

Passed by both Houses



New South Wales

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

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*I certify that this public bill, which originated in the Legislative Assembly, has finally passed the Legislative Council and the Legislative Assembly of New South Wales.*

*Clerk of the Legislative Assembly.  
Legislative Assembly,  
Sydney, , 2012*



New South Wales

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

Act No , 2012

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

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*I have examined this bill and find it to correspond in all respects with the bill as finally passed by both Houses.*

*Assistant Speaker of the Legislative Assembly.*

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**The Legislature of New South Wales enacts:**

**1 Name of Act**

This Act is the *Petroleum (Onshore) Amendment (Royalties and Penalties) Act 2012*.

**2 Commencement**

This Act commences on a day or days to be appointed by proclamation.

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## **Schedule 1 Amendments relating to royalties**

### **1.1 Petroleum (Onshore) Act 1991 No 84**

#### **[1] Section 85 Royalty**

Omit section 85 (2) and (3). Insert instead:

- (2) The royalty is payable at the rate prescribed by the regulations.
- (3) The rate of royalty may be prescribed:
  - (a) as a percentage of the value at the well-head of the petroleum, or
  - (b) by reference to such other matters as the regulations specify.

#### **[2] Section 89**

Omit the section. Insert instead:

##### **89 Ascertainment of value**

For the purposes of this Act, the value at the well-head of any petroleum is the amount determined by the Minister as being that value.

#### **[3] Section 90 Ascertainment of quantity of petroleum recovered**

Omit “where no such measuring device is so installed, or” from section 90 (b).

Insert instead “if”.

### **1.2 Petroleum (Onshore) Regulation 2007**

#### **Clauses 23 and 24**

Omit the clauses. Insert instead:

##### **23 Rate of royalty: section 85**

For the purposes of section 85 (2) of the Act, the prescribed annual rate of royalty is 10 per cent of the value at the well-head of the petroleum.

##### **24 Rate of royalty: Mining Act 1992 section 286**

For the purposes of Division 3 of Part 14 of the *Mining Act 1992*, the prescribed annual rate of royalty is 10 per cent of the value at the well-head of the petroleum.

**24AA Transitional provision**

- (1) The rate of royalty imposed by clauses 23 and 24 (as substituted by the *Petroleum (Onshore) Amendment (Royalties and Penalties) Act 2012*) applies to petroleum recovered on or after 1 January 2013.
- (2) Clauses 23 and 24, as in force before their substitution by that Act, continue to apply to petroleum recovered before 1 January 2013.

**1.3 Coal Mine Health and Safety Amendment Act 2010 No 23**

**Schedule 3.11**

Omit the Subschedule.

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## **Schedule 2 Amendments relating to penalties**

### **2.1 Criminal Procedure Act 1986 No 209**

#### **[1] Schedule 1 Indictable offences triable summarily**

Insert after clause 31 in Table 1:

#### **32 Petroleum (Onshore) Act 1991 No 84**

An offence of mining petroleum in contravention of section 7 of the *Petroleum (Onshore) Act 1991*, if the value of the petroleum to which the alleged offence relates is \$5,000 or more.

#### **[2] Schedule 1, Table 2**

Omit clause 18 (2).

### **2.2 Mining Act 1992 No 29**

#### **[1] Section 5 Mining or prospecting without authorisation**

Omit the penalty for prospecting in contravention of the section. Insert instead:

Maximum penalty for prospecting in contravention of this section:

- (a) in the case of a corporation—5,000 penalty units, and, in the case of a continuing offence, a further penalty of 500 penalty units for each day that the offence continues, or
- (b) in the case of a natural person—1,000 penalty units or imprisonment for 5 years, or both, and, in the case of a continuing offence, a further penalty of 100 penalty units for each day that the offence continues.

#### **[2] Section 5**

Omit the penalty for mining in contravention of the section. Insert instead:

Maximum penalty for mining in contravention of this section:

- (a) in the case of a corporation—10,000 penalty units, and, in the case of a continuing offence, a further penalty of 1,000 penalty units for each day that the offence continues, or
- (b) in the case of a natural person—2,000 penalty units or imprisonment for 5 years, or both, and, in the case of a continuing offence, a further penalty of 200 penalty units for each day that the offence continues.

