

Revenue Legislation (Fees and Other Matters) Amendment Regulation 2019

Explanatory notes for SL 2019 No. 112

made under the

Duties Act 2001

Geothermal Energy Act 2010

Land Tax Act 2010

Mineral Resources Act 1989

Petroleum and Gas (Production and Safety) Act 2004

State Penalties Enforcement Act 1999

Taxation Administration Act 2001

General Outline

Short title

Revenue Legislation (Fees and Other Matters) Amendment Regulation 2019

Authorising law

Sections 495(3), 508(1) and (2)(a) of the *Duties Act 2001*

Sections 104, 105 and 385(1) of the *Geothermal Energy Act 2010*

Sections 63(2)(a), 72, 85(1) and (2)(a) of the *Land Tax Act 2010*

Sections 320(1) and (4)–(7), 321(2) and (3), 417(1) and (2)(a) of the *Mineral Resources Act 1989*

Sections 590(2)(b) and (3), 595(3), 859(1) and (2)(a) of the *Petroleum and Gas (Production and Safety) Act 2004*

Sections 75(3), 119(5), 136(1)(h)(ii), 165(1) and (6) and Schedule 2 of the *State Penalties Enforcement Act 1999*

Sections 29(1)(b) and 154(1) of the *Taxation Administration Act 2001*

Policy objectives and the reasons for them

Prescribed fees

Fees administered by the Office of State Revenue prescribed in the *Duties Regulation 2013*, *Land Tax Regulation 2010*, *Mineral Resources Regulation 2013*, *Petroleum and Gas (Royalty) Regulation 2004* and the *State Penalties Enforcement Regulation 2014* are to be increased by 2.25% from 1 July 2019, in accordance with the Government's approved indexation rate for the escalation of fees and charges for the 2019-20 financial year.

Geothermal Energy Regulation 2012 amendment

Under the *Geothermal Energy Act 2010*, a geothermal lease holder who produces geothermal energy, or for whom geothermal energy is produced, must pay to the State geothermal royalty for the geothermal energy.

The *Geothermal Energy Regulation 2012* prescribes a geothermal royalty rate of 2.5% of the wellhead value of geothermal energy produced. However, geothermal royalty is not currently imposed on any geothermal energy produced before 1 July 2020 (royalty holiday).

The royalty holiday is to be extended by 10 years to allow further time for the geothermal energy industry to develop in Queensland and for Government to consider the imposition of royalty on geothermal energy. Accordingly, the *Geothermal Energy Regulation 2012* is to be amended so that royalty will not be imposed on geothermal energy produced before 1 July 2030.

Land Tax Regulation 2010 amendment

The *Land Tax Act 2010* imposes land tax on the taxable value of all taxable land owned by a person as at 30 June each year. Taxpayers have two options for paying their land tax liability under the *Land Tax Act 2010*. Taxpayers can pay the full amount with a single payment by the due date stated in the assessment notice, which is 90 days from the date of the land tax assessment. Alternatively, taxpayers can elect to pay their land tax by instalments, known as an Extended Payment Option (EPO).

Under an EPO, taxpayers are required to make three equal payments at 45, 90 and 150 days from the date of the land tax assessment. Taxpayers who wish to use an EPO are required to make an election to use an EPO within the period prescribed under a regulation (prescribed period). The current prescribed period under the *Land Tax Regulation 2010* is 21 days after the land tax assessment notice is given to the taxpayer, or a longer period allowed by the Commissioner of State Revenue (Commissioner).

The *Land Tax Regulation 2010* is to be amended to extend the current 21 day prescribed period to 35 days. This extension provides taxpayers more time to elect to use an EPO, which in turn will make it easier for taxpayers to meet their land tax obligations. Although taxpayers will have a longer time to elect to use an EPO to pay their land tax assessments, the times for making the instalment payments will remain the same. The amendment will commence on 30 June 2019, so it can take effect from the 2019-20 land tax assessment year.

