Parliamentary Committees



Royalty Legislation Amendment Bill 2020

Report No. 45, 56th Parliament
Economics and Governance Committee
August 2020

Economics and Governance Committee

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Acknowledgements

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Contents

Abbreviations

ACCC	Australian Competition and Consumer Commission
AMEC	Association of Mining and Exploration Companies
APLNG	Australia Pacific LNG Pty Ltd
APPEA	Australian Petroleum Production & Exploration Association Limited
Arrow Energy	Arrow Energy Pty Ltd
ATP	Authority to prospect
Bennestar Group	Bennestar Group Pty Ltd
Betting Tax Act	*Betting Tax Act 2018*
Bill	Royalty Legislation Amendment Bill 2020
Bridgeport Energy	Bridgeport Energy Limited
Commissioner	Commissioner of State Revenue
committee	Economics and Governance Committee, 56th Queensland Parliament
CSG	Coal seam gas
Denison Gas	Denison Gas LImited
DES	Delivered Ex-Ship
Duties Act	*Duties Act 2001*
Final Royalty Review Report	Hon Jay Weatherill*, Queensland Petroleum Royalty Review: Second Report by the Hon Jay Weatherill to the Queensland Government,* February 2020
First Royalty Review Report	Hon Jay Weatherill, *Queensland Petroleum Royalty Review: Report by the Hon J Weatherill to the Queensland Government*, December 2019
FLP	Fundamental legislative principle
FOB	Free on Board
GJ	Gigajoule
Glencore	Glencore Investment Pty Limited
GST	Goods and services tax
GVRD	Gross value royalty decision

HRA	*Human Rights Act 2019*
IPL	Incitec Pivot Limited QLD
JCC	Japanese customs-cleared crude
JR Act	*Judicial Review Act 1991*
Land Tax Act	*Land Tax Act 2010*
LNG	Liquefied natural gas
LPG	Liquefied petroleum gas
LSA	*Legislative Standards Act 1992*
Mineral Resources Act	*Mineral Resources Act 1989*
Minister	Treasurer and Minister for Infrastructure and Planning
MRR	Mineral Resources Regulation 2013
NSW	New South Wales
OECD	Organisation for Economic Co-operation and Development
OQPC	Office of Queensland Parliamentary Counsel
Origin Energy	Origin Energy Limited
OSR	Office of State Revenue
Payroll Tax Act	*Payroll Tax Act 1971*
Petroleum and Gas Act	*Petroleum and Gas (Production and Safety) Act 2004*
Petroleum and Gas Regulation	*Petroleum and Gas (Royalty) Regulation 2004*
POQA	*Parliament of Queensland Act 2001*
PRD	Petroleum royalty decision
QCAT	Queensland Civil and Administrative Tribunal
QRC	Queensland Resources Council
RAM program	Royalty Administration Modernisation program

Royalty legislation	*Mineral Resources Act 1989* and *Petroleum and Gas (Royalty) Regulation 2004*
Royalty Review	Review of the design of Queensland's petroleum royalty regime, carried out by a Working Group chaired by former South Australian Premier the Hon Jay Weatherill, October 2019-February 2020
Scrutiny Committee	Scrutiny of Legislation Committee
Standing Orders	Standing Rules and Orders of the Legislative Assembly (Queensland)
TAA	*Taxation Administration Act 2001*
Taxation Administration Regulation	Taxation Administration Regulation 2012
TTH	Texas-Tickalara Holdings
UQ	University of Queensland
WestSide	WestSide Corporation Pty Ltd
Working Group	Petroleum Royalty Review Working Group

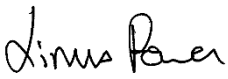
Chair's foreword

This report presents a summary of the Economics and Governance Committee's examination of the Royalty Legislation Amendment Bill 2020.

The committee's task was to invite feedback from the Queensland public on the proposed legislation and seek a response from the Queensland Treasury on any issues raised. The committee also considered the policy to be achieved by the legislation and the application of fundamental legislative principles – that is, whether the Bill has sufficient regard to the rights and liberties of individuals, and to the institution of Parliament. Further, the committee examined the Bill for compatibility with human rights, in accordance with the *Human Rights Act 2019*.

On behalf of the committee, I thank those individuals and organisations who made written submissions on the Bill. I also thank the Queensland Treasury and our Parliamentary Service staff for their assistance.

I commend this report to the House.



Linus Power MP

Chair

Recommendations

The committee recommends the Royalty Legislation Amendment Bill 2020 be passed.

1 Introduction

1.1 Role of the committee

The Economics and Governance Committee (committee) is a portfolio committee of the Legislative Assembly which commenced on 15 February 2018 under the *Parliament of Queensland Act 2001* and the Standing Rules and Orders of the Legislative Assembly.[1]

The committee's primary areas of responsibility include:

- Premier and Cabinet, and Trade
- Treasury, and Infrastructure and Planning, and
- Local Government, Racing, and Multicultural Affairs.[2]

The committee is responsible for examining each bill in its portfolio areas to consider the policy to be given effect by the legislation, the application of fundamental legislative principles, and the compatibility of the legislation with the *Human Rights Act 2019* (HRA).[3]

1.2 Inquiry process

The Royalty Legislation Amendment Bill 2020 (Bill) was introduced into the Legislative Assembly by the Treasurer and Minister for Infrastructure and Planning, the Hon Cameron Dick MP, on 16 July 2020. In accordance with Standing Order 137, the Bill was declared an urgent bill and was referred to the committee for consideration and report to the Assembly by 7 August 2020.

During its examination of the Bill, the committee:

- invited written submissions on the Bill from the public, identified stakeholders and email subscribers, and received 20 submissions and two supplementary submissions (a list of submitters is provided at **Appendix A**)
- received a written briefing on the Bill from the Queensland Treasury, prior to a public briefing from Treasury officials (via videoconference) on 28 July 2020 (a list of the officials who appeared at the briefing is provided at **Appendix B**)
- held a public hearing (via videoconference), also on 28 July 2020 (a list of the witnesses who appeared at the hearing is provided at **Appendix C**), and
- requested and received written advice from Queensland Treasury on issues raised in submissions.

Copies of the material published in relation to the committee's inquiry, including the submissions, transcripts and written advice, are available on the committee's inquiry webpage.[4]

1.3 Policy objectives of the Bill

The explanatory notes advise that the objectives of the Bill are to:

- amend the *Petroleum and Gas (Production and Safety) Act 2004* (Petroleum and Gas Act) and the Petroleum and Gas (Royalty) Regulation 2004 (Petroleum and Gas Regulation) to implement a new basis for imposing petroleum royalty, as recommended by a 2019-20 review of

1 *Parliament of Queensland Act 2001* (POQA), s 88; Standing Rules and Orders of the Legislative Assembly (Standing Orders), SO 194.

2 POQA, s 88; Standing Orders, SO 194, Schedule 6.

3 POQA, s 93(1).

4 https://www.parliament.qld.gov.au/work-of-committees/committees/EGC/inquiries/current-inquiries/RLAB2020. All web references in this report were accurate as at 5 August 2020.

Queensland's petroleum royalty arrangements (Royalty Review),[5] and amend the *Mineral Resources Regulation 2013* (MRR) to make consequential changes, and

- amend the *Mineral Resources Act 1989* (Mineral Resources Act), MRR, Petroleum and Gas Act, Petroleum and Gas Regulation, *Taxation Administration Act 2001* (TAA), and Taxation Administration Regulation 2012 (Taxation Administration Regulation), to implement the Royalty Administration Modernisation Program (RAM program).[6]

The aim of the RAM program is to apply the TAA's legislative framework to the administration of mineral and petroleum royalties, thereby aligning the administration of these royalty regimes with that of other state revenue laws.[7]

To support the adoption of the TAA for the administration of royalties, the Bill also:

- makes consequential amendments to:
  - the *Judicial Review Act 1991* (JR Act) to extend exemptions from the requirement to provide a statement of reasons for certain royalty decisions, and
  - the *Petroleum Act 1923*, and
- amends the *Betting Tax Act 2018* (Betting Tax Act) and *Payroll Tax Act 1971* (Payroll Tax Act) 'to make beneficial changes to their refund provisions', consistent with amendments being made for royalty administration.[8]

1.4 Government consultation on the Bill

In relation to the Bill's proposed implementation of a new 'volume model' for petroleum royalty, as recommended by the Royalty Review, the explanatory notes advise that a consultation paper:

> *… was provided to all 66 Queensland petroleum producers in November 2019 inviting them to provide any comments addressing the objectives of the Royalty Review and the volume model.*[9]

During the course of the Royalty Review, additionally:

- the Review Chair met with senior executives from petroleum producers and the three large LNG projects representing domestic and export petroleum producers
- a working group including representatives from the Australian Petroleum Production & Exploration Association Limited (APPEA), the Queensland Resources Council (QRC) and the Office of State Revenue (OSR) convened on several occasions to assist the Review, and
- a technical sub-group including petroleum producers was formed to discuss, analyse and model reform options.[10]

Further, following the release of the Final Royalty Review Report, the OSR undertook consultation with petroleum royalty payers and industry representative bodies on the implementation of the

5 The Royalty Review of the design of Queensland's petroleum royalty regime was carried out by a working group chaired by former South Australian Premier the Hon Jay Weatherill. The Review findings were published in two volumes, the initial report in December 2019, and the final report in February 2020.

6 Explanatory notes, p 1.

7 Human rights certificate, p 3.

8 Explanatory notes, p 1.

9 Explanatory notes, p 13.

10 Explanatory notes, p 13.

proposed volume model across all types of petroleum,[11] including issuing an implementation consultation paper and holding a series of group and individual meetings with key stakeholders.[12]

Queensland Treasury also advised:

> *To assist with implementation, an advance version of the Bill was provided to the Queensland Resources Council (QRC) and the Australian Petroleum Production and Exploration Association (APPEA) prior to its introduction into Parliament, for confidential circulation to their members. Written responses to all submissions received for the petroleum royalty review and the Royalty Administration Modernisation Program will also be provided by 22 July 2020.*[13]

Consultation on the RAM program was undertaken through a consultation paper published in October 2019 on the Government's 'Get Involved' website, and also provided directly to 'all royalty payers, representative bodies and other interested parties'.[14] The OSR also met with the mineral and petroleum subcommittees of the Resource Consultative Committee to discuss the proposed reforms, both prior to the lodgement of submissions in November 2019, and again in December 2019.[15]

Queensland Treasury advised that 'industry has indicated broad support for the RAM program'.[16]

These consultation processes and engagement with industry were broadly acknowledged by submitters and witnesses, who also commended moves by Queensland Treasury to address certain industry concerns raised through those processes.[17]

Some stakeholders indicated that they would have appreciated a longer period for review and comment in some instances,[18] and the QRC noted that while the industry sought an opportunity to comment on draft legislation, peak bodies were rather provided with a draft copy of the Bill only shortly before its introduction.[19] However, stakeholders also committed to further engaging with the Queensland Treasury on a number of matters to address outstanding implementation issues, including in relation to supporting royalty rulings and associated guidance for industry.[20]

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11 Queensland Treasury, departmental brief, 22 July 2020, p 3.

12 Queensland Treasury, departmental brief, 22 July 2020, p 3.

13 Queensland Treasury, departmental brief, 22 July 2020, p 2.

14 Queensland Treasury, departmental brief, 22 July 2020, p 4.

15 Explanatory notes, p 13; Queensland Treasury, departmental brief, 22 July 2020, p 4.

16 Queensland Treasury, departmental brief, 22 July 2020, p 4.

17 Arrow Energy Pty Ltd (Arrow Energy), submission 8, p 1; Senex Energy Limited (Senex), submission 7, p 1; Australia Petroleum Production & Exploration Association Limited (APPEA), submission 9, p 1; WestSide Corporation Pty Ltd (WestSide), submission 10, p 1; Denison Gas Limited (Denison Gas), submission 11, p 1; Shell QGC, submission 12, p 1; Bridgeport Energy Limited (Bridgeport Energy) , submission 13, p 1; Lucy Snelling, Head, Corporate and Commercial, State Gas, public hearing transcript, Brisbane (via videoconference), 28 July 2020, p 3.

For example, Bridgeport Energy submitted that 'most of these suggestions and recommendations have been responded to and have been accepted'. APPEA also submitted that it 'would like to acknowledge and thank the Queensland Government' for considering the suggestions and recommendations it provided through the consultation process for the implementation of the Royalty Review, 'some of which are reflected in [the Bill] or otherwise addressed in the Treasurer's introductory reading speech'. Senex submitted that from its perspective, 'the Bill removes key impediments identified during the implementation consultation process'.

18 Association of Mining and Exploration Companies (AMEC), submission 3, p 2; Arrow Energy, submission 8, p 1.

19 Queensland Resources Council (QRC), submission 15, p 3.

20 AMEC, submission 3, p 2; Arrow Energy, submission 8, p 1; Denison Gas, submission 11, p 1; Lucy Snelling Head, Corporate and Commercial, State Gas, public hearing transcript, Brisbane (via videoconference), 28 July 2020, p 3.

Queensland Treasury advised in response that the implementation consultation paper process and associated industry meetings undertaken by OSR provided the basis for input on implementation issues, and that 'it was made clear during this consultation process that there would not be consultation on draft legislation'.[21] Queensland Treasury also reaffirmed, however, that:

> *OSR will continue to work closely with petroleum producers and industry bodies during implementation of the volume model to identify issues for which further guidance is required, and will publish royalty rulings and other materials to assist.*[22]

1.5 Should the Bill be passed?

Standing Order 132(1) requires the committee to determine whether or not to recommend that the Bill be passed.

After examination of the Bill, including consideration of the policy objectives to be implemented, information provided by stakeholders, and advice from the Queensland Treasury, the committee recommends that the Bill be passed.

Recommendation 1

The committee recommends the Royalty Legislation Amendment Bill 2020 be passed.

[21] Queensland Treasury, response to submissions, 27 July 2020, p 11.

[22] Queensland Treasury, response to submissions, 27 July 2020, p 11.

2 Background to the Bill

2.1 Petroleum royalty reform

Petroleum royalty in Queensland is currently imposed as a proportion of the wellhead value of petroleum disposed of in a period, less certain deductions incurred between the wellhead and the point of disposal.[23] *Wellhead value* is calculated by determining the amount the petroleum could reasonably be expected to realise if it were sold on a commercial basis, less specified statutory deductions for expenses incurred between the wellhead and disposal point,[24] and less any negative wellhead value[25]. *Disposal* includes sales to third parties and related entities, own-use, and flaring and venting.[26] For petroleum royalty purposes, *petroleum* includes oil, condensate, coal seam gas (CSG), natural gas, and liquefied petroleum gas (LPG).

The petroleum royalty regime and legislation were designed prior to the emergence of the CSG and liquefied natural gas (LNG) industries in Queensland,[27] and the explanatory notes to Bill advise that:

> *The development of these industries in a way that does not always align with the legislation has resulted in issues for petroleum producers in interpreting and applying the legislation, and for the Office of State Revenue (OSR) in administering it.*[28]

The industry is now dominated by three large LNG joint venture projects – the Queensland Curtis LNG project, the Australia Pacific LNG project, and the Gladstone LNG project, which together consume approximately 90 per cent of the CSG produced in Queensland as feedstock gas for conversion to LNG, with the remaining gas sent to the domestic market.[29] For integrated CSG-LNG projects, the typical value chain sees extracted CSG being treated in upstream processing facilities before being transported through pipelines to liquefaction plants, processed into LNG, and potentially stored before being loaded onto ships for export. As all the infrastructure in these value chains is typically owned by the LNG joint venture partners, all or most of the transactions along the value chain are between related parties, with the first arm's length transaction occurring with the sale of LNG as it is loaded onto ships for export.[30]

In these circumstances, where it is not possible to establish a commercial value for the sale of CSG at the wellhead, the responsible Minister or their delegate is required to make a petroleum royalty decision (PRD) as to the value or methodology for calculating the value of the CSG.[31] This process can be time-consuming, complex and costly for both industry and OSR, and:

- can result in disputes leading to litigation[32]

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23 Explanatory notes, p 2.

24 These deductions include pipeline tariffs, processing tolls, depreciation on certain capital items, and operating costs directly related to treating, processing, refining and transporting the petroleum. See Petroleum and Petroleum and Gas (Royalty) Regulation 2004 (Petroleum and Gas Regulation), s 148.

25 Negative wellhead value arises when deductions exceed revenues in a quarter. Negative wellhead value may be carried forward within an annual period but not across years.

26 Petroleum and Gas Regulation, s 147(2).

27 Explanatory notes, p 2.

28 Explanatory notes, p 2.

29 Hon Jay Weatherill, *Queensland Petroleum Royalty Review: Report by the Hon Jay Weatherill to the Queensland Government,* First report, December 2019 (First Royalty Review Report), p 4.

30 First Royalty Review Report, p 4.

31 Petroleum and Gas Regulation, s 148E. A PRD is an administrative decision setting out the value or a method or formula for working out the value of one or more components of the wellhead value of petroleum.

32 For example: *Australia Pacific LNG Pty Limited & Ors v The Treasurer, Minister for Aboriginal and Torres Strait Islander Partnerships and Minister for Sport* [2019] QSC 124.

- can raise issues of equity and consistency between competing LNG projects operating in similar circumstances, and
- is characterised by a lack of transparency, given individual PRDs are subject to the confidentiality provisions in Petroleum and Gas Act.[33]

Additionally, the process for calculating deductions can be complex, and particularly so where related parties provide and receive services along the CSG-LNG production line, as this requires determining a commercial amount for costs and expenses for deduction in circumstances where comparability may be difficult.[34] While OSR provides specific guidance with respect to the statutory allowable deductions, there is no specific legislative prescription or limitation on what other costs and expenses can be deducted, other than those specified under a PRD.[35]

Where deductions exceed revenues in a quarter, this negative wellhead value can be carried forward as a deduction within the same annual period.[36] Although a negative wellhead value cannot be carried forward across annual periods (ie any remaining negative wellhead value at the end of an annual period is 'lost'), it can result in no royalty being payable by a petroleum producer in a given year. As a result, 'the State receives no compensation in these cases for providing the right to access non-renewable resources that are commercialised for profit by the recipient of that right'.[37]

Acknowledging these issues, in the 2019-20 Queensland Budget the Government announced a review of the design of Queensland's petroleum regime,[38] to be undertaken by a Petroleum Royalty Review Working Group (Working Group) chaired by former South Australian Premier the Hon Jay Weatherill, and comprising representatives from APPEA, the QRC and OSR.[39]

The stated objectives of the Royalty Review were:

> *… to ensure greater certainty and equity for all parties and identify opportunities to simplify the current regime, while providing an appropriate return to Queenslanders.*[40]

In addition, the Review was to identify 'any further opportunities to strengthen domestic supply through the royalty regime settings'.[41]

An initial report handed to the government in December 2019 (First Royalty Review Report) confirmed the need for the present regime to be 'replaced with a simpler model less capable of generating disputes', and called for the Working Group to continue to evaluate three identified alternative models.[42] Following a process of further consultation with petroleum industry bodies, producers, industry executives and experts, the Final Royalty Review Report was delivered to Government in February 2020.[43]

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33 First Royalty Review Report, p 7; Petroleum and Gas Act, s 617B (Disclosure of confidential information).

34 First Royalty Review Report, p 7.

35 First Royalty Review Report, p 7.

36 Petroleum and Gas Regulation, s 148(5).

37 First Royalty Review Report, p 8.

38 Queensland Government, *Queensland Budget 2019-20: Budget Paper 4 – Revenue Measures*, p 153.

39 First Royalty Review Report, p 9.

40 Queensland Government, *Queensland Budget 2019-20: Budget Paper 4 – Revenue Measures*, p 153.

41 Queensland Government, *Queensland Budget 2019-20: Budget Paper 4 – Revenue Measures*, p 153.

42 First Royalty Review Report, pp 32-33.

43 Hon Jay Weatherill, *Queensland Petroleum Royalty Review: Report by the Hon Jay Weatherill to the Queensland Government,* Second Report, February 2020 (Final Royalty Review Report).

