

**NORTHERN TERRITORY OF AUSTRALIA**

**MINERAL ROYALTY ACT**

As in force at 7 November 2002

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# NORTHERN TERRITORY OF AUSTRALIA

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As in force at 7 November 2002

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## MINERAL ROALTY ACT

### An Act to impose a royalty on minerals recovered in the Northern Territory, and for related purposes

#### Part I Preliminary

##### 1 Short title

This Act may be cited as the *Mineral Royalty Act*.

##### 2 Commencement

This Act shall come into operation on 1 July 1982.

##### 3 Application

- (1) Except as provided by this section, this Act applies to and in relation to all production units.
- (2) Subject to this section, this Act does not apply to or in relation to a production unit, or proposed production unit, which, as at the commencement of the *Mineral Royalty Amendment Act 1987*, was acknowledged by the Secretary to be the subject of an exemption under section 3(1) of the *Mineral Royalty Act 1982*.
- (3) Subject to subsection (4), in respect of the Special Mineral Lease provided for by clause 4(1) of the Agreement made between the Commonwealth of Australia and Nabalco Pty Limited, a copy of which is set out in the Schedule to the *Mining (Gove Peninsula Nabalco Agreement) Act 1968*, the exemption under subsection (2) applies only to and in relation to the period of the lease up to the end of the last of the first 3 seven-yearly royalty periods referred to in paragraph (h) of clause 6 of the Special Mineral Lease as set out in that Act.
- (4) A tenement holder of a production unit (including a production unit referred to in subsection (2)) may, by notice in an approved form to the Secretary before 31 August 1987, elect to have the *Mineral Royalty Act 1982* apply or continue to apply to and in relation to that production unit on and from the date, being not later than

1 September 1987, specified in the notice and accepted by the Secretary and on and from that date, but subject to subsection (5), the *Mineral Royalty Act 1982* shall apply, or continue to apply, accordingly.

- (5) An exemption under subsection (2), and the application of the *Mineral Royalty Act 1982* under subsection (4) to and in relation to a production unit referred to in subsection (2), ceases on the renewal of the mining tenement comprising in whole or in part that production unit.
- (6) Where a tenement holder of a production unit referred to in subsection (2) makes an election under subsection (4), his or her liability to pay royalty to the Territory under any other law in respect of minerals obtained from land comprised in that production unit after the date that the election takes effect shall cease.
- (7) An election under subsection (4) is irrevocable.
- (8) Except for the purposes of the definition of **eligible exploration expenditure** in section 4 and of section 7, this Act does not apply to or in relation to a prescribed substance within the meaning of the *Atomic Energy Act 1953* of the Commonwealth.
- (9) The deduction for **eligible exploration expenditure** expended before 1 January 1987 shall, in relation to a production unit to which this Act applies, be limited to 100% of the amount expended and the amount 35% in the definition of that term shall be construed as 25%.
- (10) For the purpose of calculating royalty in relation to a production unit to which the *Mineral Royalty Act 1982*, or that Act as amended by the *Mineral Royalty Amendment Act 1987*, applies by virtue of this section, existing assets shall be valued at the written-down value of the asset in the books of the royalty payer calculated on approved accounting principles.

#### 4 Definitions

In this Act, unless the contrary intention appears:

**accounting basis**, in relation to the accounts of a production unit for the purposes of this Act, means prepared under an historical cost assumption on either:

- (a) a cash basis, where only amounts actually paid and received are brought to account; or

- (b) an accrual basis, being accounts kept in accordance with generally accepted accounting principles on any approved basis (except a cash basis), including an incurred basis where amounts actually paid and received, together with pecuniary liabilities that have become due and revenues earned the amounts of which in either case are known or can be estimated with certainty, are brought to account,

and **specified accounting basis** means either a cash basis or an accrual basis, as elected by a royalty payer under section 11.

**active operation**, in relation to a production unit or proposed production unit, means either:

- (a) the date on which a contract was first entered into in respect of the provision of an item referred to in the definition of **eligible capital assets expenditure**; or
- (b) the date on which an amount was first expended in respect of such an item,

whichever is earlier.

**approved** means approved by the Secretary either specifically or by the promulgation of guidelines under section 4E.

**authorized person** means a person appointed under section 13 to be an authorized person.

**Board** means a Board of Review established under section 26.

**capital recognition deduction** has the meaning given in section 4C.

**eligible capital assets expenditure**, in relation to a production unit, means an amount expended which was essential to the setting up and operation of the production unit, in respect of:

- (a) feasibility studies;
- (b) studies and investigations required by or under a law in force in the Territory to be carried out;
- (c) site clearing and overburden removal activities up to the date of the commencement of the active operation of the production unit;
- (d) mine design and shaft sinking and tunnelling;

- (e) design, acquisition, installation and construction of:
- (i) mining plant;
  - (ii) treatment plant necessary for the production of a saleable mineral commodity;
  - (iii) storage facilities;
  - (iv) structures;
  - (v) electricity generation and reticulation;
  - (vi) water storage and reticulation;
  - (vii) communication facilities;
  - (viii) transport facilities;
  - (ix) town and accommodation facilities; and
  - (x) other facilities essential to the operation of the production unit; and
- (f) amounts expended after 1 July 1982 in acquiring by transfer any tenement comprising part of the production unit, to the extent that:
- (i) the amounts expended are verifiable by the transferor as being required by or under a law in force in the Territory and were represented by exploration expenditure certificates; and
  - (ii) have not been claimed in determining the net value upon which royalty is payable in respect of the production of another production unit,

but, notwithstanding that the amounts may have been expended and recorded in the books of account of the production unit as a capital item, does not include amounts expended in respect of negotiations with landowners before the operation of the production unit for the sustained production of a commercial quantity of a mineral commodity, unless the amounts were required to be expended on such negotiations in accordance with a law in force in the Territory.



***eligible exploration expenditure***, means:

- (a) in respect of work carried out in the Territory:
- (i) in the case of a production unit which, at the commencement of this Act, was exempted under section 3(2) from its operation – an amount expended by the royalty payer or any other person after the date on which this Act first applied to or in relation to that production unit; and
  - (ii) in the case of any other production unit – an amount expended by the royalty payer, or any other person after the commencement of this Act,

in each case increased by 50% in respect of the exploration for, or the determining of the existence, location, extent or quality of, a mineral occurrence in the Territory after that respective date and in respect of which amount the Secretary has issued an exploration expenditure certificate under section 7 or, where the Secretary is considering an application for an exploration expenditure certificate, until the application is refused; and

- (b) in respect of work carried out outside the Territory:
- (i) in the case of a production unit which, at the commencement of this Act, was exempted under section 3(2) from its operation – an amount expended by the royalty payer or any other person after the date on which this Act first applied to or in relation to that production unit; and
  - (ii) in the case of any other production unit – an amount expended by the royalty payer or any other person after the commencement of this Act,

in each case increased by 50% in relation to a mineral occurrence on a mining tenement which forms part of the production unit, which amount was, in the opinion of the Secretary, reasonably expended by the royalty payer or other person after that respective date directly in respect of the exploration for, or the determining of the existence, location, extent or quality of, a mineral occurrence on the land comprised in the mining tenement or the exploration retention lease, within the meaning of the *Mining Act*, from which it was derived,

or so much of those amounts the inclusion of which, in calculating the royalty payable in respect of a royalty year, does not reduce the royalty payable by more than 35% of the amount of royalty that would be payable had eligible exploration expenditure not been taken into account, whichever is the lesser.

**eligible research and development expenditure**, in relation to a production unit in respect of a royalty year, means an amount which was reasonably expended by a royalty payer for research into methods designed to reduce the eligible capital assets expenditure and the operating costs of, or to improve the rate and amount of recovery of a saleable mineral commodity from the production unit.

**expended** means:

- (a) where the specified accounting basis of a production unit is a cash basis – amounts paid;
- (b) where the specified accounting basis of a production unit is an incurred basis – amounts incurred, being amounts paid and pecuniary liabilities that have become due the amounts of which are known or can be estimated with certainty; and
- (c) where the specified accounting basis of a production unit is an accrual basis (other than an incurred basis) – charges brought to account.

**grade**, in relation to a mineral commodity, means:

- (a) the percentage contents of each element in the mineral commodity; and
- (b) any other characteristic of the mineral commodity,

that adds to or detracts from its value, and shall be taken to be that agreed between a royalty payer and the Secretary or, failing agreement within a reasonable time, as determined by the Minister.

