



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]**),

- (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.

First print



New South Wales

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

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New South Wales

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

No. , 2012

A Bill for

An Act to amend the *Petroleum (Onshore) Act 1991* and an instrument under that Act with respect to the payment of royalties in respect of petroleum; and to amend that Act, the *Mining Act 1992* and the *Criminal Procedure Act 1986* with respect to penalties and proceedings for offences.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Petroleum (Onshore) Amendment (Royalties and Penalties) Act 2012</i> .	3 4
2 Commencement	5
This Act commences on a day or days to be appointed by proclamation.	6

Schedule 1	Amendments relating to royalties	1
1.1	Petroleum (Onshore) Act 1991 No 84	2
[1]	Section 85 Royalty	3
	Omit section 85 (2) and (3). Insert instead:	4
	(2) The royalty is payable at the rate prescribed by the regulations.	5
	(3) The rate of royalty may be prescribed:	6
	(a) as a percentage of the value at the well-head of the petroleum, or	7
	(b) by reference to such other matters as the regulations specify.	8
		9
		10
[2]	Section 89	11
	Omit the section. Insert instead:	12
	89 Ascertainment of value	13
	For the purposes of this Act, the value at the well-head of any petroleum is the amount determined by the Minister as being that value.	14
		15
		16
[3]	Section 90 Ascertainment of quantity of petroleum recovered	17
	Omit “where no such measuring device is so installed, or” from section 90 (b).	18
	Insert instead “if”.	19
1.2	Petroleum (Onshore) Regulation 2007	20
	Clauses 23 and 24	21
	Omit the clauses. Insert instead:	22
	23 Rate of royalty: section 85	23
	For the purposes of section 85 (2) of the Act, the prescribed annual rate of royalty is 10 per cent of the value at the well-head of the petroleum.	24
		25
		26
	24 Rate of royalty: Mining Act 1992 section 286	27
	For the purposes of Division 3 of Part 14 of the <i>Mining Act 1992</i> , the prescribed annual rate of royalty is 10 per cent of the value at the well-head of the petroleum.	28
		29
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Petroleum (Onshore) Amendment (Royalties and Penalties) Bill 2012

Schedule 1 Amendments relating to royalties

24AA Transitional provision	1
(1) The rate of royalty imposed by clauses 23 and 24 (as substituted by the <i>Petroleum (Onshore) Amendment (Royalties and Penalties) Act 2012</i>) applies to petroleum recovered on or after 1 January 2013.	2 3 4 5
(2) Clauses 23 and 24, as in force before their substitution by that Act, continue to apply to petroleum recovered before 1 January 2013.	6 7 8
1.3 Coal Mine Health and Safety Amendment Act 2010 No 23	9
Schedule 3.11	10
Omit the Subschedule.	11

Schedule 2	Amendments relating to penalties	1
2.1	Criminal Procedure Act 1986 No 209	2
[1]	Schedule 1 Indictable offences triable summarily	3
	Insert after clause 31 in Table 1:	4
	32 Petroleum (Onshore) Act 1991 No 84	5
	An offence of mining petroleum in contravention of section 7 of the <i>Petroleum (Onshore) Act 1991</i> , if the value of the petroleum to which the alleged offence relates is \$5,000 or more.	6 7 8
[2]	Schedule 1, Table 2	9
	Omit clause 18 (2).	10
2.2	Mining Act 1992 No 29	11
[1]	Section 5 Mining or prospecting without authorisation	12
	Omit the penalty for prospecting in contravention of the section. Insert instead:	13
	Maximum penalty for prospecting in contravention of this section:	14 15
	(a) in the case of a corporation—5,000 penalty units, and, in the case of a continuing offence, a further penalty of 500 penalty units for each day that the offence continues, or	16 17 18 19
	(b) in the case of a natural person—1,000 penalty units or imprisonment for 5 years, or both, and, in the case of a continuing offence, a further penalty of 100 penalty units for each day that the offence continues.	20 21 22 23
[2]	Section 5	24
	Omit the penalty for mining in contravention of the section. Insert instead:	25
	Maximum penalty for mining in contravention of this section:	26
	(a) in the case of a corporation—10,000 penalty units, and, in the case of a continuing offence, a further penalty of 1,000 penalty units for each day that the offence continues, or	27 28 29 30
	(b) in the case of a natural person—2,000 penalty units or imprisonment for 5 years, or both, and, in the case of a continuing offence, a further penalty of 200 penalty units for each day that the offence continues.	31 32 33 34

