



Environmental  
Defenders Office

**Submission to the Mineral Royalty Scheme Review –  
Consultation Paper**

**18 August 2023**

## **About EDO**

EDO is a community legal centre specialising in public interest environmental law. We help people who want to protect the environment through law. Our reputation is built on:

**Successful environmental outcomes using the law.** With over 30 years' experience in environmental law, EDO has a proven track record in achieving positive environmental outcomes for the community.

**Broad environmental expertise.** EDO is the acknowledged expert when it comes to the law and how it applies to the environment. We help the community to solve environmental issues by providing legal and scientific advice, community legal education and proposals for better laws.

**Independent and accessible services.** As a non-government and not-for-profit legal centre, our services are provided without fear or favour. Anyone can contact us to get free initial legal advice about an environmental problem, with many of our services targeted at rural and regional communities.

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### **Submitted to:**

Territory Revenue Office  
Department of Treasury and Finance  
By email: [royaltiesandassurance.dtf@nt.gov.au](mailto:royaltiesandassurance.dtf@nt.gov.au)

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### **Acknowledgement of Country**

The EDO recognises First Nations Peoples as the Custodians of the land, seas, and rivers of Australia. We pay our respects to Aboriginal and Torres Strait Islander Elders past, present, and emerging, and aspire to learn from traditional knowledge and customs so that, together, we can protect our environment and cultural heritage through both Western and First Laws. In providing submissions, we pay our respects to First Nations across Australia and recognise that their Countries were never ceded and express our remorse for the deep suffering that has been endured by the First Nations of this country since colonisation.

## Executive Summary

Environmental Defenders Office (**EDO**) welcomes the opportunity to comment on the Consultation Paper for the Mineral Royalty Scheme Review (**Consultation Paper**) prepared by the Department of Treasury and Finance (**Department**).

EDO, in principle, supports the move to reform the scheme for mineral royalties in the Northern Territory (**Territory**). However, this support is premised on a new scheme being calibrated correctly to ensure mining operators pay a fair share of royalties as compensation to the community for the removal of the Territory's non-renewable mineral resources and in recognition of the environmental, cultural and social impacts of the industry. EDO is of the view that any replacement *ad valorem* royalty scheme should be variable and progressive in nature, and should not result in lower royalties being paid by mining companies. Moreover, any new scheme should not include thresholds, deductions, or concessions which act as further subsidies to the industry.

This submission does not address every question in the Consultation Paper, nor does it provide detailed technical input on how a new mineral royalties scheme should operate. Rather, it includes some broader critiques, analysis and recommendations for consideration by the Department and to inform further consultation.

It is difficult to address many of the questions posed without detailed information about how royalties are accounted for under the present system or modelling of how different royalty scheme proposals would work. This is exacerbated by the lack of access to the ACIL Allen Report, commissioned by the Northern Territory Government and the inputs and assumptions which underpinned the report.<sup>1</sup> As the ACIL Allen Report informed the recommendations on royalty reform put forward in the industry-driven Mineral Development Taskforce Final Report, it would be useful to see the basis for the recommendations.<sup>2</sup>

We recommend that further rounds of consultation be undertaken, informed by publicly available, independent modelling, before any legislative changes are drafted or an Exposure Draft of a proposed bill is prepared and released. We further urge the Department to undertake such consultation proactively throughout the community, including with key stakeholders, Land Councils and First Nations communities in the Territory who derive benefits through the royalty scheme as a result of Commonwealth contributions to the Aboriginal Benefit Account under the *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth) (**ALRA**).

We thank the Department for the opportunity to participate in this important reform process and look forward to continuing to engage.

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<sup>1</sup> ACIL Allen, *Northern Territory Mineral Royalty Review. Final Report to the Northern Territory Mineral Development Taskforce* (Report and Modelling, 2022); This report is not publicly available.

<sup>2</sup> *Mineral Development Taskforce Final Report* (Final Report, December 2022) ('MDT Final Report') <<https://resourcingtheterritory.nt.gov.au/minerals/mineral-development-taskforce>>.

## Summary of Recommendations

Below, we summarise our recommendations. These are discussed in greater detail in the body of our submission.

**Recommendation 1:** The modelling and data used to inform the Mineral Development Taskforce analysis of the royalty scheme, including the analysis undertaken by ACIL Allen, should be publicly released and available for scrutiny by stakeholders and community members.

**Recommendation 2:** The *Mineral Royalty Act 1982* (NT) should be reformed to enable details of royalty payers and royalty amounts to be shared with the public.

**Recommendation 3:** Before any Exposure Draft is released, further consultation must be completed based on rigorous, publicly available modelling. This consultation should be proactive and not rely upon interested or affected people or stakeholders requesting a brief.

**Recommendation 4:** Consultation materials should be accessible and in-language and this should occur at all stages of the consultation process.

**Recommendation 5:** Further consultation on mineral royalties reform should occur with Land Councils and those who are affected or likely to be affected by mineral developments in the Territory, with updated and comprehensive information and modelling. This consultation should extend to all stakeholders who accrue benefits under the matching Commonwealth payments scheme provided for under the ALRA.

**Recommendation 6:** Royalty reforms should occur alongside broader reforms to the regulation of mining in the Territory which ensure mining laws are fit for purpose and adequately regulate, remedy and prevent the environmental, cultural and social impacts of the mining industry.

**Recommendation 7:** Any *ad valorem* royalties scheme implemented in the Northern Territory should be progressive in nature. Consideration should be given to a variable, step-rate scheme, such as that which applies to coal royalty payments in Queensland.

**Recommendation 8:** The rates included in a reformed royalty scheme should be such that, current royalty payers in the system pay an equal or higher royalty amount under the new system, all other things being equal.

**Recommendation 9:** A new royalties model should not include deductions or thresholds.

**Recommendation 10:** A new royalties model should not include royalty holidays or lower royalty rates for new mining operations.

