definition:
“ ‘**part-time director**’ means a director of the Authority appointed to be a part-time director under subsection 6(2);”;
- (f) by omitting from subsection (1) the definitions of “petroleum” and “petroleum pool”;
- (g) by inserting in subsection (1) the following definition:
“ ‘**gas**’ means any petroleum gas, including petroleum gas that liquefies under pressure;”;
- (h) by omitting subsection (3) and substituting the following subsection:
“(3) In this Act, unless the contrary intention appears, a reference to a pipeline includes a reference to part of a pipeline.”.

Membership of Authority

149. Section 6 of the Principal Act is amended:

- (a) by omitting paragraph (1)(d);
- (b) by inserting in paragraph (1)(e) “up to” before “4 other directors”.

Leave of absence

150. Section 8 of the Principal Act is amended by omitting from subsection (1) “a full-time director” and substituting “the Chief Executive Officer”.

Chief Executive Officer

151. Section 10 of the Principal Act is amended:

- (a) by adding at the end of subsection (1) “on a full-time or part-time basis”;
- (b) by omitting subsection (3).

Acting appointments—part-time directors

152. Section 11 of the Principal Act is amended by omitting subsection (2).

Meetings of Authority

153. Section 12 of the Principal Act is amended by omitting subsection (3) and substituting the following subsection:

“(3) At a meeting of the Authority, a majority of the directors constitute a quorum.”.

Repeal of section and substitution of new section

154.(1) Section 13 of the Principal Act is repealed and the following section is substituted:

Functions of Authority

“13.(1) The Authority has the following functions:

- (a) to design, for itself or another person, pipelines for the carriage of gas in trade and commerce between a point in a State and a point in another State;
- (b) to construct, for itself or another person, pipelines for the carriage of gas in trade or commerce between a point in a State and a point in another State;
- (c) to maintain, for itself or another person, pipelines for the carriage of gas in trade or commerce between a point in a State and a point in another State or Territory;
- (d) to operate, for itself or another person, pipelines for the carriage of gas in trade or commerce between a point in a State and a point in another State or a Territory;
- (e) to give advice to the Minister about its functions under paragraphs (a) to (d).

“(2) The Authority may, in accordance with sections 14 and 28, carry on business for the purposes of performing those functions.”.

(2) Despite the repeal of section 13 by subsection (1), the Authority may carry on business for the purpose of finalising any business activities that relate to its functions under the *Pipeline Authority Act 1973* immediately before the commencement of this section.

Duties of the Authority

155. Section 14 of the Principal Act is amended:

- (a) by omitting from paragraphs (1)(b) and (c) “its” (wherever occurring);
- (b) by omitting from subsection (2) “petroleum” and substituting “gas”;
- (c) by omitting from subsection (2) “its”.

Insertion of new section

156. After section 14 of the Principal Act the following section is inserted:

Authority to act in accordance with Ministerial determination

“14A.(1) The Minister may, after consulting the Authority, give the Authority a written determination setting out the policies and objectives that are to be carried out by the Authority for the purposes of performing its functions.

“(2) It is the duty of the directors to give effect to a determination under subsection (1).

“(3) If the Minister gives a determination under subsection (1), the Minister must cause a copy of the determination to be laid before each House of the Parliament within 15 sitting days of that House after giving the determination.”.

Particular powers of the Authority

157. Section 16 of the Principal Act is amended:

- (a) by omitting paragraph (d) and substituting the following paragraph:
“(d) to sell or otherwise dispose of land or an interest in land;”;
- (b) by omitting paragraphs (j) and (ka).

Repeal of section and substitution of new section

158.(1) Section 16A of the Principal Act is repealed and the following section is substituted:

Authority must not form etc. companies

“16A. The Authority must not:

- (a) form, or participate in the formation of, a company; or
- (b) subscribe for, or otherwise acquire, shares in a company that is not a subsidiary of the Authority.”.

(2) If, immediately before the repeal of section 16A of the Principal Act, a subsidiary of the Authority was a subsidiary whose approval under subsection 16A(1) of the Principal Act was subject to terms and conditions specified in the approval, then despite the repeal of section 16A of the Principal Act:

- (a) the terms and conditions that applied under section 16A of the Principal Act immediately before the repeal; and
- (b) subsections 16A(3) to (6) of the Principal Act as in force immediately before the repeal;

continue to apply in relation to the subsidiary.

