



Western Australia

Mining Rehabilitation Fund Act 2012

Mining Rehabilitation Fund Regulations 2013

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Mining Rehabilitation Fund Regulations 2013

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Mining Rehabilitation Fund Regulations 2013

Part 1 — Preliminary

1. Citation

These regulations are the *Mining Rehabilitation Fund Regulations 2013*.

2. Commencement

These regulations come into operation as follows —

- (a) regulations 1 and 2 — on the day on which these regulations are published in the *Gazette*;
- (b) the rest of the regulations — on the day on which the *Mining Rehabilitation Fund Act 2012* section 37 comes into operation.

3. Terms used

In these regulations —

area, of a mining authorisation, means the area of land to which the mining authorisation relates;

assessment day, in relation to a mining authorisation and a year, means the day in that year that is nominated by the holder of the mining authorisation under regulation 5(1) in assessment information given to the CEO for that year;

exploration operations means operations under a mining authorisation that are —

- (a) directly related to exploration or prospecting for minerals; and
- (b) the subject of a programme of work;

land under rehabilitation, in relation to a mining authorisation, means land —

- (a) on which earthworks have been completed in accordance with the closure obligations that apply to the mining authorisation (whether under a condition of the mining authorisation, a programme of work, a mining proposal or otherwise); and
- (b) that is not rehabilitated land;

member means a member of the Panel;

mining proposal, in relation to a mining authorisation that is a mining lease granted under the *Mining Act 1978*, means —

- (a) a mining proposal that accompanied the application for the mining lease under section 74(1)(ca) of that Act; or
- (b) a mining proposal for which there is approval as described in section 82A(2)(b) of that Act;

Panel means the Mining Rehabilitation Advisory Panel established by section 33(1) of the Act;

programme of work, in relation to a mining authorisation, means a programme of work that is approved, or with which the holder of the authorisation is required to comply, under the *Mining Act 1978* or a programme of work that is otherwise lodged with the department in connection with the mining authorisation;

rehabilitated land, in relation to a mining authorisation, means land on which rehabilitation has been completed in accordance with the closure obligations that apply to the mining authorisation (whether under a condition of the mining authorisation, a programme of work, a mining proposal or otherwise);

rehabilitation liability category means a category specified in column 2 of the Table to Schedule 1 clause 1;

rehabilitation work has the meaning given in section 10(1) of the Act;

year means a period of 12 months ending on 30 June.

Part 2 — Mining rehabilitation levy

4. Amount of levy

- (1) For the purposes of section 13 of the Act, the amount of levy payable in respect of a mining authorisation in a year is the amount worked out in accordance with the following formula —

$$\text{RLE} \times \text{FCR}$$

where —

FCR is the fund contribution rate of 1%;

RLE is the rehabilitation liability estimate for the mining authorisation for the year worked out under subregulation (2).

- (2) For the purposes of subregulation (1), the rehabilitation liability estimate for a mining authorisation for a year is the amount obtained by —

- (a) for each rehabilitation liability category —

- (i) working out the total area of land (expressed in hectares and rounded to at least 2 decimal places) in the area of the mining authorisation that was in that category on the assessment day in that year for the mining authorisation; and
- (ii) multiplying the figure worked out under subparagraph (i) by the unit rate that applies to that category;

and

- (b) adding together all of the amounts worked out under paragraph (a).

- (3) Despite subregulation (1), if the rehabilitation liability estimate worked out under subregulation (2) is \$50 000 or less, the amount of levy payable in respect of the mining authorisation in the year is nil.

- (4) The rehabilitation liability categories of land in the area of a mining authorisation, and the unit rates applying to those rehabilitation liability categories, are determined in accordance with Schedule 1.

5. Assessment information

- (1) For the purposes of section 15(1) of the Act, the assessment information for a mining authorisation for a year is, for each rehabilitation liability category, the total area of land (expressed in hectares and rounded to at least 2 decimal places) in the area of the mining authorisation that was in that category on a day in that year that is nominated by the holder of the mining authorisation.
- (2) For the purposes of section 15(2) of the Act, assessment information must be given to the CEO on or before 30 June each year.

6. Matters to be specified in assessment notice

For the purposes of section 17(2)(d) of the Act, an assessment notice must specify details of how the levy amount was worked out under regulation 4.

7. Matters to be specified in reassessment notice

For the purposes of section 19(2)(e) of the Act, a reassessment notice must specify these matters —

- (a) details of how the levy amount as reassessed was worked out under regulation 4; and
- (b) details of how any penalty amount, or the amount of any refund, was worked out.

8. Prescribed rate applying to penalty for non-payment of levy

For the purposes of section 26(1) of the Act, the prescribed rate is 20% per annum.

