



# **Mineral and Energy Resources (Financial Provisioning) Act 2018**

**Current as at 24 May 2019**

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Queensland

# Mineral and Energy Resources (Financial Provisioning) Act 2018

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# Mineral and Energy Resources (Financial Provisioning) Act 2018

**An Act to establish a financial provisioning scheme to deal with the environmental impacts of resource activities**

## **Part 1 Preliminary**

### **Division 1 Introduction**

#### **1 Short title**

This Act may be cited as the *Mineral and Energy Resources (Financial Provisioning) Act 2018*.

#### **2 Commencement**

This Act commences on a day to be fixed by proclamation.

### **Division 2 Purposes and application of Act**

#### **3 Main purposes**

The main purposes of this Act are—

- (a) to provide for holders of authorities to pay a contribution to the scheme fund, or give a surety, for the authorities; and
- (b) to provide a way to manage the risk to the State of incurring costs and expenses if the holder of an authority or small scale mining tenure does not comply with the holder's obligations under the authority or tenure; and

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- (c) to provide a source of funds to the State for costs and expenses relating to preventing or minimising environmental harm, or rehabilitating or restoring the environment, or securing compliance with an authority or small scale mining tenure; and
- (d) to provide a source of funds to the State for—
  - (i) remediation activities at land on which an abandoned mine exists; and
  - (ii) remediation activities in relation to an abandoned operating plant; and
  - (iii) research that may contribute to the rehabilitation of land on which resource activities have been carried out.

#### **4 How main purposes to be achieved**

The main purposes are to be achieved by—

- (a) establishing a financial provisioning scheme to deal with the environmental impacts of resource activities (the *scheme*), including, for example—
  - (i) a scheme fund; and
  - (ii) a cash surety account; and
- (b) providing for the appointment of a person to manage the scheme; and
- (c) providing for the person mentioned in paragraph (b) to make payments from the scheme fund and the cash surety account, enter into surety arrangements, and call on and release sureties.

#### **5 Relationship with Environmental Protection Act 1994**

- (1) This Act does not exclude, limit or otherwise affect the operation of the *Environmental Protection Act 1994* unless this Act otherwise expressly provides.

- (2) Without limiting subsection (1), this Act does not exclude, limit or otherwise affect the duties, obligations, requirements or restrictions imposed, under the *Environmental Protection Act 1994*, on the holder of an authority or small scale mining tenure.

## **6 Act does not affect other rights or remedies**

- (1) This Act does not affect or limit a civil right or remedy that exists apart from this Act, whether at common law or otherwise.
- (2) Without limiting subsection (1), compliance with this Act does not necessarily show that a civil obligation that exists apart from this Act has been satisfied or has not been breached.
- (3) In addition, a breach of an obligation under this Act does not of itself give rise to an action for breach of statutory duty or another civil right or remedy.
- (4) To remove any doubt, it is declared that nothing in this Act creates an obligation on the State to take action, or incur costs and expenses, to—
  - (a) prevent or minimise environmental harm or rehabilitate or restore the environment, in relation to the carrying out of an activity under an authority or small scale mining tenure; or
  - (b) secure compliance with an authority or small scale mining tenure.

## **Division 3            Interpretation**

### **Subdivision 1        Dictionary**

#### **7            Definitions**

The dictionary in schedule 1 defines particular words used in this Act.

### **Subdivision 2        Key definitions**

#### **8            What is the *estimated rehabilitation cost***

The *estimated rehabilitation cost*, for an environmental authority for a resource activity (an *authority*), is the amount of the estimated cost of the following, for an ERC period, as decided under the *Environmental Protection Act 1994*, section 300 by the administering authority—

- (a) rehabilitating the land on which the resource activity is carried out;
- (b) preventing or minimising environmental harm, or rehabilitating or restoring the environment, in relation to the resource activity.

#### **9            What is an entity's *total estimated rehabilitation cost***

The *total estimated rehabilitation cost*, for an entity, is the sum of the estimated rehabilitation cost for each authority for which—

- (a) a contribution to the scheme fund is payable; and
- (b) the entity is the holder or, if there is more than 1 holder of the authority, the relevant holder.

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**10 What is the State's *total estimated rehabilitation cost***

The *total estimated rehabilitation cost*, for the State, is the sum of the estimated rehabilitation cost for each authority granted by the State.

**11 What is the *fund threshold***

- (1) The *fund threshold* is—
  - (a) the amount prescribed by regulation for this paragraph; or
  - (b) if no amount is prescribed under paragraph (a)—\$450,000,000.
- (2) Before recommending to the Governor in Council that an amount be prescribed under subsection (1)(a), the Minister must have regard to—
  - (a) the percentage of the State's total estimated rehabilitation cost that the amount represents; and
  - (b) the effect of the percentage under paragraph (a) on the financial viability of the scheme fund; and
  - (c) if the actuarial sustainability of the scheme has been investigated under section 73—the actuary's opinion, and the scheme manager's recommendation, about whether the fund threshold should be changed.

## **Part 2 Establishment of scheme**

### **Division 1 Scheme manager**

**12 Appointment**

- (1) There is to be a scheme manager.
- (2) The scheme manager is to be appointed by the Governor in Council.

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- (3) The scheme manager is appointed under this Act and not the *Public Service Act 2008*.
- (4) The scheme manager may be appointed on a full-time or part-time basis.

### **13 Term of appointment**

- (1) The scheme manager holds office for the term stated in the scheme manager's instrument of appointment.
- (2) The stated term must not be more than 5 years.
- (3) The scheme manager may be reappointed.

### **14 Remuneration and conditions**

- (1) The scheme manager is to be paid the remuneration and other allowances decided by the Governor in Council.
- (2) The remuneration must not be reduced during the scheme manager's term of office without the scheme manager's written consent.
- (3) The scheme manager holds office on the terms and conditions, not provided for by this Act, that are decided by the Governor in Council.

### **15 Resignation**

The scheme manager may, at any time, resign office as scheme manager by signed notice given to the Minister.

### **16 Acting scheme manager**

- (1) The Minister may appoint a person to act as scheme manager—
  - (a) during a vacancy in the office; or
  - (b) during any period, or during all periods, when the scheme manager is absent from duty or from the State or

is, for another reason, unable to perform the duties of the office.

- (2) However, the person can not be appointed for more than 6 months in any 12 month period.
- (3) The acting scheme manager is appointed under this Act and not the *Public Service Act 2008*.
- (4) It does not matter whether the appointee is or is not a public service officer.

## **17 Preservation of rights**

- (1) This section applies if a public service officer is appointed as the scheme manager.
- (2) The person keeps all rights accrued or accruing to the person as a public service officer as if service as the scheme manager were a continuation of service as a public service officer.
- (3) Without limiting subsection (2), the person's appointment does not—
  - (a) prejudice the person's existing or accruing rights to superannuation or recreation, sick, long service or other leave; or
  - (b) interrupt continuity of service, except that the employee is not entitled to claim the benefit of a right or entitlement more than once in relation to the same period of service; or
  - (c) entitle the person to a payment or other benefit because the person is no longer a public service officer.

## **18 Relationship with State**

- (1) The scheme manager represents the State.
- (2) Without limiting subsection (1), the scheme manager has the status, privileges and immunities of the State.

## 19 Finance

- (1) The scheme manager is a part of the department for the purposes of the *Financial Accountability Act 2009*.
- (2) Despite the *Financial Accountability Act 2009*, section 76, the accountable officer for the department under that Act may delegate the officer's functions under that Act to the scheme manager.

## 20 Not statutory body for particular Acts

The scheme manager is not a statutory body for the *Statutory Bodies Financial Arrangements Act 1982* or the *Financial Accountability Act 2009*.

## 21 Functions

- (1) The scheme manager has the following functions—
  - (a) allocating authorities to a risk category;
  - (b) reviewing the risk category to which authorities have been allocated;
  - (c) managing the scheme;
  - (d) setting investment objectives for the scheme fund or part of the scheme fund and establishing investment strategies and policies to achieve the objectives.
- (2) In performing the function under subsection (1)(d), the scheme manager must ask for advice from—
  - (a) the Long Term Asset Advisory Board; or
  - (b) if the Treasurer nominates another entity for this paragraph—the nominated entity.
- (3) In this section—

***Long Term Asset Advisory Board*** means the Long Term Asset Advisory Board established under the *Queensland Treasury Corporation Act 1988*, section 10.

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## 22 Powers

- (1) Subject to subsection (3), the scheme manager has all the powers of an individual and may, for example—
  - (a) enter into contracts; and
  - (b) acquire, hold, deal with and dispose of property; and
  - (c) appoint agents and attorneys; and
  - (d) engage consultants; and
  - (e) do anything else necessary or convenient to be done in the performance of the scheme manager's functions.
- (2) Subject to subsection (3), the scheme manager also has the powers given to the scheme manager under this Act or another Act.
- (3) The scheme manager does not have power to borrow money.

