

QUEENSLAND'S NEW FINANCIAL PROVISIONING SCHEME FOR RESOURCES PROJECTS

NOVEMBER 2018

On 14 November 2018 the *Mineral and Energy Resources (Financial Provisioning) Act 2018* (Qld) was passed by the Queensland Parliament.

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Overview

The *Mineral and Energy Resources (Financial Provisioning) Act 2018* (Qld) (**Act**) significantly changes the financial assurance regime for resource projects in Queensland.

This article highlights the key aspects of the new regime and its potential impact on the resources sector in Queensland.

The Act establishes a 'financial provisioning scheme' (**scheme**) for resource activities to replace the previous financial assurance regime under the *Environmental Protection Act 1994* (Qld) (**EP Act**). The scheme will be managed by a statutory officeholder called the 'scheme manager'.

The most significant change is the establishment of a 'financial provisioning scheme fund' (**scheme fund**) in which annual contributions paid by holders of applicable 'environmental authority' (**EA**) under the EP Act are pooled. Those pooled funds are then available to the State to fund the cost of rehabilitation and remediation activities in the event of default by an EA holder.

Under the new regime, EA holders will be required to provide one (or, in limited cases, both) of the following types of financial provisioning to the scheme manager:

- an annual contribution (in the form of a cash payment) into the scheme fund; or
- a surety (in the form of a bank guarantee, insurance bond or cash payment).

The type and amount of financial provisioning to be provided by an EA holder under the new regime is determined by the scheme manager applying a risk assessment methodology which takes three factors into account:

- **Factor 1:** the 'estimated rehabilitation cost' for the relevant EA;
- **Factor 2:** the 'risk category' to which the relevant EA is allocated by the scheme manager; and
- **Factor 3:** whether an EA holder must give a surety, rather than pay a contribution to the scheme fund, to preserve the financial viability of the scheme fund.

These three factors are discussed below.

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Factor 1 – estimated rehabilitation cost

The Act amends the EP Act to provide for the 'estimated rehabilitation cost' (**ERC**) for each EA for a resource activity to be periodically determined by the Department of Environment and Science. This is called an **ERC decision**.

The ERC for an EA is the estimated cost of:

- rehabilitating the land on which the resource activity is carried out; and
- preventing or minimising environmental harm, or rehabilitation or restoring the environment in relation to the resource activity,

for the applicable period (called the **ERC period**, which differs depending upon the nature of the EA).¹

The EA holder must apply for an ERC decision initially before commencing the resource activity under the EA and then later, before each successive ERC period expires.

The EA holder must also apply for an ERC decision in certain other circumstances, including:

- if there is an increase in the likely maximum disturbance to the environment as a result of the carrying out of the resource activity; and
- if there is a change relating to the carrying out of the resource activity which may result in an increase in the ERC.

It is a condition of every EA that the EA holder must not carry out a resource activity under the EA unless an ERC decision is in effect for the resource activity.

1. See s. 296 of the EP Act. The ERC period depends upon the nature of the relevant resource activity. In summary, the relevant period is: (a) a period of 1 to 5 years stated in the application for an ERC decision if a progressive rehabilitation and closure plan (PRCP) schedule applies; (b) a period of 1 to 5 years stated in the ERC decision if the activity is a petroleum activity that is an ineligible ERA (other than a petroleum activity to which a plan of operations applies); (c) the plan period if a plan of operations applies; or (d) otherwise, the total period during which the resource activity is likely to be carried out under the EA.



Factor 2 – risk category

To enable the scheme manager to determine the type and amount of the financial provisioning to be provided by an EA holder, the scheme manager must allocate each EA that has an ERC equal to, or greater than, the ‘prescribed ERC amount’ (which is initially \$100,000²) to a ‘risk category’ of either ‘very low’, ‘low’, ‘moderate’ or ‘high’.

To enable the scheme manager to determine the type and amount of the financial provisioning to be provided by an EA holder, the scheme manager must allocate each EA that has an ERC equal to, or greater than, the ‘prescribed ERC amount’ (which is initially \$100,000²) to a ‘risk category’ of either ‘very low’, ‘low’, ‘moderate’ or ‘high’.

