

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

(As read a first time)

PIPELINE AUTHORITY (CHARGES) BILL 1990

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1990

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA
HOUSE OF REPRESENTATIVES

Presented and read a first time, 8 November 1990

(Minister for Finance)

A BILL

FOR

**An Act relating to the charges for certain services
provided by the Pipeline Authority, and for related
purposes**

The Parliament of Australia enacts:

PART 1—PRELIMINARY

Short title

5 1. This Act may be cited as the *Pipeline Authority (Charges) Act 1990*.

Commencement

2. This Act commences on the day on which it receives the Royal Assent.

Objects

10 3. The principal objects of this Act are:
 (a) to establish as the financial goal of the Authority's operations

- the achievement of a fair and reasonable rate of return on the total current worth of the Authority’s assets; and
- (b) gradually to increase the charges for the carriage of natural gas from Moomba in South Australia to New South Wales to levels at which sufficient revenue is generated to enable the Authority to achieve that goal; and 5
- (c) to remove the inequity and economic inefficiencies that arise from the implicit subsidies to consumers of natural gas in New South Wales as a result of the charges for the carriage of natural gas from Moomba through the Authority’s pipelines being set at levels that do not enable the Authority to achieve the rate of return mentioned in paragraph (a); and 10
- (d) to ensure that persons for whom the Authority carries natural gas from Moomba through its pipelines, and corporations and certain other persons engaged in the distribution of such gas, are able to pass on to their customers, in such manner as they think fit, increases in costs resulting from the operation of Part 2; and 15
- (e) to establish procedures for the award of compensation to certain persons who suffer loss of profit as a result of the operation of Part 2. 20

Interpretation

4. (1) In this Act, unless the contrary intention appears:

“**Authority**” means the Pipeline Authority established by the *Pipeline Authority Act 1973*; 25

“**Canberra pipeline**” means the Authority’s pipeline from a point on the Moomba-Sydney pipeline near Dalton in New South Wales to the delivery point in the Australian Capital Territory;

“**contract**” includes an agreement under seal;

“**corporation**” means a corporation within the meaning of paragraph 51 (xx) of the Constitution; 30

“**current worth**”:

- (a) in relation to an asset consisting of a pipeline, means the estimated replacement cost of the asset adjusted to take account of the unexpired portion of the asset’s effective service life; and 35
- (b) in any other case, means the current market value of the asset;

“**delivery point**” means any point on a pipeline where natural gas is delivered by the Authority to a person;

“**Lithgow pipeline**” means the Authority’s pipeline originating at a point on the Moomba-Sydney pipeline near Young in New South Wales, and includes the delivery points, and pipelines leading from the first-mentioned pipeline to the delivery points, at or near the following places in that State: 40

- (a) Orange;
- (b) Bathurst;
- (c) Blayney;
- (d) Lithgow;

5 “Moomba” means Moomba in South Australia;

“Moomba-Sydney pipeline” means the Authority’s pipeline from Moomba to the delivery point at Wilton in New South Wales, and includes the delivery points, and pipelines leading from the first-mentioned pipeline to the delivery points, at or near the following

10 places in that State:

- (a) Bowral;
- (b) Goulburn;
- (c) Marulan;
- (d) Moss Vale;
- (e) Young;

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“Moomba-Sydney pipeline system” means the pipeline system consisting of the following pipelines:

- (a) the Moomba-Sydney pipeline;
- (b) the Lithgow pipeline;
- (c) the Wagga pipeline;

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“natural gas” means any gas consisting mainly of methane;

“Oberon pipeline” means the Authority’s pipeline from a point on the Lithgow pipeline near Brewongle in New South Wales to the delivery point at Oberon in that State;

25 “pipeline” means a pipeline for the carriage of natural gas, together with any associated equipment or structures;

“State” includes the Australian Capital Territory;

“Wagga pipeline” means the Authority’s pipeline originating at a point on the Moomba-Sydney pipeline near Young in New South Wales, and includes the delivery points, and pipelines leading from the first-mentioned pipeline to the delivery points, at or near the following

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- (a) Cootamundra;
- (b) Junee;
- (c) Wagga Wagga.

