

Mineral and Energy Resources (Financial Provisioning) Amendment Regulation 2025

Explanatory notes for SL 2025 No. 88

made under the

Mineral and Energy Resources (Financial Provisioning) Act 2018

General Outline

Short title

Mineral and Energy Resources (Financial Provisioning) Amendment Regulation 2025.

Authorising law

Section 87 of the *Mineral and Energy Resources (Financial Provisioning) Act 2018* (MERFP Act) empowers the Governor in Council to make regulations under this Act. In addition, sections 11, 27 and 60 of the Act are specific regulation provisions.

Policy objectives and the reasons for them

The *Mineral and Energy Resources and Other Legislation Amendment Act 2024* (Amendment Act) received assent on 18 June 2024 following successful passage through Parliament on 12 June 2024. Amendments to the MERFP Act contained in the Amendment Act will commence by Proclamation on 1 October 2025.

The MERFP Act establishes a financial provisioning scheme (the Scheme) to manage the financial risk to the State if the holder of an environmental authority for a resource activity or a small scale mining tenure does not comply with their environmental management and rehabilitation obligations. The Scheme is managed by the Scheme Manager.

The Scheme applies to:

- an environmental authority (EA) for resource activities; and
- a small scale mining tenure (SSMT)

The MERFP Act provides for certain terms and fees to be prescribed by regulation. The purpose of the *Mineral and Energy Resources (Financial Provisioning) Amendment Regulation 2025* (the Amendment Regulation) is to amend the *Mineral and Energy Resources (Financial Provisioning) Regulation 2019* (MERFP Regulation) to assist with the operation of the MERFP Act as amended by the Amendment Act.

Achievement of policy objectives

The policy objective of the Amendment Regulation is to support the effective operation of the Scheme under the MERFP Act by providing detail to a number of operational requirements of the Scheme.

The MERFP Regulation is being amended to prescribe meanings for the terms:

- prescribed rating; and
- prescribed percentage.

Amendments to the MERFP Regulation also detail the assessment fees that apply to an allocation decision made by the Scheme Manager.

Prescribed Rating

The fund threshold, currently set at \$450 million, represents the maximum single point risk exposure limit allowed under the Scheme. That is, the maximum estimated rehabilitation cost (ERC) value for any entity cumulatively across all of its EAs operating under the Scheme. In other words, it is the limit of financial exposure the State would have to any assessed entity operating very large EAs or multiple EAs through its subsidiaries.

Five per cent of the aggregate ERC (i.e. total ERC across the entire Scheme) was recommended as being appropriate given the State's appetite for risk. It was confirmed in a meeting with Ernst Young (the Scheme's Actuary) and the State Actuary that five per cent is a generally accepted estimate of limiting concentration exposure based on the size of the total aggregate insurance pool.

Since commencement, the aggregate ERC of the Scheme has grown considerably and is now sitting more than \$12 billion. Given five per cent of today's aggregate ERC equates to approximately \$600 million, it is proposed to increase the fund threshold to ensure the Scheme is not operated more conservatively than intended, elongating timeframes for the Fund to mature to long term sustainability. The Amendment Act amended the MERFP Act to increase the fund threshold for entities that have a prescribed rating to \$600 million and to retain a \$450 million threshold for all other entities.

The actuarial review supports the increase fund threshold level noting increased exposure from very highly rated entities with estimated probabilities of default at 1-in-1,000 years, and higher contribution with limited additional risk even at the 1-in-200 year event.

It is proposed that the fund thresholds be subject to review at the time of each legislated actuarial review, being every three years.

This change has benefit to both industry and Government in that it frees more capital for less risky entities and increases fund growth through increased annual contributions.

Clause 4 amends the MERFP Regulation to provide that the 'prescribed rating' for the increased fund threshold is as follows:

- (a) a long-term credit rating from Fitch Ratings of BBB+ or higher;
- (b) a long-term credit rating from Moody's Investors Service of Baa1 or higher; and

(c) a long-term credit rating from Standard & Poor's of BBB+ or higher.