**gross realization** has the meaning given in section 4A.

**mineral** means:

- (a) a naturally occurring:
  - (i) inorganic element or compound, including an inorganic carbonate compound; or
  - (ii) organic carbonate compound,

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obtained or obtainable from land by mining, whether carried out under or on the surface of the land;

(b) coal and lignite; or

(c) a prescribed mineral,

but does not include an extractive mineral, being:

(d) soil; or

(e) sand, gravel, clay or stone that is suitable for use in construction or building works,

in respect of which an extractive mineral permit, an extractive mineral lease or an authorization to occupy an extractive mineral lease has been granted under the *Mining Act*.

**mineral commodity** means a mineral or substance derived from a mineral at any stage of treatment of that mineral.

**mining tenement** means a right, by whatever name known, to obtain minerals from land (including Special Mineral Lease 11 held by Gove Aluminium Limited and Swiss Aluminium Australia Limited and dated 30 May 1969), granted or continued in force by or under a law in force in the Territory, whether granted before or after the commencement of this Act, and includes the land to which the right relates, but does not include an exploration licence or an exploration retention licence within the meaning of the *Mining Act*.

**net value** has the meaning given in section 10.

**operating costs** has the meaning given in section 4B.

**person** includes a corporation, company, syndicate, trust, firm, partnership, co-owners, joint-venture or part, and its, or if the context so requires their, heirs, executors, administrators, successors, assigns or other legal representative.

**production unit** means:

(a) a mining tenement; or

(b) where 2 or more mining tenements are being operated as part of an integrated operation, those mining tenements,

together with such facilities, if any, within the Territory and whether adjacent to the mining tenement or tenements or not as are essential for the production of a saleable mineral commodity from a mineral obtained from the mining tenement or tenements.

**records** includes:

- (a) registers or other records of information;
- (b) accounts, account books or accounting records;
- (c) contracts; and
- (d) sales or exchange agreements,

however compiled, recorded or stored.

**responsible person** means the person appointed or deemed to be appointed by the tenement holders of a production unit or proposed production unit under section 10A.

**royalty** means the royalty in respect of minerals imposed under section 9 and includes interest on royalty under section 42 and penal royalty under section 42A.

**royalty payer**, in relation to a production unit, means the holder of a mining tenement that forms part of the production unit and includes the responsible person appointed in respect of that production unit.

**royalty year**, in relation to a production unit, means the fiscal period, not exceeding 12 months, for which the accounts of a royalty payer have been, or are, ordinarily made up by the royalty payer, or such other fiscal period that may be approved for the purposes of this Act, in either case being a fiscal period commencing on or after the date on which this Act first applied to or in relation to the production unit.

**saleable mineral commodity**, in relation to a production unit, means a mineral commodity, other than a mineral commodity treated or processed to a stage declared by the Minister, by notice in writing to the royalty payer, as the stage at or beyond which it ceases to be a saleable mineral commodity for the purposes of this Act.

**Secretary** means the Chief Executive Officer of the Agency for the time being responsible under the Minister for the administration of this Act.

**4A Interpretation of *gross realization***

- (1) In this Act, ***gross realization***, in relation to a production unit, means:
- (a) the sum of:
    - (i) the gross values of saleable mineral commodities produced by the production unit in a royalty year that have been sold or removed without sale from that production unit;
    - (ii) any amount received by way of insurance, indemnity or guarantee for or in respect of the loss of a saleable mineral commodity from the production unit the value of which, if the loss had not occurred, would have been taken into account in calculating gross realizations;
    - (iii) where, pursuant to a law in force in the Territory, the sale or disposition of a saleable mineral commodity from a production unit is prohibited except to such persons or subject to such conditions as may be specified, any amount received as the price or compensation for the mineral commodity; and
    - (iv) any gain realized on the sale of assets of the production unit;
  - (b) less:
    - (i) any loss incurred on the sale of assets of the production unit; and
    - (ii) any negative net value under section 10 brought forward from previous royalty years that has been approved.
- (2) Where the sale price for saleable mineral commodities has been fully or partly paid more than 180 days before the purchaser takes physical delivery of the mineral commodities then, for the purposes of this section, the value of those mineral commodities shall be the sale price or part paid increased by such sum as would represent interest on the sale price or part paid at a rate equivalent to the arithmetic mean of the published daily yields on Australian Federal Securities most closely approximating 10 years to maturity plus 2% for the period commencing with the receipt of the sale price or part paid and ending with the delivery of the mineral commodity.

- (3) Where saleable mineral commodities are removed from a production unit without sale (whether on consignment or otherwise) then, for the purposes of this section, the mineral commodities shall be valued:
- (a) where guidelines have been promulgated pursuant to section 4E – in accordance with those guidelines;
  - (b) where the Secretary has given an opinion pursuant to section 4F – in conformity with that opinion; or
  - (c) in any other case:
    - (i) at an amount equivalent to the price which would be received for the mineral commodities on the open market; or
    - (ii) at such other amount as the royalty payer may establish and substantiate as being the value.
- (4) No interest earned which is referable to the operations of a production unit shall be taken into account in calculating gross realization.

**4AA Conversion of saleable mineral commodity before sale, &c.**

Where a saleable mineral commodity produced on a production unit is used on that production unit in the production of a mineral commodity that is not a saleable mineral commodity, the saleable mineral commodity so used shall be taken to have been sold immediately before the stage at or beyond which it ceased to be a saleable mineral commodity, and royalty shall be payable under this Act accordingly.

**4B Interpretation of *operating costs***

- (1) In this Act ***operating costs***, in relation to a production unit in respect of a royalty year for the purposes of a deduction under section 10(2), means:
- (a) expenditure which was reasonable in amount and which is directly attributable to, the production, or maintenance for the purposes of production, or the sale or marketing of the saleable mineral commodity of a production unit,
- and includes:
- (b) eligible research and development expenditure;

- (c) accounting and auditing fees;
- (d) legal fees (other than those directly attributable to royalty matters);
- (e) insurance premiums that are directly related to the operation of the production unit;
- (f) the salaries, allowances, termination or similar payments or approved benefits of a similar nature, employer contributions to superannuation schemes and the wages of employees who, throughout their employment in the royalty year, were, during their ordinary hours of duty, engaged primarily in work relating to the administration of the production unit;
- (g) office expenses directly associated with the operation of the production unit;
- (h) fees for management services, being fees and services that are reasonable and essential respectively, for or to the operation of the production unit;
- (j) tenement rentals;
- (k) fees and charges imposed under a law in force in the Territory;
- (m) such fees, charges or costs as may be prescribed;
- (n) pay-roll tax; and
- (p) other matters which were necessary for the proper administration of the production unit;

but does not include:

- (q) compensation for or in respect of the use or disturbance of land or improvements in excess of that reasonably required to be paid under section 174B or 184 of the *Mining Act*, or which would be required to be so paid if the land or improvements in respect of which it would be required to be paid were private land within the meaning of that Act or improvements on that land;
- (r) taxes on income or profits;
- (s) mineral royalties;

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- (t) the costs of negotiating with land holders unless the amounts were required to be expended in accordance with a law in force in the Territory;
  - (u) interest payments or payments in the nature of interest or any amount representing depreciation;
  - (w) payments in the nature of royalties; or
  - (y) any other payment being, or in the nature of a levy on mineral output, value, profits, income or export.
- (2) In the first royalty year after the production unit commences the production of a commercial quantity of a saleable mineral commodity, any amounts expended in the 4 year period before that date, being amounts in the nature of operating costs under subsection (1), may be claimed as an operating cost.

#### **4C Interpretation of *capital recognition deduction***

- (1) In this Act ***capital recognition deduction***, for the purposes of a deduction under section 10(2), means a factor equivalent to a fraction of the value of each item representing an amount of eligible capital assets expenditure and used in relation to the operation of a production unit in each 6 monthly period of a royalty year, calculated as follows:
- (a) all items representing eligible capital assets expenditure are allocated within the capital deduction life schedule under subsection (5);
  - (b) a principal sum represented as 100% of an item from each group in the deduction life schedule is converted into a series of semi-annual annuities payable in arrears over the period of the deduction life, at a rate of interest determined under subsection (6) plus 2%, by the use of annuity tables having at least 5 significant places of decimals or by any other approved method; and
  - (c) the resulting amounts expressed as fractions of each principal sum mentioned in paragraph (b), are the factors used in calculating the capital recognition deduction for the items in each group of the capital deduction life schedule.
- (2) The Minister shall from time to time announce the factors to be used in calculating a capital recognition deduction and the period during which they apply, being a specified period of 6 months before the Minister's announcement.



