



New South Wales

# AGL Corporate Conversion Bill 2002

## Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

### Overview of Bill

The objects of this Bill are:

- (a) to constitute The Australian Gas Light Company as a body corporate under the law of New South Wales with a modern corporate structure, and
- (b) 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, and
- (c) to amend the *Gas Industry Restructuring Act 1986* to remove the 5% limit on shareholdings in the Company on its registration as a public company and, pending the removal of that limit, to strengthen the provisions relating to the enforcement of that limit.

## Outline of provisions

### Part 1 Preliminary

**Clause 1** sets out the name (also called the short title) of the proposed Act.

**Clause 2** provides that the proposed Act commences on its date of assent.

**Clause 3** specifies the objects of the proposed Act.

**Clause 4** defines certain words and expressions used in the proposed Act.

In particular, it defines **AGL** to mean the company of proprietors known by the name “The Australian Gas Light Company” that was originally established by the *Australian Gas Light Company Act 1837*.

It also defines **Corporations legislation** to mean the Corporations legislation to which Part 1.1A of the *Corporations Act 2001* of the Commonwealth applies. Section 5D of the *Corporations Act 2001* provides that Part 1.1A of that Act applies to the following Commonwealth legislation:

- (a) the *Corporations Act 2001* (including regulations made under that Act),
- (b) Part 3 of the *Australian Securities and Investments Commission Act 2001* of the Commonwealth (and regulations made under that Act for the purposes of that Part).

The proposed section also provides that the proposed Act is intended to have extraterritorial operation in so far as the legislative powers of the State permit.

**Clause 5** defines the concept of **preserved resolution**. Preserved resolutions are certain resolutions of the proprietors of AGL that were in force under the constitution of AGL immediately before the day on which AGL is converted into a body corporate by the proposed Act (the **conversion day**).

**Clause 6** is a formal provision giving effect to certain amendments to the *Gas Industry Restructuring Act 1986* set out in Schedule 1 that strengthen the provisions in that Act relating to the enforcement of the 5% limit on shareholdings in AGL pending the removal of that limit on the registration of AGL as a public company under the *Corporations Act 2001* of the Commonwealth.

## **Part 2 Overview of the corporatisation and registration of AGL as a public company**

**Clause 7** contains a summary of the steps involved under the proposed Act:

- (a) to constitute AGL as a body corporate under State law, and
- (b) to enable AGL when incorporated (*corporatised AGL*) to seek registration under Part 5B.1 of the *Corporations Act 2001* of the Commonwealth as a public company limited by shares.

## **Part 3 Conversion and registration resolutions**

### **Division 1 Conversion resolutions**

**Clause 8** defines the concept of *conversion resolution* for the purposes of the proposed Act. A *conversion resolution* is a resolution passed in accordance with the proposed section by the proprietors of AGL at a general meeting of AGL that:

- (a) resolves that AGL be constituted as a body corporate under the proposed Act, and
- (b) approves a constitution for AGL on its conversion into a body corporate.

The passing of a conversion resolution is a necessary precondition for the conversion of AGL into a body corporate under the proposed Act.

### **Division 2 Registration resolutions**

**Clause 9** defines the concept of *registration resolution* for the purposes of the proposed Act. A *registration resolution* is a resolution passed in accordance with the proposed section either by the proprietors of AGL at a general meeting of AGL or by the members of corporatised AGL at a general meeting of corporatised AGL (as the case may be). The resolution must resolve that corporatised AGL be registered as a public company limited by shares under the *Corporations Act 2001* of the Commonwealth. The passing of a registration resolution is a necessary precondition before corporatised AGL can apply to be so registered.

### **Division 3      Judicial review of conversion and registration resolutions**

**Clause 10** provides that the provisions of the Division apply to the following resolutions (*applicable resolutions*):

- (a) any conversion resolution or purported conversion resolution,
- (b) any registration resolution or purported registration resolution.

**Clause 11** provides that an applicable resolution is not invalidated because of any procedural irregularity unless, on an application made under the proposed section, the Supreme Court by order declares the resolution to be invalid (an *invalidity order*). Any such invalidity order may only be made on the application of no fewer than 200 persons who were eligible to vote at the meeting at which the resolution was passed and must be made within the period specified by the proposed section.

## **Part 4   Conversion of AGL into body corporate**

### **Division 1      Constitution of AGL as a body corporate**

**Clause 12** constitutes AGL as a body corporate on the conversion day with the corporate name “The Australian Gas Light Company”. The body corporate so constituted is a company limited by shares.

**Clause 13** enables the Minister, by order published in the Gazette, to specify a conversion day (being the day on which AGL is to be constituted as a body corporate under the proposed Act). The Minister may make such an order only if the Minister is satisfied that:

- (a) a conversion resolution has been passed by the proprietors of AGL in accordance with the provisions of the proposed Act, and
- (b) the period specified in proposed section 11 for the making of an application for an invalidity order in respect of the resolution has expired, and
- (c) an invalidity order has not been made by the Supreme Court under proposed section 11 in respect of the resolution.

## **Division 2      Provisions consequent on conversion of AGL into body corporate**

### **Subdivision 1    General**

**Clause 14** provides that corporatised AGL is taken for all purposes, including the rules of private international law, to be a continuation of the same company, and the same legal entity, as AGL.

**Clause 15** provides for the repeal and amendment of certain provisions of legislation relating to AGL and other related legislation that will become redundant on the conversion day. In particular, it gives effect to amendments to be made to the *Gas Industry Restructuring Act 1986* by Schedule 2.

### **Subdivision 2    Specific transitional matters**

**Clause 16** provides that Schedule 3 applies to AGL's assets, rights and liabilities on and from the conversion day. Schedule 3 contains provisions that ensure that AGL's assets, rights and liabilities become the assets, rights and liabilities of corporatised AGL on and from that day.

**Clause 17** provides that the preserved resolutions of AGL will continue to have effect on and from the conversion day as if they were resolutions of the members of corporatised AGL, subject to such modifications as are necessary or that are prescribed by the regulations.

**Clause 18** provides for matters relating to the share capital of, and shareholdings in, corporatised AGL. These matters will largely be determined by reference to the existing share capital of, and shareholdings in, AGL.

**Clause 19** provides that officers and employees of AGL immediately before the conversion day will continue to hold office as officers of, or be employed by, corporatised AGL.

**Clause 20** provides that corporatised AGL will, on and after the conversion day, be entitled to the benefit and subject to the burden of, and taken to be a party to, any existing contract or arrangement entered into by AGL (or by a person on behalf of AGL).

**Clause 21** provides that a reference in any instrument (other than the *Gas Industry Restructuring Act 1986*) to AGL or the Secretary of AGL is to be read as including a reference to corporatised AGL. It also provides for a reference in any instrument (other than an Act or an instrument made under an Act) to any AGL legislation to be read on and after the conversion day as including a reference to the proposed Act.

**Clause 22** provides that the financial position and financial reports of corporatised AGL are to be taken to be the same as the financial position and financial reports of AGL immediately before the conversion day.

The provisions of the proposed section are declared to be Corporations legislation displacement provisions for the purposes of section 5G of the *Corporations Act 2001* of the Commonwealth in relation to the provisions of Chapter 2M of that Act, which relate to financial reports and audits. Section 5G of the *Corporations Act 2001* of the Commonwealth provides that if a State law declares a provision of a State law to be a Corporations legislation displacement provision, any provision of the Corporations legislation with which the State provision would otherwise be inconsistent does not apply to the extent necessary to avoid the inconsistency.

**Clause 23** provides that the auditor of AGL immediately before the conversion day is taken to be the auditor of corporatised AGL on the conversion day.

**Clause 24** provides that nothing in the Part renders defective any legal proceedings by or against AGL or its proprietors (whether or not those proceedings are commenced using the name of the Secretary of AGL).

**Clause 25** provides that nothing in the Subdivision limits the generality of proposed section 14, which provides that corporatised AGL is a continuation of, and the same legal entity as, AGL.

### **Division 3      Application of Corporations legislation to corporatised AGL**

**Clause 26** applies certain provisions of the Corporations legislation (with certain modifications) relating to companies to corporatised AGL as a matter of State law. These provisions will not extend to corporatised AGL as a law of the Commonwealth until corporatised AGL is registered as a company under the *Corporations Act 2001* of the Commonwealth.

The provisions of the proposed section will cease to have effect on the day on which corporatised AGL is registered as a public company under the *Corporations Act 2001* of the Commonwealth (the *registration day*).

**Clause 27** authorises corporatised AGL to issue shares, and to pay remuneration to its non-executive directors, in accordance with preserved resolutions despite anything to the contrary in ASX Listing Rules 7.1 and 10.17.

The provisions of the proposed section are declared to be Corporations legislation displacement provisions for the purposes of section 5G of the *Corporations Act 2001* of the Commonwealth in relation to the provisions of sections 793B and 793C of that Act (as inserted by the *Financial Services Reform Act 2001* of the Commonwealth), which relate to the enforcement of the operating rules of a licensed market under that Act. Section 5G of the *Corporations Act 2001* of the Commonwealth provides that if a State law declares a provision of a State law to be a Corporations legislation displacement provision, any provision of the Corporations legislation with which the State provision would otherwise be inconsistent does not apply to the extent necessary to avoid the inconsistency.

The provisions of the proposed section will cease to have effect on the registration day.

**Clause 28** authorises corporatised AGL to continue to publish and sign public documents and negotiable instruments using AGL's existing Australian Registered Body Number (**ARB**N) instead of the information specified in section 601DE (1) (b) of the *Corporations Act 2001* of the Commonwealth.

The provisions of the proposed section are declared to be Corporations legislation displacement provisions for the purposes of section 5G of the *Corporations Act 2001* of the Commonwealth in relation to the provisions of section 601DE of that Act, which relate to the information that a registered Australian body under that Act must set out in its public documents and negotiable instruments. Section 5G (4) of the *Corporations Act 2001* of the Commonwealth provides that a provision of the Corporations legislation does not prohibit the doing of an act or impose a liability (whether civil or criminal) for doing an act if a provision of a law of a State or Territory specifically authorises or requires the doing of that act.

The provisions of the proposed section will cease to have effect on the registration day.

**Clause 29** enables the regulations to invoke section 5F or 5G of the *Corporations Act 2001* of the Commonwealth in order to avoid inconsistency between provisions of the proposed Act relating to corporatised AGL and the Corporations legislation.

Section 5F of the *Corporations Act 2001* of the Commonwealth provides that if a State law declares a matter to be an excluded matter for the purposes of that section in relation to all or part of the Corporations legislation, the provisions that are the subject of the declaration will not apply in relation to that matter in the State concerned.

Section 5G of the *Corporations Act 2001* of the Commonwealth provides that if a State law declares a provision of a State law to be a Corporations legislation displacement provision, any provision of the Corporations legislation with which the State provision would otherwise be inconsistent does not apply to the extent necessary to avoid the inconsistency.

The provisions of the proposed section will cease to have effect on the registration day.

**Clause 30** makes it clear that nothing in the Part prevents corporatised AGL from making changes to its constitution or corporate structure on or after the conversion day in accordance with any applicable law.

## **Part 5 Registration of corporatised AGL as a public company**

### **Division 1 Authorisation to transfer incorporation**

**Clause 31** authorises corporatised AGL (or AGL on behalf of corporatised AGL) to apply to the Australian Securities and Investments Commission to be registered as a public company limited by shares under Part 5B.1 of the *Corporations Act 2001* once the Minister issues a compliance certificate under proposed section 32.

### **Division 2 Compliance certificate**

**Clause 32** enables the Minister to issue a compliance certificate to AGL or corporatised AGL that certifies that the provisions of the proposed Act have been complied with concerning the transfer of the incorporation of corporatised AGL to the *Corporations Act 2001* of the Commonwealth if the Minister is satisfied that:

- (a) a registration resolution has been passed, and
- (b) the period specified in proposed section 11 for the making of an application for an invalidity order in respect of the resolution has expired, and
- (c) an invalidity order has not been made by the Supreme Court under proposed section 11 in respect of the resolution.

### **Division 3            Provisions consequent on transfer of incorporation of corporatised AGL**

**Clause 33** refers to the provisions of section 601BM of the *Corporations Act 2001* of the Commonwealth. That section provides that the registration of a body as a company under Part 5B.1 of that Act does not:

- (a) create a new legal entity, or
- (b) affect the body's existing property, rights or obligations (except as against the members of the body in their capacity as members), or
- (c) render defective any legal proceedings by or against the body or its members.

The proposed section also provides for references to corporatised AGL in instruments to be read as if they included a reference to registered AGL.

**Clause 34** provides that the provisions of Part 4 (other than proposed section 56A to be inserted by Schedule 1 to the proposed Act) of the *Gas Industry Restructuring Act 1986* cease to have effect on the registration day. Part 4 contains special provisions relating to shareholding limitations in AGL and corporatised AGL.

**Clause 35** authorises registered AGL to use the name "The Australian Gas Light Company" as its corporate name without the word "Limited" being included in that name.

The provisions of the proposed section are declared to be Corporations legislation displacement provisions for the purposes of section 5G of the *Corporations Act 2001* of the Commonwealth in relation to the provisions of Part 2B.6 of that Act, which would otherwise require registered AGL to use the word "Limited" as part of its name. Section 5G (6) of the *Corporations Act 2001* of the Commonwealth provides that the provisions of Part 2B.6 and Part 5B.3 of that Act (which relate to the use of names) do not:

- (a) prohibit a company or other body from using a name if the use of the name is expressly provided for, or authorised by, a provision of a law of a State or Territory, or
- (b) require a company or other body to use a word as part of its name if the company or body is expressly authorised not to use that word by a provision of a law of a State or Territory.

**Clause 36** authorises registered AGL to continue to publish and sign public documents and negotiable instruments using AGL's existing Australian Registered Body Number (*ARBN*) instead of the information specified in section 153 (2) of the *Corporations Act 2001* of the Commonwealth. It also confers a similar authority in respect of the annual returns of registered AGL under section 348 of that Act.

