Legislative Assembly

09/04/2002

AGL Corporate Conversion Bill

Hansard

Extract

Second Reading

Mr YEADON (Granville—Minister for Information Technology, Minister for Energy, Minister for Forestry, and Minister for Western Sydney) [5.11 p.m.]: I move:

That this bill be now read a second time.

The AGL Corporate Conversion Bill introduces important changes for one of New South Wales oldest institutions, the Australian Gas Light Company. Since its inception in 1837 to light the streets of Sydney with gas, AGL has grown to be a major Australian company with operations throughout mainland Australia and in other countries across the energy sector. The bill is to provide a mechanism to constitute the Australian Gas Light Company, or AGL, as a body corporate under the law of New South Wales with a modern corporate structure and to authorise the company, once incorporated, to apply to be registered as a public company limited by shares under the Corporations Act 2001 of the Commonwealth. This bill also amends the Gas Industry Restructuring Act 1986 to remove the 5 per cent limit on shareholdings in the company on its registration as a public company and, in the period to the removal of that limit, to strengthen provisions relating to the enforcement of that limit.

As members would be aware, on 2 April 2001 the Government announced that AGL would be converted to a Corporations Law company. The corporate conversion process is a pathway down which many other historic companies—such as the Bank of New South Wales and AMP—have proceeded. AGL will be one of the last organisations to achieve regulation as a company under the National Corporations Legislation scheme. The bill is a result of the joint implementation process established between the Government, its relevant departments and AGL. The AGL Corporate Conversion Bill deals with AGL as an entity. It is about the corporate structure and arrangements governing one of New South Wales oldest businesses. It is not about changing the regulatory framework for the electricity and gas sectors, nor does it alter the consumer and environmental protections or the economic regulation of the industry.

Today AGL is governed by a series of Acts, by-laws and other regulations put in place to regulate what was once a monopoly gas supplier. Many of these components date back to the first half of the nineteenth century. This bill will allow AGL to be fully regulated under the Corporations Act as a modern company and will replace its 164-year-old constituent documents with a modern constitution. AGL was formed in 1837 as a gas utility under the Australian Gas Light Company Act and was first listed in 1871. The 1837 Act and subsequent amending Acts, which included shareholding restrictions of 5 per cent and differential voting rights provided in the Gas Industry Restructuring Act 1986, were designed to prevent AGL, as the monopoly gas utility company, from falling under the control of any single shareholder or group of shareholders acting in concert. In essence, AGL was subject to company-specific regulation.

There are a number of important rationales underlying the Government's decision to enact AGL's corporate conversion contained in the bill. First, as a company governed by its own Act of Parliament, AGL is treated quite differently to its competitors and other listed companies. AGL's legislation provides it with a number of special powers, rights and obligations that were appropriate for a monopoly gas utility established under New South Wales law. In addition, AGL's legislation contains mechanisms restricting any one shareholder holding more than 5 per cent of its shares, provides for disproportionate voting rights, and allows it to make by-laws that have the effect of law. Moving AGL to the same corporate legislation platform as other companies is consistent with the policy position, endorsed by all governments in Australia, to have a National Corporations Legislation scheme.

Second, the Government has undertaken to reform the energy industry and the principle of competitive neutrality requires that AGL should be subject to the same restrictions, controls and rewards as other non-government owned energy corporations. Other companies with which AGL competes do not have special powers, rights and obligations or legislative shareholding limitation mechanisms. There is, therefore, no level playing field. There is no compelling policy or other reason why AGL should be regulated differently from other energy or publicly listed corporations, or why the New South Wales Government should have any significant role to play in the operation of AGL as a private sector company above any other energy company.

Third, the original justification for the shareholding control restrictions appears to have been a desire to prevent a private owner from abusing the position of AGL as a monopoly gas utility company that it historically enjoyed in the supply of gas to New South Wales customers. The implementation of energy full retail contestability and open third party access to gas networks, including all of AGL's networks, as well as the overarching regulatory framework provided by the Gas Supply Act 1996, remove this argument for a company specific limitation. In addition, shareholding limitations are not generally supported for other major Australian companies, except in limited

circumstances and usually when they apply to all participants in an industry, for example, within the media. Fourth, AGL's existing shareholder voting rights, which give some shareholders more votes than others, are not consistent with modern corporate practice of most publicly listed companies on the Australian Stock Exchange.

I now turn to the detail of the bill. The bill has two aspects: first, the legislation enabling the conversion and, second, the compliance legislation to ensure no investor takes unfair advantage of the AGL corporate conversion reform package. I will address each of these in detail. At present, AGL is not incorporated. Its assets are vested in the Company Secretary on behalf of the Company of Proprietors. Liabilities and claims can be recovered by action against the Secretary. The Corporations Act sets out the procedure which must be followed in order for AGL to become a company registered under that Act. Chapter 5B, part 5B.1 of the Corporations Act sets out a procedure whereby a body corporate that is not a company may be registered under the Corporations Act as, amongst other things, a public company limited by shares. While AGL is a registered body under the Corporations Act, it is not a company registered under the Corporations Act for the purposes of the Corporations Act.