## 1. Introduction

The Territory has had a profit-based royalty scheme applicable to all minerals since 1982, pursuant to the *Mineral Royalty Act 1982* (NT) (**Mineral Royalty Act**). The scheme presently applies a 20% headline royalty rate to a mine's profits, less \$10,000,<sup>3</sup> for all mines with a gross production revenue over \$500,000.<sup>4</sup> There are a broad range of deductions, including exploration costs, operating costs and capital costs, which recognise depreciation and cost of financing.<sup>5</sup>

Since 1 July 2019, the scheme has also included a minimum, *ad valorem* or value-based, royalty.<sup>6</sup> This minimum royalty is equal to 1% of gross production revenue in the first year, 2% in the second year and 2.5% from the third year onwards. As a result, the royalty amount payable by a mining operation is the greater of the existing 20% net value or the minimum *ad valorem* royalty.<sup>7</sup>

Mineral royalties represent a significant proportion of the Territory's own-source revenue, with 30% of the total tax and royalty revenue of the Territory in the past 6 years coming from mineral royalties.<sup>8</sup> In the most recent financial year, royalties represented roughly 15-16% of the Territory's own-source revenue.<sup>9</sup> The Territory also benefits from a unique scheme whereby the Commonwealth provides funding to the Aboriginal Benefit Account (**ABA**) for the benefit of Aboriginal people living in the Territory based on the amount that the Territory receives from mining royalties on Aboriginal land administered under the ALRA.<sup>10</sup> 97% of the total royalties received by the Territory in the past 6 years are said to be derived from mines on Aboriginal land.<sup>11</sup>

As the Consultation Paper acknowledges, mineral royalties are not taxes on mining operators, but rather, represent compensation to the community for the removal of the Territory's non-renewable resources.<sup>12</sup> Those resources are owned by the Territory and Territorians should expect a fair return for the use of those resources and the impacts associated with the industry, and especially those on whose land mineral extraction takes place. As Australia and the world moves towards decarbonisation, and demand for critical minerals continues to increase, there is an important opportunity to re-design the royalty scheme to appropriately, fairly and equitably compensate Territorians. But this process must be genuinely community-led and not driven by industry and investor imperatives.

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<sup>3</sup> *Mineral Royalty Act 1982* (NT) s 9A(1)(a).

<sup>4</sup> *Mineral Royalty Act 1982* (NT) s 9A(2).

<sup>5</sup> *Mineral Royalty Act 1982* (NT) s 10(2).

<sup>6</sup> Amendments to the *Mineral Royalty Act 1982* (NT) giving effect to this change were introduced by the *Revenue Legislation Amendment Act 2018* (NT).

<sup>7</sup> *Mineral Royalty Act 1982* (NT) s 9A(1).

<sup>8</sup> Mineral Development Taskforce, *Mineral Royalty Scheme Review: Designing a new scheme for the Territory* (Consultation Paper, June 2023) ('Consultation Paper') Section 2.2 <<https://haveyoursay.nt.gov.au/consultation-paper-for-designing-an-ad-valorem-mineral-royalty-scheme-for-the-territory>>.

<sup>9</sup> Parliament of the Northern Territory, *Budget Strategy and Outlook* (Legislative Assembly Budget Paper No 2, 2023-2024) p 63.

<sup>10</sup> *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth) Part VI.

<sup>11</sup> Consultation Paper (n 8) Section 2.2.

<sup>12</sup> *Ibid* Section 2.1.

## **The Mineral Development Taskforce and genesis for consultation**

The current consultation process is expressly borne out of the Mineral Development Taskforce (**Taskforce**) and the Taskforce’s recommendations around royalty reform. This context is important – as we explain later in this submission, as further industry capture should be avoided in designing the new royalty scheme, and royalty data should be made publicly available to ensure that stakeholder and community engagement is properly informed.

The Taskforce, established in November 2021, was borne out of the recommendations of the Territory Economic Reconstruction Commission (**TERC**). The Taskforce was expressly set up by the Department of Industry, Tourism and Trade (**DITT**) for the purpose of accelerating mining development in the Territory, as recommended in the TERC Final Report,<sup>13</sup> and in its terms and composition, was led by industry.<sup>14</sup> The recommendations contained in the Taskforce Final Report (**MDT Final Report**), released publicly in April 2023, are expressly geared towards accelerating private investment and “*unequivocally embrac[ing] industry growth and expansion*”.<sup>15</sup>

Section 2 of the MDT Final Report considers “*options to accelerate project investment through the lens of an investor*”, including a focus on the Territory’s royalty scheme, which it says is uncompetitive and a significant deterrent to private investment.<sup>16</sup> The Report recommends the introduction of a new *ad valorem* royalty scheme by 2024, with “*legislated certainty in terms of application and supported by modelling to provide information on the broader economic impacts of this change*”.<sup>17</sup> This is intended to incorporate “*modern and contemporary design features*”, be simple, competitive and deliver appropriate returns while delivering investment certainty.<sup>18</sup>

## **The current consultation process**

EDO was invited along with other stakeholders to provide feedback on the Consultation Paper, and requested and attended a hybrid in-person/online briefing.

We understand the Department was providing briefings upon request but did not intend to hold public forums or travel to other parts of the Territory to undergo consultations unless such briefings were requested.

We understand that the Department is open to having multiple rounds of consultation, and that there will then be further consultation on an Exposure Draft containing the proposed legislative reform. As we explain in this submission, we think it is both beneficial and necessary for the Department to engage in further rounds of proactive and targeted consultation before any such Exposure Draft is prepared.

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<sup>13</sup> *Territory Economic Reconstruction Commission Final Report* (Final Report, 30 November 2020) (‘TERC Final Report’) p 61.

<sup>14</sup> MDT Final Report (n 2) p 3 <<https://ntrebound.nt.gov.au/publications/final-report>>.

<sup>15</sup> *Ibid* p 7.

<sup>16</sup> *Ibid* p 66.

