



Resourcing Queensland's future

9 March 2018

Ms Trudy Struber
Committee Secretary
Economics and Governance Committee
Parliament House
George Street
Brisbane QLD 4000
egc@parliament.qld.gov.au

Dear Ms Struber

Re: Financial assurance framework reform discussion paper

The Queensland Resources Council (QRC) welcomes the opportunity to provide a submission on the *Mineral and Energy (Financial Provisioning) Bill 2018* (the Bill) to the Economics and Governance Committee (the Committee).

QRC is the peak representative organisation of the Queensland minerals and energy sector. QRC's membership encompasses minerals and energy exploration, production, and processing companies, and associated service companies. QRC works on behalf of members to ensure Queensland's resources are developed profitably and competitively, in a socially and environmentally sustainable way.

At the outset, QRC must express significant concern with the near impossible timeframe for making submissions to the Committee on the Bill; a mere three weeks after the Bill is introduced and less than that from when the timeframes were posted on the Committee's website. Such timing is not consistent with Government's commitment to reasonable consultation timeframes, particularly as so much emphasis is being placed on the Parliamentary Committee system as a form of beneficial consultation. The Committee therefore has a responsibility to be more realistic about the timetables it gives for submission preparation.

As a representative body, QRC has to take the time to collect and collate feedback from our broad church of members. To not do this would be doing both our members and the Government a disservice in being able to present a cross-industry view.

It is also important that QRC emphasises the ongoing difficulties for the resources sector in being able to evaluate the true impact of the Bill when the underpinning detail is not available.

Despite the lengthy time between the Bill and the *Mineral and Energy Resources (Financial Provisioning) Bill 2017*, the Government has not been able to supply the main information missing from the new Financial Provisioning Scheme (the Scheme), including:

- The final rates for the pooled Fund; and

- The categorisation system for determining where each company (also referred to as Environmental Authority holder or relevant holder) sits within the Scheme.

This means that company submissions will not be able to call on actual analysis of the impact on their operations prior to the Committee's report.

Further, the contents and operation of the new Progressive Rehabilitation and Closure Plans (PRCP) are underdeveloped and remain vague. Also, it does not appear to have considered any of the main operational needs that QRC has explained to the Department of Environment and Science (DES) in response to the *Better mine rehabilitation for Queensland* discussion paper made in May 2017.

QRC is of the view that the 1 July 2018 start date for the financial provisioning component of the Bill is manifestly too short, particularly if companies are to evaluate the impact of the Scheme and be able to bring major issues forward to Government ahead of time. However, QRC does commend Government for recognising the need, and providing additional time, for the supporting guidance materials to be developed and tested prior to formal implementation of the PRCP legislative framework across a three-year period.

QRC also supports the Government proposal to draw up a formal schedule for the transition of each Environmental Authority into the Scheme, along with the preparation and implementation of the accompanying PRCP for site-specific mines. This is a critical part of company planning, and as such, QRC asks the Committee to seek from Government the development of these schedules as soon as possible in consultation with the resources sector.

To enhance this process, QRC suggests that the Committee make a further proposal that the Government call for volunteers to be the first into the Scheme, provided that there is no duplication of the payment currently held and any payment to the Fund. This will ensure that those companies who potentially are able to benefit immediately from the commencement of the Scheme can do so without delay. QRC has made this suggestion to the Hon. Leanne Enoch MP, Minister for Environment and the Great Barrier Reef, Minister for Science and Minister for the Arts and senior Government officials who appear to have received it favourably.

This submission sets out QRC's feedback on the Bill. It also specifically raises concerns with operationalisation of the new financial provisioning and PRCP frameworks. This demonstrates where the Bill is adequate and where it fails to deliver practical law for the purpose of achieving Government's intent and stakeholder needs. Considering the matters raised in this submission, the Committee should be aware that overall QRC cannot support the Bill in its current form. QRC therefore asks the Committee to make recommendations for and request clarifications of Government in consideration of the issues raised in this submission. This approach would be in the interests of implementing an effective financial provisioning and rehabilitation framework that not only gives confidence to the community and Government, but just as importantly is workable and equitable for the resources sector.

QRC would welcome the opportunity to discuss our submission further with the Committee during its consideration of the Bill and would be happy to participate in the public hearing. QRC's Policy Director, Environment, Frances Hayter has carriage of financial assurance policy matters and can be contacted at [REDACTED] or on [REDACTED]. [REDACTED] has carriage of rehabilitation policy matters and be contacted at [REDACTED]. I would also be happy to discuss any part of QRC's submission with you at any time and can be contacted on 07 3295 9560.

Yours sincerely



Ian Macfarlane
Chief Executive

QRC Submission

on the *Mineral and Energy Resources
(Financial Provisioning) Bill 2018*

9 March 2018

Table of Contents

1	INTRODUCTION	1
2	BACKGROUND	2
2.1	DISCUSSION PAPERS	2
2.1.1	<i>Financial assurance framework reform discussion paper and supporting documents</i>	<i>3</i>
2.1.2	<i>Better mine rehabilitation for Queensland discussion paper</i>	<i>3</i>
2.2	DRAFT MINERAL AND ENERGY RESOURCES (FINANCIAL PROVISIONING) BILL 2017	4
2.3	MINERAL AND ENERGY RESOURCES (FINANCIAL PROVISIONING) BILL 2017	4
3	CONSULTATION PROCESS AND TIMEFRAMES	5
4	FINANCIAL PROVISIONING	5
4.1	MATTERS OF SUPPORT	6
4.2	KEY MATTERS OF CONCERN	6
4.2.1	<i>Definition of 'estimated rehabilitation cost' and consequential amendments</i>	<i>6</i>
4.2.2	<i>Risk allocation decisions</i>	<i>8</i>
4.2.3	<i>Notice of cessation of production (care and maintenance)</i>	<i>9</i>
4.2.4	<i>Appeal rights and merits review</i>	<i>10</i>
4.2.5	<i>Refund of cash or return of guarantee instruments when entering the Fund</i>	<i>11</i>
4.2.6	<i>Advisory Committee</i>	<i>12</i>
4.3	TABULATED SUMMARY OF MATTERS OF CONCERN	12
4.4	RELATED MATTERS PERTAINING TO THE BILL	18
4.4.1	<i>Removal of company-owned calculators and replacement estimated rehabilitation cost (financial assurance) calculators</i>	<i>18</i>
4.4.2	<i>Funds not to be used from the Fund for those companies who have only provided a surety</i>	<i>18</i>
4.4.3	<i>Abandoned Mine Lands Program</i>	<i>18</i>
4.4.4	<i>The interaction of the Fund and Chain of Responsibility legislation</i>	<i>18</i>
5	FINANCIAL PROVISIONING RISK CATEGORISATION	19
5.1	RESOURCE PROJECT CHARACTERISTICS ASSESSMENT	19
5.1.1	<i>Remaining life of a resource</i>	<i>19</i>
5.1.2	<i>Offtake arrangements</i>	<i>19</i>
5.1.3	<i>Other factors in abeyance but still included</i>	<i>19</i>
5.1.4	<i>Rehabilitation</i>	<i>19</i>
5.2	REVIEW PERIODS	20
6	PROGRESSIVE REHABILITATION AND CLOSURE PLAN	20
6.1	MATTERS OF SUPPORT	20
6.2	OVERVIEW OF MATTERS OF CONCERN	20

6.3	DEFINITIONS AND TERMS	21
6.4	PLANNING PART OF THE PROGRESSIVE REHABILITATION AND CLOSURE PLAN	27
6.4.1	Community consultation.....	27
6.4.2	Planning for a post-mining land use and the rehabilitation hierarchy.....	27
6.4.3	Risk assessment.....	28
6.5	PROGRESSIVE REHABILITATION AND CLOSURE PLAN SCHEDULE	28
6.5.1	Need for a mechanism to routinely review long-term milestones.....	29
6.5.2	Appropriateness of time-based milestones.....	30
6.5.3	Interactions with and consideration of other instruments	30
6.6	AMENDMENTS	30
6.6.1	Minor amendment (PRCP) threshold	30
6.6.2	Administering authority discretion limitations	31
6.6.3	Consequential amendments and timeframes.....	32
6.6.4	Other amendments.....	32
6.6.5	Amendments to a Progressive Rehabilitation and Closure Plan upon surrender	32
6.6.6	Amendments to a Progressive Rehabilitation and Closure Plan post-mining land use consistent with government planning instruments	33
6.7	VOIDS	33
6.7.1	Rehabilitating a void in a flood plain to a stable condition.....	33
6.7.2	Permissibility of voids in a flood plain.....	34
6.8	INCONSISTENT MATTERS	34
6.9	ANNUAL RETURNS.....	34
6.10	POST-MINING MANAGEMENT REPORT (RESIDUAL RISK)	34
6.11	PROGRESSIVE CERTIFICATION	35
7	TRANSITIONAL ARRANGEMENTS.....	36
7.1	FINANCIAL PROVISIONING	36
7.1.1	When existing condition requiring financial assurance ends.....	36
7.1.2	Change in holder prior to scheduled transition	36
7.2	PROGRESSIVE REHABILITATION AND CLOSURE PLAN	37
7.2.1	Notice requiring holder to apply for a Progressive Rehabilitation and Closure Plan.....	37
7.2.2	Administering authority must assess a proposed Progressive Rehabilitation and Closure Plan.....	38
7.2.3	Decision to remove rehabilitation matters from an environmental authority.....	40
7.2.4	Original decisions.....	40
8	INCENTIVES FOR GOOD REHABILITATION PERFORMANCE	41
9	INTERACTIONS WITH OTHER LEGISLATION AND INSTRUMENTS	42
10	RECOMMENDATIONS AND CLARIFICATIONS	42
11	CONCLUSION.....	42

1 INTRODUCTION

The Queensland Resources Council (QRC) welcomes the opportunity to provide a submission to the Economics and Governance Committee (the Committee) on the *Mineral and Energy (Financial Provisioning) Bill 2018* (the Bill) introduced into the Queensland Parliament on 15 February 2018.

QRC is the peak representative organisation of the Queensland minerals and energy sector. QRC's membership encompasses minerals and energy exploration, production, and processing companies, and associated service companies. QRC works on behalf of its members to ensure Queensland's resources are developed profitably and competitively, in a socially and environmentally sustainable way.

The Bill provides for the introduction of the new financial provisioning scheme (the Scheme), replacing the current Financial Assurance (FA) framework, including the establishment of a pooled Fund (the Fund), for all resources activities, and creates a new rehabilitation framework through the introduction of Progressive Rehabilitation and Closure Plans (PRCP) for mining activities. This is without doubt the most significant Government reforms for the environmental management of the resources sector since the legal oversight of the sector was transferred to the environmental regulator in 2001.

At the outset, QRC must express significant concern with the quite unreasonable timeframe for making submissions to the Committee on the Bill; a mere three weeks after the Bill is introduced and less than that from when the timeframes were posted on the Committee's website. With the report not due to Parliament until 20 April 2018, which is not sitting that month in any case, this timeframe makes a mockery of the Government's commitment to reasonable consultation, particularly as so much emphasis is being placed on the Parliamentary Committee system as a form of beneficial consultation. The Committee therefore has a responsibility to be more realistic about the timetables it gives for submission preparation.

As a representative body, QRC has to take the time to collect and collate feedback from our broad church of members otherwise we are doing both them and the Government a disservice in being able to present a cross-industry view.

It is also important that QRC emphasises the ongoing difficulties for the resources sector in being able to evaluate the true impact of the Bill when the underpinning detail is not available.

Unfortunately, despite there being four months between the introduction of the *Mineral and Energy (Financial Provisioning) Bill 2017* introduced on 25 October 2017, the Government is still unable to supply basic information on some of the critical elements currently missing from the Scheme, including:

- The final rates for the Fund; and
- The categorisation system for determining where each company (also referred to as Environmental Authority (EA) holder or relevant holder) sits within the Scheme.

This means that company submissions will not be able to call on actual analysis of the impact on their operations prior to the Committee's report. QRC is therefore of the view that the 1 July 2018 start date for the financial provisioning component of the Bill is manifestly too short, despite the three-year transition, because of the lack of this significant supporting material.

Further, the contents and operation of the new PRCP are underdeveloped, remain vague, and do not appear to have considered any of the main operational needs that QRC has explained to the Department of Environment and Science (DES) in response to the *Better mine rehabilitation for Queensland* discussion paper made in May 2017. However, QRC does commend Government for recognising the need, and providing additional time, for the supporting guidance materials to be developed and tested prior to formal implementation of the PRCP legislative framework across a three-year period.

The lack of supporting regulations and guidelines remains perpetual no matter what pieces of legislation are introduced, and one that needs to change in the implementation of significant policy reforms such as the ones set out in the Bill.

QRC supports the Government proposal to draw up a formal schedule for the transition of each EA to the Scheme, along with the preparation and implementation of the accompanying PRCP for site-specific mines. This is a critical part of company planning, and as such, QRC asks the Committee to seek from Government the development of these schedules as soon as possible in consultation with the resources sector.

To enhance this process, QRC suggests that the Committee make a further proposal that the Government call for volunteers to be the first into the Scheme, provided that there is no duplication of the payment currently held and any payment to the Fund. This will ensure that those companies who potentially are able to benefit immediately from the commencement of the Scheme can do so without delay. QRC has made this suggestion to the Minister for Environment and the Great Barrier Reef, Minister for Science and Minister for the Arts and senior Government officials who appear to have received it favourably.

This submission sets out QRC's feedback on the Bill. It also specifically raises concerns with operationalisation of the new financial provisioning and PRCP frameworks given this demonstrates where the Bill is adequate and where it fails to deliver practical law for the purpose of achieving Government's intent and stakeholder needs. Considering the matters raised in this submission, the Committee should be aware that overall QRC cannot support the Bill in its current form.

2 BACKGROUND

QRC has provided continuous and consistent feedback to the development of the Government's FA and rehabilitation reforms since being formally commenced in May 2017, and for more than a decade prior to that. Unfortunately, QRC has only seen a small portion of our logical and detailed feedback responded to by Government, particularly as it pertains to the rehabilitation reforms.

2.1 DISCUSSION PAPERS

QRC provided detailed submissions on both the *Financial assurance framework reform* discussion paper and *Better mine rehabilitation for Queensland* discussion paper, and where relevant accompanying reports, in June and October 2017. It is these discussion papers that led ultimately to the creation of the Bill, and it is disappointing that a notable number of the key points raised in those submissions were not worked through with the resources sector or sufficiently advanced prior to the introduction of the *Mineral and Energy Resources (Financial Provisioning) Bill 2017* on 25 October 2017.

2.1.1 *Financial assurance framework reform discussion paper and supporting documents*

QRC's main issues regarding the discussion paper included:

- The categorisation system for placing companies into the Scheme failed to consider, beyond the financial 'rating', rehabilitation and environmental performance at a site level. While this has improved somewhat, following work undertaken by Government in the design of the new categorisation system, which will become a statutory guideline supporting the legislation, the resources sector is not convinced these factors will be given sufficient weighting;
- Annual contribution rates as defined by the categories, including the tiers within the Fund, may well be higher than those currently available to companies from the banks, doubling or even tripling payment amounts. QRC has not seen any further information on whether the Government is prepared to make changes to these rates;
- There are a range of companies that will find themselves in a less favourable situation as the FA discount will no longer be available and they will be outside the Fund. Although they will be able to access alternative surety instruments, it is unclear whether this would be at comparable rates, and unlikely to be sufficient compensation;
- The loss of company-owned FA calculators, although QRC is relieved that alternative third-party rates for individual FA calculator line items will be retained;
- The Government had not undertaken a complete categorisation of most major companies, and for effective consultation, this should have been done prior to the release of the discussion paper as it has made it extremely difficult to fully assess the impacts of the proposed changes. This situation remains today; and
- Minimal information on how the Fund would operate, its structure and governance.