Part 3 — Mining Rehabilitation Advisory Panel

Division 1 — Functions of Panel

9. Matters in relation to which Panel may advise

For the purposes of section 33(3)(a) of the Act, the following matters relating to the administration of the Act are prescribed —

- (a) the identification of land that is suitable to be declared to be an abandoned mine site under section 9 of the Act;
- (b) the scope and prioritisation of proposed projects for rehabilitation work, including the following —
 - (i) the development and review of general criteria for the prioritisation of those projects;
 - (ii) the CEO's programme for the carrying out of those projects;
 - (iii) the scope and priority of individual projects;
- (c) the appropriate level of expenditure on proposed or existing projects for rehabilitation work;
- (d) the administration of the Fund;
- (e) matters to be included in financial reports relating to the Fund (other than any financial report required under the *Financial Management Act 2006*);
- (f) the level of the fund contribution rate for the purposes of regulation 4(1).

Division 2 — Constitution and membership of Panel

10. Membership of Panel

- (1) The Panel is to consist of 5 members appointed by the CEO in writing.

- (2) The members are to be persons who, in the opinion of the CEO, have skills, expertise or experience relating to at least one of the following —
 - (a) the management of mining operations;
 - (b) land rehabilitation practices;
 - (c) environmental matters;
 - (d) financial matters;
 - (e) legal matters;
 - (f) natural resource planning and management.
- (3) Before appointing a person as a member, the CEO must publish on a website maintained by the department a notice calling for expressions of interest in appointment as a member.
- (4) The CEO must consider expressions of interest lodged in accordance with the notice but may appoint a person as a member whether or not the person has lodged an expression of interest.
- (5) The CEO must give the Minister written notice of the appointment of a member.
- (6) The CEO must ensure that notice of the appointment of a member is published in the *Gazette*.

11. Chairperson and deputy chairperson

- (1) The CEO must designate one of the members to be the chairperson and another to be the deputy chairperson of the Panel.
- (2) If the chairperson is unable to act because of sickness, absence or another cause, or if there is no chairperson, the deputy chairperson is to act in the chairperson's place.
- (3) An act or omission of the deputy chairperson acting in the chairperson's place cannot be questioned on the ground that the occasion to act in the chairperson's place had not arisen or had ceased.

12. Term of office

- (1) Subject to regulation 13(1), a member holds office for the term, not exceeding 3 years, that is specified in the instrument of appointment for the member.
- (2) A member is eligible for reappointment.
- (3) A member whose term of office expires without a person having been appointed to fill the vacancy continues in office (unless the person's office becomes vacant under regulation 13(1)) until whichever of the following occurs first —
 - (a) a person is appointed to fill the vacancy;
 - (b) a period of 3 months elapses after the expiry of the term of office.

13. Casual vacancies

- (1) The office of a member becomes vacant if he or she —
 - (a) dies; or
 - (b) resigns the office by written notice given to the CEO; or
 - (c) is, according to the *Interpretation Act 1984* section 13D, a bankrupt or a person whose affairs are under insolvency laws; or
 - (d) is convicted of an offence under the Act or the *Mining Act 1978*; or
 - (e) is convicted of an offence under a written law, or a law of the Commonwealth, another State or a Territory, the maximum penalty for which is or includes imprisonment; or
 - (f) is removed from office under subregulation (2).
- (2) The CEO may, by written notice given to a member, remove the member from office on the grounds of —
 - (a) neglect of duty; or
 - (b) misconduct or incompetence; or

- (c) mental or physical incapacity to carry out the member's duties in a satisfactory manner; or
- (d) absence, without leave, from 3 consecutive meetings of the Panel of which the member has had notice; or
- (e) a conflict of interest that would prevent the member from performing his or her duties; or
- (f) failure to carry out the member's duties in accordance with the code of conduct determined under regulation 14.

Division 3 — Procedure of Panel

14. Code of conduct

- (1) The Panel must, by resolution at the first meeting of the Panel, determine a code of conduct dealing with the duties of members.
- (2) The code of conduct must be in writing and be made available to members.
- (3) Without limiting subregulation (1), the code of conduct must deal with the following —
 - (a) the declaration of conflicts of interest by members;
 - (b) the consequences of a conflict of interest of a member, including the circumstances in which the member is to be prevented from voting.
- (4) The Panel may, by resolution, amend the code of conduct.

15. Holding meetings

- (1) The first meeting of the Panel is to be convened by the chairperson and subsequent meetings, unless convened under subregulation (2), are to be held at times and places determined by the Panel.
- (2) A special meeting of the Panel may at any time be convened by the chairperson.