The report recommended the adoption of a 'volume model' to replace the current wellhead value regime for CSG, and that further work be undertaken to develop the volume model for non-CSG petroleum (oil, condensate, LPG and natural gas).[44]

The OSR subsequently undertook consultation with the petroleum industry in relation to the application of the volume model for other (non-CSG) petroleum, and on 8 June 2020, the Queensland Government announced its decision to adopt the volume model for petroleum royalty determination across all petroleum from 1 October 2020,[45] with non-CSG petroleum having been incorporated into the model.[46]

2.2 Royalty Administration Modernisation Program

Separate to the Royalty Review, the RAM program focusses on aligning the administrative elements of Queensland's mineral and petroleum royalties with the administration of other state revenue laws.[47]

Currently, the administration of the state's tax legislation – being the Betting Tax Act, *Duties Act 2001* (Duties Act), *Land Tax Act 2010* (Land Tax Act) and Payroll Tax Act – is governed by a statutory framework provided by the TAA.[48] While the former legislation prescribes how the relevant tax applies, the TAA sets out administrative matters such as the making of assessments and reassessments, payment and recovery of tax, refunds of overpaid tax, interest and penalties where tax is underpaid, review rights, and powers of investigation.[49]

When enacted, the TAA originally applied only to the Duties Act, but it has progressively been extended across the other state revenue laws (including to the Payroll Tax Act on 1 July 2005, the Land Tax Act on 30 June 2009,[50] and the Betting Tax Act on 1 October 2018).[51]

Since becoming responsible for royalties in 2011 under the Mineral Resources Act and the Petroleum and Gas Act (together the 'royalty legislation'), OSR has also progressively implemented a number of amendments to the royalty legislation to include provisions modelled on the TAA, including provisions dealing with interest and penalties, the making of assessments and reassessments, investigation and garnishee powers, record keeping, confidentiality, evidentiary matters and the service of documents.[52]

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44 Final Royalty Review Report, p 15.

45 Explanatory notes, p 2. See also Hon Cameron Dick MP, Treasurer and Minister for Infrastructure and Planning, 'Queenslanders the big winners from royalty review', ministerial media statement, 8 June 2020, http://statements.qld.gov.au/Statement/2020/6/8/queenslanders-the-big-winners-from-royalty-review

46 Queensland Treasury's written briefing on the bill advised that following the conclusion of the review, 'consultation undertaken by OSR with the non-CSG industry confirmed the suitability of the volume model for all petroleum'. Queensland Treasury, correspondence, 22 July 2020, p 3.

47 Office of State Revenue (OSR), Queensland Treasury, *Royalty Administration Modernisation Program Consultation Paper*, October 2019, p 3.

48 Explanatory notes, p 6.

49 OSR, Queensland Treasury, *Royalty Administration Modernisation Program Consultation Paper*, October 2019, p 3.

50 The *Land Tax Act 1915* was repealed and replaced with the *Land Tax Act 2010* (Land Tax Act). The Taxation Administration Act was applied to the Land Tax Act from commencement on 30 June 2010.

51 OSR, Queensland Treasury, *Royalty Administration Modernisation Program Consultation Paper*, October 2019, p 3.

52 Explanatory notes, p 6; Queensland Treasury, *Royalty Administration Modernisation Program Consultation Paper*, October 2019, pp 3, 5.

However, the explanatory notes advise that as the TAA 'has not been adopted for the royalty legislation in the same way it applies for the tax legislation':

> *… there are administrative inconsistencies between taxes and royalty, and areas where royalty payers and OSR would benefit from full adoption of the TAA's framework.*[53]

The RAM program seeks to amend the royalty legislation to apply the TAA to the administration of mineral and petroleum royalties, and thereby 'provide a comprehensive and robust administration framework for mineral and petroleum royalty consistent with that applying for state taxes'.[54]

The First Royalty Review Report noted that although the RAM program represents a separate suite of reforms to those examined under the Royalty Review, it would likely address certain review objectives (including by delivering greater fairness through 'broader objection and appeal rights and a limit on the timeframes for reassessments increasing a royalty liability'); as well as delivering other administrative benefits for royalty payers, including:

> *… moving petroleum royalty return lodgement arrangements more into line with those for mineral royalty returns. This is intended to provide increased certainty for royalty payers and OSR.*[55]

53 Explanatory notes, p 6.

54 Explanatory notes, p 6.

55 First Royalty Review Report, p 8.

3 Examination of the Bill

As previously noted, the Bill proposes to:

- implement a new volume model for petroleum royalty in Queensland as per the recommendations of the Royalty Review, and
- implement reforms identified through the RAM program to extend the application of the TAA to Queensland's royalty legislation.

The committee's examination of these amendments, together with issues raised by stakeholders with respect to the provisions, is set out below.

3.1 Introducing a new model for petroleum royalty in Queensland

From 1 October 2020, the Bill will implement the volume model, which will impose tiered rates of petroleum royalty applicable to the volume of petroleum produced by a petroleum producer over each return period,[56] to 'support affordable supply for domestic customers, appropriate returns for Queenslanders and fairness for gas producers'.[57]

3.1.1 Determination of liability

The royalty payable per volume will depend on the type of petroleum and its use, with distinct royalty rates established for four identified classes of petroleum:

1. Domestic gas, which includes gas that:
    (a) is sold or transferred by a petroleum producer (either directly or indirectly through one or more resellers) to a person who is not a member of an LNG project
    (b) flared, used[58] or vented (including as gas vented as 'necessary for safety reasons'[59]), or
    (c) if the producer is not a member of an LNG project, is stored or kept in the possession of the petroleum producer or reseller[60]
2. Project gas, which is all gas produced by a petroleum producer as a member of an LNG project, other than domestic gas[61]
3. Supply gas, which is gas produced by a petroleum producer that is not a member of an LNG project, but which is sold or otherwise transferred to a member of an LNG project (eg as feedstock gas),[62] and
4. Liquid petroleum (including crude oil and condensate).[63]

56 Explanatory notes, p 2.

57 Hon Cameron Dick MP, Treasurer and Minister for Infrastructure and Planning, 'Queenslanders the big winners from royalty review', ministerial media statement, 8 June 2020.

58 'Use' does not include conversion of the petroleum into LNG. See Royalty Legislation Amendment Bill 2020 (Bill), cl 97, s 135(2).

59 Melissa Daly, Director, Strategic Policy Projects, Queensland Treasury, public briefing transcript, Brisbane (via videoconference), 28 July 2020, p 7.

60 Bill, cl 97, s 135 (amending the Petroleum and Gas Regulation).

61 Bill, cl 97, s 136 (amending the Petroleum and Gas Regulation).

62 Bill, cl 97, s 137 (amending the Petroleum and Gas Regulation).

63 Bill, cl 97, s 138 (amending the Petroleum and Gas Regulation); explanatory notes, p 2.

The Bill imposes different sliding scales of rates with respect to the three categories of gas, of which:

> *… domestic gas is the lowest; the gas that is converted to LNG is the highest of the rates; and in between there is gas that is supplied by an independent producer into one of the LNG projects.*[64]

To help differentiate between project gas and supply gas (respectively based on whether a petroleum producer is a member of an LNG project, or sells to a member of an LNG project), the Bill provides that where the Commissioner of State Revenue (Commissioner) believes a joint venture exists between one or more petroleum producers and between one or more persons who are relevant entities for a petroleum producer, the Commissioner may make a determination that the petroleum venture is an LNG project, and set out the parties who are members of the project.[65]

In addition, the Bill would impose:

> *... an obligation on anybody from an LNG project who is buying gas to advise the producer they are buying it from so they can be clear they are selling it to an LNG project. If they do not receive that notification, they can assume it is being sold domestically and apply the lower rate.*[66]

The scales of applicable royalty rates for the different classes of petroleum are to be determined with reference to the average sales price per gigajoule (GJ) of petroleum sold by the producer across the period.[67]

For example, for domestic gas, the Bill stipulates that the amount of petroleum royalty the producer must pay on the volume of domestic gas produced in the royalty return period is:

> *(a) if the average sales price for domestic gas for the producer for the period is not more than $3 per gigajoule—0.02 cents per gigajoule for each 1 cent per gigajoule more than $0 per gigajoule*
>
> *(b) if the average sales price for domestic gas for the producer for the period is more than $3, but not more than $8, per gigajoule—6 cents per gigajoule plus 0.08 cents per gigajoule for each 1 cent per gigajoule more than $3 per gigajoule;*
>
> *(c) if the average sales price for domestic gas for the producer for the period is more than $8 per gigajoule—46 cents per gigajoule plus 0.10 cents per gigajoule for each 1 cent per gigajoule more than $8 per gigajoule.*[68]

Queensland Treasury advised that the rates and tiers established by the Bill were informed by modelling undertaken by OSR in consultation with industry.[69]

For each different class of petroleum, the average sales price is to be determined on a GST-exclusive basis,[70] using one of two different mechanisms:

- Firstly, where there is an arm's length sales price available for the petroleum sold, the reference price is to be determined based on the actual pricing per GJ of petroleum for the period – eg if the

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64 Melissa Daly, Director, Strategic Policy Projects, Queensland Treasury, public briefing transcript, Brisbane (via videoconference), 28 July 2020, p 7.

65 Bill, cl 97, s 139 (amending the Petroleum and Gas Regulation).

66 Public briefing transcript, Brisbane (via videoconference), 28 July 2020, p 7. See also explanatory notes, p 3; Bill, cl 97, s 141 (amending the Petroleum and Gas Regulation).

67 Explanatory notes, p 3.

68 Bill, cl 97, s 145 (amending the Petroleum and Gas Regulation).

69 Public briefing transcript, Brisbane (via videoconference), 28 July 2020, p 5.

70 Queensland Treasury, departmental brief, 22 July 2020, p 1. Queensland Treasury advised that 'a royalty ruling will also be issued' to support the GST-exclusive calculation of the average sale price (eg using sales revenue, excluding GST, as an input).

person purchasing the petroleum is not a related entity for either the producer or the producer's related entity reseller, the reference price is based on the total sales revenue and total volume of the relevant petroleum (or, for project gas, the LNG) sold in the period.[71]

- Alternatively, a prescribed benchmark price[72] can be used to determine the average sales price where:
    - the person purchasing the petroleum is a related entity for either the producer or the producer's related entity reseller, such that there is no arm's length price available
    - information required for determining the royalty rate is not available for a producer when the royalty return is lodged, or
    - a benchmark price decision applies (eg the Commissioner or the producer elect to use a benchmark price rather than actual sales price).[73]

Queensland Treasury explained:

> *When the volume model was initially being developed in consultation with industry, the initial intention was to impose a benchmark price based rate on the volume of petroleum produced. Following submissions to government, government ultimately decided that there would be an alternative method for producers to work out their royalty rate. Basically, in setting an almost individualised benchmark price they can have regard to the revenues they earn in a royalty return period, so basically dividing revenues by the volumes gives them a dollar per gigajoule reference price. That then feeds into the royalty rate tiers that would apply, but it remains open to any producer who considers it more appropriate to use the benchmark price, which is an industry based index.*
>
> *In relation to the oil industry it is the Brent spot price. If in a particular producer's circumstances they consider that using their own sales revenues—particularly if they might have a high cost structure—would not produce an appropriate outcome for them in relation to their royalty liability, they may elect to use the benchmark price. As I mentioned, that benchmark price is neutral so it is does not have regard to cost. It is being set to basically take that out of play as far as working out your royalty liability.*[74]

The benchmark price for each class of petroleum is to be determined as the average market index price across the royalty return period.[75] Swap arrangements, whereby petroleum producers may swap volumes of petroleum in particular circumstances, will be disregarded in determining the classification of the petroleum and the applicable royalty rate.[76]

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71 Explanatory notes, p 3.

72 Specifically, the benchmark price for *domestic gas* for a royalty return period 'means the firm End of Day Wallumbilla Benchmark Price averaged over the period'; the benchmark price for *supply gas* or for *project gas* for the royalty return period is the 'average… of the daily Europe Brent Spot Price FOB [Free on Board] (Dollars per Barrel) converted into Australian dollars at the average hedge settlement rate for the royalty return period'; and the benchmark price for *liquid petroleum* for a royalty return period is the 'average, for the royalty return period, of the daily Europe Brent Spot Price FOB [Free on Board] (Dollars per Barrel) converted into Australian dollars at the average hedge settlement rate for the royalty return period'. See Bill, cl 97, ss 144, 148C, 148H, and 148J (all amending the Petroleum and Gas Regulation).

73 Explanatory notes, p 4.

74 Melissa Daly, Director, Strategic Policy Projects, Queensland Treasury, public briefing transcript, Brisbane (via videoconference), 28 July 2020, p 6.

75 Explanatory notes, p 4.

76 Queensland Treasury, departmental brief, 22 July 2020, p 1.

With respect to the determination of volume, Queensland Treasury advised that it will be developing a royalty ruling in consultation with industry that will govern the measurement of volume for the calculation of royalty liability.[77] In addition, OSR 'will publish a royalty ruling to clarify' the application of the royalty provisions to swap arrangements.[78]

In keeping with the recommendation of the Royalty Review,[79] the proposed royalty rates and benchmarks 'will be frozen for five years to give certainty to industry and government'.[80]

3.1.2 Non-tenure holders

In response to industry input, provision has been made in the Bill for a person who is involved in petroleum production, including as a joint venture participant, but who does not hold any legal interest in the petroleum tenure (eg a non-tenure holder), to elect to be treated as a petroleum producer for all royalty related matters under the Petroleum and Gas Act.[81]

Queensland Treasury explained:

> *What happens in practice is that there are some of the larger producers who are involved in joint ventures but they are not actually the tenure holder themselves. They may have provided the capital for the project and the other joint venture participant might hold the tenures. In practice, though, the petroleum that is produced they commercialise, [and they] sell it separately. For all intents and purposes, post production they are operating autonomously from that perspective.*
>
> *The request that we received was to allow somebody who is not actually a tenure holder but is involved as if they were—undertaking production activity and selling petroleum—to elect to be treated as if they are a petroleum producer. While on one hand that is an unusual thing to request to do in that they are voluntarily taking on the obligation to pay royalty, lodge returns and be accountable for the royalty that is referrable to the petroleum produced, as I said, it is something they have sought. OSR cannot require somebody to do that; it is something that will be done by election. If a producer forms a view that it is in their interest to lodge royalty returns and pay royalty on their share of the petroleum from the joint venture, they may do so. It enables them to lodge returns and pay royalty, and the tenure holder will then pay just for their share…*
>
> *… It means that they do not have to share their confidential sales information, which otherwise the non-tenure holder would have to provide to the producer to lodge one royalty return for the whole joint venture.*[82]

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77 Queensland Treasury, departmental brief, 22 July 2020, p 2.

78 Queensland Treasury, departmental brief, 22 July 2020, p 1.

79 Recommendation 5 of the Final Royalty Review Report was that the Queensland Government 'consider providing industry with an undertaking that the Volume Model settings will not change for 5 years from the date of commencement…'. See Final Royalty Review Report, p 15.

80 Hon Cameron Dick MP, Treasurer and Minister for Infrastructure and Planning, Queensland Parliament, Record of Proceedings, 16 July 2020, p 1745.

81 Bill, cl 97, s 148ZC (amending the Petroleum and Gas Regulation). See also explanatory notes, p 4; Melissa Daly, Director, Strategic Policy Projects, Queensland Treasury, public briefing transcript, Brisbane (via videoconference), 28 July 2020, p 8.

82 Melissa Daly, Director, Strategic Policy Projects, Queensland Treasury, public briefing transcript, Brisbane (via videoconference), 28 July 2020, p 8.

As an election affects the tenure holder's obligations, it can only be made with the tenure holder's consent and may continue to apply only with the tenure holder's agreement.[83] Additionally, if for any reason the non-tenure holder defaults, the tenure holder will remain liable.[84]

3.1.3 Petroleum royalty return lodgement

Under the Petroleum and Gas Act, petroleum producers are currently only required to lodge quarterly returns if petroleum is produced, disposed of or stored in the period, such that a return may be required for some quarterly periods but not for others, depending on whether the producer has been active in this respect.[85] An annual return is also required to reconcile annual liability.[86]

To support implementation of the new royalty liability framework, the Bill proposes to simplify royalty arrangements 'to move them more into line with those for mineral royalty returns, with the Petroleum and Gas Regulation prescribing the basis for lodgement'.[87] Under the proposed amendments, the holder of a petroleum lease or authority to prospect will be required to lodge a royalty return regardless of liability, but the frequency will ordinarily depend on the type of tenure held. Specifically:

- producers holding petroleum leases will ordinarily be required to lodge four quarterly returns with no requirement for an annual reconciliation return (as 'this is unnecessary under the volume model')[88], and
- producers holding only authorities to prospect generally will be required to lodge an annual return on a financial year basis.[89]

However:

> *Having regard to the amount of royalty likely to be payable, an authority to prospect holder may be required to lodge quarterly returns rather than an annual return, or may be allowed to do so if they request. Similarly, having regard to the royalty payable, the Commissioner may allow a petroleum lease holder to lodge an annual return only, removing the need for the four quarterly returns.*[90]

With the new volume model set to commence on 1 October 2020, the first two quarterly returns under the new system are due on 31 January 2021 and 30 April 2021 respectively.[91] Queensland Treasury stated that this 'will provide a reasonable period for producers to adjust to lodging returns under the new volume model'.[92]

83 Explanatory notes, p 4.

84 Bill, cl 97, s 148ZC(10) (amending the Petroleum and Gas Regulation). Queensland Treasury advised that 'this ensures the government will not be out of pocket from the election'. See Melissa Daly, Director, Strategic Policy Projects, Queensland Treasury, public briefing transcript, Brisbane (via videoconference), 28 July 2020, p 8.

85 Explanatory notes, p 4.

86 Petroleum and Gas Act, s 599.

87 Explanatory notes, p 5.

88 Explanatory notes, p 5.

89 Explanatory notes, p 5.

90 Explanatory notes, p 5.

91 Queensland Treasury, response to submissions, 27 July 2020, p 9.

92 Queensland Treasury, response to submissions, 27 July 2020, p 9.

3.1.4 Transitional and other arrangements

To support the implementation of the volume model from 1 October 2020 (with petroleum royalty liability to be determined on the volume basis for all petroleum produced on or after that day), the explanatory notes advise that the following transitional arrangements will apply:

- *Where petroleum is produced before 1 October 2020 but not disposed of by that date, royalty will be payable for the petroleum for the return period ending 30 September 2020.*
- *A petroleum producer lodging annual returns on a financial year basis will be required to lodge a transitional annual return by 31 December 2020 for the period 1 July 2020 to 30 September 2020.*
- *A petroleum producer lodging annual returns on a calendar year basis will be required to lodge a transitional annual return by 31 December 2020 for the period from 1 January 2020 to 30 September 2020.*
- *Petroleum royalty decisions for determining a component of the wellhead value of petroleum produced before 1 October 2020 may continue to be made or amended after 1 October 2020.*[93]

A transitional regulation making power has also been included in the Bill 'to facilitate effective transition from the existing provisions…where the Bill does not make sufficient provision', noting 'the significance of the reforms being implemented… and the imperative to ensure effective revenue management for the State'.[94] The regulation making power, which will expire two years after the commencement date (together with any transitional regulations made under the provisions), is examined further in section 4.1.1 of this report regarding fundamental legislative principles.

