

NORTHERN TERRITORY OF AUSTRALIA

PETROLEUM ROYALTY ACT 2023

Act No. 6 of 2023

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NORTHERN TERRITORY OF AUSTRALIA

Act No. 6 of 2023

An Act to impose a royalty on petroleum produced in the Northern Territory and for related purposes

[Assented to 6 April 2023]
[Introduced 15 February 2023]

The Legislative Assembly of the Northern Territory enacts as follows:

Part 1 Preliminary matters

1 Short title

This Act may be cited as the *Petroleum Royalty Act 2023*.

2 Commencement

This Act commences on 1 July 2023.

3 Purpose

The purpose of this Act is to provide for a royalty payable on petroleum produced from a project area.

Part 2 Interpretation

4 Definitions

In this Act:

allowable costs, see section 18.

approved means approved under section 25.

Australian Dollar Equivalent, see section 12(1).

Commissioner of Territory Revenue means the person holding or acting in the office of Commissioner of Territory Revenue under the *Taxation Administration Act 2007*.

deductible costs, see section 17.

deduction cap, for petroleum produced from a project area, means 75% of the sales value of the petroleum.

entity means any of the following:

- (a) a body corporate;
- (b) a partnership;
- (c) an unincorporated body;
- (d) an individual;
- (e) for a trust that has only one trustee – the trustee;
- (f) for a trust that has more than one trustee – the trustees together.

exchange rate, see section 12(2).

excluded costs, see section 19.

exploration permit, see section 5(1) of the *Petroleum Act 1984*.

exploration permit area, see section 5(1) of the *Petroleum Act 1984*.

exploration project area means one or more exploration permit areas operated by or on behalf of one or more permittees as a single integrated project.

first saleable point, in relation to petroleum, means the earlier of:

- (a) the point when the petroleum is first sold or disposed of in an open commercial market after production at the wellhead; and
- (b) the point when the petroleum is processed into a petroleum product.

gross value at the wellhead, see section 13.

incurred means:

- (a) in the case of a capital allowance deduction under section 18(1)(e) – incurred only at the time the cost or expense constitutes a deduction under the *Income Tax Assessment Act 1997* (Cth); or
- (b) in the case of any other cost or expense – paid or payable.

licence, see section 5(1) of the *Petroleum Act 1984*.

licence area, see section 5(1) of the *Petroleum Act 1984*.

licensee, see section 5(1) of the *Petroleum Act 1984*.

market value, see section 15.

operator means:

- (a) in the case of a licence – a person appointed by the licensee to undertake petroleum production in a licence area on behalf of the licensee; and
- (b) in the case of an exploration permit – a person appointed by the permittee to undertake petroleum exploration or production in an exploration permit area on behalf of the permittee.

permittee, see section 5(1) of the *Petroleum Act 1984*.

petroleum, see section 5(1) of the *Petroleum Act 1984*.

petroleum facility means a facility that is:

- (a) located in the Territory downstream from a wellhead; and
- (b) used for the processing, refining, storage or transport of petroleum.

Example for definition petroleum facility

A pipeline.

petroleum product means any product able to be sold or disposed of that is processed, extracted, recovered or derived from petroleum, including crude oil, condensate and processed natural gas.

post-wellhead activity means an activity that occurs after petroleum is produced at the wellhead in a project area and before its first saleable point.

post-wellhead facility means a petroleum facility used for a post-wellhead activity.

processed natural gas includes liquefied natural gas.

produce, in relation to petroleum, see section 5(1) of the *Petroleum Act 1984*.

production licence, see section 5(1) of the *Petroleum Act 1984*.

production project area means:

- (a) one or more licence areas operated by or on behalf of one or more licensees as a single integrated project to produce petroleum; or
- (b) one or more licence areas operated, under one or more licences together with one or more exploration permits, by or on behalf of one or more licensees together with one or more permittees as a single integrated project to produce petroleum.

project area means:

- (a) an exploration project area; or
- (b) a production project area.

quarter means the 3-month period ending on the last day of March, June, September or December in any year.

related body corporate, in relation to a body corporate, see section 9 of the *Corporations Act 2001* (Cth).