- (3) The Panel is to meet at least twice in each year.

16. Presiding at meetings

- (1) The chairperson, if present, is to preside at a meeting of the Panel.
- (2) If neither the chairperson nor the deputy chairperson acting in the chairperson's place is presiding under subregulation (1), the members present are to appoint one of their number to preside.

17. Quorum

Three members of the Panel constitute a quorum.

18. Voting

- (1) At a meeting of the Panel, each member present has a deliberative vote unless the code of conduct determined under regulation 14 prevents the member from voting.
- (2) In the case of an equality of votes, the chairperson has a casting vote in addition to a deliberative vote.
- (3) A question is resolved according to how the majority of votes are cast.

19. Procedure at meetings

The Panel may determine its own meeting procedures to the extent that they are not fixed by these regulations.

Part 4 — Infringement notices

[Heading inserted: Gazette 24 Apr 2014 p. 1148.]

20. Prescribed offence and modified penalty

- (1) The offence of failing to provide assessment information under section 15(2) of the Act is an offence for which an infringement notice may be issued under the *Criminal Procedure Act 2004* Part 2.
- (2) For the purposes of the *Criminal Procedure Act 2004* section 5(3), the modified penalty for the offence mentioned in subregulation (1) is \$4 000.

[Regulation 20 inserted: Gazette 24 Apr 2014 p. 1148.]

21. Authorised officers and approved officers

- (1) The CEO may, in writing, appoint persons or classes of persons to be authorised officers or approved officers for the purposes of the *Criminal Procedure Act 2004* Part 2.
- (2) The CEO must issue to each authorised officer a certificate identifying the officer as a person authorised to issue infringement notices.

[Regulation 21 inserted: Gazette 24 Apr 2014 p. 1148-9.]

22. Forms

For the purposes of the *Criminal Procedure Act 2004* Part 2, the forms set out in Schedule 2 are prescribed in relation to the matters specified in those forms.

[Regulation 22 inserted: Gazette 24 Apr 2014 p. 1149.]

Schedule 1 — Rehabilitation liability categories and unit rates

[r. 3 and 4(4)]

1. Rehabilitation liability categories and unit rates

- (1) Land in the area of a mining authorisation is in the rehabilitation liability category specified in column 2 of an item in the Table if —
 - (a) infrastructure of a kind described in column 1 of that item is situated on the land; or
 - (b) the land is of a kind described in column 1 of that item.
- (2) The unit rate that applies to a rehabilitation liability category specified in column 2 of an item in the Table is the amount specified in column 3 of that item.
- (3) Rehabilitated land in the area of a mining authorisation is not in any rehabilitation liability category.
- (4) For the purposes of the Table —
 - (a) the class of a tailings or residue storage facility is determined under clause 3; and
 - (b) the class of a waste dump or overburden stockpile is determined under clause 4; and
 - (c) the class of a low-grade ore stockpile is determined under clause 5.

Table

Item	<i>Column 1</i> Description of infrastructure or land	<i>Column 2</i> Rehabilitation liability category	<i>Column 3</i> Unit rate
1.	Tailings or residue storage facility (class 1) Waste dump or overburden stockpile (class 1) Heap or vat leach facility Evaporation pond	A	\$50 000

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Schedule 1 Rehabilitation liability categories and unit rates

cl. 1

Item	Column 1 Description of infrastructure or land	Column 2 Rehabilitation liability category	Column 3 Unit rate
	Dam — saline water or process liquor		
2.	Tailings or residue storage facility (class 2) Waste dump or overburden stockpile (class 2) Low-grade ore stockpile (class 1) Plant site Fuel storage facility Workshop Mining void (with a depth of at least 5 metres) — below ground water level Landfill site Diversion channel or drain Dam — fresh water	B	\$30 000
3.	Low-grade ore stockpile (class 2) Sewage pond Run-of-mine pad Building (other than workshop) or camp site Transport or service infrastructure corridor Airstrip Mining void (with a depth of at least 5 metres) — above ground water level Laydown or hardstand area	C	\$18 000

Item	Column 1 Description of infrastructure or land	Column 2 Rehabilitation liability category	Column 3 Unit rate
	Core yard Borrow pit or shallow surface excavation (with a depth of less than 5 metres) Borefield Processing equipment or stockpile associated with basic raw material extraction Land (other than land under rehabilitation or rehabilitated land) that is cleared of vegetation and is not otherwise described in this Table		
4.	Land (other than land under rehabilitation or rehabilitated land) that has been disturbed by exploration operations	D	\$2 000
5.	Land under rehabilitation (other than land that has been disturbed by exploration operations) Topsoil stockpile	E	\$2 000