Mineral Resources Regulation 2013 amendments

The *Mineral Resources Act 1989*, amongst other things, imposes mineral royalty and provides the administrative framework for mineral royalty. The *Mineral Resources Regulation 2013*, amongst other things, prescribes mineral royalty rates. Royalty on minerals is generally calculated based on a percentage of the value of the mineral and/or a flat rate per tonne or kilogram.

For minerals in respect of which royalty is calculated with reference to its value (e.g. coal, iron ore, gemstones and mineral sands), the *Mineral Resources Regulation 2013* requires that the value of a mineral (other than coal seam gas) is to be calculated with reference to, amongst other things, the gross value of the mineral.

The gross value of a mineral is generally the amount for which the holder of a mining authority (the holder) sells or disposes of the mineral (i.e. the market value). However, if the holder sells or disposes of the mineral on a non-arm's length basis or the holder receives a non-financial benefit from the sale or disposal, the gross value of the mineral is determined by reference to a gross value royalty decision (GVRD).

A holder must apply to the Minister for a GVRD if the gross value cannot be determined on a market value basis. The Minister can also make a GVRD on the Minister's own initiative if the Minister reasonably believes the mineral is not, or may not, be sold on a market value basis and the holder has not applied for a GVRD. In practice, the making of a GVRD is delegated to the Commissioner of State Revenue (Commissioner). A GVRD can apply for a particular period (including retrospectively), a particular transaction and/or a particular class of transactions.

The *Mineral Resources Regulation 2013* does not make provision for how the gross value of a mineral is to be calculated where a GVRD expires and, although it is intended that it be replaced with a new GVRD, the new GVRD is not made before it expires. Therefore, the *Mineral Resources Regulation 2013* is to be amended to ensure that an expired GVRD continues to operate pending the making of a new GVRD.

The royalty rates prescribed in the *Mineral Resources Regulation 2013* for coal, iron ore and uranium all have regard to the average price per tonne (for coal and iron ore) or kilogram (for uranium) of the mineral sold, disposed of or used in the return period. The *Mineral Resources Regulation 2013* does not provide for how the average price per tonne or kilogram is to be determined. Instead, administrative guidance for coal and iron ore is provided for in Royalty Rulings MRA001.1 *Determination of coal royalty* and MRA002.1 *Determination of royalty for prescribed and specified minerals* published by the Commissioner. These Royalty Rulings provide that if coal or iron ore sold, disposed of or used during a return period is the subject of a GVRD, the average price per tonne is to be calculated by reference to the GVRD. No similar administrative guidance is provided for uranium as a ban on uranium mining has been in place since 2015.

To support the longstanding administrative practice, the *Mineral Resources Regulation 2013* is also to be amended to expressly provide that, where coal, iron ore or uranium sold, disposed of or used during a return period is the subject of a GVRD, the average price is to be calculated by reference to the GVRD.

In relation to the calculation of coal royalty, the *Mineral Resources Regulation 2013* also requires the royalty rate to be worked out and applied separately for coal sold, disposed of or used inside the State (domestic coal) and coal sold, disposed of or used outside the State (export coal). Royalty Ruling MRA001.1 *Determination of coal royalty* provides administrative guidance to the effect that coal that will ultimately be consumed outside the State is export coal, even if title to the coal initially passes in Queensland (e.g. where title to coal is transferred at a Queensland port on a ship which is bound for an overseas port). The *Mineral Resources Regulation 2013* is to be amended to support the longstanding administrative practice by clarifying the distinction between domestic and export coal.

The amendments to the *Mineral Resources Regulation 2013* will take effect from 1 July 2019.

Petroleum and Gas (Royalty) Regulation 2004 amendment

The *Petroleum and Gas (Production and Safety) Act 2004*, amongst other things imposes petroleum royalty and provides the administrative framework for petroleum royalty. The petroleum royalty rate is prescribed in the *Petroleum and Gas (Royalty) Regulation 2004*. The rate is 10% of the wellhead value of petroleum disposed of or produced by a petroleum producer during a royalty return period.

