

NORTHERN TERRITORY OF AUSTRALIA

MINERAL ROYALTY ACT

No. 31 of 1982

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## NORTHERN TERRITORY OF AUSTRALIA

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No. 31 of 1982

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### AN ACT

To impose a royalty on minerals recovered in the Northern Territory, and for related purposes

[Assented to 23 June 1982]

**B**E 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:

#### PART I - PRELIMINARY

1. SHORT TITLE

This Act may be cited as the *Mineral Royalty Act 1982*.

2. COMMENCEMENT

This Act shall come into operation on 1 July 1982.

3. APPLICATION

(1) Subject to this section, this Act does not apply to or in relation to a mining tenement granted on or before 1 July 1982 in respect of which, in the opinion of the Secretary, a significant financial commitment in relation to the establishment of a mine and associated facilities has been entered into by the holder of the mining tenement before that date for the commercial production of a mineral commodity.

(2) The exemption under sub-section (1) from the operation of this Act does not extend to or in relation to the renewal after 1 July 1982 of a mining tenement referred to in that sub-section.

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(3) Subject to sub-section (4), in respect of the Special Mineral Lease provided for by sub-clause (1) of clause 4 of the Agreement made on 13 February 1968 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) Ordinance* 1968, the exemption under sub-section (1) from the operation of this Act 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.

(4) The holder of a mining tenement in respect of which an exemption under sub-section (1) from the operation of this Act applies may, by notice in writing to the Secretary, elect to have this Act apply to the mining tenement on and from a date specified in the notice and, on and from that date, this Act shall apply accordingly.

(5) Where a person makes an election under sub-section (4), his liability to pay royalty to the Territory under any other law in respect of minerals obtained from land comprised in that mining tenement after the date that the election takes effect shall cease.

(6) An election under sub-section (4) is irrevocable.

(7) 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.

### 4. INTERPRETATION

(1) In this Act, unless the contrary intention appears -

"active operation", in relation to a production unit, means the operation of that unit for the production of a commercial quantity of a mineral commodity;

"approved" means approved by the Secretary;

"authorized person" means a person appointed under section 13 to be an authorized person;

"Board" means a Board of Review established under section 26;

"eligible administration expenditure", in relation to a production unit in respect of a royalty year, means an amount paid which, in the opinion of the Secretary, was reasonably paid by a royalty payer in that royalty year in respect of -

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- (a) accounting and auditing fees;
- (b) legal fees (other than those directly attributable to royalty matters);
- (c) insurance premiums that are directly related to the operation of the production unit;
- (d) the salaries, allowances, employer contributions to superannuation schemes and 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;
- (e) office expenses directly associated with the operation of the production unit;
- (f) fees for management services, being fees and services that are reasonable and essential respectively, for or to the operation of the production unit; and
- (g) pay-roll tax,

and other payments which, in the opinion of the Secretary, were necessary for the proper administration of the production unit;

"eligible capital assets expenditure", in relation to a production unit, means an amount paid which, in the opinion of the Secretary, 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; and
- (e) design, acquisition, installation and construction of -
  - (i) mining plant;

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- (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;

"eligible deduction", in relation to a production unit in respect of a royalty year, means an amount equal to the sum of the following deductions:

- (a) eligible exploration expenditure;
- (b) eligible research and development expenditure;
- (c) depreciation allowance in respect of eligible capital assets expenditure;
- (d) eligible operating expenditure;
- (e) eligible marketing expenditure;
- (f) eligible interest expenditure; and
- (g) eligible administration expenditure;

"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(1) from its operation - an amount paid 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

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- (ii) in the case of any other production unit - an amount paid by the royalty payer, or any other person after the commencement of this Act,

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; 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(1) from its operation - an amount paid 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 paid by the royalty payer or any other person after the commencement of this Act,

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 paid 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 25% of the amount of royalty that would be payable had eligible exploration expenditure not been taken into account, whichever is the lesser;

"eligible interest expenditure" means, subject to sub-section (7), interest or loan service fees paid on funds borrowed to directly finance the

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establishment and operations of a production unit;

