



ANNO QUADRAGESIMO

ELIZABETHAE II REGINAE

A.D. 1991

No. 15 of 1991

An Act to amend the Cooper Basin (Ratification) Act 1975.

[Assented to 11 April 1991]

The Parliament of South Australia enacts as follows:

Short title

1. (1) This Act may be cited as the *Cooper Basin (Ratification) (Royalty) Amendment Act 1991*.

(2) The *Cooper Basin (Ratification) Act 1975* is referred to in this Act as “the principal Act”.

Commencement

2. This Act will be taken to have come into operation on 1 January 1991.

Contiguous Areas, etc.

3. Section 10 of the principal Act is amended by striking out subsection (1) and substituting the following subsection:

(1) Section 36 (1a) of the *Petroleum Act 1940* applies and has effect to and in relation to the areas the subject of any licence under that Act the grant of which is authorized under this Act, as if those areas were contiguous areas.

The Indenture

4. (1) The indenture set out in the Schedule to the principal Act (“the Indenture”) is amended in the manner set out in the Schedule to this Act and the amendments are, by force of this Act, ratified.

(2) The amendments to the Indenture will be taken to have had effect, and to have been ratified, on and from 1 January 1991.

SCHEDULE

Amendments to the Cooper Basin Indenture

1. Clause 6 (5)

Delete the words "Sections 35 (3) and" wherever they appear and replace with the word "Section".

2. Clause 12

Delete the existing clause 12 and replace with the following:

(1) *Payment of Royalty*

During the period from 1st January 1991 to 31st December 2000 (both inclusive) ("the Royalty Term") the Producers shall pay royalty calculated in accordance with this Indenture in respect of petroleum recovered from any area comprised in a Petroleum Production Licence granted to the Producers or to some one or more of them within the Subject Area or the areas referred to in Clause 6 (10) of this Indenture and:

(a) supplied to the Pipelines Authority of South Australia (PASA) under the terms of the Natural Gas Interim Supply Act 1985; and

(b) sold to PASA or any other purchaser under the terms of any agreement for the supply of petroleum whether such agreement is signed before or after the date of commencement of this Clause

("the petroleum").

(2) *Calculation of Royalty*

The Producers shall pay royalty at a rate of ten (10) percentum of the value at the wellhead of the petroleum, which for the purposes of this Indenture, shall be an amount calculated by taking the gross sales value of the petroleum as defined in sub-clause (3) (a) (i) and subtracting therefrom the following sums:

(a) a sum calculated by writing off on a straight line basis and with no interest component, over a period of ten (10) years commencing from 1st January 1991, the sum of EIGHT HUNDRED MILLION DOLLARS (\$800,000,000.00) being the deemed capital value of existing plant of the Producers or some one or more of them;

(b) a sum calculated by writing off on a straight line basis together with interest on the written down value at the rate provided by sub-clause (3) (c) of this clause, over a period of ten (10) years commencing from the month the expense was incurred (or such lesser period as may be agreed between the Producers and the Minister as being the life of the field) the actual capital expenditure incurred after 1st January 1991 by the Producers or some one or more of them in respect of all plant used for the purposes of treating, processing or refining of the petroleum prior to delivery (but not upstream of the wellhead) or in conveying the petroleum to the point of delivery to the purchaser PROVIDED HOWEVER that if any item of such plant is sold prior to being fully depreciated, the amount obtained upon such sale shall be deducted from the written down value of such item for the purposes of calculating the deduction, but not so as to reduce the written down value below zero;

(c) a sum, calculated on a basis to be agreed between the Producers and the Minister, or if agreement is not reached within 90 days of the commencement of this Clause, a sum calculated on a basis determined by the Minister, being expenditure actually incurred by the Producers or some one or more of them in respect of persons not employed on site in the Subject Area or the areas referred to in Clause 6 (10) of this Indenture but whose employment functions directly relate to treating, processing or refining of the petroleum prior to delivery (but not upstream of the wellhead) or in conveying the petroleum to the point of delivery to the purchaser;

(d) a sum being expenditure (other than expenditure upstream of the wellhead) actually incurred by the Producers or some one or more of them in respect of operating costs related to treating, processing or refining of the petroleum prior to delivery or in conveying the petroleum to the point of delivery to the purchaser, including but not limited to the amount of any licence fees payable in respect of any pipeline licence, all wharfage dues and Commonwealth petroleum taxes PROVIDED HOWEVER that:

(i) the amount of such deduction will be reduced by the amount obtained upon the sale of any item of plant which has not been depreciated or which has been fully depreciated, but not so as to reduce the deduction below zero,

(ii) if any such expenditure is incurred pursuant to any agreement which is not in the Minister's opinion bona fide or arms length, such expenditure (or part thereof) may not be deducted except with the Minister's prior written approval, and