The Act provides for three types of risk category allocation:

- initial risk category allocation;
- annual review allocation; and
- changed holder review allocation.

Initial risk category allocation

The scheme manager must initially allocate each EA that has an ERC equal to, or greater than, the ‘prescribed ERC amount’ to a risk category (**initial risk category allocation**).

In deciding the initial risk category allocation, the scheme manager:

- *must* consider:
 - its opinion of the probability of the State incurring rehabilitation costs (being costs incurred because the EA holder has not prevented or minimised environmental harm, or rehabilitated or restored the environment, in relation to the resource activity carried out under, or to ensure compliance with, the EA);
 - submissions made by the EA holder in relation to the scheme manager’s indicative risk category allocation (discussed below);
 - guidelines (called **scheme manager guidelines**) made by the scheme manager about the operation of the scheme (also discussed below).
- *may* also consider any other matter that the scheme manager considers relevant.

In forming its opinion of the probability of the State incurring rehabilitation costs, the scheme manager:

- *must* consider:
 - the ‘financial soundness’ (not defined) of the EA holder; and
 - the scheme manager guidelines.
- *may* also consider:
 - the characteristics of the resource project to which the EA relates; and
 - any other matter the scheme manager considers relevant.

In considering the ‘financial soundness’ of the EA holder, the scheme manager may consider the financial soundness of a ‘parent corporation’³ of the EA holder.

If the EA is jointly held by more than one EA holder, the scheme manager:

- *may* consider the financial soundness of any or all of the EA holders; and
- in considering the financial soundness of any or all of the EA holders, *may* consider the financial soundness of a ‘parent corporation’ of any or all of the EA holders; and
- *must* assign the EA to only one of the EA holders (called the **relevant holder**) of the EA.⁴

Before finally deciding the initial risk category allocation, the scheme manager must give the EA holder a notice (called a **notice of indicative decision**) stating:

- the risk category to which the scheme manager intends to allocate the EA (called the **indicative risk category allocation**);

2. See s.26 of the Act. An alternative amount may be prescribed by regulation.

3. The “parent corporation” of a holder is:

- a corporation that controls the holder under the s.50AA of the *Corporations Act 2001* (Cth); or
- a corporation of which the holder is a subsidiary under s.46 of the *Corporations Act 2001* (Cth).

4. The assignment of an EA to a relevant holder is only relevant for the purpose of the scheme manager deciding whether it requires an EA holder to give a surety (rather than pay a contribution) to preserve the financial viability of the scheme. This is discussed further below.

-
- the reasons for the indicative risk category allocation;
 - whether a contribution to the scheme fund, or a surety, is required to be provided; and
 - if the EA is jointly held by more than one EA holder, the EA holder assigned as the relevant holder of the EA.

The EA holder may make submissions to the scheme manager about the matters stated in the notice of indicative decision (including the indicative risk category allocation). The scheme manager must consider any such submissions when deciding the initial risk category allocation. Alternatively, the EA holder may notify the scheme manager that it accepts the indicative risk category allocation.

If the EA holder does not make a submission, or notifies the scheme manager that it accepts the indicative risk category allocation, then the scheme manager *must* allocate the EA to the risk category specified in the notice of indicative decision.

After deciding the initial risk category allocation, the scheme manager *must* give the EA holder a decision notice stating:

- the initial risk category allocation and the day it was decided;
- if the EA is jointly held by more than one EA holder, the EA holder assigned as the relevant holder of the EA; and
- the amount of the contribution to the scheme fund, or the surety, required to be provided under the Act.

Annual review allocation

The scheme manager *must* review the risk category to which an EA is allocated on each 'anniversary day', and either confirm or change the risk category allocation (called an **annual review allocation**).

The anniversary day is:

- if the scheme manager has decided a changed holder review allocation for the EA (discussed below), each anniversary of the date it decided the changed holder review allocation; otherwise
- each anniversary of the day the scheme manager decided the initial risk category allocation for the EA.

In making the annual review allocation, the process and matters to be considered are essentially the same as the process and matters for the initial risk category allocation.

