

Financial assurance framework reform

Discussion paper

Department of the Premier and Cabinet
Queensland Treasury
Department of Natural Resources and Mines
Department of Environment and Heritage Protection



CS6466 04/17

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Foreword

Mining activity in Queensland can be traced back to the 1800s. Since then, mining has made an enduring contribution to our local communities and regions, and to the growth of our state. The mining industry, and the resources sector more broadly, is directly linked to the revitalisation of some of our regional centres and is worth billions of dollars to our economy.

As the industry has grown and evolved, so has the expectation for resource companies to make safe and responsible decisions. Rehabilitation is a critical part of this.

While much government consideration has been dedicated to ensuring the laws around rehabilitation activities reflect current expectations and knowledge, it is timely to review the state's resources rehabilitation performance and the financial assurance framework that supports it.

Recent cases of resource companies unable to complete their rehabilitation activities have highlighted issues with the financial assurance framework. These issues are significant for the Queensland Government and have resulted in a large financial burden for the state.

Community groups and the resources industry have also expressed concerns with both rehabilitation and financial assurance requirements. These concerns are significant and must be addressed to ensure the long-term sustainability of this important industry.

However, the task of achieving a high standard of rehabilitation and financial practice is challenging and complex.

This discussion paper outlines a number of reform areas that will be made available for public feedback throughout 2017 and 2018. The reform areas will be delivered progressively based on a range of factors, including logical sequencing, the capacity of government and stakeholders to engage, the time frame to implement any changes and the development status of the reform.

These reforms are necessary to ensure our resources industry and our communities have a long, sustainable and mutually beneficial future

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Introduction

Queensland's resources industry is an important contributor to the economy—both for the revenue and jobs it generates. Last year, the resources industry contributed over \$21 billion to the state's economy, and was responsible for the direct employment of 60 000 people and the indirect employment of many more in key supporting sectors.

However, resource activities can also pose challenges for governments and the communities in which activities occur. By its very nature, resource exploration and extraction disturbs and changes the land. Successful rehabilitation of that land is a legal obligation imposed on the resource company and is critical to the industry's social licence to operate.

The Queensland Government obtains financial assurance under the *Environmental Protection Act 1994* to protect the community from instances in which a resource company does not meet its rehabilitation or environmental management obligations. The amount of financial assurance provided by a resource company is based on an assessment of the likely cost for third parties to undertake the rehabilitation of existing and planned areas of disturbance.

Currently, there is over 220 000 hectares of disturbed land in Queensland, with an estimated rehabilitation cost of \$8.7 billion.¹

In order to address the financial and environmental challenges of resource site rehabilitation, the Queensland Government commissioned a review of the financial assurance arrangements—the results of which have been used to develop proposed reform areas to improve rehabilitation outcomes for Queensland.

This discussion paper provides an overview of these proposed reforms, with a focus on a redesigned financial assurance framework.

Financial assurance in Queensland

Financial assurance is a type of financial security required for some resource activities that is provided to the Queensland Government.

The amount of financial assurance provided is based on an assessment of the likely cost for third parties to undertake the rehabilitation of existing and planned areas of disturbance.

Financial assurance can be provided in the form of cash or a bank guarantee (provided by an Australian Prudential Regulation Authority–approved, Australian-registered bank).

The Queensland Government will only use the financial assurance as a measure of last resort, after considering all other options.

¹ The estimated cost is based on third parties undertaking the rehabilitation.

The need for a review

Industry and environmental groups have expressed concerns regarding the effectiveness of the current financial assurance framework requirements. These concerns cover a range of topics, including the impact of the current framework on investment in the industry and the performance of resource site rehabilitation. A number of recent financial assurance claims also highlighted weaknesses within the current system.

As a result, the Queensland Government commissioned a review of the financial assurance framework to better understand the advantages and disadvantages for stakeholders, and to examine options for improvements. The review was based on a range of factors that included evidence-based analysis and risk assessment; feedback from industry, government and other stakeholders; and experiences in Australia and overseas.

Findings

The review found that the Queensland Government relies heavily on the current financial assurance framework to protect the state against the cost of rehabilitation should a resource company not meet its rehabilitation and environmental obligations.

The review identified that the current arrangements could be improved to:

- better protect the state's financial interests
- reduce the financial burden for industry
- promote good environmental outcomes.

A redesigned financial assurance framework has been recommended.

In addition, a number of important and interrelated reforms were identified, which would also have positive environmental outcomes, improve rates of site rehabilitation and ultimately reduce the amount of rehabilitation required at the end of a resource operation's life.

For more information on the review and its findings, download *Review of Queensland's financial assurance framework* on the Queensland Treasury website at www.treasury.qld.gov.au.

Proposed reform package

In response to the findings and recommendations identified through the review of the financial assurance framework, the Queensland Government has provided in-principle approval for substantial reform to the framework, and for complementary reforms to improve resource site rehabilitation.

Vision

Queensland will have leading international financial assurance and rehabilitation practices that contribute to the efficient and effective management of the state's minerals and energy resources and environment.

