

1994

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

SENATE

PIPELINE LEGISLATION AMENDMENT BILL 1994

EXPLANATORY MEMORANDUM

(Circulated by the authority of the Minister for Resources,
the Hon David Beddall, MP)

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GENERAL OUTLINE

1. The purpose of this Bill is to introduce certain technical amendments to both the *Moomba-Sydney Pipeline System Sale Act 1994* and the *Pipeline Authority Act 1973*.
2. The *Moomba-Sydney Pipeline System Sale Act 1994* provided the legislative basis for the sale of the major asset of the Pipeline Authority, namely the Moomba-Sydney gas pipeline. This legislation received Royal Assent on 10 June 1994. At the time of the MSP sale, the need to correct a number of deficiencies or ambiguities in the sale legislation became apparent, but timing difficulties precluded these amendments being made prior to the passage of the *Moomba-Sydney Pipeline System Act*. At the same time, negotiations in respect of the Moomba-Botany ethane pipeline for ICI were in train. During these negotiations a need was identified to make specific provision for the transfer of pipeline easements to ICI in support of this project.
3. Part 2 of the Bill amends the *Moomba-Sydney Pipeline System Sale Act 1994* to put beyond doubt that State licensing laws apply to private sector pipelines when these run in easements in which the Commonwealth has an ownership interest. This clarifies, but does not alter, the intention of the original legislation. This Part of the Bill also ensures that those instruments created for the express purpose of obtaining new easements required for the ethane pipeline remain in the ownership of the Pipeline Authority as intended under the original legislation.
4. Part 3 of the Bill amends the *Pipeline Authority Act 1973*. It establishes a mechanism by which those easements being obtained by the Pipeline Authority for the ethane pipeline can be transferred to the ICI subsidiary (Gorodok Pty Ltd) which is funding their acquisition and which will own the pipeline. This Part provides for the progressive transfer of these easements as they are obtained and contains technical provisions to ensure that this transfer process is effective. Part 3 also includes clauses that are intended to facilitate, but not guarantee, the registration of Gorodok's ownership of easements by State titles offices.

FINANCIAL IMPACT STATEMENT

5. This Bill has no direct financial impact, dealing as it does with matters of a technical nature. All costs associated with acquiring those easements that are to be transferred to ICI's Gorodok subsidiary are being met by ICI.

NOTES ON INDIVIDUAL CLAUSES

PART 1 - PRELIMINARY

Clause 1. - Short Title etc.

6. This clause provides for the Bill to be called the *Pipeline Legislation Amendment Act 1994*. The title is general rather than specific as this Act amends two Principal Acts.

Clause 2. - Commencement

7. The Act takes effect on the day it receives Royal Assent, with the exception of Part 2 which has effect from 30 June 1994. The reason for this retrospectivity is that Part 2 has the purpose of putting beyond doubt the intent of certain provisions in the *Moomba-Sydney Pipeline System Sale Act 1994* which themselves had effect from 30 June 1994.

PART 2 - AMENDMENTS OF THE MOOMBA-SYDNEY PIPELINE SYSTEM SALE ACT 1994

Clause 3. - Principal Act

8. This clause provides for the *Moomba-Sydney Pipeline System Sale Act 1994*, which is the Act being amended by this Part, to be referred to as the "Principal Act".

Clause 4. - Dual destination instruments that create easements

9. This clause has the intention of putting beyond doubt the intention of the Principal Act in respect of the operation of pipelines that run in easements which are jointly owned by the Commonwealth and the owners of the Moomba-Sydney Pipeline. The intention of the Principal Act was that such pipelines be subject to State licensing laws. This amendment clarifies this point through the addition of a new Subsection 16(6) which confirms that State laws relating to the construction and operation of pipelines are not precluded from operating concurrently with Section 16 of the Principal Act.

10. This clarification is being made in response to concerns expressed by the Governments of NSW and Queensland that they may not be able to license the operation of the Moomba-Sydney Pipeline unless the applicability of State laws was put beyond doubt.

Clause 5. - Instruments relating to the easements of the Authority or Pacenco that are not specified in the easement agreement

11. The amendments to Section 18 of the Principal Act contained in Clause 5 are also designed to clarify the intention of the original legislation.

