Explanatory Statement

PETROLEUM ROYALTY BILL 2023

SERIAL NO. 82
LEGISLATIVE ASSEMBLY OF THE
NORTHERN TERRITORY

TREASURER

GENERAL OUTLINE

This Bill introduces the *Petroleum Royalty Act 2023*, a new legislative framework from 1 July 2023 for the calculation, payment and administration of petroleum royalties, repealing and replacing the current arrangements contained in the *Petroleum Act 1984*.

Royalties are payments made to the Northern Territory Government, as the owner of the petroleum, in consideration of a right granted to extract and remove petroleum, a non-renewable resource. Royalties are not a tax.

The Northern Territory's petroleum royalty scheme encourages present and future exploration and development of petroleum resources. At the same time, it compensates the Territory community for allowing the private extraction of the Territory's non-renewable resources. The Bill is designed to provide certainty to industry to encourage the continued exploration and development of the Territory's petroleum resources.

The key aim of the *Petroleum Royalty Act 2023* is to set out in legislation the petroleum royalty framework and remove the current requirement for individual agreements to be negotiated between the Minister and the producer, as required by the *Petroleum Act 1984*. Setting out the royalty framework clearly in legislation will provide a consistent, equitable and transparent framework for industry and the broader community. For the purposes of this Act, petroleum produced relates only to petroleum recovered onshore and excludes any petroleum produced from coastal waters subject to the *Petroleum (Submerged Lands) Act 1981*.

Royalties are imposed at a rate of 10% of the gross value at the wellhead of petroleum produced from a project area in a royalty year. The *Petroleum Act 1984* provides that ownership of petroleum produced in the Territory passes to the holder of a petroleum interest at the wellhead and as such, the wellhead is the trigger point and valuation point for royalty purposes. However, as petroleum is not usually sold at the wellhead, a netback methodology is used to recognise the costs incurred after the wellhead to the point of sale.

This Bill also legislates administrative provisions within the petroleum royalty framework by applying the *Taxation Administration Act 2007*. The *Taxation Administration Act 2007* is a contemporary administrative framework and its application will bring administration of petroleum royalties in line with other revenue lines in the Territory.

NOTES ON CLAUSES

Part 1 Preliminary matters

Clause 1. Short Title

This is a formal clause which provides for the citation of this Act. This Act when passed will be cited as the *Petroleum Royalty Act 2023.*

Clause 2. Commencement

This clause provides for the commencement of this Act on 1 July 2023 and links to section 7 about when the obligation to pay royalty commences.

Clause 3. Purpose

This clause describes the purpose of this Act, which is to provide for a royalty payable on petroleum produced from a project area.

Part 2 Interpretation

Clause 4. Definitions

This clause contains the defined terms to be used in this Act. Many of the defined terms refer to a definition contained in the *Petroleum Act 1984, Corporations Act 2001* (Cth), or elsewhere in this Act. Definitions set out in this clause include:

Allowable costs is signposted to the definition contained elsewhere in the Act.

Approved is signposted to the definition contained elsewhere in the Act.

Australian Dollar Equivalent is signposted to the definition contained elsewhere in the Act.

Commissioner of Territory Revenue refers to the person holding or acting in the office of Commissioner of Territory Revenue as defined in the *Taxation Administration Act 2007.*

Deductible costs is signposted to a definition contained elsewhere in the Act.

Deduction cap limits the claiming of allowable costs to 75% of the sales value of petroleum in a royalty year to maintain the integrity of the ad valorem scheme by ensuring that a royalty is always payable for petroleum produced.

A limit on deductible costs to be included in the calculation of gross value at wellhead in a royalty year is in acknowledgment of the inherent nature of an ad valorem scheme that petroleum has a value at the wellhead and deductions should never exceed sales value. The deduction cap ensures that the Territory will always receive a royalty on petroleum produced of at least 25% of its sales value. The limiting of deductible costs in a royalty year does not exclude a deductible cost from being utilised in the royalty calculation, as any costs in excess of this limit may be carried forward for claiming in the next royalty year. There should be no adjustment for inflation or any other grossing up of the undeducted costs carried forward for claiming in the next royalty year.

Entity means a body corporate, partnership, unincorporated body, individual or, the trustee or trustees of a trust.

