



Queensland

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

Explanatory Notes for SL 2012 No. 169

made under the

Mineral Resources Act 1989

Petroleum and Gas (Production and Safety) Act 2004

State Penalties Enforcement Act 1999

General outline

Short title

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

Authorising law

Sections 320, 321, 321A, 332 and 417 of the *Mineral Resources Act 1989*.

Sections 602, 604A and 859 of the *Petroleum and Gas (Production and Safety) Act 2004*.

Sections 152A and 165 of the *State Penalties Enforcement Act 1999*.

Policy objectives and the reasons for them

Coal royalty rate under the *Mineral Resources Regulation 2003*

The royalty rate for coal is determined based on the average price per tonne of coal sold, disposed of or used in a relevant royalty return period. A two tier royalty system exists by which a 7% royalty rate applies on the part of the coal's value up to \$100 per tonne and a 10% rate applies on the part of the coal's value over \$100 per tonne.

As part of the 2012-2013 State Budget it was announced that the current two tier coal royalty rate system would be replaced with a three tier system, with effect on 1 October 2012. Under the three tier system, a 7% coal royalty rate will continue to apply on the part of the coal's value up to \$100 per tonne, with a rate of 12.5% applying on the part of the coal's value above \$100 and up to \$150 per tonne, and a rate of 15% applying on the part of the coal's value above \$150 per tonne.

Amendments to *Mineral Resources Regulation 2003* and *Petroleum and Gas (Production and Safety) Regulation 2004*

Civil penalty

Monthly payment arrangements for royalties were introduced on 1 January 2012 under the *Mineral Resources Regulation 2003* and the *Petroleum and Gas (Production and Safety) Regulation 2004*. Under these arrangements, the monthly instalments are generally worked out under the default method as one-third of the previous quarter's royalty liability. However, a person may elect to use the estimates method and pay a lower instalment if the actual royalty liability in the current quarter is reasonably expected to be less than the previous quarter's. The estimated instalment must be at least one-third of the estimated royalty liability for the current quarter.

To manage possible revenue risks where a person understates their expected royalty liability to reduce the monthly payments, section 321A of the *Mineral Resources Act 1989* and the 604A of the *Petroleum and Gas (Production and Safety) Act 2004* authorise the making of a regulation dealing with civil penalties.

Under the amendments being made to the *Mineral Resources Regulation 2003* and the *Petroleum and Gas (Production and Safety) Regulation 2004*, a person who elects to use the estimates method for working out one or both of the monthly royalty instalments in a quarter will be liable for a civil penalty if either:

- the actual royalty liability for the quarter is more than 115% of the royalty payable by the person for the previous return period; or
- the actual royalty liability for the quarter is less than the royalty payable by the person for the previous period but the total of the royalty paid for instalments 1 and 2 is less than 50% of the actual royalty liability for the quarter.

The penalty for each relevant month in which an election is made is 25% of the difference between the amount worked out under the default method and the actual payment made for the month. The penalty may be partly or fully remitted and will apply as an alternative to prosecution for an offence relating to the understatement.

Example 1

Royalty of \$120,000 was paid for an operation for the quarter ending 31 December. On that basis, royalty of \$40,000 is payable for each of instalments 1 and 2 under the default method. However, the person expects the royalty liability to decrease to \$60,000 for the January – March quarter and an election is made to reduce the royalty payable for instalment 1 to \$20,000, being 1/3 of the estimated liability. Following further review prior to paying instalment 2, the royalty liability for the quarter is then expected to be \$90,000 and another election is made to reduce the royalty payable for instalment 2 and to pay \$30,000, being 1/3 of the newly estimated quarterly liability. On lodgement of the royalty return for the quarter, the actual royalty payable for the quarter is \$140,000.

The actual royalty liability for the quarter is more than 115% of the previous quarter's liability. Penalty is therefore payable for each month in which the amount paid was less than the amount worked out under the default method. The penalty payable would therefore be (subject to any remission):

Instalment 1: $25\% \times (\$40,000 - \$20,000) = \$5,000$

Instalment 2: $25\% \times (\$40,000 - \$30,000) = \$2,500$

Example 2

If in Example 1 the actual royalty payable for the quarter was \$110,000, so that the person was entitled to use the estimates method, penalty would still be payable for instalments 1 and 2 as the total royalty paid in those months was less than 50% of the total royalty payable for the quarter.

Unpaid royalty interest

Section 332 of the *Mineral Resources Act 1989* and section 602 of the *Petroleum and Gas (Production and Safety) Act 2004* impose unpaid royalty interest at the prescribed rate on the amount of royalty that is unpaid from time to time, from the day immediately after the royalty is required to be paid, until it is fully paid, both dates inclusive.

The *Mineral Resources Regulation 2003* and *Petroleum and Gas (Production and Safety) Regulation 2004* are being amended to specify that the unpaid royalty interest rate is the same as the rate for unpaid tax interest under section 54(2) of the *Taxation Administration Act 2001*.

Section 332(3) of the *Mineral Resources Act 1989* and section 602(4) of the *Petroleum and Gas (Production and Safety) Act 2004* provide that a regulation may prescribe how unpaid royalty interest is worked out in particular cases or classes of cases, including how the interest is worked out if royalty is payable in instalments.

