



Government of **Western Australia**
Department of **Mines, Industry Regulation and Safety**

CONSULTATION PAPER

Fee for Objections under the *Mining Act 1978*

Version 1.0

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1. Purpose

The Department of Mines, Industry Regulation and Safety (DMIRS) is inviting public submissions on the proposed amendment to the Mining Regulations 1981 to introduce a prescribed fee for lodgement of objections under the *Mining Act 1978*.

2. Scope

The proposed prescribed fee is for an objection made:

- against an application for a prospecting licence - section 42(1A);
- against an application for a miscellaneous licence by virtue of section 92;
- against an application for a special prospecting licence located on a prospecting licence – section 56A(4);
- against an application for an exploration licence - section 59(1A);
- against an application for a special prospecting licence located on an exploration licence – section 70(4);
- against an application for a retention licence - section 70D(1A);
- against an application for mining lease - section 75(1AA);
- against an application for a general purpose lease by virtue of section 90(3);
- against an application for the restoration of a mining tenement after forfeiture - section 97A(6A);
- against an application for exemption from expenditure conditions – section 102(4B); and
- to the survey of a mining tenement or of land the subject of an application for a mining tenement – section 162(2)(ka)(iii).

All legislative references are to the *Mining Act 1978*.

3. Proposed fee

The proposed amendment to the Mining Regulations 1981 is to introduce a prescribed fee for objections. The indicative fee is \$859 per objection.

The amount of the prescribed fee will be finalised following the consultation period. It is expected that the fee will be included in the annual review of fees and charges for the 2024–2025 financial year, and will come into effect on 1 July 2024.

4. Overview

Amendments to the *Mining Act 1978* to enable a fee to be prescribed for lodgement of objections were made as part of the *Mining Amendment Act (No.2) 2022*. That act received royal assent on 1 November 2022 and came into effect on 2 November 2022.

The amendments provide that a Mining Act objection must be accompanied by a prescribed fee. The act provides the legislative authority for a fee to be prescribed for objections. In order to prescribe a fee, the Mining Regulations 1981 need to be amended.

Any person can object against applications for mining tenure, applications for exemption from expenditure, and applications for restoration of a tenement following forfeiture and to survey. There is currently no fee to bringing an objection before the warden. There is no other fee-free tribunal or court of such a nature in Western Australia.

It is now proposed to amend the Mining Regulations to prescribe a fee for lodgement of objections.

