1992

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

PIPELINE AUTHORITY AMENDMENT BILL 1992

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Resources,
the Honourable Alan Griffiths MP)

35008 Cat.No.92 5022 3

PIPELINE AUTHORITY AMENDMENT BILL 1992

GENERAL OUTLINE

The principal aim of the Bill is to amend the Pipeline Authority Act 1973 ("the Principal Act") so as to enable the re-organisation of the business of the Pipeline Authority ("TPA"). The re-organisation will take effect on a particular day ("the re-organisation day") when part of the business of TPA, and related assets, principally the Canberra and Oberon gas pipelines, are transferred to a nominated wholly owned subsidiary of TPA ("the receiving subsidiary"). The subsidiary will then own and operate those pipelines and undertake other pipeline related functions on a commercial basis, leaving TPA to own and operate the Moomba-Sydney pipeline system.

2. It is intended that the subsidiary will operate as a separate commercial entity to TPA and be subject to the guidelines for Government Business Enterprise Accountability. The transfer of assets to the subsidiary will be revenue neutral, no tax liability will be incurred on the transfer, but the subsidiary will thereafter be subject to the taxation applicable to a corporation. The Authority will remain exempt from income tax.

3. The assets to be transferred are, on current market value terms, assessed to be in the range $12-15 million but are to be revalued as part of the transfer. The objective is for the subsidiary's capital base to be structured for it to achieve an "A" credit rating. Its borrowings will not be subject to Government guarantees.

4. The Bill amends the Principal Act to further assist TPA in its future role. TPA Board will be expanded by two directors. Directors are to be appointed by the Minister and be subject to dismissal by the Minister on grounds which shall include on-going under performance. The remuneration arrangements for the Chief Executive and senior executives of TPA will be unchanged. Remuneration of the Chief Executive of the subsidiary will be determined by the Board of the subsidiary in consultation with the Remuneration Tribunal, while remuneration of senior executives of the subsidiary will be the responsibility of the Board having regard to existing award coverage.

5. The basis and process of dividend payments by the subsidiary will be subject to Ministerial approval, taking into account the need for capital requirements. The Bill provides for the passing on to the Commonwealth, via TPA, of dividends paid by the subsidiary.

FINANCIAL IMPACT STATEMENT

6. The proposals put forward in the Bill will not affect Government expenditure. The creation of a subsidiary may require two new positions in the Pipeline Authority. The Bill will not impact on any other section of the community.

7. The capital and any other financial resources provided by TPA to the subsidiary in exchange for share equity, plus the revenue earning capability of the Canberra and Oberon pipelines and (when built) the Riverina pipeline extension, should permit the payment of dividends by the subsidiary at an early stage.

Definition of Terms

8. The following abbreviations are used in this Explanatory Memorandum.

"TPA"	:	means The Pipeline Authority
"CGT"	:	means capital gains tax
"Subsidiary"	:	means the subsidiary to be established by TPA
"Principal Act"	:	means the Pipeline Authority Act 1973
"Board"	:	means the Board of TPA

NOTES ON INDIVIDUAL CLAUSES

Clause 1: Short title

9. Provides for the citation of the Act.

Clause 2: Commencement

10. Provides for the Act to come into operation on the day on which it receives Royal Assent.

Clause 3: Principal Act

11. Defines that, for the purposes of this Act, the "Principal Act" means the Pipeline Authority Act 1973.

Clause 4: Interpretation

12. Amends subsection 3(1) of the Principal Act by inserting a definition of "subsidiary company", which means a company that is a subsidiary of TPA.

13. New subsection 3(4) provides that the Corporations Law will determine whether a company is a subsidiary of TPA.

Clause 5: Membership of authority

14. Subclause 5(1) amends section 6 of the Principal Act by changing the descriptions of TPA Board members to directors, Chairperson, Deputy Chairperson and Chief Executive Officer and provides for two additional part-time directors of TPA Board. The additional directors will enable the TPA Board to contain a wider balance of people with relevant expertise and sound business acumen.

15. Subclause 5(1) also provides for directors, other than the Chief Executive Officer, to be appointed by the Minister for periods not exceeding 5 years. Previously, members of the Authority were appointed by the Governor-General for a period not exceeding 7 years.

16. Subclause 5(2) provides for existing part-time TPA members to continue as part-time directors for the remainder of their term.