Queensland Treasury also advised:

> *… to assist industry to move towards the new volume model … for the first six months—for the first two return periods—if there is a mistake made in classification et cetera we can make reassessments and there will be no interest or penalties. They will be fully remitted.*[95]

At the conclusion of the first two quarterly return periods, 'the need for any extension of these arrangements will then be further considered'.[96]

In addition:

> *OSR will continue to work with industry to provide guidance and support in implementing the Bill, including identifying other issues for which the preparation of a royalty ruling would be beneficial. Specifically, during implementation consultation, industry requested further guidance on the basis for measuring petroleum volumes. The requested ruling and other guidance identified by industry will be prioritised. In addition, OSR's implementation program has dedicated resources to deliver the changes required to technology and business processes. This includes changes to return forms and material that will assist industry meet its obligations (e.g. determinations, website information and user guides).*[97]

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93 Explanatory notes, pp 5-6.

94 Queensland Treasury, departmental brief, 22 July 2020, p 2.

95 Melissa Daly, Director, Strategic Policy Projects, Queensland Treasury, public briefing transcript, Brisbane (via videoconference), 28 July 2020, p 7.

96 Queensland Treasury, departmental brief, 22 July 2020, p 2.

97 Queensland Treasury, departmental brief, 22 July 2020, p 2.

3.2 Stakeholder views and the department's response

Overall, stakeholder views on the introduction of the volume model for petroleum royalty were mixed.

There was broad acknowledgement of the significant collaborative work undertaken by industry and government both during the Royalty Review process, and in subsequently progressing its recommended reforms.[98] Stakeholders also generally supported the objectives underpinning the reforms, including the commitment to greater equity, transparency and fairness within the royalty regime.[99] However, there were varying views among submitters and witnesses as to the both the appropriateness of the volume model for the achievement of these objectives, and the effectiveness of specific provisions of the Bill in implementing it.

Issues raised by stakeholders with respect to the volume model itself, the proposed model rates and benchmark prices, the clarification of the operation of certain model elements, and changes to arrangements for the lodgement of petroleum royalty returns, together with the Queensland Treasury's responses to these issues, are outlined below.

3.2.1 The volume model for petroleum royalty

Among the supporters of the proposed volume model, Australia Pacific LNG Pty Ltd (APLNG) considered that the reforms would deliver welcome improvements on the existing regime, particularly in terms of equity across producers.[100] APLNG submitted in this respect:

> *Under the existing system, during the past 3 years APLNG has paid 62% of Queensland's petroleum royalties, despite only producing 44% of the State's gas. At the same time, we are the biggest provider of gas to Australia's East Coast market, supplying approximately 30% of household, business and industry needs each year.*[101]

Origin Energy Limited (Origin Energy) similarly commended the Bill's likely 'improvement in the equitable distribution of royalties across gas producers in terms of total royalty contribution (relative to each producer's share of production)'.[102]

However, in contrast, Shell QGC submitted that it did not consider the volume model to be 'a long-term sustainable royalty model that will meet the objectives as set out in the initial Royalty Regime Review Terms of Reference'[103] – a view shared by a number of other stakeholders.[104]

Shell QGC maintained that an efficient and effective royalty regime should be based upon the true wellhead value of petroleum, as is the case with the current model, with the value on which royalty is paid to be determined 'with reference to the reasonable costs incurred in extracting the petroleum and the actual revenues derived'.[105] To do otherwise, it submitted, will 'distort commercial outcomes and result in inequality across the industry'.[106]

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98 See, for example: Arrow Energy submission 8, p 1; APPEA, submission 9, p 1; QRC, submission 15, pp 3-4.

99 See, for example: Texas-Tickalara Holdings (TTH), submission 1; State Gas, submission 2; Professor Andrew Garnett, submission 16.

100 Australia Pacific LNG Pty Ltd (APLNG), submission 4, p 1.

101 APLNG, submission 4, p 1.

102 Origin Energy Limited (Origin Energy), submission 6, p 1.

103 Shell QGC, submission 12, p 1.

104 Lucy Snelling, Head, Corporate and Commercial, State Gas, public hearing transcript, Brisbane (via videoconference), 28 July 2020, p 3; Professor Andrew Garnett, Director, UQ Centre for Natural Gas, public hearing transcript, Brisbane (via videoconference), 28 July 2020, p 18; TTH, submission 1, p 3.

105 Shell QGC, submission 12, p 2.

106 Shell QGC, submission 12, p 2.

Texas-Tickalara Holdings (TTH) also warned of the model's failure to deliver on its equity aims, suggesting the reforms as proposed represent a 'one size fits all' approach that fails to take account of the significant variability in operating costs between producers of different size, nature and location.[107]

From a size perspective, TTH submitted that the petroleum industry in Queensland is diverse, and in addition to the established, big name companies, includes quite a number of smaller and emerging operators who tend to be exploring or operating projects at a higher cost and in more remote areas.[108]

In relation to new projects in particular, State Gas submitted that data from the Australian Energy Market Operator regarding production costs for various sources shows the marginal cost of production from existing projects in Queensland is between $2.25 and $3.81, while by contrast, the estimated cost of new undeveloped projects is 'between $6.45 and $9.44, reflecting the much greater cost of getting a new project off the ground'.[109] State Gas stated that the volume model's failure to account for these differences serves to 'raise the hurdles to be surmounted by new project and market entrants and disincentivise growth'.[110]

In terms of location-specific impacts, further, TTH submitted that 'a case in point' is the Cooper-Eromanga basin in the southwest part of the State:

> *… in the Cooper-Eromanga Basin for instance, our transportation and operating costs are as much as double those of the Bowen and Surat Basins due to the remote nature of the Cooper Basin. Oil produced in the Cooper must be transported more than 1500km to market, and operations (such as those in the Bowen and Surat Basins), that could be managed by a single person who returns home each night to their families must be manned by at least two personnel for safety reasons operating from a remote camp for two week stints. All goods and services in the area come at a premium, reflecting the transportation costs associated with their provision.*[111]

In all of these instances, TTH submitted, 'removing the ability to net those costs against the royalty calculation will have a devastating effect on the commerciality of smaller operations', particularly in low profit environments.[112] State Gas also explained:

> *Under the current, soon to be replaced regime, royalty is related to profit – the deductibility of the majority of costs means that an operation is relieved of paying the tax in periods when the oil price crashes below something near breakeven. Under the new regime this will no longer be the case, the royalty is payable irrespective of profitability, it imposes an additional cost when an operation is in loss. The implications of this is that the threshold for an economic field is raised – production will be turned off earlier and marginal operations become less likely to be developed. The result will be less petroleum production, less economic activity in the relevant areas of the State, and lower royalties being paid.*[113]

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107 TTH, submission 1, p 2.

108 TTH, submission 1, p 2. State Gas also noted in this respect that as early gas projects have tended to exploit the 'low hanging fruit', new projects can be expected to always be either from less productive resources or in more challenging locations, such that higher costs may be anticipated. See State Gas, submission 2, pp 2-3.

109 State Gas, submission 2, p 2.

110 State Gas, submission 2, p 1.

111 TTH, submission 1, p 2. See also Vintage Energy, submission 19, p 1.

112 TTH, submission 1, p 3. See also State Gas, submission 2, p 2; Vintage Energy Ltd, submission 19, p 1.

113 State Gas, submission 2, p 3. For further commentary see Comet Ridge Limited, submission 20, p 1; Professor Andrew Garnett, Director, UQ Centre for Natural Gas, public hearing transcript, Brisbane (via videoconference), 28 July 2020, p 17.

Citing such issues, Shell QGC submitted that the volume model is 'inconsistent with best practice' in this area, which is to 'consider royalty settings in a long term and wider policy context and to base resource taxes and royalties on "economic-rent" (revenue minus costs)'.[114]

Among the other stakeholders citing the merits of a rent-based approach, Professor Andrew Garnett, Director of the UQ Centre for Natural Gas, advised that the primary benefit of such an approach relates to its capacity to incentivise investment (conversely, 'as long as you are putting an extra cost at the end where the companies are still losing, that makes it harder to invest').[115] Professor Garnett and Lucy Snelling, Head, Corporate and Commercial at State Gas, suggested that encouraging investment should have been included as an additional objective of the Royalty Review, with Ms Snelling stating this is 'particularly important in the current economic context':[116]

> *The petroleum industry is not just a key plank of the Queensland economy; it is also a key enabler of other industries, in particular manufacturing. More supply and more competitive supply provides opportunities for more jobs and economic growth in both Queensland and the wider Australian community.*
>
> *The changes proposed by this bill move the royalty regime from one that is essentially based on profit—that is, through sales price less certain categories of cost—to a commodity tax which is determined by the volume produced. Is it simpler? Yes, it definitely achieves that objective. Is it more certain? Probably yes, and certainly for OSR in its administration I think it would be. Does it promote domestic gas? Yes, I think there is a significant element of the model which provides the discount for domestic gas and, yes, that does promote domestic gas, which we absolutely support. However, is it equitable? We think it is only equitable if you assume that all projects and all industry producers are the same or equal, and we are demonstrably not. Does it encourage new development? This is where we think it fails. It does not. The proposed regime disincentivises new developments and growth because it raises hurdles for economic viability and impedes a project's capacity to compete when it is new.*[117]

As a counterbalance to these views, during the committee's public hearing, there were equally acknowledgements that rent-based models have their own shortcomings – including the potential to be undermined by transfer pricing, internal capital loans, and other factors, which may obstruct price clarity and pose challenges for ensuring equity across various royalty payers.[118]

Professor Garnett advised that in circumstances where there has been recognition of 'some noise in the system… and some element of gaming the system', the typical government approach – and also the approach adopted in Queensland – has been to seek to limit which costs are allowable costs for deduction for the sake of the model.[119] The result, he continued, 'does not have the full cost recovered by any means but is a sort of a halfway house'.[120] In these circumstances, Professor Garnett

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114 Shell QGC, submission 12, p 2.

115 Professor Andrew Garnett, Director, UQ Centre for Natural Gas, public hearing transcript, Brisbane (via videoconference), 28 July 2020, p 18.

116 Lucy Snelling, Head, Corporate and Commercial, State Gas, public hearing transcript, Brisbane (via videoconference), 28 July 2020, p 3.

117 Lucy Snelling, Head, Corporate and Commercial, State Gas, public hearing transcript, Brisbane (via videoconference), 28 July 2020, p 3.

118 Public hearing transcript, Brisbane (via videoconference), 28 July 2020, pp 19-20.

119 Professor Andrew Garnett, Director, UQ Centre for Natural Gas, public hearing transcript, Brisbane (via videoconference), 28 July 2020, p 19.

120 Professor Andrew Garnett, Director, UQ Centre for Natural Gas, public hearing transcript, Brisbane (via videoconference), 28 July 2020, p 19.

acknowledged 'the cry for simplicity, if you like, which is understandable from the OSR'.[121] However, Professor Garnett recommended that the implementation of the volume model be delayed, to allow more time, 'while the COVID headwinds play out, to respond to changes and design and test a more competitive system of royalties and associated resource settings'.[122]

Other submitters who opposed the introduction of the volume model suggested retaining the status quo, at least for liquid petroleum,[123] or alternatively applying the volume model only to export gas (with the current model continuing to apply to domestic gas and liquids).[124] However, recognising that such options had been 'considered but discarded' during the Royalty Review and related consultation processes,[125] it was also identified that some of the potentially adverse impacts of the new regime on the investment environment for the resources industry could be addressed by:

- introducing a form of royalty relief for new projects, whereby royalty is not payable prior to and for an initial period (eg 12 months) after first commercial petroleum sale,[126] or establishing a category of development or expansion project ('similar to the Federal Government's Major Project Status') for which new projects of significant benefit to the State are 'authorised to deduct a portion of their development costs for the initial production period'.[127] State Gas submitted that a form of royalty relief of this kind 'would increase the viability of new projects, as well as send a positive message about the State's interest in encouraging new gas and liquids to be brought on-stream'.[128] Comet Ridge Limited submitted that the recovery of development costs before royalty payments commence would allow a project 'to reach positive cash flow sooner, and potentially makes the project economics work, when without this assistance, the project could falter', and that this 'is often seen in other jurisdictions around the world and does seem to be applied in Queensland on coal mining projects'[129]
- determining petroleum royalty on the basis of petroleum sold rather than petroleum produced, as there can be delays between production and sale that may raise revenue issues for producers where they carry the costs between the time of production (and imposition of royalty) and the time of sale,[130] and
- refining the system of model royalty rates and use of benchmark prices as outlined under the Bill to account for operating cost variability, including through the provision for a deduction for transport costs in the tiered rate system to account for the geographical disadvantages experienced by some operators.[131]

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121 Professor Andrew Garnett, Director, UQ Centre for Natural Gas, public hearing transcript, Brisbane (via videoconference, 28 July 2020, p 19.

122 Professor Andrew Garnett, submission 16, p 2.

123 TTH, submission 1, p 3.

124 Lucy Snelling, Head, Corporate and Commercial, State Gas, public hearing transcript, Brisbane (via videoconference), 28 July 2020, pp 3-4.

125 Lucy Snelling, Head, Corporate and Commercial, State Gas, public hearing transcript, Brisbane (via videoconference), 28 July 2020, pp 3-4.

126 State Gas, submission 2, p 2.

127 Denison Gas, submission 11, p 2; Denison Gas, submission 11 (supplementary), p 2; See also Comet Ridge Limited, submission 20, p 2.

128 State Gas, submission 2, p 2.

129 Comet Ridge Limited, submission 20, p 2.

130 TTH, submission 1, p 3.

131 See, for example: TTH, submission 1, p 2; APLNG, submission 4, pp 1, 4-5; Origin Energy, submission 6, p 2; APPEA, submission 9, pp 5-6; Denison Gas, submission 11, pp 1-2; Denison Gas submission 11 (supplementary), pp 1-2; Vintage Energy Ltd, submission 19, p 1 .

The proposed amendments to the model's tiered system of rates are discussed further in section 3.2.2.

The suitability of the model and these proposed improvements aside, a number of stakeholders emphasised the importance of a stable regulatory regime, noting the retrospective impact of changes on the costs and value associated with tenures.[132] Shell QGC submitted in this regard:

> *Shell QGC sought and obtained an upfront agreement as to the appropriate calculation of gas royalties for LNG feedgas prior to committing to over $20 billion of investments in the QGC LNG Project in 2010. This change now comes around 6 years into a project that expects to operate for over 20 years.*[133]

Similar comments were made by TTH, with respect to its authority to prospect (ATP), and the impact of the 'change in terms' associated with the change in the royalty rate in previous 2019 amendments.[134] In addition, TTH submitted that the volume model and its 'even more fundamental change' to the royalty system, is creating 'deep uncertainty in already risk averse capital markets':

> *… the uncertainty around the royalty regime has meant we have been unable to provide potential investors with a reliable economic model. Further, the frequency and materiality of recent changes provide very little comfort for a stable regime to apply over the time periods that will be required to recover a return on the very significant capital expenditure involved in project development in spite of assurances to the contrary.*
>
> *These proposed changes are having a discernible chilling effect on the availability of the capital needed to advance the development of Queensland's petroleum resources which in turn has negative effects on the outcomes the OSR and the Government generally, is trying to achieve.*[135]

Bennestar Group Pty Ltd (Bennestar Group) also submitted in this regard that its efforts to acquire certain assets in south east Queensland 'are put at risk of being frustrated', noting this process has involved the 'offer and acceptance of a commercial arrangement which has relied on the wellhead value model continuing'.[136]

Citing its own concerns about the lingering uncertainty surrounding the regulatory environment, the QRC noted the Bill's provisions to 'lock in' the new royalty regime for five years.[137] However, 'to draw a line under the upheaval of royalty arrangements over the past 18 months', the QRC recommended that the Bill be amended to freeze the petroleum royalty regime for a full decade, so that this 'royalty certainty for all commodities is clearly set down'.[138] Arrow Energy Pty Ltd (Arrow Energy), similarly, called for the government to commit to the indexation of the final system of tiered royalty rates once the five-year 'freeze' expires, 'to avoid unnecessary bracket creep'.[139]

Senex Energy offered a slightly different perspective regarding the adequacy of the proposed five-year freeze, as well as submitting that in its view, the model would pose 'no impediment to further development' of marginal oil and gas fields in Queensland:

> *By way of particular example, Senex has successfully developed the Roma North natural gas field in western Queensland, including the construction of greenfields gas infrastructure, and at a cost of more the $200 million.*

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132 Shell QGC, submission 12, p 2; TTH, submission 1, p 2; QRC, submission 15, p 1.

133 Shell QGC, submission 12, p 2.

134 TTH, submission 1, p 1.

135 TTH, submission 1, p 2.

136 Bennestar Group Pty Ltd (Bennestar Group), submission 5, p 2.

137 QRC, submission 15, p 1.

138 QRC, submission 15, p 1 (commentary continuing on p 2).

139 Arrow Energy, submission 8, p 2.

We are actively progressing internal approvals for a material expansion of this field, and I can confirm that the proposed royalty regime which is the subject of this Bill will not negatively impact this investment decision, and in fact the certainty offered by the 5 year rate freeze offers significant certainty. Nor would the proposed royalty regime have negatively impacted the original investment decision should it have applied at that time.[140]

3.2.1.1 Department's response

In response to stakeholder commentary regarding the suitability of the volume model, as opposed to models providing a rent-based approach as per the current regime, Queensland Treasury emphasised that the Royalty Review chaired by the Hon Jay Weatherill found the current wellhead value model to no longer be suitable for the existing configuration of the Queensland gas industry, and recommended the adoption of a volume model to replace the wellhead value model.[141]

Queensland Treasury noted that having considered the Royalty Review's recommendations, the government then undertook consultation with the petroleum industry on scheme design for implementation, which informed the content of the Bill.[142] The resulting model, Queensland Treasury stated:

… imposes royalty on the volume of petroleum produced, with royalty being payable by all producers in the return period in which the petroleum was first produced. This ensures a consistent outcome for all producers.[143]

Daniel Fielding, Director, Royalty at Queensland Treasury, further stated that whereas the Royalty Review found 'that there is not currently a level playing field in terms of the amount of royalty that producers are paying based on the volume of gas they are producing':[144]

… the new volume model will provide equity across all the royalty payers in that the royalty will be calculated in the same way for each royalty payer.[145]

In terms of addressing stakeholders' various proposals for amendments or inclusions in the scheme to better support industry investment, Queensland Treasury responded to the suggestion that some form of royalty relief for new projects be provided as follows:

In relation to new projects, although they will be liable for royalty on the volume of petroleum produced from the start of production, that production would likely be low during the early stages of the project and royalty liability will accordingly also be low. To allow a royalty holiday for 12 months following first production would be akin to providing a full exemption for gas produced by new gas developments, which would be inequitable to other producers. It also would not reflect the fact that petroleum royalty is a payment to the owner of a valuable non-renewable resource and that the producer has accessed this resource from the State for use in its business.[146]

In relation to the suggestion that royalty be determined at the time the petroleum is sold, rather than on production, Queensland Treasury stated that this:

… may raise Constitutional issues as States cannot impose duties of excise. Further, the volume model is not intended to change the petroleum that is liable for royalty. Imposing petroleum

140 Senex, submission 7 (supplementary), p 1.

141 Queensland Treasury, response to submissions, 27 July 2020, p 1.

142 Queensland Treasury, response to submissions, 27 July 2020, p 1.

143 Queensland Treasury, response to submissions, 27 July 2020, p 1.

144 Public briefing transcript, Brisbane (via videoconference), 28 July 2020, p 4.

145 Public briefing transcript, Brisbane (via videoconference), 28 July 2020, p 4.

146 Queensland Treasury, response to submissions, 27 July 2020, p 2.

royalty on the volume of petroleum sold (as suggested) as opposed to the volume produced would mean that certain petroleum would no longer be liable for petroleum royalty (e.g. petroleum that is flared, vented or used that does not currently qualify for exemption).[147]

Further, the Queensland Treasury responded to calls for an extended royalty freeze or indexation as follows:

The setting of the royalty rates is a matter for government. When adoption of the volume model was announced by the Government on 8 June 2020, the ministerial statement provided that "the model is transparent, equitable, administratively simpler and locked in for five years" and that "the royalty rates are also locked in for five years to provide certainty for producers".