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Factor 2 – risk category (continued)

The scheme manager may review the risk category to which an EA is allocated if a transfer or change in control transaction occurs, or is proposed to occur.

Changed holder review allocation

The scheme manager may review the risk category to which an EA is allocated if any of the following review events occur, and either confirm or change the risk category allocation (called a **changed holder review allocation**):

REVIEW EVENT	DETAILS
Application to transfer a resource authority, or a share in a resource authority, under MERCCP Act	An entity ⁵ applies under the <i>Minerals and Energy Resources (Common Provisions) Act 2014</i> (Qld) (MERCPC Act) for approval to register an 'assessable transfer' of the 'resource authority' ⁶ to which the EA relates, or a share in such resource authority, to another entity (called a changed holder).
	An entity ⁷ applies under the MERCPC Act for approval to register a 'non-assessable transfer' of the resource authority to which the EA relates, or a share in such resource authority, to an existing holder of the 'resource authority' (also a changed holder).
Change in control of EA holder	An entity starts or stops controlling an EA holder (also a changed holder) under section 50AA of the <i>Corporations Act 2001</i> (Cth).
	An EA holder (also a changed holder) starts or stops being a subsidiary of a corporation under section 46 of the <i>Corporations Act 2001</i> (Cth).

An EA holder must notify the scheme manager within ten business days after a review event occurs. It is an offence for the EA holder to fail to give notice that a review event has occurred.

In making the changed holder review allocation, the process and matters to be considered are essentially the same as the process and matters for the initial risk category allocation (although the scheme manager has regard to the circumstances of the changed holder rather than the EA holder).

If a proposed transaction would result in a review event occurring, then the EA holder (or the changed holder with the EA holder's consent) may apply to the scheme manager to make a changed holder review allocation before the transaction actually occurs. The scheme manager makes the changed holder review allocation as if the proposed review event had occurred.

Before deciding a changed holder review allocation, the scheme manager *must* give the 'interested entity' in relation to the changed holder review allocation a notice (called a **notice of indicative decision**) stating:

- the risk category to which the scheme manager intends to allocate the EA (the **indicative changed holder allocation**);
- the reasons for the indicative changed holder allocation;
- whether a contribution to the scheme fund, or a surety, is required to be provided; and
- if the EA is jointly held by more than one EA holder, the EA holder assigned as the relevant holder of the EA.

5. The entity which makes the transfer application could be the holder of the resource authority or share in the resource authority (as applicable) or another entity with such holder's consent.
6. A "resource authority" includes:
 - an exploration permit, mineral development licence and mining lease under the *Mineral Resources Act 1989* (Qld); and
 - an authority to prospect and a petroleum lease under the *Petroleum and Gas (Production and Safety) Act 2004* (Qld).
7. The entity which makes the transfer application could be the holder of the resource authority or share in the resource authority (as applicable) or another entity with such holder's consent.

The 'interested entity' in respect of a changed holder review allocation will depend upon the circumstances.

- if the scheme manager undertakes the changed holder review allocation because a review event has occurred:
 - if the review event is an application to transfer a resource authority, or share in a resource authority, under MERC Act, the 'interested entity' will be the entity that made that application;
 - if the review is a change in control of the EA holder, the 'interested entity' will be the EA holder.
- if the scheme manager undertakes the changed holder review allocation in response to an application for a changed holder allocation in contemplation of a proposed review event occurring, the 'interested entity' will be the EA holder or changed holder (as applicable) that applied for the changed holder review allocation in anticipation of the proposed transaction.

If the interested entity does not make a submission or notifies the scheme manager that it accepts the indicative changed holder allocation, then the scheme manager *must* allocate the EA to the risk category specified in the notice of indicative decision.