17. Subclause 5(3) provides for the existing Chairman or Deputy Chairman to continue as the Chairperson or Deputy Chairperson for the remainder of their term.

Clause 6: Leave of absence

18. Amends section 8 of the Principal Act to allow for the Chief Executive Officer to be granted leave by TPA Board on such terms and conditions as the Board determines. Previously the Chief Executive Officer's leave was granted by the Minister. This amendment is consistent with the objective of the Authority being responsible for its day-to-day management practices.

Clause 7: Termination of appointment

19. Amends section 9 of the Principal Act to provide for the Minister, rather than the Governor-General, to terminate the appointment of a part-time director and the grounds for such termination, namely where the director's performance has been, in the opinion of the Minister, unsatisfactory over a significant period. The description of TPA Board Members is also changed to Directors.

Clause 8: Chief Executive Officer

20. Subclause 8(1) repeals section 10 of the Principal Act and substitutes new sections 10, 10A and 10B.

21. New subsections 10(1) to (5) allow the Chief Executive Officer (formerly referred to as the "Executive Member") to be appointed by TPA Board on a full-time basis, at the Board's pleasure, up to the age of 65.

Disclosure of Interests

22. New subsections 10A(1) to (5) replace the previous provisions of the Principal Act dealing with the basis on which disclosure of interests by a director is to be treated at meetings of TPA.

Resignation

23. New section 10B is consequential on the change in description from "member" to "part-time director". Subclause 8(2) provides for the existing Executive Member to hold office as the Chief Executive Officer.

Clause 9: Acting appointments - part-time directors

24. Repeals section 11 of the Principal Act, at the same time taking account of the new provision (see clause 8 above) whereby the Chief Executive Officer is to be appointed by TPA Board.

25. New subsections 11(1) to (4) provide the basis on which the Minister may appoint a person to act as part-time director, and outline the circumstances under which the Deputy Chairperson, or such other director or acting director as may be appointed by the Minister to do so, would act as Chairperson during designated periods of absence of the Chairperson.

Acting appointments - Chief Executive Officer

26. New subsections 11A(1) and (2) provide the circumstances and conditions under which TPA Board may appoint a person to act as Chief Executive Officer during designated periods.

Clause 10: Meetings of Authority

27. This clause amends section 12 of the Principal Act to provide for the number of directors constituting a quorum to be increased from four to five.

Clause 11: General powers of Authority

28. This clause amends section 15 of the Principal Act to empower TPA to enter into contracts for the purpose of the Act.

Clause 12: Particular powers of Authority

29. This clause amends section 16 of the Principal Act to give TPA the power to form subsidiaries and joint ventures. It also provides for a subsidiary company to use land in which the Authority has an interest.

Clause 13: Limitation on formation etc. of companies

30. This clause inserts a new section 16A in the Principal Act. Section 16A provides that TPA must not form a subsidiary or joint venture without the written approval of the Minister.

31. The Minister's approval may be subject to terms and conditions (other than in relation to amounts to be charged for work done, or services, goods or information supplied by the Authority). The Minister's approval would provide the mechanism by which Government Business Enterprise guidelines would be imposed on a subsidiary. For example, the Ministerial approval would outline the terms and conditions of Board appointments, corporate planning and reporting requirements, financial targets, etc.

32. The Minister may revoke or vary the terms and conditions of an approval, but not affect any contract entered into or acts done prior to the revocation or variation.

Clause 14: Power to enter land and take levels etc

33. This clause amends section 17 of the Principal Act to empower officers or employees of a subsidiary company to enter land for the purposes of TPA business.

Clause 15: Power to enter and occupy land

34. This clause amends section 18 of the Principal Act in a manner similar to clause 14 above, in extending TPA powers to officers or employees of a subsidiary company to enter and occupy land.

Clause 16: Functions of subsidiary

35. This clause adds a new section 18A to the Principal Act.

36. Subsections 18A(a) to (d) provide for the existing functions of TPA to be extended to a subsidiary and to enable a subsidiary to buy and sell petroleum for conveyance by pipeline and to provide pipeline consultancy and transmission support services in Australia and overseas.

