

Mineral and Energy Resources (Financial Provisioning) Regulation 2019

Explanatory notes for SL 2019 No. 16

made under the

Acts Interpretation Act 1954

Mineral and Energy Resources (Financial Provisioning) Act 2018

General Outline

Short title

Mineral and Energy Resources (Financial Provisioning) Regulation 2019

Authorising law

Section 87 of the *Mineral and Energy Resources (Financial Provisioning) Act 2018* (the Act) generally empowers the Governor in Council to make regulations under this Act. In addition, sections 56, 60 and Schedule 1 of the Act are specific regulation making provisions.

Section 17 of the *Acts Interpretation Act 1954* enables the Regulation to be made prior to the Act commencing. However, the Regulation will not commence until the Act commences.

Policy objectives and the reasons for them

The Act replaces the financial assurance requirements for resource activities under the *Environmental Protection Act 1994* (EP Act). The Act establishes a financial provisioning scheme (scheme) to manage the financial risk to the State if the holder of an environmental authority for a resource activity or a small scale mining tenure does not comply with their environmental management and rehabilitation obligations. The scheme is managed by a scheme manager.

The scheme applies to:

- an environmental authority for resource activities (authority); and
- a small scale mining tenure (SSMT)

The Act provides for certain terms and fees to be prescribed by regulation. The purpose of the *Mineral and Energy Resources (Financial Provisioning) Regulation 2019* (the Regulation) is to give full effect to these provisions in the Act.

Achievement of policy objectives

The policy objective of the Regulation is to support the effective operation of the financial provisioning scheme under the Act by providing detail to a number of operational requirements of the scheme.

The Regulation prescribes meanings for the terms:

- prescribed percentage; and
- prescribed insurer.

The Regulation also details the assessment fee that applies to an allocation decision made by the scheme manager.

Prescribed Insurer

The Act provides for the scheme manager to approve forms of surety and one of the forms is an insurance bond issued by a prescribed insurer under section 56(3). The criteria set out in clause 3 of the Regulation prescribing insurers suitable to be approved to provide surety ensures that the insurer has a high-claims paying ability and is subject to a high level of prudential regulation.

This is achieved by requiring a prescribed insurer to be an approved security provider under section 36 of the Financial and Performance Management Standard 2009 made under the *Financial Accountability Act 2009*.

However to mitigate the potential risk of insolvency associated with, what is termed, a 'captive insurer' within the meaning of, and identification under, the Prudential Standard GPS 001 made under the *Insurance Act 1973 (Cwlth)*, the criteria excludes 'sole parent captive' unless the entity had given a financial assurance under the EP Act which has been transitioned into the scheme as surety under section 89 of the Act. A sole parent captive is an insurer that is owned by a single company or a group of related bodies corporate and exists for the purpose of underwriting risks of the parent company or members of a group of related companies. An entity that meets these requirements is a prescribed insurer which means they can issue an insurance bond to a holder of an authority that is required to give a surety to the scheme manager.

This means for a sole parent captive that is a prescribed insurer under these two criteria:

- for the authority holder who had given financial assurance in a form provided by this entity under the previous EP Act framework and that financial assurance has transitioned as surety into the scheme – there is no need to make a change to the form of surety; and
- for the entity – they can issue insurance bonds for any new surety required to be given under the Act.

Assessment Fee

If the scheme manager makes an allocation decision for an authority, the holder of the authority must pay the assessment fee prescribed by regulation for the allocation decision under section 60 of the Act. An assessment fee is required for each allocation decision made by the scheme manager.

There are three types of allocation decisions for an authority (being an authority with an ERC equal to or more than \$100,000):

- Initial allocation decision under section 27 of the Act.
- Changed holder review decision under section 32 of the Act.
- Annual review decision under section 38 of the Act.

Clause 4 of the Regulation provides that the assessment fee payable for an allocation decision for an authority is stated in schedule 1.

The proposed fee structure reflects the diversity of resource activities in Queensland and provides an equitable approach to recovery of assessment costs.

Prescribed Percentage

Part 3 'Operation of the Scheme' under the Act provides the framework for the risk category allocation process and for when a holder of an authority or a SSMT is required to pay a contribution to the scheme fund or give a surety to the scheme manager.

For an authority with an estimated rehabilitation cost (ERC) equal to or more than the prescribed ERC amount (currently \$100,000 as set out in section 26(1)(b)(ii) of the Act), the scheme manager must make an allocation decision, allocating the authority to one of four risk categories – very low, low, moderate or high and then determine whether the holder is to pay a contribution to the scheme fund or give a surety to the scheme manager.

Contributions to the scheme fund will vary depending on which of the risk categories – very low, low or moderate the authority is allocated. The amount of the contribution required will be calculated by reference to the ERC for the authority and the prescribed percentage for the risk category allocated to the authority.

Prescribed percentage is defined in schedule 1 Dictionary to the Act. Prescribed percentage, for an authority, means the percentage prescribed by regulation for the authority.

The prescribed percentage for an authority allocated to one of the risk categories of very low, low and moderate is set out in clause 5 of the Regulation.

It is not necessary to prescribe a percentage for an authority allocated to the risk category of high. This is because the holder is required to give a surety to the scheme manager in accordance with section 55 of the Act.

Also the risk category allocation framework does not apply to a holder of an authority with an ERC less than \$100,000 or a holder of a SSMT. This is because under section 55 of the Act, this authority holder or SSMT holder must give a surety to the scheme manager in an amount equal to the ERC for the authority or the amount prescribed under the EP Act for the SSMT.

Consistency with policy objectives of authorising law

The objective of the Act is to manage the financial risk to the State if mineral and energy resource tenure holders do not comply with their environmental management and rehabilitation obligations. The Regulation is consistent with this objective as it enables the effective functioning of the financial provisioning scheme.

Inconsistency with policy objectives of other legislation

The Regulation is consistent with the policy objectives of other legislation.

Benefits and costs of implementation

Making the Regulation supports the effective functioning of the financial provisioning scheme under the Act. There are no new costs associated with the implementation of the Regulation.

Consistency with fundamental legislative principles

The Regulation is consistent with fundamental legislative principles.

Consultation

The draft Regulation was released for targeted consultation in June/July 2018. It was also publically available on the Queensland Treasury website and anyone could make a submission.

Prior to this, separate consultation was undertaken on the individual elements covered by the Regulation.

The Office of Best Practice Regulation was consulted regarding the regulatory impact analysis requirements of The Queensland Government Guide to Better Regulation and advised that no further assessment was required

Prescribed Insurer

Regulatory requirements for an acceptable prescribed insurer were the subject of consultation in the Financial Assurance Review – Providing Surety discussion paper publicly released in September 2017.

Assessment Fees

The assessment fees were the subject of early targeted consultation with members of the Resource Industry Advisory Council (RIAC) which has representatives from Queensland Resources Council, BHP, Glencore, APPEA and AMEC.

Prescribed percentage

The prescribed percentages are consistent with the recommendation in the Government review of financial assurance - "Review of Queensland's Financial Assurance Framework" publicly released in May 2017.