related entity, in relation to a body corporate, see section 9 of the *Corporations Act 2001* (Cth).

related party, of a person, means:

- (a) a related body corporate of the person; or
- (b) a related entity of the person; or
- (c) a joint venture or other entity that is led by the person or a related body corporate or related entity of the person.

retention licence, see section 5(1) of the *Petroleum Act 1984*.

royalty means the royalty payable under this Act on petroleum.

royalty year, in relation to a licensee or permittee, for a project area, means the 12-month period for which the accounts of the licensee or permittee are ordinarily made up.

sales value, see section 14.

shipping costs, see section 16.

third party, in relation to a person, means another person who is not a related party of the person.

well, see section 5(1) of the *Petroleum Act 1984*.

wellhead, see section 5(1) of the *Petroleum Act 1984*.

Note for section 4

The Interpretation Act 1978 contains definitions and other provisions that may be relevant to this Act.

5 Arm's length terms

A transaction entered into by a party is on arm's length terms if the terms of the transaction are no less favourable to the party than those that would be agreed to by a third party in an arm's length transaction under similar circumstances.

6 Leases under *Petroleum (Mining and Prospecting) Act 1954*

This Act also applies in relation to any lease granted or renewed under the *Petroleum (Mining and Prospecting) Act 1954*, that is in effect on 1 July 2023, and any holder of the lease, in the same manner as it applies to a licence and a licensee respectively.

Part 3 Petroleum royalties

7 Commencement of royalty

- (1) A royalty is payable under this Act on petroleum produced from a project area as follows:
 - (a) in the case of petroleum to which a royalty agreement applied immediately before 1 July 2023 – on and from the day the royalty agreement is terminated;
 - (b) in the case of petroleum to which a determination, made by the Minister under section 84(2) of the *Petroleum Act 1984*, applied immediately before 1 July 2023 – on and from the day the determination ends;

(c) in any other case – on and from 1 July 2023.

(2) In this section:

royalty agreement means an agreement that:

- (a) was made between a licensee and the Minister under section 84(2) of the *Petroleum Act 1984*; and
- (b) was in force before 1 July 2023; and
- (c) is about the gross value of petroleum produced from a licence area.

8 Royalty on petroleum produced

- (1) All licensees and permittees with a licence or exploration permit in a project area are liable to pay to the Territory a royalty on petroleum produced from the project area in the royalty year at the rate provided in section 9.
- (2) For subsection (1), petroleum produced from a project area includes petroleum, produced from a production project area, that is used or lost through venting or flaring or other means.
- (3) For subsection (1), petroleum produced from a project area does not include any of the following:
 - (a) petroleum used by the licensee, permittee or operator for incidental purposes;
 - (b) petroleum used in the project area for processing or compression, or preparing petroleum for sale;
 - (c) petroleum returned or reinjected into a natural reservoir in the project area from which it was extracted or recovered;
 - (d) petroleum produced from an exploration project area that is used or lost through venting or flaring or other means.

Examples for subsection (3)(a)

Heating and lighting buildings to provide employee accommodation or social amenities.

9 Royalty rate

The royalty rate for petroleum produced from a project area is 10% of the gross value of the petroleum at the wellhead.

10 Royalty payments

All licensees and permittees for a project area must pay the royalty for a royalty year:

- (a) by quarterly payments within 30 days after the end of each quarter; or
- (b) in accordance with any other arrangement the Commissioner of Territory Revenue approves.

11 Amount of quarterly payments

- (1) The quarterly payments, other than the final quarterly payment, of a royalty for a royalty year is calculated on the gross value at the wellhead of the petroleum produced in the quarter.
- (2) The calculation of the gross value at the wellhead under subsection (1) is determined in accordance with section 13 as if a reference in that section to the royalty year were a reference to a quarter.
- (3) The amount of the final quarterly payment for the royalty year is the balance of the royalty payable for the royalty year in accordance with the royalty return.