Objectives

- Deliver a high level of environmental performance
- Protect the state's financial interest
- Provide an incentive to invest in the resources sector
- Provide an outcome that satisfies community expectations

Reform areas

The proposed reform areas, when implemented together, will help achieve the vision and objectives to improve rehabilitation outcomes in the Queensland resources sector.

Reforms will be delivered progressively based on a range of factors, including logical sequencing, the capacity of government and stakeholders to engage, the time frame to implement any changes and the development status of each reform area (see Figure 1 overleaf).

More detail on each reform area is outlined in 'Section 1: A redesigned financial assurance framework' and 'Section 2: Other reform areas'. Your feedback on the proposed reforms, including the findings of the review, will help inform the final scope of the reform package.

The reform package will be implemented as part of a whole-of-government initiative involving Queensland Treasury, the Department of the Premier and Cabinet, the Department of Natural Resources and Mines, and the Department of Environment and Heritage Protection.

1. A redesigned financial assurance framework—the tailored solution

This reform area will seek to achieve the following objectives:

- differentiate between the portfolio of resource companies, with respect to the risk of insolvency
- reduce the financial impact of financial assurance on the industry where possible
- develop improved environmental outcomes by providing the Queensland Government with the appropriate funds to complete rehabilitation when a resource company has not met its obligations
- provide a source of funding to develop a best practice financial assurance regime and associated projects, such as an expanded Abandoned Mine Lands Program.

The tailored solution is outlined in this discussion paper.

2. Improving rehabilitation in Queensland

This reform area will seek to achieve the following objectives:

- provide certainty for investment in rehabilitation activities
- maximise the area of land that is able to sustain alternative land uses post-mining
- encourage efficient and effective mine operation and planning that supports progressive rehabilitation and post-rehabilitation land uses
- increase public confidence in rehabilitation activities
- reduce taxpayer exposure to potential environmental problems
- promote the development of a rehabilitation service industry in Queensland.

A second discussion paper, *Better mine rehabilitation for Queensland*, is due to be released for consultation in early 2017.

3. Expanded range of surety providers

This reform area will seek to achieve the following objectives:

- broaden the range of acceptable surety providers to give resource companies more options
- encourage market competition.

The Queensland Government aims to release a discussion paper for consultation by mid to late 2017.

4. Expansion of the Abandoned Mines Land Program

This reform area will seek to achieve the following objectives:

- create greater capacity to mitigate the environmental and safety risks associated with the state's higher risk abandoned mines and disclaimed operations
- create greater opportunity to commercialise the remaining resources in abandoned mines
- develop new initiatives that will provide incentives for private investment in abandoned mines.

The Queensland Government aims to release a discussion paper for consultation by late 2017.

5. Improved management of sites in care and maintenance

This reform area will seek to achieve the following objectives:

- a better understanding of how resource operators manage sites in care and maintenance
- improved monitoring of sites in care and maintenance
- ensure the risks these sites may present are managed.

The Queensland Government aims to release a discussion paper for consultation by late 2017.

6. Other reforms

The Queensland Government aims to address the following reform areas by mid 2018, with work on some areas already underway:

- review of existing approval processes for the sale of resource assets
- improved data analysis, information systems and governance framework
- residual risk policy development.

Consultation and feedback

This first discussion paper is seeking your initial feedback on the proposed reform package, and specifically the redesigned financial assurance framework (the tailored solution). Further consultation will be undertaken on each of the other reform areas.



Figure 1: Proposed time frames for stakeholder engagement on the reform areas

Benefits of the reforms

The proposed reforms are expected to deliver a range of benefits to stakeholders.

Reduced financial impact of the provision of financial assurance

By offering other forms of financial assurance for the majority of resource companies, the redesigned financial assurance framework will free up capital and borrowing capacity previously required for the provision and servicing of a bank guarantee. This has the potential to remove a barrier for new or expanding resource projects and therefore facilitate job creation.

Improved mechanisms for reducing potential risks and costs of unfunded rehabilitation

The implementation of the redesigned financial assurance framework takes into account the financial risk profile of individual resource companies. Provision for financial assurance specific to the environmental and financial risk of each resource company can be made. The pooling of financial assurance contributions (by some resource companies) in the Rehabilitation Fund will reduce the risk to the Queensland Government of unfunded rehabilitation work, while minimising additional costs on industry. Over time the fund is expected to grow, providing the state with significant protection.

Consistency of rehabilitation liability estimates and alignment with financial assurance

A revised, government-commissioned financial assurance calculator will be used for resource companies to estimate rehabilitation liability. This will provide a standard approach across the industry, facilitate better analysis of the data by government and help identify areas of higher risk.

As the redesigned financial assurance framework takes a risk-based approach to assessing a resource company, the current system of discounts will no longer be used (e.g. the estimated rehabilitation liability will be the amount used for financial assurance). The cost of financial assurance will therefore directly reflect the total rehabilitation liability, and the risk of the Queensland Government bearing any shortfall will be reduced.