Unfortunately, while the issues above are not in the direct scope of the Bill, which sets up merely the structure for the Scheme's implementation, the fact that all of the questions about rates and categorisation remain for the resources sector, shows that legislation is not a stand-alone outcome of itself. Business (and the community) must be able to see the full package of accompanying statutory documents along with Bills to have a clear and transparent understanding of what the changes mean to them.

There will not be any consultation with the resources sector on these issues prior to the end of March 2018, which is too late for this consultation process on the Bill.

2.1.2 *Better mine rehabilitation for Queensland discussion paper*

QRC's main issues regarding the discussion paper included:

- Lack of clarity:
 - In process and governance arrangements for the preparation, approval and amendment of a PRCP (at the time referred to as a Life-of-Mine Plan);
 - As to how the PRCP and amendments fit in with the administration of existing legislation and mechanisms; and
 - Regarding the content of a PRCP and how it will operate.

In the absence of the supporting statutory guideline, which is not scheduled to be available until June 2018, much of the content for the PRCP remains unclear. This is further to the issues QRC has raised in this submission regarding processes, as drafted in the Bill;

- Identification of operationally restrictive and/or subjective proposed rehabilitation concepts, definitions and terms, which remains a concern in the drafting of the Bill;

- Government's incorrect portrayal that:
 - Mines in care and maintenance automatically present a higher risk of environmental harm and non-fulfilment of rehabilitation. The decision to move a site into care and maintenance is a major decision for a mining company with all potential impacts carefully evaluated. One factor influencing this decision may be low commodity prices, which are often temporary and cyclical. Under these circumstances, a company may choose to manage the site until economic conditions are favourable to recommence operation, however, it still must meet its requirements under an EA;
 - There will be a significant increase in job opportunities in rehabilitation resulting from the proposed reform. This is not the case given the workforce employed by companies, and responsible for mining, including mine planners, engineers and environmental specialists along with technical consultants also undertake rehabilitation; and
- Failure to consider progressive certification as part of the reform, which remains a concern in the drafting of the Bill.

2.2 DRAFT MINERAL AND ENERGY RESOURCES (FINANCIAL PROVISIONING) BILL 2017

More directly pertinent to the contents of the Bill, QRC was provided with the opportunity to review a confidential draft of the *Mineral and Energy (Financial Provisioning) Bill 2017* and provide comment to Government between 3 and 6 October 2017. Putting aside the unreasonable timeframe, only a small number of changes were made to the draft in recognition of QRC and the resources sector's concerns ahead of the Bill proper being introduced on 25 October 2017. While some of these were positive, there were several key negative differences.

Disappointingly, the Bill introduced on 15 February 2018 simply perpetuated the lack of recognition of QRC and sector's concerns, again containing only minimal changes.

QRC is able to provide our confidential draft of the submission on the draft *Mineral and Energy (Financial Provisioning) Bill 2017* to the Committee on request.

2.3 MINERAL AND ENERGY RESOURCES (FINANCIAL PROVISIONING) BILL 2017

QRC notes the introduction of the *Mineral and Energy Resources (Financial Provisioning) Bill 2017* into Parliament on 25 October 2017, and its lapsing due to the Queensland election.

QRC had hoped that in the time prior to its re-introduction, Government would be willing to make some changes that would make the Bill, as it stands today, fair and workable for the resources sector (and Government), specifically as it pertains to the introduction of PRCPs and being provided with additional information about key aspects of the Scheme. However, this did not occur to any extent of value to the resources sector.

While QRC understands that some of the reason was that other stakeholders were not able to be adequately consulted about QRC's proposals, we do not accept this as a sensible excuse. If something is worth doing it is worth doing right, and a slightly longer timeframe for introduction and commencement is more than a reasonable trade-off.

The issues for the resources sector are largely the same as that for the *Mineral and Energy Resources (Financial Provisioning) Bill 2017*, and as such, are reflected in QRC's feedback on the Bill.

3 CONSULTATION PROCESS AND TIMEFRAMES

As noted in **Section 2**, QRC is disappointed about the lack of responses to the comprehensive proposals to improve the development and implementation of the FA and rehabilitation reform.

In the case of FA, the proposed reform was not a surprise given there had been consistent communication from Queensland Treasury about the review of the current system, Government proposals and key issues. In contrast, and in the months following close of submissions on the *Better mine rehabilitation for Queensland* discussion paper, DES failed to afford meaningful engagement or supply adequate information regarding the direction of the proposed rehabilitation reform with QRC or the mining sector.

QRC is of the view that the limited engagement regarding the rehabilitation reform has resulted in a missed opportunity to collaborate with DES. This is unfortunate given other Departments were able to draw upon the sector's knowledge and test key concepts for appropriateness before progressing further to proposed legislation.

Whilst consultation between DES, QRC and the mining sector has improved since late 2017, many of the concerns outlined above, and in this submission, remain outstanding.

Nevertheless, QRC has appreciated the formation of the Resource Industry Advisory Committee by the Government's Project Management Office, who is coordinating the introduction of the reforms. It is a valuable forum as a communication tool and expression of Government good-will, although it may not have been utilised quite as well as it could have been in terms of taking key issues forward and achieving appropriate changes to the Bill.

QRC reiterates our introductory comments that the commencement timeframe for the new financial provisioning framework is too short, at 1 July 2018, although we appreciate the three-year transitional provisions. However, QRC commends the Government on a far more realistic timetable for the commencement of the PRCP framework.

Going forward, the Committee needs to be aware of the extreme amount of work required to be undertaken by the resources sector in response to Government's schedule – with the next three months a focus on the Scheme implementation followed by seven months on the development of the PRCP guidance material. QRC is of the view that all of the supporting work, at least in draft form for consultation purposes, such as, regulations, guidelines and revised Estimated Rehabilitation Cost (ERC) calculators, should have been completed first (i.e. prior to the introduction of the Bill) to allow industry to fully assess the impacts on business. While the Government is now striving to do this for the Scheme commencement, prior to 1 July 2018, the amount of work in such a compressed timeframe is unrealistic and only appears to be so for political reasons.

It is concerning that this has been compounded by the Committee having chosen such an unreasonable submission period.

4 FINANCIAL PROVISIONING

As already stated, QRC emphasises that the most critical issues about the Bill, as it relates to the financial provisioning component, is its operationalisation and what the resources sector has not been told (e.g. rates, categorisation, guidelines). While of itself, the financial provisioning components of the Bill make sense and are not of any surprise, it is the numbers that will ultimately make the difference between the sector's support or not. Unfortunately, Government only appears willing to communicate these post the Bill's Committee process.

4.1 MATTERS OF SUPPORT

As a positive starting point, for the record, QRC supports the following in the Bill:

- Although there has been ongoing confusion about the relationship with the 'Relevant Entity' term from the KPMG/Ratings Australia report regarding the development of the Scheme categorisation system, and terms used in the Bill (e.g. relevant holder), we support the clarification from the Government's Project Management Office that the supporting statutory guideline will use the term 'relevant holder' and Government has 'moved on' from Relevant Entity;
- The three-year transition (Clauses 89 and 91), but suggests that Government, once confirming there will not be any double holding of surety, should first call for volunteer companies to enter the Scheme sooner rather than later (i.e. be issued with their transition notice promptly after 1 July 2018);
- The transition process for an authority that may need to move from the Fund to surety due to a change in the risk assessment (Clause 46(b));
- The new allowance for insurance instruments as a form of FA (Clause 56);
- That any request for payments from the Fund for a pre-commencement abandoned mine must have a process of consultation with the Advisory Committee (presuming the Committee operates effectively and consultatively) (Clause 64); and
- The Right to Information Act amendments, which are significant and positive changes regarding confidentiality concerns industry has had with the need to protect the materials provided to the Scheme Manager (Clauses 216, 217, 218 and 17).

4.2 KEY MATTERS OF CONCERN

Below are the key items QRC requests the Committee make recommendations on for changes to the Bill and clarification of certain matters. These are also summarised in the tabulated comments in **Section 4.3** of this submission.

4.2.1 Definition of 'estimated rehabilitation cost' and consequential amendments

DES has stated that Clause 8, and as it also relates to section 298 and 300, which has been amended from the *Mineral and Energy Resources (Financial Provisioning) Bill 2017*, maintains the status quo by including the phrase '*preventing or minimizing environmental harm*' in relation to the ERC. In an email received from Government on 8 March 2018 (similar to that provided in a tabulated form on 16 February 2018), the explanation is that the amendments:

" 'The intent of the change to the definition of 'estimated rehabilitation cost' was to retain status quo for calculating financial assurance (under the pre-amended Environmental Protection Act 1994 section 295). The drafting has changed the wording from 'protecting the environment because of environmental harm...' to 'prevent or minimise environmental harm' to ensure consistency with other sections of the Bill, including the main purpose of the Act (e.g. Clause 3) and the EP Act. The change in the Bill will not change the contents or methodologies in the ERC calculator and consultation on the calculator will occur prior to its approval".

QRC does fully understand and appreciate that it was not the intention of DES to do anything other than maintain the status quo and welcomes the assurance that it is not intended to change the calculator. However, the explanation is not accurate, in that it confuses the process of calculating the amount of the ERC, and the circumstances to which the ERC can be applied, in a situation when the ERC is called upon by the Government.

Currently, under section 295 of the *Environmental Protection Act 1994* (EP Act) the administering authority decides the amount and form of FA, however that amount cannot be “*more than an amount that (in the authority’s opinion) represents the total of likely costs and expenses that may be incurred in taking action to rehabilitate or restore and protect the environment because of environmental harm that may be caused by the activity*”. Therefore, the FA cannot be calculated having regard to the prevention or minimization of environmental harm.

In contrast, Clause 8 of the Bill now includes, the estimated cost of preventing or minimizing environmental harm, in addition to the costs of rehabilitating the land on which the resource activity is carried out (Clause 8(a)) and rehabilitating the environment (Clause 8(b)). The Bill continues to include this new factor in the calculation of the ERC amount by including it in the calculations in section 298(2)(c)(ii) and section 300(1)(b).

QRC suggests that DES may be confusing the calculation of the ERC with its current powers to claim money under the FA, under section 298 and 299 of the EA. In circumstances where the Department incurs costs “*in taking action to prevent or minimize environmental harm or rehabilitate or restore the environment*”, it can recover those costs by making a claim on, or realizing the ERC, (following the notice process under section 298). However, the amount of that claim is limited to the amount of the ERC. Note that Clause 3(c), also revised since the *Mineral and Energy Resources (Financial Provisioning) Bill 2017*, correctly sets out the circumstances for which the Government can use the ERC as opposed to calculating it.

These amendments to the Bill since the *Mineral and Energy Resources (Financial Provisioning) Bill 2017* are additional evidence that the Government is uncertain as to where the *Environmental Protection (Chain of Responsibility) Amendment Act 2016* (CoRA) process sits in relation to the Scheme. It seems to be attempting to wrap in everything that may cost the Government rectification dollars, which can be obtained through CoRA, (of course only if financial provisioning, a new residual risk system and proper timely monitoring and enforcement don’t cover it) if a site is in non-compliance into the way the ERC is calculated.

When calculating an ERC, this can only be on the assumption that the company is in compliance with its EA. Compliance with the EA prevents or minimises environmental harm. The Department also monitors EA compliance for all resource companies to ensure that they are preventing or minimising environmental harm. An ERC calculation that involves making an upfront assumption that the company will be in non-compliance and that Government will be failing to monitor and enforce compliance is not required, and is an impossible calculation to make in any case.

QRC should clarify that:

- We have no problem with the current power to make a claim on FA, which is, in effect, continued in the Bill, including not only for rehabilitation costs, but also for preventing or minimising environmental harm, in effect from offences committed by a rogue company. The reason for saying that the calculation of ‘preventing or minimising harm’ could only be as a result of offences, is that the topic of rehabilitation and restoration of disturbance is already separately covered by the section; and
- Consequently, we had already considered Section 3(c) of the *Main Purposes*, and were comfortable that this simply reflected the existing power to make a claim for either purpose.

The difficulty is this, at present, when an EA is granted, the 'likely' cost and expense of dealing with 'environmental harm' caused by a non-compliance with EA conditions under Section 295, for each individual mine, must necessarily be zero if DES has satisfied itself (as it required to do) that the operator is 'suitable' and the conditions are reasonable. It would be nonsensical for DES to make a calculation assuming future non-compliances, because the non-compliances would be unlawful. The scope of unlawful non-compliances could never be worked out as 'likely' for any individual mine, in contrast with rehabilitation costs which can be forecast and reasonably accurately calculated. Consequently, the existing drafting relating to '*likely costs...to...protect the environment because of environmental harm*' are essentially surplusage and have always been treated that way in the FA calculator.

However, under the new system, particularly in the case of the Fund, QRC has a concern that the Government may be perceived to have a duty under Clause 8 to seek actuarial advice to try to calculate a contingency for an 'estimated cost' spread over the entire pool, in respect of the risk of non-compliances on the assumption that conditions are not monitored and enforced in a timely way, and then factor in this 'estimated' cost of 'preventing or minimizing environmental harm', perhaps as a percentage contingency. This would create an additional moral hazard for companies that do comply. It has never been apparent what even the existing wording was there for, if it was always intended that there would be a zero calculation for anything other than rehabilitation costs. Given that both the financial provisioning framework as a whole and the drafting for this specific issue are now being changed, there is a notable concern that at some stage the Government will find itself under pressure to create a meaning for these otherwise apparently meaningless words. If the Government also believes that the value of these words is zero, this begs the question why they are not simply removed.

QRC asks the Committee to recommend the deletion of Clause 8(b) and return to the version of that Clause as per the *Mineral and Energy Resources (Financial Provisioning) Bill 2017*. It follows that it should be further recommended that section 298(2)(c)(ii) and 300(1)(b) be deleted and the wording returned to that of the *Mineral and Energy Resources (Financial Provisioning) Bill 2017*.

4.2.2 Risk allocation decisions

In the *Initial risk category allocation* (Clause 27, Sections (3) to (5)), the *Changed holder* (Clause 32) and *Annual review allocation* (Clause 38) the Scheme Manager must consider the financial soundness of the holder, however there is a discretion to consider '*the characteristics of a resource project*' through use of the term 'may'. This would seem to emphasise that the Resource Project Characteristics Assessment (RPCA) will have a very low weighting in the allocation process.

This means that there is no requirement for the Scheme Manager to take notice of progressive rehabilitation as a key component in the consideration by the State of their potential to be exposed to a company not meeting its rehabilitation requirements. The other key factor that will not be required to be considered is the remaining life of the resource, which again plays a key role in assessing the Government's realistic risk exposure.

QRC asks the Committee to recommend that the Scheme Manager must consider the RPCA for all applicable holders.

QRC also requests the Committee seek clarification as to why the Scheme Manager now only may consider the parent corporation of a holder. This is a change from the *Mineral and Energy Resources (Financial Provisioning) Bill 2017* and the resources sector has not been provided with a reason for the change. This type of uncertainty demonstrates the difficulties the sector is having with fully evaluating the Scheme, when Government has not consulted on the critical accompanying regulations and guidelines (one of which is to set out how the relevant holder is to be determined). For example, it is not clear when the Scheme Manager would not want to consider the parent entity.

Subjective discretion results in substantial uncertainty for the sector in analysing implications of the new framework now and in the future.

QRC asks the Committee to seek reasons from Government for the change from the *Mineral and Energy (Financial Provisioning) Bill 2017* such that the Scheme Manager no longer must consider the parent corporation in its risk allocation decisions.

4.2.3 Notice of cessation of production (care and maintenance)

Clause 43, as drafted, is disappointing given that it has been inserted prior to the resources sector having seen the Government discussion paper, which is not due until May 2018, on their overall approach to care and maintenance sites.

