



New South Wales

# State Revenue and Other Legislation Amendment (Budget Measures) Act 2014 No 37

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New South Wales

# **State Revenue and Other Legislation Amendment (Budget Measures) Act 2014 No 37**

Act No 37, 2014

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An Act to make miscellaneous amendments to certain State revenue and other legislation in connection with the Budget for the year 2014–2015; and for other purposes. [Assented to 24 June 2014]

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**The Legislature of New South Wales enacts:**

**1 Name of Act**

This Act is the *State Revenue and Other Legislation Amendment (Budget Measures) Act 2014*.

**2 Commencement**

- (1) This Act commences, or is taken to have commenced, on 1 July 2014, except as provided by subsection (2).
- (2) Schedule 5 commences on the date of assent to this Act.

**3 Explanatory notes**

The matter appearing under the heading “Explanatory note” in any of the Schedules does not form part of this Act.

**4 Repeal of this Act**

Section 30C (Automatic repeal of amending Acts that have commenced) of the *Interpretation Act 1987* is taken to apply to this Act as if this Act were an amending Act for the purposes of that section.

## Schedule 1 Amendment of Duties Act 1997 No 123

[1] **Section 11 What is “dutiabale property”?**

Omit “on a date or dates to be appointed by proclamation” from the note to the section.  
Insert instead “on 1 July 2016”.

[2] **Section 11, note**

Omit “on the abolition date appointed by the Governor”. Insert instead “on 1 July 2016”.

[3] **Section 28 Apportionment—business assets in this and other jurisdictions**

Omit section 28 (6). Insert instead:

- (6) This section applies only to dutiable transactions that occur before 1 July 2016 (the date on which duty on transfers of business assets is abolished).

[4] **Chapter 2, Part 4**

Omit the Part. Insert instead:

### Part 4 Abolition of various duties

**34 Abolition of duty on transfers of marketable securities and commercial fishery shares**

- (1) On and from 1 July 2016, marketable securities and commercial fishery shares are not dutiable property (despite section 11).
- (2) Subsection (1) does not apply in respect of any transfer or transaction with respect to marketable securities or commercial fishery shares that occurs before 1 July 2016 and, accordingly, does not affect any requirement to pay duty under this Chapter in respect of the transfer or transaction.
- (3) In this section:  
*commercial fishery share* means a share in a share management fishery (within the meaning of the *Fisheries Management Act 1994*).

**35 Abolition of duty on transfers of business assets**

- (1) On and from 1 July 2016, a business asset is not dutiable property (despite section 11).
- (2) Subsection (1) does not apply in respect of any transfer or transaction with respect to business assets that occurs before 1 July 2016 and, accordingly, does not affect any requirement to pay duty under this Chapter in respect of the transfer or transaction.

**36 Abolition of duty on transfers of statutory licences or permissions and gaming machine entitlements**

- (1) On and from 1 July 2016, a statutory licence or permission, or a gaming machine entitlement, is not dutiable property (despite section 11).
- (2) Subsection (1) does not apply in respect of any transfer or transaction with respect to statutory licences or permissions, or gaming machine entitlements, that occurs before 1 July 2016 and, accordingly, does not affect any requirement to pay duty under this Chapter in respect of the transfer or transaction.

(3) In this section:

***gaming machine entitlement*** means a gaming machine entitlement within the meaning of the *Gaming Machines Act 2001*.

***statutory licence or permission*** means a statutory licence or permission under a New South Wales law.

### **37 Anti-avoidance measures**

Section 35 or 36 does not apply in respect of a transfer or transaction that occurs on or after 1 July 2016 if:

- (a) the transfer or transaction replaces a transfer or transaction involving the same business asset, statutory licence or permission, or gaming machine entitlement, that occurred before 1 July 2016, or
- (b) the transfer or transaction is made or entered into pursuant to an option to purchase the business asset, statutory licence or permission, or gaming machine entitlement, that was granted before 1 July 2016, or
- (c) the transfer or transaction was made or entered into pursuant to another arrangement, made before 1 July 2016, the only or main purpose of which was to defer the transfer or transaction until 1 July 2016, or later, so that duty would not be chargeable under this Chapter on the transfer or transaction.

#### **[5] Section 65 Exemptions from duty**

Omit “on a date to be appointed by proclamation under section 33B” wherever occurring in the notes to section 65 (6) and (7).

Insert instead “on 1 July 2016”.

#### **[6] Sections 66 and 274 (2), notes**

Omit “on a date to be appointed by proclamation under section 33B” wherever occurring.

Insert instead “on 1 July 2016”.

#### **[7] Sections 85A and 85B**

Insert after section 85:

##### **85A Maximum of one eligible transaction per financial year**

- (1) A transaction (a ***new transaction***) is not eligible if:
  - (a) a payment of a grant under this Division has been made to the transferee, or any one of them, in respect of another transaction, and
  - (b) that other transaction occurred in the same financial year as the new transaction.
- (2) For the purposes of this section, the date on which a transaction occurs is:
  - (a) in the case of an agreement for sale or transfer or a transfer executed in conformity with an agreement for sale or transfer—the date on which the agreement for sale or transfer is entered into, or
  - (b) in the case of a transfer executed otherwise than in conformity with an agreement for sale or transfer, the date on which the transfer occurs.
- (3) In this section:

***financial year*** means a year ending on 30 June.

***transaction*** means an agreement for sale or transfer or a transfer.

**85B Grant not available to foreign nationals**

- (1) An agreement or transfer is eligible only if the transferee or, if there is more than one transferee, each of the transferees is a declared Australian national.
- (2) A transferee is a *declared Australian national* if the applicant has provided to the Chief Commissioner, in an approved form:
  - (a) such information as the Chief Commissioner requires to identify the transferee, and
  - (b) a declaration to the effect that the transferee is an Australian citizen, Australian resident or Australian-owned body.
- (3) For the purposes of this section:
  - (a) *Australian citizen* has the same meaning as in the *Australian Citizenship Act 2007* of the Commonwealth, and
  - (b) *Australian resident* means:
    - (i) the holder of a permanent visa within the meaning of section 30 of the *Migration Act 1958* of the Commonwealth, or
    - (ii) a New Zealand citizen who holds a special category visa within the meaning of section 32 of the *Migration Act 1958* of the Commonwealth, and
  - (c) *Australian-owned body* means a corporation or body corporate that is at least 50% owned or controlled by persons who are Australian citizens or Australian residents.
- (4) However, if a transferee is acquiring the land in a trustee capacity, the transferee is an Australian citizen, Australian resident or Australian-owned body only if at least 50% of the beneficial interest in the land is held by Australian citizens, Australian residents or Australian-owned bodies.
- (5) The Chief Commissioner may reject or revoke approval of an application if satisfied the applicant has made a false declaration under this section.

**[8] Section 87A Making of applications**

Omit section 87A (2) and (3).

**[9] Section 124**

Omit the section. Insert instead:

**124 Abolition of duty charged by this Part**

- (1) The duty charged by this Part is abolished on 1 July 2016.
- (2) The duty charged by this Part remains chargeable on a dutiable entitlement that is acquired before 1 July 2016.

**[10] Section 137A**

Omit the section. Insert instead:

**137A Abolition of duty charged by this Part**

- (1) The duty charged by this Part is abolished on 1 July 2016.
- (2) The duty charged by this Part remains chargeable on an allotment of shares referred to in section 138 that occurs before 1 July 2016.

**[11] Section 203A Abolition of mortgage duty**

Omit section 203A (1) and (1A). Insert instead:

- (1) Mortgage duty is abolished on and from 1 July 2016 (the *abolition date*).

