



New South Wales

# Petroleum (Onshore) Amendment (Royalties and Penalties) Bill 2012

## Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

## Overview of Bill

The objects of this Bill are as follows:

- (a) to amend the *Petroleum (Onshore) Act 1991* to provide that the rate of royalty on petroleum production is to be prescribed by regulations under that Act,
- (b) to repeal provisions that confer a royalty holiday for the first 5 years of petroleum production and a reduced rate for the second 5 years of production and instead prescribe a flat rate of royalty of 10% of the value at the well-head of petroleum,
- (c) to increase certain penalties for offences under the *Mining Act 1992* and the *Petroleum (Onshore) Act 1991*,
- (d) to confer jurisdiction on the Land and Environment Court to hear proceedings for offences under the *Petroleum (Onshore) Act 1991*,
- (e) to make consequential and minor amendments to provisions of the *Criminal Procedure Act 1986*, including enabling elections to be made with respect to summary proceedings for an indictable offence under the *Petroleum (Onshore) Act 1991*.

## Outline of provisions

**Clause 1** sets out the name (also called the short title) of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

## Schedule 1 Amendments relating to royalties

### Schedule 1.1 Petroleum (Onshore) Act 1991 No 84

**Schedule 1.1 [1]** provides for the rate of royalty payable by the holder of a petroleum title for petroleum recovered by the holder to be prescribed by the regulations. The rate may be determined as a percentage of the value at the well-head of the petroleum or by reference to such other matters as the Minister may determine.

**Schedule 1.1 [2]** provides for the Minister to determine the value at the well-head of the petroleum. Currently, the value is only determined by the Minister if the Minister and the holder of the petroleum title fail to agree on the value.

**Schedule 1.1 [3]** requires an approved measuring device to be installed at the well-head or another place approved by the Minister.

### Schedule 1.2 Petroleum (Onshore) Regulation 2007

**Schedule 1.2** prescribes the amount of royalty for petroleum as 10% of the value at the well-head of the petroleum. The Subschedule also repeals provisions that currently provide for a holiday from royalties for the first 5 years of commercial production and a reduced rate for the next 5 years, so that the full royalties are not currently payable for the first 10 years. The new royalty rate will apply to petroleum recovered on or after 1 January 2013.

### Schedule 1.3 Coal Mine Health and Safety Amendment Act 2010 No 23

**Schedule 1.3** omits an uncommenced amendment to a provision that is being substituted by Schedule 1.2.

## Schedule 2 Amendments relating to penalties

### Schedule 2.1 Criminal Procedure Act 1986 No 209

**Schedule 2.1 [1]** adds the offence of mining petroleum without an authority under section 7 of the *Petroleum (Onshore) Act 1991*, if the value of petroleum obtained is \$5,000 or more, to the list of indictable offences that are to be dealt with summarily unless the prosecutor or person charged elects otherwise. This is to make the treatment of this offence consistent with a similar offence under the *Mining Act 1992*. An offence where the value of the petroleum obtained is less than \$5,000 is already required to be dealt with summarily unless the prosecutor elects otherwise.

**Schedule 2.1 [2]** omits a reference to an offence that will no longer be an indictable offence from a table listing indictable offences.

### **Schedule 2.2 Mining Act 1992 No 29**

**Schedule 2.2** increases the maximum monetary penalties for the following offences as follows:

- (a) prospecting except in accordance with an authorisation—from \$22,000 to \$550,000 (for corporations) and \$110,000 (for individuals) and, in the case of the daily penalty for continuing the offence, from \$5,500 to \$55,000 (for corporations) and \$11,000 (for individuals) (**Schedule 2.2 [1]**),
- (b) mining except in accordance with an authorisation—from \$110,000 to \$1.1 million (for corporations) and \$220,000 (for individuals) and, in the case of the daily penalty for continuing the offence, from \$5,500 to \$110,000 (for corporations) and \$22,000 (for individuals) (**Schedule 2.2 [2]**),
- (c) unauthorised carrying out of mining purposes—from \$110,000 to \$1.1 million (for corporations) and from \$110,000 to \$220,000 (for individuals) and, in the case of the daily penalty for continuing the offence, from \$5,500 to \$110,000 (for corporations) and \$22,000 (for individuals) (**Schedule 2.2 [3]**),
- (d) stealing minerals—from \$110,000 to \$1.1 million (for corporations) and from \$110,000 to \$220,000 (for individuals) (**Schedule 2.2 [4]**),
- (e) fraudulent removal and concealment of minerals by employees—from \$110,000 to \$1.1 million (for corporations) and from \$110,000 to \$220,000 (for individuals) (**Schedule 2.2 [5]**),
- (f) fraudulent removal and concealment of minerals by partners—from \$110,000 to \$1.1 million (for corporations) and from \$110,000 to \$220,000 (for individuals) (**Schedule 2.2 [6]**),
- (g) breach of direction—from \$55,000 to \$1.1 million (for corporations) and from \$55,000 to \$220,000 (for individuals) and, in the case of the daily penalty for continuing the offence, from \$5,500 to \$110,000 (for corporations) and \$22,000 (for individuals) (**Schedule 2.2 [7]**),
- (h) failing to comply with a requirement by an inspector or delaying, obstructing or impersonating an inspector—from \$110,000 to \$1.1 million (for corporations) and from \$22,000 to \$220,000 (for individuals) and, in the case of the daily penalty for continuing the offence, from \$1,100 to \$110,000 (for corporations) and from \$550 to \$22,000 (for individuals) (**Schedule 2.2 [8]**),
- (i) failure to pay royalties—from \$110,000 to \$1.1 million (for corporations) and from \$110,000 to \$220,000 (for individuals) and, in the case of the daily penalty for continuing the offence, from \$5,500 to \$110,000 (for corporations) and \$22,000 (for individuals) (**Schedule 2.2 [9]**),
- (j) obstructing a person exercising a function—from \$110,000 to \$1.1 million (for corporations) and \$220,000 (for individuals) (**Schedule 2.2 [10]**),

