



Queensland

Mineral and Energy Resources (Financial Provisioning) Act 2018

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Mineral and Energy Resources (Financial Provisioning) Act 2018

Contents

		Page
Part 1	Preliminary	
Division 1	Introduction	
1	Short title	7
2	Commencement	7
Division 2	Purposes and application of Act	
3	Main purposes	7
4	How main purposes to be achieved	8
5	Relationship with Environmental Protection Act 1994	9
6	Act does not affect other rights or remedies	9
Division 3	Interpretation	
Subdivision 1	Dictionary	
7	Definitions	10
Subdivision 2	Key definitions	
8	What is the estimated rehabilitation cost	10
9	What is an entity's total estimated rehabilitation cost	10
10	What is the State's total estimated rehabilitation cost	11
11	What is the fund threshold	11
Part 2	Establishment of scheme and residual risks fund	
Division 1	Scheme manager	
12	Appointment	12
13	Term of appointment	13
14	Remuneration and conditions	13
15	Resignation	13
16	Acting scheme manager	13
17	Preservation of rights	14
18	Relationship with State	14

Contents

19	Finance	15
20	Not statutory body for particular Acts	15
21	Functions	15
22	Powers	16
23	Staff services from department	16
Division 2	Scheme fund and cash surety account	
24	Establishment of scheme fund	17
25	Cash surety account	18
Division 3	Residual risks fund	
25A	Establishment of residual risks fund	19
Part 3	Operation of scheme	
Division 1	Risk category allocation	
Subdivision 1	Initial allocation	
26	Application of subdivision	20
27	Scheme manager must make initial risk category allocation . . .	21
27A	Scheme manager must decide annual review allocation day . . .	23
28	Scheme manager must notify holder of indicative risk category allocation and indicative review day	23
29	When indicative risk category allocation and indicative review day become the initial risk category allocation and annual review allocation day	24
30	Period for deciding initial risk category allocation and annual review allocation day	25
31	Notice of initial risk category allocation and annual review allocation day 25	
Subdivision 2	Changed holder allocation	
31A	Meaning of changed holder event	26
32	Scheme manager decision on risk category allocation if changed holder 27	
33	Application to scheme manager if proposed changed holder . . .	29
34	Scheme manager must notify interested entity of indicative changed holder allocation	30
35	When indicative changed holder allocation and indicative review day become the changed holder allocation and annual review allocation day 32	
36	Notice of changed holder allocation	32
37	When changed holder allocation takes effect	33
Subdivision 3	Annual review allocation	
38	Annual review of risk category allocation	35

39	Scheme manager must notify holder of indicative annual review allocation	37
40	When indicative annual review allocation becomes the annual review allocation	38
41	Notice of annual review allocation	38
Subdivision 3A	Changing annual review allocation day	
41A	Application to scheme manager to change annual review allocation day 39	
41B	Scheme manager may change annual review allocation day on own initiative	40
41C	When change to annual review allocation day takes effect	42
41D	Change to annual review allocation day in relation to changed holder event	42
Subdivision 4	Information disclosure	
42	Holder must give scheme manager notice if changed holder ...	42
43	Holder must give scheme manager notice if cessation in production	43
44	Scheme manager may require further information from holder before allocation decision	44
45	Scheme manager may require further information from interested entity before changed holder allocation	45
Division 1A	Election for risk category allocation	
45A	Definitions for division	46
45B	Application of division	46
45C	Scheme manager must give notice about election	48
45D	Applicable holder may elect for authority to be subject to risk category allocation	48
45E	Scheme manager to give election notice	49
45F	Period of election notice	49
Division 2	Liability under scheme	
Subdivision 1	Contribution to scheme fund	
46	Application of subdivision	50
47	Holder must pay contribution to scheme fund	51
48	Rate of contribution if holder not able to give surety	53
49	Holder must pay contribution and give surety if estimated rehabilitation cost more than fund threshold	53
50	Refund of contribution to previous holder if changed holder allocation takes effect	54
50A	Refund of contribution to previous holder if election notice not given to changed holder	55

Contents

51	Recovery of unpaid contribution	55
52	Notification of administering authority	55
Subdivision 2	Surety	
53	Application of subdivision	56
54	Scheme manager's decision about financial viability of scheme fund	58
55	Holder must give surety	59
55A	When surety must be given	60
56	Form of surety	62
57	When holder must give increased surety	63
58	Release of surety	64
59	Notification of administering authority	65
Subdivision 3	Fees	
60	Assessment fee	65
61	Administration fee for particular sureties	65
62	Recovery of unpaid fee	66
Division 3	Claiming financial provision	
Subdivision 1	Payments from scheme fund	
63	Application of subdivision	66
64	Requesting entity may ask for payment from scheme fund	67
65	Decision of scheme manager	68
Subdivision 2	Realising surety	
66	Application of subdivision	68
67	Requesting entity may ask for realisation of surety	68
68	Realisation of surety	69
69	Replenishment of surety	69
Division 4	Guidelines and investigations	
70	Guidelines	70
73	Investigation of actuarial sustainability of scheme	70
Part 3A	Administration of residual risks fund	
76A	Application of part	71
76B	Requesting entity may ask for payment from residual risks fund	72
76C	Decision of scheme manager	72
76D	Guidelines	73
76E	Investigation of actuarial sustainability of residual risks fund . . .	73
Part 3B	Effect of decisions of scheme manager	
76F	Application for judicial review of particular decisions	74

76G	Decisions of scheme manager otherwise final	75
76H	No stay of decisions	76
Part 4	Offences and proceedings	
77	False or misleading statements	76
78	False or misleading documents	76
Part 5	Confidentiality	
79	Definitions for part	77
80	Duty of confidentiality	78
81	Use or disclosure for authorised purpose	78
82	Disclosure to particular chief executives of departments to assist in performance of functions	79
Part 6	Miscellaneous	
83	Advisory committee	80
83A	Scheme manager to keep Minister informed	80
83B	Annual report	81
84	Delegation	82
85	Protection from liability	82
86	Approved forms	82
86A	Combined notices	83
87	Regulation-making power	83
Part 7	Transitional provisions	
Division 1	Transitional provisions for Act No. 30 of 2018	
89	Application of division	83
90	Financial assurance taken to be surety given under this Act	84
91	Initial allocation decision not required until scheme manager gives transition notice	85
92	Scheme manager may require further information from holder before allocation decision	86
Division 2	Transitional provisions for Mineral and Energy Resources and Other Legislation Amendment Act 2024	
Subdivision 1	Interpretation	
93	Definitions for division	87
Subdivision 2	Provisions relating to authorities for which estimated rehabilitation cost is \$10m or more	
94	Allocation process not finished before the commencement	88
95	Changed holder review process not finished before the commencement	89
96	Existing changed holder review allocation not in effect before the	

Contents

	commencement	90
97	Annual review process not finished before the commencement .	90
98	Annual review allocation day for particular existing authorities . .	91
Subdivision 3	Provisions relating to authorities for which estimated rehabilitation cost is \$100,000 or more but less than \$10m	
99	Option to elect if allocation process not finished before the commencement	92
100	Option to elect if changed holder review process not finished before the commencement	95
101	Option to elect for particular authorities if changed holder review allocation not in effect before the commencement	98
102	Existing authorities with high risk category allocation if changed holder review allocation not in effect before the commencement	100
103	Option to elect for particular authorities if annual review process not finished before the commencement	102
104	Existing authorities with high risk category allocation if annual review process not finished before the commencement	104
105	Option to elect before relevant anniversary day for particular existing authorities	105
106	Application of new pt 3, div 1, sdiv 2 for particular authorities to which s 105 applies	108
107	Particular existing authorities if s 105 stops applying because estimated rehabilitation cost equal to or more than prescribed ERC amount	108
Subdivision 4	Transitional regulation	
108	Transitional regulation-making power	109
109	Expiry of subdivision and transitional regulation	110
Schedule 1	Dictionary	111

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, and to administer payments made for residual risks arising from 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

[s 4]

- (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
- (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 in relation to mining activities previously carried out on an abandoned mine site; 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; and
- (e) to administer payments received by the State under the *Environmental Protection Act 1994* for residual risks 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) establishing a residual risks fund; and
- (c) providing for the appointment of a person to manage the scheme and administer the residual risks fund; and
- (d) providing for the person mentioned in paragraph (c)—

- (i) for managing the scheme—to make payments from the scheme fund and the cash surety account, enter into surety arrangements, and call on and release sureties; and
- (ii) for administering the residual risks fund—to make payments from the residual risks fund.

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

[s 7]

- (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.

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* applying to an authority is—
 - (a) the amount prescribed for the authority by regulation for this paragraph; or
 - (b) if no amount is prescribed under paragraph (a) for the authority—the amount under subsection (2) for the authority.
- (2) The amount for subsection (1)(b) is—
 - (a) if the holder of the authority has a prescribed rating—\$600m; or
 - (b) if the scheme manager considers the financial soundness of a parent corporation of the holder when making an allocation decision for the authority and the parent corporation has a prescribed rating—\$600m; or
 - (c) for an authority for which there is more than 1 holder—
 - (i) if the scheme manager considers the financial soundness of any or all of the holders of the authority when making an allocation decision for the authority and at least 1 of the holders considered has a prescribed rating—\$600m; or
 - (ii) if the scheme manager considers the financial soundness of a parent corporation of any or all of the holders of the authority when making an allocation decision for the authority and at least 1 of the parent corporations considered has a prescribed rating—\$600m; or

- (d) in any other case—\$450m.
- (3) 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 number of holders of authorities affected by the amount; and
 - (c) the effect of the matters mentioned in paragraphs (a) and (b) on the financial viability of the scheme fund; and
 - (d) 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 applying to all or some of the authorities should be changed.
- (4) In this section—

prescribed rating, in relation to the holder of an authority, means a credit rating prescribed by regulation.