Part 4 Calculation of gross value at the wellhead**12 Meaning of *Australian Dollar Equivalent* and *exchange rate***

- (1) The ***Australian Dollar Equivalent***, in relation to an amount of money that is stated in a foreign currency, means the amount determined by converting the foreign currency amount into Australian dollars at the exchange rate applying at the time the foreign currency amount was earned, receivable or incurred.
- (2) The ***exchange rate***, in relation to an amount of money that is stated in a foreign currency, means one of the following rates selected by the licensee, permittee or operator in good faith and on a consistent basis:
 - (a) the closing daily representative rate for the relevant day, as published by the Reserve Bank of Australia;
 - (b) the buy rate for the foreign currency, as quoted by a major Australian trading bank;
 - (c) another rate agreed in writing between the licensee or permittee and the Commissioner of Territory Revenue.

13 Meaning of *gross value at the wellhead*

- (1) The ***gross value at the wellhead***, of petroleum produced from a project area in a royalty year, means the sales value of the petroleum, minus the lesser of the following:
 - (a) the deductible costs of the petroleum in the royalty year;
 - (b) the deduction cap for the petroleum for the royalty year.
- (2) Subject to subsection (3), any amount or value that affects the calculation of the gross value at the wellhead is calculated exclusive of GST.
- (3) The amount or value of an acquisition that relates to a supply that is input taxed is calculated inclusive of GST.
- (4) In this section:

acquisition, see section 11-10 of the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

GST, see section 195-1 of the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

input taxed, see section 9-30 of the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

supply, see section 9-10 of the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

14 Meaning of *sales value*

- (1) The ***sales value***, of petroleum produced from a project area in a royalty year, is the revenue received or receivable for the petroleum, minus the shipping costs of the petroleum.
- (2) Despite subsection (1), the sales value of the petroleum is the market value of the petroleum if:
 - (a) no revenue is received or receivable by the licensee, permittee or operator for the sale of the petroleum; or
 - (b) the petroleum is, in the royalty year:
 - (i) not sold; or
 - (ii) sold as a petroleum product that was further refined or processed after the first saleable point; or
 - (c) the sale of the petroleum is not on arm's length terms.

(3) In this section:

revenue, received or receivable for the petroleum, means:

- (a) the gross proceeds received or receivable by the licensee, permittee, operator or related party (or applied to their benefit) in Australian dollars or Australian Dollar Equivalent for the petroleum; or
- (b) the proceeds received from an insurer in the case of loss of, or damage to, the petroleum, net of any excess or deductible paid in relation to the loss.

15 Meaning of *market value*

(1) The **market value**, of petroleum produced from a project area, is the price (in Australian dollars or Australian Dollar Equivalent) that would be negotiated and agreed for the petroleum on the basis that it was sold at the first saleable point in an open commercial market between a knowledgeable, willing but not anxious buyer and a knowledgeable, willing but not anxious seller, acting severally and independently, having regard to the following:

- (a) the price of other petroleum sold to a third party on arm's length terms, that is substantially similar in time of delivery, kind, quality and composition;
- (b) a price agreed in an advance pricing arrangement with the Commonwealth Commissioner of Taxation;
- (c) a price audited and approved by the Commonwealth Commissioner of Taxation;
- (d) any applicable benchmark prices published by a recognised commodities exchange or index that the Commissioner of Territory Revenue may accept;
- (e) any other matter the Commissioner of Territory Revenue considers relevant.

(2) In this section:

advance pricing arrangement means an arrangement between the Commonwealth Commissioner of Taxation and a licensee, permittee or operator (to which there may also be other parties) under which the parties agree on a transfer pricing methodology to be used by the licensee, permittee or operator in accounting for the licensee's, permittee's or operator's dealings with petroleum for the purposes of the *Income Tax Assessment Act 1997* (Cth).

Commonwealth Commissioner of Taxation, means the Commissioner of Taxation appointed under section 4 of the *Taxation Administration Act 1953* (Cth).