[3] Section 6 Unauthorised carrying out of mining purposes	1
Omit the penalty to section 6 (1). Insert instead:	2
Maximum penalty:	3
(a) in the case of a corporation—10,000 penalty units, and, in the case of a continuing offence, a further penalty of 1,000 penalty units for each day that the offence continues, or	4
	5
	6
	7
(b) in the case of a natural person—2,000 penalty units or imprisonment for 5 years, or both, and, in the case of a continuing offence, a further penalty of 200 penalty units for each day that the offence continues.	8
	9
	10
	11
[4] Section 12B Stealing minerals	12
Omit the penalty to the section. Insert instead:	13
Maximum penalty:	14
(a) in the case of a corporation—10,000 penalty units, or	15
(b) in the case of a natural person—2,000 penalty units or imprisonment for 5 years, or both.	16
	17
[5] Section 12C Fraudulent removal and concealment of minerals by employees	18
	19
Omit the penalty to the section. Insert instead:	20
Maximum penalty:	21
(a) in the case of a corporation—10,000 penalty units, or	22
(b) in the case of a natural person—2,000 penalty units or imprisonment for 5 years, or both.	23
	24
[6] Section 12D Fraudulent removal and concealment of minerals by partners	25
	26
Omit the penalty to the section. Insert instead:	27
Maximum penalty:	28
(a) in the case of a corporation—10,000 penalty units, or	29
(b) in the case of a natural person—2,000 penalty units or imprisonment for 5 years, or both.	30
	31
[7] Section 240C Breach of direction	32
Omit the penalty to the section. Insert instead:	33
Maximum penalty:	34
(a) in the case of a corporation—10,000 penalty units, and, in the case of a continuing offence, a further penalty of	35
	36

1,000 penalty units for each day that the offence continues, or	1 2
(b) in the case of a natural person—2,000 penalty units, and, in the case of a continuing offence, a further penalty of 200 penalty units for each day that the offence continues.	3 4 5
[8] Section 248S Offences	6
Omit the penalty to the section. Insert instead:	7
Maximum penalty:	8
(a) in the case of a corporation—10,000 penalty units, and, in the case of a continuing offence, a further penalty of 1,000 penalty units for each day that the offence continues, or	9 10 11 12
(b) in the case of a natural person—2,000 penalty units, and, in the case of a continuing offence, a further penalty of 200 penalty units for each day that the offence continues.	13 14 15
[9] Section 291 Payment of royalty	16
Omit the penalty to section 291 (1A). Insert instead:	17
Maximum penalty:	18
(a) in the case of a corporation—10,000 penalty units, and, in the case of a continuing offence, a further penalty of 1,000 penalty units for each day that the offence continues, or	19 20 21 22
(b) in the case of a natural person—2,000 penalty units or imprisonment for 12 months, or both, and, in the case of a continuing offence, a further penalty of 200 penalty units for each day that the offence continues.	23 24 25 26
[10] Section 378A Obstruction	27
Omit the penalty to the section. Insert instead:	28
Maximum penalty:	29
(a) in the case of a corporation—10,000 penalty units, or	30
(b) in the case of a natural person—2,000 penalty units.	31

[11] Section 378D Contravention of condition of authorisation—offence by holder	1 2
Omit the penalties for a condition of a kind referred to in Part 1 of Schedule 7 from section 378D (1) and (2).	3 4
Insert instead:	5
Maximum penalty if the condition is of a kind referred to in Part 1 of Schedule 7:	6 7
(a) in the case of a corporation—10,000 penalty units, and, in the case of a continuing offence, a further penalty of 1,000 penalty units for each day that the offence continues, or	8 9 10 11
(b) in the case of a natural person—2,000 penalty units, and, in the case of a continuing offence, a further penalty of 200 penalty units for each day that the offence continues.	12 13 14
[12] Section 378D	15
Omit the penalty for a condition not of a kind referred to in Part 1 of Schedule 7 from section 378D (1) and (2).	16 17
Insert instead:	18
Maximum penalty if the condition is not of a kind referred to in Part 1 of Schedule 7:	19 20
(a) in the case of a corporation—2,000 penalty units, and, in the case of a continuing offence, a further penalty of 200 penalty units for each day that the offence continues, or	21 22 23 24
(b) in the case of a natural person—200 penalty units, and, in the case of a continuing offence, a further penalty of 50 penalty units for each day that the offence continues.	25 26 27
[13] Section 378D (3)	28
Insert after section 378D (2):	29
(3) In imposing a penalty under this section for a contravention of a condition of a kind referred to in Part 1 of Schedule 7, the court is to take into consideration the following (so far as they are relevant):	30 31 32 33
(a) the extent of the harm caused or likely to be caused to the environment by the commission of the offence,	34 35
(b) the practical measures that may be taken to prevent, control, abate or mitigate that harm,	36 37

