

# Mining Amendment Regulations (No. 4) 2024

## Fee for Objections under the *Mining Act 1978*

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The Department of Energy, Mines, Industry Regulation and Safety (DEMIRS) provides the following information and guidance relating to the Mining Amendment Regulations (No. 4) 2024 (Regulations).

### Details of the amendments

The Regulations amend the Mining Regulations 1981 (Mining Regulations) to introduce a fee for objections before the Warden which took effect on 16 September 2024.

There is now a prescribed fee to accompany the lodging of a notice of 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).

The amount of the fee is prescribed in Schedule 2 of the Mining Regulations.

## Terms used

The amendments made by the Regulations amend regulation 2 of the Mining Regulations to introduce new defined terms as follows:

**Centrelink** means the agency of the Commonwealth principally assisting in the administration of the *Human Services (Centrelink) Act 1997* (Commonwealth).

A definition for Centrelink has been included in the defined terms as it relates directly to the definition of an eligible individual (below).

**eligible individual** means an individual who —

- (a) holds 1 or more of the following cards issued by Centrelink —
  - (i) a health care card;
  - (ii) a health benefit card;
  - (iii) a pensioner concession card;
  - (iv) a Commonwealth seniors health card;
- or
- (b) holds any other card issued by Centrelink, or a card issued by the Department of Veterans' Affairs of the Commonwealth, that certifies entitlement to Commonwealth health concessions; or
- (c) is in receipt of a youth training allowance or an AUSTUDY allowance (as those terms are defined in the *Social Security Act 1991* (Commonwealth) section 23(1)); or
- (d) is in receipt of benefits under the Commonwealth student assistance scheme known as the ABSTUDY Scheme; or
- (e) has been granted legal aid under the *Legal Aid Commission Act 1976* or a legal aid scheme or service established under a Commonwealth, State or Territory law in respect of the proceedings under Part IV of the Act in relation to which a fee would otherwise be payable.

The concept of “eligible individual” has been included in the Mining Regulations to allow for those persons who receive benefits including a pension, allowance, concession or payment or are a holder of a card entitling them to a concession or a payment of any kind as described.

The inclusion of an eligible individual is consistent with the State Administrative Tribunal and the Supreme Court of Western Australia. These jurisdictions also providing a reduced fee for eligible individuals.

**Land Register** means the Register referred to in section 48 of the *Transfer of Land Act 1893* which comprises all registered certificates of title; record of the endorsements of the particulars of all dealings and matters and has been defined in these regulations as it relates directly to the definition of a proprietor (below).

**proprietor** means —

- (a) in relation to freehold land under the *Transfer of Land Act 1893*, the owner, whether in possession, remainder, reversion or otherwise, of land whose name appears in the Land Register; and
- (b) in relation to freehold land not under the *Transfer of Land Act 1893*, the owner of the fee simple in the land or the person entitled to the equity of redemption in the land.

The concept of “proprietor” has been included in the Mining Regulations to define who is to pay a nil fee under item 23(d) of Schedule 2 of the Mining Regulations. Proprietors are not only proprietors of freehold land but also of land that has not been brought under the operation of the *Transfer of Land Act 1893* and currently dealt with under the *Registration of Deeds Act 1856*.

The definition of proprietor does not include an occupier and owner as defined under the *Mining Act 1978*.

**registered native title body corporate** has the meaning given in the *Native Title Act 1993* (Commonwealth) section 253.

That is, a prescribed body corporate or body corporate registered on the Native Title Tribunal Register as a “registered native title body corporate” will be eligible for a concessional fee under item 23(c) of Schedule 2 of the Mining Regulations where its registered native title body corporate area is affected.

## Form 16 Objection

The Regulations amend Form 16 Objection in Schedule 1 of the Mining Regulations to provide for a means by which objectors can identify if they are objecting as eligible individuals, registered native title bodies corporate or proprietors.

New sub-paragraphs have been inserted under “(d) Particulars of objector:” as follows:

- (d)(v) allows registered native title bodies corporate to identify themselves on the Form 16 Objection to signify their eligibility for a concessional fee by selecting yes or no;
- (d)(vi) allows proprietors of land to identify themselves on the Form 16 Objection to signify their eligibility for a concessional fee by selecting yes or no; and
- (d)(vii) allows eligible individuals to identify themselves on the Form 16 Objection to signify their eligibility for a concessional fee by selecting yes or no.