Part 2 Establishment of scheme and residual risks fund

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.
- (3) The scheme manager is appointed under this Act and not the *Public Sector Act 2022*.

- (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.

[s 17]

- (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 Sector Act 2022*.
- (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) administering the residual risks fund;
 - (e) setting investment objectives for the scheme fund or part of the scheme fund, and for the residual risks fund or part of the residual risks fund, and establishing investment strategies and policies to achieve the objectives.
- (2) In performing the function under subsection (1)(e), 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.

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—
 - (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;

[s 25]

- (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.

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.

Division 3 Residual risks fund

25A Establishment of residual risks fund

- (1) The Residual Risks Fund is established.
- (2) Accounts for the residual risks fund must be kept as part of the departmental accounts of the department.
- (3) Amounts received for the residual risks fund—
 - (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) Amounts received for the residual risks fund are—
 - (a) residual risk payment amounts; or
 - (b) amounts earned as interest on the residual risks fund or as a return from investment of monies in the residual risks fund.
- (5) An amount mentioned in subsection (4) is a controlled receipt for the *Financial Accountability Act 2009*.
- (6) An amount is payable from the residual risks fund—
 - (a) for payment of costs and expenses related to the administration of the fund; or
 - (b) under part 3A.

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, of more than \$100,000, prescribed by regulation for this subparagraph;
 - (ii) if no amount is prescribed under subparagraph (i)—\$10m.
- (2) Also, 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 \$100,000 but less than the prescribed ERC amount; and
 - (c) the scheme manager gives the holder an election notice for the authority.
- (3) If the administering authority makes more than 1 decision under the *Environmental Protection Act 1994*, section 300 in relation to an authority—

-
- (a) subsection (1) applies only in relation to the first decision for which the estimated rehabilitation cost is equal to or more than the prescribed ERC amount; and
 - (b) subsection (2) applies only in relation to the first decision for which the estimated rehabilitation cost is equal to or more than \$100,000 but less than the prescribed ERC amount.
- (4) However, subsection (1) does not apply in relation to the first decision for which the estimated rehabilitation cost is equal to or more than the prescribed ERC amount if—
- (a) before the decision is made, the scheme manager had given the holder an election notice for the authority; and
 - (b) immediately before the decision is made, the election notice is in effect.
- (5) Also, subsection (2) does not apply in relation to the first decision for which the estimated rehabilitation cost is equal to or more than \$100,000 but less than the prescribed ERC amount if, immediately before the decision is made, the estimated rehabilitation cost for the authority is equal to or more than the prescribed ERC amount.
- (6) A reference in subsections (3), (4) and (5) to a decision of the administering authority includes a decision made before the commencement.

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) moderate-high;
 - (e) 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 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 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

- (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).

27A Scheme manager must decide annual review allocation day

- (1) The scheme manager must decide the annual review allocation day for the authority.
- (2) In deciding the annual review allocation day, the scheme manager—
 - (a) must consider—
 - (i) the effect the day will have on the operation of the scheme; and
 - (ii) any administrative efficiencies the day may achieve for the holder of the authority; and
 - (iii) submissions made under section 28; and
 - (b) may consider any other matter the scheme manager considers relevant to the decision.

28 Scheme manager must notify holder of indicative risk category allocation and indicative review day

- (1) The scheme manager must, before deciding the initial risk category allocation and the annual review allocation day, 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

[s 29]

- (d) the annual review allocation day the scheme manager intends to decide for the authority (the *indicative review day*); and
 - (e) whether a contribution to the scheme fund, or a surety, is required under the indicative risk category allocation; and
 - (f) 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), (d) or (e); 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)(f) by notice given to the holder.

29 When indicative risk category allocation and indicative review day become the initial risk category allocation and annual review allocation day

- (1) 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 in relation to the indicative risk category allocation; or
 - (b) gives the scheme manager a notice under section 28 that the holder accepts the indicative risk category allocation.
- (2) Also, the scheme manager must decide the annual review allocation day for the authority as being the day stated under section 28(1)(d) in the notice of indicative decision if the holder—
- (a) does not make submissions under section 28 in relation to the indicative review day; or

- (b) gives the scheme manager a notice under section 28 that the holder accepts the indicative review day.

30 **Period for deciding initial risk category allocation and annual review allocation day**

The scheme manager must decide the initial risk category allocation and the annual review allocation day—

- (a) if the holder gives the scheme manager a notice under section 28 that the holder accepts the indicative risk category allocation and the indicative review day—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 decide the initial risk category allocation—within 20 business days after the scheme manager receives the information or document.

31 **Notice of initial risk category allocation and annual review allocation day**

- (1) The scheme manager must, as soon as practicable after deciding both the initial risk category allocation and the annual review allocation day, give the holder a notice stating—
 - (a) the day the risk category allocation was decided (the *initial allocation day* for the authority); and
 - (b) the initial risk category allocation; and

[s 31A]

- (c) if section 27(5) applies—the relevant holder of the authority under section 27(5)(c); and
 - (d) the annual review allocation day; and
 - (e) when the annual review allocation day takes effect; and
 - (f) 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
 - (g) the amount of the assessment fee for the decision, and when the fee must be paid.
- (2) The annual review allocation day takes effect on the day stated in the notice.

Subdivision 2 Changed holder allocation

31A Meaning of *changed holder event*

- (1) A *changed holder event*, in relation to an authority, means any of the following—
- (a) an entity applies to the Minister under the *Mineral and Energy Resources (Common Provisions) Act 2014*, section 19 for approval of a prescribed dealing to enable its registration under section 17 of that Act that is an assessable transfer, of a resource authority relating to the authority, to another entity (the *changed holder*);
 - (b) an entity gives notice to the chief executive under the *Mineral and Energy Resources (Common Provisions) Act 2014*, section 19B of a notifiable dealing to enable its registration under section 17A of that Act that is a non-assessable transfer of a resource authority, or of a share in a resource authority, relating to the 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*);

- (c) an entity starts or stops controlling a holder of the authority (also the ***changed holder***) under the Corporations Act, section 50AA;
 - (d) 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) For subsection (1)(a) and (b), a resource authority relates to an authority if the resource authority authorises the carrying out of a resource activity for the authority.

32 Scheme manager decision on 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) a changed holder event happens in relation to the authority.
- (2) Also, this section applies if—
- (a) the estimated rehabilitation cost for an authority is equal to or more than \$100,000 but less than the prescribed ERC amount; and
 - (b) a changed holder event happens in relation to the authority; and
 - (c) the scheme manager gives the changed holder an election notice for the authority.
- (3) If the authority is allocated to a risk category, 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***).

- (4) If the authority is not allocated to a risk category, the scheme manager must—
 - (a) decide to allocate the authority to a risk category (the ***changed holder initial allocation***); and
 - (b) decide the annual review allocation day for the authority.
- (5) In making the changed holder 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 guidelines; and
 - (b) may consider any other matter the scheme manager considers relevant.
- (6) In forming an opinion under subsection (5)(a)(i), the scheme manager—
 - (a) must consider—
 - (i) the financial soundness of the changed holder; and
 - (ii) the scheme 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.
- (7) 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.
- (8) 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).
- (9) In deciding the annual review allocation day, the scheme manager—
- (a) must consider—
 - (i) the effect the day will have on the operation of the scheme; and
 - (ii) any administrative efficiencies the day may achieve for the changed holder of the authority; and
 - (iii) submissions made under section 34; and
 - (b) may consider any other matter the scheme manager considers relevant.

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) a changed holder event is proposed in relation to the authority.
- (2) Also, this section applies if—

[s 34]

- (a) the estimated rehabilitation cost for an authority is equal to or more than \$100,000 but less than the prescribed ERC amount; and
 - (b) a changed holder event is proposed in relation to the authority; and
 - (c) had the proposed changed holder event happened, division 1A would apply in relation to the changed holder.
- (3) 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 allocation as if—
 - (a) the proposed changed holder event had happened; and
 - (b) for an authority to which subsection (2) applies—the scheme manager had given the changed holder an election notice for the authority.
- (4) The scheme manager must make the changed holder allocation only if the application is accompanied by the assessment fee for the decision.

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

- (1) The scheme manager must, before deciding the changed holder allocation in relation to an authority, give the interested entity 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 the authority is not allocated to a risk category—the annual review allocation day the scheme manager intends to decide for the authority (the *indicative review day*); and

-
- (d) if section 32(8) applies—the relevant holder of the authority under section 32(8)(c); and
 - (e) whether a contribution to the scheme fund, or a surety, is required under the indicative changed holder allocation; and
 - (f) 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), (d) or (e); 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)(f) by notice given to the interested entity.
- (3) In this section—
- interested entity*** means—
- (a) for an authority in relation to which a changed holder event has happened—
 - (i) for a changed holder event of a type mentioned in section 31A(1)(a)—the entity that applied to the Minister for approval of the prescribed dealing under the *Mineral and Energy Resources (Common Provisions) Act*, section 19; or
 - (ii) for a changed holder event of a type mentioned in section 31A(1)(b)—the entity that gave notice to the chief executive of the notifiable dealing under the *Mineral and Energy Resources (Common Provisions) Act*, section 19B; or
 - (iii) for a changed holder event of a type mentioned in section 31A(1)(c) or (d)—each holder of the authority; or
 - (b) for an authority in relation to which a changed holder event is proposed—the applicant under section 33 for a

changed holder allocation for the proposed changed holder event.