Repeal of sections 18A and 25

159. Sections 18A and 25 of the Principal Act are repealed.

Repeal of section and substitution of new section

160. Section 28 of the Principal Act is repealed and the following section is substituted:

Financial policy

“28.(1) If:

- (a) the construction of a pipeline from Moomba in South Australia to Botany in New South Wales is commenced by the Authority; and

(b) the Authority continues to operate and maintain any transferred pipelines for another person after the sale day;
the Authority must pursue a policy of acting in accordance with sound commercial principles in relation to:

- (c) the construction of the pipeline; and
- (d) the operation and maintenance of the transferred pipelines; and
- (e) finalising its business activities in relation to any assets that cease to be assets of the Authority because of the Sale Act; and
- (f) the winding down of the Authority's business activities to facilitate the abolition of the Authority by the Sale Act.

“(2) If:

(a) the construction of a pipeline from Moomba in South Australia to Botany in New South Wales is not commenced by the Authority; and
(b) the Authority continues to operate and maintain any transferred pipelines for another person after the sale day;
the Authority must pursue a policy of acting in accordance with sound commercial principles in relation to:

- (c) the operation and maintenance of the transferred pipelines; and
- (d) finalising its business activities in relation to any assets that cease to be assets of the Authority because of the Sale Act; and
- (e) the winding down of the Authority's business activities to facilitate the abolition of the Authority by the Sale Act.

“(3) If:

(a) the construction of a pipeline from Moomba in South Australia to Botany in New South Wales is not commenced by the Authority; and
(b) the Authority does not continue to operate any transferred pipelines for another person after the sale day;
the Authority must pursue a policy of acting in accordance with sound commercial principles in relation to:

- (c) finalising its business activities in relation to any assets that cease to be assets of the Authority because of the Sale Act; and
- (d) the winding down of the Authority's business activities to facilitate the abolition of the Authority by the Sale Act.

“(4) In this section:

‘**Sale Act**’ means the *Moomba-Sydney Pipeline System Sale Act 1994*;
‘**sale day**’ has the same meaning as in the Sale Act;
‘**transferred pipeline**’ means a pipeline that ceases to be an asset of the Authority because of the Sale Act.”

Repeal of section 33B

161. Section 33B of the Principal Act is repealed.

PART 8—ABOLITION OF THE PIPELINE AUTHORITY

Principal Act

162. In this Part, “**Principal Act**” means the *Pipeline Authority Act 1973*¹.

Definitions

163. In this Part, unless the contrary intention appears:

“**repeal day**” means:

- (a) the day notified by the Minister in the *Gazette* for the purposes of this Part; or
- (b) 31 December 1996;

whichever occurs first;

“**residual assets**” means:

- (a) any legal or equitable estates or interests in real or personal property, including contingent or prospective ones; and
- (b) any rights, privileges and immunities including contingent or prospective ones;

of the Authority immediately before the repeal day;

“**residual instruments**” means instruments that are in force immediately before the repeal day:

- (a) to which the Authority is a party; or
- (b) that were given to, by or in favour of the Authority; or
- (c) in which a reference is made to the Authority; or
- (d) under which any money is or may become payable, or any other property is to be, or may become liable to be, transferred, conveyed or assigned, to or by the Authority;

“**residual liability**” means liabilities and duties of the Authority, including contingent and prospective ones, immediately before the repeal day.

Repeal of sections and substitution of new section

164. Sections 3 and 4 of the Principal Act are repealed and the following section is substituted:

Interpretation

“3.(1) In this Act a reference to the Authority is a reference to the Pipeline Authority as it was established by this Act before the repeal day.

“(2) In this section:

‘**repeal day**’ has the same meaning as in Part 8 of the *Moomba-Sydney Pipeline System Sale Act 1994*.”.

Repeal of Parts II, III, IV and VI

165. Parts II, III, IV and VI of the Principal Act are repealed on the repeal day.

Residual assets and liabilities to become Commonwealth assets and liabilities of the Commonwealth

166.(1) By force of this section, all the residual assets of the Authority cease to be assets of the Authority and become assets of the Commonwealth on the repeal day.

(2) By force of this section, all residual liabilities of the Authority cease to be liabilities of the Authority and become liabilities of the Commonwealth on the repeal day.

(3) A residual instrument continues to have effect on and after the repeal day as if a reference in the instrument to the Authority were a reference to the Commonwealth.

