

# Royalty Legislation Amendment Bill 2020

## Statement of Compatibility

### Prepared in accordance with Part 3 of the *Human Rights Act 2019*

In accordance with section 38 of the *Human Rights Act 2019*, I, Cameron Dick, Treasurer, Minister for Infrastructure and Planning make this statement of compatibility with respect to the Royalty Legislation Amendment Bill 2020.

In my opinion, the Royalty Legislation Amendment Bill 2020 is compatible with the human rights protected by the *Human Rights Act 2019*. I base my opinion on the reasons outlined in this statement.

### Overview of the Bill

The Royalty Legislation Amendment Bill 2020 (the Bill) will implement a new basis for imposing petroleum royalty from 1 October 2020 and deliver the Royalty Administration Modernisation program (RAM program), including a number of technical amendments consequential on delivery of the RAM program.

#### Petroleum Royalty Amendments

The Bill amends the *Petroleum and Gas (Production and Safety) Act 2004* (PGA) and *Petroleum and Gas (Royalty) Regulation 2004* (PGR) to change the basis for imposing petroleum royalty. From 1 October 2020, petroleum royalty will be calculated by applying the relevant royalty rate to the volume of petroleum produced during a royalty return period, with different royalty rates applying depending on the class of petroleum and its use (volume model).

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. This regime was designed at a time which preceded the emergence of the coal seam gas (CSG) and liquified natural gas (LNG) industries. Due to the way these industries operate, issues with the current regime have arisen, including in determining the wellhead value of CSG used for LNG and the deductibility of post wellhead expenses.

Adoption of the volume model follows an independent review of Queensland's petroleum royalty arrangements. Key objectives of the review included ensuring greater certainty, equity and simplicity for all parties, identifying opportunities to simplify the current petroleum royalty regime, and providing an appropriate return to Queenslanders from their valuable non-renewable resources.

Under the volume model, separate tiered rates will apply depending on the class of petroleum and its use. In this regard, petroleum will be classified as:

- Domestic gas;
- Supply gas, which is gas that is produced by a petroleum producer, other than as a member of an LNG project, and sold or otherwise transferred to a member of an LNG project;
- Project gas, which is all gas produced by a petroleum producer as a member of an LNG project, other than domestic gas;
- Liquid petroleum.

For each class of petroleum, the applicable royalty rate for a royalty return period will be determined based on the relevant reference price for the petroleum and that rate will then be applied to the volume of the petroleum produced in the period. The relevant reference price will be either the sale price for the petroleum or a benchmark price.

Under the volume model, a sale of petroleum by a petroleum producer must be arm's length for the sale price to be used as the relevant reference price. That is, it must be a price obtained from a sale to a person who is not a relevant entity (broadly, an unrelated 3<sup>rd</sup> party). If the sale by the petroleum producer is to a relevant entity, tracing rules will apply to enable tracing through a further transaction or series of transactions to obtain an arm's length sale price if possible. If an arm's length price is not available, a benchmark price will instead be the relevant reference price. A benchmark price may also apply if, for example, a petroleum producer elects to use it or the Commissioner of State Revenue (Commissioner) is satisfied that the available sales information is inadequate or inappropriate for use.

To support implementation of the volume model, the Bill also makes amendments to allow a person involved in petroleum production who does not hold any legal interest in the petroleum tenure to elect to be treated as a petroleum producer for royalty matters (non-tenure holder arrangements). Joint venture arrangements are common in the CSG industry and often involve situations where both parties separately commercialise the CSG but only one of the parties holds the petroleum tenure. The other party, who does not hold any legal interest in the tenure (non-tenure holder), may contribute to the joint venture by providing capital for example. Currently, for these joint venture arrangements, the tenure holder is liable for royalty on all of the petroleum produced while the non-tenure holder has no royalty obligations under the PGA and PGR.

These voluntary non-tenure holder arrangements will enable non-tenure holders to separately lodge returns and pay royalty for their share of the petroleum produced from the joint venture tenure. This will avoid the need for the non-tenure holder to provide commercially confidential sales data to the tenure holder for the purpose of determining petroleum royalty liability under the volume model.

Despite an election being made, the tenure holder remains ultimately liable for any unpaid royalty for the tenure if the non-tenure holder defaults. Therefore, an election can only be approved by the Commissioner if the tenure holder has authorised the making of the election by the non-tenure holder.

## **RAM Program Amendments**

The Bill also includes RAM program amendments. The aim of the RAM program is to adopt the *Taxation Administration Act 2001* (TAA) revenue administration framework for the administration of mineral and petroleum royalties.

The TAA currently provides a modern and comprehensive revenue administration framework for the other State revenue laws administered by the Commissioner, being duties (*Duties Act 2001*), land tax (*Land Tax Act 2010*), payroll tax (*Payroll Tax Act 1971*) and betting tax (*Betting Tax Act 2018*).

