

Scheme Manager Guideline 3

Requiring surety to preserve the financial viability of the scheme fund

Financial Provisioning Scheme



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1 About this guideline

1.1 Background

This guideline is made by the scheme manager under section 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 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 estimated rehabilitation cost (**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:

- has allocated an authority to the risk category of very low, low or moderate; and
- is considering whether to make a decision under section 53(c)(ii) that the holder of the authority must give a surety, rather than pay a contribution, to preserve the financial viability of the scheme fund.

The purpose of this Guideline is to provide guidance to the scheme manager on making a decision under section 53(c)(ii) to require a surety to preserve the financial viability of the scheme fund. Section 54 applies for making a decision under section 53(c)(ii).

1.3 Definitions used in this Guideline

Definitions in the dictionary in schedule 1 of the Act apply to this Guideline.

2 Requiring Surety to Preserve the Financial Viability of the Scheme Fund

1.4 Surety required if the total ERC is likely to be more than the fund threshold

The scheme manager must apply section 54 for making a decision under section 53(c)(ii).

Basic Rule if the total ERC exceeds the fund threshold

If the sum of the total ERC of the entities mentioned in section 54(2) exceeds the fund threshold (see section 11(1)), the scheme manager should require a surety be given for the authority.

The entities mentioned in section 54(2) are:

- The holder of the authority, or if there is more than one, the relevant holder;
- Any parent corporation of the holder or the relevant holder of the authority (parent corporation);
- Any subsidiary corporation of a parent corporation; and
- A corporation controlled by a parent corporation.

Note:

The total ERC for a holder, or if there is more than one, the relevant holder, is the sum of the ERC for each authority held by the holder or assigned to the relevant holder for which a contribution to the scheme fund is payable.

Basic Rule if the total ERC is likely to exceed the fund threshold

The scheme manager should require surety for the authority if the scheme manager considers that the sum of the total ERC of the entities mentioned in section 54(2) is likely to exceed the fund threshold before the next annual review for the authority.

In considering whether the total ERC is likely to exceed the fund threshold the scheme manager may take account of:

- Any likely change to the authorities held by a group entity;
- Any likely change to the ERC for any authority held by a group entity;
- Any likely change to a group entity.

3 Date of effect

This Guideline takes effect from 5 April 2019.

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