Royalty Legislation Amendment Bill 2020

Explanatory Notes

Short title

The short title of the Bill is the *Royalty Legislation Amendment Bill 2020* (the Bill).

Policy objectives and the reasons for them

The Bill amends the *Petroleum and Gas (Production and Safety) Act 2004* (Petroleum and Gas Act) and the *Petroleum and Gas (Royalty) Regulation 2004* (Petroleum and Gas Regulation) to implement a new basis for imposing petroleum royalty, and the *Mineral Resources Regulation 2013* (Mineral Resources Regulation) to make consequential changes.

The Bill amends the *Mineral Resources Act 1989* (Mineral Resources Act), Mineral Resources Regulation, Petroleum and Gas Act, Petroleum and Gas Regulation, *Taxation Administration Act 2001* (Taxation Administration Act) and *Taxation Administration Regulation 2012* (Taxation Administration Regulation) to implement the Royalty Administration Modernisation Program. Amendments will:

- improve mineral and petroleum royalty administration by applying the Taxation Administration Act to the royalty provisions of the Mineral Resources Act and the Petroleum and Gas Act; and
- make other changes to royalty administration.

To support adoption of the Taxation Administration Act for royalties, the Bill makes consequential amendments to the *Judicial Review Act 1991* (Judicial Review Act) to extend exemptions from the requirement to provide a statement of reasons for certain royalty decisions, and to the *Petroleum Act 1923*. The *Betting Tax Act 2018* and the *Payroll Tax Act 1971* are also amended to make beneficial changes to their refund provisions consistent with amendments being made for royalty administration.

Achievement of policy objectives

Petroleum royalty reform

Petroleum royalty is currently imposed based on the wellhead value of petroleum disposed of in a period, less certain deductions incurred between the wellhead and the point of disposal. Queensland's petroleum royalty regime and legislation were designed prior to the emergence of the coal seam gas (CSG) and liquefied natural gas (LNG) industries. The development of these industries in a way that does not always align with the legislation has resulted in issues for petroleum producers in interpreting and applying the legislation, and for the Office of State Revenue (OSR) in administering it. These issues principally relate to determining the wellhead value of CSG used for LNG as the CSG-LNG industry is highly vertically integrated and the first sale of CSG is generally to a related party. The deductibility of post wellhead expenses also raises issues, including when paid to related parties.

The 2019-20 State Budget announced a review of Queensland's petroleum royalty arrangements (Royalty Review) to ensure greater certainty, equity and simplicity for all parties, identify opportunities to simplify the current regime, and provide an appropriate return to Queenslanders from their valuable non-renewable resources. The Royalty Review was chaired by the Honourable Jay Weatherill, former Premier of South Australia, and commenced in October 2019.

Following consultation with petroleum industry bodies, petroleum producers, industry executives and experts, the final Royalty Review report was delivered to Government in February 2020. It recommended adoption of a volume model to replace the current wellhead value regime for CSG and further consideration of the volume model for all petroleum. Consultation with the petroleum industry was subsequently undertaken in relation to application of the volume model for other petroleum.

On 8 June 2020 the government announced its decision to adopt the volume model for petroleum royalty liability determination. The new petroleum royalty framework will commence on 1 October 2020 and apply to all petroleum produced from that date.

<u>Determination of liability</u>

From 1 October 2020 petroleum royalty liability will be determined for each royalty return period by applying the relevant royalty rate to the volume of petroleum produced by a petroleum producer in the period. The petroleum royalty rate will be determined having regard to the type of petroleum and its use. In this regard, petroleum will be classified as:

- Domestic gas – gas that is sold or otherwise transferred by a petroleum producer directly, or indirectly by the producer through one or more resellers, to a person who is not a member of an LNG project; flared, used or vented; or, if the producer is not a member of an LNG project, stored or kept in the possession of the petroleum producer or a reseller
- Supply gas – gas that is produced by a petroleum producer, other than as a member of an LNG project, and that is sold or otherwise transferred by the petroleum producer directly, or indirectly by the producer through one or more resellers, to a member of an LNG project
- Project gas – all gas that is produced by a petroleum producer as a member of an LNG project, other than domestic gas
- Liquid petroleum – all petroleum in liquid form.

All gas produced by a petroleum producer as a member of an LNG project, other than domestic gas, will be liable for petroleum royalty at the project gas rate. As determination of whether petroleum is project gas or supply gas depends on whether a petroleum producer is a member of an LNG project or sells to a member of an LNG project, respectively, the Commissioner of State Revenue (Commissioner) may decide an LNG project for petroleum royalty purposes. Broadly an LNG project can include one or more petroleum producers, and one or more persons who are relevant entities for one or more of the producers, and who are involved in a petroleum venture that involves the production of gas for conversion to LNG, and the processing, transportation, storage, conversion, sale or purchase of the gas or LNG.

As separate royalty rates apply for supply gas, a member of an LNG project that purchases gas must advise the person it purchases it from that it is a member of an LNG project. This notification need only be given once for each seller.

The royalty rate payable by a petroleum producer for each class of petroleum for a royalty return period is determined having regard to the average sales price for that petroleum for the period. Ordinarily this will be determined for a producer based on the total revenue and volume of the relevant petroleum (or, for project gas, the LNG) sold in the period. The sales value used for this purpose for domestic gas, supply gas and liquid petroleum depends on whether the sale is made by the producer, either directly or indirectly through a relevant entity reseller (reseller), to (i) a person who is not a relevant entity for the producer or (ii) a person who is a relevant entity for the producer.

Other than for project gas, if sales of gas or petroleum in liquid form are made directly, or indirectly by a petroleum producer through a reseller, to an independent buyer, the total revenue from all sales of the relevant petroleum made in the royalty return period must be taken into account for determining the average sales price for domestic gas, supply gas or liquid petroleum.

Where sales of the relevant petroleum are made directly, or indirectly by a petroleum producer through a reseller, to a person who is not an independent buyer, the benchmark price for the particular petroleum is applied to the volume of that petroleum to determine a deemed sales value for it. This deemed sales value is then taken into account for determining the average sales price for the period, together with all sales revenues from sales made to independent buyers as discussed above.

For petroleum producers who are members of an LNG project, similar principles apply but the royalty rate for project gas for a return period will be determined by reference to all sales of LNG made by members of the LNG project in the period and whether they are made to a person who is not a member of the LNG project and not a relevant entity for any LNG project member.

To ensure royalty liability can be properly determined in all cases, a benchmark price specific to each class of petroleum will instead apply as the average sales price for determining the applicable royalty rate for a petroleum producer for a return period in the following circumstances:

- The petroleum producer elects for the benchmark price to apply. Once made, this election will apply until the Commissioner approves it ending. This ensures an election cannot be made period by period to reduce royalty liability.
- No gas or petroleum in liquid form is sold to an independent buyer or, for project gas, no LNG is sold to a person who is neither a member of the LNG project of which the producer is a member of, nor a relevant entity for any member of the LNG project.
- All information to enable determination of the average sales price for the producer for a royalty return period is not provided for making as assessment. For instance, if a petroleum producer who produces domestic gas makes 10 sales of gas in a royalty return period but has information relating to only nine of those sales available, the benchmark price for domestic gas will apply for determining the applicable domestic gas royalty rate for the producer for the period.
- The Commissioner considers it appropriate for the protection of the public revenue.

A benchmark price for each class of petroleum is determined for each royalty return period.

Non-tenure holders

To support implementation of the volume model, industry sought beneficial reforms to legislatively allow a person who is involved in petroleum production, including as a joint venture participant, but who does not hold any legal interest in the petroleum tenure (non-tenure holder) to elect to be treated as a petroleum producer for all royalty related matters under the Petroleum and Gas Act.

Broadly, amendments to facilitate this will allow a non-tenure holder to elect to be taken to be a petroleum producer under the Petroleum and Gas Act, allowing it to lodge royalty returns, pay royalty and meet other royalty related obligations as if it was the petroleum producer for its elected share of petroleum produced from the tenure. As an election also affects the tenure holder's obligations, it can only be made with the tenure holder's consent and may continue to apply only with the tenure holder's agreement.

These non-tenure holder arrangements apply for royalty related matters, including the application of the Taxation Administration Act to the non-tenure holder as a taxpayer for the Taxation Administration Act. This means that rights and obligations under the Taxation Administration Act, such as review rights following the making of an assessment of royalty, liability for unpaid tax interest and penalty tax, and the obligation to keep records, apply to the non-tenure holder.

Any liabilities arising during the period an election applies will continue despite the election ending.

Petroleum royalty return lodgement

Under the Petroleum and Gas Act, petroleum producers are currently required to lodge quarterly returns if petroleum is produced, disposed of or stored in the period i.e. the obligation to lodge a quarterly return is conditional on whether petroleum has been produced, disposed of or stored in the period. This can mean a return is required for some quarterly periods but not others. An annual return is also required to reconcile annual liability.

To support implementation of the new royalty liability framework, petroleum royalty return arrangements will be simplified to move them more into line with those for mineral royalty returns, with the Petroleum and Gas Regulation prescribing the basis for lodgement. That is, the holder of a petroleum lease or authority to prospect will be required to lodge a royalty return regardless of liability, but the frequency will ordinarily depend on the type of tenure held. Producers holding petroleum leases will ordinarily be required to lodge four quarterly returns with no requirement for an annual reconciliation return as this is unnecessary under the volume model. Producers holding only authorities to prospect generally will be required to lodge an annual return on a financial year basis.

Having regard to the amount of royalty likely to be payable, an authority to prospect holder may be required to lodge quarterly returns rather than an annual return, or may be allowed to do so if they request. Similarly, having regard to the royalty payable, the Commissioner may allow a petroleum lease holder to lodge an annual return only, removing the need for the four quarterly returns.

Swap arrangements

In recognition of the particular arrangements that apply in the petroleum industry, where volumes of petroleum may be swapped by petroleum producers in particular circumstances. the Petroleum and Gas Regulation will enable the Commissioner to make a determination about how the royalty provisions apply to these swap arrangements. The determination must be published on the department's website.

Transitional and other arrangements

The following arrangements will apply to ensure proper transition to the new petroleum royalty liability framework.

- Petroleum royalty liability will be determined on the volume basis for all petroleum produced on or after 1 October 2020.
- Where petroleum is produced before 1 October 2020 but not disposed of by that date, royalty will be payable for the petroleum for the return period ending 30 September 2020.
- A petroleum producer lodging annual returns on a financial year basis will be required to lodge a transitional annual return by 31 December 2020 for the period 1 July 2020 to 30 September 2020.
- A petroleum producer lodging annual returns on a calendar year basis will be required to lodge a transitional annual return by 31 December 2020 for the period from 1 January 2020 to 30 September 2020.

- Petroleum royalty decisions for determining a component of the wellhead value of petroleum produced before 1 October 2020 may continue to be made or amended after 1 October 2020.

In addition, the provisions specifying how petroleum royalty is payable for quarterly return periods are being replaced to include provisions that are consistent with those applying for mineral royalty.

Adoption of Taxation Administration Act 2001 for mineral and petroleum royalty

The Taxation Administration Act, which is administered by OSR, provides the legislative framework for administering state taxes under the *Betting Tax Act 2018*, *Duties Act 2001*, *Land Tax Act 2010* and *Payroll Tax Act 1971*. The Taxation Administration Act includes provisions dealing with the making of assessments and reassessments, payment and recovery of tax, refunds of overpaid tax, interest and penalties where tax is underpaid, review rights, powers of investigation and other administrative matters. The Commissioner is responsible for the administration and enforcement of the tax legislation and the Taxation Administration Act.

The Mineral Resources Act and the Petroleum and Gas Act, which are also administered by OSR, impose mineral and petroleum royalty respectively. The Treasurer and Minister for Infrastructure and Planning (Minister) is responsible for this legislation to the extent it is relevant to royalties.

Since becoming responsible for royalties, OSR has progressively implemented a number of amendments to the royalty legislation to include provisions modelled on the Taxation Administration Act, including provisions dealing with interest and penalties, the making of assessments and reassessments, investigation and garnishee powers, record keeping, confidentiality, evidentiary matters and the service of documents.

However, as the Taxation Administration Act has not been fully adopted for royalty administration in the same way it applies for state taxes, there are some administrative inconsistencies between taxes and royalty, and areas where royalty payers and OSR would benefit from full adoption of the Taxation Administration Act's framework.

The Taxation Administration Act is therefore to be applied to provide a comprehensive and robust administration framework for mineral and petroleum royalty consistent with that applying for state taxes. It will do this by prescribing the royalty related provisions of the Mineral Resources Act and the Petroleum and Gas Act as revenue laws under the Taxation Administration Act. This approach of applying the Taxation Administration Act to only particular provisions of an Act is new and the definition of revenue law in section 6 of the Taxation Administration Act will therefore clarify the scope of its application to each Act being:

- for the Mineral Resources Act – chapter 11 and another provision of the Act to the extent the provision is administered by the Minister who administers the Taxation Administration Act
- for the Petroleum and Gas Act – chapter 6 and another provision of the Act to the extent the provision is administered by the Minister who administers the Taxation Administration Act.

The references to the Mineral Resources Act and the Petroleum and Gas Act include the regulations made under them, each of which applies as a revenue law on similar principles.

For administering the Taxation Administration Act, a *royalty law* is a provision of the Mineral Resources Act or the Petroleum and Gas Act (and their regulations) that is a revenue law.

In interpreting a revenue law, it must be read together with the Taxation Administration Act as if they formed one Act to provide a complete legislative framework for imposing and administering the particular revenue. Therefore, in interpreting the Mineral Resources Act and the Petroleum and Gas Act for royalty purposes, the royalty law provisions of each act must be read together with the Taxation Administration Act.

The Taxation Administration Act will not apply to the provisions of the Mineral Resources Act or the Petroleum and Gas Act that are not a royalty law.