<sup>17</sup> *Ibid* p 16.

<sup>18</sup> *Ibid* p 78.

We acknowledge and thank the Department for its briefing session and answers to our questions, and for its flexibility during the consultation process thus far.

### Structure of the submission

This submission is structured in the following way.

**Part 2** of the submission provides an overview of the royalty scheme in the Territory, as compared with how mineral royalty schemes operate in other States and Territories, which use various kinds of *ad valorem* schemes.

**Part 3** of the submission contains our high-level analysis and critiques to inform the reform process moving forward.

**Part 4** of the submission contains our high-level comments and views as to the features of a reformed royalty scheme. EDO is not able to provide more detailed responses to the majority of the questions put forward in the Consultation Paper.

## 2. The state of play: approaches to mineral royalties in different jurisdictions

### The Territory approach

In 2022, a total of \$4,864,596,495 (**\$4.86 billion**) worth of minerals was sold by mining operators in the Territory.<sup>19</sup> The revenue from mining royalties in the Territory amounted to \$400M in the last financial year, constituting 37% of the Territory's tax and royalties revenue.<sup>20</sup> This comes out at roughly 15-16% of the Territory's own-source revenue, or roughly 5% of total revenue in 2023-24 in the non-financial public sector.<sup>21</sup>

The Territory's hybrid-based approach includes a fixed rate for all minerals.<sup>22</sup> As noted in the introduction, the scheme presently applies a 20% headline royalty rate to a mine's profits, less \$10,000,<sup>23</sup> for all mines with a gross production revenue over \$500,000, subject to a series of deductions.<sup>24</sup> Since 2019, the scheme has also included a minimum *ad valorem* royalty calculated on a revenue basis, with the royalty payable being the greater of the 20% net profit value or the minimum *ad valorem* royalty.<sup>25</sup>

Prior to the 2019 amendments, over half of Territory mines did not pay any royalties.<sup>26</sup> The amendments were intended to guarantee that the Northern Territory would see a return even in

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<sup>19</sup> Northern Territory Department of Industry, Tourism and Trade, *FY 2021-2022 Northern Territory Mining Production* (Data report) <[https://industry.nt.gov.au/\\_data/assets/pdf\\_file/0008/1159208/2021-22-mining-production.pdf](https://industry.nt.gov.au/_data/assets/pdf_file/0008/1159208/2021-22-mining-production.pdf)>.

<sup>20</sup> Parliament of the Northern Territory, *Budget Strategy and Outlook* (Legislative Assembly Budget Paper No 2, 2023-2024) p 63 <<https://budget.nt.gov.au/budget-papers>>.

<sup>21</sup> Ibid.

<sup>22</sup> Petroleum royalties are dealt with separately and provided for in the *Petroleum Royalty Act 2023* (NT).

<sup>23</sup> *Mineral Royalty Act 1982* (NT) s 9A(1)(a).

<sup>24</sup> *Mineral Royalty Act 1982* (NT) s 9A(2).

<sup>25</sup> *Mineral Royalty Act 1982* (NT) s 9A(1).

<sup>26</sup> MDT Final Report (n 2) p 67.

mines that were not profitable, which made them exempt from royalty payments through deductions. The amendments also changed the operating costs to encourage local employment, such that companies could no longer include travel and ancillary costs for fly-in/fly-out employees who live outside the Territory in their operating costs.<sup>27</sup>

There are currently 8 major mines operating in the Territory. They are: <sup>28</sup>

- Gulkula Mining – Dhupuma Plateau (bauxite mine, East Arnhem),
- Core Lithium – Finniss (lithium mine, Finniss Region)
- Australian Ilmenite - Sill 80 (ilmenite mine, Roper River Region),
- Newmont – Tanami (gold mine, Tanami region),
- Rio Tinto – Gove (bauxite mine, Nhulunbuy)
- South 32 - Gemco (manganese mine, Groote Eylandt),
- Glencore – McArthur River (zinc, lead and silver mine, near Borroloola),
- Elmore - Peko Tailings (magnetite from tailings, near Tennant Creek)

Of these 8, half pay royalties based on the new minimum value royalty, with the rest falling under the profit-based royalty.<sup>29</sup> The secrecy provisions in the *Mineral Royalty Act* prohibit the release of information and documents related to the Act (s50(1)), which means that the public must rely on individual businesses for reports on royalty payments to government. As many mining companies choose not to disclose royalty expenditure, it is difficult to determine the royalty rates for specific companies.

Glencore did not pay royalties for the McArthur River Mine, one of the most significant and environmentally destructive mines in the Territory, until 2020-21 (see case study, **below**). Ensuring Territorians receive a fair return for the removal of their mineral resources remains a live concern which should be at the forefront of any reforms to the mineral royalty scheme.

#### **Case Study: Royalty payments by McArthur River Mine**

The McArthur River Mine is a zinc-lead-silver mine owned by Glencore and operated by its wholly owned subsidiary McArthur River Mining Pty Ltd. Located 60 km from Borroloola in the Gulf of Carpentaria, it is one of the largest zinc mines in the world. Prior to 2018, the McArthur River Mine paid very infrequent royalties.<sup>30</sup> This was due to the Territory's royalty scheme, which was entirely profit-based, with no minimum value-based component.<sup>31</sup>

It has been reported from leaked information that Glencore made no royalty payments from the opening of the mine in 1995, , to 2007.<sup>32</sup> The only reported payment was in 2008, when Glenmore made

<sup>27</sup> *Mineral Royalty Act 1982* (NT) s 4B; This aspect of the amendments commenced earlier, in 2018.

<sup>28</sup> MDT Final Report (n 2) p 28.

<sup>29</sup> *Ibid* p 67.

<sup>30</sup> Rod Campbell, *Wishful Zinking: Economics of the McArthur River Mine* (Australia Institute Report, September 2017) p 8 <<https://australiainstitute.org.au/report/wishful-zinking-economics-of-the-mcarthur-river-mine>>.

