

Pre-commencement Information Sheet

Transitional Arrangements

Financial Provisioning Scheme



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DEFINED TERMS

Act	Mineral and Energy Resources (Financial Provisioning) Act 2018
Authority	Environmental authority for a resource activity
DES	Department of Environment and Science
DNRME	Department of Natural Resources, Mines and Energy
EP Act	Environmental Protection Act 1994
EP Regulation	Environmental Protection Regulation 2008
ERC	Estimated Rehabilitation Cost
Scheme	Financial provisioning scheme
SSMT	Small scale mining tenure

BACKGROUND

The Act largely replaces the financial assurance requirements for an Authority and an SSMT under the EP Act. The Act establishes a new Scheme to manage the financial risk to the State if a holder of an Authority or an SSMT does not comply with their environmental management and rehabilitation obligations.

The Scheme will be managed by a Scheme Manager within Queensland Treasury. Authority holders must provide either a contribution payment to the Scheme fund or a surety to the Scheme Manager.

The Act amends the EP Act and, combined with changes to government policies and guidelines, changes how the ERC for an Authority is calculated and the decision-making process to determine the ERC. The ERC is an estimate of the cost to Government associated with rehabilitating or managing disturbance of land on which the resource activity relating to the Authority is carried out on site.

The Scheme will commence in the first half of 2019.

INTRODUCTION

This information sheet outlines:

- How you may be affected by these changes and how you will transition to the Scheme from commencement.
- How you apply for decisions relating to ERC after commencement and the decision-making process by the administering authority under the EP Act.
- How you will transact financially with the Scheme and relevant points of contact within the various agencies.

Who is affected by the changes?

All holders of an Authority, even if you don't currently have a financial assurance condition or have not given financial assurance before.

All holders of an SSMT will be affected by the changes, to varying degrees.

What are the key changes to how you will now provide financial assurance?

1. The Act imposes an automatic ERC condition on all Authorities.
2. For a holder of an Authority, the amount of rehabilitation costs (now called ERC) will continue to be calculated by the holder of the Authority and then reviewed and approved by the administering authority, being the DES. A new ERC calculator and guideline have been developed.

For a holder of an SSMT. The amount of surety that must be provided is the same as what was prescribed for financial assurance under EP Regulation. The surety must now be provided to the Scheme Manager.

3. Authority holders with an ERC equal to or greater than \$100,000 will undergo a risk category allocation, and the contribution amount or surety required will be calculated by reference to the ERC for the Authority.
4. DES and DNRME will no longer receive and collect your financial assurance. You will now deal with the Scheme Manager under the Act in relation to making contributions to the Scheme fund, providing surety or having contributions/surety returned.

Who is not affected by the changes?

A holder of an authority for a **prescribed** environmentally relevant activity (e.g. non-resource sites such as landfills) will continue to provide financial assurance as per the current financial assurance arrangements under the EP Act.

1.0 Transitioning to the Scheme

The transitional arrangements in Part 7 of the Act:

- provide that financial assurance given under the EP Act is taken to be surety under the Act (s90(1) of the Act);
- set out how the new Scheme arrangements apply to existing financial assurance; and
- provide that the Scheme Manager is not required to transition an Authority until a 'transition notice' is issued to holders with an ERC amount equal to or greater than \$100,000 (see paragraph 2.3 below).

The Act inserts a new chapter 13, Part 27 of the EP Act with transitional arrangements that:

- provide for the transfer of all existing financial assurance to the Scheme Manager (s765 of the EP Act);
- deem existing financial assurance to be the ERC for the Authority and prescribes the relevant ERC period (s761 and s762 of the EP Act); and
- set out when and how Authority holders must apply for a new ERC decision.

1.1 Existing financial assurance becomes ERC under EP Act

If you are a holder of an Authority (which has a condition that requires financial assurance):

- the existing financial assurance amount determined by DES is deemed to be the ERC amount; and
- the ERC amount is valid for the ERC period.

For more information on the ERC and the ERC period see new chapter 13, Part 27 of the EP Act, or contact DES.

What is the relevance of an ERC amount?

When DES makes an ERC decision for your Authority, DES gives notice of the ERC decision to the Scheme Manager (section 301 of the EP Act).

The ERC amount is used by the Scheme Manager to calculate the amount you must pay either as a contribution to the Scheme fund or provide as a surety.

What is the relevance of the ERC period?

The ERC period is intended to ensure that the ERC is regularly reviewed. You must apply for a new ERC decision before expiry of the ERC period. The risk category allocation process under the Act is not dependent on the ERC decision process under the EP Act.

The Scheme Manager may issue a transition notice at any time in the first three years after commencement, regardless of the ERC period and regardless of whether the transitioned ERC amount applies or a new ERC decision has been made.

The Scheme Manager will work with you to explain your obligations after the first decision has been made.

Can my ERC amount change before the expiry of the ERC period?

Yes. In certain circumstances, you will be required to apply for a new ERC decision prior to your ERC period expiring (eg. increase in the likely maximum amount of disturbance, change to the resource activity which affects the ERC, amalgamation/de-amalgamation of an Authority) (sections 303 and 304 of the EP Act).

2.0 How does the scheme apply to me?

2.1 Holder of an SSMT

On commencement

DNRME will transfer your existing financial assurance to the Scheme Manager upon commencement.

The existing financial assurance is taken to be surety given under the Act and there is no requirement for you to change the form of the financial assurance you have given.

There is no fee or cost to you and you do not have to do anything.

From commencement

Your obligation to give surety continues as a condition of the SSMT imposed under section 21A of the EP Act.

You have a continuing obligation to maintain surety in the amount required by Schedule 2C of the EP Regulation. There are no changes to the amounts prescribed in the EP Regulation.