After deciding the changed holder review allocation, the scheme manager *must* give the interested entity a decision notice stating:

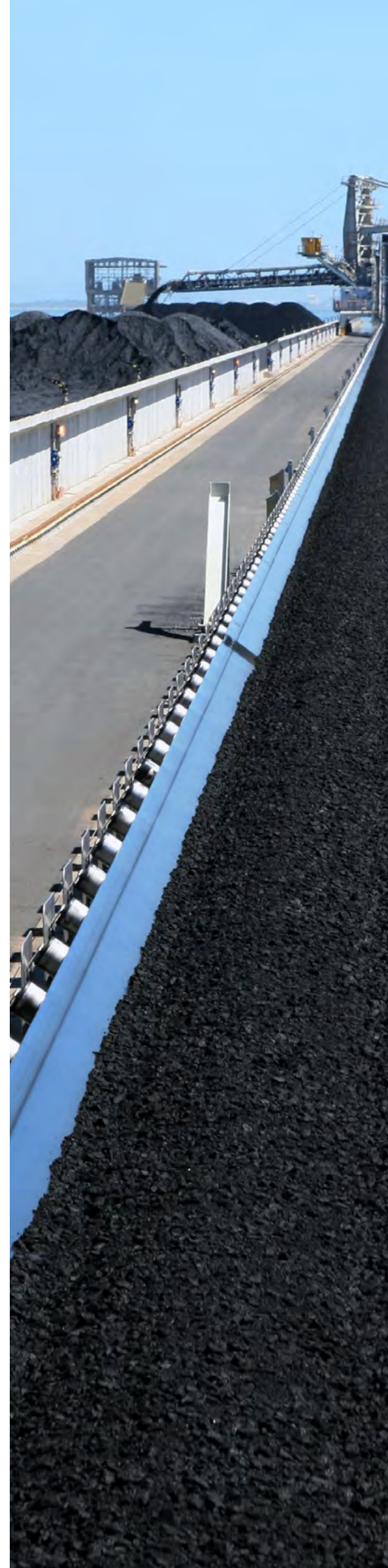
- the changed holder review allocation and that day it was decided;
- if the EA is jointly held by more than one EA holder, the EA holder assigned as the relevant holder of the EA;
- the amount of the contribution to the scheme fund, or the surety, required to be provided under the Act; and
- when the changed holder review allocation will take effect.

If the scheme manager undertakes a changed holder review allocation because a review event has occurred, then the changed holder review allocation takes effect (as applicable):

- if the review event is the making of an application for approval to transfer a resource authority, or a share in a resource authority, under the MERC Act, when the application is approved; and
- if the review event is the occurrence of a change in control of the EA holder, ten business days after the date the scheme manager gives the EA holder its decision notice in relation to the changed holder review allocation.

If the scheme manager undertakes a changed holder review allocation in response to an application for a changed holder allocation in contemplation of a proposed review event occurring, then the changed holder review allocation takes effect (as applicable):

- if the proposed review event is a proposal to apply for approval to transfer a resource authority, or a share in a resource authority, under the MERC Act, if and when the application is approved (provided that the application is made within six months (or other period prescribed by regulation) after the scheme manager gives the interested entity its decision notice in relation to the changed holder review allocation); and
- if the proposed review event is a proposed change in control of the EA holder, if and when the change in control occurs (provided that the change in control occurs within six months (or other period prescribed by regulation) after the scheme manager gives the interested entity its decision notice in relation to the changed holder review allocation).



Factor 3 – whether an EA holder must give a surety rather than pay a contribution

The scheme manager can require an EA holder that would otherwise be required to pay a contribution to the scheme fund to give a surety instead, if the scheme manager decides that is required to preserve the financial viability of the scheme fund.

As discussed below, the scheme manager can require an EA holder that would otherwise be required to pay a contribution to the scheme fund to give a surety instead, if the scheme manager decides that is required to preserve the financial viability of the scheme fund (**financial viability decision**).

While the scheme manager has a general discretion when making a financial viability decision, the Act provides that in making a financial viability decision, the scheme manager may consider whether the sum of the following is likely to be more than the fund threshold (initially \$450 million⁸):

- the 'total estimated rehabilitation cost' of the EA holder or, if the EA is jointly held by more than one EA holder, the 'relevant holder' for the EA; and
- the 'total estimated rehabilitation cost' for any or all of the following:
- a 'parent corporation' of the EA holder or, if applicable, the 'relevant holder' for the EA;
- a 'subsidiary corporation' of such 'parent corporation'; and
- a corporation 'controlled' by such 'parent corporation'.

