

# Achieving improved rehabilitation for Queensland: other associated risks and proposed solutions

*Discussion paper*

CS8244 05/18

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# Executive summary

The Queensland Treasury Corporation review of the financial assurance framework in 2016 recommended a number of complementary reforms that, in combination with the Financial Provisioning Scheme (FPS), will improve the State's ability to identify and manage the environmental and safety risks associated with resource operators defaulting on their rehabilitation responsibilities. These risks include the State becoming responsible for the management of a site's outstanding rehabilitation.

In response to the Queensland Treasury Corporation review, this discussion paper proposes reform ideas to:

- improve the State's ability to manage resource sites that enter care and maintenance mitigating the risk of the State becoming responsible for outstanding rehabilitation
- assess the financial and technical capabilities of resource authority holders when an ownership transition results in a change in control
- manage resource authorities disclaimed by liquidators.

The Queensland Treasury Corporation review, and an associated KPMG report<sup>1</sup>, concluded that resource operations in care and maintenance (C&M) present a higher risk to the government due to an increased likelihood that the State may become responsible for managing the outstanding rehabilitation of a site. This is because C&M can be perceived to be a precursor to a company entering administration or liquidation. This may be due to a variety of reasons such as fewer personnel on site to maintain vital infrastructure and monitor performance, the cost of required rehabilitation activities exceeding the value of the remaining reserve, or unforeseen environmental harm spreading to adjoining properties. The Queensland Treasury Corporation review recommended that these sites be better monitored and subject to stricter reporting requirements. The proposed C&M policy framework addresses these recommendations.

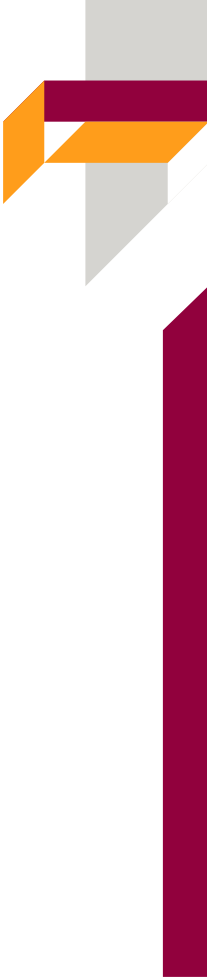
The Queensland Treasury Corporation review also recommended that government establish clear guidance on who is an acceptable holder of a resource authority, especially if an operator of a site remains the same while the assets and resource authority are sold or transferred to another company. A change of control test is proposed to address the current limitations of the State under the Commonwealth *Corporations Act 2001*. The proposed change of control test will legally allow the Department of Natural Resources, Mines and Energy (DNRME) to assess the technical and financial capability of the new holder of the resource authority. To ensure optimal use of Queensland's resources, the DNRME Financial and Technical Capability Guideline will be updated to establish contemporary standards for the operations of resource authority holders.

A framework to manage resource authorities disclaimed under the *Corporations Act 2001* is the final policy reform idea proposed in this paper. This framework proposes an alternative approach to manage a resource site that would otherwise end up as an abandoned mine (i.e. a site where mining and exploration activities have ceased and there are no leases or claims granted or environmental authorities in force). When resource authorities are currently disclaimed by a liquidator under the *Corporations Act 2001*, the government's options to purposefully and productively manage the site can be extremely limited.

This proposed reform idea aims to prevent the termination of a resource authority after an insolvent company has divested its legal and commercial interests through a disclaimer. Once a resource authority is terminated under the current system, the restoration of legacy rights can be lengthy and costly, especially if a site's potential for remining or repurposing are marginally economic. This reform will open up multiple avenues for the government to reassess a site for future productive options. If a site has no realistic prospect for further resource activities or alternative uses, rehabilitation will be required to resolve potential site risks.

If the proposed reform ideas are supported further investigations to amend acts such as the *Mineral Resources Act 1989* and *Mineral and Energy Resources (Common Provisions) Act 2014* will be required. The process to amend an act includes opportunities for stakeholder consultation.

<sup>1</sup> Design of the Risk Assessment Process for the Financial Assurance Scheme



The reform ideas proposed in this paper are intended to stimulate discussion on associated resource authority risks and potential solutions. They do not represent the final views of government. This discussion paper seeks public comment to allow proposals to be analysed and further developed. To assist this, a number of questions have been asked throughout the document and summarised in the ‘Have your say’ section located at the end of the paper. All feedback will be submitted to the government for its consideration. The Queensland Government welcomes any additional ideas or options stakeholders might have on these matters.

## Introduction

The Department of Natural Resources, Mines and Energy (DNRME) manages resource authorities for mineral, coal, and petroleum and gas developments across the State. DNRME also manages abandoned mines throughout Queensland, assessing and monitoring the risks of these sites and prioritising government funding to mitigate and eliminate risks to community safety and health, the environment and property.

