

Petroleum and Gas (Royalty) Regulation 2021

Explanatory notes for SL 2021 No. 124

made under the

Petroleum and Gas (Production and Safety) Act 2004

General Outline

Short title

Petroleum and Gas (Royalty) Regulation 2021 (2021 Regulation)

Authorising law

Sections 590, 592A, 593, 594 and 859 of the *Petroleum and Gas (Production and Safety) Act 2004* (PG Act)

Policy objectives and the reasons for them

The *Petroleum and Gas (Royalty) Regulation 2004* (2004 Regulation) contains provisions which are necessary to support the proper administration and determination of petroleum royalty under the PG Act. This includes the royalty rate, the way in which petroleum royalty is calculated, the time for payment of petroleum royalty and the form and lodgement frequency for royalty returns.

Under section 54(1) of the *Statutory Instruments Act 1992*, subordinate legislation expires on 1 September first occurring after the 10th anniversary of the day of its making, unless it is sooner repealed or expires, or a regulation is made exempting it from expiry. Under the *Statutory Instruments Regulation 2012*, the 2004 Regulation has been exempted from expiry on a number of occasions on the basis that the relevant PG Act provisions were being reviewed. Following an exemption from expiry being made in 2020, the 2004 Regulation is due to expire on 31 August 2021.

The Office of State Revenue conducted a sunset review of the 2004 Regulation in accordance with *The Queensland Government Guide to Better Regulation*. The sunset review confirmed that the provisions of the 2004 Regulation are still necessary and appropriate for the proper administration of petroleum royalty under the PG Act, and identified that a change was necessary to expand the ability of the Commissioner of State Revenue (the Commissioner) to make a determination as to how those provisions apply to particular arrangements. Therefore, the 2004 Regulation is to be remade as the 2021 Regulation, with this change along with minor changes necessary to facilitate the remake and to accord with current drafting practices.

Achievement of policy objectives

Under the PG Act, a petroleum producer is required to pay the State petroleum royalty for petroleum that the producer produces in Queensland, and to lodge royalty returns in relation to such petroleum.

The PG Act authorises regulations to be made with respect to a number of matters. Relevantly, regulations can be made with respect to:

- the time for payment of petroleum royalty;
- the way in which petroleum royalty is to be calculated;
- the rate at which petroleum royalty is payable;
- a participant in a joint venture or other arrangement involving the production of petroleum being able to be taken to be a petroleum producer for petroleum royalty purposes;
- the requirements for a petroleum producer to lodge written returns about petroleum produced by the petroleum producer;
- the information that a petroleum producer is required to give to the Commissioner about the estimated royalties payable by the petroleum producer for a future period, and the way in which such information is to be given;
- the imposition and remission of a civil penalty in relation to the making by a person of an election about the time and manner, or amount, of payment of petroleum royalty to the State;
- the fees payable under the PG Act, including late payment fees; and
- a matter for which, under the *Taxation Administration Act 2001*, a regulation under the PG Act may make provision.

Additionally, the PG Act authorises a regulation to impose a penalty of not more than 100 penalty units for a contravention of a provision of the regulation relating to petroleum royalty.

The 2021 Regulation provides for matters authorised under the regulation making heads of power identified above. Subject to the changes outlined below, the 2021 Regulation remakes the provisions of the 2004 Regulation, to:

- require petroleum royalty to be paid on a monthly, quarterly or annual basis;
- prescribe that petroleum royalty for a particular period is to be calculated by applying the relevant royalty rate to the volume of petroleum produced during that period;
- prescribe that petroleum is to be classified as domestic gas, supply gas, project gas or liquid petroleum, with a separate royalty rate applying to each class (such rate being determined with reference to either a formula or a benchmark reference price);
- allow a person (a non-tenure holder) who is a participant in a joint venture or other arrangement involving the production of petroleum, but who does not hold an interest in a petroleum tenure under which the petroleum for that joint venture or other arrangement is produced (joint venture tenure), to apply to the Commissioner to be taken to be a petroleum producer in relation to a stated amount of petroleum produced under the petroleum tenure for petroleum royalty purposes;
- require a royalty return to be lodged with the Commissioner in the approved form, such return relating to a period of either a quarter or a financial year;

