Petroleum Revenue Act 1985

Act No. 188 of 1985 as amended

This compilation was prepared on 27 October 2008
taking into account amendments up to Act No. 108 of 2008

The text of any of those amendments not in force
on that date is appended in the Notes section

The operation of amendments that have been incorporated may be
affected by application provisions that are set out in the Notes section

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An Act relating to revenue from petroleum

1 Short title [see Note 1]

This Act may be cited as the Petroleum Revenue Act 1985.

2 Commencement [see Note 1]

This Act shall come into operation on a day to be fixed by Proclamation.

3 Interpretation

(1) In this Act, unless the contrary intention appears:

agreement includes:
(a) a lease; and
(b) an agreement as varied by an agreement or by agreements.

market petroleum means:
(a) petroleum in a form in which petroleum is commonly sold; or
(b) a product that is derived from petroleum and is of a kind that is commonly sold;
but does not include petroleum, or a product, that is derived from petroleum to which paragraph (a) applies or from a product to which paragraph (b) applies.

petroleum means:
(a) any naturally occurring hydrocarbon, whether in a gaseous, liquid, or solid state;
(b) any naturally occurring mixture of hydrocarbons, whether in a gaseous, liquid, or solid state; or
(c) any naturally occurring mixture of one or more hydrocarbons, whether in a gaseous, liquid, or solid state, and one or more of the following, that is to say, hydrogen sulphide, nitrogen, helium and carbon dioxide;
and includes any petroleum as defined by paragraph (a), (b) or (c) that has been returned to a natural reservoir.

prescribed petroleum means:

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(a) stabilised crude petroleum oil;
(b) liquid petroleum obtained from naturally occurring petroleum gas; or
(c) liquefied petroleum gas obtained from unstabilised crude petroleum oil or from naturally occurring petroleum gas.

**production source** means:
(a) a source of petroleum in a State (which, without limiting the generality of the foregoing, may be a production area within the meaning of section 5B of the *Excise Tariff Act 1921*); or
(b) 2 or more sources referred to in paragraph (a) that constitute, or form part of, a project for the production of petroleum.

**production unit** means a production source together with the plant and facilities (wherever situated) used in, or in relation to, the production of market petroleum from that source (other than plant and facilities used in, or in relation to, the refining or transport of market petroleum).

**relevant resource rent royalty agreement** means a resource rent royalty agreement described in Schedule 1.

**relevant revenue-sharing agreement** means a revenue-sharing agreement described in Schedule 2.

(2) For the purposes of this Act:
(a) liquid petroleum obtained from naturally occurring petroleum gas shall be taken to have been produced from a production source if the petroleum gas was produced from that source; and
(b) liquefied petroleum gas obtained from unstabilised crude petroleum oil or from naturally occurring petroleum gas shall be taken to have been produced from a production source if that oil or naturally occurring petroleum gas, as the case may be, was produced from that source.

(3) For the purposes of this Act:
(a) where an agreement that is a relevant resource rent royalty agreement is so varied that it ceases to be a relevant resource rent royalty agreement, that agreement ceases to be in force; and

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(b) where an agreement that is a relevant revenue-sharing agreement is so varied that it ceases to be a relevant revenue-sharing agreement, that agreement ceases to be in force.

4 No discrimination or preference

The Commonwealth or the Minister shall not exercise the powers (including discretions) of the Commonwealth or of the Minister, as the case may be, under this Act or under a relevant revenue-sharing agreement in a way that would:

(a) discriminate between States or parts of States within the meaning of paragraph 51(ii) of the Constitution; or

(b) give preference to one State or any part thereof over another State or any part thereof within the meaning of section 99 of the Constitution.

5 Relevant revenue-sharing agreements

Where:

(a) a State and the person or persons who produce market petroleum from a production unit have entered into a relevant resource rent royalty agreement providing for a royalty in respect of market petroleum produced from that unit on or after 1 July in a year after 1984 specified in the agreement; and

(b) the State requests the Commonwealth to enter into a relevant revenue-sharing agreement in respect of royalty payable under that relevant resource rent royalty agreement;

the Minister may arrange for the Commonwealth to enter into that relevant revenue-sharing agreement with the State.