As is the case for the state taxes, the royalty laws will continue to prescribe when and how royalty liability arises, who is liable, rates of royalty, and exemptions and concessions. Further, although the TAA applies generally to support the administration of each revenue law, there are some cases where the revenue law overrides the Taxation Administration Act if the generic Taxation Administration Act administrative provision is not appropriate. Also, administrative provisions that are specific to a particular revenue law are dealt with in that revenue law rather than in the Taxation Administration Act. This will also be the case for royalties.

To support application of the Taxation Administration Act to mineral and petroleum royalty, consequential amendments will be made to:

- the Mineral Resources Act, Petroleum and Gas Act, Mineral Resources Regulation and Petroleum and Gas Regulation to remove administrative provisions which will no longer be required because of the application of the Taxation Administration Act or to ensure the proper operation of the royalty laws in conjunction with the Taxation Administration Act;
- the Taxation Administration Act to ensure it properly applies for royalty administration;
- the Judicial Review Act to include mineral and petroleum royalties within the scope of schedule 2, sections 15 and 16.

The following summary outlines the principal changes for royalty administration on application of the Taxation Administration Act.

References to *tax*

The Taxation Administration Act currently applies for the administration of state taxes and uses defined terms such as tax, primary tax, taxpayer and tax law. For simplicity, these fundamental terms will continue to be used, amended as necessary to include royalties. Similarly, the short title of the Taxation Administration Act will not change.

Neither mineral nor petroleum royalty is a tax. Application of the Taxation Administration Act for royalty administration will not alter this position as the nature and incidence of each royalty will continue to be specified under the relevant royalty laws. For the avoidance of any doubt, this will be legislatively clarified in the Taxation Administration Act.

Commissioner of State Revenue

The Commissioner will replace the Minister as the person legislatively responsible for administration of the royalty laws.

Relevantly the legislative change of responsibility does not affect ministerial responsibilities specified under Administrative Arrangements Orders,[1] whereby the Minister has ministerial responsibility for the Mineral Resources Act and Petroleum and Gas Act to the extent each act is relevant to royalties.

Assessments

The Mineral Resources Act and the Petroleum and Gas Act currently provide for the making of assessments and reassessments of royalty liability. However, there are currently some areas of difference in policy and operation compared to state taxes which will be addressed on application of the Taxation Administration Act for royalties.

- The making of a self assessment on lodgement of a royalty return and the consequences of the deemed assessment will be formally recognised.
- The Commissioner will be empowered to make compromise assessments.
- The timeframes for reassessing royalty to increase or decrease liability will generally be aligned, subject to stated exceptions where the reassessment limitation period may be extended.
- Generally, reassessments must be made in accordance with the assessment practices and legal interpretations that applied when the original assessment was made. In practice this provision will not apply to reassessments made to give effect to an objection, review or appeal decision (each a *review decision*) under part 6 Taxation Administration Act as these reassessments will be made in accordance with the review decision.
- Reassessments necessary to give effect to a review decision must be made even if the limitation period has expired.
- Remission of penalty tax, assessed interest, royalty civil penalty and the royalty fee will be effected by reassessment.

Specific provision will also be made as necessary in the royalty laws regarding when reassessments may or must be made for a royalty valuation decision or amended royalty valuation decision.

Payments and refunds

Currently, the royalty laws allow a refund to be held for an unlimited time for application to a royalty payer's future royalty liability. In contrast, the Taxation Administration Act allows a tax refund to be held for up to 60 days.

The Taxation Administration Act refund arrangements will be modified to allow a royalty refund to be held for application to a future royalty liability for up to six months or the date the next royalty return is lodged, whichever occurs later. In addition, the Taxation Administration Act will be amended generally to allow a refund to be held for an unlimited period if a taxpayer requests it.

[1] Made under the *Constitution of Queensland 2001*.

Such a request may be made, for instance, on commencement of a duties investigation where a pre-payment of an anticipated future liability is made to reduce any unpaid tax interest accruing.

The Taxation Administration Act's windfall gains provisions will require the benefit of a royalty refund to be passed on to the person who bore the incidence of the royalty. Accordingly, where a royalty payer receives an amount as royalty from another person, they must reimburse that person for the amount of the royalty refunded by the Commissioner.

The Commissioner may enter into a payment arrangement to allow royalty to be paid later than otherwise required, including by instalments, where satisfied that requiring payment by the due date would cause significant financial hardship.

The obligation to pay small liabilities up to a prescribed amount can be waived, extinguishing the liability to pay the amount.

Interest and penalty tax

The Taxation Administration Act provides for the weekly accrual of late payment interest following the making of an assessment whereas the royalty laws provide for the daily accrual of interest in these circumstances. The Taxation Administration Act will be amended to continue this royalty specific arrangement.

Royalty payers will be entitled to the payment of interest by the Commissioner where a refund is required to be made as a result of a reassessment giving effect to a review decision or a decision by the Supreme Court under the Judicial Review Act.

Objections, reviews and appeals

On application of the Taxation Administration Act, royalty payers will have the ability to challenge a royalty assessment through an objection to the Commissioner in the first instance, followed by review by the Queensland Civil and Administrative Tribunal (QCAT) or appeal to the Supreme Court if dissatisfied with the objection decision. As is the case for taxes, a decision or conduct leading up to or forming part of the process of making an assessment will be subject to objection only through an objection to the assessment.

To recognise royalty specific matters, the Taxation Administration Act's review framework will be expanded to allow an objection against the making or amendment of a royalty valuation decision and review by QCAT or appeal to the Supreme Court where a person is dissatisfied with the objection decision. There will be no separate right of objection for an assessment to the extent it gives effect to a royalty valuation decision.

Consequential amendments will be made to part 3 Taxation Administration Act and the royalty valuation decision provisions to ensure consistency between the circumstances where reassessments may be made in relation to royalty valuation decisions and in relation to other cases where prior period liability is sought to be adjusted outside the review processes.

The Commissioner cannot be compelled to make a royalty valuation decision to the extent it would decrease the royalty liability assessed for a prior period.

This ensures the royalty valuation decision provisions cannot provide an alternative basis to the review processes to compel prior period liability adjustment. The Commissioner will nevertheless have a discretion to make a royalty valuation decision in these circumstances if satisfied it is appropriate.

In addition, a royalty valuation decision may be amended within five years of royalty becoming payable under it. This period will also be subject to extension on a similar basis to that applying for making reassessments i.e. a royalty valuation decision may be amended after this time if an investigation commences or a request for an amendment is received within the five year period. Where a royalty valuation decision is amended, any reassessment necessary to give it effect must be made, even if the limitation period has then expired.

A decision not to amend a royalty valuation decision will be non-reviewable. This recognises that, where a person is dissatisfied with a royalty valuation decision, an objection is the appropriate basis for reviewing it. The Commissioner will nevertheless have a discretion to amend a royalty valuation decision outside this formal review process if satisfied it is appropriate.

Where a review of a royalty valuation decision or amended royalty valuation decision is successful, any reassessment necessary to give it effect must be made. This means that, if a person is dissatisfied with a gross value royalty decision under the Mineral Resources Regulation that applies for multiple return periods, they may lodge an objection against the decision. Assessments of royalty liability may be made while the objection is being decided. However, if the objection is allowed and the gross value for the mineral is reduced as a result, reassessments to reflect the objection decision must be made for any return periods to which the decision applies.

Consistent with the requirement applying for taxes under the Taxation Administration Act, any royalty and late payment interest outstanding for an assessment must be paid before commencing a QCAT review or Supreme Court appeal for the assessment. This requirement will not apply for commencing a review or appeal in relation to the making or amendment of a royalty valuation decision.

Consequential amendments to the Judicial Review Act will reflect the Taxation Administration Act's application for royalty and the availability of the Taxation Administration Act's review rights. Currently Schedule 2 sections 15 and 16 of the Judicial Review Act exclude certain tax related decisions from the requirement to provide a statement of reasons. The same types of royalty decisions will also be excluded.

Confidentiality

On application of part 8 Taxation Administration Act, royalty information that is personal confidential information within the meaning of the Taxation Administration Act will be exempt from disclosure under schedule 3 section 12 of the *Right to Information Act 2009* in the same way taxpayer personal confidential information is presently exempt from disclosure under that Act.

Enforcement and legal proceedings

On application of the Taxation Administration Act for royalty, legal proceedings may be brought in the name of the Commissioner and the full range of evidentiary provisions will apply, including provisions dealing with the validity of assessments.

The time for commencing offence proceedings will be five years after the commission of the offence. This provides greater certainty for royalty payers and OSR compared to currently where, for example, the Petroleum and Gas Act allows proceedings to commence within two years of the offence coming to the Minister's notice. Where a person is convicted of an offence, the court may order compliance with a royalty related obligation. The Taxation Administration Act will also make clear a person's responsibility for the acts and omissions of their representatives.

Private royalty

The Mineral Resources Act specifies to whom mineral royalty is payable, being either the state or another person where the mineral is not the property of the state (private royalty).

Certain Taxation Administration Act provisions are relevant for administering private royalty, including part 3 which sets out the basis for determining the total royalty payable under the Mineral Resources Act through the assessment and reassessment processes. However, there are some Taxation Administration Act provisions which should not apply in relation to private royalty amounts, including the unpaid tax interest and royalty penalty provisions, and other provisions which have no relevance for private royalty liability.

The basis on which the Taxation Administration Act applies for administering private royalty will be clarified as necessary to ensure rights, obligations and consequences are clear. For instance, although an assessment under part 3 Taxation Administration Act will determine the total royalty payable under the royalty laws, the amount payable to the state and on which unpaid tax interest may be payable will be specified in the assessment notice. Where the amount of royalty assessed as payable to the state as opposed to the private royalty recipient is subsequently determined to be incorrect even though the total royalty liability assessed is unchanged, a reassessment may be made under part 3 Taxation Administration Act to change the basis on which the liability is assessed.

Royalty operations

The Mineral Resources Act also provides for the formation of mining operations comprising one or more mining tenures held by one or more tenure holders. Practically, all mineral royalty interactions are with a mining operation, which is the basis for calculating mineral royalty, lodging returns and determining liability for all mining tenures.

On application of the Taxation Administration Act to mineral royalty, it is necessary to ensure the TAA provisions apply appropriately in the context of a mining operation. The Taxation Administration Act is therefore being amended to include a new part 11B to recognise mining operations and clarify the application of certain Taxation Administration Act provisions. In all other respects, the rights and obligations of taxpayers under the Taxation Administration Act continue to apply to each tenure holder of the mining tenures which comprise the mining operation, as each tenure holder of a mining tenure is a taxpayer for Taxation Administration Act purposes.

Transitional arrangements

The Taxation Administration Act will not apply to liability for royalty arising, or acts or omissions occurring, before the commencement date of the Bill where that would affect the substantive rights, liabilities or obligations of a royalty payer. The provisions of the royalty laws as in force at the relevant time will continue to apply in these cases. Examples include provisions governing the making of assessments and reassessments, and the imposition of unpaid royalty interest and royalty penalty.

However, provisions of the Taxation Administration Act of an administrative nature will apply from the commencement date of the Bill regardless of whether or not the relevant liability for royalty arose, or the relevant act or omission occurred, before or after that date. This will enable the new administrative arrangements to apply as broadly as possible.

Further, review rights under part 6 Taxation Administration Act may be exercised in relation to any assessment, reassessment, royalty valuation decision or amended royalty valuation decision made from commencement, including where the relevant royalty liability arose before commencement. For instance, where an assessment of royalty liability is made under the Mineral Resources Act post commencement in relation to royalty liability arising pre commencement, part 6 Taxation Administration Act will provide a right of objection against the assessment made.

Alternative ways of achieving policy objectives

The policy objectives of the Bill can only be achieved by legislative amendment.

Estimated cost for government implementation

All implementation costs are expected to be met from within existing budget allocations.

Consistency with fundamental legislative principles

The Bill is generally consistent with fundamental legislative principles.

In relation to application of the Taxation Administration Act to royalties, the Taxation Administration Act is longstanding legislation that has applied for administering state tax legislation since 2002 and is being applied for royalty administration with limited change to existing provisions.

Potential fundamental legislative principle issues are discussed below.

Transitional regulation making power

The Bill contains transitional provisions for adoption of the Taxation Administration Act for royalties and the petroleum royalty reforms. However, in implementing the changes made by the Bill to apply the Taxation Administration Act and implement the new petroleum royalty regime, situations may be identified where further transitional or savings provisions are required.

The Bill therefore provides that transitional regulations may be made which will facilitate proper transition from the existing provisions of the royalty laws to the new arrangements. Transitional regulations may operate retrospectively from as early as the commencement day for the Bill. A transitional regulation and the power to make these regulations will expire two years after the commencement of the Bill.

Other provisions

The remaining provisions of the *Royalty Legislation Amendment Bill 2020* are not considered to raise fundamental legislative principle issues.

Consultation

Given its significance in relation to total petroleum royalty payable, the Royalty Review initially focused on development of a new royalty framework for CSG. A consultation paper on the volume model was provided to all 66 Queensland petroleum producers in November 2019 inviting them to provide any comments addressing the objectives of the Royalty Review and the volume model.

The Review chair met with senior executives from petroleum producers and the three large LNG projects representing domestic and export petroleum producers. A working group that included the Australian Petroleum Production and Exploration Association (APPEA), the Queensland Resources Council (QRC) and OSR convened on several occasions to assist the Royalty Review. In addition, a technical sub-group that included petroleum producers was formed to discuss, analyse and model options.

Following finalisation of the Royalty Review report, consultation was also undertaken with non-CSG producers regarding application of the volume model to that sector.

