

Pacific Power (Dissolution) Bill 2003

Explanatory note

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

Overview of Bill

The objects of this Bill are to dissolve Pacific Power and to constitute the Residual Business Management Corporation to manage the residual assets, rights and liabilities of Pacific Power and to provide for other consequential matters.

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 Act commences or is taken to have commenced on 1 July 2003.

Clause 3 defines certain words and expressions used in the proposed Act.

Part 2 Dissolution of Pacific Power

Clause 4 dissolves Pacific Power.

Part 3 Constitution and functions of Residual Business Management Corporation

Division 1 Constitution and management of Corporation

Clause 5 constitutes the Residual Business Management Corporation (the *Corporation*).

Clause 6 sets out the objectives of the Corporation, including managing its assets, rights and liabilities effectively and responsibly and achieving the efficient and timely winding up of residual business activities.

Clause 7 provides for the appointment of a General Manager of the Corporation and for the appointment of an acting General Manager in the absence or illness of the General Manager. The Minister is to determine the salary and conditions of employment of the General Manager.

Clause 8 confers on the General Manager the function of managing and controlling the affairs of the Corporation. The General Manager is, in the exercise of the General Manager's functions, subject to the direction and control of the Minister.

Clause 9 enables the Corporation to employ staff and to fix their salary, wages and conditions. The Corporation may also make use of the services of any staff (by secondment or otherwise) or facilities of a Government agency or any other public or local authority.

Clause 10 enables the Minister, by order, to transfer staff members of the Corporation to a specified public sector service and applies to any such transferred staff members provisions of the *Public Sector Employment and Management Act 2002* which provide for the retention of existing remuneration and leave entitlements on the transfer of employees between public sector services. The Minister may also transfer staff to a State owned corporation.

Division 2 Functions of Corporation

Clause 11 sets out the functions of the Corporation, including holding on behalf of the State, retaining, transferring and disposing of assets, rights and liabilities transferred to it by or under the proposed Act or any other Act, carrying on any business or activity relating to or ancillary or incidental to those assets, rights and liabilities and other related functions.

Clause 12 enables the Corporation, with the approval of the Minister, to delegate its functions.

Clause 13 requires the Corporation to prepare a business plan within 3 months after the commencement of each financial year of the Corporation.

Part 4 Property of Corporation

Clause 14 provides that, on the dissolution of Pacific Power, the assets, rights and liabilities of Pacific Power (other than those relating to certain guarantees taken to have been entered into by the Treasurer) immediately before that dissolution become the assets, rights and liabilities of the Corporation.

Clause 15 enables the Minister, by order in writing, to transfer any of the assets, rights and liabilities of the Corporation to a State owned corporation, a subsidiary of the Corporation, the Crown, a local authority, or any other person or body acting on behalf of the Crown. The Minister may make further transfer orders relating to assets, rights and liabilities previously transferred. The clause also gives effect to proposed Schedule 1 which contains provisions setting out the effect of such orders and related matters.

Part 5 Miscellaneous

Clause 16 declares proposed Parts 3 and 4 to be Corporation legislation displacement provisions for the purposes of section 5G of the *Corporations Act 2001* of the Commonwealth. The effect of this is that any provision of the Corporations legislation with which the State legislation would otherwise be inconsistent does not apply to the extent necessary to avoid the inconsistency.

Clause 17 enables regulations, including savings and transitional regulations, to be made.

Clause 18 is a formal provision giving effect to Schedule 2 which lists Acts and regulations to be repealed, including the *Electricity (Pacific Power) Act 1950*.

Clause 19 is a formal provision giving effect to Schedule 3 which contains consequential amendments to Acts and regulations.

Clause 20 is a formal provision giving effect to Schedule 4 which contains savings and transitional provisions.

Clause 21 provides for the review of the proposed Act.

Schedule 1 Transfer of assets, rights and liabilities

Schedule 1 contains provisions relating to the transfer of assets, rights and liabilities of the Corporation by order of the Minister, including the following:

- (a) provisions vesting the assets, rights and liabilities in the transferee,
- (b) provisions deeming proceedings to have been taken by the transferee,
- (c) provisions relating to consideration, date of vesting and transfer of separate interests in land,
- (d) a provision requiring registration authorities to register transfers if a certificate relating to the transfer is lodged with them and prohibiting a fee or charge from being payable for the registration,
- (e) an evidentiary provision,
- (f) a provision exempting the transfers from duty under the *Duties Act 1997*,
- (g) a provision making it clear that the transfers do not give rise to any breach of contract or other breach or remedy and are not to be regarded as an event of default under any contract or other instrument.

Schedule 2 Repeals

Schedule 2 lists the Acts and regulations to be repealed, including the *Electricity (Pacific Power) Act 1950*.

Schedule 3 Amendments

Schedule 3 contains consequential amendments to various Acts and regulations consequent on the enactment of the proposed Act, including on the dissolution of Pacific Power and the repeal of the *Electricity (Pacific Power) Act 1950*.

Schedule 4 Savings and transitional provisions

Schedule 4 contains savings and transitional provisions consequent on the enactment of the proposed Act, including the following:

- (a) a regulation-making power,
- (b) a provision deeming the Corporation to be a continuation of and the same

legal entity as Pacific Power, except in relation to certain guarantees,
(c) provisions removing directors of Pacific Power from office but continuing the employment of staff of Pacific Power by the Corporation, certain existing powers of Pacific Power in relation to staff and existing declarations of excess surplus staff or secondments to subsidiaries,
(d) a provision converting references to Pacific Power in Acts or other instruments to references to the Corporation,
(e) a provision enabling the Treasurer to guarantee obligations under contracts entered into by former subsidiaries of Pacific Power and also deeming the Treasurer to have entered into existing guarantees,
(f) provisions enabling former directors to submit annual reports and financial statements relating to Pacific Power,
(g) a provision saving previous transfers of assets, rights and liabilities of Pacific Power,
(h) a provision validating any acts or omissions that occur after 1 July 2003 and before the date of assent to the proposed Act.