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- (3) The capital recognition deduction in respect of an item representing eligible capital assets expenditure not used on or directly related to the operations of the production unit for a whole 6 month period shall be reduced in proportion to the time during the 6 month period that it was not used.
- (4) If the Minister does not make a further announcement under subsection (2) within 1 year after making an announcement under that subsection, the factors applying in the next 6 month period shall be those specified in the Minister's first announcement, and those factors shall continue to apply in the next consecutive periods of 6 months until changed by the Minister.
- (5) For the purposes of subsection (1), the Secretary shall promulgate guidelines under section 4E indicating the period over which a capital recognition deduction will be made for items representing eligible capital assets expenditure, being guidelines (in this section referred to as a capital deduction life schedule) based on rates of depreciation allowed in respect of items for income tax purposes and taking into account the residual life of items already partly or wholly depreciated, adjusted as shown in the following table:

Period over which depreciation allowed for income tax purposes	Corresponding period allowed for purposes of capital recognition deduction
4 years or less	3 years
Over 4 years but less than 10 years	5 years
10 years and over and all other assets	10 years.

- (6) The interest rate to be used under subsection (1)(b) is equivalent to the arithmetic mean of the published daily yields on Australian Federal Securities most closely approximating 10 years to maturity during the 6 month period announced by the Minister under subsection (2).
- (7) The Secretary may, notwithstanding subsection (5) and guidelines promulgated pursuant to it, make special arrangements with a royalty payer for the treatment of items representing eligible capital assets expenditure for the purposes of this section.

**4CA Additional deductions**

The Minister may, by agreement in writing with a royalty payer, agree that there may be claimed as an additional deduction in the royalty year during which:

- (a) a production unit first commences the production of a commercial quantity of a saleable mineral commodity; or
- (b) this Act first applies to and in relation to an already producing mine,

such amounts of expenditure directly relating to the production unit or mine as were expended at any time by the royalty payer or a company which, in the opinion of the Minister, is or was at the time a company related to the royalty payer, as are specified in the agreement and, subject to section 4D, those amounts may be deducted in calculating the royalty payable under Part II accordingly.

**4D Deduction allowed once only**

Notwithstanding that an amount expended in respect of a production unit may:

- (a) fall under more than one head of allowance or deduction under this Act; or
- (b) be reflected or capable of being reflected in the financial accounts relating to the production unit in more than one form,

no deduction or allowance under this Act shall be made more than once in respect of any one amount expended.

**4E Guidelines**

- (1) The Secretary may issue written guidelines about any act, matter or thing under this Act.
- (2) A guideline may be of general or specific application.
- (3) An act, matter or thing, to the extent that it complies with a guideline in force under this section, is to be taken to comply with this Act.
- (4) A guideline does not affect:
  - (a) the exercise by the Secretary of a power under this Act; or
  - (b) the right of a person to have the Secretary exercise a power under this Act.

**4F Secretary may determine certain matters before event**

- (1) A person may, in respect of a proposal to:
- (a) set up a production unit;
  - (b) change a process; or
  - (c) adopt or change the accounting basis or system or a contractual arrangement,
- apply to the Secretary for his or her opinion on the proposal in so far as it relates to the liability for the payment of royalty.
- (2) The Secretary may consider the proposal (after receiving such additional information as he or she considers necessary) and may give his or her opinion of the proposal to the applicant accordingly.
- (3) The liability for the payment of royalty by a person who implements a proposal wholly or substantially in conformity with an opinion given under subsection (2) shall be determined by the Secretary in a manner consistent with that opinion.

**4G Arrangements purporting to alter incidence of royalty to be void**

- (1) For the purposes of this section:

**arrangement** means a contract, agreement, plan or understanding (whether enforceable or unenforceable) including all steps and transactions by which it is carried into effect.

**liability** includes a potential or prospective liability in respect of future royalty.

**royalty avoidance** includes:

- (a) directly or indirectly altering the incidence of any royalty;
- (b) directly or indirectly relieving any person from liability to pay royalty; and
- (c) directly or indirectly avoiding, reducing or postponing any liability to royalty.

- (2) An arrangement made or entered into, whether before or after the commencement of this Act, shall be absolutely void as against the Secretary for royalty purposes if and to the extent that, directly or indirectly:
- (a) its purpose or effect is royalty avoidance; or
  - (b) where it has 2 or more purposes or effects, one of its purposes or effects (not being a merely incidental purpose or effect) is royalty avoidance, whether or not any other or others of its purposes or effects relate to, or are referable to, ordinary business or family dealings,
- whether or not any person affected by that arrangement is a party thereto.
- (3) Where an arrangement is void under subsection (2) the value of any mineral commodity, asset or debt of a production unit affected by that arrangement shall be adjusted in such manner as the Secretary considers appropriate so as to counteract any royalty advantage obtained in respect of that production unit from or under that arrangement.
- (4) Without limiting the generality of subsection (3), the Secretary may, in making an adjustment under that subsection, have regard to the royalty that, in his or her opinion, would have, or might be expected to have or would in all likelihood have, been paid in respect of a production unit if the arrangement had not been entered into.
- (5) Nothing in this section shall apply to an arrangement made in conformity with guidelines promulgated under section 4E or the opinion of the Secretary under section 4F.

## **5 Secretary to determine certain matters**

- (1) The Secretary may determine the extent to which a particular expenditure is to be attributed to a particular category of eligible deduction in calculating the royalty payable by a royalty payer and, upon the determination being made, that particular expenditure shall be attributed accordingly.
- (2) Where the activities of a royalty payer on or in relation to a production unit are activities which, in the opinion of the Secretary, are not directly related to the production of a saleable mineral commodity by that production unit but which would otherwise attract eligible deductions, the Secretary may, for the purpose of calculating the royalty payable by the royalty payer, apportion the expenditure between the activities directly related to the production of a saleable mineral commodity and those other activities, as the

Secretary thinks fit.

## **6 Certain allowances and deductions transferable**

Where a production unit is sold or transferred, any:

- (a) depreciation calculated in accordance with generally accepted accounting principles; or
- (b) capital recognition deduction in relation to items representing eligible capital assets expenditure sold or transferred with the production unit,

shall continue in the same manner and to the same extent as if the production unit and the items had not been sold or transferred.

## **7 Exploration expenditure certificates**

- (1) Subject to the Regulations, a person who expends money after the commencement of this Act on work carried out in the Territory in relation to the exploration for, or the determining of the existence, location, extent or quality of, a mineral occurrence in the Territory after the commencement of this Act may, within 6 months after the end of a period, not exceeding 12 months, during which the expenditure occurred, apply to the Secretary for the issue to the person of an exploration expenditure certificate in respect of that expenditure.
- (2) An application under subsection (1) shall be in an approved form and be accompanied by such information as the Secretary thinks necessary to enable him or her to determine whether the expenditure is expenditure to which this section applies, and shall be verified by a statutory declaration by the applicant and accompanied by a statement in writing from an approved auditor giving his or her opinion as to whether or not the expenditure to which this section applies.
- (3) Within 30 days after the Secretary is satisfied that an applicant has undertaken expenditure to which this section applies, the Secretary shall issue to the applicant a certificate in respect of that expenditure or so much of that expenditure as has not previously been taken into account in an assessment under section 18.
- (4) A certificate issued under subsection (2) may be transferred to any person upon notice of its proposed transfer being given in an approved form to the Secretary.

- (5) The Secretary may, before or after the period expires, extend the period for making an application under subsection (1) for a further specified period (not exceeding 3 months) if satisfied that in all the circumstances it is reasonable to grant the extension.
- (6) In calculating an amount of expenditure for the purposes of this section, subject to subsection (7), an amount or value that affects the calculation is to be taken to be the amount or value exclusive of the amount of GST (if any) payable in relation to a supply to which that amount or value relates.
- (7) Where an amount or value that affects the calculation referred to in subsection (6) is directly attributable to an acquisition that relates to a supply that is input taxed, the amount or value is to be taken to be the amount or value inclusive of the amount of GST (if any) payable in relation to the acquisition to which that amount or value relates.
- (8) In subsections (6) and (7), **acquisition**, **GST**, **input taxed** and **supply** have the same respective meanings as in the *A New Tax System (Goods and Services Tax) Act 1999* of the Commonwealth.