- prescribe the information that a petroleum producer is required to give to the Commissioner about the estimated royalties payable by the petroleum producer for a future period, and require that information to be provided in the form stated in a notice given by the Commissioner;
- impose a civil penalty in certain circumstances where a petroleum producer pays petroleum royalty on a monthly basis, and allow the Commissioner to remit such penalty in whole or in part;
- impose a fee for failing to lodge a royalty return by the day it is required to be lodged; and
- provide for working out the period for which unpaid tax interest accrues when a petroleum producer who pays petroleum royalty on a monthly basis fails to make such a payment by the due date.

The 2021 Regulation also remakes offences in the 2004 Regulation relating to:

- a failure by a person who is a member of an LNG project who purchases gas from a petroleum producer, or a reseller for the producer, who is not a member of the same LNG project to give that petroleum producer or reseller a notice stating that the person is a member of an LNG project;
- a failure by a petroleum producer who is a member of an LNG project to give the Commissioner notice of another person who was a member of the LNG project ceasing to be involved in the petroleum venture that constitutes the LNG project; and
- a failure by a petroleum producer who is a member of an LNG project to give the Commissioner notice of a person starting to be involved in the petroleum venture that constitutes the LNG project.

The 2004 Regulation enables the Commissioner to make a determination about how relevant provisions of the 2004 Regulation apply to arrangements involving petroleum producers swapping volumes of petroleum in particular circumstances. To better reflect the range of arrangements that apply in the industry, the 2021 Regulation will allow the Commissioner to also make such a determination in relation to swap arrangements involving resellers for petroleum producers.

The 2021 Regulation will also contain transitional provisions to ensure that decisions made by the Commissioner and elections and applications made by a person (such as an election for the average sales price for a particular petroleum type to be the benchmark price) under the expired 2004 Regulation will continue under the 2021 Regulation.

Consistency with policy objectives of authorising law

The 2021 Regulation is consistent with the policy objectives of the PG Act, to impose petroleum royalty on petroleum produced in Queensland. Additionally, the PG Act authorises the making of regulations with respect to matters included in the 2021 Regulation.

Inconsistency with policy objectives of other legislation

The 2021 Regulation is not inconsistent with the policy objectives of other legislation.

Alternative ways of achieving policy objectives

An alternative way of achieving the policy objectives is to let the 2004 Regulation expire and enact its provisions in the PG Act. This alternative was not adopted as the provisions are of a technical or administrative nature which are more appropriately contained in a regulation.

Benefits and costs of implementation

The 2021 Regulation supports the proper determination and administration of petroleum royalty under the PG Act. The provisions contained in the 2021 Regulation enable the calculation and payment of petroleum royalty, and the lodgement of periodic royalty returns.

The 2021 Regulation remakes the 2004 Regulation, with the change in relation to swap arrangements involving resellers for petroleum producers, along with minor changes necessary to facilitate the remake. Accordingly, implementation costs for Government are not expected to be significant and can be met within existing allocations.

Consistency with fundamental legislative principles

The 2021 Regulation is consistent with fundamental legislative principles. Its provisions are consistent with the objectives of, and are within the scope of the regulation making power in, the PG Act.

The 2021 Regulation remakes offences contained in the 2004 Regulation relating to:

- a failure by a person who is a member of an LNG project who purchases gas from a petroleum producer, or a reseller for the producer, who is not a member of the same LNG project to give that petroleum producer or reseller a notice stating that the person is a member of an LNG project;
- a failure by a petroleum producer who is a member of an LNG project to give the Commissioner notice of another person who was a member of the LNG project ceasing to be involved in the petroleum venture that constitutes the LNG project; and
- a failure by a petroleum producer who is a member of an LNG project to give the Commissioner notice of a person starting to be involved in the petroleum venture that constitutes the LNG project.