Any revision of royalty rates and tiers is a matter for government in the context of Budget and other considerations. In relation to the indexation of royalty rate tiers at the end of the five year no change period, it is noted that there is no indexation of the rate tiers for coal royalty or for the State's taxes such as land tax or transfer duty.[148]

3.2.2 Model royalty rates and benchmark prices

Some stakeholders expressed support for the principles underpinning the Bill's systems of tiered rates, with Incitec Pivot Limited (IPL), for example, submitting that it 'welcomes the move to establish four different royalty rates where the applicable rate will depend on the petroleum type'.[149] Andrew McConville, Chief Executive, APPEA, also noted that 'in terms of the smaller producers ... there are differential rates, which I think is a positive in terms of gas that might flow into the domestic market versus alternative uses'.[150] Additionally, APPEA submitted that the Bill 'provides additional clarity about how benchmark prices will be ascertained and utilised'.[151]

However, these and other stakeholders also called for certain adjustments to be made, including in relation to:

- the quantum of royalty rates for different petroleum types
- the market indicators used for benchmark prices
- the application of benchmark prices (including for members of an LNG project who are relevant entities), and
- the inclusion of transport cost adjustments or deductions in the sales price.

These matters, and Queensland Treasury's response to the issues raised, are outlined below.

3.2.2.1 Royalty rates – liquid petroleum

Origin Energy Limited (Origin Energy), APPEA and Bridgeport Energy Limited (Bridgeport Energy) all expressed concern with the proposed middle tier-rate for liquid petroleum.[152] As Origin Energy explained:

… The issue is that there is little distinction between the royalty rate of 11.5% for the middle tier (which applies at prices between AUD$50 and AUD$100 per barrel), and the maximum rate of 12.5% which applies when prices exceed AUD$100 per barrel. The middle tier represents a range

147 Queensland Treasury, response to submissions, 27 July 2020, p 2.

148 Queensland Treasury, response to submissions, 27 July 2020, p 2.

149 Incitec Pivot Limited (IPL), submission 18, p 2.

150 Mr Andrew McConville, Chief Executive, APPEA, public hearing transcript, Brisbane (via videoconference), 28 July 2020, p 10.

151 APPEA, submission 9, p 3.

152 See, for example, Origin Energy, submission 6, p 2; APPEA, submission 9, p 4; Bridgeport Energy Limited (Bridgeport Energy), submission 13, pp 1-2.

of approximately USD$36 to USD$72. The current Brent oil price of approximately USD$44 is at historical lows and would fall within this middle tier. However, the royalty rate for this middle tier is set only 1% less than the rate applicable to the top tier, which should be applicable to environments in which producers are experiencing significant profits. The high rate of the middle tier has the effect of moving marginal oil further up the breakeven curve, considerably increasing the risk that this oil will not be developed.[153]

Origin Energy submitted that the new royalty regime should encourage resource extraction, even when the oil price is low, which it argued, is not the case with the proposed rate. It noted that the royalty rate applying to the middle tiers of other categories of petroleum is 'set at rates that are distinguishably lower than the maximum rate and consequently more likely to encourage resource extraction at the respective sale prices'.[154]

Origin Energy, APPEA and Bridgeport Energy all recommended a rate of nine per cent as being more appropriate for the middle tier of oil.[155] APPEA submitted that that level would reflect 'an appropriate return to Queensland for the production of its liquid petroleum resources when prices reflect a reasonable economic return, but not at the level where excessive profits are being made'.[156]

Queensland Treasury responded to these stakeholders as follows:

… it is noted the 11.5% rate that applies for the middle tier is a marginal rate, not an average rate. It applies to the extent the price is above the lower threshold (in the scenario above, A$50 per barrel). The rates and tiers from the lower thresholds always feed into the calculation of royalty in the higher tiers. To take the example in Origin's submission, assuming the 24 July 2020 exchange rate (0.7151 US$ per A$) and oil at US$44 per barrel, oil in A$ terms is $61.53 per barrel. This equates to royalty of $2.82 per barrel, or an average rate of 4.58% of the sales value.

This is significantly lower than the royalty rate at A$100 per barrel (the start of the top tier when the 12.5% rate applies), which is $7.25 per barrel or 7.25% of sales value.[157]

3.2.2.2 Royalty rates – gas types

WestSide Corporation Pty Ltd (WestSide) supported discounted royalty rates for domestic gas sales because of 'the importance of encouraging domestic supply for Australian industry and energy generation'.[158] IPL also acknowledged the benefits of the Bill's differential treatment of domestic gas under the tiered system.[159]

However, WestSide also encouraged the Queensland Government to 'consider greater consistency' between the tiers applicable to the domestic and supply gas classifications with those included in the Bill for project gas, by 'applying tiers of $0-$5, $5-$10, >$10 or similar values'.[160] (The Bill in contrast provides for different domestic and supply gas rates for average sales prices per GJ of $0-$3, $3-$8, and over $8, while the rates for project gas are set for average sales prices of $0-$9, $9-14, and over $14[161]).

153 Origin Energy Limited, submission 6, p 2.

154 Origin Energy Limited, submission 6, p 2.

155 Origin Energy Limited, submission 6, p 2; APPEA, submission 9, p 5; Bridgeport Energy, submission 13, p 2.

156 APPEA, submission 9, p 4.

157 Queensland Treasury, response to submissions, 27 July 2020, p 3.

158 WestSide, submission 10, p 2.

159 IPL, submission 18, p 2.

160 WestSide, submission 10, p 2.

161 Bill, cl 97, ss 145, 148A, 148F, 148K (amending the Petroleum and Gas Regulation).

WestSide further submitted:

> *In this scenario WestSide suggests that the rates currently proposed for each of the classifications apply to each of the three tiers, for example with respect to Domestic Gas:*

Domestic Gas revenue divided by volume	***Royalty payable per GJ***
Less than $5 per GJ	*0.02c per GJ for each 1c/GJ more than $0/GJ*
$5 per GJ or more but less than $10 per GJ	*18c per GJ plus 0.08c/GJ for each 1c/GJ more than $9/GJ*
$10 per GJ or more	*58c per GJ plus 0.10c/GJ for each 1c/GJ more than $14/GJ*

> *Adopting this tier structure or similar values for both 'Domestic Gas' and 'Supply Gas' supports equity across the industry for all producers and simplicity in the taxation regime, both key Government objectives. For the avoidance of doubt WestSide is not proposing to amend the tax rates relevant to each tier.*[162]

IPL suggested that royalties be increased for LNG/gas sent to export under the model, and that 'a 0% royalty should be imposed on gas sold for domestic end use', so as to provide further support for the domestic gas industry and the industries relying on it.[163] In addition, IPL recommended that a collaboration mechanism with the Australian Competition and Consumer Commission (ACCC) be implemented 'to ensure any increases in royalties are not permitted to be passed on to Australian domestic use consumers'.[164]

IPL submitted that ACCC involvement would ensure:

> *a. existing price monitoring activities contribute to this process; and*
>
> *b. cross jurisdictional activities do not mask inappropriate behaviours.*[165]

IPL also suggested the establishment of a rebate scheme for domestic users using export royalties. It contended that this would provide an allowance for domestic users, particularly in manufacturing, to receive 'a fair and competitive price for natural gas'.[166]

In response to these submitters, Queensland Treasury stated that 'the setting of the royalty rates is a matter for government'.[167]

In relation to IPL's proposal that the royalty costs not be passed on to domestic consumers, Queensland Treasury advised that it is outside the scope of the Royalty Review and current royalty arrangements.[168]

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162 WestSide, submission 10, p 2.

163 IPL, submission 18, pp 2-3.

164 IPL, submission 18, pp 2-3.

165 IPL, submission 18, p 3.

166 IPL, submission 18, p 3.

167 Queensland Treasury, response to submissions, 27 July 2020, p 2.

168 Queensland Treasury, response to submissions, 27 July 2020, p 1.

3.2.2.3 Choice of benchmark prices

Arrow Energy queried the use of the daily Europe Brent Spot Price for the benchmark price for supply gas 'given that the Japanese customs-cleared crude (JCC) is the more commonly used index in Queensland'.[169]

In response, Queensland Treasury acknowledged that LNG contracts are 'predominantly linked to the JCC' but added that the daily Europe Brent Spot Price 'is appropriate because the two prices have tracked closely and the Brent oil price is updated in a more timely manner than the JCC'.[170] Queensland Treasury noted that the Brent oil price will also be used as the benchmark for liquid petroleum.[171]

Shell QGC submitted that the benchmark price should not be defined in the legislation. It considered that it should be defined by 'an appropriate independent and transparent benchmark to ensure that the Benchmark price will reflect the dynamic LNG market conditions'.[172] Shell QGC also noted that:

> *… the ACCC uses the Japan Korea Marker … as assessed daily by S&P Global Platts … as an independent and transparent benchmark of Asian LNG prices for determining its netback series'.*[173]

In response to these comments, Queensland Treasury advised that it is necessary to include the basis for determining benchmark prices in legislation because of the significance of benchmark prices in determining the petroleum royalty payable to the State by petroleum producers. Queensland Treasury emphasised that 'certainty is required about how the benchmark is determined and how it will apply in each royalty return period'.[174]

3.2.2.4 Application of benchmark prices

The QRC noted that the Bill affords the Commissioner a broad discretion to apply benchmark prices even where gas (supply gas, project gas or liquid petroleum) is sold to an independent buyer. It stated that the Commissioner 'can apply this discretion when he or she *considers it is appropriate for the protection of the public revenue*'.[175] After noting the matters that the Commissioner may have regard to in making the decision, the QRC submitted:

> *The provision as drafted will not achieve improved royalty administration because it is imbalanced between the Commissioner and producers and provides inadequate guidance that is biased towards the revenue. The only real guidance on application of this discretion is in the words "the protection of public revenue". Gas producers who have pre-existing commitments made under long term arm's length supply contracts could be unfairly exposed to increased royalties. This is particularly so because the Commissioner is able to apply this discretion even where gas sales are made to independent buyers. Merely considering existing arrangements and the other sales and volume information says nothing about how these matters are to be taken into account when exercising the discretion. The Commissioner might consider, for example, that prior arm's length commercial commitments made by a producer do not protect the revenue because gas prices have risen since the commitments were made. It would be inappropriate and unfair for the producer to be required to pay royalties on the basis of current benchmark prices when they are receiving lesser amounts.*

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169 Arrow Energy, submission 8, p 2.

170 Queensland Treasury, response to submissions, 27 July 2020, p 3.

171 Queensland Treasury, response to submissions, 27 July 2020, p 3.

172 Shell QGC, submission 12, p 2.

173 Shell QGC, submission 12, p 2.

174 Queensland Treasury, response to submissions, 27 July 2020, p 3.

175 QRC, submission 15, p 6. Emphasis in original.

> *The statutory guidance for this discretion must be fairly balanced and better articulated so that it can be applied objectively to any given facts or circumstances. The arm's length standard should be a minimum point of reference, but contemporary international income tax concepts would be preferred. Consideration should be given to the commercial and financial conditions that apply to the producer and under any existing arrangements decided under arm's length conditions. In practical terms this would mean, for example, that a producer of incidental domestic gas at a remote coal mine location would unlikely to be required to pay royalties on the Wallumbilla Benchmark Price because, in real market terms, no one would be willing to pay that much for gas that is so far away from the major transmission pipelines and gas markets.*
>
> *QRC would prefer to see a specific clause added to the Bill for the avoidance of doubt. In the absence of drafting changes, QRC requests comments should be included in the explanatory memorandum to clarify this position.*[176]

APPEA also expressed concern about benchmark prices. It disagreed with the assumption in the Bill that all transactions with relevant entities are not at arm's length. It submitted that, in its members' experiences, transactions with relevant entities are typically at arm's length, in accordance with Organisation for Economic Co-operation and Development (OECD) transfer pricing principles.[177]

APPEA considered that the proposed definition of 'relevant entity' is too broad and is likely to capture transactions in which the parties are at arm's length. APPEA suggested that the definition 'be amended to restrict its application to circumstances where there is at least majority control by one party over the other'.[178] It further suggested that:

> *… in the case of sales between a producer and relevant entities that are otherwise at arm's length, the Commissioner should be allowed a discretion (on application by a producer) not to treat the parties as relevant entities for royalty purposes. The Commissioner's discretion could be applied on an entity basis, or in respect of individual sales contracts with particular entities.*[179]

Origin Energy was concerned that it may be considered to be a relevant entity of APLNG for royalty purposes and therefore that APLNG may have to pay higher royalties on gas sold to Origin than if the gas was sold to an entity identified as a non-relevant entity. Origin supported the amendments proposed by APPEA regarding relevant entities.[180]

APPEA also submitted that the application of one benchmark price to all project petroleum 'does not reflect the commercial reality that petroleum can be sold to different consumers and sufficient sales data will exist to appropriately determine a royalty liability'.[181] In APPEA's view:

> *… the use of benchmark prices should be used as a safeguard fall back for petroleum producers to use in the absence of information, or where the petroleum producer elects to do so for administrative simplicity. Further, the use of benchmark prices for particular volumes of petroleum should not extend to all volumes from that project where the relevant information exists to use actual sales prices in determining a royalty liability.*[182]

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176 QRC, submission 15, p 7. Bold text in original omitted. See also Glencore Investment Pty Limited (Glencore), submission 17, p 4.

177 APPEA, submission 9, p 3.

178 APPEA, submission 9, p 3.

179 APPEA, submission 9, p 3.

180 Origin Energy, submission 6, p 1.

181 APPEA, submission 9, p 3.

182 APPEA, submission 9, pp 3-4.

APPEA recommended that the Bill be amended to 'provide petroleum producers the ability to use benchmark prices to the extent the relevant information does not exist and that this does not extend to all petroleum from the project unless the petroleum producer elects to do so'.[183]

Queensland Treasury advised that a decision by the Commissioner that a benchmark price will apply 'will be made on a case-by-case basis in light of all relevant information, which may include sales information'.[184]

With respect to stakeholders' concerns about related party transactions, Queensland Treasury advised:

> *… to ensure certainty, consistency and administrative simplicity for OSR and producers where there are sales to relevant entities, the volume model adopts a clear legislative construct whereby the benchmark price will apply when a sale is made by a producer to a relevant entity and it is not possible to trace through to a final sale to a non-relevant entity. This ensures the sales price is appropriate and readily determinable for use in setting the producer's royalty rate.*
>
> *The alternative approach suggested, of requiring OSR to make a decision about whether the parties have transacted on an arm's length basis, or to substitute a price based on OECD transfer pricing principles, would require consideration on a case-by-case basis of every related party sale before the royalty rate could be set. This would add substantial complexity and uncertainty to the volume model and would be administratively time-consuming, inefficient and costly for OSR and producers. Accordingly, it would not achieve one of the key Review objectives and would not represent any substantive gain compared to the current wellhead value arrangements.*
>
> *Importantly, the fact that a producer sells to a relevant entity during a return period does not mean the benchmark price will automatically apply for all relevant petroleum for that period. Where the producer has also made sales to non-relevant entities during the return period, those arm's length sales prices may be taken into account in setting the average sales price for determining the applicable royalty rate for the period…*
>
> *… Whether entities are relevant entities will ultimately depend on the circumstances of the particular case and is something that corporate groups and their legal advisers should be well best placed to form a view on. OSR will monitor issues raised by producers in relation to the concept of relevant entity and consider whether the provision of a royalty ruling may be appropriate to provide guidance to producers.*[185]

3.2.2.5 Transportation costs

A number of stakeholders called for a deduction for transportation costs from the average sales price to be permitted when determining royalty liability under the tiered rate system, either as a deduction of actual costs, or as a benchmark cost for particular resource regions.[186]

For example, while acknowledging that the volume model has benefits in terms of the simplicity of its administration, Bridgeport Energy emphasised that sales price is 'a function of the location of that "market" for the product and in almost all cases that market is in a location other than a wellhead', such that moving the petroleum to that market involves the producer incurring costs for transport –

183 APPEA, submission 9, p 4.

184 Queensland Treasury, response to submissions, 27 July 2020, p 5.

185 Queensland Treasury, response to submissions, 27 July 2020, p 7.

186 TTH, submission 1, p 2; APLNG, submission 4, pp 1-2, 4-5; Origin Energy, submission 6, pp 1-2; APPEA, submission 9, pp 5-6; Denison Gas, submission 11, pp 1-2; Denison Gas, submission 11 (supplementary), p 2; Vintage Energy Ltd, submission 19, p 1.

either in pipeline fees for gas or trucking costs for liquid petroleum.[187] The use of an unadjusted price at the point of sale therefore, 'results in effectively charging a royalty on those transportation fees'.[188]

In terms of the Cooper Basin in particular (in which oil is mainly located), APPEA submitted that the nearest export market is approximately 1000km away, and the average cost to transport the Basin's crude oil to those 'markets' is 'AU$15 to-AU$25 per barrel – 25 to-35 per cent of the current benchmark price'.[189]

For domestic gas, APPEA submitted:

> *… as is the case for domestic gas sales, gas can be sold at multiple locations including ex-plant, at a local trading hub, at a remote trading hub or delivered to a customer. The sales price of the same commodity may vary considerably depending on the location of the point of sale and transportation costs – more recently, transportation costs have exceeded 40% of the final sales price.*
>
> *Royalty levied on a delivered gas value effectively includes royalty on pipeline infrastructure and operations.*[190]

APLNG also submitted that the transportation costs for domestic gas sales 'can exceed $2/GJ, which is factored into the contract sales price'.[191]

Beyond disadvantaging producers that are further from the 'market', it was identified that this could encourage producers to sell their liquid petroleum or gas as close to the wellhead as possible (and let the customer pay for transport of the product to its ultimate destination), which could result in market distortions.[192] Bridgeport Energy submitted that this could 'increase the already powerful leverage enjoyed by the infrastructure/pipeline owners',[193] with APPEA also warning of adverse impacts on competition and investment in Queensland.[194]

Further, with regards to exported LNG, APPEA also noted:

> *… the sales prices will depend on the shipping arrangements of the cargoes and whether cargoes are shipped Free on Board ("FOB") or Delivered Ex-Ship ("DES").*
>
> *The difference in pricing is because under a DES sale, the customer takes title to the gas at its destination port in another country, which is common with spot cargo sales for LNG. In short, royalties will be payable on the international shipping costs included in the DES sale price.*[195]

To address these issues, APLNG proposed:

> *In relation to domestic sales, minimise market distortion by ensuring producers effectively pay royalties based on actual prices received, less a benchmark transport adjustment for transport costs incurred after the Wallumbilla Hub. This will ensure greater equity between producers and can easily be achieved by allowing a benchmark adjustment based on transport prices published by third-party pipeline owners.*[196]

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187 Bridgeport Energy, submission 13, p 2.

