

## Queensland



### Regulatory Impact Statement for SL 2003 No. 174

#### *Mineral Resources Act 1989*

## MINERAL RESOURCES REGULATION 2003

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### BACKGROUND

The *Statutory Instruments Act 1992* states that subordinate legislation expires on 1 September first occurring after the tenth anniversary of the day of its making. The purpose of this event is to reduce substantially the regulatory burden, to ensure that subordinate legislation is relevant, and to ensure that legislation is of the highest standard. The *Mineral Resources Regulation 1990* came into force in 1990. Under the terms of the *Statutory Instruments Act 1992*, the *Mineral Resources Regulation 1990* was due to expire in 2000, but it has been extended to 1 September 2003.

The *Mineral Resources Act 1989* (the Act) is the primary legislation and the *Mineral Resources Regulation 1990* is the subordinate legislation. Together, they provide the legal basis for the Queensland Government to administer mining policy in the State. For example, mining related royalties in Queensland are administered under the *Mineral Resources Act 1989* with the royalty rates listed in Schedule 1 of the *Mineral Resources Regulation 1990*.

An examination of the *Mineral Resources Regulation 1990* has identified several possible amendments. These are listed in Attachment 1. As can be seen, these amendments are essentially relatively minor, of a housekeeping nature, and are designed to improve the operation of the new regulations. The proposed amendments do not involve any significant policy changes. Importantly, no changes are proposed to mineral royalty rates. The proposed amendments result from consequential changes to other legislation and from the operational experience of Mining Registrars and other staff of the Department of Natural Resources and Mines in their dealings with

miners and mining companies in administering the *Mineral Resources Regulation 1990* over the last twelve years.

It should be noted that the review of mineral royalty rates and tenure rentals is outside the scope of this Regulatory Impact Statement (RIS), even though mineral royalty rates are prescribed in the *Mineral Resources Regulation 1990*. The Department of Natural Resources and Mines has a separate process to periodically evaluate and set royalty rates for all minerals. This process involves the preparation of a RIS and consultations with all relevant stakeholders. As an example, the Department of Natural Resources and Mines recently publicly released for comment a RIS for the review of nickel and cobalt royalty rates.

Similarly, the various prescribed fees in Schedule 2 of the *Mineral Resources Regulation 1990* are not being reviewed in the remake of the Regulation because they are reviewed annually, in a separate process, by the Department of Natural Resources and Mines in consultation with Queensland Treasury.

By way of background, subordinate legislation is legislation made by an entity, for example, the Governor in Council, under power delegated by Parliament to the entity by an enabling provision in an act.

Power is commonly delegated:

- To save pressure on parliamentary time; or
- When the legislation is too technical or detailed to be suitable for parliamentary consideration; or
- To deal with rapidly changing or uncertain situations; or
- To allow for swift action in the case of an emergency.

Subordinate legislation includes regulations, proclamations and other statutory instruments declared to be subordinate legislation by an act or a regulation under the *Statutory Instruments Act 1992*. For an understanding of what instruments are subordinate legislation, see sections 6 to 9 of the *Statutory Instruments Act 1992* and the *Statutory Instruments Regulation 1992*.

The *Mineral Resources Regulation 1990* is an important piece of subordinate legislation which is generally well received and understood by the industry and other stakeholders. It provides certainty and predictability in dealings with the Government and the Department of Natural Resources and Mines, which administers the legislation. It is functioning well and there has been no adverse feedback from the industry or community groups

on the fundamental principles of the Regulation. However, that is not to say that amendments to improve the Regulation should not be made from time to time.

The following stakeholders were consulted in the preparation of this Regulatory Impact Statement.

#### Government

- Business Regulation Reform Unit
- Queensland Treasury
- The Office of Rural Communities
- Department of Aboriginal and Torres Strait Islander Policy
- Native Title Services Unit of the Department of Natural Resources and Mines

#### Non-Government

- Queensland Mining Council
- Queensland Conservation Council
- Local Government Association
- Queensland Council of Unions
- North Queensland Miners' Association
- Quilpie Boulder Opal Association
- Agforce
- Queensland Sapphire Producers Association

No objections have been raised to either the proposed remake of the *Mineral Resources Regulation 1990* or the proposed amendments. The Queensland Mining Council provided written comments supporting the proposed amendments, and also offered drafting suggestions. Several organisations said they may comment, or provide additional comments, in the 28 days the RIS is available for public comment.

