



issues background

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A history of mineral and petroleum ownership and royalties in NSW

This paper sets out a history of mineral and petroleum ownership and royalties in NSW as a background to the debate concerning recent changes to State royalties and Federal mining tax regimes. The timelines provided start at 1906, the point at which the first consolidated mining legislation was introduced. While the majority of the paper focuses on the changes in royalty rates that have occurred between 1906 and 2012, where possible, the paper identifies the reasons *why* changes to the NSW royalty regime were made.

According to the NSW Government:

Royalty is the payment to the State for the right to extract and use the State's mineral resources ... Royalty rates are set to encourage present and future exploration and development of mineral resources. At the same time, the NSW Government aims to ensure that the State receives a fair and equitable return for the use of non-renewable resources.¹

Three types of mining tax can be charged:

- (1) An output-based royalty, under which the government collects either a charge per unit of output (a quantum royalty) or a percentage of the gross value of output (an ad valorem royalty);
- (2) A profit-based royalty, under which the government collects a percentage of a resource project's net income; and
- (3) A rent-based tax, under which the government collects a percentage of the resource project's economic rent.²

Currently, all minerals in NSW are subject to either a quantum or ad valorem royalty.

On 1 July 2012, the Federal Government's Minerals Resource Rent Tax and an amended Petroleum Resource Rent Tax commenced. The PRRT applies to most offshore oil and gas projects and all onshore oil and gas projects. The MRRT applies to all iron ore and coal as well as gas extracted as a necessary part of coal mining.³ Both regimes will provide a full rebate to miners for royalties levied by the NSW Government. However, the Commonwealth Government has stated that it will penalise on a dollar-for-dollar basis any State that increases its royalty rates after 1 July 2011.⁴

On 11 September 2012, the NSW Government announced that it will remove the 5-year royalty holiday for coal seam gas producers. The NSW Government has also stated that it will introduce a supplementary coal royalty by 15 December 2012. An undisputed tenet in the debate on mining taxes is the Crown's right to levy a tax, or royalty, on the exploitation of publicly owned mineral and petroleum resources. Consequently, public debate has centred on the legitimacy of *raising* mining tax rates, the suitability of different types of mining taxes, and the relationship between State and Federal taxation of the mining industry.

The structure of the paper is as follows:

- Royalty revenue in NSW
- Timeline: Mineral and petroleum ownership in NSW
- Timeline: Coal royalties
- Timeline: Onshore mineral royalties
- Timeline: Onshore petroleum royalties
- Timeline: Offshore mineral and petroleum royalties; and
- Timeline: Royalties on privately owned minerals and petroleum.

Ten resources are the subjects of the timelines: coal, petroleum and the other top eight mineral contributors to NSW royalty revenue. Each timeline sets out changes in the base royalty rate between 1906 and 2012 and the statute or policy that introduced the change. Mining and petroleum legislation have always provided for different royalty rates to be set by the Minister in certain circumstances. These include, for example: transferral of a lease from one lessee to another; amalgamation or de-amalgamation of leases; and the renewal of a lease.

Royalty revenue in NSW

In 2011-12, the State's royalty revenue totalled \$1,486 million. This is forecast to rise to \$2,518 million by 2015-16, at an annual growth rate of 14.1%. Note that the coal mining royalty rate changed twice in the last decade: in 2004-05; and in 2008-09.

Mineral and petroleum royalties in NSW (2003-04 to 2012-13)⁵

Year	Royalty (\$m)
2003-04	233
2004-05	396
2005-06	504
2006-07	489
2007-08	573
2008-09	1,280
2009-10	985
2010-11	1,240
2011-12	1,486
2012-2013 (budget)	1,878

Coal is the most significant contributor to NSW mining royalty revenue. In 2008-09, coal made up 95.86% of NSW's royalty revenue. Gold and copper were the next most significant contributors to royalty revenue, contributing 1.84% and 1.39% respectively.

Top contributors to NSW mining royalty revenue in 2008-09⁶

Mineral	Royalty revenue (\$million)	% of total royalty revenue
Coal	\$1,227.0	95.86%
Gold	\$23.5	1.84%
Copper	\$17.8	1.39%
Lead	\$2.9	0.23%
Zinc	\$2.2	0.17%
Limestone	\$1.7	0.13%
Zircon	\$1.3	0.10%
Rutile	\$1.3	0.10%
Silver	\$0.7	0.06%
Total	\$1,278.4	99.88%

Mineral and petroleum ownership in NSW

As of October 2012, gold, silver, petroleum, coal and uranium in NSW are vested in the Crown. Gold and silver, under royal prerogative, have always been vested in the Crown. By legislation having retrospective effect, petroleum, coal and uranium became vested in the Crown in 1955, 1981 and 2012 respectively. All other minerals are reserved to the Crown where the relevant land grant was made after 1884. The *Crown Lands Act 1884* defined "minerals" for the purposes of the Act as including a relatively short list of minerals, with provision for additional minerals to be added by proclamation of the Governor.⁷ Prior to 1884, reservation of minerals to the Crown under a land grant was made on an ad hoc basis.