Exchange rate is signposted to the definition contained elsewhere in the Act.

Excluded costs is signposted to the definition contained elsewhere in the Act.

Exploration permit means an exploration permit as defined in the *Petroleum Act 1984.*

Exploration permit area means an exploration permit area as defined in the *Petroleum Act 1984.*

Exploration project area means one or more exploration permits being operated by, or on behalf of, one or more permittees as a single integrated operation. The concept of a single integrated operation means that the operation of the exploration permits must be functionally integrated and interdependent to the exploration for, and production of, petroleum.

First saleable point means the point at which petroleum is either sold, or disposed of, or the point at which the petroleum is processed into a petroleum product, and is usually the point where the value of the petroleum can be independently established. This concept applies in this Act to make clear that the sales value of petroleum is the market value if the petroleum is sold as a petroleum product that was processed beyond its first saleable point. Further, deductible costs incurred in relation to an activity after the first saleable point are excluded costs for the purposes of calculating gross value at the wellhead of petroleum. This ensures no royalty is imposed on value adding or conversion of petroleum beyond its first saleable point.

Gross value at the wellhead is signposted to the definition contained elsewhere in the Act.

Incurred means in relation to items of capital expenditure, a capital allowance deduction when a cost or expense constitutes a deduction under the *Income Tax Assessment Act 1997* (Cth), or when it becomes paid or payable in the case of any other cost or expense.

Licence means a licence as defined in the *Petroleum Act 1984*, being a production licence or retention licence.

Licence area means a licence area as defined in the *Petroleum Act 1984*.

Licensee means a licensee as defined in the *Petroleum Act 1984*, being a production licensee or retention licensee.

Market value is signposted to the definition contained elsewhere in the Act.

Operator is a person appointed by a licensee or permittee to undertake petroleum production or exploration on their behalf. This concept recognises that a licence or exploration permit may be operated by an entity other than the holder of the licence or exploration permit.

Permittee means a permittee as defined in the *Petroleum Act 1984.*

Petroleum means petroleum as defined under the *Petroleum Act 1984* and includes naturally occurring hydrocarbons, or a mixture of naturally occurring hydrocarbons whether in gas, liquid or solid state. This definition also captures hydrogen sulphide, nitrogen, helium, hydrogen and carbon dioxide where found naturally occurring with a mixture of one or more hydrocarbons.

Petroleum facility means a facility located in the Territory that is downstream from the wellhead and is for the processing, refining, storage or transport of petroleum. A petroleum facility may include a pipeline.

Petroleum product means any product that is able to be sold or otherwise disposed, that is processed, extracted, recovered or derived from petroleum. For the avoidance of doubt, the definition makes clear that a petroleum product includes crude oil, condensate and processed natural gas.

Post-wellhead activity means an activity that occurs in relation to petroleum produced from a project area after petroleum is produced at the wellhead but before its first saleable point.

Post-wellhead costs are normal operating costs which generally include field gathering costs (transfer of petroleum from the wellhead to a processing facility), processing, storage, pipeline tariffs and transportation costs. Activities that occur after petroleum is sold or further processed past its first saleable point are not post-wellhead activities under this Act.

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

Processed natural gas is defined to include liquefied natural gas for the avoidance of doubt in relation to the definition of petroleum product.

Produce means, in relation to petroleum, to produce as defined in the *Petroleum Act 1984*. That is, to recover or release the petroleum from a petroleum pool in the course, or as a result, of any operations. All petroleum produced from a project area is subject to royalty, unless specifically excluded by this Act.

Production licence means a production licence as defined in the *Petroleum Act 1984*.

Production project area means one or more licence areas being operated by, or on behalf of, one or more licensees as a single integrated operation, or 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. The concept of a single integrated operation means that the operation of the licences and exploration permits must be functionally integrated and interdependent to the production of petroleum to be considered a single production project area.

Project area means an exploration project area or a production project area and is used where a particular provision applies in the circumstances described by either definition. Ring-fencing principles apply and each of the functionally integrated operations are treated independently, for royalty purposes, from all of the other operations (including operations on distinct and separate licence areas), even if operated by the same licensee or permittee. Accordingly, the accounts from the individual field or project area may not be mixed with the accounts for activities outside the field or project. There is no ability to aggregate income or revenue and expenses from all operations carried on by the licensee or permittee within the Northern Territory.

