

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

Presented and read a first time, 19 August 1982

(Minister Assisting the Minister for Industry and Commerce)

A BILL

FOR

**An Act to amend the *Liquefied Petroleum Gas (Grants) Act*
1980**

BE IT ENACTED by the Queen, and the Senate and the House of Representatives of the Commonwealth of Australia, as follows:

Short title, &c.

5 **1. (1)** This Act may be cited as the *Liquefied Petroleum Gas (Grants) Amendment Act* 1982.

(2) The *Liquefied Petroleum Gas (Grants) Act* 1980¹ is in this Act referred to as the Principal Act.

Commencement

10 **2.** This Act shall come into operation on the day on which it receives the Royal Assent.

Interpretation

3. Section 3 of the Principal Act is amended—

(a) by omitting “Business and Consumer Affairs” from the definition of “officer” and substituting “Industry and Commerce”; and

5 “(3) A reference in this section to the use of gas by a corporation for industrial use shall be read as not including a reference to any gas sold to the corporation that is determined by the Minister, under the provision required to be included in a scheme by virtue of sub-section 6 (6A) or 7 (6A), to be deemed for the purposes of the scheme to have been sold otherwise than for eligible use.

“(4) For the purposes of this section, one tonne of eligible reticulation gas shall be taken to be that quantity of eligible reticulation gas (whether measured by volume or otherwise) that is capable of producing 50,000 megajoules of heat.

10 “(5) For the purposes of this section, the allowable quantity of gas, in relation to a corporation in relation to a consumption period, is—

(a) if the Minister does not make a determination under sub-section (7) in relation to the corporation in relation to that consumption period—

15 (i) in relation to the first consumption period—1,000 tonnes of gas; and

(ii) in relation to the second consumption period—500 tonnes of gas; and

20 (b) if the Minister makes a determination in relation to the corporation under sub-section (7) in relation to that consumption period—the quantity of gas set out in the determination in relation to that consumption period.

“(6) Where—

(a) a corporation used for industrial use during the period of 12 months that commenced on 1 October 1980 more than 1,000 tonnes of gas; or

25 (b) a corporation will, by reason of the implementation of a contract entered into by the corporation on or before 25 September 1981, being a contract relating to—

(i) the purchase of gas; or

30 (ii) the purchase, construction or modification of plant or the conversion of plant to the use of gas,

use for industrial use during the first consumption period a total quantity of gas that exceeds 1,000 tonnes or use for industrial use during the second consumption period a total quantity of gas that exceeds 500 tonnes,

35 the corporation may, before the expiration of 28 days after the commencement of this sub-section, give notice in writing to the Minister requesting the Minister to make a determination under sub-section (7) that the allowable quantity of gas in relation to the corporation in relation to the first consumption period or the second consumption period is a specified quantity of gas, being a quantity of gas that exceeds 1,000 tonnes or 500 tonnes, as the case may be.

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“(7) Where the Minister receives a request made by a corporation in accordance with sub-section (6)—

(a) if the Minister is satisfied that, having regard only to—

(i) the use of gas for industrial use by the corporation during the period referred to in paragraph (6) (a); and 5

(ii) if relevant, the likely effect of the implementation of a contract of a kind referred to in paragraph (6) (b) on the use of gas for industrial use by the corporation during the consumption period to which the request relates,

the corporation will use for industrial use during the first consumption period a total quantity of gas that exceeds 1,000 tonnes or will use for industrial use during the second consumption period a total quantity of gas that exceeds 500 tonnes, as the case may be—the Minister shall, before the relevant day, make a determination that a quantity of gas, being the quantity of gas that, in the opinion of the Minister, having regard only to the matters referred to in sub-paragraphs (i) and (ii), the corporation will use for industrial use during the first consumption period or the second consumption period, as the case may be, is the allowable quantity of gas in relation to the corporation in relation to that consumption period; and 10

(b) if the Minister is not so satisfied—the Minister shall refuse to make a determination under this sub-section in relation to the corporation in relation to the consumption period to which the request relates. 15

“(8) Where the Minister makes a determination under sub-section (7) in relation to a corporation or, after receiving a request from a corporation in accordance with sub-section (6), the Minister refuses to make a determination under sub-section (7) in relation to the corporation, the Minister shall, before the relevant day, give notice in writing to the corporation setting out the terms of the determination or stating that the Minister has refused to make a determination under sub-section (7) in relation to the corporation, as the case may be. 25

