

Queensland



ANNO TERTIO DECIMO

ELIZABETHAE SECUNDAE REGINAE

No. 36 of 1964

An Act with Respect to an Agreement between the State of Queensland and Ampol Refineries Limited and for purposes incidental thereto

[ASSENTED TO 12TH OCTOBER, 1964]

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of Queensland in Parliament assembled, and by the authority of the same, as follows:—

1. Short title. This Act may be cited as "*The Ampol Refineries Limited Agreement Act of 1964.*"

2. Execution of Agreement Authorised. The Premier and Minister for State Development is, and it is declared always was, hereby authorised to make, for and on behalf of the State of Queensland, with Ampol Refineries Limited, a company duly incorporated in the Australian Capital Territory and registered in the said State, the Agreement a copy of which is set out in the Schedule to this Act (herein referred to as the "Agreement").

3. Ratification and approval. The Agreement is hereby approved and ratified and the provisions thereof shall have, and it is hereby declared always have had as from the date of the making thereof, the force of law as though the Agreement were an enactment of this Act.

4. Variation of Agreement. The Agreement may be varied pursuant to agreement between the Minister for the time being administering this Act and the Company with the approval of the Governor in Council by Order in Council, and no provisions of the Agreement shall be varied nor the powers and rights of the Company under the Agreement be derogated from except in such manner. Any purported alteration of the Agreement not made and approved in such manner shall be void and of no legal effect whatsoever.

The Governor in Council may make any Order in Council provided for in this section, and may revoke any such Order in Council by another Order in Council which is not inconsistent with the Agreement.

SCHEDULE

THE AGREEMENT

THIS AGREEMENT made the twenty-sixth day of March 1964 BETWEEN The STATE OF QUEENSLAND (hereinafter with its successors referred to as the "Government") of the one part and AMPOL REFINERIES LIMITED a Company duly incorporated in the Australian Capital Territory and registered in the State of Queensland (hereinafter with its successors and assigns referred to as the "Company") (such Company being a subsidiary of Ampol Petroleum Limited a Company duly incorporated in the State of New South Wales);

WHEREAS the Company proposes to erect and operate a petroleum refinery at Lytton near Brisbane in the State of Queensland;

AND WHEREAS in pursuance of its policy to encourage the development of industry within the said State the Government has agreed to grant to the Company certain concessions and other aid;

NOW, THEREFORE, in consideration of the premises and in further consideration of the terms, covenants and conditions herein contained the parties hereto HEREBY AGREE as follows:—

1. In this Agreement unless the context otherwise requires—

- (a) "the Amoco Agreement" means the Agreement made the Second day of February One thousand nine hundred and sixty-one between the Government and Amoco Australia Pty. Limited;
- (b) "the Company's marine installations" means the anchorage, submarine pipelines, wharves, jetties, landing places and other marine facilities provided by the Company in the Brisbane River in the vicinity of the site of the refinery, for the receipt of crude oil arriving by sea;
- (c) "the Refinery" means the oil refinery established pursuant to this Agreement;
- (d) "the refinery site" means all those pieces or parcels of land situated in the County of Stanley Parish of Tingalpa containing an area of approximately 550 acres described as Portions 436 and 437, Subdivision 1 of Portion 398 and Subdivision 2 of Portion 412;
- (e) "Contract Year" means a period of twelve (12) calendar months commencing on the first day of July in a calendar year and ending at midnight on the thirtieth day of June in the next ensuing calendar year;

- (f) "Barrels"—As used herein, a barrel shall be equal to thirty-five (35) Imperial gallons at sixty degrees Fahrenheit (60°F);
- (g) "Barrels Per Stream Day" means the quantity of crude oil processed by the refinery in a continuous twenty-four (24) hour period;
- (h) "Petroleum Products"—The term petroleum products shall include motor spirits (petrol), aviation turbine fuels, kerosenes, diesel oils, furnace oils, liquefied petroleum gas, bitumen, lubricating oils and greases, and all other products derived directly or indirectly from crude oil through a refining process;
- (i) "Crude Oil" and "Petroleum"—The terms crude oil and petroleum shall refer to a mixture, consisting predominately of hydrocarbons, which may be processed or refined to yield petroleum products as defined in subparagraph (h) hereof;
- (j) "The Minister" means the Minister for Industrial Development of Queensland.