Quarter means the 3-month period ending on the last day of March, June, September or December in any year and is the period for which quarterly payments are calculated under this Act.

Related body corporate means related bodies corporate pursuant to the *Corporations Act 2001* (Cth). This includes companies in a parent/subsidiary relationship and subsidiaries of the same parent company.

Related entity means, in relation to a body corporate, a related entity pursuant to the *Corporations Act 2001* (Cth).

Related party means a related body corporate, related entity or joint venture or other entity that is led by the person or a related body corporate or related party. The *Interpretations Act 1978* provides that references to a person generally in an Act includes, a body politic and body corporate as well as an individual.

Retention licence means a retention licence as defined in the *Petroleum Act 1984.*

Royalty means the royalty that is payable under this Act for petroleum produced.

Royalty year means the 12 month period for which the financial accounts of a licensee or permittee are ordinarily prepared. The *Taxation Administration Act 2007* allows the Commissioner of Territory Revenue to vary the period related to a return for royalty which will allow for circumstances where a

licensee or permittee amends the 12 month period for which its financial accounts are prepared. For example, transitioning from a financial year to a calendar year basis.

Sales value is signposted to the definition contained elsewhere in the Act.

Shipping costs is signposted to the definition contained elsewhere in the Act.

Third party means a person who is not a related party of a licensee, permittee or operator.

Well means a well as defined in the *Petroleum Act 1984.*

Wellhead means a wellhead as defined in the *Petroleum Act 1984.*

The note for this section refers to the *Interpretations Act 1978* for definitions and other provisions that may be relevant to this Act.

Clause 5. Arm's length terms

This clause outlines arm's length terms to be the terms of a transaction being no less favourable to the licensee, permittee or operator than those that would be agreed to by a third party in an arm's length transaction under similar circumstances.

Arm's length terms are generally understood to be the terms that would be negotiated in an open, unrestricted, competitive market between parties acting at arm's length where both parties are independent of each other, unrelated and operating in their own self-interest with neither party influencing the other. In relation to price, for example, the price published by a well recognised commodities exchange or the price received from comparable arm's length sales would fairly represent an arm's length price.

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

This clause makes clear that this Act applies to any leases granted or renewed under the *Petroleum (Mining and Prospecting) Act 1954* that are in effect at the commencement of this Act, and any holder of those leases, in the same manner as to licences and licensees under this Act. This clause ensures that all petroleum produced in the Territory will be captured for royalty purposes under this Act from commencement.

Part 3 Petroleum royalties

Clause 7. Commencement of royalty

This clause sets out when royalty is payable under this Act for petroleum produced from a project area in the following circumstances:

(a) Where an agreement made between a production licence holder and the Minister under the *Petroleum Act 1984* applied to a project area before the commencement of this Act, on and from the day the royalty agreement is terminated.

(b) Where a determination had been issued by a Minister under the *Petroleum Act 1984* in respect of a project area, on and from the day the determination ends.

(c) For all other petroleum produced from a project area, from the day this Act commences.

It is intended that all petroleum produced in the Territory will be subject to royalty under this Act from commencement. The royalty provisions currently contained in the *Petroleum Act 1984* are to be repealed and existing agreements will be terminated under the terms of those agreements. Where no agreement exists, this Act will apply to all petroleum produced from commencement.

Clause 8. Royalty on petroleum produced

Subclause (1) provides that all licensees and permittees for a project area are liable to pay royalty to the Territory on petroleum produced from a project area in a royalty year. Section 9 of the Act provides the rate of royalty imposed.

Subclause (2) provides that petroleum that is used or lost due to venting, flaring or other means is included in the meaning of petroleum produced, and are subject to royalty under this Act, but only where this occurs on a production project area. This provision encourages the economic use of petroleum in the Territory and ensures that the Territory receives a return for its non-renewable resources.

Subclause (3) provides that the following circumstances are excluded from petroleum produced, including petroleum that is:

(a) Used in the project area for processing, or in preparing the petroleum for sale

(b) Used by, or on behalf of, a licensee or permittee for incidental purposes, such as the heating and lighting of employee accommodation or other employee social amenities

(c) Returned or reinjected into a natural reservoir in the project area from which it was extracted or recovered, in line with good field practice

(d) Used or lost through venting or flaring or other means, but only where this occurs on an exploration project area.

