

Mineral Resources (Royalty) Regulation 2025

Explanatory notes for SL 2025 No. 108

made under the

Mineral Resources Act 1989

General Outline

Short title

Mineral Resources (Royalty) Regulation 2025

Authorising law

Sections 320, 321, 321A, 327A and 417 of the *Mineral Resources Act 1989*

Policy objectives and the reasons for them

The primary objective is to remake the royalty provisions of the *Mineral Resources Regulation 2013* in a standalone Regulation as the *Mineral Resources (Royalty) Regulation 2025*.

The *Mineral Resources Regulation 2013* contains provisions which are necessary to support the proper administration and determination of mineral royalty under the *Mineral Resources Act 1989*. This includes prescribing the rates and methods of calculating royalty, the manner of making and lodging royalty returns, the time and manner of royalty assessment and payment.

Under section 54(1) of the *Statutory Instruments Act 1992*, subordinate legislation expires on 1 September first occurring after the tenth anniversary of the day of its making, unless it is sooner repealed or expires, or a regulation is made exempting it from expiry. The *Mineral Resources Regulation 2013* has been exempted from expiry twice, on the basis that the *Mineral Resources Act 1989* provisions were being reviewed. Following the latest exemption from expiry being made in 2024, the *Mineral Resources Regulation 2013* is due to expire at midnight on 31 August 2025.

A sunset review of the royalty related provisions in the *Mineral Resources Regulation 2013* has been conducted and has confirmed that the royalty provisions of the *Mineral Resources Regulation 2013* remain necessary for the proper determination and administration of mineral royalty and continued effective operation of the *Mineral Resources Act 1989*.

Achievement of policy objectives

The *Mineral Resources (Royalty) Regulation 2025* provides for matters authorised under the regulation making heads of power and remakes the royalty provisions in a standalone Regulation in substantially the same form as the royalty provisions of the *Mineral Resources Regulation 2013*.

The *Mineral Resources (Royalty) Regulation 2025* makes no changes to the formulas for working out royalty liability and no change to royalty rates.

The royalty provisions largely reflect current arrangements. The opportunity has been taken to make the following minor clarification amendments to provide greater certainty and clarity for royalty payers. The provisions have also been renumbered to reflect they are in a standalone Regulation.

Section 29(1)(b)(iii) (formerly section 54(1)(b)(iii)) has been amended to remove unnecessary words and provide certainty regarding amounts that can be deducted from the gross value of the mineral to align with existing interpretation and practice.

Section 29(3) (formerly section 54(3)) has been amended to provide clarity for how foreign exchange impacts are taken into account when working out the value of a mineral that is sold, consistent with existing interpretation and practice.

The definition of average listed price in section 31 (formerly section 56) has been amended to provide certainty as to the relativity of the day when the mineral was used, disposed of, or delivered under a contract of sale, to the period over which the average listed price for the mineral is determined.

Section 33 (formerly section 58) has been amended to provide certainty that processing adjustments that relate to the post-sale or post-disposal processing of a mineral are disregarded when determining the gross value of a market mineral that is a prescribed mineral (royalty) or a relevant mineral. A processing adjustment definition is included which outlines examples of the type of adjustments that are disregarded, consistent with current practice.

Section 34 (formerly section 59) has been amended to provide certainty for royalty payers as to the gross value of the mineral, which is not a market value mineral, prior to a gross value royalty decision being made. Section 34 provides that until the Commissioner of State Revenue (revenue commissioner) makes a gross value royalty decision for the mineral, the gross value of the mineral is taken to be the amount included as the gross value of the mineral in the royalty return for the mineral, consistent with current practice.

Section 45 (formerly section 70) has been amended to remove an administrative requirement for a reassessment to be made following the making of a gross value royalty decision in circumstances where there is no change in royalty liability. Reassessments would only be required if the gross value royalty decision increased or decreased liability for royalty.

The *Mineral Resources (Royalty) Regulation 2025* remakes an existing penalty for the holder of a mining authority if the holder fails to comply with the requirement to apply to the revenue commissioner for a gross value royalty decision for the mineral before, or as soon as practicable after, selling or disposing of or using the mineral.

Incorrect and redundant references have been corrected and current drafting practices adopted to ensure the regulation continues to effectively support the operation of the *Mineral Resources Act 1989*.

The *Mineral Resources (Royalty) Regulation 2025* contains a validation provision to ensure that assessments based on the gross value of the mineral in the royalty return prior to a gross value royalty decision being made are valid. Transitional provisions are also included to provide that an existing application for a gross value royalty decision which had not been decided, does not need to be remade and certain notices given and decisions made by the revenue commissioner under the *Mineral Resources Regulation 2013* continue under the *Mineral Resources (Royalty) Regulation 2025*. The operation of some transitional provisions under the repealed *Mineral Resources Regulation 2013* have also been saved.

Consistency with policy objectives of authorising law

The *Mineral Resources (Royalty) Regulation 2025* is consistent with the policy objectives of the authorising law as it prescribes royalty return and payment requirements pursuant to section 320 of the *Mineral Resources Act 1989* to ensure an appropriate financial return to the State from mining consistent with section 2(e) of the *Mineral Resources Act 1989*.