Timeline: Mineral and petroleum ownership in NSW⁸

Year	Statute	Provisions
1788-1828		Grants of land generally contained no reservation of minerals, although it is reported that Governor Macquarie (1810-21) did insert a reservation of all minerals in some grants.
1828	Regulations of 21 August 1828	Government reserves gold and silver from future land grants, an indication of the doubt surrounding the royal prerogative
1831		A reservation of all coal inserted into Regulations of 21 August 1828
1850		All reservations of coal made after 1830 were waived, except those respecting land within any city, township or village
1861	<i>Crown Lands Alienation Act 1861</i>	Provided for two distinct types of conditional land purchase: for the purpose of mining other than gold mining; and for non-mining purposes. A land purchase for the purpose of mining included private ownership of all minerals under that land, except gold and silver.
1865		Regulations made under the <i>Crown Lands Alienation Act 1861</i> provided for the conversion of an ordinary purchase of land into a mineral purchase. These regulations remained in force until 31 December 1909 for minerals other than coal, and 31 December 1913 for coal.
1884	<i>Crown Lands Act 1884</i>	All grants of land issued under the Act contained a reservation of all minerals to the Crown
1901	<i>Western Lands Act 1901</i>	All minerals in the Western Division of NSW vested in the Crown
1922		Petroleum proclaimed as a "mineral" for the purpose of the <i>Crown Lands Consolidation Act 1913</i>
1955	<i>Petroleum Act 1955</i>	All petroleum in NSW vested in the Crown
1981	<i>Coal Acquisition Act 1981</i>	All coal in NSW vested in the Crown
2012	<i>Mining Legislation Amendment (Uranium Exploration) Act 2012</i>	All uranium in NSW vested in the Crown

Coal royalties

A royalty was first levied on coal under the *Mining Act Further Amendment Act 1884*.⁹ Four subsequent changes in royalty rate merit brief comment. First, in 1987 the royalty rate was reduced from \$1.70 per tonne to \$1.36 per tonne, before being raised to \$1.70 per tonne again in 1989. According to Hansard, in October 1987 the Government introduced a 12 month 20% reduction in the royalty rate because of the financial difficulties being experienced by the industry at the time. The temporary reduction in royalty rates was accompanied by a reduction in 'super' royalty rates, and was extended for a further 12 months by the incoming Greiner Government in 1988.¹⁰ In 1989, the royalty rate was restored to \$1.70 per tonne, with a 'super' royalty rate of 50c per tonne, because the economic climate was improving.¹¹

Second, in 2004 the type of royalty changed from a quantum-based royalty to an ad valorem royalty. The ad valorem royalty applied in the following manner: 7% of the value of coal recovered by open cut mining; 6% of the value of coal recovered by underground mining; and 5% of the value of coal recovered by deep underground mining. The change was announced on 6 April 2004, as part of the Mini-Budget speech.¹² The quantum royalty on coal was said to have disadvantages, namely, it did not reflect the differing value of coal and changing prices in a volatile marketplace; nor did it reflect the higher costs and increasing difficulties and risks associated with underground mining compared with open-cut mining.¹³

Third, the *State Revenue and Other Legislation Amendment (Budget Measures) Act 2008* amended the Mining Regulation 2003 to increase all three tiers of the coal royalty rate by 1.2%. Rather than introduce a 'super' royalty on coal, as Queensland had done with a 10% super royalty on coal sold for more than \$100 per tonne¹⁴, the second reading speech explained that the Government was maintaining the tiered structure "in recognition of the importance of the mining industry as an employer in rural areas."

Finally, the O'Farrell Government announced the introduction of a supplementary coal royalty in its 2011-12 Budget. The royalty rate will be set so as to recover an amount calculated to compensate the NSW Government for the fiscal impact of the carbon tax. Regulations introducing the new royalty are due by 15 December 2012.¹⁵

Timeline: Coal royalties in NSW (1906 to 2012)¹⁶

Year	Statute	Royalty rate
1906	<i>Mining Act 1906</i>	6 pence per ton for large coal and 3 pence per ton for small coal ¹⁷
1918	<i>Mining (Amendment) Act 1918</i>	6 pence per ton for all coal
1952	Mining Act 1906, Amended Regulations	9 pence per ton
1966	Mining Act 1906, Amended Regulations	7.5c per ton
1966	Mining Act 1906-1965, Amended Regulations	10c per ton