188 Bridgeport Energy, submission 13, p 2.

189 APPEA, submission 9, p 6. See also Vintage Energy Ltd, submission 19, p 1.

190 APPEA, submission 9, p 5.

191 APLNG, submission 4, p 1.

192 Bridgeport Energy, submission 13, p 2.

193 Bridgeport Energy, submission 13, p 2.

194 APPEA, submission 9, p 6.

195 APPEA, submission 9, p 6.

196 APLNG, submission 4, pp 1-2, 4-5.

APLNG also included its own proposed series of transportation benchmarks for deduction from domestic gas sales prices for different regions, which it suggested could be used to arrive at a 'Wallumbilla hub'[197] gas price.[198]

For export sales, further, APLNG submitted:

> *… distortions could also easily be minimised by allowing a deduction for shipping and LNG transport costs, to arrive at a FOB price for all LNG exports for royalty purposes. This deduction will ensure Queensland LNG producers are better able to compete on the global LNG spot cargo market (which are typically sold on a DES basis).*[199]

In response to these comments, Queensland Treasury advised:

> *Under the volume model, different petroleum royalty rates apply depending on the classification of petroleum, which ensures the consistent treatment of producers producing the same type of petroleum. Each producer will necessarily have their own unique operating costs and the introduction of individualised rates for certain producers operating in particular basins or gas fields, or at different stages of a project, would be inequitable for those producers that are subject to the 'standard' rates. It would also add complexity to the volume model.*[200]

3.2.3 Clarification of the operation of model elements

Stakeholders called for clarification as to the operation of the new model in a number of respects, in some instances also calling for matters to be explicitly addressed or confirmed in legislative amendments. These comments particularly related to an identified need for greater clarity and certainty regarding:

- the way in which volume will be measured, as underpinning the determination of royalty under the volume model
- the exclusion of GST from the sales price in determining liability
- the treatment of gas swaps under the Bill, and
- the treatment of flared and vented gas under the MRR (specifically, whether an existing exemption will continue to apply).

3.2.3.1 Measurement of volume

With respect to the measurement of volume, while stakeholders noted that OSR has committed to providing guidance on this matter through the publication of a royalty ruling, there was apprehension as to what this ruling would contain.[201] WestSide and Arrow Energy expressed concern that moves towards the establishment of the new regime are being made without, 'immediately addressing a key input into the model',[202] submitting that this poses challenges for industry in preparing for implementation in the fourth quarter of 2020.[203] Simon Staples, Director—Commercial, APPEA,

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197 Wallumbilla hub is the pipeline interconnection point for the Surat-Bowen Basin, linking gas markets in Queensland, South Australia, New South Wales and Victoria.

198 APLNG, submission 4, pp 4-5.

199 APLNG, submission 4, p 2.

200 Queensland Treasury, response to submissions, 27 July 2020, pp 2-3.

201 Arrow Energy, submission 8, p 2; APPEA, submission 9, p 2; Simon Staples, Director—Commercial, APPEA, public hearing transcript, Brisbane (via videoconference), 28 July 2020, p 10; WestSide, submission 10, p 2.

202 WestSide, submission 10, p 2.

203 Arrow Energy, submission 8, p 2; WestSide, submission 10, p 2.

also emphasised the importance of addressing what is obviously 'a very critical feature of the regime, given it is the title of the regime'.[204]

As an example of the measurement complexities to be taken into account and addressed prior to implementation, APPEA submitted that:

> *… depending on where the petroleum is measured or where the relevant meter is located as part of project infrastructure, there may be differences in measured volumes for the purposes of calculating a royalty liability. For example:*
>
> - *The types of meters installed at the wellhead are not designed to accurately measure the flow of gas within a small margin for error.*
> - *Some petroleum producers may be able to measure petroleum as it enters pipelines (or gathering pipelines), whilst others may only have a reliable measurement point after the petroleum first leaves a processing facility.*
> - *Volumes measured closer to the wellhead may also include impurities that are not petroleum and so should not be subject to a royalty.*
>
> *Clear, accurate and verifiable volumes will be central to the application of the Volume Model.*
>
> *The risk with using inaccurate volumes for royalty purposes, is that producers will be faced with the application of a 75 per cent penalty plus interest for any errors in quarterly royalty returns that result in an additional royalty payment.*[205]

APPEA, WestSide and APLNG all made suggestions as to the manner in which volume should be determined.[206] In addition, Denison Gas provided specific suggestions for the measurement or estimation of the quantity of gas burnt as fuel, flared or vented between the wellhead and point of sale, including suggesting that in the absence of a defendable estimate, an assumed 'benchmark factor' could be applied, in a similar way to the benchmark pricing structure applied in the Bill.[207]

In response to these comments, Queensland Treasury affirmed that the Bill does not prescribe detail about how liable petroleum is to be measured, but rather allows for tailored guidance to be set out in a royalty ruling to be developed by OSR.[208] Queensland Treasury noted that it was made clear to industry during the implementation consultation process that took place, that a ruling would be developed, and that OSR received a number of submissions during that process that included 'suggestions on how industry proposed that the volume should be measured'.[209] Queensland Treasury further affirmed that:

> *OSR will consider the issues that industry has sought clarification on during implementation consultation and will further engage with industry and the Department of Natural Resources, Mines and Energy to develop the ruling.*[210]

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204 Simon Staples, Director—Commercial, APPEA, public hearing transcript, Brisbane (via videoconference), 28 July 2020, p 10. See also APLNG, submission 4, p 2: 'Accurate calculation of volumes under the proposed regime will be critical for the successful implementation of the volume model'.

205 APPEA, submission 9, p 2.

206 APPEA, submission 9, p 3; WestSide, submission 10, pp 2-3; APLNG, submission 4, pp 2-3.

207 Denison Gas Limited, submission 11, p 4.

208 Queensland Treasury, response to submissions, 27 July 2020, p 9.

209 Daniel Fielding, Director, Royalty, Queensland Treasury, public briefing transcript, Brisbane (via videoconference), 28 July 2020, p 3.

210 Queensland Treasury, response to submissions, 27 July 2020, p 9.

Daniel Fielding, Director, Royalty, at Queensland Treasury also assured the committee that 'it is our top priority to provide them with that guidance and clarification'.[211]

3.2.3.2 Exclusion of GST and exemptions for gas swaps and flared or vented gas

Stakeholders warmly welcomed announced moves by Queensland Treasury to address feedback provided through consultation processes by:

- excluding GST from the determination of sales revenue for the purposes of calculating royalty liability[212]
- in relation to gas location swap transactions,[213] recognising and addressing 'the commercial reality' of those arrangements (through exemptions from royalty payments),[214] and
- preserving existing royalty exemptions available for gas flared or vented for production testing'.[215]

However, some also expressed a desire for each of these matters to be 'codified' through inclusion in the Bill, therefore providing greater protection and affirmation of these positions.

APPEA submitted in this respect that an explicit acknowledgement 'that sales prices and royalty tiers will be GST exclusive' should be inserted 'for the avoidance of doubt',[216] a view shared by Arrow Energy.[217]

Tri-Star Petroleum submitted that while 'we understand that the intention in respect of swap arrangements is to exempt gas swaps from royalty', the Bill should be amended to clearly state that a gas swap is exempt from royalty payments until the Commissioner makes a determination to the contrary.[218]

Further, the QRC and Glencore Investment Pty Limited (Glencore) called for confirmation that the existing exemption from royalty for flared and vented gas under the Mineral Resources Act would

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211 Daniel Fielding, Director, Royalty, Queensland Treasury, public briefing transcript, Brisbane (via videoconference), 28 July 2020, p 3.

212 Senex, submission 7, p 1; Arrow Energy, submission 8, p 2; APPEA, submission 9, pp 1, 3; WestSide, submission 10, p 1; Shell QGC, submission 12, p 1; Lucy Snelling, Head, Corporate and Commercial, State Gas, public hearing transcript, Brisbane (via videoconference), 28 July 2020, p 3; Hon Ian Macfarlane, Chief Executive, QRC, public hearing transcript, Brisbane (via videoconference), 28 July 2020, p 12.

APPEA submitted that the exclusion of GST from the calculation of royalty rates is welcome, submitting that 'GST is a throughput tax and does not reflect the actual value of the gas and is not captured in the revenues of a business in its reporting systems', and further, that the GST component of sales is paid directly to the Australian Taxation Office, such that its inclusion would have the effect of levying 'a tax on a tax'.

213 A gas swap arrangement is an arrangement entered into between petroleum producers to swap rights or obligations in relation to petroleum produced by the producers to the extent the arrangement relates to exchanging the same volume and quality of petroleum in a particular period. See Bill, cl 97, s 149(4) (amending the Petroleum and Gas Regulation).

214 Senex, submission 7, p 1. See also Arrow Energy submission 8, p 2; APPEA, submission 9, p 1; WestSide, submission 10, p 1.

215 Senex, submission 7, p 1.

216 APPEA, submission 9, p 3.

217 Arrow Energy, submission 8, p 2.

218 Tri-Star Petroleum, submission 14, p 2.

continue to apply,[219] with the former expressing its preference for 'a specific clause' to be included for this purpose.[220]

In response to the calls for the GST exclusion to be acknowledged in the Bill, Queensland Treasury advised that following the Bill's introduction, 'OSR advised industry of this decision and that a royalty ruling will be issued to confirm it'.[221] In addition, Queensland Treasury noted that clarifying the treatment of GST for royalty purposes through a royalty ruling rather than legislation is consistent with the treatment of petroleum royalties[222] and mineral royalties,[223] as neither the Petroleum and Gas Act nor the Mineral Resources Act specify how GST is taken into account for royalty purposes.[224]

Regarding Tri-Star Petroleum's suggestion that the Bill specify that gas swaps be exempt from royalty payments, Queensland Treasury advised that in light of issues raised during consultation, the Bill includes a power for the Commissioner to make a determination about how the volume model applies to swap arrangements entered into by petroleum producers.[225] It is the intention, Queensland Treasury affirmed, that:

> *… the determination provide that a swap will be disregarded, and that the next transaction involving the petroleum, will be relevant for classifying whether gas is domestic gas, supply gas or project gas. Also, it will be the revenue for that subsequent transaction that may be used for calculating the average sales price and royalty rate for the petroleum. To the extent an arrangement is not a swap arrangement e.g. there is a swap imbalance, the determination will not apply.*[226]

Queensland Treasury further stated that allowing this detail to be set out in a determination 'provides flexibility in ensuring that all relevant matters, including industry practices, can be considered to ensure appropriate outcomes'.[227] Queensland Treasury also confirmed that OSR will be working with industry to finalise the determination, which will then be published on the department's website.[228]

Finally, regarding the submissions of the QRC and Glencore, the Queensland Treasury advised:

> *The introduction of the petroleum royalty volume model does not change the petroleum that is liable for royalty but rather it changes the basis on which royalty is imposed on liable petroleum. Consequently, existing royalty exemptions continue to apply.*
>
> *Where coal seam gas is a mineral under the [Mineral Resources Act] and petroleum under the [Petroleum and Gas Act], any exemptions available under the [Mineral Resources Act] apply. This includes the exemption available under section 49 MRR where coal seam gas is flared or vented in particular circumstances. Further, section 591(1)(e) [Petroleum and Gas Act] provides*

219 QRC, submission 15, p 6; Glencore, submission 17, pp 2-3.

220 QRC, submission 15, p 6.

221 Queensland Treasury, response to submissions, 27 July 2020, pp 5-6.

222 For example in Royalty Ruling PGA001.2.

223 For example in Royalty Ruling MRA001.2.

224 Queensland Treasury, response to submissions, 27 July 2020, pp 5-6.

225 Queensland Treasury, response to submissions, 27 July 2020, p 6. This determination will include making a determination about how the average sales price for petroleum should be calculated and, for gas, the basis for classifying it as domestic gas, supply gas or project gas. See Bill, cl 97, s 149 (amending the Petroleum and Gas Regulation).

226 Queensland Treasury, response to submissions, 27 July 2020, p 6.

227 Queensland Treasury, response to submissions, 27 July 2020, p 6.

228 Queensland Treasury, response to submissions, 27 July 2020, p 6.

that petroleum royalty is not payable on coal seam gas on which royalty under the [Mineral Resources Act] is payable.[229]

3.2.4 Petroleum royalty return lodgement

Arrow Energy, APPEA and Shell QGC all expressed concern that annual returns will no longer be a feature of the royalty regime for most producers under the new volume model, highlighting the benefits provided by the penalty-free annual reconciliation process that such returns allowed.[230]

Simon Staples, Director—Commercial, APPEA, advised the committee in this regard:

That was an important feature for a lot of our members because, with the nature of sales contracts, quarterly returns can become difficult around ascertaining certain volumes with the veracity needed to verify sales transactions. Sales prices are potentially lagged by the nature of commodity prices being published. The annual return process offered an opportunity for members to effectively do that true-up in line with the auditing of their systems of accounts with preparation of year-end returns for a range of lodgement obligations, not just for royalty purposes. It was allowed to do so without the automatic application of the 75 per cent penalty.[231]

Whilst welcoming 'the removal of an administrative compliance process',[232] Shell QGC submitted that the change would increase the importance of the quarterly return, which 'will become a final return'.[233] Shell QGC noted, however, that 'this has not been reflected in the time allowed to prepare and lodge returns', which remain due within one month after the end of the quarterly period.[234] Mr Staples of APPEA further explained:

The concern around the lodgement time frames is if there is a shortfall on a quarterly basis and you have only 30 days to prepare that return whereas for the annual process you have a 60-day period, you have the whole year to prepare for that process and you would have external help around auditing and the veracity of those accounts. It places increased pressure to get those quarterly returns right, especially with the potential for the application of the 75 per cent penalty…

We are dealing with something new. We are asked to provide a lot of information that would have been completely taken care of in the annual return process now four times a year, effectively.[235]

'In the absence of an annual return process', Arrow Energy called for an extension of the lodgement date from 30 days to 45 days – or preferably 60 days – after the quarter end, 'to reflect the time it takes to collect the necessary information and compile the return'.[236] Shell QGC and APPEA echoed these calls, both proposing an extended 60-day period for lodgement after the quarter end.[237] Further, APPEA recommended provision be made to allow quarterly returns to be amended within 12 months

229 Queensland Treasury, response to submissions, 27 July 2020, p 15.

230 Arrow Energy submission 8, p 3; APPEA, submission 9, p 5; Shell QGC, submission 12, p 2.

231 Simon Staples, Director—Commercial, APPEA, public hearing transcript, Brisbane (via videoconference), 28 July 2020, p 9.

232 Shell QGC, submission 12, p 2.

233 Shell QGC, submission 12, p 2.

234 Shell QGC, submission 12, p 2; Simon Staples, Director—Commercial, APPEA, public hearing transcript, Brisbane (via videoconference), 28 July 2020, p 9; APPEA, submission 9, p 5.

235 Simon Staples, Director—Commercial, APPEA, public hearing transcript, Brisbane (via videoconference), 28 July 2020, p 9.

236 Arrow Energy, submission 8, p 3. Arrow Energy submitted that it 'considers this essential to implementation of the volume model'.

237 Shell QGC, submission 12, p 2; APPEA, submission 9, p 5.

from the date of lodgement without penalty 'where adjustments are the result of purchase price or volume adjustments'.[238]

Further, Arrow Energy submitted that in light of the significant changes in the regime and further consultation on supporting royalty rulings and guidance to occur, a penalty amnesty of four quarters, as opposed to the two-quarter amnesty outlined in the Bill, would be prudent.[239] This was a view shared by APPEA[240] and Bennestar Group, with the latter considering the 'financial penalty of erroneously calculating applicable royalties is severe'.[241]

In response to the commentary regarding the proposed return lodgement approach, Queensland Treasury noted that an annual return is necessary under the current wellhead value model because actual petroleum royalty liability cannot be properly determined until the end of the annual period when all sales have been reconciled and all deductions quantified.[242] Adoption of the volume model, however:

> *… means there is no longer a requirement for an annual reconciliation return to properly determine petroleum royalty liability, and return arrangements are therefore being simplified consistently with those applying for mineral royalty.*[243]

Queensland Treasury also noted that the proposed lodgement timeframes in the Bill are consistent with lodgement timeframes that currently apply for quarterly annual returns under the current regime, as well as with the lodgement timeframes that apply for mineral royalties.[244] Further:

> *Delays in obtaining sales information will not preclude a petroleum producer calculating petroleum royalty liability for the period because a benchmark price can instead apply to determine the applicable royalty rate where sales information is unavailable. There are no features of the volume model that require ongoing extension of royalty return lodgement dates to 45 days or 60 days after the quarter end.*[245]

Queensland Treasury also noted, however, that the commissioner will have the power to extend the date for lodgement of a return where it is considered appropriate in the particular circumstances. Therefore, during implementation of the volume model, 'case by case consideration may be given to assisting individual producers experiencing difficulty lodging returns within the 30 day timeframe'.[246]

In response to the suggestions for an extension of the proposed amnesty period, Queensland Treasury stated that the Bill provides 'a reasonable period for producers to adjust to lodging returns',[247] and noted that OSR would work closely with producers to provide a range of assistance on the matter.[248]

238 APPEA, submission 9, p 5.

239 Arrow Energy, submission 8, pp 1-2.

240 APPEA, submission 9, p 5.

241 Bennestar Group, submission 5, p 1.

242 Queensland Treasury, response to submissions, 27 July 2020, p 10.

243 Queensland Treasury, response to submissions, 27 July 2020, p 10.

244 Queensland Treasury, response to submissions, 27 July 2020, p 10.

245 Queensland Treasury, response to submissions, 27 July 2020, p 10.

246 Queensland Treasury, response to submissions, 27 July 2020, p 10.

247 Queensland Treasury, response to submissions, 27 July 2020, p 9.

248 Queensland Treasury, response to submissions, 27 July 2020, p 9.

3.3 Implementing the Royalty Administration Modernisation Program

Working in tandem with the new petroleum regime, the Bill would implement reforms identified through the RAM program to apply the legislative framework of the TAA to the administration of the royalty legislation, thereby aligning with other state revenue laws and simplifying processes for OSR,[249] as well as 'delivering several benefits for royalty payers'.[250] The explanatory notes advise that Queensland's application of the TAA to its royalty legislation 'is consistent with the approach taken by New South Wales, which applied its *Taxation Administration Act 1996* [NSW] to royalty administration in 2014'.[251]

Key changes to be implemented under these reforms include amendments to:

- administrative responsibility for royalty
- assessment processes for royalty liability
- review rights
- provisions governing legal proceedings
- the handling of refunds and other payment arrangements, and
- the treatment of interest and penalty tax.

While the amendments are all due to commence on 1 October 2020 alongside the new volume model and associated petroleum royalty reforms, the explanatory notes emphasise that the provisions of the TAA:

> *… will not apply to liability for royalty arising, or acts or omissions occurring, before the commencement date of the Bill where that would affect the substantive rights, liabilities or obligations of a royalty payer. The provisions of the royalty laws as in force at the relevant time will continue to apply in these cases. Examples include provisions governing the making of assessments and reassessments, and the imposition of unpaid royalty interest and royalty penalty.*[252]

Those provisions of the TAA that are of an administrative nature, however, are to apply from the commencement date of the Bill 'regardless of whether or not the liability for royalty arose, or the relevant act or omission occurred before or after that date', to 'enable the new administrative arrangements to apply as broadly as possible'.[253]

Each of the key changes mentioned above is detailed further below.

3.3.1 Administrative responsibility

Currently, the Commissioner is responsible for the administration and enforcement of the tax legislation and the TAA, while the Treasurer and Minister for Infrastructure and Planning (Minister) is responsible for the administration of the royalty legislation.[254] The proposed amendments would see

[249] Explanatory notes, p 6. The explanatory notes state that 'OSR would benefit from full adoption of the Taxation Administration Act's framework' to address outstanding 'administrative inconsistencies between taxes and royalty'.

[250] Melinda Kross, Acting Deputy Commissioner, OSR, Queensland Treasury, public briefing transcript, Brisbane (via videoconference), 28 July 2020, p 2.

[251] Explanatory notes, p 14.

[252] Explanatory notes, p 12.

[253] Explanatory notes, p 12.