Following public announcement on 8 June 2020 of the intention to implement the volume model for petroleum royalty from 1 October 2020, OSR undertook further consultation on implementation issues. This included provision of a consultation paper published on the Queensland Treasury website which gave APPEA, QRC and all petroleum royalty payers an opportunity to provide written submissions. It also included discussions with representatives of key petroleum royalty payers covering all types of petroleum. Information obtained and submissions received during this consultation was taken into account in settling the Bill. A written response to all submissions will be provided on passage of the Bill.

Consultation on the Royalty Administration Modernisation Program was undertaken with the mining and petroleum resources industry through APPEA and QRC. This included provision of a consultation paper and discussion with industry representatives through OSR's Resource Consultative Committee.

In addition, the consultation paper was published on the Queensland Government's *Get Involved* website and was provided directly to all mineral and petroleum royalty payers and other representative bodies and interested parties. All responses have been considered in settling the policy position adopted and a written response to all submissions will be provided on passage of the Bill.

Consistency with legislation of other jurisdictions

The approach being taken by Queensland in applying its taxation administration legislation to royalty administration is consistent with the approach taken by New South Wales, which applied its *Taxation Administration Act 1996* to royalty administration in 2014.

Notes on provisions

Part 1 Preliminary

Clause 1 provides that the Bill, when enacted, may be cited as the *Royalty Legislation Amendment Act 2020*.

Clause 2 provides for the commencement of the Bill.

Part 2 Amendment of Betting Tax Act 2018

Clause 3 provides that part 2 amends the *Betting Tax Act 2018*.

Clause 4 amends section 56 to insert new section 56(3A) to provide the Commissioner may hold a relevant refund amount for any period and apply the relevant refund amount for any purpose at the betting operator's request or with their consent.

Part 3 Amendment of Judicial Review Act 1991

Clause 5 provides that part 3 amends the *Judicial Review Act 1991*.

Clause 6 amends section 3 to insert a defined term *royalty*.

Clause 7 amends sections 15 and 16 of schedule 2 to include decisions relating to royalty as decisions for which reasons need not be given.

Part 4 Amendment of Mineral Resources Act 1989

Clause 8 provides that part 4 amends the *Mineral Resources Act 1989*.

Clause 9 omits the chapter 11, part 1 heading.

Clause 10 inserts a new section 319 which declares that chapter 11 Mineral Resources Act does not contain all the provisions about mineral royalty, noting the application of the Taxation Administration Act. Under section 3(3) of the Taxation Administration Act, the provisions of the Mineral Resources Act that are a revenue law must be read together with the Taxation Administration Act as if they formed a single Act.

Clause 11 amends section 320 by replacing a reference to the *Minister* with a reference to the *revenue commissioner* as the responsible entity for mineral royalty administration. New section 320(9) provides that a regulation may prescribe when mining of minerals under one or more authorities is taken to be a mining operation. A mining operation may therefore arise in two circumstances, under section 320(8) where the Commissioner makes such a determination or as now contemplated by new section 320(9), when the circumstances prescribed under a regulation are satisfied.

Clause 12 amends section 321A by inserting new subsections providing that a regulation may provide for the Commissioner to remit, either in whole or part, the civil penalty and to declare for section 59 of the Taxation Administration Act purposes that the civil penalty is a penalty tax.

Clause 13 amends section 324 by omitting a reference to a mining operation determination 'under section 320(8)' which is no longer necessary due to amendment of section 320 by clause 11. This clause also replaces references to the *Minister* and *chief executive* with a reference to the *revenue commissioner* as the responsible entity for mineral royalty administration.

Clause 14 amends section 327A by replacing references to the *Minister* with references to the *revenue commissioner* as the responsible entity for mineral royalty administration and then relocates the provision to follow section 325.

Clause 15 omits chapter 11, parts 2 – 4. These matters are dealt with by the Taxation Administration Act.

Clause 16 amends section 386O by omitting a reference to chapter 11, part 3, division 9 which is being omitted by clause 15 and replacing it with the relevant Taxation Administration Act part 11, division 2 reference that will now apply.

Clause 17 amends section 398 to include a note that clarifies that section 10 of the Taxation Administration Act provides for the delegation of the Commissioner's powers under a tax law.

Clause 18 amends section 412 by inserting new section 412(3) to clarify section 45 of the Taxation Administration Act deals with the payment and recovery of royalty and related royalty amounts payable to the State. New section 412(4) provides that where royalty is payable to a person other than the State, as contemplated under section 320(3)(b), and that royalty is unpaid, the person may recover the amount of unpaid royalty as a debt.

Clause 19 amends section 412A to omit references to mineral royalty provisions which have been omitted. Section 140 of the Taxation Administration Act will now deal with these matters for mineral royalty purposes.

Clause 20 amends section 412B to omit section 412B(4).

Clause 21 amends section 416A to include new subsections to clarify the chief executive may approve forms for use under a Mineral Resources Act provision that is not a royalty provision while the Commissioner may approve forms for use under a Mineral Resources Act provision that is a royalty provision.

Clause 22 amends section 417 to include a further regulation making power for matters which, under the Taxation Administration Act, a regulation under the Mineral Resources Act may make provision.

Clause 23 inserts new chapter 15, part 20 which provides transitional provisions for the *Royalty Legislation Amendment Act 2020*.

New section 885 defines terms used in this part.

New section 886 deals with the application of the Taxation Administration Act to mineral royalty liabilities. Generally, the Taxation Administration Act applies for a royalty liability arising either before or after the commencement of the *Royalty Legislation Amendment Act 2020*, unless a provision in this part provides otherwise.

New section 887 provides how the provisions of the Taxation Administration Act apply for mineral royalty purposes. From 1 October 2020, the Taxation Administration Act and the Mineral Resources Act, to the extent it is a revenue law for Taxation Administration Act purposes, must be read together as a single Act. However, certain provisions of the Taxation Administration Act will not apply to pre-commencement liabilities. The provisions of the Taxation Administration Act that do not apply for mineral royalty in these circumstances are set out in new section 887(2). The provisions of the Mineral Resources Act as in force at the relevant time will continue to apply in these cases.

Example

The commencement is on 1 October 2020. A person failed to lodge their mineral royalty return for the annual return period ending 30 June 2020, as required under the Mineral Resources Act and Mineral Resources Regulation as in force before commencement. The failure to lodge the relevant return for a pre-commencement liability was discovered on audit in December 2020.

The assessment which issues will be made under the assessment provisions of the Mineral Resources Act and Mineral Resources Regulation as in force before commencement. Further, interest and penalties for breach of these obligations in the 2019-2020 financial year would continue to be calculated under the Mineral Resources Act and Mineral Resources Regulation as in force before commencement (that is, royalty penalty and unpaid royalty interest) and not under part 5 Taxation Administration Act (that is, penalty tax and unpaid tax interest).

New section 887(3) and (4) clarify how the Taxation Administration Act applies to acts or omissions after commencement, including for an act or omission relating to a pre-commencement liability.

New section 887(5) clarifies how the provisions in part 4 Taxation Administration Act are to be applied when dealing with a pre-commencement liability.

New section 887(6) clarifies that the Commissioner's ability to issue an evidentiary certificate in respect of an assessment includes the ability to issue an evidentiary certificate for a royalty assessment made under the Mineral Resources Act.

New section 887(8) provides that any application of section 136 of the Taxation Administration Act to a pre-commencement act or omission is subject to the operation of section 412 Mineral Resources Act as in force before the commencement.

Example

The commencement is on 1 October 2020. A person failed to lodge their mineral royalty return for the annual return period ending 30 June 2020, as required to do so under the Mineral Resources Act and Mineral Resources Regulation as in force before commencement. The failure to lodge the relevant return for a pre-commencement liability was discovered on audit in December 2020.

The person's failure to lodge that return is a pre-commencement act or omission and subject to the penalty provisions of the Mineral Resources Act as in force before commencement. Section 412 Mineral Resources Act as in force before commencement continues to apply to allow prosecution for the offence (under section 333B of the Mineral Resources Act) to be commenced at any time (and not within the 5 years as provided by section 136 Taxation Administration Act).

New section 888 provides that certain references in the Taxation Administration Act are, if the context permits, to be read as including equivalent references in the Mineral Resources Act as in force before commencement. This is necessary to allow the Taxation Administration Act to apply where required in relation to a pre-commencement liability.

New section 889 clarifies that the Commissioner's ability under section 38 of the Taxation Administration Act to apply a refund amount against current or future tax law liabilities extends to liabilities for mineral royalty arising before the commencement.

New section 890 ensures that the increase in the maximum penalty under section 138 of the Taxation Administration Act for a further offence, where the first offence was under the provisions of the Mineral Resources Act as in force before commencement, applies only where the further offence is committed on or after commencement. It also ensures that the maximum penalty under section 138 may be increased where the first offence was committed against a provision of the Mineral Resources Act as in force before commencement and a subsequent offence is committed against a corresponding provision of the Mineral Resources Act as amended by the Bill or the Taxation Administration Act.

New section 891 provides that the provisions of former chapter 11, part 3 Mineral Resources Act and related provisions, such as transitional provisions, as in force before commencement continue to apply in relation to an assessment or reassessment of pre-commencement liabilities.

New section 892 clarifies the ability for proceedings to be started or continued in respect of an offence against section 412A committed by a person before the commencement in relation to an offence against former sections 326D(1), 333B(1), 333C(1), 333D(1) or 334C(1) of the Mineral Resources Act.

New section 893 clarifies the ability of the Commissioner to do anything that the Minister could do before commencement under former chapter 11 Mineral Resources Act or a related royalty provision. For instance, if the Minister could make an assessment prior to the commencement, the Commissioner may make the assessment from the commencement. Similarly, if the Minister made an assessment and could have made a reassessment prior to the commencement, the Commissioner may make the reassessment from the commencement.

New section 894 provides that delegations in force immediately before commencement continue in force, as if they had been made by the Commissioner.

New section 895 clarifies that any reference in any Act or any document to the Minister where the reference relates to chapter 11 or a related provision is taken to be a reference to the Commissioner if the context permits. This would include an Act or regulation other than the Mineral Resources Act or Mineral Resources Regulation.

New section 896 clarifies that, where a royalty investigator was appointed under the Mineral Resources Act prior to the commencement, the appointment and the terms under which the royalty investigator is taken to be appointed, continue under the Taxation Administration Act.

New section 897 provides for the continuing application of certain former Mineral Resources Regulation provisions in relation to a pre-commencement liability.

The section also provides for the continuation of internal review rights under chapter 3, part 5, division 3, subdivision 3 Mineral Resources Regulation Act, even though this subdivision is being omitted by this Bill. This subdivision provides a right to internal review for a gross value royalty decision or amended gross value royalty decision made before the commencement. These review rights will also continue to apply where an application for review under section 67 of the Mineral Resources Regulation was made but not decided before the commencement. Part 6 Taxation Administration Act provides review rights for gross value royalty decisions and amended gross value royalty decisions that are made on or after the commencement.

New section 898 provides for the making of a regulation to ensure the effective transition from the operation of the Mineral Resources Act and Mineral Resources Regulation as in force before commencement to the operation of the Mineral Resources Act, Mineral Resources Regulation and Taxation Administration Act. The regulation may have limited retrospective effect to the commencement date. Provision is also made for the expiry of this section and any regulation made under it after two years.

Clause 24 amends schedule 2 to omit, amend and insert various royalty related definitions.

Part 5 Amendment of Mineral Resources Regulation 2013

Clause 25 provides that part 5 amends the *Mineral Resources Regulation 2013.*

Clause 26 amends section 32 by omitting the defined term *mining operation*. The term is now defined in new section 32A.

Clause 27 inserts a new section 32A which prescribes, for the purposes of section 320(9) of the Mineral Resources Act, what is a *mining operation.* A mining operation exists where the mining of minerals occurs under one mining authority. A mining operation also exists where there is mining of minerals under two or more mining authorities and the authorities are held by the same person or by two or more persons that are relevant entities for each other, and any stage of the mining is carried out using common mining facilities. A *relevant entity* is defined in section 32 of the Mineral Resources Regulation.

Clause 28 inserts a new section 33A to clarify a royalty return is required to be lodged with the Commissioner.

Clause 29 amends section 35 by including a new subsection that allows the Commissioner to decide, for a mining operation that is required under section 35(1)(b) to lodge a royalty return on a financial year basis, that the mining operation will instead lodge royalty returns on a calendar quarter basis. However, the Commissioner can only do this if requested to do so by the person required to lodge the royalty return or with that person's agreement.

Clause 30 amends section 36 by omitting provisions that are provided for under the Taxation Administration Act or elsewhere in the Mineral Resources Regulation.

Clause 31 amends section 37 by making consequential amendments.

Clause 32 inserts new section 37A which imposes a fee where a royalty return is not lodged by the day it is required to be lodged. This fee replaces the fee that was previously imposed under sections 36 and 37 of the Mineral Resources Regulation. New section 37A also provides the Commissioner may remit the fee either wholly or in part and that any remission must be made by way of an assessment. Further, new section 37A provides the fee is payable when the relevant assessment is made.

Clause 33 amends section 38 to provide when a royalty return will still be required to be lodged despite section 38(1).

Clause 34 amends section 38A for coal seam gas returns consequent on amendments being made to the Petroleum and Gas Act and Petroleum and Gas Regulation.

Clause 35 amends section 39 to clarify how this provision, which deals with the time for payment of royalty for a yearly return period, interacts with section 30 of the Taxation Administration Act which also deals with the time for payment of tax.

Clause 36 inserts new section 39A to clarify when royalty is payable for a quarterly return period where royalty is payable to a person other than the State. The royalty is payable on the day the royalty return must be lodged for the quarterly return period.

Clause 37 amends section 40 to clarify how this provision, which deals with the time for payment of royalty for a quarterly return period, interacts with section 30 of the Taxation Administration Act, which also deals with the time for payment of tax, and new section 39A.

Clause 38 replaces section 41(1) to provide that the Commissioner may allow a person to pay royalty for a quarterly return period on the day the royalty return must be lodged instead of by monthly instalments provided for under section 40(1) of the Mineral Resources Regulation.