Increased rehabilitation and greater certainty of expectations, including residual risk

The requirement for a resource company to rehabilitate land is documented in the environmental authority conditions. Clarifying the Queensland Government's rehabilitation expectations and requirements of resource activities will:

- result in community confidence regarding what and when rehabilitation will occur
- enable clear funding and operational decisions for resource companies
- support the undertaking of progressive rehabilitation
- reduce the Queensland Government's rehabilitation exposure.

Overall, greater rates of progressive rehabilitation will reduce the Queensland Government's reliance on the financial assurance framework to complete rehabilitation if a resource company defaults on their obligations.

Opportunities created through growth of the rehabilitation service industry

Implementation of the proposed package of reforms will support accelerated investment in rehabilitation, which will also provide an opportunity to expand the rehabilitation industry and stimulate regional economic growth.

Supporting the growth of the rehabilitation industry will:

- position Queensland as a world leader in rehabilitation skills and expertise
- facilitate an investment pipeline of large and small rehabilitation projects across the resources industry
- create a range of jobs, from technical to labouring, in regional centres and towns across Queensland.

The requirements for effective planning, delivery of rehabilitation works and assessment of land management outcomes embedded in the redesigned financial assurance framework are critical to the development of this service sector.

Improved mechanisms for addressing environmental and social impacts associated with abandoned mines

The redesigned financial assurance framework will facilitate an enhanced Abandoned Mine Lands Program that will have greater capacity to mitigate the environmental and safety risks associated with the state's higher risk abandoned mines and disclaimed operations. In situations where the current scope of work focuses on public safety and public health, increased funding will allow the program to expand the scope of works to include rehabilitation of sites.

Incentives for resource companies to mine existing abandoned mines

Through the enhanced Abandoned Mine Lands Program, there is an opportunity to provide incentives to resource companies to conduct mining activities on abandoned mine sites in return for accepting and undertaking the outstanding rehabilitation work.

Improved mechanisms for assessing and responding to higher risk operations

Through improved data and monitoring of changes in the risk profiles of resource companies, the Queensland Government will be better equipped to identify at-risk resource operations. At-risk operations are those that are currently encountering operational and/or financial difficulty, or are very likely to in the foreseeable future. By identifying at-risk operations early in the process, preventative action can be taken to ensure that environmental and financial risks are adequately managed.

For example, resource operations in care and maintenance (when production ceases and the site is managed to enable operations to commence at a later date) can be an indication of an at-risk operation. A key aim will be to ensure that environmental standards are met and suitable rehabilitation is undertaken across all resource operation sites, whether operational or not currently in production.

Improved governance, administrative and regulatory arrangements between government agencies

The current financial assurance framework requires stakeholders to interact with multiple government departments. This can create confusion and uncertainty for stakeholders. The formulation of end-to-end processes, supported by a contemporary IT system, will clarify roles and responsibilities between government departments. This will provide a coordinated process—from granting tenure to making a residual risk payment—and provide clarity to active resource companies in the state.

Section 1: A redesigned financial assurance framework

The current framework

The current financial assurance framework (Figure 2) requires the holder of a site-specific environmental authority or an environmental authority for mining and petroleum leases to submit a plan of operations prior to commencing mining activities. The plan of operations outlines how the resource company intends to meet the conditions set out in the environmental authority, including rehabilitation requirements, over the subsequent one to five years (depending on the term of the plan).

The financial assurance required is based on an assessment of the likely cost for third parties to undertake the rehabilitation of existing and planned areas of disturbance. The calculation is made using the Queensland Government’s financial assurance calculator or the company’s own calculator, if approved. Discounts of up to 30% can be applied based on the resource company’s financial health, progressive rehabilitation, and certification and waste management practices.

The resource company then provides a financial surety for the assessed amount to the Queensland Government. The preferred form is a bank guarantee, although cash is accepted in limited circumstances.



Figure 2: Current process for financial assurance


Resource activities cannot start until the financial assurance has been provided and the financial assurance must stay in place for the life of the operation, including when sites enter care and maintenance. The plan of operations must also be updated and submitted at least every five years, which then triggers a review of the financial assurance amount. If the amount has changed, the resource company must update the surety provided to the Queensland Government to ensure it covers the full financial assurance amount.

For an environmental authority obtained through a standard or variation application process, the financial assurance is based on either a simple schedule of rates or on a case-by-case basis using the Queensland Government–approved financial assurance calculator. The financial assurance amounts for small operators are only required to be updated if there is a change in operations.

Shortfalls of the current framework

The Queensland resources sector is very diverse, with significant variation in the financial and environmental risk profiles of resource companies. Typically, large operators have a low likelihood of insolvency but higher risk of environmental consequences (and therefore pose a lower financial risk but higher environmental risk), whereas small operators (including junior explorers) may have a higher likelihood of insolvency but a much lower risk of environmental consequences (and therefore pose a higher financial risk but a lower environmental risk).