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1967	<i>Mining (Amendment) Act 1967</i>	No royalty payable if the value of coal won was less than \$2,000 in 12 months or, where the royalty period was less than 12 months, such amount as bears to \$2,000 the same proportion as the number of days in the royalty period bears to three hundred and sixty-five ¹⁸
1970	<i>Mining (Further Amendment) Act 1970</i>	The prescribed rate (10c per ton) plus any additional rate agreed to by the lessee
1971	Mining Act 1906, Amended Regulations	25c per ton
1973	<i>Coal Mining Act 1973</i>	Provision made for an additional 'super' royalty to be included in the conditions of a lease ¹⁹
1974	Coal Mining Act 1973, Regulations	25c per tonne
1974	Coal Mining Act 1973, Amended Regulations	50c per tonne
1975	Coal Mining Act 1973, Regulations	\$1 per tonne
1981	Coal Mining Act 1973, Regulations	\$1.70 per tonne
1987	Coal Mining Act 1973, Regulations (October)	\$1.36 per tonne. In April 1987, a new policy abolished the 'super' royalty on underground mines and made the 'super' royalty on open-cut mines a uniform 50c per tonne. In October 1987, the 'super' royalty on open-cut mines was reduced to 40c per tonne for 24 months ²⁰
1989	Coal Mining Act 1973, Regulations	\$1.70 per tonne
1996	<i>Mining Legislation Amendment Act 1996</i>	Coal reject royalties: set by Minister as being anywhere from a zero rate to half the base rate of royalty ²¹
1997	Mining (General) Regulation 1997	\$1.70 per tonne. Where a lease contains a condition requiring payment of additional royalty, it is to be at 50c per tonne
2004	Mining Amendment (Royalties) Regulation 2004	(a) 7% of the value of coal recovered by open cut mining, (b) 6% of the value of coal recovered by underground mining, (c) 5% of the value of coal recovered by deep underground mining.
2008	<i>State Revenue and Other Legislation Amendment (Budget Measures) Act 2008</i>	(a) 8.2% of the value of coal recovered by open cut mining, (b) 7.2% of the value of coal recovered by underground mining, (c) 6.2% of the value of coal recovered by deep underground mining
2012	NSW Budget Papers	Supplementary coal royalty to be introduced from 2012-13

Onshore mineral royalties

All three types of royalties have been applied to minerals in NSW: quantum; ad valorem; and profit-based. As of October 2012, 41 of 110 minerals listed in the Mining Regulation 2010 are subject to one of three quantum royalty rates: 35c per tonne; 40c per tonne; or 70c per tonne. The remaining minerals, other than coal, are subject to an ad valorem rate of 4% of the value of the mineral recovered (calculated on the ex-mine value less allowable deductions).²² The timeline divides eight minerals into three groups:

- (1) Copper, gold, lead, silver & zinc have always been subject to an ad valorem royalty calculated in relation to the 'ex-mine' value of the mineral recovered;
- (2) Limestone has always been subject to a quantum-based royalty; and
- (3) Rutile and zircon have been subject to quantum-based royalties and ad valorem royalty rates, where two different methodologies by which the ad valorem royalty is calculated have been used.²³

Profit-based royalties have been applied three times between 1906 and 2012: to specific mines in Cobar; to specific mines in Broken Hill; and to renewed leases between 1921 and 1935. Major minerals produced from the Cobar and Broken Hill mines include copper, lead, zinc, silver and gold. The royalty rates that have applied to these mines resulted from negotiations between the NSW Department of Mineral Resources and mining companies. Changes in royalty rates were made to encourage efficient mining, support mining of otherwise marginal grades and promote exploration and provision of amenities in remote areas.²⁴

Timeline: Onshore mineral royalties in NSW (1906 to 2012)

Year	Statute	Royalty rate		
		Copper, Gold, Lead, Silver & Zinc ²⁵	Limestone ²⁶	Rutile ²⁷ & Zircon
1906	<i>Mining Act 1906</i>	1% of the value	-	1% of the value
1921	Mining Act 1906, Additional Regulations	Renewed lease: profit-based royalty ²⁸	-	Renewed lease: profit-based royalty ²⁹
1935	Mining Act 1906-1935, Regulations	Repeal of 1921 regulation	-	Repeal of 1921 regulation
1949			-	Rutile: 10s. per ton ³⁰ Zircon: 2s.6d. per ton
1952	Mining Act 1906, Amended Regulations	1.5% of the value	3 pence per ton	
1954	Mining Act 1906-1952, Amended Regulation	1.5% of the value	6 pence per ton	
1955				Rutile: 15s. per ton Zircon: 2s.6d. per ton

