



Queensland

# Resources Legislation and Another Regulation Amendment Regulation (No. 1) 2012

## Subordinate Legislation 2012 No. 169

made under the

*Mineral Resources Act 1989*

*Petroleum and Gas (Production and Safety) Act 2004*

*State Penalties Enforcement Act 1999*

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## **Part 1 Preliminary**

### **1 Short title**

This regulation may be cited as the *Resources Legislation and Another Regulation Amendment Regulation (No. 1) 2012*.

### **2 Commencement**

Parts 2 and 3 commence on 1 October 2012.

## **Part 2 Amendment of Mineral Resources Regulation 2003**

### **3 Regulation amended**

This part amends the *Mineral Resources Regulation 2003*.

### **4 Amendment of s 28 (When royalty return must be lodged)**

Section 28(4)—

*omit, insert—*

- ‘(4) The prescribed fee must accompany a royalty return lodged after—
- (a) the day mentioned in subsection (1) or (2); or
  - (b) if the Minister has approved a later day under subsection (3)—the later day.
- ‘(5) The Minister may remit the whole or part of the fee mentioned in subsection (4).’.

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**5 Amendment of s 30A (When and how royalty payable—quarterly return period)**

Section 30A(7), definition *quarterly return period*—  
*omit.*

**6 Amendment of s 30B (Working out monthly payments for quarterly return period generally)**

Section 30B(8)—  
*omit.*

**7 Amendment of s 30C (Election to change monthly payments for quarterly return period)**

(1) Section 30C(1)(a), from ‘return period ending’—  
*omit, insert—*

‘previous return period; and’.

(2) Section 30C(5) and (6), ‘If’—  
*omit, insert—*

‘Subject to subsection (7), if’.

(3) Section 30C(7) and (8)—  
*renumber* as section 30C(8) and (9).

(4) Section 30C—  
*insert—*

‘(7) The amount payable, as changed under subsection (3) for the first month or the second month of a royalty return period, may be more than the amount payable under subsection (5) or (6).’.

(5) Section 30C(9), as renumbered, definition *quarterly return period*—  
*omit.*

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## **8 Insertion of new pt 9, div 4A**

Part 9—

*insert—*

### **‘Division 4A Civil penalty**

#### **‘46A Imposition of civil penalty—Act, s 321A**

- ‘(1) This section applies if a person makes a section 30C election and either—
- (a) the royalty payable for the current return period exceeds the royalty payable for the previous return period by an amount that is more than 15% of the royalty payable for the previous return period; or
  - (b) both of the following apply—
    - (i) the royalty payable for the current return period is less than the royalty payable for the previous return period;
    - (ii) the total of the royalty payable for the first month and the second month of the current return period is less than 50% of the total royalty payable for the current return period.
- ‘(2) The person is liable to the State for an amount (*civil penalty*) equal to 25% of the default estimate difference, if any, for each month of the current return period for which the person makes the section 30C election.
- ‘(3) For subsection (2), the *default estimate difference* for a month of the current return period is the difference between—
- (a) the amount that would have been payable for the month under section 30B if the person had not made the section 30C election; and
  - (b) the amount payable for the month under the section 30C election.

- 
- ‘(4) However, if the amount mentioned in subsection (3)(a) is less than the amount mentioned in subsection (3)(b), the default estimate difference for the month is taken to be 0.
- ‘(5) Subsection (6) applies if, for royalty payable for the current return period—
- (a) a determination is made under section 330 of the Act; or
  - (b) a reassessment is made under section 331 of the Act.
- ‘(6) For subsection (1), the royalty payable for the current return period is the amount of royalty payable taking into account the determination or reassessment.
- ‘(7) For subsection (1), a reference to the royalty payable for the previous return period is a reference to the amount worked out under section 30C(2).
- ‘(8) The Minister may remit the whole or part of the civil penalty.
- ‘(9) In this section—
- current return period* see section 30C(1)(a).
- section 30C election* means an election under section 30C(3) to change the amount payable to the State for the first month or the second month, or both, of the current return period.

#### **‘46B Notice of civil penalty**

- ‘(1) If a person is liable to pay a civil penalty, the Minister must give the person a written notice stating—
- (a) the amount of the civil penalty that is payable; and
  - (b) that the person must pay the civil penalty on or before the day stated in the notice.
- ‘(2) For subsection (1)(b), the day must be at least 28 days after the day the notice is given to the person.

#### **‘46C Civil penalty not payable if proceeding for offence started**

- ‘(1) This section applies if—

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- (a) a person is liable to pay a civil penalty because of an act or omission of the person; and
- (b) the act or omission constitutes an offence under the Act.