## 23 Staff services from department

- (1) The chief executive may, at the scheme manager's request, assign public service employees of the department to perform work for the scheme manager.
- (2) A person assigned to perform work for the scheme manager under subsection (1) is not subject to the direction of the chief executive in relation to the work.

## Division 2 Scheme fund and cash surety account

### 24 Establishment of scheme fund

- (1) The Financial Provisioning Fund (the *scheme fund*) is established.
- (2) Accounts for the scheme fund must be kept as part of the departmental accounts of the department.
- (3) Amounts received for the scheme fund—

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- (a) must be deposited in a departmental financial institution account of the department; and
  - (b) may be deposited in an account used for depositing other amounts of the department.
- (4) The chief executive (environment) must pay into the scheme fund an amount recovered under the *Environmental Protection Act 1994* in relation to costs and expenses for which the chief executive (environment) receives an amount from the scheme manager under section 65.
- (5) The Treasurer may advance amounts to the scheme fund on the terms the Treasurer considers appropriate.
- (6) An advance by the Treasurer under subsection (5) is to be paid by the Treasurer out of the consolidated fund which is appropriated accordingly.
- (7) Amounts received for the scheme fund include the following—
  - (a) contributions to the scheme fund paid under this Act;
  - (b) fees paid under this Act;
  - (c) amounts received from the chief executive (environment) under subsection (4);
  - (d) amounts advanced by the Treasurer;
  - (e) amounts earned as interest on the cash surety account deposited into the scheme fund by the scheme manager;
  - (f) amounts earned as interest on the scheme fund.
- (8) An amount mentioned in subsection (7) is a controlled receipt for the *Financial Accountability Act 2009*.
- (9) An amount is payable from the scheme fund for—
  - (a) the purposes of this Act, including, for example, a cost related to the administration of the scheme or staff services under section 23; or
  - (b) the repayment of an amount advanced to the scheme fund by the Treasurer.

(10) In this section—

*departmental financial institution account*, of the department, means an account of the department kept under the *Financial Accountability Act 2009*, section 83.

## 25 Cash surety account

- (1) The scheme manager must keep a separate bank account (a *cash surety account*) with a financial institution for the management of cash amounts paid as surety for an authority or small scale mining tenure.
- (2) Accounts for the cash surety account must be kept as part of the departmental accounts of the department.
- (3) The scheme manager must pay into the cash surety account a cash amount paid as surety for an authority or small scale mining tenure.
- (4) The scheme manager may make payments from the cash surety account only for—
  - (a) giving an amount to a requesting entity under section 68(b); or
  - (b) depositing an amount of interest earned on the account into the scheme fund; or
  - (c) releasing a surety under section 58.
- (5) The scheme manager may invest an amount in the cash surety account only in—
  - (a) deposits with a financial institution; or
  - (b) investment arrangements mentioned in the *Statutory Bodies Financial Arrangements Act 1982*, section 44(1)(d).
- (6) An investment mentioned in subsection (5) must be—
  - (a) at call; or
  - (b) for a fixed time of not more than 1 year.

## **Part 3                      Operation of scheme**

### **Division 1                Risk category allocation**

#### **Subdivision 1        Initial allocation**

#### **26        Application of subdivision**

- (1) This subdivision applies if—
  - (a) the administering authority decides, under the *Environmental Protection Act 1994*, section 300, the estimated rehabilitation cost for an authority; and
  - (b) the estimated rehabilitation cost decided by the administering authority is equal to or more than the following amount (the ***prescribed ERC amount***)—
    - (i) the amount prescribed by regulation for this subparagraph;
    - (ii) if no amount is prescribed under subparagraph (i)—\$100,000.
- (2) If the administering authority makes more than 1 decision under the *Environmental Protection Act 1994*, section 300 in relation to an authority, this subdivision applies only in relation to the first decision for which the estimated rehabilitation cost is equal to or more than the prescribed ERC amount.

#### **27        Scheme manager must make initial risk category allocation**

- (1) The scheme manager must decide to allocate the authority to 1 of the following risk categories (the ***initial risk category allocation***)—
  - (a) very low;
  - (b) low;

- (c) moderate;
  - (d) high.
- (2) In deciding the initial risk category allocation, the scheme manager—
- (a) must consider—
    - (i) the scheme manager’s opinion of the probability of the State incurring costs and expenses because the holder of the authority has not prevented or minimised environmental harm, or rehabilitated or restored the environment, in relation to a resource activity carried out under, or to ensure compliance with, the authority; and
    - (ii) submissions made under section 28; and
    - (iii) the scheme manager guidelines; and
  - (b) may consider any other matter the scheme manager considers relevant to the decision.
- (3) In forming an opinion under subsection (2)(a)(i), the scheme manager—
- (a) must consider—
    - (i) the financial soundness of the holder; and
    - (ii) the scheme manager guidelines; and
  - (b) may consider—
    - (i) the characteristics of a resource project to which the authority relates; and
    - (ii) any other matter the scheme manager considers relevant to forming the opinion.
- (4) In considering the financial soundness of the holder, the scheme manager may consider the financial soundness of a parent corporation of the holder.
- (5) If there is more than 1 holder, the scheme manager—
- (a) may consider the financial soundness of any or all of the holders; and

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- (b) in considering the financial soundness of any or all of the holders, may consider the financial soundness of a parent corporation of any or all of the holders; and
- (c) must assign the authority to only 1 of the holders (the *relevant holder* of the authority).

## 28 **Scheme manager must notify holder of indicative risk category allocation**

- (1) The scheme manager must, before deciding the initial risk category allocation, give the holder a notice (a *notice of indicative decision*) stating—
  - (a) the risk category to which the scheme manager intends to allocate the authority (the *indicative risk category allocation*); and
  - (b) the reasons for the indicative risk category allocation; and
  - (c) if section 27(5) applies—the relevant holder of the authority under section 27(5)(c); and
  - (d) whether a contribution to the scheme fund, or a surety, is required under the indicative risk category allocation; and
  - (e) that the holder may, within 20 business days after the notice of indicative decision is given—
    - (i) make submissions to the scheme manager about a matter mentioned in paragraph (a), (b), (c) or (d); or
    - (ii) give the scheme manager notice that the holder accepts the indicative risk category allocation.
- (2) The scheme manager may extend the period mentioned in subsection (1)(e) by notice given to the holder.

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**29 When indicative risk category allocation becomes the initial risk category allocation**

The scheme manager must decide to allocate the authority to the risk category stated under section 28(1)(a) in the notice of indicative decision if the holder—

- (a) does not make submissions under section 28; or
- (b) gives the scheme manager a notice under section 28 that the holder accepts the indicative risk category allocation.

**30 Period for making initial risk category allocation**

The scheme manager must decide the initial risk category allocation—

- (a) if the holder gives the scheme manager a notice under section 28 that the holder accepts the indicative risk category allocation—within 5 business days after the scheme manager receives the notice; or
- (b) if the holder does not make submissions under section 28—within 5 business days after the period in which the holder was permitted to make submissions ends; or
- (c) if the holder makes submissions under section 28—within 20 business days after the scheme manager receives the submissions; or
- (d) if the scheme manager requires the holder, under section 44, to give the scheme manager information or a document the scheme manager reasonably requires to make the decision—within 20 business days after the scheme manager receives the information or document.

**31 Notice of initial risk category allocation**

The scheme manager must, as soon as practicable after deciding the initial risk category allocation, give the holder a notice stating—

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- (a) the day the risk category allocation was decided (the *initial allocation day* for the authority); and
- (b) the initial risk category allocation; and
- (c) if section 27(5) applies—the relevant holder of the authority under section 27(5)(c); and
- (d) the amount of the contribution to the scheme fund, or surety, required under division 2 in relation to the authority, and when the amount must be paid or given; and
- (e) the amount of the assessment fee for the decision, and when the fee must be paid.