Clause 17: Repeal of section 29

37. This clause repeals section 29 of the Principal Act and thereby removes the requirement for the Minister to approve TPA entering into any contract exceeding $500,000. Ministerial oversight will, in future, be carried out through approval of corporate and financial plans.

Clause 18: Profits of the Authority

38. Amends section 30 of the Principal Act to make TPA profits subject to the payment to the Commonwealth of dividends received from TPA's subsidiary.

Clause 19: Authority to pay dividends from subsidiaries to the Commonwealth

39. This clause inserts a new section 30A in the Principal Act. Section 30A directs the Authority to pay to the Commonwealth amounts of dividends received from subsidiaries, other than such amounts as are specified by the Minister in writing.

Clause 20: Liability of subsidiary to taxation

40. This clause inserts new sections 33A and 33B in the Principal Act.

41. New section 33A provides that a subsidiary company is not a public authority for the purposes of the Income Tax Assessment Act 1936 and is subject to taxation under the laws of the Commonwealth and a State or Territory.

Revaluation of Assets

42. New section 33B requires TPA to revalue its assets every three years in accordance with normal commercial practice.

Clause 21: PART VA - RE-ORGANISATION OF THE BUSINESS OF THE AUTHORITY

43. This clause inserts a new part, "Part VA - Re-organisation of the Business of the Authority" into the Principal Act. This part provides for the means for the re-organisation of TPA to occur.

DIVISION 1 - INTERPRETATION

44. New section 33C defines terms that are used in this Part.

DIVISION 2 - STEPS LEADING TO RE-ORGANISATION

Fixing the day on which re-organisation is to take place - the re-organisation day

45. New section 33D provides for the Minister, by a notice in the Gazette, to fix a day on which the re-organisation is to take place.

Nomination of subsidiary to which business is to be transferred - the receiving subsidiary

46. New section 33E provides for the Minister to nominate a subsidiary of the Authority, by notice in the Gazette, as the receiving subsidiary for the re-organisation. The receiving subsidiary will be the subsidiary to which TPA's selected assets are transferred.

47. New subsections 33E(2), (3) and (4) list certain criteria which a subsidiary must meet if it is to be nominated as the receiving subsidiary.

Determination of assets, instruments and liabilities to be transferred etc. - the transferring assets, instruments and liabilities

48. New section 33F empowers the Minister to specify, by notice in the Gazette, assets, liabilities and instruments of TPA to be transferring assets, liabilities or instruments to be transferred or, in the case of instruments, referenced, to the receiving subsidiary on or before the re-organisation day. Other assets, liabilities and instruments will remain with TPA.

DIVISION 3 - THE REORGANISATION

Transferred business of Authority becomes business of receiving subsidiary

49. New section 33G provides for the transferred business of the Authority to cease to be the business of the Authority on the re-organisation day and become the business of the receiving subsidiary.

50. It is only the "commercial" pipeline business of TPA which is transferred to the receiving subsidiary on the re-organisation day. The non-commercial Moomba-Sydney Pipeline system is to continue to be the business of TPA.

Transferring assets and transferring liabilities of Authority become assets and liabilities of receiving subsidiary

51. New section 33H provides for the transferring assets and liabilities of TPA to become assets and liabilities of the receiving subsidiary.

Instruments

52. New section 33J provides that instruments to which this Part applies continue to be in force on and after the re-organisation day. This section also provides that transferring instruments have effect as if a reference in such an instrument to the Authority were a reference to the receiving subsidiary.

Pending Proceedings

53. New section 33K provides that the receiving subsidiary is to be put in place of the Authority on and after the re-organisation day in respect of pending proceedings in respect of the transferred business.

Valuation of transferring business

54. New section 33L enables the Minister to determine the net value of the transferring business within 7 days after the reorganisation day. A period of 7 days is allowed as it will not be possible to accurately calculate such value on or before the reorganisation day. This value will be used as the basis on which to issue shares to the Authority.

Issue of shares in receiving subsidiary to Authority in relation to transferring business

55. New section 33M provides that the receiving subsidiary is to issue shares to the Authority on the day on which the value of the transferring business is determined under proposed section 33L(1). Shares issued to the Authority will be taken to be fully paid and to have been issued for valuable consideration.

Authorised person may certify matters in relation to re-organisation

56. New section 33N provides that if an authorised person, defined in new section 33C as the Minister or a person authorised in writing by the Minister, issues a certificate in relation to a matter in this Division, that certificate is taken to have been properly given, unless the contrary is established.