6 Exemption from Excise duty

(1) Where:

(a) a State and the person or persons who produce market petroleum from a production unit have entered into a relevant resource rent royalty agreement providing for a royalty in respect of market petroleum produced from that unit on or after 1 July in a year after 1984 specified in the agreement; and
(b) the Commonwealth and the State have entered into a relevant revenue-sharing agreement in respect of royalty payable under that relevant resource rent royalty agreement; the Minister shall give the Minister administering the *Excise Tariff Act 1921* (in this section referred to as the “Excise Minister”) a certificate in writing stating that it is appropriate that prescribed petroleum produced from that production source on or after that 1 July should be exempt from duties of Excise.

(2) Where the Minister gives the Excise Minister a certificate under subsection (1) in respect of a production source, the Excise Minister shall, by notice in writing published in the *Gazette*, declare that prescribed petroleum produced from that source, other than:

(a) prescribed petroleum produced before the 1 July specified in the certificate; or

(b) prescribed petroleum produced after the revocation of the declaration under this subsection in respect of that source; is exempt from duties of Excise, and, where the Excise Minister publishes that notice, that declaration has effect accordingly.

(3) Where:

(a) a declaration under subsection (2) in respect of a production source is in force; and

(b) either the relevant resource rent royalty agreement or the relevant revenue-sharing agreement because of which that declaration has been made ceases to be in force;

the Minister shall give the Excise Minister a certificate stating that the declaration should be revoked.

(4) Where the Minister gives the Excise Minister a certificate under subsection (3) in respect of a declaration, the Excise Minister shall, by notice in writing published in the *Gazette*, revoke that declaration.

7 **Excise Act**

(1) For the purposes of the *Excise Act 1901*, prescribed petroleum that, by virtue of section 6, is exempt from duties of excise shall not be taken to be *excisable goods* within the meaning of that Act and any entry of that prescribed petroleum purporting to have been made under section 58 of that Act shall be taken not to have been made.
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(2) Subsection (1) does not affect any Departmental By-laws under the *Excise Act 1901* in force immediately before the commencement of this Act or prevent the making of Departmental By-laws under that Act:

(a) prescribing any petroleum production area for the purposes of the definition of *prescribed production area* in subsection 6B(1) of the *Excise Tariff Act 1921*; or

(b) prescribing any new petroleum production area for the purposes of the definition of *prescribed new production area* in subsection 6C(1) of that last-mentioned Act; or

(ba) prescribing any condensate production area for the purposes of the definition of *prescribed condensate production area* in subsection 6CA(1) of that last-mentioned Act; or

(c) prescribing any intermediate petroleum production area for the purposes of the definition of *prescribed intermediate production area* in subsection 6D(1) of that last-mentioned Act.

8 Repayments

(1) Where, because of this Act, any amounts paid by way of duties of *Excise* are repayable to a person, interest on those amounts is not payable to that person.

(2) Subsection (1) shall not be taken to imply that:

(a) but for that subsection, interest would have been payable on the amounts referred to in that subsection; or

(b) interest is payable on any other amounts paid by way of duties of *Excise* and repayable to a person.
Schedule 1—Relevant resource rent royalty agreement

Subsection 3(1) (definition of relevant resource rent royalty agreement)

1. A resource rent royalty agreement between a State and a person or persons (in this Schedule referred to as the producer) shall provide—

(a) that a royalty is payable by the producer to the State in respect of the market petroleum produced from a production unit specified in the agreement on and after 1 July in a year after 1984 specified in the agreement (in this clause referred to as the “relevant petroleum”);

(b) that the royalty in respect of the relevant petroleum disposed of in a financial year is—
   (i) except where sub-paragraph (ii) applies—40% of the accumulated net receipts from the relevant petroleum disposed of in that year; or
   (ii) where the accumulated net receipts from the relevant petroleum disposed of in that year is nil or less—nil;

(c) that revenue from the royalty shall be shared between the Commonwealth and the State in accordance with a relevant revenue-sharing agreement between the Commonwealth and the State;

(d) that no other royalty or charges imposed by the State shall be payable to the State in respect of petroleum produced, during the period to which the agreement applies, from the production source in that production unit;

(e) for provisional royalty payments during each financial year to which the agreement applies, other than a financial year that ended before the agreement was entered into;

(f) that—
   (i) as soon as practicable after the end of each financial year to which the agreement applies, the producer shall give the State Minister sufficient information to enable the State Minister to ascertain the amount of the royalty payable in

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respect of the relevant petroleum disposed of during that financial year;

