

Explanatory Memorandum

Mining Rehabilitation Fund Bill 2012

Introduction

The purpose of this Bill is to secure long-term funding for the State to rehabilitate abandoned mine sites in Western Australia. The Bill achieves this by requiring holders of tenements under the *Mining Act 1978*, and certain other authorisations relating to mining operations, to pay a levy into a Mining Rehabilitation Fund ('the Fund'), which is established as a special purpose account under the *Financial Management Act 2006*.

Clause notes

Part 1 – Preliminary

Clause 1 Short title

This clause formally names the Act.

Clause 2 Commencement

This clause provides for sections 1 and 2 (the short title and commencement provision) to come into effect when the Bill receives Royal Assent. The rest of the Act will commence on a day or day to be fixed by proclamation.

Clause 3 Terms used

This provision defines certain terms and expressions used in the Bill. Definitions key to the operation of the Bill include:

- **abandoned mine site**, which means land that is declared to be an abandoned mine site under clause 9; and
- **affected land**, which means land outside an abandoned mine site that has been affected by mining operations carried out in, on, or under the site.

Clause 4 Mining authorisation

The holder of a mining authorisation will be subject to a rehabilitation levy liability in respect of the authorisation. A mining authorisation includes:

- a mining tenement as defined in the *Mining Act 1978* (1978 Act), other than a mining tenement granted or held pursuant to a State agreement;
- specified kinds of mining tenements or rights granted or held pursuant to a State agreement, provided that the tenement or right is identified in the regulations.

The effect of the clause will be that all 1978 Act mining tenements attract levy liability, unless they are associated with State Agreements. All tenements and similar rights held by State Agreement participants only attract levy liability if they are identified in the regulations.

Part 2 – Mining Rehabilitation Fund

Clause 5 Establishment of Mining Rehabilitation Fund

This clause establishes an account called the Mining Rehabilitation Fund as an agency special purpose account under the *Financial Management Act 2006*.

Clause 6 Purpose of Fund

This clause describes the main purpose of the Fund, which 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.

Clause 7 Payments to Fund

This clause requires levies paid, penalties recovered and interest earned to be credited to the Fund. Other amounts that can be credited to the Fund are specified in section 18 of the *Financial Management Act 2006*. These include appropriations and other money lawfully received or required or authorised to be paid into the account.

Clause 8 Payments from Fund

This clause sets out the purposes for which Fund money can be used.

There are two categories of Fund money – the principal amount and the interest – and different restrictions on expenditure apply to each.

Principal

Levy payments made into the Fund make up the principal amount. The principal amount can be used:

- to fund the rehabilitation of abandoned mine sites and affected land in relation to which levy payments have been, or should have been, made; and
- for refunds due after objections or assessments resulting in a reduction in the payable amount.

Interest

Interest earned on the principal amount may be used to fund:

- the rehabilitation of abandoned mine sites and affected land, whether or not a levy payment has been, or should have been, made in relation to the site;
- programs or information dealing with mine site rehabilitation generally;
- and administration and enforcement costs related to the Fund and the new Act.

The effect is that levy payments into the Fund will only be able to be used to rehabilitate land affected because of operations undertaken by tenement holders who are required to contribute to the Fund. The rehabilitation of historic abandoned mines, as well as administrative and associated costs, will be funded out of interest earned.

Part 3 – Abandoned mine sites

Clause 9 Declaration of abandoned mine sites

This clause allows the CEO to declare identified land to be an abandoned mine site, if the CEO is satisfied that mining operations on, in or under the land have been carried out, and have ceased.

Declarations are to be made by notices published in the Government Gazette. A notice will be able to declare one, or more than one, area of land to be an abandoned mine site. Further notices will be able to amend or revoke previously published notices.

The only effect of an abandoned mine site declaration is that money can be expended from the Fund to rehabilitate land to which the notice relates and affected land. The existence of a notice relating to land does not mean that Fund money will necessarily be spent on its rehabilitation, but the existence of a notice is a prerequisite to such expenditure.

Clause 10 Power to enter abandoned mine sites and affected land for rehabilitation work

Clause 10 empowers a person authorised in writing by the CEO to enter an abandoned mine site or affected land for the purposes of carrying out rehabilitation work. If the land is private land or the subject of a pastoral lease, the person proposing to enter must either have the consent of the owner, occupier or leaseholder, or have taken reasonable steps to give notice of the intended entry.