The 'total estimated rehabilitation cost' of an entity is the sum of the 'estimated rehabilitation cost' for each EA for which:

- a contribution to the scheme fund is payable; and
- the entity is the holder or, if the EA is jointly held by more than one EA holder, the 'relevant holder' of the EA.

As noted above, the 'relevant holder' of an EA which is jointly held by more than one EA holder is specified in the decision notice given by the scheme manager when it last makes a risk category allocation decision in relation to the EA. The assignment of an EA to a 'relevant holder' is only relevant for the purpose of the scheme manager's financial viability decision.

This assessment process is intended to protect the financial viability of the scheme fund from over exposure to one particular entity or corporate group. However, the Act does not limit the scheme manager's discretion in making a financial viability decision. It may make that decision based on other relevant considerations.

8. The entity which makes the transfer application could be the holder of the resource authority or share in the resource authority (as applicable) or another entity with such holder's consent.



Liability under the scheme

Under the new scheme, an EA holder will be required to:

- pay an annual contribution to the scheme fund if sections 46(a) or (b) of the Act apply;
- give a surety to the scheme manager if sections 53(a), (c) or (d) of the Act apply; or
- pay a contribution to the scheme fund and give a surety if sections 46 (a), 49 and 53(h) apply.

The following table summarises the circumstances that trigger a liability to pay a contribution, give a surety, or do both, and the amount of the contribution or surety in each case.

REVIEW EVENT	DETAILS
Liability to contribute to scheme fund only	<p>Section 46(a) – Risk category is ‘very low’, ‘low’ or ‘moderate’ and surety not required to preserve viability of scheme fund</p> <p>Trigger</p> <p>An EA holder is liable to pay a contribution to the scheme fund if:</p> <ul style="list-style-type: none">• the EA has been allocated to the ‘very low’, ‘low’ or ‘moderate’ risk category; and• the scheme manager has not decided under section 53(b) that the EA holder must give a surety (rather than pay a contribution) to preserve the viability of the scheme fund (discussed above). <p>Amount of contribution</p> <p>The amount of the contribution is calculated as follows:</p> $ERC \text{ for the EA} \times \text{prescribed percentage}$ <p>The ‘prescribed percentage’ is 0.5% (if the risk category is ‘very low’), 1.0% (if the risk category is ‘low’) and 2.75% (if the risk category is ‘moderate’).⁹</p>
	<p>Section 46(b) – Risk category is ‘high’ but scheme manager allows EA holder to pay a contribution to the scheme fund</p> <p>Trigger</p> <p>An EA holder is liable to pay a contribution to the scheme fund if:</p> <ul style="list-style-type: none">• the scheme manager’s most recent annual review allocation decision allocates the EA to the ‘high’ risk category;• the scheme manager’s annual review allocation decision for the preceding four years allocated the EA to either the ‘very low’, ‘low’ or ‘moderate’ risk categories; and• the scheme manager is satisfied when it made its most recent annual review allocation decision that the EA holder is not reasonably able to give a surety for the EA within 12 months after the annual review allocation is made. <p>Amount of contribution</p> <p>The amount of the contribution is calculated as follows:</p> $ERC \text{ for the EA} \times \text{prescribed percentage}$ <p>The ‘prescribed percentage’ is 2.75% (as if the EA was allocated to the ‘moderate’ risk category rather than the ‘high’ risk category).¹⁰</p>

9. These prescribed percentages are specified in the consultation draft of the Mineral and Energy Resources (Financial Provisioning) Regulation 2018 (Qld).

10. These prescribed percentages are specified in the consultation draft of the Mineral and Energy Resources (Financial Provisioning) Regulation 2018 (Qld).