(ii) as soon as practicable after ascertaining the amount of the royalty referred to in sub-paragraph (i), the State Minister shall give the producer notice in writing of that amount;

(iii) where the amount specified in the notice referred to in sub-paragraph (ii) in respect of a financial year exceeds the sum of the amounts paid to the State by the producer under the provision of the agreement required by paragraph (e) in respect of that year—the producer shall pay to the State the difference between the amount and the sum; and

(iv) where the amount specified in the notice referred to in sub-paragraph (ii) in respect of a financial year is less than the sum of the amounts paid to the State by the producer under the provision of the agreement required by paragraph (e) in respect of that year—the State shall pay the producer the difference between the amount and the sum or shall otherwise give the producer the benefit of that difference;

(g) that, if relevant petroleum is destroyed or lost and the producer receives an amount by way of insurance or indemnity in respect of the destruction or loss, the producer shall be taken to have sold the petroleum for that amount;

(h) that, where relevant petroleum is sold by the producer otherwise than in an arms length transaction, the producer shall be taken to have sold the petroleum for an amount equal to the value of the petroleum at the time of the sale;

(j) that market petroleum shall be taken to be sold otherwise than in an arms length transaction if—

   (i) there is any consideration payable for or in respect of the petroleum other than its price;

   (ii) the price is influenced by a commercial or other relationship between the buyer, or an associate of the buyer, and the seller, or an associate of the seller; or

   (iii) the buyer, or an associate of the buyer, will, directly or indirectly, be reimbursed, be compensated, or otherwise receive a benefit for, or in respect of, the whole or any part of the price;
(k) that 2 persons shall be deemed to be associates of each other if, and only if—
   (i) both being natural persons—
      (A) they are connected by a blood relationship or by marriage or by adoption; or
      (B) one of them is an officer or director of a body corporate controlled, directly or indirectly, by the other;
   (ii) both being bodies corporate—
      (A) both of them are controlled, directly or indirectly, by a third person (whether or not a body corporate);
      (B) both of them together control, directly or indirectly, a third body corporate; or
      (C) the same person (whether or not a body corporate) is in a position to cast, or control the casting of, 5% or more of the maximum number of votes that might be cast at a general meeting of each of them;
   (iii) one of them, being a body corporate, is, directly or indirectly, controlled by the other (whether or not a body corporate);
   (iv) one of them, being a natural person, is an employee, officer or director of the other (whether or not a body corporate);
   (v) they are members of the same partnership; or
   (vi) they are trustees or beneficiaries, or one of them is a trustee and the other is a beneficiary, of the same trust;

(m) that, if—
   (i) the production of market petroleum from the production unit is ended; and
   (ii) there are costs directly incurred in ending that production that are not included in eligible expenditure in respect of relevant petroleum disposed of in a financial year, not being costs incurred later than 36 months after the ending of that production, the State will pay to the producer an amount equal to 40% of those costs; and

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(n) subject to clause 2, expressions in the agreement that are used in this Act (including this Schedule) have the same meaning as in this Act.

2. A resource rent royalty agreement may substitute for an expression in this Act (including the Schedule) another expression that has the same meaning as the first-mentioned expression.

3. A resource rent royalty agreement may provide for a penalty by way of additional royalty under the agreement.

4. (1) In this Schedule:

“accumulated net receipts”, in relation to the market petroleum produced from a production unit which is disposed of in a financial year, means the amount ascertained in accordance with the formula—

\[
A + B \left(1 + \frac{C}{100}\right),
\]

where—

A is the net receipts derived from the market petroleum;

B is—

(a) where the accumulated net receipts in relation to the market petroleum produced from that production unit which was disposed of in the immediately preceding financial year was not ascertained for the purposes of this Act—zero;

(b) where the accumulated net receipts in relation to market petroleum produced from that production unit which was disposed of in the immediately preceding financial year was nil or greater—zero; or

(c) where the accumulated net receipts in relation to the market petroleum produced from that production unit which was disposed of in the immediately preceding financial year was less than nil—those accumulated net receipts; and

C is the threshold rate for the financial year;
“eligible exceptional expenditure”, in relation to market petroleum produced from a production unit which is disposed of in a financial year, means—

(a) expenditure incurred in that financial year in respect of the exploration for, or the determination of the existence, location, extent, quality or occurrence of, petroleum the source of which forms, or would form, part of that production unit (including expenditure in respect of geological and geophysical surveys and exploration, development and appraisal drilling); or