The provisions of the proposed section are declared to be Corporations legislation displacement provisions for the purposes of section 5G of the *Corporations Act 2001* of the Commonwealth in relation to the provisions of sections 153 (2) and 348 of that Act, which relate to the information that a company under that Act must set out in its public documents and negotiable instruments and in its annual returns. Section 5G (4) of the *Corporations Act 2001* of the Commonwealth provides that a provision of the Corporations legislation does not prohibit the doing of an act or impose a liability (whether civil or criminal) for doing an act if a provision of a law of a State or Territory specifically authorises or requires the doing of that act.

**Clause 37** provides that the preserved resolutions of AGL (other than any preserved resolution revoked by the members of corporatised AGL before the registration day) will continue to have effect on and from the registration day as if they were resolutions of the members of registered AGL, subject to such modifications as are necessary or that are prescribed by the regulations.

**Clause 38** authorises registered AGL:

- (a) to give benefits to a person holding a board or managerial office in relation to registered AGL, and
  - (b) to pay remuneration to a director of registered AGL, and
  - (c) to give financial assistance to a person to acquire shares in registered AGL,
- in accordance with any preserved resolutions that are continued in force by proposed section 37.

The provisions of the proposed section are declared to be Corporations legislation displacement provisions for the purposes of section 5G of the *Corporations Act 2001* of the Commonwealth in relation to the following provisions that Act:

- (a) Part 2D.2 (Restrictions on indemnities, insurance and termination payments),
- (b) Part 2D.3 (Appointment, remuneration and cessation of appointment of directors),
- (c) Part 2J.3 (Financial assistance).

Section 5G (4) of the *Corporations Act 2001* of the Commonwealth provides that a provision of the Corporations legislation does not prohibit the doing of an act or impose a liability (whether civil or criminal) for doing an act if a provision of a law of a State or Territory specifically authorises or requires the doing of that act.

**Clause 39** authorises registered AGL to issue shares, and to pay remuneration to its non-executive directors, in accordance with preserved resolutions that are continued in force by proposed section 37 despite anything to the contrary in ASX Listing Rules 7.1 and 10.17.

The provisions of the proposed section are declared to be Corporations legislation displacement provisions for the purposes of section 5G of the *Corporations Act 2001* of the Commonwealth in relation to the provisions of sections 793B and 793C of that Act (as inserted by the *Financial Services Reform Act 2001* of the Commonwealth), which relate to the enforcement of the operating rules of a licensed market under that Act. Section 5G of the *Corporations Act 2001* of the Commonwealth provides that if a State law declares a provision of a State law to be a Corporations legislation displacement provision, any provision of the Corporations legislation with which the State provision would otherwise be inconsistent does not apply to the extent necessary to avoid the inconsistency.

**Clause 40** provides that the auditor of registered AGL on the registration day is the same person or firm as the auditor of corporatised AGL immediately before the registration day.

The proposed section also provides that:

- (a) registered AGL is authorised to hold the first annual general meeting that occurs after the registration day without at that meeting appointing a person or persons, firm or firms, or a person or persons and a firm or firms, as auditor or auditors of the company, and
- (b) the auditor of registered AGL is authorised to hold office until death or removal or resignation from office in accordance with section 329 of the *Corporations Act 2001* of the Commonwealth or until ceasing to be capable of acting as auditor by reason of section 324 (1) or (2) of that Act.

The provisions granting the above authorisations are declared to be Corporations legislation displacement provisions for the purposes of section 5G of the *Corporations Act 2001* of the Commonwealth in relation to the provisions of section 327 of that Act. Section 5G (4) of the *Corporations Act 2001* of the Commonwealth provides that a provision of the Corporations legislation does not prohibit the doing of an act or impose a liability (whether civil or criminal) for doing an act if a provision of a law of a State or Territory specifically authorises or requires the doing of that act.

**Clause 41** authorises registered AGL on and after the registration day to use an amount of share capital equal to the amount standing to the credit of AGL's share premium reserve referred to in clause 6 of Schedule 4 in accordance with the provisions of that clause.

The provisions of the proposed section are declared to be Corporations legislation displacement provisions for the purposes of section 5G of the *Corporations Act 2001* of the Commonwealth in relation to the provisions of sections 254K and 256D of that Act, which relate to reductions in share capital. Section 5G (4) of the *Corporations Act 2001* of the Commonwealth provides that a provision of the Corporations legislation does not prohibit the doing of an act or impose a liability (whether civil or criminal) for doing an act if a provision of a law of a State or Territory specifically authorises or requires the doing of that act.

**Clause 42** enables the regulations to invoke section 5F or 5G of the *Corporations Act 2001* of the Commonwealth in order to avoid inconsistency between provisions of the proposed Act relating to registered AGL and the Corporations legislation.

Section 5F of the *Corporations Act 2001* of the Commonwealth provides that if a State law declares a matter to be an excluded matter for the purposes of that section in relation to all or part of the Corporations legislation, the provisions that are the subject of the declaration will not apply in relation to that matter in the State concerned.

Section 5G of the *Corporations Act 2001* of the Commonwealth provides that if a State law declares a provision of a State law to be a Corporations legislation displacement provision, any provision of the Corporations legislation with which the State provision would otherwise be inconsistent does not apply to the extent necessary to avoid the inconsistency.

## **Part 6 Miscellaneous**

**Clause 43** enables the Governor to make regulations for the purposes of the proposed Act.

**Clause 44** ensures that the operation of the proposed Act will not result in a breach of contract or any other civil liability.

**Clause 45** provides that State tax is not payable in respect of matters relating to the conversion of AGL into a body corporate or the registration of corporatised AGL as a company under the *Corporations Act 2001* of the Commonwealth.

**Clause 46** is a formal provision giving effect to Schedule 5, which contains an amendment to the *Subordinate Legislation Act 1989*.

**Clause 47** is a formal provision giving effect to Schedule 6, which contains savings and transitional provisions.

## **Schedule 1 Amendment of Gas Industry Restructuring Act 1986 concerning shareholdings limits**

**Schedule 1 [1]** makes an amendment in the nature of statute law revision. It inserts a definition of *Corporation* in the general definition section of the Act. The term is defined to mean the Energy Corporation of New South Wales.

**Schedule 1 [3]** increases the maximum penalty for an offence under section 41 (Maximum shareholding in AGL) from 500 penalty units (currently \$55,000) to 5,000 penalty units (currently \$550,000).

**Schedule 1 [4]** amends section 45 of the Act to enable the Minister to direct that a person pay to the Corporation any realised capital gain on any shares that the Minister has directed the person to dispose of under the section because of a contravention of section 41. **Schedule 1 [2], [5], [6] and [7]** make consequential amendments to sections 40 and 49.

**Schedule 1 [8]** inserts a new section 50A in the Act that enables the Minister to require AGL to furnish the Minister with such information contained in its Share Register or concerning shareholdings in AGL as may be required by the Minister.

**Schedule 1 [9]** inserts sections 56, 56A, 56B and 56C in the Act.

Proposed section 56 enables the Minister to obtain, and act on, advice from any person or body that the Minister considers has relevant expertise to assist the Minister in exercising functions under Part 4 of the Act.

Proposed section 56A requires AGL to lodge a statement with the Minister within 7 days after the enactment of the proposed Act concerning suspicious movements in its Share Register during the period commencing 2 April 2001 and ending on the day immediately before the date of assent to the proposed Act (inclusive) that may constitute contraventions of section 41 (Maximum shareholding in AGL) of the Act. It also requires a similar statement to be lodged with the Minister within 7 days after AGL is registered as a public company under the *Corporations Act 2001* of the Commonwealth in respect of the period commencing on the date of assent to the proposed Act and ending on the registration day (inclusive).

Proposed section 56B provides that any act, omission, body, person or thing that is prohibited, required, authorised or permitted by or under Part 4 of that Act is declared to be an excluded matter for the purposes of section 5F of the *Corporations Act 2001* of the Commonwealth in relation to the whole of the Corporations legislation. Section 5F of the *Corporations Act 2001* of the Commonwealth provides that if a State law declares a matter to be an excluded matter for the purposes of that section in relation to all or part of the Corporations legislation, the provisions that are the subject of the declaration will not apply in relation to that matter in the State concerned.

Proposed section 56C provides that the amendments made to the Act by Schedule 1 to the proposed Act extend to matters occurring on or after 2 April 2001.

**Schedule 1 [10]** amends clause 17 of Schedule 3 to the Act to enable regulations to be made of a savings and transitional nature consequent on the enactment of the amendments made to the Act by the proposed Act.

## **Schedule 2 Amendment of Gas Industry Restructuring Act 1986 on incorporation of AGL**

**Schedule 2 [1]** inserts a new section 4 in the Act to ensure that the provisions of the Act apply to corporatised AGL.

**Schedule 2 [2]** omits section 6, which refers to the *Australian Gas Light Company Act 1837*. That Act will be repealed by section 15 (1) of the proposed Act on the conversion day.

**Schedule 2 [3]** omits Division 1 of Part 3 dealing with the transfer of The Australian Gas Light Company's gas undertakings. That Division is now spent.

**Schedule 2 [4]** amends section 41 to ensure that the maximum shareholding provisions in that section apply to corporatised AGL to the exclusion of anything in the proposed Act.

**Schedule 2 [5]–[7]** omit sections 51, 53 and 54 dealing with the corporate governance of AGL. Those provisions will become redundant with the adoption by corporatised AGL on the conversion day of a new corporate constitution.

**Schedule 2 [8]** omits section 55, which imposes restrictions on dealings in shares of certain gas distributors.

**Schedule 2 [9]** amends Schedule 1 to omit references to corporate bodies whose gas undertakings have been transferred to other bodies.

### **Schedule 3 Existing assets, rights and liabilities to belong to corporatised AGL**

**Schedule 3** provides for the assets, rights and liabilities of AGL immediately before the conversion day to become the assets, rights and liabilities of corporatised AGL on that day.

### **Schedule 4 Provisions relating to par value shares on or after conversion day**

**Schedule 4** makes transitional provision in relation to shares of AGL that, immediately before the conversion day, have a par value and to its share premium and capital redemption reserves. These provisions are modelled on the transitional provisions previously contained in Division 10A of Part 11.2 of the *Corporations Law* that were inserted in that Law when the par value rule was abolished in relation to the shares of registered companies.

### **Schedule 5 Amendment of Subordinate Legislation Act 1989**

**Schedule 5** amends Schedule 4 to the *Subordinate Legislation Act 1989* to ensure that regulations made under the proposed Act are excluded instruments for the purposes of the *Subordinate Legislation Act 1989*.

### **Schedule 6 Savings, transitional and other provisions**

**Schedule 6** contains savings, transitional and other provisions. In particular, it enables the regulations to contain provisions of a savings or transitional nature consequent on the enactment of the proposed Act.



New South Wales

# AGL Corporate Conversion Bill 2002

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New South Wales

## AGL Corporate Conversion Bill 2002

No. , 2002

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### **A Bill for**

An Act to provide for The Australian Gas Light Company to be constituted as a body corporate and to enable it to seek registration as a company under the *Corporations Act 2001* of the Commonwealth; to make further provision in respect of shareholding limits in relation to the Company; to repeal and amend consequentially various Acts and other legislation; and for other purposes.

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Clause 1            AGL Corporate Conversion Bill 2002

Part 1              Preliminary

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**The Legislature of New South Wales enacts:** 1

**Part 1 Preliminary** 2

**1 Name of Act** 3

This Act is the *AGL Corporate Conversion Act 2002*. 4

**2 Commencement** 5

This Act commences on the date of assent to this Act. 6

**3 Objects** 7

The objects of this Act are as follows: 8

(a) to constitute AGL as a body corporate under the law of New South Wales with a modern corporate structure, 9 10

(b) to authorise AGL, once incorporated, to apply to be registered as a public company limited by shares under the *Corporations Act 2001* of the Commonwealth, 11 12 13

(c) to amend the *Gas Industry Restructuring Act 1986* to remove the 5% limit on shareholdings in AGL on its registration as a public company and, pending the removal of that limit, to strengthen the provisions relating to the enforcement of that limit. 14 15 16 17 18

**4 Definitions** 19

(1) In this Act: 20

*AGL* means the company of proprietors known by the name “The Australian Gas Light Company” that was originally established by the *Australian Gas Light Company Act 1837*. 21 22 23

*AGL legislation* means the legislation referred to in section 15 (1). 24

*ASIC* means the Australian Securities and Investments Commission. 25

*assets* means any legal or equitable estate or interest (whether present or future, whether vested or contingent and whether personal or assignable) in real or personal property of any description (including money), and includes securities, choses in action and documents. 26 27 28 29

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<b><i>ASX Listing Rule</i></b> means a Listing Rule of the Australian Stock Exchange Limited.	1 2
<b><i>board or managerial office</i></b> has the same meaning as it has in section 9 of the <i>Corporations Act 2001</i> of the Commonwealth.	3 4
<b><i>company limited by shares</i></b> means a body corporate, whose principle, or one of whose principles, is that the liability of its member or members is limited to the amount (if any) unpaid on the shares respectively held by the member or members.	5 6 7 8
<b><i>compliance certificate</i></b> means a certificate issued by the Minister under section 32 certifying that the provisions of this Act have been complied with concerning the transfer of corporatised AGL's incorporation to the <i>Corporations Act 2001</i> of the Commonwealth.	9 10 11 12
<b><i>constitution</i></b> means:	13
(a) in relation to AGL, the following:	14
(i) the AGL legislation,	15
(ii) the provisions of the <i>Gas Industry Restructuring Act 1986</i> relating to AGL as in force at the relevant time before the conversion day,	16 17 18
(iii) any by-laws or resolutions relating to AGL made under that legislation or Act, and	19 20
(b) in relation to corporatised AGL, the constitution of corporatised AGL as in force from time to time, and	21 22
(c) in relation to registered AGL, the constitution of registered AGL as in force from time to time.	23 24
<b><i>conversion day</i></b> means the day specified by the Minister in a conversion order as the day on which AGL is to be constituted as a body corporate under this Act.	25 26 27
<b><i>conversion order</i></b> means an order made by the Minister under section 13 specifying a conversion day.	28 29
<b><i>conversion resolution</i></b> —see section 8.	30
<b><i>Corporations legislation</i></b> means the Corporations legislation to which Part 1.1A of the <i>Corporations Act 2001</i> of the Commonwealth applies.	31 32
<b><i>corporatised AGL</i></b> means AGL after it is constituted as a body corporate under this Act.	33 34