## **Subdivision 2      Changed holder review allocation**

### **32      Scheme manager may review risk category allocation if changed holder**

- (1) This section applies if—
  - (a) an authority is allocated to a risk category; and
  - (b) the estimated rehabilitation cost for the authority is equal to or more than the prescribed ERC amount; and
  - (c) either—
    - (i) an entity applies under the *Mineral and Energy Resources (Common Provisions) Act 2014*, section 19 for approval to register a prescribed dealing under section 17 of that Act that is—
      - (A) an assessable transfer, of a resource authority relating to the authority, to another entity (the *changed holder*); or
      - (B) a non-assessable transfer, of a resource authority relating to the authority, that is a transfer of the resource authority or of a share in the resource authority, if part of 1 holder's share in the resource authority will

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be transferred to another holder of the resource authority (also the *changed holder*); or

- (ii) either of the following changes happen—
  - (A) an entity starts or stops controlling a holder of the authority (also the *changed holder*) under the Corporations Act, section 50AA;
  - (B) a holder of the authority (also the *changed holder*) starts or stops being a subsidiary of a corporation under the Corporations Act, section 46.
- (2) The scheme manager may—
  - (a) review the risk category to which the authority is allocated; and
  - (b) decide to confirm or change the risk category to which the authority is allocated (the *changed holder review allocation*).
- (3) In making the changed holder review allocation, the scheme manager—
  - (a) must consider—
    - (i) the scheme manager’s opinion of the probability mentioned in section 27(2)(a)(i) having regard to the changed holder; and
    - (ii) submissions made under section 34; and
    - (iii) the scheme manager guidelines; and
  - (b) may consider any other matter the scheme manager considers relevant.
- (4) In forming an opinion under subsection (3)(a)(i), the scheme manager—
  - (a) must consider—
    - (i) the financial soundness of the changed holder; and
    - (ii) the scheme manager guidelines; and

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- (b) may consider—
  - (i) the characteristics of a resource project to which the authority relates; and
  - (ii) any other matter the scheme manager considers relevant to forming the opinion.
- (5) In considering the financial soundness of the changed holder, the scheme manager may consider the financial soundness of a parent corporation of the changed holder.
- (6) If there is more than 1 holder, or changed holder, of the authority, the scheme manager—
  - (a) may consider the financial soundness of any or all of the holders, or changed holders, of the authority; and
  - (b) in considering the financial soundness of any or all of the holders, or changed holders, of the authority, may consider the financial soundness of a parent corporation of any or all of the holders, or changed holders, of the authority; and
  - (c) must assign the authority to only 1 of the holders, or changed holders, of the authority (the *relevant holder* of the authority).
- (7) For subsection (1)(c)(i), a resource authority relates to an authority if the resource authority authorises the carrying out of a resource activity for the authority.

### **33 Application to scheme manager if proposed changed holder**

- (1) This section applies if—
  - (a) an authority is allocated to a risk category; and
  - (b) the estimated rehabilitation cost for the authority is equal to or more than the prescribed ERC amount; and
  - (c) either—
    - (i) an entity proposes to apply under the *Mineral and Energy Resources (Common Provisions) Act 2014*,

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section 19 for approval to register a prescribed dealing under section 17 of that Act that is—

- (A) an assessable transfer, of a resource authority relating to the authority, to another entity (the *changed holder*); or
  - (B) a non-assessable transfer, of a resource authority relating to the authority, that is a transfer of the resource authority or of a share in the resource authority, if part of 1 holder's share in the resource authority will be transferred to another holder of the resource authority (also the *changed holder*); or
- (ii) either of the following changes is proposed—
- (A) an entity is to start or stop controlling a holder of the authority (also the *changed holder*) under the Corporations Act, section 50AA;
  - (B) a holder of the authority (also the *changed holder*) is to start or stop being a subsidiary of a corporation under the Corporations Act, section 46.
- (2) A holder of the authority, or the changed holder with the consent of a holder of the authority, may apply to the scheme manager to make a changed holder review allocation as if—
- (a) for subsection (1)(c)(i)—the application for approval to register the prescribed dealing had been made; or
  - (b) for subsection (1)(c)(ii)—the change had happened.
- (3) The scheme manager must make the changed holder review allocation only if the application is accompanied by the assessment fee for the decision.
- (4) For subsection (1)(c)(i), a resource authority relates to an authority if the resource authority authorises the carrying out of a resource activity for the authority.

### **34 Scheme manager must notify interested entity of indicative changed holder review allocation**

- (1) The scheme manager must, before deciding the changed holder review allocation, give the entity mentioned in section 32(1)(c)(i), each holder of an authority mentioned in section 32(1)(c)(ii), or the applicant under section 33(2) (each the *interested entity* for the authority), a notice (the *notice of indicative decision*) stating—
  - (a) the risk category to which the scheme manager intends to allocate the authority (the *indicative changed holder allocation*); and
  - (b) the reasons for the indicative changed holder allocation; and
  - (c) if section 32(6) applies—the relevant holder of the authority under section 32(6)(c); and
  - (d) whether a contribution to the scheme fund, or a surety, is required under the indicative changed holder allocation; and
  - (e) that the interested entity may, within 20 business days after the notice of indicative decision is given—
    - (i) make submissions to the scheme manager about a matter mentioned in paragraph (a), (b), (c) or (d); or
    - (ii) give the scheme manager notice that the interested entity accepts the indicative changed holder allocation.
- (2) The scheme manager may extend the period mentioned in subsection (1)(e) by notice given to the interested entity.

### **35 When indicative changed holder allocation becomes the changed holder review allocation**

The scheme manager must decide to allocate the authority to the risk category stated under section 34(1)(a) in the notice of indicative decision if the interested entity—

- (a) does not make submissions under section 34; or
- (b) gives the scheme manager a notice under section 34 that the interested entity accepts the indicative changed holder allocation.

### **36 Notice of changed holder review allocation**

The scheme manager must, as soon as practicable after deciding the changed holder review allocation, give a notice to the interested entity stating—

- (a) the day the changed holder review allocation was decided (the *changed holder review day* for the authority); and
- (b) the risk category to which the authority is allocated under the changed holder review allocation; and
- (c) if section 32(6) applies—the relevant holder of the authority under section 32(6)(c); and
- (d) the amount of the contribution to the scheme fund, or surety, required under division 2 in relation to the authority, and when the amount must be paid or given; and
- (e) the amount of the assessment fee for the decision, and when the fee must be paid, unless the assessment fee has been paid under section 33; and
- (f) when the changed holder review decision takes effect.

### **37 When changed holder review decision takes effect**

- (1) The changed holder review decision takes effect—
  - (a) for an application mentioned in section 32(1)(c)(i)—if and when the application is approved under the *Mineral and Energy Resources (Common Provisions) Act 2014*; or

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- (b) for a change mentioned in section 32(1)(c)(ii)—on the day that is 10 business days after the notice under section 36 is given to the interested entity; or
  - (c) for a proposed application mentioned in section 33(1)(c)(i)—if and when the application is made and approved under the *Mineral and Energy Resources (Common Provisions) Act 2014*; or
  - (d) for a proposed change mentioned in section 33(1)(c)(ii)—if and when the proposed change happens.
- (2) However—
- (a) subsection (1)(c) applies only if the proposed application is made within the prescribed period after the notice under section 36 is given to the interested entity; and
  - (b) subsection (1)(d) applies only if the proposed change happens within the prescribed period after the notice under section 36 is given to the interested entity.
- (3) In this section—
- prescribed period*** means—
- (a) the period prescribed by regulation for this paragraph; or
  - (b) if no period is prescribed under paragraph (a)—6 months.

### **Subdivision 3      Annual review allocation**

#### **38      Annual review of risk category allocation**

- (1) This section applies if—
- (a) an authority is allocated to a risk category; and
  - (b) the estimated rehabilitation cost for the authority is equal to or more than the prescribed ERC amount.

- (2) The scheme manager must, within 30 business days before each anniversary day for the authority—
  - (a) review the risk category to which the authority is allocated; and
  - (b) decide to confirm or change the risk category to which the authority is allocated (the *annual review allocation*).
- (3) In making the annual review allocation, the scheme manager—
  - (a) must consider—
    - (i) the scheme manager’s opinion of the probability mentioned in section 27(2)(a)(i); and
    - (ii) submissions made under section 39; and
    - (iii) the scheme manager guidelines; and
  - (b) may consider any other matter the scheme manager considers relevant.
- (4) In forming an opinion under subsection (3)(a)(i), the scheme manager—
  - (a) must consider—
    - (i) the financial soundness of the holder; and
    - (ii) the scheme manager guidelines; and
  - (b) may consider—
    - (i) the characteristics of a resource project to which the authority relates; and
    - (ii) any other matter the scheme manager considers relevant to forming the opinion.
- (5) In considering the financial soundness of the holder, the scheme manager may consider the financial soundness of a parent corporation of the holder.
- (6) If there is more than 1 holder, the scheme manager—

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- (a) may consider the financial soundness of any or all of the holders; and
  - (b) in considering the financial soundness of any or all of the holders, may consider the financial soundness of a parent corporation of any or all of the holders; and
  - (c) must assign the authority to only 1 of the holders (the *relevant holder* of the authority).
- (7) In this section—
- anniversary day*, for an authority, means—
- (a) if a changed holder review decision takes effect in relation to the authority—the day in each year that is the anniversary of the changed holder review day for the authority; or
  - (b) otherwise—the day in each year that is the anniversary of the initial allocation day for the authority.

