

Western Australia

## **Mining Rehabilitation Fund Act 2012**

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As at 05 Nov 2012

No. 33 of 2012

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# Mining Rehabilitation Fund Act 2012

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Western Australia

## **Mining Rehabilitation Fund Act 2012**

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**No. 33 of 2012**

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**An Act to provide for —**

- **the establishment of the Mining Rehabilitation Fund; and**
- **the declaration of abandoned mine sites; and**
- **a levy payable in respect of mining authorisations, and for related purposes.**

*[Assented to 5 November 2012]*

The Parliament of Western Australia enacts as follows:

## **Part 1 — Preliminary**

### **1. Short title**

This is the *Mining Rehabilitation Fund Act 2012*.

### **2. Commencement**

This Act comes into operation as follows —

- (a) sections 1 and 2 — on the day on which this Act receives the Royal Assent;
- (b) the rest of the Act — on a day fixed by proclamation, and different days may be fixed for different provisions.

### **3. Terms used**

In this Act, unless the contrary intention appears —

***abandoned mine site*** means land declared to be an abandoned mine site under section 9(1);

***adjustment notice*** has the meaning given in section 22(2)(c);

***affected land***, in relation to an abandoned mine site, means land outside the site that has been affected by mining operations carried out in, on or under the site;

***assessment*** means an assessment under section 14;

***assessment notice*** has the meaning given in section 17(1);

***CEO*** means the chief executive officer of the department;

***department*** means the department of the Public Service principally assisting in the administration of this Act;

***due date***, in relation to a levy amount, means the day specified in a levy notice as the day on which the levy amount is payable;

***Fund*** means the account called the Mining Rehabilitation Fund established under section 5(1);

***investment income*** means money derived from the investment of money standing to the credit of the Fund;

***land*** has the meaning given in the *Mining Act 1978* section 8(1);

**levy** means the mining rehabilitation levy referred to in section 11(1);

**levy amount** means the amount of levy that is payable;

**levy notice** means —

- (a) an assessment notice; or
- (b) a reassessment notice; or
- (c) an adjustment notice;

**mining authorisation** has the meaning given in section 4(2);

**mining operations** has the meaning given in the *Mining Act 1978* section 8(1);

**objection** means an objection under section 20(1);

**original assessment** has the meaning given in section 18(1)(a);

**penalty amount** means an amount payable under section 26(1);

**prescribed** means prescribed by the regulations;

**reassessment** means a reassessment under section 18(1);

**reassessment notice** has the meaning given in section 19(1);

**record** means any document or record of information, irrespective of how the information is recorded or stored or able to be recovered and includes —

- (a) any thing from which images, sounds or writings can be reproduced, with or without the aid of anything else; and
- (b) any thing on which information is recorded or stored, whether electronically, magnetically, mechanically or by some other means.

#### 4. Mining authorisation

(1) In this section —

**Government agreement** has the meaning given in the *Government Agreements Act 1979* section 2;

**mining tenement**, except in subsection (2)(d), has the meaning given in the *Mining Act 1978* section 8(1).

- (2) For the purposes of this Act, each of these is a mining authorisation —
- (a) a mining tenement unless it is granted, or held, pursuant to a Government agreement;
  - (b) a mining tenement granted, or held, pursuant to a Government agreement, if the mining tenement is prescribed or of a class prescribed;
  - (c) a mineral lease granted under a Government agreement, if the mineral lease is prescribed or of a class prescribed;
  - (d) a mining tenement referred to in the *Mining Act 1978* section 5(2)(a), if the mining tenement is prescribed or of a class prescribed;
  - (e) a right of occupancy referred to in the *Mining Act 1978* section 5(2)(b), if the right of occupancy is prescribed or of a class prescribed.



## **Part 2 — Mining Rehabilitation Fund**

### **5. Establishment of Mining Rehabilitation Fund**

- (1) An account called the Mining Rehabilitation Fund is established for the department.
- (2) The Fund is an agency special purpose account under the *Financial Management Act 2006* section 16.