(b) where that financial year is the first financial year to which the relevant resource rent royalty agreement that relates to that production unit applies—expenditure incurred in the immediately preceding financial year—

(i) in respect of exploration, development and appraisal drilling programs relating to the exploration for, or the determination of the existence, location, extent, quality or occurrence of, petroleum the source of which forms, or would form, part of that production unit; or

(ii) in relation to the equipment of production wells drilled in accordance with those programs;

“eligible expenditure”, in relation to market petroleum produced from a production unit which is disposed of in a financial year, means eligible normal expenditure and eligible exceptional expenditure relating to that petroleum;

“eligible normal expenditure”, in relation to market petroleum produced from a production unit which is disposed of in a financial year, means expenditure incurred in the production of the petroleum (whether capital expenditure, expenditure on administration, operations, exploration, marketing, research, or rehabilitation of the environment or other expenditure) but does not include—

(a) eligible exceptional expenditure;
(b) expenditure relating to loans or the acquisition of capital;
(c) expenditure relating to depreciation charges and taxes on income;
(d) expenditure by way of payments for entering a joint venture;
(e) expenditure by way of payment of a royalty known as an override royalty; or
(f) other expenditure not directly related to the production of the petroleum;

“financial year”, in relation to a resource rent royalty agreement, means—
(a) in the case of an agreement that relates to a production unit that includes at least one source of petroleum from which petroleum for commercial use was produced before 25 June 1985—a period agreed upon by the State Minister and the relevant producer; or
(b) in any other case—a period of 12 months commencing on 1 July;

“gross receipts”, in relation to market petroleum produced from a production unit which is disposed of in a financial year, means the sum of—
(a) the proceeds of the sale of that market petroleum which was sold; and
(b) the value of the market petroleum which was not, and is not to be, sold, other than—
   (i) market petroleum flared or vented with the approval of the State Minister;
   (ii) market petroleum used by the relevant producer for the purposes of active operations of the production unit; and
   (iii) market petroleum which is otherwise lost, not being market petroleum to which the provision required by paragraph 1 (g) applies;

“long-term bond rate”, in relation to a financial year, means the average of the weighted average yield of the longest term bond series in each Commonwealth Treasury bond tender declared in that year;

“net receipts”, in relation to market petroleum produced from a production unit which is disposed of in a financial year, means the difference between the gross receipts for that petroleum and the eligible expenditure relating to that petroleum;

“State Minister”, in relation to a resource rent royalty agreement, means the Minister of the Crown of the State who is responsible,
or principally responsible, for the administration of matters relating to petroleum in the State;

“threshold rate”, in relation to a financial year, means the sum of—
(a) the long-term bond rate for that year; and
(b) a rate not greater than 15%.

(2) For the purposes of this Schedule and a resource rent royalty agreement, market petroleum shall be taken to be disposed of—
(a) when it is sold; or
(b) in a case where it is not sold—when it leaves the production source, a facility, or another place, in the production unit where it was produced otherwise than in the course of moving to another place in that unit.
Schedule 2—Relevant revenue-sharing agreement

Subsection 3(1) (definition of relevant revenue-sharing agreement)

1. A revenue-sharing agreement between the Commonwealth and a State (in this Schedule referred to as the “sharing agreement”) shall provide—

(a) that a proportion of the revenue (in this Schedule referred to as the “relevant revenue”) received by the State under a relevant resource rent royalty agreement (in this Schedule referred to as the “rent agreement”) specified in the sharing agreement shall be paid to the Commonwealth;

(b) that the proportion of the relevant revenue received by the State in a financial year that is to be paid to the Commonwealth shall be—

(i) in the case of a rent agreement that relates to a production unit that includes at least one source of petroleum from which petroleum for commercial use was produced before 25 June 1985—

(A) where at least 50% of the stabilised crude petroleum oil produced from the production source in that production unit which was sold in the financial year which commenced on 1 July 1984 was produced from an old accumulation within the meaning of the Excise Tariff Act 1921—75%; or

(B) in any other case—25%; or

(ii) in the case of a rent agreement to which sub-paragraph (i) does not apply—

(A) where the quantity of stabilised crude petroleum oil produced from the production source in the production unit which was sold in the first-mentioned financial year does not exceed 500ML—nil;

(B) where that quantity exceeds 500ML but does not exceed 700ML—25%;