Extraterritorial operation of Division

57. New section 33P extends the operation of this Division to jurisdictions outside Australia (as far as Parliament is able to). This is to ensure, as far as is possible, that the overseas business of the Authority is treated similarly to its Australian business.

Authority to take steps necessary to carry out re-organisation

58. New section 33Q places an onus on the Authority to take all steps necessary to ensure this Division is given effect to, particularly in relation to its operation outside Australia.

DIVISION 4 : TRANSFER OF STAFF

Determination of staff to be transferred to receiving subsidiary

59. New section 33R enables the Chief Executive Officer, in writing, to specify which staff members will transfer to the receiving subsidiary.

Employment of nominated staff member to continue with receiving subsidiary

60. New section 33S provides that staff members who are nominated to transfer are employed on the same terms and conditions by the receiving subsidiary after their transfer, subject to new sections 33T and 33U.

Act not to affect certain matters relating to transferring staff members

61. New section 33T provides that the contracts of employment and periods of employment of transferred staff members are not broken by the operation of this Act, and accrued rights are not affected.

Variation of terms and conditions of employment

62. New section 33U provides that the terms and conditions of employment of each transferred staff member may be varied by the receiving subsidiary in the same way as could be done by the Authority immediately before the transfer day.

DIVISION 5 - TAXATION MATTERS

Exemptions relating to tax exempt matters

63. New section 33V provides for exemption from taxation (other than Commonwealth income tax or fees payable under the Corporations Law of a State or Territory) in relation to various matters associated with business of the subsidiary, or in relation to a tax exempt matter (as defined in section 33C).

64. One of the major effects of this section is its provision to exempt from State or Territory stamp duty any instrument created or required in relation to the vesting of the transferred assets in the receiving subsidiary under sections 33H and 33J.

Value of trading stock for income tax purposes

65. To the extent that the transferred assets include trading stock in the form of gas in pipelines, new section 33W will ensure that the trading stock is valued at TPA's market selling price for the income year in which the transferred assets become the assets of the receiving subsidiary (pursuant to Subdivision B of Division 2 of Part III of the Income Tax Assessment Act). This enables a tax neutral treatment of the transferred trading stock.

Capital gains tax - assets acquired on or after 20 September 1985

66. New section 33X provides for the treatment of capital gains and losses on the subsidiary's transferred assets which were acquired by TPA on or after 20 September 1985 and acquired by the subsidiary on the re-organisation day.

67. Subsection 33X(3), in effect, provides that, if:

- an asset is owned by the subsidiary on the re-organisation day; and
- the market value of the asset on the re-organisation day is greater than the indexed cost base of the asset to TPA if it had been disposed of by TPA at that time;
  - the asset will be taken to have been acquired at market value;
  - in any other case, it will be valued at its "indexed cost base".

68. Only capital gains realised after the re-organisation day will be subject to capital gains tax under Part IIIA of the Assessment Act.

69. Subsection 33X(4), in effect, provides that, if:

- an asset is owned by the subsidiary on the re-organisation day; and
- the market value of the asset on the re-organisation day is less than the reduced cost base of the asset to TPA if it had been disposed of by TPA at that time;
  - the asset will be taken to have been disposed of at its marked value;
  - in any other case, the asset will be valued at its "reduced cost value".

70. Only the capital loss which is incurred after the re-organisation day on the market value of the asset will be used for determining capital losses.

Capital gains tax - assets acquired before 20 September 1985

71. Subsection 33Y(1) provides that Part IIIA of the Assessment Act does not apply to the disposal of a transferred asset of the subsidiary where the asset was acquired by the Authority before 20 September 1985.

72. Subsection 33Y(2) provides that, unless the contrary intention appears, expressions used in this section have the same respective meaning as in Part IIIA of the Assessment Act.

Superannuation payments

73. New section 33Z provides that, for the purposes of section 82AAC of the Assessment Act, a payment made by the subsidiary to the Commonwealth under the Superannuation Act 1976 or the Superannuation Act 1990 is taken to be a contribution to an eligible superannuation fund, within the meaning of Part IX of the Assessment Act, in relation to the year of income of the fund in which the payment is made.