### **39 Scheme manager must notify holder of indicative annual review allocation**

- (1) The scheme manager must, before deciding the annual review allocation, give the holder a notice (the *notice of indicative decision*) stating—
- (a) the risk category to which the scheme manager intends to allocate the authority (the *indicative annual review allocation*); and
  - (b) the reasons for the indicative annual review allocation; and
  - (c) if section 38(6) applies—the relevant holder of the authority under section 38(6)(c); and
  - (d) whether a contribution to the scheme fund, or a surety, is required under the indicative annual review allocation; and
  - (e) that the holder may, within 20 business days after the notice of indicative decision is given—

- (i) make submissions to the scheme manager about a matter mentioned in paragraph (a), (b), (c) or (d); or
  - (ii) give the scheme manager notice that the holder accepts the indicative annual review allocation.
- (2) The scheme manager may extend the period mentioned in subsection (1)(e) by notice given to the holder.

#### **40 When indicative annual review allocation becomes the annual review allocation**

The scheme manager must decide to allocate the authority to the risk category stated under section 39(1)(a) in the notice of indicative decision if the holder—

- (a) does not make submissions under section 39; or
- (b) gives the scheme manager a notice under section 39 that the holder accepts the indicative annual review allocation.

#### **41 Notice of annual review allocation**

The scheme manager must, as soon as practicable after deciding the annual review allocation, give a notice to the holder stating—

- (a) the day the annual review allocation was decided (the *annual review day* for the authority); and
- (b) the risk category to which the authority is allocated under the annual review allocation; and
- (c) if section 38(6) applies—the relevant holder of the authority under section 38(6)(c); and
- (d) the amount of the contribution to the scheme fund, or surety, required under division 2 in relation to the authority, and when the amount must be paid or given; and

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- (e) the amount of the assessment fee for the decision, and when the fee must be paid.

## **Subdivision 4 Information disclosure**

### **42 Holder must give scheme manager notice if changed holder**

- (1) If an authority has been allocated under this division to a risk category, the holder of the authority must give the scheme manager a notice under this section if—
  - (a) an entity applies under the *Mineral and Energy Resources (Common Provisions) Act 2014*, section 19 for approval to register a prescribed dealing under section 17 of that Act that is—
    - (i) an assessable transfer, of a resource authority relating to the authority, to another entity; or
    - (ii) a non-assessable transfer, of a resource authority relating to the authority, that is a transfer of the resource authority or of a share in the resource authority, if part of 1 holder's share in the resource authority will be transferred to another holder of the resource authority; or
  - (b) either of the following changes happen—
    - (i) an entity starts or stops controlling the holder under the Corporations Act, section 50AA;
    - (ii) the holder starts or stops being a subsidiary of a corporation under the Corporations Act, section 46.

Maximum penalty—100 penalty units.

- (2) The notice must—
  - (a) state the details of the matter mentioned in subsection (1); and
  - (b) include the other information prescribed by regulation.

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- (3) The notice must be given within 10 business days after—
    - (a) for a matter mentioned in subsection (1)(a)—the application for approval to register the prescribed dealing is made; or
    - (b) for a matter mentioned in subsection (1)(b)—the change happens.
  - (4) For subsection (1)(a), a resource authority relates to an authority if the resource authority authorises the carrying out of a resource activity for the authority.

#### **43 Holder must give scheme manager notice if cessation in production**

- (1) This section applies to an authority if the resource activity for which the authority is given is authorised under any of the following resource authorities—
  - (a) a mining lease or mining development licence under the *Mineral Resources Act 1989*;
  - (b) an authority to prospect or petroleum lease under the *Petroleum and Gas (Production and Safety) Act 2004*;
  - (c) a geothermal production lease under the *Geothermal Energy Act 2010*.
- (2) The holder of the authority must give the scheme manager a notice under this section if, after the start of production under the resource authority—
  - (a) the holder ceases production under the resource authority and does not expect production to restart within 6 months after the cessation; or
  - (b) production has not been carried out under the resource authority for 6 months.

Maximum penalty—100 penalty units.

- (3) The notice must—
  - (a) state the details of the matter mentioned in subsection (2); and

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- (b) include the other information prescribed by regulation.
- (4) The notice must be given within 10 business days after —
  - (a) for the matter mentioned in subsection (2)(a)—the holder ceases production; or
  - (b) for the matter mentioned in subsection (2)(b)—the end of the 6 month period mentioned in that subsection.
- (5) In this section—

**production** means—

  - (a) for a resource authority mentioned in subsection (1)(a)—an activity mentioned in the *Mineral Resources Act 1989*, section 6A(1)(a) or (b); or
  - (b) for a resource authority mentioned in subsection (1)(b)—an activity mentioned in the *Petroleum and Gas (Production and Safety) Act 2004*, section 15; or
  - (c) for a resource authority mentioned in subsection (1)(c)—an activity mentioned in the *Geothermal Energy Act 2010*, section 14.

#### **44 Scheme manager may require further information from holder before allocation decision**

- (1) The scheme manager may, before making an allocation decision for an authority, require the holder of the authority to give the scheme manager further information or a document the scheme manager reasonably requires to make the decision.
- (2) For an initial allocation decision, the scheme manager may exercise the power mentioned in subsection (1) at any time after the holder has applied for an ERC decision under the *Environmental Protection Act 1994*, section 298 in relation to the authority.
- (3) The requirement must—
  - (a) be made by notice given to the holder; and

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- (b) state a reasonable period of at least 10 business days within which the holder must comply with the requirement.
  - (4) The scheme manager may extend the period mentioned in subsection (3)(b) by notice given to the holder.
  - (5) The holder of the authority must, unless the holder has a reasonable excuse, comply with the requirement.  
Maximum penalty—100 penalty units.
  - (6) If the holder of the authority does not comply with the requirement, the scheme manager may make the decision without the further information or document.

**45 Scheme manager may require further information from interested entity before changed holder review decision**

- (1) The scheme manager may, before making a changed holder review decision for an authority, require an interested entity for the authority to give the scheme manager further information or a document the scheme manager reasonably requires to make the decision.
- (2) The requirement must—
  - (a) be made by notice given to the interested entity; and
  - (b) state a reasonable period of at least 10 business days within which the interested entity must comply with the requirement.
- (3) The scheme manager may extend the period mentioned in subsection (2)(b) by notice given to the interested entity.
- (4) The interested entity must, unless the interested entity has a reasonable excuse, comply with the requirement.  
Maximum penalty—100 penalty units.
- (5) If the interested entity does not comply with the requirement, the scheme manager may make the decision without the further information or document.

## **Division 2                    Liability under scheme**

### **Subdivision 1            Contribution to scheme fund**

#### **46            Application of subdivision**

This subdivision applies if—

- (a) both of the following apply—
  - (i) the scheme manager makes an allocation decision for an authority that allocates the authority to 1 of the following risk categories—
    - (A) very low;
    - (B) low;
    - (C) moderate;
  - (ii) the scheme manager does not decide, under section 53(c)(ii), that the holder of the authority must give a surety rather than pay a contribution;  
or
- (b) all of the following apply—
  - (i) the scheme manager makes an annual review decision for an authority that allocates the authority to the risk category of high;
  - (ii) the scheme manager has made an annual review decision for the authority, for each of the 4 years immediately preceding the decision mentioned in subparagraph (i), that allocates the authority to 1 of the following risk categories—
    - (A) very low;
    - (B) low;
    - (C) moderate;
  - (iii) the scheme manager is satisfied when the scheme manager makes the annual review decision

mentioned in subparagraph (i) that the holder is not reasonably able to give a surety for the authority within 12 months after the decision is made.

#### **47 Holder must pay contribution to scheme fund**

- (1) The holder of the authority must pay a contribution to the scheme fund within 30 business days after—
  - (a) for an initial allocation decision—the initial allocation day for the authority; or
  - (b) for a changed holder review decision—the day the decision takes effect under section 37; or
  - (c) for an annual review decision—the annual review day for the authority.

*Note—*

The holder of the authority must not carry out, or allow the carrying out of, a resource activity under the authority unless the holder has paid the contribution—see the *Environmental Protection Act 1994*, section 297.

- (2) The contribution payable must be worked out using the formula—

$$C = A \times B$$

where—

**A** is the estimated rehabilitation cost for the authority at the beginning of the day that is—

- (a) for an initial allocation decision—the initial allocation day for the authority; or
- (b) for a changed holder review decision—the day the decision takes effect under section 37; or
- (c) for an annual review decision—the annual review day for the authority.