REVIEW EVENT	DETAILS
Liability to give a surety only	<p>Section 53(a) – Risk category is ‘high’ but section 46(b) does not apply</p> <p>Trigger An EA holder is liable to give a surety if:</p> <ul style="list-style-type: none"> the EA has been allocated to the ‘high’ risk category; and section 46(b) does not apply (discussed above). <p>Amount of surety The amount of the surety is the ERC for the EA.</p>
	<p>Section 53(c) – Risk category ‘very low’, ‘low’ or ‘moderate’ but surety required to preserve viability of scheme fund</p> <p>Trigger An EA holder is liable to give a surety if:</p> <ul style="list-style-type: none"> the EA has been allocated to the ‘very low’, ‘low’ or ‘moderate’ risk category; and the scheme manager decides that the EA holder must give a surety (rather than pay a contribution) to preserve the financial viability of the scheme fund (discussed above). <p>Amount of surety The amount of the surety is the ERC for the EA.</p>
	<p>Section 53(d) – ERC for EA is less than prescribed ERC amount</p> <p>Trigger An EA holder is liable to give a surety if the ERC for the EA is less than the ‘prescribed ERC amount’ (initially \$100,000¹¹).</p> <p>Amount of surety The amount of the surety is the ERC for the EA.</p>
Liability to contribute to scheme fund plus give a surety	<p>Sections 46 (a), 49 and 53(b) – EA holder is liable to pay contribution under section 46(a) or section 46(b) but ERC for the EA is greater than the fund threshold</p> <p>Trigger If an EA holder is liable to pay a contribution to the scheme fund under sections 46(a) or 46(b) but the ERC for the EA is greater than the ‘fund threshold’ (initially \$450 million¹²), then the EA holder will be liable to:</p> <ul style="list-style-type: none"> pay a contribution to the scheme fund; plus give a surety. <p>Amount of contribution and surety The amount of the contribution is calculated as follows: fund threshold (initially \$450 million¹³) × prescribed percentage The ‘prescribed percentage’ is 0.5% (if the risk category is ‘very low’), 1.0% (if the risk category is ‘low’) and 2.75% (if the risk category is ‘moderate’).¹⁴ The amount of the surety is the amount of the ERC for the EA less the amount of the fund threshold (initially \$450 million¹⁵).</p>

Liability to the scheme is summarised in the following diagram.

11. See s.26 of the Act. An alternative amount may be prescribed by regulation.

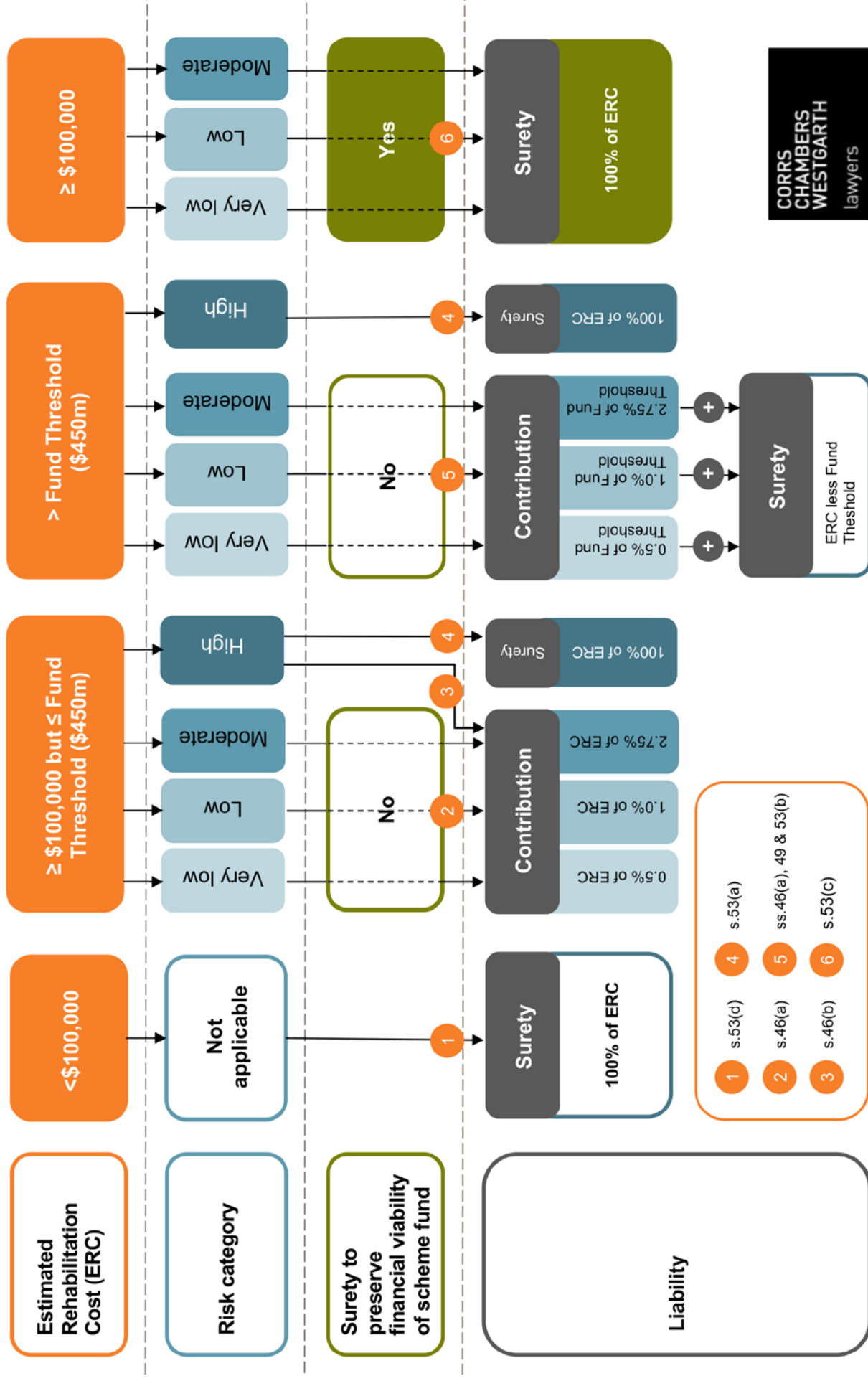
12. See s.11 of the Act. An alternative amount may be prescribed by regulation.

