

# MINERAL ROYALTY ACT

## Royalty Guideline

### RG-MRA-001: MRA Guidelines and Advance Opinions

Version	Issued	Dates of Effect	
1	29 August 2011	From: 29 August 2011	To: Current

#### Purpose

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1. This Guideline provides information about publications under the *Mineral Royalty Act 1982* (NT) (the MRA). The Secretary makes his or her views known in a range of publications including Guidelines and Advance Opinions. More detailed information about each of these publications, including legal status, binding effect and processes for issue and withdrawal, is outlined in this Guideline.
2. This Guideline is issued by the Secretary under section 4E of the MRA.

#### Guidelines

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##### ***What constitutes a Guideline***

3. Section 4E of the MRA permits the Secretary to issue a Guideline setting out the Secretary's opinion as to the way the provisions of the MRA apply to an act, matter or thing. This includes how the MRA will apply to:
  - (1) any royalty payer in relation to a class of arrangements;
  - (2) a class of royalty payers in relation to an arrangement; or
  - (3) a class of royalty payers in relation to a class of arrangements.
4. While a Guideline may describe the way in which a discretionary power of the Secretary is exercised, it cannot operate to improperly fetter the Secretary's duty to consider and deal with individual cases on their merits. That is, the Secretary makes a decision on the basis of the facts of the particular case having regard to policies such as the relevant Guidelines.
5. A Guideline is only a section 4E Guideline if it is expressly stated to be one. For the avoidance of doubt, all Guidelines contain the following clause 'this Guideline is issued by the Secretary under section 4E of the MRA'. Where a publication does not contain such a clause, it is not a section 4E Guideline.

##### ***The types of Guidelines the Secretary publishes***

6. Guidelines are issued to provide:
  - (1) information about the Secretary's interpretation of various provisions of the MRA; and/or
  - (2) details of administrative policies, practices or procedures adopted by the Secretary in administering the MRA.
7. Guidelines are updated to reflect current or revised interpretations of the provisions of the MRA or updated practices and procedures. The dates of effect and currency of each Guideline are clearly indicated at the beginning of each Guideline, and both current and historical

versions of the Guidelines are maintained and made available on the Territory Revenue Office (TRO) website.

8. Two types of Guidelines may be issued:
  - (1) Guidelines which lay down general rules of conduct with **general application** to any individual or company which falls within the scope of the MRA; or
  - (2) Guidelines of **specific application** which deal with an individual matter or a specific case.
9. Specific Guidelines are only issued in exceptional circumstances at the discretion of the Secretary. As Specific Guidelines deal with an individual matter or a specific case they are private and confidential to the relevant individual or company.

#### ***Date of effect of Guideline***

10. Unless indicated otherwise, a Guideline applies to past, present and future arrangements from the date of effect, which is generally the date of issue. The Guideline has effect until the Guideline is withdrawn in whole or in part (refer to paragraphs 16 to 19 below).
11. When a Guideline is stated to apply to only present and future arrangements from the date of effect, this does not mean that the practice or interpretation set out in the Guideline did not exist prior to the issue of the Guideline. Accordingly, to the extent that current practice is reflected in the Guideline, that practice continues. To the extent that the Guideline alters a current practice, that new or amended practice takes effect from the date of effect of the Guideline.

#### ***Status and binding effect of Guidelines***

12. Where an actual or prospective royalty payer has relied on a current Guideline to its detriment, the principles enunciated in that Guideline are binding on the Secretary and royalty payer. This effectively means that the Guideline overrules or trumps the legal effect of the provisions of the MRA such that, where a royalty payer relies on a Guideline, the law compels the Secretary to make a decision or an assessment in accordance with that Guideline.
13. Where there is no Guideline relevant to a particular act, matter or thing, the Secretary makes his or her decision on the basis of the facts of the particular case having regard to the MRA and any relevant internal policies. In this situation, no statement or conduct of the Secretary or his or her staff operates as an estoppel against the operation of the MRA.

#### ***Conflicting Guidelines***

14. If a new Guideline is issued and an earlier Guideline dealing with the same act, matter or thing exists, the earlier Guideline continues to apply to arrangements commenced before the issue of the new Guideline. However, the new Guideline applies to arrangements commenced after the issue of the new Guideline.
15. If there is a conflict between a Guideline having specific application and a later guideline having general application dealing with the same act, matter or thing, the Guideline having specific application continues to apply to past, present and future arrangements unless the later general application Guideline states otherwise.