A maximum penalty of 100 penalty units is prescribed for these offences, consistent with the penalties under the 2004 Regulation. The penalty amount is considered appropriate to provide a deterrent against non-compliance with the requirements. Additionally, the PG Act authorises a regulation to impose a penalty of not more than 100 penalty units for a contravention of a provision of the regulation relating to petroleum royalty.

The *Legislative Standards Act 1992* (LS Act) provides that legislation must have sufficient regard to the rights and liberties of individuals, and that this depends on (amongst other things) the legislation not adversely affecting rights and liberties, or imposing obligations, retrospectively (section 4(3)(g) of the LS Act).

Section 34 of the *Statutory Instruments Act 1992* (the SI Act) allows a beneficial provision of a regulation to be given retrospective operation, if the regulation expressly provides for that operation. In this context, a beneficial provision is a provision that does not operate to the disadvantage of a person (other than the State, a State authority or a local government) by decreasing the person's rights, or imposing liabilities on the person.

To ensure an appropriate transition from the 2004 Regulation to the 2021 Regulation, the 2021 Regulation expressly provides that, following its commencement, the Commissioner may make the following decisions (each, a retrospective decision) with effect from a date before the commencement:

- following an application from a petroleum producer, ending an election made by the petroleum producer to have the average sales price for a particular petroleum type be equal to the benchmark price (sections 66, 67, 70, 71, 74, 75, 78 and 79 of the 2021 Regulation);
- with the petroleum producer's agreement, deciding that the petroleum producer must lodge petroleum royalty returns on a quarterly basis, rather than on a financial year basis (sections 81 and 83 of the 2021 Regulation);
- deciding that the petroleum producer must lodge petroleum royalty returns on the basis of a financial year, rather than on a quarterly basis (section 83 of the 2021 Regulation) (the annual lodgement decision);
- following an application by a non-tenure holder to be taken to be a petroleum producer in relation to a stated amount of petroleum produced under a joint venture tenure, granting the application (sections 90 and 92 of the 2021 Regulation); and
- following an application by a non-tenure holder or the holder of an interest in a joint venture tenure (joint venture tenure holder), ending the election period for a joint venture tenure (sections 93 and 95 of the 2021 Regulation).

In considering the retrospective decisions in the context of section 4(3)(g) of the LS Act and section 34 of the SI Act, it is noted that:

- most entities liable for petroleum royalty are corporations rather than individuals, so the 2021 Regulation will therefore have limited application to individuals;
- except in relation to the annual lodgement decision, a retrospective decision would be as a consequence of a petroleum producer, non-tenure holder or joint venture tenure holder (i.e. a person affected by the decision) making an application or request to the Commissioner (i.e. the retrospective operation of the 2021 Regulation is not automatic, and is not able to occur as a result of a unilateral action by the Commissioner);
- although the annual lodgement decision can occur as a result of a unilateral action by the Commissioner, such decision would be beneficial to the petroleum producer because it would decrease the frequency with which the petroleum producer was required to lodge petroleum royalty returns and pay petroleum royalty; and
- in any event, the Commissioner is currently empowered under the 2004 Regulation to make decisions retrospectively about the matters the subject of the retrospective decisions – that is, the 2021 Regulation does not empower the Commissioner to make a decision that the Commissioner could not have made under the 2004 Regulation but for its expiry.

Consultation

The Office of Best Practice Regulation (OBPR) was consulted on the sunset review of the 2004 Regulation. OBPR advised that no further regulatory impact analysis was required under *The Queensland Government Guide to Better Regulation* because, amongst other things, the technical and administrative provisions of the 2004 Regulation had been reviewed in recent years, with any necessary changes being made in the *Revenue Legislation Amendment Act 2020* from 1 October 2020.