The Queensland Mining Council has raised other amendments with the Department of Natural Resources and Mines that it would like made to the *Mineral Resources Act 1989* and the *Mineral Resources Regulation 1990*. It should be noted that the Department of Natural Resources and Mines is also conducting a review of the *Mineral Resources Act 1989*. This will involve consultation with stakeholders. Any amendments to the Act are likely to require consequential amendments to the remake *Mineral*

*Resources Regulation 2003*. If changes are to be progressed, further consultation will occur.

## **AUTHORISING LAW**

Section 417(1) of the *Mineral Resources Act 1989* provides that the Governor in Council may make regulations under this Act.

## **POLICY OBJECTIVES**

The main objective of the *Mineral Resources Act 1989* is ‘to provide for the assessment, development and utilisation of mineral resources to the maximum extent practicable consistent with sound economic and land use management’.

Section 2 of the *Mineral Resources Act 1989* sets out the other main objectives of the legislation. These include, inter alia:

- To ensure an appropriate financial return to the State from mining [section 2(e)].
- To provide an administrative framework to expedite and regulate prospecting and exploring for and mining of minerals [section 2(f)].

Section 417(2) of the *Mineral Resources Act 1989* sets out the regulation making powers of the Act.

The *Mineral Resources Regulation 1990*:

- Prescribes the fees, charges and royalties payable on tenures issued and minerals mined.
- Describes Restricted Areas.
- Prescribes conditions for prospecting permits, mining claims, exploration permits, mineral development licences and mining leases.
- Prescribes the way in which information regarding mining tenures is recorded.

Information is provided on restricted areas. Section 63 of the *Mineral Resources Regulation 1990* specifies that restrictions might be imposed on

prospecting permits, mining claims, exploration permits, mineral development licences and mining leases (or applications therefore) in accordance with Schedule 4 Part 1 to the Regulation.

Briefly summarised, the restrictions that may be imposed on land within a restricted area include the following:

(1) A restriction that applications for, or grant of, prospecting permits, mining claims, exploration permits, mineral development licences or mining leases are prohibited within a restricted area. Restricted areas of this kind are used to “protect” areas such as dam sites where mining would not be in the public interest. This kind of restricted area is also used to protect areas of environmental significance which are not part of National Parks or Environmental Parks.

(2) A restriction that the grant of a prospecting permit, mining claim, exploration permit, mineral development licence or mining lease must not be over an area that exceeds the area specified as a ‘restricted area’ in Schedule 4 Part 2. Such restricted areas are used in areas such as the central Queensland gem fields to ensure that resources are not “locked up” by the grant of large area tenures which may take many years to mine.

In Schedule 4 Part 2 it can be seen that the *Mineral Resources Regulation 1990* enables the Government and the Department of Natural Resources and Mines to meet the objectives of the *Mineral Resources Act 1989* and effectively administer the mining industry in Queensland. It is an integral part of the *Mineral Resources Act 1989*. The *Mineral Resources Regulation 1990* quantifies the amount of royalty to be paid. Therefore, if the Regulation ceased to exist the Government would not practicably be able to collect mining royalties for the betterment of the State. In addition, it would not be able to issue new mining permits because the fees payable are prescribed in the Regulation. The Regulation states that a new mining permit cannot be issued unless the prescribed fee is paid.

Royalties are payments to the owners of a resource for the use of that resource. The ownership of onshore mineral resources in Queensland is vested largely in the State Government. As noted above, one of the main objectives of the *Mineral Resources Act 1989* is to ensure an appropriate financial return to the State from mining.

The Department of Natural Resources and Mines (previously the Department of Mines and Energy), collects State mineral royalties under the *Mineral Resources Act 1989*, as prescribed in the *Mineral Resources Regulation 1990*.

The regulation is essential for the functioning of the *Mineral Resources Act 1989*.

## **LEGISLATIVE INTENT**

As noted above, the *Mineral Resources Regulation 1990* provides the Government with the legislative means to administer the mining industry in Queensland and to also collect mining royalties, thereby promoting the development of the State's resources and the interests of Queenslanders. The *Mineral Resources Regulation 1990* supports the *Mineral Resources Act 1989*.