Further, the *Mineral Resources (Royalty) Regulation 2025* reflects current legislative drafting practices.

Inconsistency with policy objectives of other legislation

There is no inconsistency with policy objectives of other legislation.

Alternative ways of achieving policy objectives

There is no alternative way to achieve the policy objectives of the authorising law. If the royalty provisions of the *Mineral Resources Regulation 2013* are not remade, there would be no effective regulatory framework for the administration of mineral royalty to facilitate the operation of the *Mineral Resources Act 1989*, resulting in uncertainty for government and industry and significant adverse financial implications for Queensland.

Benefits and costs of implementation

Implementing the *Mineral Resources (Royalty) Regulation 2025* will ensure the regulatory framework supporting the administration of mineral royalty for *Mineral Resources Act 1989*, continues appropriately.

Implementing the *Mineral Resources (Royalty) Regulation 2025* will not result in any increased costs for government as administration of the royalty framework will remain subject to existing processes, systems and staffing of the Queensland Revenue Office.

Consistency with fundamental legislative principles

The *Mineral Resources (Royalty) Regulation 2025* has been drafted with regard to, and is consistent with, fundamental legislative principles.

The *Mineral Resources (Royalty) Regulation 2025* remakes an offence contained in the *Mineral Resources Regulation 2013* relating to a failure of a holder of a mining authority to apply to the revenue commissioner for a gross value royalty decision for mineral before, or as soon as practicable after, selling or disposing or using the mineral.

A maximum penalty of 20 penalty units is prescribed for this offence, consistent with the current penalty under the *Mineral Resources Regulation 2013*. Section 417(2)(q) of the *Mineral Resources Act 1989* authorises a regulation may be made about penalties for a contravention or failure to comply with any regulation. The penalty amount is required and appropriate to provide a deterrent against non-compliance with the requirement.

This offence provision is well-established. It is considered to have sufficient regard to the rights and liberties of individuals and therefore to fundamental legislative principles.

Section 50(3) in relation to the content of royalty estimate notices may be seen to raise a fundamental legislative principle under section 4(5)(e) of the *Legislative Standards Act 1992* which provides that subordinate legislation allows the sub-delegation of power delegated by an Act only in appropriate cases and to appropriate persons, and if authorised by an Act.

Section 327A of the *Mineral Resources Act 1989* provides that the revenue commissioner may, by notice given to a person who is liable to pay royalty, require the person to provide a royalty estimate for a stated future period. The power to require a royalty estimate is authorised by the Act and to the revenue commissioner who is an appropriate person.

Section 417(2)(l) of the *Mineral Resources Act 1989* provides that a regulation may be made about the amounts or rates or methods of calculation of royalty to be paid under the *Mineral Resources Act 1989* and the time and manner of its assessment and payment, the collection and enforcement of payment. Section 417(2)(m) provides a regulation may be made about the manner of making and lodging royalty returns documents and statements and the keeping of records and books of accounts.

Specifically, section 50(1) of the *Mineral Resources (Royalty) Regulation 2025* provides that the revenue commissioner can give a person a royalty estimate notice and outlines what the royalty estimate notice must include. Section 50(1)(d) provides that the notice must include a description of the information the person must give in the royalty estimate. For subsection (1)(d), subsection (2) sets out the parameters of the type of information the revenue commissioner may require the person to give in the royalty estimate.

As there are different types of minerals, mining operations, deductions and ways to determine value for royalty purposes, flexibility is required in subsection (3) to not limit what the revenue commissioner may ask the person to give in the royalty estimate. Subsection (3) is bound by the fact that there must first be a royalty estimate notice given by the revenue commissioner.

As the revenue commissioner is an appropriate person who is authorised to require the royalty estimate, it is also considered that the revenue commissioner is an appropriate person to decide what can be requested in the royalty estimate if additional information is warranted. Subsection (3) is not an open discretion and must be relevant to the royalty estimate.

The flexibility is necessary to ensure the royalty estimate is appropriately determined and the revenue commissioner can be satisfied of the estimate. Further it is considered that sections 327A and 417(2) authorise this approach. For these reasons section 50(3), is considered to not infringe fundamental legislative principles.

Consultation

Community consultation was not undertaken in relation to the *Mineral Resources (Royalty) Regulation 2025* because the *Mineral Resources (Royalty) Regulation 2025* remakes the royalty provisions of the *Mineral Resources Regulation 2013* in substantially the same form, with minor amendments to provide clarity and certainty to royalty payers and ensure the *Mineral Resources (Royalty) Regulation 2025* can support the proper administration of mineral royalty and continued effective operation of the *Mineral Resources Act 1989*.

In accordance with the *Queensland Government Better Regulation Policy* (the Better Regulation Policy), the Office of Best Practice Regulation was notified of the regulatory proposal and an Impact Analysis Statement was prepared.

The Better Regulation Policy provides that certain regulatory proposals are exempted from regulatory impact analysis. One category for which no regulatory impact analysis is required is regulatory proposals relating to taxation or royalties.

The making of the *Mineral Resources (Royalty) Regulation 2025* falls within this category which does not require further impact analysis under the Better Regulation Policy, as it a regulatory proposal that relates to royalties (the remake of the royalty provisions of the *Mineral Resources Regulation 2013*).