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1956		Cobar mines: profit-based royalties ³¹		
1956				Rutile: £1 10s. per ton Zircon: 2s.6d. per ton
1959				1.5% of the value, f.o.b. ³²
1961		Cobar mines: royalty free period from 1961 to December 1971 ³³		
1966	Mining Act 1906, Amended Regulations	1.5% of the value	5c per ton	2% of the value, f.o.b.
1967	<i>Mining (Amendment) Act 1967</i> ³⁴			2% of the value, f.o.b. ³⁵
1968	Mining Act 1906, Amended Regulations	2% of the value	5c per ton	2% of the value, f.o.b.
1974	Mining Act 1973, Regulations	2% of the value	5c per tonne	2% of the value, f.o.b.
1974	<i>Mining (Amendment) Act 1974</i>	Cobar ³⁶ and Broken Hill ³⁷ mines: profit-based royalties		
1974	Mining Act 1973, Amended Regulations	4% of the value	20c per tonne	4% of the value, f.o.b.
1981	Mining Act 1973, Regulations	4% of the value	35c per tonne	4% of the value, f.o.b.
1983		Broken Hill mines: profit-based royalty (4% to 50%) ³⁸		
1985		Broken Hill mines: 20% of profits (variable) ³⁹		
1992		4% of the 'ex-mine' value ⁴⁰		4% of the value, f.o.b. ⁴¹
1992	Mining (General) Regulation 1992	4% of the value of the mineral recovered	35c per tonne	4% of the value of the mineral recovered
2001	Mining (General) Amendment (Minerals and Royalties) Regulation 2001		40c per tonne	
2010		4% of the 'ex-mine' value ⁴²		4% of the 'ex-mine' value

Onshore petroleum royalties

Petroleum is defined in the legislation as any naturally occurring hydrocarbon, whether in gaseous, liquid or solid state. This definition therefore includes natural gas and coal seam gas. Petroleum was first classified as a mineral for legislative purposes in 1922, at which stage it was subject to royalties under the *Mining Act 1906*. A petroleum-specific royalty was introduced under the *Petroleum Act 1955*. The royalty rate was a flat 10% of the gross value at the well-head.

In 1992, the Petroleum (Onshore) Regulation 1992 introduced a progressive royalty rate for petroleum, where all onshore petroleum developments in NSW, including coal seam gas developments, enjoy a five-year royalty holiday. After this time, royalties are imposed at an initial rate of 6% per annum, rising by 1% every year until reaching the top rate of 10% per annum. The five-year holiday on royalty payments was not addressed in the Second Reading speech for the *Petroleum (Onshore) Act 1991*. However, a possible explanation can be found in the rationale provided for introducing the legislation, namely that petroleum exploration had fallen over the previous three years. The administrative procedures contained in the Act were therefore established to create incentives for exploration and production.

The O'Farrell Government first flagged a possible review of the five-year royalty holiday in 2011.⁴³ In May 2012, the Legislative Council General Purpose Standing Committee No.5 released its report on coal seam gas in which it recommended that the NSW Government require "coal seam gas companies to pay the full royalty rate from the first date of production under a petroleum title."⁴⁴ On 11 September 2012, the Government announced that it would remove the royalty holiday as part of the Government's Strategic Regional Land Use Policy.⁴⁵

Timeline: Onshore petroleum royalties in NSW (1906 to 2012)

Year	Statute	Royalty rate
1922	<i>Mining Act 1906</i>	1% of the value
1952	Mining Act 1906, Amended Regulations	1.5% of the value
1955	<i>Petroleum Act 1955</i>	10% of the gross value at the well-head
1967	<i>Petroleum (Amendment) Act 1967</i>	10% of the gross value at the well-head. Renewed lease: royalty rate may be amended by Minister
1983	<i>Coal Mining (Amendment) Act 1983</i>	Rate of royalty for petroleum won under a coal lease: set by Minister ⁴⁶
1992	Petroleum (Onshore) Regulation 1992	For titles granted or renewed after 21 August 1992, the rate of royalty for the first five years of commercial production is nil; and for the sixth year 6%, rising by 1% each year up to 10% of the well-head value in the tenth year.
2000	Petroleum (Onshore) Amendment (Royalty) Regulation 2000	Applied the specified progressive royalty rate to petroleum recovered under a coal mining lease. ⁴⁷
2012		NSW Government announced planned removal of "royalty holiday"

Offshore mineral and petroleum royalties

The *Petroleum (Submerged Lands) Act 1967* introduced a royalty on petroleum recovered from submerged land adjacent to the NSW coast. The royalty rate was 10% of the value at the well head, 40% of which the State had to pay to the Commonwealth. This 1967 Act was a mirror Act to the *Petroleum (Submerged Lands) Act 1967* (Cth). However, the conflict between the State and Commonwealth Governments over who had the power to legislate for the offshore petroleum sector was only resolved in 1979 when the Commonwealth and the States agreed to a division of offshore powers and responsibilities known collectively as the Offshore Constitutional Settlement.⁴⁸ The Settlement includes arrangements for managing oil, gas and other seabed minerals.