It reads:

The holder of the authority must give the scheme manager a notice under this section if, after the start of production under the resource authority—

(a) the holder ceases production under the resource authority and does not expect production to restart within 6 months [NB within 10 business day] after the cessation; or

(b) production has not been carried out under the resource authority for 6 months.

The timeframes of six months seem far too short and arbitrary. At the very least, there needs to be a reason why this cannot be considered as part of the annual review of an EA's risk category. For example, in the scenario where a site goes into care and maintenance, it is sold and stays in care and maintenance while the new owner conducts studies, appraisal drilling etc., such activities cannot be done in six months.

The 'care and maintenance' clause is also of concern because of the reference to the *Mineral Resources Act 1989*, which results in a very broad definition of *production*.

It is imperative that the Committee understands that stopping production for a period of time does not relieve a company of its EA requirements, which are subject to regular inspections by DES. Plan of Operations with rehabilitation action plans are also provided and reviewed by the Department.

QRC therefore notes the following:

- Care and maintenance should not be confused with premature closure of a mine. Periods of care and maintenance may last several years. However, in both care and maintenance and premature closure, the ongoing liability for the site remains with the mining lease holder – it is not relinquished until Government requirements have been met;
- Care and maintenance should also be viewed as a natural part of the commodities cycle. Care and maintenance periods could be viewed as sustainable development, with companies responding responsibly to market supply and demand conditions;
- Care and maintenance should also not be confused with abandonment, which is safeguarded by FA (or ERC); and
- Rejects any blanket assertion that there is a direct link with a mine going into care and maintenance and any greater risk of not meeting rehabilitation obligations.

Note that QRC does not oppose notification regarding cessation of production, provided it is a reasonable timeframe. As a minimum, the notification timeframe should be extended to 30 days and the very short six months for the cessation of production be extended to 12 months to align with the annual review.

QRC asks the Committee to recommend, as a minimum, that the notification timeframe for cessation of production should be extended to 30 days and the very short six months for the cessation of production be extended to 12 months to align with the annual review. QRC also asks that the Committee seek an explanation from the Government regarding how the drafting in the Bill will interact / relates to its overall discussion with the sector on the matter of care and maintenance mines given that companies are not relieved of their EA responsibilities simply because production may have temporarily ceased.

4.2.4 Appeal rights and merits review

The Government has not accepted the resource sector's position of including a merits review (appeal process) for the risk categorisation decisions, instead only providing for a judicial review process under Clause 74. The justification for this provision being the only 'appeal' right provided to QRC, on 26 October 2017, seems to make little sense, particularly the reference to the 'third party':

The Bill does not provide for an external review or appeal on the following basis. The scheme manager's risk category allocation decision is about managing the risk to the State, is expected to be primarily financial in nature and applies only to a holder (or incoming holder) of an authority and not a third party. The allocation decision is reviewed each year and each year the risk category allocation may change. The decision will be informed by highly specialised advice received from an external assessment advisor. In these circumstances any merits review would, at best, involve a review of the material considered by the scheme manager rather than a reassessment independent from the scheme manager. However the estimated rehabilitation cost (ERC) decision made by the administering authority under the Environmental Protection Act 1994, which forms the basis of the calculation of the amount of contribution required or surety to be given, is subject to a merits review under that Act, consistent with the current framework. However the Bill does provide procedural fairness to holders through a two-stage decision making process. The scheme manager is required to provide the holder with an indicative risk category allocation decision, including reasons for the proposed allocation.

A merits review also would ensure the quality and consistency of the decisions of the Scheme Manager. The purpose of a merits review is to ensure that the decisions of the Scheme Manager are correct and preferable. Correct, in the sense that they are made according to law and preferable, in that, if there is a range of decisions that are correct in law, the decision settled upon is the best that could have been made on the basis of the relevant facts. A merits review will ensure fair treatment of all persons affected by a decision. This is important given that this is a brand-new system for establishing environmental credentials and the financial surety that must be paid.

It would also be contrary to the fundamental legislative principles not to provide for a right of appropriate review when the Scheme Manager allocation involves the exercise of administrative power, which would significantly affect rights and obligations of the tenement holder. The decision is also based on a broad ranging discretionary power and is therefore legislatively unstructured. At the very least the Court should be given the right to order a stay in appropriate cases.

QRC can provide the Committee with legal advice on the precedents already existing in Queensland legislation which would enable appeal rights for the categorisation decision to be easily applied.

There are also issues with the original decisions as they pertain to the PRCP part of the Bill and the amendments to the list in the EP Act (see **Section 7.2.4**). QRC requests the Committee recommend the Bill be amended to include appeal rights equivalent to an 'original decision' under the EP Act for the full range of categorisation decisions made by the Scheme Manager.

4.2.5 Refund of cash or return of guarantee instruments when entering the Fund

There is a concern from QRC members that despite obvious Government intent, the Bill is not clear that a bank guarantee instrument or cash surety (whichever is applicable) will be returned once the allocation decision has been made (following the issuing of the transition notice), if it is determined that the amount relative to the ERC is to be paid into the Fund, and that amount is so paid. Ensuring this certainty will assist the Government with the scheduling of companies, given the adoption of a volunteering approach will more likely be of interest for those entities wanting to enter the Scheme Fund earlier rather than later.

The nature of the bank guarantee behind an FA is that it must be payable on demand, on presentation of the bank guarantee by the State to the banking institution. In addition, running fees on the guarantee will continue to be applicable until the guarantee is returned to the issuer. As drafted, the Bill is silent on when an existing bank guarantee will be released. This generates uncertainty for banks and for the resources sector.

Part 7 contains the transitional provisions for the Bill, with Section 90(1) providing that for existing EAs, the existing FA is taken to be surety for the purpose of the new scheme and section 91(4) allowing the transition to occur over 3 years.

However, Part 3, to which the transitional arrangements in Part 7 relate, is to be read on its face, altered only by Clause 90 such that 'surety' includes a pre-existing FA, i.e. Clause 90 simply means that FAs are taken to be sureties under Part 3. Critically, there is nothing in Clause 90 to expand the operation of subdivision 2 of Part 3 when reading it with reference to an FA. Clause 53 operates to limit the operation of Clause 58 – whether reading Clause 58 with respect to a surety or an FA. The resources sector is suggesting there is the need to modify Part 7, Clause 90 to expand the operation of Clause 58 to include all sureties and not only those the subject of the subdivision. Currently nothing applies Clause 58 to FAs beyond the scope of Clause 53. Part 7, Clause 90 could be amended, so as to keep all of the transitional arrangements together, by inserting a new 92A which specifically calls to the return of the existing surety or bank guarantee instrument.

Prior to the making of this submission, QRC had discussed this issue with Government and gained a clear understanding that there is no intention to simultaneously hold both a pre-existing FA and the Fund contribution. However, given the concern from QRC members with the drafting of these relevant transitional provisions, we recommend the Committee ask for confirmation that the clauses will operate as per this intent. QRC is happy to suggest some possible drafting for this clarity. As a minimum, the Explanatory notes should set out the Government's position so that member concerns can be minimised by having this 'on the record'.

QRC strongly supports the development of on-line systems to enable the return of FA instruments as quickly as possible once a payment made has been recognised.

A related issue is that under Section 50, is that there is a complication with refunding cash to a Previous Holder is if that if Previous Holder was part of a Joint Venture. Holders should only ultimately receive their proportionate refund (not an entire pro rata amount relating to the total Resource). Is it the intention that total pro rata amount of cash is refunded entirely to the Relevant Holder?

QRC requests that the ECG recommend the government provide clarity around its transitional provisions and their intent that the Government will not hold both a pre-existing surety and any amount paid into the Fund simultaneously, and will return such pre-existing FAs as soon as possible. An amendment to Part 7 should be considered, but as a minimum, the principle should be set out in the Bill's Explanatory Notes.

4.2.6 Advisory Committee

Given the focus on the role of Fund earnings to be provided to the Abandoned Mine Lands Program (AMLPL), QRC suggests that the Committee size, as outlined in Clause 83, is too small and should have two representatives from the resources sector to cover both petroleum and gas and mining.

QRC requests the Committee recommend the Advisory Committee is expanded in the legislation to specifically require the representation of two resources sector representatives.

QRC asks the Committee to seek advice from the Government for a Terms of Reference for the Committee and greater detail on regarding its role and operating rules.

4.3 TABULATED SUMMARY OF MATTERS OF CONCERN

Table 1 sets out comments which are either directly relevant to financial provisioning component of the Bill (generally in order of appearance in the Bill), having regard to **Section 4.2**, Explanatory Notes or more general comments – a number of which were raised in QRC's submission on the draft Bill and discussed with Government in relation to the *Mineral and Energy Resources (Financial Provisioning) Bill 2017*. Where relevant, references to feedback received from Government so far have been included.

Table 1 Summary of matters as it relates to financial provisioning in the Bill

Ref.	Section	Issue and recommendation
1	What is an <i>estimated rehabilitation cost</i> (Clause 8(b) and consequently section 298(2)(c)(ii) and 300(1)(b))	<p>(b) newly includes '<i>preventing or minimising environmental harm</i>' beyond the <i>Mineral and Energy Resources (Financial Provisioning) Bill 2017</i>, which just spoke to '<i>rehabilitating the land</i>', i.e. the FA determination as it currently operates.</p> <p>DES has stated that Clause 8, as it relates to section 298 and 300, which have been amended from the <i>Mineral and Energy Resources (Financial Provisioning) Bill 2017</i> to include the phrase '<i>preventing or minimizing environmental harm</i>' in relation to the ERC, maintains the status quo. However, QRC suggests that this is not accurate, in that it confuses the process of <u>calculating the amount</u> of a ERC, and the <u>circumstances to which the ERC can be applied</u>, in a situation when the ERC is called upon by the Government.</p> <p>See Section 4.2.1 for further information and recommendations.</p>
2	Fund Threshold (Clause 11)	Note that QRC has not seen the guideline, which is to be developed prior to 1 July 2018, setting out how the \$450M threshold (and its replacement over time) will be determined. This makes it difficult to understand exactly how the criteria will be applied, although we are supportive of the explanation as set out in Clause 11(2).
3	Scheme Manager must make initial risk category allocation (Clause 27, (1))	<p>QRC supports the four proposed risk categories, however would like there to be a tighter link with the contribution rate of the Fund. QRC understands that the prescribed percentage will be set in the Regulation, but it would be appropriate for the Act to state that the prescribed percentage will be different for each of the very low, low and medium categories (i.e. relative to the risk). It should be explicit that the prescribed percentage for the very low risk category will be less than that for the low risk category, which in turn will be less than that for the moderate risk category. This will ensure that the government cannot simply make the percentages the same for each risk level.</p> <p>QRC asks the Committee to recommend an amendment to the Bill that explicitly recognises there will be different prescribed percentages for each of the very low, low and medium risk categories, which appropriately recognises the relative risk applicable to each category.</p>
4	Scheme Manager must make initial risk category allocation (Clause 27, (2)(ii))	Although the Scheme Manager must consider submissions made under Clause 28 there is no requirement to respond to the submissions. A provision should be inserted that the Scheme Manager must give reasons, based on criteria, if the submissions are rejected. The criteria could be in the statutory guideline.

Ref.	Section	Issue and recommendation
5	Scheme manager must make initial risk category allocation (Clause 27, (3) to (5))	<p>Disappointingly, '<i>the characteristics of a resource project</i>' remains as a '<u>may</u>' consideration only when the Scheme Manager allocates the initial risk category. This would seem to emphasise that the RPCA will have a very low weighting in the allocation process. It should be a requirement that the Scheme Manager <u>must</u> consider the RPCA.</p> <p>QRC also notes a number of changes to these sections from the <i>Mineral and Energy Resources (Financial Provisioning) Bill 2017</i>. Most notably, while the Scheme Manager <u>must</u> consider the financial soundness of the holder, the <i>Mineral and Energy Resources (Financial Provisioning) Bill 2017</i> provided that this extended to "<i>any parent corporation of the holder</i>". While remaining as part of the clause, this has now become only a <u>may</u> consideration.</p> <p>Where there is more than one holder, the category allocation will consider the financial soundness of '<i>any or all of the holders</i>' as well as the '<i>parent corporation of any or all of the holders</i>' (although again this is only a <u>may</u> consideration). QRC waits for the complete clarification of how this process will work in the statutory guideline for the risk categorisation.</p> <p>The <i>Change holder review allocation</i> and <i>Annual review allocation</i> clauses have the same points as above. See Section 4.2.2 for further information and recommendations.</p>
6	Scheme Manager may review risk category allocation if changed holder (Clause 32)	<p>Currently under Clause 32, the Scheme Manager may review a risk category allocation if there is a change to any holders' share in the resource. The Scheme Manager should only have the ability to review if the <i>relevant holder</i> changes (as this is the only holder on which the financial risk assessment is based). Change to a holder who is not the <i>relevant holder</i> should have no impact on the risk assessment under the proposed risk criteria framework, this is regardless of the ownership share which the changing holder has in the resource. Reassessment on the change of any holder creates unnecessary administration and costs for all parties.</p>
7	Notice of Cessation of production (Clause 43)	<p>The 'care and maintenance' clauses have been maintained from the <i>Mineral and Energy Resources (Financial Provisioning) Bill 2017</i>, which continues to be disappointing given that QRC has not yet seen the Government discussion paper on their overall approach to care and maintenance mines and this is not planned to occur before May 2018.</p> <p>See Section 4.2.3 for further information and recommendations.</p>

Ref.	Section	Issue and recommendation
8	Scheme manager may require further information from holder before allocation decision (Clause 44)	<p>Under Clause 44, it is unclear what the boundaries of 'further information' that can be reasonably required by the Scheme Manager may be (and if the holder refuses to provide whether they will receive penalty units). For instance, highly confidential information such as offtake agreements may fall under this bucket, particularly as they are being considered as an ancillary risk assessment. The holder should not be penalised for non-provision of confidential information regardless of undertakings under this clause. Drafted guidelines should also make it clear that this process not be applied against holders that do not provide (or cannot provide) particular financial or other information for use in the actual risk assessment.</p> <p>In addition, given the type of further information requested by the Scheme Manager is not defined and therefore may not be readily available or possible to provide (or in the situation of a Joint Venture may require agreement between all holders to actually consent to provide), the timeframe in 44(3)(b) is far too short. QRC suggests this should be changed from 10 business days to 20 business days.</p> <p>QRC asks the Committee to request from government their position on the management of 'further information' requests as it pertains to the provision of highly confidential information and the associated penalties for holders.</p> <p>QRC asks the Committee to recommend that the 10 business days for information provision under 44(3)(b) be extended from 10 business days to 20 business days. This extension of time also applies to Clause 45(2)(b) Scheme manager may require further information from interested entity before changed holder review decision.</p>
9	Application of subdivision (Clause 46(b)(iii))	<p>Under this sub-clause, the Scheme Manager has the discretion to decide whether a holder is reasonably able to give a surety within 12 months. The Scheme Manager will not have this level of insight into the ability of a holder, their banking/surety relationships and other non-evident factors that contribute to a holder having capacity to obtain surety within a timeframe. A blanket 12 months period should be provided to all holders transitioning.</p>