"eligible marketing expenditure", in relation to a production unit in respect of a royalty year, means an amount paid which, in the opinion of the Secretary, is reasonably paid by a royalty payer for services for the sale or marketing of a mineral commodity;

"eligible operating expenditure", in relation to a production unit in respect of a royalty year, means an amount paid which, in the opinion of the Secretary -

- (a) was reasonably paid by a royalty payer; and
- (b) is directly attributable to the production, or maintenance for the purposes of production, of a mineral commodity or to the closure of the mine on, or rehabilitation of the land comprised in, the relevant mining tenement,

but does not include -

- (c) 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;
- (d) tenement rentals;
- (e) taxes on income or profits;
- (f) mineral royalties;
- (g) payments in the nature of royalties; or
- (h) any other payment considered by the Secretary to be a levy on mineral output, value, profits, income or exports;

"eligible research and development expenditure", in relation to a production unit in respect of a royalty year, means an amount paid which, in the opinion of the Secretary, was reasonably paid by a royalty payer after 1 July 1982 for research into methods designed to reduce the eligible capital assets expenditure and eligible



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operating expenditure of, or to improve the rate and amount of recovery from, the production unit;

"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;

"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 and lignite; or

(c) a prescribed mineral;

"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;

"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*;

"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;

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"production unit" means -

- (a) a mining tenement; or
- (b) where the Minister so declares under sub-section (2), more than one mining tenement,

together with such facilities, if any, as the Minister considers 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;

"royalty payer", in relation to a production unit, means the holder of a mining tenement that forms part of the 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 as is determined for the purposes of this Act by the Secretary, 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 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.

(2) For the purposes of the definition of "production unit" in sub-section (1), the Minister may, by notice in writing posted to the royalty payer, where the

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Minister is of the opinion that 2 or more mining tenements are being operated as part of an integrated operation, declare those mining tenements, together with the facilities he considers essential for the production of a saleable mineral commodity from a mineral obtained from them, to be a production unit, and those mining tenements and facilities shall, on and from the date of the declaration, be a production unit accordingly.

(3) For the purposes of the definition of "eligible deduction" in sub-section (1), the depreciation allowance in respect of eligible capital assets expenditure is an amount calculated in accordance with the formula -

$$\sum_{i = \text{one}}^{i = n} \frac{A_i}{L_i}$$

where -

$$\sum_{i = \text{one}}^{i = n}$$

is the summation over assets one to n;

$A_i$  is the cost of asset  $i$ , expenditure on which is included in eligible capital assets expenditure; and

$L_i$  is -

- (a) the economic life of asset  $i$ ;
- (b) where the asset cannot be used elsewhere after the life of the production unit, the life of the production unit; or
- (c) 15 years,

as certified by an approved auditor appointed by the royalty payer, whichever is the shorter,

provided that -

- (a) the sum over time of deductions in respect of each asset, expenditure on which is included in eligible capital assets expenditure, does not exceed the eligible capital assets expenditure in respect of that asset; and

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- (b) an asset scrapped, sold or removed without sale from the production unit for a purpose other than repair or maintenance or which, in the opinion of the Secretary, is consistent with its intended continued use in the production unit, shall not, in respect of a period after that event, be taken into account in the calculation under this sub-section of a depreciation allowance.

(4) For the purposes of this Act, the value of a mineral commodity is such amount as is agreed between the royalty payer and the Secretary or, in the absence of agreement within such period as the Secretary allows, is such amount as is determined by the Minister to be the value having regard to -

- (a) the grade of the mineral commodity;
- (b) the point of sale;
- (c) the nature of the market;
- (d) the terms of relevant contracts or sales agreements and the quantities specified therein;
- (e) the state of the market at the time the prices in the contracts or sales agreements were set;
- (f) the provisions of the contracts or sales agreements relating to the variation or renegotiation of prices;
- (g) prices paid to producers elsewhere in arm's length transactions;
- (h) prices recommended by international associations of governments of countries producing the mineral commodity; and
- (j) such other matters as the Minister thinks fit.

(5) For the purposes of the definition of "eligible exploration expenditure" in sub-section (1), an amount paid in a royalty year in respect of which an exploration expenditure certificate has been applied for under section 7 but which certificate, at the relevant time, has been neither issued nor refused, shall be included as an amount paid for the purposes of paragraph (a) of that definition.