35 When indicative changed holder allocation and indicative review day become the changed holder allocation and annual review allocation day

- (1) 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 in relation to the indicative changed holder allocation; or
 - (b) gives the scheme manager a notice under section 34 that the interested entity accepts the indicative changed holder allocation.
- (2) If the authority is not allocated to a risk category, the scheme manager must decide the annual review allocation day for the authority as being the day stated under section 34(1)(c) in the notice of indicative decision if the interested entity—
 - (a) does not make submissions under section 34 in relation to the indicative review day; or
 - (b) gives the scheme manager a notice under section 34 that the interested entity accepts the indicative review day.

36 Notice of changed holder allocation

- (1) The scheme manager must, as soon as practicable after deciding the changed holder allocation, give a notice to the interested entity stating—
 - (a) the day the changed holder allocation was decided; and
 - (b) the risk category to which the authority is allocated under the changed holder allocation; and
 - (c) if the scheme manager decides the annual review allocation day for the authority under section 32(4)(b)—
 - (i) the annual review allocation day; and

- (ii) when the annual review allocation day takes effect; and
 - (d) if section 32(8) applies—the relevant holder of the authority under section 32(8)(c); and
 - (e) 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
 - (f) 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
 - (g) when the changed holder allocation takes effect.
- (2) The annual review allocation day takes effect on the day stated in the notice.

37 When changed holder allocation takes effect

- (1) The changed holder allocation takes effect—
- (a) for a changed holder event of a type mentioned in section 31A(1)(a)—when the prescribed dealing is approved under the *Mineral and Energy Resources (Common Provisions) Act 2014*, section 19 by the Minister; or
 - (b) for a changed holder event of a type mentioned in section 31A(1)(b)—when the notifiable dealing is notified under the *Mineral and Energy Resources (Common Provisions) Act 2014*, section 19B to the chief executive; or
 - (c) for a changed holder event of a type mentioned in section 31A(1)(c) or (d)—on the day that is 10 business days after the notice under section 36(1) is given to the interested entity; or
 - (d) for a proposed changed holder event of a type mentioned in section 31A(1)(a)—if and when the prescribed dealing is approved under the *Mineral and*

Energy Resources (Common Provisions) Act 2014, section 19 by the Minister; or

- (e) for a proposed changed holder event of a type mentioned in section 31A(1)(b)—if and when the notifiable dealing is notified under the *Mineral and Energy Resources (Common Provisions) Act 2014*, section 19B to the chief executive; or
 - (f) for a proposed changed holder event of a type mentioned in section 31A(1)(c) or (d)—if and when the proposed event happens.
- (2) However—
- (a) subsection (1)(d) applies only if—
 - (i) the application for approval of the prescribed dealing is made within the prescribed period after the notice under section 36(1) is given to the interested entity; and
 - (ii) for an authority to which section 33(2) applied—the scheme manager gives the changed holder an election notice for the authority; and
 - (b) subsection (1)(e) applies only if—
 - (i) notice of the notifiable dealing is given within the prescribed period after the notice under section 36(1) is given to the interested entity; and
 - (ii) for an authority to which section 33(2) applied—the scheme manager gives the changed holder an election notice for the authority; and
 - (c) subsection (1)(f) applies only if—
 - (i) the proposed changed holder event happens within the prescribed period after the notice under section 36(1) is given to the interested entity; and
 - (ii) for an authority to which section 33(2) applied—the scheme manager gives the changed holder an election notice for the authority.
- (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) Also, 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 \$100,000 but less than the prescribed ERC amount; and
 - (c) the scheme manager has given the holder an election notice for the authority; and
 - (d) the election notice is in effect.
- (3) The scheme manager must, within 30 business days before the annual review allocation 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*).
- (4) However, subsection (3) does not apply to an annual review allocation day that is within 9 months after—
 - (a) the initial allocation day for the authority; or

- (b) the day a changed holder allocation takes effect for the authority; or
 - (c) the day a change to the annual review allocation day takes effect.
- (5) 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 guidelines; and
 - (b) may consider any other matter the scheme manager considers relevant.
- (6) In forming an opinion under subsection (5)(a)(i), the scheme manager—
 - (a) must consider—
 - (i) the financial soundness of the holder; and
 - (ii) the scheme 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.
- (7) In considering the financial soundness of the holder, the scheme manager may consider the financial soundness of a parent corporation of the holder.
- (8) If there is more than 1 holder, the scheme manager—
 - (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).

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(8) applies—the relevant holder of the authority under section 38(8)(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(8) applies—the relevant holder of the authority under section 38(8)(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 3A Changing annual review allocation day

41A Application to scheme manager to change annual review allocation day

- (1) The holder of an authority may apply to the scheme manager to change the annual review allocation day for the authority to another day (the *proposed day*).
- (2) The application must state—
 - (a) the proposed day; and
 - (b) the reasons for the proposed change.
- (3) In deciding the application, the scheme manager—
 - (a) must consider—
 - (i) the effect the proposed day will have on the operation of the scheme; and
 - (ii) any administrative efficiencies the proposed day may achieve for the holder; and
 - (b) may consider any other matter the scheme manager considers relevant.
- (4) The scheme manager must consider the application and decide—
 - (a) to change the annual review allocation day to the proposed day; or
 - (b) to refuse the application.
- (5) The scheme manager must make the decision within—
 - (a) 20 business days after receiving the application; or
 - (b) if the scheme manager and the holder agree to a longer period for deciding the application—the longer period.
- (6) As soon as practicable after making the decision, the scheme manager must give the holder notice of the decision.

- (7) If the scheme manager decides to change the annual review allocation day, the notice under subsection (6) must state—
 - (a) the annual review allocation day for the authority; and
 - (b) when the change to the annual review allocation day takes effect.

41B Scheme manager may change annual review allocation day on own initiative

- (1) The scheme manager may decide, on the scheme manager's own initiative, to change the annual review allocation day for an authority to another day (the *new day*).
- (2) The scheme manager must, before deciding to change the annual review allocation day to the new day, give the holder of the authority a notice (a *notice of indicative decision*) stating—
 - (a) the new day; and
 - (b) the reasons for the proposed change; and
 - (c) 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) or (b); or
 - (ii) give the scheme manager notice that the holder accepts the new day as the annual review allocation day for the authority.
- (3) The scheme manager may extend the period mentioned in subsection (2)(c) by notice given to the holder.
- (4) In deciding whether to change the annual review allocation day to the new day, the scheme manager—
 - (a) must consider—
 - (i) the effect the new day will have on the operation of the scheme; and
 - (ii) any administrative efficiencies the new day may achieve for the holder; and

- (b) may consider any other matter the scheme manager considers relevant.
- (5) After considering any submissions made under subsection (2), the scheme manager must decide—
 - (a) to change the annual review allocation day to the new day; or
 - (b) to change the annual review allocation day to another day agreed between the scheme manager and the holder; or
 - (c) not to change the annual review allocation day.
- (6) The scheme manager must make the decision—
 - (a) if the holder gives the scheme manager a notice under subsection (2) that the holder accepts the new day—within 5 business days after the scheme manager receives the notice; or
 - (b) if the holder does not make submissions under subsection (2)—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 subsection (2)—within 20 business days after the scheme manager receives the submissions.
- (7) As soon as practicable after making the decision, the scheme manager must give the holder notice of the decision.
- (8) If the scheme manager decides to change the annual review allocation day, the notice under subsection (7) must state—
 - (a) the annual review allocation day for the authority; and
 - (b) when the change to the annual review allocation day takes effect.

41C When change to annual review allocation day takes effect

A change to the annual review allocation day for an authority takes effect on the day stated in the notice given under section 41A(6) or 41B(7) for the authority.

41D Change to annual review allocation day in relation to changed holder event

- (1) This section applies if—
 - (a) a changed holder event happens or is proposed in relation to an authority; and
 - (b) the scheme manager is reviewing or deciding, under section 32, the risk category allocation to which the authority is allocated.
- (2) Sections 41A and 41B apply in relation to the changed holder as if a reference in the sections to the holder of an authority were a reference to the changed holder for the authority.
- (3) However, a change to the annual review allocation day must not take effect before the changed holder allocation takes effect under section 37.

Subdivision 4 Information disclosure

42 Holder must give scheme manager notice if changed holder

- (1) If the estimated rehabilitation cost for an authority is equal to or more than \$100,000, the holder of the authority must give the scheme manager a notice under this section if a changed holder event happens in relation to the authority.

Maximum penalty—100 penalty units.

- (2) The notice must—
 - (a) state the details of the changed holder event; 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 changed holder event of a type mentioned in section 31A(1)(a)—the application for approval of the prescribed dealing is made; or
 - (b) for a changed holder event of a type mentioned in section 31A(1)(b)—the notice of the notifiable dealing is given; or
 - (c) for a changed holder event of a type mentioned in section 31A(1)(c) or (d)—the event happens.
- (4) If a notice under subsection (1) relates to a changed holder event of a type mentioned in section 31A(1)(c) or (d), the scheme manager must give the chief executive (resources) a copy of the notice within 10 business days after the scheme manager receives the notice.

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
 - (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
 - (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 allocation

- (1) The scheme manager may, before making a changed holder allocation 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 1A Election for risk category allocation

45A Definitions for division

In this division—

applicable holder, of an authority, means—

- (a) if section 45B(1) or (2) applies in relation to the authority—the holder of the authority; or
- (b) if section 45B(3) applies in relation to the authority—the changed holder of the authority.

election period, in relation to an authority, means the period—

- (a) starting on the day the applicable holder is given a notice under section 45C in relation to the authority; and
- (b) ending on the earlier of the following—
 - (i) 20 business days after the applicable holder is given the notice under section 45C;
 - (ii) if the applicable holder gives a notice under section 45D(2) in relation to the authority—the day the notice is given.

