

# NEW LEGISLATION: A TECTONIC SHIFT IN QUEENSLAND'S FINANCIAL ASSURANCE AND REHABILITATION FRAMEWORK PASSES

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Legal Briefings - By **Sian Newnham, Madeline Simpson and Tooru Nishido**

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The new legislation has significant implications for resource sector EA holders. Impacted entities should consider the potential impacts on their mining operations and cash flow caused by the FP Act. Relevant steps should be taken by entities to prepare for the transition to PRCPs, the new FA framework and position themselves to comply with all new environmental obligations.

## IN BRIEF

On 14 November 2018, the Queensland Parliament passed the *Mineral and Energy Resources (Financial Provisioning) Act 2018* (Qld) (**FP Act**) which aims to reform Queensland's financial assurance (**FA**) and rehabilitation framework in the resources sector. The changes introduced by the FP Act represent the most significant change to these frameworks in two decades. A number of amendments were made to the FP Bill prior to being passed, including clarification regarding the retrospective nature of some provisions, correcting minor drafting errors and introducing public interest evaluations to the Environmental Impact Study (**EIS**) process.

Whether the FP Act commences before the end of 2018 remains uncertain.

## OVERVIEW OF THE FP ACT

Reforms for Queensland's FA and rehabilitation framework have been under development once an independent review revealed that an increasingly small proportion of land disturbed by mining is being rehabilitated, resulting in an over-reliance on FA to remediate the environmental impacts of mining in Queensland. Throughout 2017, the Queensland Government released discussion papers before introducing the FP Bill on 25 October 2017 which subsequently lapsed due to the Queensland election. The FP Bill was re-introduced on 15 February 2018 and referred to the Economics and Governance Committee which recommended that the FP Bill be passed.

The FP Bill was discussed in detail in Herbert Smith Freehills' November 2017 article.<sup>1</sup>

Broadly, the FP Act introduces a new compulsory financial provisioning scheme where eligible entities are required to make contributions to a 'pooled scheme fund' based on the estimated rehabilitation cost (**ERC**) and the risk category allocated to an environmental authority (**EA**) by the scheme manager. Resource sector EA holders will now also be required to develop Progressive Rehabilitation and Closure Plans (**PRCP**) for all new mines as part of the initial site-specific EA application process, with existing mines transitioning over the next three years.

## **REGULATION, GUIDELINES AND SUPPORTING DOCUMENTS**

The Queensland Government developed and released supporting material for the FP Act throughout 2018. This included discussion papers outlining the potential policy framework for managing abandoned mines and other reforms in relation to care and maintenance procedures, regulating change in control of resource authority holders and disclaimer of projects by liquidators.<sup>2</sup>

Most relevant to project proponents and EA holders are the draft scheme manager guidelines which provide a more comprehensive explanation of the process and factors considered in determining, among other things, risk allocation and surety requirements for EA holders. The following guidelines have been released:

- Forming the Scheme Manager's Opinion;<sup>3</sup>
- Assigning an Authority to a Relevant Holder;<sup>4</sup>
- Requiring Surety to Preserve the Financial Viability of the Scheme Fund;<sup>5</sup> and
- Forms of Surety.<sup>6</sup>

A draft regulation for the FP Act was also released,<sup>7</sup> providing further details about the operation of the 'pooled scheme fund' including the prescribed ERC contributions for the risk categories allocated to an EA holder by the scheme manager. Contributions to the fund are to be calculated annually at the following percentages of total ERC based on risk allocation:

- very low risk - 0.5%;
- low risk - 1.0%; and
- moderate risk - 2.75%.

EA holders allocated as high risk are obliged to provide surety for the total ERC.

## **NEW AMENDMENTS**

Prior to the FP Bill passing, a number of amendments were made following further consultation with stakeholders. One of the major issues identified through the consultation process was potentially retrospective amendments to the conditions of EAs through PRCPs. This concern was addressed by amendments that exempt 'land outcome document holders' from being obliged to comply with some rehabilitation requirements. For example, if a condition of an EA authorises a void, the requirements of a PRCP cannot retrospectively require a different rehabilitation outcome.

The majority of amendments relate to the introduction of a public interest evaluation process for land identified as non-use management areas as part of the EIS process. Amendments include that the administering authority may only approve a proposed PRCP schedule if the public interest evaluation report recommends approval and the matters which must be considered in the public interest evaluation. A project proponent will be obliged to pay the reasonable costs of the administering authority in relation to qualified entities conducting the evaluation, but the administering authority chooses the appropriate entity to conduct the evaluation.

A final noteworthy amendment is the change to the definition of confidential information being expanded to include information about an allocation decision for an EA. This was changed on the basis that this information could be considered commercially sensitive.

## **ENDNOTES**

- See

<https://www.herbertsmithfreehills.com/latest-thinking/queensland%E2%80%99s-financial-assurance-reforms-up-in-the-air>

- See: <https://www.herbertsmithfreehills.com/latest-thinking/qld-rehab-reforms-roll-on-with-potential-impacts-for-liquidators>
- See: <https://s3.treasury.qld.gov.au/files/20180605-MERFP-Bill-SM-Guideline-1-Forming-the-Scheme-Managers-Opinion-Final-Version-Consultation.pdf>
- See: <https://s3.treasury.qld.gov.au/files/20180605-MERFP-Bill-SM-Guideline-2-Assigning-an-Authority-to-a-Relevant-Holder-Final-Version-Consultation.pdf>
- See: <https://s3.treasury.qld.gov.au/files/20180605-MERFP-Bill-SM-Guideline-3-Requiring-Surety-to-Preserve-the-Financial-Viability-of-the-Scheme-Fund.pdf>
- See: <https://s3.treasury.qld.gov.au/files/20180605-MERFP-Bill-SM-Guideline-4-Forms-of-Surety-Final-Version-Consultation.pdf>
- See: <https://s3.treasury.qld.gov.au/files/Draft-MERFP-Regulation-2018.pdf>

## KEY CONTACTS

If you have any questions, or would like to know how this might affect your business, phone, or email these key contacts.



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