To minimise administrative burden and reduce complexity in the royalty calculation, the measurement and valuation of petroleum used for the purpose of processing or preparing petroleum for sale, or for incidental purposes is not required. As the value of petroleum used for these purposes would be considered an allowable cost under clause 18, there would be no net impact on the royalty calculation. Accordingly, to the extent that petroleum is used on the project area for the specified purposes, it would be specifically excluded from the royalty arrangements. However, the sale of petroleum, or use of petroleum outside the project area, is subject to royalty under this Act.

Petroleum is also not produced if it is returned or reinjected into the natural reservoir in accordance with good oilfield practice. Petroleum that is used or lost through venting, flaring or other means is also not taken to be produced provided this occurs on an exploration project area. Holders of exploration permits and retention licences may be approved by the Minister as a condition of those titles the ability to sell or use appraisal petroleum that would otherwise have been vented or flared. Where appraisal petroleum is sold, or used outside the project area, it would not be subject to this exclusion and would therefore be subject to royalty.

Clause 9. Royalty rate

This clause provides that the royalty rate that applies to petroleum produced from a project area is at a rate of 10% of the gross value at the wellhead.

Clause 10. Royalty payments

This clause provides that all licensees and permittees of a project area must pay royalty in a royalty year by quarterly payments made within 30 days after the end of the quarter, being 30 April, 30 July, 30 October and 30 January. However, discretion is also provided for the Commissioner of Territory Revenue to approve royalty payments under another arrangement. For example, where a project area commences petroleum production shortly before the end of a quarterly period, a licensee or permittee may apply to vary the period to which its first royalty payment applies.

Clause 11. Amount of quarterly payments

Subclause (1) provides that the amount of the first three quarterly payments of a royalty year are calculated on the gross value at the wellhead of petroleum produced in the quarter.

Subclause (2) makes clear that for the purposes of this calculation, that references to royalty year in the meaning of gross value of the wellhead should be read as references to the quarter.

Subclause (3) requires that the final quarterly payment is calculated for the balance of royalty payable for royalty year, including any end of year adjustments and taking into account payments in accordance with subclause (1).

The intention is that the payments made in each quarterly payment is based on actual revenues received or receivable and expenses incurred in the quarter to which the payment is being made, with any end of year adjustments being taken into account in the final quarter.

Part 4 Calculation of gross value at the wellhead

Clause 12. Meaning of Australian Dollar Equivalent and exchange rate

Subclause (1) provides that any amounts stated in a foreign currency should be converted to an Australian dollar equivalent using the exchange rate applying at the time the amount was received, receivable or incurred.

Subclause (2) stipulates that the exchange rate selected by a royalty payer should be in good faith and on a consistent basis and are either, the closing daily representative rate published by the Reserve Bank of Australia, the buy rate for the foreign currency published by a major Australian trading bank or another rate agreed in writing between the licensee or permittee and the Commissioner of Territory Revenue.

Clause 13. Meaning of gross value at the wellhead

Subclause (1) provides that the gross value at the wellhead on which the royalty payable is based, is calculated by taking the sales value of petroleum and reducing it by the lesser of the deductible costs of the petroleum in the royalty year or the deduction cap for the petroleum for the royalty year. The deduction cap limits the extent to which the sales value of petroleum is reduced by deductible costs to 75%.

Subclause (2) makes clear that any amounts that affect the calculation of gross value at the wellhead should be recorded exclusive of GST.

Subclause (3) further provides that where an amount affecting the calculation of gross value at the wellhead is a value of an acquisition relating to a supply that is input taxed, it should be calculated inclusive of GST.

Subclause (4) specifies terms defined under *A New Tax System (Goods and Services Tax) Act 1999* that are referenced in this clause.

Clause 14. Meaning of sales value

Subclause (1) provides that the sales value of petroleum produced is the revenue received or receivable net of shipping costs of the petroleum.