Ref.	Section	Issue and recommendation
10	Holder must give surety (Clause 55)	<p>The periods of 30 days for the giving of surety in Clause 55(3) is not sufficient and the resources sector has previously requested that they be extended.</p> <p>30 business days is too short for arrangement for provision of surety and will present difficulties, particularly when the large amounts and the complexity of financial arrangements are considered (i.e. negotiating bank guarantees worth hundreds of millions of dollars across a number of banks is not a simple or quick process, nor are the timeframes within the control of the holders – holders are in the hands of the banks' processes).</p> <p>While it is acknowledged that there is a discretion for the Scheme Manager to provide an extension to this timeframe, that does not provide certainty to holders. It would be preferable to start with a realistic timeframe. This is particularly significant in the context of the proposed EP Act amendments which as currently drafted would mean an operation would have to cease operations if it could not meet the timeframes.</p> <p>QRC asks the Committee to recommend amendments to the Bill which set the timing for the provision of sureties as 90 business days with the retention of the Scheme Manager's discretion to extend timeframes.</p>
11	Release of Surety (Clause 58)	<p>QRC is uncertain as to why there is not a release of surety timeframe in this clause as there is when there is a changed holder under Clause 50. Under that Clause, the Scheme Manager must return funds within 30 business days (noting that this is of itself too long and 10 business days would be more appropriate), however Clause 58 does not have a similar courtesy, instead only that the surety will be released 'as soon as is practicable'.</p> <p>QRC asks the Committee to recommend that Clause 58 also require the release of surety to be within a set number of business days as it is for <i>Refund of contribution to previous holder</i> (Clause 50) and that the 30 days be reduced to 10 business days. This is not the Government's money to hold.</p> <p>See also Section 4.2.5 for related refund and release issues.</p>
12	Scheme annual report (Clause 72(2)(b))	<p>While there is some detail on the required inclusions for the Scheme annual report in the Bill, one is that the report must contain '<i>a summary of information received from the public during the year of the report about the effectiveness of the scheme</i>'. It is unclear what this is meant to achieve.</p> <p>QRC asks that the report specifically include detail on what funds may have been expended, and on what, as this has not been included despite several previous requests.</p> <p>In addition, the Annual Report should include details of how the Fund rates (particularly if changed from year to year) have been derived (e.g. a level of benchmarking from external sources).</p> <p>QRC asks the Committee to ask the Government what the 'summary of information for the public' in the Scheme's annual report means and what it is meant to achieve as well as a number of other points needed to clarify the contents and operation of the annual report.</p>

Ref.	Section	Issue and recommendation
13	Inclusion of an appeal process (Clause 74)	<p>The Government has not accepted the sector's position of including an appeal process for the risk categorisation decision.</p> <p>The Bill only allows for a relevant holder to make a submission on aspects of categorisation decisions and go to Judicial Review under Clause 74. This is not sufficient to recognise the importance of these decisions for companies and all related decisions should be appealable. The current Government response to this matter is nonsensical.</p> <p>See Section 4.2.4 for further information and recommendations.</p>
14	Duties of confidentiality (Clauses 79 to 82. See also Right to Information clauses)	<p>Although the penalty in clause 82 has been doubled, overall the penalties are still too low given the significance of breaching confidentiality of a company's financial position. Government is of the view that the penalties are consistent with similar legislation. This is not QRC's position.</p> <p>QRC suggests that the Committee recommend a re-consideration of all penalties in relation to the Scheme given the potential financial and market impacts on a company of releasing the financially sensitive and commercial-in-confidence information required for the risk categorisation system.</p>
15	Advisory Committee (Clause 83)	QRC asks the Committee to recommend that the Advisory Committee membership be expanded in the Bill to include two resources representatives – one from mining and one from petroleum and gas.
16	Release of surety instruments on payment into the Fund	QRC asks the Committee to recommend the amendment of the transitional provisions in Part 7 (see Section 4.2.5) to match the Government's intent not to hold both a pre-existing FA instrument and any amount paid into the Fund simultaneously, and ensure the return of such pre-existing FAs as soon as is practicable.
17	Amendment of <i>Mineral and Energy Resources (Common Provisions) Act 2014</i> (Clause 207, insertion of new s20A)	<p>This Clause introduces for the first time the power for the Minerals and Energy Minister to prevent the registration of a transfer until the new entity has paid, what is effectively, a replacement surety or contribution to the Fund. Previously this restriction on transfer registration had been limited to where there were unpaid royalties or where a security (under the various resources acts) is required. Although DES currently withholds the release of the transferors FA until such transfers have been registered, they did not appear to be doing so with any head of power.</p> <p>This is a notable change in the legislative framework for transfers and has not been discussed with the resources sector, nor is it adequately explained in the Explanatory Notes. We also believe that the rightful place is within the financial provisioning component of the Bill rather than in the <i>Mineral and Energy Resources (Common Provisions) Act 2014</i> (MERCPA) amendments. It has the real potential to limit or prevent transfer of tenures to smaller companies whose risk category may be considered higher and the new operator having to pay FA/ surety before a transfer is complete.</p> <p>QRC asks the Committee to clarify with Government the reason for the change, which up to now does not appear to have had such a head of power, and why it has been included in the amendments to MERCPA rather than in the financial provisioning Changed holder part of the Bill as it relates to the ERC.</p>

4.4 RELATED MATTERS PERTAINING TO THE BILL

4.4.1 *Removal of company-owned calculators and replacement estimated rehabilitation cost (financial assurance) calculators*

As noted in **Section 2.1.1**, there is likely to be an increase in the amount of ERC for those companies who have been using their own ERC (Government accredited) calculators. QRC is aware that the Government is attempting to get updated versions of both the Petroleum and Gas and Mining calculators ready for the 1 July 2018 start date of the Scheme. However, given the loss of company-owned calculators, there needs to be an ongoing process, adequately resourced by Government, to regularly (e.g. no less than every two years) update the Government calculators to keep them relevant to the times and technology (e.g. new infrastructure that one company may have that others do not, infrastructure to be built in the future or brine management options which are not costed in the calculator as it stands).

Given the new ERC framework is a key part of the Bill, all of the other accompanying components must be reliable. QRC asks the Committee to seek clarification from Government as to how they will ensure the ERC calculators will be kept up to date. This includes adequate resourcing of regular reviews.

4.4.2 *Funds not to be used from the Fund for those companies who have only provided a surety*

Government has indicated that funds from the Fund will not be used to account for companies who provide only surety, however, this intent is not reflected in the Bill.

QRC asks the Committee to recommend that the Bill clearly state that the Fund will not be used for companies who have provided sureties only, rather than leaving it to Government 'intent'.

4.4.3 *Abandoned Mine Lands Program*

Government still needs to provide a clearer link to the integrity of the Fund with the allocation of monies from the Fund to the Abandoned Mine Lands Program (AMLPL). So far, the Government has been unwilling to reveal how the Fund's stability will be assured, particularly in the case where QRC has previously been informed that a set amount will be regularly drawn upon from the Fund.

Note that QRC will not see Government's discussion paper on the AMLPL until after the submission period on the Bill.

QRC asks the Committee to seek an explanation from Government on the interaction of the AMLPL with the Fund, particularly how it will access amounts from the Fund while maintaining the stability of the Fund. Further Government should be asked whether there is a pre-budgeted amount for this draw-down.

4.4.4 *The interaction of the Fund and Chain of Responsibility legislation*

As set out in **Section 4.2.1**, CoRA and the order of drawdown from the Fund has still yet to be defined. Government has previously suggested QRC should look to the CoRA Guideline for the answer, however, this guideline was developed before the Fund proposal.

QRC asks the Committee to seek a response from Government on the interaction of the Scheme with CoRA, which does not refer back to the CoRA Guideline.

5 FINANCIAL PROVISIONING RISK CATEGORISATION

QRC understands that the risk categorisation system for the Scheme is not directly within the remit of the Committee, but for the record, we would like to outline the below key concerns, particularly pertaining to the RPCA as we understand it at this point in time. This is necessary given the complete intertwining of the rules for the categorisation with the establishment of the Scheme and that the resources sector has not had any opportunity to comment on the related statutory guideline.

5.1 RESOURCE PROJECT CHARACTERISTICS ASSESSMENT

5.1.1 *Remaining life of a resource*

The originally proposed 20 year (plus) remaining life is too long to achieve the maximum score. QRC is proposing 10 years for reserves or a link with the definitions (e.g. using 'resources' for a longer period even though it does not have as much weight as reserves). This supports a value approach rather than a timeframe approach to resources. Government needs to take into account that the definition of reserves versus resources and Life of Mine is dependent not only on exploration data but also tenure applications and approvals, the stage of expansionary projects etc.

Government also needs to consider a more scalable methodology, such as a percentage left of mine life. This would be more suitable for smaller operations that may only have a 10-year mine life.

5.1.2 *Offtake arrangements*

The current definition provided to the resources sector for an acceptable offtake agreement is one where 'counterparties must be unrelated parties'. It has been discussed previously with Government, that this definition would not be absolute, but could have a threshold percentage.

Government also needs to make clear what percentage of future closure costs or current capital investment should be covered by the margin on the offtake agreement (e.g. a mine with a 10-year mine life but a five-year offtake agreement).

5.1.3 *Other factors in abeyance but still included*

It remains a concern that the factors of quality of resources, position on the cost curve, and market outlook for a commodity, as previously discussed with Government, may become future considerations in the RPCA. Evidence of this sits within the recent release of the Request for Offers for the appointment of the critical Risk Advisor position.

These factors can be a concern for different reasons for different companies because:

- They already contribute to the definition of reserves and the RPCA needs to ensure it does not double count factors; and / or
- They will differ across companies based on their policies and procedures and therefore a standard cannot be enforced.

5.1.4 *Rehabilitation*

Rehabilitation should be considered more highly in the ratings and the weighting should rise in value as rehabilitation increases over time in line with the life of the mine and rehabilitation stages identified for the PRCP/annual reporting.

5.2 REVIEW PERIODS

Currently, the proposal is that the Scheme Manager is to undertake a review of the Scheme on an annual basis with the Risk Advisor delivering its own review and recommendations for changes to the framework. These reviews would then change to be bi-annual after three to five years. The resources sector would like clarity on what appears to be a constant reviewing of the framework (unless material) in order to establish some certainty and predictability.

6 PROGRESSIVE REHABILITATION AND CLOSURE PLAN

The following section provides comment on the Bill and Explanatory Notes to the Bill as it relates to the introduction of the PRCP under amendments to the EP Act. These comments also have relevance to the Government's *Mined Land Rehabilitation Policy*, which informed the Bill.

6.1 MATTERS OF SUPPORT

QRC commends the Government for recognising the need, and providing additional time, for the supporting guidance materials to be developed and tested prior to formal implementation of the PRCP legislative framework. This approach will better prepare the mining sector and DES for the change and transition to the new framework. In this regard, QRC supports:

- The staged approach for legislative commencement of the PRCP component of the Bill by provision of the 'PRCP start date' (s750) to mean the day, prescribed by regulation for this definition, that is no later than 1 July 2019;
- The transitional provision (s754), which allows for up to a three-year period from the PRCP start date for holders of an EA to provide a PRCP schedule;
- The intent outlined in the Explanatory Notes that "plans of operations will be phased out for mining operations with minimum administrative burden for both industry and government"; and
- The intent outlined in the Explanatory Notes that where post-mining land uses or non-management areas have already been specified in an Environmental Impact Statement (EIS), EA conditions, Plan of Operations, or other written agreement the Department should be able to allow these to be transferred into the new PRCP format without the need for public notification.

6.2 OVERVIEW OF MATTERS OF CONCERN

Progressive rehabilitation is undertaken in line with the scheduling of operations, which varies regularly in response to market fluctuations and customer product specifications. The ability for operations to be flexible to such changes facilitates a competitive mining sector both within Australia and globally.

While there is merit behind the introduction of the PRCP, QRC is concerned that the Bill does not adequately accommodate the dynamic nature of mining operations. As drafted, the articulation of key concepts, definitions and terms, and associated processes will impact the ability for proponents to respond to external variables as well as drive perverse rehabilitation outcomes, which work against the purpose of the PRCP and Government's intent. A complete outline of QRC's issues as it relates to PRCPs is provided in following sections. In this regard, QRC cannot support the Bill in its current form.

Further, it is difficult to test the appropriateness of the Bill in the absence of the supporting guidance material and direction for what a PRCP will practically entail. Based on DES's timeline, this information will not be available for consideration in the Committee process.

The sector needs:

- Practical rehabilitation arrangements in the short-term to offer clear rehabilitation commitments; with
- Flexibility to respond to external variables whilst still giving the Government and community confidence in the direction of rehabilitation and post-mining land use outcomes in the long-term.

6.3 DEFINITIONS AND TERMS

There are a number of definitions and terms in the PRCP component of the Bill that are:

- Subjective and open to differing interpretation;
- Inaccurate, particularly as it relates to well-known concepts used and accepted across the mining sector and many departments within Government; and/or
- Do not exist.

While it is understood that a statutory guideline will elaborate on these definitions and terms to provide greater clarity, it is critical that the Bill itself contains the correct definitions rather than leaving them to a subordinate legislative instrument.

Table 2 outlines the key issues and recommendations regarding definitions and terms in the Bill, as it relates to the PRCP component.

Table 2 Key issues and recommendations as it relates to PRCP definitions and terms in the Bill

Ref.	Section	Issue	Recommendation
1	Part 8	<p>relevant activity and mining activities</p> <p>The term '<i>relevant activity</i>' as it relates to a PRCP, and having regard to the definition of <i>relevant activity</i> under the EP Act (Schedule 4, Dictionary), means the relevant activity/ies to be carried out on land the subject of the Plan. The Explanatory Notes suggest that this term is intended to mean 'mining activities and rehabilitation activities', although the Bill itself does not say so.</p> <p>As such, the term <i>mining activities</i> is not limited to extraction, but rather, includes all associated infrastructure authorised under the <i>Mineral Resources Act 1989</i>.</p> <p>The definition of 'post-mining land use' under the Bill "<i>means the purpose for which the land will be used after all relevant activities for the PRC plan carried out on the land have ended</i>". In this context, and having regard to the term <i>mining activities</i>, the Bill cannot allow for the continuation of any of the infrastructure that a proponent has constructed as part of mining operations and that the next landowner has advised, under agreement, to keep (e.g. roads, water supply dams, workshops, quarry), because. This would also be inconsistent with the existing provision in the <i>Mineral Resources Act 1989</i> enabling infrastructure to be retained¹.</p>	The term relevant activity in the context of a PRCP should be amended to mean mining activities as it relates to extraction. It should not preclude the retention of infrastructure for the next land use.
2	98, s111A	<p>stable condition</p> <p>The definition attempts to provide a revised version of the four rehabilitation goals for areas disturbed by mining, as it is stipulated in the Queensland Government's <i>Rehabilitation requirements for mining resource activities guideline</i> (EM1122) and well-understood within the mining sector, including:</p> <ul style="list-style-type: none"> • Safe to humans and wildlife; • Non-polluting; 	The definition should be re-drafted to reflect the four rehabilitation goals, separately, as currently accepted by Government and the mining sector.

¹ Fulcher, J and Bowie, L Managing environmental risks effectively post-rehabilitation for all stakeholders: legal options for coal miners, landholders and governments to manage post-coal mining rehabilitation and land-use risks, 2018.