[254] OSR, Queensland Treasury, *Royalty Administration Modernisation Program Consultation Paper,* October 2019, p 8.

the Commissioner replace the Minister as the person legislatively responsible for the administration of the royalty laws, consistent with all other state taxes administered by OSR.[255]

3.3.2 Assessments

While the TAA's assessment framework has largely been replicated in the royalty legislation, by effecting the full application of part 3 of the TAA (regarding reassessments of tax), the Bill will reform royalty assessment arrangements as follows:

- the TAA's provisions for self-assessment will be formally adopted, with the effect that lodgement of a royalty return will be formally recognised as the making of a self-assessment for the liability stated in the return, and an assessment notice for that amount will be deemed to have been given to the royalty payer (applying the TAA self-assessment framework)[256]
- the Commissioner will be empowered to make compromise assessments under an agreement with the royalty payer, to assist where there are particular complexities in determining liability (there are no review rights for compromise assessments, as they are made by agreement)[257]
- the current unlimited timeframe for making reassessments increasing royalty liability will be decreased to five years, matching the five-year limitation applicable for making reassessments which reduce royalty liability,[258] and the reassessment timeframes currently applying for taxes.[259] (There will, however, still be 'stated exceptions where the reassessment period may be extended' – for example, reassessments necessary to give effect to a review must be made even if the limitation period has expired.[260])
- generally, reassessments for royalty liability or amended royalty valuation must be made in accordance with the assessment practices and legal interpretations that applied when the original assessment was made. However, in practice this provision will not apply to reassessments made to give effect to an objection, review or appeal decision (each a review decision) under part 6 of the TAA, as these reassessments will be made in accordance with the review decision.[261] To support the operation of these amendments, specific provision will be made in the royalty laws to clarify when reassessments *may* or *must* be made for a royalty valuation decision or amended royalty valuation decision,[262] and
- any remission of penalty tax, assessed interest, royalty civil penalty and the royalty fee must be made by way of a reassessment by the Commissioner.[263]

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255 Explanatory notes p 8; Queensland Treasury, departmental brief, 22 July 2020, p 3. The explanatory notes emphasise that the legislative change of administrative responsibility does not affect ministerial responsibilities specified under the Administrative Arrangement Orders, 'whereby the Minister has ministerial responsibility for the Mineral Resources Act and the Petroleum and Gas Act to the extent each act is relevant to royalties'.

256 OSR, Queensland Treasury, *Royalty Administration Modernisation Program Consultation Paper,* October 2019, p 10.

257 OSR, Queensland Treasury, *Royalty Administration Modernisation Program Consultation Paper,* October 2019, p 10; explanatory notes, p 8.

258 *Mineral Resources Act 1989* (Mineral Resources Act), s 331B; *Petroleum and Gas (Production and Safety) Act 2004* (Petroleum and Gas Act), s 599C.

259 Queensland Treasury, departmental brief, 22 July 2020, p 4.

260 Explanatory notes, p 8.

261 Explanatory notes, p 8.

262 Explanatory notes, p 8.

263 Explanatory notes, pp 8, 20, 23, 37, 40.

3.3.3 Objections, reviews and appeals

In respect of assessments of liability and royalty valuation decisions for the purposes of calculating liability, the Bill proposes to give royalty payers access to rights of internal review and full external merits review through the Queensland Civil and Administrative Tribunal (QCAT) or the Supreme Court, replacing the current, more limited review rights available under the JR Act.[264] Queensland Treasury explained:

> *… at the moment if you are a royalty payer and you are dissatisfied with an assessment or a royalty valuation decision... all that you are pretty much limited in doing if you are not happy with the commissioner's decision that has been made is exercise rights under the Judicial Review Act to go to the Supreme Court and ask a Supreme Court judge to look at the decision that has been made. In terms of that decision, there are very limited grounds on which that decision can be challenged, based upon administrative law principles.*
>
> *Once the TAA applies, it will be a completely different environment for a royalty payer. What they will be able to do—and it is very similar to what happens at the moment for a duties payer, a land tax payer, a payroll tax payer or someone who pays betting tax—is, if they get an assessment or if they are the subject of a royalty valuation decision, object to that decision that has been made, and that will happen under part 6 of the Taxation Administration Act. The objection itself is decided internally within the Office of State Revenue, but, in saying that, whoever has made the original decision is certainly not going to be the person who looks at the objection and determines the objection as such. We have a completely separate area of the office that is quite independent of the administrative areas of the office that will consider that objection and make a decision.*
>
> *In terms of looking at that with regard to the grounds you can raise when you are looking at an assessment or a royalty valuation decision that you are not happy with, you can raise effectively any grounds whatsoever in terms of that decision as to why you are not happy with it. Comparing that to what happens under the JR Act at the moment, that is a big change and it is a big benefit for royalty payers. It puts them on the same footing as other revenue payers within Queensland. All going well, most people are usually satisfied with the objection outcome. If you are still not satisfied with your objection outcome, under part 6 of the TAA you then have two options. You can appeal to the Supreme Court and just go through the standard Supreme Court appeal process—and, again, you raise whatever grounds are relevant to your particular circumstances. Alternatively, you may feel that, based upon the circumstances, you do not want to go to the Supreme Court. Instead, you will be able to go to QCAT and have that reviewed by one of the members of QCAT.*[265]

3.3.4 Legal proceedings

On the Bill's application of the TAA to the royalty legislation, legal proceedings may be brought in the name of the Commissioner, and the TAA's full range of evidentiary provisions will apply, including provisions dealing with the validity of assessments.[266]

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264 Queensland Treasury, departmental brief, 22 July 2020, p 4.

265 Rosemarie Gastadello, Special Policy Adviser, Queensland Treasury, public briefing transcript, Brisbane (via videoconference), 28 July 2020, p 3.

266 Explanatory notes, p 11.

The Bill will also impose a uniform five-year limitation period for proceedings, commencing from the commissioning of the offence.[267] The explanatory notes state that this:

> *… provides greater certainty for royalty payers and OSR compared to currently where, for example, the Petroleum and Gas Act allows proceedings to commence within two years of the offence coming to the Minister's notice.*[268]

The TAA will also clearly establish executive liability by clarifying a person's responsibility for the acts and omissions of their representatives.[269]

3.3.5 Refunds and payment arrangements

Currently, the royalty legislation allows overpaid royalties to be held until a future liability arises (which may be an unlimited period), while the TAA allows a tax refund to be held for up to 60 days. The proposed amendments will apply the TAA on a modified basis[270] such that any overpaid royalties will be held until the later of either:

- six months
- the date the next royalty return is lodged, or
- for an indefinite period, but only if at the request of the royalty payer (the explanatory notes state that such a request may be made, for example 'on commencement of a duties investigation where pre-payment of an anticipated future liability is made to reduce any unpaid tax interest accruing).[271]

Additionally, the application of the 'windfall gains' provisions of the TAA will require the benefit of the royalty refund to be passed on to the person who bore the incidence of the royalty (to avoid a windfall gain).[272]

Supporting these provisions, the explanatory notes advise that where the Commissioner is satisfied that requiring payment by the due date would cause the payer significant financial hardship, the Commissioner will be able to enter into a payment arrangement to allow royalty to be paid later than otherwise required, including by instalments.[273]

3.3.6 Interest and penalty tax

Unpaid royalty interest, similar to unpaid tax interest, is currently payable where royalty is not paid on time. However, the TAA provides for the weekly accrual of late payment interest following the making of an assessment,[274] whereas royalty laws provide for the daily accrual of interest in these circumstances.[275] The Bill proposes to maintain this royalty specific arrangement by inserting a new provision in the TAA confirming that 'for unpaid primary tax under a royalty law, late payment interest accrues daily from and including the start date'.[276]

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267 Explanatory notes, p 11.

268 Explanatory notes, p 11.

269 Through the application of *Taxation Administration Act 2001* (TAA), s 139. See also explanatory notes, p 11.

270 The modified application reflects the larger liability associated with royalty payments compared to liabilities from other state taxes. See OSR, Queensland Treasury, *Royalty Administration Modernisation Program Consultation Pape*r, October 2019, p 13.

271 Bill, cl 119, s 38 (amending the TAA).

272 Explanatory notes, p 9.

273 Explanatory notes, p 9.

274 TAA, s 54.

275 Mineral Resources Act, s 332; Petroleum and Gas Act, s 602.

276 Bill, cl 122, s54(2A) (amending the TAA).

Royalty payers will be entitled to the payment of interest by the Commissioner where a refund is required to be made as a result of a reassessment giving effect to an objection decision by OSR, or an external review decision by QCAT or the Supreme Court.[277]

3.4 Stakeholder views and the department's response

The QRC communicated its support for the Bill's intention of modernising royalty administration,[278] while the Association of Mining and Exploration Companies (AMEC) submitted that it was hopeful the simplification of the royalty collection process and streamlining of royalty administration under the TAA 'will benefit industry and bring Queensland in line with other states'.[279] AMEC particularly welcomed the imposition of consistent reassessment timeframes for royalty liability regardless of 'whether altered amounts are owed to the State or the royalty payer'.[280] In this respect AMEC submitted that the change from an 'open ended' process in the former instance 'to a limit of 5 years in both cases is more consistent and practical and reasonable',[281] and further, that:

> *The opportunity for Royalty payers to object or appeal decisions made by the Commissioner is also seen as a positive for industry.*[282]

Glencore similarly submitted that it generally welcomes the RAM program, 'particularly because royalty payers will be able to appeal against the decisions of the Revenue Commissioner based on the merits of their case'.[283] Glencore stated that this stands in contrast to 'the limited scope currently available under a 'judicial review' of the administrator's decision making', and noted that 'merits based reviews have been available for other Queensland state taxes since 2001'.[284]

However, the QRC, AMEC and Glencore also expressed concerns about possible unintended consequences of certain RAM program reforms.[285] In particular, while welcoming the changes to 'do away with' the PRD process for petroleum royalties and the 'inequitable responses' it has delivered, the QRC suggested that the parallel process for gross value royalty decisions (GVRDs) that will continue to be used for minerals may be negatively impacted by some of the administrative changes, such that further amendments may be required to ensure this process remains 'workable'.[286] The concerns of these stakeholders, together with Queensland Treasury's responses on these matters, are outlined further below (at section 3.4.1).

The QRC also noted that during consultation on the RAM program a number of issues raised by industry were flagged as being outside the scope of the program, and submitted that in an ideal world, industry 'would have appreciated an opportunity to make suggestions on the scope and focus of the RAM reforms'.[287]

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277 Explanatory notes, p 9.

278 Hon Ian Macfarlane, Chief Executive, QRC, public hearing transcript, Brisbane (via videoconference), 28 July 2020, p 12.

279 AMEC, submission 3, p 2.

280 AMEC, submission 3, p 2.

281 AMEC, submission 3, p 2.

282 AMEC, submission 3, p 2.

283 Glencore, submission 17, p 1.

284 Glencore, submission 17, p 1.

285 Hon Ian Macfarlane, Chief Executive, QRC, public hearing transcript, Brisbane (via videoconference), 28 July 2020, p 13; AMEC, submission 3, p 2; Glencore, submission 17, pp 2-3.

286 Hon Ian Macfarlane, Chief Executive, QRC, public hearing transcript, Brisbane (via videoconference), 28 July 2020, p 13.

287 QRC, submission 15, p 4.

In response to these comments, Queensland Treasury noted that 'as has occurred each time a state revenue law has adopted the TAA legislative framework':

> *… the TAA is being adopted with minimal amendment, making only those changes to the TAA that are necessary to support royalty administration within the existing TAA framework…*
>
> *The scope of the RAM program was not intended to extend to conducting a broader policy review of either the TAA or the existing royalty liability regime. However, during consultation, industry was invited to provide submissions on any other issues affecting mineral or petroleum royalty that are outside the scope of the RAM program. These submissions will be separately considered by OSR. Any decision to progress any of those submissions will be a matter for government, having regard to government policy priorities and revenue considerations.*[288]

3.4.1 Gross royalty value decisions

Similar to a PRD, as currently provided for under the Petroleum and Gas Act (but due to effectively be rendered obsolete with the use of benchmark prices under the volume model), the Mineral Resources Act provides for a GVRD to be made in certain circumstances where a commercial sale value cannot easily be determined (especially where the mineral is sold to a related party, or is disposed of or used).[289] In these instances, a GVRD specifies the basis for determining the gross value of the mineral on which royalty is paid. A GVRD may be amended or a new GVRD made for an earlier return period if necessary, and may change the basis on which royalty was assessed for those periods.[290]

The QRC, Glencore and AMEC all expressed concern about the impacts of the RAM program on assessments with respect to GVRDs, especially singling out possible adverse effects of proposed ss 63(6) and 63(7) of the MRR, to be inserted by cl 46 of the Bill.[291]

Proposed s 63(6) provides that despite s 59 of the MRR (which provides for a GVRD to be made where a mineral is not a market value mineral), the Commissioner cannot be compelled to make a GVRD for a mineral for a return period to the extent the decision would decrease the gross royalty value taken to apply for the mineral, if royalty was payable for the return period. Proposed s 63(7) provides that a decision in this regard (eg not to make a decision that would decrease the GVRD) is a non-reviewable decision.

The QRC and Glencore submitted that the proposed amendments appear to be at odds with s 59,[292] and AMEC stated that they introduce uncertainty, with all three citing issues surrounding the timing of decisions made regarding the gross value of royalties.[293] The QRC explained that while the holder of a mineral who sells that mineral to a related party is required (under s 60 of the MRR) to make an application for a GVRD as soon as practicable after the mineral is sold, 'the time it has taken the Office of State Revenue to make these decisions has been an ongoing problem with Queensland royalty administration'.[294] Glencore noted in this respect that 'it is not uncommon for years to pass before a

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288 Queensland Treasury, response to submissions, 27 July 2020, pp 11-12.

289 Queensland Government, *Gross value of minerals,* last reviewed 28 July 2020, https://www.business.qld.gov.au/industries/mining-energy-water/resources/minerals-coal/authorities-permits/payments/royalties/calculating/gross-value

290 Queensland Treasury, response to submissions, 27 July 2020, p 12.

291 AMEC, submission 3, p 2; QRC, submission 16, pp 4-5; Glencore, submission 17, pp 2-3.

292 QRC, submission 15, p 4; Glencore, submission 17, p 2.

293 AMEC, submission 3, p 2.

294 QRC, submission 15, p 5.

GVRD decision is made'.[295] With no GVRD, both submitters noted that there would be no rights of appeal either to QCAT or the Supreme Court.[296]

Additionally, the QRC and Glencore submitted that where, in the absence of a GVRD, a producer might previously have been more inclined to overstate its royalty liability compared to what is expected to minimise exposure to interest and penalties, there would be disadvantage in doing so if the Commissioner could decline to make a GVRD for the return period to reflect the lower liability.[297]

As a result, the QRC and Glencore identified that:

- the provisions would instead encourage producers to report low mineral values for royalty purposes because to do otherwise might mean they never receive a decision and achieve certainty for sales to related parties, and
- submitting royalty returns with low sales values would in turn run the risk of penalties and interest being imposed by the Commissioner when a decision is eventually made.[298]

Similar concerns were also expressed by these stakeholders regarding equivalent provisions to be inserted by cl 49 of the Bill with respect to the Commissioner's amendment of an existing GVRD (eg also stipulating that the Commissioner must not be compelled to amend an earlier GVRD to the extent that it would decrease the value applying to the mineral if royalty was payable for the return period[299]).[300]

In response to these concerns, Queensland Treasury noted that on adoption of the TAA for royalty, royalty payers will have rights of review for assessments and GVRDS.[301] Queensland Treasury emphasised that these review rights must be exercised within legislated timeframes to 'ensure there is revenue certainty':[302]

> *That is, if a royalty payer does not seek a review of an assessment within the required time, they may be taken to be satisfied with the royalty liability assessed. Under the TAA, and consistent with existing arrangements for the State's taxes, the Commissioner cannot be compelled to make a reassessment decreasing liability outside the formal review process. Inclusion of sections 63(6) and (7) in the MRR is necessary to properly support adoption of the TAA for royalty. The policy intention of section 63(6) MRR is to ensure that the making of a GVRD application for a prior period where an assessment has been made does not provide a royalty payer with an alternative right of review for that assessment where review rights for the assessment have expired. If the Commissioner refused to make the GVRD and the royalty payer could object to that decision, the underlying assessed liability would effectively be subject to review at that time despite the objection period having expired for the assessment.*
>
> *Proposed new s.63(7) MRR, which provides that the Commissioner's decision not to make a GVRD in the circumstances is non-reviewable, supports this policy position.*[303]

Queensland Treasury further stated that the provisions are not incompatible with existing provisions governing the making of GVRDs, and also emphasised that s 63(6) does not prevent a

295 QRC, submission 15, pp 4-5.

296 QRC, submission 15, p 5; Glencore, submission 17, p 2.

297 QRC, submission 15, p 5; Glencore, submission 17, p 2.

298 QRC, submission 15, p 5; Glencore, submission 17, p 2.

299 Bill, cl 49, s 65(7)-(8) (amending the Mineral Resources Regulation 2013 (MRR)).

300 QRC, submission 15, p 5; Glencore, submission 17, p 3.

301 Queensland Treasury, response to submissions, 27 July 2020, p 13.

302 Queensland Treasury, response to submissions, 27 July 2020, p 13.

303 Queensland Treasury, response to submissions, 27 July 2020, p 13.

GVRD from being made for a prior period – rather, it remains within the Commissioner's discretion to do so where it would reduce prior period liability. In making such a decision, Queensland Treasury indicated that the Commissioner 'would consider all relevant matters', and that 'the fact a GVRD application was made before a royalty liability actually arose and before an assessment was made would be particularly relevant and would support a GVRD being made for this period'.[304]

The QRC and Glencore also raised issues regarding the application of legislative timeframes to the processes for correcting GVRDs, as outlined below.