Clause 39 amends section 42 to update references.

Clause 40 amends section 46 in relation to royalty payable for coal seam gas, which is payable when it is produced.

Clause 41 amends section 47 to update references.

Clause 42 amends section 48 to reflect that, from 1 October 2020, royalty will be payable on the volume of coal seam gas produced in a royalty return period.

Clause 43 omits section 53 to reflect that, from 1 October 2020, royalty will be payable on the volume of coal seam gas produced in a royalty return period.

Clause 44 amends section 54, which provides for the value of minerals other than coal seam gas, to reflect the omission of section 53.

Clause 45 amends the heading of chapter 3, part 5 which relates to working out the gross values of minerals other than coal seam gas, to reflect the omission of section 53.

Clause 46 amends section 63 to update references and reflect the operation of the Taxation Administration Act.

New section 63(6) provides the Commissioner cannot be compelled to make a gross value royalty decision for a return period, to the extent the decision would decrease the gross value applying to the mineral, if royalty was already payable for the return period. This is despite any requirement otherwise applying under section 59 of the Mineral Resources Regulation that requires the Commissioner to make a gross value royalty decision. Further, under new section 63(7) any decision by the Commissioner to not make a gross value royalty decision under section 63(6) will be a non-reviewable decision for the purpose of section 75 of the Taxation Administration Act.

Clause 47 replaces section 63C. Section 63C provides when the Commissioner must reassess royalty where section 63B applies, that is, when the Commissioner has made an assessment of royalty based on an expired gross royalty valuation decision. Once the Commissioner has made a new gross royalty valuation decision, the Commissioner is required to reassess the royalty payable for the return period to give effect to the new gross value royalty decision.

The limitation period for making a reassessment under the Taxation Administration Act is declared not to apply, ensuring the Commissioner may make a reassessment at any time where the requirements in section 63C(1) and (2) are satisfied. Further, if in making a reassessment, a liability for penalty tax, unpaid tax interest or a civil penalty arises, the Commissioner must remit these liabilities to the extent they arise because of the requirement on the Commissioner to reassess the royalty under section 63C(2).

Clause 48 amends section 64 to reduce the time from 60 days to 30 days for a person to notify the Commissioner on becoming aware an existing gross value royalty decision is not or is no longer correct. This time period is now consistent with similar notification requirements in section 28 of the Taxation Administration Act.

Clause 49 amends section 65 to replace section 65(5) and (6) and include new sections 65(7), (8) and (9). Section 65(5) permits the Commissioner to amend at any time an earlier gross value royalty decision in any of the circumstances contemplated by section 65(5)(a), (b), (c) or (d).

Sections 65(5)(a) – (c) extend the time in which the Commissioner may amend a gross value royalty decision to reflect similar circumstances where the Commissioner can make a reassessment of tax liability outside the usual five year limitation period under the Taxation Administration Act. This reflects that the amendment of a gross value royalty decision affects royalty liability for the return periods to which it applies.

Section 65(5)(d) allows a gross value royalty decision to be amended at any time, despite an appeal or review for the gross value royalty decision being undecided, but only with the holder's agreement. Where appropriate this may allow the matters subject to appeal or review to be resolved ahead of the appeal or review being decided. No notice of intention to amend is required in this case.

Section 65(7) provides that the Commissioner cannot be compelled to amend an earlier gross value royalty decision, to the extent the amendment would decrease the gross value applying to the mineral, if royalty was already payable for the return period. Further, under new section 65(8) any decision by the Commissioner to not amend a gross value royalty decision under section 65(7) will be a non-reviewable decision for the purpose of section 75 of the Taxation Administration Act.

Section 65(9) also provides the Commissioner may amend an earlier gross value royalty decision even if an objection, appeal or review against the earlier gross value royalty decision has started but not yet been decided. This provision corresponds to the Commissioner's ability to make a reassessment under section 69A of the Taxation Administration Act in similar circumstances. Where the circumstances of section 65(9) exist, the Commissioner must still comply with any time limits otherwise provided for amending the gross value royalty decision specified in section 65 of the Mineral Resources Regulation.

Clause 50 amends section 66 to update references.

Clause 51 omits chapter 3, part 5, division 3, subdivision 3 which deals with internal review rights for gross value royalty decisions and amended gross value royalty decisions. However, these provisions will continue to operate under transitional arrangements to provide internal review rights for gross value royalty decisions and amended gross value royalty decisions made prior to the commencement. Generally, objection, appeal and review rights for gross value royalty decisions and amended gross value royalty decisions made after the commencement will be provided under part 6 Taxation Administration Act.

Clause 52 replaces section 70 to provide when the Commissioner must make a reassessment for an earlier royalty return period in relation to the making or amendment of a gross value royalty decision.

A reassessment must be made to give effect to an amended gross value royalty decision despite the limitation period under the Taxation Administration Act. In addition, a reassessment must be made to give effect to a gross value royalty decision and generally the reassessment must be made within the limitation period. However, a reassessment may be made outside the limitation period to decrease the royalty payable in relation to a gross value royalty decision

for a return period if the holder applied for the gross value royalty decision within the five year limitation period. This is consistent with the principles generally applying under section 21(2) Taxation Administration Act for making reassessments decreasing liability.

A reassessment increasing liability in relation to a gross value royalty decision may be made outside the limitation period to increase the royalty payable for a return period if the Commissioner has given the holder a notice under section 61(3) of the Mineral Resources Regulation within the five year limitation period informing the holder that the Commissioner proposes to make a gross value royalty decision. In addition, the Commissioner may make a reassessment outside the limitation period in relation to a gross value royalty decision where the circumstances specified in section 22(2) Taxation Administration Act apply.

Clause 53 amends section 77 to update references and require that any remission of a civil penalty be made by assessment under the Taxation Administration Act.

Clause 54 omits sections 78 and 79 of the Mineral Resources Regulation. These matters are dealt with by the Taxation Administration Act.

Clause 55 replaces sections 80 and 81 with new section 81. Section 80 dealt with the rate of interest on unpaid royalty, which is now dealt with by the Taxation Administration Act. New section 81 provides, for section 54(9) of the Taxation Administration Act, how to work out the period unpaid tax interest accrues for royalty payable to the State where the royalty is payable in instalments under section 40 of the Mineral Resources Regulation.

Clause 56 omits chapter 3, part 10 as this matter is now dealt with by the Taxation Administration Act.

Clause 57 inserts new chapter 4, part 13 which provides a transitional provision for the *Royalty Legislation Amendment Act 2020*. New section 115 continues the notification obligations of a holder under former section 64 of the Mineral Resources Regulation where the holder becomes aware before the commencement of matters that are required to be notified.

Clause 58 amends schedule 5 to reflect the fee for failing to lodge a return by the due day is now imposed under section 37A of the Mineral Resources Regulation.

Clause 59 amends schedule 6 to omit royalty related defined terms and insert new defined terms required as a result of the application of the Taxation Administration Act for mineral royalty purposes.

Clause 60 amends various provisions and headings to replace references to the *Minister* with references to the *revenue commissioner*.

Part 6 Amendment of Payroll Tax Act 1971

Clause 61 provides that part 6 amends the *Payroll Tax Act 1971*.

Clause 62 amends section 83 to insert a new section 83(3A) to provide the Commissioner may hold an annual refund amount or final refund amount for any period and apply the amount for any purpose at an employer's request or with their consent.

Part 7 Amendment of Petroleum Act 1923

Clause 63 provides that part 7 amends the *Petroleum Act 1923*.

Clause 64 amends section 102 by omitting the note following section 102(1).

Part 8 Amendment of Petroleum and Gas (Production and Safety) Act 2004

Clause 65 provides that part 8 amends the *Petroleum and Gas (Production and Safety) Act 2004*.

Clause 66 amends section 487 to update references.

Clause 67 amends section 588 to update references.

Clause 68 amends section 589 by inserting new section 589(1AA) to clarify section 45 of the Taxation Administration Act deals with the payment and recovery of petroleum royalty and related amounts, as well as making consequential amendments.

Clause 69 omits the chapter 6, part 1 heading.

Clause 70 inserts a new section 589A which declares that chapter 6 Petroleum and Gas Act does not contain all the provisions about petroleum royalty, noting the application of the Taxation Administration Act. Under section 3(3) of the Taxation Administration Act, the provisions of the Petroleum and Gas Act that are a revenue law must be read together with the Taxation Administration Act as if they formed a single Act.

Clause 71 amends section 590 which provides for the imposition of petroleum royalty on petroleum producers. A minor wording change is made to section 590(2)(b) and new section 590(4) is inserted. Under new section 590(4), a regulation may provide for a participant in a joint venture, or other arrangement, involving the production of petroleum to be taken to be a petroleum producer for a royalty law.

Clause 72 amends section 591 to update references.

Clause 73 replaces section 592 and inserts new section 592A. Section 592 currently enables the Minister to decide a measurement of, or information about, petroleum in certain circumstances. New section 592 applies where a measurement of, or information about, petroleum that is required for a royalty return is not given or where the Commissioner is not satisfied with the accuracy or completeness of the measurement or information given. In these circumstances, the Commissioner may decide the measurement of, or information about, the petroleum. Consistent with current section 592, the decided measurement or information is taken to be the required measurement or information and notice of the decision must be given to the petroleum producer. Also, the decision does not relieve a person of an obligation to make a measurement of, or give information about, petroleum required for a royalty return.

New section 592A requires a petroleum producer to lodge written returns about petroleum produced by the producer (royalty returns) as required by regulation. The requirement to lodge royalty returns applies whether or not petroleum has been produced during the royalty return period, unless a regulation provides otherwise.

Clause 74 omits chapter 6, part 2, division 1.

Clause 75 amends section 599A and its heading to replace references to the *Minister* with references to the *revenue commissioner* as the responsible entity for petroleum royalty administration. This provision is then relocated to follow section 592A and is renumbered as section 593.

Clause 76 amends, relocates and renumbers section 604A by inserting a new subsection that a regulation may provide for the Commissioner to remit, either in whole or part, a civil penalty and to declare for section 59 Taxation Administration Act purposes that the civil penalty is a penalty tax. This provision is then relocated to follow section 593 and renumbered as section 594.

Clause 77 omits chapter 6, parts 2 – 5. These matters are dealt with by the Taxation Administration Act.

Clause 78 amends section 813 by omitting section 813(6) which references petroleum royalty provisions being omitted.

Clause 79 amends section 814 to omit references to petroleum royalty provisions being omitted. Section 140 of the Taxation Administration Act will now deal with these matters for petroleum royalty purposes.

Clause 80 amends section 814A to omit section 814A(4).

Clause 81 amends section 851AA to update references.

Clause 82 amends section 857 to include a note that clarifies section 10 of the Taxation Administration Act provides for the delegation of the Commissioner's powers under a tax law.

Clause 83 amends section 858 to allow the Commissioner to approve forms under a Petroleum and Gas Act provision that is a royalty provision.

Clause 84 amends section 859 to include a further regulation making power for matters which, under the Taxation Administration Act, a regulation under the Petroleum and Gas Act may make provision. Also, a regulation may be made imposing a penalty of no more than 100 penalty units for contravention of a royalty provision of a regulation

Clause 85 inserts a new chapter 15, part 28 which provides transitional provisions for the *Royalty Legislation Amendment Act 2020*. This clause inserts new sections 1018 to 1033 that deal with the adoption of the Taxation Administration Act for petroleum royalty purposes and the new petroleum royalty regime.

New section 1018 defines terms used in part 28 Petroleum and Gas Act.

New section 1019 deals with the application of the Taxation Administration Act to petroleum royalty liabilities. Generally, the Taxation Administration Act applies for a liability arising either before or after the commencement of the *Royalty Legislation Amendment Act 2020*, unless a provision in part 28 provides otherwise.

New section 1020 provides how the provisions of the Taxation Administration Act apply for petroleum royalty purposes. From 1 October 2020, the Petroleum and Gas Act to the extent it is a revenue law, is taken to be a revenue law for Taxation Administration Act purposes and the two Acts must then be read together as a single Act. However, certain provisions of the Taxation Administration Act will not apply to pre-commencement liabilities. The provisions of the Taxation Administration Act that do not apply for petroleum royalty in these circumstances are set out in new section 1020(2). The provisions of the Petroleum and Gas Act as in force at the relevant time will continue to apply in these cases.

New sections 1020(3) and (4) clarify how the Taxation Administration Act applies to acts or omissions after commencement, including for an act or omission relating to a pre-commencement liability.

New section 1020(5) clarifies how the provisions in part 4 Taxation Administration Act are to be applied when dealing with a pre-commencement liability.

New section 1020(6) clarifies that the Commissioner's ability to issue an evidentiary certificate in respect of an assessment includes the ability to issue an evidentiary certificate for a petroleum royalty assessment or determination made under the Petroleum and Gas Act.

New section 1020(8) provides that any application of section 136 of the Taxation Administration Act to a pre-commencement act or omission is subject to the operation of section 837 of the Petroleum and Gas Act as in force before the commencement.

New section 1021 provides that certain references in the Taxation Administration Act, are, if the context permits, to be read as including equivalent references in the Petroleum and Gas Act as in force before commencement. This is necessary to allow the Taxation Administration Act to apply where required in relation to a pre-commencement liability.

New section 1022 clarifies that the Commissioner's ability under section 38 of the Taxation Administration Act to apply a refund against current or future tax law liabilities extends also in relation to liabilities for petroleum royalty arising before the commencement.

New section 1023 ensures that the increase in the maximum penalty under section 138 of the Taxation Administration Act for a further offence, where the first offence was under the provisions of the Petroleum and Gas Act as in force before commencement, applies only where the further offence is committed on or after commencement. It also ensures that the maximum penalty under section 138 may be increased where the first offence was committed against a provision of the Petroleum and Gas Act as in force before commencement and a subsequent offence is committed against a corresponding provision of the Petroleum and Gas Act as amended by the Bill or the Taxation Administration Act.