The current financial assurance framework takes a ‘one size fits all’ approach that does not recognise and account for the variations in these risk profiles.



In addition, in the limited circumstances it has been called upon, the financial assurance amount provided by the resource company has often been insufficient to cover the cost of rehabilitation. In this situation, Queensland Government finances are the only alternative source of funding to meet the shortfall.

It is becoming challenging for the resources industry to access financial assurance, as there is a limited range of acceptable providers. The surety being offered is also becoming more expensive.

The financial assurance framework is also designed to provide discounts for undertaking progressive rehabilitation. Despite this, there is little evidence that this incentive has resulted in greater rates of activity. Additionally, the review found that the current provision of discounts does not reflect a resource company's risk profile.

A redesigned framework—the tailored solution

During the course of the review, a number of options were considered as alternatives to the current financial assurance framework. After in-depth analysis, financial modelling and risk assessment, a preferred solution was identified—referred to as the 'tailored solution'.

The tailored solution assesses resource companies individually based on their financial risk, and uses a range of financial assurance arrangements that appropriately match the risk. The resource company is allocated a 'category' to determine the form of financial assurance provided to the Queensland Government.

While still retaining individual surety where appropriate, the tailored solution allows financial assurance funds to be pooled for lower risk resource companies—reducing the financial risk to the Queensland Government in the event that unexpected rehabilitation requirements exceed the financial assurance guarantees held for individual mine sites.

In contrast to the existing financial assurance framework, the tailored solution strikes a better balance between the risk to the Queensland Government and the cost burden for industry.

Components of the tailored solution

During the redesign of the financial assurance framework, the portfolio of resource companies operating in Queensland was assessed and four categories were developed:

1. **Representative resource entities**—companies that are an acceptable risk for the pooled Rehabilitation Fund, based on the company's financial strength and amount of its total rehabilitation liability.
2. **Significant resource entities**—companies that represent 5% or more of the total rehabilitation liability in Queensland.
3. **Other resource entities**—companies that pose a relatively higher risk of default.
4. **Small operators**—companies that have a total rehabilitation cost estimate across all of their environmental authorities of less than \$50 000.

Each resource company will be classified into one of these four categories based on their risk profile and the amount of their rehabilitation cost estimate. A corresponding financial assurance arrangement is determined, specific to the risk profile of the company (Figure 3). The classification of a resource company is not static and can change in response to movement in the company's risk profile.

The financial assurance arrangements under the tailored solution include:

1. Rehabilitation Fund
2. Selected Partner Arrangement
3. Third Party Surety
4. Small Operator Arrangement.

Under the tailored solution, a government-commissioned rehabilitation calculator will be used and discounts will no longer be offered. This will ensure the amount used to determine a resource company's obligation is determined consistently across the sector and matches the estimated rehabilitation cost.