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<b><i>instrument</i></b> means an instrument (other than this Act or an instrument made under this Act) or any other document that creates, modifies or extinguishes rights or liabilities (or would do so if lodged, filed or registered in accordance with any law), and includes any judgment, order, process or other instrument issued by a court or tribunal.	1 2 3 4 5
<b>Note.</b> Section 21 (1) of the <i>Interpretation Act 1987</i> provides that a reference in an Act to <b>document</b> means any record of information, and includes:	6 7
(a) anything on which there is writing, or	8
(b) anything on which there are marks, figures, symbols or perforations having a meaning for persons qualified to interpret them, or	9 10
(c) anything from which sounds, images or writings can be reproduced with or without the aid of anything else, or	11 12
(d) a map, plan, drawing or photograph.	13
<b><i>invalidity order</i></b> —see section 11 (1).	14
<b><i>liabilities</i></b> means any liabilities, debts or obligations (whether present or future, whether vested or contingent and whether personal or assignable).	15 16 17
<b><i>matter</i></b> includes act, omission, body, person or thing.	18
<b><i>preserved resolution</i></b> —see section 5.	19
<b><i>proprietors</i></b> of AGL means persons who are proprietors of AGL under the constitution of AGL.	20 21
<b><i>registered AGL</i></b> means corporatised AGL after it is registered as a public company limited by shares under Part 5B.1 of the <i>Corporations Act 2001</i> of the Commonwealth.	22 23 24
<b><i>registration day</i></b> means the day on which corporatised AGL is registered as a public company limited by shares under Part 5B.1 of the <i>Corporations Act 2001</i> of the Commonwealth.	25 26 27
<b><i>registration resolution</i></b> —see section 9.	28
<b><i>rights</i></b> means any rights, powers, privileges or immunities (whether present or future, whether vested or contingent and whether personal or assignable).	29 30 31
<b><i>Secretary</i></b> of AGL means the person holding office as the Secretary of AGL from time to time under the constitution of AGL.	32 33

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- (2) If this Act provides for an event or other thing to occur on the conversion day or registration day, that event or thing is taken to occur at the beginning of the day that is the conversion day or registration day. However, if the conversion day is the same day as the registration day, any event or other thing to occur on the registration day is taken to have occurred immediately after any event or other thing to occur on the conversion day.
- (3) A reference in this Act to the *Australian Gas Light Company Act 1837* is a reference to the Act passed in 1837 entitled “An Act for lighting with Gas the Town of Sydney in the Colony of New South Wales and to enable certain persons associated under the name style and firm of ‘The Australian Gas-light Company’ to sue and be sued in the name of the Secretary for the time being of the said Company and for other purposes therein mentioned”, as amended by subsequent Acts.
- (4) Words and expressions used in this Act have the same meanings as in section 9 of the *Corporations Act 2001* of the Commonwealth, except in so far as they are defined differently in this Act or the context or subject-matter otherwise indicates or requires.
- (5) This Act is intended to have extraterritorial application in so far as the legislative powers of the State permit.
- (6) Notes included in this Act do not form part of this Act.
- 5 Preserved resolutions**
- (1) In this Act:
- consolidated published constitution*** means the publication entitled *The Australian Gas Light Company: Constituent documents*, ISBN 0-9580690-0-X, published by AGL in March 2002.
- preserved resolution*** means any of the following resolutions of the proprietors of AGL that was in force under the constitution of AGL immediately before the conversion day:
- (a) the resolution referred to in the consolidated published constitution as R1/1985 relating to non-executive directors’ retiring allowances,
- (b) the resolution referred to in the consolidated published constitution as R5A/1987 relating to the AGL Management Share Plan,

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(c)	the resolution referred to in the consolidated published constitution as R1/1988 relating to the AGL Employee Share Plan,	1 2 3
(d)	the resolution referred to in the consolidated published constitution as R8/1992 relating to the AGL Share Investment Plan,	4 5 6
(e)	the resolution referred to in the consolidated published constitution as R3/1997 relating to the AGL Share Reward Plan,	7 8 9
(f)	the resolution referred to in the consolidated published constitution as R4/1997 relating to the AGL Share Purchase Plan,	10 11 12
(g)	the resolution referred to in the consolidated published constitution as R5/1997 relating to the AGL Share Loan Plan,	13 14
(h)	the resolution referred to in the consolidated published constitution as R1/1998 relating to The Australian Gas Light Company Dividend Re-investment Plan,	15 16 17
(i)	the resolution referred to in the consolidated published constitution as R1/2000 relating to remuneration of non-executive directors,	18 19 20
(j)	such other resolutions of the proprietors of AGL as may be prescribed by the regulations.	21 22
(2)	A regulation referred to in subsection (1) (j) may be made before, on or after the conversion day.	23 24
<b>6</b>	<b>Amendment of Gas Industry Restructuring Act 1986 relating to shareholdings in AGL</b>	25 26
	Schedule 1 has effect.	27 28

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<b>Part 2 Overview of the corporatisation and registration of AGL as a public company</b>	1
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<b>7 Summary of the steps involved in corporatisation and registration of AGL as a company</b>	3
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(1) The conversion of AGL into an incorporated public company limited by shares will involve the following two steps:	5
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<b>Conversion of AGL into a body corporate</b>	7
The first step will be to convert AGL into a body corporate under State law. Currently, AGL is an unincorporated company of proprietors that was originally established by the <i>Australian Gas Light Company Act 1837</i> .	8
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<b>Registration of corporatised AGL as a company</b>	12
The second step will be to enable corporatised AGL to seek registration as a public company limited by shares under Part 5B.1 of the <i>Corporations Act 2001</i> of the Commonwealth.	13
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(2) The following is a summary of the steps involved in the conversion of AGL into a body corporate under State law:	16
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<b>Conversion resolution</b>	18
The proprietors of AGL must pass a conversion resolution at a general meeting of AGL in accordance with Division 1 of Part 3 that approves both the conversion of AGL into a body corporate and a new constitution for that body corporate.	19
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<b>Order specifying conversion day</b>	23
The Minister makes a conversion order under section 13 specifying the day on which AGL is to be constituted as a body corporate under this Act.	24
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<b>AGL constituted as body corporate</b>	27
AGL will be constituted as a body corporate with the name “The Australian Gas Light Company” on the conversion day as provided by Part 4. Existing legislation relating to the constitution of AGL and related gas companies will be repealed on that day.	28
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(3) The following is a summary of the steps involved in enabling corporatised AGL to be registered as a public company limited by shares under Part 5B.1 of the <i>Corporations Act 2001</i> of the Commonwealth:	32
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Part 2 Overview of the corporatisation and registration of AGL as a public company

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**Registration resolution**

The proprietors of AGL or the members of corporatised AGL must pass a registration resolution at a general meeting of AGL or corporatised AGL (as the case may be) in accordance with Division 2 of Part 3 that resolves that corporatised AGL be registered as a public company limited by shares under the *Corporations Act 2001* of the Commonwealth.

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**Compliance certificate**

The Minister issues a compliance certificate under section 32 to the effect that the provisions of this Act concerning the transfer of corporatised AGL's incorporation have been complied with.

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**Application for registration as public company**

Corporatised AGL makes an application to ASIC under Part 5B.1 of the *Corporations Act 2001* of the Commonwealth to be registered as a public company limited by shares.

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**Registration as public company limited by shares**

Corporatised AGL is registered by ASIC under Part 5B.1 of the *Corporations Act 2001* of the Commonwealth as a public company limited by shares.

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- (4) This section does not affect the meaning or interpretation of any provision of this Act that it summarises.

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<b>Part 3 Conversion and registration resolutions</b>	1
<b>Division 1 Conversion resolutions</b>	2
<b>8 What is a conversion resolution?</b>	3
(1) For the purposes of this Act, a <i>conversion resolution</i> is a resolution passed in accordance with this section by the proprietors of AGL at a general meeting of AGL that:	4
(a) resolves that AGL be constituted as a body corporate under this Act, and	5
(b) approves a constitution for AGL on its conversion into a body corporate.	6
(2) A constitution approved by a conversion resolution may contain any matter that could be included in the constitution of a public company limited by shares under the <i>Corporations Act 2001</i> of the Commonwealth.	7
(3) A resolution is passed in accordance with this section only if:	8
(a) the resolution is passed by at least 50% of the votes cast by the proprietors of AGL (whether present in person or by proxy) who are eligible to vote at the general meeting, and	9
(b) subject to paragraph (a)—the general meeting at which the resolution is put is called and held in accordance with the constitution of AGL.	10
(4) A conversion resolution may form part of a composite resolution that, among other things (if any), includes a registration resolution.	11
(5) A conversion resolution may be expressed to be subject to such conditions as may be specified in the resolution. If a conversion resolution is subject to any such conditions, it does not have effect as a conversion resolution for the purposes of any provision of this Act (other than this section) until the conditions are satisfied.	12
(6) A resolution passed by the proprietors of AGL before the date of assent to this Act that would have been a conversion resolution for the purposes of this section if it had been in force at the time the resolution was passed is taken to be a conversion resolution for the purposes of this section.	13
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Clause 8	AGL Corporate Conversion Bill 2002
Part 3	Conversion and registration resolutions
Division 1	Conversion resolutions

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| (7) Nothing in this Act prevents a further proposal for the conversion of AGL into a body corporate being put to the proprietors of AGL if a previously proposed conversion resolution was not passed or was declared to be invalid by order of the Supreme Court under section 11. | 1<br>2<br>3<br>4 |
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<b>Division 2</b>	<b>Registration resolutions</b>	5
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<b>9</b>	<b>What is a registration resolution?</b>	6
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| (1) For the purposes of this Act, a <b>registration resolution</b> is a resolution passed in accordance with this section by the proprietors of AGL at a general meeting of AGL or by the members of corporatised AGL at a general meeting of corporatised AGL (as the case may be) that resolves that corporatised AGL be registered as a public company limited by shares under the <i>Corporations Act 2001</i> of the Commonwealth. | 7<br>8<br>9<br>10<br>11<br>12<br>13 |
| (2) A resolution is passed in accordance with this section only if:   | 14                                  |
| (a) the resolution is passed by at least 50% of the votes cast by the proprietors of AGL or members of corporatised AGL (whether present in person or by proxy) who are eligible to vote at the general meeting, and  | 15<br>16<br>17<br>18                |
| (b) subject to paragraph (a)—the general meeting at which the resolution is put is called and held in accordance with the constitution of AGL or corporatised AGL (as the case may be).   | 19<br>20<br>21                      |
| (3) A registration resolution may, but need not, be passed at the same general meeting at which a conversion resolution is passed.  | 22<br>23                            |
| (4) A registration resolution may form part of a composite resolution that, among other things (if any), includes a conversion resolution.  | 24<br>25                            |
| (5) A registration resolution may be expressed to be subject to such conditions as may be specified in the resolution. If a registration resolution is subject to any such conditions, it does not have effect as a registration resolution for the purposes of any provision of this Act (other than this section) until the conditions are satisfied.   | 26<br>27<br>28<br>29<br>30          |

(6)	The members of corporatised AGL will be taken on and after the conversion date to have consented to the transfer of corporatised AGL's incorporation in accordance with the terms of a registration resolution passed by the proprietors of AGL unless a further resolution passed in accordance with this section revoking the registration resolution is passed by those members before the registration day.	1 2 3 4 5 6
	<b>Note.</b> Section 14 provides that corporatised AGL is a continuation of, and the same legal entity as, AGL. Also, section 18 (1) (b) provides that a person who, immediately before the conversion date, was a proprietor of AGL is taken to be a member of corporatised AGL.	7 8 9 10
(7)	If a further resolution revoking a registration resolution is passed by the members of corporatised AGL as referred to in subsection (6), the registration resolution ceases to have effect as a registration resolution for the purposes of this Act.	11 12 13 14
(8)	A resolution passed by the proprietors of AGL before the date of assent to this Act that would have been a registration resolution for the purposes of this section if it had been in force at the time the resolution was passed is taken to be a registration resolution for the purposes of this section.	15 16 17 18 19
(9)	Nothing in this Act prevents a further proposal for a registration resolution being put to the proprietors of AGL or members of corporatised AGL if:	20 21 22
(a)	a previously proposed registration resolution was not passed or was declared to be invalid by order of the Supreme Court under section 11, or	23 24 25
(b)	an application for registration under Part 5B.1 of the <i>Corporations Act 2001</i> of the Commonwealth was not made by corporatised AGL within the prescribed period applicable to the resolution under section 31.	26 27 28 29
<b>Division 3</b>	<b>Judicial review of conversion and registration resolutions</b>	30 31
<b>10</b>	<b>Application of this Division</b>	32
	This Division applies to the following resolutions ( <i>applicable resolutions</i> ):	33 34
(a)	any conversion resolution or purported conversion resolution,	35
(b)	any registration resolution or purported registration resolution.	36

Clause 11	AGL Corporate Conversion Bill 2002
Part 3	Conversion and registration resolutions
Division 3	Judicial review of conversion and registration resolutions

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<b>11</b>	<b>Irregularities concerning conversion and registration resolutions</b>	1
(1)	<b>Procedural irregularity does not invalidate resolution without court order</b>	2
	An applicable resolution is not invalidated because of any procedural irregularity unless, on an application made under this section, the Supreme Court by order declares the resolution to be invalid (an <i>invalidity order</i> ).	3 4 5 6
(2)	<b>Who may apply for invalidity order</b>	7
	An application to the Supreme Court for an invalidity order under this section may be made only if no fewer than 200 persons who were eligible to vote at the meeting at which the applicable resolution was passed make the application.	8 9 10 11
(3)	<b>Time for application for order</b>	12
	Such an application can only be made to the Supreme Court within:	13
(a)	if the resolution was passed before the date of assent to this Act—the period of 7 days commencing on the date of assent to this Act, or	14 15 16
(b)	if the resolution was passed on or after the date of assent to this Act—the period of one month commencing on the date of the passing of the resolution.	17 18 19
(4)	<b>Parties to an application</b>	20
	The parties to any such application are as follows:	21
(a)	the applicants,	22
(b)	AGL or corporatised AGL (as the case may be),	23
(c)	the Minister.	24
(5)	<b>When Supreme Court may make invalidity order</b>	25
	The Supreme Court must not make an invalidity order unless it is of the opinion that:	26 27
(a)	the irregularity was not, or was not the result of, an accidental omission or non-receipt of a notice required under the constitution of AGL or corporatised AGL (as the case may be), and	28 29 30 31
(b)	the irregularity has caused or may cause substantial injustice.	32