2. REFINERY: (a) The Company hereby agrees to construct a petroleum refinery in the State of Queensland with a minimum crude oil processing capacity of 40,000 barrels per stream day. Such Refinery shall be designed to produce motor spirits (petrol), aviation turbine fuels, kerosenes, diesel oils, furnace oils, and such other products as the Company may determine. The Company shall commence commercial operation of the refinery not later than the thirty-first day of December One thousand nine hundred and sixty-five. The Company will deliver to the Government within twelve months after the date of commencement of construction of the Refinery as hereinbefore provided, a Construction Progress Schedule (hereinafter in this subparagraph referred to as "the Schedule") setting out details of the construction programme for the completion of the Refinery no later than the thirty-first day of December One thousand nine hundred and sixty-five. If at any time during the course of construction of the Refinery the Company fails to adhere to the Schedule (or to any revised Schedule substituted therefor with the consent of the appropriate authority), then, subject to the provisions of clause 8 hereof the Government shall have the right of terminating this Agreement by notice, in writing, to that effect served upon the Company in manner hereinafter provided and this Agreement shall thereupon be of no further force and effect: PROVIDED ALWAYS that the Company shall be at liberty at all times to accelerate the construction of the Refinery in advance of any time factor stipulated in the Schedule (or revised Schedule).

(b) If requested by the Company, the Government will at the cost and expense of the Company do all such acts, matters and things which the Government shall have power and authority so to do under or pursuant to the laws in force (without however issuing any direction in any such regard) as will enable the Company to obtain site approval from the Brisbane City Council and the Harbours Trust and all necessary easements, rights of way, licenses, permits or other authorisations which may be required to enable or permit the Company to construct, maintain and operate the Refinery and to distribute by pipeline petroleum products and effluent therefrom within the City of Brisbane as constituted by "The City of Brisbane Acts, 1924 to 1960" and to lay and operate all necessary or appropriate pipelines within such City, sea lines, docks, wharves and all other facilities necessary to or appropriate for the Refinery, including the use of available water and the discharge of refinery effluent

and waste water into the Brisbane River and/or Moreton Bay. The acquisition by the Company of site approval and all such easements, rights of way, licenses, permits and other authorisations shall be a condition precedent to the further obligation of the parties hereunder.

(c) For the purpose of constructing maintaining and operating the pipelines referred to in sub-clause (b) hereof the provisions of "*The Petroleum Acts, 1923 to 1962*" relating to pipelines shall (with all such amendments and modifications as shall be necessary to meet the circumstances) be deemed to apply and extend to such pipelines as if the word "petroleum" as defined by those Acts included "petroleum products" as herein defined and for the purposes aforesaid the word "Petroleum" appearing in the said "*The Petroleum Acts, 1923 to 1962*" shall be read and construed accordingly.

3. The Government hereby agrees with the Company that the Company shall on application be granted a Special Lease under the provisions of section 80 of "*The Harbours Acts, 1955 to 1963*" with respect to the foreshores of the Brisbane River contiguous to the land described in paragraph (d) of clause 1 hereof together with the land situate below highwater mark whereon the Company's wharf is erected and the adjacent berthage area. Such Special Lease as aforesaid shall be for a term of at least thirty (30) years and shall provide for an annual rental to be determined by the Department of Public Lands of the said State of Queensland, and shall be payable half-yearly in advance to the Under Treasurer, Treasury Department of the said State.

4. ESTABLISHMENT AID: The Government hereby expressly stipulates and agrees with the Company as follows:—

(a) Prior to 31st March, 1965, the following dredging operations will be undertaken and completed by or on behalf of the Government:—

- (i) The dredging of a Swinging Basin near the mouth of the Brisbane River between the Boat passage and Luggage Point to a minimum depth of forty (40) feet below the Datum adopted for the port of Brisbane. The general location of this Swinging Basin is shown on Drawing No. PD 26, "Moreton Bay—Northern Portion—Caloundra to Dunwich" and its general limits shall be as shown on Drawing No. PD 27, "Swinging Basin and Inner Bar Cutting";
- (ii) The deepening of a channel from the seaward limits of the Swinging Basin to the thirty-eight (38) foot contour on the seaward side of the Pile Light to a minimum depth of thirty-eight (38) feet below the Datum for the Port of Brisbane. From the Swinging Basin to the Outer Bar Lights the channel shall have a minimum bottom width of four hundred (400) feet, and from the Outer Bar Lights to the thirty-eight (38) foot contour beyond the Pile Light it should have a minimum bottom width of five hundred (500) feet. The general location of the channel is shown on Drawing No. PD 26, "Moreton Bay—Northern Portion—Caloundra to Dunwich" and on drawings No. PD 28, "Outer Bar Cutting and Dumping Ground", and No. PD 29, "Soundings—Outer Bar Cutting";
- (iii) The deepening of the East Channel in Moreton Bay and the North West Channel, which constitutes the northern entrance to Moreton Bay from Caloundra, to provide a channel everywhere with a minimum bottom width of one thousand (1,000) feet. From the deepwater seawards from the Pile