In 2016, the Queensland Treasury Corporation undertook a review of the financial assurance framework for the resources sector. The review recommended wide-ranging reforms to:

- promote good environmental outcomes
- better protect the State’s financial interests
- reduce the financial burden for resource operators.

The Queensland Government is developing a reform package in response to the recommendations of the review. The package will be progressively rolled out to deliver positive rehabilitation outcomes and a new financial assurance framework, referred to as the Financial Provisioning Scheme. The financial assurance framework reform discussion paper outlines the scope of reforms.<sup>2</sup>

This discussion paper outlines the government’s proposals to:

- improve the State’s ability to manage resource sites that enter care and maintenance, mitigating the risk of the State becoming responsible for outstanding rehabilitation
- assess the financial and technical capabilities of resource authority holders when an ownership transition results in a change in control
- manage resource authorities disclaimed by liquidators.

### Have your say

The Queensland Government is seeking industry and community feedback on the reform ideas proposed in this paper. There are a number of questions posed throughout the document and summarised in the ‘Have your say’ section at the end of the document. The government welcomes any additional ideas or comments on these matters.

Please note: All other financial assurance–related policy issues and reforms have been or are being addressed through other processes and fall outside the scope of this paper.

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<sup>2</sup> *Financial assurance framework reform: discussion paper*, available at <<https://www.treasury.qld.gov.au/growing-queensland/improving-rehabilitation-financial-assurance-outcomes-resources-sector/>>.

# Background

Queensland's resources industry is an important contributor to the economy. During 2016-17, the industry contributed more than \$30 billion in Gross State Product to the State's economy and was responsible for the direct employment of 60,000 people and the indirect employment of many more.

As the legal custodian of Queensland's natural resources, the government is responsible for ensuring their sustainable and responsible use for the benefit of current and future generations. Securing these outcomes is challenging because resource exploration and extraction can disturb, change and degrade the land (subsurface and surface), the environment and other natural resources.

As the profile of the Queensland resources sector evolves, first generation coal and mineral developments are entering the final phase of their lifecycle; new and smaller producers are adopting innovative operating and funding models.

The government recognises a need to strengthen existing regulatory and policy frameworks to identify and mitigate risks, and avoid associated costs being borne by the taxpayer. This is based on:

- a high number of sites in care and maintenance (relative to total operations) – section 1 of proposed reform ideas provides a proposed solution
- a number of recent high profile insolvencies and the expectation the State will address outstanding environmental issues - section 2 of proposed reform ideas provides a proposed solution
- a growing trend of liquidators disclaiming resource authorities in an attempt to absolve the operator of environmental obligations, which the State is left to manage - section 3 of proposed reform ideas provides a proposed solution.

## Relationship with financial assurance reform

Two discussion papers, the *Financial Assurance Framework for Reform* and *Better Mine Rehabilitation for Queensland*, were released for public consultation on 4 May 2017. Stakeholder feedback was carefully considered with the introduction of the Mineral and Energy Resources (Financial Provisioning) Bill 2017 on 25 October 2017, which then lapsed upon the dissolution of Parliament. The Mineral and Energy Resources (Financial Provisioning) Bill 2018 was reintroduced into Parliament on 15 February 2018. Public consultation on the third discussion paper, *Financial Assurance Review – Providing Surety*, has closed and a consultation report on the findings has been publicly released.

A fourth discussion paper, *Achieving improved rehabilitation for Queensland: addressing the state's abandoned mines legacy*, was released for public consultation in May this year.

This paper, *Achieving improved rehabilitation for Queensland: other associated risks and proposed solutions*, is the fifth paper in the series of discussion papers related to the financial assurance reform.

A residual risk discussion paper will be released for public consultation later this year. It will propose a policy framework requiring resource operators to make a payment when surrendering their environmental authorities to cover long-term monitoring or maintenance costs and risks associated with the potential failure of rehabilitation work.

# Proposed reform ideas

## 1. Identifying and managing community risks when resource operations enter care and maintenance

### Background

Care and maintenance (C&M) typically refers to a holder of an environmental authority and a resource authority that is no longer operating to produce resources, but is maintaining the site, infrastructure and equipment. In some cases, particularly for sites that have been in C&M for long periods without any efforts to undertake progressive rehabilitation, there may be an increase in the risk of environmental harm and rehabilitation liabilities deferring to the State.

C&M is, however, a legitimate operational response to changes in market or other operating conditions. The resources sector operates in a highly variable business environment where commodity prices can move in cycles according to global supply and demand. Where the severity and length of a downturn in commodity prices is extreme, a producer with an economically marginal site may opt to temporarily cease production and enter C&M to minimise commercial losses. Other reasons to enter C&M include technical constraints and serious one-off events such as flooding. Sites in C&M are still required to comply with statutory obligations including rehabilitation conditions.

