



Offshore Petroleum (Royalty) Act 2006

No. 18, 2006

**An Act to impose a royalty on petroleum recovered
from the North West Shelf, and for related
purposes**

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)

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No. 18, 2006

An Act to impose a royalty on petroleum recovered from the North West Shelf, and for related purposes

[Assented to 29 March 2006]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Offshore Petroleum (Royalty) Act 2006*.

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 and 2 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	29 March 2006
2. Sections 3 to 17	At the same time as Chapter 2 of the <i>Offshore Petroleum Act 2006</i> commences.	1 July 2008
3. Schedule 1	At the same time as the provision(s) covered by table item 2.	1 July 2008

Note: This table relates only to the provisions of this Act as originally passed by the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

- (2) Column 3 of the table contains additional information that is not part of this Act. Information in this column may be added to or edited in any published version of this Act.

3 Application of Chapter 1 of the *Offshore Petroleum Act 2006*

Chapter 1 of the *Offshore Petroleum Act 2006* applies to this Act in a corresponding way to the way in which it applies to the *Offshore Petroleum Act 2006*.

Note: This means, for example, that the definitions in section 6 of the *Offshore Petroleum Act 2006* apply to this Act.

4 Definitions

In this Act:

month means one of the 12 months of a year.

North West Shelf exploration permit means one of the North West Shelf exploration permits as defined by section 2 of the *Petroleum Resource Rent Tax Assessment Act 1987*.

North West Shelf production licence means a production licence that, under the *Petroleum Resource Rent Tax Assessment Act 1987*, is related to a North West Shelf exploration permit.

North West Shelf retention lease means a retention lease that, under the *Petroleum Resource Rent Tax Assessment Act 1987*, is related to a North West Shelf exploration permit.

primary production licence has the same meaning as in Schedule 4 to the *Offshore Petroleum Act 2006*.

royalty means royalty payable under section 5.

royalty period, in relation to a North West Shelf exploration permit, a North West Shelf retention lease or a North West Shelf production licence, means:

- (a) the period beginning on:
 - (i) the day on which the permit, lease or licence comes or came into force; and
 - (ii) ending at the end of the month in which that day occurs; and
- (b) each later month.

secondary production licence has the same meaning as in Schedule 4 to the *Offshore Petroleum Act 2006*.

value has the meaning given by section 12.

Note: See also section 15, which deals with provisional value.

wellhead has the meaning given by section 11.

5 Imposition of royalty

The registered holder of:

- (a) a North West Shelf exploration permit; or
- (b) a North West Shelf retention lease; or
- (c) a North West Shelf production licence;

is liable to pay a royalty on all petroleum recovered by the holder in the permit area, lease area or licence area in a royalty period beginning at or after the commencement of this section.

Note 1: For exemptions, see section 10.

Note 2: For collection of royalty, see Part 4.6 of the *Offshore Petroleum Act 2006*.

6 Rate of royalty—production licences

- (1) The rate of royalty on petroleum recovered under a production licence is worked out using the table:

Rate of royalty		
Item	In this case...	the rate of royalty is this percentage of the value at the wellhead of the petroleum...
1	(a) petroleum recovered under a production licence granted otherwise than by way of renewal; and (b) none of items 2, 3, 4 and 5 apply	10%
2	petroleum recovered under a secondary production licence granted otherwise than by way of renewal	the percentage determined under subsection (2) in relation to the petroleum recovered under the licence
3	petroleum recovered under a primary production licence granted otherwise than by way of renewal, where a secondary production licence is granted to the holder of the primary production licence	(with effect from the beginning of the next royalty period after the day on which the secondary production licence takes effect) the same percentage as is applicable to the petroleum recovered under the secondary production licence
4	petroleum recovered under a production licence granted on an application under section 154 of the <i>Offshore Petroleum Act 2006</i>	the same percentage as was applicable to petroleum recovered under the initial production licence (within the meaning of that section)

