

South Australia

## **Mining (Royalty No 2) Amendment Act 2005**

An Act to amend the *Mining Act 1971*.

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**The Parliament of South Australia enacts as follows:**

### **Part 1—Preliminary**

#### **1—Short title**

This Act may be cited as the *Mining (Royalty No 2) Amendment Act 2005*.

#### **2—Commencement**

This Act will come into operation on 1 January 2006.

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### 3—Amendment provisions

In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

## Part 2—Amendment of *Mining Act 1971*

### 4—Substitution of section 17

Section 17—delete the section and substitute:

#### 17—Royalty

- (1) Subject to this Act, royalty is payable to the Minister on all minerals recovered from mineral land and—
  - (a) sold or intended for sale; or
  - (b) utilised, or to be utilised, for any commercial or industrial purpose.
- (2) Royalty is not payable on minerals recovered from mineral land that are removed from the area of a mining tenement for the purpose of any testing of a kind approved by the Minister.
- (3) Royalty is only payable on precious stones if the precious stones are recovered under this Act.
- (4) Subject to this or any other relevant section, royalty will be equivalent to—
  - (a) in the case of extractive minerals—35 cents per tonne, or such lesser amount as may be prescribed by the regulations, as assessed at the mine gate; or
  - (b) in any other case—3.5% of the value of the minerals, as assessed in accordance with subsection (5) (the *royalty assessment principles*).
- (5) For the purposes of subsection (4)(b) (and any other relevant section), the value of minerals will be the value (the *ex-mine gate value*) that fairly represents the market value (excluding GST) of the minerals at the time that the minerals leave the area of—
  - (a) unless paragraph (b) applies, the mining tenement from which the minerals were recovered; or
  - (b) if the minerals have been transported to mineral land the subject of a miscellaneous purposes licence—that mineral land.
- (6) Without limiting any other relevant matter, the market value of particular minerals will be determined according to—
  - (a) any contract price obtained for the minerals if the sale is to a genuine purchaser at arms length and taking into account the point of sale; or

- (b) if there is not a contract with a genuine purchaser at arms length as contemplated by paragraph (a) in a particular case—
    - (i) any price quoted or obtained on any market recognised by the Minister (by notice published in the Gazette) as being a relevant industry market for the purposes of determining the market value of minerals of that kind; or
    - (ii) if subparagraph (i) does not apply in a particular case—the price (if any) declared by the Minister by notice in the Gazette as being an indicative price for the minerals; or
  - (c) if neither paragraph (a) nor (b) applies in a particular case, any price obtained by other parties within the industry in relation to similar sales on the open market within a period determined by the Minister.
- (7) For the purposes of subsection (6)(a), **contract price** means—
- (a) the amount to be paid under the contract; plus
  - (b) the value of any consideration, set-off, concession or other factor otherwise taken into account by the parties to the contract in determining the amount to be paid under the contract.
- (8) Any costs of a prescribed kind are not to be included in the market value of particular minerals at the gate of the relevant tenement.
- (9) The Minister may, under an agreement between the Minister and the person liable to pay royalty on any minerals other than extractive minerals, determine that royalty will be payable according to the weight or volume of minerals recovered or some other basis, and royalty will be payable by the person in accordance with the determination.
- (10) The Minister may, on the application of a person liable to pay royalty under this section, having regard to the effect that payment of such royalty would be likely to have on the viability or profitability of mining operations carried on by the person, waive payment of royalty wholly or in part, or reduce the rate at which royalty is payable, on minerals recovered in the course of those operations.
- (11) Royalty may be recovered by the Crown as a debt due to the Crown in any court of competent jurisdiction.
- (12) The holder of a tenement from which minerals are recovered is liable to pay the royalty.

**Note—**

For private mines see section 73E.