An analysis conducted by DNRME in September 2017 identified 27 of Queensland's 170 medium, large and giant<sup>3</sup> coal and minerals (base and precious metals) operations in C&M. Of these 27 sites:

- some have an uneconomic orebody at today's commodity prices and either:
  - » a restart may be possible given favourable market and commercial conditions, or
  - » the owner is attempting to divest but there are no viable purchasers and rehabilitation has commenced.
- some have an economic orebody at today's commodity prices and either:
  - » have active plans to restart operations, or
  - » despite having an economic orebody that is likely to generate an economic return over the remaining life of the operation, no attempts are being made to sell or restart the operation. In some cases, some rehabilitation may have been undertaken.
- in addition there could be a case where a site has no orebody left to extract and either:
  - » no other foreseeable opportunities to develop the site further, or
  - » the operator is not taking active steps to undertake final rehabilitation.

If this was the case it would be a compliance issue to be enforced by government.

### Current operational and policy frameworks

Queensland's resource Acts do not require a resource operator to formally notify the government that a site is entering C&M and there are limited powers to the government to oversee sites in C&M.

A Plan of Operations must be submitted under the *Environmental Protection Act 1994* and cannot exceed a period of more than five years of activity. A plan of operations must provide a description of the existing and all proposed activities within the plan period and a compliance statement that demonstrates the extent to which the plan of operations complies with the conditions of the Environmental Authority (EA) including rehabilitation obligations.

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<sup>3</sup> Refers to the quantity of ore that remains in-situ (Medium is up to 250,000 tonnes, Large up to 2,000,000 tonnes, and Giant greater than this).

In addition, coal and petroleum lease holders have obligations under resources Acts to provide a Development Plan to DNRME prior to a resource authority being granted (under the Mineral Resources Act, mineral leases are not required to submit a Development Plan). This allows DNRME to assess the prospective resource and identify any resource dilution issues. The Development Plan must include a schedule of proposed mining activities during the plan period. If significant changes to the nature and extent of an authorised activity occur, lease holders are obligated to lodge an alternative Development Plan. At the moment, a site entering into C&M does not automatically trigger any reporting requirement to notify the government but may be disclosed through other statutory mechanisms.

## QUESTIONS FOR PUBLIC FEEDBACK

**Q:** Are the current provisions for regulators and obligations on lease holders and EA holders adequate for a proportionate response to managing sites in C&M?

### Policy objectives

The Queensland Treasury Corporation review concluded that sites in C&M are a higher financial risk to the government due to an increased likelihood that the state may become responsible for managing the outstanding rehabilitation of the site. The review recommended that sites in C&M be required to meet stricter monitoring and reporting requirements.

The government considers C&M to be an appropriate business strategy for operations with available resources and under certain economic conditions. Current and proposed policies will provide flexibility for companies to adapt to changing market conditions by entering C&M under appropriate circumstances. While circumstances vary, a resource operation seeking to enter C&M with a completely depleted orebody<sup>4</sup> is likely to be viewed by the government to be as a high risk activity.

The government expects resource operators to ensure that if they suspend production operations, the site will:

- remain compliant with the prevailing policy and regulatory framework that promotes continued compliance with environmental and safety obligations
- recommence operations as soon as is commercially feasible.

### Proposed business improvement activities

The Mineral and Energy Resources (Financial Provisioning) Bill 2018 includes triggers for reporting when a resource project with an authority (mining lease or mining development licence, authority to prospect, geothermal production lease) ceases operation or has not been in operation for more than six months.

This reporting will complement the government's approach for care and maintenance by allowing better monitoring of the site by government and enabling the scheme manager to take into account the ceasing of production as part of risk assessment.

The Plan of Operations for site-specific mining leases is to be progressively replaced by a Progressive Rehabilitation and Closure Plan (PRCP) after the Financial Provisioning Scheme commences.<sup>5</sup> The amendments to the Environmental Protection Act in the Mineral and Energy Resources (Financial Provisioning) Bill 2018 require all site-specific mines to prepare a PRCP. The PRCP will include binding, time-based milestones for actions that achieve progressive rehabilitation and will ultimately support the transition to a mine site's future use. When a company enters C&M, it will still be required to meet its PRCP milestones. An operator may apply to amend its PRCP (e.g. to extend the timeline for rehabilitation) and the Bill provides a process to assess these amendment applications.

<sup>4</sup> A depleted orebody is defined as having no available resources and reserves.

<sup>5</sup> Petroleum and gas operations will continue under the current framework and will be required to submit a Plan of Operations.