45B Application of division

- (1) This division 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 \$100,000 but less than the prescribed ERC amount; and

- (c) the decision is the first decision in relation to the authority for which the estimated rehabilitation cost is equal to or more than \$100,000 but less than the prescribed ERC amount; and
 - (d) immediately before the decision is made, the authority is not subject to risk category allocation under division 1; and
 - (e) the holder of the authority is also the holder of an authority—
 - (i) for which the estimated rehabilitation cost is equal to or more than \$100,000; and
 - (ii) that is allocated to a risk category other than high.
- (2) Also, this division 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 \$100,000 but less than the prescribed ERC amount; and
 - (c) immediately before the decision is made—
 - (i) the estimated rehabilitation cost for the authority is equal to or more than the prescribed ERC amount; and
 - (ii) the authority is allocated to a risk category other than high; and
 - (d) the holder of the authority is also the holder of an authority—
 - (i) for which the estimated rehabilitation cost is equal to or more than \$100,000; and
 - (ii) that is allocated to a risk category other than high.
- (3) Further, this division applies if—

[s 45C]

- (a) the estimated rehabilitation cost for an authority is equal to or more than \$100,000 but less than the prescribed ERC amount; and
- (b) a changed holder event happens in relation to the authority; and
- (c) the changed holder is also the holder of an authority—
 - (i) for which the estimated rehabilitation cost is equal to or more than \$100,000; and
 - (ii) that is allocated to a risk category other than high.
- (4) A reference in subsection (1)(c) to a decision of the administering authority includes a decision made before the commencement.

45C Scheme manager must give notice about election

- (1) The scheme manager must give the applicable holder of the authority a notice stating the applicable holder may elect for the authority to be subject to risk category allocation under division 1 within the election period.
- (2) The scheme manager must give the applicable holder the notice—
 - (a) if section 45B(1) or (2) applies in relation to the authority—within 10 business days after the scheme manager receives notice of the administering authority's decision in relation to the authority under the *Environmental Protection Act 1994*, section 301; or
 - (b) if section 45B(3) applies in relation to the authority—within 10 business days after the scheme manager receives a notice under section 42 in relation to the changed holder event.

45D Applicable holder may elect for authority to be subject to risk category allocation

- (1) The applicable holder may elect for the authority to be subject to risk category allocation under division 1 by giving the

scheme manager notice of the election within the election period.

- (2) If the applicable holder decides not to make the election, the applicable holder may give the scheme manager notice of the applicable holder's decision within the election period.

45E Scheme manager to give election notice

If the applicable holder gives the scheme manager a notice under section 45D(1) within the election period, the scheme manager must give the applicable holder a notice (an ***election notice***) stating—

- (a) the day the notice is given; and
- (b) the authority to which the notice relates; and
- (c) that the authority is subject to risk category allocation under division 1.

45F Period of election notice

- (1) An election notice for the authority has effect from the day the election notice is given to the applicable holder.
- (2) An election notice for the authority stops having effect if—
 - (a) the estimated rehabilitation cost for the authority is—
 - (i) less than \$100,000; or
 - (ii) equal to or more than the prescribed ERC amount; or
 - (b) the scheme manager makes an allocation decision for the authority that allocates the authority to a risk category of high; or
 - (c) the authority is surrendered under the *Environmental Protection Act 1994*, chapter 5; or
 - (d) for an applicable holder mentioned in section 45A, definition *applicable holder*, paragraph (a)—a changed holder event happens that has the effect of another

holder of the authority being liable to pay a contribution, or give a surety, under this part; or

- (e) for an applicable holder mentioned in section 45A, definition *applicable holder*, paragraph (b) if a changed holder event of a type mentioned in section 31A(1)(a) happened—the prescribed dealing is not approved under the *Mineral and Energy Resources (Common Provisions) Act 2014*, section 19 by the Minister.

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;
 - (D) moderate-high;
 - (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 previous annual review decision for the authority, made within 21 months before the decision mentioned in subparagraph (i), allocated the authority to 1 of the following risk categories—
 - (A) very low;
 - (B) low;
 - (C) moderate;
 - (D) moderate-high;
- (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;
- (iv) the scheme manager is satisfied when the scheme manager makes the annual review decision mentioned in subparagraph (i) that the scheme manager is unlikely to be asked under section 64 to make a payment from the scheme fund in relation to the authority.

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 allocation—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—

$$C = \frac{A \times B}{365} \times D$$

where—

A is the estimated rehabilitation cost for the authority at the beginning of the day that is the current review day.

B is the prescribed percentage for the authority.

C is the amount of the contribution.

D is the number of days between the current review day and—

- (a) for an initial allocation decision—the annual review allocation day occurring more than 9 months after the current review day; or
 - (b) for a changed holder allocation—
 - (i) if a change to the annual review allocation day takes effect on the current review day—the changed annual review allocation day occurring more than 9 months after the current review day; or
 - (ii) otherwise—the annual review allocation day occurring more than 9 months after the current review day; or
 - (c) for an annual review decision—
 - (i) if a change to the annual review allocation day takes effect on the current review day—the changed annual review allocation day occurring more than 9 months after the current review day; or
 - (ii) otherwise—the next annual review allocation day occurring more than 9 months after the current review day.
- (3) For the *Mineral and Energy Resources (Common Provisions) Act 2014*, section 21, the holder mentioned in subsection (1) is the entity mentioned in section 21(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-high 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 applying to the authority.
- (2) Despite section 47(2), the contribution payable must be worked out using the formula—

$$C = \frac{A \times B}{365} \times D$$

where—

A is the fund threshold applying to the authority.

B is the prescribed percentage for the authority.

C is the amount of the contribution.

D is the number of days between the current review day and—

- (a) for an initial allocation decision—the annual review allocation day occurring more than 9 months after the current review day; or
- (b) for a changed holder allocation—
 - (i) if a change to the annual review allocation day takes effect on the current review day—the changed annual review allocation day occurring more than 9 months after the current review day; or
 - (ii) otherwise—the annual review allocation day occurring more than 9 months after the current review day; or

- (c) for an annual review decision—
 - (i) if a change to the annual review allocation day takes effect on the current review day—the changed annual review allocation day occurring more than 9 months after the current review day; or
 - (ii) otherwise—the next annual review allocation day occurring more than 9 months after the current review day.
- (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 applying to the authority.

50 Refund of contribution to previous holder if changed holder allocation takes effect

- (1) This section applies if—
 - (a) a holder of an authority (a *previous holder*) pays a contribution; and
 - (b) during the period for which the contribution is paid, the scheme manager makes a changed holder allocation that has the effect of another holder of the 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 proportion of the amount of the contribution the previous holder paid that is equal to the number of days between—
 - (a) the day the changed holder allocation takes effect; and
 - (b) the end of the period for which the previous holder paid the contribution.

50A Refund of contribution to previous holder if election notice not given to changed holder

- (1) This section applies if—
- (a) a holder of an authority (a *previous holder*) pays a contribution; and
 - (b) during the period for which the contribution is paid, a changed holder event happens that has the effect of another holder of the authority (the *changed holder*) being liable to give a surety under this part; and
 - (c) the changed holder is liable to give the surety because the scheme manager did not give the changed holder an election notice for the authority.
- (2) The scheme manager must, within 30 business days after the changed holder gives the surety under this part, refund to the previous holder the proportion of the amount of the contribution the previous holder paid that is equal to the number of days between—
- (a) the day the changed holder's liability takes effect under subdivision 2; and
 - (b) the end of the period for which the previous holder paid the contribution.

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
- (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, moderate or moderate-high;
 - (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, moderate or moderate-high;
 - (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) all of the following apply—
 - (i) a changed holder event of a type mentioned in section 31A(1)(a) happens in relation to an authority for which the estimated rehabilitation cost is equal to or more than \$100,000 but less than the prescribed ERC amount;

- (ii) the prescribed dealing is approved under the *Mineral and Energy Resources (Common Provisions) Act 2014*, section 19 by the Minister;
- (iii) if division 1A applies in relation to the changed holder for the changed holder event—the election period has ended and the scheme manager has not given the changed holder an election notice for the authority; or
- (e) both of the following apply—
 - (i) a changed holder event of a type mentioned in section 31A(1)(b), (c) or (d) happens in relation to an authority for which the estimated rehabilitation cost is equal to or more than \$100,000 but less than the prescribed ERC amount;
 - (ii) if division 1A applies in relation to the changed holder for the changed holder event—the election period has ended and the scheme manager has not given the changed holder an election notice for the authority; or
- (f) all of the following apply—
 - (i) the administering authority decides, under the *Environmental Protection Act 1994*, section 300, the estimated rehabilitation cost for an authority;
 - (ii) the estimated rehabilitation cost decided by the administering authority is equal to or more than \$100,000 but less than the prescribed ERC amount;
 - (iii) if division 1A applies in relation to the holder for the administering authority's decision—the election period has ended;
 - (iv) an election notice is not in effect for the authority;
or
- (g) both of the following apply—

- (i) a changed holder event happens in relation to an authority for which the estimated rehabilitation cost is less than \$100,000;
 - (ii) if the changed holder event is of a type mentioned in section 31A(1)(a)—the prescribed dealing is approved under the *Mineral and Energy Resources (Common Provisions) Act 2014*, section 19 by the Minister; or
- (h) both of the following apply—
 - (i) the administering authority decides, under the *Environmental Protection Act 1994*, section 300, the estimated rehabilitation cost for an authority;
 - (ii) the estimated rehabilitation cost decided by the administering authority is less than \$100,000; or
- (i) 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 applying to the authority—
 - (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 allocation—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

[s 55A]

- (c) for an authority mentioned in section 53(d), (e), (f), (g) or (h)—the amount of the estimated rehabilitation cost for the authority; or
 - (d) for a small scale mining tenure mentioned in section 53(i)—the amount under the *Environmental Protection Act 1994*, section 21A(2)(a).
- (3) For the *Mineral and Energy Resources (Common Provisions) Act 2014*, section 21, the holder mentioned in subsection (1) is the entity mentioned in section 21(2) of that Act.