3.4.1.1 Notification timeframes

Section 64 of the MRR provides that if a holder of a mineral to which a GVRD applies becomes aware the existing GVRD was not, or is no longer correct, and that if correctly decided the gross value would be greater than the value stated in the existing decision, the person must notify the Minister in writing. Currently, the MRR requires that the person make this notification within 60 days of becoming aware of the inaccuracy,[305] but the Bill would reduce this notification time period to 30 days.[306]

The QRC and Glencore objected to the Bill's proposed reduction in the notification period, submitting that 'the complexity of these issues and required documentation requires more time, not less',[307] and that the 'length of time required for the Minister to make GVRDs in the past evidences this complexity'.[308] Glencore also further recommended that an extended period of 90 days be available for a producer to advise the Commissioner of an incorrect GVRD.[309]

In response to these comments, Queensland Treasury stated that the reduction from 60 to 30 days will align with the TAA's requirement for taxpayers to inform the Commissioner within 30 days of becoming aware an assessment was incorrect and liability has been understated, thereby ensuring consistency across notification obligations on the application of the TAA to royalty.[310] In addition, Queensland Treasury advised:

> *Relevantly, the notification obligation only arises once the person becomes aware of the matters that they are required to notify, rather than when the matters themselves arise.*[311]

3.4.1.2 Investigation timeframes

The QRC and Glencore also noted that while the Bill would apply a five-year limitation period for making reassessments increasing royalty liability (consistent with that for reassessments reducing royalty liability), the amendments also specify that a GVRD may be amended in a way that increases the gross value of the mineral if the Commissioner gives the tenure holder a notice of investigation with respect to the royalty liability within the five-year limitation period.[312]

The QRC submitted that this effectively provides an open-ended extension of the reassessment period, as 'once notice is given, there is no obligation on the Commissioner to conduct the investigation within a reasonable time period', such that giving notice may 'hold review periods open

304 Queensland Treasury, response to submissions, 27 July 2020, p 13.

305 MRR, s 64(2).

306 Bill, cl 48, s 64(2) (amending the MRR).

307 QRC, submission 15, p 4; Glencore, submission 17, p 3.

308 QRC, submission 15, p 5.

309 Glencore, submission 17, p 3.

310 Queensland Treasury, response to submissions, 27 July 2020, p 14.

311 Queensland Treasury, response to submissions, 27 July 2020, p 14.

312 QRC, submission 15, p 5; Glencore, submission 17, p 3. See also Bill, cl 49, s 65(5) (amending the MRR).

indefinitely'.[313] The QRC and Glencore considered that a time limit should also apply when the Commissioner has given notice of investigation.[314]

Additionally, these stakeholders submitted that if the Commissioner provides a notice of investigation, it would be appropriate to allow the Commissioner to consider both increases *and decreases* in the gross value of the mineral.[315] Glencore submitted:

> *A change in the method or formula for setting mineral values can often result in both positive and negative adjustments to prior return periods. It is inappropriate to confine adjustments to increases in these circumstances.*[316]

In response to these comments, Queensland Treasury clarified that where an investigation of a person's royalty liability commences, a five-year limitation will still apply for the producer/holder, commencing from the date notice of investigation is given.[317] However, Queensland Treasury stated that including a legislated period in which the Commissioner must then make any amendment of a GVRD once the investigation has commenced, 'is not considered appropriate':[318]

> *Relevantly, investigation action is reliant on the cooperation of the royalty payer in providing documentation or information to ensure all matters are properly considered before the Commissioner can be satisfied a GVRD requires amendment and the extent to which it should be amended.*
>
> *Any delays, for whatever reason, by a royalty payer in providing this information may compromise the integrity of the Commissioner's investigation and the obligation to properly administer the royalty legislation.*
>
> *This would be exacerbated if there was a legislated timeframe imposed on the Commissioner to amend the GVRD once the investigation had commenced.*[319]

Queensland Treasury also advised that concerns regarding the time taken to conclude investigations and determine royalty payable pending an investigation outcome are addressed legislatively, stating that the MRR 'provides appropriate mechanisms to deal with the calculation and payment of royalty pending the amendment of an existing GVRD'.[320]

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313 QRC, submission 15, p 5. See also Glencore, submission 17, p 3.

314 QRC, submission 15, p 5; Glencore, submission 17, p 3.

315 Glencore, submission 17, p 3.

316 Glencore, submission 17, p 3. See also QRC, submission 15, p 5.

317 Queensland Treasury, response to submissions, 27 July 2020, p 14.

318 Queensland Treasury, response to submissions, 27 July 2020, p 14.

319 Queensland Treasury, response to submissions, 27 July 2020, p 14.

320 Queensland Treasury, response to submissions, 27 July 2020, p 15. Queensland Treasury specified in this regard:

> *In particular, sections 63B and 63C MRR contemplate how royalty should continue to be accounted for if an existing GVRD expires pending the making of a new GVRD or amendment of that GVRD, and the basis on which the Commissioner will be required to reassess any existing royalty assessments once an amended GVRD is made. In relation to amending a GVRD to reduce royalty liability, section 65 MRR allows an amendment to be made outside the five-year period if the royalty payer requests the amendment within the five years. In addition, and consistent with the policy underlying the review rights provided by the TAA, a GVRD must be amended to give effect to a review decision under Part 6 of the TAA.*

3.4.2 Other administrative changes

The QRC and Glencore also raised a number of other issues with the proposed RAM program amendments, including identifying concerns in relation to:

- the vesting of administrative responsibility with the Commissioner, rather than the Minister
- the application of the TAA's windfall provisions to the royalty laws, and
- provisions governing the grounds for objection under the new review framework.

Regarding the Commissioner's adoption of the role played by the Minister in administering the royalty laws, the QRC questioned whether this is achieved as a delegation of the Minister's powers that effectively replaces Ministerial discretion with the Commissioner's discretion, and whether such a change is consistent with FLPs.[321]

In response, Queensland Treasury advised that the change is not considered to breach FLPs, noting that:

- the progressive application of elements of the TAA to royalty legislation since 2011 has in fact been effected by delegating the Minister's legislative responsibilities under royalty legislation to the Commissioner (and other OSR staff as appropriate), and
- adoption of the TAA for royalty will instead 'result in the Commissioner having legislative responsibility for all royalty administration matters, replacing the arrangements now existing under delegation from the Minister'.[322]

With respect to the Bill's application of the TAA's s 29 'windfall gains' provision to royalty refunds,[323] the QRC and Glencore noted that this provision requires the Commissioner be satisfied that the taxpayer has not received the amount from another person before refunding the taxpayer. In such circumstances, they argued, the refund to the taxpayer should be the overriding concern of the statute and not the commercial arrangements between taxpayers.[324] The QRC submitted:

> *For practical purposes and given the range of possible commercial arrangements that may arise, it is difficult to envisage how the Commissioner could be satisfied in regard to matters covered by the section.*[325]

The Queensland Treasury advised in response that the proposed amendments only seek to clarify the operation of s 39 of the TAA with respect to mineral royalty liabilities, noting that this 'longstanding revenue administration provision' ensures that if a taxpayer has recovered an amount as tax from another person, any refund of tax made to the taxpayer must be passed on to the other person to avoid a windfall gain.[326] The Queensland Treasury further stated:

> *Proposed new section 149L(3) TAA provides that if there is a refund entitlement for a royalty operation, the Commissioner must be satisfied the royalty operation has not received an amount as tax from a person other than one of the authority holders of the tenures which comprise the royalty operation, or that the refund amount will be passed on to the relevant person.*

321 QRC, submission 15, p 4.

322 Queensland Treasury, response to submissions, 27 July 2020, p 12.

323 Bill, cl 143, s 149(L)(3) (amendment the TAA).

324 QRC, submission 15, p 6; Glencore, submission 17, p 3.

325 QRC, submission 15, p 6.

326 Queensland Treasury, response to submissions, 27 July 2020, p 16.

> *For this purpose, the Commissioner is not concerned with commercial agreements in place between a taxpayer and others as these are matters for them, and the Commissioner will not therefore become involved in allocating payments to third parties.*[327]

Regarding provisions governing the grounds for objection, the QRC and Glencore noted that the Bill proposes to insert a new s 64(3) in the TAA which specifies that a matter relating to a decision may only be raised under 63A (objection to a royalty valuation decision), and not under 63 (regarding objections to an assessment informing a royalty valuation decision).[328] The QRC and Glencore called for the operation of the provisions to be further clarified through the inclusion of the following additional wording:

> *To remove any doubt, it is declared that this subsection applies only to matters relating to the decision and not to the how the gross value of the mineral is finally worked out in accordance with that decision.*[329]

These stakeholders submitted that they considered the inclusion of these additional words is necessary as 'if a formula or method for deciding the market value of minerals is stated as general principles', the producer should reasonably be able to object to the way the Commissioner has applied those principles.[330]

In response, Queensland Treasury confirmed that the amendment as drafted is intended to ensure the review rights in part 6 of the TAA operate appropriately on application to the royalty legislation, by clarifying 'the extent to which a matter in a GVRD can be reviewed by objection to the GVRD rather than in any subsequent assessment made in reliance on the GVRD'.[331] Queensland Treasury stated:

> *This ensures the TAA does not inappropriately provide a royalty payer with dual review rights for the same matter i.e. the right to seek a review by objecting to a GVRD and then also to the assessment that gives effect to the GVRD.*
>
> *If a person is dissatisfied with the terms of a GVRD, including the extent to which a formula or method for deciding the market value of minerals is stated in general principles, this issue should be reviewed as part of an objection against the GVRD and not any subsequent assessment made.*
>
> *If a person considers a GVRD has been incorrectly applied in making the assessment, a right of review may arise for the assessment made, subject to the basis of the GVRD not being the subject of the review.*[332]

Queensland Treasury further advised that 'if it is necessary to clarify this, OSR may issue a royalty ruling'.[333]

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327 Queensland Treasury, response to submissions, 27 July 2020, pp 16-17.

328 QRC, submission 15, p 5; Glencore, submission 17, p 3.

329 QRC, submission 15, p 5.

330 QRC, submission 15, p 5; Glencore, submission 17, p 3.

331 Queensland Treasury, response to submissions, 27 July 2020, p 16.

332 Queensland Treasury, response to submissions, 27 July 2020, p 16.

333 Queensland Treasury, response to submissions, 27 July 2020, p 16.

4 Compliance with the *Legislative Standards Act 1992*

4.1 Fundamental legislative principles

Section 4 of the *Legislative Standards Act 1992* (LSA) states that 'fundamental legislative principles' (FLPs) are the 'principles relating to legislation that underlie a parliamentary democracy based on the rule of law'. The principles include that legislation has sufficient regard to:

- the rights and liberties of individuals, and
- the institution of Parliament.

The committee has examined the application of the FLPs to the Bill. The committee considers that clauses 23, 85 and 154 of the Bill raise potential issues of FLP with respect to both the rights and liberties of individuals and the institution of Parliament. The committee's consideration of these issues is outlined below.

4.1.1 Transitional regulation making power – clauses 23, 85 and 154

Clause 23 inserts transitional provisions in the Mineral Resources Act which provide for the application of the TAA to a liability for royalty or a royalty-related amount, whether arising before or after the commencement.

The clause inserts new s 898, which provides:

> *1) A regulation (a transitional regulation) may make provision of a saving or transitional nature about any matter—*
>
> *(a) for which it is necessary to make provision to allow or facilitate the doing of anything to achieve the transition from the former provisions of this Act and the Mineral Resources Regulation 2013 to the provisions of this Act, the regulation and the* Taxation Administration Act 2001 *as in force from the commencement; and*
>
> *(b) for which this Act or a regulation does not make provision or sufficient provision.*
>
> *(2) A transitional regulation may have retrospective operation to a day that is not earlier than the day this section commences.*
>
> *(3) A transitional regulation must declare it is a transitional regulation.*
>
> *(4) This section and any transitional regulation expire 2 years after this section commences.*

Clauses 85 and 154 respectively insert transitional provisions in the Petroleum and Gas Act and the TAA which essentially duplicate the provisions in s 898 above with respect to those Acts.[334]

4.1.1.1 Issues of fundamental legislative principle – Retrospectivity and delegation of legislative power

As noted above, cls 28 (proposed s 898), 85 (proposed s 1033), and 154 (proposed s 187) were identified as raising potential FLP issues in relation to both:

- the rights and liberties of individuals (retrospectivity), and
- the institution of Parliament (delegation of legislative power).

Regarding the former issue, s 4(3)(g) of the LSA specifies that whether legislation has sufficient regard to the rights and liberties of individuals depends on whether, for example, the legislation does not adversely affect rights and liberties, or impose obligations retrospectively.[335]

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[334] Bill, cl 85, s 1033 (amending the Petroleum and Gas Act); cl 154, s 187 (amending the TAA).

[335] *Legislative Standards Act 1992*, s 4(3)(g).

Here, the transitional regulation making powers contained in cls 23, 85 and 154 provide for any transitional regulations made under those provisions to operate retrospectively from as early as the commencement day for the Bill (1 October 2020).[336] Accordingly, any regulations made after 1 October 2020 will have a retrospective effect.

The Office of the Queensland Parliamentary Counsel (OQPC) *FLP Notebook* stipulates that strong argument is required to justify an adverse effect on rights and liberties, or imposition of obligations, retrospectively.[337]

In relation to the institution of Parliament, further, s 4(4) of the LSA specifies:

> *Whether a Bill has sufficient regard to the Institution of Parliament depends on whether, for example, the Bill –*
>
> *(a) allows for delegation of legislative power only in appropriate cases and to appropriate persons; and*
>
> *(b) sufficiently subjects the exercise of a delegate legislative power to the scrutiny of the Legislative Assembly; and*
>
> *(c) authorises the amendment of an Act by another Act.*

Issues raised by transitional regulation making powers in this regard are discussed in the OQPC *FLP Notebook* with reference to the comments of the former Scrutiny of Legislation Committee (Scrutiny Committee).[338]

In the Scrutiny Committee's consideration of such provisions, the form of transitional regulation making power regarded as 'most objectionable' had with the following characteristics:

- it was expressed to allow for a regulation that could override an Act
- it was so general as to allow for a provision about any subject matter, including those that should be dealt with by Act as opposed to subordinate legislation, and
- it was not subject to any control, for example, a sunset clause.[339]

Regarding the second of these characteristics, the *FLP Notebook* also highlights that the Scrutiny Committee regularly expressed the view that the subjects about which transitional regulations may be made should be stated in the Bill.[340]

In this instance, each provision is very broad in scope. As an example, proposed s 898(1) of the Mineral Resources Act provides that a regulation may make provision of a saving or transitional nature about:

> *… any matter for which it is necessary to make provision to allow or facilitate the doing of anything to achieve the transition from the former provisions of the Act and the Mineral Resources Regulation 2013 to the provisions of this Act, the regulation and the* Taxation Administration Act 2001 *as in force from the commencement.*

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336 Bill, cl 23, s 898(2) (amending the Mineral Resources Act); cl 85, s 1033(2) (amending the Petroleum and Gas Act); cl 154, s 187(2) (amending the TAA).

337 Office of the Queensland Parliamentary Counsel (OQPC), *Fundamental Legislative Principles: The OQPC Notebook*, p 55.

338 OQPC, *Fundamental Legislative Principles: The OQPC Notebook*, p 160 and following.

339 OQPC*, Fundamental Legislative Principles: The OQPC Notebook,* p 160.

340 OQPC*, Fundamental Legislative Principles: The OQPC Notebook,* p 161.

The proposed transitional provisions in the Petroleum and Gas Act and TAA are in similar broad terms.[341] The breadth of application is apparent from the wording, including making 'provisions for which this Act or a regulation does not make provision or sufficient provision'.[342]

The Scrutiny Committee regarded it as an inappropriate delegation to provide that a regulation may be made about the matter of a savings, transitional or validating nature 'for which this part does not make provision or enough provision', because this anticipates that the Bill may be inadequate and that a matter which otherwise would have been of sufficient importance to be dealt with in the Act will now be dealt with by regulation.[343]

The explanatory notes provide this justification:

> *The Bill contains transitional provisions for adoption of the Taxation Administration Act for Royalty and the petroleum royalty reforms. However, in implementing the changes made by the Bill to apply for the Taxation Administration Act and implement the new petroleum royalty regime, situations may be identified where further transitional or savings provisions are required.*
>
> *The Bill therefore provides that transitional regulations may be made which will facilitate proper transition from the existing provisions of the royalty laws to the new arrangements.*[344]

The Bill does include a sunset clause with respect to the powers contained in the transitional provisions, specifying that each section, and any transitional regulation made under it, expire two years after the relevant section commences.[345]

By way of comparison with some other recent Bills:

- the Plumbing Bill 2018 provided for a sunset period of one year
- the Medicines and Poisons Bill 2019 had a sunset period of two years in each case.
- the Working with Children (Risk Management and Screening) and Other Legislation Amendment Bill 2018 provided for sunset periods of 18 months in each case, and
- the Disability Services and Other Legislation (NDIS) Amendment Bill 2019 and Disability Services and Other Legislation (Worker Screening) Amendment Bill 2020 each provided for sunset periods of three years.

Committee comment

While cognisant of the concerns of the Scrutiny Committee regarding the provision for transitional regulation making powers without specific and limited parameters, given the complexity and technicality of the matters addressed in the Bill, the committee considers the broad scope of these provisions is appropriate in the circumstances, as necessary to support the effective implementation of the proposed reforms. The committee notes that the QRC, in its submission, stated that it 'welcomes the Bill's recognition of the need for transitional arrangements and the two-year head of power to make regulations under the Bill'.[346]

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341 See Bill, cl 85, s 1033(1) (amending the Petroleum and Gas Act); cl 154, s 187(1) (amending the TAA).

342 Bill, cl 23, s 898(1)(b) (amending the Mineral Resources Act); cl 85, s 1033(1)(b) (amending the Petroleum and Gas Act); cl 154, s 187(1)(b) (amending the TAA).

343 OQPC*, Fundamental Legislative Principles: The OQPC Notebook*, p 161.

344 Explanatory notes, p 13.

345 Explanatory notes, p 13. See also Bill, cl 23, s 898(4) (amending the Mineral Resources Act); cl 85, s 1033(4) (amending the Petroleum and Gas Act); cl 154, s 187(4) (amending the TAA).

346 QRC, submission 15, p 3.

The provision for the retrospective application of such provisions 'to a day that is not earlier than the day the section commences' also appears reasonable, potentially serving to ensure a clear commencement date for the new regime and any associated regulatory requirements.

In reaching these conclusions, the committee notes the availability of the disallowance powers of the House with respect to any transitional regulations made under these provisions, together with the inclusion of the two-year sunset clauses in the provisions, which would appear to place an appropriate limit on the application of these powers.

4.2 Explanatory notes

Part 4 of the LSA requires that an explanatory note be circulated when a Bill is introduced into the Legislative Assembly, and sets out the information an explanatory note should contain.

Explanatory notes were tabled with the introduction of the Bill.

Committee comment

The committee considers that the notes are fairly detailed and contain the information required by part 4 and a sufficient level of background information and commentary to facilitate understanding of the Bill's aims and origins.

5 Compliance with the *Human Rights Act 2019*

The portfolio committee responsible for examining a bill is required to consider and report to the Legislative Assembly about whether the bill is not compatible with human rights, and consider and report to the Legislative Assembly about the statement of compatibility tabled for the bill.[347]

A bill is compatible with human rights if the bill:

(a) does not limit a human right, or
(b) limits a human right only to the extent that is reasonable and demonstrably justifiable in accordance with s 13 of the HRA.[348]

The HRA protects fundamental human rights drawn from international human rights law.[349] Section 13 of the HRA provides that a human right may be subject under law only to reasonable limits that can be demonstrably justified in a free and democratic society based on human dignity, equality and freedom.

The committee has examined the Bill for human rights compatibility. The committee brings the following to the attention of the Legislative Assembly.

5.1 Human rights compatibility

In his statement of compatibility on the Bill, the Minister identified the following human rights under the HRA that are engaged by different provisions of the Bill:

- *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.*[350]

5.1.1 Property rights – *Taxation Administration Act 2001* refund provisions

5.1.1.1 The nature of the right

Section 24 of the HRA provides that all persons have the right to own property alone or in association with others, and that a person must not be arbitrarily deprived of the person's property. The statement of compatibility notes that this provision 'extends to real or personal property and to traditional aspects of property rights, such as the ability to use, transfer or dispose of property'.[351]

Clauses 119 and 120 of the Bill, which would amend ss 38 and 39 of the TAA respectively, have implications for the use, transfer or disposal of property.

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347 HRA, s 39.

348 HRA, s 8.

349 The human rights protected by the HRA are set out in ss 15 to 37 of the Act. A right or freedom not included in the Act that arises or is recognised under another law must not be taken to be abrogated or limited only because the right or freedom is not included in this Act or is only partly included. See HRA, s 12.