The TAA deals with administrative matters such as assessments and reassessments of tax, payment and recovery of tax, refunds, interest and penalties where tax is underpaid, review rights, investigation and garnishee powers, confidentiality and other administrative matters such as service and delivery of documents and record keeping obligations.

Since 2011 when administrative responsibility for royalties was transferred to the Treasurer, the Office of State Revenue (OSR) has progressively implemented a number of changes to the legislative framework supporting royalty administration to adopt provisions consistent with those applying for taxes under the TAA. As a result, the present royalty administration provisions in the *Mineral Resources Act 1989* (MRA), *Mineral Resources Regulation 2013* (MRR), PGA and PGR (royalty legislation) are largely consistent with the TAA's provisions dealing with assessments and reassessments, payment and recovery of royalty, interest and penalties, investigation and garnishee powers, confidentiality, service and delivery of documents and record keeping obligations. However, adoption of the TAA to provide the administrative framework for royalties will achieve consistency for all revenues administered by OSR, and will deliver beneficial reforms for both OSR and royalty payers.

As matters such as the imposition, calculation and incidence of a particular tax are dealt with in the tax legislation itself rather than the TAA, adopting the TAA for administering royalties will not affect mineral or petroleum royalty liability.

To achieve the RAM program objectives, the Bill will amend section 6 of the TAA to include the MRA's mineral royalty provisions and the PGA's petroleum royalty provisions as revenue laws under the TAA. The TAA and the royalty legislation will then be read together as if they formed one Act, therefore providing a complete legislative framework for both imposing and administering royalties.

The royalty legislation will be amended to omit the existing administrative provisions, and consequential amendments will be made to certain TAA provisions to properly support inclusion of mineral and petroleum royalty. Consequential amendments are also being made to the *Betting Tax Act 2018*, *Judicial Review Act 1991*, *Payroll Tax Act 1971* and the *Petroleum Act 1923* to support the RAM program.

Given the current arrangements, expanding the TAA's scope to formally apply it to royalties will result in minimal change to the way the royalty administration framework currently applies in most cases. No human rights issues are therefore considered to newly arise to this extent.

However, there will be some cases where adoption of the TAA will result in changes to royalty administration that require human rights consideration.

## Human Rights Issue

### Human rights relevant to the Bill (Part 2, Division 2 and 3 *Human Rights Act 2019*)

In my opinion, the human rights under the *Human Rights Act 2019* (Human Rights Act) that are relevant to the Bill are:

- Property rights (section 24) in respect of the Commissioner’s ability to offset royalty refunds against current and future revenue law liabilities;
- Privacy and reputation (section 25) in respect of the petroleum royalty amendments;
- Property rights (section 24) and privacy and reputation (section 25) in relation to the adoption of the TAA’s recognised law investigation framework for royalty administration; and
- Right to a fair hearing (section 31) in relation to the adoption of the TAA’s part 6 review framework for royalty assessments and royalty valuation decisions.

For the reasons outlined below, I am of the view the Bill is compatible with each of these human rights.

Further, section 11 of the Human Rights Act provides that only individuals have human rights. When considering the impact that the petroleum royalty amendments and extending the TAA’s scope to include royalty administration will have on individuals, it is relevant that most entities liable for royalty are corporations rather than individuals. The amendments in the Bill will therefore have limited application to individuals which minimises the potential for any limitation on human rights.

**If human rights may be subject to limitation if the Bill is enacted – consideration of whether the limitations are reasonable and demonstrably justifiable (section 13 *Human Rights Act 2019*)**

#### **TAA refund provisions**

##### (a) the nature of the right

Section 24 of the Human Rights Act protects the right of a person to own property, whether alone or with others, and provides that a person has a right to not be arbitrarily deprived of their property. It extends to real or personal property and to traditional aspects of property rights, such as the ability to use, transfer or dispose of property.

Case authority suggests that ‘arbitrary’ in the human rights context refers to conduct that is capricious, unpredictable or unjust and refers to interferences which are unreasonable in the sense of not being proportionate to a legitimate aim that is sought. Provisions which deal with the forfeiture and seizure of property, those affecting an individual’s ability to access property or which exercise control over an individual’s property may therefore potentially amount to a deprivation of property and limit this right, provided the deprivation is considered to have been arbitrary.

Currently a royalty refund may be held for an indefinite time to be offset against a person's future royalty liability. On adoption of the TAA, the timeframe for holding a royalty refund for application to a future royalty liability will be the later of 6 months or when the next royalty assessment is made. Whilst the Commissioner's ability to retain a royalty refund would ordinarily engage a person's right to property, the TAA amendments reduce the time for which a royalty refund may be held compared to now and, on that basis, these amendments are not considered to limit a person's right to property.

In addition, section 38 of the TAA will permit the Commissioner to apply a royalty refund owing to a person to offset a current or future liability under another revenue law e.g. a payroll tax liability. However, the timeframe for holding a refund in this case will only be 60 days, which is the same timeframe currently applying for taxes under the TAA. A provision such as this that limits a person's entitlement to a royalty refund is considered to limit a person's property rights.