(6) For the purposes of the definition of "eligible interest expenditure" in sub-section (1), where the Minister is of the opinion that the ratio of borrowed funds to total funds in respect of a production unit is greater than that which normally would be expected for

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such a project in Australia, and having regard to the financial circumstances of the project, he may determine the maximum ratio of borrowed funds to total funds in respect of the production unit, and the eligible interest expenditure shall be calculated as if the maximum ratio so determined were applied to the production unit.

(7) For the purposes of the definition of "eligible interest expenditure" in sub-section (1), where the Minister is of the opinion that interest payments or other loan service fees on funds borrowed in respect of a production unit are above normal and appropriate commercial market levels having regard to the relevant money market and other conditions at the date of the loan, its size, period, currency denomination and other terms and conditions, he may determine the maximum rate of interest and other loan service fees, if any, that will be allowed as eligible interest expenditure and, on his so determining, that rate and those fees shall, accordingly, be used in the calculation of the eligible interest expenditure.

(8) For the purposes of this Act, the mass and grade of a mineral commodity produced by a production unit during a royalty year shall be taken to be that agreed between the royalty payer and the Secretary or, in the absence of agreement within such period as the Secretary allows, that determined by the Minister to be the mass and grade.

### 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 his so determining, 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 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 mineral commodity and those other activities, as he thinks fit.

### 6. DEPRECIATION ALLOWANCE TRANSFERABLE

The right of a former royalty payer to have taken into account in respect of eligible capital assets expenditure a depreciation allowance in relation to capital assets sold or transferred with a production unit shall,

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where the production unit is sold or transferred to another person, apply to and in relation to that other person as if he were the former royalty payer continuing in possession of the production unit.

### 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 3 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 sub-section (1) shall be in an approved form and be accompanied by such information as the Secretary thinks necessary to enable him to determine whether the expenditure is expenditure to which this section applies, and shall be verified by a statutory declaration by the applicant and a certificate of an approved auditor.

(3) Where the Secretary is satisfied that an applicant has undertaken expenditure to which this section applies, he 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 sub-section (2) may be transferred to any person upon notice of its proposed transfer being given to the Secretary.

### 8. SUBSTITUTED CERTIFICATES

(1) The Secretary shall, as soon as practicable after a certificate under section 7 is delivered to him 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 him 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 and the prescribed fee, 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.

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### 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 \$9,000 less than 18% of the net value of a mineral commodity sold or removed without sale from a production unit in a royalty year, provided that if this calculation yields a negative number, the royalty payable is nil.

(2) For the purposes of sub-section (1), net value in a royalty year means the value of a mineral commodity sold or removed without sale from a production unit, together with a value adjustment for capital assets scrapped, sold or removed without sale from the production unit for a purpose other than repair or maintenance or which, in the opinion of the Secretary, is consistent with its continued use in the production unit, being assets taken into account for the purposes of the definition of "eligible capital assets expenditure" in section 4, interest earned on funds which, in the opinion of the Secretary, were reasonably employed or retained to be employed in the operation of the production unit pending those funds being so employed and any negative net value in the previous royalty year, less eligible deductions for the royalty year.

(3) For the purposes of sub-section (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 under this Act.

(4) For the purposes of sub-section (2), eligible exploration expenditure shall not be included in calculating eligible deductions 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.

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### 11. INFORMATION TO BE SUPPLIED

A royalty payer shall, unless another royalty payer has already done so -

- (a) notify the Secretary in writing, within 30 days after the commencement of active operations, that a production unit is in active operation;
- (b) state in the notice under paragraph (a) -
  - (i) his name and address
  - (ii) the name and location of the production unit;
  - (iii) the name and address of the manager of the production unit or of some other person to whom notices required to be given under this Act may be given; and
  - (iv) the names and addresses of other royalty payers, if any, in respect of the production unit; and
- (c) within 30 days after it happens, notify the Secretary -
  - (i) of every change in the name or address, or both, of the manager of the production unit or other person referred to in paragraph (b)(iii);
  - (ii) of a change in the ownership of the production unit or of a mining tenement which forms part of the production unit;
  - (iii) of a significant change in the level of production of a mineral commodity by the production unit;
  - (iv) of a discontinuance of active operations; and
  - (v) of a recommencement of active operations after discontinuance.