Ref.	Section	Issue	Recommendation
		<ul style="list-style-type: none"> • Stable; and • Able to sustain an agreed post-mining land use. <p>As provided in the guideline, "the rehabilitation goals have been developed from the ESD [ecologically sustainable development] policy framework".</p> <p>With the term 'stable' already having a technical meaning, the Bill creates confusion with the established rehabilitation goals.</p>	
3	98, s111A	<p>stable condition</p> <p>The four rehabilitation goals as provided in <i>Rehabilitation requirements for mining resource activities guideline</i> (EM1122) are provided in the context of final rehabilitation for the purpose of being able to relinquish along with relevant considerations for progressive certification.</p> <p>In consultation with DES during late 2017 and in correspondence dated 28 February 2018, the Department advised that <i>stable condition</i> is also provided in the context of final rehabilitation outcomes of an area proposed as a post mining land use for the purpose of being able to relinquish, and not active progressive rehabilitation during operations.</p>	The definition and/or Explanatory Notes should be re-drafted to reflect the intent that the four rehabilitation goals or (as drafted) <i>stable condition</i> is provided in the context of final rehabilitation following completion of all relevant mining activities for the purpose of relinquishment.
4	98, s111A(a)	<p>stable condition</p> <p>Subsection (a) provides that a <i>stable condition</i> is achieved, in part, when "the land is safe and structurally stable". However, structurally stable does not accurately reflect the mechanics of pre-existing geology and earth materials once excavated and used as part of mining operation. This is better considered in the assessment of geotechnical stability.</p>	Subsection (a) of the definition should be revised having regard to geotechnical stability.
5	98, s111A(b)	<p>stable condition</p> <p>Subsection (b) provides that a <i>stable condition</i> is achieved, in part, when "there is no environmental harm being caused by anything on or in the land". However, this requirement should be provided in the context of offsite impacts. As currently drafted, it could be interpreted that material deemed a contaminant, however, confined to the site (e.g. tailings dam) does not qualify that site as having achieved a stable condition.</p>	Subsection (b) of the definition should be revised to provide that the rehabilitation goal of non-polluting or (as drafted) environmental harm be considered in the context of offsite impacts.

Ref.	Section	Issue	Recommendation
6	98, s111A(b)	<p>stable condition</p> <p>Subsection (b) provides no allowance for future uses that aren't mining that cause environmental harm. For example, it might be better to repurpose mining land as an industrial activity that requires an Environmentally Relevant Activity, or to allow better realisation of the resource next door. The use of the term 'no environmental harm' is too restrictive and does not contemplate such other uses. Failure to allow for repurposing of areas into an acceptable and productive 'next' or 'post-mining' use has the real potential to restrict economic development activities and possibilities.</p>	The term 'no environmental harm' should be amended so that it is 'no environmental harm that is not authorised'.
7	98, s111A(b)	<p>stable condition</p> <p>Subsection (b) provides that a <i>stable condition</i> is achieved, in part, when "there is no environmental harm being caused by anything on or in the land". However, the definition does not take into account that mine operations often co-exist with other land uses operated by third parties that may occur within the Mining Lease, such as overlapping tenures for other resource activities, powerline easements, substations, railways, and roads. Given these other land uses may operate outside of a proponent's control, it is necessary to recognise that these uses may cause environmental harm on or in the land. The impact of others should not become a burden on the proponent¹.</p>	Subsection (b) of the definition should be revised to better account for the environmental impacts of co-existing land uses on a Mining Lease that is outside of a proponent's control to manage. In these circumstances, the definition should not preclude a proponent from achieving the four rehabilitation goals or (as drafted) a <i>stable condition</i> .
8	99, s112	<p>rehabilitation milestone</p> <p>The definition does not adequately reflect the Government's intent for a <i>rehabilitation milestone</i> to be binding, enforceable, time-based, provide transparency on progress, and allow progress to be reported. DES engaged consultants KBR-Landloch in late 2017 to undertake a review of best practice rehabilitation for the purpose of providing technical advice for the PRCP guideline. As part of this work, KBR-Landloch recommended a revised definition of <i>rehabilitation milestone</i>, which better articulates Government's intent.</p>	The definition should be re-drafted to "A <i>significant event or step in the rehabilitation process that is able to be used to measure and demonstrate the progress of rehabilitation over time</i> " consistent with the alternative drafting provided by KBR-Landloch.
9	99, s112	<p>non-use management area</p> <p>The artificial distinction between 'uses' and the term <i>non-use management area</i> does not appear to have a precedent. For example, on an ordinary residential lot, it is not unusual for parts of the</p>	Given the laws that apply post-relinquishment, the definition should specify constraints on the broader land use as opposed to referring to it as a <i>non-use management area</i> .

Ref.	Section	Issue	Recommendation
		land to be subject to some constraints on use, such as a prohibition against building over a sewer, or an easement to protect a neighbour's retaining wall. It follows that, once land previously subject of mining has been relinquished, <i>non-use management areas</i> under PRCPs will not make sense under the normal planning and valuation of land framework ¹ .	
10	99, s112	management milestone The definition does not consider the rehabilitation goals that would generally be required to fulfil EA requirements for a ' <i>non-use management area</i> '. For example, a void (not on a flood plain) will be required to be safe, stable and non-polluting.	The definition should be revised to include the rehabilitation goals of safe, stable (or geotechnical stability) and non-polluting (as to be consistent with <i>rehabilitation milestone</i>) without the need for the land to sustain a post-mining land use. This aligns with the definition of a non-use management area given the land cannot achieve all of the rehabilitation goals or (as drafted) <i>stable condition</i> .
11	99, s112	post-mining land use The definition is definitive in the way it describes how the land <u>will be used</u> post-mining. However, this is restrictive given the next landholder may decide to use the land differently than that stipulated in a PRCP.	The definition should be revised to " <i>...means the purpose for which the land is able to be used after all relevant activities for the PRC plan carried out on the land have ended</i> ".
12	104, s126C(1)(d)(i)	The term <i>community</i> is too broad, which in turn casts the net too wide for the purpose of engagement. This is emphasised by the extent of the list which the Government intends community to mean in the Explanatory Notes.	The term <i>community</i> should be changed to 'relevant stakeholder/s'.
13	104, s126C(1)(e) s126C(1)(i)	Using the term <i>method</i> and <i>methodology</i> may unintentionally be taken to imply a prescriptive description. The provision is better to rely on the existing term <i>techniques</i> and/or supported by alternative drafting.	The term <i>method</i> and <i>methodology</i> should be replaced with 'processes' or 'approaches'.
14	104, s126C(1)(i)	The term ' <i>best practice management</i> ' is vague and subjective.	The term ' <i>best practice management</i> ' should be removed. Having regard to the item above, subsection (i) should be re-drafted to "for each proposed non-use management area, state the applicant's proposed processes to achieve the management milestones under the proposed

Ref.	Section	Issue	Recommendation
			PRCP schedule for the area".
15	104, s126D(3)	<i>flood plain</i> The term <i>flood plain</i> has not been defined.	Reference should be made to the definition of floodplain as provided in Schedule 4 of the <i>Water Act 2000</i> .
16	104, s126D(5)(a)	<i>available for rehabilitation</i> The term ' <i>operating</i> ' infrastructure or machinery constrains some operations, such as those in 'care and maintenance', or when operations cease and infrastructure/machinery is being retained as an asset.	The term <i>operating</i> should be omitted.
17	104, s126D(5)(b)	<i>available for rehabilitation</i> The definition currently allows, and hence exempts, " <i>relevant activities to which the schedule relates as containing a resource to be mined</i> " from being land available for rehabilitation. It is not clear if the term <i>relevant activities</i> extend to areas ancillary to the resource, such as pit highwalls and overburden emplacement areas, which may be used for access or in the extraction process. This subsequently adds to the concern that the definition does not accommodate circumstances where an operation is in care and maintenance as outlined above.	The definition should be re-drafted to provide that land is available for rehabilitation unless the area is ancillary to the resource, such as associated infrastructure, pit highwalls or overburden emplacement areas, which may be used for access or in the extraction process, tailings/rejects emplacement or storage facilities, which will be used for disposal of process waste streams when the extraction or beneficiation processes are occurring.
18	104, s126D(6)	<i>Void</i> The definition is not technically correct. As drafted, the definition implies that a void is an area to be excavated as part of mining as opposed to an excavated area that remains following mining.	The definition should be re-drafted to " <i>final void</i> – an excavated area, for the purpose of extracting ore, that remains following the completion of mining activities".

6.4 PLANNING PART OF THE PROGRESSIVE REHABILITATION AND CLOSURE PLAN

6.4.1 Community consultation

The planning part requires the proponent to demonstrate community consultation for the development of the PRCP and throughout the life of the operation for rehabilitation more broadly.

While the mining sector is happy to engage and build good relationships with the community, in particular affected neighbouring stakeholders, there will always be differences of opinion with regard to operations and the next land use as agreed with Government. In this regard, the term 'community' in Clause 104, Section 126C(1)(d)(i) is too broad, which in turn unnecessarily casts the net too wide for the purpose of engagement. Further, under this provision it is not possible for a proponent to fully align the post-mining land use or non-use management area 'consistent with' the outcomes of consultation with the community in developing the PRCP.

QRC recommends that Section 126C(1)(d), as it relates to subsection (i), be re-drafted to state "... identified in the proposed PRCP schedule, to the extent to which it is consistent with – (i) the outcome of consultation with the community in developing the plan" and the term community be changed to 'relevant stakeholder/s'.

In addition, Clause 104, Section 126C(1)(c)(iv) requires details of ongoing consultation in relation to rehabilitation to be carried out under the PRCP. It is unnecessary to legislate ongoing consultation when a large number of proponents already operate under a legally required code and compensation agreement, more than understand the importance of operating in good faith, have formed Community Reference Groups and other forums, and use tools, to keep relevant stakeholders informed of operations and its performance, including rehabilitation efforts. Further, once consultation undertaken for the development of a PRCP, where applicable, has been carried out, rehabilitation performance is communicated through annual reporting that will be made publicly available under the new requirements of the PRCP framework.

There is, and will continue to be, avenues for community engagement and public transparency throughout the life of Queensland's mining operations without having to regulate ongoing consultation. As such, QRC recommends that Section 126C(1)(c)(iv) be omitted from the Bill.

6.4.2 Planning for a post-mining land use and the rehabilitation hierarchy

Clause 104, Section 126(C)(1)(d) requires a proponent to specify the intended post-mining land use/s, and as provided in **Section 6.4.1**, this should be to the extent to which it is consistent with community consultation.

DES currently adopts a rehabilitation hierarchy to prevent or minimise environmental harm and guide the post-mining land use priorities:

1. Avoid disturbance that will require rehabilitation;
2. Reinstatement a "natural" ecosystem as similar as possible to the original ecosystem;
3. Develop an alternative outcome with a higher economic value than the previous land use;
4. Reinstatement previous land use (e.g. grazing or cropping);
5. Develop lower value land use; and
6. Leave the site in an unusable condition or with a potential to generate future pollution or adversely affect environmental values.

QRC has long argued that the rehabilitation hierarchy is not appropriate. DES's approach has the potential to (and in the past has) contradict stakeholder expectations, specifically when a company has consulted and agreed on the next land use with relevant stakeholders consistent with local planning instruments.

QRC recommends that the current rehabilitation hierarchy be removed from any guidance material moving forward.

6.4.3 Risk assessment

Clause 104 provides that the planning part of a PRCP is to include a risk assessment of a *stable condition* not being achieved. As drafted, there is the potential for the risk assessment to extend to matters well beyond the remit of a proponent's control.

In evaluating if a post-mining land use area is not able to achieve a *stable condition*, the only risks that should be considered are:

- Credible and material; and
- Related to environmental risks that are within the proponent's ability to control and manage, such as management of onsite rehabilitation failure, containment and/or treatment of contaminants from moving off site, changes in activities in response to weather and seasonal events (e.g. drought, fire, flood).

There are other external risks, such as changes in market variables, that could influence or result in a proponent not being able to achieve a stable post-mining land use, however, these can only be identified not assessed as part of a risk assessment given it cannot be controlled or managed by the business. Further, these risks may not necessarily be anticipated at the time of the risk assessment, and therefore the assessment of the likelihood of this occurring would be impossible to establish upfront.

QRC recommends that the risk assessment component of a planning part of a PRCP be re-drafted and broken into two subsections. Section 126C(1)(f) could be amended to:

"identify the risks of a stable condition for land mentioned in paragraph (e) not being achieved, and state how the applicant intends to manage or minimise the risks, by –

(i) identifying and assessing the credible and material risks of a stable condition for an area not being achieved as it relates to environmental factors that are within an applicant's ability to control or influence, and how these risks will be managed or minimised as low as reasonably practicable; and

(ii) identifying any other risks that are not identified in 126C(1)(f)(i), noting that these risks may not be able to be assessed".

6.5 PROGRESSIVE REHABILITATION AND CLOSURE PLAN SCHEDULE

For the purpose of this section, and given the supporting guidance material to the PRCP is yet to be developed, QRC assumes that a milestone, in a practical sense, can be represented by any of the following activities that contribute to achieving the four existing rehabilitation goals and site-specific completion criteria:

- Engineering designs of landforms to be rehabilitated;
- De-contamination of an area;
- Decommissioning of infrastructure or another feature;
- Landform development (shaping);

- Cover placement (e.g. topsoil, seed, capping);
- Cover establishment (e.g. vegetation maturation, meeting the rehabilitation completion criteria).

6.5.1 *Need for a mechanism to routinely review long-term milestones*

As drafted in the Bill, a PRCP schedule is approved once upon transition to the new framework and is intended to outline all milestones from the date of commencement throughout the life of operations, into closure and, as needed, upon approach to relinquishment. For many existing and new operations, this means getting one chance to forecast out the completion date of milestones for multiple areas across the site for decades (e.g. 20, 50 years).

Beyond the immediate three years of operations, it is difficult for the mining sector to accurately forecast long-term milestones given the dynamic nature of operations in response to ongoing and short-term changes in market and customer demands. This becomes particularly difficult with large dynamic multi-pit mining operations where mining will occur for thirty years (as an example) but may continuously switch on and off possibly between up to 12 or 15 locations to allow for market fluctuations and delivery of customer-specific product blends and mixes.

As drafted, the Bill fails to accommodate a routine review and update process to refine long-term milestones in the PRCP schedule without it being considered as a major amendment with full submission and objection rights (see **Section 6.6**). This is one of the most critical issues for the mining sector and requires the Committee's attention and careful consideration. The mining sector holds a grave concern that this will severely impact business flexibility, which is a direct risk to investment certainty.

While the PRCP reform was being developed between May and October 2017, QRC consistently tried to demonstrate to Government, in particular DES, the need for a routine review process. QRC proposed that a PRCP schedule outline:

- Detailed short-term milestones (i.e. first three years of the PRCP) consistent with the three-year audit cycle; accompanied by
- A long-term line of sight for rehabilitation activities through to closure and relinquishment, which could be represented in an alternative format, such as a remaining disturbance footprint or staged forecast as generally outlined in an EIS or similar approval (e.g. staged mine plans – such as Year 10, 15, 20), or for older mines, an Environmental Management Overview Strategy, Environmental Management Plan or equivalent.

In approaching the end of the first three years of the Plan, or as agreed with the administering authority, the PRCP schedule would be formally reviewed with Government with the sole intent of tightening the operational and rehabilitation commitments for the next three-year period.

Unfortunately, this proposal, which was tested with QRC's mining members, was overlooked in Government's development of the Bill.

While it is important for proponents to have a line of sight to the final landform and next land use, it is inappropriate to make the entire mining sector predict individual milestones into the future, as part of a PRCP schedule. This approach also has the potential to drive a perverse environmental outcome of delayed progressive rehabilitation because of the invariable need for a company to include notable time contingencies in their milestone commitments. This is precisely what the Government is using the Bill to ultimately avoid.

QRC is of the view that the sector's concern can readily be resolved by, and as such it recommends, including a mechanism in the Bill, which allows a PRCP schedule to be amended on a routine basis to refine long-term milestones. It would also align with other jurisdictions within Australia, where there remains flexibility to refine long-term rehabilitation targets whilst having a clear direction for closure and the post-mining land use.

Further, this mechanism should not be subject to public notification or right to submissions given that it does not affect the post-mining land use outcome. It simply affords a process to more accurately forecast milestones, upon approach, over time.

6.5.2 Appropriateness of time-based milestones

Establishing time-bound targets is suitable for some milestones, such as landform development and cover placement, which can be better planned and managed by a proponent. However, this approach is not always feasible for other milestones, particularly activities associated with vegetation growth, given there are too many external variables (e.g. weather) outside of the proponent's control that can affect the progress and success.

