



Debt Recovery Procedure for outstanding rents and penalties on Mining Titles

Pursuant to: *Mining Act 1978 and Mining Regulations 1981*

Purpose

This document outlines the Department of Mines, Industry Regulation and Safety's (DMIRS) procedure for recovering rent and penalty debts payable on mining titles under the *Mining Act 1978 (Mining Act)*.

Introduction

The Department of Mines, Industry Regulation and Safety through the Resource and Environmental Compliance Division (REC) collect annual rents (fees) for Mining Tenements on behalf of the State Government, and is obliged under the *Financial Management Act 2006* to recover outstanding fees, penalties and rents.

Legislation

Timing and frequency of rent payments

The holder of a mining tenement must pay rent at the rates and times as prescribed in section 108 of the Mining Act.

Rent is payable annually, in advance. The first payment is the rent for the first year of the term of the mining tenement and is paid at the time of lodging the application. Subsequent payments of rent are due on the anniversary date of the start of the term of the tenement and must be paid no later than one month after that date, in accordance with regulation 109 of the Mining Regulations 1981 (Mining Regulations).

Amount of payment

The annual rental fees are calculated based on the amounts stipulated in the Mining Regulations, which

dictates that the prescribed rent for a mining tenement for the second and subsequent years of the term of the tenement shall be paid yearly in advance within one month of the anniversary date on which the term commenced.

Effect of surrender, forfeiture or expiry on rent payments

If the tenement is surrendered, forfeited or expires prior to the anniversary date then no rent is due for the following year. Where the tenement dies on or after the anniversary date, rent payment is required, and the Debt Recovery process will proceed on the dead tenement. If a tenement is re-instated under section 97A of the Mining Act, the annual rent must be paid.

Non-compliance with Rent payments

Non-payment of annual rent leaves the mining tenement liable to forfeiture, under sections 96, 96A and 97 of the Mining Act. The tenement holder's liability to pay the outstanding rent amount is not affected by the forfeiture, surrender or expiry of that tenement, in accordance with the provisions of section 114B of the Mining Act;

The expiry, surrender or forfeiture of a mining tenement does not affect the liability of the person who was the holder of the mining tenement immediately before its expiry, surrender or forfeiture –

to pay any rent, fee, royalty, penalty, or other money on any other account, payable on or before the date of expiry, surrender or forfeiture under or in relation to the mining tenement; or

to comply with any obligation imposed on or before that date under, or in relation to, the mining tenement; or

for any act done or default made on or before that date under, or in relation to, the mining tenement.

For example, a lease commenced on 1 July 2015 for which a rent of \$1,570 is payable by 31 July 2016. If the lease is later forfeited on 31 August 2016, the holder of the lease remains liable to pay \$1,570. No provision is made by the Act to accept pro-rata amounts.

The notice of intention to forfeit process for the non-payment of rent, and other non-compliances and breaches of the Mining Act, are separate processes to the rent debt recovery process and runs parallel to this if rent remains unpaid.

1. Procedure for the Payment and Enforcement of Rents

1.1 Rent Reminder Notices for most tenements

In most cases, rent reminder notices are issued annually in the form of a Rental Reminder. These notices are generated and sent to tenement holders approximately six weeks prior to the anniversary date.

For those tenements with an anniversary date of 1 July up to early August, a rental reminder cannot be issued until after government gazetted annual rental increases have been entered into the electronic register. Once the gazettal occurs, the amount can be obtained from the register. For these tenements, the onus is on the tenement holder to ensure rent is paid within one month of the anniversary date.

Where a tenement rent is paid in full before the generation of a notice, then no annual rent reminder is sent.

1.2 Rent Payment Due

The ongoing annual rent becomes legally payable on the anniversary date and is due within one month after this date.

1.3 Overdue Rental Reminder

If the annual rent payment is not received within one month of the anniversary date, an overdue rental reminder is issued to the holder of the mining tenement. The overdue rental reminder is issued whether or not the tenement has been forfeited, surrendered or expired.

At this stage, the department will instigate a Notice of Intention to Forfeit letter under Regulation 49 or 50 of the Mining Regulations (see section 2.1 below). The overdue rental reminder and the Notice of Intention to Forfeit are issued separately and may be sent on different dates.

1.4 Final Overdue Rent Notice

If rent remains unpaid one month after the issue of the overdue rental reminder, a final overdue rent notice is issued giving one further month to pay.

1.5 Debt recovery action instigated

If rents remain unpaid by one month after the final overdue rent notice, debt recovery action begins.

By this stage the tenement may have been forfeited for the non-payment of rent. Forfeiture, surrender or expiry will not prevent the recovery of rent as detailed above under section 114B of the Mining Act (see section 2.4 below).

DMIRS strongly urges tenement holders to consider surrendering their tenements prior to the anniversary date to avoid paying the rent. If there is no intent to surrender the tenement, then tenement holders should pay the rent within one month of the anniversary date to avoid incurring a penalty for late payment of rent.

The penalty debt recovery process is very similar to the rent debt recovery process. Likewise with unpaid rent the death of a mining tenement does not affect the liability of the holder to pay the unpaid penalty debt under section 114B of the Mining Act.

2. Procedure for non-compliance with tenement conditions and debt recovery of penalties

2.1 Notice of Intention to Forfeit

A Notice of Intention to Forfeit letter is issued pursuant to Regulation 49 or 50 of the Mining Regulations. These letters are issued on a monthly basis; dependent upon the anniversary date of the tenement, and the availability of Warden's Court dates. The correspondence can be sent out up to two months after the one month period given to pay the mining tenement's rent. The overdue rental reminder and the notice of intention to forfeit are issued separately and may be sent on different dates.

2.2 Penalty in Lieu of Forfeiture notice

When a penalty is imposed in lieu of forfeiture for breach of covenant a "notice of penalty" will be attached to the official penalty letter. The time in which to pay the penalty is endorsed on the letter, notice of penalty and in eMiTs.

If rent is paid after the issue of a Notice of Intention to Forfeit Notice under Regulation 49 or 50 a penalty may also be imposed for the late payment under sections 96(3), 96A(5) or 97(5) of the Mining Act.

2.3 Forfeiture for non-payment of penalty and Reminder Notice

If the penalty remains unpaid the tenement will be forfeited as per section 96,96A and 97 of the Mining Act and a penalty reminder notice will be issued.

2.4 Final Penalty Reminder

If unpaid, a further final penalty reminder is issued with one month to pay. If unpaid after that, debt recovery action is instigated.

Glossary

Anniversary Date: is the yearly anniversary of the commencement of the term of a mining tenement.

eMiTs: The Department's electronic Mineral Titles data base.

Forfeiture: Death of a mining tenement declared by the Minister or ordered by the Warden for non-compliance and breaches of the Mining Act.

Penalty: Fine imposed as an alternative to forfeiture.

Document Hierarchy

Legislation	<i>Mining Act 1978</i> Mining Regulations 1981
Procedures	This Document

Version History

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0.0	12/02/2020	Initial Draft
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Government of Western Australia

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