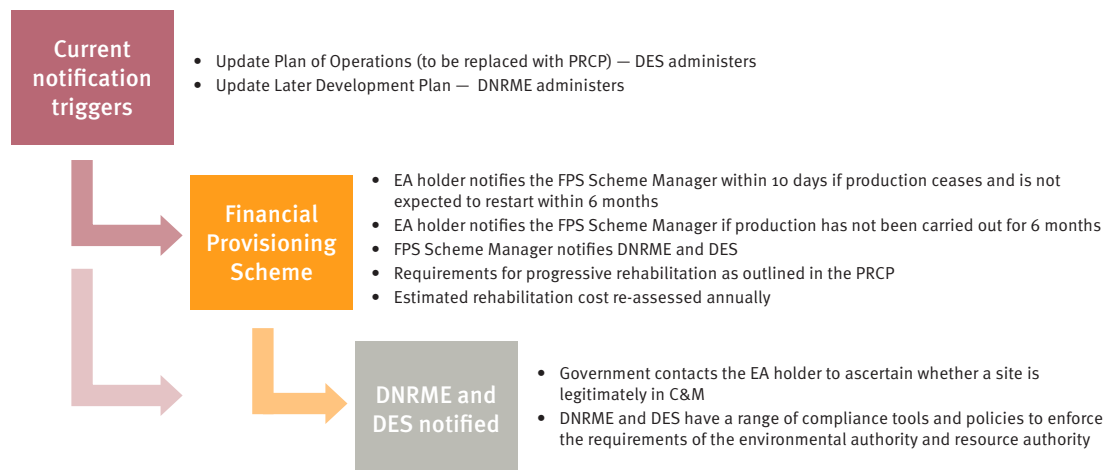


It is proposed that when the holder of a resource authority (including minerals) chooses to suspend production and enter into C&M, it submits a Later Development Plan to DNRME. The Plan includes the following detail:

- notification of the cessation of production
- the expected C&M period
- the sorts of conditions that would justify bringing the site out of C&M.

This will assist government in identifying behaviour deemed not to be in the public interest. This could include the instance of a site entering C&M with a depleted orebody and no intentions to recommence production.

The C&M policy framework is illustrated as follows:



If a site overlays a depleted orebody and there is little to no foreseeable opportunity to further develop the site, the government may, based on their notification details commence actions to ensure that rehabilitation is progressed.

The government’s Mined Land Rehabilitation Policy, considers disturbed land associated with mining activities to be available for rehabilitation unless it is:

- being actively mined, or
- being used for operating mining infrastructure, or
- overlaying a probably or proven resource reserve identified for extraction in the approved PRCP within 10 years, or
- the site of built infrastructure that will be retained as a beneficial asset in the approved PRCP.

The government has tools at its disposal to manage operators of sites in C&M including:

- compliance action to ensure compliance with EA conditions and PRCP milestones
- following an audit, require updating of PCRPs or plans of operations to cover the expected C&M period, and
- require operators to provide an updated Later Development Plans seeking an explanation for a site entering C&M, as well as conduct safety inspections.

## Summary of regulatory responses

Rescheduling of agreed rehabilitation requirements or changes to environmental monitoring and reporting requirements during C&M need to be negotiated with the Department of Environment and Science (DES) on a site by site basis to ensure environmental risks are appropriately managed. Resource operators may also be required to undertake a PRCP or EA amendment process.

In addition, a Development Plan provides detailed information about the nature and extent of mining activities to be carried out over the life of a lease. It is proposed that all coal, mineral and petroleum operations will be required to submit a new or reviewed Development Plan if entering C&M.

Once C&M notification occurs, the proponent would be required to submit a revised Later Development Plan to DNRME, which will need to include the following information:

- a revised Life of Mine Plan including a description of the estimated quantity of remaining reserves and resources
- details on factors such as why the site is in C&M including market forces, technology constraints and financing difficulties
- the operational and market conditions required to recommence production and an estimated forecast quarter and year for recommencement of production.

This information would enable government to monitor the ongoing management of the site and ensure production recommences in accordance with the site operator's submission.

## Relationship with the FPS

A significant risk associated with sites entering C&M is that of financial default on meeting rehabilitation requirements occurring in the period prior to the commencement of the Financial Provisioning Scheme, as well as potentially drawing down on the Financial Provisioning Scheme Rehabilitation Fund before sufficient funds have accumulated (i.e. in its transition phase). In these unlikely cases, both DES and DNRME will have been notified of a site's production status moving to C&M, and they can use a range of tools and powers to mitigate the risks.

Resource operators who are in C&M when the FPS commences or enter C&M after commencing production will be required to notify the scheme Manager. This information will be available to the scheme Manager when conducting the risk rating assessment of the resource operation.

The Environmental Protection Act requires all resource operations, regardless of whether they are producing or not, to meet the environmental management conditions in their EA. Once the FPS commences, EA holders will be required to provide surety for 100 percent of the estimated rehabilitation cost or contribute to the scheme. All sites over the \$100,000 estimated rehabilitation cost threshold will be subject to an annual risk assessment by the scheme manager and DES will oversee the progressive rehabilitation outcomes as outlined in the PRCPs.<sup>6</sup>

The government is currently developing a number of policies to ensure that the calculation of the estimated rehabilitation cost more accurately reflect the true costs should the State be required undertake the rehabilitation.

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<sup>6</sup> Note that petroleum and gas operations will remain under the existing framework and continue to submit a Plan of Operations.

## Potential legislative amendments to support proposed reform idea

If this proposed reform idea is supported further investigations into amendments to legislation will be required, including potential:

- Amendments to the *Mineral Resources Act 1989* may be required to:
  - » ensure that mineral mining lease holders provide a development plan
  - » ensure that a new or revised development plan will be required for all resource authority holders if entering care and maintenance
  - » prescribe the requirements for a revised later development plan where care and maintenance is required
  - » provide for compliance requirements that may be necessary.