New section 1024 provides that the provisions of former chapter 6, part 2 Petroleum and Gas Act and related provisions, such as transitional provisions, as in force before commencement continue to apply in relation to an assessment or reassessment of pre-commencement liabilities.

New section 1025 clarifies the Commissioner is required, despite former section 599C(7) of the Petroleum and Gas Act, to make any assessment or reassessment under section 19 of the Taxation Administration Act that is necessary for a pre-commencement liability.

New section 1026 clarifies the ability for proceedings to be started or continued in respect of an offence against section 814 committed by a person before the commencement in relation to an offence against former sections 604F(1), 605(1), 606(1), 607 and 617C(1) of the Petroleum and Gas Act.

New section 1027 clarifies the ability of the Commissioner to do anything that the Minister could do before commencement under former chapter 6 Petroleum and Gas Act or a related royalty provision. For instance, if the Minister could make an assessment prior to the commencement, the Commissioner may make the assessment from the commencement. Similarly, if the Minister made an assessment and could have made a reassessment prior to the commencement, the Commissioner may make the reassessment from the commencement.

New section 1028 provides that delegations in force immediately before commencement continue in force, as if they had been made by the Commissioner.

New section 1029 clarifies that any reference in any Act or any document to the Minister where it relates to petroleum royalty is taken to be a reference to the Commissioner if the context permits. This would include an Act or regulation other than the Petroleum and Gas Act or Petroleum and Gas Regulation.

New section 1030 clarifies that, where a royalty investigator was appointed under the Petroleum and Gas Act prior to the commencement, the appointment and the terms under which the royalty investigator is taken to be appointed continue under the Taxation Administration Act.

New section 1031 applies to petroleum producers required to lodge an annual return under section 599(2), which is being omitted by this Bill, for an annual return period that starts on 1 July 2020 and ends on 30 June 2021. Section 1031 provides that the annual return period is taken to start on 1 July 2020 and end on 30 September 2020. This is necessary as the amendments in this Bill implement the new volume model for petroleum royalty from 1 October 2020.

New section 1032 applies to petroleum producers required to lodge an annual return under section 599(2), which is being omitted by this Bill, for an annual return period that starts on 1 January 2020 and ends on 31 December 2020. Section 1032 provides that the annual return period is taken to start on 1 January 2020 and end on 30 September 2020. This is necessary as the amendments in this Bill implement the new volume model for petroleum royalty from 1 October 2020.

New section 1033 provides for the making of a regulation to ensure the effective transition from the operation of the Petroleum and Gas Act and Petroleum and Gas Regulation as in force before commencement to the operation of the Petroleum and Gas Act and Petroleum and Gas Regulation as amended by the Bill, and the Taxation Administration Act. The regulation may have limited retrospective effect to the commencement date. Provision is also made for the expiry of this section and any regulation made under it after two years.

Clause 86 amends schedule 1 to omit the table 2 heading 'Other decisions' and the entries under that heading that reference sections 592 and 604 of the Petroleum and Gas Act.

Clause 87 amends schedule 2 to omit, amend and insert various royalty related definitions.

Part 9 Amendment of Petroleum and Gas (Royalty) Regulation 2004

Clause 88 provides that part 9 amends the *Petroleum and Gas (Royalty) Regulation 2004*.

Clause 89 amends section 3 to cross-reference the dictionary in schedule 1.

Clause 90 replaces the chapter 6 heading to reflect the provisions in new chapter 6 as inserted by this Bill.

Clause 91 omits the chapter 6, part 2 heading as part 2 is being replaced by this Bill.

Clause 92 omits chapter 6, part 2, division 1.

Clause 93 omits the chapter 6, part 2, division 4 heading.

Clause 94 omits chapter 6, part 2, division 4, subdivisions 1,2, 2A, 3 and 5. To the extent they continue to be relevant, the matters in subdivision 1 and 3 will instead be dealt with in new part 3 'Royalty rates', new part 4 'Royalty returns' and new part 5 'Payment of petroleum royalty' as inserted by this Bill. Subdivision 2, which relates to working out the components of the wellhead value of petroleum, and subdivision 2A, which relates to petroleum royalty decisions, are no longer required under the new petroleum royalty liability framework. To the extent they continue to be relevant, the matters dealt with in subdivision 5 are now dealt with under the Taxation Administration Act.

Clause 95 amends the chapter 6, part 2, division 4, subdivision 4 heading.

Clause 96 renumbers chapter 6, part 2, division 4, subdivisions 4 to 4B as chapter 6, parts 8 to 10. New parts 1 to 7 are being inserted by this Bill.

Clause 97 inserts new chapter 6, parts 1 to 7.

New part 1 provides for the interpretation of chapter 6.

New section 133 provides that chapter 6 prescribes the time on or before which petroleum royalty must be paid, the way in which it is calculated and the rate at which it is payable.

New section 134 provides definitions for terms used in chapter 6. New section 134 also declares that, for chapter 6, a reference to a petroleum producer includes a participant in a joint venture, or other arrangement, who is taken to be a petroleum producer under section 590(4) of the Petroleum and Gas Act.

New section 135 defines *domestic gas*. For a petroleum producer, petroleum produced in a royalty return period is domestic gas if it is gas that is either sold or otherwise transferred by the producer directly or indirectly through one or more resellers to a person who is not an LNG project buyer.

Domestic gas is also gas that is flared, used (other than for converting it into LNG) or vented by a petroleum producer. It also includes gas that is stored or kept in the possession of a petroleum producer or a reseller provided the producer is not a member of an LNG project. For instance, where gas is being transported by a petroleum producer to a customer at the end of the royalty return period and has not yet been sold, it would be in the producer's possession and classified as domestic gas. *Gas, reseller, LNG project, LNG project buyer* and *member* are new terms defined in new section 134.

New section 136 defines *supply gas.* Supply gas is gas that is produced by a petroleum producer, other than as a member of an LNG project, in a royalty return period and that is sold or otherwise transferred directly or indirectly through one or more resellers to a person who is an LNG project buyer.

New section 137 defines *project gas*. Project gas is gas that is produced by a petroleum producer in a royalty return period as a member of an LNG project, and is not domestic gas. For a petroleum producer that is a member of an LNG project, the gas they produce will be classified as either project gas or domestic gas. Where the producer is unable to determine whether or not the gas is domestic gas, it will be project gas.

New section 138 defines *liquid petroleum.* Liquid petroleum is defined as petroleum that is oil. *Oil* is defined in section 134 as petroleum in liquid state. Therefore, liquid petroleum may include crude oil and condensate.

New part 2 contains provisions relating to LNG projects.

New section 139 provides that the Commissioner may make a determination that a petroleum venture is an LNG project. A *petroleum venture* is defined in section 139(10) as a joint venture or other arrangement involving the production of gas for the purpose of converting it into LNG and the processing, transportation, storage, conversion, sale or purchase of that gas or LNG. If the Commissioner makes a determination that a petroleum venture is an LNG project, the Commissioner must also make a determination of who are the members of the LNG project and must give a notice containing certain information to each member of the LNG project. A determination takes effect on the day stated in the notice which may be before the day that the determination is made. The Commissioner may also amend or revoke a determination by notice given to each person who is a member of the LNG project or who was a member before the amendment or revocation. The amendment or revocation takes effect on the day stated in the notice which may be before the date the amendment is made.

New section 140 applies where the Commissioner has made an assessment of the amount of petroleum royalty payable by a petroleum producer without having regard to a determination made, amended or revoked under section 139. Section 140(2) provides that the Commissioner must reassess the amount of petroleum royalty payable by the petroleum producer having regard to the determination, amendment or revocation. If in making a reassessment, a liability for penalty tax, unpaid tax interest or a civil penalty arises, the Commissioner must remit these liabilities to the extent they arise because of the requirement on the Commissioner to reassess the royalty under section 140(2).

New section 141 applies where a member of LNG project purchases gas from a petroleum producer or a reseller for the producer, who is not a member of the LNG project. Section 141(2) provides that, as soon as reasonably practicable after the purchase, the member must give a notice to the petroleum producer or the reseller stating that they are a member of an LNG project. Failure to give notice is an offence. A separate offence is committed each time the member of the LNG project purchases gas from the producer or the reseller without having given them a notice. However, section 141(2) does not apply if the member has already given the petroleum producer or the reseller notice. For example, where they have given notice in relation to a previous purchase of gas from the producer or the reseller.

This notification obligation is intended to enable petroleum producers to determine whether the gas they have sold is supply gas and also to enable application of the average sales price provisions in section 146 and 148B.

To ensure the proper operation of the legislation, section 141(4) clarifies that the Commissioner may tell a petroleum producer or reseller that a person purchasing gas from them is a member of an LNG project.

New section 142 imposes notification obligations where the members of an LNG project change. Where a person who is a member of an LNG project stops being involved in the petroleum venture that constitutes the LNG project, each petroleum producer that continues to be involved in the petroleum production must give notice to the Commissioner within 30 days. Similarly, where a new person starts being involved in a petroleum venture that constitutes an LNG project, each petroleum producer, including the new participant if they are a petroleum producer, must give notice to the Commissioner within 30 days. Notice may be given either individually or jointly with another producer and failure to give notice is an offence. The Commissioner must decide whether to amend or revoke the determination made under section 139 of the LNG project or of the members of the LNG project.

New part 3 provides the royalty rates for each of the four classes of petroleum, being domestic gas, supply gas, project gas and liquid petroleum.

New section 143 contains definitions for terms used in part 3. As petroleum royalty is imposed on the volume of petroleum produced in a royalty return period from 1 October 2020, the definition of *volume* in section 143 is particularly relevant. For gas, domestic gas, supply gas, project gas or LNG, the volume of petroleum means the volume converted to gigajoules. For liquid petroleum or oil, it means the volume measured in barrels.

Division 2 of part 3 provides for how to calculate petroleum royalty for domestic gas and sets out the relevant rates.

New section 144 provides definitions for terms used in division 2. Relevantly, the *benchmark price* for domestic gas for a royalty return period means the firm End of Day Wallumbilla Benchmark Price averaged over the period. The firm End of Day Wallumbilla Benchmark Price is published online by the Australian Energy Market Operator.

New section 145 provides that a petroleum producer that produces domestic gas in a royalty return period must pay petroleum royalty on the volume of domestic gas produced in the period at the rate set out in section 145. Different rates apply depending on the average sales price (per gigajoule) for domestic gas for the producer for the period.

New section 146 sets out how to calculate the *average sales price* for domestic gas for a petroleum producer for a royalty return period where the petroleum producer sells gas in the period directly, or indirectly through one or more resellers, to an independent buyer who is not an LNG project buyer.

For determining the average sales price, all sales of gas made by the producer, directly or indirectly through one or more resellers, to a person who is not an LNG project buyer are relevant. This includes sales made to independent buyers and persons who are not independent buyers. Section 146 specifies how to determine the deemed sales value for the sales to non-independent buyers, which has regard to the benchmark price for domestic gas.

Relevantly, the volume of domestic gas produced by the petroleum producer in the royalty return period has no relevance for the purpose of calculating the average sales price for the period, which is determined by reference to the volume of gas sold by the producer directly or indirectly to the relevant purchasers in the period.

New section 147 provides that, despite section 146, the average sales price for domestic gas for a petroleum producer for a royalty return period is the benchmark price for domestic gas for the period in certain circumstances. One such circumstance is if the producer has made an election, in a royalty return lodged by the producer, for the benchmark price to apply. An election starts on the first day of the royalty return period for the royalty return in which the election is made and continues for each subsequent royalty return period unless the Commissioner ends the election. A petroleum producer may apply to the Commissioner in the approved form to end the election. The Commissioner may decide to end the election if it is considered appropriate in the circumstances and must give notice of the decision to the petroleum producer. An election ends on the day stated in the notice which may be before the day the petroleum producer made the application to end the election.

Another circumstances in which the benchmark price will apply under section 147 is if a petroleum producer does not provide for an assessment the information required to work out the average sales price under section 146 for the producer for the period. That is, if the producer cannot provide information for all sales of gas made by the producer that are required for determining *AR* under section 146, an assessment will be made using the benchmark price for determining the royalty rate under section 145 for the domestic gas produced in the royalty return period. Also, a benchmark price will apply for the royalty return period if no gas is sold in the period by the producer, either directly or indirectly through one or more resellers, to a person who is an independent buyer and not an LNG project buyer.

Finally, a benchmark price will apply under section 147 if the Commissioner considers it is appropriate for the protection of the public revenue. Section 147(10) sets out the matters the Commissioner may have regard to in reaching this decision. In this circumstance, the Commissioner must give the petroleum producer notice of the decision to apply the benchmark price. The decision takes effect on the day stated in the notice which may be before the day the decision was made.

Division 3 of part 3 provides for how to calculate petroleum royalty on supply gas and sets out the relevant rates.

New section 148 provides definitions for terms used in division 3.

New section 148A provides that, if petroleum produced by a petroleum producer in a royalty return period is supply gas, the producer must pay petroleum royalty for the period on the volume of supply gas produced in the period at the rate set out in section 148A. Different rates apply depending on the average sales price (per gigajoule) for supply gas for the producer for the period.

New section 148B sets out how to calculate the *average sales price* for supply gas for a petroleum producer for a royalty return period where the producer sells gas in the period directly, or indirectly through one or more resellers, to an independent buyer who is an LNG project buyer.

For determining the average sales price, all sales of gas made by the producer, directly or indirectly through one or more resellers, to a person who is an LNG project buyer are relevant. This includes sales made to independent buyers and persons who are not independent buyers. Section 148B specifies how to determine the deemed sales value for the sales to non-independent buyers, which has regard to the benchmark price for supply gas.