- (6) **Supreme Court may enjoin Minister from making conversion order or issuing compliance certificate** 1  
The Supreme Court may, of its own motion or on the application of a 2  
party to an application for an invalidity order in relation to an 3  
applicable resolution, make an order that enjoins the Minister from 4  
making a conversion order or issuing a compliance certificate (as the 5  
case may be) in relation to the resolution until the application for the 6  
invalidity order is determined by the Court. 7  
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- (7) **Minister may make conversion order or issue compliance certificate if not enjoined** 9  
The Minister may make a conversion order or issue a compliance 10  
certificate in relation to an applicable resolution even if it is the subject 11  
of an application for an invalidity order, unless the Minister is enjoined 12  
from doing so under subsection (6). Any such order or certificate is to 13  
be treated in the proceedings for the invalidity order as having the 14  
same effect as it would have had if no application for the invalidity 15  
order had been made. 16  
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- Note.** Section 13 (5) provides that a conversion order is conclusive evidence in 18  
any proceedings before a court or tribunal that all the requirements of this Act have 19  
been complied with concerning the conversion of AGL into a body corporate. 20  
Similarly, section 32 (4) provides that a compliance certificate is conclusive 21  
evidence in any proceedings before a court or tribunal that all the requirements of 22  
this Act have been complied with concerning the transfer of the incorporation of 23  
corporatised AGL to the *Corporations Act 2001* of the Commonwealth as a public 24  
company limited by shares. 25
- (8) **Effect of invalidity order on conversion orders or compliance certificates** 26  
If the Supreme Court makes an invalidity order in relation to an 27  
applicable resolution: 28
- (a) in the case of a conversion resolution or purported conversion 29  
resolution—the Minister cannot make a conversion order in 30  
relation to the resolution, and 31
- (b) in the case of a registration resolution or purported registration 32  
resolution—the Minister cannot issue a compliance certificate 33  
in relation to the resolution. 34
- (9) **Rules of court may be made** 35  
Rules of court (not inconsistent with this Act or the regulations) may 36  
be made under the *Supreme Court Act 1970* for the purposes of this 37  
section. This subsection does not limit the rule-making powers 38  
conferred by the *Supreme Court Act 1970*. 39

Clause 11	AGL Corporate Conversion Bill 2002
Part 3	Conversion and registration resolutions
Division 3	Judicial review of conversion and registration resolutions

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(10) <b>Meaning of procedural irregularity</b>	1
In this section, a reference to a procedural irregularity includes a reference to:	2
(a) any defect, irregularity or deficiency of notice or time, and	3
(b) any miscalculation of voting entitlements.	4
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<b>Part 4 Conversion of AGL into body corporate</b>	1
<b>Division 1 Constitution of AGL as a body corporate</b>	2
<b>12 AGL constituted as body corporate on conversion day</b>	3
(1) On the conversion day, AGL is constituted as a body corporate by this Act with the corporate name of “The Australian Gas Light Company”.	4 5
(2) The body corporate constituted by this Act is a company limited by shares.	6 7
<b>Note.</b> This Part makes provision in relation to the corporate structure of corporatised AGL and its assets, rights and liabilities. It also applies certain provisions of the Corporations legislation to corporatised AGL as if it were a public company limited by shares.	8 9 10 11
<b>13 Order specifying conversion day</b>	12
(1) The Minister may, by order published in the Gazette, specify a day on which AGL is to be constituted as a body corporate under this Act (the <i>conversion day</i> ).	13 14 15
(2) The Minister may make an order under this section on the application of AGL only if the Minister is satisfied that:	16 17
(a) a conversion resolution has been passed by the proprietors of AGL in accordance with the provisions of this Act, and	18 19
(b) the period specified in section 11 for the making of an application for an invalidity order in respect of the resolution has expired, and	20 21 22
(c) an invalidity order has not been made by the Supreme Court under section 11 in respect of the resolution.	23 24
(3) The day specified in an order under this section must be no earlier than the day on which the order is published in the Gazette.	25 26
(4) An order under this section cannot be challenged, reviewed or called into question in proceedings before any court or tribunal.	27 28
(5) An order under this section is conclusive evidence in any proceedings before a court or tribunal that all the requirements of this Act have been complied with concerning the conversion of AGL into a body corporate.	29 30 31 32

Clause 13	AGL Corporate Conversion Bill 2002	
Part 4	Conversion of AGL into body corporate	
Division 1	Constitution of AGL as a body corporate	
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	(6) The Minister cannot make an order under this section in relation to a conversion resolution if the Minister is enjoined from doing so by the Supreme Court under section 11 (6).	1 2 3
	<b>Note.</b> Section 11 (7) provides that the Minister may make a conversion order in relation to a conversion resolution even if it is the subject of an application for an invalidity order, unless the Minister is enjoined from doing so under section 11 (6).	4 5 6
<b>Division 2</b>	<b>Provisions consequent on conversion of AGL into body corporate</b>	7 8
<b>Subdivision 1</b>	<b>General</b>	9
<b>14</b>	<b>Corporatised AGL is continuation of AGL</b>	10
	(1) Subject to the provisions of this Part and to the fullest extent possible, corporatised AGL is taken for all purposes, including the rules of private international law, to be a continuation of the same company, and the same legal entity, as AGL.	11 12 13 14
	(2) Without limiting subsection (1), the conversion of AGL into a body corporate by this Act does not constitute a dissolution or termination of AGL. Accordingly, AGL is not required to wind up its affairs or pay its liabilities and distribute its assets as a result of the operation of this Act.	15 16 17 18 19
<b>15</b>	<b>Repeal and amendment of AGL legislation, related legislation and resolutions on conversion day</b>	20 21
	(1) <b>Repeal of AGL legislation</b>	22
	On the conversion day, the following are repealed:	23
	(a) the <i>Australian Gas Light Company Act 1837</i> ,	24
	(b) the Act passed in 1839 entitled “An Act to amend an Act intituled An Act for lighting with Gas the Town of Sydney in the Colony of New South Wales and to enable certain persons associated under the name style and firm of ‘The Australian Gas-light Company’ to sue and be sued in the name of the Secretary for the time being of the said Company and for other purposes therein mentioned”,	25 26 27 28 29 30 31

- (c) the Act passed in 1849 entitled “An Act to amend an Act intituled An Act for lighting with Gas the Town of Sydney in the Colony of New South Wales and to enable certain persons associated under the name style and firm of ‘The Australian Gas-light Company’ to sue and be sued in the name of the Secretary for the time being of the said Company and for other purposes therein mentioned and for better enabling the said Company to purchase hold and dispose of real and personal Property”, 1  
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- (d) the Act passed in 1858 entitled “An Act to enable the Australian Gas-light Company to extend their Works to places beyond the boundaries and limits of the City of Sydney and to increase their Capital Stock”, 10  
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- (e) *The Australian Gas-light Company’s Act of 1883*, 14
- (f) any regulation or by-law made under an Act referred to in paragraph (a), (b), (c), (d) or (e). 15  
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- Note.** Section 30 of the *Interpretation Act 1987* provides that the repeal of an Act or statutory rule does not, among other things, affect the previous operation of the Act or statutory rule or anything duly suffered, done or commenced under the Act or statutory rule or affect any right, privilege, obligation or liability acquired, accrued or incurred under the Act or statutory rule. 17  
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- (2) **Repeal of related gas companies legislation** 22  
On the conversion day, the following are repealed: 23
- (a) *The City of Newcastle Gas and Coke Company’s Incorporation Act 1866*, 24  
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- (b) *The City of Goulburn Gas and Coke Company’s Incorporation Act* that was passed in 1879, 26  
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- (c) the *Wollongong Gas-light Company Limited Act of 1883*, 28
- (d) any regulation or by-law made under an Act referred to in paragraph (a), (b) or (c). 29  
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- (3) **Amendment of the Gas Industry Restructuring Act 1986** 31  
On the conversion day, Schedule 2 has effect. 32
- (4) **Resolutions** 33  
Any resolution made under an Act referred to in subsection (1) or (2) 34  
(other than a preserved resolution, conversion resolution or registration 35  
resolution) ceases to have effect on the conversion day. 36

Clause 15	AGL Corporate Conversion Bill 2002	
Part 4	Conversion of AGL into body corporate	
Division 2	Provisions consequent on conversion of AGL into body corporate	

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(5)	<b>Repeals etc do not affect operation of section 14</b>	1
	Nothing in this section affects the continuation of AGL as a legal entity on or after the conversion day by the operation of section 14.	2 3
	<b>Subdivision 2 Specific transitional matters</b>	4
<b>16</b>	<b>Assets, rights and liabilities of AGL taken to be assets, rights and liabilities of corporatised AGL</b>	5 6
(1)	The provisions of Schedule 3 apply to AGL's assets, rights and liabilities on and from the conversion day.	7 8
	<b>Note.</b> Schedule 3 makes provision for AGL's assets, rights and liabilities to become the assets, rights and liabilities of corporatised AGL.	9 10
(2)	In this section:	11
	<i>AGL's assets, rights and liabilities</i> means:	12
(a)	the assets of AGL:	13
	(i) vested in the Secretary of AGL on behalf of AGL (whether under the AGL legislation or otherwise), or	14 15
	(ii) purportedly vested in the name of AGL instead of the Secretary of AGL,	16 17
	immediately before the conversion day, and	18
(b)	any right or liability of AGL, and	19
(c)	any right or liability enforceable by or against the Secretary of AGL under the AGL legislation or otherwise in his or her capacity as Secretary of AGL.	20 21 22
	<b>Note.</b> The AGL legislation provides for the real and personal property of AGL to be vested in the Secretary of AGL.	23 24
<b>17</b>	<b>Preserved resolutions of AGL to continue to have effect after conversion day</b>	25 26
(1)	Any preserved resolution continues to have effect on and after the conversion day as if it were a resolution of the members of corporatised AGL passed on the conversion day in relation to corporatised AGL, with such modifications as are necessary or that are prescribed by the regulations.	27 28 29 30 31
(2)	A regulation referred to in subsection (1) may be made before, on or after the conversion day.	32 33

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- (3) If a regulation referred to in paragraph (j) of the definition of *preserved resolution* in section 5 (1) is made after the conversion day but before the registration day in relation to a resolution of the proprietors of AGL, subsection (1) is taken to have applied to that resolution on and from the conversion day. 1  
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- (4) If a regulation modifying a preserved resolution referred to in subsection (1) is made after the conversion day but before the registration day, subsection (1) is taken to have applied to that resolution in its modified form on and from the conversion day. 6  
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- (5) A preserved resolution has no effect to the extent to which it is inconsistent with this Act or any provision of the constitution of corporatised AGL. 10  
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- (6) A preserved resolution may be varied or revoked by resolution of the members of corporatised AGL, subject to any applicable provisions of any law or the constitution of corporatised AGL. 13  
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15
- 18 Share capital and shareholdings in corporatised AGL** 16
- (1) On the conversion day: 17
- (a) subject to Schedule 4, the amount of share capital of corporatised AGL is taken to be the same as the total issued share capital of AGL immediately before the conversion day and the share capital is taken to be comprised of the same number of shares as AGL had on issue immediately before the conversion day, and 18  
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- (b) a person who, immediately before the conversion day, was a proprietor of AGL is taken to be a member of corporatised AGL, and 24  
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- (c) each person who, immediately before the conversion day, held shares in AGL under the constitution of AGL is taken to hold the same number of ordinary shares in corporatised AGL as the person held in AGL and is taken to have acquired them at the same time as the person acquired the shares in AGL, and 27  
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- (d) any amount on any of the shares of AGL that was unpaid immediately before the conversion day is taken to be an amount that is unpaid on the corresponding shares in corporatised AGL, and 32  
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Clause 18            AGL Corporate Conversion Bill 2002

Part 4                Conversion of AGL into body corporate

Division 2           Provisions consequent on conversion of AGL into body corporate

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(e)	the provisions of Schedule 4 have effect in relation to shares in AGL that had a par value immediately before the conversion day.	1 2 3
(2)	This section has effect subject to the provisions of the constitution of corporatised AGL and Division 3.	4 5
<b>19</b>	<b>Officers and employees of AGL taken to be officers and employees of corporatised AGL</b>	6 7
(1)	Any person who, immediately before the conversion day, was an officer of AGL is taken on and after that day:	8 9
(a)	to hold the same, or the corresponding, office in corporatised AGL, and	10 11
(b)	to hold that office on the same terms and conditions as the office the person held in AGL immediately before that day.	12 13
(2)	Any person who, immediately before the conversion day, was an employee of AGL is taken on or after that day to be an employee of corporatised AGL on the same terms and conditions as under the person's contract of employment with AGL immediately before that day.	14 15 16 17 18
(3)	The terms and conditions of employment of any employee referred to in subsection (2) may, after the conversion day, be changed in the same way as they could have been before the conversion day.	19 20 21
(4)	The service with AGL of an employee referred to in subsection (2) is taken to be service with corporatised AGL for all purposes and the employee's accrued entitlements with AGL are taken to be accrued entitlements with corporatised AGL.	22 23 24 25
(5)	An employee referred to in subsection (2) is not entitled to payment (including, without limitation, any payment in lieu of leave or any damages or other compensation, whether under legislation, contract or otherwise) arising out of, or resulting from, the operation of this Act.	26 27 28 29
(6)	Nothing in this section affects the continued application of any industrial instrument under the <i>Industrial Relations Act 1996</i> to the employment of an employee referred to in subsection (2).	30 31 32

