

3. **THE TERM “INDUSTRY STANDARD” IS NOT RESTRICTED TO STANDARDS AND MINIMUM REQUIREMENTS SET OUT BY THE GOVERNMENT OR AUTHORITIES AND THAT GENERAL INDUSTRY PRACTICE MAY BE RELIED ON WHEN DETERMINING WHAT THE INDUSTRY STANDARD IS; AND**
4. **THE DEFINITION OF THE WORD “STANDARD” WILL BE CONSIDERED BY THE COURT IN THE CONTEXT IT IS BEING USED.**

SUMMARY OF GAS INDUSTRY (RESIDUAL PROVISIONS) (AMENDMENT) ACT 51/2002 (VIC)*

The purpose of the Act, which came into effect on 4 November 2002, is to amend the *Gas Industry (Residual Provisions) Act 1994 (Vic.)* (“**GIRP Act**”) to provide for the transfer of certain property, rights and liabilities from Gascor Pty Ltd (“**Gascor**”) to another state-owned entity.

Gascor acts as a gas wholesaler. It purchases gas from Esso/BHP-Billiton and on-sells it to private sector gas retailers Origin Energy (Vic.) Pty Ltd, AGL Victoria Pty Ltd and TXU Australia Pty Ltd. Until the onset of full retail contestability (“**FRC**”) on 1 October 2002, each of the retailers had an exclusive right in a geographical area to supply gas as an agent of Gascor to non-contestable customers. The retailers paid agency fees to Gascor in return. On commencement of FRC, the retailers’ obligation to pay agency fees to Gascor lapsed.

When the Bracks Government came to power in October 1999 the gas industry (apart from Gascor) had passed to private ownership. Pre-existing contractual arrangements established as part of the reform process provided the State of Victoria (the “**State**”) with options exercisable until 31 December 2002 to transfer one third of the shares in Gascor to each of the retailers.

Certain steps were required before the State would be in a position to exercise the options if it determined to do so. In particular, as a condition to the State exercising the options, the State had to warrant that if and when Gascor was transferred to the retailers it would have no contingent, accrued or prospective liabilities (apart from certain defined liabilities related to its respective contracts with Esso/BHP-Billiton and the retailers).

Gascor (together with 15 other State entities) is a party in the Longford class action. These proceedings arose over fire and explosions at the Esso/BHP-Billiton gas processing plant at Longford on 25 September 1998. The class action is a claim by gas users and stood-down workers for damages relating to the 10-day cessation of gas supplies, which followed the events at Longford.

The purpose of the Act is to transfer Gascor’s Longford class action interests, including any liability, to another State entity to ensure that the State could elect to exercise the options to transfer its shares in Gascor to the retailers without being in breach of warranties contained in the contract granting the options. Similarly it ensured preservation of the interests of the state with respect to the class action.

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On 17 December 2002 the Department of Treasury and Finance issued two notices fixing 27 December 2002 and 30 December 2002 as the relevant dates for the purposes of an allocation statement under section 155C of the GIRP Act relating to the allocation of property, rights and liabilities of Gascor to Gascor Holdings No 1 Pty Ltd and the State Electricity Commission of Victoria respectively.

Although the time for the State to exercise the option to transfer the Gascor shares to the retailers has now lapsed, the Government has not disclosed whether or not the State exercised its option to transfer the shares to the retailers. However, on the basis of the two notices issued by the Department of Treasury and Finance, it appears likely that an election to transfer the shares has been made.

MINERAL RESOURCES DEVELOPMENT REGULATIONS 2002*

The Mineral Resources Development Regulations 2002 commenced operation on 28 October 2002. Made under the *Mineral Resources Development Act 1990* (Vic), the new regulations revoke the following sets of regulations which were subject to a 10-year sunset period:

- Mineral Resources (Titles) Regulations 1991;
- Mineral Resources (Royalties) Regulations 1991;
- Mineral Resources (Infringements) Regulations 1991; and
- Mineral Resources (Disclosure of Interest) Regulations 1991.

The new regulations consolidate the old regulations and provide a one-stop-shop for the regulation of mining matters, except for health and safety matters which is now found in the Occupational Health and Safety (Mines) Regulations 2002.

While the new regulations are largely similar to those in place before, outlined below are a few of the significant differences.

Royalties

The regulations no longer provide a specific royalty rate for gypsum, but do set a default royalty rate for brown coal. The royalty rates are as follows:

- lignite (brown coal) – \$0.0239 (indexed) per gigajoule unit of coal produced;
- tailings disposed under Crown land – \$1.43 per cubic metre; and
- all other minerals (except gold) – 2.75% of the net market value.

Under the old regulations, royalties and royalty return statements were due quarterly. The new regulations require royalties to be paid and statements submitted within four weeks of 30 June each year.

Application information

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