**[12] Schedule 1 Savings, transitional and other provisions**

Insert at the end of the Schedule with appropriate Part and clause numbering:

**Part Provisions consequent on enactment of State Revenue and Other Legislation Amendment (Budget Measures) Act 2014**

**Changes to New Home Grant Scheme**

The amendments to Division 1A of Part 8 of Chapter 2 made by the *State Revenue and Other Legislation Amendment (Budget Measures) Act 2014* apply to the following:

- (a) agreements for sale or transfer entered into on or after 1 July 2014,  
(b) transfers that occur on or after 1 July 2014, other than transfers made in conformity with an agreement for sale or transfer entered into before 1 July 2014.

**Explanatory note**

Items [4] and [11] of the proposed amendments to the *Duties Act 1997* establish 1 July 2016 as the date for the abolition of the following duties:

- (a) duty on transfers of marketable securities and commercial fishery shares,  
(b) duty on transfers of business assets,  
(c) duty on transfers of statutory licences or permissions and gaming machine entitlements,  
(d) mortgage duty.

At present, the duties concerned are to be abolished on a date to be set by the Governor by proclamation.

The amendments also include anti-avoidance measures, to prevent the duty from being avoided in anticipation of the abolition date.

Items [9] and [10] establish 1 July 2016 as the date for the abolition of duty on the acquisition of a dutiable entitlement arising from a capital reduction or rights alterations, and duty on an allotment of shares by direction. At present, those duties are due to be abolished on a date to be set by the Governor for the abolition of duty on the transfer of marketable securities and commercial fishery shares.

Items [1]–[3], [5] and [6] are consequential amendments.

Item [7] restricts eligibility for a grant under the New Home Grant Scheme to one transaction per financial year. If a transferee has already received a grant or part of a grant under the Scheme in relation to a transaction, the transferee will cease to be eligible for a further grant in relation to another transaction that occurs in the same financial year.

Item [7] also restricts eligibility for a grant under the New Home Grant Scheme to transferees who are declared Australian nationals. A transferee is a declared Australian national if the applicant for the grant has provided to the Chief Commissioner, in an approved form:

- (a) such information as the Chief Commissioner requires to identify the transferee, and  
(b) a declaration to the effect that the transferee is an Australian citizen, Australian resident or Australian-owned body.

Under section 55 of the *Taxation Administration Act 1996* it is an offence to give false information to the Chief Commissioner. It is also an offence under section 58 of that Act to falsify the identity of a person.

Item [8] removes the time limit (currently 3 months) for making an application under the New Home Grant Scheme.

Item [12] provides for transitional matters.

## **Schedule 2 Amendment of First Home Owner Grant (New Homes) Act 2000 No 21**

**[1] Section 13A First home owner grant cap**

Omit “1 January 2010” from section 13A (1). Insert instead “1 July 2014”.

**[2] Section 13A (2) (a)**

Omit “\$650,000”. Insert instead “\$750,000”.

**[3] Schedule 1 Savings, transitional and other provisions**

Insert after Part 11:

### **Part 12 Provisions consequent on enactment of State Revenue and Other Legislation Amendment (Budget Measures) Act 2014**

**20 Change to first home owner grant cap**

- (1) The amendment to section 13A made by the *State Revenue and Other Legislation Amendment (Budget Measures) Act 2014* does not apply in respect of an eligible transaction that has a commencement date that is before 1 July 2014.
- (2) Section 13A, as in force immediately before the amendment, continues to apply in respect of such an eligible transaction.
- (3) Section 13A, as in force immediately before the amendment, also applies to an eligible transaction with a commencement date on or after 1 July 2014 if the Chief Commissioner is satisfied that:
  - (a) the contract concerned replaces a contract made before 1 July 2014, and
  - (b) the replaced contract was a contract for the purchase of the same home or a comprehensive home building contract to build the same or a substantially similar home.

**Explanatory note**

Item [2] of the proposed amendments to the *First Home Owner Grant (New Homes) Act 2000* increases the first home owner grant cap from \$650,000 to \$750,000. This means that an eligible transaction that has a total value of up to \$750,000 will qualify for the first home owner grant for new homes.

Items [1] and [3] apply the increase in the cap to any eligible transaction that has a commencement date of on or after 1 July 2014. Item [3] also includes an anti-avoidance measure.

## **Schedule 3 Amendments relating to payroll tax rebate scheme**

### **3.1 Payroll Tax Rebate Scheme (Disability Employment) Act 2011 No 54**

The *Payroll Tax Rebate Scheme (Disability Employment) Act 2011* is repealed.

#### **Explanatory note**

Schedule 3.1 repeals the *Payroll Tax Rebate Scheme (Disability Employment) Act 2011*. The repealed Act provides for the payment of rebates in respect of the employment of persons who, because of a disability, are members of the target group under the *Disability Services Act 1993*.

### **3.2 Payroll Tax Act 2007 No 21**

#### **Schedule 3 Savings, transitional and other provisions**

Insert at the end of the Schedule with appropriate Part and clause numbering:

### **Part Provision consequent on enactment of State Revenue and Other Legislation Amendment (Budget Measures) Act 2014**

#### **Repeal of Payroll Tax Rebate Scheme (Disability Employment) Act 2011**

The *Payroll Tax Rebate Scheme (Disability Employment) Act 2011*, as in force immediately before its repeal, continues to apply:

- (a) in relation to the employment of a person if the employment commenced before the repeal of that Act, and
- (b) in relation to a claim for a rebate, or a rebate, in respect of such employment.

#### **Explanatory note**

Schedule 3.2 provides for the continuation of the *Payroll Tax Rebate Scheme (Disability Employment) Act 2011* in respect of employment that commenced before the repeal of that Act.

## **Schedule 4 Amendments relating to royalties**

### **4.1 Mining Act 1992 No 29**

- [1] **Sections 11A (2) (b), 26 (2) (a), 44 (2) (a), 192 (2), 282 (1), (1A) and (2), 284 (1) and (1A), 286 (1), 286B (2), 287 (1), 288 (1) and 291 (1)**

Omit “to the Minister” wherever occurring. Insert instead “to the Crown”.

- [2] **Section 26 Conditions of exploration licence**

Omit section 26 (3). Insert instead:

- (3) Part 14 applies:
- (a) to royalty payable under a condition referred to in subsection (2) (a) in the same way as it applies to royalty payable on a mineral recovered under a mining lease, and
  - (b) to the person by whom royalty is payable as if the person were the holder of a mining lease.

- [3] **Section 44 Conditions of assessment lease**

Omit section 44 (3). Insert instead:

- (3) Part 14 applies:
- (a) to royalty payable under a condition referred to in subsection (2) (a) in the same way as it applies to royalty payable on a mineral recovered under a mining lease, and
  - (b) to the person by whom royalty is payable as if the person were the holder of a mining lease.

- [4] **Section 192 Conditions of mineral claim**

Omit section 192 (3). Insert instead:

- (3) Part 14 applies:
- (a) to royalty payable under such a condition in the same way as it applies to royalty payable on a mineral recovered under a mining lease, and
  - (b) to the person by whom royalty is payable as if the person were the holder of a mining lease.

- [5] **Section 284 Liability to pay royalty—privately owned minerals**

Omit section 284 (2). Insert instead:

- (2) If royalty (including any interest and penalty tax on royalty) is paid to or recovered by the Chief Commissioner in respect of a privately owned mineral, the Chief Commissioner is to pay to the Minister seven-eighths of the amount so paid or recovered.
- (2A) The Minister is to pay that amount to the owner of the mineral.

- [6] **Section 287 Exemption from royalty**

Insert after section 287 (1):

- (1A) The Chief Commissioner is to remit the interest or penalty tax on any royalty that ceases to be payable because of a decision of the Minister under this section.