**[3] Section 6 Unauthorised carrying out of mining purposes**

Omit the penalty to section 6 (1). Insert instead:

Maximum penalty:

- (a) in the case of a corporation—10,000 penalty units, and, in the case of a continuing offence, a further penalty of 1,000 penalty units for each day that the offence continues, or
- (b) in the case of a natural person—2,000 penalty units or imprisonment for 5 years, or both, and, in the case of a continuing offence, a further penalty of 200 penalty units for each day that the offence continues.

**[4] Section 12B Stealing minerals**

Omit the penalty to the section. Insert instead:

Maximum penalty:

- (a) in the case of a corporation—10,000 penalty units, or
- (b) in the case of a natural person—2,000 penalty units or imprisonment for 5 years, or both.

**[5] Section 12C Fraudulent removal and concealment of minerals by employees**

Omit the penalty to the section. Insert instead:

Maximum penalty:

- (a) in the case of a corporation—10,000 penalty units, or
- (b) in the case of a natural person—2,000 penalty units or imprisonment for 5 years, or both.

**[6] Section 12D Fraudulent removal and concealment of minerals by partners**

Omit the penalty to the section. Insert instead:

Maximum penalty:

- (a) in the case of a corporation—10,000 penalty units, or
- (b) in the case of a natural person—2,000 penalty units or imprisonment for 5 years, or both.

**[7] Section 240C Breach of direction**

Omit the penalty to the section. Insert instead:

Maximum penalty:

- (a) in the case of a corporation—10,000 penalty units, and, in the case of a continuing offence, a further penalty of



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1,000 penalty units for each day that the offence continues,  
or

- (b) in the case of a natural person—2,000 penalty units, and, in the case of a continuing offence, a further penalty of 200 penalty units for each day that the offence continues.

**[8] Section 248S Offences**

Omit the penalty to the section. Insert instead:

Maximum penalty:

- (a) in the case of a corporation—10,000 penalty units, and, in the case of a continuing offence, a further penalty of 1,000 penalty units for each day that the offence continues,  
or
- (b) in the case of a natural person—2,000 penalty units, and, in the case of a continuing offence, a further penalty of 200 penalty units for each day that the offence continues.

**[9] Section 291 Payment of royalty**

Omit the penalty to section 291 (1A). Insert instead:

Maximum penalty:

- (a) in the case of a corporation—10,000 penalty units, and, in the case of a continuing offence, a further penalty of 1,000 penalty units for each day that the offence continues,  
or
- (b) in the case of a natural person—2,000 penalty units or imprisonment for 12 months, or both, and, in the case of a continuing offence, a further penalty of 200 penalty units for each day that the offence continues.

**[10] Section 378A Obstruction**

Omit the penalty to the section. Insert instead:

Maximum penalty:

- (a) in the case of a corporation—10,000 penalty units, or
- (b) in the case of a natural person—2,000 penalty units.

**[11] Section 378D Contravention of condition of authorisation—offence by holder**

Omit the penalties for a condition of a kind referred to in Part 1 of Schedule 7 from section 378D (1) and (2).

Insert instead:

Maximum penalty if the condition is of a kind referred to in Part 1 of Schedule 7:

- (a) in the case of a corporation—10,000 penalty units, and, in the case of a continuing offence, a further penalty of 1,000 penalty units for each day that the offence continues, or
- (b) in the case of a natural person—2,000 penalty units, and, in the case of a continuing offence, a further penalty of 200 penalty units for each day that the offence continues.

**[12] Section 378D**

Omit the penalty for a condition not of a kind referred to in Part 1 of Schedule 7 from section 378D (1) and (2).

Insert instead:

Maximum penalty if the condition is not of a kind referred to in Part 1 of Schedule 7:

- (a) in the case of a corporation—2,000 penalty units, and, in the case of a continuing offence, a further penalty of 200 penalty units for each day that the offence continues, or
- (b) in the case of a natural person—200 penalty units, and, in the case of a continuing offence, a further penalty of 50 penalty units for each day that the offence continues.