In 1982, the NSW Parliament passed the *Petroleum (Submerged Lands) Act 1982*, which retained the royalty scheme introduced in the 1967 Act. Two Commonwealth statutes mirror the royalty provisions established in the 1982 NSW Act: the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (Cth); and the *Offshore Petroleum (Royalty) Act 2006* (Cth).

In 1999, the NSW Government introduced a royalty on offshore minerals of 4% of the landed value of the mineral. As with offshore petroleum, the State is required to pay 40% of offshore mineral royalties to the Commonwealth. The 1999 Act is a mirror Act to two Commonwealth statutes: the *Offshore Minerals (Royalty) Act 1981*; and the *Offshore Minerals Act 1994*.

Timeline: Offshore mineral and petroleum royalties in NSW (1906 to 2012)

Year	Statute	Royalty rate	
		Minerals	Petroleum
1967	<i>Petroleum (Submerged Lands) Act 1967</i> ⁴⁹		10% of the value at the well head Renewed lease: 11% to 12.5% of the value at the well-head State to pay 40% of royalties to Commonwealth ⁵⁰
1982	<i>Petroleum (Submerged Lands) Act 1982</i> ⁵¹		As above
1999	<i>Offshore Minerals Act 1999</i> ⁵²	Rate to be set in regulations. State to pay 40% of royalties to Commonwealth ⁵³	
2000	Offshore Minerals Regulation 2000	4% of the landed value of the mineral ⁵⁴	

Royalties on privately owned minerals and petroleum

A royalty on privately owned minerals was first introduced in 1918. At first, the royalty was a profit-based royalty of 5% of net annual profits, 1/5th of which was payable to the Crown. Between 1918 and 1968, the proportion payable to the Crown fluctuated. From 1968 onwards, 1/8th of any royalty on privately owned minerals was payable to the Crown. Also from 1968, the royalty rate payable on any privately owned mineral was made equal to the rate applicable to publicly owned minerals.

Timeline: Royalties on privately owned minerals and petroleum (1906 to 2012)

Year	Statute	Royalty rate		
		Coal	Minerals	Petroleum
1918	<i>Mining (Amendment) Act 1918</i>		5% on net annual profits, 1/5 th to be paid to Crown	
1919	<i>Mining (Amendment) Act 1919</i>	6 pence per ton, 1/6 th to be paid to Crown		
1924	<i>Mining (Amendment) Act 1924</i>	6 pence per ton, 1/6 th to be paid to Crown	1 & 1/8 th of the gross value, 1/9 th to be paid to Crown	1 & 1/8 th of the gross value, 1/9 th to be paid to Crown
1952	Mining Act 1906, Amended Regulations	9 pence per ton, 1 pence to be paid to Crown	1¾% of the value, 1/7 th to be paid to Crown	1¾% of the value, 1/7 th to be paid to Crown
1966	Mining Act 1906, Amended Regulations	7.5c per ton, 1/7 th to be paid to Crown		n/a (all petroleum vested in the Crown in 1955)
1966	Mining Act 1906-1965, Amended Regulations	10c per ton, 1/7 th to be paid to Crown		n/a
1967	<i>Mining (Amendment) Act 1967</i> ⁵⁵	Royalty upon renewal of lease: 1/8 th to be paid to Crown	Royalty upon renewal of lease: 1/8 th to be paid to Crown	n/a
1968	Mining Act 1906, Amended Regulations ⁵⁶	10c per ton, 1/8 th to be paid to Crown	2% of the value, 1/8 th to be paid to Crown	n/a
1968-2012	After 1968, the royalty rate was always equal to the rate applied to publicly owned minerals, with 1/8 th paid to the Crown. All coal was vested in the Crown in 1981.			

Author: Daniel Montoya

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¹ NSW Industry & Investment, [Mining Royalties and Statistics in NSW](#), 2010, p.1

² K Henry, [Australia's future tax system: Report to the Treasurer](#), Part Two - Detailed Analysis, Vol 1 of 2, December 2009, p.221

³ Australian Government, [A new resource taxation regime](#), online [accessed 02/10/2012]

⁴ *Sydney Morning Herald*, [Swan warns states not to gouge royalties](#), 22 August 2012

⁵ Sources: NSW Minerals Council, [Key Industry Statistics 2011](#), 2011; NSW Budget Statement 2012-13, [Budget Paper No.2](#), 2012, Chapter 5-4

⁶ NSW Auditor-General, [Performance Audit: Coal Mining Royalties](#), November 2010, p.22

⁷ The minerals included in the definition of "mineral" in the 1884 Act were: coal, kerosene, shale, gold, silver, copper, tin, iron, antimony, cinnabar, galena, nickel, cobalt, platinum, bismuth and manganese.