<b>20</b>	<b>Contracts and arrangements with AGL</b>	1
(1)	On and after the conversion day, corporatised AGL is entitled to the benefit and subject to the burden of, and taken to be a party to, any contract or arrangement entered into by AGL (or by a person on behalf of AGL) with any person and having force immediately before the conversion day.	2 3 4 5 6
(2)	Nothing in this section limits the operation of section 19.	7
<b>21</b>	<b>Construction of references to AGL and AGL legislation</b>	8
(1)	On and after the conversion day, a reference in any instrument (other than the <i>Gas Industry Restructuring Act 1986</i> ) to:	9 10
(a)	AGL, or	11
(b)	the Secretary of AGL (but only when acting on behalf of AGL), is to be read as including a reference to corporatised AGL.	12 13
(2)	A reference in any instrument (other than an Act or an instrument made under an Act) to any AGL legislation is to be read on and after the conversion day as including a reference to this Act.	14 15 16
(3)	Nothing in this section limits the operation of clause 2 (1) (f) of Schedule 3.	17 18
<b>22</b>	<b>Accounts of corporatised AGL</b>	19
(1)	Subject to section 18 (1) (e) and Schedule 4, the financial position of corporatised AGL on the conversion day is taken to be the same as the financial position of AGL immediately before the conversion day.	20 21 22
(2)	In particular, the following provisions must be applied when preparing or auditing any financial report (including any financial statement) of corporatised AGL on or after the conversion day or any economic entity of which corporatised AGL is the parent entity:	23 24 25 26
(a)	corporatised AGL is to be treated on and after the conversion day as being the same entity as AGL immediately before the conversion day,	27 28 29
(b)	the opening balances in the financial reports of corporatised AGL on the conversion day (if any such reports are prepared) are to be treated as being the same as the closing balances in the financial reports of AGL immediately before the conversion day,	30 31 32 33 34

Clause 22	AGL Corporate Conversion Bill 2002	
Part 4	Conversion of AGL into body corporate	
Division 2	Provisions consequent on conversion of AGL into body corporate	
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	(c) corporatised AGL is to be treated as being the parent entity of each economic entity of which AGL is the parent entity immediately before the conversion day, and the existence of that economic entity is to be treated as being continuous from immediately before the conversion day,	1 2 3 4 5
	(d) the opening balances in the financial reports of each economic entity of which corporatised AGL is the parent entity on the conversion day (if any such reports are prepared) are to be treated as being the same as the closing balances in the financial reports of that entity immediately before the conversion day.	6 7 8 9 10
	(3) The provisions of subsections (1) and (2) are declared to be Corporations legislation displacement provisions for the purposes of section 5G of the <i>Corporations Act 2001</i> of the Commonwealth in relation to the provisions of Chapter 2M of that Act.	11 12 13 14
	<b>Note.</b> Section 5G of the <i>Corporations Act 2001</i> of the Commonwealth provides that if a State law declares a provision of a State law to be a Corporations legislation displacement provision, any provision of the Corporations legislation with which the State provision would otherwise be inconsistent does not apply to the extent necessary to avoid the inconsistency.	15 16 17 18 19
	(4) In this section, the expressions <i>economic entity</i> , <i>entity</i> and <i>parent entity</i> have the same meanings as they have in <i>Accounting Standard AASB 1024: Consolidated Accounts</i> made by the Australian Accounting Standards Board (as in force from time to time).	20 21 22 23
<b>23</b>	<b>Auditor of AGL</b>	24
	The auditor of AGL immediately before the conversion day is taken to be the auditor of corporatised AGL on the conversion day.	25 26
<b>24</b>	<b>Effect on proceedings</b>	27
	Nothing in this Part renders defective any legal proceedings by or against AGL or its proprietors (whether or not those proceedings are commenced using the name of the Secretary of AGL).	28 29 30
<b>25</b>	<b>Subdivision does not limit section 14</b>	31
	Nothing in this Subdivision limits the generality of section 14.	32

<b>Division 3</b>	<b>Application of Corporations legislation to corporatised AGL</b>	1
		2
<b>26</b>	<b>Application of Corporations legislation concerning companies to corporatised AGL</b>	3
		4
(1)	<b>Application of section</b>	5
	This section applies certain provisions of the Corporations legislation relating to companies to corporatised AGL as a matter of State law.	6
	These provisions will not extend to corporatised AGL as a law of the Commonwealth until corporatised AGL is registered as a company under the <i>Corporations Act 2001</i> of the Commonwealth.	7
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(2)	<b>Application of non-applicable provisions of Corporations legislation</b>	11
	Subject to this Act, corporatised AGL is declared to be an applied Corporations legislation matter for the purposes of Part 3 of the <i>Corporations (Ancillary Provisions) Act 2001</i> in relation to the non-applicable Commonwealth provisions, subject to the following modifications:	12
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(a)	the non-applicable Commonwealth provisions apply to corporatised AGL as if it were a public company limited by shares,	17
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(b)	the constitution of corporatised AGL on the conversion day is the constitution approved by the conversion resolution,	20
		21
(c)	the members, share capital and shareholders of corporatised AGL on the conversion day are as provided by section 18 and Schedule 4,	22
		23
		24
(d)	the auditor of corporatised AGL referred to in section 23 is taken to have been duly appointed at a general meeting of the members of corporatised AGL as its auditor on the conversion day for the purposes of section 327 of the <i>Corporations Act 2001</i> of the Commonwealth,	25
		26
		27
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(e)	the financial position and financial reports of corporatised AGL on the conversion day are taken to be as specified in section 22,	30
		31
(f)	a benefit given to a person holding a board or managerial office in corporatised AGL on or after the conversion day in accordance with the terms of a preserved resolution is taken to be a benefit that has been approved under section 200E of the <i>Corporations Act 2001</i> of the Commonwealth for the purposes of Division 2 of Part 2D.2 of that Act,	32
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Clause 26	AGL Corporate Conversion Bill 2002
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Division 3	Application of Corporations legislation to corporatised AGL

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(g)	any remuneration that is paid to a director of corporatised AGL on or after the conversion day in accordance with the terms of a preserved resolution is taken to have been determined by resolution of corporatised AGL for the purposes of section 202A of the <i>Corporations Act 2001</i> of the Commonwealth (or any provision of the constitution of corporatised AGL dealing with the remuneration of directors),	1 2 3 4 5 6 7
(h)	any financial assistance to acquire shares in corporatised AGL that is given by corporatised AGL on or after the conversion day in accordance with the terms of a preserved resolution is taken to be assistance that has been approved under section 260B of the <i>Corporations Act 2001</i> of the Commonwealth,	8 9 10 11 12 13
(i)	without limiting paragraph (h)—an employee share scheme approved by a preserved resolution is taken to be a scheme that has been duly approved for the purposes of section 260C (4) of the <i>Corporations Act 2001</i> of the Commonwealth,	14 15 16 17
(j)	AGL is not required to use the word “Limited” in its name despite anything to the contrary in Part 2B.6 of the <i>Corporations Act 2001</i> of the Commonwealth,	18 19 20
(k)	the non-applicable Commonwealth provisions have effect subject to the provisions of the <i>Gas Industry Restructuring Act 1986</i> relating to corporatised AGL,	21 22 23
(l)	such other modifications (within the meaning of Part 3 of the <i>Corporations (Ancillary Provisions) Act 2001</i> ) as may be prescribed by the regulations.	24 25 26
<b>Note.</b>	Part 3 of the <i>Corporations (Ancillary Provisions) Act 2001</i> provides for the application of provisions of the <i>Corporations Act 2001</i> and Part 3 of the <i>Australian Securities and Investments Commission Act 2001</i> of the Commonwealth as laws of the State in respect of any matter declared by a law of the State (whether with or without modification) to be an applied Corporations legislation matter for the purposes of that Part in relation to those Commonwealth provisions.	27 28 29 30 31 32
	Section 14 (2) of the <i>Corporations (Ancillary Provisions) Act 2001</i> ensures that a declaration made for the purposes of Part 3 of that Act only operates to apply a provision of the Corporations legislation to a matter as a law of the State if that provision does not already apply to the matter as a law of the Commonwealth. If a provision referred to in a declaration already applies as a law of the Commonwealth, nothing in the declaration will affect its continued operation as a law of the Commonwealth.	33 34 35 36 37 38 39

- (3) **Conferral of functions on ASIC** 1  
The regulations may provide for ASIC to exercise a function under any 2  
provision of the Corporations legislation that is the subject of the 3  
declaration under subsection (2), but only if: 4
- (a) ASIC is to exercise that function pursuant to an agreement of 5  
the kind referred to in section 11 (8) or (9A) (b) of the 6  
*Australian Securities and Investments Commission Act 2001* of 7  
the Commonwealth, and 8
- (b) ASIC is authorised to exercise that function under section 11 of 9  
the *Australian Securities and Investments Commission Act 2001* 10  
of the Commonwealth. 11
- (4) **Effect of regulation under subsection (3)** 12  
Section 17 of the *Corporations (Ancillary Provisions) Act 2001* has 13  
effect in relation to a regulation under subsection (3) as if subsection 14  
(2) had expressly made provision for ASIC to exercise the functions 15  
concerned. 16
- (5) **When section ceases to apply** 17  
Subsections (1)–(4) cease to apply to corporatised AGL on the 18  
registration day. However, nothing in this subsection affects the 19  
previous operation of this section in relation to corporatised AGL. 20
- (6) **Definitions** 21  
In this section: 22
- benefit* means a benefit for the purposes of Division 2 of Part 2D.2 of 23  
the *Corporations Act 2001* of the Commonwealth. 24
- financial assistance* means financial assistance for the purposes of 25  
Part 2J.3 of the *Corporations Act 2001* of the Commonwealth. 26
- non-applicable Commonwealth provisions* means provisions of the 27  
Corporations legislation that would apply to corporatised AGL or any 28  
other matter as a law of the Commonwealth if corporatised AGL were 29  
registered as a public company limited by shares under the 30  
*Corporations Act 2001* of the Commonwealth. 31
- 27 Application of certain ASX Listing Rules to corporatised AGL** 32
- (1) Corporatised AGL is authorised to (and may) issue or agree to issue 33  
shares in corporatised AGL despite anything to the contrary in ASX 34  
Listing Rule 7.1 if, assuming the following, the issue or agreement 35  
would not have contravened that Rule on the day it occurred: 36



- (a) the expression “Australian Registered Body Number” or “ARBN” followed by AGL’s existing ARBN is set out instead of the information specified by section 601DE (1) (b), and 1  
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- (b) the other provisions of section 601DE are complied with. 4
- (2) Subsection (1) is declared to be a Corporations legislation displacement provision for the purposes of section 5G of the *Corporations Act 2001* of the Commonwealth in relation to the provisions of section 601DE of that Act. 5  
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- Note.** Section 5G (4) of the *Corporations Act 2001* of the Commonwealth provides that a provision of the Corporations legislation does not: 9  
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- (a) prohibit the doing of an act, or 11
- (b) impose a liability (whether civil or criminal) for doing an act, 12
- if a provision of a law of a State or Territory specifically authorises or requires the doing of that act. 13  
14
- However, section 5G (3) of that Act provides that section 5G will only apply to a provision of a law of a State or Territory enacted after the commencement of that Act if a law of the State or Territory declares the provision to be a Corporations legislation displacement provision for the purposes of that section. 15  
16  
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- (3) Subsections (1) and (2) cease to apply to corporatised AGL on the registration day. However, nothing in this subsection affects the previous operation of this section in relation to corporatised AGL. 19  
20  
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- (4) In this section, *AGL’s existing ARBN* means the ARBN of AGL immediately before the conversion day. 22  
23
- 29 Exclusion of Corporations legislation that applies to corporatised AGL as federal law** 24  
25
- (1) **Application of section** 26
- This section enables the regulations to exclude the operation of provisions of the Corporations legislation that would otherwise apply to corporatised AGL (or a matter relating to corporatised AGL) as a law of the Commonwealth. 27  
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- (2) **Declarations under section 5F of Corporations Act 2001** 31
- The regulations may declare any matter relating to corporatised AGL (other than a declared matter) to be an excluded matter for the purposes of section 5F of the *Corporations Act 2001* of the Commonwealth in relation to: 32  
33  
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- (a) the whole of the Corporations legislation, or 36
- (b) a specified provision of that legislation, or 37

Clause 29	AGL Corporate Conversion Bill 2002
Part 4	Conversion of AGL into body corporate
Division 3	Application of Corporations legislation to corporatised AGL

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(c)	that legislation other than a specified provision, or	1
(d)	that legislation otherwise than to a specified extent.	2
	<b>Note.</b> Section 5F of the <i>Corporations Act 2001</i> of the Commonwealth provides that if a State law declares a matter to be an excluded matter for the purposes of that section in relation to all or part of the Corporations legislation of the Commonwealth, the provisions that are the subject of the declaration will not apply in relation to that matter in the State concerned.	3 4 5 6 7
(3)	<b>Declarations under section 5G of Corporations Act 2001</b>	8
	The regulations may declare any provision of this Act relating to corporatised AGL (other than a declared provision) to be a Corporations legislation displacement provision for the purposes of section 5G of the <i>Corporations Act 2001</i> of the Commonwealth (either generally or specifically in relation to a provision of the Corporations legislation).	9 10 11 12 13 14
	<b>Note.</b> Section 5G of the <i>Corporations Act 2001</i> of the Commonwealth provides that if a State law declares a provision of a State law to be a Corporations legislation displacement provision, any provision of the Corporations legislation with which the State provision would otherwise be inconsistent does not apply to the extent necessary to avoid the inconsistency.	15 16 17 18 19
(4)	<b>When section ceases to have effect</b>	20
	Subsections (1)–(3) cease to have effect on the registration day. However, nothing in this subsection affects the previous operation of this section.	21 22 23
(5)	<b>Definitions</b>	24
	In this section:	25
	<i>declared matter</i> means a matter that is declared to be an excluded matter for the purposes of section 5F of the <i>Corporations Act 2001</i> of the Commonwealth by another provision of this Act.	26 27 28
	<i>declared provision</i> means a provision of this Act that is declared to be a Corporations legislation displacement provision for the purposes of section 5G of the <i>Corporations Act 2001</i> of the Commonwealth by another provision of this Act.	29 30 31 32
<b>30</b>	<b>Changes to corporate structure of corporatised AGL permitted</b>	33
	Nothing in this Part prevents corporatised AGL on or after the conversion day from:	34 35
(a)	altering or replacing its constitution, or	36
(b)	changing its corporate name, or	37
(c)	appointing or removing an auditor, or	38