Subclause (2) provides that where no revenue is received or receivable, petroleum is not sold, is sold as a petroleum product that was further refined or processed past its first saleable point, or where the sale is not on arm’s length terms, the sales value is the market value

Subclause (3) provides that for the purposes of this clause, the revenue received or receivable for petroleum should be converted to Australian dollars by converting foreign currency at the exchange rate applying at the time the foreign currency was received, receivable or incurred. Revenue also includes the proceeds received from an insurer for the loss or damage to petroleum, net of any excess paid in relation to the claim.

Clause 15. Meaning of market value

Subclause (1) provides that the market value of petroleum produced from the project area is the price in Australian dollars that would be negotiated on the basis that it was sold at the first saleable point in an open commercial market between knowledgeable, willing but not anxious buyers and sellers, acting severally and independently, having regard to:

(a) The price of other petroleum sold to a third party on arm's length terms and that is substantially similar to the petroleum being valued 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 accepts

(e) Any other matter the Commissioner of Territory Revenue considers relevant.

It is noted that some of the above circumstances, particularly the methodologies employed by the Commonwealth Commissioner of Taxation may not be in line with the provisions of this Act (for example, the scope of deductions that may be entertained by the Commonwealth Commissioner of Taxation in arriving at a value, including marketing fees, which are an excluded cost under this Act). While regard would be given to these circumstances, they would not be applied rigidly in all circumstances. Further, a recognised commodities exchange price may not be appropriate to apply directly to petroleum produced in the Territory in all circumstances.

Subclause (2) outlines that, for the purposes of this clause, an advance pricing arrangement is an arrangement made with the Commonwealth Commissioner of Taxation under which a transfer pricing methodology is agreed to be used in accounting for dealings with petroleum for the purposes of the *Income Tax Assessment Act 1997* (Cth).

Clause 16. Shipping costs

Subclause (1) provides that shipping costs to be used in the calculation of sales value is:

(a) Where petroleum is exported, it is all freight charges, dead freight costs and marine insurance costs

(b) Where petroleum is not exported, but sold into the Australian market, the freight and insurance costs incurred in delivering the petroleum to the point of sale or transfer.

Subclause (2) makes clear that shipping costs do not include costs for which reimbursement or compensation is received, or where the costs are charged to another person, to ensure that the sales value is not reduced for costs for which no net expense has been incurred. Costs that are listed as excluded costs under this Act are not shipping costs.

Subclause (3) provides that for shipping costs to be included in the calculation of sales value, they must be incurred by the licensee, permittee or operator of the project directly in relation to the sale of petroleum or be incurred by a related party of the licensee, permittee or operator in relation to the sale of the petroleum on arm's length terms. Where the shipping costs have been incurred by a related party, no mark up is permitted on the price charged by the third party.

Clause 17. Deductible costs

Subclause (1) provides for the amount of deductible costs that may be deducted for the purposes of determining the gross value at the wellhead for petroleum produced from a project area.

Subclause (2) provides a formula stipulating that deductible costs should be calculated as allowable costs plus the amount of the balance of any carry forward deductions, less the amount of any allowable costs incurred for which reimbursement or compensation has been received by a licensee, permittee or operator as follows:

DC = AC + CFD – R

Where:

DC is the amount of the deductible costs.

AC is the amount of the allowable costs calculated in accordance with clause 18.

CFD is the amount of the balance of any carry forward deductions that are unable to be used in the royalty calculation in the current royalty year as a result of the deduction cap.

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

Subclause (3) ensures that all deductible costs are able to be claimed by a licensee, permittee or operator, by providing that where deductible costs incurred in a royalty year are unable to be claimed in full in that royalty year due to application of the deduction cap, the balance of any deductible costs that exceed the deduction cap in a royalty year are able to be carried forward to a later royalty year.

Clause 18. Allowable costs

This clause lists the allowable costs that may be included in the calculation of deductible costs in relation to petroleum produced from a project area.

