

**Consideration of the Auditor-
General's Report 1: 2017-18**

***Follow-up of Report 15: 2013-14
Environmental regulation of the
resources and waste industries***

Report No. 6, 56th Parliament

**Innovation, Tourism Development and Environment
Committee**

September 2018

Innovation, Tourism Development and Environment Committee

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Abbreviations

Bill	Mineral and Energy Resources (Financial Provisioning) Bill 2018
committee	Innovation, Tourism Development and Environment Committee
DEHP	former Department of Environment and Heritage Protection
DNRM	former Department of Natural Resources and Mines
EA	environmental authority
PRC plan	progressive rehabilitation and closure plan
QAO	Queensland Audit Office
QTC	Queensland Treasury Corporation
Report 1: 2017-18	<i>Report 1: 2017-18 Follow-up of Report 15: 2013-14 Environmental regulation of the resources and waste industries</i>
Report 15: 2013-14	<i>Report 15: 2013-14 Environmental regulation of the resources and waste industries</i>

Chair's foreword

This report presents a summary of the Innovation, Tourism Development and Environment Committee's examination of the Auditor-General's Report 1: 2017-18 *Follow-up of Report 15: 2013-14 Environmental regulation of the resources and waste industries*.

The committee's task was to consider the Auditor-General's findings in relation to the effectiveness of the former Department of Environment and Heritage Protection and the former Department of Natural Resources and Mines in compliance monitoring, reporting, and enforcement of environmental conditions for resource and waste management activities.

On behalf of the committee, I thank the Queensland Audit Office for its assistance with the committee's examination.

I commend this report to the House.

A handwritten signature in blue ink, appearing to read 'D. Pegg', with a stylized circular flourish at the end.

Mr Duncan Pegg MP

Chair

Recommendation

Recommendation 1

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The committee recommends that the Legislative Assembly note the contents of this report.

1 Introduction

1.1 Role of the committee

The Innovation, Tourism Development and Environment Committee (committee) is a portfolio committee of the Legislative Assembly which commenced on 15 February 2018 under the *Parliament of Queensland Act 2001* and the Standing Rules and Orders of the Legislative Assembly.¹

The committee's primary areas of responsibility include:

- Innovation and Tourism Industry Development and the Commonwealth Games, and
- Environment and the Great Barrier Reef, Sciences and the Arts.

According to s 94(1)(a) of the *Parliament of Queensland Act 2001*, the committee has responsibility within its portfolio areas for the assessment of the integrity, economy, efficiency and effectiveness of government financial management by:

- examining government financial documents, and
- considering the annual and other reports of the Auditor-General.

1.2 Role of the Auditor-General

The role of the Auditor-General is to provide Parliament with independent assurance of public sector accountability and performance. This is achieved through reporting to Parliament on the results of its financial and performance audits.

A financial audit assesses whether the information contained in the financial statements of public sector entities is accurate, can be relied upon and is prepared in accordance with Australian Accounting Standards and relevant legislative requirements.²

A performance audit evaluates whether an agency or government program is achieving its objectives effectively, economically and efficiently, and is compliant with relevant legislation. It does not consider the merits of government policy. Rather, it focuses on how that policy is implemented.³

The Queensland Audit Office's (QAO) report titled Auditor-General's *Report 1: 2017-18 Follow-up of Report 15: 2013-14 Environmental regulation of the resources and waste industries* (Report 1: 2017-18) was prepared under Part 3 Division 3 of the *Auditor-General Act 2009* and was tabled in the Legislative Assembly in accordance with s 67 of that Act on 19 September 2017. The report presents the results of the QAO's performance audit.

1.3 Referral of the Auditor-General's report

Standing Order 194B provides the Committee of the Legislative Assembly shall as soon as practicable after a report of the Auditor-General is tabled in the Assembly, refer that report to the relevant portfolio committee for consideration.

A portfolio committee may deal with this type of referral by considering and reporting on the matter and making recommendations about it to the Assembly.⁴

Report 1: 2017-18 was referred to the former Agriculture and Environment Committee on 10 October 2017. The Agriculture and Environment Committee of the 55th Parliament did not have the opportunity to consider the report before dissolution of the Queensland Legislative Assembly on 29 October 2017, prior to the state general election.

¹ *Parliament of Queensland Act 2001*, section 88 and Standing Order 194.