“(9) Where the total quantity of gas purchased by a corporation for industrial use during the period commencing on 1 October 1982 and ending on the relevant day, being gas in relation to which the corporation has received the benefit of a payment or payments under a scheme or schemes, is equal to, or exceeds, the allowable quantity of gas in relation to the corporation in relation to the first consumption period, the corporation is not entitled to receive the benefit of a payment or payments under a scheme or schemes in respect of any gas purchased by the corporation for industrial use after the relevant day and during that consumption period, and the corporation shall— 30

(a) before the expiration of 50 days after the date of commencement of this sub-section, give notice in writing to the Minister; and 35

(b) before purchasing after the relevant day and during that consumption period from a distributor of gas any gas for industrial use, give notice in writing to that distributor, 40

stating that the corporation is not entitled to receive the benefit of a payment or payments under a scheme or schemes in respect of any purchase of gas for industrial use by the corporation after the relevant day and during that consumption period.

5 Penalty: \$2,000.

“(10) Where—

- 10 (a) a corporation (other than a corporation to which sub-section (9) applies) proposes, after the relevant day and during a consumption period, to purchase for industrial use a quantity of gas (in this sub-section referred to as the ‘relevant quantity of gas’); and
- 15 (b) if the corporation purchased for industrial use during that consumption period the relevant quantity of gas and received, in respect of that purchase of gas, the benefit of a payment or payments under a scheme or schemes, the total quantity of gas purchased by the corporation for industrial use during that consumption period in respect of which the corporation had received the benefit of a payment or payments under a scheme or schemes would be equal to the allowable quantity of gas in relation to the corporation in relation to that consumption period,

20 the corporation is not entitled to receive the benefit of a payment or payments under a scheme or schemes in respect of any gas purchased by the corporation for industrial use during that consumption period after the purchase by the corporation of the relevant quantity of gas, and the corporation shall—

- 25 (c) before purchasing the relevant quantity of gas, give notice in writing to the Minister stating that the corporation is not entitled to receive the benefit of a payment or payments under a scheme or schemes in respect of any subsequent purchase of gas by the corporation for industrial use during that consumption period; and
- 30 (d) before purchasing from a distributor of gas any further gas for industrial use during that consumption period, give notice in writing to the distributor stating that the corporation is not entitled to receive the benefit of a payment or payments under a scheme or schemes in respect of that gas.

Penalty: \$2,000.

“(11) Where—

- 35 (a) a corporation (other than a corporation to which sub-section (9) or (10) applies) proposes, after the relevant day and during a consumption period, to purchase from a distributor of gas for industrial use a quantity of gas (in this sub-section referred to as the ‘relevant quantity of gas’); and
- 40 (b) if the corporation purchased for industrial use during that consumption period the relevant quantity of gas and received, in respect of that purchase of gas, the benefit of a payment or payments under a scheme or schemes, the total quantity of gas purchased by the corporation for industrial use during that consumption period in respect of which the corporation had received the benefit of a payment or payments under a
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scheme or schemes would exceed the allowable quantity of gas in relation to the corporation in relation to that consumption period, the corporation is not entitled to receive the benefit of a payment or payments under a scheme or schemes in respect of so much of the relevant quantity of gas as is equal to the excess referred to in paragraph (b) or in respect of any further quantity of gas purchased by the corporation for industrial use during that consumption period, and the corporation shall—

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- (c) before purchasing for industrial use from the distributor the relevant quantity of gas, give notice in writing to the Minister and to the distributor stating that the corporation is not entitled to receive the benefit of a payment or payments under a scheme or schemes during that consumption period in respect of so much of the relevant quantity of gas as is equal to the excess referred to in paragraph (b); and
- (d) before purchasing from a distributor of gas for industrial use any further quantity of gas during that consumption period, give notice in writing to that distributor stating that the corporation is not entitled to receive the benefit of a payment or payments under a scheme or schemes in respect of that gas.

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Penalty: \$2,000.

“(12) A corporation shall not knowingly obtain or attempt to obtain the benefit of a payment or payments under a scheme or schemes to which it is not entitled.

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Penalty: \$50,000.

“(13) Where a corporation obtains the benefit of a payment or payments under a scheme or schemes to which the corporation is not entitled, the amount of that payment or the sum of the amounts of those payments is a debt due by the corporation to the Commonwealth and may be recovered by the Commonwealth from the corporation in a court of competent jurisdiction.

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“(14) A corporation that receives the benefit of a payment or payments under a scheme or schemes in respect of gas purchased by the corporation for industrial use after the commencement of this sub-section shall preserve the accounts, records, documents and papers of the corporation relating to the purchase and use of that gas until the expiration of 2 years after the day on which that gas was purchased by the corporation.

