

Mineral Resources Regulation 2013

Explanatory notes for SL 2013 No. 170

made under the

Coal Mining Safety and Health Act 1999

Mineral Resources Act 1989

Petroleum and Gas (Production and Safety) Act 2004

General Outline

Short title

Mineral Resources Regulation 2013

Authorising law

Section 282 of the *Coal Mining Safety and Health Act 1999*

Section 417 of the *Mineral Resources Act 1989*

Section 859 of the *Petroleum and Gas (Production and Safety) Act 2004*

Policy objectives and the reasons for them

The primary objective is to replace the *Mineral Resources Regulation 2003* with the *Mineral Resources Regulation 2013*.

Under Part 7 of the *Statutory Instruments Act 1992*, the *Mineral Resources Regulation 2003* will automatically expire on 1 September 2013. The provisions contained in the *Mineral Resources Regulation 2003* remain necessary for the continued effective operation of the *Mineral Resources Act 1989*.

In particular, the *Mineral Resources Regulation 2003* facilitates the operation of the *Mineral Resources Act 1989* by:

- prescribing conditions, restrictions, exemptions and prohibitions for tenure, areas for particular land, reporting requirements, a small scale mining code; additional information and lodgement requirements, prescribed hours of business and rent payable for mining tenements;

- prescribing the rates and methods of calculating royalty, the way in which royalty is assessed and payable, and the basis for collection and enforcement of royalty liabilities.

Schedule for rental fees were excluded from the annual fee review captured in *Natural Resources and Mines Legislation Amendment Regulation (No. 2) 2013*. Annual tenure rentals are effective as of 1 September each year and will be incorporated into this remake for practicality purposes.

Achievement of policy objectives

The *Mineral Resources Regulation 2013* is made in substantially similar form to the previous regulation. However, the opportunity has been taken to adopt current drafting practices and to make the modifications necessary to ensure the regulation continues to effectively support the operation of the *Mineral Resources Act 1989*.

Inaccuracies related to terminology in the *Mineral Resources Regulation 2003* are also corrected, and minor, consequential amendments to the *Coal Mining Safety and Health Regulation 2001* and the *Petroleum and Gas (Production and Safety) Regulation 2004*, flowing from the corrections and renumbering are included.

The royalty provisions largely reflect current arrangements. However, to ensure continued, effective royalty administration, the *Mineral Resources Regulation 2013*:

- specifies that returns are to be lodged for calendar quarters where a mining operation is under one or more mining claims, unless the Treasurer and Minister for Trade (the Minister) decides that a financial year return is appropriate in the circumstances;
- requires that, where returns are being lodged for calendar quarters and the mining operation ends during a quarter, the return for the relevant quarter must be lodged on or before the last business day of the month after the quarter ended;
- allows the Minister to specify an earlier date for lodging returns than otherwise required where it is considered necessary for the protection of the public revenue;
- recognises the particular contractual arrangements under which certain minerals are sold, allowing royalty to be paid on an adjustment basis where the mineral's value cannot be finally determined when the royalty liability arises;
- allows a refund of overpaid royalty to be credited against an amount the Minister is reasonably satisfied is, or will become payable, by the person for royalty related amounts; and
- clarifies the operation of the gross value royalty provisions by specifying when a person will be required to obtain a gross value royalty decision for a mineral or to advise the Minister when a gross value royalty decision is incorrect, the Minister's powers for making and amending gross value royalty decisions, the dates of effect for gross value royalty decisions, and a person's rights of review.

The *Mineral Resources Regulation 2013* makes no substantive changes to the formulas for working out royalty liability.

The regulatory fees for rental payable have been reviewed for indexation and validated. A CPI increase of 3.5% has been applied.

Consistency with policy objectives of authorising law

The *Mineral Resources Regulation 2013* is consistent with the policy objectives of authorising law as it provides an administrative framework to expedite and regulate prospecting and exploring for and mining of minerals pursuant to section 2(f) of the *Mineral Resources Act 1989*.

It also prescribes royalty return and payment requirements pursuant to section 320 of the *Mineral Resources Act 1989*.

Further, the *Mineral Resources Regulation 2013* reflects current legislative drafting practices.

Inconsistency with policy objectives of other legislation

There is no inconsistency with policy objectives of other legislation. The remaking of the *Mineral Resources Regulation 2013* provided an opportunity to make its provisions covering conditions applying to particular coal mining leases more consistent with the terminology and framework of the *Coal Mining Safety and Health Act 1999*. There are now references to a “plan” rather than a “principal hazard management plan”. The purpose of the plan is to manage risks and hazards, and not only principal hazards, from overlapping or adjacent leases. The respective safety and health obligations of holders and coal mine operators, in relation to the safety and health management system for a mine are also taken into account.

Alternative ways of achieving policy objectives

Not remaking the subordinate legislation would result in an incomplete regulatory framework, which includes the specification of fees payable causing uncertainty to both government and industry.

Benefits and costs of implementation

The remade subordinate legislation will remove outdated regulation to streamline and simplify the regulatory framework.

Implementing the *Mineral Resources Regulation 2013* will ensure that the regulatory framework supporting the *Mineral Resources Act 1989*, particularly for mining tenures, rents and royalties, continues appropriately.

Implementing the *Mineral Resources Regulation 2013* will not result in an increase in costs for government as administration will remain subject to existing processes, systems and staffing.

Consistency with fundamental legislative principles

The *Mineral Resources Regulation 2013* has been drafted with regard to and is considered not to breach any fundamental legislative principles.

Consultation

A review of the current *Mineral Resources Regulation 2003* was undertaken in consultation with industry in relation to regulatory matters. It was agreed to remake the regulation largely the same and where appropriate, remove duplicative and outdated provisions.

The Office of Best Practice Regulation (OBPR) was consulted regarding the need to prepare a Regulatory Impact Statement (RIS). OBPR has advised that a RIS is not required because the *Mineral Resources Regulation 2013* does not impose significant adverse impacts on business, government or the community.

Reasons for non-inclusion of information

All relevant information has been included.