16 Shipping costs

- (1) The shipping costs that are allowed in a royalty year for the purpose of calculating the sales value of petroleum produced from a project area (the **shipping costs**), are the following:
 - (a) in the case of petroleum that is exported from Australia – all freight charges, dead freight costs and marine insurance costs;
 - (b) in the case of petroleum that is not exported from Australia – the freight and insurance costs incurred in delivering the petroleum to the purchaser or transferee.
- (2) For subsection (1), shipping costs do not include:
 - (a) any charges mentioned in subsection (1) for which the licensee, permittee or operator, or a related party of the licensee, permittee or operator, received reimbursement or compensation or charged to another person; or
 - (b) any excluded costs.
- (3) For subsection (1), shipping costs must be incurred by:
 - (a) the licensee, permittee or operator of the project area from a third party directly in relation to the sale of the petroleum; or
 - (b) a related party of the licensee, permittee or operator, of the project area from a third party directly in relation to the sale of the petroleum on arm's length terms with no mark up.

17 Deductible costs

- (1) The amount that may be deducted in a royalty year for the purpose of calculating the gross value at the wellhead in relation to petroleum produced from a project area (the **deductible costs**), is the amount calculated in accordance with the formula in subsection (2) and as provided by subsection (3).
- (2) The formula is:

$$DC = AC + CFD - R$$

where:

DC is the amount of the deductible costs.

AC is the amount of the allowable costs.

CFD is the amount of the balance of any deductions allowed to be carried forward under subsection (3).

R is the amount of any allowable costs the licensee, permittee or operator has received as reimbursement or compensation.

- (3) If the amount of the deductible costs of petroleum produced in a project area in a royalty year exceeds the deduction cap, the amount of the excess may be:
- (a) carried forward; and
 - (b) applied as a deductible cost in a later royalty year.

18 Allowable costs

- (1) Subject to subsection (2), the costs that are allowed in a royalty year for the purpose of calculating deductible costs under this Act in relation to petroleum produced from a project area (the **allowable costs**) are the following:
- (a) a pipeline tariff for transporting the petroleum through a pipeline to its first saleable point;
 - (b) a processing plant toll or other charge for processing the petroleum before its first saleable point;
 - (c) field gathering costs to transport the petroleum from the wellhead to processing or storage facilities;
 - (d) the operating costs of a post-wellhead activity that is directly related to:
 - (i) the treatment, processing, refining or storage of the petroleum; or
 - (ii) transporting the petroleum;
 - (e) a capital allowance deduction incurred by the licensee, permittee or operator on a post-wellhead facility calculated in accordance with:
 - (i) if Australian income tax treatment applies to the petroleum – the applicable Australian income tax treatment of the facility; or

- (ii) if no Australian income tax treatment applies to the petroleum – a method approved in writing by the Commissioner of Territory Revenue;
 - (f) a cost or expense directly related to a post-wellhead activity in relation to any of the following:
 - (i) operating or maintaining an office in the Territory;
 - (ii) centralised services that control, influence or direct strategic management of the operation of a licence area, if the services were performed wholly in the Territory;
 - (iii) labour, employee and personnel costs, including travel and ancillary costs, in relation to an employee or contractor working solely in the Territory:
 - (A) in the period to which the cost or expense relates; and
 - (B) for the period the employee or contractor was remunerated.
- (2) For subsection (1), allowable costs must:
- (a) be incurred by a licensee, permittee or operator, or a related party to the licensee, permittee or operator, in relation to the petroleum in the royalty year; and
 - (b) not be shipping costs or excluded costs; and
 - (c) be directly related to a post-wellhead activity; and
 - (d) be incurred on arm's length terms.

19 Excluded costs

- (1) The costs that are excluded for the purposes of calculating shipping costs or deductible costs under this Act in relation to petroleum produced from a project area (the **excluded costs**) are the following:
- (a) costs and expenses incurred in relation to any of the following:
 - (i) exploring for the petroleum or discovering the petroleum;
 - (ii) marketing or selling the petroleum, including fees, commission, brokerage or an amount paid to a distributor or agent;