Relevantly, the volume of supply gas produced by the petroleum producer in the royalty return period has no relevance for the purpose of calculating the average sales price for the period, which is determined by reference to the volume of gas sold to the relevant purchasers in the period.

New section 148C provides the formula for calculating the benchmark price for supply gas for a royalty return period. The daily Europe Brent Spot Price FOB which is relevant for the formula is published on the U.S. Energy Information Administration (EIA) website.

New section 148D provides that, despite section 148B, the average sales price for supply gas for a petroleum producer for a royalty return period is the benchmark price for supply gas for the period in certain circumstances. These circumstances are similar to those applying under section 147 for domestic gas. Relevantly for supply gas, the benchmark price will apply for the royalty return period if no gas is sold in the period by the producer, either directly or indirectly through one or more resellers, to a person who is an LNG project buyer and who is an independent buyer.

Division 4 of part 3 provides for how to calculate petroleum royalty on project gas and sets out the relevant rates.

New section 148E provides definitions for terms used in division 4.

New section 148F provides that, if petroleum produced by a petroleum producer in a royalty return period is project gas, the producer must pay petroleum royalty on the volume of project gas produced in the period at the rate set out in section 148F. Different rates apply depending on the average sales price (per gigajoule) for project gas for the producer for the period.

New section 148G sets out how to calculate the *average sales price* for project gas for a petroleum producer for a royalty return period where a member of the LNG project of which the producer is a member sells LNG in the period to a person who is neither a member of the LNG project nor a relevant entity for a member of the LNG project.

For determining the average sales price, all sales of LNG made by members of the LNG project are relevant. This includes sales made to members of the LNG project and relevant entities for a member of the LNG project and section 148G specifies how to determine the deemed sales value for these sales, which has regard to the benchmark price for project gas.

Relevantly, the volume of project gas produced by the petroleum producer in the royalty return period has no relevance for the purpose of calculating the average sales price for the period, which is determined by reference to the volume of LNG sold in the period by each member of the LNG project of which the producer is a member.

New section 148H provides the formula for calculating the benchmark price for project gas for a royalty return period. As noted for supply gas, the daily Europe Brent Spot Price FOB is published on the EIA website.

New section 148I provides that, despite section 148G, the average sales price for project gas for a petroleum producer for a royalty return period is the benchmark price for project gas for the period in certain circumstances. These circumstances are similar to those applying under section 147 for domestic gas. Relevantly for project gas, the benchmark price will apply for the royalty return period if no LNG is sold in the period by a member of the LNG project of which the producer is a member to a person who is neither a member of the LNG project nor a relevant entity for a member of the LNG project.

Division 5 of part 3 provides for how to calculate petroleum royalty on liquid petroleum and sets out the relevant rates.

New section 148J provides definitions for terms used in division 5 including the *benchmark price* for liquid petroleum.

New section 148K provides that a petroleum producer must pay petroleum royalty on the volume of liquid petroleum produced in a royalty return period at the rate set out in section 148K. Different rates apply depending on the average sales price (per barrel) for liquid petroleum for the producer for the period.

New section 148L sets out how to calculate the *average sales price* for liquid petroleum for a petroleum producer for a royalty return period where the producer sells oil in the period directly, or indirectly through one or more resellers, to an independent buyer. *Oil* is petroleum in a liquid state.

Relevantly, the volume of liquid petroleum produced by the petroleum producer in the royalty return period has no relevance for the purpose of calculating the average sales price which is determined by reference to the volume of oil sold in the period.

New section 148M provides that, despite section 148L, the average sales price for liquid petroleum for a petroleum producer for a royalty return period is the benchmark price for liquid petroleum for the period in certain circumstances. These circumstances are similar to those applying under section 147 for domestic gas. Relevantly for liquid petroleum, the benchmark price will apply for the royalty return period if no oil is sold in the period by the producer, either directly or indirectly through one or more resellers, to an independent buyer.

New part 4 contains provisions relating to petroleum royalty returns.

New section 148N provides that part 4 prescribes the requirements for royalty returns lodged under the Petroleum and Gas Act.

New section 148O provides that a royalty return must be lodged with the Commissioner.

New section 148P provides that a royalty return lodged under the Petroleum and Gas Act must be in the approved form.

New section 148Q prescribes the period to which a royalty return must relate. Section 148Q(1) provides that, for a petroleum producer that holds a petroleum lease or a 1923 Act lease, the royalty return must relate to a calendar quarter. For all other producers, the royalty return must relate to a financial year. These provisions apply to a person who is a non-tenure holder under part 6 as though the non-tenure holder held the joint venture tenure.

However, section 148Q(2) provides that the Commissioner may decide that a petroleum producer is required to lodge royalty returns relating to a calendar quarter instead of a financial year, and vice versa, if the Commissioner considers it appropriate having regard to the amount of the petroleum royalty likely to be payable by the producer. Under section 148Q(3), a producer that is required under section 148Q(1)(b) to lodge returns relating to a financial year may also ask the Commissioner to decide that their royalty return period is a calendar quarter. If the Commissioner makes such a decision under section 148Q(2) or (3), notice must be given to the producer which states the date of effect of the decision. If the Commissioner decides to require a producer to lodge returns relating to a calendar quarter instead of a financial year, the date of effect must not be earlier than the day the notice is given unless the producer agrees.

New section 148R provides for when royalty returns generally must be lodged. Producers required to lodge returns relating to a financial year must lodge within three months after the end of the financial year to which the return relates. Producers required to lodge returns relating to a calendar quarter must lodge on or before the last business day of the month immediately following the calendar quarter to which the return relates. This is consistent with the lodgement timeframes that apply for mineral royalty returns.

New section 148S provides that the Commissioner may, for the protection of the public revenue, give a notice to a petroleum producer requiring lodgement of a royalty return on a stated day that is earlier than the day mentioned in section 148R. The stated day must be at least seven days after the day the notice is given. Section 148S replaces a similar power currently in section 594 of the Petroleum and Gas Act which is being replaced by this Bill.

New section 148T provides that a petroleum producer that does not lodge a royalty return by the day it is required to be lodged must pay the prescribed fee. The fee is payable on the day the assessment is made for the period to which the return relates. Section 148T also provides that the Commissioner may remit the fee by making an assessment.

New part 5 contains provisions relating to the payment of petroleum royalty. These provisions reflect those that applied under the Petroleum and Gas Regulation before commencement, amended to ensure their proper operation.

New section 148U provides that, for a petroleum producer that is required to lodge a royalty return relating to a financial year, petroleum royalty is payable on the day the royalty return must be lodged. This is consistent with when mineral royalty is payable for a return relating to a financial year.

New section 148V provides that, for a petroleum producer that is required to lodge a return relating to a calendar quarter, petroleum royalty is generally payable in three instalments. Instalments 1 and 2, which are the amounts payable for the first and second months of the royalty return period, are generally worked out under section 148X unless the petroleum producer has made an election under section 148Z to change the amount payable for the first or second months. Instalment 3 is the difference between the petroleum royalty payable for the royalty return period and the total paid under instalments 1 and 2. When each instalment payment is made, the petroleum producer must lodge an approved form for payment.

New section 148W provides that the Commissioner may give a quarterly payment notice to a petroleum producer stating that petroleum royalty for a return period that is a calendar quarter is payable on the day that the return must be lodged. Therefore, instead of paying petroleum royalty in instalments under section 148V, the full amount is payable on the same day that instalment 3 would otherwise have been payable under 148V. A quarterly payment notice must state the period for which it applies. The Commissioner may withdraw a quarterly payment notice with effect from the royalty return period immediately following the return period in which notice of the withdrawal is given.

New section 148X specifies for section 148V(1) the amounts payable for the first and second months of the royalty return period. These amounts are calculated by reference to the petroleum royalty payable by the petroleum producer for the previous royalty return period, taking into account any assessment made before the amount for the first month is paid or becomes payable (whichever is earlier).

New section 148Y provides how to work out the amounts payable for the first and second months of the royalty return period in circumstances where a petroleum producer did not lodge a royalty return for the previous royalty return period or where the previous royalty return period was not a calendar quarter. In these circumstances, the Commissioner may estimate the amount for the previous royalty return period, having regard to relevant matters including other royalty returns lodged by the petroleum producer and the volume of petroleum for which the petroleum royalty is payable. The Commissioner must give the petroleum producer a notice stating the estimated amount which is the total amount of petroleum royalty payable for the previous return period for the purpose of working out the amounts payable for the first and second months of the royalty return period.

New section 148Z provides that a petroleum producer may make an election to change the amount payable for the first or second months of the current royalty return period in certain circumstances. The election may be made if the petroleum producer reasonably believes that the amount of petroleum royalty payable for a royalty return period that is a calendar quarter will be less than the petroleum royalty payable for the previous royalty return period and provided the Commissioner has not given the producer a notice under section 148ZA. Section 148Z(4) sets out the requirements for making an election.

Section 148Z(5) provides how to calculate the amounts payable for the first and second months where an election is made. Section 594 of the Petroleum and Gas Act provides that a regulation may impose a penalty in certain circumstances relating to the making of an election. Section 149E of the Petroleum and Gas Regulation provides for the basis on which the penalty applies.

New section 148ZA provides that the Commissioner may give a notice to a petroleum producer requiring the amounts for the first and second months of one or more royalty return periods to be worked out under section 148X. A notice may be given where a petroleum producer has previously made an election under section 148Z(3) to change the amounts payable for the first and second months and the Commissioner considers that the petroleum producer did not have a reasonable basis for forming a belief that the amount of petroleum payable would be less than the petroleum royalty payable for the previous royalty return period.

New part 6 contains provision relating to particular joint venture tenures.

New section 148ZB provides definitions for terms used in part 6.

New section 148ZC applies where a person (non-tenure holder) is a participant in a joint venture or other arrangement involving the production of petroleum and another person (tenure holder) holds a petroleum tenure under which the petroleum for the joint venture or other arrangement is produced (joint venture tenure). The non-tenure holder may apply to be taken to be a petroleum producer in relation a stated amount of petroleum produced under the joint venture tenure (e.g. a stated percentage or proportion of petroleum produced under the tenure). Section 148ZC(3) provides that the application must be in the approved form, contain certain information and be accompanied by the tenure holder's consent to the application. Section 148ZC(6) contains limitations on when the election period may start and end.

The Commissioner may decide to grant the application in the way proposed by the non-tenure holder or in another way with written agreement from the non-tenure holder and tenure holder. However, the Commissioner may only grant the application if satisfied it would not adversely affect the protection of the public revenue. The Commissioner must give notice of the decision to the non-tenure holder and tenure holder and provide reasons where a decision is made to refuse to grant the application.

Section 148ZC(9) sets out the implications for the non-tenure holder if the Commissioner decides to grant the application. In particular, the non-tenure holder is taken to be a petroleum producer and is taken to produce the amount of petroleum produced under the joint venture tenure that is decided by the Commissioner. Therefore, the non-tenure holder is required to lodge royalty returns and provisions relating to when a royalty return is required to be lodged are taken to apply to the non-tenure holder. Additionally, the non-tenure holder may be eligible for exemptions from petroleum royalty under the Petroleum and Gas Act. Section 148ZC(9) also clarifies that the Taxation Administration Act applies to the non-tenure holder as a taxpayer.

Section 148ZC(10) clarifies that even if the Commissioner grants an application under section 148ZC, it does not affect the tenure holder's liability to pay petroleum royalty on all of the petroleum produced under the joint venture tenure. This means that, if the non-tenure holder fails to pay the petroleum royalty to which the election relates, the tenure holder must pay it. In having regard to any requirement that all petroleum royalty must be paid for a petroleum tenure, any amount unpaid by the non-tenure holder is relevant.

Section 148ZD provides that a non-tenure holder or tenure holder may apply to the Commissioner to end the election period for a joint venture tenure. The application must be in the approved form, state the proposed day for the election period to end and include evidence that the non-tenure holder or tenure holder has been notified of the application.

The Commissioner may decide to end the election on the day proposed or on another day with the written agreement from the non-tenure holder and tenure holder. The Commissioner must decide to end the election period if it would not adversely affect the protection of the public revenue. The Commissioner may also decide, on the Commissioner's own initiative, to end the election period it satisfied it is appropriate for the protection of the public revenue. The Commissioner must give notice of the decision to the non-tenure holder and tenure holder, including reasons if the Commissioner has decided to end the election period on the Commissioner's own initiative. The day on which the election period ends must not be earlier than the first day of the current royalty return period, being the royalty return period applying on the day the non-tenure holder or tenure holder makes the application or on the day the Commissioner makes a decision on the Commissioner's own initiative.

Importantly, section 148ZD(10) declares that the ending of an election period does not affect a liability arising before the ending of the election period.

New part 7 contains miscellaneous provisions.

New section 149 provides that the Commissioner may make a determination about how chapter 6 applies to swap arrangements. A *swap arrangement* is defined in section 149(4) and means an arrangement entered into between petroleum producers to swap rights or obligations in relation to petroleum produced by the producers to the extent the arrangement relates to exchanging the same volume and quality of petroleum in a particular period. For petroleum subject to a swap arrangement, the Commissioner may make a determination about how the average sales price for the petroleum is to be worked out for chapter 6, part 3 and, if the petroleum is gas, whether the gas is to be classified as domestic gas, supply gas or project gas.

Clause 98 amends section 149A to update references.

Clause 99 amends section 149B to update references and replace subsection (2). Section 149B(2) currently sets out the information that a petroleum producer may be asked to provide in a royalty estimate and lists information that is relevant to the calculation of petroleum royalty on the current wellhead value basis. New section 149B(2) sets out the information that a petroleum producer may be asked to provide in a royalty estimate under the new petroleum royalty framework. For example, the Commissioner may ask the producer to include a statement of each type of petroleum that the producer expects to produce and particular information in relation to each type of petroleum, such as the volume the producer expects to produce. Section 149B(2) does not limit the information the Commissioner can request in the royalty estimate.