## **8 Substituted certificates**

- (1) The Secretary shall, as soon as practicable after a certificate under section 7 is delivered to the Secretary with a statement under section 12, issue to the royalty payer a certificate for the balance of the amount of the delivered certificate not taken into account by the royalty payer as an eligible deduction for the purpose of calculating the royalty payable by the royalty payer in respect of the royalty year to which the statement relates.
- (2) The Secretary may, on the application of the holder of a certificate under section 7 accompanied by the certificate, issue to the applicant such number of certificates, and in respect of such amounts, as the applicant requires, in substitution for the first-mentioned certificate.

## **Part II Imposition and assessment, &c., of royalty**

### **9 Royalty**

- (1) There is payable under this Act to the Crown in right of the Territory a royalty in respect of all minerals vested in the Crown in right of the Territory obtained from a production unit in a royalty year.
- (2) The holders of mining tenements that form part of a production unit are jointly and severally liable for the payment of royalty in respect of the production unit.

**10 Rate of royalty**

- (1) The royalty payable under section 9 is 18% of the net value of a saleable mineral commodity sold or removed without sale from a production unit in a royalty year, but where that net value is:
- (a) \$50,000 or less, the royalty payable is nil; or
  - (b) more than \$50,000, the royalty otherwise payable is reduced by \$9,000.

- (2) For the purposes of subsection (1), the net value in a royalty year is calculated in accordance with the following formula:

$$GR - (OC + CRD + EEE + AD)$$

where:

GR is the gross realization from the production unit in the royalty year;

OC is the operating costs of the production unit for the royalty year;

CRD is the capital recognition deduction;

EEE is any eligible exploration expenditure, if any; and

AD is the additional deduction, if any, under section 4CA.

- (3) For the purposes of subsection (2), the value adjustment for a capital asset scrapped, sold or removed without sale from the production unit, being an asset taken into account for the purposes of the definition of **eligible capital assets expenditure**, is such amount as is agreed between the royalty payer and the Secretary to be the value of the asset or, in the absence of agreement within such period as the Secretary allows, is such amount as is determined by the Secretary to be the value of the asset, less that portion of the cost of the asset remaining to be depreciated in the accounts of the production unit.
- (4) For the purposes of subsection (2), eligible exploration expenditure shall not be included in calculating the net value if the royalty payable in respect of the relevant production unit in relation to the royalty year would, in the absence of that eligible exploration expenditure deduction, be nil.

- (5) Notwithstanding subsection (1), where:
- (a) a production unit has ceased the production of a saleable mineral commodity; and
  - (b) after the cessation amounts have been expended on the rehabilitation of the tenement forming part of the production unit,
- the royalty payer of the production unit may, after the rehabilitation of the tenement is completed, furnish the Secretary with a statement, verified in such manner as the Secretary may require, of the amounts expended.
- (6) After being satisfied of the correctness of a statement furnished pursuant to subsection (5) and making any adjustments necessary, the Secretary shall:
- (a) apportion the sum of the amounts allowed in the statement ratably over the previous 5 royalty years of the production unit or the life of the production unit, whichever is shorter;
  - (b) allow the amount apportioned as a deduction to determine the net value of the saleable mineral commodity in each royalty year to which the amount has been apportioned; and
  - (c) recalculate the royalty payable in each relevant royalty year.
- (7) For the purposes of subsection (5):
- (a) royalty does not include interest on royalty under section 42 or penal royalty under section 42A; and
  - (b) where the specified accounting basis of the production unit is an accrual basis, amounts expended shall be interpreted as if that accounting basis were an incurred basis as described in paragraph (b) of the definition of **accounting basis** in section 4.
- (8) Nothing in subsections (5) or (6) affects the liability of a royalty payer to furnish a statement under section 12 in respect of a saleable mineral commodity sold or removed without sale from a production unit in a royalty year after the production unit has ceased active production of a saleable mineral commodity.
- (9) For the purpose of calculating or recalculating an amount of royalty under this section, subject to subsection (10), an amount or value that affects the calculation or recalculation is to be taken to be the amount or value exclusive of the amount of GST (if any) payable in



relation to a supply to which that amount or value relates.

- (10) Where an amount or value that affects the calculation or recalculation referred to in subsection (9) is directly attributable to an acquisition that relates to a supply that is input taxed, the amount or value is to be taken to be the amount or value inclusive of the amount of GST (if any) payable in relation to the acquisition to which that amount or value relates.
- (11) In subsections (9) and (10), **acquisition**, **GST**, **input taxed** and **supply** have the same respective meanings as in the *A New Tax System (Goods and Services Tax) Act 1999* of the Commonwealth.

#### **10A Responsible person**

- (1) The tenement holders of a production unit shall, at or before the time the production unit or proposed production unit comes into active operation, appoint a person who would usually be found on or about the production unit or proposed production unit to be responsible on behalf of the tenement holders to accept service of a document or process, furnish a statement or return or make a payment, pursuant to this Act.
- (2) If the tenement holders fail to appoint a responsible person under subsection (1), the manager of the production unit or proposed production unit at the time it comes into active operation shall be deemed to have been appointed as the responsible person.

#### **11 Information to be supplied**

- (1) Within 30 days after the date of active operation of a production unit or proposed production unit the responsible person for the production unit shall notify the Secretary in writing of that fact, and shall include in the notice:
- (a) his or her name, address and designation;
  - (b) the location or locations of the production unit, a description of the nature of its operations and processes, the minerals and mineral commodities being or to be recovered, and its work programme and mining schedule;
  - (c) the names and addresses of the tenement holders whose tenements form part of the production unit or proposed production unit;
  - (d) the name and address of the manager of the production unit or proposed production unit;

- (e) the day in each year on which the royalty year of the production unit commences or will commence; and
  - (f) an election as to the accounting basis on which royalty returns will be prepared.
- (2) The responsible person for a production unit or proposed production unit shall, within 30 days after it happens, notify the Secretary in writing:
- (a) of every change in the name or address, or both, of the responsible person and manager of the production unit or proposed production unit;
  - (b) of a change in the ownership of the production unit or proposed production unit or of a mining tenement which forms part of the production unit or proposed production unit;
  - (c) of a significant change in the level of production of a mineral commodity by the production unit;
  - (d) of a discontinuance of the commercial production of a mineral commodity; and
  - (e) of a recommencement of the commercial production of mineral commodity after discontinuance.

Penalty: \$5,000.

## **12 Royalty return**

- (1) Subject to subsection (7), a royalty payer shall, within 3 months after the expiration of a royalty year or such longer period as the Secretary, in writing, allows, deliver to the Secretary a detailed statement, relating to the whole production unit, containing or indicating:
- (a) the name and description of the production unit;
  - (b) the name and address of each royalty payer in respect of the production unit;
  - (c) the quantity of a mineral commodity sold or removed without sale from the production unit during the royalty year;
  - (d) the name and address of the smelter, refinery or mill to which a mineral commodity recovered was sent;

- (e) the name and address of, and relationship between, any person with an interest in the production unit and the operator of the smelter, refinery or mill;
- (f) the value and the basis of valuation of a mineral commodity sold or removed without sale from the production unit;
- (g) details of all sales or shipments of a mineral commodity from the production unit; and
- (h) details of all contracts and sale or exchange agreements relating to a mineral commodity obtained from the production unit,

and such other information as the Secretary requires.

- (2) A statement referred to in subsection (1) shall, in addition to the matters required under that subsection to be contained or indicated, contain:
  - (a) details of all expenditure claimed as eligible deductions in calculating net value under section 10(2);
  - (b) by way of summary, a calculation of net value; and
  - (c) an estimate of the royalty payable.
- (3) The statement required under subsection (1) to be delivered shall be in an approved form and, subject to subsection (7), shall be signed by the holders of each mining tenement that forms part of the production unit or a person having knowledge of the affairs of the production unit on behalf of those mining tenement holders.
- (4) The statement required by subsection (1) to be delivered shall be audited by an approved auditor whose written report shall accompany the statement, being a report indicating whether, in the opinion of the auditor, the statement:
  - (a) is based on proper accounts and records properly kept and is in agreement with those accounts and records; and
  - (b) complies with the relevant provisions of this Act.
- (5) Where eligible exploration expenditure is taken into account by a royalty payer in estimating the royalty payable by him or her, the statement required under subsection (1) to be delivered shall be accompanied by a certificate issued under section 7 or 8 or, where no such certificate has been issued in respect of that expenditure, details of the application under section 7 for the issue of the

certificate.

- (6) Where a statement required under subsection (1) to be delivered is accompanied by details of an application under section 7 for the issue of a certificate in respect of eligible exploration expenditure taken into account by the royalty payer in estimating the royalty payable by him or her, and a certificate is subsequently issued under that section in respect of that expenditure, the royalty payer shall, within 30 days after receiving the certificate, deliver it to the Secretary to be dealt with under section 8(1) as if it were a certificate delivered with the statement.