² Queensland Audit Office Practice Statement – Financial statement audit, p 1.

³ QAO Factsheet - About us, p 2.

⁴ *Parliament of Queensland Act 2001*, s 92(3).

On 3 May 2018, Report 1: 2017-18 was referred to the Innovation, Tourism Development and Environment Committee for consideration and report.

1.4 Scope of the report

In *Report 15: 2013-14 Environmental regulation of the resources and waste industries* (Report 15: 2013-14), the QAO focused on environmental regulation of the resources industry and followed up on the progress the former Department of Environment and Heritage Protection (DEHP) had made in addressing six recommendations from *Report 10: 2011 Regulating waste: protecting the environment*.

Report 1: 2017-18 focussed on environmental regulation of the resources industry as it relates to the nine recommendations made in Report 15: 2013–14, and not on regulating waste industries.

The QAO assessed whether DEHP and the former Department of Natural Resources and Mines (DNRM) actioned the Auditor General's recommendations from Report 15: 2013-14 in relation to the resources industry and addressed the data and systems issues that led to the recommendations.⁵

1.5 Examination process

The committee received a public briefing in relation to Report 1: 2017-18 from the QAO on 30 April 2018. See Appendix A of this report for a list of witnesses. A copy of the transcript can be accessed on the committee's web page.⁶

⁵ Queensland Audit Office, Auditor-General Report 1: 2017-18 *Follow-up of Report 15: 2013-14 Environmental regulation of the resources and waste industries*, p 1.

⁶ <http://www.parliament.qld.gov.au/documents/committees/ITDEC/2018/3AuditorGeneral/3-trns-30Apr2018-Final.pdf>

2 Examination of the Auditor-General's report

2.1 Background

In Report 15: 2013-14, the QAO examined the effectiveness of DEHP and DNRM in relation to compliance monitoring, reporting, and enforcement of environmental conditions for resource and waste management activities.

Report 15: 2013-14 concluded that:

- DEHP was 'not fully effective in its supervision, monitoring and enforcement of environmental conditions', and
- the two departments were 'not effectively managing' financial assurance or mines that were in care and maintenance (mines not in operation) and this unnecessarily exposed the state to liability and the environment to harm.⁷

Report 15: 2013-14 also found that:

- DEHP's planning and risk assessments were hindered by poor data and inadequate systems
- DNRM and DEHP were not coordinating and sharing information
- DEHP was often not requesting sufficient financial assurance to meet the rehabilitation costs of mining sites, and
- both departments were reluctant to take appropriate action where needed to revoke permits and claim financial assurance for the state.⁸

There were nine recommendations in Report 15: 2013-14, all of which were accepted by the two departments. Refer to Table 1 below for details of the nine recommendations.

In 2017, the QAO conducted a follow-up audit on the implementation of its recommendations in relation to the resources industry, which had been set out in Report 15: 2013-14.

The results were presented in Report 1: 2017-18, which noted that Queensland's resources industry adds significant economic and social value to the state through royalties, investment, employment, and community development. For example, in 2016, the resources industry contributed over \$2.2 billion to the state's economy in royalties received and directly employed over 60 000 people.⁹

Additionally, Report 1: 2017-18 stated:

[R]esource activities can also cause environmental harm that may be irreversible or take years to rectify. By its very nature, exploring and extracting resources disturbs the land. Resource companies must successfully rehabilitate the land as a condition of their licence to operate.

Currently, there are more than 220 000 hectares of disturbed land in Queensland. The estimated cost to rehabilitate this land is \$8.7 billion.¹⁰

⁷ Queensland Audit Office, Auditor-General Report 1: 2017-18 Follow-up of Report 15: 2013-14 Environmental regulation of the resources and waste industries, p 3.

⁸ Queensland Audit Office, Auditor-General Report 1: 2017-18 Follow-up of Report 15: 2013-14 Environmental regulation of the resources and waste industries, p 3.

⁹ Queensland Audit Office, Auditor-General Report 1: 2017-18 Follow-up of Report 15: 2013-14 Environmental regulation of the resources and waste industries, p 2.

¹⁰ Queensland Audit Office, Auditor-General Report 1: 2017-18 Follow-up of Report 15: 2013-14 Environmental regulation of the resources and waste industries, p 2.