### **6. Purpose of Fund**

- (1) The main purpose of the Fund is to provide a source of funding for the rehabilitation of abandoned mine sites and other land affected by mining operations carried out in, on or under those sites.
- (2) Subsection (1) does not limit or otherwise affect the operation of section 8.

### **7. Payments to Fund**

There is to be credited to the Fund —

- (a) any levy amount paid or recovered; and
- (b) any penalty amount paid or recovered; and
- (c) investment income.

### **8. Payments from Fund**

- (1) Money standing to the credit of the Fund (whether or not it consists of or includes investment income) may be applied for these purposes —
  - (a) to fund the rehabilitation of —
    - (i) abandoned mine sites that are, or have been, the subject of mining authorisations in respect of which the levy is, or has been, payable; and
    - (ii) any affected land relating to those sites;

- (b) in payment of the amount of any refund required under Part 4.
- (2) Money standing to the credit of the Fund that consists of investment income may also be applied for these purposes —
  - (a) to fund the rehabilitation of —
    - (i) abandoned mine sites other than those described in subsection (1)(a)(i); and
    - (ii) any affected land relating to those sites;
  - (b) to fund programmes, or the provision of information, relating to the rehabilitation of abandoned mine sites, affected land and other land affected by mining operations;
  - (c) in payment of the costs of administering the Fund;
  - (d) in payment of the other costs of administering and enforcing this Act.

### **Part 3 — Abandoned mine sites**

#### **9. Declaration of abandoned mine sites**

- (1) The CEO may, by notice published in the *Gazette*, declare land to be an abandoned mine site for the purposes of this Act if the CEO is satisfied that —
  - (a) mining operations have been carried out in, on or under the land; and
  - (b) those mining operations have ceased.
- (2) Under subsection (1) —
  - (a) more than one area of land may be declared to be a single abandoned mine site; and
  - (b) more than one abandoned mine site may be declared in the same notice.
- (3) For the purposes of subsection (2)(a), the areas of land need not be contiguous.
- (4) The CEO may, by notice published in the *Gazette*, amend or revoke a notice under subsection (1).
- (5) A notice under this section comes into operation on the day on which it is published in the *Gazette* or on any later day specified in it.

#### **10. Power to enter abandoned mine sites and affected land for rehabilitation work**

- (1) In this section —  
***rehabilitation work*** means work to rehabilitate an abandoned mine site or affected land that is funded from money standing to the credit of the Fund.
- (2) A person authorised in writing by the CEO may enter an abandoned mine site or affected land for the purpose of carrying out rehabilitation work.

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- (3) Entry under subsection (2) may be made with any assistants or equipment that the person authorised considers necessary for the purpose of carrying out rehabilitation work.
- (4) A person must not exercise the power in subsection (2) —
  - (a) in respect of private land (as defined in the *Mining Act 1978* section 8(1)) unless —
    - (i) the person has taken reasonable steps to give the owner or occupier of the land notice of the intended entry; or
    - (ii) the owner or occupier of the land consents to the entry;
  - or
  - (b) in respect of land that is the subject of a pastoral lease (as defined in the *Land Administration Act 1997* section 3(1)) unless —
    - (i) the person has taken reasonable steps to give the holder of the lease notice of the intended entry; or
    - (ii) the holder of the lease consents to the entry.
- (5) A notice under subsection (4) must specify the purpose for which the entry is required and successive entries for that purpose are to be regarded as entries to which the notice relates.

## **Part 4 — Mining rehabilitation levy**

### **Division 1 — Mining rehabilitation levy**

**11. Mining rehabilitation levy**

- (1) A levy called the mining rehabilitation levy is payable in respect of each mining authorisation that is in force.
- (2) The levy is payable each year in accordance with the regulations.