Penalty: \$2,000.

- (7) The Secretary may, with the consent in writing of all the royalty payers for a production unit, permit a royalty payer to deliver a statement under this section in respect of his or her operations in relation to the production unit separate from those of other royalty payers, and the Secretary may deal with that statement, and the statement or statements in relation to the remainder of the production unit, accordingly.
- (8) Nothing in subsection (7) shall be construed as relieving a royalty payer from his or her liability for the payment of royalty in respect of the whole production unit.

### **13 Appointment of authorized person**

The Secretary may, in writing, appoint a person to be an authorized person for the purposes of this Act.

### **14 Inspection of stock and accounts**

- (1) For the purposes of this Act, an authorized person may, at reasonable times or, where he or she has reasonable cause to believe an offence against this Act has been, is being, or is about to be, committed, at any time, enter:
- (a) a production unit or any part thereof;
  - (b) premises where there is stored, or where the authorized person has reasonable cause to believe is stored, a mineral commodity in respect of which royalty is payable or, in his or her opinion, is likely to be payable; or
  - (c) premises where there are, or where he or she has reasonable cause to believe are kept, records relating to the mining, processing, storage or sale or other disposal of a mineral commodity,

and may:

- (d) inspect or take stock of a mineral commodity;
  - (e) inspect the mining or processing of a mineral commodity;
  - (f) inspect the records relating to the mining, processing, storage or sale or other disposal of a mineral commodity; and
  - (g) require a person in that production unit or on those premises to furnish the authorised person with that person's name or residential address, or both, and to answer questions put to the person relating to the subject of the inspection.
- (1A) A person required under subsection (1)(g) to answer questions shall answer truthfully to the best of the person's knowledge and belief, but need not answer to a question if that answer might tend to incriminate the person or make the person liable to a penalty.
- (2) An authorized person may make and retain copies of, or extracts from, the records inspected under this section by him or her.
- (3) A person required under subsection (1) to furnish his or her name or address, or both his or her name and address, shall not:
- (a) refuse or fail to comply with the requirement;
  - (b) furnish a name that is false in a material particular; or
  - (c) furnish as his or her address an address other than the full and correct address of his or her ordinary place of residence.

Penalty: \$500.

- (4) The occupier or person in charge of a production unit or part of a production unit, or of premises referred to in subsection (1)(b) or (c), shall provide an authorized person with all reasonable facilities and assistance for the effective exercise of the authorized person's powers under this section.

Penalty: \$5,000.

**15 Power to require person to answer questions and produce documents**

- (1) The Secretary or an authorized person may, by notice in writing, in relation to a production unit, require the responsible person appointed for that production unit to attend before him or her at the time and place specified in the notice and there to answer questions and to produce to him or her such records in relation to

the mining, storage, transportation, processing or sale or other disposal of a mineral commodity as are referred to in the notice.

- (2) The Secretary or an authorized person may make and retain copies of, or extracts from, the records produced under this section to him or her.
- (3) A person is not excused from answering a question or producing records when required under this section or section 14 so to do, on the ground that the answer to the question, or the production of the records, might tend to incriminate the person or make the person liable to a penalty, but the person's answer to any such question is not admissible in evidence against the person in proceedings other than proceedings for an offence against this Act or an offence against or under this or any other law of the Territory in respect of the person's failure to provide information or the person's providing of false information.

#### **16 Power to examine on oath**

- (1) The Secretary or an authorized person may examine, on oath or affirmation, a person attending before him or her in pursuance of section 15 and, for that purpose, may administer an oath or affirmation to that person.
- (2) The oath or affirmation to be taken or made by a person for the purposes of subsection (1) is an oath or affirmation that the answers the person will give to questions asked of him or her will to the best of his or her knowledge be true.

#### **17 Proper books to be kept**

- (1) A royalty payer shall keep at the production unit, or at some other place in Australia agreed between the royalty payer and the Secretary or, in the absence of agreement, as determined by the Secretary, proper books of account in accordance with generally accepted accounting principles and the specified accounting basis showing in respect of that production unit:
  - (a) the amount and particulars of each expenditure in each category of deduction;
  - (b) details of all sales, transfers and other disposals of assets, being assets the costs of which have been included in calculating eligible capital assets expenditure;
  - (c) details of the mass and grade of a mineral commodity recovered from the production unit and of sales, shipments, transfers and other disposals of a mineral commodity from the

production unit, including the time, destination, value and basis of valuation and mass and grade of each sale, shipment, transfer or other disposal; and

- (d) details of all assets, being assets the costs of which have been included in calculating eligible capital assets expenditure, eligible exploration expenditure and eligible research and development expenditure.
- (2) A mineral commodity shall not be sold or removed from a production unit, or treated in a processing plant not included in the production unit, until its mass and grade have been ascertained and entered in a book of account referred to in subsection (1).

Penalty: \$5,000.

## **18 Assessment**

From the statement required to be delivered under section 12, and from any other information in his or her possession, whether or not obtained under this Act, the Secretary shall make an assessment of the net value, and the royalty payable by the royalty payer, in respect of the royalty year to which that statement relates.

## **19 Default assessment**

- (1) If:
- (a) a person makes default in delivering a statement referred to in section 12;
  - (b) the Secretary is not satisfied that a statement delivered by a royalty payer is a full and accurate statement; or
  - (c) the Secretary is of the opinion that an amount stated by the royalty payer to be the gross value of a saleable mineral commodity is not reasonable,

the Secretary may make an assessment of the amount of net value of a saleable mineral commodity sold or removed without sale from the production unit upon which, in his or her opinion, royalty ought to be levied, and that net value shall be the net value upon which royalty shall be payable.

- (2) In the circumstances referred to in subsection (1)(c) the Secretary shall, in assessing the net value of the saleable mineral commodity, by notice in writing to the royalty payer, declare the amount the Secretary considers to be a reasonable gross value for the mineral commodity concerned, and the net value shall be assessed by

reference to the gross value so declared.

## 20 Amendment of assessment

- (1) The Secretary may, subject to this Act, at any time amend an assessment notwithstanding that royalty may have been paid pursuant to it.
- (2) Where a royalty payer has not made to the Secretary a full and true disclosure of all the material facts necessary for an assessment and there has been an avoidance of royalty, whether pursuant to an arrangement under section 4G or otherwise, the Secretary may:
  - (a) where the avoidance of royalty is due to fraud or evasion – at any time; and
  - (b) in any other case – within 6 years after the date upon which the royalty became due and payable under the assessment,amend the assessment to correct an error in calculation or a mistake of fact, or to prevent avoidance of royalty, as the case may be.
- (3) Where a royalty payer has made to the Secretary a full and true disclosure of all the material facts necessary for the Secretary's assessment, and an assessment is made after that disclosure, no amendment of the assessment varying the liability of the royalty payer in any particular shall be made except to correct an error in calculation or a mistake of fact, and no such amendment shall be made after the expiration of 3 years from the date upon which the royalty became due and payable under that assessment.
- (4) Notwithstanding subsections (2) and (3), where the assessment of net value in respect of a royalty year includes an estimate of the value of a saleable mineral commodity sold or removed without sale in that year from a production unit the net value of which was not ascertainable at the end of that year, the Secretary may, at any time within 3 years after ascertaining the net value of the mineral commodity so sold or removed, amend the assessment so as to ensure its completeness and accuracy on the basis of that net value.
- (5) Notwithstanding subsections (2) and (3), where the assessment of net value in respect of a royalty year includes as an eligible deduction expenditure referred to in paragraph (b) of the definition of **eligible exploration expenditure**, the Secretary may, at any time within 3 years after refusing to issue a certificate under section 7 in respect of any part of that expenditure claimed, amend the assessment so as to ensure its completeness and accuracy on



the basis of eligible exploration expenditure.

**21            Amended assessment to be assessment**

An assessment amended under section 20 shall be an assessment for the purposes of this Act.

**22            Notice of assessment**

As soon as practicable after an assessment under this Act is made, the Secretary shall, by post or otherwise, serve a written notice of assessment on the royalty payer.

**23            Validity of assessment**

The validity of an assessment made under this Act shall not be affected by reason that a provision of this Act has not been complied with.

**24            Judicial notice of signature**

All courts and all persons having by law or consent of parties authority to hear, receive and examine evidence, shall take judicial notice of the signature of the Secretary.

