

NORTHERN TERRITORY OF AUSTRALIA
MINERAL ROYALTY AMENDMENT ACT 1987

No. 18 of 1987

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NORTHERN TERRITORY OF AUSTRALIA

No. 18 of 1987

AN ACT

to amend the *Mineral Royalty Act*

[Assented to 25 June, 1987]

BE it enacted by the Legislative Assembly of the Northern Territory of Australia, with the assent as provided by the *Northern Territory (Self-Government) Act 1978* of the Commonwealth, as follows:

1. SHORT TITLE

This Act may be cited as the *Mineral Royalty Amendment Act 1987*.

2. COMMENCEMENT

This Act shall be deemed to have come into operation on 1 July 1986.

3. PRINCIPAL ACT

The *Mineral Royalty Act* is in this Act referred to as the Principal Act.

4. APPLICATION AND TRANSITIONAL

Section 3 of the Principal Act is repealed and the following substituted:

"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*.

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"(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 3 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 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."

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5. REPEAL AND SUBSTITUTION

Section 4 of the Principal Act is repealed and the following substituted:

"4. INTERPRETATION

"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;

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'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 -

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- (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 -

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- (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 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

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- (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,
obtained or obtainable from land by mining, whether carried out under or on the surface of the land;
(b) coal within the meaning of the *Coal Act*; 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 up to the time that it first becomes a saleable mineral commodity, and includes a saleable mineral commodity;

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'mining tenement' means a right, by whatever name known, to obtain minerals from land, 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 lease 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;

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'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' means a mineral treated to an extent that is, in the opinion of the Minister, the minimum treatment necessary to enable that mineral to be sold commercially, having regard to the nature and location of the mineral, the mining tenement or tenements of the production unit and the market;

'Secretary' means the departmental head of the Department for the time being primarily responsible under the Minister for the administration of this Act."

6. NEW SECTIONS

The Principal Act is amended by inserting after section 4 the following:

"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 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 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;

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- (iii) where, pursuant to a law in force in the Territory, the sale or disposition of a 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 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 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.

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"(4) No interest earned which is referable to the operations of a production unit shall be taken into account in calculating gross realization.

"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 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 -

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- (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 73, 74 or 75 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;
- (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 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

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- (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.

"(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.

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"(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.

"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. SECRETARY MAY PROMULGATE GUIDELINES

"(1) Subject to this Act, the Secretary may promulgate in writing guidelines in the form of criteria, either general or specific, for or in relation to the drawing up, approval, determination, interpretation, furnishing or carrying on of an act, plan, proposal, standard, report, certificate, return, system, matter or thing under this Act.

"(2) Where guidelines are promulgated under subsection (1) and are currently in force, an act, plan, proposal, standard, report, certificate, return, system, matter or thing, to the extent that it is in conformity with the guidelines, shall be deemed to be drawn up, approved, determined, interpreted, furnished, or carried on, as the case may require, in conformity with the requirements of this Act.

"(3) The -

- (a) power of the Secretary to exercise a discretion, draw up, approve, determine or interpret a matter or thing under this Act; or
- (b) right of a person to have the Secretary specifically consider such a matter or thing,

is not limited or affected by a guideline promulgated under subsection (1).

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"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 opinion on the proposal insofar 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 considers necessary) and may give his 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

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- (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 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."

7. REPEAL AND SUBSTITUTION

Section 6 of the Principal Act is repealed and the following substituted:

"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."

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8. EXPLORATION EXPENDITURE CERTIFICATES

Section 7 of the Principal Act is amended -

- (a) by omitting from subsection (2) "a certificate of an approved auditor" and substituting "accompanied by a statement in writing from an approved auditor giving his opinion as to whether or not the expenditure to which this section applies";
- (b) by omitting from subsection (3) "Where" and substituting "Within 30 days after"; and
- (c) by inserting in subsection (4) after "given" the words "in an approved form".

9. SUBSTITUTED CERTIFICATES

Section 8(2) of the Principal Act is amended by omitting "and the prescribed fee".

10. RATE OF ROYALTY

Section 10 of the Principal Act is amended -

- (a) by omitting subsections (1) and (2) and substituting the following:

"(1) The royalty payable under section 9 is 18% of the net value of a 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:

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

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; and

EEE is any eligible exploration expenditure.";

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(b) by omitting from subsection (3) "under this Act" and substituting "in the accounts of the production unit";

(c) by omitting from subsection (4) "eligible deductions" and substituting "the net value"; and

(d) by adding at the end the following:

"(5) Notwithstanding subsection (1), where -

(a) a production unit has ceased the production of a 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 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.

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"(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 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 mineral commodity."

11. NEW SECTION

The Principal Act is amended by inserting after section 10 the following:

"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."

12. REPEAL AND SUBSTITUTION

Section 11 of the Principal Act is repealed and the following substituted:

"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 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;

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- (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."

13. ROYALTY RETURN

Section 12 of the Principal Act is amended -

- (a) by omitting from subsection (1) "unless another royalty payer in respect of the production unit has already done so,"; and
- (b) by omitting subsection (4) and substituting the following:

"(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."

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14. INSPECTION OF STOCK AND ACCOUNTS

Section 14(1) of the Principal Act is amended by omitting paragraph (g) and substituting the following:

"(g) require a person in that production unit or on those premises to furnish him with that person's name or residential address, or both, and to answer questions put to him 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 him or make him liable to a penalty."

15. POWER TO REQUIRE PERSON TO ANSWER QUESTIONS AND PRODUCE DOCUMENTS

Section 15 of the Principal Act is amended by omitting from subsection (1) "require a person whom he believes to be capable of giving information relevant to the operation of this Act in relation to the mining, storage, transportation, processing or sale or other disposal of a mineral commodity," and substituting "in relation to a production unit, require the responsible person appointed for that production unit".

16. PROPER BOOKS TO BE KEPT

Section 17(1) of the Principal Act is amended -

- (a) by inserting after "place" the words "in Australia";
- (b) by inserting after "account" the words "in accordance with generally accepted accounting principles and the specified accounting basis"; and
- (c) by omitting from paragraph (a) "eligible".

17. AMENDMENT OF ASSESSMENT

Section 20 of the Principal Act is amended by omitting subsections (1) and (2) and substituting the following:

"(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 -

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- (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."

18. PAYMENT OF ROYALTY

Section 40 of the Principal Act is amended -

- (a) by inserting in subsection (1)(a) before "production" the words "net value of the mineral commodity sold or removed without sale from the"; and
- (b) by omitting from subsection (3) "in his discretion,".

19. INTEREST ON UNPAID ROYALTY

Section 42 of the Principal Act is amended -

- (a) by omitting from subsection (1) "additional royalty on the amount outstanding calculated at the rate from time to time payable by the Territory on borrowings for a maximum period of 10 years secured by the issue of Northern Territory Stock on the loan most recently closed" and substituting "interest on the amount outstanding calculated 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 4%"; and
- (b) by omitting from subsection (2) "additional royalty" and substituting "interest".

20. NEW SECTION

The Principal Act is amended by inserting after section 42 the following:

"42A. PENAL 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,

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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."

21. FORFEITURE

Section 44 of the Principal Act is amended by omitting from subsection (1) "Notwithstanding the *Mining Act* but subject to this section" and substituting "In addition to the grounds specified in section 171(1) of the *Mining Act*".

22. REPEAL

Section 48 of the Principal Act is repealed.

23. REPEAL AND SUBSTITUTION

Section 51 of the Principal Act is repealed and the following substituted:

"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."

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24. SAVINGS

Section 52 of the Principal Act is amended by adding at the end the following:

"(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."