<sup>31</sup> *Ibid*.

<sup>32</sup> *Ibid*.



a \$13 million royalty payment.<sup>33</sup> No royalty information is available for the 2010-2015 period.<sup>34</sup> Published reports since 2017 show that Glencore paid no royalties for the McArthur River Mine up until 2020 (Glencore's *Payment to Governments Report 2017 – 2022*).

In 2018, the Northern Territory passed the *Revenue Legislation Amendment Act 2018*, which amended the *Mineral Royalty Act* to introduce a new minimum value-based royalty. The value-based royalty provisions came into operation on 1 July 2019. Glencore continued to pay no royalties for the McArthur River Mine until 2020-21. Glencore's publicly available reports show a royalty payment of \$7,475,000, the first reported since 2008.<sup>35</sup> This increased to a \$23,411,000 payment in 2022,<sup>36</sup> representing less than 7% of the total royalty amount received by the Territory government in 2022.<sup>37</sup>

## Royalty payments and Aboriginal land

Apart from the hybrid scheme, the royalty position in the Northern Territory is also distinct from other jurisdictions in that the Commonwealth distributes money generated from mining on Aboriginal land administered under the ALRA. The Commonwealth pays into the ABA an amount equivalent to the value of the statutory royalties paid to the Northern Territory government, which is then allocated and distributed as payments to the Territory's four Aboriginal Land Councils for administrative purposes, for distribution via the Land Councils to royalty associations, and as grant payments for the benefit of Aboriginal people in the Territory, including via the recently established Northern Territory Aboriginal Investment Corporation. In the 2021-22 financial year, the ABA received mining royalty equivalent receipts of \$349.6 million.<sup>38</sup>

Under the ALRA, an exploration licence can only be granted on Aboriginal land if consent is given by Traditional Owners through their applicable Land Council after consultation, negotiation and agreement.<sup>39</sup> Approximately half of the land in the Northern Territory is under Aboriginal freehold, including 80% of its coastline.<sup>40</sup> Much of the remainder of the Territory is subject to native title under the *Native Title Act 1992* (Cth), including land under pastoral leasehold, or is likely to be subject to native title. This means that a majority of mining developments will be on Aboriginal-owned land or land which is subject to the rights of native title holders.

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<sup>33</sup> Ibid p 8-9.

<sup>34</sup> Ibid p 9.

<sup>35</sup> Glencore, *Payments to Governments Report* (2021) p 19

<<https://www.glencore.com/.rest/api/v1/documents/ce4fec31fc81d6049d076b15db35d45d/GLEN-2021-annual-report-.pdf>>.

<sup>36</sup> Glencore, *Payments to Governments Report* (2022) p 15

<[https://www.glencore.com/.rest/api/v1/documents/static/a574baa8-d3b0-4214-b247-2ec0fbf892e9/GLEN\\_2022-Payments-to-Governments-Report.pdf](https://www.glencore.com/.rest/api/v1/documents/static/a574baa8-d3b0-4214-b247-2ec0fbf892e9/GLEN_2022-Payments-to-Governments-Report.pdf)>.

<sup>37</sup> Parliament of the Northern Territory, *Budget Strategy and Outlook* (Legislative Assembly Budget Paper No 2, 2023-2024) p 65.

<sup>38</sup> National Indigenous Australians Agency (Annual Report, 2021-2022) Appendix C – Aboriginals Benefit Account

<<https://www.transparency.gov.au/annual-reports/national-indigenous-australians-agency/reporting-year/2021-22>>.

<sup>39</sup> *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth) s 40.

<sup>40</sup> Office of Aboriginal Affairs – Northern Territory Government, *Aboriginal Land and Sea Action Plan* (2022) p 6

<<https://aboriginalaffairs.nt.gov.au/aboriginal-land-and-sea>>.

## Approaches to mineral royalties in other jurisdictions

The other Australian jurisdictions adopt various approaches to their mineral royalty schemes. WA and Queensland have variable *ad valorem*-based schemes for various minerals. In WA, there is a three-tier *ad valorem* system for most minerals, which is intended to return roughly 10% of the value of the minerals at the mine-head. The *ad valorem* rate is 2.5%, 5% or 7.5%, and is calculated depending on the form of the final product.<sup>41</sup> The tiered approach accounts for the increase in value of the minerals, recognising the increase in value between ‘bulk’, ‘concentrate’ and ‘metal’ as final products.<sup>42</sup> In QLD, there is either a flat rate per tonne or an *ad valorem* approach, depending on the mineral.<sup>43</sup> The progressive royalty rate for coal in Queensland is calculated according to the coal market price, from 7% up to 40% after recent amendments.<sup>44</sup> In SA, an *ad valorem* calculation is made on the minerals, with different rates applying to different mineral types.<sup>45</sup> In VIC, there is an *ad valorem* royalty of 2.75% of net market value for most minerals.<sup>46</sup> In NSW, there is a value-based or fixed royalty amount depending on the mineral, with a tiered approach to coal, depending on the type of mine.<sup>47</sup> Tasmania has a fixed rate for construction and industrial materials, petroleum and coal seam gas, and a 1.9% sales and profit approach for other minerals.<sup>48</sup>

Various forms of deductions are available to mining operators in different states. For example, in WA, there are deductions available for transport costs, including packaging and other reasonable costs.<sup>49</sup> Queensland offers deductions for late dispatch costs (for coal only), ocean freight and insurance costs, loss of metal content for certain minerals, and other approved deductions.<sup>50</sup> SA offers deductions for transport and shipping costs, or other costs allowed by the Minister<sup>51</sup>

Various states have programs where certain royalty amounts are earmarked for particular purposes. For example, WA has a Royalties for Regions program which supports regional communities, and is funded by 25% of WA royalty revenue each financial year.<sup>52</sup> SA has an Extractive Areas Rehabilitation fund (EARF), which is used to aid in rehabilitating mining areas for extractive minerals such as sand, gravel, stone and clay.<sup>53</sup> The EARF is funded by a fixed rate of 25 cents per tonne of royalties received from extractive minerals.<sup>54</sup> In NSW, the Royalties Rejuvenation Fund was established to support

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<sup>41</sup> *Mining Regulations 1981* (WA) reg 86.