**[7] Section 287A Waiver of payment of additional royalty for coal**

Insert after section 287A (3):

- (4) The Chief Commissioner is to remit the interest or penalty tax on any royalty the payment of which is waived under this section.

**[8] Section 289**

Omit the section. Insert instead:

**289 Returns**

- (1) The holder of a mining lease is required to lodge returns with the Chief Commissioner, at such times, and in respect of such periods, as may be prescribed by the regulations.
- (2) A return is to include:
  - (a) the information prescribed by the regulations, and
  - (b) any other information the Chief Commissioner requires for the purposes of the assessment and recovery of royalty under this Act.
- (3) The Chief Commissioner is to give a copy to the Minister of each return lodged with the Chief Commissioner.

**Note.** The Chief Commissioner is responsible for the assessment and recovery of royalties under the *Taxation Administration Act 1996*. That Act requires returns to be in an approved form. The Chief Commissioner can also approve special arrangements for the lodging of returns under that Act.

**[9] Section 291 Payment of royalty**

Omit section 291 (2) and (3). Insert instead:

- (2) A tax default occurs for the purposes of the *Taxation Administration Act 1996* if royalty payable to the Crown:
  - (a) is not paid by the time that it becomes payable in accordance with the regulations (unless paragraph (b) applies), or
  - (b) in the case of royalty payable on demand by the Minister—is not paid within 28 days of the demand for its payment.
- (3) The regulations may require the payment of any royalty to accompany a return made under this Part.

**[10] Sections 291A and 292**

Omit section 292. Insert instead:

**291A Assessment and recovery of royalties**

- (1) Royalty payable under this Act is a tax for the purposes of the *Taxation Administration Act 1996*.

**Note.** The *Taxation Administration Act 1996* applies to the assessment and recovery of royalty.
- (2) The royalty is payable to the Chief Commissioner in accordance with that Act.
- (3) The Minister is to provide the Chief Commissioner with any information necessary to enable the Chief Commissioner to exercise the Chief Commissioner's functions with respect to royalties under this Act and the *Taxation Administration Act 1996*.
- (4) A certificate that is signed by the Minister and that states that, on a specified date, the Minister made a determination, or did anything else, under any of the

following provisions, is admissible in evidence in any proceedings and is evidence of the fact or facts so certified:

- (a) section 283 (3) (c) or (5),
  - (b) section 286C (1),
  - (c) section 286D,
  - (d) section 291 (1) (b),
  - (e) any other provision of this Act relating to royalties that is prescribed by the regulations.
- (5) The Chief Commissioner may request a certificate under this section and a certificate is to be provided in accordance with that request.

**292 Disclosure of royalty information**

- (1) The Minister, or any other person engaged in the administration of this Act, may disclose royalty information obtained from a tax officer under this Act or the *Taxation Administration Act 1996* in connection with the administration or execution of this Act.
- (2) This section applies despite section 84 of the *Taxation Administration Act 1996* but subject to any restrictions in this Act.

**Note.** See section 365 of this Act.

- (3) In this section:

**royalty information** means information in a return lodged with the Chief Commissioner under this Act or any other information relating to the assessment or recovery of royalty.

**tax officer** has the same meaning as it has in the *Taxation Administration Act 1996*.

**[11] Section 365 Disclosure of information**

Insert after section 365 (2) (before the penalty):

- (3) A reference in this section to information obtained in connection with the administration or execution of this Act includes a reference to a return or other information relating to royalty under this Act that is obtained by the Minister, or a delegate of the Minister, from a tax officer (within the meaning of the *Taxation Administration Act 1996*).

**[12] Schedule 6 Savings, transitional and other provisions**

Insert at the end of the Schedule with appropriate Part and clause numbering:

**Part Provisions consequent on enactment of State Revenue and Other Legislation Amendment (Budget Measures) Act 2014**

**Definition**

In this Part:

**Budget Measures Act** means the *State Revenue and Other Legislation Amendment (Budget Measures) Act 2014*.

#### **Assessment and recovery of royalties under Taxation Administration Act 1996**

- (1) An amendment made to this Act or the regulations by the Budget Measures Act applies only to royalty under this Act that is payable in respect of a period that commences on or after the commencement of the amendment.
- (2) This Act and the regulations, as in force before such an amendment, continue to apply to royalty in respect of a period commencing before the commencement of the amendment.

#### **Requirements to pay royalty to the Minister**

- (1) A requirement imposed by or under this Act to pay royalty under this Act to the Minister is taken, from the relevant commencement date, to be a requirement to pay royalty under this Act to the Crown.
- (2) A reference in any document to royalty payable to the Minister under this Act is taken, from the relevant commencement date, to be a reference to royalty payable to the Crown under this Act.
- (3) In this clause, the *relevant commencement date* means the date of commencement of section 291A, as inserted by the Budget Measures Act.

#### **Continuation of special arrangements for returns**

- (1) An authority given to the holder of a mining lease under section 289 (2) that would, but for the substitution of that subsection by the Budget Measures Act, have effect in respect of royalty payable for a period commencing on or after 1 July 2014 is taken, on that substitution, to be an approval given by the Chief Commissioner under section 37 of the *Taxation Administration Act 1996*.
- (2) The Chief Commissioner may vary or cancel that approval in accordance with that Act.

### **[13] Dictionary**

Insert in alphabetical order:

*Chief Commissioner* means the Chief Commissioner of State Revenue.

#### **Explanatory note**

Item [10] of the proposed amendments to the *Mining Act 1992* provides that royalties payable under that Act are taxes for the purposes of the *Taxation Administration Act 1996*. Accordingly, royalties will be assessed and recoverable by the Chief Commissioner of State Revenue (the **Chief Commissioner**) under that Act. The amendment requires the Minister to provide the Chief Commissioner with any information necessary to enable the Chief Commissioner to exercise his or her functions with respect to royalties. The Minister is given power to certify certain decisions made under the Act that are relevant to the calculation of royalty. The amendment also removes a provision that makes royalty a debt recoverable in a court of competent jurisdiction. The provision is redundant because the *Taxation Administration Act 1996* provides that all taxes are recoverable by the Chief Commissioner as a debt in a court of competent jurisdiction.

Item [1] is a consequential amendment. At present, royalties are payable to the Minister. The amendment makes it clear that royalties are payable to the Crown.

Item [10] also makes it clear that the disclosure of royalty information by the Minister remains subject to the *Mining Act 1992*, and not the *Taxation Administration Act 1996*. Item [11] is a consequential amendment.

Item [5] enables the Chief Commissioner to pay part of the royalty collected in respect of privately owned minerals to the Minister, so as to enable the Minister to exercise his or her functions with respect to the payment of royalties to owners of privately owned minerals.

Item [8] requires royalty returns to be lodged with the Chief Commissioner (instead of the Minister). The *Taxation Administration Act 1996* provides for the form in which returns must be provided. The Chief Commissioner is to provide a copy of the returns to the Minister. The amendments continue to permit the regulations to prescribe mandatory information to be included in returns. The Chief Commissioner may also require additional information. The amendment removes a provision that enables the Minister to approve special return arrangements, as the Chief Commissioner can do that

under the *Taxation Administration Act 1996*. Item [8] also removes a provision that makes it an offence to fail to furnish a return, or to include false or misleading information in a return, as to do so will be an offence under existing provisions of the *Taxation Administration Act 1996* (sections 55 and 57).

Items [2]–[4] are consequential amendments to ensure that the obligation to lodge a royalty return applies not only to holders of a mining lease but to other authorisation holders who are liable to pay royalty under the Act.