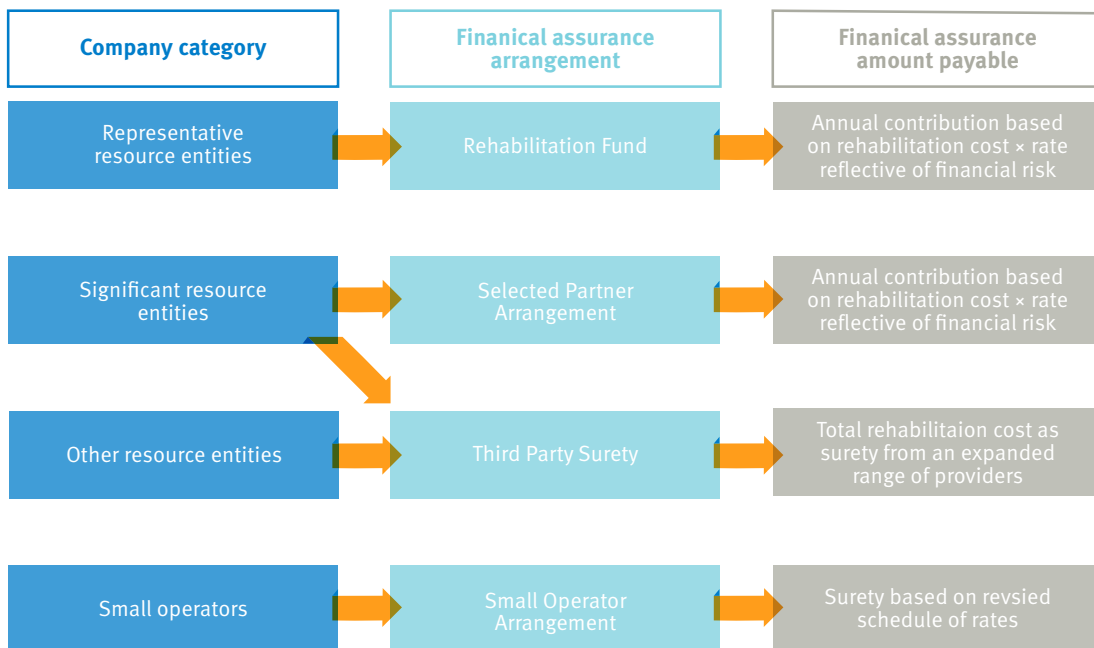


Figure 3: Summary of the tailored solution

Arrangement 1: Rehabilitation Fund

For companies in the **representative resource entities** category

Resource companies classified as ‘representative resource entities’ will contribute to a Rehabilitation Fund. These companies, with an acceptable risk profile and a total rehabilitation cost estimate of less than approximately \$500 million, will pay contributions based on their estimated rehabilitation cost multiplied by a contribution rate that reflects their financial risk. The financial risk of a resource company will be determined by a credit ratings agency or, if a rating has not been obtained by the company, by assessing the financial data provided by the resource company. Should a resource company not provide the necessary data, they will be unable to participate in the Rehabilitation Fund.


The Rehabilitation Fund will pool contributions and, if the Queensland Government is required to take on responsibility to rehabilitate the site of a resource company in this pool, the cost of the work will be claimed from the Rehabilitation Fund.

Interest earned on the balance of the Rehabilitation Fund could be redirected to fund Queensland Government resource-related initiatives—for example, an enhanced scope of works under the Abandoned Mine Lands Program (see ‘Section 2: Other reform areas’ for more information). Resource companies participating in the Rehabilitation Fund will benefit by no longer having to provide a bank guarantee or cash, improving their balance sheet and increasing their borrowing capacity.

Arrangement 2: Selected Partner Arrangement

For a subset of companies in the **significant resource entities** category

Resource companies that are classified as ‘significant resource entities’ and have a minimum credit rating of A- or above will participate in the Selected Partner Arrangement. For these companies—which are responsible for a large rehabilitation liability but have a very low risk of financial failure (hence the likelihood of making a claim on financial assurance is very low)—the Queensland Government will take on the risk.



A contribution rate, calculated using the same approach as the Rehabilitation Fund, will be used to generate a reliable source of funding for the Queensland Government. The funds generated will be redirected towards the Queensland Government's resource-related initiatives, including an enhanced scope of works under the Abandoned Mine Lands Program.

Resource companies considered suitable to participate in the Selected Partner Arrangement will be closely monitored by the Queensland Government, and these companies will transition to other categories if their risk profile begins to deteriorate (to either the Rehabilitation Fund or Third Party Surety arrangement depending on the revised risk profile).

Setting the contributions based on the estimated rehabilitation cost multiplied by a rate that reflects the financial risk will make this approach consistent with the Rehabilitation Fund, and enable a seamless transfer between categories if required in the future. Limiting the Selected Partner Arrangement to resource companies with a very low financial risk will ensure the Queensland Government is only bearing the risk for companies that have a very low risk of defaulting.

It is critical to the operation of the Rehabilitation Fund and the Selected Partner Arrangement that appropriate oversight occurs and controls are in place, including maintaining the integrity of all data used to calculate rehabilitation amounts and participant profiles (including at-risk operations), actuarial reviews of the contribution rates and adherence to the established business rules.

Arrangement 3: Third Party Surety

For a subset of companies in the **significant resource entities** category and companies in the **other resource entities** category

Resource companies with an elevated financial risk and companies with a very large rehabilitation liability that cannot be effectively managed within the previous two arrangements have therefore been excluded from the Rehabilitation Fund and Selected Partner Arrangement. Unless deemed very low risk, these companies will be required to provide third party surety for the full estimated rehabilitation amount.

Under the current financial assurance framework, resource companies can only obtain a bank guarantee. Under the tailored solution, the possible forms of sureties would be reviewed to extend beyond the Australian regulated banking sector, provided the following conditions are met:

- The surety is irrevocable, unconditional and payable on demand, with a form of wording acceptable to the Queensland Government (so that the financial assurance is not subject to claim by other parties in the event of a liquidation).
- The entity that provides the surety is rated A- (S&P equivalent) or better by a major rating agency.²
- The entity that provides the surety is regulated in jurisdictions with regulatory regimes comparable to Australia.
- Any legal disputes are dealt with under Australian law.
- The entity that provides the surety is approved by the Queensland Government, with such approval given on a case-by-case basis and at the discretion of the Queensland Government.

A formal policy on acceptable forms of surety, including cash, will be issued as part of the new arrangements.

² S&P, Moody's or Fitch Ratings

Arrangement 4: Small Operator Arrangement

For companies in the **small operators** category

There are many small resource entities active in Queensland—generally small to medium explorers for gems, precious metal, coal, conventional oil and gas.

Small resource companies will fall under the Rehabilitation Fund or Third Party Surety arrangements depending on the total amount of financial assurance required. To ensure a smooth integration of resource companies into the tailored solution, a review of the environmentally relevant activity standards for mining activities will be necessary. Specifically, the review will encompass the criteria for eligibility, operational conditions and financial assurance requirements. These standards and the financial assurance requirements have not materially changed since the early 2000s. It is proposed that this review will be undertaken by mid 2018—the time frame for consultation with industry and the broader community is currently being determined.