For the purposes of calculating a particular component of the wellhead value, a petroleum producer may apply to the Minister for a petroleum royalty decision (PRD) so that the Minister can determine the value of a component of wellhead value or specify a formula or method for calculating same. The Minister can also make a PRD on the Minister's own initiative. In practice, the making of a PRD is delegated to the Commissioner of State Revenue (Commissioner).

Royalty Ruling PGA001.1 *Determination of petroleum royalty* (PGA001.1), published by the Commissioner, provides administrative guidance on the calculation of petroleum royalty for a return period. Specifically, PGA001.1 requires that where a component of wellhead value is the subject of a PRD, the wellhead value of petroleum must be calculated with reference to the PRD. Although this requirement in PGA001.1 reflects the longstanding administrative practice, there is no express legislative requirement to this effect. Therefore, the *Petroleum and Gas (Royalty) Regulation 2004* is to be amended, with effect from 1 July 2019, to support this longstanding administrative practice.

Taxation Administration Regulation 2012

The *Taxation Administration Act 2001* provides the administrative framework for the 'tax laws', being the *Betting Tax 2018*, *Duties Act 2001*, *Land Tax Act 2010*, *Payroll Tax Act 1971*, and the *Taxation Administration Act 2001* itself. The *Taxation Administration Act 2001* requires an amount payable under a tax law (e.g. primary tax, unpaid tax interest, penalty tax, prescribed fees) to be paid by cash, cheque or as prescribed under a regulation.

The *Taxation Administration Regulation 2012* prescribes a number of electronic payment methods, including electronic funds transfer, direct debit, BPAY and credit card. In relation to payment by credit card, the *Taxation Administration Regulation 2012* only allows payment by Visa and MasterCard (legislative restriction).

The *Taxation Administration Regulation 2012* is to be amended to remove the legislative restriction, and instead allow amounts payable under a tax law to be paid by Visa, MasterCard or another credit card approved by the Commissioner of State Revenue by a notice published on the Queensland Treasury website. The amendment will take effect from 1 July 2019.

Achievement of policy objectives

The *Revenue Legislation (Fees and Other Matters) Amendment Regulation 2019* achieves the policy objectives by amending the:

- *Duties Regulation 2013, Land Tax Regulation 2010, Mineral Resources Regulation 2013, Petroleum and Gas (Royalty) Regulation 2004 and State Penalties Enforcement Regulation 2014* to increase particular fees for the 2019-20 financial year with reference to the Government's approved indexation rate for 2019-20 of 2.25%;
- *Geothermal Energy Regulation 2012* to extend the royalty holiday by 10 years so that royalty will not be imposed on geothermal energy produced before 1 July 2030;
- *Land Tax Regulation 2010* to extend the current prescribed period in which land taxpayers must elect to use an EPO from 21 days to 35 days, from the 2019-20 financial year onwards;
- *Mineral Resources Regulation 2013* to allow an expired GVRD to continue pending the making of a new GVRD, from 1 July 2019;
- *Mineral Resources Regulation 2013* to clarify that, where coal, iron ore or uranium sold, disposed of or used during a return period is the subject of a GVRD, the average price per tonne (for coal or iron ore) or kilogram (for uranium) is to be calculated with reference to the GVRD, from 1 July 2019;
- *Mineral Resources Regulation 2013* to clarify the distinction between domestic and export coal, from 1 July 2019;
- *Petroleum and Gas (Royalty) Regulation 2004* to clarify that, where a component of wellhead value of petroleum is the subject of a PRD, the wellhead value must be calculated with reference to the PRD, from 1 July 2019; and
- *Taxation Administration Regulation 2012* to remove the legislative restriction on the types of credit cards that can be used to pay amounts payable under a tax law, and instead allow such amounts to be paid by Visa, MasterCard or another credit card approved by the Commissioner of State Revenue by a notice published on the Queensland Treasury website, from 1 July 2019.

Consistency with policy objectives of authorising law

Amendments to increase prescribed fees

The amendments to increase prescribed fees are consistent with the policy objectives of the relevant authorising laws, being the *Duties Act 2001, Land Tax Act 2010, Mineral Resources Act 1989, Petroleum and Gas (Production and Safety) Act 2004* and the *State Penalties Enforcement Act 1999*. These authorising laws contemplate prescription of relevant fees as part of administration provided under each authorising law.

