

The defendants appealed this decision. Delhi cross-appealed.

The Full Court dismissed the appeal. His Honour Justice Besanko, dismissed Delhi's cross appeal as to estoppel and Operator's costs. The majority upheld the cross-appeal.

The Full Court found that:

(a) *Construction of the Downstream Agreement*

The indenture to the Act regulated the proportions in which the fixed components of the wharfage and the roads and water were to be paid. The Full Court rejected the defendant's submission that the Agreement only governed the proportion of the payment of those operating costs. The proper construction was that asserted by Delhi.

(b) *Estoppel*

If Delhi's construction was wrong and the Operator was right then, alternatively, two memoranda compiled by the Operator's employees in 1984 and 1986 which detailed the historical accounting procedure and adopted a mistaken construction, had been distributed to all parties and represented the common understanding of the parties at that time. As a consequence of that common understanding, the Operator was estopped from going back and adjusting the accounts in the way that it did. Delhi would not have proceeded in executing the Settlement Agreement if it was aware of the adjustments made by the Operator.

(d) *Operator's Costs*

The Operator was not entitled to debit its costs from the Unit Account as the defence of the proceedings was not a cost for which the Operator was entitled to be reimbursed under the relevant joint venture agreements.

TASMANIA

GAS LEGISLATION*

The Tasmanian gas pipeline legislation saga goes on, with further amendments to the *Gas Act* 2002 (Tas) and the *Gas Pipelines Act* 2000 (Tas) since last reporting. These amendments were achieved through the *Gas Legislation Amendment (Land Acquisition) Act* 2003 (Tas) which entered into force on Royal Assent on 18 June 2003 and the *Gas Infrastructure (Miscellaneous Amendments) Act* 2003 (Tas) (Royal Assent on 4 July 2003).

The *Gas Legislation Amendment (Land Acquisition) Act* provides for the compulsory acquisition of land by a gas entity for its own purposes and also for the purpose of installation and maintenance of telecommunications infrastructure (through the insertion of a new s 84A in the *Gas Act* and s 27A in the *Gas Pipelines Act*). The stated purpose of this amendment is "to provide a straightforward mechanism for the acquisition of private land, where necessary, to provide for the continued development of natural gas infrastructure in Tasmania".¹ The second reading speech notes that this amendment gives gas entities the same powers as electricity entities under s 51 of the *Electricity Supply Industry Act* 1995 (Tas). The reason for the provision relating to telecommunications infrastructure is to enable the necessary facilities for fibre optic cables, which are intended to be installed alongside the gas pipeline at some future date.

* Dianne Nicol.

¹ Second reading speech, House of Assembly *Hansard*, Wednesday 21 May 2003 - Part 2.

The *Gas Infrastructure (Miscellaneous Amendments) Act* effects a number of significant amendments to the *Gas Act*, principally with respect of licence conditions, gas codes and pipeline planning corridors. Amendments to the provisions in the *Gas Act* relating to gas codes were deemed necessary by the government because of difficulties encountered with the code-compliant tender process.² Although this process was ultimately successful, with Powerco Ltd from New Zealand winning the tender, it was deemed by the government that amendments were necessary to ensure that the retail sector is fully contestable. The pipeline planning corridor provisions deal with planning approvals for new developments and uses of land within the pipeline corridor. These provisions are essentially the same as those provided for in the *Gas Pipelines Act*, discussed previously.³

In addition, Gas Infrastructure (Planning Permit Exemption) Regulations were made on 14 July 2003. The Regulations set out prescribed criteria for carrying out certain works including gas connection and infrastructure work and gas distribution infrastructure work on roads and other land in historic or heritage areas, sensitive areas, areas containing threatened species, etc.

MINING LEGISLATION

The *Mineral Resources Development Amendment (New Landslip Zoning Arrangements) Act 2003* (Tas) amends the *Mineral Resources Development Act 1995* (Tas) and makes consequential amendments to other Acts. It entered into force on 4 June 2003. A new Part 9A is inserted into the *Mineral Resources Development Act* providing for declaration and registration of landslip areas and giving affected owners the opportunity to object.

VICTORIA

APPEAL FROM DETERMINATION OF THE NATIONAL ELECTRICITY TRIBUNAL*

MurrayLink Transmission Company Pty Ltd v NEMMCO ([2003] VSC 265)

Facts

This case concerned a judicial review of a determination made by National Electricity Market Management Co Ltd (“NEMMCO”) by MurrayLink Transmission Company Pty Ltd (“MurrayLink”) in relation to cl 5.6.6(c) of the National Electricity Code (“Code”).¹

The determination by NEMMCO the subject of the appeal was “that an interconnector proposed by the second respondent (TransGrid) and known as the SNI option (SNI) was justified”.²

Grounds of appeal

MurrayLink appealed on a number of different grounds. Broadly, these were that the Tribunal had erred in law:

1. in the way that it applied the “Regulatory Test” pursuant to clause 5.6.5(k)(2);
2. by treating the tests under clauses 5.6.5(k)(1) and 5.6.5(k)(2) as the same;
3. in the way that it applied the two tests under clauses 5.6.5(k)(1) and 5.6.5(k)(2);

² Second reading speech, House of Assembly *Hansard*, Thursday 29 May 2003 - Part 2.

³ D Nicol, “Recent Developments – Tasmania: Electricity Supply Industry Amendment Act 2003 ” (2003) 22 ARELJ 132 .

* James McLaren, Mallesons Stephen Jaques.

¹ *National Electricity (Victoria) Act 1997* (Vic); all clause references are to the provision of the Code.

² *MurrayLink Transmission Company Pty Ltd v NEMMCO* [2003] VSC 265, paragraph [1].