2.2 Audit conclusions

The follow-up audit looked at the progress of the two departments in implementing the nine recommendations of Report 15: 2013-14. Report 1: 2017-18 concluded that the departments 'have gone to considerable effort and implemented most of our recommendations'.¹¹

The departments have fully implemented seven of the nine recommendations. The QAO noted that the two recommendations which have not been fully implemented have been overtaken by the government's proposed implementation of a new financial assurance framework for Queensland.

The QAO found that DEHP was 'better placed' to target its strategies, operations and resources to maximise compliance and effectively detect non-compliance. The QAO stated that new systems and processes will continue to mature as DEHP and DNRM improve the way they collect, share and store data.¹²

Table 1 details the QAO's assessment of the implementation status for each recommendation, at the time of the follow-up audit in 2017.

Table 1

Report 15: 2013–14 recommendations and implementation status at follow-up audit

Recommendation	QAO assessment of status
The Department of Environment and Heritage Protection and the Department of Natural Resources and Mines:	
1 improve the exchange, coordination, and accessibility of information to achieve better planning and risk assessments to inform their compliance activities.	Recommendation fully implemented
9 establish clear definitions, guidelines, and formal protocols for dealing with the ongoing management of, and where necessary the transfer of responsibility for 'care and maintenance' sites.	Recommendation fully implemented
The Department of Environment and Heritage Protection:	
2 pursues enforcement action to recover the long-term debt it is owed from annual fees.	Recommendation fully implemented
3 utilises information provided in annual returns to inform its compliance planning and improves its supervision of the industries it regulates.	Recommendation fully implemented
4 implements a program to proactively monitor compliance with environmental authorities with standard conditions and variations to standard conditions.	Recommendation fully implemented
5 captures and recovers the full cost of investigating and prosecuting all non-compliance cases.	Recommendation fully implemented
6 improves its performance measurement and reporting to demonstrate the effectiveness of its activities in achieving environmental outcomes.	Recommendation fully implemented

¹¹ Queensland Audit Office, Auditor-General Report 1: 2017-18 *Follow-up of Report 15: 2013-14 Environmental regulation of the resources and waste industries*, p 5.

¹² Queensland Audit Office, Auditor-General Report 1: 2017-18 *Follow-up of Report 15: 2013-14 Environmental regulation of the resources and waste industries*, p 4.

7	assumes responsibility for administering all financial assurance including those currently collected and held by the Department of Natural Resources and Mines.	No substantial action taken
8	ensures the financial assurance it calculates and collects reflects the estimated cost of environmental rehabilitation.	Recommendation partially implemented

2.2.1 Managing financial assurance

Recommendations 7 and 8 were concerned with the management of financial assurance. DEHP has not fully implemented these recommendations as it is awaiting implementation of a proposed new financial assurance scheme.

Proposed financial assurance scheme

Following a number of cases where operators were unable to meet their rehabilitation obligations, and growing concerns about the quantity and quality of rehabilitation of mine sites, the Queensland Treasury Corporation (QTC) was commissioned to review the state's financial assurance arrangements and identify possible improvements to rehabilitation performance. QTC's report, *Review of Queensland's Financial Assurance Framework*, was published in May 2017 with two discussion papers: the *Financial Assurance Framework Reform* and the *Better Mines Rehabilitation for Queensland*.¹³

The Mineral and Energy Resources (Financial Provisioning) Bill 2017 was introduced in the 55th Parliament on 25 October 2017, to enable implementation of a proposed new financial assurance scheme. This bill lapsed when the Queensland Legislative Assembly was dissolved on 29 October 2017. A new bill, the Mineral and Energy Resources (Financial Provisioning) Bill 2018 (Bill), was introduced on 15 February 2018 and referred to the Economics and Governance Committee, to report to the Legislative Assembly by 20 April 2018.

Refer to section 2.3 of this report for details of the proposed new financial assurance scheme.

The Economics and Governance Committee tabled its report, *No.6, 56th Parliament – Mineral and Energy Resources (Financial Provisioning) Bill 2018* on 20 April 2018. The committee recommended that the Mineral and Energy Resources (Financial Provisioning) Bill 2018 be passed.¹⁴ The Bill is expected to be debated in the Parliament in 2018.

Responsibility for administering financial assurance

Report 15: 2013-14 recommended that DEHP assume responsibility for administering all financial assurance, including that currently held and collected by DNRM. These departments¹⁵ have delayed transferring full responsibility to DEHP pending implementation of the new financial assurance scheme. This scheme includes a proposed central registry for all financial assurance held by the state. A scheme manager will be appointed to manage all financial assurance.