2. Land used under previous mining authorisation

- (1) Despite clause 1(1), land in the area of a mining authorisation (the ***current mining authorisation***) is to be taken not to be in any rehabilitation liability category if —
- (a) at any time before the grant of the current mining authorisation, another mining authorisation (the ***previous mining authorisation***) was in force in respect of the land; and

cl. 3

- (b) under the previous mining authorisation —
 - (i) infrastructure of a kind described in column 1 of an item in the Table to clause 1 was situated on the land; or
 - (ii) the land was of a kind described in column 1 of an item in the Table to clause 1;
 and
 - (c) any infrastructure situated on the land has not been used under the current mining authorisation; and
 - (d) there has been no disturbance of the land as a result of activities carried out under the current mining authorisation.
- (2) Subclause (1) does not apply if the previous mining authorisation was in force immediately before the grant of the current mining authorisation and was held by —
- (a) the holder of the current mining authorisation; or
 - (b) any person who has a legal interest in the current mining authorisation; or
 - (c) any person who is related (as defined in the *Mining Act 1978* section 8(4)) to a person mentioned in paragraph (a) or (b).

3. Classes of tailings or residue storage facility

A tailings or residue storage facility that meets the criteria set out in column 1 of an item in the Table is of the class specified in column 2 of that item.

Table

Item	Column 1 Criteria applying to tailings or residue storage facility	Column 2 Class
1.	Either or both of the following apply to the tailings or residue storage facility — <ul style="list-style-type: none"> (a) its highest embankment is at least 5 metres high; (b) it contains any of the following — <ul style="list-style-type: none"> (i) fibrous minerals; (ii) radioactive material; 	Class 1

Item	<i>Column 1</i> Criteria applying to tailings or residue storage facility	<i>Column 2</i> Class
	(iii) material capable of generating acid and metalliferous drainage, including neutral drainage and saline drainage, and management requirements imposed under a condition of the mining authorisation or under a mining proposal apply to those minerals or that material	
2.	The tailings or residue storage facility is not of class 1	Class 2

4. Classes of waste dump or overburden stockpile

A waste dump, or overburden stockpile, that meets the criteria set out in column 1 of an item in the Table is of the class specified in column 2 of that item.

Table

Item	<i>Column 1</i> Criteria applying to waste dump or overburden stockpile	<i>Column 2</i> Class
1.	Either or both of the following apply to the waste dump or overburden stockpile — (a) its highest point is at least 15 metres high; (b) it contains any of the following — (i) fibrous minerals; (ii) radioactive material; (iii) material capable of generating acid and metalliferous drainage, including neutral drainage and saline drainage; (iv) erodible material that is capable of compromising the structure of the waste dump or overburden stockpile, and management requirements imposed under a condition of the mining authorisation or under a mining proposal apply to those minerals or that material	Class 1

cl. 5

Item	Column 1 Criteria applying to waste dump or overburden stockpile	Column 2 Class
2.	The waste dump or overburden stockpile is not of class 1	Class 2

5. Classes of low-grade ore stockpile

A low-grade ore stockpile that meets the criteria set out in column 1 of an item in the Table is of the class specified in column 2 of that item.

Table

Item	Column 1 Criteria applying to low-grade ore stockpile	Column 2 Class
1.	Either or both of the following apply to the low-grade ore stockpile — (a) its highest point is at least 15 metres high; (b) it contains any of the following — (i) fibrous minerals; (ii) radioactive material; (iii) material capable of generating acid and metalliferous drainage, including neutral drainage and saline drainage, and management requirements imposed under a condition of the mining authorisation or under a mining proposal apply to those minerals or that material	Class 1
2.	The low-grade ore stockpile is not of class 1	Class 2

Schedule 2 — Infringement notice forms

[r. 22]

[Heading inserted: Gazette 24 Apr 2014 p. 1149.]

Form 1 — Infringement notice

<i>Mining Rehabilitation Fund Act 2012</i>		Infringement notice no.
INFRINGEMENT NOTICE		
Alleged offender	Name	
	Address	
Details of alleged offence	Mining authorisation	
	Date or period	
	Place	
	Written law contravened	Section of the <i>Mining Rehabilitation Fund Act 2012</i>
	Details of offence	
Date	Date of notice	
Issuing officer	Name	
	Office	
	Signature	
Modified penalty	\$_____	