55A When surety must be given

- (1) This section states when the holder of the authority must give the surety.
- (2) For an authority mentioned in section 53(a) or (b), the surety must be given within 30 business days after—
 - (a) for an initial allocation decision—the initial allocation day for the authority; or
 - (b) for a changed holder allocation—the day the decision takes effect under section 37; or
 - (c) for an annual review decision—the annual review day for the authority.
- (3) For an authority mentioned in section 53(c), the surety must be given 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.
- (4) For an authority mentioned in section 53(d), the surety must be given within 30 business days after the later of the following—
 - (a) if division 1A applies in relation to the changed holder for the changed holder event—the day the election period ends;
 - (b) the day the prescribed dealing is approved.

- (5) For an authority mentioned in section 53(e), the surety must be given within 30 business days after—
 - (a) if division 1A applies in relation to the changed holder for the changed holder event—the day the election period ends; or
 - (b) otherwise—the day the changed holder event happens.
- (6) For an authority mentioned in section 53(f), if division 1A applies in relation to the holder for the administering authority's decision, the surety must be given within 30 business days after—
 - (a) if the period for which a contribution to the scheme fund has been paid for the authority has not ended immediately before the election period ends—the day that is the end of the period for which the contribution was paid; or
 - (b) otherwise—the day the election period ends.
- (7) For another authority mentioned in section 53(f), the surety must be given within 30 business days after—
 - (a) if the period for which a contribution to the scheme fund has been paid for the authority has not ended immediately before the administering authority makes the decision—the day that is the end of the period for which the contribution was paid; or
 - (b) otherwise—the day the administering authority makes the decision.
- (8) For an authority mentioned in section 53(g), the surety must be paid within 30 business days after the changed holder event happens.
- (9) For an authority mentioned in section 53(h), the surety must be paid within 30 business days after—
 - (a) if the period for which a contribution to the scheme fund has been paid for the authority has not ended immediately before the administering authority made the decision—the day that is the end of the period for which the contribution was paid; or

- (b) otherwise—the day the administering authority makes the decision.
- (10) For a small scale mining tenure mentioned in section 53(i), the surety must be given before carrying out an activity, or allowing the carrying out of an activity, under the tenure.
- (11) The scheme manager may extend a period mentioned in any of subsections (2) to (9) if the scheme manager is satisfied it is not reasonably practicable for the holder to obtain the surety within the period.

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) before the next allocation decision is made for the authority—
 - (i) the estimated rehabilitation cost for the authority increases; or
 - (ii) for an authority mentioned in section 53(b)—the fund threshold applying to the authority decreases.
- (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)—
 - (i) if subsection (1)(b)(i) applies—that equals the amount of the increased estimated rehabilitation cost for the authority less both the fund threshold applying to the authority and the amount of the surety for the authority already given; or
 - (ii) if subsection (1)(b)(ii) applies—that equals the amount of the estimated rehabilitation cost for the authority less both the amount of the decreased fund threshold applying to the authority 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
 - (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 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), (e), (f), (g) or (h); or
 - (b) the holder of a small scale mining tenure is required to give a surety under section 53(i); 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 55A 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.

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 344C, to carry out remediation activities in relation to mining activities previously carried out on an abandoned mine site; 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 (common provisions) 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) Before making a request for payment of the costs and expenses mentioned in section 63(b) relating to mining activities carried out on a pre-commencement abandoned mine site, the requesting entity must consult with the advisory committee about the proposed request.
- (4) Before making a request for payment of the costs and expenses mentioned in section 63(c) relating to remediation activities carried out on a pre-commencement abandoned operating plant, the requesting entity must consult with the advisory committee about the proposed request.
- (5) Before making a request for payment of the costs and expenses mentioned in section 63(d), the requesting entity must consult with the advisory committee about the proposed request.
- (6) In this section—

pre-commencement abandoned mine site means an abandoned mine site in existence before 1 April 2019.

pre-commencement abandoned operating plant means an abandoned operating plant in existence before 1 April 2019.

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.

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 Guidelines and investigations

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*.

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 mentioned in section 3(a) to (d); and
 - (b) any of the following characteristics of the scheme fund should be changed—
 - (i) the fund threshold applying to all or some of the authorities;
 - (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
 - (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 report for the immediately preceding investigation.

Part 3A Administration of residual risks fund

76A Application of part

This part applies if a chief executive (resources) (the ***requesting entity***) incurs, or might reasonably incur, costs and expenses to carry out residual risk activities for the State.

76B Requesting entity may ask for payment from residual risks fund

- (1) The requesting entity may ask the scheme manager for payment of the costs and expenses from the residual risks fund.
- (2) The request must—
 - (a) be in writing; and
 - (b) state the details of the costs and expenses; and
 - (c) include the other information prescribed by regulation.

76C Decision of scheme manager

- (1) The scheme manager must decide to authorise or not to authorise payment of the costs and expenses from the residual risks fund.
- (2) The scheme manager must decide to authorise payment of an amount for the costs and expenses unless the payment would adversely affect the financial viability of the residual risks fund.
- (3) To ensure the authorisation of a payment does not adversely affect the financial viability of the residual risks fund, the scheme manager may decide to—
 - (a) authorise payment of an amount for only a part of the costs and expense; or
 - (b) authorise payment of an amount for all or a part of the costs and expenses in instalments.
- (4) If the scheme manager decides to authorise payment of an amount for all or part of the costs and expenses, the scheme manager must give the amount decided to the requesting entity.
- (5) In making a decision under this section, the scheme manager must have regard to any guidelines made under section 76D.

76D Guidelines

- (1) The scheme manager may make guidelines about the administration of the residual risks fund.
- (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*.

76E Investigation of actuarial sustainability of residual risks fund

- (1) The scheme manager must, within the prescribed period, investigate the actuarial sustainability of the residual risks fund.
- (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 residual risks fund.
- (3) If the scheme manager decides to ask an appropriately qualified actuary to give the scheme manager a report under subsection (2)—
 - (a) the scheme manager may ask the chief executive (environment) or a chief executive (resources) to provide information that may be relevant to the actuary's report; and
 - (b) the chief executive (environment) or the chief executive (resources) must provide the information requested.
- (4) The actuary's report must include the actuary's opinion about—
 - (a) whether the amount of the residual risks fund is adequate to meet the State's costs and expenses to carry out residual risk activities; and
 - (b) whether any changes need to be made in relation to deciding residual risk payment amounts to ensure the amount of the residual risks fund is adequate to meet the

State's costs and expenses to carry out residual risk activities.

- (5) After the scheme manager completes the investigation, the scheme manager must give the Minister—
 - (a) the actuary's report; and
 - (b) the scheme manager's recommendations about—
 - (i) the actuary's opinion under subsection (4)(b); and
 - (ii) any other matter relating to the administration of the residual risks fund.
- (6) This section does not limit the scheme manager's ability to make other inquiries about the administration of the residual risks fund.
- (7) In this section—

prescribed period means—

 - (a) for the first investigation—5 years after the first residual risk payment amount is paid into the residual risks fund; or
 - (b) for each investigation after the first investigation—3 years after the date of the report for the immediately preceding investigation.

Part 3B Effect of decisions of scheme manager

76F 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 allocation;
 - (c) an annual review allocation;

- (d) a decision about the annual review allocation day for an authority under section 27A or 32(4)(b);
 - (e) a decision to change the annual review allocation day for an authority under part 3, division 1, subdivision 3A.
- (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 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; or
 - (d) for a decision about the annual review allocation day for an authority under section 27A—the holder of the authority; or
 - (e) for a decision about the annual review allocation day under section 32(4)(b)—the interested entity for which the decision is made; or
 - (f) for a decision to change the annual review allocation day for an authority under part 3, division 1, subdivision 3A—the holder of the authority or, if section 41D applies, the changed holder for the authority.

76G Decisions of scheme manager otherwise final

- (1) This section is subject to section 76F.
- (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.

76H No stay of decisions

A decision mentioned in section 76F 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.

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 3A; 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 76E; or
 - (v) about a function of the scheme manager under section 21(1)(e); 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 or 76E;
 - (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.

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 (common provisions) 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.

83A 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 the residual risks fund; 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 or the residual risks 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.

83B Annual report

- (1) For each financial year, the scheme manager must give the Minister a report on the administration of this Act, the scheme and the residual risks fund during the financial year.
- (2) The report must include—
 - (a) information relating to an investigation under section 73 or 76E by the scheme manager, including, for example—
 - (i) the actuary's opinions; and
 - (ii) the scheme manager's recommendations; and
 - (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 or the residual risks fund; 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.

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 Sector Act 2022*, section 269 does not apply to a protected person who is a prescribed person under section 267 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.

86A Combined notices

If the scheme manager is required under this Act to give an entity notices under more than 1 provision in relation to an authority, the scheme manager may give the entity a combined notice for the provisions.

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.

Part 7 Transitional provisions

Division 1 Transitional provisions for Act No. 30 of 2018

89 Application of division

- (1) This division 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 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

[s 90]

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)—
 - (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—

[s 92]

- (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
- (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.