## Schedule 2

The Regulations amend Schedule 2 of the Mining Regulations to introduce a new item 23 “Fee for notice of objection”:

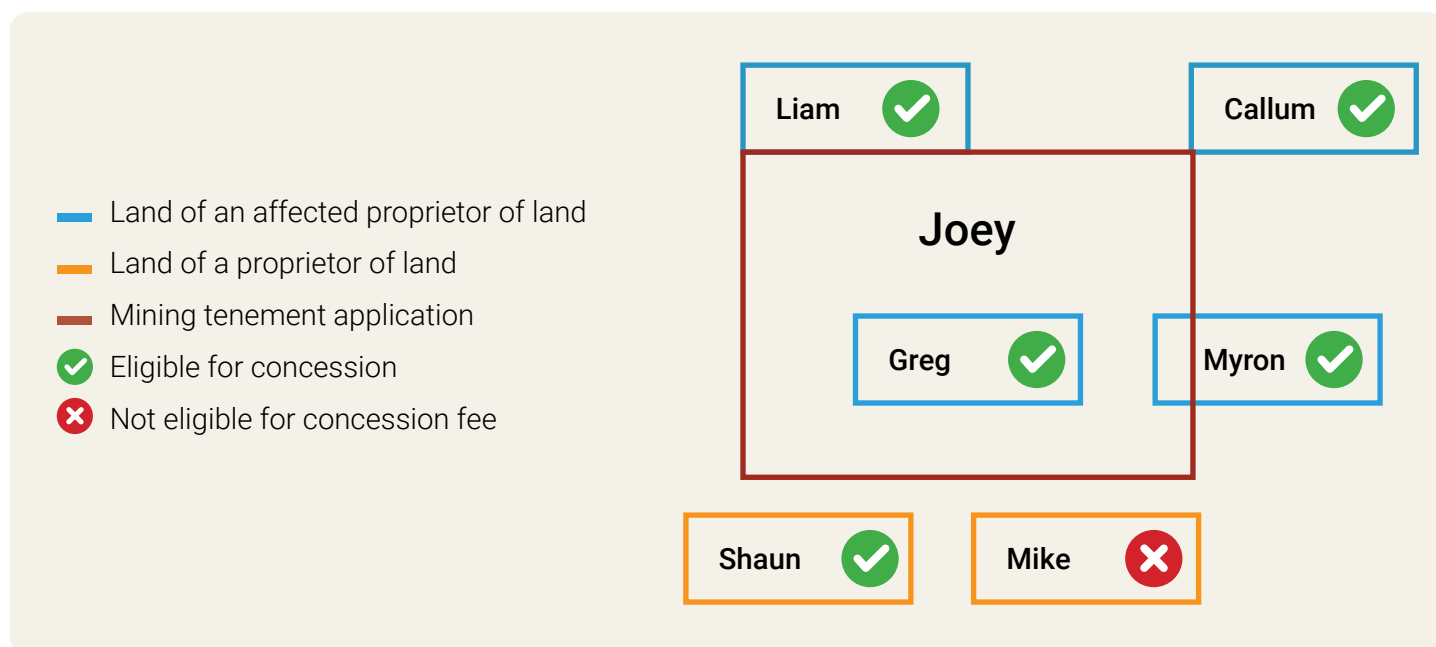
Identification	Amount (\$)
(a) general	\$430.00
(b) eligible individual	\$100.00
(c) registered native title body corporate whose land is included or partly included in or shares a common boundary with land the subject of the mining tenement application	Nil fee
(d) proprietor of land included or partly included in or sharing a common boundary with land the subject of the mining tenement application	Nil fee

## Guide for objectors

- An objector must complete and lodge Form 16 Objection found in Schedule 1 of the Mining Regulations.
- If the objector wants to claim a concessional fee, the objector is required to indicate on Form 16 Objection if the objector falls into one of the categories that are eligible for a concessional fee. If the objector indicates more than one concessional fee category, the one with the lowest fee applies.
- If the validity of the fee concession is challenged, the Wardens may require the objector to produce appropriate evidence to support the eligibility for a concessional fee.
- If the objector cannot provide evidence to support the eligibility for a concessional fee, statutory requirements for the lodgement of a prescribed fee would not be satisfied. That would mean that the objector had not lodged an objection as required by the *Mining Act 1978*.