Form 1

<p>TAKE NOTICE</p>	<p>It is alleged that you have committed the above offence.</p> <p>If you do not want to be prosecuted in court for the offence, pay the modified penalty to the Approved Officer within 28 days after the date of this notice.</p> <p>If you do not pay the modified penalty within 28 days, you may be prosecuted or enforcement action may be taken under the <i>Fines, Penalties and Infringement Notices Enforcement Act 1994</i>. Under that Act, some or all of the following action may be taken — your driver’s licence may be suspended, your vehicle licence may be suspended or cancelled, you may be disqualified from holding or obtaining a driver’s licence or vehicle licence, your vehicle may be immobilised or have its number plates removed, your details may be published on a website, your earnings or bank accounts may be garnished, and your property may be seized and sold.</p> <p>If you need more time to pay the modified penalty, you should contact the Approved Officer at the address below.</p> <p>Paying the modified penalty will not be regarded as an admission for the purposes of any civil or criminal court case.</p> <p>If you want this matter to be dealt with by prosecution in court, sign and date here:</p> <p>_____ / ____ /20</p> <p>and post this notice to the Approved Officer at the address below within 28 days after the date of this notice.</p>	
<p>How to pay</p>	<p>By post</p>	<p>Tick the relevant box below and post this notice to:</p> <p>Approved Officer — <i>Mining Rehabilitation Fund Act 2012</i></p> <p><i>[Insert address]</i></p> <p><input type="checkbox"/> I want to pay the modified penalty. A cheque or money order (payable to ‘Approved Officer — <i>Mining Rehabilitation Fund Act 2012</i>’) for</p>

		the modified penalty is enclosed. <input type="checkbox"/> I want to pay the modified penalty by credit card. Please debit my credit card account. <i>[Insert details for credit card payment]</i>
	In person	Pay the cashier at: <i>[Insert address]</i>

[Form 1 inserted: Gazette 24 Apr 2014 p. 1149-50; amended: SL 2020/170 r. 4.]

Form 2 — Withdrawal of infringement notice

<i>Mining Rehabilitation Fund Act 2012</i>		Withdrawal no.
WITHDRAWAL OF INFRINGEMENT NOTICE		
Alleged offender	Name	
	Address	
Details of infringement notice	Infringement notice no.	
	Date of issue	
Details of alleged offence	Mining authorisation	
	Date or period	
	Place	
	Written law contravened	Section of the <i>Mining Rehabilitation Fund Act 2012</i>
	Details of offence	

Form 2

Approved Officer withdrawing notice	Name		
	Office		
	Signature		
Date	Date of withdrawal		
Withdrawal of infringement notice <i>[*Delete whichever is not applicable]</i>	<p>The above infringement notice issued against you for the above alleged offence has been withdrawn.</p> <p>If you have already paid the modified penalty for the alleged offence, you are entitled to a refund.</p> <p>1. Your refund is enclosed.</p> <p><i>or</i></p> <p>2. If you have paid the modified penalty but a refund is not enclosed, you may claim your refund by signing and dating this notice and posting it to:</p> <p>Approved Officer — <i>Mining Rehabilitation Fund Act 2012</i></p> <p><i>[Insert address]</i></p>		
Your signature		Date	

[Form 2 inserted: Gazette 24 Apr 2014 p. 1151.]



Notes

This is a compilation of the *Mining Rehabilitation Fund Regulations 2013* and includes amendments made by other written laws. For provisions that have come into operation see the compilation table.

Compilation table

Citation	Published	Commencement
<i>Mining Rehabilitation Fund Regulations 2013</i>	21 Jun 2013 p. 2423-42	r. 1 and 2: 21 Jun 2013 (see r. 2(a)); Regulations other than r. 1 and 2: 1 Jul 2013 (see r. 2(b) and <i>Gazette</i> 21 Jun 2013 p. 2445)
<i>Mining Rehabilitation Fund Amendment Regulations 2014</i>	24 Apr 2014 p. 1148-51	r. 1 and 2: 24 Apr 2014 (see r. 2(a)); Regulations other than r. 1 and 2: 25 Apr 2014 (see r. 2(b))
<i>Mining Rehabilitation Fund Amendment Regulations 2020</i>	SL 2020/170 25 Sep 2020	r. 1 and 2: 25 Sep 2020 (see r. 2(a)); Regulations other than r. 1 and 2: 29 Sep 2020 (see r. 2(b) and SL 2020/159 cl. 2(a))

Defined terms

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

The list is not part of the law.]

Defined term	Provision(s)
area.....	3
assessment day	3
current mining authorisation	Sch. 1 cl. 2(1)
exploration operations.....	3
land under rehabilitation	3
member	3
mining proposal	3
Panel	3
previous mining authorisation.....	Sch. 1 cl. 2(1)
programme of work	3
rehabilitated land.....	3
rehabilitation liability category	3
rehabilitation work	3
year	3