- (iii) maintaining a petroleum facility during an extended or permanent shutdown of the facility;
- (iv) decommissioning, rehabilitation or abandonment of the project area or a petroleum facility;
- (v) complying with a law of the Territory, the Commonwealth, a State or another Territory, including costs and expenses related to guarantees, securities or insurance imposed or required under the law;
- (vi) salaries, allowances, termination payments, other similar payments or benefits, employer contributions to superannuation schemes and wages in respect of an employee or contractor for a pay period during which the employee or contractor:
 - (A) did not work solely in the Territory; or
 - (B) was not engaged primarily in work that was directly attributable to the production of petroleum in the Territory;
- (b) office expenses that:
 - (i) do not relate to an office in the Territory; or
 - (ii) are not for work services performed solely in the Territory;
- (c) fees for management services that:
 - (i) are not performed solely in the Territory; or
 - (ii) are not directly attributable to the production of petroleum in the Territory;
- (d) travel and ancillary costs in relation to an employee, contractor or other worker whose principal place of residence is outside the Territory;
- (e) interest and financing costs;
- (f) foreign exchange gains or losses;
- (g) hedging costs;
- (h) costs associated with bad debts;
- (i) asset revaluation gains or losses;

- (j) royalties or similar payments;
- (k) taxes, levies or fees imposed or payable under a law of the Territory, the Commonwealth, a State or another Territory;
- (l) costs of negotiating with land holders or with persons related to the *Native Title Act 1993* (Cth), including payments or compensation paid under an access agreement or native title agreement;
- (m) amounts payable in relation to a breach of a legal or statutory obligation, including a penalty or damages for breach of contract.

Examples for subsection (1)(k)

1 *Monitoring and compliance levy.*

2 *Orphan well levy.*

- (2) For subsection (1), if the sales value of petroleum is the market value of the petroleum under section 14(2), a deductible cost incurred in relation to an activity after the first saleable point of the petroleum is taken to be an excluded cost.

20 Treatment of deductions, costs and expenses, revenue and expenditure

- (1) An amount must not be deducted or claimed as a cost or expense more than once under this Act, whether for the same royalty year or a different royalty year, despite the amount:
 - (a) falling under more than one head of deduction or cost or expense under this Act; or
 - (b) being reflected or capable of being reflected in the accounts relating to petroleum production in more than one form.
- (2) When ascertaining the gross value at the wellhead, or sales value, of petroleum, an item of revenue or expenditure must be classified under the most appropriate provision of this Act, even if it might also be classified under another provision as revenue or as expenditure.

21 Swap arrangements

- (1) If a licensee, permittee or operator procures petroleum under a swap arrangement, the price received by the licensee, permittee or operator for the sale of the procured petroleum may be used to determine the value of the petroleum produced from a project area for the licence or exploration permit if:

- (a) the parties to the swap arrangement are not related parties; and
 - (b) the swap arrangement is on arm's length terms; and
 - (c) the swap arrangement provides for the swap or exchange of rights or obligations in relation to petroleum produced by the parties; and
 - (d) a comparable quantity and quality of petroleum is swapped or exchanged under the swap arrangement; and
 - (e) the swap or exchange is made within 6 months after the petroleum is delivered or the rights vested.
- (2) The petroleum produced from the project area for the licence or exploration permit must be valued at market value under a swap arrangement if:
- (a) the swap arrangement is between related parties; or
 - (b) the procured petroleum is sold to a related party; or
 - (c) the procured petroleum is not sold to a second buyer within 6 months after the petroleum is delivered to the licensee, permittee or operator; or
 - (d) subsection (1) does not otherwise apply to the petroleum.
- (3) In this section:

procured petroleum means petroleum procured by a licensee, permittee or operator under a swap arrangement.

swap arrangement means an arrangement that:

- (a) is entered into between two petroleum producers or resellers; and
- (b) provides for them to swap or exchange rights or obligations in relation to petroleum produced by them.

Part 5 Application of Taxation Administration Act 2007

22 Application of *Taxation Administration Act 2007*

The *Taxation Administration Act 2007* applies to a royalty as if:

- (a) a reference in that Act to tax were a reference to royalty; and

- (b) a reference in that Act to taxpayer were a reference to licensee or permittee; and
- (c) a reference in that Act to a taxation law included a reference to this Act; and
- (d) a reference in that Act to a corresponding law in Parts 9 and 10 included a reference to a law of the Commonwealth, a State or another Territory corresponding to this Act.