### Example 1

Joey applies for a prospecting licence over an area of land indicated by a red-bordered rectangle in the diagram. The six neighbouring proprietors of land want to object against Joey's application. Their landholdings are indicated by blue and orange-bordered rectangles in the diagram.



The overlap between Greg's land and Joey's application area is complete. Greg will be eligible for a nil fee under item 23(d).

Myron's land is only partially included in Joey's application area. Myron will be eligible for a nil fee under item 23(d).

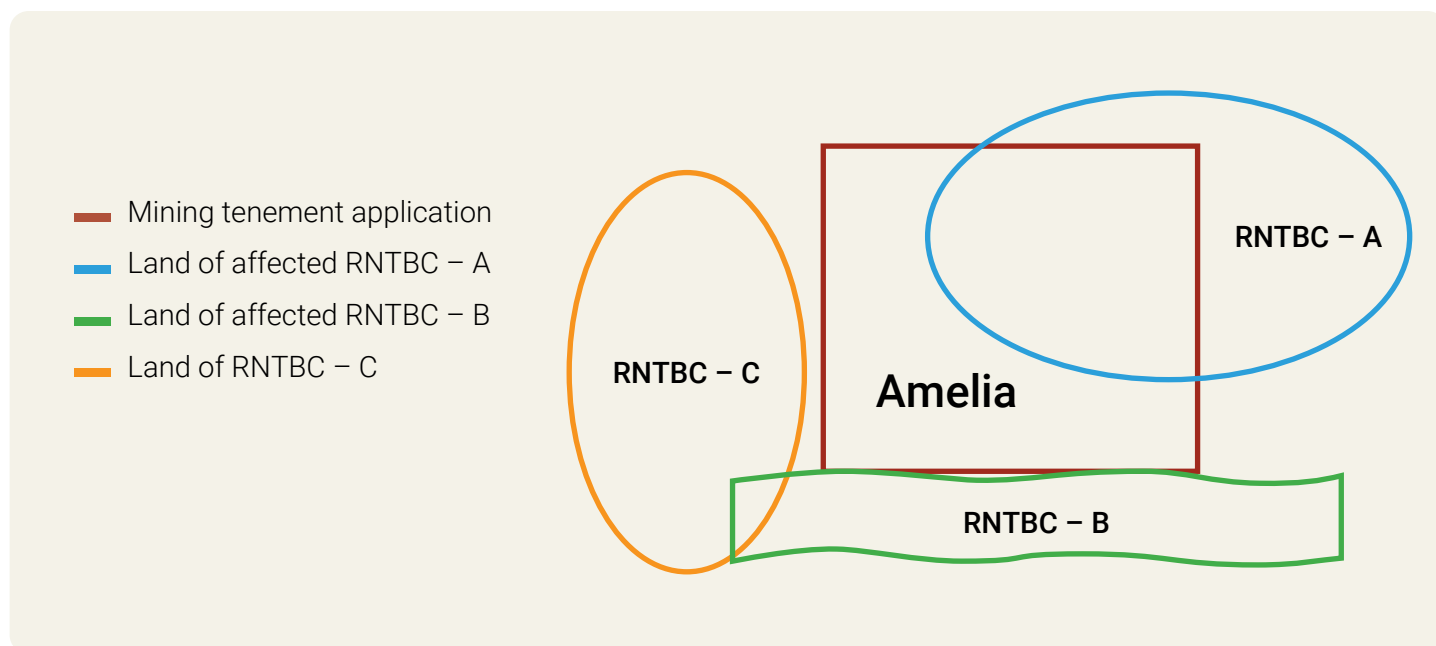
Callum's and Liam's land holdings share a common boundary with Joey's application area. Both Callum and Liam will be eligible for a nil fee under item 23(d).