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PART 2—ADJUSTMENT OF CARRIAGE RATES

Division 1—Moomba-Sydney pipeline system

Interpretation

40 5. For the purposes of this Division, gas passing from the Moomba-Sydney pipeline to the Oberon pipeline is to be taken to be delivered, at the point at which the gas passes into the Oberon pipeline, to the

person for whom the gas is then to be carried through the Oberon pipeline for delivery at Oberon.

Carriage of natural gas through the Moomba-Sydney pipeline system

6. (1) This section applies to natural gas that is carried, or is to be carried, from Moomba by means of the Moomba-Sydney pipeline system and, on or after 1 January 1991, is delivered, or is to be delivered, by the Authority in New South Wales under a contract between the Authority and a person. 5

(2) Where a person is required by the terms of a contract to pay for the carriage of natural gas: 10

(a) at a rate per gigajoule that is less than the adjusted rate; or

(b) at a rate that, when expressed as a rate per gigajoule, is less than the adjusted rate;

the contract has effect as if it provided for the adjusted rate.

(3) For natural gas delivered, or to be delivered, by the Authority in 1991, the adjusted rate is \$1.00 per gigajoule. 15

(4) For natural gas delivered, or to be delivered, by the Authority in 1992, the adjusted rate is \$1.25 per gigajoule.

(5) For natural gas delivered, or to be delivered, by the Authority in a calendar year after 1992, the adjusted rate is the rate per gigajoule fixed by the regulations. 20

(6) A reference to a contract in this section is a reference to a contract made before or after the commencement of this Act.

Division 2—Oberon pipeline

Carriage of natural gas through the Oberon pipeline

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7. (1) This section applies to natural gas that is carried, or is to be carried, from Moomba by means of the Moomba-Sydney pipeline system and the Oberon pipeline and, on or after 1 January 1991, is delivered, or is to be delivered, by the Authority at Oberon in New South Wales under a contract between the Authority and a person. 30

(2) Where:

(a) a person is required by the terms of a contract to pay the Authority an amount for the carriage of natural gas through the Oberon pipeline in a particular calendar month; and

(b) the amount is less than the adjusted amount; 35

the contract has effect as if it provided for the adjusted amount.

(3) The adjusted amount for a particular calendar month is the amount:

(a) for the time being set by a memorandum signed by the Authority and the person; or 40

(b) if there is no such memorandum in force, the amount fixed by the regulations.

(4) A memorandum is not effective for the purpose of paragraph (3) (a) unless:

- 5 (a) the Minister has approved the memorandum; and
(b) the instrument of approval has been published in the *Gazette*.

(5) The Minister must not approve a memorandum unless:

- 10 (a) the memorandum has been given to the Minister no later than 15 December in the calendar year before the calendar year that includes the month to which the memorandum relates; and
(b) the Minister is satisfied that the amount specified in the memorandum is reasonable, having regard to the need for the Authority to achieve the goal set out in paragraph 3 (a).

15 (6) A reference to a contract in this section is a reference to a contract made before or after the commencement of this Act.

Division 3—Canberra pipeline

Sale of natural gas carried through the Canberra pipeline

20 8. (1) This section applies to natural gas that is carried, or is to be carried, from Moomba by means of the Moomba-Sydney pipeline system and the Canberra pipeline and, on or after 1 January 1991, is delivered, or is to be delivered, by the Authority in the Australian Capital Territory under a contract between the Authority and a person.

25 (2) If the price per gigajoule at which a person is required by the terms of a contract to pay the Authority for the purchase of natural gas delivered, or to be delivered, in the Australian Capital Territory during a calendar year is less than the adjusted price for that calendar year, the contract has effect as if it provided for the adjusted price.

(3) The adjusted price per gigajoule for a particular calendar year is the price per gigajoule:

- 30 (a) for the time being set by a memorandum signed by the Authority and the person; or
(b) if there is no such memorandum in effect, the price fixed by the regulations.

35 (4) A memorandum is not effective for the purposes of paragraph (3) (a) unless:

- (a) the Minister has approved the memorandum; and
(b) the instrument of approval has been published in the *Gazette*.
(5) The Minister must not approve a memorandum unless:
40 (a) the memorandum has been given to the Minister no later than 15 December in the calendar year before the calendar year to which the memorandum relates; and

(b) the Minister is satisfied that the price specified in the memorandum is reasonable, having regard to the need for the Authority to achieve the goal set out in paragraph 3 (a).