## 2. Assessing the financial and technical capabilities of resource authority holders when an ownership transition results in a change in control

### Current operational and policy framework

An applicant for a resource authority in Queensland must demonstrate that they have human, technical and financial resources to comply with the conditions of the resource authority<sup>7</sup>. A risk exists because these companies are not required to demonstrate that they have the financial capability to comply with state obligations beyond the resource authority including the environmental management and rehabilitation of mined land. Resource operators that do not demonstrate the necessary financial and technical capabilities pose higher safety and environmental risks as well as financial risks to the State.

The QTC review also highlighted a number of occasions where a resource authority is held by one resource company (e.g. company A) that is subsequently taken over by another company (e.g. company B) such that it assumes a controlling interest as defined under the Commonwealth's Corporations Act 2001. Company B could reasonably be expected to exert a material influence on company A's decisions that could affect the future management, sustainability and productivity of the resource operation.

In this situation, the government currently lacks the necessary powers to assess the financial and technical capabilities of the new owner (i.e. company B). This reduces the government's ability to safeguard and optimise the value of the resource in the public interest.

The situation above is distinct from the sale of a resource authority (i.e. say from company A to company B) which is designated as a dealing under the Mineral and Energy (Common Provisions) Act 2014 (MERC Act). Dealings are grouped into assessable and non-assessable transfers. The sale of a resource authority is an assessable transfer that requires the responsible Minister to consider whether the proposed new holder of a mining lease has the technical and financial capabilities to comply with the conditions of the resource authority (see Figure 1 below). Because the rights of the resource authority pass directly to the buyer, this type of transaction does not present an issue for the government in terms of the ability to assess financial and technical capability of the owner.

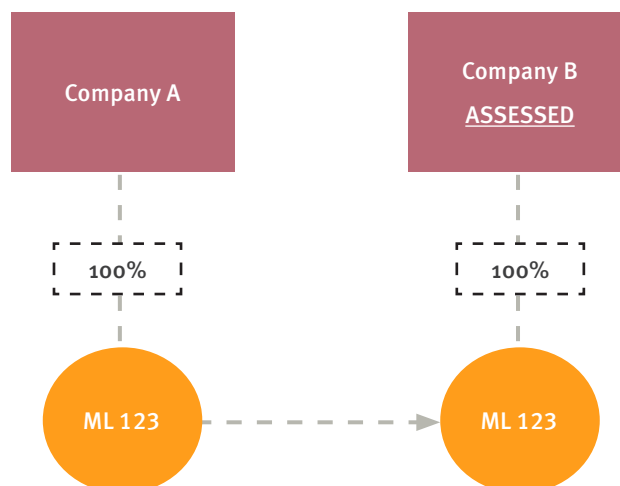
The government is proposing to address the first situation described above (i.e. where a change in control of the holder of the resource authority occurs) by designating it as a dealing under the MERC Act. This means that government will be able to assess the financial and technical capability of any company that acquires a resource authority (i.e. company B) by virtue of the

Figure 1: Example of a resource authority transfer that is assessable as a dealing (Source: DNRME)

#### Resource authority sold, buyer assessed

Company A owns 100 per cent of Mining Lease 123 (ML 123), and wishes to sell it to Company B via an asset sale – a direct transfer of Company A's share of the ML.

To complete the proposed sale, Company B must obtain Ministerial approval as it is an assessable transfer. Company B must make submissions demonstrating its technical and financial capability in its application for Ministerial consent to be registered as the new owner.



<sup>7</sup> See section 10 Mineral and Energy Resources (Common Provisions) Regulation 2016

sale of a company holding a resource authority (i.e. company A). In such a situation, company B may not be the legal holder of the resource authority, but has only have assumed a controlling interest in the commercial decision making of company A.

### Policy objectives

A number of resource operations in Queensland are approaching the end of their development phase and operators may be looking to sell assets that no longer fit their overall corporate strategy or commercial objectives. To divest these assets, some operators are selling the company that holds the resource authority and operates the mine (see Figure 2 below). As the operation is still being run by the same entity and ownership of the resource authority has not changed, a financial and technical capability assessment is not required. This is despite the ultimate ownership and control of the resource operation changing (e.g. through a share acquisition).

The government is proposing to amend an existing framework to ensure all resource authority holders and their parent entities are required to demonstrate the necessary financial and technical capabilities to meet state obligations including environmental management and rehabilitation before a change in ownership can occur.

Figure 2: Example of a resource authority transfer that is not assessable as a dealing (Source: DNRME)

#### Sale of resource company (resource authority holder), buyer not assessed



### Proposed policy changes

Under the proposed framework, ‘change of control’ transactions will be treated in the same way as a direct sale of a resource authority, and be assessable as a dealing under the MERC Act. These arrangements would give the government the power to ensure operators have the capability to extract the resource and meet other state obligations to optimise the associated benefit for all Queenslanders.