Part 6 Miscellaneous matters

23 Register of licensees and permittees

- (1) A licensee or permittee must register with the Commissioner of Territory Revenue within 30 days after the licensee or permittee starts petroleum production under the licence or exploration permit.
- (2) A licensee or permittee must notify the Commissioner of Territory Revenue within 30 days after the day:
 - (a) the licensee or permittee ends petroleum production during an extended or permanent shutdown of its operations in a project area; or
 - (b) the licensee or permittee restarts petroleum production after an extended or permanent shutdown of its operations in a project area; or
 - (c) there is a change in ownership of the licence or exploration permit.
- (3) Registration and notification under this section must be in the approved form and the approved manner.
- (4) The Commissioner of Territory Revenue may cancel the registration of the licensee or permittee if:
 - (a) petroleum production ends following a permanent shutdown of its operations under the licence or exploration permit in a project area; or
 - (b) the licence or exploration permit is transferred to another person; or
 - (c) the registration is not required for any other reason.

24 Lodgement of returns

- (1) A licensee or permittee must lodge a royalty return with the Commissioner of Territory Revenue within 30 days after the end of a royalty year for the licensee or permittee.
- (2) A licensee or permittee must also lodge a royalty return with the Commissioner of Territory Revenue 30 days after the day:
 - (a) the licensee or permittee ends petroleum production during an extended or permanent shutdown of its operations in a project area; or
 - (b) there is a change in ownership of the licence or exploration permit.
- (3) On application, the Commissioner of Territory Revenue may waive the requirement to lodge a royalty return under subsection (2) if:
 - (a) the requirement is triggered by a change in ownership of the licence or exploration permit; and
 - (b) the change does not interrupt the operation of the project area or the accounts relating to petroleum production.
- (4) A royalty return must be in the approved form.
- (5) If there is more than one licensee or permittee for a project area:
 - (a) a single royalty return must be lodged for the project area; and
 - (b) the licensees or permittees may authorise a person to lodge the royalty return.
- (6) The lodgement of a single royalty return for a project area does not affect the joint and several liability of each licensee or permittee for the project area to pay royalty for the petroleum production from the project area.

25 Approved forms and manner

The Commissioner of Territory Revenue may approve:

- (a) forms for this Act; and
- (b) the manner of registration under section 23.

26 Regulations

- (1) The Administrator may make regulations under this Act.

Note for subsection (1)

See section 65 of the Interpretation Act 1978.

- (2) A regulation may:
- (a) prescribe fees payable under this Act; and
 - (b) apply, adopt or incorporate, with or without changes, the whole or part of a document as in force or existing at a particular time or from time to time.

27 Review of Act

- (1) The Commissioner of Territory Revenue must review the operation of this Act as soon as practicable before 1 July 2028.
- (2) The review must consider the effectiveness and efficiency of the calculation of royalties under this Act.
- (3) The Commissioner of Territory Revenue must prepare a written report of the review for the Minister.

Part 7 Transitional matters for Petroleum Royalty Act 2023**28 Royalty agreements under *Petroleum Act 1984***

Part III, Division 5 of the *Petroleum Act 1984*, as in force immediately before 1 July 2023 continues to apply to a royalty agreement that:

- (a) was in force immediately before 1 July 2023; and
- (b) is not terminated.

Part 8 Consequential amendment of Petroleum Act 1984**29 Act amended**

This Part amends the *Petroleum Act 1984*.

30 Section 3 amended (Objective)

Section 3(2)(h)

omit

and collection of royalties

31 Section 15A amended (Appropriate person to hold permit or licence)

Section 15A(6), definition ***prescribed legislation***, after paragraph (b)

insert

(ba) the *Petroleum Royalty Act 2023*;

32 Section 54 amended (Conditions of production licence)

Section 54(2)(c)

omit

33 Section 58 amended (General conditions)

(1) Section 58(aa)

omit, insert

(aa) pay royalties in accordance with the *Petroleum Royalty Act 2023*.

(2) Section 58(a)

omit

and royalties

34 Part III, Division 5 repealed (Royalties)

Part III, Division 5

repeal

35 Section 119 amended (Application, savings and transitional)

Section 119(2)

omit

information, the giving of directions by the Minister and the calculation and payment of royalties

insert

information and the giving of directions by the Minister

36 Repeal of Part

This Part is repealed on the day after it commences.