(iii) any expenditure allowed as a deduction under this sub-clause shall not include any expenditure provided for in sub-clause 2 (b) or 2 (c) or 2 (e) of this Clause;

(e) a sum being expenditure (other than expenditure upstream of the wellhead) actually incurred by the Producers or some one or more of them pursuant to a bona fide arms length agreement to lease any plant used for the purposes of treating, processing or refining of the petroleum prior to delivery or in conveying the petroleum to the point of delivery to the purchaser PROVIDED HOWEVER THAT:

(i) any such expenditure in any one calendar year which is in excess of:

(A) in the calendar year 1991—the sum of \$4 million; or

(B) in all subsequent calendar years, the sum of \$4 million increased by the same percentage as the percentage increase in the Consumer Price Index (All Groups) for the City of Adelaide ("CPI") from the CPI in the calendar year 1991 to the CPI in the relevant year

shall not be deductible without the written approval of the Minister;

(ii) any expenditure (or part thereof) incurred under an agreement which in the Minister's opinion is not bona fide or arms length may be deducted with the Minister's written approval; and

(f) a sum being the actual expenditure (other than expenditure upstream of the wellhead) incurred by the Producers or some one or more of them in rehabilitating the ground surface and site of plant and the actual expenditure incurred in dismantling removing or abandoning of such plant less any salvage obtained thereon where such plant is used for the purposes of treating processing or refining of the petroleum prior to delivery or in conveying the petroleum to the point of delivery to the purchaser and the actual expenditure incurred in rehabilitating the ground surface and site of a well of the type described in sub-clause (3) (b) and the actual expenditure incurred in abandoning such well but not including any costs incurred as a result of the loss of control of any well.

(3) *Further provisions regarding calculation of Royalty*

(a) For the purposes of sub-clause (2):

(i) in each month the gross sales value of the petroleum means:

(A) the value of the actual sales in respect of the petroleum described in sub-clause (1) (a) in that month; plus

(B) the value of the actual sales in respect of the petroleum described in sub-clause (1) (b) in that month PROVIDED HOWEVER that if any petroleum is not in the Minister's opinion supplied to a bona fide arms length purchaser and in the Minister's opinion not sold for full market value, the gross sales value of such petroleum shall be the amount which would have been received in respect of such petroleum from a bona fide arms length purchaser for full market value;

(ii) the term "plant" includes but is not limited to:

(A) any machinery, equipment, vehicle, implement, tool, article, vessel, pit, building, structure, improvement or other such property used in, or in connection with, treating processing or refining of the petroleum prior to the delivery or in conveying the petroleum to the point of delivery to the purchaser; or

(B) any pipeline;

and

(iii) "wellhead" means the casing head and includes any casing hanger or spool, or tubing hanger, and any flow control equipment up to and including the wing valves.

(b) *Non Producing Wells*

The capital expenditure referred to in sub-clause (2) (b) may include the actual capital expenditure incurred by the Producers or some one or more of them in respect of wells used solely for the purpose of assisting or enhancing the recovery of the petroleum from other wells or for the purposes of storing the petroleum or for the recovery or disposal of water used in connection with treating processing or refining of the petroleum prior to delivery or for any similar purpose other than the production of the petroleum and may also include the actual capital expenditure incurred by the Producers or some one or more of them in converting a well used for the production of the petroleum to a well used for such other purposes.

(c) *Interest Rate*

For the purposes of sub-clause (2) (b) the interest rate shall be one half of the long term Australian Government Bond Rate for bonds of a 10 year term as published at the end of the month in which the capital expenditure was made. If no such rate is in existence or published at the end of such period then, unless the parties otherwise agree, the interest rate for the purposes of sub-clause (2) (b) shall be one half of the average of the long term Australian Government Bond Rate for bonds of a 10 year term prevailing during the period of 5 years preceding the date on which such rate ceased to exist or be published.

(d) *Apportionment of Expenses*

Where an item of plant is used partly for the purposes of treating, processing or refining of petroleum prior to delivery or in conveying petroleum to the point of delivery to the purchaser, and partly for some other purpose, the amount of the deduction (whether for capital or operating expenditure) which shall be allowed shall be a proportion only of the actual capital or operating expenditure. The apportionment of the actual expenditure shall be made upon the basis agreed between the Producers and the Minister or, in the event that agreement is not reached within 90 days of the commencement of discussions entered into with a view to reaching such agreement, upon the basis determined by the Minister.

(e) *Sale of Plant*

Notwithstanding the provisions of sub-clause (2), if an item of plant is sold by a Producer ("the first Producer") to another Producer, or to a company that becomes a successor or assign of the first Producer under this Indenture ("the second Producer"), the second Producer may only depreciate the plant to the extent to which the first Producer was, immediately before the time of sale, entitled to depreciate the plant under this Indenture.