Light to the south-eastern side of Spitfire Banks the channel shall be dredged to a minimum depth of forty (40) feet below the Datum for the Port of Brisbane, and the Spitfire Banks and the channel thence to Caloundra shall be dredged to a minimum depth of forty-two feet six inches (42 ft. 6 ins.) below this datum. The general locations of the relevant channels are shown on Drawing No. PD 26, "Moreton Bay—Northern Portion—Caloundra to Dunwich".

(b) **HARBOUR DUES:** The Government hereby agrees with the Company that notwithstanding anything to the contrary contained in "The Harbours Acts, 1955 to 1963" or in any regulation gazetted thereunder, harbour dues payable to The Corporation of the Treasurer of the State of Queensland (or any statutory successor) during the currency of this Agreement and of any extension thereof as hereinafter provided with respect to all vessels delivering crude oil to or receiving petroleum products from the refinery, shall be calculated at the rate and in the manner following that is to say:—

- (1) On all crude oil imported by the Company and received at the refinery through the Company's marine installations for refinery use fifty per centum (50%) of the harbour dues fixed from time to time for motor spirits (petrol) imports to the Port of Brisbane: PROVIDED HOWEVER that such rate shall not exceed by more than five per centum (5%) the simple average of harbour dues levied and paid at the relevant times in respect of crude oil imports to the refineries at Matraville and Kurnell in the State of New South Wales, Geelong in the State of Victoria, and Noarlunga in the State of South Australia;
- (2) On all crude oil imported as above for other than refinery use eighty per centum (80%) of the harbour dues fixed from time to time for crude oil imports to the Port of Brisbane;
- (3) No harbour dues shall be payable by the Company on its export of refinery products derived from crude oil arriving by sea;
- (4) At the conclusion of each year's commercial operation of the refinery, the Company shall provide the Government with all such particulars and information as the Under Treasurer, Department of the Treasury shall require for that year concerning the following:—
 - (i) Total intake of crude oil at the refinery;
 - (ii) Total sales of crude oil to merchant trade;
 - (iii) Amount of crude oil for refinery uses;
 - (iv) Total exports of refinery products.

If it is found that in any particular year the percentage of refinery production exported by the Company exceeds fifty per centum (50%) all harbour dues paid by the Company on the import of crude oil for refinery use equivalent to such excess shall be refunded by the Government to the Company.

- (5) For the purpose of this paragraph of this Agreement the words "harbour dues" shall have the meaning ascribed to them by "The Harbours Acts, 1955 to 1963";

- (6) Except as expressly provided by this paragraph of this Agreement this Agreement shall not be deemed to confer any exemption upon the Company from any harbour dues payable in pursuance of the provisions of "*The Harbours Acts, 1955 to 1963*".

IT IS HEREBY EXPRESSLY AGREED AND DECLARED by and between the parties hereto that the concession granted to the Company by the Government in relation to harbour dues as hereinbefore in this clause set out shall continue in force during the period of this Agreement or during any renewal thereof:

PROVIDED HOWEVER—

- (1) That if the Company or the Company and Amoco Australia Pty. Limited obtains or obtain supplies of crude oil in any other manner howsoever than by carriage by sea through the Port of Brisbane averaging in the aggregate in excess of 10,000 barrels per day for a continuous period of three months; or
- (2) That if the harbour dues payable to the Government by Amoco Australia Pty. Limited pursuant to the Amoco Agreement are reviewed in accordance with the provisions in that behalf contained in that Agreement;

THEN, and in any such case, the Government may either review immediately the harbour dues hereinbefore in this clause set out or may review the whole of the provisions contained in such clause, and may increase reduce or otherwise vary the harbour dues payable by the Company or otherwise vary the terms and conditions of such clause. PROVIDED ALWAYS AND IT IS HEREBY FURTHER EXPRESSLY AGREED AND DECLARED by and between the parties hereto that in making any such review as aforesaid the Government will not vary the harbour dues payable by the Company as hereinbefore in this clause set out until the Company or the Company and Amoco Australia Pty. Limited obtains or obtain supplies of crude oil in any other manner howsoever than by carriage by sea through the Port of Brisbane averaging in the aggregate in excess of 10,000 barrels per day for a continuous period of three months.