Shaun's land is neither included in Joey's application area nor does it share a common boundary. Shaun holds a pensioner concession card, is an eligible individual and is eligible for a concessional fee of \$100 under item 23(b) when he objects against Joey's application.

Mike's land is neither included in Joey's application area nor does it share a common boundary. Mike will need to pay the general fee of \$430 under item 23(a) when he objects against Joey's application.

### Example 2

Amelia applies for a prospecting licence over an area of land indicated by a red-bordered rectangle in the diagram.



RNTBC - A land is partially included in Amelia's application area. RNTBC - A will be eligible for a nil fee under item 23(c).

RNTBC - B land share a common boundary with Amelia's application area. RNTBC - B will be eligible for a nil fee under item 23(c).

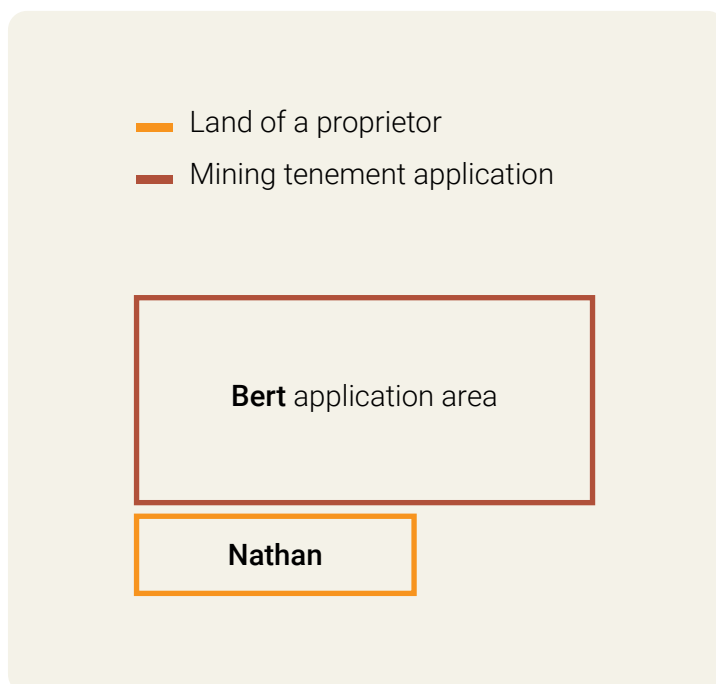
RNTBC - C land is neither included in Amelia's application area nor does it share a common boundary. RNTBC - C will need to pay the general fee of \$430 under item 23(a) when it objects against Amelia's application.

### Example 3

Bert applies for a prospecting licence over an area of land indicated by a red-bordered rectangle in the diagram.

Nathan is a proprietor of land some distance away from Bert's application area. Nathan's land is neither included in Bert's application area nor does it share a common boundary. Nathan will need to pay the general fee of \$430 under item 23(a) when he objects against Bert's application.

After lodging his objection, Nathan becomes the holder of a health care card. This would have made Nathan an eligible individual under paragraph (a)(i) of the definition of "eligible individual" in regulation 2. However, because Nathan lodged an objection prior to becoming a health care card holder, the applicable fee is \$430 under item 23(a) rather than \$100 under item 23(b).



#### Example 4

Ed applies for a prospecting licence over an area of land indicated by a red-bordered rectangle in the diagram.

John's land is neither included in Ed's application area nor does it share a common boundary.

When lodging his objection, John has selected that he is an eligible individual and therefore pays a \$100 concession fee under item 23(b) when lodging his objection. At a hearing before the Warden, Ed challenges John's objection on the grounds that John is not an eligible individual.

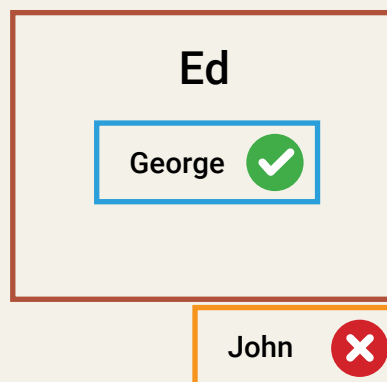
John is unable to provide evidence that he falls under any of the categories of eligible individual under regulation 2. John cannot prove that he is an eligible individual.