(6) A reference to a contract in this section is a reference to a contract made before or after the commencement of this Act.

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Division 4—Adjustment of contracts

Application of Division

9. This Division applies to a contract, other than a contract referred to in Division 3, that is within any one or more of the following paragraphs:

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- (a) a contract under which the property in Moomba gas first passes to a purchaser in New South Wales;
- (b) a contract for the sale of Moomba gas delivered, or to be delivered, in the Australian Capital Territory;
- (c) a contract for the sale of Moomba gas by a corporation;
- (d) a contract for the sale of Moomba gas to a corporation.

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Interpretation

10. In this Division:

“Moomba gas” means natural gas that at any time has been carried, or is to be carried, from Moomba through the Authority’s pipelines to New South Wales or the Australian Capital Territory.

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Recovery of additional costs occasioned by this Act

11. (1) Nothing in a State law relating to the price at which natural gas may be sold renders unlawful:

- (a) the sale of Moomba gas at a price fixed by or under a contract to which this Division applies; or
- (b) anything done in connection with the making or performance of such a contract.

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(2) The reference in subsection (1) to a State law relating to the price at which natural gas may be sold is a reference to a provision of a State law that fixes, or provides for the fixing of, the price or maximum price at which natural gas may be sold.

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(3) Where a State law includes both a provision of the kind referred to in subsection (2) and other provisions, nothing in subsection (1) is intended to affect the operation of those other provisions.

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(4) Subsection (1) does not apply in relation to a State law declared by Proclamation to be a State law that is excluded from the operation of that subsection.

(5) In this section:

“State law” means:

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- (a) a State Act; or
- (b) an instrument made or issued under a State Act.

Provision for adjustment of fixed-price contracts

12. (1) In this section:

- 5 “fixed-price contract” means a contract to which this Division applies:
- (a) that was made before the commencement of this Act; and
 - (b) that does not permit adjustment of the sale price payable under the contract to take account of:
 - 10 (i) increased carriage costs incurred by the seller; or
 - (ii) an increase in the purchase price payable by the seller; as a result of the operation of this Part or that permits such adjustment but limits the extent of the adjustment.

(2) Where, as a result of the operation of this Part, the seller under a fixed-price contract:

- 15 (a) has incurred; or
- (b) will incur;

on or after 1 January 1991:

- (c) increased carriage costs; or
 - (d) an increased purchase price;
- 20 in respect of Moomba gas the subject of the contract, the seller may give to the purchaser under the contract written notice that, on and after a specified day, the sale price payable under the contract will be the price specified in the notice.

(3) The day specified in the notice must not:

- 25 (a) be earlier than 28 days after the day on which the notice is given; or
- (b) be earlier than 1 January 1991.

(4) A purchaser who:

- 30 (a) entered into the fixed-price contract before 22 August 1990; and
- (b) receives a notice under subsection (2);

may, not later than the day specified in the notice, give to the seller a notice informing the seller that the purchaser elects to bring the contract to an end.

35 (5) If a notice is given under subsection (4), the contract is discharged on the day specified in the notice under subsection (2).

40 (6) In spite of the discharge of the contract under subsection (5), any rights or liabilities arising under, or in relation to, the contract and existing immediately before the discharge may be enforced as if the discharge had not occurred.

(7) A person does not incur any liability under, or in relation to, a contract by reason only of the giving of a notice under subsection (4).

(8) If a notice is not given under subsection (4), then, on and after the day specified in the notice, the sale price payable under the contract is the price specified in the notice under subsection (2). 5

PART 3—COMPENSATION

Interpretation

13. (1) In this Part:

“supplier” means:

(a) a person, other than the Authority, who is a party to a contract to which Division 1, 2 or 3 of Part 2 refers, being a contract entered into before the commencement of this Act; or 10

(b) a subsidiary of such a person.

