



Resource Tenure Division

Position Paper

REQUESTS FOR REFUNDS OF SECTION 40E PERMIT APPLICATION FEE ISSUED IMMEDIATELY PRIOR TO THE COVID-19 PANDEMIC DECLARED STATE OF EMERGENCY

Background

Section 40E of the Mining Act 1978 (Mining Act), provides for a permit to be issued to the holder of a Miner's Right to prospect on Crown land within a granted Exploration Licence held by another person. A Section 40E permit may be held by up to three individuals, each holding a Miner's Right. The permit provides the right to prospect for minerals using hand tools only.

The permit comes into operation either on the date of issue if it is supported by a statement from the Exploration Licence holder, or after 21 days of the permit issue date if no Licensee statement is made by that time.

The permit stops being in force three months after the date of issue or when a notice of surrender of the permit is lodged with the Department.

The price of the Section 40E permit is \$90.00 and goes to covering the administration costs incurred in the assessment and issuing of the permit.

Directions issued under the COVID-19 Pandemic declared State of Emergency effective from 11:59pm on 31 March 2020 restricts interstate and intrastate travel into and across Western Australia respectively.

Issue

Holders of section 40E permits issued immediately before the travel restrictions were imposed have not been able to exercise the permissions given under the permit.

The Mining Act does not make provision for the refund of the section 40E permit application fee, nor does it contemplate deferring the operation date once the permit is issued.

The Minister for Mines and Petroleum has been delegated by the Treasurer, under the provisions of the *Financial Management Act 2006*, the authority to approve an amount to be paid to a person even though the payment would not otherwise be authorised by law. Such a payment may be made subject to conditions.

The Minister for Mines has previously considered a request for an act of grace payment, equivalent to the section 40E Permit application fee and approved the payment on the condition that the permit is surrendered by the permit holders. Any permit holder seeking a reimbursement of the Section 40E permit application fee should therefore be prepared to surrender the permit.

Procedure

Permit holders that have not been able to exercise their rights under the permit due to travel restrictions imposed under the COVID-19 Pandemic declared state of emergency may seek an act of grace payment equivalent to the permit application fee, provided the permit holders surrender the permit.



The letter of surrender should be addressed to the Executive Director, Resource Tenure Division: Department of Mines, Industry Regulation and Safety, but the content of the letter should include the request *“for the Minister, exercising the delegated authority of the Treasurer, to favourably consider an Act of Grace payment for the recovery of X application fees totalling \$XXX.00 (list of permit numbers and their expiry dates provided below) , given the special circumstances that the permit holders have had no opportunity to exercise the permitted rights due to the COVID-19 State of Emergency Declaration and associated travel restrictions”*.

Provision of a list of permit numbers and their respective expiry dates is important.

The request will be put to the Minister for Mines and Petroleum for his consideration.

Requests will considered on their merits and if approved, the payment will be made to the person who paid the permit application fee.