The main objective of the *Mineral Resources Act 1989* is 'to provide for the assessment, development and utilisation of mineral resources to the maximum extent practicable consistent with sound economic and land use management'. The *Mineral Resources Regulation 1990* is the means to achieve this objective.

## **CONSISTENCY WITH THE AUTHORISING LAW**

The main objective of the *Mineral Resources Act 1989* is 'to provide for the assessment, development and utilisation of mineral resources to the maximum extent practicable consistent with sound economic and land use management'.

The proposed *Mineral Resources Regulation 2003* is consistent with the authorising legislation.

## **CONSISTENCY WITH OTHER LEGISLATION**

The proposed *Mineral Resources Regulation 2003* is not inconsistent with other legislation.

## **OPTIONS AND ALTERNATIVES**

The following options have been considered.

**Option 1 – do nothing**

Under this option the *Mineral Resources Regulation 1990* would lapse on 1 September 2003.

**Option 2 – remake the regulation with no change**

Under this option the *Mineral Resources Regulation 1990* would be remade in its current form.

**Option 3 – remake the regulation with minor amendments**

Under this option the *Mineral Resources Regulation 1990* would be remade with some minor amendments so that, in general terms, the existing arrangements continue.

**COST BENEFIT ASSESSMENT****Option 1 - do nothing**

This option would result in significant adverse impacts on the Government, the industry and other stakeholders.

Because part of the legislative framework would be missing, mining exploration and development in the State would gradually grind to a halt, with consequent adverse economic and employment impacts.

The Regulation prescribes the royalty rate. Accordingly, if the Regulation did not exist, the royalty rates would not be prescribed and the Government would be unable to collect mining royalty and rent receipts and fees for mining tenures.

If the Regulation ceased to exist then the Restricted Areas would cease to exist. As noted previously, Restricted Areas serve an important community role by, inter alia, controlling where mining exploration and development can occur (for example, areas around dam sites are protected from mining exploration and development) and preventing mining tenure applicants 'locking up' land which could remain unproductive for a long time.

**Summary**

In summary, the Department of Natural Resources and Mines believes that the potential environmental, economic and administrative costs outweigh any benefits of Option 1. This is not a viable option.

## Option 2 - remake the regulation with no change

### Benefits

#### Revenue to State continues

The Government, on behalf of the community, will continue to receive about \$740m per annum in mining royalty and rent receipts for the use of a community owned resource. The Government would also continue to collect about \$121,000 per annum in fees for mining tenures.

#### Development of the industry continues

The Government will be able to continue to effectively administer the development of the mining industry in Queensland. By way of background, the *Mineral Resources Act 1989* provides that a fee must accompany a mining application. The fees are prescribed in the Regulation. Accordingly, if the Regulation continued to exist, fees could be paid to lodge a new mining tenure. Therefore, new mining tenures could be applied for and issued.

Among other matters, the Regulation provides where and how applications for mining tenures must be made, as well as specifying office hours to lodge applications. Mining applicants will be able to continue to lodge mining applications. In addition, effective land use management would also continue.

#### Economic benefits to Queensland continue

A study prepared for the Department of Natural Resources and Mines shows, inter alia, that:

- The minerals and processing industries make a significant contribution to the Queensland economy. In summary, the mining and minerals processing sectors currently contribute around 10.2% of Gross State Product, or about \$9.4 billion per year in Queensland. Together, Queensland's mining and minerals processing industries directly and indirectly generate almost 93,000 full-time equivalent jobs throughout Australia, including some 86,000 in Queensland. This represents about 7.2% of total (full-time and part-time) employment in the State.
- Every \$1 million spent by mining companies supports 27 jobs in the State.
- One in every 10 dollars of Gross State Product and one in every 14 jobs depends on mining and minerals processing.

- The mining and minerals processing sectors presently contribute around 34% of Queensland's total investment in research and development.
- The mining industry presently accounts for about 17% of all capital expenditure in Queensland.

Under this option, these benefits to Queensland will continue.

#### Regions benefit

The study referred to above found that:

- Mining has become almost as important as agriculture to employment in remote areas, having reached 85% of the level of employment in agriculture by 1996.
- In Central Queensland, nearly one in every four jobs depends on mining and minerals processing.
- For every dollar earned by a miner, around 56 cents is spent where he or she resides.