Given the PRCP schedule will be used to assess compliance, it would be unfair to penalise a proponent for not having achieved the target cover establishment by a set date due to unforeseen weather. This supports QRC's argument, where if all milestones are to be time-based, there needs to be greater flexibility to refine long-term forecasts (see **Section 6.5.1**). Again, where the mining sector is forced to commit to unrealistic timeframes or set targets for reaching progressive rehabilitation goals where they have limited control, the process will inevitably drive perverse outcomes, and dampen Government's political needs to promote the success of this significant policy reform.

6.5.3 Interactions with and consideration of other instruments

The Department of Natural Resources, Mines and Energy (DNRME) provides in their *Operational policy for deciding the term of a mining lease* that a guidance benchmark of 25 years is generally the maximum term that will be accepted for the purpose of granting a Mining Lease under the *Mineral Resources Act 1989*, noting that the term is ultimately determined at the discretion of the Minister. As such there is no guarantee that a Mining Lease will be renewed to facilitate the relevant activities for the PRCP beyond the granted term. QRC recommends that the Committee seek clarification from the Government as to how the PRCP will interact with other resource instruments, such as a Mining Lease.

DNRME also require Initial or Later Development Plans every five years to support a Mining Lease. As outlined in the *Development plans and work programs guide*, the principal objectives of a Development Plan are to:

- Provide a better understanding of the nature and extent of the proposed development and production of mineral resources from the lease;
- Allow an assessment of the proposed development and whether it is appropriate with respect to the area, resource and state and people of Queensland;
- Assess the prospective resource utilisation and identify any resource sterilisation issues;
- Allow appropriate resource management decisions to be made.

It is clear that DNRME understand the dynamic nature of mining operations with a short-term focus reflected in the term for Development Plans. This adds to the reasoning behind QRC's early proposal to Government and need for a routine review mechanism of a PRCP schedule as outlined in **Section 6.5.1**.

6.6 AMENDMENTS

6.6.1 Minor amendment (PRCP) threshold

Clause 143, Section 223 defines a *minor amendment (PRCP threshold)*, which stipulates circumstances for which a proponent may apply for a minor amendment. Subsection (e) states "does not change when a rehabilitation milestone or management milestone will be achieved by more than 5 years after the time stated in the schedule when it was first approved".

While the mining sector understands the importance of adhering to the commitments of a PRCP, there are circumstances, some of which are outside the sector's control, where forecasted operations, and hence rehabilitation milestones, will need to change. For example, market fluctuations can change demands for individual sites and the sector more broadly. This can affect production rates (reduction or increase) along with the location and sequence of reserve/s approved to be mined, which in turn can affect land *available for rehabilitation*. This is also complicated with the need to respond to changes in weather, particularly extreme conditions (i.e. flood and drought).

With a number of unforeseeable changes or events to occur into the future, it is inappropriate to make the entire mining sector predict individual milestones for decades to come but also restrict the timeframe to achieve such milestones to no longer than five years from the date specified in the PRCP schedule. Such a short contingency can disappear when forecasting, for example, 50 years in advance. This further justifies the need for a mechanism to routinely review long-term milestones as highlighted in **Section 6.5.1**.

Where a milestone cannot be met within the specified timeframe (i.e. no longer than five additional years from the PRCP schedule date), a proponent is consequently captured under a major amendment and subject to public notification and right to object provisions (see Clause 113, Section 150 and Clause 115, Section 160). As explained in **Section 6.6.2**, and under the above unforeseeable circumstances, QRC recommends that the administering authority have discretionary rights to:

- Assess a major PRCP amendment as a minor amendment despite it being inconsistent with the *minor amendment (PRCP threshold)*; or
- Decide whether a major PRCP amendment needs to proceed to public notification, as it currently does for major EA amendments.

Despite the current definition, QRC is of the view, and as such strongly recommends, that many of the above concerns could actually easily be resolved by streamlining and amending the *minor amendment (PRCP threshold)* to:

for a PRCP schedule, means an amendment that –

- (i) Does not change the post-mining land use; and*
- (ii) Does not materially increase the disturbance footprint or have a significant additional impact on environment values beyond approved relevant activities.*

6.6.2 Administering authority discretion limitations

Clause 147, Section 228 allows the administering authority discretion to decide, as part of the assessment level decision process, where a PRCP amendment is not consistent with the '*minor amendment (PRCP) threshold*' (i.e. major amendment) that the application will be accepted as a minor amendment. The circumstance where this discretion will apply is limited to a change in rehabilitation sequence (order) of two or more areas. For example, a site committed to rehabilitating Area A but due to changing market demands, and as such workings, Area B is now available.

To satisfy the administering authority that the application is a minor amendment, a proponent is required to demonstrate "*adequate consultation with the community in relation to the proposed amendment*".

Currently, under the EP Act, there is no requirement for public notification with regard to a minor EA amendment. In this regard, it is not clear as to the need for any form of consultation with the community, or to what extent, when the administering authority has a defined circumstance (i.e. re-sequencing) where they can afford discretion. Section 228(1A)(a) as drafted offers little difference in process when compared to a major amendment, where a proponent is subject to public notification and consequently right to submission.

The amendment circumstances which the administering authority has discretion to determine as minor is very limited. As recommended in **Section 6.6.1**, the administering authority should have a broader scope to their discretionary rights to:

- Assess a major PRCP amendment as a minor amendment despite it being inconsistent with the *minor amendment (PRCP threshold)*; or
- Decide whether a major PRCP amendment needs to proceed to public notification, as it currently does for major EA amendments.

For both major and minor PRCP amendments, there needs to be greater equity and consistency with existing EA amendment provisions.

As such, QRC recommends that the Bill be re-drafted to allow:

- For major and minor PRCP amendments to be consistent with existing EA amendment provisions. This should also be recognised in the supporting guideline as it is for the *Major and minor amendment guideline* (ESR/2015/1684) under the EP Act; and
- Re-sequencing of operations, and hence rehabilitation, be exempt under the *minor amendment PRCP threshold* allowing it to be considered a minor amendment provided it meets amendments (i) and ii) to the *minor amendment (PRCP threshold)* as outlined in **Section 6.6.1**.

6.6.3 Consequential amendments and timeframes

Part 15, division 1, Section 316H(4) provides that where a PRCP schedule is amended, the holder only has 10 business days to also update the rehabilitation planning part of the PRCP. This may be too short depending on the extent of changes required, particularly if the amendment is called in by DES and not the proponent. QRC recommends that the timeframe needs to be extended to a minimum of 20 business days, consistent with existing Plan of Operations processes, or longer as agreed with the administering authority.

6.6.4 Other amendments

The Bill provides for 'other amendments' including:

- An amendment of the PRCP schedule in response to the outcomes of an audit report (Clause 136, Section 215(2)(h));
- An amendment of the PRCP schedule to the extent necessary because of progressive certification (Clause 180, Section 318ZJA); and
- An amendment of the PRCP schedule where a surrender application is approved (Clause 169, Section 275A).

It is not clear if these other amendments represent a major or minor amendment. QRC recommends that other amendments should be specified in the Bill as minor.

6.6.5 Amendments to a Progressive Rehabilitation and Closure Plan upon surrender

Clause 169, Section 275A provides for the amendment of a PRCP where a surrender application is approved. The concern is that subsection (2) requires the administering authority to amend the PRCP schedule, which would also affect the planning part of the PRCP (as is currently required under Section 226B), to reflect the area surrendered. However, QRC is of the view that it would be more appropriate for a proponent to amend a PRCP schedule and planning part (PRC plan) for the administering authority's assessment and decision rather than the administering authority undertake this exercise themselves. This should also be supported by an internal review process to allow for dispute-resolution instead of proceeding directly to the Land Court (see also **Section 7.2.4**).

QRC recommends that Section 275A be amended to:

- Require proponents to amend a PRCP schedule within a relevant period to reflect the surrender. This period should correspond with the timeframe to provide an amended PRCP planning part (PRC plan) (see recommended timeframe in **Section 6.6.3** as it relates to Section 316H)).
- Reference Section 226B requiring the holder to provide an amended PRCP planning part (PRC plan) within the relevant period (see recommended timeframe in **Section 6.6.3** as it relates to Section 316H));
- Provide or reference provisions relevant to the administering authority's assessment and decision processes with the option for internal review of the PRCP if any disputes (see recommendation in **Section 7.2.4**); and
- Require the administering authority to include a copy of the amended PRCP schedule on the relevant register (as per Section 275A(2)).

6.6.6 Amendments to a Progressive Rehabilitation and Closure Plan post-mining land use consistent with government planning instruments

The definition of *minor amendment (PRCP threshold)* in Clause 143, Section 223 provides that any change in post-mining land use or non-use management area will be considered a major amendment and be subject to public notification and right to submissions (see Clause 113, Section 150 and Clause 115, Section 160). However, this does not accommodate a change in land use that is consistent with a government planning instrument.

A proponent is still required to proceed through public notification and be subject to right to submissions even if the land use is proposed to be changed to 'accepted development' for the area², listed in the local planning scheme. For example, if it is proposed to change forestry to grazing within a Rural zone, or vice versa (consistent with the example provided in the Explanatory Notes, page 91). This is despite the fact that the planning instrument has already been through a statutory public notification process, with submission rights available, and has been subject to State interest checks, before it takes effect. Consequently, the requirement for a proponent to go through another public notification process for the same types of 'accepted development' on the same land is a duplication¹.

QRC recommends that the definition of *minor amendment (PRCP threshold)* in Clause 143, Section 223 allow for a change in post-mining land use or non-use management area without being subject to public notification and right to submissions when it is consistent with a government planning instrument.

6.7 VOIDS

6.7.1 Rehabilitating a void in a flood plain to a stable condition

Clause 104, Section 126D(3) requires that if land subject of the proposed PRCP schedule will contain a void situated wholly or partly in a flood plain, the schedule must provide for rehabilitation of the land to a *stable condition*. The Explanatory Notes add that "*this means that in floodplains, all voids must be rehabilitated to be safe and structurally stable, not cause environmental harm by anything on or in the land and be able to sustain a post mining land use*". Establishing this new requirement for new mining projects entering into the assessment and approvals pathway following the commencement of the Bill clearly sets Government's position from that day forward, however, it is not appropriate to retrospectively apply this to existing mines.

² 'Accepted development' does not require development approval: Planning Act 2016(Qld) Section 44(4)

For some existing operations, including those on a flood plain, their EA and supporting approval documents permit a void that does not have a post-mining land use. In fact, it is not clear why voids in a flood plain have been singled out as being different to the requirements for any other non-use management area in 126D(2). A retrospective change in Government expectation could have perverse financial impacts on proponents.

QRC recommends that Section 126D(3) be amended to reflect its applicability to new mining projects only, and not existing operations, following commencement of the Bill.

Section 7.2.2, elaborates on this matter as it relates to transitional arrangements.

6.7.2 Permissibility of voids in a flood plain

Clause 104, Section 126D(3) provides that a void in a flood plain is permissible so long as it is rehabilitated to a stable condition. However, the Explanatory notes state that "126D(3) also contains a prohibition on leaving a void in a flood plain", which conflicts with the Bill. QRC recommends that the Explanatory Notes should be revised to remove or replace the term 'prohibition' when referencing the permissibility of voids that have achieved a *stable condition* in a flood plain.

6.8 INCONSISTENT MATTERS

Clause 125, Section 202E, allows for an EA to override a PRCP schedule if there is an inconsistency. QRC recommends that if an EA is inconsistent with a PRCP schedule, the schedule should be brought in line with the EA (as is the current requirement for a Plan of Operations).

6.9 ANNUAL RETURNS

Part 15, Division 2, Section 316J(2) requires, where a PRCP schedule applies, an Annual Return to "include an evaluation of the effectiveness of the schedule, including the effectiveness of the environmental management carried out under the schedule...". However, QRC suggests that in fact the Annual Return should outline:

- The effectiveness of environmental management as it relates to the EA (not the PRCP); and
- Progress against the PRCP schedule.

6.10 POST-MINING MANAGEMENT REPORT (RESIDUAL RISK)

Clause 163, Section 264A requires a post-mining management report as it relates to residual risk upon completion of mining activities, rehabilitation and the transfer of risk to the next land holder/user. However, Section 264 of the EP Act (*Requirements for final rehabilitation report*) currently captures the provisions of proposed Section 264A. Inserting Section 264A would create duplication.

QRC recommends that if Government prefers to insert Section 264A to distinguish the residual risk component from the final rehabilitation report, then existing Section 264(1)(c), (d)(ii), (d)(iii) and (2) should be omitted from the EP Act (as an additional amendment to the Bill) to remove duplication. Alternatively, if Government is to rely on existing Section 264, then Section 264A should be omitted from the Bill.

QRC asks the Committee to encourage DES to revisit the operation of Section 264 and related sections as part of Government's planned residual risk reform scheduled for consultation later in 2018 to ensure cohesive legislation.

6.11 PROGRESSIVE CERTIFICATION

Progressive certification provisions were introduced under the EP Act by the *Environmental Protection and Other Legislation Amendment Act 2005 (Qld)*. The intent of this ground-breaking initiative was explained by the then Environment Minister, Desley Boyle, in the Parliamentary Debate on the Bill:³

"[T]his bill allows for the staged rehabilitation of working mines. When mining activity ceases in one section it can be rehabilitated while another area of the mine is worked. With this approach the impact on the environment is lessened and the company will have certainty of its responsibilities through a certification process.

Amendments to the Environmental Protection Act 1994 will assure mining companies that rehabilitation requirements will not change for those areas where rehabilitation has been completed early in the life of a mining project".

The resources sector has long maintained the position, consistent with the above extract, that progressive certification is an important component of the rehabilitation process and implemented properly has the capacity to be a strong driver for progressive rehabilitation. This mechanism can provide the sector with certainty, and hence an incentive, that certified rehabilitation will not be subject to future changes in rehabilitation requirements or expectations over time. It also has the benefit of giving Government greater confidence in a site's path towards successful closure and relinquishment at no increased risk to the State given:

- A proponent still holds a Mining Lease and EA in respect of the land that has been certified and is responsible for maintaining it; and
- FA is still in place to secure the proponent's obligations until relinquishment.

Significant effort has been invested by the resources sector since early 2016 to work collaboratively with DES to test the progressive certification framework. These efforts resulted in:

- Greater clarity in process and information requirements;
- Identification of legislative amendment opportunities, including:
 - The need to separate requirements for residual risk and relinquishment from certification; and
 - Streamlining of information requirements.
- Identification of legislative barriers as it relates to the Coal Seam Gas (CSG) industry:
 - Lack of control over landholder activities following completion of activities and expiry of conduct and compensation agreements (CCA) and land access;
 - Lack of recognition of landholder sign-off and transfer of liabilities (as far as practical); and
 - Large lease areas, the nature of CSG development and CCA conditions affect the ability for a simple approach to certification and hence relinquishment. Certification needs to afford CSG companies an avenue to proceed to relinquishment without having to revisit those areas signed-off.

³ Queensland, *Parliamentary Debates*, House of Representatives, 23 August 2005, [pinpoint] (D Boyle, Minister for Environment, Local Government, Planning and Women), (p. 2585)

- Newlands being the first open-cut mine to be granted certification in early June 2017 for a portion (73 hectares) of rehabilitation associated with an overburden emplacement area; and
- Improved confidence for both Government and the sector in using the framework moving forward.

Disappointingly, the Bill has missed a significant opportunity to move forward on the legislative improvements (noted above) to the progressive certification framework by failing to provide any amendments to the progressive certification framework beyond consequential amendments made in relation to the introduction of the PRCP. QRC is concerned that the proactive and voluntary efforts of the resources sector in working with DES, in particular the key learnings, have not been considered in the current reform.