**25            Evidence**

The production of a notice of assessment, or of a document under the hand of the Secretary that purports to be a copy of a notice of assessment, shall be conclusive evidence of the due making of the assessment and, except in proceedings under this Act to review the assessment, that the amount and all the particulars of the assessment are correct.

**Part III            Objection and review**

**Division 1        Board of Review**

**26            Appointment of Board**

- (1) For the purposes of this Part, the Minister may establish such Boards of Review as are necessary to consider applications for the review of assessments under this Act.
- (2) The Minister may, in writing, appoint a Judge of the Supreme Court to be the Chairperson of a Board, and such other members as the Minister thinks fit, to review a particular assessment under this Act.

**27            Protection of members**

No action or suit shall be brought or maintained against a person who is or has been the Chairperson or a member of a Board for any thing done or suffered by him or her to be done in connection with his or her duties as the Chairperson or a member.

**Division 2            Objection and review**

**28            Objection to an assessment**

- (1) A royalty payer who is aggrieved by an assessment made under Part II in relation to him or her may, within 30 days after the date on which the royalty payer is informed of the assessment, post to, or lodge with, the Secretary an objection in writing to the assessment.
- (1A) If the Secretary is satisfied that a royalty payer has a reasonable excuse for not lodging an objection within the 30 day period referred to in subsection (1), the Secretary may extend the time within which the person may lodge the objection.
- (1B) Subsection (1A) does not apply to a royalty payer in relation to whom an assessment was made before the commencement of the *Mineral Royalty Amendment Act 2002* if the 30 day period within which the royalty payer could lodge an objection to the Secretary under subsection (1) expired before that commencement.
- (2) A royalty payer shall, in an objection under subsection (1), state fully and in detail the grounds on which he or she relies.
- (3) The Secretary shall consider the objection lodged under subsection (1) and, subject to subsection (4), either disallow it or allow it either wholly or in part.
- (4) Where an objection lodged under subsection (1) alleges, as a ground on which the royalty payer relies, an incorrect exercise by the Minister of a discretion under this Act, the Secretary shall, as soon as practicable, refer the objection to the Minister who may, within 60 days after it is referred to him or her, confirm or vary his or her exercise of that discretion and advise the Secretary accordingly.
- (5) The Secretary shall cause notice in writing of his or her decision under subsection (3) to be served on the royalty payer.
- (6) A royalty payer has no further right of objection in relation to an amended assessment than he or she would have if the amendment had not been made, except to the extent to which a fresh liability is imposed upon him or her or an existing liability is increased by reason of the amendment.

**29            Application for review**

A royalty payer who is dissatisfied with a decision under section 28(3) may, within 60 days after notice of the decision has been served on him or her under section 28(5), in writing, request the Secretary to treat his or her objection as an application for review and forward it to the Minister.

**30            Notice to refer**

- (1) If, within 60 days after receiving a request under section 29, the Secretary does not refer the objection as requested, the objector may, at any time after the expiration of that period, give the Secretary notice in writing so to do and the Secretary shall, subject to subsection (2), within 60 days after receiving the notice, refer the objection accordingly.
- (2) Where, within 60 days after receiving a request under section 29, the Secretary, in writing, requires the objector to furnish information relating to the objection, the Secretary is not bound to forward the objection to the Minister until the expiration of 60 days after the receipt by the Secretary of the information requested.

**31            Minister to refer matter to Board**

On receiving an objection forwarded to him or her under section 30, the Minister shall appoint a Board of Review to review the assessment and forward all documents relating to the objection to the Chairperson of the Board.

**32            Grounds for review**

- (1) A review under this Part shall be limited to the grounds stated in the written objection referred to in section 28(1).
- (2) If an objector's liability to pay royalty or assessment has been reduced as a result of an objection under section 28, the reduced liability or assessment shall be the liability or assessment required to be reviewed.

**33            Power, procedure, &c., of Board**

- (1) On the reviewing under this Part of an assessment, the Board shall form its opinion on the matters submitted to it including whether a discretion or opinion under this Act was reasonably exercised or held by the Minister or the Secretary, and shall have such other powers as are prescribed.

- (2) At a meeting of a Board:
  - (a) its procedures are, subject to this Act and the Regulations, in its discretion;
  - (b) it is not bound to act in a formal manner or by the rules of evidence, but may inform itself on any matter as it thinks fit; and
  - (c) it shall act without regard to legal technicalities or forms.
- (3) At a meeting of a Board a royalty payer may appear in person or be represented by any person.

**34            Opinion and recommendations of Board**

A Board shall, as soon as practicable after forming its opinion on a matter before it, by notice in writing, inform the Minister of its opinion and make such recommendations in relation thereto as it thinks fit.

**35            Appeal or reference to Supreme Court**

- (1) A royalty payer may appeal to the Supreme Court from the action of the Secretary in pursuance of section 37 based on an opinion of a Board that involves a question of law.
- (2) A Board shall, at the request of the Secretary or the royalty payer, refer a question of law arising before the Board to the Supreme Court.
- (3) An appeal or reference to the Supreme Court under this section shall be heard by a single Judge of the Supreme Court.
- (4) An appeal does not lie from the decision of the Supreme Court constituted by a single Judge on an appeal or reference under this section.

**36            Review pending not to affect liability or assessment**

The fact that a review under this Part is pending in relation to a liability or assessment shall not in the meantime interfere with or affect the liability or assessment the subject of the review, and the royalty may be recovered as if no review were pending.

**37            Action as result of finding**

- (1) On receiving notice under section 34 of the decision of a Board and considering its recommendations the Minister may, by notice in writing to the Secretary, confirm the assessment objected to or

direct the Secretary to amend the assessment as the Minister thinks fit and specifies in the notice, and the Secretary shall comply with that direction.

- (2) The Minister shall cause a copy of a notice under subsection (1) to the Secretary to be served on the royalty payer.

### **38 Adjustment of royalty after review**

If an assessment is varied by the Secretary as the result of a direction under section 37(1):

- (a) an amount of royalty not paid or underpaid is recoverable from the person liable under the assessment as varied to pay the royalty; and
- (b) an amount of royalty overpaid shall, subject to section 45, be refunded.

## **Part IV Collection and recovery of royalty**

### **39 When royalty payable**

Subject to this Part, royalty assessed by the Secretary shall be due and payable by the royalty payer on the date specified in the notice of assessment under section 22 as the date on which royalty is due and payable, being not less than 30 days after the service of the notice or, if no date is so specified or if the date specified is less than 30 days after the service of the notice, on the thirtieth day after the service of the notice.

### **40 Payment of royalty**

- (1) A royalty payer shall pay on account of royalty:
  - (a) not later than 30 days after the end of each six-monthly period in the royalty year in respect of which the royalty is payable, an amount equal to the royalty as estimated by the royalty payer to be payable in respect of the net value of the saleable mineral commodity sold or removed without sale from the production unit for that six-monthly period; and
  - (b) at the time of making a statement under section 12, the balance of royalty payable as estimated in the statement.
- (2) Where the sum of the 2 six-monthly payments referred to in subsection (1) in respect of the royalty year is less than 80% of the assessment under section 18 of royalty payable, additional royalty

shall be paid of an amount equal to the difference between the sum of the 2 six-monthly payments in respect of the royalty year and 80% of the assessment under section 18 of royalty payable in respect of that royalty year, and this Act shall apply to and in relation to that additional royalty (except for the purposes of making a calculation under this section) as if the additional royalty was assessed under section 18 by the Secretary.

- (3) The Minister may, if satisfied that the liability to pay additional royalty under subsection (2) was not brought about by an attempt on the part of the royalty payer to avoid the payment of royalty, remit additional royalty payable under that subsection, or any part of that additional royalty, and on remission the liability to pay the additional royalty or part of the additional royalty, as the case may be, ceases.

#### **41 Extension of time and payment by instalments**

The Secretary may grant such extension of time for payment of royalty or an amount on account of royalty, or permit payment to be made by such instalments and within such times, as he or she thinks fit and, in such a case, the royalty shall be due and payable, or the liability to make the payment on account of royalty shall accrue, accordingly.

#### **42 Interest on unpaid royalty**

- (1) Subject to subsection (2), if any royalty remains unpaid after the time it becomes due and payable, or a payment on account of royalty remains unpaid after the liability to make the payment accrues, the person liable to pay the royalty or make the payment on account of royalty is, in addition to that liability, liable to pay interest on the amount outstanding at an annual rate calculated by adding 7% to the monthly average yield of 90-day bank accepted bills published by the Reserve Bank of Australia for:
- (a) if the day on which the royalty became due and payable or payment on account of royalty accrued is on or after the commencement of the *Mineral Royalty Amendment Act 2002* but before 1 July 2003 – May 2002; or
  - (b) if the day on which the royalty became due and payable or payment on account of royalty accrued is on or after 1 July 2003 – the month of May in the financial year immediately preceding the financial year in which the day occurs,

and computed from the day when the amount became outstanding to and including the day on which the interest is calculated.