(f) *Take or Pay*

(i) For the purposes of this clause and of calculating the gross sales value of the petroleum, where the Producers or any one or more of them enter into an agreement commonly known as a take or pay agreement, any payment received by the Producers or any one or more of them in respect of petroleum which has been paid for but not been taken shall be treated as part

of the gross sales value of the petroleum at the time of receipt of payment by such Producer or Producers and not at any other time.

- (ii) The Producers will, on or before 15th June 1991, pay to the Minister the sum of ONE MILLION ONE HUNDRED AND FIFTY FOUR THOUSAND SEVEN HUNDRED AND EIGHTY SIX DOLLARS (\$1,154,786.00) being the royalty payable on petroleum paid for but not taken under any such take or pay arrangements up to and including 31st December 1990.

(g) Tolling

- (i) If the Producers or any one or more of them receive any revenue from the use of any plant downstream of the wellhead used for treating processing or refining petroleum sourced from anywhere within the area from time to time comprised in Petroleum Exploration Licences 5 and 6 or any Petroleum Production Licence issued from an area which was comprised in Petroleum Exploration Licences 5 and 6 immediately prior to the time such Petroleum Production Licence was issued, or in conveying such petroleum to the point of delivery to the purchaser (such plant to include but not be limited to part or all of each of the plant at Moomba, South Australia, the plant at Port Bonython in the said State or the pipeline the subject of Pipeline Licence 2) such revenue shall be deemed to be part of the gross sales value of the petroleum to the intent that royalty shall be payable thereon.
- (ii) Any sums, being sums deemed under sub-clause (3) (g) (i) to be part of the gross sales value of the petroleum, paid by the Producers or any one or more of them in respect of the use of such plant for treating processing or refining such petroleum or in conveying such petroleum to the point of delivery to the purchaser shall be deemed to be an expense under sub-clause (2) (d).
- (iii) If any such plant is used for treating processing or refining of petroleum sourced from outside of the areas referred to in sub-clause (3) (g) (i) or in conveying such petroleum to the point of delivery to the purchaser any amounts which may be claimed as deductions under this clause (whether such deductions be by way of operating expenditure or capital expenditure) in respect of such plant shall be reduced by the proportion which would be obtained by the method of apportioning costs used by the Producers to ascertain the tolling fee, or on such other basis as the Minister approves, but any revenue received by the Producers or any one or more of them for the use of such plant for the treating processing or refining of such petroleum prior to delivery or in conveying the petroleum to the point of delivery to the purchaser shall not be deemed to be part of the gross sales value of the petroleum.

(h) Licence Fees

Any fees paid by the Producers or any one or more of them in respect of any Petroleum Production Licences granted within the Subject Area or the areas referred to in Clause 6 (10) of this Indenture may be set off against the amount of royalty payable under this Indenture.

(4) Royalty Returns

- (a) Not later than thirty (30) days after the conclusion of each calendar month during the Royalty Term, the party appointed from time to time as Operator under the Unit Agreement ("the Operator") will calculate and notify to the Minister the royalty, calculated by taking the gross sales value of the petroleum sold in that month, and deducting therefrom the estimated monthly expenditure described in sub-clause (4) (c), payable by each Producer. The Operator shall with each such notification provide the Minister with a statement, in a form approved by the Minister, advising of the quantity of the petroleum sold and the amount realised upon such sale during the last preceding month, together with such other information as the Minister may require.
- (b) Each Producer shall not later than thirty (30) days after the conclusion of each calendar month during the Royalty Term pay to the Minister the amount of royalty specified in the notice referred to in sub-clause (4) (a) as payable by that Producer.
- (c) On or before each 15th April (in respect of the next succeeding six (6) month period commencing 1st July) and on or before each 15th October (in respect of the next succeeding six (6) month period commencing 1st January) during the Royalty Term, the Operator shall bona fide estimate the gross sales value of the petroleum, the allowable deductions and hence calculate the estimated royalty payable for the next succeeding six (6) month period and shall provide the Minister with such estimates, together with the apportionment thereof on a monthly basis. The Operator shall provide such estimate in respect of the period commencing 1st January 1991 and concluding 30th June 1991, within 30 days of the enactment of the Cooper Basin (Ratification) (Royalty) Amendment Act 1991.
- (d) Not later than thirty (30) days after the completion of each twelve month period during the Royalty Term concluding on each 30th June the Operator shall reconcile the monthly sales and estimated expenditure with the actual sales and expenditure and reconcile all calculations of royalties and shall provide the Minister within the said period of 30 days with copies of such reconciliations, together with a notice advising the Minister of any additional royalty calculated in accordance with the reconciliations as payable by each Producer. If any such reconciliation shows that the total of the amounts of royalty paid during the last preceding 12 months was in excess of the amount of royalty which should have been paid for that period, the difference shall, subject to this sub-clause, be set off against royalty payable in the next succeeding months. The Operator shall provide such reconciliation in respect of the period commencing 1st January 1991 and concluding 30th June 1991 on or before 30th July 1991.
- (e) Each Producer shall not later than thirty (30) days after the completion of each twelve month period during the Royalty Term concluding on each 30th June pay to the Minister the additional royalty calculated in accordance with the reconciliation referred to in sub-clause 4 (d) as payable by that Producer.