Section 38 of the TAA, and equivalent refund provisions in the *Payroll Tax Act 1971* and *Betting Tax Act 2018* are also being amended to permit the Commissioner to retain refunds to offset liabilities for longer than the standard timeframes, provided the person entitled to the refund consents. For instance, a person may prepay 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. Mandating repayment of that amount within a legislated timeframe would defeat the person's clear intentions. Allowing the overpaid amount to be held as requested is a beneficial amendment that addresses a potential anomaly with the existing provisions. For these reasons, these amendments are not considered to limit a person's property rights.

Section 39 of the TAA is a windfall gains provision which will ensure the Commissioner may only refund a royalty amount if satisfied the recipient will pass it on to the person who actually bore the incidence of the royalty liability. That is, a refund of royalty may only be made if the Commissioner is satisfied the royalty payer has not received, or will not receive, an amount as royalty from another person for any part of the royalty paid or, when an amount in relation to the royalty paid has been received as royalty from another person, the royalty payer will reimburse the other person. This ensures the benefit of the refund is received by the person properly entitled to it and is therefore considered to promote a person's property rights.

(b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The purpose of the refund provisions is to ensure the continued effective maintenance and protection of the public revenue. They ensure that, if the Commissioner has an amount to be refunded to a person in relation to a particular revenue law liability, it can be applied by the Commissioner to discharge any other revenue law liability the person has at the time the refund arises or which will arise within a reasonable time afterwards. This maximises the prospects that all of a person's revenue liabilities will be appropriately discharged on time.

On application of the TAA to royalties, these same principles are equally relevant. Importantly, a royalty refund may only be held for 60 days for application to another revenue liability of the person, which is the same period that currently applies for any State tax refund the person may be entitled to.

The requirement that a royalty refund may be held for application to another royalty liability until the later of six months or when the next royalty assessment is made is necessary to reflect the particular nature of royalty liabilities and their return lodgement requirements. That is, due to the continuing periodic nature of royalty liabilities, it is not possible to accurately determine the extent of a person's next royalty liability until at least the next periodic assessment period, noting that a royalty periodic assessment period is either three or 12 months.

The Commissioner's ability to retain a refund amount in accordance with the specific instructions of the person that is otherwise entitled to the refund is considered consistent with a free and democratic society as it allows the Commissioner to give effect to a person's wishes.

(c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

Each of these provisions ensures the Commissioner can continue to effectively administer and maintain the public revenue.

The Commissioner's ability to retain a refund arising under a revenue law and apply this to a current or future liability under that or another revenue law or as directed by the person directly ensures a person's revenue law liabilities are discharged and consequently, the integrity of the public revenue is maintained.

(d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill

It is not considered there are any less restrictive or reasonably available ways to achieve the purposes outlined above. The limitation on a person's property rights is confined as the refund provisions have clear time limits in which overpaid amounts may be retained and applied by the Commissioner, with positive obligations imposed on the Commissioner to make a refund on expiry of those time limits. Further, any retention of amounts by the Commissioner beyond those timeframes and conditions can only occur with the consent of the person affected.

(e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

To ensure the refund provisions do not result in an arbitrary deprivation of a person's property, they include legislated safeguards as to when and how these powers may be exercised, as discussed above. This therefore limits the possibility these powers may be used in a capricious, unpredictable or unjust manner or in a manner disproportionate to the aim that is sought.

Any potential impacts on an individual's property rights are considered to be outweighed by the benefits to the broader community in ensuring the Commissioner can effectively collect and administer the public revenue for the benefit of the State and all Queenslanders.

(f) any other relevant factors

Nil.

**Petroleum royalty amendments**

(a) the nature of the right

Section 25 of the Human Rights Act provides that a person has the right not to have their privacy, family, home or correspondence unlawfully or arbitrarily interfered with. Further, a person has the right not to have their reputation unlawfully attacked.

Provisions that require or contemplate the disclosure of certain information to petroleum producers for the purpose of determining the petroleum royalty rate may potentially limit the right to privacy and reputation.

Determination of the applicable royalty rate will depend on whether petroleum is project gas, supply gas, domestic gas, or liquid petroleum. In relation to supply gas, the petroleum producer selling the petroleum will need to know whether or not the purchaser is an LNG project. For petroleum royalty purposes, the Commissioner may decide that an arrangement is an LNG project and there will be a legislative obligation for an LNG project member to advise each producer from whom it purchases gas that it is an LNG project. Failure to do so is an offence. To ensure royalty can be properly paid, the Commissioner may advise a person that it is selling gas to an LNG project if the project member fails to do so. Status as an LNG project for royalty purposes may be considered to be information that is of a confidential nature.