<sup>42</sup> Department of State Development (WA) and Department of Mines and Petroleum (WA), *Mineral Royalty Rate Analysis* (Final Report, 2015) p 2  
<[https://parliament.wa.gov.au/publications/tailedpapers.nsf/displaypaper/3912756aad06a775b4735f5948257e14002d559b/\\$file/2756.pdf](https://parliament.wa.gov.au/publications/tailedpapers.nsf/displaypaper/3912756aad06a775b4735f5948257e14002d559b/$file/2756.pdf)>.

<sup>43</sup> *Mineral Resources Regulation 2013* (QLD) ch 3.

<sup>44</sup> *Mineral Resources Regulation 2013* (QLD) sch 3, reg 5.

<sup>45</sup> Department for Energy and Mining, *Mineral Royalties* (Website) Royalty Rates  
<<https://www.energymining.sa.gov.au/industry/minerals-and-mining/mining/mineral-royalties#rates>>.

<sup>46</sup> *Mineral Resources (Sustainable Development) (Mineral Industries) Regulations 2019* (VIC) reg 6.

<sup>47</sup> *Mining Regulation 2016* (NSW) regs 73-74.

<sup>48</sup> *Mineral Resources Regulations 2016* (TAS) pt 3.

<sup>49</sup> *Mining Regulations 1981* (WA) reg 85.

<sup>50</sup> Queensland Revenue Office, *Calculating mining royalty: Deductions for mining royalty* (Website, 16 March 2023)  
<<https://qro.qld.gov.au/royalty/calculate-mineral/deduction/>>.

<sup>51</sup> *Mining Act 1971* (SA) s 17(8)-(8a); *Mining Regulations 2020* (SA) reg 11.

<sup>52</sup> *Royalties for Regions Act 2009* (WA) s 6.

<sup>53</sup> *Mining Act 1971* (SA) s 63; Royalties are not charged on extractive minerals in the Northern Territory except where those minerals are extracted on mineral leases which are subject to royalty payments.

<sup>54</sup> *Mining Act 1971* (SA) s 63.

communities affected by coal mining.<sup>55</sup> The NSW government has guaranteed \$25 million each year for the Fund.<sup>56</sup>

### **Case study: Royalty payments for coal in Queensland**

In Queensland, there is a progressive scheme for coal royalty rates. As the price of coal increases, the royalty rate increases at staggered intervals. As coal price increases beyond certain thresholds, there is a higher marginal royalty rate for the portion of the coal price that extends beyond the threshold, similar to progressive taxation.<sup>57</sup>

For example, for coal prices up to \$100 per tonne there is a 7% marginal royalty rate, and up to \$150 per tonne there is a 12% marginal royalty rate. This means that a mining operator selling coal at \$150 per tonne, would pay a 7% rate on the first \$100 per tonne and a 12% rate on the next \$50 per tonne, resulting in an 'average' 9% royalty rate.

The scheme progressively increases to a marginal rate of 40% for all prices over \$300 per tonne. For example, the marginal rate for a coal price of \$500 is 40%, but the average rate is only 28%.

This scheme is considered a variable rate structure and is a common royalty scheme, implemented similarly in Bolivia, Mauritania, Mongolia, Myanmar and other countries.<sup>58</sup> The advantage of the system is that it is adaptable to volatile mineral prices, and the Queensland model is relatively simple compared to other variable royalty schemes.<sup>59</sup> Progressive royalties are generally effective at capturing a share of windfall profits while accommodating mining investment.<sup>60</sup>

It is estimated that if this model was adopted in NSW, where coal makes up a larger share in the energy mix,<sup>61</sup> there would be an increase of up to \$6.2 billion in the 2022-23 financial year.<sup>62</sup>

## **3. Overarching issues and critiques**

In this section of our submission, we set out overarching issues and critiques. We then outline the principles we think should be adhered to in any royalty scheme reform moving forward. As is apparent from the below, we do not intend to answer every question put forward for consultation,

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<sup>55</sup> *Mining Act 1992* (NSW) s 292W.

<sup>56</sup> New South Wales Government, *Royalties for Rejuvenation Fund* (Website) <<https://www.nsw.gov.au/regional-nsw/programs-and-grants/royalties-for-rejuvenation-fund>>.

<sup>57</sup> *Mineral Resources Regulation 2013* (QLD) sch 3, reg 5; Rod Campbell and Matt Saunders, *Northern direction: If NSW had the Queensland coal royalty system* (Australia Institute Report, March 2023) p 2 <<https://australiainstitute.org.au/report/northern-direction-if-nsw-had-the-queensland-coal-royalty-system/>>.

<sup>58</sup> Anna Fleming, David Manley, and Thomas Lassourd, *Variable Royalties: An answer to volatile mineral prices* (Policy paper, August 2022) p 7 <<https://www.igfmining.org/wp-content/uploads/2022/11/variable-royalties-an-answer-to-volatile-mineral-prices.pdf>>.

<sup>59</sup> *Ibid* p 7.

<sup>60</sup> *Ibid* p 2-3.

<sup>61</sup> Department of Climate Change, Energy, the Environment and Water, *Energy Data for States and Territories* (Website) <<https://www.energy.gov.au/data/states-and-territories>>.

<sup>62</sup> Rod Campbell and Matt Saunders, *Northern direction: If NSW had the Queensland coal royalty system* (Australia Institute Report, March 2023) p 6.

nor do we believe we have sufficient information with which to do so. EDO would be happy to engage in further rounds of consultation as to the details of the scheme as further information becomes available.