(2) The question whether a corporation is a subsidiary of a person is to be determined in the same manner as the question whether a corporation is a subsidiary of another corporation is determined for the purposes of the *Companies Act 1981*. 15

(3) If the *Companies Act 1981* ceases to operate because of the coming into force of another law that contains provisions corresponding to the provisions of that Act, the regulations may modify subsection (2) by omitting the reference to the *Companies Act 1981* and substituting a reference to the other law or a provision of the other law. 20

Entitlement to compensation

14. (1) In respect of each calendar year commencing with 1991 and ending with 2006, a supplier is entitled to such compensation as the Minister determines to be the loss of profit suffered by the supplier in that calendar year as a result of the operation of Part 2. 25

(2) The loss of profit referred to in subsection (1) is the loss of profit resulting from the quantity of natural gas sold in the calendar year being less than it could reasonably be expected to have been had this Act not been enacted. 30

(3) A supplier is not entitled to compensation for loss of profit in relation to a particular calendar year unless the Minister is satisfied that the supplier has passed on all:

(a) increases in carriage costs incurred by the supplier in that year; and 35

(b) increases in the purchase price of natural gas payable by the supplier during that year;

as a result of the operation of Part 2 by increasing the prices at which the supplier sells natural gas. 40

Mitigation of loss

5 15. In determining the amount of compensation to which a supplier is entitled in respect of a particular calendar year, the Minister must have regard to the extent to which the supplier has taken action to mitigate the loss to which the claim relates by seeking alternative markets for natural gas.

Claims for compensation

16. (1) A supplier may make a claim for compensation in respect of a calendar year.

10 (2) A claim:

(a) must be in the form approved by the Minister for the purposes of this subsection; and

(b) must specify:

15 (i) the difference between the quantity of natural gas sold by the supplier in the calendar year and the quantity that could reasonably be expected to have been sold but for the operation of Part 2; and

(ii) the amount of compensation the supplier claims; and

(iii) the means by which the amount was arrived at; and

20 (c) must be given to the Minister.

(3) Where a supplier has made a claim, it may, by written notice given to the Minister, withdraw the claim.

(4) Where a claim is withdrawn, this Act has effect as if the claim had never been made.

25 (5) For the purposes of this Act, a claim is to be taken to be made when it is given to the Minister.

Time limit for claim

17. A claim must be made within 3 months of the end of the calendar year to which it relates.

30 **Minister either to accept claim and notify amount of compensation or to reject claim**

35 18. (1) If the Minister is satisfied that the loss, or any part of the loss for which a supplier has made a claim for compensation, was suffered in the calendar year to which the claim relates, the Minister must, by written notice given to the supplier:

(a) inform the supplier of the amount of compensation to which the Minister considers the supplier is entitled in accordance with section 14; and

(b) explain to the supplier how the amount was arrived at.

40 (2) If the Minister is not satisfied that any part of the loss for which a supplier has made a claim for compensation was suffered by the

supplier in the calendar year to which the claim relates, the Minister must, by written notice given to the supplier, reject the claim and state the reasons for the rejection.

(3) For the purposes of section 21, if, within 3 months after the receipt of the claim, the Minister has not given the supplier a notice under subsection (1) or (2), the Minister is, at the end of that period, to be taken to have rejected the claim.

Supplier may accept or reject compensation

19. (1) Where a notice under subsection 18 (1) is given to a supplier, the supplier may, by written notice given to the Minister:

- (a) accept the amount of compensation so specified in the notice; or
- (b) dispute the amount of compensation so specified by the Minister and:
 - (i) inform the Minister of the amount that the supplier considers is the loss of profit; and
 - (ii) explain to the Minister how that amount was arrived at.

(2) A notice under subsection (1) must be given within 2 months after the supplier receives a notice under subsection 18 (1).

Minister to determine compensation

20. (1) On receipt of a notice under paragraph 19 (1) (b), the Minister must reconsider the amount of compensation to which the supplier is entitled and must, by written notice given to the supplier:

- (a) determine the amount of compensation to which the supplier is entitled in accordance with section 14; and
- (b) explain to the supplier how the amount was arrived at.

(2) In reconsidering the amount of compensation to which the supplier is entitled, the Minister is to have regard to information included in the supplier's notice in accordance with paragraph 19 (1) (b).

(3) For the purposes of section 21, if within 1 month after the receipt of the notice under paragraph 19 (1) (b), the Minister has not given the claimant a notice under subsection (1), the notice given to the supplier under subsection 18 (1) is to be taken to be a notice given to the supplier under subsection (1) of this section on the last day of that period of 1 month.