Geothermal Energy Regulation 2012 amendment

The amendment to the *Geothermal Energy Regulation 2012* is consistent with the policy objectives of the *Geothermal Energy Act 2010*, to encourage and facilitate the safe production of geothermal energy for the benefit of all Queenslanders. Specifically, the *Geothermal Energy Act 2010* imposes geothermal royalty on geothermal energy produced. The *Geothermal Energy Act 2010* contemplates the obligation to pay geothermal energy being subject to a regulation.

Land Tax Regulation 2010 amendment

The amendment to the *Land Tax Regulation 2010* is consistent with the policy objectives of the *Land Tax Act 2010*, to impose land tax. Specifically, the *Land Tax Act 2010* provides special provisions relating to the payment of land tax by instalments and contemplates the period for electing to use an EPO being prescribed under a regulation.

Mineral Resources Regulation 2013 amendments

The amendments to the *Mineral Resources Regulation 2013* are consistent with the policy objectives of the *Mineral Resources Act 1989*, to ensure an appropriate financial return to the State from mining. Specifically, the *Mineral Resources Act 1989* imposes mineral royalty and provides an administrative framework for mineral royalty. The *Mineral Resources Act 1989* contemplates prescription under a regulation of the rate of royalty and the manner and basis of its calculation.

Petroleum and Gas (Royalty) Regulation 2004 amendment

The amendment to the *Petroleum and Gas (Royalty) Regulation 2004* is consistent with the policy objectives of the *Petroleum and Gas (Production and Safety) Act 2004*, to manage the State's petroleum resources for the benefit of all Queenslanders. Specifically, the *Petroleum and Gas (Production and Safety) Act 2004* imposes petroleum royalty and provides an administrative framework for petroleum royalty. The *Petroleum and Gas (Production and Safety) Act 2004* contemplates a regulation prescribing the rate of petroleum royalty based on the value. It also contemplates a regulation prescribing the value, or way for working out the value, of petroleum royalty.

Taxation Administration Regulation 2012 amendment

The amendment to the *Taxation Administration Regulation 2012* is consistent with the policy objectives of the *Taxation Administration Act 2001*, to provide for the general administration of the tax laws and contemplates methods of paying amounts payable under the tax laws being prescribed under a regulation.

Inconsistency with policy objectives of other legislation

The amendments are not inconsistent with the policy objectives of other legislation.

Benefits and costs of implementation

The amendments to increase prescribed fees ensure the value of the fees are maintained over time, in accordance with the Government's approved indexation rate.

There will be no additional costs to Government to implement the amendments. Administration of the regulations being amended will continue to be subject to existing processes, systems and staffing.

Consistency with fundamental legislative principles

The amendments are consistent with fundamental legislative principles. Each of the relevant authorising laws contemplate the use of subordinate legislation to prescribe the particular matters to which the amendments relate.

Consultation

Amendments to increase prescribed fees

In accordance with *The Queensland Government Guide to Better Regulation*, the Office of Best Practice Regulation (OBPR), Queensland Productivity Commission, was not consulted. Queensland Treasury applied an agency-assessed exclusion from further regulatory impact analysis (exclusion category (h) – regulatory proposals that put forward standard annual fee variations in line with or below a government endorsed indexation factor).

Geothermal Energy Regulation 2012 amendment

In accordance with *The Queensland Government Guide to Better Regulation*, the OBPR was not consulted. Queensland Treasury applied an agency-assessed exclusion from further regulatory impact analysis (exclusion category (b) – regulatory proposals that impose taxation or royalty).

Remaining amendments

The OBPR was consulted on the remaining amendments as they do not fall within an agency-assessed exclusion under *The Queensland Government Guide to Better Regulation*. The OBPR confirmed that the amendments fall within an OBPR-assessed exclusion from further regulatory impact analysis (exclusion category (k) – regulatory proposals designed to reduce the burden of regulation, or that clearly do not add to the burden, and it is reasonably clear there are no significant adverse impacts).