Government also does not appear to have had any interest in addressing QRC's proposal to Government, dated 5 September 2017, setting out in detail suggested legislative amendments to improve the progressive certification system by utilising the opportunities presented by the scheduling of the introduction of the Bill. The proposal included the following changes:

- The existing legislative requirement for a residual risk payment at certification be removed in preparation for the new residual risk system to avoid the potential for duplication of payment provisions;
- The existing legislative requirement to prepare an environmental risk assessment for the purpose of informing the above residual risk payment at certification be removed given its lack of relevance; and
- The requirement for stakeholder engagement at relinquishment (s264(1)(d)(i)(B)) be removed given its lack of relevance.

Currently, there is no line of sight or serious consideration from Government to give the resources sector certainty that rehabilitation will even be generally accepted for certification let alone upon relinquishment. In this regard, QRC asks the Committee to request that DES progress legislative amendments for progressive certification, including key learnings and identified legislative opportunities from the testing of the current framework, prior to the introduction of associated reform (e.g. residual risk, AMLP, tenure-related matters) in 2019. These amendments must be developed in consultation with QRC and key stakeholders from the resources sector.

7 TRANSITIONAL ARRANGEMENTS

As provided in **Section 6.1**, there are a number of transitional provisions that QRC supports. However, there are still some gaps and errors in these provisions, and in some instances, the intent outlined in the Explanatory Notes has not been carried through to the Bill.

7.1 FINANCIAL PROVISIONING

7.1.1 *When existing condition requiring financial assurance ends*

As set out in detail in **Section 4.2.5** of this submission, there is a gap in the transitional arrangements in Part 7 of the Bill that when an ERC decision has been made and surety or a contribution provided to the Fund, not only does the FA condition need to end, but also, the FA needs to be physically given back.

7.1.2 *Change in holder prior to scheduled transition*

A change in holder prior to the scheduled transition during the three-year period must not automatically (however can voluntarily) trigger assessment and categorisation under the new framework. This will provide certainty to buyer/seller in sales processes during this period and also non-assessable transfers.

7.2 PROGRESSIVE REHABILITATION AND CLOSURE PLAN

7.2.1 Notice requiring holder to apply for a Progressive Rehabilitation and Closure Plan

Notwithstanding that the Explanatory Notes state “it is expected that the timeframe will range between 6 and 12 months” for a holder to apply for a PRCP, there is no minimum period specified in Part 27, Section 754. As drafted, the administering authority could technically have the discretion to require a PRCP within 24 hours. Further, there is also no right of appeal or review against an unreasonable timeframe imposed in a notice.

In an email received from DES on 8 March 2018, it was explained that:

“The minimum timeframe was removed from the Bill as a result of consultation to provide flexibility in the transition process. The timeframe was removed because the intent was that DES would work with operators and tailor the date to the operator’s needs as well as assessment centre resourcing needs. For example, if a PRC plan was prepared through the mock assessment process, then 6 months may not be required. This also allows for voluntary submission of PRC plans by allowing the operator and DES to work together to set a due date for submission”.

However, if a PRCP is prepared through a mock assessment process and then a DES notice requires lodgement within a statutory minimum of six months, nothing prevents the operator from attending to lodgement overnight. Similarly, if a voluntary plan is submitted, the operator can advise during pre-lodgement, of its intention to submit the voluntary plan, DES can then issue a formal notice requiring submission within six months, and then lodgement the next day would certainly be ‘within’ the six months. This is similar to any other statutory minimum for notices. The notice cannot impose a compulsory requirement to submit information any earlier than a reasonable timeframe, but this does not prevent the holder/applicant from submitting it earlier if they wish.

This timeframe was certainly not removed as a result of consultation with QRC and its members. QRC has always sought a reasonable timeframe, not removal of a minimum altogether. The general sector view is that a minimum of 12 months would be acceptable.

Given the above, QRC recommends:

- A minimum timeframe (preferably of 12 months) be specified in Section 754; and (at this stage)
- The above decision be listed as an Original Decision in Schedule 2, so that if an officer imposes an unreasonable timeframe in terms of the complexity of the site (quite likely, having been unaware of the complexity of the issues), there is a simple opportunity for internal review of this decision.

Note that provided there is a statutory minimum period of 12 months, QRC would not require a review process for the timeframe specified in the notice. If there is no statutory minimum or if the minimum is less than 12 months, then there should be a review process. It would surely be simpler just to have a statutory minimum notice period of 12 months, while encouraging companies to lodge sooner if they are able to do so.

The Committee may also wish to consider whether there should be an opportunity for holders to be able to submit a PRCP voluntarily, without waiting to receive a notice under Section 754, which is not currently available.

7.2.2 Administering authority must assess a proposed Progressive Rehabilitation and Closure Plan

Under Part 27, Section 755, there are several issues, which will be important to resolve in order to provide adequate certainty for investors in the mining sector in Queensland, in particular, to ensure that mines that have already invested in significant rehabilitation will not face the risk of retrospective changes to their practical rehabilitation requirements. This would be an unacceptable shift in the goal posts.

Retrospectivity was clearly not the intention, as stated in the Explanatory Notes (page 8), as follows:

"Whether the legislation does not adversely affect rights and liberties, or impose obligations, retrospectively – Legislative Standards Act 1992, Section 4(3)(g)

No retrospective provisions.

For existing mines, holders of an authority will be required to submit their PRC plan upon receiving a notice. In preparing their PRC plan, the holder will be asked to translate their authority rehabilitation conditions into milestones and milestone criteria. For example, if the proponent's authority sets out a proposed post mining land use and completion criteria for that land use, there will be no change to that commitment. The proponent will be required to re-format those commitments into the PRCP schedule which may include developing milestones to achieve that post mining land use.

This also applies to non-use management areas".

However, this intent did not carry through into the drafting of the Bill itself.

For non-use management areas, although the Explanatory Notes state 'no retrospectivity', Section 755(3) provides the administering authority with a discretion whether or not to allow an existing non-use management area to be continued in a PRCP through the use of the term 'may' as opposed to 'must'. The particular sections the subject of the discretion, Section 126C(1)(g) or (h), also do not include existing non-use management areas in flood plains under Section 126D(3). Consequently, these provisions are retrospective, as currently drafted, and no justification has been provided for the retrospectivity for the purposes of fundamental legislative principles requirements. QRC is particularly concerned about this because of the uncertainty with the current definitions. For example, it is unclear at this stage what a 'flood plain' is or where the demarcation line lies between non-use management areas and post-mining land uses.

QRC recommends that Section 755(3) be revised to:

- Replace the term 'may' with 'must' to remove the administering authority's discretion; and
- Extend the scope of the provision (i.e. exemption to retrospectivity) to include existing non-use management areas in flood plains.

For criteria for decision, in Section 755(6), there is nothing to provide comfort to holders that, if their PRCP simply re-formats into the new structure the existing commitments for post-mining land uses and completion criteria, that the goal posts will not be changed (i.e. preservation of existing rights is unclear). Instead, the subsection requires assessment as if the application had been an application for a new project, other than a requirement to take into account the existing EA (which may, or may not, have been the instrument that set out completion criteria and post-mining land uses for a mine). Only the notification subsection (3) acknowledges the role of existing instruments, not the final assessment.

QRC recommends that Section 755(6) be revised so that the decision must have regard to existing instruments, which preserve existing rights, as opposed to assessing the application as if it were a new project.

There are also gaps in Section 755(4) regarding the exemption from public notification of the first PRCP. While it is intended that public notification not be required if the post-mining land uses remain the same, this is not what the subsection currently stipulates:

“(4) Also, the notification stage under chapter 5, part 4 does not apply for the assessment process if—

(a) either—

(i) the EIS process for an EIS for each relevant activity the subject of the proposed PRC plan has been completed; or

(ii) a proposed post-mining land use for the land the subject of the proposed PRC plan is stated in the holder’s environmental authority or plan of operations; and

(b) since the EIS process was completed or environmental authority was issued, a post-mining land use or non-use management area for the land has not changed”.

The specific clerical errors or other gaps in this drafting of Section 755(4) appear to be:

- The subsection does not pick up the previous reference to a ‘written agreement between the holder and the administering authority’ referred to in subsection (3). This is relevant given a post-mining land use may be embedded in a management plan, EIS or another document whether required or not under an EA.

For many sites in Queensland, the post-mining land uses and possibly the rehabilitation completion criteria are set out in an existing closure, rehabilitation or post-mining land use plan submitted pursuant to a requirement in an EA condition, not in the EA condition itself. This means that the post-mining land use is not “*stated in the holder’s environmental authority*” but rather, in a document required by the EA.

Further, where an EA does not specify the extent of information typically required for transition to a PRCP, for example the post-mining land use or non-use management area, however, these have been provided to a reasonable extent within an EIS or equivalent, then the administering authority should also have regard to that document.

QRC recommends:

- The drafting in subsection (3)(c) be included in subsection (4);
 - In subsection (4)(a)(ii), replacing the term ‘in’ with ‘under’ as it relates to the holder’s EA, Plan of Operation, or written agreement between the holder and the administering authority;
 - Specific reference should be made to management plans that may be required by an EA in both subsection (3)(a) and (4); and
 - Specific reference should be made to an EIS or equivalent, where an EA does not provide information necessary to determine if an exemption applies, in subsection (3).
- Although subsection (4)(a) correctly refers to Plans of Operations, this is missing from subsection (4)(b). QRC recommends including reference to a Plan of Operations under subsection 4(b); and
- The reference to “*since the environmental authority was issued*” in subsection 4(b) is open to different interpretations. Presumably, this is not intended to mean the first time an EA was issued for a site 17 years ago, but rather the last version of the EA that was issued prior to the PRCP. The administering authority has a practice of issuing a new EA each time it has made an amendment.

QRC recommends subsection 4(b) be revised to clearly specify that it relates to the last version of the EA that was issued prior to the PRCP.

7.2.3 Decision to remove rehabilitation matters from an environmental authority

Given that the term 'rehabilitation matters' is undefined in Section 756, it is not necessarily always going to be clear which conditions or parts of conditions in the EA should be removed. For example, in some instances there may be individual conditions of an existing EA which partly relate to rehabilitation and partly relate to other operational management issues. The amendments may also affect definitions or parts of definitions, but in some cases the definitions may also be relevant to conditions on topics other than rehabilitation.

QRC recommends that a more robust process would be if applicants are given the opportunity to submit a mark-up of their proposed consequential amendments to the EA together with the PRCP, and then have the administering authority decide both documents at the same time.

7.2.4 Original decisions

For Clause 204, regarding the amendment of Schedule 2 (Original decisions), the Explanatory Notes mention that the intent is that *"This amendment ensures that new, or replaced decisions are listed in schedule 2 as original decisions"*. QRC appreciates and supports this statement; however, the intent has not been completely achieved by the current drafting of the Bill and as such recommends the following:

- Inserting Section 303(2) (or part of it), notice to re-apply for an ERC decision for a resource activity. Note that QRC has no objection to this notice in the case of an amalgamation or de-amalgamation; however, the remaining ground for this notice is only that the administering authority has *"become aware of a change relating to the carrying out of the resource activity that may result in an increase"*. The administering authority may be mistaken in assuming that a relevant change has occurred, in which case, the holders should have an opportunity for internal review to explain why they believe the administering authority has made a mistake, and if this is accepted, they should not be put to the trouble and expense of re-applying;
- Inclusion of transitional decisions. None of the decisions that are associated with transitioning an existing mine to the new PRCP system have been listed as 'original decisions', which means that minor mistakes or disputes cannot be addressed through a simple internal review process. Instead, the entire process for a new project has been adopted from Chapter 5,⁴ including the ability to refer the PRCP directly to the Land Court.⁵ This contradicts the assurance in the Explanatory Notes that *"plans of operations will be phased out for mining operations with minimum administrative burden for both industry and government"* (page 90).

It would obviously be a dramatic administrative and cost burden for both the mining sector and the Government to have to refer to the Land Court every minor mistake that the administrative authority might make in the process of simply transitioning existing obligations into the new format, instead of being able to use a straightforward internal review process for resolution. Examples of transitional decisions that should be listed as Original Decisions, facilitating the simple internal review process, include:

- Section 754(1)(b) – Notice of the date to provide a PRCP. There should be a right of review to ensure that this date is reasonable. As mentioned in **Section 7.2.1**, there should also be a minimum period set in the legislation;

⁴ Section 755(2).

⁵ Clause 119 Section 181(c).

- Section 755 (3) – Decision not to exempt the PRC Plan from Section 126C(1)(g) and (h). As explained in **Section 7.2.2**, QRC does not consider that the administering authority should have a discretion in this regard, because in all cases, the Explanatory Notes have provided an assurance that there will be ‘no retrospectivity’, but if a discretion is retained to impose retrospectivity, there should obviously be a right of review;
- Section 756 – Decision to remove rehabilitation matters from an EA. Given that the term ‘rehabilitation matters’ is undefined, there may be scope for disagreement about which conditions or parts of condition in the EA should be removed. For example, in some instances there may be individual conditions of an existing EA which partly relate to rehabilitation and partly relate to other issues. The amendments may also affect definitions or parts of definitions. As explained in **Section 7.2.2**, it would be a more robust process if applicants are given the opportunity to submit a mark-up of their proposed consequential amendments to the EA together with the PRCP, and then have the administering authority decide both documents at the same time. However, even on the basis of Section 758 as it currently stands, there should be a right of review.

In passing, it is noted that there are still some historical errors in the list of original decisions that remain to be corrected:

- The list of original decisions in Schedule 2 of the existing Act continues to refer to Section 233(2)(b)(ii), but this section no longer exists in the Act;
- The reference in the list of original decisions in Schedule 2 to Section 234(2) should be 234(1). This error is perpetuated in Clause 204(5) of the Bill; and
- Section 254 (refusal of transfer) is missing from Schedule 2.

QRC recommends these errors be rectified as part of any subsequent amendments to the Bill.

8 INCENTIVES FOR GOOD REHABILITATION PERFORMANCE

The *Better mine rehabilitation for Queensland* discussion paper, released in May 2017, provided the opportunity for the mining sector to suggest incentives for good rehabilitation performance and sought further feedback from stakeholders regarding other options the State could provide. In response, QRC recommended the following incentives, which are not tangibly tied to the actual cost of undertaking rehabilitation:

- Concessions for tenure rent (DNRME):
 - Where the area of tenure is not disturbed, that is paying rent only on the area disturbed (used) not on the full tenure;
 - Where the area is under active rehabilitation, that is rehabilitation action implemented, however not proven successful or yet certified; and
 - Where the area is certified by DES.
- Reduced Environmentally Relevant Activities/EA annual fees (DES) through the removal or amendment of prerequisites for a relevant resource activity EA in Paying a reduced annual fee (ESR/2015/1723). With the current discounts to be removed from the FA system, the resources sector should now be eligible to apply for a reduced annual fee as a result of carrying out progressive rehabilitation;

- Access to future tenure areas for companies with demonstrated rehabilitation performance although not at the risk of penalising new operators;
- Grants for site-specific rehabilitation trials; and
- Establishment of a robust certification system to provide certainty that the condition of the rehabilitation (having met completion criteria) when endorsed will be accepted by Government, in particular DES, upon relinquishment.

These recommendations were re-iterated to Government, through the Project Management Office, in October 2017 again without response.

With the resources sector, in particular the mining sector, having shown willingness to transition to the new financial provisioning and, where applicable, PRCP framework (noting the concerns raised in this submission), QRC is disappointed that these recommendations have not been considered by Government, and as such, have not been reflected in the Bill.

QRC asks the Committee to encourage Government to engage with the resources sector, as part of the next round of associated reform, to consider meaningful incentives.