350 Statement of compatibility, p 4.

351 Statement of compatibility, p 4.

That is, currently, a royalty refund may be held for an indefinite time to be offset against a person's future royalty liability.[352] However, if the Bill is passed, the s 38 amendments would see the timeframe for holding a royalty refund for application to a future liability be reduced to the later of six months, or when the next royalty assessment is made.[353] Whilst the Commissioner's ability to retain a royalty refund would ordinarily engage a person's right to property, the TAA amendments would reduce the time for which a royalty refund may be held compared to now. On this basis, the Minister concludes that they, 'are not considered to limit a person's property rights'.[354]

Proposed new s 38 of the TAA and equivalent refund provisions in the Payroll Tax Act and the Betting Act would also allow overpaid amounts to be held over by the Commissioner to offset liabilities with the consent of the person entitled to the refund.[355] These amendments are described as beneficial provisions that 'address a potential anomaly with the existing provisions' and therefore 'are not considered to limit a person's property rights'.[356]

Further, s 39 of the TAA ensures that the benefit of a refund is received by the person properly entitled to it and is therefore 'considered to promote a person's property rights'.[357]

5.1.1.2 The nature of the purpose of the proposed limitation

The statement of compatibility advises that the purpose of the refund provisions is to ensure the continued effective maintenance and protection of the public revenue.[358]

5.1.1.3 The relationship between the proposed limitation and its purpose

The statement of compatibility advises that each of these provisions ensures the Commissioner can continue to effectively administer and maintain the public revenue. It adds that the provisions ensure that a person's revenue law liabilities are discharged and hence the integrity of public revenue is maintained. This is achieved through 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.[359]

5.1.1.4 Whether there are any less restrictive, reasonably available ways to achieve the Bill's purpose

According to the statement of compatibility, there are not any less restrictive, reasonably available ways to achieve the purpose. It also notes:

> *… 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.*[360]

352 Statement of compatibility, p 5.

353 Bill, cl 119, s 38 (amending the TAA).

354 Statement of compatibility, p 5.

355 Bill, cl 119, s 38 (amending the TAA); cl 4, s 56 (amending the Betting Tax Act); cl 62, s 83 (amending the Payroll Tax Act).

356 Statement of compatibility, p 5.

357 Statement of compatibility, p 5.

358 Statement of compatibility, p 5.

359 Statement of compatibility, p 6.

360 Statement of compatibility, p 6.

5.1.1.5 The balance between the importance of the purpose of the limitation and the importance of preserving the human rights

There are safeguards in the legislation to ensure the refund provisions do not result in an arbitrary deprivation of a person's property. The statement of compatibility states that this:

> *… 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.*[361]

5.1.2 Privacy and reputation – Petroleum royalty amendments

5.1.2.1 The nature of the right

Section 25 of the HRA provides that a person has the right not to have the person's privacy, family, home or correspondence unlawfully or arbitrarily interfered with, and not to have the person's reputation unlawfully attacked.

The statement of compatibility advises that provisions that require or contemplate the disclosure of certain information to petroleum producers for the purpose of determining the petroleum royalty liability (as set out below) may potentially limit the right to privacy and reputation.[362]

LNG projects

Under the proposed amendments, the Commissioner may decide that an arrangement is an LNG project for the purpose of petroleum royalty. Status as an LNG project for royalty purposes may be considered to be information that is of a confidential nature. However, to ensure that the proper rate of royalty is paid, the Commissioner may, in some circumstances, advise a person that they are selling gas to an LNG project.[363]

Sales price

Under the Bill, the applicable royalty rate for petroleum sold by a petroleum producer through relevant entities is to be determined using the sales price as the reference price.

The producer must include this information in its royalty return, but should it not have the information, there is no legislative obligation for the reseller to disclose the information to the producer. The parties will determine what information will be made available. If the reseller does not provide the sales information, the producer is to use the benchmark price as the relevant reference price to determine the applicable royalty rate.[364]

Non-tenure holder arrangements

In some circumstances, the Bill would require the Commissioner to disclose information to a tenure holder or non-tenure holder. For example, 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.[365]

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361 Statement of compatibility, pp 6-7.

362 Statement of compatibility, p 7.

363 Statement of compatibility, p 7. See also Bill, cl 96, ss 139, 141 (amending the Petroleum and Gas Regulation).

364 Statement of compatibility, p 7. See also Bill, cl 97, ss 147, 148D, 148I, 148M (amending the Petroleum and Gas Regulation).

365 Statement of compatibility, p 7.

Section 111 of the TAA provides that confidential information must not be disclosed by an official apart from in certain circumstances, including for the administration or enforcement of legislation administered by the Commissioner. The statement of compatibility advises:

> *… 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.*[366]

5.1.2.2 The nature of the purpose of the proposed limitation

LNG projects

The statement of compatibility advises that the purpose of the LNG project disclosure obligation is to facilitate the proper calculation of petroleum royalty. It elaborates:

> *… 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.*[367]

Sales price

The volume model does not compel disclosure of the arm's length sales price of the petroleum to the producer. In instances in which the producer does not have the information, a benchmark price will be used to determine the applicable royalty rate. The statement of compatibility states:

> *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.*[368]

Non-tenure holder arrangements

Regarding the disclosure of information to support the administration of the non-tenure holder arrangements, the statement of compatibility states that 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.*[369]

5.1.2.3 The relationship between the proposed limitation and its purpose

The statement of compatibility advises that the LNG project disclosure obligation and the ability to disclose confidential information relating to non-tenure holders and tenure holders in limited circumstances support the implementation of the new volume model.[370]

366 Statement of compatibility, p 8.

367 Statement of compatibility, p 8.

368 Statement of compatibility, p 8.

369 Statement of compatibility, p 9.

370 Statement of compatibility, p 9.

5.1.2.4 Whether there are any less restrictive, reasonably available ways to achieve the Bill's purpose

The statement of compatibility provides that there are no less restrictive and reasonably available ways to achieve the purpose of the Bill.[371]

5.1.2.5 The balance between the importance of the purpose of the limitation and the importance of preserving the human rights

The statement of compatibility addresses the balance between the limitation on human rights and the preservation of human rights in these provisions as follows:

> *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.*[372]

5.1.3 Property rights and privacy and reputation – *Taxation Administration Act 2001* recognised law investigation framework

5.1.3.1 The nature of the right

The proposed amendment to s 6 of the TAA would result in including TAA's recognised law framework (part 7, divisions 1 and 3) as part of the legislative framework for the royalty legislation. It potentially limits a person's property rights (s 24 of the HRA) and the right to privacy and reputation (s 25 of the HRA).[373]

The statement of compatibility describes the TAA's recognised law framework and explains how a person's property rights and privacy and reputation rights may be affected:

> *… 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.*

[371] Statement of compatibility, p 9.

[372] Statement of compatibility, p 10.

[373] Statement of compatibility, p 10.

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 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.[374]

The statement of compatibility notes that the Taxation Administration Regulation would have to be amended before the TAA's investigation provisions would be able to be applied to facilitate interstate royalty investigations under the recognised law framework. The statement of compatibility advises that if such a regulation is made, the scope of operation would be broader, but there would be no change to the nature of the investigation powers which currently apply for conducting investigations for Queensland's royalty legislation.[375]

5.1.3.2 The nature of the purpose of the proposed limitation

According to the statement of compatibility, the recognised law 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'.[376]

5.1.3.3 The relationship between the proposed limitation and its purpose

The recognised law investigation provisions would enable the Commissioner to conduct interstate investigations, through reciprocal arrangements, to ensure compliance with Queensland's royalty laws. The statement of compatibility notes that all other federal, state and territory revenue agencies have adopted the recognised law investigations provisions for taxes.[377]

5.1.3.4 Whether there are any less restrictive, reasonably available ways to achieve the Bill's purpose

The statement of compatibility states that there are no less restrictive and reasonably available ways to achieve the purpose of ensuring maintenance and protection of public revenue.[378]

The investigation powers that would apply for royalty purposes would only be able to be exercised by the Commissioner or an appropriately qualified investigator and only able to be used for the administration of a tax law or recognised law.[379]

The powers of entry would only be exercisable by consent or by warrant or in other limited circumstances. Additionally, the seizure powers require the issue of a receipt for items seized, time limits for retention of items, an obligation to return seized items, and allowing access to seized items.[380]

374 Statement of compatibility, pp 11-12.

375 Statement of compatibility, p 12.

376 Statement of compatibility, p 12.

377 Statement of compatibility, p 13.

378 Statement of compatibility, p 14.

379 Statement of compatibility, p 13.

380 Statement of compatibility, p 13.

If personal confidential information or confidential information is collected during the exercise of the powers, part 8 of the TAA limits the secondary disclosure of the information. The *Information Privacy Act 2009* provides further safeguards for the use of any private information collected.[381]

5.1.3.5 The balance between the importance of the purpose of the limitation and the importance of preserving the human rights

According to the statement of compatibility, any potential limitation on property rights and privacy and reputation 'are outweighed by the fundamental importance to both the State and the community of the need to protect and maintain the public revenue'.[382] In addition, the investigation powers currently apply for royalty purposes and include safeguards to regulate their use.[383]

5.1.3.6 Other relevant factors

The Taxation Administration Regulation would have to be amended to prescribe an interstate royalty law as a recognised law and the other jurisdiction would have to legislatively reciprocate the arrangements for the amendments to be implemented.[384]

5.1.4 Right to a fair hearing – *Taxation Administration Act 2001* review framework amendments

Section 31 of the HRA provides that a person has the right to have their charge or proceeding decided by a competent, independent and impartial court or tribunal after a fair and public hearing.

The statement of compatibility notes that provisions which may potentially limit this right include those which create or restrict administrative decision making and appeal processes.[385]

The Bill would replace the internal review framework for royalty valuation decisions and amended royalty valuation decisions in the MRR and Petroleum and Gas Regulation with 'broadly identical objection rights' to those contained in the review framework in part 6 of TAA.[386] It would, however, also replace the current review rights for royalty assessments, royalty valuation decisions and amended royalty valuation decisions under the JR Act ,and thus potentially limit a person's right to a fair hearing.[387]

The statement of compatibility explains:

> *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 [JR Act]. 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. ...*
>
> *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.*[388]

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381 Statement of compatibility, pp 13-14.

382 Statement of compatibility, p 14.

383 Statement of compatibility, p 14.

384 Statement of compatibility, p 14.

385 Statement of compatibility, p 14.

386 Statement of compatibility, p 15.

387 Statement of compatibility, p 15.

388 Statement of compatibility, p 15.

The statement of compatibility advises that this change:

> *… 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 [JR Act] 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 [JR Act] 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.*[389]

The statement of compatibility identifies the following aspects of the part 6 framework that may be considered to limit a person's right to a fair hearing:

- the 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, and
- that certain decisions are non-reviewable.[390]

With respect to the requirement to pay any tax or late payment interest before an appeal right arises, the statement of compatibility notes that it is 'longstanding State tax policy'.[391] The statement of compatibility explains:

> *… 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. …*[392]

Regarding non-reviewable decisions, the statement of compatibility provides:

> *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.*[393]

5.1.4.1 The relationship between the proposed limitation and its purpose

The statement of compatibility notes that the part 6 framework '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 [JR Act] review rights'.[394]

It also states that public revenues are protected by requiring taxpayers to pay any outstanding tax or late payment interest before pursuing any external review or appeal.[395]

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389 Statement of compatibility, p 16.

390 Statement of compatibility, p 16.

391 Statement of compatibility, p 16.

392 Statement of compatibility, p 16.

393 Statement of compatibility, p 16.

394 Statement of compatibility, p 17.

395 Statement of compatibility, p 18.

With respect to the non-reviewable nature of certain TAA and royalty law decisions, the statement of compatibility advises that this is required to ensure that taxpayers use the part 6 framework to challenge assessments or royalty valuation decisions, rather than pursue other review options. The statement of compatibility adds:

> *… 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.*[396]

5.1.4.2 Whether there are any less restrictive, reasonably available ways to achieve the Bill's purpose

The statement of compatibility states that there are no less restrictive and reasonably available ways to achieve the reform.[397] It states that the part 6 framework, in particular, is a 'significant beneficial reform for royalty payers'.[398] It notes that the requirement to pay royalty and late interest 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.[399]

5.1.4.3 The balance between the importance of the purpose of the limitation and the importance of preserving the human rights

The statement of compatibility concludes:

> *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.*[400]

Committee comment

The committee agrees with the issues raised, and the conclusions drawn, in the statement of compatibility. The committee is satisfied that the Bill is compatible with the HRA and that any limits on human rights in the Bill have been sufficiently justified.

The committee notes, however, that while the HRA does not extend to corporations (see s 11), there may be instances in which the computation of royalty rights might affect an individual (such as private royalty rights and reversionary interests). This, however, would be the result of actions taken with respect to regulations or the Commissioner's decisions, and not under the Bill itself.

396 Statement of compatibility, p 18.

397 Statement of compatibility, p 18.

398 Statement of compatibility, p 18.

399 Statement of compatibility, p 18.

400 Statement of compatibility, pp 18-19.

In this respect the committee also notes the advice of Queensland Treasury with respect to petroleum royalty liability that there is currently one individual who has an authority to prospect in Queensland, with all other petroleum tenure or authority holders being corporations or joint ventures.[401]

5.2 Statement of compatibility

Section 38 of the HRA requires a statement of compatibility to be tabled for the Bill. A statement of compatibility was tabled with the introduction of the Bill.

Committee comment

The committee considers the statement is a detailed and comprehensive document outlining the human rights relevant to the Bill, their nature, the justifiable purpose of any limitations on human rights in the Bill when balanced with the Bill's purpose, and whether any less restrictive ways could achieve the purpose of the Bill.

[401] Daniel Fielding, Director, Royalty, Queensland Treasury, public briefing transcript, Brisbane (via videoconference), 28 July 2020, p 5.

Appendix A – Submitters

Sub #	Submitter
001	Texas-Tickalara Holdings
002	State Gas
003	Association of Mining and Exploration Companies
004	Australia Pacific LNG Pty Ltd
005	Bennestar Group Pty Ltd
006	Origin Energy Limited
007	Senex Energy Limited
007	Senex Energy Limited – supplementary submission
008	Arrow Energy Pty Ltd
009	Australian Petroleum Production & Exploration Association Limited
010	WestSide Corporation Pty Ltd
011	Denison Gas Limited
011	Denison Gas Limited – supplementary submission
012	Shell QGC
013	Bridgeport Energy Limited
014	Tri-Star Petroleum
015	Queensland Resources Council
016	Professor Andrew Garnett (UQ Centre for Natural Gas)
017	Glencore Investment Pty Limited
018	Incitec Pivot Limited (IPL) QLD
019	Vintage Energy Ltd
020	Comet Ridge Limited

Appendix B – Officials at the public departmental briefing

Queensland Treasury

- Melinda Kross, A/Deputy Commissioner, Office of State Revenue
- Simon McKee, A/General Manager, Office of State Revenue
- Melissa Daly, Director, Strategic Policy Projects
- Daniel Fielding, Director, Royalty
- Rosemarie Gastaldello, Special Policy Officer

Appendix C – Witnesses at the public hearing

Texas-Tickalara Holdings

- Kevin Curtis, General Partner

Bennestar Group Ltd

- Lauren Bennett, Co-Founder and Chief Executive Officer

State Gas

- Lucy Snelling, Head Corporate and Commercial

Australian Petroleum Production & Exploration Association Limited (APPEA)

- Andrew McConville, Chief Executive
- Georgy Mayo, Queensland Director
- Simon Staples, Director – Commercial

Queensland Resources Council

- Hon Ian Macfarlane, Chief Executive
- Andrew Barger, Policy Director Economics
- Kirby Anderson, Director Strategy and External Relations

UQ Centre for Natural Gas

- Professor Andrew Garnett, Director

DISSENTING REPORT

ROYALTY LEGISLATION AMENDMENT BILL 2020

The LNP Members of the EGC believe this Bill should not be passed.

Only the economically incompetent Palaszczuk Labor Government could introduce urgent legislation to amend royalty arrangements without having determined how the volume measurements for royalty calculations will be made. Adding to the circus that is the *Royalty Legislation Amendment Bill 2020* (the Bill), the committee has been asked to consider the changes to the royalty arrangements, which were first announced by the former Treasurer Jackie Trad over year ago, without being informed of the economic impact of the proposed changes. As the below excerpt outlines, the Palaszczuk Labor Government is refusing to release the modelled impact the revised royalty regime will have until September – months after the committee's consideration of the Bill.

> **Mr O'CONNOR:** Treasury does have an estimate for how much additional revenue these changes will raise but we will not know until September, which is potentially after the parliament has considered these changes?
>
> **Mr McKee:** What I said earlier was that modelling was undertaken to determine the appropriate tiers and rates to establish, consistent with what Melissa Daly was saying. The actual modelling for the purposes of the budget will be undertaken, as we said, in September in the COVID update.
>
> **Mr O'CONNOR:** Released or undertaken in September? Released as far as the update?
>
> **Mr McKee:** As part of the budget update, correct.[1]

Premier Annastacia Palaszczuk's anti-jobs attack on Queensland's resources sector has been relentless over the past five years. Queenslanders do not forget that the Palaszczuk Labor Government's former Treasurer Jackie Trad, who first announced the proposed royalty changes contained in the Bill, told Queensland resources communities that they need to reskill. Whether it was the constant shifting of the goal posts on Adani or the continued refusal to back New Acland, Premier Annastacia Palaszczuk has made it clear to Queenslanders that she does not support Queensland resource jobs or regional development. It is no wonder that under Premier Annastacia Palaszczuk, prior to coronavirus Queensland had the nation's highest unemployment, most bankruptcies and lowest businesses confidence.

The royalty review that led to the development of this Bill was announced on the same day that the Palaszczuk Labor Government's former Treasurer Jackie Trad declared a 25% increase in gas royalty rates ripping another $476 million from Queensland's economy. At the time of the announcement the 25% gas tax was met with widespread condemnation with the CEO of the Australian Petroleum Production and Exploration Association (APPEA) Andrew McConville stating that "to increase a cost right at a time when we need growth and investment, it just makes very little sense and it's extremely disappointing"[2]. Even Labor's former Federal Resources Minister the Hon Martin Ferguson AM said that Palaszczuk Labor Government's decision was "going to effectively increase the price of gas and probably raise serious questions

[1] https://www.parliament.qld.gov.au/documents/committees/EGC/2020/RLAB2020/trns-pb-28July2020-RLAB2020.pdf

[2] https://www.2gb.com/industry-body-slams-qld-governments-tax-hike/

in the minds of investors about sovereign risk"[3]. Concerningly, as the below public hearing excerpt outlines due to Premier Annastacia Palaszczuk's Government's anti-resources and anti-jobs agenda Queensland has now fallen behind some African countries as a resources investment destination.

Mr STEVENS: Yes, thank you. In relation to your answer where you said that you were very concerned about those matters, I believe the terminology used for countries, such as African countries, that have legislation that changes regularly is 'sovereign risk'. Would you care to give an opinion whether this legislation further enhances Queensland's reputation as a sovereign risk?

Brisbane - 13 - 28 Jul 2020

Public Hearing—Examination of the Royalty Legislation Amendment Bill 2020

Mr Macfarlane: The legislation certainly decreases our attractiveness as an investment destination on the basis that it increases the sovereign risk profile of Queensland. That is reflected also in the statistics that are collected internationally by the REaD Group* which has seen Queensland fall to 16 in comparison to Western Australia, which is No. 1 in the world in terms of investment destination for royalties. I should add: we are now below some African countries as an investment destination.[4]

*Fraser Institute

Unlike the Palaszczuk Labor Government, the LNP has an ambitious plan to stimulate the economy, create a decade of secure jobs and drag Queensland out of this recession. We will start work on opening up new resource projects as a major new economic driver for Queensland, invest in new infrastructure to create more jobs and stimulate the economy and we will guarantee a 10-year royalty freeze.

Only the LNP will provide royalty certainty, meaning more jobs and more royalties through more investment. The LNP's economic plan will create a decade of secure jobs to get Queensland working again.

Ray Stevens
Deputy Chair of Economics and Governance Committee
State Member for Mermaid Beach

Sam O'Connor
Member for Bonney

Trevor Watts
Member for Toowoomba North

[3] https://www.theaustralian.com.au/nation/politics/gas-tax-hike-treasurer-sparks-energy-backlash/news-story/de55021ea1b99f8878f2211774f25f3f

[4] https://www.parliament.qld.gov.au/documents/committees/EGC/2020/RLAB2020/trns-ph-28July2020-RLAB2020.pdf