**B** is the prescribed percentage for the authority.

**C** is the amount of the contribution.

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- (3) For the *Mineral and Energy Resources (Common Provisions) Act 2014*, section 20A, the holder mentioned in subsection (1) is the entity mentioned in section 20A(2) of that Act.

**48 Rate of contribution if holder not able to give surety**

An authority mentioned in section 46(b) is taken to be allocated to the risk category of moderate for working out, under section 47, the contribution payable for the authority.

**49 Holder must pay contribution and give surety if estimated rehabilitation cost more than fund threshold**

- (1) This section applies if the estimated rehabilitation cost for the authority is more than the fund threshold.
- (2) Despite section 47(2), the contribution payable must be worked out using the formula—

$$C = A \times B$$

where—

*A* is the fund threshold.

*B* is the prescribed percentage for the authority.

*C* is the amount of the contribution.

- (3) In addition to paying the contribution worked out under subsection (2), the holder of the authority must give a surety for the amount that equals the estimated rehabilitation cost for the authority less the fund threshold.

**50 Refund of contribution to previous holder**

- (1) This section applies if—
- (a) a holder of an authority (a *previous holder*) pays a contribution; and
- (b) during the 12 months after the contribution is paid, the scheme manager makes a changed holder review decision that has the effect of another holder of the

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authority (the *changed holder*) being liable to pay a contribution, or give a surety, under this part.

(2) The scheme manager must, within 30 business days after the changed holder pays the contribution or gives the surety under this part, refund to the previous holder the pro rata amount of the contribution relating to the remainder of the year after the decision.

(3) In this section—

*pro rata amount*, of a contribution relating to the remainder of a year, means the proportion of the amount of the contribution that is the same proportion that the remainder of the year bears to the whole year.

## **51 Recovery of unpaid contribution**

A contribution payable under this subdivision may be recovered as a debt payable to the State.

## **52 Notification of administering authority**

The scheme manager must, as soon as practicable after the holder of an authority has paid a contribution under this subdivision, give the administering authority for the authority notice of the payment.

## **Subdivision 2 Surety**

### **53 Application of subdivision**

This subdivision applies if—

- (a) both of the following apply—
  - (i) the scheme manager makes an allocation decision for an authority that allocates the authority to the risk category of high;
  - (ii) section 46(b) does not apply; or

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- (b) both of the following apply—
  - (i) the scheme manager makes an allocation decision for an authority that allocates the authority to the risk category of very low, low or moderate;
  - (ii) the holder of the authority is required to give a surety under section 49(3); or
- (c) both of the following apply—
  - (i) the scheme manager makes an allocation decision for an authority that allocates the authority to the risk category of very low, low or moderate;
  - (ii) the scheme manager decides the holder of the authority must give a surety, rather than pay a contribution, to preserve the financial viability of the scheme fund; or
- (d) the estimated rehabilitation cost for an authority is less than the prescribed ERC amount; or
- (e) the holder of a small scale mining tenure is required under the *Environmental Protection Act 1994*, section 21A(2) to give a surety before carrying out an activity, or allowing the carrying out of an activity, under the tenure.

#### **54 Scheme manager's decision about financial viability of scheme fund**

- (1) This section applies for making a decision under section 53(c)(ii).
- (2) The scheme manager may consider whether the sum of the following is likely to be more than the fund threshold—
  - (a) the total estimated rehabilitation cost for the holder of the authority or, if there is more than 1 holder, the relevant holder of the authority;
  - (b) the total estimated rehabilitation cost for any or all of the following—

- 
- (i) a parent corporation of the holder of the authority or, if there is more than 1 holder, the relevant holder of the authority;
  - (ii) a subsidiary corporation, under the Corporations Act, section 46, of a parent corporation mentioned in subparagraph (i);
  - (iii) a corporation controlled, under the Corporations Act, section 50AA, by a parent corporation mentioned in subparagraph (i).

## 55 Holder must give surety

- (1) The holder of the authority, or small scale mining tenure, must give a surety for the authority, or tenure, in a form approved by the scheme manager under section 56.

*Notes—*

- 1 The holder of the authority must not carry out, or allow the carrying out of, a resource activity under the authority unless the holder has given the surety—see the *Environmental Protection Act 1994*, sections 297 and 430.
- 2 For small scale mining tenures, see the *Environmental Protection Act 1994*, sections 21A and 435A.

- (2) The amount of the surety is—
- (a) for an authority mentioned in section 53(a) or (c)—the amount of the estimated rehabilitation cost for the authority at the beginning of the day that is—
    - (i) for an initial allocation decision—the initial allocation day for the authority; or
    - (ii) for a changed holder review decision—the day the decision takes effect under section 37; or
    - (iii) for an annual review decision—the annual review day for the authority; or
  - (b) for an authority mentioned in section 53(b)—the amount worked out under section 49(3); or

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- (c) for an authority mentioned in section 53(d)—the amount of the estimated rehabilitation cost for the authority; or
  - (d) for a small scale mining tenure mentioned in section 53(e)—the amount under the *Environmental Protection Act 1994*, section 21A(2)(a).
- (3) The surety must be given—
- (a) for an authority mentioned in section 53(a) or (b)—within 30 business days after—
    - (i) for an initial allocation decision—the initial allocation day for the authority; or
    - (ii) for a changed holder review decision—the day the decision takes effect under section 37; or
    - (iii) for an annual review decision—the annual review day for the authority; or
  - (b) for an authority mentioned in section 53(c)—within 30 business days after the day the scheme manager decides the holder must give a surety, rather than pay a contribution, to preserve the financial viability of the scheme fund; or
  - (c) for an authority mentioned in section 53(d)—within 30 business days after—
    - (i) if a contribution to the scheme fund has been paid for the authority within the 12 month period immediately preceding the day the administering authority decided the estimated rehabilitation cost for the authority—the day that is 12 months after the day the contribution was paid; or
    - (ii) otherwise—the day the administering authority decides the estimated rehabilitation cost for the authority; or
  - (d) for a small scale mining tenure mentioned in section 53(e)—before carrying out an activity, or allowing the carrying out of an activity, under the tenure.

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- (4) The scheme manager may extend a period mentioned in subsection (3)(a), (b) or (c) if the scheme manager is satisfied it is not reasonably practicable for the holder to obtain the surety within the period.
  - (5) For the *Mineral and Energy Resources (Common Provisions) Act 2014*, section 20A, the holder mentioned in subsection (1) is the entity mentioned in section 20A(2) of that Act.

## 56 Form of surety

- (1) The scheme manager may only approve a surety in 1 or more of the following forms—
  - (a) a bank guarantee—
    - (i) in the approved form; or
    - (ii) on terms and conditions approved by the scheme manager;
  - (b) an insurance bond issued by a prescribed insurer—
    - (i) in the approved form; or
    - (ii) on terms and conditions approved by the scheme manager;
  - (c) a payment of a cash amount—
    - (i) on the condition that the giver of the surety is not entitled to interest on the amount of the surety; and
    - (ii) subject to subparagraph (i), on the terms and conditions approved by the scheme manager.
- (2) The *Acts Interpretation Act 1954*, section 48A(1) does not apply to a form mentioned in subsection (1).
- (3) In this section—

***prescribed insurer*** means an insurer prescribed by regulation for this section.

## **57 When holder must give increased surety**

- (1) This section applies if—
  - (a) a surety is given for an authority mentioned in section 53(a), (b) or (c); and
  - (b) within 12 months after the allocation decision for the authority mentioned in section 53(a), (b) or (c), the estimated rehabilitation cost for the authority increases.
- (2) In addition to giving the surety under section 55, the holder of the authority must give a surety in the amount—
  - (a) for an authority mentioned in section 53(a) or (c)—that equals the amount of the increased estimated rehabilitation cost for the authority less the amount of the surety for the authority already given; or
  - (b) for an authority mentioned in section 53(b)—that equals the amount of the increased estimated rehabilitation cost for the authority less both the fund threshold and the amount of the surety for the authority already given.
- (3) The surety must be in the form approved by the scheme manager under section 56.
- (4) The surety must be given within 30 business days after the estimated rehabilitation cost for the authority increases.
- (5) The scheme manager may extend the period mentioned in subsection (4) if the scheme manager is satisfied it is not reasonably practicable for the holder to obtain the surety within the period.

