



Mining Amendment (Coal Royalty) Regulation 2012

under the

Mining Act 1992

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Mining Act 1992*.

CHRIS HARTCHER, MP
Minister for Resources and Energy

Explanatory note

Under the *Mining Act 1992*, royalty is payable by holders of mining leases at a base rate prescribed by the regulations on the value of coal recovered under the leases. The object of this Regulation is to prescribe an additional rate of royalty on coal that will be payable only by those holders of mining leases who are liable to pay minerals resource rent tax (*MRRT*) under the *Minerals Resource Rent Tax Act 2012* of the Commonwealth. The additional rate of royalty is to be prescribed by reference to the impact of the pricing of carbon regime (often described as the “carbon tax”) imposed by the *Clean Energy Act 2011*, and associated legislation, of the Commonwealth on the finances of the State of New South Wales.

MRRT is a tax imposed by the Commonwealth on the economic rents miners make from taxable resources after they are extracted from the ground. The tax is imposed on a miner’s mining profit in respect of the miner’s mining project interests less certain MRRT allowances. Those allowances include mining royalties paid to the State. This ensures that the royalties and the MRRT do not double tax the mining project. As a result, the liability of holders of mining leases for MRRT will be offset by the royalty paid at the additional rate.

This Regulation is made under the *Mining Act 1992*, including sections 283 (1) (b) and (3) and 388 (the general regulation-making power).

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Clause 1 Mining Amendment (Coal Royalty) Regulation 2012

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1 Name of Regulation

This Regulation is the *Mining Amendment (Coal Royalty) Regulation 2012*.

2 Commencement

This Regulation commences on 1 December 2012 and is required to be published on the NSW legislation website.

Schedule 1 Amendment of Mining Regulation 2010

[1] Clause 61A

Insert after the heading to Part 7:

61A Interpretation

- (1) In this Part:

Commonwealth Act means the *Minerals Resource Rent Tax Act 2012* of the Commonwealth.

holder of a mining lease includes the holder of a mining sublease.

instalment of MRRT means an instalment of MRRT payable under section 115–10 of the *Taxation Administration Act 1953* of the Commonwealth.

MRRT offset amount—see clause 63 (1C).

supplementary royalty means royalty payable at the additional rate prescribed under clause 63 (1A) and (1B).

supplementary royalty period, in relation to the holder of a mining lease, means the MRRT year for that holder.

transitional MRRT year means an MRRT year referred to in clause 10 of Schedule 4 to the *Minerals Resource Rent Tax (Consequential Amendments and Transitional Provisions) Act 2012* of the Commonwealth.

transitional supplementary royalty period means the period commencing on 1 December 2012 and ending on 30 June 2013.

value component of the additional rate—see clause 63 (1A) and (1B).

- (2) If an expression is defined in the Commonwealth Act and is also used in this Part, the expression as used in this Part has, unless the contrary intention appears, the same meaning as in that Act.

[2] Clause 63 Rates of royalty for coal

Insert after clause 63 (1):

- (1A) For the purposes of section 283 (1) (b) of the Act, the additional rate of royalty for coal recovered by the holder of a mining lease during the transitional supplementary royalty period consists of 1.95% of the value of coal recovered (the *value component of the additional rate*) less the applicable MRRT offset amount (if any).

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- (1B) For the purposes of section 283 (1) (b) of the Act, the additional rate of royalty for coal recovered by the holder of a mining lease during a year commencing on or after 1 July 2013 consists of 1.0% of the value of coal recovered (the *value component of the additional rate*) less the applicable MRRT offset amount (if any).
- (1C) For the purposes of subclauses (1A) and (1B), the following is the formula to be used for working out the MRRT offset amount with respect to a supplementary royalty period:
- If $A+B>C$, the MRRT offset amount is the lesser of the following:
- (a) $A+B-C$,
 - (b) A
- where:
- A* means the value component of the additional rate.
- B* means the MRRT liability that would apply if the supplementary royalty included only the value component of the additional rate.
- C* means the MRRT liability that would apply if the supplementary royalty were zero.
- (1D) An additional rate of royalty is payable by the holder of a mining lease during a supplementary royalty period in respect of which the holder is required by this Act to pay royalty only if:
- (a) the mining lease is a mining project interest, and
 - (b) during that supplementary royalty period one or more instalments of MRRT are paid or payable by that holder in respect of that mining project interest.

[3] Clause 64 Returns

Insert “(other than those referred to in subclause (1A))” after “royalty returns” wherever occurring in clause 64 (1).

[4] Clause 64 (1A) and (1B)

Insert after clause 64 (1):

- (1A) In addition, the holder of a mining lease that is a mining project interest from which coal is recovered must:
- (a) within 30 days after the end of the third quarter of its MRRT year (not being a transitional MRRT year) furnish the following returns:
 - (i) a list of all mining project interests of the holder from which coal is recovered,

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- (ii) the value of coal recovered by each such mining project interest,
 - (iii) a statement of whether any MRRT instalment payment greater than zero is payable in respect of each of those interests during that MRRT year,
 - (iv) a statement of the amount of MRRT that has been paid in respect of each of its mining project interests for that MRRT year at the end of that quarter, and
 - (b) within 10 months after the end of its MRRT year—furnish a statement of the total amount of MRRT that has been paid in respect of each of its mining project interests for the entire MRRT year.
- (1B) A holder of a mining lease is only required to furnish a statement under subclause (1A) (b) in respect of a mining project interest if the holder has paid an MRRT instalment payment greater than zero in respect of the mining project interest during the MRRT year concerned.
- (1C) If, during the transitional supplementary royalty period, the holder of a mining lease has a transitional MRRT year, the holder must, no later than on 15 December 2012, furnish returns referred to in subclause (1A) (a) (i)–(iv) for the transitional MRRT year as at the date on which the return is furnished.

[5] Clause 65 Payment of royalty

Omit clause 65 (4). Insert instead:

- (4) In the case of coal:
 - (a) royalty payable at the base rate is payable within 21 days after the beginning of each month, and
 - (b) supplementary royalty is payable no later than 10 months after the end of the MRRT year of the holder of the lease.

Note. An MRRT year is a financial year starting on or after 1 July 2012. Other accounting periods may be MRRT years if the lease holder uses an accounting period other than a financial year: see Division 190 of the Commonwealth Act.

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[6] Schedule 12 Savings and transitional provisions

Insert after Part 3:

Part 4 Provisions consequent on making of Mining Amendment (Coal Royalty) Regulation 2012

14 Definition

In this Part:

amending Regulation means the *Mining Amendment (Coal Royalty) Regulation 2012*.

15 Payment of supplementary royalty

Clause 63, as amended by the amending Regulation, only applies to coal recovered from material extracted on or after the commencement of the amending Regulation.