**12. Liability for payment of levy**

The person liable to pay the levy in respect of a mining authorisation in a particular year is the holder of the mining authorisation on the day prescribed for the purposes of section 15(2) in that year.

**13. Amount of levy**

The amount of levy payable is the amount that is specified in, or worked out in accordance with, the regulations.

### **Division 2 — Assessment and reassessment of levy**

**14. Assessment of levy**

The CEO must assess the levy amount for each person liable to pay the levy.

**15. Authorisation holder required to provide assessment information**

- (1) In this section —  
*assessment information* means information of a prescribed kind required for the purposes of making an assessment.

- (2) The holder of a mining authorisation must, on or before the prescribed day each year, give to the CEO assessment information in the form and manner approved by the CEO.  
Penalty: a fine of \$20 000.

**16. How assessment is made**

- (1) The CEO may make an assessment on the basis of assessment information given to the CEO under section 15 or other information obtained or provided under this Act or the *Mining Act 1978*.
- (2) If —
- (a) assessment information has not been given to the CEO under section 15; or
  - (b) the CEO is not satisfied with the adequacy or reliability of information available to make an assessment,
- the CEO may make an assessment on the basis of the CEO's estimate of the levy amount.
- (3) This section does not limit the matters to which the CEO may have regard when making an assessment.

**17. Assessment notice**

- (1) After making an assessment the CEO must give a notice (an *assessment notice*) to the person liable to pay the levy.
- (2) The assessment notice must specify these matters —
- (a) the date of the notice;
  - (b) the levy amount;
  - (c) the day on which the levy amount is payable (being a day not less than 30 days after the date of the notice);
  - (d) any other matter required by the regulations.

**18. Reassessment of levy**

- (1) The CEO may reassess a levy amount if the CEO considers that —
  - (a) there has been an error in the assessment of the levy amount (the *original assessment*); or
  - (b) there has been an error in an earlier reassessment of the levy amount; or
  - (c) it is otherwise appropriate to do so.
- (2) A reassessment may increase or decrease the levy amount or determine that the levy amount is to remain unchanged.
- (3) A reassessment may be made whether or not the levy amount or any part of it has been paid in relation to the original assessment or any earlier reassessment.
- (4) A reassessment cannot be made more than 2 years after the original assessment was made.

**19. Reassessment notice**

- (1) If, on a reassessment, the levy amount is increased or decreased the CEO must give a notice (a *reassessment notice*) to the person liable to pay the levy.
- (2) The reassessment notice must specify these matters —
  - (a) the date of the notice;
  - (b) the levy amount as reassessed;
  - (c) if the levy amount is increased —
    - (i) any amount of levy payable under the original assessment, or any earlier reassessment, that is unpaid; and
    - (ii) any additional amount of levy payable as a consequence of the reassessment and the day on which that amount is payable (being a day not less than 30 days after the date of the notice); and

- (iii) any penalty amount that is owing;
  - (d) if the levy amount is decreased —
    - (i) any amount of levy payable under the original assessment, or any earlier reassessment, that is unpaid (after taking into account the reassessment); and
    - (ii) the amount of any refund; and
    - (iii) any penalty amount that is owing (after taking into account the reassessment);
  - (e) any other matter required by the regulations.
- (3) If an amount of levy in excess of the amount referred to in subsection (2)(b) has been paid by the person liable to pay the levy, the CEO must cause —
- (a) the amount of the excess; and
  - (b) any penalty amount paid in relation to the amount of the excess,
- to be refunded to the person.