### Further information must be provided for meaningful feedback on the Consultation Paper

There is insufficient information and modelling to enable EDO or other stakeholders and community members to properly assess and understand the implications of different royalty models, both in terms of the monetary implications and the anticipated consequences for the size and scale of the industry in the Territory and the environmental and social impacts that come with an expansion of the industry. Whilst we commend the Department for its concise discussion paper and illustrative hypotheticals, there is an absence of real-world data or modelling around what could be expected if different variables are adopted in a new royalties scheme. This is notwithstanding that the Consultation Paper seeks extensive feedback on, for example, whether fixed or variable rates should be adopted, variation in rates across mineral types/processing, amounts for thresholds and deductions, royalty holidays and indexation.

Meaningful engagement requires:

- (i) clear and transparent information on historical and current royalty returns by each company, including which companies are paying based on the profit rate, as opposed to the *ad valorem* rate, under the current hybrid model;
- (ii) modelling on whether and in what circumstances different royalty models/variables would result in current royalty paying mines paying more, less or equal amounts of royalties, all other circumstances being equal;
- (iii) modelled anticipated impacts on developments which are proposed/in the pipeline under different royalty models; and
- (iv) the terms of reference and all assumptions which underpin any modelling which is informing the consultation and review process.

The need for modelling is acknowledged in the MDT Final Report, which indicates that a replacement *ad valorem* royalty scheme should have “*legislated certainty in terms of application and supported by modelling to provide information on the broader economic impacts of this change*”.<sup>63</sup>

Indeed, the modelling in the report is said to be underpinned by an “*independent comparative analysis of the royalty scheme*” and assessment of potential alternative royalty schemes prepared by consulting firm ACIL Allen.<sup>64</sup> However, a copy of that report has not been made publicly available and we understand that DITT is not prepared to release it. This modelling, and the assumptions which underpin it, should be released so the community can be properly informed and be able to meaningfully comment on the details of any change to the royalty model. This includes transparency around the multi-criteria analysis/assessment variables which resulted in the various

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<sup>63</sup> MDT Final Report (n 2) p 16.

<sup>64</sup> Ibid p 66; ACIL Allen, *Northern Territory Mineral Royalty Review. Final Report to the Northern Territory Mineral Development Taskforce* (Report and Modelling, 2022).

*ad valorem* royalty models put forward as prospective options in the MDT Final Report.<sup>65</sup> Further, there should be independent analysis and modelling commissioned which has not been directed by an industry led taskforce, together with the ability for stakeholders to commission their own modelling if they wish.

The absence of data is also exacerbated by the secrecy provisions under s. 50 of the *Mineral Royalty Act*, which precludes Department officials from publicly sharing important information about royalty payers and amounts at a granular level.<sup>66</sup> We submit that members of the public should be entitled to understand how royalties presently operate (noting that royalties are purportedly for the benefit of and to compensate Territorians), and this knowledge would enhance this consultation process. We suggest that the secrecy provisions be reformed.

**Recommendation 1:** The modelling and data used to inform the Mineral Development Taskforce analysis of the royalty scheme, including the analysis undertaken by ACIL Allen, should be publicly released and available for scrutiny by stakeholders and community members.

**Recommendation 2:** The *Mineral Royalty Act 1982* (NT) should be reformed to enable details of royalty payers and royalty amounts to be shared with the public.

### Reform process must be community led and not subject to further industry capture

We have strong reservations about the proposed reforms originating from an industry-led taskforce, which is couched in terms of rolling out the red carpet for industry and ensuring the ongoing expansion of and investment in mining.<sup>67</sup> Any reforms to the mineral royalty scheme should be independent and must genuinely involve and be led by the community, recognising that royalties function as “*compensation to the community for the removal of its non-renewal resources*”.<sup>68</sup>

The MDT Final Report expressly acknowledges the importance of the mining industry securing a social licence to operate.<sup>69</sup> We suggest that this social licence is absent where the royalty scheme does not adequately facilitate community participation, nor does it fairly compensate the community for the impacts of mining operations from the wealth which is generated by the industry.

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<sup>65</sup> MDT Final Report (n 2) p 77.

<sup>66</sup> *Mineral Royalty Act 1982* (NT) s 50(1); The secrecy provisions apply to government employees and contractors. Those to whom it applies must not record or communicate information acquired under the act.

<sup>67</sup> See, for example, MDT Final Report (n 2) p 7-8 on the need for the Territory to be “*attractive and competitive for new investment in mining*” and targeted initiatives being required “*to encourage increased exploration and mining activity*”.

<sup>68</sup> Consultation Paper (n 8) Section 2.1.

<sup>69</sup> MDT Final Report (n 2) p 58.

**Further, meaningful and proactive consultation is required, and specifically with those who benefit from and are affected by the payments made under the *Aboriginal Land Rights Act 1976 (Cth)***

We encourage the Department to undertake further rounds of targeted consultation and to commission and release independent analysis of different royalty models, with transparent data inputs, prior to any Exposure Draft being prepared.

We do not think it is sufficient for briefings to occur only by request. Rather, there should be proactive consultation in communities about the royalty regime and the implications for those communities of proposed changes to the scheme. This should occur throughout the Territory in a variety of contexts and formats, with resources prepared in oral and written form, in plain English and in language.

This proactive, targeted consultation is necessary given over 30% of the Territory's population is Aboriginal,<sup>70</sup> and around half of the Territory's landmass constitutes Aboriginal freehold land which is administrated under the ALRA. Further, as the majority of remaining land and waters are either subject to, or likely to be subject to native title, the communities impacted by the proposed changes should have the benefit of participating in the consultation process. The quantum of royalties payable under the *Mineral Royalty Act* has direct implications for the funding which the Commonwealth pays into the ABA.

The Consultation Paper notes that the Territory government is not responsible for the ABA nor a party to the Commonwealth arrangements under the ALRA that provide for payments into the ABA.<sup>71</sup> Nonetheless, it is artificial to divorce the implications of this royalty reform process from the impacts on the Commonwealth scheme.