Item [9] makes it clear that a tax default for the purposes of the *Taxation Administration Act 1996* occurs if royalty is not paid when it becomes due and payable. The amendment also removes a provision that enables the Minister to impose interest for late payment of royalty. The *Taxation Administration Act 1996* already permits the Chief Commissioner to impose interest and other penalties for late payment of taxes, and those provisions will now apply to royalties.

Items [6] and [7] require the Chief Commissioner to remit interest and penalty tax if the Minister waives payment of royalty or part of royalty.

Item [12] provides for transitional matters.

Item [13] inserts a definition of **Chief Commissioner** in the Dictionary.

## 4.2 Mining Regulation 2010

### [1] Clause 13 Activities taken not to be prospecting or mining

Omit “to the Minister” from clause 13 (5). Insert instead “to the Crown”.

### [2] Clause 62 Rates of royalty for minerals other than coal

Omit “Minister” wherever occurring in clause 62 (2). Insert instead “Chief Commissioner”.

### [3] Clause 63 Rates of royalty for coal

Omit “Minister” from clause 63 (2). Insert instead “Chief Commissioner”.

### [4] Clause 63 (3) and (4)

Omit the subclauses.

### [5] Clause 63A

Insert after clause 63:

#### 63A Disputes

- (1) The Chief Commissioner is to refer a dispute about any of the following matters to the Minister and the Minister may make a determination with respect to that matter:
  - (a) the quantity of minerals disposed of or held by the holder of a mining lease,
  - (b) the quantity of coal disposed of by the holder of a mining lease,
  - (c) whether, and the extent to which, coal was recovered by open cut mining, underground mining or deep underground mining.
- (2) Any determination made by the Minister with respect to the matter is final and binding.
- (3) A certificate that is signed by the Minister and that states that, on a specified date, the Minister made a determination under this clause is admissible in evidence in any proceedings and is evidence of the fact or facts so certified.

### [6] Clause 64 Returns

Omit “289 (1)” from clause 64 (1). Insert instead “289”.

**[7] Clause 64 (1) (a)**

Omit “be in a form that shows”. Insert instead “include”.

**[8] Clause 64 (1) (a) (iii)**

Omit “Director-General to be shown”. Insert instead “Chief Commissioner to be included”.

**[9] Clause 64 (1) (b), (1A), (1B) and (1C)**

Omit “furnished” and “furnish” wherever occurring.

Insert instead “lodged” and “lodge” respectively.

**[10] Clause 65 Payment of royalty**

Omit “to the Minister” from clause 65 (1). Insert instead “to the Crown”.

**Explanatory note**

The proposed amendments to the *Mining Regulation 2010* are consequential on the amendments to the *Mining Act 1992* described above.

The amendments include provision for the Chief Commissioner to make royalty determinations that are currently made by the Minister. In the event of a dispute, the matter is to be referred to the Minister, who may make a final determination with respect to the matter.

### **4.3 Offshore Minerals Act 1999 No 42**

**[1] Section 5 Interpretation**

Insert in alphabetical order:

*Chief Commissioner* means the Chief Commissioner of State Revenue.

**[2] Section 27 Confidential information**

Insert after section 27 (2):

- (3) A reference in this section to information given to the Minister by a licence holder includes a reference to a return or other information relating to royalty under this Act that is obtained by the Minister, or a delegate of the Minister, from a tax officer (within the meaning of the *Taxation Administration Act 1996*).

**[3] Section 429 Royalty**

Omit “to the Minister”. Insert instead “to the State”.

**[4] Section 431 Reduction of royalty in certain cases**

Insert after section 431 (4):

- (5) The Chief Commissioner is to be advised of any determination made under this section.

**[5] Section 432 Fixing of landed value**

Insert at the end of the section:

- (2) A certificate that is signed by the Minister and that states that, on a specified date, the Minister made a determination under subsection (1) (b) is admissible in evidence in any proceedings and is evidence of the fact or facts so certified.
- (3) The Chief Commissioner may request a certificate under this section and a certificate is to be provided in accordance with that request.

**[6] Section 433 Fixing of quantity**

Insert at the end of the section:

- (2) A certificate that is signed by the Minister and that states that, on a specified date, the Minister made a determination under subsection (1) (b) is admissible in evidence in any proceedings and is evidence of the fact or facts so certified.
- (3) The Chief Commissioner may request a certificate under this section and a certificate is to be provided in accordance with that request.

**[7] Section 434 Time for payment**

Insert at the end of the section:

- (2) A failure to pay the royalty within one month after the last day of that royalty period is a tax default for the purposes of the *Taxation Administration Act 1996*.  
**Note.** If a tax default occurs, interest and penalty tax may be charged under the *Taxation Administration Act 1996*.
- (3) A tax default does not occur in respect of an amount of royalty payable until the expiration of 7 days after:
  - (a) the landed value of the mineral has been agreed or determined under section 432, where the rate of royalty is related to the landed value of the mineral, or
  - (b) the quantity of the mineral has been agreed or determined under section 433, where the rate of royalty is related to the quantity of the mineral recovered.

**[8] Section 435 State to pay 40% of royalties to Commonwealth**

Omit “penalty” from the definition of *royalty* in section 435 (3).

Insert instead “interest or penalty tax”.

**[9] Sections 435A and 435B**

Insert after section 435:

**435A Royalty returns**

- (1) A person who is required to pay royalty under this Act is required to lodge with the Chief Commissioner a return relating to each royalty period.
- (2) The return is to be lodged with the Chief Commissioner within one month after the last day of that royalty period.
- (3) The Chief Commissioner is to give a copy to the Minister of each return lodged with the Chief Commissioner.
- (4) The Minister may give directions to the Chief Commissioner as to the information that is to be included in the form of return approved under the *Taxation Administration Act 1996*.

**Note.** The *Taxation Administration Act 1996* requires a return to be in a form approved by the Chief Commissioner.

**435B Disclosure of royalty information**

- (1) The Minister, or a person engaged in the administration of this Act, may disclose royalty information obtained from a tax officer under this Act or the *Taxation Administration Act 1996* in connection with the administration or execution of this Act.

- (2) This section applies despite section 84 of the *Taxation Administration Act 1996* but subject to any restrictions in this Act.

**Note.** See sections 374–376 of this Act.

- (3) In this section:

**royalty information** means information in a return lodged with the Chief Commissioner under this Act or any other information relating to the assessment or recovery of royalty.

**tax officer** has the same meaning as it has in the *Taxation Administration Act 1996*.

**[10] Section 436 Penalty if fee overdue**

Omit “or amount of royalty” from section 436 (1).

**[11] Section 436 (2)**

Omit “or royalty” wherever occurring.

**[12] Section 436 (3)**

Omit the subsection.

**[13] Section 437 Fees recoverable as debts**

Omit “, royalty or penalty”.

**[14] Section 437A**

Insert after section 437:

**437A Assessment and recovery of royalties**

- (1) Royalty payable under this Act is a tax for the purposes of the *Taxation Administration Act 1996*.

**Note.** The *Taxation Administration Act 1996* applies to the assessment and recovery of royalty.

- (2) The royalty is payable to the Chief Commissioner in accordance with that Act.

- (3) The Minister is to ensure that the Chief Commissioner is provided with any information necessary to enable the Chief Commissioner to exercise the Chief Commissioner’s functions with respect to royalties under this Act and the *Taxation Administration Act 1996*.