- (d) altering its share capital, or 1
  - (e) removing or appointing officers, or 2
  - (f) dismissing or employing employees, or 3
  - (g) otherwise altering its corporate structure, 4
- in accordance with the provisions of the Corporations legislation 5  
applicable to it by virtue of this Division or otherwise. 6

Clause 31	AGL Corporate Conversion Bill 2002
Part 5	Registration of corporatised AGL as a public company
Division 1	Authorisation to transfer incorporation

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<b>Part 5</b>	<b>Registration of corporatised AGL as a public company</b>	1
		2
<b>Division 1</b>	<b>Authorisation to transfer incorporation</b>	3
<b>31</b>	<b>Corporatised AGL may apply to be registered as a public company under Corporations Act 2001</b>	4
		5
(1)	Corporatised AGL may apply to ASIC for corporatised AGL to be registered under Part 5B.1 of the <i>Corporations Act 2001</i> of the Commonwealth as a public company limited by shares, but only if a compliance certificate is issued by the Minister.	6
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(2)	AGL may make an application for the purposes of subsection (1) if the registration resolution in respect of which the compliance certificate is issued was passed by the proprietors of AGL rather than the members of corporatised AGL. In that event, corporatised AGL is taken to have made the application on the conversion date.	10
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(3)	An application under subsection (1) must be made:	15
(a)	subject to subsection (4), in accordance with the provisions of section 601BC of the <i>Corporations Act 2001</i> of the Commonwealth, and	16
		17
		18
(b)	within the prescribed period applicable to the registration resolution.	19
		20
(4)	Corporatised AGL is authorised to make an application under subsection (1) without stating the information specified in section 601BC (2) (e), (l) or (m) of the <i>Corporations Act 2001</i> of the Commonwealth.	21
		22
		23
		24
(5)	Subsection (4) is declared to be a Corporations legislation displacement provision for the purposes of section 5G of the <i>Corporations Act 2001</i> of the Commonwealth in relation to the provisions of section 601BC of that Act.	25
		26
		27
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	<b>Note.</b> Section 5G (4) of the <i>Corporations Act 2001</i> of the Commonwealth provides that a provision of the Corporations legislation does not:	29
		30
(a)	prohibit the doing of an act, or	31
(b)	impose a liability (whether civil or criminal) for doing an act,	32
	if a provision of a law of a State or Territory specifically authorises or requires the doing of that act.	33
		34

However, section 5G (3) of that Act provides that section 5G will only apply to a provision of a law of a State or Territory enacted after the commencement of that Act if a law of the State or Territory declares the provision to be a Corporations legislation displacement provision for the purposes of that section.

(6) For the purposes of section 601BC (8) (d) of the *Corporations Act 2001* of the Commonwealth, corporatised AGL is authorised by this Act to transfer its incorporation in accordance with this Act.

(7) In this section:

***prescribed period***, in relation to a registration resolution, means:

(a) if the resolution was passed before the date of assent to this Act (and except as provided by paragraph (c))—the period of 12 months commencing on the date of assent to this Act (or such other period as may be prescribed by the regulations, whether before or after the 12 month period expires), or

(b) if the resolution is passed on or after the date of assent to this Act (and except as provided by paragraph (c))—the period of 12 months (or such other period as may be prescribed by the regulations, whether before or after the resolution is passed or before or after the 12 month period expires) commencing on the day on which the resolution is passed, or

(c) if an application for an invalidity order under section 11 is duly made but is refused or withdrawn after the end of the period referred to in paragraph (a) or (b) that is applicable to the resolution—the period of one month commencing on the date on which the application is finally determined or withdrawn (as the case may be).

## **Division 2 Compliance certificate**

### **32 Minister may issue compliance certificate**

(1) The Minister may issue a compliance certificate to AGL or corporatised AGL that certifies that the provisions of this Act have been complied with concerning the transfer of the incorporation of corporatised AGL to the *Corporations Act 2001* of the Commonwealth if the Minister is satisfied that:

Clause 32	AGL Corporate Conversion Bill 2002	
Part 5	Registration of corporatised AGL as a public company	
Division 2	Compliance certificate	
<hr/>		
	(a) a registration resolution has been passed, and	1
	(b) the period specified in section 11 for the making of an application for an invalidity order in respect of the resolution has expired, and	2 3 4
	(c) an invalidity order has not been made by the Supreme Court under section 11 in respect of the resolution.	5 6
	(2) The Minister is to provide ASIC with a copy of the compliance certificate issued under this section as soon as practicable after it is issued to AGL or corporatised AGL. However, a failure to provide such a copy does not affect the validity of the certificate.	7 8 9 10
	(3) A compliance certificate issued under this section cannot be challenged, reviewed or called into question in proceedings before any court or tribunal.	11 12 13
	(4) A compliance certificate issued under this section is conclusive evidence in any proceedings before a court or tribunal that all the requirements of this Act have been complied with concerning the transfer of the incorporation of corporatised AGL to the <i>Corporations Act 2001</i> of the Commonwealth as a public company limited by shares.	14 15 16 17 18 19
	(5) The Minister cannot issue a certificate under this section in relation to a registration resolution if the Minister is enjoined from doing so by the Supreme Court under section 11 (6).	20 21 22
	<b>Note.</b> Section 11 (7) provides that the Minister may issue a compliance certificate in relation to a registration resolution even if it is the subject of an application for an invalidity order, unless the Minister is enjoined from doing so under section 11 (6).	23 24 25
<b>Division 3</b>	<b>Provisions consequent on transfer of incorporation of corporatised AGL</b>	26 27
<b>33</b>	<b>Registered AGL is continuation of corporatised AGL</b>	28
	(1) Section 601BM of the <i>Corporations Act 2001</i> of the Commonwealth makes provision for the legal consequences of the registration of a body corporate as a company under Part 5B.1 of that Act.	29 30 31
	<b>Note.</b> Section 601BM of the <i>Corporations Act 2001</i> of the Commonwealth provides that the registration of a body as a company under Part 5B.1 of that Act does not:	32 33 34
	(a) create a new legal entity, or	35

	(b) affect the body's existing property, rights or obligations (except as against the members of the body in their capacity as members), or	1 2
	(c) render defective any legal proceedings by or against the body or its members.	3 4
	(2) A reference in any instrument to corporatised AGL (including a reference to corporatised AGL arising from the operation of section 21) is to be read on and after the registration day as including a reference to registered AGL.	5 6 7 8
<b>34</b>	<b>Part 4 of Gas Industry Restructuring Act 1986 ceases to have effect on registration day</b>	9 10
	(1) The provisions of Part 4 (other than section 56A) of the <i>Gas Industry Restructuring Act 1986</i> cease to apply on the registration day in relation to matters arising on or after that day.	11 12 13
	(2) Section 30 of the <i>Interpretation Act 1987</i> is taken to apply to subsection (1) in the same way as it would have applied to subsection (1) if it had repealed the provisions of Part 4 of the <i>Gas Industry Restructuring Act 1986</i> .	14 15 16 17
	<b>Note.</b> Section 30 of the <i>Interpretation Act 1987</i> provides that the repeal of an Act or statutory rule does not, among other things, affect the previous operation of the Act or statutory rule or anything duly suffered, done or commenced under the Act or statutory rule or affect any right, privilege, obligation or liability acquired, accrued or incurred under the Act or statutory rule.	18 19 20 21 22
	(3) Without limiting subsection (2), nothing in subsection (1) prevents the continued application to matters arising before the registration day of any provisions of Part 4 of the <i>Gas Industry Restructuring Act 1986</i> relating to compliance or enforcement.	23 24 25 26
	(4) The Governor may, by proclamation published in the <i>Gazette</i> , repeal Part 4 of the <i>Gas Industry Restructuring Act 1986</i> on or after the registration day.	27 28 29
<b>35</b>	<b>Registered AGL is authorised to use existing name</b>	30
	(1) Registered AGL is authorised to use the name "The Australian Gas Light Company" as its corporate name without the word "Limited" being included in that name.	31 32 33
	(2) Nothing in subsection (1) prevents registered AGL from changing its name in accordance with the provisions of the <i>Corporations Act 2001</i> of the Commonwealth to include the word "Limited" in its name.	34 35 36

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- (3) Subsection (1) has effect for only so long as registered AGL retains the name “The Australian Gas Light Company”. 1  
2
- (4) Subsection (1) is declared to be a Corporations legislation displacement provision for the purposes of section 5G of the *Corporations Act 2001* of the Commonwealth in relation to the provisions of Part 2B.6 of that Act. 3  
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- Note.** Section 5G (6) of the *Corporations Act 2001* of the Commonwealth provides that the provisions of Part 2B.6 and Part 5B.3 of that Act (which relate to the use of names) do not: 7  
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9
- (a) prohibit a company or other body from using a name if the use of the name is expressly provided for, or authorised by, a provision of a law of a State or Territory, or 10  
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12
- (b) require a company or other body to use a word as part of its name if the company or body is expressly authorised not to use that word by a provision of a law of a State or Territory. 13  
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- However, section 5G (3) of that Act provides that section 5G will only apply to a provision of a law of a State or Territory enacted after the commencement of that Act if a law of the State or Territory declares the provision to be a Corporations legislation displacement provision for the purposes of that section. 16  
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- 36 Registered AGL authorised to issue public documents and negotiable instruments with AGL’s existing ARBN** 20  
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- (1) Registered AGL is authorised to publish or sign in any place any public document or negotiable instrument even if the document or instrument does not comply with section 153 (2) of the *Corporations Act 2001* of the Commonwealth if: 22  
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24  
25
- (a) the expression “Australian Registered Body Number” or “ARBN” followed by AGL’s existing ARBN is set out instead of the expression “Australian Company Number” followed by its ACN as specified by section 153 (2) of the *Corporations Act 2001* of the Commonwealth and the other provisions of section 153 are complied with, or 26  
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- (b) AGL’s existing ARBN is set out instead of its ACN as specified by section 153 (2) of the *Corporations Act 2001* of the Commonwealth and the other provisions of section 153 are complied with. 32  
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- (2) Without limiting subsection (1), registered AGL is authorised to set out AGL’s existing ARBN instead of its ACN in its annual returns under section 348 of the *Corporations Act 2001* of the Commonwealth. 36  
37  
38

- (3) Subsections (1) and (2) are declared to be Corporations legislation displacement provisions for the purposes of section 5G of the *Corporations Act 2001* of the Commonwealth in relation to:
- (a) in the case of subsection (1)—the provisions of section 153 (2) of that Act, and
- (b) in the case of subsection (2)—the provisions of section 348 of that Act.
- Note.** Section 5G (4) of the *Corporations Act 2001* of the Commonwealth provides that a provision of the Corporations legislation does not:
- (a) prohibit the doing of an act, or
- (b) impose a liability (whether civil or criminal) for doing an act, if a provision of a law of a State or Territory specifically authorises or requires the doing of that act.
- However, section 5G (3) of that Act provides that section 5G will only apply to a provision of a law of a State or Territory enacted after the commencement of that Act if a law of the State or Territory declares the provision to be a Corporations legislation displacement provision for the purposes of that section.
- (4) Subsection (1) (a) and, to the extent that it relates to that paragraph, subsection (3) cease to have effect on the expiry of the period of 2 years commencing on the registration day. However, nothing in this subsection affects the previous operation of this section.
- (5) In this section, *AGL's existing ARBN* means the ARBN of AGL immediately before the conversion day.
- 37 Certain preserved resolutions continue in effect after registration day**
- (1) Any preserved resolution (other than a preserved resolution that is revoked by the members of corporatised AGL before the registration day) that continues in force under section 17 immediately before the registration day continues to have effect on and after the registration day as if it were a resolution of the members of registered AGL passed on the registration day in relation to registered AGL, with such modifications as are necessary or that are prescribed by the regulations.
- (2) A regulation referred to in subsection (1) may be made before, on or after the registration day.
- (3) If a regulation referred to in paragraph (j) of the definition of *preserved resolution* in section 5 (1) is made after the registration day in relation to a resolution of the proprietors of AGL, subsection (1) is taken to have applied to that resolution on and from the registration day.