A change of control transaction will be a new assessable dealing. A condition to notify the Minister of any proposed change of control transaction will be placed on all existing and new authorities issued under the resources Acts. The obligation applies to all parties – the holder of the resource authority, the entity divesting itself of the holder, and the new controlling entity.

The *Corporations Act 2001* definition of ‘control’ will be applied to determine whether a transaction or dealing involving a resource authority holder affects the control of the holder.

#### ***Corporations Act 2001, section 50AA Control***

1. For the purposes of this Act, an entity controls a second entity if the first entity has the capacity to determine the outcome of decisions about the second entity’s financial and operating policies.
2. In determining whether the first entity has this capacity:
  - a. the practical influence the first entity can exert (rather than the rights it can enforce) is the issue to be considered; and
  - b. any practice or pattern of behaviour affecting the second entity’s financial or operating policies is to be taken into account (even if it involves a breach of an agreement or a breach of trust).
3. The first entity does not control the second entity merely because the first entity and a third entity jointly have the capacity to determine the outcome of decisions about the second entity’s financial and operating policies.
4. If the first entity:
  - a. has the capacity to influence decisions about the second entity’s financial and operating policies; and
  - b. is under a legal obligation to exercise that capacity for the benefit of someone other than the first entity’s members; and
  - c. the first entity is taken not to control the second entity.

Some transactions that would otherwise trigger the new change of control assessment may be exempt, especially where they are assessed under an alternative regulatory or notification framework. In these cases, the government must be notified of the change and, depending on the opportunity for additional risk, may decide not to undertake further assessments of the financial and technical capabilities of the new entities. These transactions may include:

- corporate restructures whereby changes in ownership occur between related group companies but the ultimate control remains unchanged
- where a holder already has the majority control of a resource authority and proceeds to increase its indirect ownership interest in the same resource authority, and
- appointment of an administrator, receiver, or liquidator to a resource authority holder (this would not exempt sales by administrators or liquidators to new entities).

An assessment of the change of control will be required before any transaction occurs, and existing resource authority holders must apply beforehand to the Minister for a legally binding indicative assessment on whether the new controlling structure has the necessary financial and technical capabilities. An indicative assessment may also be granted conditionally, requiring certain conditions to be satisfied before a change of control can occur. Positive indicative assessments will remain valid for six months.

The risk of a potential new holder failing to fulfil the rehabilitation obligations is likely to be considered unacceptably high in situations where the resource authority to be transferred overlays a resource that is deemed to be of lesser value than the total cost of meeting a rehabilitation obligation, when assessed by the scheme Manager. This could be managed by requiring the resource authority holder to contribute appropriately to the Financial Provisioning Scheme Rehabilitation Fund or provide sufficient surety. Where the new controlling structure continues to operate without a positive assessment or meeting the indicative approvals, compliance action could be taken for conducting a resource activity without a resource authority.

## QUESTIONS FOR PUBLIC FEEDBACK

Q: Would the change in control assessment provide sufficient regulatory oversight to ensure resource authority holders maintain sufficient financial and technical capabilities to operate in Queensland?

Q: Is the proposed change of control test appropriate and broad enough to capture indirect resource authority transactions that may affect the holder's financial and technical capabilities?

### Relationship with the Financial Provisioning Scheme

The FPS test and Resources Acts consistently apply the Corporations Act definition of control for the change of control assessment. The proposed FPS also includes a review of the risk category allocation when a change in control of the EA occurs.

### Review of financial and technical guidelines

The new change of control assessable dealing requirement will be supported by a review and update of the DNRME's Financial and Technical Guidelines to provide greater transparency of the capability requirements. This review will have its own targeted stakeholder consultation process.

## QUESTIONS FOR PUBLIC FEEDBACK

Q: What information should the financial and technical capability assessment consider, for example the capacity to undertake rehabilitation?

If this proposed reform idea is supported further investigations into amendments to legislation will be required, including potential:

- Amendment to the *Mineral and Energy Resources (Common Provisions) Act 2014* may be required to:
  - » provide for a condition of tenure to notify the Minister of any change in control transaction
  - » apply the obligation to notify the Minister to the holder of the resource authority, the entity divesting and the entity acquiring
  - » apply the *Corporations Act 2001* definition of control
  - » provide exemptions for certain transactions (i.e. related corporations etc.).

### 3. Reducing risks to the State and community when liquidators disclaim resource authorities

#### **Current operational and policy frameworks**

When a resource company becomes insolvent, its liquidators may ‘disclaim’ a resource authority if a buyer for the resource operation cannot be identified. The act of disclaiming a resource authority, which legally terminates a company’s rights, interests and/or liabilities in the authority, is generally taken where there are ongoing costs and expenses that the insolvent company would otherwise be required to pay.