Subclause (1) lists allowable costs as follows:

(a) A pipeline tariff for transporting petroleum from the project area through a pipeline to the first saleable point. Pipeline tariffs beyond the first saleable point are not allowable costs

(b) The cost of a processing plant toll or other charge for processing the petroleum before its first saleable point. Costs for further processing of the petroleum past its first saleable point are not allowable costs

(c) Field gathering costs to transport the petroleum from the wellhead to processing or storage facilities

(d) Operating costs of a post-wellhead activity that is directly related to the treatment, processing, refining, storage or transportation of the petroleum

(e) A capital allowance deduction, calculated in accordance with Australian income tax treatment, in relation to a post-wellhead facility. Where no Australian income tax treatment applies to the post-wellhead facility, a deduction may be calculated in accordance with a method approved in writing by the Commissioner of Territory Revenue

(f) Costs directly related to a post-wellhead activity that are directly incurred for operating or maintaining an office in the Territory, fees for management services performed wholly in the Territory, or labour, employee or personnel costs (including travel and ancillary costs) only where work is performed solely in the Territory. For labour, employee and personnel costs to meet this provision, the worker must be working solely in the Territory for the entire period to which the cost relates, and for the period the worker was remunerated.

Subclause (2) requires that for a cost to be an allowable cost under this clause it must be incurred by a licensee, permittee or operator, or a related party, in relation to the petroleum produced in the royalty year, not be a shipping cost or excluded cost, be directly related to a post-wellhead activity and be incurred on arm's length terms.

Clause 19. Excluded costs

This clause lists the costs that are specifically excluded for the purposes of calculating shipping costs or deductible costs from a project area. The nature of an ad valorem royalty scheme is such that royalty is imposed on the gross value of petroleum at the wellhead, with only those costs necessarily incurred after the wellhead to the point of sale or first saleable point being deducted from the sales value of petroleum. Although for a cost to be included as a shipping cost or deductible cost it must fall within the meaning of those terms under separate provisions, for the avoidance of doubt a list is provided of costs that are specifically excluded from either allowable costs or shipping costs.

Subclause (1) lists all the following as specifically excluded from the calculation:

(a) Costs incurred in relation to:

(i) Exploration or discovering petroleum

(ii) Marketing or selling petroleum, including fees, commissions, brokerage, or an amount paid to a distributor or agent

(iii) Maintaining a petroleum facility during an extended or permanent shutdown of the facility. An extended or permanent shutdown does not include shutdowns for the repairs and maintenance in the ordinary course of operations of the project area

(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 any guarantees, securities or insurance imposed under law.

(vi) Salaries, allowance termination payments, other similar payments or benefits, superannuation payments and wages for any pay periods where the worker to which the payment relates did not work solely in the Territory, or was not engaged primarily in work that was directly attributable to petroleum produced in the Territory. This provision works with section 18(1)(f) to make clear that only costs for wages and other employee related remuneration costs may be claimed as a deductible costs for royalty calculation purposes where the work is carried out solely in the Territory.

(b) Office expenses that do not relate to an office in the Territory, or are not for work services performed in the Territory. In order to incentivise the establishment of offices in the Territory, this provision works with section 18(1)(f) to make clear that only costs office costs may be claimed as a deductible cost where an office is located in the Territory and the services are performed solely in the Territory.

(c) Fees for management services that are not performed solely in the Territory, or are not directly attributable to the production of petroleum in the Territory. This provision works with section 18(1)(f) to make clear that only fees for management services may be claimed as a deductible cost where the services to which the services related are performed solely in the Territory.

(d) Travel or ancillary costs in relation to an employee, contractor or other worker whose principal place of residence is outside the Territory. In order to incentivise the employment of local workers, this provision works with section 18(1)(f) to make clear that only travel and ancillary costs for resident employees is claimable for royalty deduction calculation purposes.

(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 payments in the nature of a royalty.

(k) Taxes, levies or fees imposed or payable under a law of the Territory, the Commonwealth or a state or another Territory. This includes any licence, application or licence fees imposed under the *Petroleum Act 1984* and any levies imposed as a condition of the licence or exploration permit imposed under the law, including the monitoring and compliance or orphan well levies.

(l) Costs in relation to negotiating with, or compensation payments to, land holders or persons related to native title under an access agreement or native title agreement under the *Native Title Act 1993*.

(m) Amounts paid or payable for breaches of a legal or statutory obligation, including a penalty or damages for breach of contract.

Subclause (2) makes clear that any costs incurred beyond or after the first saleable point of the petroleum is not to be included in calculation of royalty.

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

Subclause (1) makes clear that an amount cannot be claimed more than once, either in the same or different royalty year, regardless of whether it could fall under more than one heading of deduction or is capable of being reflected in the financial accounts of a licensee or permittee in more than one form. This is to prevent the double deduction of costs as both capital or expense.