Division 2 Transitional provisions for Mineral and Energy Resources and Other Legislation Amendment Act 2024

Subdivision 1 Interpretation

93 Definitions for division

In this division—

allocation process, for an authority, means the process for making an initial allocation decision under former part 3, division 1, subdivision 1 for the authority.

amendment Act means the *Mineral and Energy Resources and Other Legislation Amendment Act 2024*.

annual review process, for an authority, means the process for making an annual review decision under former part 3, division 1, subdivision 3 for the authority.

changed holder review process, for an authority in relation to which a changed holder event happens or is proposed, means the process for making a changed holder review allocation under former part 3, division 1, subdivision 2 in relation to the changed holder event, including because of an application made under former section 33.

former, for a provision of this Act, means the provision as in force from time to time before the commencement.

new, for a provision of this Act, means the provision as in force from the commencement.

relevant anniversary day, for an authority, means the anniversary day within the meaning of former section 38(7) first occurring after the commencement.

Subdivision 2 Provisions relating to authorities for which estimated rehabilitation cost is \$10m or more

94 Allocation process not finished before the commencement

- (1) This section applies if—
 - (a) before the commencement, the scheme manager had started, but not finished, the allocation process for an authority; and
 - (b) on the commencement, the estimated rehabilitation cost for the authority is equal to or more than the prescribed ERC amount.
- (2) The allocation process for the authority continues as if the amendment Act had not been enacted.
- (3) The scheme manager must—
 - (a) decide the annual review allocation day for the authority; and
 - (b) give the holder notice of the decision before or when the notice mentioned in former section 31 is given to the holder.
- (4) The annual review allocation day takes effect on the day the risk category allocation is decided for the authority under the allocation process.
- (5) Despite subsection (2) and former section 31(d), a notice given under former section 31 must state the amount of the contribution to the scheme fund, or surety, required under new part 3, division 2 in relation to the authority, and when the amount must be paid or given under the new division.
- (6) The initial risk category allocation decided for the authority under the allocation process is taken to be an initial risk category allocation for the authority under new section 27.

- (7) The day the risk category allocation is decided under the allocation process is taken to be the initial allocation day for the authority under new section 31(1)(a).

95 Changed holder review process not finished before the commencement

- (1) This section applies if—
- (a) before the commencement, the scheme manager had started, but not finished, the changed holder review process for an authority in relation to which a changed holder event happened or is proposed; and
 - (b) on the commencement, the estimated rehabilitation cost for the authority is equal to or more than the prescribed ERC amount.
- (2) The changed holder review process for the authority continues as if the amendment Act had not been enacted.
- (3) However, new section 41D applies in relation to the authority for the changed holder event as if a reference in the section to section 32 included a reference to former section 32.
- (4) Despite subsection (2) and former section 36(d), a notice given under former section 36 must state the amount of the contribution to the scheme fund, or surety, required under new part 3, division 2 in relation to the authority, and when the amount must be paid or given under the new division.
- (5) The changed holder review allocation decided for the authority under the changed holder review process is taken to be a changed holder review allocation for the authority under new section 32.
- (6) The changed holder review allocation takes effect under new section 37.
- (7) For applying new section 37, a reference in the section to section 36(1) is taken to be a reference to former section 36.

96 Existing changed holder review allocation not in effect before the commencement

- (1) This section applies if—
 - (a) before the commencement, the scheme manager had made a changed holder review allocation under former section 32 in relation to an authority; and
 - (b) immediately before the commencement, the changed holder review allocation had not taken effect under former section 37; and
 - (c) on the commencement, the estimated rehabilitation cost for the authority is equal to or more than the prescribed ERC amount.
- (2) The changed holder review allocation is taken to be a changed holder review allocation decided under new section 32.
- (3) The changed holder review allocation takes effect under new section 37.
- (4) For applying new section 37, a reference in the section to section 36(1) is taken to be a reference to former section 36.

97 Annual review process not finished before the commencement

- (1) This section applies if—
 - (a) before the commencement, the scheme manager had started, but not finished, the annual review process for an authority; and
 - (b) on the commencement, the estimated rehabilitation cost for the authority is equal to or more than the prescribed ERC amount.
- (2) The annual review process continues as if the amendment Act had not been enacted.
- (3) The scheme manager must—
 - (a) decide the annual review allocation day for the authority; and

- (b) give the holder notice of the decision before or when the notice mentioned in former section 41 is given to the holder.
- (4) The annual review allocation day takes effect on the relevant anniversary day for the authority.
- (5) New section 38(3) does not apply to an annual review allocation day that is within 9 months after the relevant anniversary day for the authority.
- (6) Despite subsection (2) and former section 41(d), a notice given under former section 41 must state the amount of the contribution to the scheme fund, or surety, required under new part 3, division 2 in relation to the authority, and when the amount must be paid or given under the new division.
- (7) The annual review allocation decided for the authority under the annual review process is taken to be an annual review allocation for the authority under new section 38.
- (8) The day the annual review allocation is decided under the annual review process is taken to be the annual review day for the authority under new section 41(a).
- (9) To the extent new part 3, division 2, subdivision 1 applies in relation to the annual review decision, a reference in new sections 47 and 49 to the current review day is taken to be a reference to the relevant anniversary day for the authority.

98 Annual review allocation day for particular existing authorities

- (1) This section applies in relation to an authority if—
 - (a) immediately before the commencement—
 - (i) the authority is allocated to a risk category; and
 - (ii) the annual review process for the authority had not started; and
 - (b) on the commencement, the estimated rehabilitation cost for the authority is equal to or more than the prescribed ERC amount.

[s 99]

- (2) The scheme manager must, within 30 business days after the commencement—
 - (a) decide the annual review allocation day for the authority; and
 - (b) give the holder notice of the decision.
- (3) The annual review allocation day takes effect on the relevant anniversary day for the authority.
- (4) New part 3, division 1, subdivision 3 applies in relation to the authority as if a reference in new section 38(3) to the annual review allocation day included a reference to the relevant anniversary day for the authority.
- (5) New section 38(3) does not apply to an annual review allocation day that is within 9 months after the relevant anniversary day for the authority.
- (6) To the extent new part 3, division 2, subdivision 1 applies in relation to an annual review decision made because of subsection (4), a reference in new sections 47 and 49 to the current review day is taken to be a reference to the relevant anniversary day for the authority.

Subdivision 3 Provisions relating to authorities for which estimated rehabilitation cost is \$100,000 or more but less than \$10m

99 Option to elect if allocation process not finished before the commencement

- (1) This section applies if—
 - (a) before the commencement, the scheme manager had started, but not finished, the allocation process for an authority; and

- (b) on the commencement, the estimated rehabilitation cost for the authority is equal to or more than \$100,000 but less than \$10m.
- (2) On the commencement, the allocation process stops.
- (3) The scheme manager must, within 10 business days after the commencement, give the holder a notice stating—
 - (a) that the holder may elect for the authority to be subject to risk category allocation under part 3, division 1; and
 - (b) that the holder may make the election within 20 business days after the notice is given to the holder.
- (4) The holder may elect for the authority to be subject to risk category allocation under new part 3, division 1 by giving the scheme manager notice of the election within the period mentioned in subsection (3)(b).
- (5) If the holder gives the scheme manager a notice under subsection (4) within the period mentioned in subsection (3)(b), the scheme manager must give the holder a notice stating—
 - (a) the day the notice is given; and
 - (b) the authority to which the notice relates; and
 - (c) that the authority is subject to risk category allocation under part 3, division 1.
- (6) A notice given under subsection (5) is taken to be an election notice for the authority under new part 3, division 1A.
- (7) If the scheme manager gives the holder a notice under subsection (5)—
 - (a) the balance of the allocation process restarts as if the amendment Act had not been enacted; and
 - (b) the scheme manager must—
 - (i) decide the annual review allocation day for the authority; and

- (ii) give the holder notice of the decision before or when the notice mentioned in former section 31 is given to the holder.
- (8) The annual review allocation day takes effect on the day the risk category allocation is decided for the authority under the allocation process.
- (9) For restarting the allocation process under subsection (7)(a), if a period mentioned in former section 28 or 30 had started but not ended before the commencement, the period is extended by the period—
 - (a) starting on the commencement; and
 - (b) ending at the end of the period mentioned in subsection (3)(b).
- (10) Despite subsection (7)(a) and former section 31(d), a notice given under former section 31 must state the amount of the contribution to the scheme fund, or surety, required under new part 3, division 2 in relation to the authority, and when the amount must be paid or given under the new division.
- (11) The initial risk category allocation decided for the authority under the allocation process is taken to be an initial risk category allocation for the authority under new section 27.
- (12) The day the risk category allocation is decided for the authority under the allocation process is taken to be the initial allocation day for the authority under new section 31(1)(a).
- (13) If the holder does not give the scheme manager a notice under subsection (4) within the period mentioned in subsection (3)(b)—
 - (a) the allocation process ends; and
 - (b) the scheme manager must give the holder a notice stating—
 - (i) that the allocation process has ended; and
 - (ii) that part 3, division 2, subdivision 2 applies in relation to the authority; and

- (c) new part 3, division 2, subdivision 2 applies in relation to the authority as if—
 - (i) the matters mentioned in new section 53(f) applied in relation to the authority; and
 - (ii) new section 55A required the surety for the authority to be given within 30 business days after the period mentioned in subsection (3)(b) ends.