*Example of an act or omission for subsection (1)(b)—*

giving a false or misleading statement in contravention of the Act, section 329

- ‘(2) If a proceeding is started against the person for the offence constituted by the act or omission and the civil penalty has not been paid to the State, the civil penalty is payable only if the proceeding against the person is withdrawn.
- ‘(3) If the civil penalty has been paid to the State, but a proceeding is started against the person for an offence against the Act constituted by the act or omission, the amount of the civil penalty must be remitted in full.
- ‘(4) However, if the proceeding against the person is withdrawn, the civil penalty remitted under subsection (3) again becomes payable by the person.’.

## **9 Replacement of pt 9, div 5 (Prescribed interest rate)**

Part 9, division 5—

*omit, insert—*

### **‘Division 5 Unpaid royalty interest**

#### **‘47 Unpaid royalty interest rate—Act, s 332(2)(a)**

‘For section 332(2)(a) of the Act, the rate of interest is the rate prescribed for unpaid tax interest under the *Taxation Administration Act 2001*, section 54(2).

#### **‘47AA Working out unpaid royalty interest on royalty payable for quarterly return period—Act, s 332(3)**

- ‘(1) This section applies for working out the period for which unpaid royalty interest accrues under the Act, section 332, if—



- (a) royalty is payable by a person under section 30A(1) for a quarterly return period; and
  - (b) the person has not paid all of the amount payable for instalment 1, instalment 2 or instalment 3 as required under section 30A.
- ‘(2) Unpaid royalty interest accrues—
- (a) if instalment 1 or instalment 2 is not paid in full by the day required under section 30A—on the amount unpaid from time to time, for the period starting on the day after the day the instalment must be paid and ending on the earlier of the following days, both days inclusive—
    - (i) the day the instalment is paid in full;
    - (ii) the lodgement day; and
  - (b) if the royalty payable for the quarterly return period is not paid in full on the lodgement day—on the total amount unpaid from time to time, for the period starting on the day after the lodgement day and ending when the total amount is paid in full, both days inclusive.
- ‘(3) In this section—

*lodgement day* means the day a royalty return must be lodged for the quarterly return period, disregarding any later day for lodging the return approved by the Minister under section 28(3).’.

## 10 Insertion of new pt 13, div 6

Part 13—

*insert—*

[s 10]

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**‘Division 6                      Transitional provisions for  
Resources Legislation and Another  
Regulation Amendment Regulation  
(No. 1) 2012**

**‘92            Remission of late payment fee under s 28**

‘Section 28(5), as in force on 1 October 2012, applies in relation to a fee paid or payable under section 28(4) before, on or after that date.

**‘93            Application of s 47—unpaid royalty interest rate**

- ‘(1) This section applies if, immediately before 1 October 2012, an amount of royalty payable by a person to the State is unpaid (the *unpaid royalty*).
- ‘(2) Section 47, as in force on 1 October 2012, applies in relation to the unpaid royalty on and from that day.

**‘94            Application of sch 4, pt 2, s 3—royalty payable for coal**

- ‘(1) Schedule 4, part 2, section 3, as in force on 1 October 2012, applies for coal sold, disposed of or used on and from that day.
- ‘(2) For working out royalty payable under the Act for a return period that started before, and ends on or after, 1 October 2012—
  - (a) a reference in pre-amended schedule 4, part 2, section 3 to the quarterly return period is taken to be a reference to the days in the return period up to and including 30 September 2012; and
  - (b) a reference to schedule 4, part 2, section 3, as in force on 1 October 2012, to the return period is taken to be a reference to the days in the return period occurring on and from 1 October 2012.
- ‘(3) In this section—

*pre-amended*, in relation to a provision, means the provision as in force immediately before 1 October 2012.’

## 11 Amendment of sch 4 (Royalty payable for minerals)

Schedule 4, part 2, section 3(1)—

*omit, insert—*

‘(1) The royalty rate for coal is—

- (a) if the average price per tonne of the coal sold, disposed of or used in the return period is \$100 or less—7% of the value of the coal; or
- (b) the royalty rate applied to the value of the coal sold, disposed of or used in the return period, rounded down to 2 decimal places, worked out using the following formula—
  - (i) if the average price per tonne of the coal sold, disposed of or used in the return period is more than \$100 but not more than \$150—

$$RR = 7 + \left( \frac{(AP - 100)}{AP} \times 5.5 \right)$$

- (ii) if the average price per tonne of the coal sold, disposed of or used in the return period is \$150 or more—

$$RR = 7 + \left( \frac{(AP - 100)}{AP} \times 5.5 \right) + \left( \frac{(AP - 150)}{AP} \times 2.5 \right)$$

where—

**RR** is the royalty rate, expressed as a percentage.

**AP** is the average price per tonne of the coal sold, disposed of or used in the return period.

*Note—*

The royalty rate for coal prescribed under this section is not prescribed for the purpose or effect of funding the development or demonstration of technology which will assist in reducing the production or emission

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of Greenhouse Gas from the use of coal. See the *Clean Coal Technology Special Agreement Act 2007*, schedule, section 2.5.’.