5. Background

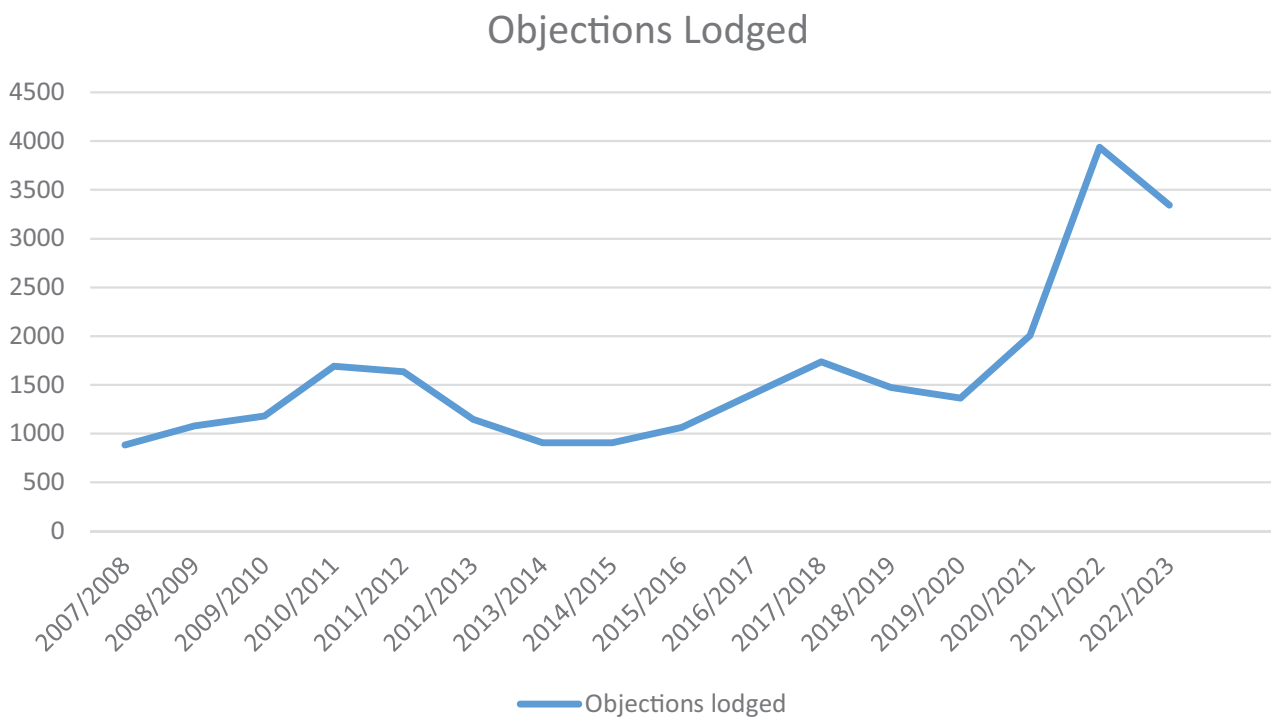
Before 1993, there was a prescribed fee for the lodgement of objections. The fee was removed by the Mining Amendment Regulations (No 5) 1993 on 24 December 1993.

The fee for objections was removed as a consequence of the *Land (Titles and Traditional Usage) Act 1993* (LTTU). Under the LTTU no fees were charged for objections lodged by Aboriginal groups on grounds relating to rights of traditional usage. It was considered appropriate at the time to dispense with the charging of a fee for all other objections.

On 16 March 1995 the High Court found the LTTU to be invalid in its decision *Western Australia v Commonwealth* [1995] HCA 47. However, the fee for objections was not reinstated into the Mining Act.

6. Cost of dealing with objections

The number of objections lodged has increased over the last three years, resulting in an increasing number of matters before the warden and affecting the timely processing to grant of tenement applications. The increasing volume of objections has resulted in the appointment of a second mining warden in Perth with the cost met by DMIRS.



The Perth wardens deal exclusively with Mining Act matters. Matters in Perth are heard every week.