Where a petroleum producer sells petroleum through relevant entities, determination of the applicable royalty rate using sales price as the reference price will require tracing through the sale made by the relevant entity reseller to an arm's length purchaser, and inclusion of this information by the petroleum producer in its royalty return. However, this arm's length sales information may not be within the knowledge and possession of the producer. Therefore, it would need to be obtained from the reseller for use in determining the producer's royalty liability. There will be no legislative obligation for the reseller to disclose this information to the producer; rather it will be left to the parties to determine what information will be made available. If the reseller does not provide the sales information, the producer would instead use the benchmark price as the relevant reference price to determine the applicable royalty rate.

There may be certain circumstances where the Commissioner needs to disclose particular information to both a non-tenure holder and tenure holder. For example, a notice must be provided to the non-tenure holder and tenure holder where the Commissioner makes particular decisions relating to an election by a non-tenure holder to be treated as a petroleum producer for royalty matters, such as where the Commissioner decides an application for an election,

refuses a request to withdraw an election or makes a decision about bringing an election to an end. Depending on the circumstances, the provision of this notice may involve the disclosure of information about the affairs of either the non-tenure holder or tenure holder. Further, where a non-tenure holder defaults on paying royalty, the Commissioner may need to disclose information relating to their affairs to the tenure holder to ensure payment of all outstanding royalty for the tenure.

Section 111 of the TAA, which will apply for petroleum royalty administration purposes as a consequence of the RAM program, generally limits the disclosure of confidential information. However, exceptions apply which permit the Commissioner to disclose personal confidential information in particular circumstances, including for the administration or enforcement of legislation administered by the Commissioner. With the introduction of the non-tenure holder arrangements, this exception will facilitate their administration by permitting the disclosure of information relating to the affairs of a non-tenure holder or tenure holder in certain circumstances.

(b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The purpose of the LNG project disclosure obligation is to facilitate the proper calculation of petroleum royalty. As separate royalty rates apply to different classes of petroleum, it is critical a producer knows whether the gas that it sells is being used in an LNG project so that the producer can determine which rate applies. As petroleum royalty is a payment to the State for the right to extract petroleum, this limitation is considered reasonable and necessary to ensure the State is appropriately compensated for the extraction of this non-renewable resource, for the benefit of all Queenslanders. Further, LNG projects are comprised of corporations so practically there will be no impact on individuals.

Ordinarily the applicable royalty rate will be determined based on the arm's length sales price for the petroleum. Where the liable petroleum producer sells the petroleum to a non-relevant entity, the producer has direct access to the necessary sales information. However, where sales are made through relevant entities to an arm's length purchaser, this information may not be within the knowledge or possession of the petroleum producer.

While the volume model is designed in a way which contemplates the disclosure of this information to the petroleum producer, it does not compel disclosure and a benchmark price will be used to determine the applicable royalty rate where the relevant entity does not provide the sales information to the producer. Therefore, as far as possible, the model ensures consistency for all petroleum producers, including those that sell to relevant entities, by facilitating determination of the applicable petroleum royalty rate by reference to sales price, but providing an alternative if the producer cannot voluntarily obtain the required information from its relevant entity reseller.

In relation to the disclosure of information to support administration of the non-tenure holder arrangements, decisions relating to an election will necessarily have impacts for both the non-tenure holder and the tenure holder in terms of their obligations under the PGA and PGR. That is, whether they both have obligations in relation to their respective share of royalty or whether the tenure holder alone is liable for all of the petroleum produced. Therefore, information relating to these decisions must necessarily be disclosed to both parties. Additionally, where a non-tenure holder defaults, the default needs to be disclosed to the tenure holder to ensure payment of all outstanding royalty by the tenure holder.

These provisions enable transparency in decision-making, ensure that both non-tenure holders and tenure holders have the requisite information to enable them to comply with their royalty obligations, and seek to minimise any risk to the public revenue associated with implementation of the non-tenure holder arrangements.

Further, a person elects to be treated as a non-tenure holder for royalty purposes, and the tenure holder must agree to the election. Both should do so in full knowledge of all of the implications.

(c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

The LNG project disclosure obligation will facilitate implementation of the new volume model by ensuring producers that sell to LNG projects have the relevant information available to determine the applicable petroleum royalty rate.

The ability to disclose confidential information relating to non-tenure holders and tenure holders in limited circumstances necessarily ensures the proper operation of the new non-tenure holder arrangements, which ultimately supports implementation of the new volume model.

(d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill.

There are no less restrictive or reasonably available ways to achieve the purpose of the Bill.

In relation to the LNG project disclosure obligation, any potential impact is minimised by the fact the disclosure requirement only applies in specific circumstances, being where petroleum is being sold to an LNG project. This also means the disclosure of information will generally occur between parties that have an existing commercial relationship, such as through a history of commercial dealings. Additionally, as noted, the persons affected by these provisions are very unlikely to be individuals.

While the new volume model contemplates that sales information would need to be provided to a petroleum producer by a relevant entity reseller to enable the producer's royalty rate to be determined using the sales information, it does not compel the disclosure. Rather, it is ultimately up to the petroleum producer and relevant entity reseller to reach their own agreement about whether this information will be shared and on what terms. The producer's royalty can be determined on the basis of a benchmark price if the information is not available.