⁸ Sources: A De Lissa, *Companies' work and mining law in New South Wales and Victoria: a treatise for the guidance of solicitors, directors, investors and others*, Robertson: Melbourne, 1894, pp454; JRS Forbes & AG Lang, *Australian Mining & Petroleum Laws*, Butterworths: Sydney, 2nd ed. 1987, pp375

⁹ C.G.W. Davidson, H.W. Gepp and L.K. Ward, *Report of the Royal Commission appointed to inquire into and report upon the coal industry, together with appendices*, 1930, pp.522.

¹⁰ NSW PD, Legislative Council, 14 October 1987, p.14,423; NSW PD, Legislative Assembly, 20 September 1988, p.1,478.

¹¹ NSW PD, Legislative Council, 8 August 1989, p.9,460

¹² [NSW PD](#), Legislative Assembly, 6 April 2004, p.8,083

¹³ Hon. Kerry Hickey, [Media release: State Govt introduces fairer, more flexible royalty scheme for coal industry](#), 6 April 2004

¹⁴ *Sydney Morning Herald*, [It's the pits: royalty rise angers miners](#), 12 November 2008

¹⁵ The 2012-13 NSW Budget Papers state that: "To address the negative financial impacts on NSW of the carbon tax, the Government announced in the 2011-12 Budget that coal royalties would be increased. Under the Australian Government's Minerals Resource Rent Tax (MRRT), royalties paid to state governments are deducted from companies' MRRT liabilities. As a result, the increase in NSW royalties will not alter the tax burden of mining companies.

The increase in royalties will take the form of a supplementary coal royalty, to be paid in addition to normal royalties. The revenue raised each year by supplementary royalties will be an amount calculated to compensate the NSW Government for the fiscal impact of the carbon tax. The estimated impact in 2012-13 is \$235 million, and this will be the revenue target for the fiscal year. The supplementary royalty rate to achieve this revenue target in 2012-13 will be set by regulation on or before 15 December 2012 and will apply to all coal produced during the Government's fiscal year by mining projects that pay MRRT instalments." NSW Budget Statement 2012-13, [Budget Paper No.2](#), 2012, Chapter 5-4

¹⁶ In 1923, a royalty using a sliding scale was applied to renewed coal or shale leases, where the original lease was granted under an Act repealed by the *Mining Act 1906*. The sliding scale was based on the selling price of coal as follows:

Selling price

Not exceeding 10 shillings (10s.) per ton
Exceeding 10s. but not exceeding 13s. per ton
Exceeding 13s. but not exceeding 15s. per ton
Exceeding 15s. but not exceeding 22s. 6d. per ton
Exceeding 22s. 6d. but not exceeding 30s. per ton
Exceeding 30s. per ton

Royalty

7d. per ton
8d. per ton
9d. per ton
10d. per ton
11d. per ton
1s. per ton

This regulation was introduced by the Mining Act 1906, Amended Regulations 1923 and repealed in 1935.

¹⁷ Small coal is defined as coal which may pass through a screen the bars of which are not more than three-quarters of an inch apart (*Mining Act 1906*, s3).

¹⁸ This provision was not included in the *Coal Mining Act 1973*, although it was included in the *Mining Act 1973*. The provision was included in the *Mining Act 1992*, which repealed the *Coal Mining Act 1973*, and is still in force today (s287).

¹⁹ A 'super' royalty is generally a royalty levied when the value of coal produced exceeds a set price. In this case, it appears to have been levied where the Government held that the costs involved in extracting coal from certain mines (e.g. open-cut mines) relative to other mines were low enough to justify levying an additional royalty.

²⁰ NSW PD, Legislative Council, 14 October 1987, p.14,424

²¹ Coal reject is defined in the Act as "the by-product of the mining or processing of coal that contains a mixture of coal and other substances (such as shale) and has either an energy value (the maximum energy capable of being produced by it on combustion) of less than 16 gigajoules per tone (dry weight) or contains more than 35 per cent ash (by dry weight)" (s286A).

²² NSW Trade & Investment, Division of Resources and Energy, [NSW minerals & petroleum - royalty rates](#) [online - accessed 27/09/2012]

²³ Note that changes in royalty rates for rutile and zircon, as identified in the timeline, are indicative of the types of rate that applied at certain times, rather than an exact account of when changes were made. This is because, according to Hansard debates, royalty rates were often fixed by the Governor as they exercised the statutory discretion provided in the legislation. These royalty rates were only published as a condition of the lease issued [NSW PD, Legislative Assembly, 15 November 1967 p.3,296].