Rate of royalty		
Item	In this case...	the rate of royalty is this percentage of the value at the wellhead of the petroleum...
5	petroleum recovered under a production licence granted by way of renewal	the percentage that would be the rate of royalty if the renewed licence were the continuation in force of the previous licence

Application for secondary production licence—determination of rate of royalty

- (2) If:
- (a) a person has applied for a primary production licence; and
 - (b) before or after the grant of the primary production licence, the person applies for a secondary production licence;
- the Joint Authority must, by written instrument, determine the rate of royalty payable in relation to petroleum recovered, whether under the primary production licence or under the secondary production licence.
- (3) The rate must not be less than 11%, nor more than 12.5%, of the value at the wellhead of that petroleum.
- (4) Before determining the rate of royalty payable, the Joint Authority must:
- (a) give the person an opportunity to confer with the Designated Authority about the rate; and
 - (b) give the Designated Authority an opportunity to report to the Joint Authority about any such conferring; and
 - (c) consider the Designated Authority's report.
- (5) A determination under subsection (2) is not a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

Royalty at the prescribed rate

- (6) A reference in a production licence (whether granted before or after the commencement of this subsection) to:
- (a) royalty at the prescribed rate; or

- (b) royalty at the rate that is for the time being the prescribed rate;

is to be read as a reference to royalty at the rate that is or was the rate of royalty applicable in accordance with the provisions of this Act, as in force from time to time.

7 Rate of royalty—exploration permit

- (1) The rate of royalty on petroleum recovered under an exploration permit is 10% of the value at the wellhead of the petroleum.

Royalty at the prescribed rate

- (2) A reference in an exploration permit (whether granted before or after the commencement of this subsection) to:

- (a) royalty at the prescribed rate; or
- (b) royalty at the rate that is for the time being the prescribed rate;

is to be read as a reference to royalty at the rate that is or was the rate of royalty applicable in accordance with the provisions of this Act, as in force from time to time.

8 Rate of royalty—retention lease

- (1) The rate of royalty on petroleum recovered under a retention lease is 10% of the value at the wellhead of the petroleum.

Royalty at the prescribed rate

- (2) A reference in a retention lease (whether granted before or after the commencement of this subsection) to:

- (a) royalty at the prescribed rate; or
- (b) royalty at the rate that is for the time being the prescribed rate;

is to be read as a reference to royalty at the rate that is or was the rate of royalty applicable in accordance with the provisions of this Act, as in force from time to time.

9 Reduction of royalty—potentially uneconomic wells

Scope

- (1) This section applies if the Designated Authority is satisfied that the rate of recovery of petroleum from a well has become so reduced that, having regard to the rate or rates of royalty applicable under section 6, 7 or 8, further recovery of petroleum from that well would be uneconomic.

Reduction of royalty

- (2) The Joint Authority may, by written instrument, determine that the royalty in relation to any or all of the petroleum recovered from that well on or after a date specified in the determination is to be such lower rate as is specified in the determination.
- (3) The Joint Authority may, by written instrument, revoke or vary a determination under subsection (2), and the revocation or variation applies to petroleum recovered on or after such date as is specified in the instrument.
- (4) A determination under subsection (2) has effect despite section 6, 7 or 8.

10 Exemptions from royalty

- (1) Royalty under this Act:
 - (a) is not payable in relation to petroleum that the Designated Authority is satisfied was unavoidably lost before the quantity of that petroleum was ascertained; and
 - (b) is not payable in relation to petroleum that is used by the registered holder of the exploration permit, retention lease or production licence, as approved by the Designated Authority, for the purposes of petroleum exploration operations or operations for the recovery of petroleum; and
 - (c) is not payable in relation to petroleum that, with the approval of the Designated Authority, is flared or vented in connection with operations for the recovery of petroleum.

- (2) If petroleum that has been recovered by the registered holder of an exploration permit, retention lease or production licence is, with the approval of the Designated Authority, returned to a natural reservoir, royalty under this Act is not payable in relation to that petroleum because of that recovery.
- (3) Subsection (2) does not affect the liability of that or any other registered holder to pay royalty in relation to petroleum that is recovered from that natural reservoir.