In relation to the potential disclosure of confidential information under the non-tenure holder arrangements, any impact is minimised by the fact it will only apply where the non-tenure holder has voluntarily elected to be treated as a tenure holder and to subject itself to the legislative rights and obligations that result. Additionally, an election by a non-tenure holder must be endorsed by the tenure holder, which ensures all parties are aware of and consent to the arrangements. Further, a person to whom the Commissioner has disclosed confidential information to under the TAA is only permitted to on-disclose that information in limited circumstances.

- (e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

In relation to the LNG project disclosure obligation, any potential impact on a person's right to privacy and reputation is considered to be outweighed by the administrative benefits to producers of having the necessary information available to them to enable them to properly calculate their royalty liability under the volume model, using arm's length sales information where appropriate. Similarly, any potential impact on a person's right to privacy and reputation is considered to be outweighed by the benefits to the State and maintaining the integrity of the public revenue.

In relation to the possible disclosure of confidential information to support administration of the non-tenure holder arrangements, any potential impact on a person's right to privacy and reputation is considered to be outweighed by the flexibility afforded to petroleum producers that voluntarily elect to utilise these arrangements. By giving non-tenure holders the ability to make an election to be treated as a tenure holder, they are able to lodge their own royalty returns and maintain the confidentiality of their sales data. Additionally, any potential impact on a person's right to privacy and reputation is considered to be outweighed by the fact that limitations are necessary to ensure both the tenure holder and non-tenure holder have clarity and certainty regarding their obligations under the PGA and PGR, enabling them to comply with their obligations and thus ultimately ensuring protection of the public revenue for the benefit of the State and all Queenslanders.

- (f) any other relevant factors

Nil.

### **TAA recognised law investigation framework**

The amendment to section 6 of the TAA to include the royalty legislation as a TAA revenue law has the effect of including the TAA's recognised law framework (part 7 divisions 1 and 3 TAA) as part of the legislative framework for the royalty legislation and potentially limits the following rights:

- Property rights (section 24)
- Privacy and reputation (section 25)

(a) the nature of the right

As discussed above, section 24 of the Human Rights Act protects the right of a person to own property, whether alone or with others, and provides a person has a right to not be arbitrarily deprived of their property. It extends to real or personal property and to traditional aspects of property rights, such as the ability to use, transfer or dispose of property.

Section 25 of the Human Rights Act provides a person has the right not to have the person's privacy, family, home or correspondence unlawfully or arbitrarily interfered with. In this context, privacy extends to matters such as personal information and data collection, while an unlawful or arbitrary interference would be one not permitted by law or that would otherwise be capricious, unpredictable or unjust.

The investigation framework in part 7 of the TAA provides for the powers which may be exercised, by either the Commissioner or an investigator appointed by the Commissioner, for the administration or enforcement of the revenue laws. These powers include the ability to require production of documents or information, access to places under certain conditions and the power to seize things, subject to certain conditions.

Since 2014, the TAA's investigation framework (part 7 division 2) has been applied for mineral and petroleum royalty purposes by way of a legislative application provision.<sup>1</sup> This enables these TAA provisions to be exercised for royalty administration purposes as if they, in effect, formed part of the MRA and PGA.

Once the mineral and petroleum royalty legislation each become a TAA revenue law, the application provision will be omitted from the royalty legislation and part 7 division 2 TAA will substantively apply in the same way it applies for all other TAA revenue laws. There will be no actual change to the powers able to be exercised compared to now.

However, on application of the TAA for royalties, the TAA's recognised law investigation provisions (part 7 divisions 1 and 3) will then also form part of the legislative framework for royalty purposes. These provisions are part of a longstanding interjurisdictional legislative framework that facilitates investigations being conducted where taxpayers may operate in more than one jurisdiction or hold their records interstate. It enables the Commissioner to exercise investigation powers under the TAA on request by another jurisdiction for the purpose of that jurisdiction's tax law where certain conditions are satisfied. These include the interstate law having been declared a recognised law under the *Taxation Administration Regulation 2012* (TAR) and the other jurisdiction having legislatively reciprocated these arrangements to allow it to conduct an investigation under its legislation for the purpose of a Queensland revenue law.

A person's property rights, and privacy and reputation rights, may therefore be impacted where a recognised law investigation is undertaken in Queensland for the purpose of ensuring the correct amount of royalty is paid by the person in another jurisdiction. The investigation will be carried out under the same framework that applies for the purposes of ensuring compliance with Queensland's revenue laws. As a result, an investigator will, subject to conditions, be able

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<sup>1</sup> Sections 333Z *Mineral Resources Act 1984* and 616D *Petroleum and Gas (Production and Safety) Act 2004*.

to access a place in Queensland to obtain documents that are relevant to determining a person's interstate royalty liability, and exercise powers in relation to the seizure, retention and forfeiture of a person's property for the same purpose. The information and documents obtained may be provided to the Commissioner of the jurisdiction to which the investigation relates.