### **Division 3 — Objections**

#### **20. Objection**

- (1) A person may object to an assessment notice or a reassessment notice given to the person —
- (a) on the ground that the person is not liable to pay the levy amount to which the notice relates; or
  - (b) on the ground that there is an error in the assessment or reassessment of the levy amount; or
  - (c) on a prescribed ground (if any).
- (2) An objection must be made to the CEO in writing within —
- (a) 28 days after the date of the assessment notice or reassessment notice; or



- (b) if that period is extended under subsection (3) — the extended period.
- (3) The CEO may extend the period referred to in subsection (2)(a), before or after it has expired, if the person making the objection shows that there are reasonable grounds for doing so.
- (4) An objection must —
  - (a) identify the person making it; and
  - (b) give details of the ground on which it is made; and
  - (c) have attached to it the assessment notice or reassessment notice to which it relates; and
  - (d) comply with any other prescribed requirements.

**21. Determination of objection**

- (1) The CEO must consider and determine an objection within 28 days after the day on which it is made.
- (2) In determining an objection, the CEO may decide that —
  - (a) the levy amount is to be increased or decreased; or
  - (b) the levy amount is to remain unchanged; or
  - (c) the person to whom the assessment notice or reassessment notice was given is not liable to pay the levy to which the notice relates.
- (3) After making a decision on an objection, the CEO must give to the person who made the objection a notice setting out the CEO's decision and the reasons for the decision.

**22. Notice of adjusted levy following objection**

- (1) This section applies if the CEO's decision on an objection is that the levy amount is to be increased or decreased.
- (2) The CEO must —
  - (a) determine —
    - (i) the levy amount; and

- (ii) any penalty amount;
  - and
  - (b) determine the amount that is owing or is to be refunded having regard to —
    - (i) any amount of levy already paid in relation to an assessment or reassessment; and
    - (ii) any penalty amount already paid;
  - and
  - (c) give a notice (an *adjustment notice*) to the person liable to pay the levy.
- (3) The adjustment notice must specify these matters —
  - (a) the date of the notice;
  - (b) the levy amount;
  - (c) if the levy amount is increased —
    - (i) any amount of levy payable under an assessment or reassessment that is unpaid; and
    - (ii) any additional amount of levy payable as a consequence of the determination under subsection (2)(b) (the *relevant determination*) and the day on which that amount is payable (being a day not less than 30 days after the date of the notice); and
    - (iii) any penalty amount that is owing;
  - (d) if the levy amount is decreased —
    - (i) any amount of levy payable under an assessment or reassessment that is unpaid (after taking into account the relevant determination); and
    - (ii) the amount of any refund; and
    - (iii) any penalty amount that is owing (after taking into account the relevant determination).

- (4) If an amount of levy in excess of the levy amount specified under subsection (3)(b) has been paid by a person, the CEO must cause —
- (a) the amount of the excess; and
  - (b) any penalty amount paid in relation to the amount of the excess,
- to be refunded to the person.

**23. Notice of withdrawal of levy following objection**

- (1) This section applies if the CEO's decision on an objection is that the person to whom the assessment notice or reassessment notice was given is not liable to pay the levy to which the notice relates.
- (2) The CEO must —
- (a) give to the person referred to in subsection (1) a notice stating that the assessment notice or reassessment notice is withdrawn; and
  - (b) cause to be refunded to the person —
    - (i) any amount of levy paid by the person in relation to the assessment or reassessment; and
    - (ii) any penalty amount paid by the person in relation to the assessment or reassessment.

**24. Review of decision on objection**

- (1) A person who is dissatisfied with a decision of the CEO on an objection may apply to the State Administrative Tribunal for a review of the decision.
- (2) An application under subsection (1) must be made within —
- (a) 42 days after the day on which notice of the decision is given under section 21(3); or
  - (b) if that period is extended under subsection (3) — the extended period.

- (3) The State Administrative Tribunal may extend the period referred to in subsection (2)(a), before or after it has expired, if the applicant shows that there are reasonable grounds for doing so.

**Division 4 — Payment and recovery of levy**

**25. When levy amount due and payable**

A levy amount becomes due and payable on the due date.