The *Mineral Resources Regulation 2003* and *Petroleum and Gas (Production and Safety) Regulation 2004* are being amended to clarify how unpaid royalty interest applies where monthly instalment 1 or monthly instalment 2 are unpaid for a quarter, and how unpaid royalty interest is worked out for the quarter where royalty remains unpaid when the quarterly return is due.

The *Petroleum and Gas (Production and Safety) Regulation 2004* is also being amended to clarify the basis for working out unpaid royalty interest in relation to an unpaid royalty amount under the annual return.

The amendments to the *Mineral Resources Regulation 2003* and the *Petroleum and Gas (Production and Safety) Regulation 2004* in relation to civil penalties and unpaid royalty interest will commence on 1 October 2012.

Late lodgement fee

Under the *Mineral Resources Regulation 2003*, a late lodgement fee of \$159 applies when a royalty return is lodged late, with no discretion to remit it. The *Mineral Resources Regulation 2003* is being amended to provide a discretion for the Minister to remit the fee.

Attendance expenses under the *State Penalties Enforcement Regulation 2000*

Amendments have been made to the *State Penalties Enforcement Act 1999* to permit the Registrar to require a person's attendance to give either information or documents that are within the person's control or possession. Where this requirement is imposed on a person other than an enforcement debtor or their representative, the person is entitled to be paid attendance expenses as prescribed under a regulation. The *State Penalties Enforcement Regulation 2000* is being amended to prescribe these attendance expenses.

Achievement of policy objectives

The amendment of the coal royalty rate in the *Mineral Resources Regulation 2003* is in accordance with Government policy as announced in the 2012-13 State Budget.

The amendments to the *Mineral Resources Regulation 2003* and the *Petroleum and Gas (Production and Safety) Regulation 2004* to provide for civil penalties for royalty paid by instalments, prescribe the interest rate for unpaid royalty interest and specify the basis for working out unpaid royalty interest in particular cases, are in accordance with Government policy as announced in the 2012-13 State Budget. The amendment of the *Mineral Resources Regulation 2003* to allow remission of the fee for late lodgement of a mineral royalty return is also in accordance with Government policy as given effect under the *Fiscal Repair Amendment Act 2012*.

The amendment of the *State Penalties Enforcement Regulation 2000* to prescribe the expenses a person may claim for attendance before the Registrar will ensure that people are appropriately compensated for expenses in these cases. Specifying the expense amounts by reference to Part 4 of the *Uniform Civil Procedure (Fees) Regulation 2009* is also in accordance with Government policy as it will ensure attendance expenses are consistent with those paid to witnesses and interpreters in a Queensland court proceeding.

Consistency with policy objectives of authorising law

Amendment of the coal royalty rate in the *Mineral Resources Regulation 2003* is consistent with the policy objective of the *Mineral Resources Act 1989* that the coal royalty rate be prescribed by regulation.

The amendments to the *Mineral Resources Regulation 2003* and the *Petroleum and Gas (Production and Safety) Regulation 2004* to specify how civil penalties apply for monthly royalty payments made using the estimates method, and to specify matters relevant to imposing interest on unpaid royalties, are consistent with the policy objectives of the *Mineral Resources Act 1989* and the *Petroleum and Gas (Production and Safety) Act 2004*.

Amendments of the *Mineral Resources Regulation 2003* to allow remission of the fee for late lodgement of a return is consistent with the policy objectives of the *Mineral Resources Act 1989*.

Amendment of the *State Penalties Enforcement Regulation 2000* to specify the attendance expenses that a person attending before the Registrar is entitled to receive is consistent with the policy objective of the *State Penalties Enforcement Act 1999* that such fees be prescribed by regulation.

Inconsistency with policy objectives of other legislation

Not applicable.

Benefits and costs of implementation

Implementation costs in relation to the amendments are not expected to be significant.

Consistency with fundamental legislative principles

The regulation is consistent with fundamental legislative principles.

Consultation

Consultation on the increase in the coal royalty rate was inappropriate as it formed part of a revenue initiative for the 2012-13 State Budget.

Consultation was undertaken with the Queensland Resources Council and the Australian Petroleum Production and Exploration Association in relation to the amendments being made to the *Mineral Resources Regulation 2003* and the *Petroleum and Gas (Production and Safety) Regulation 2004*. No issues were raised.

In relation to the amendment of the *State Penalties Enforcement Regulation 2000*, the expenses payable for attendance before the Registrar are consistent with those paid under the *Taxation Administration Act 2002* and the *Uniform Civil Procedure (Fees) Regulation 2009* in similar circumstances. Consultation is not therefore considered necessary.

The Regulatory Review Branch of Queensland Treasury and Trade was consulted regarding the need to prepare a Regulatory Assessment Statement (RAS).

The Regulatory Review Branch advised that with regard to the obligations imposed by Part 5 of the *Statutory Instruments Act 1992* and the RAS System, a RAS is not required.

ENDNOTES

- 1 Laid before the Legislative Assembly on . . .
- 2 The administering agency is Queensland Treasury and Trade.

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