Review of decisions

21. (1) Application may be made to the Administrative Appeals Tribunal for review of:

- (a) a decision of the Minister under subsection 18 (2) to reject a claim for compensation; or
- (b) a determination by the Minister under section 20.

(2) Where the Minister makes a decision under subsection 18 (2) or section 20 and gives to the supplier notice in writing of the decision, that notice is to include a statement to the effect that, subject to the *Administrative Appeals Tribunal Act 1975*, application may be made to the Administrative Appeals Tribunal, by or on behalf of any person whose interests are affected by the decision, for review of the decision.

(3) A failure to comply with the requirements of subsection (2) in relation to a decision does not affect the validity of the decision.

Payment of compensation

22. Where an amount of compensation has been determined under this Part, the Commonwealth must pay to the supplier the amount of compensation so determined.

Interest payable on compensation

23. (1) This section applies where the Commonwealth is liable to pay compensation to a supplier under this Part.

(2) A supplier is entitled to payment by the Commonwealth of interest on the compensation at the rate specified in, or ascertained in accordance with, the regulations from the day on which the supplier made a claim for the compensation until the day on which the compensation is paid or, where payment is delayed through a default or delay of the supplier, until the day on which the compensation would have been paid but for the default or delay.

(3) For the purposes of subsection (2) if:

- (a) the Minister gave the supplier a notice under subsection 18 (1); and
- (b) the supplier disputed the amount of compensation specified in the notice; and
- (c) the amount of compensation determined under this Part is less than the amount so specified;

the payment of the compensation is to be taken to have been delayed through a delay of the supplier and the day on which the compensation would have been paid but for that delay is to be taken to be the day on which the supplier received the notice under subsection 18 (1).

(4) If, on the day following the end of the period of 3 months that commenced on the day on which the claim was made or any succeeding period of 3 months, the interest payable to the supplier under subsection (2) in respect of the period has not been paid, this Part has effect as if, on that day, the amount of compensation payable were increased by the amount of the unpaid interest.

(5) Interest is not payable on compensation otherwise than under this section.

PART 4—COURTS TO ENSURE JUST TERMS**Courts to ensure just terms**

24. (1) In any case where, but for this section, the application of any of the provisions of this Act, including Part 3, would result in an acquisition of property from any person having been made otherwise than on just terms, the person is entitled to such compensation from the Commonwealth as is necessary to ensure that the acquisition is made on just terms.

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(2) The Federal Court has jurisdiction with respect to matters arising under subsection (1) and that jurisdiction is exclusive of the jurisdiction of all other courts, other than jurisdiction of the High Court under section 75 of the Constitution.

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PART 5—MISCELLANEOUS**Authority to act commercially**

25. (1) In spite of anything in the *Pipeline Authority Act 1973*, in conducting its business, the Authority must act in accordance with sound commercial principles and must pursue a policy directed towards achieving the goal set out in paragraph 3 (a).

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(2) The Authority may only enter into a contract for the carriage of natural gas for a person if the rate payable for that carriage is not less than the adjusted rate under Division 1 of Part 2.

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(3) The Authority may only enter into a contract for the sale of natural gas to a person if the price payable is not less than the adjusted price under Division 3 of Part 2.

(4) For the purposes only of determining whether the Authority has complied with subsection (2) or (3), where, by the terms of a contract for the carriage of natural gas, the amount payable under the contract for the carriage of such gas in a particular calendar year is fixed otherwise than by reference to a rate per gigajoule, the contract is to be taken to provide for payment under the contract for the carriage of gas in that year to be at a rate per gigajoule calculated by dividing the total amount payable under the contract for the carriage of gas in that year by the amount of gas, expressed by reference to gigajoules, carried in that year.

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Commonwealth guarantee

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26. Neither a provision of this Act nor anything done under this Act has the effect of bringing into operation any guarantee by the Commonwealth of the due performance by the Authority of its obligations under any contract.

Regulations

27. The Governor-General may make regulations, not inconsistent with this Act, prescribing matters:

- (a) required or permitted by this Act to be prescribed; or
- 5 (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act;

and, in particular, may make regulations prescribing penalties not exceeding \$1,000 for offences against the regulations.



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