### **17A—Reduced royalty for new mines**

- (1) The Minister may, on the application of a person liable to pay royalty (other than on extractive minerals), by notice in the Gazette, declare that a mine will be taken to be a *new mine* for the purposes of this section.
- (2) Despite section 17, for the period of 5 years commencing on the date of paying the first royalty payment under this Act, royalty payable in relation to minerals (other than extractive minerals) recovered from mineral land at a new mine will be equivalent to 1.5 per cent of the value of the minerals (as assessed in accordance with the royalty assessment principles under section 17).
- (3) The Minister may, by subsequent notice in the Gazette, vary or revoke a declaration under subsection (1).
- (4) An application under this section must be made in a manner and form determined by the Minister and must be lodged with the Director of Mines.
- (5) An applicant must provide any information reasonably required by the Minister to determine the application.
- (6) In determining whether or not to make a declaration under this section, the Minister may have regard to the following matters (insofar as they may be relevant):
  - (a) the extent to which the mining operations to be carried on at the mine can be viewed as constituting an extension of existing mining operations, or the revival of mining operations that have been previously carried on;
  - (b) the nature of the mining operations to be carried on at the mine when compared to any existing operations carried on, or previously carried on, at the same tenement, or a tenement within the vicinity of the relevant mine;
  - (c) the relationship of the applicant to any other person carrying on mining operations within the vicinity of the relevant mine (including, in the case of a body corporate, mining operations carried on by a related body corporate within the meaning of section 50 of the *Corporations Act 2001* of the Commonwealth);
  - (d) such other matters as the Minister thinks fit.

### **17B—Assessments by Minister**

- (1) The Minister may make an assessment of royalty under this Act if the Minister is of the opinion that a person liable to pay royalty—
  - (a) has not made a payment of royalty when it falls due; or
  - (b) has not paid royalty in accordance with the royalty assessment principles (and any related provision under this Act); or

- (c) has not paid royalty in accordance with any agreement or determination that applies under section 17 or 17A; or
  - (d) has not paid royalty in accordance with any other relevant requirement.
- (2) Without limiting subsection (1), the Minister may, on application or on the Minister's own initiative, review and revise an earlier assessment of royalty (and that revision will then be taken to be a new assessment for the purposes of this Act).
  - (3) The Minister must cause a copy of any assessment under this section to be served on the person liable to pay the royalty.
  - (4) A person on whom a copy of an assessment is served may, within 1 month after the date of service, appeal against the assessment to the ERD Court.
  - (5) On the hearing of an appeal, the ERD Court may vary the assessment of the Minister to such extent as it thinks fit.
  - (6) In this section—

*royalty assessment principles* means the royalty assessment principles that apply under section 17.

### **17C—Recovery of royalty where appeal lodged**

The fact that an appeal has been lodged under section 17B but not yet determined does not in the meantime affect the assessment to which the appeal relates, and the amount of any royalty or civil penalty amount determined as being payable under this Act as a result of the assessment may be recovered as if no appeal had been lodged.

### **17D—When royalty falls due**

- (1) Subject to this Act, royalty will fall due—
  - (a) in respect of minerals with an ex-mine gate value calculated during the period between 1 January and 30 June (both dates inclusive) in any year—on 31 July of that year;
  - (b) in respect of minerals with an ex-mine gate value calculated during the period between 1 July and 31 December (both dates inclusive) in any year—on 31 January of the following year,

(but the Minister may, on application by the person liable to pay the royalty or of his or her own motion, extend the date on which the royalty will fall due).
- (2) Despite subsection (1), any royalty on minerals recovered from land within a mining tenement or private mine will be due and payable (including for the purposes of the imposition of a penalty amount for unpaid royalty under this Act)—
  - (a) in the case of a mining tenement—

- (i) when the mining tenement is being transferred or surrendered; or
    - (ii) when the mining tenement is suspended or cancelled; or
    - (iii) when the mining tenement expires; or
  - (b) in the case of a private mine—when the declaration of the relevant area as a private mine is revoked; or
  - (c) at any other time in accordance with the regulations.
- (3) The Minister may, on application by a person liable to pay royalty or of his or her own motion, exempt (on such conditions as the Minister thinks fit) a person from the operation of subsection (1) or (2) if the Minister is satisfied that it is not reasonably practicable for the person to strictly comply with the requirements of this section.
- (4) In this section—
- ex-mine gate value* means a value calculated in accordance with section 17(5).