A resource operation with an economic orebody may still be disclaimed if the market conditions are not favourable for it to be sold. High operational maintenance costs will also influence the decision to disclaim, particularly if these are unlikely to be recouped from any potential sale.

It is in the public interest to return a site to production as soon as is commercially feasible and/or practicable due to employment opportunities and royalty revenues which provide public funding to support essential goods and services. The Resources Acts do not currently provide a mechanism for the State to re-allocate a resource authority from a defaulting or insolvent company. All resource authority rights are expunged when a site is disclaimed. Therefore, should another company be interested in developing a disclaimed resource operation, they must apply for a new resource authority and undertake the notification, objection and appeals stages.

Where a resource company becomes insolvent, a resource operation can be sold (before being disclaimed) if the potential new owner is able to demonstrate the financial and technical capability required to conduct the resource operation and seek the Minister’s approval to transfer the resource authority. This would significantly reduce the time and the associated costs of re-establishing a project compared to a resource authority being disclaimed and approvals then being required to be newly obtained, and could be the difference between a development continuing or not.

Over the last decade seven resource authorities have been disclaimed after the holding company entered insolvency. Three of these sites are considered to have an economic orebody. One site with an economic orebody returned to production in late 2017, while another is currently the subject of a resource authority application process. In each of these cases there has been a delay of over two years from when the site was initially disclaimed to when it has (or will potentially be) returned to production.

When a new operator cannot be found, disclaimed resource operations often become abandoned and are left to be managed under the government’s Abandoned Mine Lands Program. Access to abandoned mines and the ability to complete necessary works are also impeded when the resource authority is disclaimed.

A new framework is proposed to reduce the number of disclaimed sites becoming abandoned and to return sites with an economic orebody to production faster

#### **Policy objectives**

The framework for dealing with disclaimed mines aims to promote the continued development of economic orebodies by reducing the delays and costs associated with the application process for a resource authority. Returning a site to operation as soon as practicable can minimise the job losses and community impacts. It also ensures continued royalty revenue to the State.

The framework mitigates the risk of rehabilitation costs being deferred to the State by providing an alternative to the disclaiming of a resource authority. This will facilitate the transfer of the resource authority to a new holder, where appropriate. Where the government deems it not appropriate to preserve the resource authority, the framework will facilitate rehabilitation and/or remediation works to render the site as safe, secure and stable and/or productive.



## Proposed policy changes

The proposed framework under the resources Acts will enable a disclaimed mine to be transferred to a holding entity (which may or may not be a government-owned entity) that will effectively ‘warehouse’ the resource authority until it is sold, transferred or terminated (for sites without an economic orebody). This means that the EA will also need to transfer with the resource authority; and as such, any new operator will need to be a registered suitable operator under the Environmental Protection Act.

Warehousing the resource authority prevents it from terminating and will reduce delays in returning the site to production. A resource authority that is kept ‘alive’ to be sold or transferred without duplicating the approvals process may improve a site’s commercial attractiveness and provide additional financial incentives for potential buyers.

If no interest is declared in taking on a disclaimed resource authority, it will transfer – following a grace period – to a holding entity and be managed by the State. While the resource authority is maintained, the insolvent company (in accordance with the Corporations Act) will no longer have any legal rights, liabilities or obligations in relation to the resource authority, but may still be pursued for environment compliance and enforcement actions.

The resource authority will be held in abeyance (i.e. suspended) when it is transferred to the holding entity. The disclaimed resource operation will be managed by the State in the same way as an abandoned mine, with works undertaken to address on-site risks as prioritised under the Abandoned Mine Lands Program. Maintenance of the site’s plant and infrastructure may also be completed to ensure the site’s operational value.

An assessment of the resource operation’s economic viability will be conducted by the government while the resource authority is held in abeyance. The assessment will aim to identify opportunities to return the site to production or otherwise reduce the State’s rehabilitation obligation.

New powers will be established for the government to facilitate dealings with a resource authority after it has been disclaimed. Where the resource operation is sold, the new operator must demonstrate that they have the financial and technical capabilities to conduct the resource operation, before they can take over the site. The environmental, financial assurance, land access and native title requirements must also be met before the new owner can operate.

A disclaimed resource operation will be classified as abandoned if it cannot be returned to production or repurposed, and it will be subject to the relevant standard procedures of an abandoned mine.

## Relationship with the Financial Provisioning Scheme

Under the current framework, the government can call on the financial assurance of a disclaimed site to fund rehabilitation activities. The government’s financial assurance reforms will continue to operate in the same way for a disclaimed site.

The discussion paper *Achieving improved rehabilitation for Queensland: addressing the state’s abandoned mines legacy*, proposed DNRME establish a new sub-category of abandoned mine to be known as a pre-commencement terminated mine in order to better represent the associated management risks. A pre-commencement terminated mine (abandoned prior to the commencement of the FPS) is where an operator had strict environmental and rehabilitation obligations imposed on them but failed to fulfil them.