**[15] Schedule 2 Savings and transitional provisions**

Insert before clause 1:

**Part 1 Preliminary**

**[16] Schedule 2, clause 1**

Insert at the end of clause 1 (1):

any Act that amends this Act

[17] **Schedule 2, Part 2, heading**

Insert after clause 1:

**Part 2 Provisions consequent on enactment of this Act**

[18] **Schedule 2, Part 3**

Insert after clause 5:

**Part 3 Provisions consequent on enactment of State Revenue and Other Legislation Amendment (Budget Measures) Act 2014**

**6 Assessment and recovery of royalties under Taxation Administration Act 1996**

- (1) An amendment made to this Act or the regulations by the *State Revenue and Other Legislation Amendment (Budget Measures) Act 2014* applies only to royalty under this Act that is payable in respect of a royalty period that commences on or after the commencement of the amendment.
- (2) This Act and the regulations, as in force before such an amendment, continue to apply to royalty under this Act that is payable in respect of a royalty period that commenced before the commencement of the amendment.

**7 Requirements to pay royalty to the Minister**

- (1) A requirement imposed by or under this Act to pay royalty under this Act to the Minister is taken, from the relevant commencement date, to be a requirement to pay royalty under this Act to the State.
- (2) A reference in any document to royalty payable to the Minister under this Act is taken, from the relevant commencement date, to be a reference to royalty payable to the State under this Act.
- (3) In this clause, the *relevant commencement date* means the date of commencement of section 437A, as inserted by the *State Revenue and Other Legislation Amendment (Budget Measures) Act 2014*.

**Explanatory note**

Item [14] of the proposed amendments to the *Offshore Minerals Act 1999* provides that royalties payable under that Act are taxes for the purposes of the *Taxation Administration Act 1996*. This means that the royalty will be assessed and recoverable by the Chief Commissioner under that Act. The amendment also requires the Minister to ensure that the Chief Commissioner is provided with any information necessary to enable the Chief Commissioner to exercise his or her functions with respect to royalties.

Item [3] is a consequential amendment. At present, royalties are payable to the Minister. The amendment makes it clear that royalty is payable to the State.

Item [4] requires the Chief Commissioner to be advised of any determination by the Minister that royalty is to be paid at a lower rate than the prescribed rate.

Items [5] and [6] permit the Minister to certify certain determinations made under the Act that are relevant to the calculation of royalty.

Item [7] makes it clear that a tax default for the purposes of the *Taxation Administration Act 1996* occurs if royalty is not paid when it becomes due and payable. Item [12] is a consequential amendment.

Item [9] requires royalty returns to be lodged with the Chief Commissioner. The *Taxation Administration Act 1996* provides for the form in which returns must be provided. A copy of each return is to be provided to the Minister and the Minister may give directions as to the information to be included in the returns.

Item [9] also makes it clear that the disclosure of royalty information by the Minister remains subject to the *Offshore Minerals Act 1999*, and not the *Taxation Administration Act 1996*. Item [2] is a consequential amendment.

Items [10] and [11] remove provisions that impose a penalty for late payment of royalty. The *Taxation Administration Act 1996* already permits the Chief Commissioner to impose interest and other penalties for late payment of taxes, and those provisions will now apply to royalties. Item [8] is a consequential amendment to a provision that requires 40% of royalties, including penalties for late payment, to be paid to the Commonwealth. The amendment will require 40% of royalties, including interest and penalty tax for late payment, to be paid to the Commonwealth.

Item [13] removes a provision that makes royalty a debt recoverable in a court of competent jurisdiction. The provision is redundant because the *Taxation Administration Act 1996* provides that all taxes are recoverable by the Chief Commissioner as a debt in a court of competent jurisdiction.

Item [1] inserts a definition of **Chief Commissioner** in the Act.

Items [15]–[18] provide for transitional matters.

#### **4.4 Offshore Minerals Regulation 2013**

##### **Clause 14 Returns to be made**

Omit the clause.

##### **Explanatory note**

The proposed amendment to the *Offshore Minerals Regulation 2013* removes a requirement to lodge returns with the Minister. The provision is redundant because the proposed amendments to the parent Act require returns to be lodged with the Chief Commissioner.

#### **4.5 Petroleum (Offshore) Act 1982 No 23**

##### **[1] Section 5 Definitions**

Insert in alphabetical order in section 5 (1):

*Chief Commissioner* means the Chief Commissioner of State Revenue.

##### **[2] Section 119 Release of information**

Insert after section 119 (6A):

(6B) A reference in this section to a return or other document furnished to the Minister under this Act includes a reference to a return or other document relating to royalty under this Act that is obtained by the Minister, or a delegate of the Minister, from a tax officer (within the meaning of the *Taxation Administration Act 1996*).

##### **[3] Section 129 Certain payments to be made by State to Commonwealth**

Omit “under this Act” where secondly occurring in the definition of *A* in section 129 (1).

##### **[4] Section 143 Royalty**

Omit “to the Minister” from section 143 (1). Insert instead “to the Crown”.

##### **[5] Section 144 Reduction of royalty in certain cases**

Insert after section 144 (3):

(4) The Chief Commissioner is to remit the interest or penalty tax on any royalty that ceases to be payable because of a determination of the Minister under this section.

**[6] Section 145 Royalty not payable in certain cases**

Insert after section 145 (2):

- (3) The Chief Commissioner is to remit the interest or penalty tax on any royalty that ceases to be payable because of a decision of the Minister under this section.

**[7] Section 149 Payment of royalty**

Insert at the end of the section:

- (2) A failure to pay royalty payable under this Act by the end of that next succeeding royalty period is a tax default for the purposes of the *Taxation Administration Act 1996*.  
**Note.** If a tax default occurs, interest and penalty tax may be charged under the *Taxation Administration Act 1996*.
- (3) A tax default does not occur before the expiration of 7 days after the value of the relevant petroleum is agreed or determined under section 147.

**[8] Section 149A**

Insert after section 149:

**149A Royalty returns**

- (1) A person who is required to pay royalty under this Act is required to lodge with the Chief Commissioner a return relating to each royalty period.
- (2) The return is to be lodged with the Chief Commissioner no later than the last day of the next succeeding royalty period.
- (3) The Chief Commissioner is to give a copy to the Minister of each return lodged with the Chief Commissioner.
- (4) The Minister may give directions to the Chief Commissioner as to the information that is to be included in the form of return approved under the *Taxation Administration Act 1996*.  
**Note.** The *Taxation Administration Act 1996* requires a return to be in a form approved by the Chief Commissioner.

**[9] Section 150 Penalty for late payment of fees**

Omit “or an amount of royalty” from section 150 (1).

**[10] Section 150 (1)**

Omit “or the amount of royalty”.

**[11] Section 150 (1)**

Omit “or royalty”.

**[12] Section 150 (2)**

Omit the subsection.

**[13] Section 151 Fees and penalties debts due to the State**

Omit the section.

**[14] Sections 151A and 151B**

Insert after section 151:

**151A Assessment and recovery of royalties**

- (1) Royalty payable under this Act is a tax for the purposes of the *Taxation Administration Act 1996*.  
**Note.** The *Taxation Administration Act 1996* applies to the assessment and recovery of royalty.
- (2) The royalty is payable to the Chief Commissioner in accordance with that Act.
- (3) The Minister is to provide the Chief Commissioner with any information necessary to enable the Chief Commissioner to exercise the Chief Commissioner's functions with respect to royalties under this Act and the *Taxation Administration Act 1996*.
- (4) A certificate that is signed by the Minister and that states that, on a specified date, the Minister made a determination, or did anything else, under any of the following provisions, is admissible in evidence in any proceedings and is evidence of the fact or facts so certified:
  - (a) section 43 (1), 144, 145, 146, 147 or 148, or
  - (b) any other provision of this Act relating to royalties that is prescribed by the regulations.
- (5) The Chief Commissioner may request a certificate under this section and a certificate is to be provided in accordance with that request.