#### **17E—Penalty for unpaid royalty**

- (1) If royalty payable on minerals under this Act (other than extractive minerals recovered from a private mine) is not paid on or by the day on which it fell due, the person liable to pay the royalty is liable to pay a penalty amount, in addition to the amount of royalty unpaid, equal to \$1 000 plus the prescribed amount for each month (or part of a month) for which the royalty remains unpaid.
- (2) The Minister may, at the Minister's discretion, remit a penalty amount payable under subsection (1) by any amount.
- (3) A penalty amount may be recovered by the Crown as a debt due to the Crown in any court of competent jurisdiction.
- (4) In this section—

*prescribed amount* is to be calculated as follows:

$$PA = R \left( \frac{CLRR + 3\%}{12} \right)$$

where—

*PA* is the prescribed amount;

*R* is the amount of unpaid royalty;

*CLRR* is the corporate loan reference rate applied by the Commonwealth Bank of Australia for corporate lending on the day on which the royalty fell due.

#### **17F—Processed minerals**

For the purposes of the imposition of royalty under this Act, a reference to minerals includes a reference to processed minerals.

## **17G—Means of payment**

Royalty must be paid in accordance with any requirement prescribed or authorised by or under the regulations.

## **5—Amendment of section 73E—Royalty**

- (1) Section 73E(5)—delete "has remained unpaid for more than three months after" and substitute:

is not paid on or by
- (2) Section 73E(5)(b)—delete "(disregarding the first three months after the day on which the royalty fell due)"

## **6—Substitution of section 76**

Section 76—delete the section and substitute:

### **76—Returns**

- (1) The holder of a mining tenement must, not later than 31 January and 31 July in each year, furnish the Director of Mines with a return in a manner and form determined by the Director of Mines (but the Director of Mines may, on application by the holder of a mining tenement or of his or her own motion, extend the date by which a return must be furnished).
- (2) A return must contain the information required by the Director of Mines relating to the conduct of mining operations, the minerals recovered in the course of those operations and the sale or disposal of those minerals during the period of 6 months commencing—
  - (a) in the case of the return due on 31 January in each year—on the preceding 1 July; and
  - (b) in the case of the return due on 31 July in each year—on the preceding 1 January,and must comply with any other requirement specified by the Director of Mines.
- (3) A holder of a mining tenement who fails to comply with this section, or who furnishes a return that is false in any material particular, is guilty of an offence.  
Maximum penalty: \$5 000.
- (4) In the case of a continuing failure by a holder of a mining tenement to comply with this section, the holder of the mining tenement is guilty of a further offence for each month for which the failure continues.  
Maximum penalty: \$5 000.
- (5) A holder of a mining tenement who furnishes a return that is misleading in any material particular is guilty of an offence.  
Maximum penalty: \$1 250.  
Expiation fee: \$160.

- (6) This section applies to the operator of a private mine as if the operator were the holder of a mining tenement.
- (7) The regulations may exempt a person, or a class of persons, from the requirement under subsection (1).
- (8) An exemption—
  - (a) may be granted absolutely or on conditions; and
  - (b) remains in force for the period specified in the regulations.

### **7—Amendment of section 77—Records and samples**

- (1) Section 77(1)—delete "(except a miscellaneous purposes licence)"
- (2) Section 77(2)—after "produce" insert:

, at the place specified by the Director of Mines or the person acting under his written authority,
- (3) Section 77—after subsection (2) insert:
  - (2a) Without limiting any other power that might otherwise be exercised, the Director of Mines or a person acting under his written authority may make copies or take extracts of a record produced under this section.