74. Paragraph 82AAC(1)(a) of the Assessment Act provides that employer contributions to superannuation funds for employees are allowable taxation deductions. The Superannuation Act 1976 and the Superannuation Act 1990 provide the legislative authority for TPA to levy employer superannuation contributions.

75. The Authority regularly pays to the Retirement Benefits Office, as manager of the Commonwealth Superannuation Scheme and the Public Sector Superannuation Scheme, productivity and other contributions of a superannuation nature. These contributions are exclusive of those contributed by members of the scheme.

76. The new section has the effect that all contributions, excluding productivity and annual contributions, paid by the subsidiary for recognised arrangements in respect of its employees who retained a right of continued membership of the Commonwealth Superannuation Scheme or the Public Sector Superannuation Scheme, will be deductible for taxation purposes as if those payments were made to an approved superannuation fund.

DIVISION 6 : MISCELLANEOUS

Certificates in relation to land and interests in land

77. New section 33ZA provides for the method to register land or interests in the name of the receiving subsidiary of land transferred from the Authority to the receiving subsidiary under this Part.

Certificates in relation to other assets

78. New section 33ZAB provides for the method to register in the name of the receiving subsidiary assets, other than land and interests in land (which are dealt with in section 33ZA) transferred from the Authority to the receiving subsidiary.

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

79. New section 33ZC ensures that the effect of this Part is not frustrated by any other law and does not place the Authority or any of its subsidiaries in breach of a law, contract, or confidence etc. Proposed sub-section 33ZC(3) provides that if the consent of a person is required to give effect to this Part that consent shall be taken to have been given.

Compensation for acquisition of property

80. New section 33ZD provides for compensation to be paid if the operation of the Bill results in acquisition of property otherwise than on just terms.

Clause 22: Subsidiary of Authority not incorporated for public purposes etc and not a public authority

81. This clause inserts new sections 34A, 34B, 34C, 34D and 34E to the Principal Act.

82. New section 34A provides that a subsidiary company is not established for a public or Commonwealth purpose, is not to be a public authority or instrumentality or agency of the Crown, and is not entitled to Commonwealth immunity or privilege, except so far as express provision is made by this Act or any other law of the Commonwealth, a State or Territory.

Application of Environment Protection (Impact of Proposals) Act 1974 to subsidiary

83. New section 34B provides that a subsidiary company be subject to the Environment Protection (Impact of Proposals) Act 1974.

Lands Acquisition Act

84. New section 34C provides that the Land Acquisition Act 1989 applies to the acquisition of land, or an interest in land, by a subsidiary company.

Laws relating to buildings, structures and facilities

85. New section 34D provides that the law of a State or Territory shall not apply in relation to a building, structure or facility that is the property of a subsidiary company, and was occupied or in use, or under construction, alteration or demolition, before the re-organisation day.

Prescribed State laws relating to buildings, structures etc not to apply to a subsidiary of the Authority

86. New section 34E provides that prescribed laws of a State or Territory relating to building, design or construction standards, or to the approval, occupancy, use, alteration or demolition of a building, structure or facility (as defined in subsection 34E(2)) shall not apply to the property of a subsidiary company.

Clause 23: Authority and subsidiary to do as little damage as possible

87. This clause amends section 35 of the Principal Act to include a subsidiary company in the provision affecting avoidance of damage and related liability to pay compensation.

Clause 24: Marking of route of pipeline

88. This clause amends section 38 of the Principal Act to include a subsidiary company in responsibility for the marking of a pipeline route.

Clause 25: Pipeline licence not required

89. This section amends section 39 of the Principal Act. The amendment to this section will provide that no licence is required by a subsidiary company in relation to construction, maintenance and operation of a pipeline or a proposed pipeline in an adjacent area within the meaning of the Petroleum (Submerged Lands) Act 1967.

Clause 26: Delegation

90. This clause inserts a new section 44 of the Principal Act to empower the Authority, under its seal, to delegate powers to a director or officer or employee of TPA. The Authority's power of delegation is limited in accordance with Part VII - Powers Conferred and Duties Imposed by Acts of the Acts Interpretation Act 1901.

Clause 27: Other amendments

91. This clause provides for consequential and minor amendments to the Principal Act as set out in the Schedule to the Bill.

Printed by Authority by the Commonwealth Government Printer

9 780644 403498