Prescribed Percentage

Part 3 'Operation of the Scheme' under the MERFP Act provides the framework for the risk category allocation process and for when a holder of an authority or a SSMT is required to pay a contribution to the Scheme fund or give a surety to the Scheme Manager.

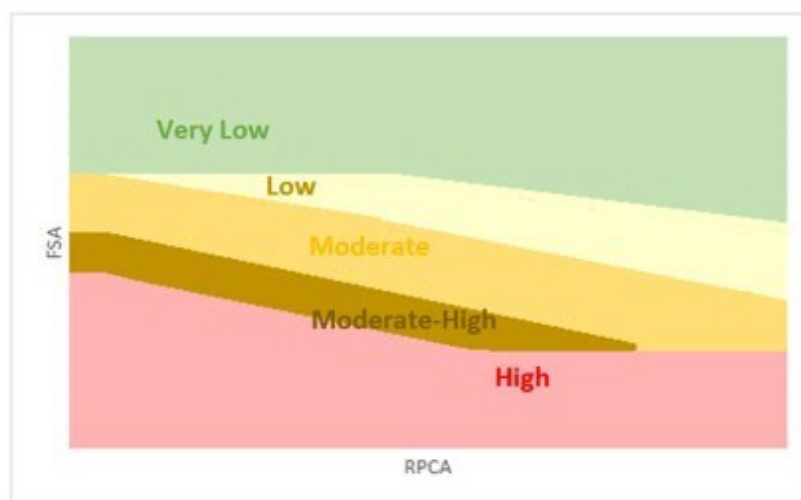
The Scheme prescribes percentages. These are linked to risk category ratings and used to calculate required contributions to the Scheme fund, calculated as a percentage of the ERC. Lower risk entities pay a lower percentage of their ERC, reflecting the lower risk of defaulting on their rehabilitation obligations. The prescribed percentages are based on modelling by Queensland Treasury Corporation (QTC). Actuarial analysis performed by Ernst Young confirmed the Scheme fund is growing in line with the model proposed by QTC. The prescribed percentage of current risk categories is presented in the following table.

Risk Category	Prescribed Percentage
Very Low	0.5%
Low	1%
Moderate	2.75%
High	Surety

The Amendment Act inserted an additional risk category into the MERFP Act of Moderate-High to better reflect company risk profiles. Feedback from consultation was supportive of an additional risk category noting support for a 'transitional' provisioning category which eases the path between contribution and surety. Clause 5 of the Amendment Regulation amends the prescribed percentages of risk categories given the additional risk category of Moderate-High, as follows:

Risk Category	Proposed Prescribed Percentage
Very Low	0.5%
Low	1%
Moderate	2.25%
Moderate/High	6.5%
High	Surety

Modelling of the risk category matrix has found boundary changes emerge from a mathematical approach (refer to the below chart). Based on this, technical rates have been updated reflecting the combination of EAs grouped together within their relative risk ranking and new Resource Project Characteristics Assessment (RPCA) scoring methodology as defined in the Scheme Manager Guidelines. The actuary found the pricing points for Very Low and Low remain accurate and with the introduction of Moderate High, Moderate could be shortened with Moderate High picking up the higher risk EAs.

Risk Allocation Combined Model**Assessment Fee**

If the Scheme Manager makes an allocation decision for an authority, the holder of the authority must pay the assessment fee prescribed by regulation for the allocation decision under section 60 of the MERFP Act. An assessment fee is required for each allocation decision made by the Scheme Manager.

There are three types of allocation decisions for an authority (being an authority with an ERC equal to or more than \$100,000):

- Initial allocation decision under section 27 of the MERFP Act.
- Changed holder review decision under section 32 of the MERFP Act.
- Annual review decision under section 38 of the MERFP Act.

The MERFP Regulation provides that the assessment fee payable for an allocation decision for an authority is stated in schedule 1 as follows.