Subclause (2) further provides that, for the purposes of calculating sales value or gross value at the wellhead, where an item of revenue or expenditure could technically fall under more than one definition, it must be classified under the most appropriate provision of this Act, even if it could also be classified under another provision. This ensures, for example, that a capital cost relating to a pre-wellhead activity (excluded costs) may not be included as a pre-wellhead operating cost (deductible costs) in calculating the gross value at the wellhead.

Clause 21. Swap arrangements

This clause provides for circumstances where a disposal of petroleum occurs by way of a swap arrangement. Swap arrangements are a transportation mechanism and therefore it is intended that the value of the petroleum involved in the transaction is the key aspect, not the underlying contractual arrangements for the swap.

Subclause (1) provides that the price received for the sale of the petroleum procured under a swap arrangement may be used to determine the value of petroleum produced from a project area if the swap arrangement is negotiated on arm's length terms between unrelated parties, the procured petroleum is of a comparable quantity and quality and the swap occurs within six months after the petroleum is delivered.

Subclause (2) stipulates that the market value must be used if the swap arrangement is between related parties, if the procured petroleum is sold to a related party, the procured petroleum is not onsold within six months after delivery, or if the requirements of sub-section (1) are not otherwise met.

Subclause (3) provides further guidance of the meaning of procured petroleum and swap arrangement. Procured petroleum means petroleum obtained by a licensee, permittee or operator under a swap arrangement, being an arrangement between a petroleum producer (or reseller on

behalf of a petroleum producer) and another petroleum producer (or reseller on behalf of the other petroleum producer) to swap rights or obligations in relation to petroleum produced.

Part 5 Application of Taxation Administration Act 2007

Clause 22. Application of *Taxation Administration Act 2007*

This clause acts to apply provisions of the *Taxation Administration Act 2007* to the administration of petroleum royalties under this Act. The provisions require that for the purposes of the *Taxation Administration Act 2007*, it applies to petroleum royalties imposed under this Act as if:

(a) All references to tax in the *Taxation Administration Act 2007* are read to be a reference to royalty imposed under this Act

(b) All references to taxpayer in the *Taxation Administration Act 2007* are read to be a reference to a licensee or permittee under this Act

(c) All references to a taxation law in the *Taxation Administration Act 2007* included a reference to this Act

(d) All references to a corresponding law in Parts 9 and 10 of the *Taxation Administration Act 2007,* which relate to investigations and the disclosure of information.

The *Taxation Administration Act 2007* applies to other revenue legislation in the Territory and, as such, there may be sections that may not be necessary to ensure the proper administration of petroleum royalties in the Territory. However, for the avoidance of doubt, all provisions apply to petroleum royalties in accordance with this clause.

For clarity, a decision made by the Commissioner under this Act which affects a licencee or permittee's liability to pay a royalty enlivens the objection and appeal provisions contained in Part 11 of the *Taxation Administration Act 2007* and they are extended the same rights and obligations provided to a 'person affected' as defined therein.

Part 6 Miscellaneous matters

Clause 23. Register of licensees and permittees

Subclause (1) provides that a licensee or permittee must register with the Commissioner of Territory Revenue within 30 days after the commencement of petroleum production under a licence or exploration permit.

Subclause (2) requires that within 30 days of certain events occurring the licensee or permittee must notify the Commissioner of Territory Revenue. These events are as follows:

(a) Petroleum production ends during an extended or permanent shutdown of a project area. This does not include a temporary shutdown in the ordinary course of operations for the purposes of repairs and maintenance

(b) Petroleum production restarts after a period of cessation. This would not include a restart after a temporary shutdown unless notification had been provided that the shutdown would be extended or permanent

(c) There is a full or partial change in ownership of a licence or exploration permit.

Subclause (3) makes clear that registration or notification under this clause must be made to the Commissioner of Territory Revenue in the approved form and in the approved manner.

Subclause (4) provides that the Commissioner of Territory Revenue may cancel the registration of a licensee or permittee, where:

(a) Petroleum production ceases following a permanent shutdown of operations under a licence or exploration permit in a project area.

(b) A licensee or permittee transfers its interest in a licence or exploration permit to another person.