- (2) Where an extension of time for the payment of royalty or on account of royalty has been granted under section 41, the interest payable under this section shall be computed from such date as the Secretary determines, being not earlier than the date on which the royalty would have been due and payable or the liability to make the payment on account of royalty accrued, had that extension of time not been granted.

#### **42A Penalty royalty**

- (1) If a royalty payer:
- (a) evades, or attempts to evade;
  - (b) does any act with intent to evade; or
  - (c) makes default in the performance of any duty imposed under this Act or the Regulations with intent to evade,

the assessment or payment of a sum which is or may become chargeable against the royalty payer by way of royalty (in this section referred to as the deficient royalty) the Secretary shall, when assessing the deficient royalty, assess the royalty payer with additional royalty by way of a penalty (in this section referred to as penal royalty) not exceeding twice the deficient royalty or \$10,000, whichever is the greater.

- (2) Penal royalty is payable in respect of the same royalty year as the deficient royalty.
- (3) Notwithstanding that penal royalty assessed does not exceed the greater of twice the deficient royalty or \$10,000, an assessment of penal royalty shall be subject, in the same manner as any other assessment, to objection on the grounds:
- (a) that the royalty payer is not chargeable with penal royalty; or
  - (b) that the amount assessed is excessive having regard to:
    - (i) the nature and degree of the matters that lead to the imposition of the penal royalty; or
    - (ii) the reasons for its imposition.

**42B Penalty royalty on default assessment under section 19**

- (1) If the Secretary makes a default assessment under section 19, the royalty payer in respect of whom the default assessment is made is liable to pay:
  - (a) the amount of royalty payable on the default assessment;
  - (b) an additional amount of royalty equal to 75% of that amount of royalty; and
  - (c) interest imposed under section 42 on the part of that amount of royalty not paid on the due date in accordance with section 40.
- (2) The Secretary may, for the reasons he or she thinks sufficient, remit the whole or a part of an additional amount of royalty referred to in subsection (1)(b) and, on remission, the liability to pay that whole or part of the additional amount of royalty ceases.

**43 Secretary may collect royalty from person owing money to royalty payer or operator**

- (1) The Secretary may, at any time, by notice in writing, a copy of which shall be forwarded to the royalty payer at his or her last place of business known to the Secretary, require a person:
  - (a) by whom any money is due or accruing or may become due to a royalty payer or operator;
  - (b) who holds or may subsequently hold money for or on account of a royalty payer or operator;
  - (c) who holds or may subsequently hold money on account of some other person for payment to a royalty payer or operator; or
  - (d) having authority from some other person to pay money to a royalty payer or operator,

to pay to the Secretary, either immediately upon the money becoming due or being held, or at or within a time specified in the notice (not being a time before the money becomes due or is held):

- (e) so much of the money as is sufficient to pay the amount due by the royalty payer in respect of royalty or additional royalty payable under this Act, where such royalty or additional royalty remains unpaid after 60 days after the royalty or additional royalty became due and payable, or the whole of



the money when it is equal to or less than that amount; or

- (f) such amount as is specified in the notice out of each of any payments which the person so notified becomes liable from time to time to make to the royalty payer or operator, until the amount due by the royalty payer in respect of royalty or additional royalty payable under this Act, where such royalty remains unpaid after 60 days after the royalty or additional royalty became due and payable, is satisfied.
- (2) A person who fails to comply with a notice under this section is guilty of an offence.
- Penalty: \$5,000.
- (3) A person making a payment in pursuance of this section shall be deemed to have been acting under the authority of the royalty payer or operator, and of all other persons concerned, and is hereby indemnified by the Territory in respect of the payment.
- (4) In this section **operator** means the person who, by agreement with the royalty payer, has the right to work and obtain from the production unit in respect of which the royalty is payable a mineral commodity, whether the person does so personally or through an agent, servant or associate.

#### **44 Forfeiture**

- (1) In addition to the grounds specified in section 171(1) of the *Mining Act*, the Minister may forfeit a mining tenement forming part of a production unit where the royalty levied under this Act remains unpaid in respect of that production unit for 6 months or more from the date upon which the royalty became due and payable.
- (2) The Minister shall not, under subsection (1), forfeit a mining tenement unless the Minister has first:
- (a) given to the tenement holder written notice of the intention so to do, indicating the reason for the proposed action;
- (b) specified in the notice a date, being not earlier than 30 days after the service of that notice on the tenement holder, on or before which the tenement holder may submit to the Minister any matter that he or she wishes the Minister to consider before deciding whether to forfeit the mining tenement; and
- (c) considered any submissions made to the Minister in response to, and within the time specified in, the notice given under this subsection.

**45 Amounts overpaid**

- (1) Where, by reason of an amendment of an assessment of his or her liability to pay royalty, or for any other reason, a royalty payer has paid an amount for royalty in excess of his or her liability to pay, the Secretary:
  - (a) may, where satisfied that the royalty payer will have, within 2 months after the Secretary becomes aware of the overpayment, a liability to pay a further amount of or on account of royalty, retain that overpayment, or so much of it as the Secretary thinks necessary to meet that further liability, on account of that further liability; and
  - (b) shall, in any other case, refund to the royalty payer the amount of royalty overpaid.
- (2) A refund payable under subsection (1)(b) by the Secretary shall be paid from the public moneys of the Territory and the Allocation for that purpose is hereby established or increased to the extent necessary.

**Part V Offences and prosecutions****46 Failure to furnish returns or information**

- (1) A person who fails to deliver or furnish a statement or information required by or under this Act to be delivered or furnished, or to comply with a requirement of the Secretary or an authorized person made under this Act, is guilty of an offence.

Penalty: \$5,000.

- (1A) An offence against this section for failing to deliver a statement required by section 12(1) to be delivered is a regulatory offence.
- (2) A prosecution for an offence against this section may be commenced at any time.

**47 Refusal to give evidence, &c.**

A person who, without reasonable excuse, refuses or fails:

- (a) to attend before the Secretary, an authorized person or a Board;
- (b) to be sworn or make an affirmation; or

(c) to answer a question or produce records,

when so required under this Act or the Regulations, is guilty of an offence.

Penalty: \$5,000 or imprisonment for 6 months.

#### **49 False returns or statements**

A person who makes or delivers a statement required by or under this Act or the Regulations to be made or delivered which is false in a material particular, or makes a false answer, whether orally or in writing, to a question put to the person by the Secretary, an authorized person or a Board, is guilty of an offence.

Penalty: \$5,000.

## **Part VI Miscellaneous**

### **49A Delegation**

- (1) The Minister or the Secretary may, by instrument, delegate to a specified person or to a person for the time being holding, acting in or performing the duties of a specified office, designation or position any of his or her functions or powers under this Act, other than this power of delegation.
- (2) A function performed or a power exercised in pursuance of a delegation under subsection (1) is to be taken to have been performed or exercised by the Minister or the Secretary.
- (3) A delegation under subsection (1) does not prevent the Minister or the Secretary performing a function or exercising a power.

### **50 Secrecy**

- (1) Subject to this section, a person who is or has been:
  - (b) a Territory employee;
  - (c) contracted by the Territory to provide a service in connection with the administration of this Act; or
  - (d) an employee of a person referred to in paragraph (c),

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must not, directly or indirectly, other than for the purposes of this Act or the contract:

- (e) make a record of, or communicate to a person, information concerning the affairs of another person acquired by him or her under this Act because of that office, employment or contract; or
- (f) produce to a person, or permit a person to have access to, a document furnished to him or her for the purposes of this Act.

Penalty: \$500 or 6 months imprisonment.

(2) Subsection (1) does not apply to the communication of information or the production of a document by:

- (a) the Secretary or a person authorised by the Secretary to another Territory employee performing a function under this Act for the purpose of enabling the Territory employee to carry out that function;
- (b) the Secretary or a person authorised by the Secretary to the Auditor-General performing a function or exercising of a power under the *Audit Act* or another Act in relation to an audit relating to the Agency responsible for this Act;
- (c) a Territory employee performing a function under this Act to a Territory employee performing a function under an Act administered by the Commissioner of Taxes for the purpose of enabling the second-mentioned Territory employee to carry out the second-mentioned function;
- (d) a Territory employee performing a function under this Act to a Territory employee performing a function under the *Mining Act* or the *Petroleum Act*, where the communication or production is necessary for the efficient administration of this Act; or
- (e) a Territory employee performing a function under this Act to the Aboriginal and Torres Strait Islander Commission in relation to the payment of an amount of royalty under this Act by a holder of a mining tenement on Aboriginal land within the meaning of the *Aboriginal Land Rights (Northern Territory) Act 1976* of the Commonwealth.