### **8—Insertion of section 77A**

After section 77 insert:

#### **77A—Period of retention of records**

- (1) A person required to keep a record under section 77 must keep the record for not less than 7 years after—
  - (a) the date it was made by the person or, if it was not made by the person, the date it was obtained by the person; or
  - (b) if it relates to a transaction, the date of completion of the transaction,whichever is the later.

Maximum penalty: \$750.
- (2) A person may, with the written approval of the Director of Mines, destroy a record within the 7-year period.
- (3) A decision to refuse approval under subsection (2) is a non-reviewable decision.
- (4) This section is subject to the provisions of any other law concerning the retention or destruction of records.

## Schedule 1—Transitional provisions

### 1—Interpretation

In this Schedule—

*Minister* means the Minister to whom the administration of the principal Act is committed;

*principal Act* means the *Mining Act 1971*.

### 2—Continuation of existing arrangements

- (1) Subject to clause 3, in the case of a mine in existence immediately before the commencement of this Act, the ex-mine gate value of any minerals—
- (a) subject to royalty under section 17(5) of the principal Act, as enacted by this Act; and
  - (b) listed in Column 1 of the following table,
- will be determined according to the values set out in Column 3 of the following table:

| Mineral                      | Grade   | Value (\$/unit)       |
|------------------------------|---|-----------------------|
| Agricultural Limestone       |   | 4/tonne               |
| Barite                       | 1st   | 24/tonne              |
|                              | 2nd   | 14/tonne              |
| Clay                         | 1st   | 8/tonne               |
|                              | 2nd   | 4/tonne               |
| Dolomite                     | 1st   | 10/tonne              |
|                              | 2nd   | 5/tonne               |
| Feldspar                     |   | 20/tonne              |
| Gold                         |   | 12/gram               |
| Granites & Granitic Rocks    |   | 50/metre <sup>3</sup> |
|                              |   | 16.67/tonne           |
| Gypsum                       | Categories 1-3 (super premium grade, plaster board, cement)     | 8/tonne               |
|                              | Categories 4-8 (agricultural premium, grade 1, 2 & 3 and other) | 4/tonne               |
| Jade (Nephrite)              |   | 5000/tonne            |
|                              |   | 5/kilogram            |
| Kaolin                       |   | 8/tonne               |
| Limesand                     |   | 4/tonne               |
| Limestone (including Marble) | 1st   | 8/tonne               |
|                              | 2nd   | 4/tonne               |
| Magnesite                    |   | 8/tonne               |

| <b>Mineral</b>          | <b>Grade</b> | <b>Value (\$/unit)</b> |
|-------------------------|--------------|------------------------|
| Phosphate               |              | 4/tonne                |
| Salt                    |              | 8/tonne                |
| Silica Sand/Rock Silica |              | 4/tonne                |
| Shell Grit              |              | 4/tonne                |
| Talc                    | 1st          | 20/tonne               |
|                         | 2nd          | 10/tonne               |

- (2) The Governor may, by regulation, prescribe principles that may be taken into account to determine whether or not a mine falls within the ambit of subclause (1).
- (3) This clause will expire on 31 December 2008.

### **3—Agreements**

- (1) Unless otherwise agreed by the parties, any agreement under the principal Act relating to royalty on any minerals between the Minister and a person liable to pay the royalty in force immediately before the commencement of this Act will continue to have effect after the commencement of this Act, subject to any modifications that may be necessary in the circumstances or that may be prescribed (and on the basis that the agreement will cease to have effect in any event when the agreement expires, or is brought to an end in accordance with its terms or otherwise by agreement between the parties).
- (2) Nothing in this Schedule prevents or limits the ability of the Minister to enter into an agreement under the principal Act as amended by this Act (including an agreement that has the effect of modifying or excluding the operation of clause 2 in the relevant case).