## 12 Amendment of sch 7 (Dictionary)

Schedule 7—

*insert—*

‘*civil penalty* see section 46A(2).

*previous return period*, in relation to a return period, means the return period immediately preceding the return period.

*quarterly return period* means a return period that is a quarter.’.

# Part 3 Amendment of Petroleum and Gas (Production and Safety) Regulation 2004

## 13 Regulation amended

This part amends the *Petroleum and Gas (Production and Safety) Regulation 2004*.

## 14 Amendment of s 147 (When and how petroleum royalty payable)

Section 147, heading, after ‘payable’—

*insert—*

‘—royalty return period’.

## 15 Amendment of s 147A (Working out monthly payments for petroleum royalty generally)

Section 147A(7)—

---

*omit.*

**16 Amendment of s 147B (Election to change monthly payments)**

- (1) Section 147B(1)(a), from ‘royalty return period ending’—  
*omit, insert—*  
‘previous royalty return period; and’.
- (2) Section 147B(5) and (6), ‘If’—  
*omit, insert—*  
‘Subject to subsection (7), if’.
- (3) Section 147B(7) and (8)—  
*renumber* as section 147B(8) and (9).
- (4) Section 147B—  
*insert—*  
‘(7) The amount payable, as changed under subsection (3) for the first month or the second month of a royalty return period, may be more than the amount payable under subsection (5) or (6).’.

**17 Insertion of new s 147BA**

After section 147B—

*insert—*

**‘147BA When petroleum royalty payable—annual royalty return**

- ‘(1) This section applies if the amount of petroleum royalty payable by a petroleum producer for an annual return period under the Act, section 599 is more than the amount of petroleum royalty payable by the producer for all the royalty return periods occurring during the annual return period (the *royalty difference*).

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- ‘(2) The petroleum producer must pay the royalty difference when the annual royalty return for the annual return period is required to be lodged.’

## 18 Insertion of new ch 6, pt 2, div 4, sdivs 4A and 4B

Chapter 6, part 2, division 4—

*insert—*

### ‘Subdivision 4A Civil penalty

#### ‘149E Imposition of civil penalty—Act, s 604A

- ‘(1) This section applies if a petroleum producer makes a section 147B election and either—
- (a) the petroleum royalty payable for the current royalty return period exceeds the petroleum royalty payable for the previous royalty return period by an amount that is more than 15% of the petroleum royalty payable for the previous royalty return period; or
  - (b) both of the following apply—
    - (i) the petroleum royalty payable for the current royalty return period is less than the petroleum royalty payable for the previous royalty return period;
    - (ii) the total of the petroleum royalty payable for the first month and the second month of the current royalty return period is less than 50% of the total petroleum royalty payable for the current royalty return period.
- ‘(2) The producer is liable to the State for an amount (*civil penalty*) equal to 25% of the default estimate difference, if any, for each month of the current royalty return period for which the producer makes the section 147B election.
- ‘(3) For subsection (2), the *default estimate difference* for a month of the current royalty return period is the difference between—

- 
- (a) the amount that would have been payable for the month under section 147A if the producer had not made the section 147B election; and
  - (b) the amount payable for the month under the section 147B election.
- ‘(4) However, if the amount mentioned in subsection (3)(a) is less than the amount mentioned in subsection (3)(b), the default estimate difference for the month is taken to be 0.
- ‘(5) Subsection (6) applies if, at any time, the petroleum royalty payable for the current royalty return period is adjusted.
- ‘(6) For subsection (1), the petroleum royalty payable for the current royalty return period is the amount of petroleum royalty payable taking into account the adjustment.
- ‘(7) For subsection (1), a reference to the petroleum royalty payable for the previous royalty return period is a reference to the amount worked out under section 147B(2).
- ‘(8) The Minister may remit the whole or part of the civil penalty.
- ‘(9) In this section—
- current royalty return period* see section 147B(1)(a).
- section 147B election* means an election under section 147B(3) to change the amount payable for the first month or the second month, or both, of the current royalty return period.

