

Mineral and Energy Resources (Financial Provisioning) Act 2018

Scheme Manager Guideline Forming the Scheme Manager's Opinion

Prepared for the Queensland Government Interdepartmental Committee on Financial Assurance for the Resource Sector

© State of Queensland, 2018.

The Queensland Government supports and encourages the dissemination and exchange of its information. The copyright in this publication is licensed under a Creative Commons Attribution 3.0 Australia (CC BY) licence.



Under this licence you are free, without having to seek our permission, to use this publication in accordance with the licence terms.

You must keep intact the copyright notice and attribute the State of Queensland as the source of the publication.

For more information on this licence, visit <https://creativecommons.org/licenses/by/4.0/>.

The information contained herein is subject to change without notice. The Queensland Government shall not be liable for technical or other errors or omissions contained herein.

The reader/user accepts all risks and responsibility for losses, damages, costs and other consequences resulting directly or indirectly from using this information.

Contents

1.0	About this guideline	2
1.1	Background	2
1.2	Purpose of this guideline	2
1.3	Definitions used in this Guideline	2
2.0	Forming the scheme manager's opinion	3
2.1	Financial Soundness	3
2.1.1	Which holder to consider?	3
2.1.2	Considering financial soundness of a holder or parent corporation	3
2.2	Resource Project Characteristics	4
2.2.1	When to consider resource project characteristics	4
2.2.2	Characteristics for consideration	5

1.0 About this guideline:

1.1 Background

This guideline is made by the scheme manager under s 70 (Guidelines) of the *Mineral and Energy Resources (Financial Provisioning) Act 2018 (Act)*.

The Act establishes a Financial Provisioning Scheme (**scheme**) to manage the financial risk to the State if environmental authority holders for resource activities do not comply with their environmental management and rehabilitation obligations.

The scheme manager is required to undertake a risk category allocation for each environmental authority with an estimated rehabilitation cost (ERC) equal to or more than the prescribed ERC amount (currently \$100,000) and decide whether to allocate the authority to a risk category of very low, low, moderate or high. This allocation is used to determine whether the authority holder is required to pay a contribution to the scheme fund or give a surety in the amount of the ERC for the authority calculated under the EP Act.

This guideline should be read in conjunction with the Act and, where relevant, other guidelines made under the Act. Guidelines are available on the scheme manager's website together with additional information about the scheme.

1.2 Purpose of this guideline

This guideline applies if the scheme manager is required to undertake an allocation decision for an authority.

The purpose of this guideline is to provide guidance to the scheme manager in relation to forming an opinion under section 27(2)(a)(i) of the Act.

The scheme manager is required to form an opinion of the probability of the State incurring costs and expenses:

- because of the holder has not prevented or minimised environmental harm or rehabilitated or restored the environment in relation to a resource activity carried out under the authority; or
- to ensure compliance with the authority.

The opinion of the scheme manager is a mandatory consideration in making an allocation decision, in addition to submissions made by the holder of an authority in relation to allocation decision processes.

Guideline not mandatory

In making an allocation decision under section 27 the scheme manager is required to have regard to this guideline but retains a discretion.

1.3 Definitions used in this Guideline

Definitions in the dictionary in schedule 3 of the Act apply to this Guideline.

2.0 Forming the scheme manager's opinion

2.1 Financial Soundness

2.1.1 Which holder to consider?

In forming the opinion under section 27(2)(a)(i), the scheme manager must consider the financial soundness of the holder of the authority.

If there is more than one holder – the scheme manager may consider the financial soundness of any or all of the holders.

Basic Rule where more than one holder

The scheme manager need only consider the financial soundness of one holder.

The entity selected should be the holder that is operator of the resource project (defined term) provided that the holder holds a share of not less than 20% in the resource tenure or tenures to which the authority relates.

If the Basic Rule does not apply

The scheme manager should select a holder that holds a share of not less than 20% in the resource tenure or tenures to which the authority relates.

If there is no such holder, the scheme manager should select a holder having regard to the ownership structure for the authority and the roles of the holders.

Notes:

1. Despite the Basic Rule, the scheme manager may consider a nomination from the holders for the scheme manager's consideration.
2. In accordance with the Relevant Holder Guideline a holder may be the relevant holder for an authority if the holder's financial soundness:
 - has been considered by the scheme manager under section 27(2)(a)(i); and
 - has informed the risk category allocation.

Therefore, any change to the relevant holder arising from a submission made by the holder during the risk allocation process may require the scheme manager to reconsider the risk category allocation for the authority (see Scheme Manager Relevant Holder Guideline).

[Despite there being a relevant holder for the authority, under the EP Act all holders and parent corporations remain responsible for the performance of obligations under the authority.]

2.1.2 Considering financial soundness of a holder or parent corporation

Relevance of parent corporation

In considering the financial soundness of the holder, the scheme manager may consider the financial soundness of a parent corporation of the holder. If there is more than one holder then, the scheme manager, 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.

Basic Rule when considering the financial soundness of a parent corporation

The scheme manager should consider the financial soundness of a parent corporation that is an Australian company in priority to a parent corporation that is a foreign company .

Note: This rule reflects the difficulties that may arise in enforcing environmental obligations in a foreign jurisdiction. The scheme manager retains a discretion to consider the financial soundness of a foreign parent corporation.

Financial Soundness consideration

Basic Rule where entity has credit rating

The scheme manager is not required to consider other financial information relating to an entity where the entity has a credit rating from a credit rating agency approved by Queensland Treasury that is:

- a long term public credit rating

[Note: Where the entity has multiple credit ratings in this category the scheme manager should use the weakest rating]

- a private credit rating not more than 12 months old

Basic Rule where entity does not have credit rating

The scheme manager should consider the financial soundness of the entity having regard to:

- 3 years of audited financial statements; and
- any other factors of a kind that would ordinarily be considered by a credit rating agency such as the relevant industry sector and the domicile of the entity.

If the entity does not provide 3 years of audited financial statements, then, for the purposes of forming an opinion under section 27(2)(a)(i), the scheme manager may draw an adverse inference in relation to the entity's financial soundness.

2.2 Resource Project Characteristics

In forming the opinion under section 27(3)(a)(i), the scheme manager may consider the characteristics of the resource project to which the authority relates.

2.2.1 When to consider resource project characteristics

Basic rule for consideration of resource project characteristics

The scheme manager should consider the resource project characteristics outlined in section 2.2.2 for each allocation decision except where:

- the resource tenure to which the authority relates is not a mining lease or petroleum lease; or
- the resource tenure is not in production.

2.2.2 Characteristics for consideration

Basic Rule for which resource project characteristics to consider

The scheme manager should consider characteristics which the scheme manager considers may affect the likelihood of sale of the resource project in the event of a failure of the holder, including at least the following:

1. Project Strength including matters such as:
 - remaining economic life based on reserves and current rate of production; and
 - off-take agreements.
2. The outstanding rehabilitation and site management obligations for the project and certainty of success for proposed rehabilitation and management activities; and
3. Material compliance issues relevant to the authority or the resource tenure or tenures to which this authority relates.