As John is not an eligible individual, he has not paid the correct prescribed fee when making the objection (\$430 under item 23(a) in this case).

Therefore, John has not made an objection under section 42 of the Mining Act. John's objection is invalid.

John may apply for an extension of time to lodge another objection with the \$430 prescribed fee. The Minister or Warden may extend the period of time in accordance with section 162B of the *Mining Act 1978*.

- Land of an affected proprietor
- Land of a proprietor
- Mining tenement application



#### Example 5

Jay applies for a prospecting licence over an area of land.

Luke and Paul lodge a joint objection against Jay's application. Luke is in receipt of an AUSTUDY allowance, and thus falls under paragraph (c) of the definition of "eligible individual" under regulation 2. Paul is not an eligible individual nor is he a proprietor as defined in regulation 2.

In circumstances such as this one, the lowest fee would be applicable. Luke and Paul can lodge an objection as joint objectors. The lowest fee, being the \$100 concessional fee for an eligible individual under item 23(b), would be applicable.

#### Example 6

Henry applies for a restoration of his mining lease following forfeiture. The mining lease overlaps with Mid-Southern RNTBC's land.

Mid-Southern RNTBC as well as Jessica want to object against Henry's application. Jessica is a tenant occupying a small dwelling on the Mid-Southern RNTBC's land. She is neither an eligible individual nor a proprietor as defined in regulation 2.

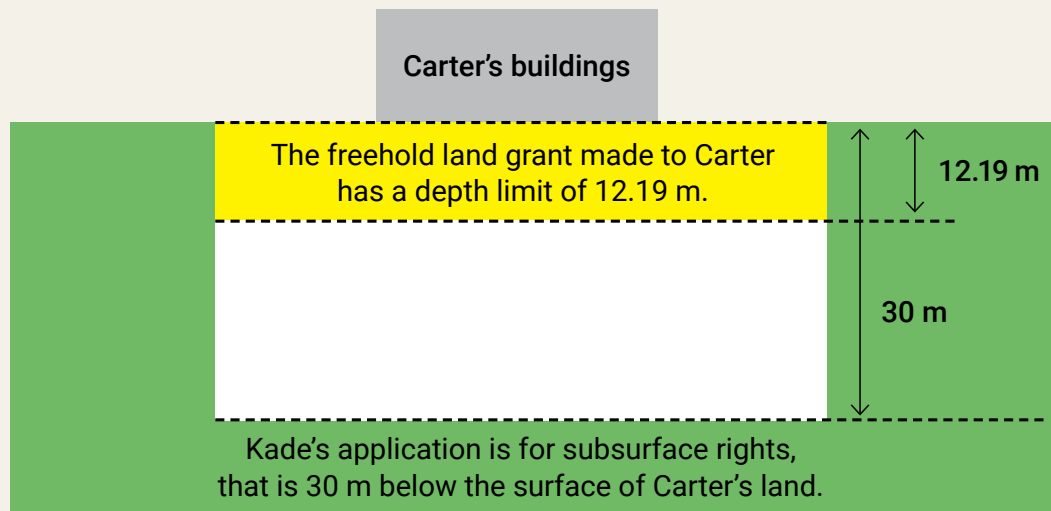
As their grounds for objecting are identical, Jessica and Mid-Southern RNTBC decide to lodge a joint objection.

Given that the RNTBC is entitled to a nil fee under item 23(c), that is what the application fee will be for Jessica and Mid-Southern RNTBC's joint objection. The lowest fee for the joint objection applies.

### Example 7

Kade applies for an exploration licence over an area of land. In relation to Carter's freehold land, Kade has indicated that he wants the exploration licence to be granted for sub-surface rights only (meaning below 30 metres from the surface of the ground) under section 29(2) of the *Mining Act 1978* indicated in green in the diagram.

Kade's application is for the sub-surface rights which means the application doesn't overlap Carter's land but shares a common boundary. In this situation, Carter would still be eligible for a nil fee under item 23(d) as his land directly abuts the boundary of Kade's exploration licence.