The current framework versus the tailored solution

Table 1 provides an overview of the current financial assurance arrangements and how they may change based on components of the tailored solution.

Table 1: Comparison of the existing financial assurance arrangements and the tailored solution

Current framework	Tailored solution
Plan of operations prepared by the environmental authority holder and submitted for a maximum period of 5 years	Plan of operations prepared by the environmental authority holder and submitted for a maximum period to be determined
Plan of operations includes estimate of rehabilitation cost based on the maximum area of disturbance during the period of the plan	Plan of operations includes estimate of rehabilitation cost based on the maximum area of disturbance during the period of the plan
No current arrangement for the provision of additional information in the plan of operations	Additional information may be required in the plan of operations, including rehabilitation and mining closure planning
Estimate of rehabilitation cost provided by environmental authority holder using the government's or operator's financial assurance calculator	Estimate of rehabilitation cost provided by environmental authority holder using only the government-commissioned financial assurance calculator
The Queensland Government reviews the rehabilitation cost estimate and determines whether the environmental authority holder is eligible for any discount on the amount of financial assurance required	The Queensland Government reviews and determines the rehabilitation cost estimate
The environmental authority holder is advised of the amount of financial assurance required	
Financial assurance provided by bank guarantee or, in limited circumstances and with Queensland Government approval, financial assurance may be provided in cash	A Queensland Government scheme manager will assess the resource company's risk profile to determine which financial assurance category they fall within, and subsequently nominate the applicable arrangement
Environmental authority holders can provide guarantees from a limited range of banks	Environmental authority holders can provide third party surety from a much wider range of providers
Environmental authority holder provides the Queensland Government with the required financial assurance	Environmental authority holder operating under the Third Party Surety arrangement will continue to provide the Queensland Government with the required financial assurance

Table 1 (cont.)

Current framework	Tailored solution
Current arrangements do not include a Rehabilitation Fund	Contribution rates for the Rehabilitation Fund and Selected Partner Arrangement will be assessed on an actuarial basis and adjusted periodically based on this advice (frequency of billing to be determined)
Environmental authority holder pays fees to the bank for the provision of the financial assurance	<p>Environmental authority holder operating under the Third Party Surety arrangement pays fees to the bank or institution for the provision of the financial assurance</p> <p>Environmental authority holder operating under the Rehabilitation Fund or Selected Partner Arrangement pays contributions to the Queensland Government</p>
Provision of financial assurance may affect the environmental authority holder's borrowing capacity	<p>For environmental authority holders operating under the Third Party Surety arrangement, the provision of financial assurance may affect their borrowing capacity</p> <p>For environmental authority holders operating under the Rehabilitation Fund or Selected Partner Arrangement, the impact on borrowing capacity may be relieved</p>
After considering all other options, the Queensland Government will claim the financial assurance from the bank as a measure of last resort	After considering all other options, the Queensland Government will claim the financial assurance from the bank, institution or Rehabilitation Fund as a measure of last resort



Section 2: Other reform areas

In addition to the redesigned financial assurance framework, other areas of reform were identified as necessary to improve rehabilitation outcomes for the state.

Improving rehabilitation in Queensland

The review recommended reducing the risk of unfunded rehabilitation by improving rates of progressive rehabilitation over the life of an operation. By supporting a resource company to undertake progressive rehabilitation, less rehabilitation may be required at the end of the operation's life and the risk that the Queensland Government will be left to cover the cost of incomplete rehabilitation may be reduced.

The Queensland Government is proposing a framework that will provide industry with clear and enforceable expectations for rehabilitation, and deliver improved performance in Queensland.

During development of the recommendations, the review examined how resource companies are currently performing in regards to rehabilitation. It found that the gap between the area of disturbed land and the area of rehabilitated land has grown over recent years.

Current estimates are that rehabilitated land accounts for approximately 9% of the disturbed area. By 2021, however, it is estimated that the area of disturbed land will be approximately 12 times greater than land that is being progressively rehabilitated.³

This gap may result in:

- an increased risk of poor environmental outcomes due to greater emissions of contaminants from sites
- increased likelihood of the transfer of costs to the state from mines that disclaim tenure and/or are abandoned
- reduced access to post-mining investment and employment opportunities for regional communities
- a risk to the resource industry's social licence due to a perceived failure of resource companies to deliver on rehabilitation commitments.

Proposed rehabilitation policy and framework


Although expectations for mine rehabilitation differ across the world, it is universally accepted that best practice mining is when a resource company takes responsibility for carrying out their mining obligations, plans for and achieves good rehabilitation outcomes, and makes sufficient financial provisions to enable quality progressive and final rehabilitation to occur.

The Queensland Government is proposing a policy and an integrated mine land management framework that are based on these best practice principles and respond to recommendations identified during the review.

