

QLD REHAB REFORMS ROLL ON WITH POTENTIAL IMPACTS FOR LIQUIDATORS

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Legal Briefings - By **Peter Smith, Madeline Simpson and Claire Meiklejohn**

As the Mineral and Energy Resources (Financial Provisioning) Bill 2018 (Qld) (**FP Bill**) continues to await debate in Queensland Parliament, the timeline for the commencement of the reforms is uncertain.

Meanwhile, the Government has also released two new discussion papers for public consultation foreshadowing the next stage of the reforms, and which assume the FP Bill will be passed and take effect.

BACKGROUND TO THE REFORMS

In 2016, an independent review¹ of Queensland's FA framework revealed that an increasingly small proportion of land disturbed by mining in Queensland is rehabilitated, causing over-reliance on FA to remediate the environmental impacts of mining.

In May 2017, the Queensland Government released discussion papers² proposing significant reforms to the resource sector FA and rehabilitation frameworks. Following a period of public consultation, the FP Bill was initially released in October 2017.

THE FP BILL

The FP Bill was discussed in detail in Herbert Smith Freehills' November 2017 article.³ Broadly, two key categories of reform for the mineral and energy resources sector are proposed:

1. reforms to the existing FA framework; and

2. reforms to the existing mining rehabilitation framework.

In respect of the FA framework, the FP Bill proposes to introduce a new financial provisioning scheme, based around a scheme fund, surety arrangements and the appointment of a scheme manager. Eligible entities would be required to make contributions to the scheme fund on the basis of estimated rehabilitation cost (**ERC**) and the risk category allocated to an environmental authority (**EA**) by the scheme manager. FA discounts and industry FA calculators would be removed.

In respect of rehabilitation, the FP Bill proposes to require progressive rehabilitation and closure plans and progressive rehabilitation closure schedules to be developed for all mines as part of the initial site-specific EA application process.

LAPSING OF THE FP BILL

The proposed reforms were initially set to commence on 1 July 2018, however, the original FP Bill lapsed in October 2017 when Queensland Parliament was dissolved following the calling of the State election. The commencement of the FP Bill became uncertain.

On 15 February 2018, the FP Bill was re-introduced into Queensland Parliament proposing substantially the same reforms and targeting commencement on 1 July 2018. However, the FP Bill was not debated in Queensland Parliament's May sittings and is now unlikely to be passed until after the Budget Week sitting in June.

FURTHER REFORMS FORESHADOWED

Despite the delay in implementing the FP Bill, Queensland Treasury has released two new discussion papers for public consultation, foreshadowing future likely reforms, entitled:

- Achieving improved rehabilitation for Queensland: addressing the state's abandoned mines legacy (**Abandoned Mines Paper**); and
- Achieving improved rehabilitation for Queensland: other associated risks and proposed solutions (**Other Reforms Paper**).

ABANDONED MINES PAPER

The Abandoned Mines Paper outlines a potential conceptual framework for classifying historic mine sites and disturbances according to risk, to prioritise government management of sites and rehabilitation of workings. The Abandoned Mines Paper also foreshadows a policy intention to reduce the administrative burden for private proponents seeking to re-purpose legacy sites, particularly where relevant tenure has ceased to exist.

OTHER REFORMS PAPER

The three matters raised in the Other Reforms Paper are likely to be of greater interest to current operators, being changes to care and maintenance arrangements, change in control of assets and the disclaimer of resource authorities.

- The Other Reforms Paper proposes to formalise a legislative regime which applies when an existing mine proposes to enter into care and maintenance, including e.g. by requiring formal notification and the lodgement of a later development plan. It is anticipated this information will then be fed through to the Scheme Manager for the pooled FA scheme (assuming the FP Bill is enacted).
- The Other Reforms Paper also builds on a proposal foreshadowed in the May 2017 discussion papers for regulating corporate transactions which lead to a change in control of resource authority holders. In particular, the Other Reforms Paper proposes to include such transactions as assessable dealings requiring approval in respect of resource tenements, and incorporate a specific assessment of the financial and technical capabilities of the proposed incoming owner. Given the delay in progressing the FP Bill, there is the potential for these amendments to be introduced by amending that proposed legislation later this year.
- The Other Reforms Paper also proposes framework changes to prevent the termination of resource authorities on disclaimer by a liquidator under the *Corporations Act 2001* (Cth). In particular, the paper suggests tenements which liquidators seek to disclaim might be transferred to another body (potential one established and managed by the State) so that the rights for entering land and conducting activities remain on foot, providing for ongoing management to occur. These authorities may also be available for transfer to other private operators willing to assume control of the site.

These reforms have potentially significant impacts for environmental authority holders, mining operators and insolvency practitioners.

ENDNOTES

1. See <https://s3.treasury.qld.gov.au/files/review-of-queenslands-financial-assurance-framework.pdf>.
2. See <https://s3.treasury.qld.gov.au/files/better-mine-rehabilitation-in-qld-discussion-paper.pdf> and <https://s3.treasury.qld.gov.au/files/financial-assurance-framework-reform-discussion-paper.pdf>.
3. See <https://www.herbertsmithfreehills.com/latest-thinking/queensland%E2%80%99s-financial-assurance-reforms-up-in-the-air>.

KEY CONTACTS

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



PETER A SMITH
PARTNER, BRISBANE

+61 7 3258 6667
Peter.A.Smith@hsf.com



MADELINE SIMPSON
SPECIAL COUNSEL,
BRISBANE

+61 7 3258 6662
Madeline.Simpson@hsf.com

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