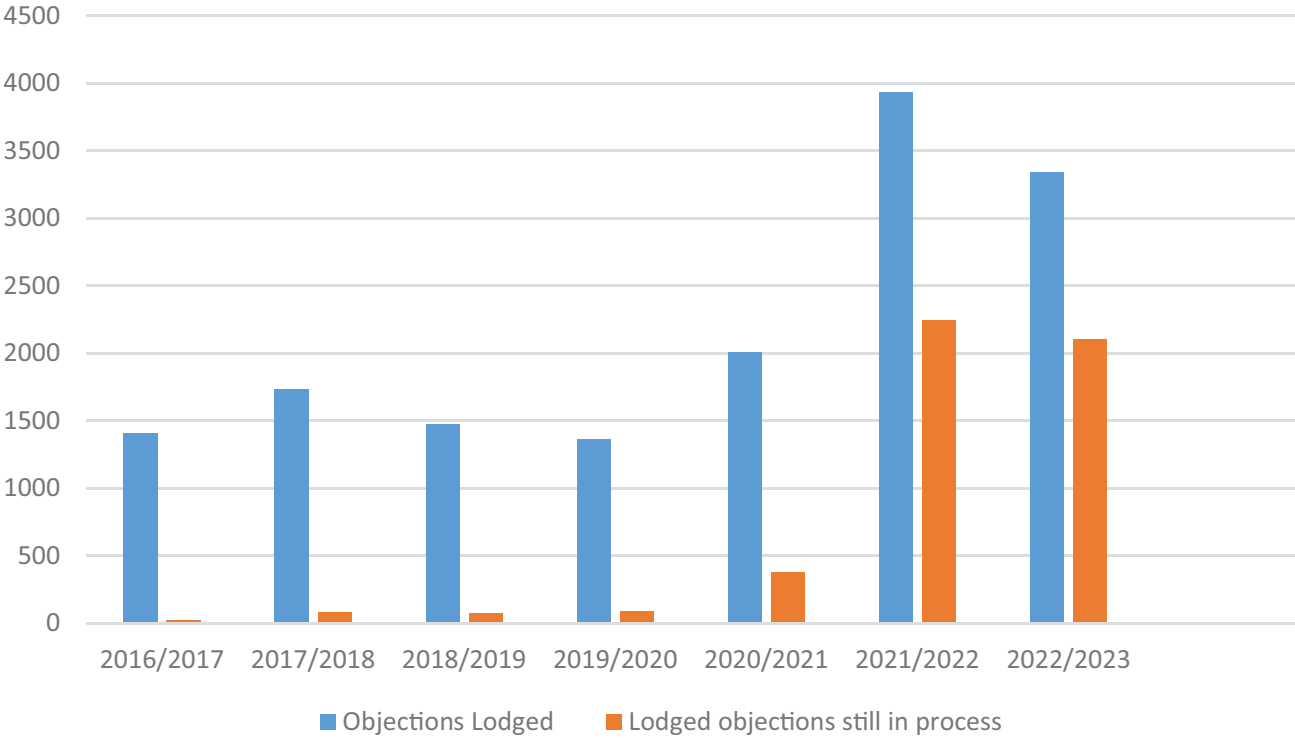
In the Kalgoorlie, Leonora, Mount Magnet and Southern Cross regional offices, Mining Act matters, including objections, are dealt with on a monthly basis by visiting magistrates acting as wardens. Matters may be transferred to Perth by the visiting magistrates or at the request of the parties.

Concerns were expressed by industry representative groups and individual companies regarding delays and the availability of dates for the hearing of matters. The delays in available hearing dates approached 10–12 months in October 2021. Since the appointment of a second Perth warden in May 2022, dates for hearings requiring more than one hearing day are now available within two months (as at May 2023).

Within DMIRS, a second team was established at the beginning of 2023 to provide the required administrative support for the second Perth warden. Investment has also been made in developing systems to improve the administration of the matters before the wardens.

A fee for objections is required to:

- provide ongoing funding for the second warden in Perth;
- support staff;
- ensure there is sufficient resourcing to deal with the number of objections being lodged each month; and
- reduce the number of active matters before the wardens.



Cost recovery

Applying a fee for objections is consistent with the cost recovery policy for government services.¹ As a government agency, DMIRS is governed by rules about the amount and the purpose of fees.

The relevant rule for imposing fees is found in Treasurer's Instruction 810.² This requires agencies to conduct reviews of their tariffs, fees and charges on at least an annual basis. The review is to ensure the tariffs, fees and charges:

- reflect changes to input costs;
- achieve, or make adequate progress towards achieving, full cost recovery where appropriate;
- are not over recovering costs;
- are fair and equitable;
- are competitive, in comparison to service providers locally and in other jurisdictions; and
- are comprehensive in the way new fees and charges are designed and introduced in a timely manner.

DMIRS conducts an annual review of fees and charges, with adjustments implemented from 1 July each year.

Currently there are fees for proceedings in the warden's court under Parts VII and VIII of the Mining Act. Applying a fee for objections before the warden would bring such objections into line with Part VII and VIII proceedings.

Applying a fee for objections is necessary to maintain the required resources to process the work generated by the increased volume of objections.

The increase in the number of objections and subsequent increasing cost of administering the objection process can no longer be sustained on a fee free basis.