The policy and framework aim to enhance the current arrangements by clarifying Queensland's rehabilitation policy. A 'life of mine' plan will feature as a central component (which will be required for all site-specific mines) and will describe:

- the post-mining land use identified for each area of the mine
- how each area will be progressively rehabilitated
- milestones for completing rehabilitation activities
- the program of trials to demonstrate the success of rehabilitation methods
- the actions to minimise the areas of land that will not have a sustainable post-mining land use.

³ This figure is based on an analysis of 'plan of operations' in Queensland as at 1 July 2016.



The ‘life of mine’ plan will reflect the resource operator’s intentions when the mine commences, but an amendment process (which incorporates public notification) will be available should the operator need to change the plan.

However, the development of a ‘life of mine’ plan will not be sufficient by itself to ensure improved rehabilitation performance. Other elements of the framework will require regular monitoring and reporting against milestones, clear completion and sign-off requirements, and incentives that ensure good performers are not put at a competitive disadvantage.

Objectives

The proposed policy and framework seek to achieve best practice in Queensland mining rehabilitation. In addition, they seek to:

- protect the environment from mine sites that are not properly managed
- stop the increase of mined land with incomplete or no rehabilitation, and steadily decrease the amount of disturbed land
- maintain the community’s opportunities to comment on rehabilitation outcomes through the application and amendment processes
- inform the community of progress toward achieving rehabilitation commitments
- ensure mined land is returned to productive economic or ecosystem capacity that allows the community to benefit after mining
- reduce the number of abandoned mine sites
- support diversifying employment opportunities in regional Queensland through the emergence of a land rehabilitation service industry in Queensland
- provide certainty for investment in rehabilitation activities.

Implementation

The proposed rehabilitation policy and framework will initially apply to coal and mineral mines operating under a mining lease tenure that have obtained an environmental authority through a site-specific application process. These mines are the most significant in terms of disturbed areas and the risk of environmental and financial impact from the failure to rehabilitate. Care will be taken to integrate and build on existing requirements where possible.

The application of all or part of the policy to other resource activities will be evaluated once the framework for coal and mineral mines has been established.

The Queensland Government will work with all stakeholders to consider how administrative and legislative arrangements can be optimised and how the regulatory impact of adopting the proposed framework can be minimised.

Expanded range of surety providers

The current financial assurance framework requires surety to be provided by an Australian Prudential Regulation Authority–approved, Australian-registered bank. In response to the resources industry’s concerns about the increasing cost and reduced availability of bank guarantees from the existing market of acceptable providers, the Queensland Government is looking to expand the market to other banks and insurance companies.

The Queensland Government is also developing documentation that will enable it to accept cash as a standard form of surety for material amounts of financial assurance. Currently, the government must give its consent for cash to be used.

Expansion of the Abandoned Mine Lands Program

The priority of the Abandoned Mine Lands Program is to mitigate or manage public safety and health risks, with a focus on land owned by the Queensland Government.

The outstanding rehabilitation requirements for abandoned mine sites vary greatly, depending on the level of activity that occurred at the time of abandonment and the residual funds available for remediation works post-abandonment.

Funds under the Selected Partner Arrangement and interest earned on the Rehabilitation Fund could be directed towards initiatives that reduce the state's exposure to rehabilitation liability, as well as expanding the Abandoned Mine Lands Program. A more sustainable funding source will enable the program to further mitigate the legacy impacts associated with abandoned mine sites.

With increased funding, the Queensland Government will also have capacity to deliver innovative research and development programs or programs that provide incentives to the private sector to commercialise these abandoned mines (some of which still have resources that could potentially be mined), thereby addressing the environmental risks and generating jobs. More work will be needed to develop and analyse the effectiveness of any incentive options.

Improved management of sites in care and maintenance

A resource operation is considered to be in care and maintenance when production ceases and the site is managed to enable operations to commence at a later date. Currently, care and maintenance is not a defined term in any legislation administered by the Department of Environment and Heritage Protection or the Department of Natural Resources and Mines, and there is no formal requirement for resource companies to advise the Queensland Government when the rights granted to extract the resources are not being exercised.

While genuine operational issues may cause a site to go into care and maintenance—for example, a (temporary) fall in the commodity price makes the operation uneconomical—it is also seen by some as a mechanism for operators to defer rehabilitation costs indefinitely. In addition, it can also be considered a precursor for administrators to disclaim an operation, thereby limiting exposure to outstanding liabilities.

Sites in care and maintenance may present a higher risk to the Queensland Government and the environment, with less resource company personnel and equipment on site to maintain vital infrastructure and monitor performance. Progressive rehabilitation activities may also cease. Such sites can slowly decline, increasing the risk that they will cause environmental harm. Entering into care and maintenance may also be a precursor to a company going into default.

In order to better manage the risks that these sites present, improved oversight is proposed. This may include measures such as developing and applying a formal definition of care and maintenance, and incorporating and/or clarifying the obligations of resource operators (e.g. requirement to notify, allowable time and progressive rehabilitation requirements) while a site is in care and maintenance.