11 Meaning of *wellhead*

For the purposes of this Act, the *wellhead*, in relation to any petroleum, is:

- (a) such valve station as is agreed between:
 - (i) the registered holder of the exploration permit, retention lease or production licence; and
 - (ii) the Designated Authority; or
- (b) if there is no agreement within such period as the Designated Authority allows—such valve station as the Designated Authority determines to be that wellhead.

12 Meaning of *value*

For the purposes of this Act, the *value* at the wellhead of any petroleum is:

- (a) such amount as is agreed between:
 - (i) the registered holder of the exploration permit, retention lease or production licence; and
 - (ii) the Designated Authority; or
- (b) if there is no agreement within such period as the Designated Authority allows—such amount as the Designated Authority determines to be that value.

13 Quantity of petroleum recovered

For the purposes of this Act, the quantity of petroleum recovered by the registered holder of an exploration permit, retention lease or production licence from a well during a period is taken to be:

- (a) the quantity measured during that period by a measuring device:
 - (i) approved by the Designated Authority; and
 - (ii) installed at the wellhead or at such other place as the Designated Authority approves; or
- (b) if:
 - (i) no such measuring device is so installed; or
 - (ii) the Designated Authority or the Joint Authority is not satisfied that the quantity of petroleum recovered by the registered holder from that well has been properly or accurately measured by such a measuring device;the quantity determined by the Designated Authority as being the quantity recovered by the registered holder from that well during that period.

14 Directions by Joint Authority

- (1) The Joint Authority must give directions to the Designated Authority about the manner in which the Designated Authority is to exercise the powers conferred by sections 11, 12 and 13.
- (2) A direction under subsection (1) must relate to a particular exploration permit, retention lease or production licence.
- (3) The Designated Authority must comply with a direction under subsection (1).
- (4) A direction under subsection (1) is not a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

15 Provisional payment of royalty

- (1) If, in relation to petroleum recovered during a royalty period, the value of the petroleum has not been agreed or determined under section 12, the Designated Authority may determine a provisional value.
- (2) If:
 - (a) a provisional value of any petroleum has been determined under subsection (1); and

- (b) the value of that petroleum has not yet been agreed or determined under section 12;
- this Act has effect, in relation to that petroleum, as if:
- (c) the provisional value of the petroleum were its value; and
 - (d) the determination of the provisional value were an agreement or determination under section 12.

16 Adjustment of payments of royalty

Scope

- (1) This section applies if:
 - (a) subsection 15(2) has operated in relation to petroleum recovered during a royalty period, and a value of the petroleum different from the provisional value is subsequently agreed or determined under section 12; or
 - (b) an error has been made in:
 - (i) the calculation of royalty due; or
 - (ii) the application of a procedure for ascertaining the value of the petroleum.

Adjustment

- (2) If the determined royalty is greater than the provisional royalty, the difference is payable by the registered holder concerned.
- (3) If the determined royalty is less than the provisional royalty, the difference is to be:
 - (a) deducted from any amount subsequently payable under this Act by the registered holder concerned; or
 - (b) if no amount is likely to be subsequently payable under this Act by the registered holder concerned—refunded to the registered holder.

Definitions

- (4) In this section:
 - determined royalty*** means:

- (a) if paragraph (1)(a) applies—the amount of royalty payable in relation to the petroleum on the basis of the value ascertained under section 12; or
- (b) if paragraph (1)(b) applies—the amount of royalty payable in relation to the petroleum.

provisional royalty means:

- (a) if paragraph (1)(a) applies—the amount of royalty payable in relation to the petroleum on the basis of the provisional value; or
- (b) if paragraph (1)(b) applies—the amount of royalty demanded in relation to the petroleum as a result of the erroneous:
 - (i) calculation of royalty due; or
 - (ii) application of a procedure for ascertaining the value of the petroleum.

17 Transitional provisions

Schedule 1 has effect.