7. Proposed fee structure

A flat fee is proposed for administrative simplicity and consistency with all other prescribed fees applied under the Mining Regulations 1981. This can be contrasted with a differential fee model that charges different fees to different people for the same service.

Considering the nature of the objection process and the services provided, it is a by and large a business type service, which lends itself to a flat fee structure. This is more so when there is comparison with other tribunals rather than courts. Courts in general have a differential fee structure because they exercise judicial powers over a wide range of subject matter, not infrequently associated with matters of personal justice affecting members of community at large. Tribunals exercise executive powers, usually in narrow areas of competency or under specific statutory provisions under which they are called to determine technical matters related to the administration of legislation. Wardens under Part IV of the Mining Act similarly exercise executive powers, rather than judicial powers.

Analysis undertaken by DMIRS indicates that in a two month time period in April and May 2022, there were 350 objections which can be categorised as follows:

- 56 per cent lodged by companies (180) or people involved in the mining industry (15)
- 21 per cent lodged by people not connected with mining (including private landholders community members and water rights holders etc.) (75)
- 12 per cent lodged by pastoral lessees (42)
- 8 per cent lodged by native title parties or individuals on the basis of native title rights and interests (28)
- 3 per cent lodged by other organisations including NGOs (7) and LGAs (3)

A flat fee model also provides clarity to the applicant as to the fee payable. Under a differential fee regime an applicant needs to determine which category of fee they are required to pay. This could lead to an incorrect fee being paid with the result that an objection is not accepted for lodgement. It also leads to increased administrative costs, because with a differential fee regime resourcing would need to be applied to verifying that a correct fee has been paid and to compliance actions if it were not paid correctly.

A flat fee model is more efficient, making it easier for the correct fee to be lodged with objections and doing away with resourcing for administrative and compliance actions necessary to differential fee models.

¹ Department of Treasury, Costing and Pricing Government Services Guidelines, Seventh edition, May 2020: www.wa.gov.au/system/files/2020-06/costing-and-pricing-government-services-guidelines.pdf

² Part of the *Financial Administration Bookcase*, www.wa.gov.au/government/publications/financial-administration-bookcase published by the Department of Treasury.

8. Comparative assessment

DMIRS uses flat fees for Part VII and Part VIII processes in the warden's court. For example, the fee for plaints is \$525 per tenement.

In other jurisdictions, fees charged are either flat fees or differential fees that depend on various factors, such as:

- whether the applicant is an individual or a company or corporate entity;
- the grounds on which an application is lodged;
- the amount or value of a claim; or
- whether the applicant is eligible for a reduced fee.

The following tables provide a comparison list of fees and charges imposed:

- in the mining jurisdictions of other states (Table 1)
- by other Western Australia tribunals and courts (Table 2)
- other administrative tribunals around Australia (Table 3)

It is important to note particularly in making comparisons with mining jurisdictions in other states, which parties can object and the conduct and resolution of objections and disputes differs between states. In addition, a significant difference exists between states in the volume of applications which may generate objections or disputes.

For example in the Northern Territory in year to date for the quarter ending 31 March 2023, 114 exploration licences were granted. For the same period in Western Australia 1105 exploration licences were granted.

In Victoria in the 2021–2022 financial year, licence applications increased 9.4 per cent from 127 to 139, 577 current licences were held and 208 licence variations submitted.³ In Western Australia in the same period in 2021–2022, the volumes were much larger; 4,571 tenement applications lodged, with 24,957 current tenements in existence.