(c)	the extent to which the person who committed the offence could reasonably have foreseen the harm caused or likely to be caused to the environment by the commission of the offence,	1 2 3 4
(d)	the extent to which the person who committed the offence had control over the causes that gave rise to the offence,	5 6
(e)	any other matters the court considers relevant.	7
[14]	Section 378H Proceedings for offences	8
	Omit “Division 1 of Part 2” from section 378H (1) (a).	9
	Insert instead “Division 1 or 2 of Part 2 or section 291”.	10
[15]	Section 378H (2) (b)	11
	Omit “200 penalty units”. Insert instead “2,000 penalty units”.	12
[16]	Schedule 7 Offences	13
	Insert “238, 239,” after “168A,” in Part 1.	14
2.3	Petroleum (Onshore) Act 1991 No 84	15
[1]	Section 7 Offence of prospecting or mining without authority	16
	Omit the penalty for prospecting in contravention of the section. Insert instead:	17
	Maximum penalty for prospecting in contravention of this section:	18 19
	(a) in the case of a corporation—5,000 penalty units, and, in the case of a continuing offence, a further penalty of 500 penalty units for each day that the offence continues, or	20 21 22 23
	(b) in the case of a natural person—1,000 penalty units or imprisonment for 5 years, or both, and, in the case of a continuing offence, a further penalty of 100 penalty units for each day that the offence continues.	24 25 26 27
[2]	Section 7	28
	Omit the penalty for mining in contravention of the section. Insert instead:	29
	Maximum penalty for mining in contravention of this section:	30
	(a) in the case of a corporation—10,000 penalty units, or	31
	(b) in the case of an individual—2,000 penalty units or imprisonment for 5 years, or both.	32 33

[3] Section 77 Direction to comply with conditions of petroleum title	1
Omit the penalty. Insert instead:	2
Maximum penalty:	3
(a) in the case of a corporation—10,000 penalty units, or	4
(b) in the case of an individual—2,000 penalty units.	5
[4] Section 136 Other offences	6
Omit the penalties from section 136 (1) and (2). Insert instead:	7
Maximum penalty:	8
(a) in the case of a corporation—10,000 penalty units, or	9
(b) in the case of an individual—2,000 penalty units.	10
[5] Section 136A Contravention of conditions of title	11
Omit the penalty to section 136A (1). Insert instead:	12
Maximum penalty:	13
(a) if the condition of the title is identified as a condition related to environmental management:	14 15
(i) in the case of a corporation—10,000 penalty units, or	16 17
(ii) in the case of an individual—2,000 penalty units, or	18
(b) in any other case—2,000 penalty units.	19
[6] Section 136A (3)	20
Insert after section 136A (2):	21
(3) In imposing a penalty for a contravention of or failure to comply with a condition identified as a condition related to environmental management, the court is to take into consideration the following (so far as they are relevant):	22 23 24 25
(a) the extent of the harm caused or likely to be caused to the environment by the commission of the offence,	26 27
(b) the practical measures that may be taken to prevent, control, abate or mitigate that harm,	28 29
(c) the extent to which the person who committed the offence could reasonably have foreseen the harm caused or likely to be caused to the environment by the commission of the offence,	30 31 32 33

(d)	the extent to which the person who committed the offence had control over the causes that gave rise to the offence,	1 2
(e)	any other matters the court considers relevant.	3
[7]	Section 137	4
	Omit the section. Insert instead:	5
137	Proceedings for offences	6
(1)	Proceedings for an offence against this Act or the regulations are, except as provided by this section, to be dealt with summarily by:	7 8
(a)	the Land and Environment Court, or	9
(b)	the Local Court.	10
(2)	If proceedings for an offence against this Act or the regulations are brought in the Local Court:	11 12
(a)	the maximum period of imprisonment that the Court may impose is 12 months, and	13 14
(b)	the maximum monetary penalty that the Court may impose is 2,000 penalty units.	15 16
(3)	Proceedings against an individual for an offence of mining in contravention of section 7 may be taken on indictment.	17 18