²⁴ NSW Department of Mineral Resources, *Mining Royalties in New South Wales*, 1992. See also NSW DPI, [Cobar's mining history](#), Primefact 555, February 2007

²⁵ Zinc was proclaimed as a mineral under the *Crown Lands Consolidation Act 1913* in 1922.

²⁶ A royalty was first levied on limestone in 1952. It was proclaimed as a mineral under the *Lands Consolidation Act 1913* in 1957.

²⁷ Rutile was proclaimed as a mineral under the *Crown Lands Consolidation Act 1913* in 1955. Royalty was payable on rutile from at least 1949 onwards.

²⁸ A profit-based royalty was introduced for renewed leases that applied to all minerals except for coal and shale in 1921 with the Mining Act 1906, Additional Regulations 1921. A royalty was levied according to the amount of profit made as follows: where net profits were less than £100,000, the royalty was 3%; where net profits were between £100,000 and £200,000, the royalty was 3% for the first £100,000 and 4% for the next £100,000 or part thereof; where net profits exceeded £200,000, the royalty was 3% for the first £200,000, plus a further 1% of profits thereafter for each successive £100,000 or part thereof. This regulation was repealed in 1935.

²⁹ See n28

³⁰ See n35

³¹ According to the First Reading speech made upon introduction of the Mining (Amendment) Bill 1974, a profit-based royalty on certain leases in Cobar was negotiated from 1956 onwards in connection with proposals to develop and re-open gold and copper mines [NSW PD, Legislative Assembly, 30 October 1974, p.2,329]. These royalty provisions were subsequently varied in additional respects [NSW PD, Legislative Assembly, 31 October 1974, p.2,438]. The royalty rates as they were in 1974 were set out in the Mining (Amendment) Act 1974 [see n36].

³² Free on board, see n35

³³ "When leases granted to Cobar Mines Pty Limited in the Cobar field were renewed in 1961 the Government then permitted the company a royalty-free period to the end of December, 1971. After that date the company was required to make an annual payment in respect of the net profits, if any, arising in any year from the working of the leases. This payment was on an escalating percentage scale with a ceiling of 8 per cent, subject to the company spending \$2 million on prospecting and development" [NSW PD, Legislative Assembly, 31 October 1974, p.2,438].