Regional communities benefit from mining operations in several ways. Mining operations generally source some of their requirements from the local town. The miners also spend money in the town. The multiplier effect of this spending can provide a significant benefit to the region.

Under this option regional areas of the State will continue to benefit from mining activities.

#### Restricted Areas continue

The continuation of Restricted Areas will provide social and economic benefits to the community. Controls will continue to exist on where mining developments could occur. For example, restrictions on mining activity around dam sites will provide a health and safety benefit to the community by ensuring the water does not become polluted, and also ensuring the integrity of the structure.

In addition, restrictions on 'locking up' tenures will continue, thus avoiding excessive control of tenures by individual applicants. This will benefit the community by promoting exploration and development. This is likely to lead to the creation of new jobs.

#### Prescribed conditions continue

The Regulation prescribes conditions which the tenure holder must comply with. These conditions include:

- Specify which roads on occupied land are to be used.
- That precautions are to be taken to ensure there is no dispersal of parthenium weed or the seed of any other declared plant within the meaning of the *Rural Lands Protection Act 1985*.
- That access to the occupied land is at points designated by the mining registrar.
- Animals are to be restrained, unless the prior consent of the landowner has been obtained and that consent has been lodged with the mining registrar.
- Firearms are not to be discharged with the prior consent of the landowner has been obtained and that consent has been lodged with the mining registrar.
- A ban on the lighting of open fires with the prior consent of the landowner has been obtained and that consent has been lodged with the mining registrar.
- For unoccupied land – must ensure rubbish and human waste is disposed of in a safe and sanitary way (proposed to be deleted as this responsibility now falls under the *Environmental Protection and Other Legislation Amendment Act 2000*).

These are essential conditions to meet basic health and safety requirements, and for land management.

## **Costs**

### Revenue cost to industry

The main cost will be on the mining industry, which will continue to pay about \$740m per annum in mining royalties and rents to the Government. In addition, mining applicants will also continue to pay about \$121,000 per annum in fees for mining tenures.

### Summary

In summary, the Department of Natural Resources and Mines believes that the above analysis indicates that the potential environmental, economic and administrative benefits outweigh the potential economic costs. The analysis suggests that this is a viable option.

### Option 3 – remake the regulation with minor amendments

This option is similar to Option 2 above. However, in addition to the costs and benefits outlined for Option 2 above, costs and benefits associated with some proposed amendments have been identified.

An examination of the Mineral Resources Regulation 1990 has identified several possible amendments. These are listed in Attachment 1. As can be seen, these amendments are essentially relatively minor and of a housekeeping nature. The proposed amendments do not involve any significant policy changes. Importantly, no changes are proposed to mineral royalty rates.

In brief, the amendments:

1. Remove references to environmental matters following the transfer of the environmental function to the Environmental Protection Agency in 2001.
2. Reflect the current numbering in the *Mineral Resources Act 1989*. Sections of the *Mineral Resources Act 1989* were deleted and renumbered following the enactment of the *Environmental Protection and Other Legislation Amendment Act 2000*. This amendment aligns the numbering in the *Mineral Resources Act 1989* and the *Mineral Resources Regulation 1990*.
3. Remove references to the Warden's Court. The *Land and Resources Tribunal Act 1999* abolished the Warden's Court. This amendment makes the necessary adjustments to the Mineral Resources Regulation 1990.
4. Prescribes a fee of \$14.20 for an application to add a mineral to a Mineral Development Licence. The *Mineral Resources Act 1989* provides for a holder of a Mineral Development Licence to add a mineral to the licence. The Act requires a fee, but none has been prescribed. This amendment ensures consistency with the prescribed fee of \$14.20 to add a mineral to a Mining Lease.
5. Recognise Exploration Permits and Mineral Development Licences in the survey process to agree with the corresponding provisions contained in the *Mineral Resources Act 1989* for the survey of mining tenements.

Amendment 4 will require applicants to pay a new fee of \$14.20 per application to add a new mineral to a Mineral Development Licence. In 2001-02, application fees for all tenures totalled about \$42,500. Therefore,

the cost to applicants of this new application fee for one particular type of tenure is considered to be negligible. However, the community would receive some benefit, as the proposed new fee will help to offset the costs of processing.

### Summary

Option 3 is the preferred option. This option combines the benefits of Option 2 with the benefits of the proposed amendments.