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(4)	If a regulation modifying a preserved resolution referred to in subsection (1) is made after the registration day, subsection (1) is taken to have applied to that resolution in its modified form on and from the registration day.	1 2 3 4
(5)	A preserved resolution to which subsection (1) applies may be varied or revoked by resolution of the members of registered AGL, subject to any applicable provisions of any law or the constitution of registered AGL.	5 6 7 8
(6)	Subsection (1) ceases to apply to any preserved resolution that is revoked on or after the registration day.	9 10
<b>38</b>	<b>Certain benefits and financial assistance given by registered AGL under a preserved resolution authorised</b>	11 12
(1)	Registered AGL is authorised on and after the registration day to give a person holding a board or managerial office in relation to registered AGL a benefit in accordance with the terms of any preserved resolution to which section 37 (1) applies.	13 14 15 16
(2)	Registered AGL is authorised to pay remuneration to a director of registered AGL on or after the registration day in accordance with the terms of any preserved resolution to which section 37 (1) applies.	17 18 19
(3)	Registered AGL is authorised to give financial assistance to a person to acquire shares in registered AGL on or after the registration day in accordance with the terms of any preserved resolution to which section 37 (1) applies (including any assistance given in accordance with the terms of any employee share scheme approved by any such resolution).	20 21 22 23 24
(4)	Subsections (1), (2) and (3) are declared to be Corporations legislation displacement provisions for the purposes of section 5G of the <i>Corporations Act 2001</i> of the Commonwealth in relation to:	25 26 27
(a)	in the case of subsection (1)—the provisions of Part 2D.2 of that Act, and	28 29
(b)	in the case of subsection (2)—the provisions of Part 2D.3 of that Act, and	30 31
(c)	in the case of subsection (3)—the provisions of Part 2J.3 of that Act.	32 33
	<b>Note.</b> Section 5G (4) of the <i>Corporations Act 2001</i> of the Commonwealth provides that a provision of the Corporations legislation does not:	34 35
(a)	prohibit the doing of an act, or	36

(b)	impose a liability (whether civil or criminal) for doing an act,	1
	if a provision of a law of a State or Territory specifically authorises or requires the doing of that act.	2
		3
	However, section 5G (3) of that Act provides that section 5G will only apply to a provision of a law of a State or Territory enacted after the commencement of that Act if a law of the State or Territory declares the provision to be a Corporations legislation displacement provision for the purposes of that section.	4
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(5)	In this section:	8
	<b><i>benefit</i></b> means a benefit for the purposes of Division 2 of Part 2D.2 of the <i>Corporations Act 2001</i> of the Commonwealth.	9
		10
	<b><i>financial assistance</i></b> means financial assistance for the purposes of Part 2J.3 of the <i>Corporations Act 2001</i> of the Commonwealth.	11
		12
<b>39</b>	<b>Application of certain ASX Listing Rules to registered AGL</b>	13
(1)	Registered AGL is authorised to (and may) issue or agree to issue shares in registered AGL despite anything to the contrary in ASX Listing Rule 7.1 if, assuming the following, the issue or agreement would not have contravened that Rule on the day it occurred:	14
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(a)	the members of registered AGL passed all of the preserved resolutions to which section 37 (1) applies that were still in force at the time of the issue or agreement,	18
		19
		20
(b)	the date on which each such preserved resolution was passed by the members of registered AGL was the date on which each resolution was originally passed by the proprietors of AGL,	21
		22
		23
(c)	without limiting sections 14 and 33, registered AGL was the same company of proprietors as AGL.	24
		25
(2)	Registered AGL is authorised to pay remuneration payable to non-executive directors of registered AGL and its wholly owned subsidiaries in accordance with any preserved resolution to which section 37 (1) applies despite anything to the contrary in ASX Listing Rule 10.17 if, assuming the following, the payment would not have contravened that Rule on the day it occurred:	26
		27
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		31
(a)	the members of registered AGL passed the resolution on the date on which the resolution was originally passed by the proprietors of AGL,	32
		33
		34
(b)	without limiting sections 14 and 33, registered AGL was the same company of proprietors as AGL.	35
		36

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(3) The provisions of subsections (1) and (2) are declared to be Corporations legislation displacement provisions for the purposes of section 5G of the *Corporations Act 2001* of the Commonwealth in relation to the provisions of sections 793B and 793C of the *Corporations Act 2001* of the Commonwealth.

**Note.** Section 5G of the *Corporations Act 2001* of the Commonwealth provides that if a State law declares a provision of a State law to be a Corporations legislation displacement provision, any provision of the Corporations legislation with which the State provision would otherwise be inconsistent does not apply to the extent necessary to avoid the inconsistency.

**40 Auditor and accounts of registered AGL**

(1) The auditor of corporatised AGL immediately before the registration day continues to be the auditor of registered AGL on the registration day.

(2) Registered AGL is authorised to hold the first annual general meeting that occurs after the registration day without at that meeting appointing a person or persons, firm or firms, or a person or persons and a firm or firms, as auditor or auditors of the company.

(3) The auditor of registered AGL referred to in subsection (1) is authorised to hold office until death or removal or resignation from office in accordance with section 329 of the *Corporations Act 2001* of the Commonwealth or until ceasing to be capable of acting as auditor by reason of section 324 (1) or (2) of that Act.

(4) Subsections (2) and (3) are declared to be Corporations legislation displacement provisions for the purposes of section 5G of the *Corporations Act 2001* of the Commonwealth in relation to the provisions of section 327 of that Act.

**Note.** Section 5G (4) of the *Corporations Act 2001* of the Commonwealth provides that a provision of the Corporations legislation does not:  
(a) prohibit the doing of an act, or  
(b) impose a liability (whether civil or criminal) for doing an act,  
if a provision of a law of a State or Territory specifically authorises or requires the doing of that act.

However, section 5G (3) of that Act provides that section 5G will only apply to a provision of a law of a State or Territory enacted after the commencement of that Act if a law of the State or Territory declares the provision to be a Corporations legislation displacement provision for the purposes of that section.

(5) Nothing in this Part affects the continued application of section 22 to the financial position and financial reports of corporatised AGL after it becomes registered AGL.

<b>41</b>	<b>Use of amount standing to credit of share premium reserve</b>	1
(1)	Registered AGL is authorised on and after the registration day to use an amount of share capital equal to the amount standing to the credit of AGL's share premium reserve immediately before the conversion day referred to in clause 6 of Schedule 4 in accordance with the provisions of that clause.	2 3 4 5 6
(2)	Subsection (1) is declared to be a Corporations legislation displacement provision for the purposes of section 5G of the <i>Corporations Act 2001</i> of the Commonwealth in relation to the provisions of sections 254K and 256D of the <i>Corporations Act 2001</i> of the Commonwealth.	7 8 9 10 11
	<b>Note.</b> Section 5G (4) of the <i>Corporations Act 2001</i> of the Commonwealth provides that a provision of the Corporations legislation does not:	12 13
	(a) prohibit the doing of an act, or	14
	(b) impose a liability (whether civil or criminal) for doing an act, if a provision of a law of a State or Territory specifically authorises or requires the doing of that act.	15 16 17
	However, section 5G (3) of that Act provides that section 5G will only apply to a provision of a law of a State or Territory enacted after the commencement of that Act if a law of the State or Territory declares the provision to be a Corporations legislation displacement provision for the purposes of that section.	18 19 20 21
<b>42</b>	<b>Exclusion of Corporations legislation that applies to registered AGL as federal law</b>	22 23
(1)	<b>Application of section</b> This section enables the regulations to exclude the operation of provisions of the Corporations legislation that would otherwise apply to registered AGL (or a matter relating to registered AGL) as a law of the Commonwealth.	24 25 26 27 28
(2)	<b>Declarations under section 5F of Corporations Act 2001</b> The regulations may declare any matter relating to registered AGL (other than a declared matter) to be an excluded matter for the purposes of section 5F of the <i>Corporations Act 2001</i> of the Commonwealth in relation to:	29 30 31 32 33
	(a) the whole of the Corporations legislation, or	34
	(b) a specified provision of that legislation, or	35
	(c) that legislation other than a specified provision, or	36

Clause 42	AGL Corporate Conversion Bill 2002
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(d)	that legislation otherwise than to a specified extent.	1
	<b>Note.</b> Section 5F of the <i>Corporations Act 2001</i> of the Commonwealth provides that if a State law declares a matter to be an excluded matter for the purposes of that section in relation to all or part of the Corporations legislation of the Commonwealth, the provisions that are the subject of the declaration will not apply in relation to that matter in the State concerned.	2 3 4 5 6
(3)	<b>Declarations under section 5G of Corporations Act 2001</b>	7
	The regulations may declare any provision of this Act relating to registered AGL (other than a declared provision) to be a Corporations legislation displacement provision for the purposes of section 5G of the <i>Corporations Act 2001</i> of the Commonwealth (either generally or specifically in relation to a provision of the Corporations legislation).	8 9 10 11 12
	<b>Note.</b> Section 5G of the <i>Corporations Act 2001</i> of the Commonwealth provides that if a State law declares a provision of a State law to be a Corporations legislation displacement provision, any provision of the Corporations legislation with which the State provision would otherwise be inconsistent does not apply to the extent necessary to avoid the inconsistency.	13 14 15 16 17
(4)	<b>Definitions</b>	18
	In this section:	19
	<b><i>declared matter</i></b> means a matter that is declared to be an excluded matter for the purposes of section 5F of the <i>Corporations Act 2001</i> of the Commonwealth by another provision of this Act.	20 21 22
	<b><i>declared provision</i></b> means a provision of this Act that is declared to be a Corporations legislation displacement provision for the purposes of section 5G of the <i>Corporations Act 2001</i> of the Commonwealth by another provision of this Act.	23 24 25 26

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## Part 6 Miscellaneous

### 43 Regulations

The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

### 44 Effect of this Act on contracts, instruments and related matters

The operation of this Act (and, in particular, Schedule 3) is not to be regarded as:

- (a) a breach of contract or confidence or otherwise as a civil wrong, or
- (b) a breach of any instrument (including, without limitation, any provision prohibiting, restricting or regulating the assignment or transfer of assets or liabilities), or
- (c) an event of default under any contract or other instrument, or
- (d) giving rise to any remedy by a party to a contract or other instrument, or as causing or permitting the termination of, or exercise of rights under, any contract or other instrument.

### 45 Exemption from State tax

(1) In this section:

*exempt matter* means any of the following:

- (a) the conversion of AGL into a body corporate by operation of this Act,
- (b) the vesting in corporatised AGL on the conversion day of any assets by operation of this Act, including, without limitation, any instrument executed only for a purpose ancillary to or consequential on the operation of Schedule 3,
- (c) the conferring or imposition on corporatised AGL on the conversion day of any rights or liabilities by operation of this Act, including, without limitation, any instrument executed only for a purpose ancillary to or consequential on the operation of Schedule 3,

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(d)	the registration of corporatised AGL as a company under Part 5B.1 of the <i>Corporations Act 2001</i> of the Commonwealth,	1 2
(e)	such other matters in connection with this Act as may be prescribed by the regulations.	3 4
	<i>State tax</i> means application or registration fees, stamp duty or any other tax, duty, fee or charge imposed by any Act or law of the State.	5 6
(2)	State tax is not payable in relation to:	7
(a)	an exempt matter, or	8
(b)	anything done because of, or for a purpose connected with or arising out of, an exempt matter.	9 10
<b>46</b>	<b>Amendment of Subordinate Legislation Act 1989 No 146</b>	11
	The <i>Subordinate Legislation Act 1989</i> is amended as set out in Schedule 5.	12 13
<b>47</b>	<b>Savings, transitional and other provisions</b>	14
	Schedule 6 has effect.	15

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<b>Schedule 1</b>	<b>Amendment of Gas Industry Restructuring Act 1986 concerning shareholdings limits</b>	1
		2
	(Section 6)	3
<b>[1]</b>	<b>Section 3 Interpretation</b>	4
	Insert before section 3 (2):	5
	(1) In this Act:	6
	<i>Corporation</i> means the Energy Corporation of New South Wales constituted under the <i>Energy Administration Act 1987</i> .	7
		8
<b>[2]</b>	<b>Section 40 Shareholding—interpretation</b>	9
	Insert after section 40 (3):	10
	(4) In this Part, a reference to a <i>realised capital gain</i> in relation to a share is a reference to any capital gain realised by the shareholder on the disposition of the share less any tax paid or payable by the shareholder in respect of that gain under a law of this State or the Commonwealth.	11
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<b>[3]</b>	<b>Section 41 Maximum shareholding in AGL</b>	16
	Omit “500 penalty units” from section 41 (1).	17
	Insert instead “5,000 penalty units”.	18
<b>[4]</b>	<b>Section 45 Powers of Minister to deal with contravention</b>	19
	Insert after section 45 (2):	20
	(2A) An order that directs a person to dispose of the shares may also direct that the person pay to the Corporation any realised capital gain on the shares.	21
		22
		23
	(2B) If a person is directed under subsection (2A) to pay to the Corporation any realised capital gain on shares, that amount becomes a debt due to the Corporation on the date on which the direction is given that is recoverable in a court of competent jurisdiction.	24
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		26
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<b>[5] Section 49 Power of Corporation to deal with shares</b>	1
Omit section 49 (3). Insert instead:	2
(3) The Corporation:	3
(a) is entitled to retain 5 per cent of the proceeds of sale as commission, and	4 5
(b) if there is a realised capital gain and it is greater than the amount of the commission, is entitled to retain the amount of that gain on the shares less the amount of the commission, and	6 7 8 9
(c) must pay the rest of the proceeds together with any other sum due to the Corporation in respect of the shares to the person who was the registered holder of the shares immediately before they vested in the Corporation.	10 11 12 13 14
<b>[6] Section 49 (4)</b>	15
Insert “and realised capital gain (if any)” after “commission”.	16
<b>[7] Section 49 (5)</b>	17
Insert “and realised capital gain (if any)” after “commission”.	18
<b>[8] Section 50A</b>	19
Insert after section 50:	20
<b>50A Minister may require Company to furnish certain shareholding         information</b>	21 22
(1) The Minister may at any time require the Company to furnish the Minister with such information contained in its Share Register or concerning shareholdings in it as may be required by the Minister.	23 24 25 26
(2) The requirement must:	27
(a) be in writing, and	28
(b) be served on the Company, and	29
(c) specify the manner in which and the time within which the information is to be furnished.	30 31

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(3) The Company must comply with any requirement under this section.	1 2
Maximum penalty (subsection (3)): 500 penalty units.	3
(4) It is a defence to a prosecution for an offence under subsection (3) if the Company satisfies the court that it was not within the Company's power to comply with the requirement.	4 5 6
<b>[9] Sections 56–56C</b>	7
Insert after section 55:	8
<b>56 Minister may obtain expert advice concerning prohibited shareholdings</b>	9 10
(1) The Minister may obtain advice from any person or body that the Minister considers has relevant expertise to assist the Minister in exercising a function under this Part.	11 12 13
(2) The Minister may take any such advice into account in exercising a function under this Part.	14 15
<b>56A Statements from Company concerning monitoring of Share Register</b>	16 17
(1) In this section:	18
<i>post-enactment period</i> means the period commencing on the date of assent to the <i>AGL Corporate Conversion Act 2002</i> and ending on the registration day within the meaning of that Act (inclusive).	19 20 21 22
<i>pre-enactment period</i> means the period commencing on 2 April 2001 and ending on the day immediately before the date of assent to the <i>AGL Corporate Conversion Act 2002</i> (inclusive).	23 24 25 26
(2) The Company must, within 7 days after the end of the pre-enactment period:	27 28
(a) examine the Share Register of the Company for the pre-enactment period, and	29 30