- ³⁴ This Act introduced a new provision for royalties whereby no royalty was payable if the value of minerals won was less than \$2,000 in 12 months or, where the royalty period was less than 12 months, such amount as bears to \$2,000 the same proportion as the number of days in the royalty period bears to three hundred and sixty-five.
- ³⁵ "Value, f.o.b." was defined in the *Mining (Amendment) Act 1967* to mean "such amount as is determined by the Minister as being the value, f.o.b., of the mineral at such port in Australia as the Minister determines." Section 10 of the 1967 Act clarified the royalties payable on rutile, zircon and ilmenite acquired during the pendency of the application for a lease between 1949 and the commencement of the section by making them equivalent to the rates applicable, as set by the Governor, to rutile, zircon and ilmenite won under a mining lease [see timeline]. Note that the royalty changed from a quantum-based royalty to an ad valorem-based royalty, despite the provisions under previous regulatory instruments that prescribed an ad valorem-based royalty for rutile and zircon.
- ³⁶ As set out in Schedule 5 of the *Mining (Amendment) Act 1974*, royalty on net profits from mining under specific leases in Cobar to be calculated in the following manner: (a) where such net profits do not exceed the sum of two hundred thousand dollars (\$200,000) in any year—two per centum of such profits; (b) where such net profits exceed the sum of two hundred thousand dollars (\$200,000) but do not exceed the sum of four hundred thousand dollars (\$400,000) in any year—two per centum of such profits, plus a further one per centum on the second two hundred thousand dollars (\$200,000) or part thereof; or (c) where such net profits exceed the sum of four hundred thousand dollars (\$400,000) in any year—two per centum of such profits, plus a further one per centum on the second two hundred thousand dollars (\$200,000), and thereafter in the increasing proportion of one per centum on each successive two hundred thousand dollars (\$200,000) or part thereof of the balance of such profits. Provided that at least \$2 million has been spent in prospecting or developing any lease or leases held under the Act, the maximum rate of royalty payable shall be 8%. This concession applies only where the value of copper produced for realization in any one year exceeds 50 per cent of the total value of all minerals produced for realization [NSW PD, Legislative Assembly, 31 October 1974, p.2,439]. Other leases in the Cobar district were subject to profit-based royalties different to those specified above.
- ³⁷ According to the Second Reading speech, only certain leases in the Broken Hill district were subject to a profit-based royalty [NSW PD, Legislative Assembly, 31 October 1974, p.2,439].
- ³⁸ According to NSW Hansard, "royalties [on Broken Hill mines] commence at 4 per cent of net profit and escalate at the rate of 2 per cent for each additional \$400,000 of net profit, to a maximum of 50 per cent on a net profit of \$9.2 million." [NSW PD, Legislative Assembly, 25 August 1983, p.582]
- ³⁹ On 23 October 1984, the NSW Premier confirmed that: "the royalty position that will apply in the lease renewals early in 1985 will see the long-established sliding scale of royalties based on profit replaced by a reduced scale of royalties which provides special incentive for the mining of low and deep grades, and to exploration and development of new ore bodies. The incentive provided by this new royalties structure should extend the economic lives of the mines for many years to come, thus assisting employment in Broken Hill and, of course, assisting the local economy" [NSW PD, Legislative Assembly, 23 October 1984, p.2,258]. According to a 1991 Industry Commission report on mining in Australia, the Broken Hill royalty regime operated as a "20 per cent (variable) profit" royalty [Industry Commission, [Mining and Minerals Processing in Australia](#), Volume 3: Issues in Detail, 25 February 1991, p.361]
- ⁴⁰ 'Ex-mine value' refers to the value of the mineral once it is mined and brought to the surface [NSW Department of Mineral Resources, *Mining Royalties in New South Wales*, 1992].
- ⁴¹ Four minerals had a 4% royalty calculable on the free-on-board (f.o.b.) value of production: rutile, zircon, ilmenite and monazite [NSW Department of Mineral Resources, *Mining Royalties in New South Wales*, 1992].
- ⁴² NSW Industry & Investment, [Mining Royalties and Statistics in NSW](#), 2010
- ⁴³ *Sydney Morning Herald*, [Rise in gas royalties could lead to windfall](#), 7 January 2012
- ⁴⁴ NSW Legislative Council General Purpose Standing Committee No.5, [Coal seam gas](#), May 2012, p.xx
- ⁴⁵ Hon. Andrew Stoner and the Hon. Brad Hazzard, [Media release: Government unveils new protections for agricultural land](#), 11 September 2012
- ⁴⁶ The *Coal Mining (Amendment) Act 1983* made it possible for holders of a coal mining lease to apply for the right to mine petroleum (s72A). It seems likely that this provision was introduced, at least in part, because of the potential significance of coal seam gas resources in the State. As stated in the Second Reading speech: "The total resources of coal seam gas in the Sydney basin are estimated

- to be in excess of 95 billion cubic metres of gas. This resource could make a significant contribution to this State's future natural gas supplies and, indeed, the Australian Gas Light Company is currently assessing such resources over a large portion of the Sydney basin" [NSW PD, Legislative Assembly, 2 November 1983, p.2,285].
- ⁴⁷ Not long after the introduction of this provision in the Regulations, the NSW Government enacted the *Mining and Petroleum Legislation Amendment Act 2000*, section 286(4) of which made an exemption in the case of methane recovered in conjunction with coal mining operations.
- ⁴⁸ See further the NSW Parliamentary Research Service publication: D Montoya, [Offshore petroleum exploration and mining](#), 2011
- ⁴⁹ An Act relating to the exploration for, and the exploitation of, the petroleum resources, and certain other resources, of certain submerged lands adjacent to the coasts of the State.
- ⁵⁰ The State is to pay the Commonwealth a proportion of the royalty won according to the formula:
- $$\frac{4A}{B}$$
- where A is the amount of royalty payable under the Act, including any amount payable under the Act by reason of late payment of royalty, and B is the percentage rate at which royalty is payable.
- ⁵¹ An Act relating to the exploration for, and the exploitation of, the petroleum resources, and certain other resources, of certain submerged lands adjacent to the coasts of New South Wales.
- ⁵² An Act relating to exploration for, and the recovery of, minerals (other than petroleum) in the first 3 nautical miles of the territorial sea in respect of New South Wales.
- ⁵³ The State is to pay 40% of royalties to the Commonwealth, where royalty includes any payment for late payment of royalty (s435).
- ⁵⁴ The "landed value" of the mineral is defined by s432 of the Act as follows: (a) an amount agreed between the mining licence holder and the Minister, or (b) if there is no agreement within such period as the Minister allows, an amount determined by the Minister by instrument in writing.
- ⁵⁵ This Act introduced a new provision for privately owned minerals where the royalty was to be calculated on the "gross value" of the mineral won.
- ⁵⁶ These Regulations made the total royalty payable on privately owned minerals equivalent to that payable on minerals reserved to the Crown.