## Appendix A – Table of provisions amendment by the Mining Amendment Regulations (No. 4) 2024

Mining Regulations	Information, document or notice
r.2	<b>'Centrelink'</b> term defined in 'Terms used' to specify that it means the agency of the Commonwealth principally assisting in the administration of the <i>Human Services (Centrelink) Act 1997</i> (Commonwealth).
r. 2	<p><b>'eligible individual'</b> term defined in 'Terms used' to specify an individual who</p> <ul style="list-style-type: none"> <li>(a) holds one or more of the following cards issued by Centrelink; <ul style="list-style-type: none"> <li>(i) a health care card</li> <li>(ii) a health benefit card</li> <li>(iii) a pensioner concession card</li> <li>(iv) a Commonwealth seniors health card;</li> </ul> </li> <li>or</li> <li>(b) holds any other card issued by Centrelink, or by the Department of Veterans' Affairs of the Commonwealth, that certifies entitlement to Commonwealth health concessions;</li> <li>or</li> <li>(c) is in receipt of a youth training allowance or an AUSTUDY allowance (as those terms are defined in the <i>Social Security Act 1991</i> (Commonwealth) section 23(1); or</li> <li>(d) is in receipt of benefits under the Commonwealth student assistance scheme known as the ABSTUDY Scheme; or</li> <li>(e) has been granted legal aid under the <i>Legal Aid Commission Act 1976</i> or a legal aid scheme or service established under a Commonwealth, State or Territory law in respect of the proceedings under Part IV of the Act in relation to which a fee would otherwise be payable.</li> </ul>
r. 2	<b>'Land Register'</b> term defined in "Terms used" to mean the Register referred to in the <i>Transfer of Land Act 1893</i> section 48.
r. 2	<p><b>'proprietor'</b> term defined in 'Terms used' to specify that it means;</p> <ul style="list-style-type: none"> <li>(a) in relation to freehold land under the <i>Transfer of Land Act 1893</i>, the owner, whether in possession, remainder, reversion or otherwise, of land whose name appears in the Land Register; and</li> <li>(b) in relation to freehold land not under the <i>Transfer of Land Act 1893</i>, the owner of the fee simple in the land or the person entitled to the equity of redemption in the land.</li> </ul>
r. 2	<b>'registered native title body corporate'</b> is defined in 'Terms used' to specify that it has the meaning given in the <i>Native Title Act 1993</i> (Commonwealth) section 253.
r. 120A(3b)	This clause is inserted to require that an objection lodged under reg 120A(3a) must be accompanied by the prescribed fee in accordance with schedule 2 item 23.



Mining Regulations	Information, document or notice	
r. 146(1A)	This clause is inserted to connect the prescribed fees created by the Regulations to the relevant clauses inserted into the Mining Act by the <i>Mining Amendment Act (No. 2) 2022</i> .	
Schedule 1 Form 16(d)(v)	Form 16 Objection is amended to provide for the objector to identify they are a registered native title body corporate with land included, partly included or sharing a common boundary with the land subject to a mining tenement application and thus eligible for 'nil fee'.	
Schedule 1 Form 16(d)(vi)	Form 16 Objection is amended to provide for the objector to identify they are a proprietor of land with land included, partly included in or sharing a common boundary with the land subject of a mining tenement application and thus eligible for 'nil fee'.	
Schedule 1 Form 16(d)(vii)	Form 16 is amended to provide for the objector to identify they are an eligible individual and thus eligible for a concessional fee.	
Schedule 2 header	Schedule 2 – information under header updated to cite new regulations. [r. 2, 4D(2), 16C(2), 23BA(2), 25B, 28A(1), 64(1b), (1C) and (8), 84D, 109(1), (3) and (3A), 120A(3b), 121(2), 163(2) and (4). 146(1A) and 165(7)(f)].	
Schedule 2 item 23	The differential fees are inserted in Schedule 2 under Item 23 as follows: Fee for notice of objection –	
	(a) general	\$430.00
	(b) eligible individual	\$100.00
	(c) registered native title body corporate whose land is included or partly included in or shares a common boundary with land the subject of the mining tenement application	Nil fee
	(d) proprietor of land whose land is included or partly included in or shares a common boundary with land the subject of the mining tenement application	Nil fee