## **FUNDAMENTAL LEGISLATIVE PRINCIPLES**

The proposed *Mineral Resources Regulation 2003* is consistent with fundamental legislative principles.

## **NATIONAL COMPETITION POLICY**

National competition policy (NCP) principles seek to ensure, to the maximum practical extent possible, that a level playing field exists in order to foster competition.

Queensland Treasury has advised that the proposed *Mineral Resources Regulation 2003* is consistent with NCP principles.

## **RISK ASSESSMENT**

The main risks that the Government wishes to avoid are:

1. The uncertain investment climate that would result if the *Mineral Resources Regulation 1990* lapses. It is generally accepted that industry and other stakeholders prefer a stable investment climate, with certainty and predictability arising from legislation. The cessation of the Regulation is likely to be of some concern to the mining industry because it would not have a complete legislative framework within which to operate.
2. Potential job losses from the uncertain investment climate and the inability to issue new mining tenures.

3. Potential community health and safety risks. These risks arise if the *Mineral Resources Regulation 1990* ceases to exist and, consequently, the Restricted Areas cease to exist. If this happened there would be no restrictions on mining activities near infrastructure sites, such as dams, with accompanying potential health and safety risks.
4. Potential adverse State and regional economic impacts. The above analysis notes the likely significant adverse economic and employment impacts on the State and regions if the Regulation lapses.

**ATTACHMENT 1****MINERAL RESOURCES REGULATION 1990****POSSIBLE AMENDMENTS FOR CONSIDERATION IN NEW  
REGULATION**

<b>SECTION/ ISSUE</b>	<b>TITLE</b>	<b>PROPOSED CHANGE</b>	<b>RATIONALE</b>
9(b) 12(a) 23(b) 29(b) 35(a)	Conditions	Delete.	<i>Rural Lands Protection Act 1985</i> repealed.
9(g)	Conditions	Delete “for unoccupied land”	Rubbish and human waste to be disposed of on all land, not just unoccupied land. Unoccupied land terminology is no longer used – native title.
10(2) 13(2) 24(2) 30(2)	Register	Wording after “at the office.....” to read “of the chief executive or office of the mining registrar .....	Provision should specify that searches can be conducted at any office of a mining registrar and also the office of the Chief Executive.

<b>SECTION/ ISSUE</b>	<b>TITLE</b>	<b>PROPOSED CHANGE</b>	<b>RATIONALE</b>
16	Moving datum post after survey of contiguous land	Add in (c) “exploration permit”, (d) “mineral development licence”, (g) “an application for an exploration permit” and (h) “an application for a mineral development licence”.	Provision should include reference to exploration permits and mineral development licences, which can also be surveyed under s.407 of the Act. See also s.74(1)(b) of Regs.
40	Moving datum post after survey of contiguous land	Add in (c) “exploration permit”, (d) “mineral development licence”, (g) “an application for an exploration permit” and (h) “an application for a mineral development licence”.	Provision should include reference to exploration permits and mineral development licences, which can also be surveyed under s.407 of the Act. See also s.74(1)(b) of Regs.
58	Seal of Warden’s Court	Delete	No Warden, Warden’s Court or Seal

<b>SECTION/ ISSUE</b>	<b>TITLE</b>	<b>PROPOSED CHANGE</b>	<b>RATIONALE</b>
59	Change wording of title to – “Application for issue of duplicate permits, leases etc.”	Combine (a) & (b) to read: “a duplicate prospecting permit, certificate of mining claim, instrument of exploration permit, instrument of mineral development licence or instrument of mining lease is to be made in writing to the chief executive or to the mining registrar.”	To agree with section 389 of MRA.
74	Survey Plan to be lodged with Chief Executive	In 74(1) change “300(5) to 300(7)  In dot point number 1 following the words “ Examples of a survey not complying.....” change 300(5) to 300(7)	Section 300 has been amended by renumbering.  Section 300 has been amended by renumbering
New – Need to amend Schedule 2 Part 6 – MDLs	Adding mineral to licence (s.208 of Act)	Prescribing a fee	Act requires fee but none prescribed, \$14.20 fee should apply – same as that for MLs.

## ENDNOTES

1. Laid before the Legislative Assembly on . . .
2. The administering agency is the Department of Natural Resources and Mines.