Part 4 – Mining rehabilitation levy

Division 1 – Mining rehabilitation levy

Clause 11 Mining rehabilitation levy

Clause 11 provides that a mining rehabilitation levy ('the levy') is payable in respect of a mining authorisation (as defined in clause 4), and is payable in accordance with the regulations.

Clause 11 will be amended by the *Mining Rehabilitation Fund Amendment Bill 2012* to include a subclause directly imposing the levy. A separate amending Bill is required because the *Constitution Acts Amendment Act 1899*, section 46(7), has the effect that Bills imposing taxation can deal only with the imposition of taxation.

Clause 12 Liability for payment of levy

This clause identifies the person holding a mining authorisation on the day on which assessment information is due for a particular year as the person liable to pay the levy in respect of the authorisation for that year.

Clause 13 Amount of levy

Clause 13 enables regulations to be made specifying the levy or the method of working out the levy.

Division 2 – Assessment and reassessment of levy

Clause 14 Assessment of levy

Clause 14 provides that the CEO is to assess each liable person's levy amount.

Clause 15 Authorisation holder required to provide assessment information

Each holder of a mining authorisation will be required under this provision to lodge prescribed information on or before the prescribed date in every year. Failure to comply will be an offence with a maximum penalty of \$20,000.

Clause 16 How assessment is made

Clause 16(1) provides that a levy assessment can be made on the basis of assessment information provided by the person liable to pay it, or other information obtained or provided under the new Act or under the *Mining Act 1978*. An assessment may also take into account any other relevant matters.

Under clause 16(2), if assessment information has not been lodged, or if the CEO is not satisfied with the adequacy or reliability of lodged information, the CEO may estimate the levy amount.

Clause 17 Assessment notice

An assessment notice issued under clause 17 to a person liable to pay the levy will specify the date of issue, levy amount, the due date for payment of the levy (which cannot be sooner than 30 days from the date of issue) and any other prescribed matter.

Clause 18 Reassessment of levy

This clause provides for a reassessment of the levy if the CEO considers there has been an error in a previous levy assessment or for any other appropriate reason. A levy amount can be reassessed whether or not all or some of the levy has been paid, but cannot be reassessed not more than two years after the initial assessment. A reassessment may result in an increase, a decrease, or no change in the levy amount.

Clause 19 Reassessment notice

Following a reassessment resulting in an increase or decrease in the levy amount, a reassessment notice is to be issued under clause 19(1). The reassessment notice will specify the reassessed amount, and:

- if it relates to an increase in levy – any outstanding earlier assessed amount, the additional amount payable as a result of the increase and the due date, and any penalty amount under clause 26 that is owing;
- If it relates to a decrease in levy – any outstanding earlier assessed or penalty amount (accounting for the decrease on reassessment), any refund due, and any penalty amount under clause 26 that is owing.

Clause 19(2) requires any amount that has been overpaid in light of the reassessment, and any penalty amount paid in relation to the overpayment, to be refunded.

Division 3 – Objections

Clause 20 Objection

Under clause 20, a person can object to an assessment or reassessment notice given to the person on the basis that there is an error in the assessment or reassessment, or on the basis that the person is not liable to pay the levy. Objections are to be in writing and are to be made within 28 days of the notice, unless the CEO agrees to extend that period. An objection must specify certain matters, including details of the grounds on which it is made.

Clause 21 Determination of objection

The CEO has 28 days in which to consider and determine an objection. The CEO may decide to increase or decrease the levy amount or not to change it, or decide that the person to whom the relevant notice was given is not liable to pay the levy. The CEO is required to notify the person making the objection of the CEO's decision and the reasons for it.

Clause 22 Notice of adjusted levy following objection

Following a decision on objection resulting in an increase or decrease in the levy amount, an adjustment notice is to be issued under clause 22(1). The adjustment notice will specify the reassessed amount, and:

- if it relates to an increase in levy – any outstanding earlier assessed amount, the additional amount payable as a result of the increase and the due date, and any penalty amount under clause 26 that is owing;
- If it relates to a decrease in levy – any outstanding earlier assessed or penalty amount (accounting for the decrease on reassessment), any refund due, and any penalty amount under clause 26 that is owing.