(C) where that quantity exceeds 700ML but does not exceed 900ML—50%; or

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(D) where that quantity exceeds 900ML—75%;

(c) that, where the State receives in respect of a financial year an amount under a provision of the rent agreement required by paragraph 1 (e) of Schedule 1, the State shall, within 21 days after the receipt of that amount, pay the Commonwealth a proportion of that amount, being—

(i) in the case of the first financial year to which the sharing agreement applies—the proportion that the Commonwealth and the State estimate will be the proportion of relevant revenue payable by the State to the Commonwealth in that first financial year; or

(ii) in the case of any other financial year—the proportion of relevant revenue payable by the State to the Commonwealth under the sharing agreement in the immediately preceding financial year;

(d) that, where the State receives in respect of a financial year an amount under the provision of the rent agreement required by paragraph 1 (f) of Schedule 1—the State shall, within 21 days after the receipt of the amount, pay to the Commonwealth such proportion of that amount as will result in the proportion of relevant revenue paid to the Commonwealth by the State in respect of that financial year being the proportion required by paragraph (b);

(e) that, where the State becomes liable to pay, or to give the benefit of, an amount in respect of a financial year under the provision of the rent agreement required by sub-paragraph 1 (f) in Schedule 1, the Commonwealth shall, within 21 days of being given notice in writing by the State that the State has become so liable, being notice accompanied by verification in writing of the amount of the liability of the State, pay to the State such amount as will result in the proportion of relevant revenue received by the State in respect of that year paid by the State to the Commonwealth and retained by the Commonwealth being the proportion that the State is required to pay under paragraph (b);

(f) subject to paragraph (g), that the Commonwealth is not responsible for, and shall not bear, any of the administrative or other expenses incurred by the State in the assessment and collection of royalty under the rent agreement;

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(g) where, in a financial year, administrative expenses are incurred by the State in the assessment and collection of royalty under the rent agreement, the Commonwealth shall pay to the State a proportion of those expenses, being a proportion equal to the proportion required by paragraph (b) in respect of the sharing agreement;

(h) that a Minister of State of the State or other person who receives a return, or gives an assessment, under the rent agreement, shall, as soon as practicable after receiving the return or giving the assessment, give the Minister a copy of the return or assessment;

(j) that, where the rent agreement or a lease relating to the production unit to which the rent agreement applies confers a discretion on a Minister of the Crown of the State or another person, other than an arbitrator, being a discretion that could affect the amount of royalty, then, subject to any judgment, order or decree of a court, that Minister or other person shall not exercise that discretion except in accordance with procedures approved by the Minister;

(k) that, if the State becomes liable to make a payment under the provision of the rent agreement required by paragraph 1 (m) in Schedule 1, the Commonwealth shall, within 21 days of being given notice in writing by the State that the State has become so liable, being notice accompanied by verification in writing of the amount of the liability of the State, pay to the State a proportion of the amount of the payment, being a proportion equal to the proportion, or average of the proportions, required by paragraph (b) in respect of the sharing agreement;

(m) that, if a party to an agreement is in breach of the agreement, the other party may terminate the agreement by giving the party in breach 7 days notice in writing of the termination; and

(n) that, subject to the provision required by paragraph (m), the agreement shall continue in force unless and until the rent agreement ceases to be in force.

2. A revenue-sharing agreement shall not contain any provision which—

(a) discriminates, or would in any circumstances discriminate, between States or parts of States within the meaning of paragraph 51 (ii) of the Constitution; or
(b) gives, or would in any circumstances give, preference to one State or any part thereof over another State or any part thereof within the meaning of section 99 of the Constitution.

3. A revenue-sharing agreement may substitute for an expression in this Act another expression that has the same meaning as the first-mentioned expression.
Notes to the *Petroleum Revenue Act 1985*

**Note 1**

The *Petroleum Revenue Act 1985* as shown in this compilation comprises Act No. 188, 1985 amended as indicated in the Tables below.

For all relevant information pertaining to application, saving or transitional provisions see Table A.

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**ad.** = added or inserted       **am.** = amended       **rep.** = repealed       **rs.** = repealed and substituted
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**Schedule 1**

**13 Application**

*Application of Schedule*

(1) The amendments made by this Schedule apply in relation to condensate produced after midnight (by legal time in the Australian Capital Territory) on 13 May 2008.