**26. Penalty for non-payment of levy**

- (1) If a levy amount remains unpaid after the due date, the person liable to pay the levy is liable to pay, in addition to the levy amount, an amount calculated at the prescribed rate on the levy amount from time to time remaining unpaid.
- (2) The CEO may waive, in whole or in part, a penalty amount if the CEO considers that there are good reasons for doing so.

**27. Recovery of levy amount and penalty amount**

These amounts may be recovered by the CEO in a court of competent jurisdiction as debts due to the State —

- (a) a levy amount that remains unpaid after the due date;  
(b) a penalty amount that remains unpaid.

**28. Liability to pay not affected by objection**

A person's liability to pay a levy amount or penalty amount is not affected by the making of an objection.

### **Division 5 — Other matters**

#### **29. CEO may require information and records**

- (1) The CEO, for the purposes of the administration and enforcement of this Part, may do any of these things —
  - (a) direct a person —
    - (i) to give such information as the CEO requires; or
    - (ii) to answer a question put to the person;
  - (b) direct a person to produce a record in the person's custody or under the person's control;
  - (c) examine and make a copy of a record produced in response to a direction under paragraph (b).
- (2) A direction under subsection (1)(a) —
  - (a) may be given orally or in writing to the person required to give the information or answer; and
  - (b) must specify the time at or within which the information or answer is to be given; and
  - (c) may require that the information or answer —
    - (i) be given orally or in writing; or
    - (ii) be given at or delivered to a place specified in the direction; or
    - (iii) in the case of written information or a written answer, be delivered by means specified in the direction; or
    - (iv) be verified by statutory declaration.
- (3) A direction under subsection (1)(b) —
  - (a) must be given in writing to the person required to produce the record; and
  - (b) must specify the time at or within which the record is to be produced; and

- (c) may require that the record be produced —
  - (i) at a place specified in the direction; and
  - (ii) by means specified in the direction.
- (4) A person to whom a direction is given under subsection (1) must not, without reasonable excuse, fail to comply with the direction.

Penalty: a fine of \$20 000.

**30. Incriminating information**

- (1) An individual is not excused from giving information, answering a question or producing a record when directed to do so under section 29(1) on the ground that the information, answer to the question, or production of the record, might tend to incriminate the individual or make the individual liable to a penalty.
- (2) However —
  - (a) the information or answer given or record produced; or
  - (b) giving the information, answering the question or producing the record; or
  - (c) any information, document or thing obtained as a direct or indirect consequence of giving the information, answering the question or producing the record,is not admissible in evidence against the individual —
  - (d) in any civil proceedings; or
  - (e) in any criminal proceedings other than proceedings for perjury or an offence against section 31.

**31. False or misleading information**

- (1) A person must not, in compliance or purported compliance with section 15(2), a direction under section 29(1), or any other requirement under this Act, do any of the things to which this subsection applies.

Penalty: a fine of \$20 000.

- (2) The things to which subsection (1) applies are —
- (a) making a statement that the person knows is false or misleading in a material particular; or
  - (b) making a statement that is false or misleading in a material particular, with reckless disregard as to whether or not the statement is false or misleading in a material particular; or
  - (c) providing, or causing to be provided, information that the person knows is false or misleading in a material particular; or
  - (d) providing, or causing to be provided, information that is false or misleading in a material particular, with reckless disregard as to whether or not the information is false or misleading in a material particular.

**32. Evidentiary value of levy notice**

A levy notice (or a copy of a levy notice) is admissible as evidence in proceedings under this Act and, in the absence of proof to the contrary, is proof of these matters —

- (a) the making of the assessment, reassessment or decision on an objection, as the case requires;
- (b) the levy amount;
- (c) the identity of the person liable to pay the levy;
- (d) when the levy amount is due and payable;
- (e) any other fact stated in the notice.