³ The Victorian Earth Resources Regulation Annual Statistical Report for Financial Year 2021–2022 [Earth-Resources-Regulation-Statistical-Report-2021-2022.pdf](#) (earthresources.vic.gov.au)

1 Fees for objections against mining tenement applications and other matters relating to mining

#	State	Fee for Objection	Fee for General Dealing	Fee for Transfer	Notes
1.1	WA	Nil (currently)	\$149 Mortgage \$153 Caveat	\$152	Objections are dealt with by a warden.
1.2	NSW	Nil However court fees apply: Small scale title \$287 Standard \$575 Corporate Other than small scale title \$1,104 Standard \$2,210 Corporate	\$250 application for registration of interest	\$1,000	Objections are dealt with in the Land and Environment Court, Civil proceeding Class 8 (Mining).
1.3	NT	Nil	\$27	\$76	Objections are determined by Delegate, Department of Industry, Tourism & Trade. Affected landholders can object, other parties can lodge submissions. Delegate's decision is reviewable in court.
1.4	QLD	Nil There is no fee to lodge an application at the Land Court both for mining and for non-mining applications.	\$52 \$139.10 caveat	Varies based on mineral: \$390.30 coal \$238.50 gold, tin, gemstones. Precious stones \$476.80 other minerals	Land Court hears objections against the grant of mining tenure and makes recommendations. Recommendations cannot be appealed. Objectors may apply for judicial review in Supreme Court.
1.5	SA	\$46 - Plaintiff for Forfeiture. \$18 - Plaintiff for all other matters including objections ERD fees: \$276 application fee plus \$302 court fee if matter proceeds to hearing	\$272 to register dealing on mining register. \$545 for caveat and mortgage	\$671 base fee for ministerial consent to transfer plus \$1,635 or \$3,268 based on rehabilitation liability.	Warden's Court proceedings are initiated by lodging a plaintiff. Environment, Resources and Development Court (ERD) deals with appeals from Warden's Court matters and applications for determinations consequent upon lodging a notice of objection.

1 Fees for objections against mining tenement applications and other matters relating to mining

#	State	Fee for Objection	Fee for General Dealing	Fee for Transfer	Notes
1.6	TAS	\$49.84	\$186.90	\$507.30	<p>Delegate, Department of State Growth mediates to resolve objections.</p> <p>Cases are referred to the Mining Tribunal if mediation is unsuccessful.</p> <p>Objectors must be landholders ie. have a demonstrable interest.</p>
1.7	VIC	<p>Nil</p> <p>VCAT fees for review of environmental and resource matters:</p> <ul style="list-style-type: none"> - Individual \$934.90 - Individual trading as a business or a partnership \$934.90 - Individual with Pension Card or other concession card \$934.90 - Individual with Health Care card \$174.90 - Company or Business \$1,335.60 - Not for profit organisation \$934.90 		\$218.60	<p>Objections and submissions are determined by Earth Resources, Department of Energy, Environment and Climate Action, who can also refer to mining warden.</p> <p>Mining warden mediates disputes.</p> <p>A dispute may also be taken to the Victorian Civil and Administrative Tribunal (VCAT) – lodgement fees apply</p>

2 Departments, courts and tribunals in WA

#	Jurisdiction	Application/Lodgement Fees	Notes
2.1	Warden's Court	\$525 for plaints and applications for forfeiture ¹	
2.2	State Administrative Tribunal	<p>Fees for applications under provisions in petroleum legislation:²</p> <p>\$2,186 Individual, entity or eligible entity \$100 Eligible individual</p> <p>Aside from the application fee, there is also a hearing fee payable for each day of hearing allocated:³</p> <p>\$2,186 Individual, entity or eligible entity \$100 Eligible individual</p> <p>General fee for applications not covered by regulations 9, 10 or 11A:⁴</p> <p>\$656 Individual, entity or eligible entity \$100 Eligible individual</p>	<p>Fee varies based on which of the schedules applies.</p> <p>A reduced fee applies to an eligible individual or entity.</p> <p>An eligible individual is a holder of a Centrelink or Veterans Affairs health or concession card, a recipient of Austudy or Abstudy, a person granted legal aid or a person the executive officer has directed is an eligible individual by reason of financial hardship or the interests of justice.</p> <p>The general fee applies for example for various applications and reviews under the <i>Mining Act 1978</i>,⁵ <i>Mining Rehabilitation Fund Act 2012</i>,⁶ <i>Minerals Safety Research Institute of Western Australia Act 2013</i>⁷ and <i>Mines Safety and Inspection Levy Regulations 2010</i>⁸ and <i>Land Administration Act 1997</i>.⁹</p>

¹ Mining Regulations 1981, Schedule 2, item 22(a).