Schedule 1—Transitional provisions

Note: See section 17.

1 Definition

In this Schedule:

eligible instrument means a determination, a direction, an approval, an agreement or any other instrument.

2 Pre-commencement royalty periods

- (1) Despite the repeal of the *Petroleum (Submerged Lands) (Royalty) Act 1967*, that Act continues to apply, in relation to royalty for a royalty period that began before the commencement of this clause, as if that repeal had not happened.
- (2) Despite the repeal of section 42 of the *Petroleum (Submerged Lands) Act 1967*, that section continues to apply, in relation to royalty for a royalty period that began before the commencement of this clause, as if that repeal had not happened.
- (3) The definitions of *royalty* and *royalty period* in section 4 of this Act do not apply to this clause.

3 Transitional—eligible instruments

- (1) This clause applies to an eligible instrument if:
 - (a) the eligible instrument was in force immediately before the commencement of this clause; and
 - (b) either:
 - (i) the eligible instrument was made or given under, or for the purposes of, a particular provision of the *Petroleum (Submerged Lands) (Royalty) Act 1967*; or
 - (ii) the eligible instrument was made or given under, or for the purposes of, section 42 of the *Petroleum (Submerged Lands) Act 1967*.

- (2) The eligible instrument has effect, after the commencement of this clause, as if:
- (a) it had been made or given under, or for the purposes of, the corresponding provision of this Act; and
 - (b) any requirement imposed by this Act in relation to the making or giving of the eligible instrument (including a requirement about the form of words) had been satisfied.
- (3) Subclause (2) does not prevent the eligible instrument continuing to have effect for the purposes of:
- (a) a particular provision of the *Petroleum (Submerged Lands) (Royalty) Act 1967* as that Act continues to apply after its repeal because of clause 2 of this Schedule; or
 - (b) section 42 of the *Petroleum (Submerged Lands) Act 1967* as that section continues to apply after its repeal because of clause 2 of this Schedule.
- (4) For the purposes of this clause, in determining whether a provision is a corresponding provision:
- (a) regard must be had to the substance of the provision; and
 - (b) if the provision appears to have expressed the same idea in a different form of words for the purpose of using a clearer style—disregard the difference.

4 Transitional—royalty at the prescribed rate

Subsections 6(6), 7(2) and 8(2) of this Act have effect as if:

- (a) each reference in those subsections to royalty included a reference to royalty payable under the repealed *Petroleum (Submerged Lands) (Royalty) Act 1967*; and
- (b) each reference in those subsections to this Act included a reference to the repealed *Petroleum (Submerged Lands) (Royalty) Act 1967*.

5 Transitional—rate of royalty

- (1) Subsection 6(1) of this Act has effect as if the reference in item 2 of the table in that subsection to subsection (2) of that section

Clause 6

included a reference to section 42 of the repealed *Petroleum (Submerged Lands) Act 1967*.

- (2) Subsection 6(1) of this Act has effect as if:
- (a) the reference in item 4 of the table in that subsection to section 154 of the *Offshore Petroleum Act 2006* included a reference to subsection 51(1) of the repealed *Petroleum (Submerged Lands) Act 1967*; and
 - (b) the reference in item 4 of the table in that subsection to the initial production licence (within the meaning of section 154 of the *Offshore Petroleum Act 2006*) included a reference to the original licence as defined by subsection 51(1) of the repealed *Petroleum (Submerged Lands) Act 1967*.

6 Re-enactment of the *Petroleum (Submerged Lands) (Royalty) Act 1967*

This Act re-enacts the *Petroleum (Submerged Lands) (Royalty) Act 1967* with certain modifications.

Note: Section 15AC of the *Acts Interpretation Act 1901* provides that if an Act has expressed an idea in a particular form of words, and a later Act appears to have expressed the same idea in a different form of words for the purpose of using a clearer style, the ideas shall not be taken to be different merely because different forms of words were used.

*[Minister's second reading speech made in—
House of Representatives on 23 June 2005
Senate on 5 September 2005]*

(117/05)