13. See s.11 of the Act. An alternative amount may be prescribed by regulation.

14. These prescribed percentages are specified in the consultation draft of the Mineral and Energy Resources (Financial Provisioning) Regulation 2018 (Qld).

15. See s.11 of the Act. An alternative amount may be prescribed by regulation.

Liability under financial provisioning scheme



If a contribution is not paid into the scheme fund in accordance with the Act, it may be recovered as a debt payable to the State.

It is also an offence under the EP Act for an EA holder to carry out, or allow the carrying out of, a resource activity under an EA unless the EA holder has paid the contribution.

Liability to pay annual contribution into scheme fund

If an EA holder is liable to pay a contribution to the scheme fund, it must do so within 30 business days after:

- for an initial allocation or annual review allocation decision, the day the decision was made; and
- for changed holder review allocation decision, the day the decision takes effect (discussed above).

In the event that a changed holder review allocation decision takes effect within 12 months after an EA holder (**previous EA holder**) has paid a contribution into the scheme fund, the scheme manager must refund to the previous EA holder a pro rata proportion of its contribution within 30 business days after the changed holder pays its contribution into the scheme fund or gives a surety under the Act.

If a contribution is not paid into the scheme fund in accordance with the Act, it may be recovered as a debt payable to the State.

It is also an offence under the EP Act for an EA holder to carry out, or allow the carrying out of, a resource activity under an EA unless the EA holder has paid the contribution.

Liability to give surety

If an EA holder is liable to give a surety to the scheme manager, it must give the surety in the required amount and in the approved form within the required timeframe.

The surety must be given within the following timeframe (unless the scheme manager extends the timeframe because it is satisfied it is not reasonably practicable for the EA holder to obtain the surety within the timeframe):

- For a surety required under section 53(a) or 53(b), within 30 business days after:
 - for an initial allocation or annual review allocation decision, the day the decision was made; and
 - for changed holder review allocation decision, the day the decision takes effect.
- For a surety required under section 53(c), within 30 business days after the day the decision manager decides the EA holder must give a surety, rather than pay a contribution, to preserve the financial viability of the scheme fund.
- For a surety required under section 53(d), within 30 business days after the later of:
 - the day that is 12 months after the day the EA holder last paid a contribution to the scheme fund for the EA (if applicable); and
 - the day the ERC for the EA was decided.