Calculating and collecting financial assurance

According to Report 1: 2017-18, DEHP has made progress in ensuring the financial assurance it calculates and collects reflects the estimated cost of environmental rehabilitation. An additional \$1.85 billion in financial assurance has been collected. However, the amount held is still \$1.9 billion short of the \$8.7 billion needed to cover estimated costs of rehabilitation. This is mainly due to the current

¹³ Economics and Governance Committee, *Report No.6, 56th Parliament – Mineral and Energy Resources (Financial Provisioning) Bill 2018*, p 3.

¹⁴ Economics and Governance Committee, *Report No.6, 56th Parliament – Mineral and Energy Resources (Financial Provisioning) Bill 2018*, p 2.

¹⁵ After some changes to administrative arrangements following the state general election on 25 November 2017, the relevant departments are the Department of Environment and Science and the Department of Natural Resources, Mines and Energy.

practices of giving discounts based on environmental and compliance performance. Under the proposed new financial assurance scheme, discounts will not be offered.

2.2.2 Monitoring compliance

Recommendations 1, 3, 4, 6 and 9 were related to improving how the two departments monitor compliance. These recommendations have been fully implemented.

Improved data and systems

DEHP has improved the way it collects and shares data, through:

- better systems - with the new Connect system progressively replacing the legacy EcoTrack system
- improved processes between DEHP and DNRM that facilitate the collection and sharing of relevant information, and
- collection of quality data to inform risk.

Risk-based compliance activities

The QAO found DEHP had introduced a more proactive compliance activity program targeting high-risk sites. The department has developed the Compliance and Risk Evaluation tool and the Compliance Prioritisation Model to enable a risk-based approach to inspection activities.

Managing care and maintenance of mine sites

Both departments have worked collaboratively to define and document formal protocols on how they manage mines once in the care and maintenance phase. While record-keeping has improved, there is still no central record of all sites in care and maintenance. In the future, DEHP will record information on sites in care and maintenance in the Compliance and Risk Evaluation tool.

As part of the financial assurance reforms, regulating the way mine sites are managed from beginning to end, as part of a rehabilitation plan, will be required for mine operators to minimise the burden on government, industry and the community. Refer to section 2.3 of this report for details.

2.2.3 Regulatory fees and costs

DEHP has implemented recommendations 2 and 5, increasing both the recovery of overdue annual return fees, and legal and investigation costs.

Overdue annual fees

As a result of improvements to DEHP's debt management program, overdue annual fees have almost halved since the QAO's original audit. DEHP has achieved this by using various initiatives, such as frequent and more direct reminders.

Recovery of legal and investigation costs

Report 15: 2013-14 found that DEHP documents its external costs, such as the costs of engaging lawyers, but did not capture internal costs, such as the cost of investigation. DEHP now captures and records both its internal and external costs of investigating and prosecuting all non-compliance cases.

2.3 Proposed changes to Queensland's financial assurance framework

Under section 292 of the *Environmental Protection Act 1994*, the state obtains financial assurance from environmental authority (EA) holders to ensure it holds sufficient funds to:

- prevent or minimise environmental harm, or rehabilitate or restore the environment
- secure compliance with an environmental authority.

The Mineral and Energy Resources (Financial Provisioning) Bill 2018

The policy objectives of the Bill include:

- establishing a new financial provisioning scheme to manage the state's financial risk in relation to the financial impacts of mineral and energy resource activities
- amending the *Environmental Protection Act 1994* to implement rehabilitation reforms including plans for the progressive closure and rehabilitation of land.¹⁶

On financial provisioning, the Bill proposes to replace the existing scheme with one where a holder of an EA for mining activities is required to either make a contribution to the scheme fund or pay a surety (in the form of a bank guarantee, insurance bond issued by a prescribed insurer or cash), depending on the estimated rehabilitation cost for the EA and, if applicable, the risk category assigned to the EA.¹⁷

The Bill proposes that the scheme fund will operate on a pooled basis, rather than under the current arrangement where assurance is provided for each EA, and may only be applied for rehabilitation activities relating to that EA. A pooled fund is intended to avoid the risk of funding shortfalls and require holders to pay only an annual contribution.¹⁸