**151B Disclosure of royalty information**

- (1) The Minister, or a person engaged in the administration of this Act, may disclose royalty information obtained from a tax officer under this Act or the *Taxation Administration Act 1996* in connection with the administration or execution of this Act.
- (2) This section applies despite section 84 of the *Taxation Administration Act 1996* but subject to any restrictions in this Act.  
**Note.** See section 119 of this Act.
- (3) In this section:  
**royalty information** means information in a return lodged with the Chief Commissioner under this Act or any other information relating to the assessment or recovery of royalty.  
**tax officer** has the same meaning as it has in the *Taxation Administration Act 1996*.

**[15] Schedule 4 Savings, transitional and other provisions**

Insert after Part 4:

**Part 5 Provisions consequent on enactment of State Revenue and Other Legislation Amendment (Budget Measures) Act 2014**

**8 Assessment and recovery of royalties under Taxation Administration Act 1996**

- (1) An amendment made to this Act by the *State Revenue and Other Legislation Amendment (Budget Measures) Act 2014* applies only to royalty under this Act

that is payable in respect of a royalty period that commences on or after the commencement of the amendment.

- (2) This Act, as in force before such an amendment, continues to apply to royalty under this Act that is payable in respect of a royalty period that commenced before the commencement of the amendment.

## 9 Requirements to pay royalty to the Minister

- (1) A requirement imposed by or under this Act to pay royalty under this Act to the Minister is taken, from the relevant commencement date, to be a requirement to pay royalty under this Act to the Crown.
- (2) A reference in any document to royalty payable to the Minister under this Act is taken, from the relevant commencement date, to be a reference to royalty payable to the Crown under this Act.
- (3) In this clause, the *relevant commencement date* means the date of commencement of section 151A, as inserted by the *State Revenue and Other Legislation Amendment (Budget Measures) Act 2014*.

### Explanatory note

Item [14] of the proposed amendments to the *Petroleum (Offshore) Act 1982* provides that royalties payable under that Act are taxes for the purposes of the *Taxation Administration Act 1996*. This means that the royalty will be collected and recoverable by the Chief Commissioner under that Act. The amendment also requires the Minister to provide the Chief Commissioner with any information necessary to enable the Chief Commissioner to exercise his or her functions with respect to royalties. The Minister is given power to certify certain decisions made under the Act that are relevant to the calculation of royalty.

Item [4] is a consequential amendment. At present, royalties are payable to the Minister. The amendment makes it clear that royalty is payable to the Crown.

Item [14] also makes it clear that the disclosure of royalty information by the Minister remains subject to the *Petroleum (Offshore) Act 1982*, and not the *Taxation Administration Act 1996*. Item [2] is a consequential amendment.

Item [7] makes it clear that a tax default for the purposes of the *Taxation Administration Act 1996* occurs if royalty is not paid when it becomes due and payable.

Item [8] requires royalty returns to be lodged with the Chief Commissioner (instead of the Minister). The *Taxation Administration Act 1996* provides for the form in which returns must be provided. The Chief Commissioner is to provide a copy of the returns to the Minister. The amendment also permits the Minister to give directions as to the information to be included in the approved form of return.

Items [9]–[12] remove provisions that impose a penalty for late payment of royalty. The *Taxation Administration Act 1996* already permits the Chief Commissioner to impose interest and other penalties for late payment of taxes, and those provisions will now apply to royalties. Item [3] is a consequential amendment.

Items [5] and [6] require the Chief Commissioner to remit interest and penalty tax if the Minister waives payment of royalty or part of royalty.

Item [13] removes a provision that makes a fee or royalty a debt recoverable in a court of competent jurisdiction. The provision is redundant because the *Taxation Administration Act 1996* provides that all taxes are recoverable by the Chief Commissioner as a debt in a court of competent jurisdiction. The *Taxation Administration Act 1996* will apply to royalties. In relation to fees, section 142 of the *Petroleum (Offshore) Act 1982* already provides that fees are debts due to the Crown and recoverable in a court of competent jurisdiction.

Item [15] provides for transitional matters.

Item [1] inserts a definition of **Chief Commissioner** in the Act.

## 4.6 Petroleum (Onshore) Act 1991 No 84

### [1] Section 3 Definitions

Insert in alphabetical order in section 3 (1):

**Chief Commissioner** means the Chief Commissioner of State Revenue.

**[2] Section 83 Sale of petroleum plant**

Omit “of Unclaimed Money” from section 83 (4).

**[3] Section 85 Royalty**

Omit “to the Minister” from section 85 (1). Insert instead “to the Crown”.

**[4] Section 86 Reduction of royalty in certain cases**

Insert after section 86 (3):

- (4) The Chief Commissioner is to remit the interest or penalty tax on any royalty that ceases to be payable because of a decision of the Minister under this section.

**[5] Section 87 Royalty not payable in certain cases**

Insert after section 87 (2):

- (3) The Chief Commissioner is to remit the interest or penalty tax on any royalty that ceases to be payable because of a decision of the Minister under this section.

**[6] Section 91 Payment of royalty**

Insert at the end of the section:

- (2) A failure to pay royalty payable under this Act by the end of that next succeeding royalty period is a tax default for the purposes of the *Taxation Administration Act 1996*.  
**Note.** If a tax default occurs, interest and penalty tax may be charged under the *Taxation Administration Act 1996*.
- (3) A tax default does not occur before the expiration of 7 days after the value of the relevant petroleum was determined under section 89.

**[7] Section 92 Penalty for late payment**

Insert after section 92 (2):

- (3) This section applies to royalty payable for a period commencing before 1 July 2014. The *Taxation Administration Act 1996* applies to royalty payable for a period commencing on or after 1 July 2014.

**[8] Section 93**

Insert after section 92:

**93 Royalty returns**

- (1) A person who is required to pay royalty under this Act is required to lodge with the Chief Commissioner a return relating to each royalty period.
- (2) The return is to be lodged with the Chief Commissioner no later than the last day of the next succeeding royalty period.
- (3) The Chief Commissioner is to give a copy to the Minister of each return lodged with the Chief Commissioner.
- (4) The Minister may give directions to the Chief Commissioner as to the information that is to be included in the form of return approved under the *Taxation Administration Act 1996*.  
**Note.** The *Taxation Administration Act 1996* requires a return to be in a form approved by the Chief Commissioner.

**[9] Sections 94 and 94AA**

Omit section 94. Insert instead:

**94 Assessment and recovery of royalties**

- (1) Royalty payable under this Act is a tax for the purposes of the *Taxation Administration Act 1996*.  
**Note.** The *Taxation Administration Act 1996* applies to the assessment and recovery of royalty.
- (2) The royalty is payable to the Chief Commissioner in accordance with that Act.
- (3) The Minister is to provide the Chief Commissioner with any information necessary to enable the Chief Commissioner to exercise the Chief Commissioner's functions with respect to royalties under this Act and the *Taxation Administration Act 1996*.
- (4) A certificate that is signed by the Minister and that states that, on a specified date, the Minister made a determination, or did anything else, under any of the following provisions, is admissible in evidence in any proceedings and is evidence of the fact or facts so certified:
  - (a) section 86, 87, 88, 89 or 90, or
  - (b) any other provision of this Act relating to royalties that is prescribed by the regulations.
- (5) The Chief Commissioner may request a certificate under this section and a certificate is to be provided in accordance with that request.

**94AA Disclosure of royalty information**

- (1) The Minister, or a person engaged in the administration of this Act, may disclose royalty information obtained from a tax officer under this Act or the *Taxation Administration Act 1996* in connection with the administration or execution of this Act.
- (2) This section applies despite section 84 of the *Taxation Administration Act 1996* but subject to any restrictions in this Act.  
**Note.** See Part 13 of this Act.
- (3) In this section:  
**royalty information** means information in a return lodged with the Chief Commissioner under this Act or any other information relating to the assessment or recovery of royalty.  
**tax officer** has the same meaning as it has in the *Taxation Administration Act 1996*.