9 INTERACTIONS WITH OTHER LEGISLATION AND INSTRUMENTS

As highlighted in **Section 4.2.3** and **6.5.3**, it is not clear how the Bill interacts with or considers the requirements under the *Mineral Resources Act 1989*, including:

- Mining Leases and Development Plans and their associated terms as it relates to a PRCP; and
- The definition of *production* as it relates to care and maintenance in Clause 43.

QRC recommends that the Committee seek clarification from the Government as to how the PRCP will interact with other legislation and instruments.

In addition, given Clause 127 (amending Section 205 of the EP Act) which recognises Conditions that must be imposed if the application relates to a coordinated project, QRC suggests that an amendment also needs to be made to Section 47C of the *State Development and Public Works Organisation Act 1971* so that the Coordinator-General has the power to state conditions for the proposed PRCP schedule.

10 RECOMMENDATIONS AND CLARIFICATIONS

QRC submits the following recommendations in **Table 3** and clarifications in **Table 4** to the Committee as detailed in the body of this submission.

11 CONCLUSION

Overall, while QRC does not oppose the basis for the proposed new financial provisioning and PRCP frameworks, we are not in a position to support the Bill until we have seen a greater willingness by Government to consider QRC's proposed amendments to the Bill, in particular those related to the PRCP framework, and provide critical missing information for the Scheme, such as the Fund rates, to allow the resources sector to better understand the impacts to business.

QRC would welcome the opportunity to discuss our submission further with the Committee during its consideration of the Bill and would be happy to participate in the public hearing.

QRC's Policy Manager, Environment, [REDACTED], and Policy Director, Environment, [REDACTED] have carriage of environment policy matters and can be contacted at [REDACTED] and [REDACTED]

Table 3 Summary of recommendations

Ref.	Section	Recommendation
FINANCIAL PROVISIONING		
1	Clause 8(b) s298(2)(c)(ii) s300(1)(b))	Delete Clause 8(b) and return to the version of that clause in the <i>Mineral and Energy Resources (Financial Provisioning) Bill 2017</i> . Delete section 298(2)(c)(ii) and 300(1)(b) and return to the version in the <i>Mineral and Energy Resources (Financial Provisioning) Bill 2017</i> .
2	Clause 27, 1	Amend to explicitly recognise there will be different prescribed percentages for each of the very low, low and medium risk categories which appropriately recognises the relative risk applicable to each category.
3	Clause 27, 3 to 5 Clause 32 Clause 38	Amend to the Scheme Manager <u>must</u> consider the RPCA for all applicable holders.
4	Clause 27,2(ii)	Amend so that the Scheme Manager must not only consider submissions made under Clause 28 but also be required to respond to the submissions, particularly if the submission is rejected.
5	Clause 43	Amend the notification timeframe for cessation of production from 10 days to 30 days and the very short six months for the cessation of production be extended to 12 months to align with the annual review by the Scheme Manager. In addition, Government should provide an explanation to the resources sector of how the drafting in the Bill relates to their overall position on the matter of care and maintenance mines given that companies are not relieved of their EA responsibilities simply because production may have temporarily ceased.
6	Clause 44 Clause 45	Amend the 10 business days for information provision under Clause 44(3)(b) from 10 business days to 20 business days. This extension of time also applies to Clause 45(2)(b) Scheme manager may require further information from interested entity before changed holder review decision.
7	Clause 55, 3	Amend to set the timing for the provision of sureties as 90 business days, rather than 30 business days, while retaining the Scheme Manager's discretion to extend timeframes.
8	Clause 58	Amend to require the release of surety to be within a set number of business days as it is for <i>Refund of contribution to previous holder</i> (Clause 50) and that the 30 days be reduced to 10 business days.
9	Clause 74	Amend to include appeal rights equivalent to an 'original decision' under the EP Act for the full range of categorisation decisions made by the Scheme Manager.
10	Clauses 79 to 82	Re-consider all penalties in relation to the Scheme given the potential financial and market impacts on a company of releasing the financially sensitive and commercial-in-confidence information required for the risk categorisation system.

Ref.	Section	Recommendation
11	Clause 83	Amend to allow the Advisory Committee to be expanded to specifically require the representation of two resources sector representatives.
12	Part 7	Amend the transitional provisions in Part 7 (see Section 4.2.5) to match the Government's intent not to hold both a pre-existing FA instrument and any amount paid into the Fund simultaneously, and ensure the return of such pre-existing FAs as soon as is practicable.
13	NA	Amend to clearly state that the Fund will not be used for companies who have provided sureties only, rather than leaving it to Government 'intent'.
PROGRESSIVE REHABILITATION AND CLOSURE PLAN		
14	Clause 98, s111A Clause 99, s112 Clause 104, s126C(1)(d)(i), (e), (i) Clause 104, s126D(3), (5)(a), (5)(b), (6)	Adopt or adapt definitions and terms in the Bill to reflect the recommendations in Table 2 .
15	Clause 104, s126C(1)(c)(iv)	Omit the provision requiring details of ongoing consultation in relation to rehabilitation to be carried out under the PRCP from the Bill given existing efforts afforded by the mining sector.
16	Clause 104, s126C(1)(d)(i)	Amend to state "... identified in the proposed PRCP schedule, <u>to the extent to which it is consistent with</u> – (i) the outcome of consultation with the community in developing the plan" given it is not possible for a proponent to fully align the post-mining land use or non-use management area 'consistent with' the outcomes of consultation with the community as there will always be differing opinions. Amend the term 'community' to 'relevant stakeholder/s' given it is too broad and casts the net too wide for the purpose of engagement for the PRCP planning part (PRC plan).
17	Clause 104, s126C(1)(d)	Remove the current rehabilitation hierarchy from any supporting guidance material, particularly as it relates to this provision, to minimise conflict with community consultation outcomes for a post-mining land use.
18	Clause 104, s126C(1)(f)	Amend to state "identify the risks of a stable condition for land mentioned in paragraph (e) not being achieved, and state how the applicant intends to manage or minimise the risks, by – (i) identifying and assessing the credible and material risks of a stable condition for an area not being achieved as it relates to environmental factors that are within an applicant's ability to control or influence, and how these risks will be managed or minimised as low as reasonably practicable; and (ii) identifying any other risks that are not identified in 126C(1)(f)(i), noting that these risks may not be able to be assessed". This focuses the risk assessment scope to assess only those matters that can be controlled by a proponent as

Ref.	Section	Recommendation
		opposed to those that can only be identified.
19	Clause 104, s126D(3)	Amend to clarify that the requirement where land subject of the proposed PRCP schedule will contain a void situated wholly or partly in a flood plain, the schedule must provide for rehabilitation of the land to a stable condition, is applicable to new mining projects only (following commencement of the Bill), and not existing operations.
20	Clause 104, s126D(3)	Amend (the Explanatory Notes) to remove or replace the term 'prohibition' when referencing the permissibility of voids that have achieved a stable condition in a flood plain.
21	Clause 127 (amending s205 of the EP Act)	Amend section 47C of the <i>State Development and Public Works Organisation Act 1971</i> so that the Coordinator-General has the power to state conditions for the proposed PRCP schedule.
22	Clause 143, s223	Amend the definition of <i>minor amendment (PRCP threshold)</i> to "for a PRCP schedule, means an amendment that – <ul style="list-style-type: none"> (i) does not change the post-mining land use; and (ii) does not materially increase the disturbance footprint or have a significant additional impact on environment values beyond approved relevant activities". This will better accommodate the dynamic nature of mining as it responds to external variables outside business control and streamlines the amendment processes required for both proponents and Government.
23	Clause 143, s223	Amend the definition of <i>minor amendment (PRCP threshold)</i> to allow for a change in post-mining land use or non-use management area without being subject to public notification and right to submissions on the when it is consistent with a government planning instrument.
24	Clause 147, s228	Amend to allow the administering authority to have discretionary rights to: <ul style="list-style-type: none"> • Assess a major PRCP amendment as a minor amendment despite it being inconsistent with the minor amendment (PRCP threshold); or • Decide whether a major PRCP amendment needs to proceed to public notification, as it currently does for major EA amendments.
25	Clause 147, s228	Amend to allow: <ul style="list-style-type: none"> • For major and minor PRCP amendments to be consistent with existing EA amendment provisions; and • Re-sequencing of operations, and hence rehabilitation, be exempt under the <i>minor amendment PRCP threshold</i> allowing it to be considered a minor amendment provided it does not change the post-mining land use, and does not materially increase the disturbance footprint or have a significant additional impact on environment values beyond approved relevant activities. Refer also to Items 22 and 24 .

Ref.	Section	Recommendation
26	Part 15, division 1, s316H(4)	Amend to a minimum of 20 business days for updating the rehabilitation planning part of the PRCP, consistent with existing Plan of Operations processes, or longer as agreed with the Department.
27	Clause 136, s215(2)(h) Clause 180, s318ZJA	Amend to clarify that 'other amendments' are considered minor amendments.
28	Clause 125, Section 202E	Amend so that if an EA is inconsistent with a PRCP schedule, the schedule is brought in line with the EA (as is the current requirement for a Plan of Operations).
29	Clause 163, s264A	Amend either by: <ul style="list-style-type: none"> Inserting Section 264A to distinguish the residual risk component from the final rehabilitation report and omit existing Section 264(1)(c), (d)(ii), (d)(iii) and (2) from the EP Act (as an additional amendment to the Bill) to remove duplication; or Retaining existing Section 264 and omit Section 264A from the Bill.
30	Clause 169, s275A	Amend to allow proponents to amend a PRCP schedule and planning part of the Plan (PRC plan), where a surrender application is approved, for the administering authority's assessment and decision.
31	Part 15, division 2, s316J(2)	Amend to allow an Annual Return to outline: <ul style="list-style-type: none"> The effectiveness of environmental management <u>as it relates to the EA</u> (not the PRCP); and Progress against the PRCP schedule.
32	Part 27, s754	Amend to include a minimum timeframe (preferably 12 months) for when a holder is to provide a PRCP to the administering authority. Subsequently, amend to allow this timeframe to be listed as an Original Decision in Schedule 2, so that if an officer imposes an unreasonable timeframe there is a simple opportunity for internal review of this decision.
33	Part 27, s755(3)	Amend to: <ul style="list-style-type: none"> Replace the term 'may' with 'must' to remove the administering authority's discretion; and Extend the scope of the provision (i.e. exemption to retrospectivity) to include existing non-use management areas in flood plains for the purpose of transitioning existing operations under the new PRCP framework.
34	Part 27, s755(6)	Amend so that the decision must have regard to existing instruments, which preserve existing rights, as opposed to assessing the PRCP application for an existing operation under transitional arrangements as if it were a new project.
35	Part 27, s755(4)	Amend to include consideration of a 'written agreement between the holder and the administering authority' as provided in subsection (3)(c) in subsection (4) when determining if an existing operation is exempt from public

Ref.	Section	Recommendation
		notification in the transition to the new PRCP framework.
36	Part 27, s755(3)(a),(4)	Amend to include specific reference to management plans that may be required by an EA in both subsection (3)(a) and (4) when determining if an existing operation is exempt from public notification in the transition to the new PRCP framework.
37	Part 27, s755(3)	Amend to include specific reference to an EIS or equivalent, where an EA does not provide information necessary to determine if an exemption applies.
38	Part 27, s755(4)	Amend subsection (4)(a)(ii) to replace the term 'in' with 'under' as it relates to the holder's EA, Plan of Operations or written agreement between the holder and the administering authority when determining if an existing operation is exempt from public notification in the transition to the new PRCP framework.
39	Part 27, s755(4)	Amend to include consideration of a Plan of Operations under subsection 4(b) when determining if an existing operation is exempt from public notification in the transition to the new PRCP framework.
40	Part 27, s755(4)	Amend subsection 4(b) to clearly specify that the provision relates to the last version of the EA that was issued prior to the PRCP.
41	Part 27, s756	Amend to allow applicants to submit a mark-up of their proposed consequential amendments to the EA (as it relates to 'rehabilitation matters') together with the PRCP to ensure there is a clear division in conditions between the two documents. The administering authority should subsequently decide both documents concurrently.
42	Clause 204	Amend to include Section 303(2) (or part of it) notice to re-apply for an ERC decision for a resource activity as an original decision.
43	Clause 204	Amend to include transitional decisions, such as Notice of the date to provide a PRCP (Section 754(1)(b)), Decision not to exempt the PRC Plan from Section 126C(1)(g) and (h) (Section 755 (3)) and Decision to remove rehabilitation matters from an EA (Section 756) as an original decision.
44	NA	Amend to include a mechanism in the Bill, which allows a PRCP schedule, and hence planning part (PRC plan, to be amended on a routine basis to refine long-term milestones. This will better accommodate the dynamic nature of mining as it responds to external variables outside business control and avoid creating a perverse environmental outcome of delayed progressive rehabilitation because of the invariable need for a company to include notable time contingencies in their milestone commitments. Further, this mechanism should not be subject to public notification or right to submissions given that it does not affect the post-mining land use outcome.
45	NA	Amend to allow for holders to be able to submit a PRCP voluntarily, without waiting to receive a notice under Section 754, which is not currently available.
46	NA	Amend to rectify the following historical errors: <ul style="list-style-type: none"> The list of original decisions in Schedule 2 of the existing Act continues to refer to Section 233(2)(b)(ii), but

Ref.	Section	Recommendation
		<p>this section no longer exists in the Act;</p> <ul style="list-style-type: none"> The reference in the list of original decisions in Schedule 2 to Section 234(2) should be 234(1). This error is perpetuated in Clause 204(5) of the Bill; and Section 254 (refusal of transfer) is missing from Schedule 2.

Table 4 Summary of clarifications

Ref.	Section	Clarification
FINANCIAL PROVISIONING		
1	Clause 27, 3 to 5 Clause 32 Clause 38	Government to provide reasons for the change from the <i>Mineral and Energy (Financial Provisioning) Bill 2017</i> such that the Scheme Manager no long must consider the parent corporation in its risk allocation decisions.
2	Clause 44	Government clarify their position on the management of 'further information' requests as it pertains to the provision of highly confidential information and the associated penalties for holders.
3	Clause 72(2)(b)	Government clarify what the 'summary of information for the public' in the Scheme's annual report means and what it is meant to achieve, as well as a number of other points needed to clarify the contents and operation of the annual report.
4	Clause 83	Government provide the Terms of Reference for the Advisory Committee and greater detail on how it sees its role and operating rules.
5	Clause 207, 20A	Government clarify the reason for the sudden change to this section, which now includes the payment into the Scheme as a reason for not registering the transfer, and why it has been included in the amendments to MERCPA rather than in the financial provisioning <i>Changed holder</i> part of the Bill (as it relates to the ERC).
6	NA	Government clarify how they will ensure the ERC calculators will be kept up to date. This includes adequate resourcing of regular reviews.
7	NA	Government clarify the interaction of the AMLP with the Fund, particularly how it will access amounts from the Fund while maintaining the stability of the Fund given that the resources sector has been told there is a pre-budgeted AMLP draw-down amount.
8	NA	Government clarify the interaction of the Scheme with CORA, which does not refer back to the CoRA Guideline.
PROGRESSIVE REHABILITATION AND CLOSURE PLAN		
9	NA	DES to clarify how the PRCP will interact with other resource instruments, such as a Mining Lease.

Ref.	Section	Clarification
10	NA	Government to engage with the resources sector, as part of the next round of associated reform, to consider meaningful incentives for good rehabilitation performance (see Section 8).
11	Clause 163, s264A	DES to revisit the operation of Section 264 and related sections as part of Government's planned residual risk reform scheduled for consultation later in 2018 to ensure cohesive legislation.
12	NA	DES progress legislative amendments for progressive certification, including key learnings and identified legislative opportunities from the testing of the current framework (see Section 6.11), prior to the introduction of associated reform (e.g. residual risk, AMLP, tenure-related matters) in 2019. These amendments must be developed in consultation with QRC and key stakeholders from the resources sector.