Clause 22(2) requires any levy or penalty amount that has been overpaid to be refunded.

Clause 23 Notice of withdrawal of levy following objection

This clause applies if the CEO's decision on an objection is that a person to whom a levy notice has been given is not liable to pay the levy. The clause requires a further withdrawal notice, and a refund of any levy or penalty paid, to be given to the person.

Clause 24 Review of decision on objection

This provision entitles a person who is not satisfied with the CEO's decision on objection to apply to the State Administrative Tribunal (SAT) for review of the decision within 42 days of the decision or a longer period if extended by the SAT.

Division 4 – Payment and recovery of levy

Clause 25 When levy amount due and payable

Clause 25 provides that a levy amount is due and payable on the date specified in the relevant levy notice.

Clause 26 Penalty for non-payment of levy

A penalty amount will be payable in addition to any overdue levy amount, unless the CEO waives part or whole of the penalty amount. Clause 26 enables the regulations to prescribe the rate at which a penalty amount is calculated.

Clause 27 Recovery of levy amount and penalty amount

Under clause 27, any overdue levy or penalty amount is recoverable in a court as a debt due to the State.

Clause 28 Liability to pay not affected by objection

This clause makes it clear that making an objection under clause 20 does not affect a person's liability to pay a levy or penalty amount.

Division 5 – Other matters**Clause 29 CEO may require information and records**

Clause 29 empowers the CEO, for the purposes of administering and enforcing Part 4, to direct a person to give information, answer questions or produce records, and to inspect and take copies of any records produced. The clause provides for how such directions are to be made. It will be an offence, with a maximum penalty of \$20,000, to fail to comply with a direction.

Clause 30 Incriminating information

Clause 30 provides that:

- a person cannot avoid giving information in response to a direction under clause 29 on the basis that the information might tend to incriminate them; and
- any information, answer or record given or produced, and any other information obtained as a consequence, is not admissible in most civil or criminal proceedings against the person.

Clause 31 False or misleading information

Clause 31 makes it an offence, with a maximum penalty of \$20,000, to give false or misleading information in relation to requirements under the new Act.

Clause 32 Evidentiary value of levy notice

Clause 32 provides for a levy notice or a copy of a levy notice to be admissible in evidence in proceedings under the new Act.

Part 5 – Miscellaneous**Clause 33 Mining Rehabilitation Advisory Panel**

This provision establishes a Mining Rehabilitation Advisory Panel, which will have its members appointed by the CEO. The functions of the Panel are to advise the CEO on any matter relating to the administration of the Act that is prescribed in the regulations or as to which the CEO requests advice. The regulations will also provide for the constitution and membership of the Panel, matters relating to the appointment and tenure of Panel members, and procedural matters.

Clause 34 Delegation

This clause enables the CEO to delegate various powers under the new Act to departmental officers. The CEO will not be able to delegate any powers in relation to making abandoned mine site declarations under clause 9.

Clause 35 Confidentiality

Clause 35 prohibits recording, disclosing or otherwise using information obtained while exercising functions under the new Act. Contravention of the provision will be an offence with a maximum penalty of \$20,000. It will not be an offence to use information in the performance of statutory functions, with relevant consent, for the purposes of court or SAT proceedings, and in any other prescribed circumstances.

Clause 36 Protection from liability

Clause 36 protects people from tortious liability for anything done in good faith in the performance of a function under the new Act. Protection under the clause does not extend to any liability of the State.

Clause 37 Regulations

Clause 37(1) is a general regulation-making power.

Clause 37(2) specifically provides for regulations to be made:

- prescribing the basis for calculation of levy amounts and the factors to be taken into account in the calculation;
- to deal with the assessment or reassessment of levy amounts; and
- to provide that contravention of a regulation is an offence and may attract a fine not exceeding \$10,000.

Part 6 – Consequential amendment

Clause 38 *Constitution Acts Amendment Act 1899* amended

Clause 38 amends the *Constitution Acts Amendment Act 1899* as a consequence of the enactment of clause 33, which establishes the Mining Rehabilitation Advisory Panel. The amendment has the effect that the office of a member of the Panel who is elected as a member of State Parliament automatically becomes vacant upon the declaration of the election.