Although the TAA's investigation provisions will be capable of application for a broader purpose to facilitate interstate royalty investigations under the recognised law framework, amendment of the TAR will first be necessary to prescribe an interstate recognised royalty law and a corresponding Commissioner administering such legislation. This may only be done if that other jurisdiction has prescribed Queensland's royalty legislation as a corresponding law to enable its investigation provisions to be used to monitor compliance with Queensland royalty obligations.

The Bill does not amend the TAR to prescribe any such interstate law or Commissioner, nor is the Commissioner or the royalty legislation being prescribed in the TAA equivalent legislation of any other jurisdiction at this time. Until that occurs, there is no scope for the investigation powers discussed above to be used for part 7 divisions 1 and 3 TAA.

Further, on such a regulation being made, although their scope of operation will be broader, there will be no change to the nature of the investigation powers which currently apply for conducting investigations for Queensland's royalty legislation.

(b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The recognised law investigation provisions are necessary to achieve the overall policy objective of effective revenue management and protection of the public revenue by the Commissioner and for those jurisdictions that administer comparable revenue legislation. This is achieved by providing the Commissioner and investigators with adequate powers to properly identify and assess a person's revenue law liabilities and obligations. It facilitates the Commissioner accessing information or documents outside Queensland for a Queensland revenue investigation and allows the Commissioner to undertake investigations in Queensland on another jurisdiction's behalf, provided there are reciprocal arrangements in place with that jurisdiction.

This is necessary as people with revenue liabilities, including for royalty, may operate in more than one jurisdiction and therefore the recognised law investigation provisions enable appropriate and lawful investigation action so the Commissioner can investigate potential revenue avoidance and ensure the correct amounts are being accounted for and paid.

(c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

All other Federal, State and Territory revenue agencies have adopted the recognised law investigation provisions for taxes as they ensure revenue investigations may be undertaken regardless of the location in which a person with a revenue liability may operate, which ultimately operates to ensure the public revenue is maintained. They are a necessary and well recognised aspect of a modern, effective and comprehensive revenue management framework.

As with the other TAA provisions discussed in this statement, adoption of the recognised law investigation provisions will facilitate the Commissioner being able to properly administer and maintain royalty revenue by ensuring that, through reciprocal arrangements, investigations can be conducted interstate to assure compliance with Queensland's royalty laws, and vice versa.

(d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill.

For self assessed revenues such as royalty, solely relying on a person to voluntarily disclose all necessary information and documents does not necessarily achieve the correct revenue outcome in all cases and therefore does not ensure effective administration and maintenance of the public revenue. Compliance activity to review self assessed liabilities is a longstanding and significant feature of Queensland's revenue management.

This is the case whether the necessary information and documents are located in Queensland or in another jurisdiction. The above mentioned investigation powers, supported by the recognised law investigation provisions, are therefore fundamental.

As noted, the investigation powers that will apply for royalty purposes on adoption of the TAA are the same as those currently applying under the royalty legislation, and are consistent with those applying in other revenue jurisdictions. The TAA investigation provisions and the recognised law provisions also include appropriate legislative safeguards discussed below to ensure a person's property rights and right to privacy are not unreasonably limited.

Relevantly, in addition to only being able to be used for the administration of a tax law or recognised law, the investigation powers can only be exercised by the Commissioner or an appropriately qualified investigator appointed under part 7 division 2 TAA. Under section 80 of the TAA only a suitably qualified person may be appointed by the Commissioner to be an investigator.

Powers of entry can only be exercised by consent, via execution of a warrant or in other limited circumstances. The TAA investigation provisions regarding seizure powers also require the issue of a receipt for items seized, strict time limits for retention, obligations to return a seized item as well as providing access to a seized item while it is being held.

Further, if exercise of these powers results in the collection of either personal confidential information or confidential information, the secondary disclosure of any information disclosed under these investigation provisions will be limited as provided for under the confidentiality provisions in part 8 TAA. In addition, to the extent any information collected is also personal information, the *Information Privacy Act 2009* provides further safeguards about the use of information obtained.

For these reasons, it is considered there are no less restrictive or reasonably available ways to ensure maintenance and protection of the public revenue.

(e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

On balance, it is considered any potential limitation on these human rights are outweighed by the fundamental importance to both the State and the community of the need to protect and maintain the public revenue. Further, the investigation powers discussed above currently apply for royalty purposes and also include suitable safeguards to regulate their use.

(f) any other relevant factors

Adopting the TAA for royalties will only result in the recognised law framework in part 7 divisions 1 and 3 TAA forming part of the legislative framework for royalty administration once the TAR is amended to prescribe an interstate royalty law for this purpose, which may be done only if the other jurisdiction does likewise for Queensland's royalty laws. The Bill does not effect these amendments.