Improvements to the monitoring, and more specific requirements, of sites in care and maintenance will allow for earlier identification and action for sites at risk. It will also enable the Queensland Government to better understand how a resource operator manages these sites.



Other reforms

Review of the existing approval processes for the sale of resource assets

There is a risk to the state if an incoming resource company does not have the financial capacity required to undertake the required rehabilitation works. Clear guidelines and processes need to be established to signal to the market the requirements for acceptable counterparties and to enable the prompt assessment of any proposals.

If the sale of a resource asset occurs through the sale of shares in a company, there is currently no legislative trigger to review the terms of the tenure and environmental authority. The Queensland Government will investigate means of mitigating the risk of unfunded rehabilitation costs in such situations. This will also provide clarity to industry on acceptable counterparties for sale and asset transactions, as well as assisting with decision-making on tenure transfers requiring an assessment of financial capability.

Improved data analysis, information systems and governance framework

Reliable, accurate and timely information is required to understand the financial exposure and risk to the Queensland Government. Additional data from environmental authority holders and an improved information management system will enable better management and more effective engagement between the Queensland Government and resource companies.

With improved data and information systems, there must also be a strong governance framework. Historically, the day-to-day management of financial assurance has been shared between two Queensland Government departments (the Department of Natural Resources and Mines and the Department of Environment and Heritage Protection). Under the new financial assurance framework, the Department of Environment and Heritage Protection, together with a Queensland Government scheme manager, will administer the tailored solution.

High-level business rules will be developed to guide the operation of the new tailored solution. Further work will be conducted to formulate an end-to-end process, provide clarity of roles and responsibilities, and provide a coordinated flow from tenure management through to residual risk—giving industry increased clarity on expectations and process.

Residual risk policy development

Currently, financial assurance is used if a resource company fails to meet its environmental obligations during the life of the operation. When the resource company has met its obligations under an environmental authority (including final rehabilitation) and it is deemed appropriate to surrender the environmental authority, the obligation to give financial assurance can be discharged.

Under the *Environmental Protection Act 1994*, resource companies may be required to provide a residual risk payment to ensure the Queensland Government is protected financially from costs associated with future rehabilitation failure (e.g. post-environmental authority surrender or as a result of progressive certification). Costs may include addressing any potential rehabilitation failure, as well as associated monitoring or maintenance costs.

Lack of certainty about when a residual risk payment will be required and the methodology that will be used to calculate the amount of the payment has been identified by industry as a disincentive to invest in rehabilitation.

Work on this reform initiative is currently being undertaken, with a focus on developing the basis for the calculation of residual risk.

Have your say

The Queensland Government is seeking industry and community feedback on the package of reforms proposed in this discussion paper.

More specifically, we want your feedback on the tailored solution—the first reform area outlined in Section 1.

We also want your initial feedback on the summaries provided for the other reform areas—outlined in Section 2. Further consultation will be undertaken for each of the remaining reform areas.

In your submission, please identify the reform area you are addressing to ensure your feedback can be considered in relation to those ideas.

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.

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

Email: 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 or call 13 QGOV (13 74 68).

Submissions close **5 pm, Thursday 15 June 2017**.

Should these reforms proceed, the Queensland Government plans to roll out elements of the package as soon as possible, with the tailored solution reforms in place by July 2018.

Please indicate whether you would prefer any elements of your feedback to remain confidential. Submissions not marked as confidential may be published in full or quoted in public documents or may be available to applicants under the Right to Information Act 2009.

Glossary

Abandoned mine	<p>A site:</p> <ul style="list-style-type: none">(a) where mining or mining exploration activities have been carried out(b) for which no current mining lease or mining claim is granted(c) for which no environmental authority is in force for activities mentioned in point (a) that were carried out under a mining lease or mining claim that is no longer in force
Bank guarantee	An unconditional undertaking provided by a bank (currently only Australian Prudential Regulation Authority–approved banks), on behalf of the customer, to pay the beneficiary the amount of the guarantee on demand
Care and maintenance	For the purpose of this paper, a resource operation is considered to be in care and maintenance when production ceases and the site is managed to enable operations to commence at a later date
Environmental authority	An environmental authority issued by the administering authority under Chapter 5 of the <i>Environmental Protection Act 1994</i>
Environmental authority holder	For a resource activity, an environmental authority holder is (in general) the holder or the ‘person’ (tenure holder) who holds the environmental authority under the <i>Environmental Protection Act 1994</i> for carrying out the resource activity
Plan of operations	A planning document required under the <i>Environmental Protection Act 1994</i> that must be submitted to the administering authority prior to carrying out activities on a mining or petroleum lease—the plan contains information about where activities will be carried out, an action program that demonstrates how the holder of the environmental authority will comply with conditions, a rehabilitation program and a proposed amount of financial assurance
Resource activities	Mining or petroleum (including coal seam gas and unconventional or conventional gas) activities authorised under the relevant resources legislation
Surety	Involves a promise by one party to assume responsibility for the debt obligation of a borrower if that borrower defaults