## **Part 5 — Miscellaneous**

### **33. Mining Rehabilitation Advisory Panel**

- (1) A body called the Mining Rehabilitation Advisory Panel is established.
- (2) The members of the Panel are to be appointed by the CEO.
- (3) The function of the Panel is to provide advice to the CEO in relation to —
  - (a) any matter relating to the administration of this Act that is prescribed; and
  - (b) any other matter relating to the administration of this Act on which the CEO requests the Panel to provide advice.
- (4) Without limiting section 37(1), the regulations may make provision for and in relation to —
  - (a) the constitution and membership of the Panel; and
  - (b) the appointment, term of office, resignation and removal of members of the Panel; and
  - (c) the procedure of the Panel.

### **34. Delegation**

- (1) The CEO may delegate to a public service officer in the department any power or duty of the CEO under another provision of this Act other than the powers conferred by section 9(1) and (4).
- (2) The delegation must be in writing signed by the CEO.
- (3) A person to whom a power or duty is delegated under this section cannot delegate that power or duty.
- (4) A person exercising or performing a power or duty that has been delegated to the person under this section is to be taken to do so



in accordance with the terms of the delegation unless the contrary is shown.

- (5) Nothing in this section limits the ability of the CEO to perform a function through an officer or agent.

**35. Confidentiality**

A person who is or has been engaged in the performance of functions under this Act must not, directly or indirectly, record, disclose or make use of any information obtained in the performance of those functions except —

- (a) for the purpose of, or in connection with, the administration of this Act or another written law; or
- (b) as required or allowed by this Act or another written law; or
- (c) with the written consent of the Minister or the person to whom the information relates; or
- (d) for the purpose of any proceedings before a court or the State Administrative Tribunal arising out of the operation of this Act; or
- (e) in prescribed circumstances.

Penalty: a fine of \$20 000.

**36. Protection from liability**

- (1) An action in tort does not lie against a person for anything that the person has done, in good faith, in the performance or purported performance of a function under this Act.
- (2) The protection given by subsection (1) applies even though the thing done as described in that subsection may have been capable of being done whether or not this Act had been enacted.
- (3) Despite subsection (1), the State is not relieved of any liability that it might have for another person having done anything as described in that subsection.

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- (4) In this section a reference to the doing of anything includes a reference to the omission to do anything.

**37. Regulations**

- (1) The Governor may make regulations prescribing all matters that are —
- (a) required or permitted to be prescribed by this Act; or
  - (b) necessary or convenient to be prescribed for giving effect to this Act.
- (2) Without limiting subsection (1), the regulations may —
- (a) provide for levy amounts to be worked out on such basis, and in accordance with such factors, as are prescribed; and
  - (b) deal with matters relating to the assessment or reassessment of levy amounts; and
  - (c) provide that contravention of a regulation is an offence and, for an offence against the regulations, provide for a penalty not exceeding a fine of \$10 000.

**38. Review of Act**

- (1) The Minister must carry out a review of the operation and effectiveness of this Act as soon as is practicable after the end of the period of 10 years beginning on the day on which this Act receives the Royal Assent.
- (2) The Minister must prepare a report based on the review and must cause the report to be laid before each House of Parliament as soon as is practicable after it is prepared and, in any event, not later than 18 months after the end of the period referred to in subsection (1).

## Part 6 — Consequential amendment

### 39. *Constitution Acts Amendment Act 1899* amended

- (1) This section amends the *Constitution Acts Amendment Act 1899*.
- (2) In Schedule V Part 3 after the item relating to the Mining and Petroleum Advisory Committee insert:

The Mining Rehabilitation Advisory Panel established by the *Mining Rehabilitation Fund Act 2012*.

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Defined Terms

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**Defined Terms**

*[This is a list of terms defined and the provisions where they are defined.*

*The list is not part of the law.]*

<b>Defined Term</b>	<b>Provision(s)</b>
abandoned mine site.....	3
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affected land.....	3
assessment.....	3
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assessment notice .....	3, 17(1)
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Fund .....	3
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