**[10] Section 117 Definitions**

Insert after section 117 (2):

- (3) A reference to information furnished to the Minister under this Act includes a reference to a return or other information relating to royalty under this Act that is obtained by the Minister, or a delegate of the Minister, from a tax officer (within the meaning of the *Taxation Administration Act 1996*).

**[11] Schedule 1 Savings and transitional provisions**

Insert at the end of the Schedule with appropriate Part and clause numbering:

**Part Provisions consequent on enactment of State Revenue and Other Legislation Amendment (Budget Measures) Act 2014**

**Assessment and recovery of royalties under Taxation Administration Act 1996**

- (1) An amendment made to this Act by the *State Revenue and Other Legislation Amendment (Budget Measures) Act 2014* applies only to royalty under this Act that is payable in respect of a royalty period that commences on or after the commencement of the amendment.
- (2) This Act, as in force before such an amendment, continues to apply to royalty under this Act that is payable in respect of a royalty period that commenced before the commencement of the amendment.

**Requirements to pay royalty to the Minister**

- (1) A requirement imposed by or under this Act to pay royalty under this Act to the Minister is taken, from the relevant commencement date, to be a requirement to pay royalty under this Act to the Crown.
- (2) A reference in any document to royalty payable to the Minister under this Act is taken, from the relevant commencement date, to be a reference to royalty payable to the Crown under this Act.
- (3) In this clause, the *relevant commencement date* means the date of commencement of section 93, as inserted by the *State Revenue and Other Legislation Amendment (Budget Measures) Act 2014*.

**Explanatory note**

Item [9] of the proposed amendments to the *Petroleum (Onshore) Act 1991* provides that royalties payable under that Act are taxes for the purposes of the *Taxation Administration Act 1996*. This means that the royalty will be assessed and recoverable by the Chief Commissioner under that Act. The amendment requires the Minister to provide the Chief Commissioner with any information necessary to enable the Chief Commissioner to exercise his or her functions with respect to royalties. The Minister is given power to certify certain decisions made under the Act that are relevant to the calculation of royalty. The amendment also removes a provision that makes royalty a debt recoverable in a court of competent jurisdiction. The provision is redundant because the *Taxation Administration Act 1996* provides that all taxes are recoverable by the Chief Commissioner as a debt in a court of competent jurisdiction.

Item [3] is a consequential amendment. At present, royalties are payable to the Minister. The amendment makes it clear that royalty is payable to the Crown.

Item [9] also makes it clear that the disclosure of royalty information by the Minister remains subject to the *Petroleum (Onshore) Act 1991*, and not the *Taxation Administration Act 1996*. Item [10] is a consequential amendment.

Item [6] makes it clear that a tax default for the purposes of the *Taxation Administration Act 1996* occurs if royalty is not paid when it becomes due and payable.

Item [7] limits a provision that imposes a penalty for late payment of royalty. As a consequence of the amendments, the *Taxation Administration Act 1996* will permit the Chief Commissioner to impose interest and other penalties for late payment of royalties.

Item [8] requires royalty returns to be lodged with the Chief Commissioner (instead of the Minister). The *Taxation Administration Act 1996* provides for the form in which returns must be provided. The Chief Commissioner is to provide a copy of the returns to the Minister. The amendments also permit the Minister to give directions as to the information to be included in the approved form of return.

Items [4] and [5] require the Chief Commissioner to remit interest and penalty tax if the Minister waives payment of royalty or part of royalty.

Item [11] provides for transitional matters.

Item [1] inserts a definition of **Chief Commissioner** in the Act.

Item [2] updates an obsolete reference to the Chief Commissioner.

## 4.7 Taxation Administration Act 1996 No 97

### [1] Section 5B

Insert after section 5A:

#### 5B Application of Act to royalties

- (1) For the purpose of the administration and enforcement of legislative schemes for the payment of royalties to the Crown, the following provisions are taken to be taxation laws:
  - (a) Part 14 of the *Mining Act 1992*,
  - (b) Divisions 2 and 3 of Part 4.4 of the *Offshore Minerals Act 1999*,
  - (c) the provisions of Division 7 of Part 4 of the *Petroleum (Offshore) Act 1982* to the extent that those provisions relate to royalties under that Act,
  - (d) Part 7 of the *Petroleum (Onshore) Act 1991*,
  - (e) any other provisions of the Acts referred to in paragraphs (a)–(d), or of the regulations under those Acts, to the extent that they relate to royalties.
- (2) Royalty is taken to be a tax for the purposes of this Act.
- (3) In this section:  
*royalty* means royalty payable under:
  - (a) the *Mining Act 1992*, or
  - (b) the *Offshore Minerals Act 1999*, or
  - (c) the *Petroleum (Offshore) Act 1982*, or
  - (d) the *Petroleum (Onshore) Act 1991*.

### [2] Section 111 Appropriation of Consolidated Fund

Insert “or any taxation law” after “this Act”.

### [3] Schedule 1 Savings, transitional and other provisions

Insert at the end of the Schedule with appropriate Part and clause numbering:

## Part Provisions arising from enactment of State Revenue and Other Legislation Amendment (Budget Measures) Act 2014

### Application of Act to royalties

Section 5B, as inserted by the *State Revenue and Other Legislation Amendment (Budget Measures) Act 2014*, applies in respect of royalty payable for a period that commences on or after the commencement of that section.

#### Explanatory note

Item [1] of the proposed amendments to the *Taxation Administration Act 1996* provides that provisions relating to royalties in the *Mining Act 1992*, the *Offshore Minerals Act 1999*, the *Petroleum (Offshore) Act 1982* and the *Petroleum (Onshore) Act 1991*, and the regulations under those Acts,

are taxation laws for the purposes of the *Taxation Administration Act 1996*. This means the *Taxation Administration Act 1996* will apply to the assessment and recovery of royalties as taxes under that Act.

Item [2] is consequential to an amendment to the *Mining Act 1992* which requires the Chief Commissioner to pay part of the royalty collected in respect of privately owned minerals to the Minister administering that Act (for payment to the owner of the privately owned mineral). The amendment requires the Consolidated Fund to be appropriated for the purpose of payments made by the Chief Commissioner under taxation laws.

Item [3] is a transitional provision.

## **Schedule 5 Amendments relating to public sector employee costs**

### **5.1 Industrial Relations Act 1996 No 17**

#### **Schedule 4 Savings, transitional and other provisions**

Insert at the end of the Schedule with appropriate Part and clause numbering:

### **Part Provisions relating to Industrial Relations (Public Sector Conditions of Employment) Regulation 2014**

#### **Re-making of regulation**

- (1) Subschedule 5.2 to the *State Revenue and Other Legislation Amendment (Budget Measures) Act 2014* sets out the terms of the *Industrial Relations (Public Sector Conditions of Employment) Regulation 2014*.
- (2) On and from the commencement of Subschedule 5.2 to that Act:
  - (a) the regulation set out in the subschedule is taken to be and has effect as a regulation validly made under section 146C of the *Industrial Relations Act 1996*,
  - (b) Part 2 of the *Subordinate Legislation Act 1989* does not apply to the regulation set out in the subschedule (but applies to any amendment or repeal of the regulation),
  - (c) the regulation set out in the subschedule is taken, for the purposes of section 10 of the *Subordinate Legislation Act 1989*, to have been published on the commencement of the subschedule,
  - (d) sections 39, 40 and 41 of the *Interpretation Act 1987* do not apply to the regulation set out in the subschedule (but apply to any amendment or repeal of the regulation),
  - (e) section 146C (6) of the *Industrial Relations Act 1996* applies to the regulation set out in the subschedule, and accordingly the regulation applies to proceedings that are pending in the Commission on the commencement of the subschedule (except as otherwise provided in the regulation).