ERC	Assessment Fee
\$100,000 - <\$1M	\$250
\$1M - <\$10M	\$1,250
\$10M - <\$50M	\$5,000
\$50M - <\$100M	\$22,500
\$100M +	\$45,000

The proposed fee structure reflects the diversity of resource activities in Queensland and provides an equitable approach to recovery of assessment costs.

It was noted during consultation on the amendments to the MERFP Act that some consider the fees to be high and in recognition of introducing 'Assessment Pathways', a 'Streamlined' assessment for those EAs with an ERC of \$50 million or more will incur a fee 50 per cent less than what they would otherwise pay, bringing a direct savings to these companies. The reason for that level of discount is due to half of the assessment being

carried out (i.e. only a financial soundness check occurs and not the resource project characteristics assessment). In keeping with the MERFP Act, the financial soundness must be carried out. The resource project characteristics assessment is only being carried out every three years for mines that are found to be stable year on year. Capping the discount at EAs with an ERC of \$50 million or more is based on evidence showing EAs with a smaller ERC are receiving subsidised fees with respect to costs experienced by the Scheme no matter the level of assessment.

Clause 6 amends Schedule 1 of the MERFP Regulation to provide for the following amended fee schedule:

ERC	Assessment Fee	Streamlined Assessment Fee
\$100,000 - <\$1M	\$250	\$250
\$1M - <\$10M	\$1,250	\$1,250
\$10M - <\$50M	\$5,000	\$5,000
\$50M - <\$100M	\$22,500	\$11,250
\$100M +	\$45,000	\$22,500

Consistency with policy objectives of authorising law

The objective of the MERFP Act is to manage the financial risk to the State if mineral and energy resource tenure holders do not comply with their environmental management and rehabilitation obligations. The Amendment Regulation is consistent with this objective as it enables the effective functioning of the Scheme.

Inconsistency with policy objectives of other legislation

The Amendment Regulation is consistent with the policy objectives of other legislation.

Benefits and costs of implementation

As outlined in the explanatory notes for the *Mineral and Energy Resources and Other Legislation Amendment Bill 2024* making amendments to the MERFP Regulation supports the effective functioning of the Scheme. There are no new costs associated with the implementation of the Amendment Regulation due to work being performed by Scheme staff, which is self-funded from the Scheme fund.

Consistency with fundamental legislative principles

The Amendment Regulation is consistent with fundamental legislative principles.

Consultation

Extensive consultation on the amendments to the MERFP Act and Regulation were conducted with industry stakeholders from July 2022 to November 2022. Scheme participants and key stakeholders including peak bodies and environmental groups were invited to provide feedback on a range of suggestions raised by the Scheme Manager.

Across October and November 2022, two townhall sessions discussing the broader suite of changes and four focus groups targeting specific changes as identified in the townhalls were held with stakeholders. Overall, 48 written submissions were received and 121 stakeholders across 74 organisations attended the townhalls and focus groups.

Consultation on the amendments to the MERFP Act and Regulation occurred with Queensland Resources Council (QRC), Australian Mining and Exploration Council (AMEC) and Australian Petroleum Production and Exploration Association (now known as Australian Energy Producers). In addition, there were further presentations to QRC and AMEC forums following release of the final proposed amendments to the MERFP Act.

Feedback from industry was largely positive with the only concern being raised relating to the increase in the Prescribed ERC. These concerns were addressed by softening the policy to allow those EA holders under the proposed Prescribed ERC threshold who want to stay in the risk assessment process and to not have to provide surety, to do so. Working with industry in driving efficiencies throughout the risk assessment process also garnered strong support with both peak bodies and industry alike.

Industry and stakeholders are accepting of the amendments to the MERFP Act and Regulation and support having them implemented to realise proposed efficiencies and cost savings.

Industry stakeholders are also aware the Scheme is aiming for the commencement date of 1 October 2025.