EDO is not a First Nations run organisation and does not have expertise or experience in the administration of the ALRA or the distribution of royalty payments. However, we are of the strong view that Land Councils and affected communities should be proactively consulted and play a leading or co-design role in any reforms to the royalty scheme, given the Territory's population, the location of mineral developments and the operation of the ABA. Proactive consultation should especially be prioritised in relation to communities which are already affected by mineral developments or will be impacted by those which have been approved or are in feasibility.

**Recommendation 3:** Before any Exposure Draft is released, further consultation must be done based on rigorous, publicly available modelling. This consultation should be proactive and not rely upon interested or affected stakeholders requesting a brief.

**Recommendation 4:** Consultation materials should be accessible and in-language and this should occur at all stages of the consultation process.

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<sup>70</sup> The Australian Bureau of Statistics, *Estimates of Aboriginal and Torres Strait Islander Australians* (Data report, June 2021) <<https://www.abs.gov.au/statistics/people/aboriginal-and-torres-strait-islander-peoples/estimates-aboriginal-and-torres-strait-islander-australians/latest-release>>.

<sup>71</sup> Consultation Paper (n 8) p 7.

**Recommendation 5:** Further consultation on mineral royalties reform should occur with Land Councils and those who are affected or likely to be affected by mineral developments in the Territory, with updated and comprehensive information and modelling. This consultation should extend to all stakeholders who accrue benefits under the matching Commonwealth payments scheme provided for under ALRA.

### Royalty reform must occur in the context of wider regulatory reform

The underlying purpose of the Taskforce recommendations, as acknowledged in the Consultation Paper, is to accelerate investment in new mining projects in the Territory. This cannot be done unreservedly, and particularly in the context of major deficiencies in the Territory's mining regulatory regime.

The Territory's mining laws are outdated and not fit for purpose. They are acutely in need of reform to ensure that they adequately address the environmental, cultural and social impacts of mining activities. Broader amendments to the Territory's mining laws have been anticipated for several years in acknowledgment of those deficiencies. A proposed Exposure Draft was released on the day this submission was finalised, which EDO has not yet had time to review.<sup>72</sup> EDO's strong view is that changes to mining regulation in the Territory should happen in a holistic and principled way, rather than in a piecemeal fashion. Otherwise, there is the potential to perpetuate further extractivism and the significant environmental degradation and destruction of cultural heritage which continues to occur in the Territory because of mining operations.

We recommend that royalty reforms be considered in the context of wider reforms to the regulation of mining in the Territory and that there be a coordinated, consultative and community-driven approach to those reforms across the board.

**Recommendation 6:** Royalty reforms should occur alongside broader reforms to the regulation of mining in the Territory which ensure mining laws are fit for purpose and adequately regulate, remedy and prevent the environmental, cultural and social impacts of the mining industry.

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<sup>72</sup>Environmental Reforms: Environment Protection Legislation Amendment (Mining) Bill 2023<sup>3</sup>, *Northern Territory Government* (Web Page) <<https://haveyoursay.nt.gov.au/environmental-reforms>>.



## 4. Potential features of a new royalty scheme

### Any *ad valorem* royalty model must be progressive in nature and recoup adequate royalties

EDO reserves judgment on the specific and detailed questions put forward in the Consultation Paper, in the absence of real-world data and more detailed information about the operation and implications of possible new royalty models. However, at a minimum, we submit that any reformed *ad valorem* scheme must be progressive in nature, and suggest that a variable, step-rate model may be the most appropriate way to ensure that royalties are paid appropriately. The Queensland model for coal, detailed above, provides an example of such a progressive scheme, with higher marginal royalty rates applicable when commodity prices increase. The effectiveness of any progressive royalty regime requires that both average and marginal royalty rates be set at appropriate levels and that the rates be revised over time where appropriate.

As noted earlier in this submission, we lack the detail and modelling required to provide or obtain an informed view on precisely what models and rates are appropriate and strike the correct balance in a mineral royalty scheme. This extends to any comment on, for example, whether and what rates should be applied to different commodities and whether a model should be adopted which charges different rates depending on the form or level of processing of the mineral in question.

One of the stated imperatives of the Taskforce is to create a “*broader royalty base from new projects and mine expansions*”, based on ACIL Allen modelling which suggests that a deficit in royalties will be incurred as two major mines that pay royalties shut down within the decade.<sup>73</sup> Whilst this claimed royalty deficit is difficult to interrogate in the absence of the model inputs, EDO stresses that any changes to the royalty scheme should not aim to ‘grow the base’ at all costs without appropriate, rigorous regulation of mining operations, to very high environmental standards and with discernment about which projects are approved and in what locations.

We also submit that any changes to the royalty scheme should not result in current royalty payers paying less in royalties overall, all other conditions being equal.

**Recommendation 7:** Any *ad valorem* royalties scheme implemented in the Northern Territory should be progressive in nature. Consideration should be given to a variable, step-rate scheme, such as that which applies to coal royalty payments in Queensland.

**Recommendation 8:** The rates included in a reformed royalty scheme should be such that, current royalty payers in the system pay an equal or higher royalty amount under the new system, all other things being equal.

### There should be no deductions or thresholds included in a reformed royalty scheme

EDO does not support the introduction of deductions into a reformed *ad valorem* royalty scheme. It is clear that the incorporation of generous deductions within the profit-based model substantially

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<sup>73</sup> MDT Final Report (n 2) p 88.



diluted the headline royalty rate. This is demonstrated by half of the eight mining operators currently paying royalties under the minimum *ad valorem* rate, as well as Glencore's ongoing failure to pay any royalties for the McArthur River Mine. Glencore was able to avoid paying royalties for a substantial period of time, despite the scale of its mining operation – the fourth largest zinc producer in the world. As the Consultation Paper acknowledges, deductions are likely to reduce the return to government whilst adding complexity to the royalty scheme.<sup>74</sup> Indeed, the complexity entailed in introducing deductions also appears to run contrary to the Taskforce's stated goal of reducing the administrative complexity of the royalty regime.