5. PRODUCT SUPPLY: The Government HEREBY AGREES with the Company that in the event of Amoco Australia Pty. Limited not constructing or building a Refinery within the time stipulated by clause 2 of the Amoco Agreement or within any extension of such time as may be agreed to by the Government or in the event of Amoco Australia Pty. Limited failing to exercise the exclusive option granted to it pursuant to clause 5 of the Amoco Agreement, the Company or its nominee shall have the exclusive option from the date of commencement of commercial operation of the Company's refinery or from such later date as the parties may agree to supply to the Government, including all departments, agencies, organisations and instrumentalities thereof

other than local governmental authorities, all of its requirements for motor spirits (petrol), aviation turbine fuels, lighting kerosene, power kerosene, automotive diesel oil, industrial diesel oil, furnace (fuel) oils, liquefied petroleum gas, bitumen, lubricating oils and greases, and all other petroleum products in all cases from its own refinery unless otherwise agreed, excepting therefrom that portion of the Government's requirements for bitumen which the Government is obligated to purchase during the remaining original term of that certain agreement, dated sixteenth day of March, 1954, between the Government as Purchaser, and Queensland Refineries Pty. Limited as Vendor, AND IT IS HEREBY EXPRESSLY AGREED AND DECLARED by and between the parties hereto that the exercise by the Company of such exclusive option as aforesaid shall be on such terms and subject to such conditions as are in the said clause 5 paragraphs (a), (b), (c), (d) and (e) set out so that in the interpretation of such clause and all or any of such paragraphs thereof any reference to Amoco Australia Pty. Limited (therein shortly termed "Amoco") shall be a reference to the Company.

6. To the extent of its powers and authority so to do under or pursuant to the laws for the time being in force and expressly subject to its obligations arising under the provisions in that behalf contained in the Amoco Agreement, the Government shall give the Company its assistance in the development and acquisition of potential markets for furnace (fuel) oils, petroleum products and other products which may be produced by the Company and in order to aid the refinery in achieving an economic processing volume, the Government HEREBY AGREES (subject to its obligations as hereinbefore in this clause expressed) to use its good offices to prevent any and all future State-imposed prohibitions against construction and operation by the Company or its nominee of service stations and other petrol outlets in the said State.

7. **PETROCHEMICALS:** The Company hereby agrees after the execution hereof to study and investigate the possibilities of establishing, alone or in conjunction with other parties, petrochemical projects or other projects or industries which could be conveniently and successfully carried on adjacent to a petroleum refinery.

8. **FORCE MAJEURE:** The performance by either party of the terms, covenants and conditions herein contained is subject to and is contingent upon events, happenings or contingencies which interfere with the performance of such terms, covenants and conditions and which, in the absence of fault or negligence on the part of either party, are beyond the reasonable control of either party, including but not restricted to accidents, acts of God, weather and conditions arising therefrom, insurrection, rebellion, revolution, civil war, martial law, state of siege, hostilities, war and conditions arising therefrom (whether declared or undeclared), acts of enemies or belligerents, sabotage, strikes, boycotts,

lockouts and other labour difficulties, riot, fire, earthquake, flood, storm, lightning, epidemic, quarantine restrictions, the declaration or existence of a national emergency (whether in fact or in law), perils of navigation; acts or requests of any Government or governmental authority having control over crude oil, the components thereof or the transportation thereof; accidents, breakdown, injury to or expropriation or confiscation of any producing, manufacturing, selling or delivery facilities; exhaustion or unavailability of supplies for any reason, inability for reasons beyond the control of either party to secure labour or adequate supplies of materials, machinery or equipment; delays in delivery of crude oil, partial or total interruption, loss or shortage of transportation facilities; failure of carriers to transport or furnish transportation facilities; inability to obtain, or the revocation or suspension of any of the easements, rights of way, licenses, permits or other authorisations mentioned in paragraph 2 (b) hereof; interference, restriction, prohibition, limitation or prevention by legislation, regulation, decree, order, request, or any other act or omission of any governmental authority or any agency, instrumentality or political subdivision thereof, including any court of competent jurisdiction; and upon the occurrence of any one or more of such events, the party so affected shall not be liable to the other for delay or failure to perform and observe the terms covenants and conditions herein contained during such periods as it is unable so to do: SUBJECT to the Company being in a position to and in fact exercising the option referred to in clause 5 hereof then if for any such reason the Company is unable to supply petroleum products to the Government during any such period, the Government shall be entitled to purchase petroleum products sufficient for its immediate needs from other suppliers, and any obligation of the Company and the Government to sell and purchase the petroleum products referred to in clause 5 hereof shall be temporarily suspended during such periods.