- (k) contravention of an environmental condition of an authorisation or a mining lease—from \$110,000 to \$1.1 million (for corporations) and from \$55,000 to \$220,000 (for individuals) and, in the case of the daily penalty for continuing the offence, from \$11,000 to \$110,000 (for corporations) and from \$5,500 to \$22,000 (for individuals) (**Schedule 2.2 [11]**),
- (l) contravention of any other condition of an authorisation or a mining lease—from \$22,000 to \$220,000 (for corporations) and from \$11,000 to \$22,000 (for individuals) and, in the case of the daily penalty for continuing the offence, from \$2,200 to \$22,000 (for corporations) and from \$1,100 to \$5,500 (for individuals) (**Schedule 2.2 [12]**).

**Schedule 2.2 [13]** requires a court that is considering the penalty for contravening an environmental condition of an authorisation or a mining lease to take into account the extent of the harm caused to the environment, mitigation and control measures, the foreseeability of any harm caused and the offender's control over the causes of the offence.

**Schedule 2.2 [14]** confers jurisdiction on the Land and Environment Court to deal summarily with corporations accused of offences relating to stealing minerals and the fraudulent removal and concealment of minerals or who fail to pay royalties.

**Schedule 2.2 [15]** increases the maximum fine that may be imposed by a Local Court for mining offences from \$22,000 to \$220,000.

**Schedule 2.2 [16]** enables a breach of environmental conditions, being conditions inserted under specified provisions, to be liable to the highest maximum penalty for breaches. The amendment continues the effect of a transitional provision that currently applies to the specified provisions.

### **Schedule 2.3 Petroleum (Onshore) Act 1991 No 84**

**Schedule 2.3** increases the maximum monetary penalties for the following offences as follows:

- (a) prospecting except in accordance with a petroleum title—from \$22,000 to \$550,000 (for corporations) and \$110,000 (for individuals) and, in the case of the daily penalty for continuing the offence, imposing a penalty of \$55,000 (for corporations) and \$11,000 (for individuals) (**Schedule 2.3 [1]**),
- (b) mining except in accordance with a petroleum title—from \$110,000 to \$1.1 million (for corporations) and from \$22,000 to \$220,000 (for individuals) (**Schedule 2.3 [2]**),
- (c) failure to comply with a direction to give effect to conditions of a petroleum title—from \$11,000 to \$1.1 million (for corporations) and \$220,000 (for individuals) (**Schedule 2.3 [3]**),
- (d) assaulting, hindering or obstructing a person exercising a power under the *Petroleum (Onshore) Act 1991* or contravening a condition of an exemption, suspension or consent or a direction or requirement made under that Act—from \$11,000 to \$1.1 million (for corporations) and \$220,000 (for individuals) (**Schedule 2.3 [4]**),

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- (e) contravention of a condition of a petroleum title related to environmental management—from \$110,000 to \$1.1 million (for corporations) and \$220,000 (for individuals) (**Schedule 2.3 [5]**),
- (f) contravention of any other condition of a petroleum title—from \$22,000 to \$220,000 (**Schedule 2.3 [5]**).

**Schedule 2.3 [6]** requires a court that is considering the penalty for contravening a condition of a petroleum title related to environmental management to take into account the extent of the harm caused to the environment, mitigation and control measures, the foreseeability of any harm caused and the offender's control over the causes of the offence.

**Schedule 2.3 [7]** confers on the Land and Environment Court jurisdiction to deal summarily with offences under the *Petroleum (Onshore) Act 1991* and limits the jurisdiction of the Local Court to maximum penalties of 2,000 penalty units and imprisonment for 12 months. The offence of contravention of conditions of a petroleum title related to environmental management will no longer be an indictable offence but may be dealt with by the Land and Environment Court. That Court has jurisdiction to impose the maximum amount of monetary penalty provided for by the Act for any offence.