Pending proceedings

167. If, immediately before the repeal day, proceedings to which the Authority was a party are pending in a court, then, on and after the repeal day, the Commonwealth is substituted for the Authority in the proceedings and has the same rights and obligations as the Authority would have had in the proceedings.

Minister may dispose of or deal with residual assets

168. The Minister may, on behalf of the Commonwealth, dispose of or otherwise deal with the residual assets that become assets of the Commonwealth under section 166.

Exemption from certain State and Territory stamp duties

169.(1) No stamp duty is payable under a law of a State or Territory in respect of an exempt matter or anything connected with an exempt matter.

(2) An authorised person may, by signed writing, certify that:

- (a)** a specified matter or thing is an exempt matter; or
- (b)** a specified thing was done in connection with a specified exempt matter.

(3) In all courts and for all purposes, a certificate under subsection (2) is evidence of the matter stated in the certificate.

(4) A document that appears to be a certificate under subsection (2) is taken to be such a certificate and to have been properly given unless the contrary is established.

(5) In this section:

“exempt matter” means:

- (a)** residual assets and residual liabilities ceasing to be assets and liabilities of the Authority under section 166 and becoming assets and liabilities of the Commonwealth under that section; or

- (b) the operation of this Part in any other respect.

Certificates in relation to interests in land

170.(1) This section applies if:

- (a) land becomes land of the Commonwealth under this Part; and
- (b) there is lodged with a land registration official a certificate that:
 - (i) is signed by an authorised person; and
 - (ii) identifies the land, whether by reference to a map or otherwise; and
 - (iii) states that the land has become land of the Commonwealth under this Part.

(2) The land registration official may:

- (a) register the matter in the same way in which dealings in land of that kind are registered; and
- (b) deal with, and give effect to, the certificate.

(3) A document that appears to be a certificate under subsection (1) is taken to be such a certificate and to have been properly given unless the contrary is established.

(4) In this section:

“land registration official” means the Registrar of Titles or other proper officer of the State or Territory in which the land is situated.

Certificates in relation to other assets

171.(1) This section applies if:

- (a) an asset becomes an asset of the Commonwealth under this Part; and
- (b) there is lodged with an assets official a certificate that:
 - (i) is signed by an authorised person; and
 - (ii) identifies the asset; and
 - (iii) states that the asset has, under this Part, become an asset of the Commonwealth.

(2) The assets official may:

- (a) deal with, and give effect to, the certificate as if the certificate were a proper and appropriate instrument for transactions in relation to assets of that kind; and
- (b) make such entries in the register as are necessary having regard to the effect of section 166.

(3) A document that appears to be a certificate under subsection (1) is taken to be such a certificate and to have been properly given unless the contrary is established.

(4) In this section:

“**assets official**” means a person or authority who, under the law of the Commonwealth or of a State or Territory, has responsibility for keeping a register in relation to assets of the kind concerned.

Part to have effect in spite of laws and agreements prohibiting transfer etc.

172.(1) This Part has effect, and must be given effect to, in spite of anything in:

- (a) any other law of the Commonwealth or any law of a State or Territory; or
- (b) any instrument.

(2) Without limiting subsection (1), if, apart from this section, the consent of a person would be necessary in order to give effect to this Part in a particular respect, the consent is taken to have been given.

Saving and transitional matters

173. The regulations may make provision for saving or transitional measures in relation to the abolition of the Authority by this Part.

PART 9—MISCELLANEOUS

Regulations

174.(1) The Governor-General may make regulations prescribing all matters:

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) In particular but without limiting subsection (1), the regulations may prescribe:

- (a) the fees payable to the TPC on making a prescribed application, or giving a prescribed notice, to the TPC under this Act or the regulations; and
- (b) matters in connection with the procedure of the TPC; and
- (c) fees and expenses of witnesses in proceedings before the TPC; and
- (d) matters for and in relation to the costs, if any, that may be awarded by the Federal Court in proceedings before the Federal Court under this Act.

NOTE

1. No. 42, 1973, as amended. For previous amendments, see No. 216, 1973; No. 91, 1976; No. 36, 1978; No. 109, 1980; Nos. 65, 159 and 166, 1985; No. 76, 1986; Nos. 21 and 129, 1989; Nos. 122 and 199, 1991; and Nos. 7 and 188, 1992.

Moomba-Sydney Pipeline System Sale *No. 70, 1994*

*[Minister's second reading speech made in—
House of Representatives on 12 May 1994
Senate on 1 June 1994]*