### **TAA review framework amendments**

(a) the nature of the right

Section 31 of the Human Rights Act provides for the right to a fair hearing for both criminal and civil matters and includes the right to have a proceeding decided by a competent, independent and impartial court or tribunal after a fair and public hearing. Provisions which may potentially limit this right include provisions which create or restrict administrative decision making and appeal processes.

#### *New administrative decision making and appeal processes for royalties*

A person with a royalty assessment or royalty valuation decision (including an amended royalty valuation decision) will be able to challenge these decisions under the TAA's part 6 objection, review and appeal framework (part 6 framework). As this will result in the creation of a new review and appeal process for royalty assessments and royalty valuation decisions, a person's right to a fair hearing is considered engaged.

The part 6 framework will replace the internal review framework for royalty valuation decisions and amended royalty valuation decisions in the MRR and PGR with broadly identical objection rights. To this extent there is no change and no limitation. The part 6 framework will also replace current review rights for royalty assessments, royalty valuation decisions and amended royalty valuation decisions under the *Judicial Review Act 1991* (JRA). Removing these review rights results in a restriction of a person's existing review processes and to that extent, a person's right to a fair hearing is potentially limited.

#### *TAA part 6 framework*

Adoption of the TAA's part 6 framework and the consequent removal of existing JRA review rights means all aspects of the TAA's part 6 framework will now apply for a person seeking to challenge a royalty assessment or royalty valuation decision. Some aspects of the part 6 framework are considered to limit a person's right to a fair hearing and these are now discussed.

Under the part 6 framework, a person dissatisfied with an objection decision will be able to seek a Queensland Civil and Administrative Tribunal (QCAT) review or Supreme Court appeal, subject to first having paid any royalty or late payment interest where the review or appeal relates to an assessment.

The part 6 framework also provides that a limited number of decisions are non-reviewable, meaning they fall outside the TAA part 6 review framework and cannot be challenged, reviewed or called into question in any other way, including under the JRA. No such concept presently exists in the royalty legislation so once the TAA applies for royalty purposes, such decisions will also be non-reviewable if made in a royalty context. The TAA non-reviewable decisions that will now, by extension, also apply for royalties are discussed in (b) below.

Further, the Bill includes amendments to specify certain royalty decisions will also be non-reviewable decisions. Specifically, the Commissioner cannot be compelled to either make or amend a royalty valuation decision in a way that decreases the royalty for a period, if royalty was payable for that period. The Commissioner's decision to not make or amend a royalty valuation decision in this regard will be a non-reviewable decision.

(b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

#### *New administrative decision making and appeal processes for royalties*

A review framework is essential for protecting taxpayer's rights and effectively managing the public revenue. Adoption of the TAA for royalties ensures a person with a royalty liability or who has had a royalty valuation decision made for royalty purposes can avail themselves of the TAA's robust and comprehensive part 6 review framework, in the same way any person presently subject to the TAA can.

This will actually result in an expansion of a royalty payer's review rights compared to now where there are only limited internal review rights for royalty valuation decisions and amended royalty valuation decisions, and JRA review rights for royalty assessments and royalty valuation decisions. For this reason, adoption of the part 6 framework and its expansion to accommodate royalty valuation decisions does not limit a person's right to a fair hearing.

Maintaining a person's JRA review rights in addition to the TAA's broader review rights would also jeopardise the public revenue or create uncertainty by providing a person with a royalty liability or a royalty valuation decision more than one avenue to seek review of those decisions.

#### *TAA part 6 framework*

The part 6 framework includes a requirement to pay any tax or late payment interest in respect of an assessment before proceeding with either a QCAT review or Supreme Court appeal in relation to that assessment. It also provides that certain decisions are non-reviewable. Each of these matters may be considered to limit a person's right to a fair hearing.

It is a longstanding State tax policy to require an assessment liability and any late payment interest to be paid before an appeal right arises. This ensures a person accounts for their revenue liabilities in a timely manner, recognising external review and appeal mechanisms may take a number of years to be concluded. Applying such a requirement consistently across all revenue payers under the TAA ensures the requirement is administered equitably and does not, of itself, limit or disadvantage a person's right to external review. If this condition were not imposed, deferring payment of a person's revenue liabilities pending conclusion of review and appeal processes would result in delayed public revenue collections, to the detriment of the State and the community. As this requirement is part of the part 6 framework, a person with a royalty assessment will now be subject to this requirement.

While the TAA deems certain decisions made under that Act or a revenue law to be non-reviewable decisions, those decisions are generally made in the Commissioner's absolute discretion to confer a benefit on a person, so that refusal by the Commissioner to exercise such a discretion in the taxpayer's favour is properly non-reviewable.

The limitation also ensures the effective administration of the TAA's review framework. For example, under section 17(4) of the TAA the Commissioner cannot be compelled to make a reassessment to decrease a person's liability, other than where required under the TAA's part 6 review framework. The Commissioner's refusal to make a reassessment decreasing a person's liability under section 17 generally is a non-reviewable decision under section 19 TAA. This reflects that a person aggrieved by an assessment should formally seek a review of that decision under part 6 via objection and subsequent review or appeal.