In order for AGL to become a company which is regulated solely by the Corporations Act, enabling legislation must be passed which provides for the conversion of AGL into a body corporate. The method adopted is called the corporatisation method. AGL will be firstly converted into a body corporate under the bill. All assets and liabilities will be vested in the corporatised AGL. Corporatised AGL is, to the fullest extent possible, taken to be a continuation of the same company and the same legal entity as AGL. All officers and employees of AGL will be taken to be officers and employees of corporatised AGL. All contracts with AGL will be taken to be contracts with corporatised AGL. All references to AGL in any instrument will be taken to be references to corporatised AGL. The financial position of AGL and its accounts are taken to be the opening financial position and accounts of corporatised AGL. Corporatised AGL is then registered as a company under the Corporations Act.

To register a company as a company under part 5B.1 of the Corporations Law AGL will lodge an application with the Australian Securities and Investments Commission. Before conversion of AGL into a body corporate, AGL shareholders must approve the passing of a motion at a general meeting that resolves that AGL be constituted as a body corporate under the proposed Act, approves a constitution for AGL on its conversion into a body corporate and resolves that AGL be registered as a public company limited by shares under the Corporations Act. All relevant legislation governing AGL as a company is to be repealed. This is planned to occur in parallel with the commencement of the proposed legislation. The main legislation to be repealed includes the Australian Gas Light Company Act 1837, 1839, 1849, 1858 and 1883 and relevant sections of the Gas Industry Restructuring Act 1986. It is proposed that this will occur automatically upon the registration of AGL as a company.

If the Parliament accepts the Government's bill, and once I am satisfied the relevant provisions have been complied with, on application by AGL I will issue a compliance certificate and conversion order to AGL specifying the conversion date that AGL be registered as a company under the Corporations Act. This conversion date is expected to be one month after the passing of the relevant motion by AGL shareholders and is targeted to occur around 1 July 2002, the commencement of the new financial year. Under this process the bill will confirm AGL's ability to continue to do business after conversion. In addition, the bill also has the effect of strengthening the application of the current 5 per cent limit on the shareholdings in AGL for an interim period from the date of the public announcement of removal of the restrictions until AGL is converted into a body corporate and registered under the Corporations Act as described above.

Last year when I announced the Government's policy on AGL's corporate conversion I noted that, once the market became aware that the shareholding limits would be removed, there may be an incentive for some parties to attempt to illegally acquire a higher level of holding than 5 per cent prior to the relevant legislative changes taking effect. As I indicated last April, it is the intention of the Government that no-one should take financial advantage of the corporate conversion process. Retrospective measures are introduced in this appeal to tighten the prohibition on a person owning more than 5 per cent of the shares in AGL between 2 April 2001 and the date of AGL registering as a company under the Corporations Act. The Government has given a clear signal to the market that this will not be tolerated. It is proposed, therefore, to strengthen current legislation to remove any chance that a profit could be made or any advantage be taken during the interim period before removal of the 5 per cent limit.

This legislation will introduce a number of additional measures. First, the obligation imposed on AGL to monitor its share register and inform the Minister whether it suspects any breach of the 5 per cent limit is enhanced through a requirement that AGL report to the Minister in writing regarding its share-monitoring obligations within seven days after the date of assent to this legislation, and then seven days after the date of registration. Second, the penalty for contravention is significantly increased to include a significant monetary penalty of up to 5,000 penalty units—that is, $550,000. Third, where the Minister has ordered a person to dispose of shares the Minister may also direct that the person pay to the Energy Corporation of New South Wales any realised capital gains on the shares. Fourth, the Minister may require AGL to provide further information on its share register. Fifth, the Minister may obtain expert advice concerning these provisions and their enforcement. Sixth, the Minister will have the power to request a copy of the share register and to inquire as to the beneficial ownership of shares held.

The above transitional compliance measures are in addition to part 4 of the Gas Industry Restructuring Act under which there are already a number of measures concerning shareholding limits. The Minister can decide whether there has been a contravention of the 5 per cent limit and order that the contravention be remedied. The Minister can order that the offending shares be sold and, if the order is not complied with, the Minister can direct that the shares invest in a body that will sell them and retain 5 per cent of the sale proceeds as commission, which, after defraying expenses, is to be remitted to the Consolidated Fund. The Minister can direct AGL not to pay

dividends or other sums in respect of offending shares. The Minister can require persons to furnish information in relation to shareholdings where the Minister believes there are reasonable grounds that a person has information. AGL can refuse to register a transfer of shares if the proposed transferee does not declare that the transfer will not result in a contravention, thus rendering those shares unsaleable, and AGL can restrict voting rights attached to shares if it is aware of a contravention.

This compliance legislation will apply retrospectively from the date of the announcement of AGL's corporate conversion, which was 2 April 2001, to the date of removal of the shareholding limitation. This will deter any potential illegal trading. The implementation process is also designed to avoid adverse consequences for AGL, its customers and shareholders as well as the New South Wales Government. AGL has formally advised the Government that the deal is acceptable to it. The bill is also important in achieving a level playing field between AGL and other energy companies in a competitive New South Wales energy market, and ensuring that AGL is treated in the same way as other companies that are regulated in the energy sector. Although the legislation deals with complex corporate regulatory issues, the policy is simple: AGL will become just the same as any other company participating in the energy sector. This is a good outcome for AGL, its shareholders and consumers because it reinforces a competitive market. Redundant and inappropriate provisions will be removed to better reflect the reformed gas, electricity and utilities market. I commend the bill to the House.