#### ‘149F Notice of civil penalty

- ‘(1) If a petroleum producer is liable to pay a civil penalty under section 149E, the Minister must give the producer a written notice stating—
- (a) the amount of the civil penalty that is payable; and
  - (b) that the producer must pay the civil penalty on or before the day stated in the notice.
- ‘(2) For subsection (1)(b), the day must be at least 28 days after the day the notice is given to the producer.

[s 18]

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### **‘149G Civil penalty not payable if proceeding for offence started**

- ‘(1) This section applies if—
- (a) a petroleum producer is liable to pay a civil penalty under section 149E because of an act or omission of the producer; and
  - (b) the act or omission constitutes an offence under the Act.

*Example of an act or omission for subsection (1)(b)—*

giving a false or misleading statement in contravention of the Act, section 813

- ‘(2) If a proceeding is started against the producer for the offence constituted by the act or omission and the civil penalty has not been paid to the State, the civil penalty is payable only if the proceeding against the producer is withdrawn.
- ‘(3) If the civil penalty has been paid to the State, but a proceeding is started against the producer for an offence against the Act constituted by the act or omission, the amount of the civil penalty must be remitted in full.
- ‘(4) However, if the proceeding against the producer is withdrawn, the civil penalty remitted under subsection (3) again becomes payable by the producer.

### **‘Subdivision 4B Unpaid royalty interest**

#### **‘149H Unpaid royalty interest rate—Act, s 602(3)(a)**

‘For section 602(3)(a) of the Act, the rate of interest is the rate prescribed for unpaid tax interest under the *Taxation Administration Act 2001*, section 54(2).



**‘149I Working out unpaid royalty interest on petroleum royalty payable for royalty return period—Act, s 602(4)**

- ‘(1) This section applies for working out the period for which unpaid royalty interest accrues under the Act, section 602, if—
- (a) petroleum royalty is payable by a petroleum producer under section 147(3) for a royalty return period; and
  - (b) the producer has not paid all of the amount payable for instalment 1, instalment 2 or instalment 3 as required under section 147.
- ‘(2) Unpaid royalty interest accrues—
- (a) if instalment 1 or instalment 2 is not paid in full by the day required under section 147—on the amount unpaid from time to time, for the period starting on the day after the day the instalment must be paid and ending on the earlier of the following days, both days inclusive—
    - (i) the day the instalment is paid in full;
    - (ii) the lodgement day; and
  - (b) if the petroleum royalty payable for the royalty return period is not paid in full on the lodgement day—on the total amount unpaid from time to time, for the period starting on the day after the lodgement day and ending when the total amount is paid in full, both days inclusive.
- ‘(3) In this section—
- lodgement day* means the day a royalty return must be lodged for the royalty return period.’.

**19 Amendment of s 151 (Prescribed interest rates)**

- (1) Section 151, heading, ‘rates’—

*omit, insert—*

**‘rate for amounts owing to the State other than for petroleum royalty’.**

[s 20]

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- (2) Section 151, ‘sections 588(3) and 602(2)’—  
*omit, insert—*  
‘section 588(3)’.

**20 Insertion of new ch 7, pt 8**

Chapter 7—

*insert—*

**‘Part 8 Transitional provision for  
Resources Legislation and  
Another Regulation  
Amendment Regulation (No. 1)  
2012**

**‘173 Application of s 149H—unpaid royalty interest rate**

- ‘(1) This section applies if, immediately before 1 October 2012, an amount of petroleum royalty payable by a petroleum producer is unpaid (the *unpaid petroleum royalty*).
- ‘(2) Section 149H, as in force on 1 October 2012, applies to the unpaid petroleum royalty on and from that day.’.

**21 Amendment of sch 12 (Dictionary)**

Schedule 12—

*insert—*

‘*previous royalty return period*, in relation to a royalty return period, means the royalty return period immediately preceding the royalty return period.’.



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(c) for expenses mentioned in subsection (1)(b)—an attendance allowance.

‘(3) For subsection (2)(a), a reference in the *Uniform Civil Procedure (Fees) Regulation 2009*, part 4, to the court is taken to be a reference to the place the person is required to attend.’.

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#### ENDNOTES

- 1 Made by the Governor in Council on 27 September 2012.
- 2 Notified in the gazette on 28 September 2012.
- 3 Laid before the Legislative Assembly on . . .
- 4 The administering agency is Queensland Treasury and Trade.

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