2.2 Holder of an Authority with an ERC amount less than \$100,000

On commencement

Any existing financial assurance you have lodged with either DES or DNRME will be transferred to the Scheme Manager upon commencement.

The existing financial assurance is taken to be surety given under the Act and there is no requirement for you to change the form of the financial assurance you have given.

There is no fee or cost to you and you do not have to do anything.

From commencement

You have a continuing obligation under the Act to maintain surety equal to the ERC amount, as it changes from time to time (see section 1.1 above).

- If the ERC amount decreases, you may replace your existing surety with another surety in that amount in a form approved by the Scheme Manager.

- If the ERC amount increases to equal or exceed \$100,000, the Scheme Manager must undertake a risk category allocation for the Authority to determine whether you will continue to give a surety or pay a contribution to the Scheme fund.

2.3 Holder of an Authority with an ERC amount equal to or more than \$100,000

On commencement

The existing financial assurance you have lodged with either DES or DNRME will be transferred to the Scheme Manager upon commencement.

This transfer of your financial assurance includes all associated documentation, for example, any cash deed associated with cash given.

The existing financial assurance is taken to be surety given under the Act and there is no requirement for you to change the form of financial assurance you have given.

There is no fee or cost to you and you do not have to do anything.

From commencement

Within three years from commencement, the Scheme Manager is required to make an initial risk category allocation decision for your Authority to determine whether you will continue to give a surety or pay a contribution to the Scheme fund.

The Scheme Manager is not required to make an initial risk category allocation decision unless the Scheme Manager gives you a “transition notice”. Until then, your obligation under the Act is to maintain a surety equal to the ERC amount, as it changes from time to time (see section 1.1 above).

If your ERC amount falls below \$100 000 after commencement, but before you receive a transition notice from the Scheme Manager, your Authority will not be subject to an initial risk category allocation and your obligation to maintain a surety equal to the ERC amount continues.

What will the transition notice say?

The transition notice will state that the Scheme Manager intends to start the process to make an initial risk category allocation decision for the Authority and when this will start.

Prior to giving the transition notice, the Scheme Manager will contact you to discuss how this process will progress and seek your views on how and when the Authority (as a single Authority or together with other Authorities making up the whole or part of your resource portfolio) may be subject to the transition notice.

3.0 Further information and contact details

General information is available on the website at <https://www.treasury.qld.gov.au/resource/financial-provisioning-scheme/>

Contact the Scheme representatives in relation to the Scheme or the transition process:

Telephone: 3035 3551
Email: fps@treasury.qld.gov.au

Contact DES for all enquiries about your Authority, including any questions about the ERC for the Authority:

Petroleum & Gas Business Centre
Telephone: 07 3330 5715
Email: EnergyandExtractive@des.qld.gov.au

Minerals Business Centre

Telephone: 07 4222 5352

Email: ESCairns@des.qld.gov.au

Coal Business Centre

Telephone: 07 4987 9320

Email: CRMining@des.qld.gov.au

Contact the Small Scale Mining Assessment Hub for all enquiries in relation to your SSMT:

Telephone: (07) 4987 9350

Email: SSMHub@dnrme.qld.gov.au

4.0 Questions and Answers

4.1 When do the changes take effect?

The changes take effect on the date the Financial Provisioning Scheme commences.

4.2 Who is the best contact for Scheme enquiries?

The Scheme representatives (see contact details above)

In particular, the Scheme representatives can provide information on the process for transitioning existing financial assurance into the Scheme and Authority assessment.

4.3 Who do I contact about my Authority or SSMT after commencement?

DES for all enquiries about your Authority, including any questions about the ERC for the Authority.

The Small Scale Mining Assessment Hub (DNRME) for all enquiries about your SSMT.

4.4 What if I am awaiting a decision about financial assurance on commencement?

If you lodged an application or a Plan of Operations before the Act commenced, DES will continue to finalise the decision under the pre-commencement version of the EP Act, this includes allowing discounts and company owned calculators. You will need to arrange payment/provide surety to DES. DES will then transfer your payments/surety to the Scheme Manager.

4.5 If the Authority has multiple holders, can we make separate payments to the Scheme Manager?

After commencement, if the Authority has multiple holders, the Scheme Manager will only issue an invoice to one of the holders. This will be either:

- the 'relevant holder', if an Authority has been assessed by the Scheme Manager; or
- the 'principal applicant' nominated to DES, for Authorities under \$100,000.

Cash payments

The invoice will specify a bank account into which funds are to be deposited. Where there is more than one holder, although the Scheme Manager will be able to accept payment from different holders, no record will be made of which holder made which payment. All payments will be allocated to the relevant holder/principal applicant. Similarly, any refunds will be made to the relevant holder/principal applicant.

Multiple holders will need to make arrangements between themselves to deal with proportional payments and refunds.

The exception to this is where payments were made by multiple holders in respect of one Authority under the current financial assurance scheme (**legacy payments**). Where the surety amount changes or a transfer occurs, legacy payments will be returned to the original payees after the new surety has been lodged or contribution to the Scheme fund has been made by the relevant holder.

4.6 Can I change the form of existing surety I have already given after commencement?

A holder of an Authority or SSMT can change the form of surety for their ERC amounts at any time. However, the form of surety must always be approved by the Scheme Manager.

Existing surety consisting of multiple sureties provided by multiple holders will only be returned to their contributors once the new surety is received.

4.7 Can I ask to transition into the Scheme before I receive a transition notice?

Yes. If, for business reasons, you would prefer to transition into the Scheme before a transition notice is issued to you by the Scheme Manager, please contact the Scheme Manager to discuss.