- (f) The Minister shall not be concerned to inquire that the royalty has been correctly apportioned as between each of the Producers so long as the aggregate of the royalty so apportioned equals the total amount of royalty payable in accordance with this Clause. The Producers may, however, dispute inter se the correctness of the apportionment of royalty.
 - (g) Provided that royalty has been correctly calculated, each Producer shall only be liable to pay the amount of royalty specified in each royalty return as payable by that Producer. Nothing in this Clause shall confer joint or joint and several liability on the Producers for the payment of royalty.
 - (h) The Producers shall at their cost cause the royalty calculation reconciliations submitted by the Operator to be audited by the auditor appointed by the Operator to audit its own accounts (provided that such auditor must be a duly registered auditor in Australia) and the Operator shall forward a copy of the auditor's report in respect of a particular reconciliation within 3 months of the receipt of such reconciliation by the Minister, such report to be accompanied by a certificate by the auditor that the reconciliation is in accordance with the royalty provisions of this Indenture.
 - (i) If the Minister considers that any matter has been incorrectly calculated in any royalty return, the Minister may recalculate such return and by notice in writing to the Operator within 6 calendar months of the receipt by the Minister of the audit of the relevant royalty return require the Producers to pay within 30 days of the date of such notice the additional royalty calculated by the Minister as payable and in any proceedings before a Court for the review of such determination, the Minister's recalculation shall be deemed to be correct unless the contrary is proved.
 - (j) Either the Producers or the Minister may, notwithstanding the audit of a royalty return, within a period of 5 years of the Minister's receipt of that return, serve notice on the other party seeking to correct an inaccuracy in that return. If the notice is served by the Producers, the Minister may within 90 days of the receipt of the Producers' notice make a determination as to the correctness of the Producers' notice.
 - (k) The Producers or any one of them shall at the request of the Minister or of any person duly authorised in writing by the Minister produce to the Minister or such authorised person such books, accounts and other records (including but not limited to computer records) in the possession or power of that Producer relating to the petroleum and the royalty payable thereon and shall permit the Minister or such authorised person to inspect and make copies of such books, accounts and records.
 - (l) The Minister may require the Operator to prepare and provide to the Minister forecasts of royalty for such periods and to be provided at such times as the Minister may reasonably specify.
 - (m) If the Producers fail to pay any payment of royalty within the time provided by this sub-clause, the Producers shall pay interest on the amount of royalty which should have been paid, calculated on a daily basis from the date such payment should have been made to the date of actual payment, at a rate being the sum of 2% per annum and the long term Australian Government Bond Rate for bonds of a 10 year term as published at the end of the month the payment should have been made. If the long term Australian Government Bond Rate for bonds of a 10 year term ceases to exist or be published then the rate of interest shall be the sum of 2% per annum and the average of the long term Australian Government Bond Rate for bonds of a 10 year term prevailing during the period of 5 years preceding the date on which such rate ceased to exist or be published.
- (5) *General*
- (a) The payment of royalty pursuant to this Indenture shall during the Royalty Term be in substitution for and not in addition to any royalty which would otherwise have been payable under the Petroleum Act, 1940 in respect of the petroleum.
 - (b) On and from the 1st day of January 2001 the Producers shall pay royalty in accordance with the provisions of the Petroleum Act, 1940 or any statute repealing, replacing, amending or consolidating that Act.
 - (c) Notwithstanding anything to the contrary contained in this Indenture no royalty, tax, impost or levy of whatsoever nature or kind other than bona fide charges for services provided by the State shall be payable by the Producers upon any petroleum produced from a State other than South Australia.
 - (d) The Minister may delegate any of his powers contained in this Clause 12; however such delegation shall not derogate from the Minister's ability to exercise such power personally.
 - (e) In making any determination under this Clause, the Minister must take into consideration all relevant factors and make the determination on reasonable grounds.
 - (f) If the Producers consider that the Minister has made a determination otherwise than on the basis set out in sub-clause (5) (e), the Producers may within 90 days of service of the Notice of Determination make application to a single judge of the Supreme Court of South Australia for the review of such determination. The parties agree to be bound by and implement the decision of the court in respect of the determination which has been received.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

ROMA MITCHELL Governor