Terminated mines that become abandoned following the commencement of the Financial Provisioning Scheme (post-commencement terminated mines) will have their rehabilitation costs covered by their contributions to the Financial Provisioning Scheme Rehabilitation Fund or provision of a surety to cover the total estimated rehabilitation cost.

Some pre-commencement terminated mines may be considered by DNRME as potentially suitable for alternative non-mining uses. Re-purposing a site could reduce the environmental risks on-site while utilising the site for an alternative productive use. The discussion paper referred to above proposes that DNRME establish and administer a new re-purposing program to incentivise the involvement of the private sector to help manage the risks and opportunities associated with them.

While the vast majority of scheme funds will be allocated to rehabilitation activities, some sites may be more suited to re-purposing rather than final rehabilitation.

### **Potential legislative amendments to support proposed reform idea**

If this proposed reform idea is supported further investigations into amendments to legislation will be required, including potential:

- Amendment to the *Mineral and Energy Resources (Common Provisions) Act 2014* to:
  - » provide a mechanism to acquire a mining lease prior to disclaiming/deem the instrument to survive the disclaiming process and to transfer to the State (may need mirror provisions for the Environmental Protection Act in relation to the EA)
  - » provide for a mechanism for the State to transfer the resource authority to a new owner (Environmental Protection Act amendments likely required to mirror requirement for EA)
  - » provide the requirements the transferee must meet prior to approving the transfer.
- Amendments to establish the corporate entity and the rules of its operation.

#### **QUESTIONS FOR PUBLIC FEEDBACK**

Q: Are the current provisions for dealing with disclaimed mines adequate? What would be an appropriate response to deal with disclaimed mines?

# Have your say

The Queensland Government is seeking industry and community feedback on the package of reform ideas in this discussion paper. Specifically, we want your feedback on the following questions:

1. Are the current provisions for regulators and obligations on lease holders and EA holders adequate for a proportionate response to managing sites in C&M?
2. Would the change in control assessment provide sufficient regulatory oversight to ensure resource authority holders maintain sufficient financial and technical capabilities to operate in Queensland?
3. Is the proposed change of control test appropriate and broad enough to capture indirect resource authority transactions that may affect the holder's financial and technical capabilities?
4. What information should the financial and technical capability assessment consider, for example the capacity to undertake rehabilitation?
5. Are the current provisions for dealing with disclaimed mines adequate? What would be an appropriate response to deal with disclaimed mines?

In addition, to help identify trends from different groups, please indicate which of the following categories best describes you:

- resource company—existing resource operation
- resource company—prospective resource operation
- landholder
- traditional owner or group representing the interests of traditional owners
- peak bodies (please specify)
- federal, state or local government (please specify)
- community group (please specify)
- environmental group (please specify)
- financial institution (please specify)
- other (please specify).

## How to make a submission

Visit the Queensland Treasury website at [www.treasury.qld.gov.au](http://www.treasury.qld.gov.au).

You can also provide a written submission by email or post:

Email: [financial.assurance@treasury.qld.gov.au](mailto:financial.assurance@treasury.qld.gov.au)

Post: Financial Assurance Review  
Queensland Treasury  
PO Box 15216  
City East Qld 4002

For more information, visit [www.treasury.qld.gov.au](http://www.treasury.qld.gov.au) or call 13 QGOV (13 74 68).

Submissions close **5 pm, 16 July 2018**.

Should these reform ideas proceed, the Queensland Government plans to roll them out as soon as possible.

# Appendix 1: Glossary

<b>Abeyance</b>	Temporarily suspended
<b>Disclaim</b>	Under the <i>Corporations Act 2001</i> (Cth), liquidators may terminate a company's rights, interests or liabilities in or with respect to onerous property, including land and any resources tenures held by the company. This process is referred to as 'disclaiming'.
<b>Environmental authority</b>	An environmental authority issued by the administering authority under Chapter 5 of the <i>Environmental Protection Act 1994</i>
<b>Orebody</b>	An ore is a type of rock that contains minerals with important elements including metals that can be extracted from the rock. The ores are extracted through mining activity and then refined to extract the valuable element or elements.
<b>Resource authority</b>	A resource authority includes: <ul style="list-style-type: none"> <li>a. a prospecting permit, mining claim, exploration permit, mineral development license, mining lease, and water monitoring authority under the <i>Mineral Resources Act 1989</i> (Qld) (MRA);</li> <li>b. an authority to prospect, petroleum lease, data acquisition authority, water monitoring authority, survey license, pipeline license, and petroleum facility license under the <i>Petroleum and Gas (Production and Safety) Act 2004</i> (Qld) (P&amp;G Act);</li> <li>c. an authority to prospect, lease, and water monitoring authority under the <i>Petroleum Act 1923</i> (Qld) (1923 Act);</li> <li>d. a geothermal exploration permit and geothermal production lease under the <i>Geothermal Energy Act 2010</i>;</li> <li>e. a GHG exploration permit, GHG injection and storage lease, and a GHG injection and storage data acquisition authority under the <i>Greenhouse Gas Storage Act 2009</i> (Qld).</li> </ul>

