

CHANGES TO THE ROYALTY PROVISIONS OF THE *MINING ACT 1971 (SA)**

Mining (Royalty No 2) Amendment Act 2005

Changes to the royalty provisions of the Mining Act, 1971 (SA) came into effect on 1 January 2006. Whilst new mines are given advantages by a reduced royalty rate, existing mines will face an immediate increase. The way royalty rates are calculated has changed dramatically however transitional provisions provide a grace period for most minerals to 31 December 2008.

Existing Mines

Changes brought into effect by this legislation were aimed at increasing the financial return to the State.¹ They will do so via an immediate increase in the rate of royalty which tenement holders of existing mines must pay. As at 1 January 2006 royalty must be paid at the rate of 3.5% of the value of the mineral up from 2.5%.

To date the value of most minerals has been set down by the Department of Primary Industries and Resources SA (PIRSA) in its table of “Specified Royalties” which provides an assessed value for the minerals listed. The table does not provide an assessed value for uranium, zinc and lead which have had their value determined on a case by case basis taking into account sales values calculated by the mining company in consultation with PIRSA.

The value of the few minerals not provided for in PIRSA’s table of specified royalties will now be determined in accordance with the new regime while transitional provisions will apply to those minerals which have been assigned a value in the schedule to the amending legislation (the values set out in this schedule are the same as those set out in PIRSA’s table of Specified Royalties).

While the increase in the royalty rate to 3.5% represents a small increase of 1%, for most minerals these measures are only transitional providing a grace period. Major changes will occur at the expiration of the grace period.

Changes to the way Royalties are to be calculated

Upon expiry of the transitional period on 31 December 2008 royalty calculations for those minerals listed in the table set out at Schedule 1 of the Act (i.e. previously given an assessed value by PIRSA) will be made according to the *royalty assessment principle*. Although the rate of royalty will remain at 3.5% of the value of the mineral, the way that value is calculated will change.

In general, the royalty assessment principle dictates that the value of a mineral will be determined by the **market value** of that mineral at the time it leaves a mining tenement (see s17(5)).

The market value will be determined according to any contract price obtained for the mineral (provided the contract is to a genuine purchaser at arms length). If there is no contract with a genuine purchaser then the market value will be determined according to any price quoted on any

* Leanne McClurg – Unimin Australia Limited.

¹ Holloway, P. Mining Royalties in SA. Media Release dated 22 November 2005.

market recognised by the Minister as being a relevant industry market (or failing this, a price declared by the Minister as being an indicative price).

Where there is no contract at arms length nor any Ministerial recognised nor declared price, then the value will be any price obtained by other parties within the industry in relation to similar sales on the open market.

This new way of calculating royalty payments could lead to significant increases in the payments that a tenement holder must make. The obvious question is whether the government should be entitled to benefit where companies are able to negotiate commercially advantageous terms for themselves.

Other issues raised by this new methodology relate to practicalities of calculation such as in situations where mining companies add value to the recovered mineral. For example, companies may have a contract for a product which is a blend of several minerals (or other products) and to which may be added some type of service. Often minerals undergo one or more manufacturing processes. Clearly the contract price does not reflect the value of the mineral but takes into account value added services and products. As no relevant costs have been prescribed for the purposes of section 17(8) there remains doubt that this issue was contemplated by the legislators.

New Mines

Another main aim of this legislation is to encourage investment in the development of new mines. Where a mine is considered a *new mine* then royalty is payable on minerals recovered at the reduced rate of 1.5% of their value (as determined in accordance with the new royalty assessment principles).

In determining whether or not a mine is classed as a *new mine*, regard may be given to such things as: whether the operations could be considered an extension of existing operations; whether the operations could be considered a revival of past operations; the nature of the *new* operations (as compared to any existing or previously carried on operations); whether operations are carried out on the same tenement or within the vicinity of a relevant mine; the relationship of the applicant for the *new* mine to other persons or entities carrying on operations in the vicinity (including related body corporate issues pursuant to the *Corporations Act, 2001*).

Conclusion

Once a company has had a chance to digest the changes brought about by the new royalty regime if it feels their effect would be likely to have impacts on the viability or profitability of operations they may apply to the Minister for royalty payments to be wholly or partially waived or for the rate to be reduced (s17(10)).

In other instances there is scope for companies to seek a determination from the Minister that royalty is to be paid according to the weight or volume of minerals recovered (or some other basis)(s17(9)).

Clearly, mining companies will need to undertake a thorough investigation into the new royalty regime to determine what impact the changes will have on their bottom line. They will need to

ensure they make any necessary applications to the Minister so that they do not suffer any unnecessary erosion of profit by paying more royalties than absolutely necessary.

TASMANIA*

GAS AMENDMENT ACT 2005

The Gas Amendment Act 2005 received Royal Assent on 9 December 2005. It amends the *Gas Act 2000* and the *Gas Pipelines Act 2000* and adds to the package of legislation relating to the Tasmanian Natural Gas Project.

The amending legislation extends the definition of gas supply point in section 3 of the *Gas Act 2000* to allow certain points of supply to be declared as gas supply points. It also adds a new definition to section 3 for licensees under the *Gas Pipelines Act 2000*. Licensees falling within this definition are included in the category of entities in section 52(2) that commit an offence for knowingly supplying or selling gas for use in a gas installation which does not comply with the Act otherwise than with the approval of the Director of Gas Safety. At the same time, the amendment to the *Gas Pipelines Act 2000* removes the mandatory requirement in section 34(2) for licensees to report to the Director of Gas Safety incidents in respect of gas installations for the supply of gas, although the reporting requirements for incident respect of a pipelines or pipeline facilities are retained.

The purpose of these amendments is to ensure appropriate safety and technical measures apply to all gas installations irrespective of whether they are connected to a transmission pipeline or a distribution system.

ELECTRICITY SUPPLY INDUSTRY (MISCELLANEOUS AMENDMENTS) ACT 2005

The Electricity Supply Industry (Miscellaneous Amendments) Act 2005 received Royal Assent on 15 December 2005. Most of the provisions commenced on that date, although some remain to commence on a day to be proclaimed. The Act amends a number of pieces of legislation relating to the supply of electricity. These amendments were required to be made as a result of Tasmania's entry into the National Electricity Market in May 2005. They are minor in nature, generally substituting 'Australian Energy Regulator' for 'Australian Competition and Consumer Commission', 'National Electricity Rules' for 'National Electricity Code' and 'system' for 'network'.

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