**[13] Section 378D (3)**

Insert after section 378D (2):

- (3) In imposing a penalty under this section for a contravention of a condition of a kind referred to in Part 1 of Schedule 7, the court is to take into consideration the following (so far as they are relevant):
  - (a) the extent of the harm caused or likely to be caused to the environment by the commission of the offence,
  - (b) the practical measures that may be taken to prevent, control, abate or mitigate that harm,

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- (c) the extent to which the person who committed the offence could reasonably have foreseen the harm caused or likely to be caused to the environment by the commission of the offence,
  - (d) the extent to which the person who committed the offence had control over the causes that gave rise to the offence,
  - (e) any other matters the court considers relevant.

**[14] Section 378H Proceedings for offences**

Omit “Division 1 of Part 2” from section 378H (1) (a).

Insert instead “Division 1 or 2 of Part 2 or section 291”.

**[15] Section 378H (2) (b)**

Omit “200 penalty units”. Insert instead “2,000 penalty units”.

**[16] Schedule 7 Offences**

Insert “238, 239,” after “168A,” in Part 1.

**2.3 Petroleum (Onshore) Act 1991 No 84**

**[1] Section 7 Offence of prospecting or mining without authority**

Omit the penalty for prospecting in contravention of the section. Insert instead:

Maximum penalty for prospecting in contravention of this section:

- (a) in the case of a corporation—5,000 penalty units, and, in the case of a continuing offence, a further penalty of 500 penalty units for each day that the offence continues, or
- (b) in the case of a natural person—1,000 penalty units or imprisonment for 5 years, or both, and, in the case of a continuing offence, a further penalty of 100 penalty units for each day that the offence continues.

**[2] Section 7**

Omit the penalty for mining in contravention of the section. Insert instead:

Maximum penalty for mining in contravention of this section:

- (a) in the case of a corporation—10,000 penalty units, or
- (b) in the case of an individual—2,000 penalty units or imprisonment for 5 years, or both.

**[3] Section 77 Direction to comply with conditions of petroleum title**

Omit the penalty. Insert instead:

Maximum penalty:

- (a) in the case of a corporation—10,000 penalty units, or
- (b) in the case of an individual—2,000 penalty units.

**[4] Section 136 Other offences**

Omit the penalties from section 136 (1) and (2). Insert instead:

Maximum penalty:

- (a) in the case of a corporation—10,000 penalty units, or
- (b) in the case of an individual—2,000 penalty units.

**[5] Section 136A Contravention of conditions of title**

Omit the penalty to section 136A (1). Insert instead:

Maximum penalty:

- (a) if the condition of the title is identified as a condition related to environmental management:
  - (i) in the case of a corporation—10,000 penalty units, or
  - (ii) in the case of an individual—2,000 penalty units, or
- (b) in any other case—2,000 penalty units.

**[6] Section 136A (3)**

Insert after section 136A (2):

- (3) In imposing a penalty for a contravention of or failure to comply with a condition identified as a condition related to environmental management, the court is to take into consideration the following (so far as they are relevant):
  - (a) the extent of the harm caused or likely to be caused to the environment by the commission of the offence,
  - (b) the practical measures that may be taken to prevent, control, abate or mitigate that harm,
  - (c) the extent to which the person who committed the offence could reasonably have foreseen the harm caused or likely to be caused to the environment by the commission of the offence,

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- (d) the extent to which the person who committed the offence had control over the causes that gave rise to the offence,
  - (e) any other matters the court considers relevant.

**[7] Section 137**

Omit the section. Insert instead:

**137 Proceedings for offences**

- (1) Proceedings for an offence against this Act or the regulations are, except as provided by this section, to be dealt with summarily by:
  - (a) the Land and Environment Court, or
  - (b) the Local Court.
- (2) If proceedings for an offence against this Act or the regulations are brought in the Local Court:
  - (a) the maximum period of imprisonment that the Court may impose is 12 months, and
  - (b) the maximum monetary penalty that the Court may impose is 2,000 penalty units.
- (3) Proceedings against an individual for an offence of mining in contravention of section 7 may be taken on indictment.