100 Option to elect if changed holder review process not finished before the commencement

- (1) This section applies if—
 - (a) before the commencement, the scheme manager had started, but not finished, the changed holder review process for an authority in relation to which a changed holder event happened or is proposed; and
 - (b) on the commencement, the estimated rehabilitation cost for the authority is equal to or more than \$100,000 but less than \$10m.
- (2) On the commencement, the changed holder review process stops.
- (3) The scheme manager must, within 10 business days after the commencement, give the changed holder a notice stating—
 - (a) that the changed holder may elect for the authority to be subject to risk category allocation under part 3, division 1; and
 - (b) that the changed holder may make the election within 20 business days after the notice is given to the changed holder.
- (4) The changed holder may elect for the authority to be subject to risk category allocation under new part 3, division 1 by giving the scheme manager notice of the election within the period mentioned in subsection (3)(b).
- (5) If the changed holder gives the scheme manager a notice under subsection (4) within the period mentioned in

subsection (3)(b), the scheme manager must give the changed holder a notice stating—

- (a) the day the notice is given; and
 - (b) the authority to which the notice relates; and
 - (c) that the authority is subject to risk category allocation under part 3, division 1.
- (6) A notice given under subsection (5) is taken to be an election notice for the authority under new part 3, division 1A.
- (7) If the scheme manager gives the changed holder a notice under subsection (5)—
- (a) the balance of the changed holder review process restarts as if the amendment Act had not been enacted; and
 - (b) the scheme manager must—
 - (i) decide the annual review allocation day for the authority; and
 - (ii) give the changed holder notice of the decision before or when the notice mentioned in former section 36 is given to the interested entity.
- (8) The annual review allocation day takes effect when the changed holder review allocation takes effect under subsection (12).
- (9) For restarting the changed holder review process under subsection (7)(a), if a period mentioned in former section 34 had started but not ended before the commencement, the period is extended by the period—
- (a) starting on the commencement; and
 - (b) ending at the end of the period mentioned in subsection (3)(b).
- (10) Despite subsection (7)(a) and former section 36(d), a notice given under former section 36 must state the amount of the contribution to the scheme fund, or surety, required under new

part 3, division 2 in relation to the authority, and when the amount must be paid or given under the new division.

- (11) The changed holder review allocation decided for the authority under the changed holder review process is taken to be a changed holder review allocation for the authority under new section 32.
- (12) The changed holder review allocation takes effect on the later of the following days—
 - (a) the day the notice under former section 36 is given to the interested entity;
 - (b) the day the changed holder review decision would take effect under new section 37.
- (13) A reference in this Act to the changed holder review allocation taking effect under new section 37 is taken to include a reference to the day the changed holder review allocation takes effect under subsection (12).
- (14) For applying new section 37, a reference in the section to section 36(1) is taken to be a reference to former section 36.
- (15) If the changed holder does not give the scheme manager a notice under subsection (4) within the period mentioned in subsection (3)(b)—
 - (a) the changed holder review process ends; and
 - (b) the scheme manager must give the changed holder a notice stating that the changed holder review process has ended; and
 - (c) for an authority in relation to which a changed holder event has happened—new part 3, division 2, subdivision 2 applies in relation to the authority as if—
 - (i) a reference in new section 53(d) and (e) to a changed holder event happening or a prescribed dealing being approved included a reference to the event happening or the prescribed dealing being approved before the commencement; and

- (ii) new section 55A required the surety for the authority to be given within 30 business days after the later of the following—
 - (A) if the changed holder event is of a type mentioned in section 31A(1)(a)—when the prescribed dealing is approved;
 - (B) the day the period mentioned in subsection (3)(b) ends.

101 Option to elect for particular authorities if changed holder review allocation not in effect before the commencement

- (1) This section applies if—
 - (a) before the commencement, the scheme manager had made a changed holder review allocation under former section 32 in relation to an authority that allocated the authority to the risk category of very low, low or moderate; and
 - (b) immediately before the commencement, the changed holder review allocation had not taken effect under former section 37; and
 - (c) on the commencement, the estimated rehabilitation cost for the authority is equal to or more than \$100,000 but less than \$10m.
- (2) The scheme manager must, within 10 business days after the commencement, give the changed holder a notice stating—
 - (a) that the changed holder may elect for the authority to be subject to risk category allocation under part 3, division 1; and
 - (b) that the changed holder may make the election within 20 business days after the notice is given to the changed holder.
- (3) The changed holder may elect for the authority to be subject to risk category allocation under new part 3, division 1 by

giving the scheme manager notice of the election within the period mentioned in subsection (2)(b).

- (4) If the changed holder gives the scheme manager a notice under subsection (3) within the period mentioned in subsection (2)(b), the scheme manager must give the changed holder a notice stating—
 - (a) the day the notice is given; and
 - (b) the authority to which the notice relates; and
 - (c) that the authority is subject to risk category allocation under part 3, division 1.
- (5) A notice given under subsection (4) is taken to be an election notice for the authority under new part 3, division 1A.
- (6) If the scheme manager gives the changed holder a notice under subsection (4)—
 - (a) the scheme manager must—
 - (i) decide the annual review allocation day for the authority; and
 - (ii) give the changed holder notice of the decision before or when the notice mentioned in former section 36 is given to the interested entity; and
 - (b) the changed holder review allocation is taken to be a changed holder review allocation for the authority under new section 32; and
 - (c) the changed holder review allocation takes effect on the later of the following days—
 - (i) the day the notice is given under subsection (4);
 - (ii) the day the changed holder review allocation would take effect under new section 37.
- (7) A reference in this Act to the changed holder review allocation taking effect under new section 37 is taken to include a reference to the day the changed holder review allocation takes effect under subsection (6)(c).

- (8) For applying new section 37, a reference in the section to section 36(1) is taken to be a reference to former section 36.
- (9) The annual review allocation day takes effect when the changed holder review allocation takes effect under subsection (6)(c).
- (10) If the changed holder does not give the scheme manager a notice under subsection (3) within the period mentioned in subsection (2)(b)—
 - (a) the changed holder review allocation does not take effect; and
 - (b) the scheme manager must give the changed holder a notice stating that the changed holder review allocation does not take effect; and
 - (c) for an authority in relation to which the changed holder event has happened—new part 3, division 2, subdivision 2 applies in relation to the authority as if—
 - (i) a reference in new section 53(d) and (e) to a changed holder event happening or a prescribed dealing being approved included a reference to the event happening or the prescribed dealing being approved before the commencement; and
 - (ii) new section 55A required the surety for the authority to be given within 30 business days after the later of the following—
 - (A) if the changed holder event is of a type mentioned in section 31A(1)(a)—when the prescribed dealing is approved;
 - (B) the day the period mentioned in subsection (2)(b) ends.

102 Existing authorities with high risk category allocation if changed holder review allocation not in effect before the commencement

- (1) This section applies if—

- (a) before the commencement, the scheme manager had made a changed holder review allocation under former section 32 in relation to an authority that allocated the authority to the risk category of high; and
 - (b) immediately before the commencement, the changed holder review allocation had not taken effect under former section 37; and
 - (c) on the commencement, the estimated rehabilitation cost for the authority is equal to or more than \$100,000 but less than \$10m.
- (2) On the commencement—
- (a) the changed holder review allocation does not take effect; and
 - (b) the scheme manager must give the holder a notice stating that the changed holder review allocation does not take effect.
- (3) For an authority in relation to which the changed holder event has happened, new part 3, division 2, subdivision 2 applies in relation to the authority as if—
- (a) a reference in new section 53(d) and (e) to a changed holder event happening or a prescribed dealing being approved included a reference to the event happening or the prescribed dealing being approved before the commencement; and
 - (b) new section 55A required the surety for the authority to be given within 30 business days after the later of the following—
 - (i) if the changed holder event is of a type mentioned in former section 31A(1)(a)—when the prescribed dealing is approved;
 - (ii) the day the scheme manager gives the notice under subsection (2)(b).

103 Option to elect for particular authorities if annual review process not finished before the commencement

- (1) This section applies if—
 - (a) before the commencement, the scheme manager had started, but not finished, the annual review process for an authority; and
 - (b) on the commencement—
 - (i) the estimated rehabilitation cost for the authority is equal to or more than \$100,000 but less than \$10m; and
 - (ii) the authority is allocated to the risk category of very low, low or moderate.
- (2) On the commencement, the annual review process stops.
- (3) The scheme manager must, within 10 business days after the commencement, give the holder a notice stating—
 - (a) that the holder may elect for the authority to be subject to risk category allocation under part 3, division 1; and
 - (b) that the holder may make the election within 20 business days after the notice is given to the holder.
- (4) The holder may elect for the authority to be subject to risk category allocation under new part 3, division 1 by giving the scheme manager notice of the election within the period mentioned in subsection (3)(b).
- (5) If the holder gives the scheme manager a notice under subsection (4) within the period mentioned in subsection (3)(b), the scheme manager must give the holder a notice stating—
 - (a) the day the notice is given; and
 - (b) the authority to which the notice relates; and
 - (c) that the authority is subject to risk category allocation under part 3, division 1.
- (6) A notice given under subsection (5) is taken to be an election notice for the authority under new part 3, division 1A.

- (7) If the scheme manager gives the holder a notice under subsection (5)—
 - (a) the balance of the annual review process restarts as if the amendment Act had not been enacted; and
 - (b) the scheme manager must—
 - (i) decide the annual review allocation day for the authority; and
 - (ii) give the holder notice of the decision before or when the notice mentioned in former section 41 is given to the holder.
- (8) The annual review allocation day takes effect on the relevant anniversary day for the authority.
- (9) New section 38(3) does not apply to an annual review allocation day that is within 9 months after the relevant anniversary day for the authority.
- (10) For restarting the annual review process under subsection (7)(a), if a period mentioned in former section 39 had started but not ended before the commencement, the period is extended by the period—
 - (a) starting on the commencement; and
 - (b) ending at the end of the period mentioned in subsection (3)(b).
- (11) Despite subsection (7)(a) and former section 41(d), a notice given under former section 41 must state the amount of the contribution to the scheme fund, or surety, required under new part 3, division 2 in relation to the authority, and when the amount must be paid or given under the new division.
- (12) The annual review allocation decided for the authority under the annual review process is taken to be an annual review allocation for the authority under new section 38.
- (13) The day the annual review allocation is decided under the annual review process is taken to be the annual review day for the authority under new section 41(a).