Penalty: \$5,000.

### 12. ROYALTY RETURN

(1) Subject to sub-section (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, unless another royalty payer in respect of the



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production unit has already done so, 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 sub-section (1) shall, in addition to the matters required under that sub-section 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 sub-section (1) to be delivered shall be in an approved form and, subject to sub-section (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.

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(4) The statement required under sub-section (1) to be delivered shall be verified by statutory declaration and shall be certified to be correct for the purposes of this Act by an approved auditor.

(5) Where eligible exploration expenditure is taken into account by a royalty payer in estimating the royalty payable by him, the statement required under sub-section (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 sub-section (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, 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 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 sub-section (7) shall be construed as relieving a royalty payer from his liability for the payment of royalty in respect of the whole production unit.

### 13. APPOINTMENT OF AUTHORIZED PERSON

The Secretary may, by writing signed by him, 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 has reasonable cause to believe an offence against this Act has been, is being, or is about to be, committed, at any time, enter -

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- (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 opinion, is likely to be payable; or
- (c) premises where there are, or where he 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) where he has reasonable cause to believe that a person in that production unit or on those premises has information relevant to the authorized person's inspection, require the person to furnish to the authorized person his name or residential address, or both his name and address, and to answer questions put to him relating to that information.

(2) An authorized person may make and retain copies of, or extracts from, the records inspected under this section by him.

(3) A person required under sub-section (1) to furnish his name or address, or both his 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 address an address other than the full and correct address of his ordinary place of residence.

Penalty: \$500.

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(4) The occupier or person in charge of a production unit or part of a production unit, or of premises referred to in sub-section (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, 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, to attend before him at the time and place specified in the notice and there to answer questions and to produce to him 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.

(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 him or make him liable to a penalty, but his answer to any such question is not admissible in evidence against him 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 his failure to provide information or his 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 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 sub-section (1) is an oath or affirmation that the answers he will give to questions asked of him will to the best of his knowledge be true.

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### 17. PROPER BOOKS TO BE KEPT

(1) A royalty payer shall keep at the production unit, or at some other place agreed between the royalty payer and the Secretary or, in the absence of agreement, as determined by the Secretary, proper books of account showing in respect of that production unit -

- (a) the amount and particulars of each expenditure in each category of eligible 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 sub-section (1).

Penalty: \$5,000.

### 18. ASSESSMENT

From the statement required to be delivered under section 12, and from any other information in his 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

If -

- (a) a person makes default in delivering a statement referred to in section 12; or

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- (b) the Secretary is not satisfied that a statement delivered by a royalty payer is a full and accurate statement,

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

### 20. AMENDMENT OF ASSESSMENT

(1) The Secretary may, subject to this section, at any time amend an assessment by making such alterations or additions to the assessment as he thinks fit, notwithstanding that royalty may have been paid in respect of the assessment.

(2) Where a royalty payer has not made to the Secretary a full and true disclosure of all the material facts necessary for the Secretary's assessment and, in the Secretary's opinion, there has been an avoidance of royalty, the Secretary may -

- (a) where he is of the opinion that 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 by making such alterations or additions as he thinks fit 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 sub-sections (2) and (3), where the assessment of net value in respect of a royalty year includes an estimate of the value of a 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

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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 sub-sections (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 deduction", 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

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this Act.

(2) The Minister may, in writing, appoint a Judge of the Supreme Court to be the Chairman of a Board, and such other members as he 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 Chairman or a member of a Board for any thing done or suffered by him to be done in connection with his duties as the Chairman 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 may, within 30 days after the date on which he is informed of the assessment, post to, or lodge with, the Secretary an objection in writing to the assessment.

(2) A royalty payer shall, in an objection under sub-section (1), state fully and in detail the grounds on which he relies.

(3) The Secretary shall consider the objection lodged under sub-section (1) and, subject to sub-section (4), either disallow it or allow it either wholly or in part.

(4) Where an objection lodged under sub-section (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, confirm or vary his exercise of that discretion and advise the Secretary accordingly.