Clause 100 amends section 149D to update references.

Clause 101 amends section 149E to update references and clarify that any remission of a civil penalty must be made by assessment under the Taxation Administration Act.

Clause 102 omits sections 149F and 149G. These matters are dealt with by the Taxation Administration Act.

Clause 103 replaces sections 149H and 149I with new section 149I. Section 149H dealt with the rate of interest on unpaid royalty, which referenced the Taxation Administration Act prescribed rate for unpaid tax royalty. This matter is now dealt with by the Taxation Administration Act.

Section 149I provides, for the purpose of section 54(9) of the Taxation Administration Act, how to work out the period unpaid tax interest accrues for petroleum royalty that is payable in instalments under the Petroleum and Gas Regulation.

Clause 104 inserts new chapter 7 part 14 which provides transitional provisions for the *Royalty Legislation Amendment Act 2020.*

New section 183 contains definitions for part 14.

New section 184 applies to petroleum producers required to lodge a royalty return relating to a financial year under new section 148Q(1)(b) as inserted by this Bill. Section 184 provides that, for new chapter 6 as inserted by this Bill, the financial year that starts on 1 July 2020 and ends on 30 June 2021 is taken to start on 1 October 2020 and end on 30 June 2021. This is necessary as the amendments in this Bill implement the new volume model for petroleum royalty from 1 October 2020 which is part-way through a financial year.

New section 185 applies to petroleum producers that produced petroleum in a quarterly return period that ended before 1 October 2020 but did not dispose of the petroleum before 1 October 2020. Under the current wellhead value regime, petroleum royalty would ordinarily be payable in the royalty return period in which it is disposed of after 1 October 2020. As the new volume model applies to petroleum produced on or after 1 October 2020, a transitional provision is required to ensure that petroleum produced but not disposed of before 1 October 2020 is properly accounted for in petroleum royalty returns that relate to wellhead value. Therefore, section 185(2) provides that petroleum royalty for the petroleum produced but not disposed of before 1 October 2020 is taken to be payable for the royalty return period that ended on 30 September 2020 at the rate of 12.5% of the wellhead value of the petroleum. New section 185(3) declares that current section 148, which is being replaced in this Bill, continues to apply after 1 October 2020 for working out the wellhead value of the petroleum.

New section 186 applies to petroleum producers that produced petroleum in an annual return period that ended before 1 October 2020 but did not dispose of the petroleum before 1 October 2020. Once again, as the new volume model applies to petroleum produced on or after 1 October 2020, a transitional provision is required to ensure that petroleum produced but not disposed of before 1 October 2020 is properly accounted for in annual royalty returns. Therefore, section 186(2) provides that petroleum royalty for the petroleum produced but not disposed of before 1 October 2020 is taken to be payable for the annual return period that ended on 30 September 2020 at the rate of 12.5% of the wellhead value of the petroleum. New section 186(3) declares that current section 148, which is being replaced in this Bill, continues to apply after 1 October 2020 for working out the value of the petroleum.

New section 187 provides that chapter 6, part 2, division 4, subdivisions 2 and 2A, which are being omitted by this Bill, continue to apply after 1 October 2020 for working out the components of the wellhead value of petroleum produced before 1 October 2020. Subdivision 2 contains provisions relating to the making of petroleum royalty decisions for one or more components of the wellhead value of petroleum and subdivision 2A provides for the amendment or review of petroleum royalty decisions. Therefore, among other things, a petroleum royalty decision relating to petroleum produced before 1 October 2020 may be made or amended after 1 October 2020.

In relation to review of a petroleum royalty decision or amended petroleum royalty decision, subdivision 2A continues to apply to such decisions made before 1 October 2020. Under transitional arrangements, part 6 of the Taxation Administration Act provides for the rights of review applying for petroleum royalty decisions and amended petroleum royalty decisions made from 1 October 2020.

New section 188 provides that, if a petroleum royalty decision is made in relation to a petroleum producer, current section 148G, which is being replaced by this Bill, continues to apply after 1 October 2020 in relation to the petroleum producer. Current section 148G requires the producer of petroleum to which a petroleum royalty decision applies to advise the Minister of particular matters affecting the decision, such as if the producer becomes aware that the decision is or becomes incorrect. Section 148G continues to apply in relation to the petroleum producer irrespective of whether the petroleum royalty decision was made before or after 1 October 2020.

New section 189 provides that where an application for a petroleum royalty decision was made but not finally dealt with before 1 October 2020, chapter 6, which is being replaced by this Bill, continues in relation to the application as if the *Royalty Legislation Amendment Act 2020* had not commenced. This ensures the provisions governing petroleum royalty decisions continue to apply in relation to that application.

New section 190 provides that where an application for a review of a petroleum royalty decision was made but not finally dealt with before 1 October 2020, chapter 6, which is being replaced by this Bill, continues in relation to the application as if the *Royalty Legislation Amendment Act 2020* had not commenced. This ensures the provisions governing the review of petroleum royalty decisions continue to apply in relation to that application.

New section 191 provides that, where chapter 7, part 14 provides that a provision continues to apply as if the *Royalty Legislation Amendment Act 2020* had not commenced, a reference to the Minister in the provision is taken to be a reference to the Commissioner. As the Commissioner will be the person legislatively responsible for administration of the royalty laws from 1 October 2020 when the Taxation Administration Act is adopted for royalties, section 191 ensures the Commissioner has responsibility for administering the provisions continued under chapter 7, part 14.

Clause 105 amends the dictionary in schedule 12 and renumbers it as schedule 1. It omits a number of definitions that are no longer required and inserts a number of new definitions relevant to the new petroleum royalty framework.

Part 10 Amendment of Taxation Administration Act 2001

Clause 106 provides that part 10 amends the *Taxation Administration Act 2001*.

Clause 107 amends section 6 to include as revenue laws those provisions of the Mineral Resources Act and Petroleum and Gas Act referenced in section 6. A revenue law referred to in section 6 necessarily includes any regulations made under the revenue law, so this will include any regulation made under either of those Acts to the extent the regulation is administered by the Minister who administers the Taxation Administration Act.

Clause 108 inserts new section 6A to clarify that for the purpose of interpreting the provisions of the Taxation Administration Act, which will now apply for the administration of taxes and royalties, the continued use of the term 'tax' in the Taxation Administration Act provisions is intended to apply to a revenue law which is either a tax or a royalty. As the purpose of the Taxation Administration Act is to facilitate the administration of a revenue law, use of the term 'tax' in Taxation Administration Act provisions does not alter in any way the nature of a royalty under the Mineral Resources Act or Petroleum and Gas Act.

Clause 109 inserts new section 13A to clarify the Commissioner may make as assessment in relation to a related royalty valuation decision even though an objection, appeal or review in respect of that royalty valuation decision has started but not yet been decided.

Clause 110 amends section 14 to clarify that when a self assessor lodges a return, an assessment is made for each taxpayer stated in the return and for the amount that, based on the information the self assessor has included in the return, is the amount of the taxpayer's liability for tax. This ensures if the information stated in the return reveals the assessment should include a further amount, for example, a royalty fee (due to late lodgement of the return) or a civil penalty, these amounts will be included in the assessment despite the return lodger not having specifically identified or quantified these amounts in the return.

Clause 111 amends section 14A which applies where a self assessor lodges a transaction statement rather than a return. This provision is amended in the same manner that section 14 is amended by the preceding clause.

Clause 112 amends section 17 to clarify that the Commissioner may make a reassessment of an assessment even though an objection, appeal or review in respect of the assessment or a royalty valuation decision that relates to the assessment has started but not yet been decided.

Clause 113 replaces section 19 to provide the Commissioner must make any reassessment or amend a royalty valuation decision to give effect to either the Commissioner's decision to allow an objection, or a court or QCAT's decision about a tax law liability or royalty valuation decision, noting that the Commissioner is not required to do so in relation to an appeal or review decision until the end of any appeal period for that decision.

Clause 114 amends section 26 by including new section 26(6) providing that an assessment notice is not required for an assessment making a remission under section 60 if, after the remission and application of any payments received by the Commissioner, the taxpayer has no assessment liability. This provision replaces section 60(3) which is being omitted.

Clause 115 inserts new section 28A which deals with assessment matters where royalty is payable to a person other than the State, as contemplated by section 320(3)(b) of the Mineral Resources Act. New section 28A clarifies that an assessment notice must include the amount of royalty payable to the State and to another person if relevant. Any reassessment of such an assessment may vary the amount of royalty payable to the State or the other person even though it may not change the overall liability for royalty. Further, a taxpayer's obligation to notify the Commissioner of matters referred to in section 28 of the Taxation Administration Act only relate to the person's liabilities for royalty payable to the State.

Clause 116 amends section 29 to clarify that only amounts payable to the Commissioner under a tax law are required to be paid using the payment methods in section 29.

Clause 117 amends section 30 to provide that if amounts are payable under a royalty law and the royalty law provides a time for payment, then that is the time the payment is required to be made. This is necessary as the royalty laws provide for the payment of quarterly return period liabilities on a monthly instalment basis in certain circumstances. Section 30 is also amended to clarify generally for a return self assessment that any assessed interest is payable on the day the assessment is made rather than a time period specified in section 30(1).

Clause 118 amends section 34 to clarify the Commissioner's ability to approve payment arrangements under the Taxation Administration Act and confirm a payment arrangement can include an arrangement involving instalment payments. Where the royalty legislation specifically provides for the payment of quarterly period royalty liabilities on a monthly instalment basis, this is not a payment arrangement as contemplated by section 34(1).

Clause 119 replaces section 38 to provide the circumstances when the Commissioner may apply refunds against a current or future tax liability of the taxpayer. A refund may be offset against any tax law liability of the taxpayer or any future tax law liability that becomes payable within 60 days after the refund entitlement arises. As mineral and petroleum royalties are now revenue laws under the Taxation Administration Act, this means a royalty refund may now be applied against any other tax law liabilities the taxpayer may have within that 60 day time period.

In addition, if the refund amount is a royalty amount the Commissioner may offset the refund against any future royalty liability that will become payable within six months of the refund arising or the day an assessment is made for the next royalty return period, whichever is the later.

Section 38 also now provides the Commissioner may retain a refund amount for any time period and apply it for any purpose specified by a taxpayer. This will facilitate circumstances where a taxpayer may require a refund entitlement be applied to a future liability that is expected to arise later than the time contemplated in this provision. For example, a person may pre-pay an amount to the Commissioner at the beginning of an audit in anticipation of an increased liability so as to minimise any unpaid tax interest accruing. The pre-payment would ordinarily be required to be refunded under section 38 if it were not for new section 38(4).

Clause 120 amends section 39 as a consequence of the amendment made in the preceding clause.

Clause 121 amends section 45 to clarify that this section does not apply for any royalty payable to a person other than the State. Section 412 of the Mineral Resources Act, as amended by this Bill, deals with any royalty payable to a person other than the State which remains unpaid.

Clause 122 amends section 54 to include modifications to reflect inclusion of mineral and petroleum royalties as revenue laws under the Taxation Administration Act. Both royalties will now be subject to unpaid tax interest under section 54 rather than unpaid royalty interest under the royalty legislation, however the manner in which unpaid interest is calculated for royalty purposes will remain unchanged. New section 54(2A) maintains the existing treatment for unpaid interest for royalty in that the late payment interest component of unpaid tax interest for royalty will continue to accrue daily. For all other revenue laws, the late payment interest component of unpaid tax interest also remains unchanged in that it continues to accrue weekly.

Unlike other revenue laws, both royalties provide for the payment of quarterly return liabilities by monthly instalments. New section 54(9) provides a regulation may prescribe how unpaid tax interest is calculated in certain circumstances, including for an unpaid instalment.

Section 54 also includes new section 54(8) to clarify that where royalty is payable to a person other than the State, as contemplated by section 302(3)(b) of the Mineral Resources Act, any royalty payable to that person is not included as royalty for the purposes of calculating unpaid tax interest payable to the Commissioner.

Clause 123 amends section 58 to clarify that where royalty is payable to a person other than the State, as contemplated by section 320(3)(b) of the Mineral Resources Act, the royalty payable to that person is not included in the amount of primary tax relevant for calculating penalty tax.

Example

An original royalty assessment issues for $1,000, where $650 is payable to the State and $350 is payable to a person other than the State. A reassessment is made in the circumstances contemplated by section 58(1)(c) to increase the royalty assessment to $1,500, where the royalty payable to the State is now $1,100 (an increase of $450) and the royalty payable to the other person is now $400 (an increase of $50). Under section 58(2), penalty tax applies at the rate of 75% of $450.

Clause 124 amends section 60 by omitting section 60(3) as the matters dealt with by that subsection are now included in new section 26(6) of the Taxation Administration Act.

Clause 125 inserts new section 62A to clarify that where royalty is payable to a person other than the State, as contemplated by section 320(3)(b) of the Mineral Resources Act, interest is only payable under part 5, division 3 Taxation Administration Act on royalty payable to the State.

Clause 126 amends the part 6 heading to reflect that part 6 Taxation Administration Act, as amended by this Bill, will not only provide objection, reviews and appeals against assessments.

Clause 127 amends section 63 to clarify rights of objection where a reassessment is made in relation to royalty payable to the State and to a person other than the State, as contemplated by section 320(3)(b) of the Mineral Resources Act. In this respect, the provision clarifies there is a right of objection against the reassessment where the royalty payable to the State and to the other person changes, even though the total amount of royalty payable in the reassessment is the same as under the assessment.

Clause 128 inserts new section 63A to provide a right of objection for royalty valuation decisions. Royalty valuation decisions are defined in schedule 2 of the Taxation Administration Act and include making a royalty valuation decision in the first instance and any subsequent amendment of the decision. Under transitional arrangements, a royalty valuation decision includes a decision under a former provision of the Petroleum and Gas Act about one or more components of the wellhead value of petroleum, and an amended royalty valuation decision is a decision amending that petroleum royalty valuation decision.