On rehabilitation reforms, the Bill proposes to introduce a requirement for mine operators to develop a progressive rehabilitation and closure plan (PRC plan). The main purposes of a PRC plan are to require EA holders to plan for how and where environmentally relevant activities will be carried to maximise the progressive rehabilitation of the land to a stable condition, and to provide for the condition to which the EA holder must rehabilitate the land.¹⁹ The Bill provides that land is in a stable condition if it is safe and structurally stable, there is no environmental harm being caused and the land can sustain a post-mining land use.²⁰

2.4 Issues raised in public briefing

The committee received a public briefing on Report 1: 2017-18 from the QAO on 30 April 2018. At the public briefing, the committee discussed the following issues:

- the two outstanding recommendations, in terms of departmental response concerning financial assurance calculation and responsibility
- financial assurance for mine rehabilitation in Queensland and the current reported shortfall of financial assurance to cover the estimated costs of rehabilitation
- the definition of rehabilitation and the calculation of a mine operator's estimated rehabilitation costs, and
- the new scheme proposed in the Bill.

In relation to the collection and administration of financial assurances, the QAO stated:

Getting financial assurance right is crucial to protecting the state from liability and ensuring operators comply with their obligations to effectively rehabilitate the environment.

While the departments' efforts to date have seen a \$1.85 billion increase in financial assurance held by the state, there remains a \$1.9 billion shortfall between the estimated rehabilitation costs and the amount held. Whether the risks posed by this gap are well managed will depend

¹⁶ Explanatory notes, p 1; Hon Jackie Trad MP, Deputy Premier, Treasurer and Minister for Aboriginal and Torres Strait Islander Partnerships, Record of Proceedings, 15 February 2018, p 102.

¹⁷ Mineral and Energy Resources (Financial Provisioning) Bill 2018 (Bill), cls 25, 56; Explanatory notes, pp 16, 25.

¹⁸ Explanatory notes, p 2.

¹⁹ Bill, cl 104 (s 126B); Explanatory notes, p 35.

²⁰ Bill, cl 98; Explanatory notes, p 33.

on how effectively the proposed new financial provisioning scheme is designed and implemented. At the time of issuing our follow-up report, there were still many undecided aspects of the new scheme, such as who the scheme manager would be and how much operators would pay.²¹

On the issue of estimating rehabilitation costs for mine rehabilitation, the QAO informed the committee:

Since the original report the department has developed a calculator to assist the department in making their calculations as to what the cost of rehabilitation will be, and that is applied across the state in all regions. It has been strengthened in that sense in terms of consistency. The calculator is updated from time to time to ensure that the figures that it relies on are up-to-date.²²

The QAO commented on how aspects of the proposed new financial assurance scheme could reduce financial risk to the state:

Under the previous scheme the financial assurance was held against a particular environmental authority. If the operator for that authority was unable to comply with its requirements and the state wanted to use that financial assurance, it could only use it for that particular site. One of the categorisations in the new scheme is a pooled fund. Instead of those operators providing a financial assurance up-front, they will make an annual contribution to the pooled fund. Where an operator is subsequently unable to comply with their conditions, the funds from the pool will cover the rehabilitation of that site. It is not specific to the financial assurance being sufficient for that particular site to cover it. It shifts the gap profile somewhat and spreads the risk across the industry.²³

2.5 Proposed performance audit, 2019-20

The QAO has proposed conducting a performance audit, *Monitoring environmental conditions for mining activities*, in 2019-20. The QAO expects that, by the time of the audit, many of the changes implemented by the departments will have matured and their effectiveness should be more evident.²⁴

Recommendation 1

The committee recommends that the Legislative Assembly note the contents of this report.

²¹ Public briefing transcript, Brisbane, 30 April 2018, p 2.

²² Public briefing transcript, Brisbane, 30 April 2018, p 3.

²³ Public briefing transcript, Brisbane, 30 April 2018, p 4.

²⁴ Queensland Audit Office, Auditor-General Report 1: 2017-18 *Follow-up of Report 15: 2013-14 Environmental regulation of the resources and waste industries*, p 4.

Appendix A – Officials at public briefing on 30 April 2018

Queensland Audit Office

- Brendan Worrall, Queensland Auditor-General
- Daniele Bird, Deputy Auditor-General
- Darren Brown, Director, Performance Audit Section