(5) The Secretary shall cause notice in writing of his decision under sub-section (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 would have if the amendment had not been made, except to the extent to which a fresh liability is imposed upon him or an existing liability is increased by reason of the amendment.



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### 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 under section 28(5), in writing, request the Secretary to treat his 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 sub-section (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 him of the information requested.

### 31. MINISTER TO REFER MATTER TO BOARD

On receiving an objection forwarded to him 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 Chairman 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 -

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- (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.

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(2) The Minister shall cause a copy of a notice under sub-section (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 him to be payable in respect of 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 sub-section (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

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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, in his discretion, if he is satisfied that the liability to pay additional royalty under sub-section (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 sub-section, or any part of that additional royalty, and on his so doing 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 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. PENALTY FOR UNPAID ROYALTY, &c.

(1) Subject to sub-section (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 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, computed from the time when the amount became outstanding.

(2) Where an extension of time for the payment of royalty or on account of royalty has been granted under section 41, the additional royalty 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.

### 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 last place of business known to the Secretary, require a person -

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- (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 he does so personally or through an agent, servant or associate.

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### 44. CANCELLATION

(1) Notwithstanding the *Mining Act* but subject to this section, 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 sub-section (1), forfeit a mining tenement unless he has first -

- (a) given to the tenement holder written notice of his intention so to do, indicating the reason for his 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 wishes the Minister to consider before deciding whether to forfeit the mining tenement; and
- (c) considered any submissions made to him in response to, and within the time specified in, the notice given under this sub-section.

### 45. AMOUNTS OVERPAID

(1) Where, by reason of an amendment of an assessment of his liability to pay royalty, or for any other reason, a royalty payer has paid an amount for royalty in excess of his liability to pay, the Secretary -

- (a) may, where he is 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 he 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) The Consolidated Fund is, to the extent of any refund payable under sub-section (1) by the Secretary, appropriated accordingly.

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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.

(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.

48. ADDITIONAL ROYALTY IN CERTAIN CASES

(1) Notwithstanding anything contained elsewhere in this Act, a royalty payer who fails to deliver or furnish as and when required by this Act or the Regulations, or by the Secretary, a statement, return or information in relation to a matter affecting either his liability to pay royalty or the amount of royalty, is liable to pay as additional royalty an amount equal to the royalty assessable to him, or \$5,000, whichever is the greater.

(2) A royalty payer who, in the opinion of the Secretary, acts to avoid the payment of royalty by -

- (a) omitting from or understating his statement under section 12 the value of a mineral commodity sold or removed without sale from a production unit; or
- (b) including in his statement under section 12, as an eligible deduction, an amount which is in excess of actual expenditure incurred in respect of the production unit or otherwise allowable as a deduction under this Act,

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is liable to pay, as additional royalty, an amount equal to double the difference between the royalty properly payable by him and the royalty that would be payable if it were assessed upon the basis of the statement under section 12 delivered by him, or \$5,000, whichever is the greater.

(3) The Secretary may, if he thinks fit, either before or after making an assessment under this Act, remit additional royalty payable under this section, or any part of that royalty, and on his so doing the liability to pay the royalty or part of that royalty, as the case may be, ceases.

### 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 him by the Secretary, an authorized person or a Board, is guilty of an offence.

Penalty: \$5,000.

## PART VI - MISCELLANEOUS

### 50. SECRECY

(1) Subject to sub-section (2), a person who is employed by the Territory or who has, or is employed by a person who has, contracted with the Territory to provide a service in connection with the administration of this Act shall not, either directly or indirectly, except for the purposes of this Act or that contract -

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

Penalty: \$500 or imprisonment for 6 months.

(2) Sub-section (1) does not apply to the communication of information or the production of a document by the Secretary, or by a person authorized by him, to a person performing, in pursuance of employment by the Territory, a function under an Act for the administration of which the Secretary, under the Minister, is primarily responsible, for the purpose of enabling that person to carry out that function.



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### 51. REGULATIONS

The Administrator may make regulations, not inconsistent with this Act, prescribing all matters required or permitted by this Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to this Act.

### 52. SAVINGS

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.

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