## **58 Release of surety**

- (1) The scheme manager must release a surety given under this subdivision for an authority if—
  - (a) the surety is replaced with another surety for the authority in a form approved by the scheme manager under section 56; or

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- (b) the surety is no longer required to be given because a contribution to the scheme fund is required to be paid under subdivision 1 for the authority.
- (2) The surety must be released to the giver of the surety as soon as practicable after—
    - (a) for subsection (1)(a)—the replacement surety is given; or
    - (b) for subsection (1)(b)—the contribution to the scheme fund is paid.
  - (3) The scheme manager may release a surety given under this subdivision for an authority, or small scale mining tenure, to the giver of the surety if the scheme manager is satisfied the scheme manager will not be asked under division 3, subdivision 2 to make a claim on or realise the surety or part of it.
  - (4) Without limiting subsection (3), the scheme manager may be satisfied under that subsection if the administering authority for the authority gives the scheme manager a notice stating the administering authority will not ask the scheme manager, under division 3, subdivision 2, for the payment of costs and expenses by the scheme manager making a claim on or realising the surety or part of it.

## **59 Notification of administering authority**

The scheme manager must, as soon as practicable after the holder of an authority or small scale mining tenure gives a surety under this subdivision, give the administering authority for the authority notice of the giving of the surety.

## **Subdivision 3 Fees**

### **60 Assessment fee**

- (1) If the scheme manager makes an allocation decision for an authority, the holder of the authority must pay the scheme

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manager the assessment fee prescribed by regulation for the decision.

- (2) The assessment fee must be paid within 30 business days after the decision is made.

## **61 Administration fee for particular sureties**

- (1) This section applies if—
  - (a) the holder of an authority is required to give a surety under section 53(d); or
  - (b) the holder of a small scale mining tenure is required to give a surety under section 53(e); or
  - (c) the holder of an authority or small scale mining tenure replaces a surety.
- (2) The holder must pay the scheme manager the administration fee prescribed by regulation for the surety.
- (3) The administration fee must be paid—
  - (a) for subsection (1)(a) or (b)—within the period mentioned in section 55(3) for giving the surety; or
  - (b) for subsection (1)(c)—within 30 business days after the replacement surety is given.

## **62 Recovery of unpaid fee**

A fee payable under this subdivision may be recovered as a debt payable to the State.

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## Division 3                    Claiming financial provision

### Subdivision 1            Payments from scheme fund

#### 63            Application of subdivision

This subdivision applies if—

- (a) the administering authority (the *requesting entity*) decides, under the *Environmental Protection Act 1994*, section 316G, to ask the scheme manager for the payment of costs and expenses from the scheme fund; or
- (b) the chief executive (mineral resources) (also the *requesting entity*) incurs, or might reasonably incur, costs and expenses in authorising a person, under the *Mineral Resources Act 1989*, section 344A(1), to carry out remediation activities at land on which an abandoned mine exists; or
- (c) the chief executive (petroleum) (also the *requesting entity*) incurs, or might reasonably incur, costs and expenses in authorising a person, under the *Petroleum and Gas (Production and Safety) Act 2004*, section 799D, to carry out remediation activities in relation to an abandoned operating plant; or
- (d) the chief executive (resources) or the chief executive (environment) (also the *requesting entity*) incurs, or might reasonably incur, costs and expenses relating to particular research that may contribute to the rehabilitation of land on which resource activities have been carried out.

#### 64            Requesting entity may ask for payment from scheme fund

- (1) The requesting entity may ask the scheme manager for payment of the costs and expenses from the scheme fund.
- (2) The request must—

- (a) be in writing; and
  - (b) state the details of the costs and expenses; and
  - (c) for costs and expenses mentioned in section 63(a)—state the details of the authority to which the costs and expenses relate; and
  - (d) include the other information prescribed by regulation.
- (3) If a request under section 63(b) relates to a pre-commencement abandoned mine, the requesting entity must consult with the advisory committee before making the request.
- (4) Before making a request under section 63(d), the requesting entity must consult with the advisory committee about the proposed request.
- (5) In this section—

*pre-commencement abandoned mine* means an abandoned mine in existence before the commencement.

## **65 Decision of scheme manager**

- (1) The scheme manager must decide to authorise or not to authorise payment of the costs and expenses from the scheme fund.
- (2) The scheme manager must decide to authorise payment of the costs and expenses unless the payment would adversely affect the financial viability of the scheme fund.
- (3) If the scheme manager decides to authorise payment of the costs and expenses, the scheme manager must give the amount of the costs and expenses to the requesting entity.

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## Subdivision 2 Realising surety

### 66 Application of subdivision

This subdivision applies if the administering authority (the *requesting entity*) decides, under the *Environmental Protection Act 1994*, section 316G, to ask the scheme manager for the payment of costs and expenses by the scheme manager making a claim on or realising a surety or part of it.

### 67 Requesting entity may ask for realisation of surety

- (1) The requesting entity may ask the scheme manager for payment of the costs and expenses by making a claim on or realising the surety or part of it.
- (2) The request must—
  - (a) be in writing; and
  - (b) state the details of the costs and expenses; and
  - (c) state the details of the authority or small scale mining tenure to which the request relates; and
  - (d) include the other information prescribed by regulation.

### 68 Realisation of surety

The scheme manager must, as soon as practicable after receiving the request—

- (a) make a claim on, or realise, the surety to the extent of the lesser of the following—
  - (i) the amount of the costs and expenses;
  - (ii) the amount of the surety; and
- (b) give the amount claimed or realised under paragraph (a) to the requesting entity.

## **69 Replenishment of surety**

- (1) This section applies if—
  - (a) under section 68, all or part of the surety is claimed or realised; and
  - (b) a surety for the authority or small scale mining tenure is still required under this part.
- (2) The scheme manager must give the holder of the authority or small scale mining tenure a notice—
  - (a) stating how much of the surety has been claimed or realised; and
  - (b) directing the holder to, within 30 business days after the giving of the notice, replenish the surety to the amount that was held by the scheme manager before the surety started to be claimed or realised.
- (3) It is a condition of the authority or small scale mining tenure that the holder must comply with the direction.
- (4) The scheme manager must give a notice to the administering authority to inform the administering authority whether or not the holder has complied with the direction.
- (5) The scheme manager may extend the period mentioned in subsection (2)(b) by notice given to the holder.

## **Division 4 Accountability**

### **70 Guidelines**

- (1) The scheme manager may make guidelines about the operation of the scheme, including, for example, about—
  - (a) the making of allocation decisions for authorities; and
  - (b) the assigning of authorities to a relevant holder; and
  - (c) the making of decisions under section 53(c)(ii); and
  - (d) the forms of surety under section 56.

- (2) The guidelines may be amended or replaced by later guidelines made under this section.
- (3) The guidelines are a statutory instrument under the *Statutory Instruments Act 1992*.

## **71 Scheme manager to keep Minister informed**

- (1) The scheme manager must—
  - (a) keep the Minister reasonably informed of the operations, financial performance and financial position of the scheme; and
  - (b) give the Minister reports and information the Minister requires to help the Minister make informed assessments of the matters mentioned in paragraph (a); and
  - (c) if matters arise that in the scheme manager's opinion may significantly affect the financial viability of the scheme fund—immediately inform the Minister of the matters and the scheme manager's opinion in relation to them.
- (2) Subsection (1) does not limit the matters of which the scheme manager is required to keep the Minister informed, or limit the reports or information the scheme manager is required, or may be required, to give to the Minister under another Act.

## **72 Scheme annual report**

- (1) For each financial year, the scheme manager must give the Minister a report on the administration of this Act and the scheme during the financial year.
- (2) The report must include—
  - (a) information relating to an investigation under section 73 by the scheme manager, including, for example—
    - (i) the actuary's opinions; and
    - (ii) the scheme manager's recommendations; and

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- (iii) any action taken in response to the scheme manager's recommendations; and
  - (b) a summary of information received from the public during the financial year of the report about the effectiveness of the scheme; and
  - (c) the other information prescribed by regulation.
- (3) The report must be given to the Minister within 3 months after the end of the financial year.
- (4) The report must be published on the department's website as soon as practicable after it is given to the Minister.

### **73 Investigation of actuarial sustainability of scheme**

- (1) The scheme manager must, within the prescribed period, investigate the actuarial sustainability of the scheme.
- (2) For subsection (1), the scheme manager may ask an appropriately qualified actuary to give the scheme manager a report about the actuarial sustainability of the scheme.
- (3) The actuary's report must include the actuary's opinion about whether—
  - (a) the amount of the scheme fund is adequate to achieve the main purposes of this Act; and
  - (b) any of the following characteristics of the scheme fund should be changed—
    - (i) the fund threshold;
    - (ii) the number of risk categories;
    - (iii) the rate of contribution to the scheme fund; and
  - (c) the amounts of the assessment fee and administration fee are adequate to meet the cost of operating the scheme.
- (4) After the scheme manager completes the investigation, the scheme manager must give the Minister—
  - (a) the actuary's report; and

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- (b) the scheme manager's recommendations about—
    - (i) the actuary's opinion under subsection (3)(b); and
    - (ii) any other matter relating to the operation of the scheme.
  - (5) This section does not limit the scheme manager's ability to make other inquiries about the operation of the scheme.
  - (6) In this section—

*prescribed period* means—

    - (a) for the first investigation—5 years after the commencement; or
    - (b) for each investigation after the first investigation—3 years after the date of the immediately preceding report.