- (14) To the extent new part 3, division 2, subdivision 1 applies in relation to the annual review decision, a reference in new sections 47 and 49 to the current review day is taken to be a reference to the relevant anniversary day for the authority.
- (15) If the holder does not give the scheme manager a notice under subsection (4) within the period mentioned in subsection (3)(b)—
 - (a) the review process ends; and
 - (b) the scheme manager must give the holder a notice stating—
 - (i) that the review process has ended; and
 - (ii) that part 3, division 2, subdivision 2 applies in relation to the authority; and
 - (c) new part 3, division 2, subdivision 2 applies in relation to the authority as if—
 - (i) the matters mentioned in new section 53(f) applied in relation to the authority; and
 - (ii) new section 55A required the surety for the authority to be given within 30 business days after the later of the following—
 - (A) the relevant anniversary day; or
 - (B) the day the period mentioned in subsection (3)(b) ends.

104 Existing authorities with high risk category allocation if annual review process not finished before the commencement

- (1) This section applies if—
 - (a) before the commencement, the scheme manager had started, but not finished, the annual review process for an authority; and
 - (b) on the commencement—

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- (i) the estimated rehabilitation cost for the authority is equal to or more than \$100,000 but less than \$10m; and
 - (ii) the authority is allocated to the risk category of high.
 - (2) On the commencement—
 - (a) the review process ends; and
 - (b) the scheme manager must give the holder a notice stating that the review process has ended.
 - (3) If, for the last annual review decision made in relation to the authority before the commencement, former section 46(b) applied, new part 3, division 2, subdivision 2 applies in relation to the authority as if—
 - (a) the matters mentioned in new section 53(f) applied in relation to the authority; and
 - (b) new section 55A required the surety for the authority to be given within 30 business days after the later of the following—
 - (i) the relevant anniversary day for the authority;
 - (ii) the day the scheme manager gives the notice under subsection (2)(b).

105 Option to elect before relevant anniversary day for particular existing authorities

- (1) This section applies if—
 - (a) immediately before the commencement—
 - (i) an authority was allocated to the risk category of very low, low or moderate; and
 - (ii) the annual review process for the authority had not started; and
 - (b) on the commencement, the estimated rehabilitation cost for the authority is equal to or more than \$100,000 but less than \$10m.

- (2) The scheme manager must, at least 30 business days before the relevant anniversary day for the authority, give the holder a notice stating—
 - (a) that the holder may elect for the authority to be subject to risk category allocation under part 3, division 1; and
 - (b) that the holder may make the election within 20 business days after the notice is given to the holder.
- (3) The holder may elect for the authority to be subject to risk category allocation under new part 3, division 1 by giving the scheme manager notice of the election within the period mentioned in subsection (2)(b).
- (4) If the holder gives the scheme manager a notice under subsection (3) within the period mentioned in subsection (2)(b), the scheme manager must give the holder a notice stating—
 - (a) the day the notice is given; and
 - (b) the authority to which the notice relates; and
 - (c) that the authority is subject to risk category allocation under part 3, division 1.
- (5) A notice given under subsection (4) is taken to be an election notice for the authority under new part 3, division 1A.
- (6) If the scheme manager gives the holder a notice under subsection (4)—
 - (a) new part 3, division 1, subdivision 3 applies in relation to the authority as if a reference in new section 38(3) to the annual review allocation day included a reference to the relevant anniversary day for the authority; and
 - (b) the scheme manager must—
 - (i) decide the annual review allocation day for the authority; and
 - (ii) give the holder notice of the decision before or when the notice under new section 41 is given to the holder.

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- (7) The annual review allocation day takes effect on the relevant anniversary day for the authority.
 - (8) New section 38(3) does not apply to an annual review allocation day that is within 9 months after the relevant anniversary day for the authority.
 - (9) To the extent new part 3, division 2, subdivision 1 applies in relation to an annual review decision made because of subsection (6), a reference in new sections 47 and 49 to the current review day is taken to be a reference to the relevant anniversary day for the authority.
 - (10) If the holder does not give the scheme manager a notice under subsection (3) within the period mentioned in subsection (2)(b)—
 - (a) the scheme manager must give the holder a notice stating that part 3, division 2, subdivision 2 applies in relation to the authority; and
 - (b) new part 3, division 2, subdivision 2 applies in relation to the authority as if—
 - (i) the matters mentioned in new section 53(f) applied in relation to the authority; and
 - (ii) new section 55A required the surety for the authority to be given within 30 business days after the later of the following—
 - (A) the relevant anniversary day;
 - (B) the day the period mentioned in subsection (2)(b) ends.
 - (11) This section stops applying in relation to the authority if, after the commencement and before the relevant anniversary day for the authority—
 - (a) the estimated rehabilitation cost for the authority is less than \$100,000; or
 - (b) the authority is surrendered under the *Environmental Protection Act 1994*, chapter 5; or

[s 106]

- (c) a changed holder event happens that has the effect of another holder of the authority being liable to pay a contribution, or give a surety, under new part 3.
- (12) Also, this section stops applying in relation to the authority if—
 - (a) the estimated rehabilitation cost for the authority is equal to or more than the prescribed ERC amount; and
 - (b) immediately before the estimated rehabilitation cost increased, an election notice is not in effect for the authority.

106 Application of new pt 3, div 1, sdiv 2 for particular authorities to which s 105 applies

- (1) This section applies if—
 - (a) section 105 stops applying in relation to an authority—
 - (i) under section 105(11)(c); or
 - (ii) because section 105, according to its terms, is spent; and
 - (b) under new part 3, division 1A, the scheme manager gives the changed holder an election notice for the authority.
- (2) For deciding the changed holder allocation in relation to the changed holder event, new part 3, division 1, subdivision 2 applies in relation to the authority as if the authority were not allocated to a risk category.

107 Particular existing authorities if s 105 stops applying because estimated rehabilitation cost equal to or more than prescribed ERC amount

- (1) This section applies if section 105 stops applying in relation to an authority under section 105(12).

- (2) New section 26(1) does not apply in relation to the administering authority's decision of the estimated rehabilitation cost for the authority.
- (3) New part 3, division 1, subdivision 3 applies in relation to the authority as if a reference in new section 38(3) to the annual review allocation day included a reference to the relevant anniversary day for the authority.
- (4) The scheme manager must—
 - (a) decide the annual review allocation day for the authority; and
 - (b) give the holder notice of the decision before or when the notice under new section 41 is given to the holder.
- (5) The annual review allocation day takes effect on the relevant anniversary day for the authority.
- (6) New section 38(3) does not apply to an annual review allocation day that is within 9 months after the relevant anniversary day for the authority.
- (7) To the extent new part 3, division 2, subdivision 1 applies in relation to an annual review decision made because of subsection (3), a reference in new sections 47 and 49 to the current review day is taken to be a reference to the relevant anniversary day for the authority.

Subdivision 4 Transitional regulation

108 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 this Act, as in force before its amendment by the amendment Act, to the operation of this Act, as in force after its amendment by the amendment Act; and

[s 109]

- (b) this Act does not provide or sufficiently provide.
- (2) A transitional regulation may have retrospective operation to a day not earlier than the day this section commences.
- (3) A transitional regulation must declare it is a transitional regulation.

109 Expiry of subdivision and transitional regulation

This subdivision and any transitional regulation under section 108 expire on the day that is 2 years after the day this section commences.

Schedule 1 Dictionary

section 7

abandoned mine site 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 allocation;
- (c) an annual review decision.

annual review allocation see section 38(3)(b).

annual review allocation day, for an authority, means—

- (a) the day, in each year, decided by the scheme manager before which the scheme manager will make an annual review allocation for the authority; or
- (b) if a change to the day mentioned in paragraph (a) takes effect under part 3, division 1, subdivision 3A—the day, in each year, as changed from time to time under that subdivision.

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.

applicable holder, for part 3, division 1A, see section 45A.

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, for an authority in relation to which a changed holder event happens or is proposed, means the changed holder mentioned in section 31A for the event.

changed holder allocation means a changed holder initial allocation or a changed holder review allocation.

changed holder event, in relation to an authority, see section 31A.

changed holder initial allocation see section 32(4)(a).

changed holder review allocation see section 32(3)(b).

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

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—

- (a) the chief executive (mineral resources); or
- (b) the chief executive (petroleum); or

- (c) the chief executive of the department in which the *Geothermal Energy Act 2010* is administered; or
- (d) the chief executive of the department in which the *Greenhouse Gas Storage Act 2009* 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.

current review day, for an authority, means—

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

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

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

disclose, for part 5, see section 79.

election notice see section 45E.

election period, in relation to an authority, see section 45A.

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 review day—

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

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(1)(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 see section 34(3).

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); or
- (d) for part 3, division 1, subdivision 3A—see section 41B(2).

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 allocation—see section 32(8)(b); or
- (c) an annual review decision—see section 38(8)(c).

remediation activity—

- (a) in relation to mining activities previously carried out on an abandoned mine site—see the *Mineral Resources Act 1989*, section 344A; or
- (b) in relation to an abandoned operating plant—see the *Petroleum and Gas (Production and Safety) Act 2004*, section 799CA.

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.
- (c) for part 3A—see section 76A.

residual risk activities means remedial action or ongoing management activities carried out in relation to land because of residual risks of the land.

residual risk payment amount means an amount paid by the holder of an environmental authority for a resource activity under the *Environmental Protection Act 1994* for residual risks of land within the area of the environmental authority.

residual risks, of land, see the *Environmental Protection Act 1994*, schedule 4.

residual risks fund means the Residual Risks Fund established under section 25A.

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

scheme manager means the scheme manager appointed under section 12.

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*.