(c) The registration is not required for any other reason.

Clause 24. Lodgement of returns

Subclause (1) requires a licensee or permittee to lodge a royalty return with the Commissioner of Territory Revenue within 30 days after the end of a royalty year.

Subclause (2) requires that a final royalty return is lodged with the Commissioner of Territory Revenue within 30 days after the extended or permanent shutdown of a project area (except a temporary shutdown) or where a licence or exploration permit for a project area is transferred under the *Petroleum Act 1984*.

Subclause (3) provides that the Commissioner of Territory Revenue may, upon application, waive the requirement to lodge a royalty return where there is a transfer of a licence or exploration permit and the event does not interrupt the operation of the project area or the accounts relating to petroleum production from that project area.

Subclause (4) requires that a royalty return lodged under this clause must be in the approved form.

Subclause (5) provides, in the interests of administrative efficiency, that where there is more than one licensee or permittee for a project area, only one royalty return should be lodged in relation to that project area. The licensees or permittees may authorise a person to lodge the royalty return on behalf of all licensee and permittees for the purposes of this clause.

Subclause (6) makes clear that the lodgement of a single royalty return on behalf of all licensee and permittees does not affect the liability of each licensee or permittee for the project area to pay royalty for petroleum produced from the project area.

Clause 25. Approved forms and manner

This is a standard clause included to stipulate that the Commissioner of Territory Revenue may approve forms and the manner of registration for the purposes of the proper administration of this Act.

Clause 26. Regulations

This is a standard clause included to allow for the Administrator to make regulations for the purposes of this Act.

Clause 27. Review of Act

Subclause (1) provides that due to the nascent nature of the petroleum industry in the Territory the Commissioner of Territory Revenue must conduct a review of the operation of this Act as soon as practicable before 1 July 2028.

Subclause (2) provides that although not limiting the scope of the review, at a minimum, the Commissioner of Territory Revenue must consider the effectiveness and efficiency of the calculation of royalties under this Act as part of the review.

Subclause (3) requires that the Commissioner of Territory Revenue must prepare a written report of the results of the review for the Minister.

Part 7 Transitional matters for Petroleum Royalty Act 2023

Clause 28. Royalty agreements under *Petroleum Act 1984*

This clause makes clear that where a royalty agreement issued under the *Petroleum Act 1984* prior to the commencement of this Act continues to apply if it is not cancelled prior to the commencement

of this Act. Although it is intended that this Act will apply to all petroleum produced in the Territory from commencement, this provision is included as a catch all to ensure that timing differences for any transitional arrangements around the cancellation of existing agreements are captured.

Part 8 Consequential amendment of Petroleum Act 1984

Clause 29. Act amended

This clause stipulates that this part amends the *Petroleum Act 1984*.

Clause 30. Section 3 Amended (Objective)

This clause amends section 3 of the *Petroleum Act 1984* to remove reference to the collection of royalties. As the royalty provisions of the *Petroleum Act 1984* are being repealed by this part and replaced by this Act, this aspect of the objective is not required.

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

This clause amends section 15A(6) to provide that for a person to be considered an appropriate person to hold a permit or licence, the meaning of prescribed legislation includes this Act from commencement.

Clause 32. Section 54 amended (Conditions of production licence)

This clause amends section 54 to omit the payment of royalties as a specific condition of a production licence as the *Petroleum Act 1984* requires the payment of royalty as a general condition of petroleum interests so this provision is not required.

Clause 33. Section 58 amended (General conditions)

This clause amends section 58 to provide that the payment of royalties in accordance with this Act is a general condition of petroleum interests, and to remove references to the payment of royalties under the *Petroleum Act 1984*.

Clause 34. Part III, Division 5 repealed (Royalties)

This clause repeals the existing royalty provisions under the *Petroleum Act 1984*, as they will be replaced by this Act from commencement.

Clause 35. Section 119 amended (Applications, savings and transitional)

This clause is amended to remove the stipulation that the royalty provisions being repealed by this Act apply to leases issued or renewed under the repealed act (*Petroleum (Mining and Prospecting) Act 1954*). These leases will now be subject to the provisions of this Act from commencement.

Clause 36. Repeal of Part

This is a standard clause which provides that this part of the Act is repealed on the day after it commences.