9. NOTICE: All notices and other writings required or appropriate to be given under the provisions of this Agreement shall be deemed to be properly served if delivered in writing personally or sent by registered post to the Government; addressed to the Minister, or to the Company, addressed to its Managing Director in care of Messrs. Morris, Fletcher and Cross, 163 Adelaide Street, Brisbane, in the said State or to such other persons and addresses as each party shall from time to time designate in writing to the other, and any such notice or other writing sent by registered post shall unless the contrary be proved be deemed to have been so given when it would have been delivered in the ordinary course of post.

10. WAIVER: No waiver, or omission by either party to require the performance by the other of any of the terms, covenants or conditions of this Agreement nor any forbearance or indulgence granted or shown by either party to the other shall release, discharge or in any manner affect or prejudice the right of a party at any time to require strict and full performance by the other of any or all of the terms, covenants or conditions to be observed or performed hereunder.

11. This Agreement is made subject to the approval and ratification by the Parliament of the State of Queensland expressed in an Act to be passed during the sittings of Parliament to be held immediately following the execution hereof. If the Act is not so passed this Agreement shall not operate and neither of the parties hereto shall have any claim against the other with respect to anything arising out of this Agreement.

If Parliament shall pass the Act hereinbefore in this paragraph referred to, any subsequent withdrawal of such approval and ratification by Parliament or any future Parliament shall not affect the rights and privileges acquired by or obligations undertaken by the Company under and in pursuance of this Agreement.

12. This Agreement may be varied pursuant to agreement between the Government and the Company with the approval of the Governor in Council by Order in Council and no provision of this Agreement shall be varied nor shall the powers and rights of the Company hereunder be derogated from except in such manner.

13. The law of this Agreement shall be the law of the State of Queensland.

14. **AUTHORITY:** (a) This Agreement has been executed on behalf of the Government by The Honourable George Francis Reuben Nicklin, the Premier and Minister for State Development of the State of Queensland, as the duly authorised agent of the State of Queensland, in accordance with authority granted by the Executive Council. Concurrent with the execution hereof, the Government has delivered to the Company a certified copy of a resolution of the Executive Council setting forth such approval and authorising the execution of this Agreement.

(b) This Agreement has been executed under the Common Seal of the Company pursuant to a resolution passed at a meeting of directors on the twenty-fifth day of March, 1964, and in pursuance of the powers vested in the directors under the Company's Memorandum and Articles of Association.

15. Notwithstanding anything herein contained the said The Honourable George Francis Reuben Nicklin shall not incur or be considered to incur or to have incurred any personal liability hereunder in respect of himself, his heirs, executors or administrators or his or their estate but the whole liability hereunder shall be upon the Government only.

16. This Agreement will expire on the Thirtieth day of June One Thousand nine hundred and ninety-five, unless the Company by notice in writing given to the Government not later than the Thirtieth day of June One thousand nine hundred and ninety-three requires the Agreement for such further period not exceeding twenty (20) years as the Company may nominate in such notice, and the Agreement, save for the right of renewal, shall thereupon be extended accordingly.

IN WITNESS WHEREOF the parties hereunto have caused this instrument to be executed on the day and year appearing in the first unnumbered paragraph hereof.

SIGNED by GEORGE FRANCIS REUBEN
NICKLIN, the Premier and Minister
for State Development of the State
of Queensland for and on behalf of
the said State in the presence of
A. W. MUNRO

FRANK NICKLIN



THE COMMON SEAL of AMPOL
REFINERIES LIMITED was hereto
affixed by authority of the Board
of Directors in the presence
of
R. C. MASON

W. M. LEONARD, Director
L. J. THOMPSON, Director