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Penalty: \$2,000.

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“(15) A corporation that has received the benefit of a payment or payments under a scheme or schemes in respect of gas purchased by the corporation for industrial use at any time during a consumption period shall permit an officer, at all reasonable times, to have, for the purposes of this section, full and free access to all accounts, records, documents and papers of the corporation relating directly or indirectly to the purchase or use for eligible use (whether before or after the commencement of this sub-section) of gas by the corporation and shall permit an officer to make copies of, or take extracts from, any such accounts, records, documents and papers.

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Penalty: \$2,000.

5 “(16) An officer may require a corporation of the kind referred to in sub-section (15) to furnish him with such information in the possession of the corporation, or to which the corporation has access, being information relating directly or indirectly to the purchase or use (whether before or after commencement of this sub-section) of gas by the corporation, as the officer specifies, and the corporation shall comply with the requirement.

“(17) A corporation that contravenes sub-section (16) is guilty of an offence punishable, on conviction, by a fine not exceeding \$2,000.

10 “(18) A corporation shall not, in making a request to the Minister under sub-section (6) or in supplying information required by an officer under sub-section (16), make a statement or furnish information that is, to the knowledge of the corporation, false or misleading in a material particular.

Penalty: \$2,000.

15 “(19) In proceedings for an offence against sub-section (12) or (18) in respect of conduct engaged in by a corporation, knowledge on the part of the corporation may be established by showing that a servant or agent of the corporation who engaged in that conduct had that knowledge.

20 “(20) For the purposes of sub-sections (12) and (18), any conduct engaged in on behalf of a corporation by an agent or servant of the corporation shall be deemed to have been engaged in by the corporation.

“(21) An offence against sub-section (12) is an indictable offence.

25 “(22) Notwithstanding that an offence against sub-section (12) is an indictable offence, a court of summary jurisdiction may hear and determine proceedings in respect of such an offence if the court is satisfied that it is proper to do so and the defendant and the prosecutor consent.

30 “(23) Where, in accordance with sub-section (22), a court of summary jurisdiction convicts a person of an offence against sub-section (12), the penalty that the court may impose in respect of the offence is a fine not exceeding \$2,000.

“(24) The Minister may, either generally or as otherwise provided by the instrument of delegation, by writing signed by him, delegate to an officer all or any of his powers or functions under this section, other than this power of delegation.

35 “(25) A power or function so delegated, when exercised by the delegate, shall, for the purposes of this section, be deemed to have been exercised or performed by the Minister.

“(26) A delegation under sub-section (24) does not prevent the exercise of a power or the performance of a function by the Minister.”

Applications for review

6. Section 15 of the Principal Act is amended—

(a) by inserting after paragraph (ga) the following paragraph:

“(gb) a decision of the Minister or his delegate for the purposes of the provision required by paragraph 6 (6A) (b);”;

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(b) by omitting from the end of paragraph (m) “or”; and

(c) by adding at the end thereof the following paragraphs:

“(o) a decision of the Minister or his delegate for the purposes of the provision required by paragraph 7 (6A) (b);

(p) a determination of the Minister or of his delegate under sub-section 7A (7); or

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(q) a refusal of the Minister or of his delgate to make a determination under sub-section 7A (7).”.

7. After section 15 of the Principal Act the following section is inserted:

Statements to accompany notice of decisions

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“15A. (1) Where the Minister, a delegate of the Minister or an approved person makes a decision of a kind referred to in section 15 and gives to the person or persons whose interests are affected by the decision notice in writing of the making of the decision, that notice shall include a statement to the effect that, subject to the *Administrative Appeals Tribunal Act 1975*, application may be made to the Administrative Appeals Tribunal for review of the decision to which the notice relates by or on behalf of the person or persons whose interests are affected by the decision.

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“(2) Any failure to comply with the requirements of sub-section (1) in relation to a decision does not affect the validity of the decision.”.

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Effect of undertakings and agreements

8. Any agreement entered into, or undertaking given by, a distributor of liquefied petroleum gas or eligible reticulation gas (whether before or after the commencement of this Act) pursuant to paragraph 6 (2) (a) or 7 (2) (a) of the *Liquefied Petroleum Gas (Grants) Act 1980* shall not be taken to require the distributor to sell gas to a purchaser who is not, by virtue of the operation of the section 7A that is inserted in the Principal Act by this Act, entitled to receive the benefit of a payment under a scheme in respect of that gas at a price that gives to the purchaser the benefit of any payment under a scheme.

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NOTE

1. No. 37, 1980, as amended. For previous amendments, see No. 173, 1980.