(3) Nothing in this section prevents the Auditor-General from disclosing information or publishing a document that he or she has acquired under subsection (2)(b) if the disclosure or publication does not directly or indirectly divulge information identifying the affairs of a particular person.

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(4) Nothing in this section prevents a Territory employee from disclosing information or publishing a document that he or she has acquired under subsection (2)(d) if the disclosure or publication:

- (a) is in the performance by the employee of a function under the *Mining Act* or the *Petroleum Act*; and
- (b) does not directly or indirectly divulge information identifying the affairs of a particular person.

(4A) A person to whom this section applies must not be required to:

- (a) produce in court an assessment, return, statement, notice, record or other document made or given for the purposes of this Act; or
- (b) divulge or communicate to a court a matter or thing that has come or came to his or her notice when performing duties for the purposes of this Act,

unless:

- (c) the person about whom the assessment, return, statement, notice, record or other document concerned consents to the production, divulgence or communication;
- (d) the production, divulgence or communication is made in connection with the administration or execution of this Act; or
- (e) the production, divulgence or communication is made for the purposes of legal proceedings arising out of this Act or of a report of such legal proceedings.

(5) In this section, ***Territory employee*** means a Chief Executive Officer or an employee as defined in the *Public Sector Employment and Management Act*.

## 51 Regulations

The Administrator may make regulations, not inconsistent with this Act, prescribing matters:

- (a) required or permitted to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

**52 Savings**

- (1) Notwithstanding section 191B of the *Mining Act*, the law in force immediately before the commencement of this Act relating to the assessment and payment of royalties shall continue to apply to and in relation to a mining tenement exempted under section 3(1) from the operation of this Act until it ceases to be so exempted.
- (2) Notwithstanding the repeals and amendments effected by the *Mineral Royalty Amendment Act 1987*, the *Mineral Royalty Act 1982* remains in force to the extent necessary to give effect to section 3(5) as if the *Mineral Royalty Amendment Act 1987* (other than section 4 of that Act) had never commenced.

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**ENDNOTES**
**1****KEY**

Key to abbreviations

<b>amd = amended</b>	<b>od = order</b>
<b>app = appendix</b>	<b>om = omitted</b>
<b>bl = by-law</b>	<b>pt = Part</b>
<b>ch = Chapter</b>	<b>r = regulation/rule</b>
<b>cl = clause</b>	<b>rem = remainder</b>
<b>div = Division</b>	<b>renum = renumbered</b>
<b>exp = expires/expired</b>	<b>rep = repealed</b>
<b>f = forms</b>	<b>s = section</b>
<b>Gaz = Gazette</b>	<b>sch = Schedule</b>
<b>hdg = heading</b>	<b>sdiv = Subdivision</b>
<b>ins = inserted</b>	<b>SL = Subordinate Legislation</b>
<b>lt = long title</b>	<b>sub = substituted</b>
<b>nc = not commenced</b>	

**2****LIST OF LEGISLATION*****Mineral Royalty Act 1982 (Act No. 31, 1982)***

Assent date	23 June 1982
Commenced	1 July 1982 (s 2)

***Criminal Law (Regulatory Offences) Act 1983 (Act No. 68, 1983)***

Assent date	28 November 1983
Commenced	1 January 1984 (s 2 s 2 <i>Criminal Code Act 1983</i> (Act No. 47, 1983), <i>Gaz</i> G46, 18 November 1983, p 11 and <i>Gaz</i> G8, 26 February 1986, p 5)

***Mineral Royalty Amendment Act 1987 (Act No. 18, 1987)***

Assent date	25 June 1987
Commenced	1 July 1986 (s 2)

***Mining Amendment Act 1991 (Act No. 27, 1991)***

Assent date	17 June 1991
Commenced	17 June 1991

***Mineral Royalty Amendment Act 1992 (Act No. 77, 1992)***

Assent date	14 December 1992
Commenced	14 December 1992

***Statute Law Revision Act 1995 (Act No. 14, 1995)***

Assent date	23 June 1995
Commenced	23 June 1995

***Mineral Royalty Amendment Act 1998 (Act No. 76, 1998)***

Assent date	15 October 1998
Commenced	15 October 1998

***Financial Relations Agreement (Consequential Provisions) Act 2000 (Act No. 32, 2000)***

Assent date	27 June 2000
Commenced	1 July 2000 (s 2)

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**Mineral Royalty Amendment Act 2002 (Act No. 53, 2002)**

Assent date 10 October 2002  
Commenced 10 October 2002

**Statute Law Revision Act (No. 2) 2002 (Act No. 59, 2002)**

Assent date 7 November 2002  
Commenced 7 November 2002

**3 SAVINGS AND TRANSITIONAL PROVISIONS**

*s 7 Mineral Royalty Amendment Act 1998 (Act No. 76, 1998)*

**4 LIST OF AMENDMENTS**

s 3	sub No. 18, 1987, s 4 amd No. 77, 1992, s 4; No. 76, 1998, s 6
s 4	sub No. 18, 1987, s 5 amd No. 27, 1991, s 4; No. 77, 1992, ss 5 and 10; No. 14, 1995, s 5
s 4A	ins No. 18, 1987, s 6 amd No. 77, 1992, s 10
s 4AA	ins No. 77, 1992, s 6
s 4B	ins No. 18, 1987, s 6 amd No. 77, 1992, s 10; No. 59, 2002, s 5
s 4C	ins No. 18, 1987, s 6
s 4CA	ins No. 77, 1992, s 7
s 4D	ins No. 18, 1987, s 6
s 4E	ins No. 18, 1987, s 6 sub No. 76, 1998, s 3
ss 4F – 4G	ins No. 18, 1987, s 6 amd No. 76, 1998, s 6
s 5	amd No. 77, 1992, s 10; No. 76, 1998, s 6
s 6	sub No. 18, 1987, s 7
s 7	amd No. 18, 1987, s 8; No. 76, 1998, s 4; No. 32, 2000, s 44
s 8	amd No. 18, 1987, s 9; No. 76, 1998, s 6
s 10	amd No. 18, 1987, s 10; No. 77, 1992, ss 8 and 10; No. 32, 2000, s 44
s 10A	ins No. 18, 1987, s 11
s 11	sub No. 18, 1987, s 12 amd No. 76, 1998, s 6
s 12	amd No. 18, 1987, s 13; No. 76, 1998, s 6
s 13	amd No. 76, 1998, s 6
s 14	amd No. 18, 1987, s 14; No. 76, 1998, s 6
s 15	amd No. 18, 1987, s 15; No. 76, 1998, s 6
s 16	amd No. 76, 1998, s 6
s 17	amd No. 18, 1987, s 16
s 18	amd No. 76, 1998, s 6
s 19	amd No. 77, 1992, ss 9 and 10; No. 76, 1998, s 6
s 20	amd No. 18, 1987, s 17; No. 77, 1992, s 10; No. 59, 2002, s 5
ss 26 – 27	amd No. 76, 1998, s 6
s 28	amd No. 76, 1998, s 6; No. 53, 2002, s 3;
ss 29 – 31	amd No. 76, 1998, s 6
s 40	amd No. 18, 1987, s 18; No. 77, 1992, s 10; No. 76, 1998, s 6
s 41	amd No. 76, 1998, s 6
s 42	amd No. 18, 1987, s 19; No. 53, 2002, s 4
s 42A	ins No. 18, 1987, s 20
s 42B	ins No. 53, 2002, s 5



## ENDNOTES

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s 43	amd No. 76, 1998, s 6
s 44	amd No. 18, 1987, s 21; No. 76, 1998, s 6
s 45	amd No. 14, 1995, s 5; No. 76, 1998, s 6
s 46	amd No. 68, 1983, s 8
s 48	rep No. 18, 1987, s 22
s 49	amd No. 76, 1998, s 6
s 49A	ins No. 76, 1998, s 5
s 50	sub No. 76, 1998, s 5 amd No. 53, 2002, s 6
s 51	sub No. 18, 1987, s 23
s 52	amd No. 18, 1987, s 24