#### ***Withdrawal of Guidelines***

16. The Secretary may withdraw either the whole or part of a Guideline by:
  - (1) publishing notice of the withdrawal on the TRO website; or
  - (2) subject to paragraphs 14 and 15 above, publishing a new Guideline which is inconsistent with an existing Guideline.
17. Where the Secretary is considering withdrawing a Guideline, in conformity with the principles of natural justice and procedural fairness, the Secretary will generally adopt either a formal or

an informal consultative procedure. This could be by way of providing advance notice to, where appropriate, affected persons or groups representative of royalty payers' interests.

18. Where a new Guideline is only partly inconsistent with an earlier Guideline, the earlier Guideline is only withdrawn to the extent of the inconsistency.
19. To the extent that a Guideline is withdrawn, it does not apply to arrangements entered into after the withdrawal. However, a withdrawn Guideline continues to apply to arrangements entered into before the withdrawal.

### ***Preservation of pre-existing Guidelines of specific application***

20. Any Specific Guideline issued prior to the commencement of this Guideline continues in force as if it had been issued subsequent to the issue of this Guideline.

## **Advance Opinions**

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### ***What constitutes an Advance Opinion***

21. Under section 4F of the MRA, a person may apply in writing to the Secretary for an Advance Opinion on liability for the payment of royalty with respect to a proposal to set up a production unit, change a process, or adopt or change an accounting basis, system or contractual arrangement.
22. An Advance Opinion sets out the Secretary's interpretation of the operation of the provisions of the MRA to the particular proposal and is given in advance of the proposal being implemented. This provides the royalty payer with confidence to enter into the transaction knowing the consequent royalty implications.
23. An Advance Opinion is only an Advance Opinion if it is expressly stated to be one. All Advance Opinions contain the following statement: 'this opinion is issued by the Secretary under section 4F of the MRA'.

### ***Date of effect of Advance Opinion***

24. An Advance Opinion applies to the proposal which forms the basis of the Advance Opinion effective from the date of implementation of the proposal. For an Advance Opinion to have effect, the proposal must be implemented wholly or substantially in conformity with the Opinion.

### ***Status and binding effect of Advance Opinions***

25. Where a section 4F Advance Opinion is issued with respect to a proposal and a royalty payer implements the proposal wholly or substantially in accordance with the terms and conditions of the Advance Opinion, the Secretary will determine liability for the payment of royalty in a manner consistent with the Advance Opinion.
26. This effectively means that the Advance Opinion overrules or trumps the legal effect of the MRA such that the law compels the Secretary to act in accordance with that Advance Opinion where the tax payer has implemented the proposal wholly or substantially.

### ***Conflicts between Advance Opinions and Guidelines***

27. If an Advance Opinion is inconsistent with a section 4E Guideline with respect to the proposal, the Advance Opinion applies to the arrangement, provided it is implemented in accordance with the terms and conditions of the Advance Opinion.

## **Numbering system for publications**

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28. Publications are numbered using the following protocol:

(1) a code indicating whether the document is a Guideline, Advance Opinion or Form:

RG – Royalty Guideline

AO – Advance Opinion

RF – Royalty Form

(2) for Guidelines, Advance Opinions and Forms, a code indicating the subject matter such as:

MRA – Mineral Royalty

(3) the sequential numbering of the Guidelines and Forms.

Where Guidelines and Forms are amended, a new version will be issued but retaining the same number. The version history for each Guideline, including the date of effect, is set out at the beginning of the Guideline.

29. For example, this Guideline, being concerned with general administrative matters and the first of the series of Mineral Royalty Guidelines to be issued, is numbered *RG-MRA-001*.

30. Guidelines having specific application which deal with an individual matter or specific case are not numbered.

### **Publication and access to Guidelines and Forms**

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31. Guidelines having general application and Forms are all publicly available from the TRO website (see address below). Hard copies are not distributed.

32. To receive an email advice whenever a new or amended Guideline becomes available, you can register through TRO's Publications Management System. The Publications Management System allows you to specify which categories of information you wish to register for.

33. To register click on the 'Publications Management System' link located under 'Online Services' on the TRO website home page.



Anne Tan  
Secretary

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