Royalty valuation decisions will also be decisions subject to the part 6 framework in the same way as assessments, and the royalty legislation provides the Commissioner cannot be compelled to make or amend a royalty valuation decision if the effect would be to require a reassessment to be made decreasing liability, if royalty is already payable. The Commissioner's decision to not make or amend a royalty valuation decision in these cases will be non-reviewable. This is consistent with the approach taken for assessments discussed above and recognises if a person is dissatisfied with a royalty valuation decision, the appropriate course of action is to challenge the decision under the part 6 framework. If the objection, review or appeal is successful, this will then trigger an obligation on the Commissioner to make a reassessment decreasing liability.

The following Commissioner's decisions under the TAA are also non-reviewable for State tax purposes and will also apply for royalties on adoption of the TAA:

- Commissioner's discretion to not make an assessment (section 11(3))
- Commissioner making a compromise assessment, which can only occur with the consent of the taxpayer (section 12(3))
- Commissioner's decision as to the Commissioner's legal interpretations and assessment practices (section 20(3))
- Commissioner's discretion to terminate a payment arrangement (section 34(6))
- Commissioner's discretion to not extend the time for lodging an objection (section 65(3))
- Commissioner's discretion to not disclose confidential information (section 111(5)).

The part 6 review framework is a fundamental aspect of the TAA's revenue management framework, providing taxpayers with an effective and comprehensive mechanism to review the Commissioner's decisions. It promotes public confidence that the integrity of the public revenue is maintained by providing substantive review rights to people with revenue liabilities and an oversight function in relation to decisions the Commissioner makes in administering the TAA and its revenue laws. This is considered consistent with a free and democratic society that is based on human dignity, equality and freedom.

(c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

*New administrative decision making and appeal processes for royalties*

Providing an independent full merits review framework for a person with a royalty liability or royalty valuation decision, consistent with that enjoyed by others subject to the TAA, is directly related to the continued effective and efficient administration of the public revenue.

It provides certainty to the State and taxpayers regarding review rights and provides royalty payers with greater scope for a full merits review of their royalty liabilities compared to the existing limited JRA review rights. To that extent, there is no real limitation of a person's right to a fair hearing due to adoption of the TAA's part 6 framework and removal of existing JRA review rights for royalty assessments or royalty valuation decisions.

*TAA part 6 framework*

The aspects of the part 6 framework discussed above are necessary to support its effective operation as part of an overall package providing review rights, which ultimately ensures the continued effective management of the public revenue. The requirement for a taxpayer to pay any outstanding tax or late payment interest before pursuing any external review or appeal ensures a person's revenue liabilities are properly discharged, thereby directly protecting public revenue collections.

The non-reviewable nature of certain TAA and royalty law decisions ensures taxpayers use the part 6 framework to challenge assessments or royalty valuation decisions, rather than pursue other review avenues. It is also relevant in ensuring the continued effective protection of the revenue base, by ensuring the Commissioner's decisions cannot be challenged if the Commissioner chooses to not exercise a discretion favourably, where that discretion would not otherwise be available to a taxpayer.

(d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill.

Adoption of the TAA and in particular, the part 6 framework, is a significant beneficial reform for royalty payers, and requires adoption of the TAA's part 6 framework in full to ensure those with a royalty liability are treated consistently and equitably with other State revenue payers.

Whilst a person is required to pay their assessment liability and any late payment interest before commencing a review or appeal of an assessment, a person will be entitled to be paid interest by the Commissioner on a successful objection, appeal or review. Further the requirement to pay royalty and late payment interest does not apply for reviews of royalty valuation decisions as they do not impose a liability directly in the same way an assessment does.

Taking all matters into consideration, it is considered there are no less restrictive or reasonably available ways to achieve this reform.

(e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

On balance, it is considered adoption of the TAA will provide those with a royalty liability with a fair and comprehensive review framework to challenge assessment and royalty valuation decisions, which clearly outweighs any possibly perceived limitation on the right to a fair hearing that results from removal of existing JRA review rights.

Adopting all aspects of the TAA's part 6 framework for royalty purposes ensures a person with a royalty assessment or royalty valuation decision will also be treated consistently with people that are already subject to the TAA's review framework, which in turn also promotes effective and streamlined revenue administration.

Therefore, on balance, any potential or perceived limitation on a person's human rights to a fair hearing is outweighed by achievement of the policy objectives of a consistent, efficient and effective revenue administration framework to ensure the continued maintenance and protection of the public revenue.

(f) any other relevant factors

Nil.

## Conclusion

In my opinion, the Royalty Legislation Amendment Bill 2020 is compatible with human rights under the *Human Rights Act 2019* because it limits a human right only to the extent that is reasonable and demonstrably justifiable in accordance with section 13 of the Act.

**THE HONOURABLE CAMERON DICK MP**  
TREASURER  
MINISTER FOR INFRASTRUCTURE AND PLANNING

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