12. Section 18 transfers to the Commonwealth those easements of the Pipeline Authority and its subsidiary company Pacenco which

do not become jointly owned by the Commonwealth and Newco. In the Principal Act, Newco is the term used to designate East-Aust Pipeline Limited, the new owner of the Moomba-Sydney Pipeline. The Pipeline Authority expressed some concern that this Section could be interpreted in a way to include those legal instruments which were issued to the Authority as the first step towards obtaining new easements for the Moomba-Botany ethane pipeline being built for ICI. This was not, however, the intention of this Section.

13. The amendment to Subsection 18(1) links the term "instruments" to easements that are already in existence and which are defined in Section 17. This eliminates the possibility of the term "instruments" as used in Section 18 from applying to those legal documents pertaining to the as yet uncreated easements for the ethane pipeline.

14. The insertion of a new Subsection 18(4) is intended to address the same concerns that the provisions of Clause 4 cover and is expressed in identical terms to the new Subsection 16(6).

PART 3 - AMENDMENT OF THE PIPELINE AUTHORITY ACT 1973

Clause 6 - Principal Act

15. This clause provides for the *Pipeline Authority Act 1973*, which is the Act being amended, to be referred to as the "Principal Act".

Clause 7 - Insertion of new Part VB

16. This Part has the purpose of creating a statutory transfer of certain easements from the Pipeline Authority to Gorodok Pty Ltd, a subsidiary company of ICI. The easements to be covered by this Part are those the Pipeline Authority is acquiring specifically in support of the Moomba-Botany ethane pipeline to be owned by Gorodok.

Definitions

17. Section 33ZE defines the terms that are used in Part VB.

Specifying the easements etc. to be transferred to Gorodok and the transfer day

18. Section 33ZF provides a mechanism for identifying by notice in the Gazette those easements which are to be transferred to Gorodok and the date of effect of such transfer. The Section also allows for more than one notice to be published in the Gazette in order to provide for the progressive transfer of easements as they are obtained by the Pipeline Authority.

Transfer to Gorodok of transferring interests of the Authority

19. Section 33ZG provides the actual statutory means by which ownership of the easements pertaining to the Moomba-Botany ethane pipeline is transferred from the Pipeline Authority to Gorodok.

Instruments relating to the transferring interests of the Authority

20. Section 33ZH enables relevant supporting documents to be included in the process of gazettal. This is intended to aid in the identification of transferring easements and also to ensure that those transferring interests which are not formal easements are also covered. An example of a non-formal easement would be an agreement with the custodians of a park or reserve to place and operate a pipeline within the confines of that park or reserve. In such instances the document of agreement takes the place of a formal easement.

Certificates in relation to interests in land

21. Section 33ZJ establishes a process whereby Gorodok's interest in easements transferred to it from the Pipeline Authority can be noted and recorded by land registration officials in relevant State titles offices. The purpose of this Section is to indicate that the Commonwealth's intention is that Gorodok have a registrable interest in those easements it receives from the Authority.

22. However, Section 33ZJ does not purport to effect the registerability of Gorodok's interests in easements as this is a matter ultimately for decision by relevant State authorities. Rather, it is intended to facilitate to the degree possible the likelihood of such registration by land title officials.

Commonwealth and Authority to take steps to carry out transfers

23. Section 33ZK provides a statutory basis for Commonwealth officials and Pipeline Authority officers to execute documents and take whatever other actions may be necessary to give effect to this Part.

Part to have effect in spite of laws prohibiting transfers

24. Section 33ZL is included to ensure that the process of easement transfer provided for in this Part is not unintentionally thwarted by the operation of some other legislative provisions. The type of contingency this Section provides for is where a Pipeline Authority easement or other interest in land might be secured in the first instance by force of a statute under which any subsequent divestiture would see the easement lapse or revert to a former owner.

25. Section 33ZL also ensures that any consent that would otherwise be required to be obtained to give effect to this transfer can be taken to have been obtained. This provision is included as the transfers of easements covered by this Part to Gorodok do not have any impact on the intended purpose or method of use of the affected land.



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