² State Administrative Tribunal Regulations 2004 reg 9(1). The petroleum legislation is referred to in Schedule 3: *Petroleum and Geothermal Energy Resources Act 1967* s 82(1) or 85(2). The fees are levied for an application to SAT about an incorrect register entry (s 82(1)) and about the Minister's determination on fees payable under the registration regulations for a memorandum (s 85(2)). They are not fees for objections against applications. *Petroleum Pipelines Act 1969* s 54(1) which is about fees levied for an application to SAT about an incorrect register entry. *Petroleum (Submerged Lands) Act 1982* s 88(1) or 92(1). The fees are levied for an application to SAT about an incorrect register entry (s 88(1)) and about the Minister's determination on fees payable under the registration regulations for a memorandum (s 92(1)).

³ State Administrative Tribunal Regulations 2004 reg 9(1). This fee is not payable for the first day of the hearing, but is payable for each day or part day allocated to a hearing.

⁴ State Administrative Tribunal Regulations 2004 reg 11B.

⁵ *Mining Act 1978* s 21(4) Tribunal may order that in accordance with the Act such adjoining land or some portion thereof shall also be taken.

⁶ *Mining Rehabilitation Fund Act 2012* s 24(1) Review of a decision on an objection.

⁷ *Minerals Safety Research Institute of Western Australia Act 2013* s 24 Review of decision to terminate financial assistance.

⁸ *Mines Safety and Inspection Levy Regulations 2010* reg 28(1) review of determination of objection to an assessment or reassessment.

⁹ *Land Administration Act 1997* s 126(a), 126(b), 210(1), 214(2), 220(c), 221(1)(b), 222(1), 224(4), 230(1).

2 Departments, courts and tribunals in WA

#	Jurisdiction	Application/Lodgement Fees	Notes
2.3	Supreme Court (General division)	<p>Filing fees:¹⁰</p> <p>\$1,730 Individual or eligible entity</p> <p>\$3,371 Entity</p> <p>\$100 Eligible individual</p> <p>Aside from the filing fee, there are also daily fees payable for allocating a hearing and for the hearing itself:¹¹</p> <p>\$1,158 Individual or eligible entity</p> <p>\$3,007 Entity</p> <p>\$100 Eligible individual</p>	
2.4	Magistrates Court (Civil)	<p>Filing fee:¹²</p> <p>1. \$169; 2. \$430; 3. \$684 Individual or eligible entity</p> <p>1. \$328; 2. \$838; 3. \$1,331 Entity</p> <p>1. \$50.50; 2. \$100; 3. \$100 Eligible individual</p> <p>Allocation fee:¹³</p> <p>1. \$153.50; 2. \$272; 3. \$388 Individual or eligible entity</p> <p>1. \$403; 2. \$702; 3. \$1,000 Entity</p> <p>1. \$46; 2. \$81.50; 3. \$100 Eligible individual</p> <p>Hearing fee (half-daily):¹⁴</p> <p>1. \$153.50; 2. \$272; 3. \$388 Individual or eligible entity</p> <p>1. \$403; 2. \$702; 3. \$1,000 Entity</p> <p>1. \$46; 2. \$81.50; 3. \$100 Eligible individual</p>	<p>Fee based on value of claim:</p> <p>1. Up to \$10,000</p> <p>2. \$10,000 to \$50,000</p> <p>3. Over \$50,000</p>

¹⁰ Supreme Court (Fees) Regulations 2002 Schedule 1, item 1.

¹¹ Supreme Court (Fees) Regulations 2002 Schedule 1, item 5 (allocation of hearing date) and item 6 (daily hearing fee).