An EA holder may provide the following types of surety:

- a bank guarantee in the approved form (or otherwise on terms and conditions approved by the scheme manager);
- an insurance bond issued by a 'prescribed insurer' (being an entity approved as such under the regulations) in the approved form (or otherwise on terms and conditions approved by the scheme manager); or
- a cash payment on terms and conditions approved by the scheme manager.

If an EA holder gives a surety as required under section 53(a), 53(b) or 53(c) and the ERC for the EA increases within 12 months after the relevant allocation decision, the EA holder must give a top-up surety to the scheme manager within 30 business days after the ERC increases (unless the scheme manager extends that timeframe

because it is satisfied it is not reasonably practicable for the EA holder to obtain the surety within the timeframe). The amount of the top-up surety is:

- for a surety required under section 53(a) or 53(c), the difference between the increased ERC and the amount of the surety already given; and
- for a surety required under section 53(b), the difference between the increased ERC and the sum of the amount of the surety already given and the funds threshold (initially \$450 million¹⁶).

It is an offence under the EP Act for an EA holder to carry out, or allow the carrying out of, a resource activity under an EA unless the EA holder has given a surety.

SCHEME MANAGER GUIDELINES

The scheme manager may make guidelines (called **scheme manager guidelines**) about the operation of the scheme.

Queensland Treasury has released consultation drafts of scheme manager guidelines in relation to the following matters:

- forming the scheme manager's opinion under section 27(2)(a)(i) of the Act about the financial soundness of an EA holder and about the characteristics of resource project to which an EA relates;
- assigning an EA to a relevant holder;
- requiring a surety to preserve the financial viability of the scheme fund; and
- forms of surety.

REVIEW OF DECISIONS

A 'dissatisfied person' may apply for judicial review under the *Judicial Review Act 1991* (Qld) of the risk category allocation decisions by the scheme manager.

A dissatisfied person is limited to the EA holder in the case of the initial risk category allocation decision and an 'interested entity' (discussed above) in the case of a changed holder review allocation decision.

Except for judicial review of the above risk category allocation decisions, other decisions of the scheme manager under the Act are final and conclusive and cannot be challenged¹⁷.

It is an offence under the EP Act for an EA holder to carry out, or allow the carrying out of, a resource activity under an EA unless the EA holder has given a surety.

16. See s.11 of the Act. An alternative amount may be prescribed by regulation.

17. This does not apply if the decision is affected by jurisdictional error.

18. s 90.



TRANSITIONAL PROVISIONS

The Act and the EP Act include transitional provisions in relation to EAs in respect of which a financial assurance has been given under the old financial assurance regime (**transitional EAs**).¹⁸

The scheme manager is not required to make an initial risk category allocation decision for a transitional EA until it has given the EA holder a 'transition notice'. A transition notice must be given for a transitional EA within three years after the commencement of the Act.

During the period from the commencement of the Act until the scheme manager makes the initial risk category allocation decision for a transitional EA (**transitional period**), the EA holder is required to give a surety for the ERC amount for the transitional EA.

The transitional provisions deem the ERC amount for a transitional EA to be the amount of the financial assurance required to be provided under the old financial assurance regime.

The transitional provisions also provide that an existing financial assurance given for a transitional EA under the old financial assurance regime is taken to be a surety given under the new scheme.

As a result, at least initially, a financial assurance provided for a transitional EA in accordance with the requirements of the old financial assurance regime will satisfy the requirement for the EA holder to give a surety for the transitional EA during the transitional period.

However, if an ERC decision is made during the transitional period which results in the ERC amount for a transitional EA increasing, then the EA holder must give the scheme manager a top-up surety for the additional amount (or a replacement surety for the increased ERC amount) in a form approved under the Act.

FURTHER INFORMATION

It will be important for participants in the resources sector to understand the impact of the new scheme under the Act.

Please contact a member of our Energy and Resources team if you would like more information about the new scheme or how it will affect you.



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