New section 63A provides where a royalty valuation decision is amended, the right of objection in respect of the amendment is limited to the changes made by the amendment, similar to section 63(3) of the Taxation Administration Act which provides objection rights for reassessments. New section 63A also provides that any decision or conduct leading up to the making of a royalty valuation decision can only be reviewed as part of an objection against the royalty valuation decision, similar to section 63(4) of the Taxation Administration Act which similarly provides for decisions or conduct leading to the making of an assessment.

Clause 129 amends section 64 as a consequence of the amendment made in the preceding clause to provide objection rights for royalty valuation decisions. In particular, new section 64(3) recognises that a royalty valuation decision is relied on when determining the royalty payable under a royalty assessment, so it clarifies that any objection grounds regarding the royalty valuation decision will need to be raised in an objection against the royalty valuation decision. Those grounds cannot then also be raised in an objection against any royalty assessment made in reliance on the royalty valuation decision. This is also the case even if the person failed to raise those grounds in an objection against the royalty valuation decision.

Clause 130 amends section 65 to clarify the time period for lodging an objection against a royalty valuation decision.

Clause 131 amends section 67 to reflect amendments made by the Bill to provide objection rights for royalty valuation decisions.

Clause 132 amends section 68 to address a drafting issue.

Clause 133 amends section 69 to provide appeal and review rights for royalty valuation decisions and make any necessary consequential amendments. In particular, section 69(1)(b) is amended to clarify that the requirement to pay any tax and late payment interest payable under an assessment before commencing an appeal or review does not extend to an appeal or review against a royalty valuation decision objection as these decisions do not result in a tax liability in the way an assessment does.

This is supported by new section 69(4) which clarifies that any tax or late payment interest on an assessment must be paid before an appeal or review against the assessment objection may be made, even where the person may also be seeking to appeal or review the royalty valuation decision which is relied on in the assessment.

Example

A person objects to a royalty valuation decision, one ground of objection relates to the valuation methodology in clause 10 of the decision. An assessment for $5,000 is made relying on the clause 10 methodology.

The person cannot object to the assessment on the basis of the methodology used, they can only raise that ground in an objection against the royalty valuation decision as provided by section 64(3). The person's assessment objection therefore only includes any grounds that do not relate to the royalty valuation decision.

Both objections are unsuccessful and the person appeals the objections decisions relating to the royalty valuation decision and assessment. Under section 69, the person must pay the $5,000 assessment liability and any late payment interest that has accrued on the assessment before being able to appeal the assessment objection decision to the Supreme Court or seek a review by QCAT.

The person may also appeal or seek a review of the royalty valuation decision objection decision and section 69(1)(b) does not apply.

Clause 134 amends section 69A to reflect amendments made by the Bill to provide appeal and review rights for royalty valuation decisions. Section 69A will now also apply to allow the Commissioner to amend a royalty valuation decision once an appeal or review against the royalty valuation decision has commenced but not yet been decided. If this occurs, the taxpayer may continue or withdraw the appeal or review or vary their grounds of appeal or review, but only to the extent they would have a right of review in respect of the amended royalty valuation decision.

Clause 135 amends section 71 to reflect amendments made by the Bill to provide review rights for royalty valuation decisions.

Clause 136 amends section 75 to provide a non-reviewable decision is a decision that, under a provision of the Taxation Administration Act or a revenue law, is declared to be a non-reviewable decision. This enables a provision of the royalty legislation to declare a Commissioner's decision to be a non-reviewable decision. For example, the Bill provides that the Commissioner's decisions to not make or amend a gross value royalty decision where doing so would decrease the gross value of the mineral where royalty is already payable, are non-reviewable decisions.

Clause 137 amends section 77 to reflect amendments made by the Bill to provide objection, appeal and review rights for royalty valuation decisions. Section 77 provides that where review rights are available under part 6 Taxation Administration Act, then parts 3 and 5 Judicial Review Act do not apply. This is the case whether or not a taxpayer chooses to pursue those rights of review. Section 77 therefore provides that parts 3 and 5 do not apply to assessments and the provision is being amended to reference royalty valuation decisions as well.

Clause 138 amends section 78 to reflect the inclusion of the mineral and petroleum royalty laws as Taxation Administration Act revenue laws. Section 78 provides for the making of a regulation to prescribe laws of the Commonwealth or another State or Territory that deal with a tax, fee, duty, other impost or the payment of a subsidy for goods to be recognised laws if there is a corresponding provision in a law of that jurisdiction allowing for the conduct of investigations for a law administered by the Commissioner. The provision is being amended to include reference to a law dealing with a royalty.

Clause 139 inserts new section 99A which is an investigation power relevant only for mineral or petroleum royalty purposes. Similar investigation powers currently existing in the royalty legislation but are being omitted in this Bill. Section 99A ensures an investigator may test a sample of a thing seized under section 97 of the Taxation Administration Act if the investigator considers it is a mineral or petroleum, even though this may result in the destruction of the mineral or petroleum. If it is destroyed, the investigator will not be required to return it but the person affected may be able to claim compensation under section 106 of the Taxation Administration Act.

Clause 140 amends section 111 to reflect the inclusion of mineral and petroleum royalty laws as Taxation Administration Act revenue laws. The amendments ensure that the circumstances detailed in section 111(2) where the Commissioner may disclose personal confidential information operate as intended. Section 111 reflects similar disclosure provisions currently existing in the royalty legislation which are being omitted by this Bill.

Clause 141 amends section 147 by including a new section 147(5) that clarifies references to liability for tax also includes liability to pay tax for a matter for a particular period. This is necessary as liability for both mineral and petroleum royalty is of an ongoing periodic nature in that liability arises on either a quarterly or annual basis.

Clause 142 amends section 148 by including new sections 148(2) and (3) dealing with the manner in which documents can be given by the Commissioner to a person.

Clause 143 inserts new part 11B dealing with the application of the Taxation Administration Act for royalty operations. New section 149J defines terms relevant for part 11B. New part 11B will apply where there is a royalty operation, being a mining operation as provided for in chapter 11 Mineral Resources Act.

Schedule 2 Mineral Resources Act, as amended by this Bill, provides that a mining operation, for chapter 11 purposes, is taken to exist if the Commissioner makes a determination to that effect under section 320(8) of that Act or if the circumstances prescribed by a regulation made under section 320(9) of that Act are satisfied. Relevantly, new section 32A of the Mineral Resources Regulation prescribes two circumstances when a mining operation will be taken to exist for chapter 11 purposes.

New section 149J also defines what is an authority holder as that term is used in new part 11B.

New section 149K provides that where there is an assessment made for a royalty operation, any Taxation Administration Act references to an assessment of the taxpayer's liability for tax are taken to mean an assessment of each of the relevant authority holders of the tenures which comprise the royalty operation.

Similarly, new section 149L provides how sections 38 and 39 of the Taxation Administration Act are to apply where a royalty operation would be entitled to a refund under the Taxation Administration Act. In particular, under new section 149L(2) the Commissioner's ability under section 38 to apply a refund relating to a royalty operation to current or future tax liabilities of a royalty operation only extends to applying the refund to the tax law liabilities of the authority holders of the tenures which comprise the royalty operation.

New section 149L(3) clarifies for applying section 39 Taxation Administration Act that, in the case of a royalty operation refund entitlement, the Commissioner must be satisfied the royalty operation has not received an amount as tax from a person other than one of the authority holders of the tenures which comprise the royalty operation, or that the refund amount will be passed on to the relevant person.

Clause 144 renumbers part 14 as part 13, division 3 Taxation Administration Act.

Clause 145 renumbers part 15 as part 13, division 4 Taxation Administration Act.

Clause 146 amends section 166 references to part 15 Taxation Administration Act that are renumbered as a consequence of the amendment made in the preceding clause.

Clause 147 renumbers part 16 as part 13, division 5 Taxation Administration Act.

Clause 148 renumbers part 17 as part 13, division 6 Taxation Administration Act.

Clause 149 amends section 170 references to part 17 Taxation Administration Act that are renumbered as a consequence of the amendment made in the preceding clause.

Clause 150 renumbers part 18 as part 13, division 7 Taxation Administration Act.

Clause 151 renumbers part 19 as part 13, division 8 Taxation Administration Act.

Clause 152 renumbers part 20 as part 13, division 9 Taxation Administration Act.

Clause 153 renumbers part 21 as part 13, division 10 Taxation Administration Act.

Clause 154 inserts new part 13, division 11 which provides transitional provisions for the *Royalty Legislation Amendment Act 2020*. This clause inserts new sections 179 to 187 that deal with the adoption of the Taxation Administration Act for mineral and petroleum royalty purposes.

New section 179 defines terms used in the division.

New section 180 clarifies that sections 13A and 19 of the Taxation Administration Act apply to the Commissioner for making an assessment, reassessment or amended royalty valuation decision where the circumstances in those provisions arise, even where it relates to a pre-commencement liability.

New section 181 clarifies that part 3 Taxation Administration Act applies for making an assessment for mineral royalty liability for the financial year ending 30 June 2021.

New section 182 provides how section 61 of the Taxation Administration Act, which deals with the payment of interest following a successful external review decision, applies in relation to a pre-commencement liability.

New section 183 provides how section 61A of the Taxation Administration Act, which deals with the payment of interest following a successful objection decision, applies in relation to a pre-commencement liability.

New section 184 clarifies the extent to which part 6 Taxation Administration Act applies for mineral and petroleum royalty purposes from commencement. Whilst the Taxation Administration Act generally applies in respect of any royalty liabilities arising on or after commencement, the review rights available to a taxpayer under part 6 Taxation Administration Act will apply for any royalty assessment or reassessment, royalty valuation decision or amended royalty valuation decision made on or after commencement. This will be the case whether the decisions relate to a pre-commencement or post commencement royalty liability, or whether the assessment or reassessment was made under the Mineral Resources Act, Petroleum and Gas Act or the Taxation Administration Act.

Example

A person failed to lodge their mineral royalty return for the annual return period ending 30 June 2020, as required under the Mineral Resources Act. The failure to lodge the relevant return for a pre-commencement liability was discovered on audit in December 2020 and the Commissioner subsequently issued an assessment in January 2021.

Under the relevant transitional provision for applying the Taxation Administration Act for mineral royalty purposes, the Taxation Administration Act does not apply for any assessment that is required to be made for a pre-commencement liability. The assessment which issues is therefore made under the Mineral Resources Act.

However, if the person wishes to challenge the assessment, they may lodge an objection against the assessment under part 6 Taxation Administration Act as the assessment was made after the commencement. This is even though the assessment relates to a pre-commencement liability.

New section 185 clarifies the application of part 8 Taxation Administration Act which deals with the confidentiality of information. Similar provisions presently exist in the Mineral Resources Act and the Petroleum and Gas Act for mineral and petroleum royalty purposes respectively. This provision clarifies part 8 will apply to information acquired before commencement, where that information was acquired in the administration or enforcement of a former provision of the Mineral Resources Act or Petroleum and Gas Act.

New section 186 provides that a reference to a royalty valuation decision in the Taxation Administration Act includes a decision or amended decision under the former provisions of the Petroleum and Gas Act about one or more components of the wellhead value of petroleum. This ensures that part 6 Taxation Administration Act applies to provide review rights for such decisions made after the commencement.

New section 187 provides for the making of a regulation to ensure the effective transition from the operation of the Mineral Resources Act, Petroleum and Gas Act and Taxation Administration Act as in force before commencement to the operation of the Taxation Administration Act as amended by the Bill, where provision or sufficient provision is not made for that transition. The regulation may have limited retrospective effect. Provision is also made for the expiry of this section and any regulation made under it after two years.

Clause 155 amends schedule 2 to omit various defined terms and insert new defined terms required as a result of the application of the Taxation Administration Act for royalty purposes.

In particular, the meaning of an *original assessment* is amended to clarify that an original assessment also contemplates an assessment being made for a particular period, which recognises the periodic nature of certain revenue laws such as royalties and payroll tax. In addition, as an original assessment is, by its nature, the first assessment made for a period, transaction, instrument or matter, it can only ever be made once. This means that if the original assessment is varied in any way, for example on reassessment an amount such as penalty tax is included that was not included in the original assessment, then the original assessment is still the original assessment for that particular period, transaction, instrument or matter. The reassessment is not taken to be an original assessment in respect of the penalty tax imposed in the reassessment.

The term *royalty law* means those provisions of the Mineral Resources Act and Petroleum and Gas Act that are revenue laws for section 6 of the Taxation Administration Act purposes. Each of the Mineral Resources Act and Petroleum and Gas Act must be read together with the *Mineral and Energy Resources (Common Provisions) Act 2014* by virtue of sections 6 and 7 of the *Mineral and Energy Resources (Common Provisions) Act 2014.*

Part 11 Amendment of Taxation Administration Regulation 2012

Clause 156 provides that part 11 amends the *Taxation Administration Regulation 2012.*

Clause 157 amends section 4 to include royalty specific amounts (royalty, royalty civil penalty and a royalty fee) as amounts that may be paid using the methods prescribed by section 4.

Clause 158 inserts new sections 12A and 12B to include royalty specific methods for lodging documents and determining when a lodged document is received by the Commissioner.

Clause 159 amends section 13. Section 147 of the Taxation Administration Act provides a document is taken to be given to all taxpayers who are liable to pay the tax if given to one of the taxpayers, however section 147(2) provides a regulation may prescribe when that does not apply. Relevantly, section 13(1)(a) provides that section 147 does not apply if a taxpayer is not required to pay the tax under an agreement between the taxpayers liable to pay the tax, but this exclusion does not apply to the payment of payroll tax as provided for in section 13(2). This clause amends section 13(2) to broaden the exclusion to royalty.