¹² Magistrates Court (Fees) Regulations 2005 Schedule 1, Division 2 – Civil jurisdiction, item 1.

¹³ Magistrates Court (Fees) Regulations 2005 Schedule 1, Division 2 – Civil jurisdiction, item 5.

¹⁴ Magistrates Court (Fees) Regulations 2005 Schedule 1, Division 2 – Civil jurisdiction, item 6.

3 Tribunals in the Commonwealth and other States

#	Jurisdiction	Application/Lodgement Fees	Notes
3.1	National Native Title Tribunal	\$1,002 ¹	The fee is refundable if the application is not accepted or the determination is not made in the applicant's favour. Fee exemptions and waivers in certain circumstances. ²
3.2	Administrative Appeals Tribunal	\$1082 Standard fee \$100 reduced fee \$3,374 for Migration and Refugee review	Reduced fee where there is financial hardship. ³
3.3	South Australian Civil and Administrative Tribunal (SACAT)	Application for commencement of Tribunal proceedings: \$85 \$64 concession	
3.4	New South Wales Civil and Administrative Tribunal (NCAT)	General consumer and commercial proceedings: Standard: 1. \$58; 2. \$120 3. \$309 Corporate: 1. \$116; 2. \$240; 3. \$618 Reduced fee: 1. \$15; 2. \$30; 3. \$77	Fee is based on the value of the claim: 1. Not more than \$10,000 2. \$10,000 to \$30,000 3. Over \$30,000
3.5	Queensland Civil and Administrative Tribunal (QCAT)	Minor civil disputes: 1. \$111.30 2. \$90.10 3. \$153.20 4. \$379.50	Fee is based on the value of the claim: 1. No amount claimed 2. Not more than \$1,000 3. \$1,000 to \$10,000 4. More than \$10,000
3.6	Queensland Planning and Environment Court	Filing a notice of appeal: \$709.50 Individual \$1,405 Others	Hears matters relating to planning and development, protection for environment and coasts, marine parks, and conservation areas.
3.7	Northern Territory Civil and Administrative Tribunal (NTCAT)	Small claims: Individual: 1. \$117; 2. \$234; 3. \$469 Body Corporate: 1. \$145; 2. \$294; 3. \$587 Application under the petroleum legislation: \$411	Fee based on value of claim: 1. Less than \$2,000 2. \$2,000 to \$10,000 3. Over \$10,000 or amount not specified in application
3.8	Tasmanian Civil and Administrative Tribunal (TASCAT)	Application in the Resource and Planning Stream: \$370.24	

¹ Fee gazetted pursuant to sections 16 and 17 of the *Native Title (Tribunal) Regulations 1993*, from 1 July 2023. www.legislation.gov.au/Details/C2023G00663.

² *Native Title (Tribunal) Regulations 1993* reg 8 provides that if an applicant falls into one of the categories, the applicant can request an exemption from paying the fee. Some of the categories are: receiving legal aid; holders of a health care card, a health benefit card, a pensioner concession card, a Commonwealth seniors health card or any other card that certifies entitlement to Commonwealth health concessions; prisoners; persons under the age of 18; persons receiving youth allowance, Austudy or ABSTUDY; financial hardship grounds.

³ The reduced fee is available upon request only, and it requires the applicant to provide a substantial amount of details of income, property, expenses and liabilities, including the income of any dependants.

9. Consultation

The consultation materials are accessible at the [DMIRS website](#). Written submissions can be made by email to RTD.Consultation@dmirs.wa.gov.au.

All submissions will be made available to the public in a response to submissions document. Submissions will be published verbatim, with the submitter listed.

Parties wishing to engage with DMIRS regarding the proposed fee can request a meeting by emailing RTD.Consultation@dmirs.wa.gov.au.

Government of Western Australia

**Department of Mines, Industry Regulation
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8.30am – 4.30pm

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