### **5.2 Industrial Relations (Public Sector Conditions of Employment) Regulation 2014**

#### **1 Name of Regulation**

This Regulation is the *Industrial Relations (Public Sector Conditions of Employment) Regulation 2014*.

#### **2 Commencement**

This Regulation commences on the day on which Schedule 5.2 to the *State Revenue and Other Legislation Amendment (Budget Measures) Act 2014* commences.

#### **3 Definition**

In this Regulation:

*the Act* means the *Industrial Relations Act 1996*.

#### 4 Declarations under section 146C

The matters set out in this Regulation are declared, for the purposes of section 146C of the Act, to be aspects of government policy that are to be given effect to by the Industrial Relations Commission when making or varying awards or orders.

#### 5 Paramount policies

The following paramount policies are declared:

- (a) Public sector employees are entitled to the guaranteed minimum conditions of employment (being the conditions set out in clause 7).
- (b) Equal remuneration for men and women doing work of equal or comparable value.

**Note.** Clause 6 (1) (c) provides that existing conditions of employment in excess of the guaranteed minimum conditions may only be reduced for the purposes of achieving employee-related cost savings with the agreement of the relevant parties.

Clause 9 (1) (e) provides that conditions of employment cannot be reduced below the guaranteed minimum conditions of employment for the purposes of achieving employee-related cost savings.

#### 6 Other policies

- (1) The following policies are also declared, but are subject to compliance with the declared paramount policies:
  - (a) Public sector employees may be awarded increases in remuneration or other conditions of employment, but only if employee-related costs in respect of those employees are not increased by more than 2.5% per annum as a result of the increases awarded together with any new or increased superannuation employment benefits provided (or to be provided) to or in respect of the employees since their remuneration or other conditions of employment were last determined.
  - (b) Increases in remuneration or other conditions of employment can be awarded even if employee-related costs are increased by more than 2.5% per annum, but only if sufficient employee-related cost savings have been achieved to fully offset the increased employee-related costs beyond 2.5% per annum. For this purpose:
    - (i) whether relevant savings have been achieved is to be determined by agreement of the relevant parties or, in the absence of agreement, by the Commission, and
    - (ii) increases may be awarded before the relevant savings have been achieved, but are not payable until they are achieved, and
    - (iii) the full savings are not required to be awarded as increases in remuneration or other conditions of employment.
  - (c) For the purposes of achieving employee-related cost savings, existing conditions of employment of the kind but in excess of the guaranteed minimum conditions of employment may only be reduced with the agreement of the relevant parties in the proceedings.
  - (d) Awards and orders are to resolve all issues the subject of the proceedings (and not reserve leave for a matter to be dealt with at a later time or allow extra claims to be made during the term of the award or order). However, this does not prevent variations made with the agreement of the relevant parties.
  - (e) Changes to remuneration or other conditions of employment may only operate on or after the date the relevant parties finally agreed to the

change (if the award or order is made or varied by consent) or the date of the Commission's decision (if the award or order is made or varied in arbitration proceedings).

- (f) Policies regarding the management of excess public sector employees are not to be incorporated into industrial instruments.
- (2) Subclause (1) (e) does not apply if the relevant parties otherwise agree or there are exceptional circumstances.
- (3) The *relevant parties* in relation to a matter requiring agreement under this clause are the employer and any other party to the proceedings that is an industrial organisation of employees with one or more members whose interests are directly affected by the matter.
- (4) In subclause (1) (a), *new or increased superannuation employment benefits* means any new or increased payments by an employer to a superannuation scheme or fund of an employee as a consequence of amendments to the *Superannuation Guarantee (Administration) Act 1992* of the Commonwealth or the *State Authorities Non-contributory Superannuation Act 1987*.

## 7 The guaranteed minimum conditions of employment

- (1) For the purposes of this Regulation, the *guaranteed minimum conditions of employment* are as follows:
  - (a) Unpaid parental leave that is the same as that provided by the National Employment Standards.
  - (b) Paid parental leave that applies to the relevant group of public sector employees on the commencement of this clause.
  - (c) Employer payments to employee superannuation schemes or funds (being the minimum amount prescribed under the relevant law of the Commonwealth).
- (2) The *guaranteed minimum conditions of employment* also include the following:
  - (a) Long service or extended leave (being the minimum leave prescribed under the *Government Sector Employment Act 2013* or the *Long Service Leave Act 1955*, whichever Act is applicable to the employment concerned).
  - (b) Annual leave (being the minimum leave prescribed under the *Annual Holidays Act 1944*).
  - (c) Sick leave entitlements under section 26 of the Act.
  - (d) Public holiday entitlements under the *Public Holidays Act 2010*.
  - (e) Part-time work entitlements under Part 5 of Chapter 2 of the Act.

## 8 Meaning of employee-related costs

- (1) For the purposes of this Regulation, *employee-related costs* are the costs to the employer of the employment of public sector employees, being costs related to the salary, wages, allowances and other remuneration payable to the employees and the superannuation and other personal employment benefits payable to or in respect of the employees.
- (2) In subclause (1), *superannuation benefits* include any payments by the employer to a superannuation scheme or fund of an employee as a consequence of the enactment of or amendments to the *Superannuation*

*Guarantee (Administration) Act 1992* of the Commonwealth or the *State Authorities Non-contributory Superannuation Act 1987*.

## 9 Meaning of employee-related cost savings

- (1) For the purposes of this Regulation, *employee-related cost savings* are savings:
  - (a) that are identified in the award or order of the Commission that relies on those savings, and
  - (b) that involve a significant contribution from public sector employees and generally involve direct changes to a relevant industrial instrument, work practices or other conditions of employment, and
  - (c) that are not existing savings (as defined in subclause (2)), and
  - (d) that are additional to whole of Government savings measures (such as efficiency dividends), and
  - (e) that are not achieved by a reduction in guaranteed minimum conditions of employment below the minimum level.
- (2) Savings are *existing savings* if they are identified in a relevant industrial instrument made before the commencement of this Regulation (or in an agreement contemplated by such an industrial instrument) and are relied on by that industrial instrument, whether or not the savings have been achieved and whether or not they were or are achieved during the term of that industrial instrument.

## 10 Exception for pending proceedings concerning police officers

This Regulation does not apply to the following proceedings:

- (a) proceedings pending before the Commission in respect of police officers and designated IRC 325/2011 (limited to those proceedings as in force on the commencement of this Regulation),
- (b) proceedings on a cross-claim or counter application made in connection with those pending proceedings.

## 5.3 Industrial Relations (Public Sector Conditions of Employment) Regulation 2011

The *Industrial Relations (Public Sector Conditions of Employment) Regulation 2011* is repealed.

### Explanatory note

Schedule 5.1 amends the *Industrial Relations Act 1996* to give effect to the *Industrial Relations (Public Sector Conditions of Employment) Regulation 2014* as a regulation validly made under that Act.

Schedule 5.2 sets out the *Industrial Relations (Public Sector Conditions of Employment) Regulation 2014*. The Regulation remakes, with some changes for clarification, the *Industrial Relations (Public Sector Conditions of Employment) Regulation 2011*. The remaking of the Regulation confirms the validity of the Government policies that are required to be given effect to by the Industrial Relations Commission. In particular, it confirms the Government's policies regarding the management of excess public sector employees and the 2.5% cap on increases in remuneration or other conditions of employment (including superannuation).

Schedule 5.3 repeals the *Industrial Relations (Public Sector Conditions of Employment) Regulation 2011*.

[Second reading speech made in—  
Legislative Assembly on 17 June 2014  
Legislative Council on 19 June 2014]