EDO similarly does not support the use of thresholds in the royalty scheme, such as the \$500,000 minimum revenue threshold which forms a part of the current scheme. We note that it is difficult to provide further comment on this issue in the absence of any information on how many operations are excluded (or have been excluded) under the current threshold, or how many potential new mines this is likely to affect if revenue thresholds are retained in a new scheme.

**Recommendation 9:** A new royalties model should not include deductions or thresholds.

### The new royalty scheme should not include royalty holidays or reduced rates for new mines

EDO is opposed to any royalty holidays being included for new mining operations, such as royalty payments being deferred for a period of up to 5 years while a mine is in its early stages. Nor do we think that companies should pay specifically reduced or no royalties in the early stages of mining operations.

Mining operators should be in a financial position to adequately fund mining costs, including royalty payments, taxes, and long-term rehabilitative and closure costs, when commencing operations in the Territory. Territory residents, and especially those on whose Country mining is taking place, are entitled to appropriate compensation and responsible operations which meet rigorous environmental standards.

Royalty holidays and reduced or absent royalty payments in early mine stages also pose a significant concern in circumstances where multiple Territory mines have entered into care and maintenance (sometimes on more than one occasion) within a couple of years of commencing or re-commencing operations. In such circumstances, the ability to obtain royalties is significantly curtailed, and any default is borne by government, and in turn, Territorians.

By way of illustration, there are three iron ore mines in the Territory which are in or have recently been in care and maintenance, being the Nathan River Resources (**NRR**) mine, the Roper Valley iron ore mine, and the Frances Creek iron ore mine. The NRR Mine re-opened in 2020 under a new owner and operated for barely a year before going into care and maintenance.<sup>75</sup> The Roper Valley iron ore

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<sup>74</sup> Consultation Paper (n 8) p 18.

<sup>75</sup> Jon Daly, 'Mothballed NT iron ore mines reopen amid soaring demand for steel in China', *ABC News* (online, 7 December 2020) <<https://www.abc.net.au/news/rural/2020-12-07/nt-iron-ore-mines-reopen-to-meet-chinese-demand-for-steel/12950170>>; The Nathan River Resources website indicates that the mine went into care and maintenance in November 2021: see 'Overview, Nathan River Resources (Web Page) <<https://www.nathan-river.com/>>.

mine has had numerous owners since it first operated in 2013, and similarly operated for only a short period of time in 2021-22 under its latest owner before going into care and maintenance.<sup>76</sup> The Frances Creek mine went into care and maintenance in 2015, and briefly recommenced shipping iron ore in 2021.<sup>77</sup> The current status of this mine is unclear, but it is slated to restart production this year.<sup>78</sup> All three of these mines have had multiple operators and been replete with environmental issues, a further illustration of the ongoing issues with mining regulation in the Territory.<sup>79</sup>

The Territory has a long history of abandoned and legacy mines with significant and unremedied environmental impacts, with the costs left to be borne by the taxpayer, as well as ongoing environmental issues with its presently operating mines. The royalty system should not provide further incentives for short-term mining extraction without appropriate compensation.

**Recommendation 10:** A new royalties model should not include royalty holidays or lower royalty rates for new mining operations.

Finally, we observe that some jurisdictions earmark a percentage of royalty payments for particular purposes, such as the NSW Royalties for Rejuvenation Fund detailed above, which assists communities to transition away from the coal industry. Without making any detailed comment at this stage, we suggest that the earmarking of royalty payments for particular purposes, such as to deal with legacy or ongoing environmental issues or for ongoing community benefit, could also be considered in the development of a new royalty scheme. This would, however, require further and ongoing consultation, including with Land Councils and affected communities.

## 5. Conclusion

EDO recognises this important opportunity to re-design the royalty scheme to appropriately, fairly and equitably compensate Territorians for the use of the Territory's non-renewable resources and in recognition of the ongoing environmental impacts of mining. However, such a process must proactively and transparently engage with those who are most affected by the impacts of any change to the royalty scheme, with independent, public modelling, and the process must not be driven solely by industry goals. Royalty reform should be considered in the context of holistic mining

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<sup>76</sup> Daniel Fitzgerald, 'NT government paid \$400,000 for stabilisation work on Roper Valley iron ore mine', *ABC News* (online, 25 January 2023) <<https://www.abc.net.au/news/2023-01-25/nt-government-paid-mining-erosion-work-roper-valley-iron-ore/101867794>>.

<sup>77</sup> Nickolas Zakharia, 'NT Bullion ships first iron ore from Frances Creek', *Australian Mining* (online, 24 June 2021) <<https://www.australianmining.com.au/nt-bullion-ships-first-iron-ore-from-frances-creek/>>.

<sup>78</sup> 'Developing Projects', *Resourcing the Territory* (Web Page) <<https://resourcingtheterritory.nt.gov.au/minerals/mines-and-projects/developing-projects>>.

<sup>79</sup> See, for example, Felicity James, 'NT government failures allowed environmentally damaging mining to continue 'unchecked'', *ABC News* (online, 4 May 2019) <<https://www.abc.net.au/news/2023-01-25/nt-government-paid-mining-erosion-work-roper-valley-iron-ore/101867794>>; Jano Gibson, 'Mining company Nathan River Resources fined \$340,000 for releasing contaminated wastewater into river in NT', *ABC News* (online, 19 October 2022) <<https://www.abc.net.au/news/2022-10-19/nathan-river-resources-fined-over-contaminated-mine-wastewater/101550016>>; Fitzgerald (n 76).

reform and should not operate in a way which incentivises unbridled industry expansion at the expense of the Territory's rich natural environment and cultural heritage.

*Thank you for the opportunity to make this submission. We look forward to continuing to engage with the Department on this important reform process and would be happy to answer any further questions regarding this submission.*