## Division 5                      Effect of decisions

### 74                      Application for judicial review of particular decisions

- (1) A dissatisfied person may apply for review under the *Judicial Review Act 1991* of the following decisions of the scheme manager—
  - (a) an initial risk category allocation;
  - (b) a changed holder review allocation;
  - (c) an annual review allocation.
- (2) In this section—

*dissatisfied person* means—

  - (a) for an initial risk category allocation—the holder of the authority for which the allocation is made; or
  - (b) for a changed holder review allocation—the interested entity for which the allocation is made; or
  - (c) for an annual review allocation—the holder of the authority for which the allocation is made.

## **75 Decisions of scheme manager otherwise final**

- (1) This section is subject to section 74.
- (2) Unless the Supreme Court decides a decision of the scheme manager under this Act is affected by jurisdictional error, the decision—
  - (a) is final and conclusive; and
  - (b) can not be challenged, appealed against, reviewed, quashed, set aside or called in question in any other way under the *Judicial Review Act 1991* or otherwise (whether by the Supreme Court, another court, a tribunal or another entity); and
  - (c) is not subject to any declaratory, injunctive or other order of the Supreme Court, another court, a tribunal or another entity on any ground.
- (3) The *Judicial Review Act 1991*, part 5 applies to a decision of the scheme manager under this part to the extent it is affected by jurisdictional error.

## **76 No stay of decisions**

A decision mentioned in section 74 must not be stayed.

# **Part 4 Offences and proceedings**

## **77 False or misleading statements**

A person must not, in relation to the administration of this Act—

- (a) state anything to the scheme manager the person knows, or should reasonably know, is false or misleading in a material particular; or
- (b) omit from a statement made to the scheme manager anything without which the statement is, to the person's knowledge, misleading in a material particular.

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Maximum penalty—100 penalty units.

## 78 False or misleading documents

- (1) A person must not, in relation to the administration of this Act, give to the scheme manager a document containing information the person knows, or should reasonably know, is false or misleading in a material particular.

Maximum penalty—100 penalty units.

- (2) Subsection (1) does not apply to a person if the person, when giving the document—
- (a) informs the scheme manager, to the best of the person's ability, how it is false or misleading; and
  - (b) if the person has, or can reasonably obtain, the correct information, gives the correct information.

## Part 5 Confidentiality

### 79 Definitions for part

In this part—

*confidential information*—

- (a) means information—
  - (i) about a person's commercial, business or financial affairs; or
  - (ii) disclosed to, or in the possession or under the control of, the scheme manager under part 3; or
  - (iia) about an allocation decision for an authority; or
  - (iii) about a contribution paid, or a surety given, under part 3; or
  - (iv) about an investigation, or report, under section 73; or

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- (v) about a function of the scheme manager under section 21(1)(d); and
- (b) does not include—
  - (i) statistical or other information that could not reasonably be expected to result in the identification of the person to whom it relates; or
  - (ii) information that is publicly available.

*disclose* includes give access to.

*information* includes a document.

## **80 Duty of confidentiality**

- (1) This section applies to a person who—
  - (a) is, or has been, any of the following persons performing functions under or relating to the administration of this Act—
    - (i) the scheme manager;
    - (ii) an acting scheme manager;
    - (iii) the chief executive;
    - (iv) a public service employee of the department;
    - (v) an actuary asked to give the scheme manager a report under section 73;
    - (vi) a person engaged under a contract of service to perform work for the scheme manager;
    - (vii) a person to whom the scheme manager delegates a function;
    - (viii) a member of the advisory committee; and
  - (b) in that capacity, acquires confidential information or has access to, or custody of, confidential information.
- (2) The person must not use or disclose the confidential information, other than under this part.

Maximum penalty—100 penalty units.

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## 81 Use or disclosure for authorised purpose

The person may use or disclose the confidential information as follows—

- (a) to the extent the use or disclosure is required or permitted under this Act or necessary to perform the person's functions under this Act;
- (b) if the information relates to an adult—with the adult's consent;
- (c) if the information relates to an entity other than an individual—with the entity's consent;
- (d) in compliance with lawful process requiring production of documents or giving of evidence before a court or tribunal;
- (e) if otherwise required or permitted under another law.

## 82 Disclosure to particular chief executives of departments to assist in performance of functions

- (1) The scheme manager may disclose the confidential information to—
  - (a) the chief executive (environment) if the scheme manager is satisfied the disclosure would assist in the performance of the chief executive's functions under the *Environmental Protection Act 1994*; or
  - (b) the chief executive (mineral resources), the chief executive (petroleum) or the chief executive (resources) if the scheme manager is satisfied the disclosure would assist in the performance of the chief executive's functions under the *Mineral and Energy Resources (Common Provisions) Act 2014* or a Resource Act.
- (2) A person who acquires the confidential information mentioned in subsection (1), or has access to, or custody of, the confidential information, must not use or disclose the confidential information, other than under subsection (1).

Maximum penalty—100 penalty units.

(3) In this section—

*Resource Act* see the *Mineral and Energy Resources (Common Provisions) Act 2014*, section 9.

## Part 6 Miscellaneous

### 83 Advisory committee

- (1) The chief executive must establish an advisory committee to give advice—
  - (a) under section 64 to a requesting entity; or
  - (b) to the scheme manager about the operation of the scheme.
- (2) The advisory committee is to consist of at least 5 appropriately qualified persons appointed by the Minister.
- (3) The persons appointed under subsection (2) must include at least—
  - (a) 1 person nominated by an organisation representing environmental interests in Queensland; and
  - (b) 1 person nominated by an organisation representing the interests of the mineral and energy resources sector in Queensland.
- (4) The Minister must appoint 1 of the members of the advisory committee as chairperson.
- (5) The terms on which the members of the advisory committee hold office are to be decided by the Minister.
- (6) However, a member of the advisory committee is—
  - (a) not entitled to be paid remuneration; and
  - (b) entitled to be paid expenses.

## **84 Delegation**

- (1) The scheme manager may delegate the scheme manager's functions under this Act to an appropriately qualified person.
- (2) In this section—  
*function* includes power.

## **85 Protection from liability**

- (1) A protected person does not incur civil liability for an act done, or omission made, in good faith under this Act.
- (2) If subsection (1) prevents a civil liability attaching to a protected person, the liability attaches instead to the State.
- (3) The *Public Service Act 2008*, section 26C does not apply to a protected person who is a State employee for chapter 1, part 3, division 3 of that Act.
- (4) In this section—  
*protected person* means—
  - (a) the scheme manager; or
  - (b) an acting scheme manager; or
  - (c) a person to whom the scheme manager delegates a function under section 84; or
  - (d) a member of the advisory committee.

## **86 Approved forms**

The scheme manager may approve forms for use under this Act.

## **87 Regulation-making power**

- (1) The Governor in Council may make regulations under this Act.
- (2) A regulation may—

- (a) prescribe fees payable under the Act; and
- (b) provide for a maximum penalty of 20 penalty units for a contravention of a regulation.

## 88 Transitional regulation-making power

- (1) A regulation (a *transitional regulation*) may make provision about a matter for which—
  - (a) it is necessary to make provision to allow or facilitate the doing of anything to achieve the transition from the operation of the old scheme to the operation of the new scheme; and
  - (b) this Act does not make provision or sufficient provision.
- (2) A transitional regulation may have retrospective operation to a day not earlier than the commencement.
- (3) A transitional regulation must declare it is a transitional regulation.
- (4) This section and any transitional regulation expire 2 years after the commencement.
- (5) In this section—

*new scheme* means the scheme established under this Act.

*old scheme* means the scheme of financial assurance provided for by the *Environmental Protection Act 1994*, chapter 5, part 12 immediately before the commencement.

## Part 7 Transitional provisions

### 89 Application of part

- (1) This part applies to—
  - (a) a financial assurance given under the pre-amended Act, chapter 5, part 12 by the holder of an environmental authority for a resource activity if, immediately before

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the commencement, the financial assurance was in effect; and

- (b) a financial assurance given under the pre-amended Act, section 21A(2) by the holder of a small scale mining tenure if, immediately before the commencement, the financial assurance was in effect; and
- (c) a financial assurance given by the holder of an environmental authority after the commencement if the administering authority decided, whether before or after the commencement, the amount and form of the financial assurance under the pre-amended Act, chapter 5, part 12, division 2, subdivision 2.