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(b)	provide the Minister with a written statement that:	1
(i)	states whether, following that examination, the Company suspects that any person may have contravened section 41 during the pre-enactment period, and	2 3 4 5
(ii)	gives details of any such suspected contravention (including details of any suspected contravention previously notified to the Minister under section 43 (1)).	6 7 8 9
	Maximum penalty: 100 penalty units.	10
(3)	The Company must, within 7 days after the end of the post-enactment period:	11
(a)	examine the Share Register of the Company for the post-enactment period, and	12 13 14
(b)	provide the Minister with a written statement that:	15
(i)	states whether, following that examination, the Company suspects that any person may have contravened section 41 during the post-enactment period, and	16 17 18 19
(ii)	gives details of any such suspected contravention (including details of any suspected contravention previously notified to the Minister under section 43 (1)).	20 21 22 23
	Maximum penalty: 100 penalty units.	24
<b>56B</b>	<b>Application of Corporations legislation to this Part</b>	25
(1)	Any relevant matter is declared to be an excluded matter for the purposes of section 5F of the <i>Corporations Act 2001</i> of the Commonwealth in relation to the whole of the Corporations legislation to which Part 1.1A of that Act applies.	26 27 28 29
(2)	In this section:	30
	<i>matter</i> includes act, omission, body, person or thing.	31
	<i>relevant matter</i> means any matter that is prohibited, required, authorised or permitted by or under this Part.	32 33

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<b>56C</b>	<b>Amendments made by AGL Corporate Conversion Act 2002 apply to matters occurring on or after 2 April 2001</b>	1 2
(1)	The amendments made to this Part by Schedule 1 to the <i>AGL Corporate Conversion Act 2002</i> extend to matters occurring on or after 2 April 2001 as if those amendments had been in force at the relevant time.	3 4 5 6
(2)	In this section: <i>matter</i> includes act, omission, body, person or thing.	7 8
<b>[10]</b>	<b>Schedule 3 Savings and transitional provisions</b>	9
	Insert after clause 17 (1) (c):	10
(d)	<i>AGL Corporate Conversion Act 2002</i> , but only to the extent that it amends this Act.	11 12

<b>Schedule 2</b>	<b>Amendment of Gas Industry Restructuring Act 1986 on incorporation of AGL</b>	1
		2
	(Section 15 (3))	3
<b>[1] Section 4</b>		4
	Insert after section 3:	5
	<b>4 Application of this Act to AGL</b>	6
	A reference in this Act to The Australian Gas Light Company includes on or after the conversion day referred to in the <i>AGL Corporate Conversion Act 2002</i> :	7
		8
		9
	(a) in relation to matters arising before that day—a reference to The Australian Gas Light Company referred to in the <i>Australian Gas Light Company Act 1837</i> , and	10
		11
		12
		13
	(b) in relation to matters arising on or after that day—to the body corporate of that name constituted by the <i>AGL Corporate Conversion Act 2002</i> , and	14
		15
		16
	(c) in relation to matters arising on or after the registration day referred to in the <i>AGL Corporate Conversion Act 2002</i> —to registered AGL referred to in that Act.	17
		18
		19
<b>[2] Section 6 Application of Australian Gas Light Company Act 1837</b>		20
	Omit the section.	21
<b>[3] Part 3, Division 1 Transfer of The Australian Gas Light Company's gas undertaking</b>		22
		23
	Omit the Division.	24

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<b>[4] Section 41 Maximum shareholding in AGL</b>	1
Omit section 41 (3). Insert instead:	2
(3) This section applies to the exclusion of any provision of the <i>AGL Corporate Conversion Act 2002</i> (or any law applied to the Company by that Act) concerning the maximum shareholding in the Company.	3 4 5 6
<b>[5] Section 51 Directors—special provisions</b>	7
Omit the section.	8
<b>[6] Section 53 Voting rights of proprietors</b>	9
Omit the section.	10
<b>[7] Section 54 Resolutions concerning management</b>	11
Omit the section.	12
<b>[8] Section 55 Restrictions on dealings in shares of gas distributors</b>	13
Omit the section.	14
<b>[9] Schedule 1 Gas distributors</b>	15
Omit the following:	16
City of Goulburn Gas and Coke Company (Limited)	17
Newcastle Gas Company Limited	18
Wollongong Gas Limited	19

<b>Schedule 3</b>	<b>Existing assets, rights and liabilities to belong to corporatised AGL</b>	1
		2
	(Section 16 (1))	3
<b>1</b>	<b>Application and interpretation</b>	4
	This Schedule applies to AGL's assets, rights and liabilities (within the meaning of section 16).	5 6
<b>2</b>	<b>Vesting etc of assets, rights and liabilities of AGL in corporatised AGL</b>	7
(1)	On and from the conversion day, the following provisions have effect (both in New South Wales and as provided by section 4 (5)) in relation to any assets, rights or liabilities to which this Schedule applies:	8 9 10
(a)	the assets to which this Schedule applies vest in corporatised AGL by virtue of this clause:	11 12
(i)	without the need for any further conveyance, transfer, assignment or assurance, and	13 14
(ii)	free of any estate or interest that any proprietor of AGL may have had in the assets immediately before the conversion day by reason of being a proprietor of AGL,	15 16 17
(b)	the rights to which this Schedule applies become by virtue of this clause the rights of corporatised AGL and may be exercised without regard to any fetters on the exercise of those rights that were enforceable by the proprietors of AGL immediately before the conversion day by reason of being proprietors of AGL,	18 19 20 21 22 23
(c)	the liabilities to which this Schedule applies become by virtue of this clause the liabilities of corporatised AGL,	24 25
(d)	all proceedings pending immediately before the conversion day relating to the assets, rights or liabilities to which this Schedule applies by or against AGL or a predecessor of AGL are taken to be proceedings pending by or against corporatised AGL,	26 27 28 29
(e)	any act, matter or thing done or omitted to be done in relation to the assets, rights or liabilities to which this Schedule applies before the conversion day by, to or in respect of AGL or a predecessor of AGL is (to the extent to which that act, matter or thing has any force or effect) taken to have been done or omitted to be done by, to or in respect of corporatised AGL,	30 31 32 33 34 35

(f)	a reference in any instrument to AGL or the Secretary of AGL while acting on behalf of AGL is (to the extent to which it relates to those assets, rights or liabilities) to be read as including a reference to corporatised AGL.	1 2 3 4
(2)	No attornment to corporatised AGL by a lessee from AGL is required.	5
(3)	No compensation is payable to any person or body in connection with the operation of this Schedule in respect of any asset, right or liability.	6 7
<b>3</b>	<b>Confirmation of vesting</b>	8
(1)	The Minister may, by notice in writing, confirm that particular assets, rights or liabilities have become the assets, rights or liabilities of corporatised AGL by operation of this Schedule.	9 10 11
(2)	Such a notice is conclusive evidence of that fact.	12
<b>4</b>	<b>Assets, rights and liabilities outside of New South Wales</b>	13
(1)	If any asset to which this Schedule applies:	14
(a)	is vested in the former Secretary under the law of an external jurisdiction immediately before the conversion day, and	15 16
(b)	does not, despite clause 2 (1) (a), become vested in corporatised AGL under the law of that jurisdiction,	17 18
	the former Secretary:	19
(c)	subject to paragraph (d), holds that asset, for the purposes of the law of New South Wales, in trust for the sole benefit of corporatised AGL until such time as the asset becomes vested in corporatised AGL under the law of the external jurisdiction or the trust is otherwise terminated, and	20 21 22 23 24
(d)	if it is possible for the former Secretary to vest the asset in corporatised AGL under the law of that external jurisdiction by effecting a conveyance, transfer, assignment or assurance and corporatised AGL directs it—must, in accordance with any such direction, effect any such conveyance, transfer, assignment or assurance.	25 26 27 28 29 30
	<b>Note.</b> For example, paragraph (d) enables corporatised AGL to direct that the legal title to an asset be transferred to it as the beneficial owner of the asset.	31 32

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- (2) The trust created by subclause (1) (c) is to be treated, for all purposes, as if it was a bare trust declared by the former Secretary *inter vivos*. 1  
2
- Note.** The general law relating to the law of trusts applies to the trust created by subclause (1) (c). 3  
4
- (3) Corporatised AGL is the person nominated by this Act for the purposes of appointing a new trustee under Division 1 of Part 2 of the *Trustee Act 1925* in respect of the trust created by subclause (1) (c). 5  
6  
7
- Note.** The provisions of Division 1 of Part 2 of the *Trustee Act 1925* provide for the appointment and removal of trustees. 8  
9
- (4) If any right to which this Schedule applies: 10
- (a) is exercisable by the former Secretary under the law of an external jurisdiction, and 11  
12
- (b) does not, despite clause 2 (1) (b), become a right of corporatised AGL on or after the conversion day under the law of that jurisdiction, 13  
14  
15
- the former Secretary (or any person entitled to exercise the right instead of the former Secretary) must exercise that right in accordance with any directions given by corporatised AGL from time to time. 16  
17  
18
- (5) If any liability to which this Schedule applies: 19
- (a) is a liability enforceable against the former Secretary of AGL under the law of an external jurisdiction, and 20  
21
- (b) does not, despite clause 2 (1) (c), become a liability of corporatised AGL on or after the conversion day under the law of that jurisdiction, 22  
23  
24
- the former Secretary (or, if the former Secretary is deceased, the estate of the former Secretary) is entitled to be indemnified by corporatised AGL against the liability. 25  
26  
27
- (6) In this clause: 28
- external jurisdiction** means any of the following: 29
- (a) a State (other than New South Wales), 30
- (b) a Territory, 31
- (c) the Commonwealth, 32
- (d) a jurisdiction outside of Australia. 33
- former Secretary** means the person who held office as Secretary of AGL immediately before the conversion day. 34  
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<b>Schedule 4</b>	<b>Provisions relating to par value shares on or after conversion day</b>	1
		2
	(Sections 18 (1) (e), 26 (2) (c) and 41)	3
<b>1</b>	<b>Interpretation</b>	4
	(1) In this Schedule:	5
	<i>applied Corporations Act</i> means the provisions of the <i>Corporations Act 2001</i> of the Commonwealth that are applied to corporatised AGL by section 26 of this Act.	6
		7
		8
	<i>converted share</i> means a share in the capital of AGL within the meaning of the constitution of AGL that, by operation of section 18 of this Act, is converted into a share in the capital of corporatised AGL.	9
		10
		11
	<i>share premium reserve</i> means the Share Premium Reserve of AGL maintained under the constitution of AGL immediately before the conversion day.	12
		13
		14
	(2) The provisions of this Schedule apply to corporatised AGL instead of the provisions of section 601BQ of the applied Corporations Act.	15
		16
<b>2</b>	<b>Corporatised AGL shares to have no par value</b>	17
	On and after the conversion day, section 254C of the applied Corporations Act applies to converted shares as well as to shares issued on or after that day.	18
		19
		20
	<b>Note.</b> Section 254C of the applied Corporations Act provides that the shares of a company have no par value.	21
		22
<b>3</b>	<b>Share capital—references to amount paid on shares issued before conversion day</b>	23
		24
	For the purposes of the operation of the applied Corporations Act on and after the conversion day in relation to a converted share:	25
		26
	(a) the amount paid on the share is the sum of all amounts paid to AGL or corporatised AGL at any time for the share (but not including any premium), and	27
		28
		29
	(b) the amount unpaid on the share is the difference between the issue price of the share (but not including any premium) and the amount paid on the share (see paragraph (a)).	30
		31
		32

<b>4</b>	<b>Share capital—calls on partly-paid shares</b>	1
	The liability of an AGL shareholder or corporatised AGL shareholder for calls in respect of money unpaid on converted shares (whether on account of the par value of the shares or by way of premium) is not affected by the share ceasing to have a par value.	2 3 4 5
<b>5</b>	<b>Share capital—transfer of money in share premium reserve into the share capital account</b>	6 7
	On the conversion day, any amount standing to the credit of AGL's share premium reserve becomes part of corporatised AGL's share capital.	8 9 10
<b>6</b>	<b>Share capital—use of amount standing to credit of share premium reserve</b>	11 12
	Corporatised AGL may use any amount of share capital equal to the amount standing to the credit of AGL's share premium reserve immediately before the conversion day:	13 14 15
	(a) to provide for the premium payable on redemption of debentures or converted shares that are redeemable preference shares issued before the conversion day, or	16 17 18
	(b) to write off:	19
	(i) the preliminary expenses of AGL incurred before the conversion day, or	20 21
	(ii) expenses incurred, payments made, or discounts allowed, on or before the conversion day, in respect of any issue of shares in, or debentures of, AGL.	22 23 24
<b>7</b>	<b>Share capital—references in pre-commencement contracts and other documents to par value</b>	25 26
	(1) This clause applies for the purpose of interpreting and applying on or after the conversion day:	27 28
	(a) a contract entered into before that day, or	29
	(b) a trust deed or other document executed before that day.	30
	(2) A reference to the par value of a share is taken to be a reference to:	31
	(a) if the share is a converted share—the par value of the share immediately before the conversion day, or	32 33

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(b)	if the share is issued on or after the conversion day but AGL shares of the same class were on issue immediately before that day—the par value that the share would have had if it had been issued then, or	1 2 3 4
(c)	if the share is issued on or after the conversion day and AGL shares of the same class were not on issue immediately before that day—the par value determined by the directors.	5 6 7
	A reference to share premium is taken to be a reference to any residual share capital in relation to the share.	8 9
(3)	A reference to a right to a return of capital on a share is taken to be a reference to a right to a return of capital of a value equal to the amount paid in respect of the share's par value.	10 11 12
(4)	A reference to the aggregate par value of AGL or corporatised AGL's issued share capital is taken to be a reference to the aggregate par value of AGL's share capital as it existed immediately before the conversion day and:	13 14 15 16
(a)	increased to take account of the par value of any shares issued on or after that day, and	17 18
(b)	reduced to take account of the par value of any shares cancelled on or after that day.	19 20

Schedule 5      Amendment of Subordinate Legislation Act 1989

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<b>Schedule 5</b>	<b>Amendment of Subordinate Legislation Act 1989</b>	1
		2
	(Section 46)	3
<b>Schedule 4 Excluded instruments</b>		4
Insert after item 24:		5
		6
25	Regulations under the <i>AGL Corporate Conversion Act 2002</i> .	7

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<b>Schedule 6</b>	<b>Savings, transitional and other provisions</b>	1
	(Section 47)	2
<b>1</b>	<b>Regulations</b>	3
(1)	The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:	4
	this Act	5
(2)	Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.	6
(3)	To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:	7
(a)	to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or	8
(b)	to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.	9
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