*Note—*

See the *Environmental Protection Act 1994*, sections 757 and 758.

- (2) In this section—

pre-amended Act means the *Environmental Protection Act 1994* as in force before the commencement.

## **90 Financial assurance taken to be surety given under this Act**

- (1) The financial assurance is taken to be a surety given under part 3 for the authority or small scale mining tenure.
- (2) This Act applies in relation to the surety.
- (3) However, it does not matter if the surety is not in a form approved by the scheme manager under section 56.
- (4) Also, an administration fee is not payable for the surety.
- (5) Without limiting subsection (2), the scheme manager may make a claim on or realise the surety or part of it under part 3, division 3, subdivision 2.
- (6) An instrument comprising or relating to the surety must be interpreted, and takes effect, as if it were amended to the extent necessary for this section.
- (7) Without limiting subsection (6)—

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- (a) subsection (2) applies despite the terms of an instrument comprising or relating to the surety, including, for example, a term that the surety or its benefit is not transferable; and
  - (b) the surety is taken to have been given for valuable consideration and any instrument granting it is taken to have been executed as a deed under seal by each party to the instrument; and
  - (c) this section, or anything done under it, does not—
    - (i) discharge the surety; or
    - (ii) discharge or release the surety or other obligee, wholly or partly, from an obligation; or
    - (iii) fulfil a condition allowing a person to—
      - (A) terminate an instrument comprising or relating to the surety; or
      - (B) be released, wholly or partly, from an obligation; or
      - (C) modify the operation or effect of an instrument comprising or relating to the surety, or an obligation; and
  - (d) if the advice or consent of, or giving notice to, a person would be necessary to give effect to the giving of the surety—
    - (i) the advice is taken to have been obtained; and
    - (ii) the consent or notice is taken to have been given.
- (8) If the surety is in the form of a cash payment, the giver of the surety is not entitled to interest on the amount of the surety accrued after the commencement.

## **91 Initial allocation decision not required until scheme manager gives transition notice**

- (1) This section applies to an environmental authority mentioned in section 89(1)(a) or (c) if the estimated rehabilitation cost

for the authority, as mentioned in the *Environmental Protection Act 1994*, section 761(3)(a) or 762(3)(a)(i), is equal to or more than the prescribed ERC amount.

- (2) Despite sections 26 and 27, the scheme manager is not required to make an initial allocation decision for the authority unless the scheme manager gives the holder of the authority a notice (a **transition notice**) for the authority.
- (3) The transition notice must state—
  - (a) that the scheme manager intends to start making an initial allocation decision for the authority; and
  - (b) the day on which the scheme manager intends to start making the initial allocation decision.
- (4) The transition notice for the authority must be given within 3 years after the commencement.
- (5) Until the scheme manager makes an initial allocation decision for the authority, the holder of the authority must give a surety for the authority in the amount of the estimated rehabilitation cost for the authority.
- (6) If a surety is given under subsection (5) after the day this section commences, the surety must be in a form approved by the scheme manager under section 56.
- (7) The surety must be given within 30 business days after the day the administering authority decides the estimated rehabilitation cost for the authority.
- (8) The scheme manager may extend the period mentioned in subsection (7) if the scheme manager is satisfied it is not reasonably practicable for the holder to obtain a surety within the period.

## **92 Scheme manager may require further information from holder before allocation decision**

Section 44 applies to—

- (a) the holder of an environmental authority mentioned in section 89(1)(a) from the commencement; and

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- (b) the holder of an environmental authority mentioned in section 89(1)(c) from the later of the following—
  - (i) the commencement;
  - (ii) the day the administering authority gives a notice of a decision about the amount and form of the financial assurance to the holder of the authority.

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## Schedule 1      Dictionary

## section 7

***abandoned mine*** see the *Mineral Resources Act 1989*, section 344.

***abandoned operating plant*** see the *Petroleum and Gas (Production and Safety) Act 2004*, section 799C.

***acting scheme manager*** means an acting scheme manager appointed under section 16.

***administering authority***, for an authority or small scale mining tenure, means the chief executive (environment).

***administration fee*** means the administration fee prescribed by regulation under section 61.

***advisory committee*** means the advisory committee established under section 83.

***allocation decision***, for an authority, means any of the following for the authority—

- (a) an initial allocation decision;
- (b) a changed holder review decision;
- (c) an annual review decision.

***annual review allocation*** see section 38(2)(b).

***annual review day***, for an authority, see section 41(a).

***annual review decision***, for an authority, means a decision under section 38 in relation to the authority.

***approved form*** means a form approved under section 86.

***assessment fee***, for a decision of the scheme manager, means the assessment fee for the decision prescribed by regulation under section 60.

***authority*** see section 8.

***cash surety account*** see section 25(1).

***changed holder review allocation*** see section 32(2)(b).

***changed holder review day***, for an authority, see section 36(a).

***changed holder review decision***, for an authority, means a decision under section 32 in relation to the authority.

***chief executive (environment)*** means the chief executive of the department in which the *Environmental Protection Act 1994* is administered.

***chief executive (mineral resources)*** means the chief executive of the department in which the *Mineral Resources Act 1989* is administered.

***chief executive (petroleum)*** means the chief executive of the department in which the *Petroleum and Gas (Production and Safety) Act 2004* is administered.

***chief executive (resources)*** means the chief executive of the department in which the *Mineral and Energy Resources (Common Provisions) Act 2014* is administered.

***confidential information***, for part 5, see section 79.

***contribution*** means a contribution under part 3, division 2, subdivision 1 to the scheme fund.

***control*** has the meaning given by the Corporations Act, section 50AA.

***departmental accounts***, of the department, means the accounts of the department under the *Financial Accountability Act 2009*, section 69.

***disclose***, for part 5, see section 79.

***environmental authority***, for a resource activity, means an environmental authority for the resource activity under the *Environmental Protection Act 1994*.

***ERC period*** see the *Environmental Protection Act 1994*, section 296.

***estimated rehabilitation cost***, for an authority, see section 8.

***fund threshold*** see section 11(1).

**holder**, of an authority or small scale mining tenure, means the holder of the authority or tenure within the meaning of the *Environmental Protection Act 1994*.

**indicative annual review allocation** see section 39(1)(a).

**indicative changed holder allocation** see section 34(1)(a).

**indicative risk category allocation** see section 28(1)(a).

**information**, for part 5, see section 79.

**initial allocation day**, for an authority, see section 31(a).

**initial allocation decision**, for an authority, means a decision under section 27 in relation to an authority.

**initial risk category allocation** see section 27(1).

**interested entity**, for an authority, see section 34(1).

**notice** means written notice.

**notice of indicative decision**—

- (a) for part 3, division 1, subdivision 1—see section 28(1);  
or
- (b) for part 3, division 1, subdivision 2—see section 34(1);  
or
- (c) for part 3, division 1, subdivision 3—see section 39(1).

**parent corporation**, of a holder, means—

- (a) a corporation that controls the holder under the Corporations Act, section 50AA; or
- (b) a corporation of which the holder is a subsidiary under the Corporations Act, section 46.

**prescribed ERC amount** see section 26(1)(b).

**prescribed percentage**, for an authority, means the percentage prescribed by regulation for the authority.

**relevant holder**, of an authority, for a matter relating to—

- (a) an initial allocation decision—see section 27(5)(c); or
- (b) a changed holder review decision—see section 32(6)(c);  
or

(c) an annual review decision—see section 38(6)(c).

**remediation activities**—

(a) at land on which an abandoned mine exists—see the *Mineral Resources Act 1989*, section 344A(1); or

(b) in relation to an abandoned operating plant—see the *Petroleum and Gas (Production and Safety) Act 2004*, section 799D.

**requesting entity**—

(a) for part 3, division 3, subdivision 1—see section 63; or

(b) for part 3, division 3, subdivision 2—see section 66.

**resource activity** see the *Environmental Protection Act 1994*, section 107.

**resource authority** see the *Mineral and Energy Resources (Common Provisions) Act 2014*, section 10.

**risk category** means a category mentioned in section 27(1).

**scheme** see section 4(a).

**scheme fund** see section 24(1).

**scheme manager** means the scheme manager appointed under section 12.

**scheme manager guidelines** means the guidelines made by the scheme manager under section 70 and in effect.

**small scale mining tenure** see the *Environmental Protection Act 1994*, section 21A(2).

**surety** means a surety under part 3, division 2, subdivision 2.

**total estimated rehabilitation cost**—

(a) for an entity, see section 9; or

(b) for the State, see section 10.

**Treasurer** means the Minister administering the *Financial Accountability Act 2009*.