

Guideline

Financial assurance under the *Environmental Protection Act 1994*

This guideline describes the arrangements for financial assurance for prescribed Environmentally Relevant Activities and Transitional Environmental Programs under the Environmental Protection Act 1994. This Guideline is approved by the chief executive under section 550 of the Environmental Protection Act 1994.

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1 Introduction

1.1 Financial assurance

Financial assurance (FA) is a type of financial security provided to the Queensland Government by the holder of an *environmental authority* (EA)¹. FA may be required as a condition of an EA or a *Transitional Environmental Program* (TEP) under the *Environmental Protection Act 1994* (EP Act).

FA provides the government with a financial security to cover any costs or expenses incurred in taking action to prevent or minimise environmental harm or rehabilitate or restore the environment, should the holder fail to meet their environmental obligations in the EA or TEP. Providing FA to the government does not relieve an EA holder of any obligation under other legislation (e.g. delivering an offset under the *Environmental Offsets Act 2014*).

1.2 How financial assurance is imposed

This guideline sets out two ways in which FA requirements may be imposed:

- through a condition of an EA
- through a condition of a TEP.

1.3 The purpose of this guideline

This guideline outlines the relevant legislative provisions, the circumstances when FA may be required, the form of FA, the methods for calculation, application requirements, decision-making criteria and other matters such as lodging, changing, discharging or claiming FA. This guideline is for:

- new operators who are applying for a new EA and are giving FA for the first time
- existing EA holders who apply to amend/replace their FA as a result of changes to the activity or planned disturbance
- existing EA holders who apply to transfer the EA to a new holder
- existing EA holders who apply to surrender the EA
- existing EA holders who have a TEP
- departmental staff administering the FA provisions
- members of the public interested in learning more about the regulatory framework for FA.

All references to FA in this guideline refer to the EP Act only, unless otherwise stated. Flowcharts appear throughout the document in order to provide more guidance on FA processes. Unless specified, any reference to a timeframe in the flowcharts is a reference to a timeframe that is set by legislation.

This guideline is for prescribed ERA's only. For information pertaining to Estimated Rehabilitation Costs for resource activities refer to the *Guideline Estimated Rehabilitation Cost under the Environmental Protection Act 1994* (ESR/2018/4425).

1.4 Further information

For further advice please contact Permit and Licence Management (PaLM) and organise to speak with an assessment team representative for your relevant industry. Information is also available on the Queensland

¹ Throughout this document, italicised words appear in the dictionary at the end of this guideline. Only the first expression of the word will be italicised. Note: some words are italicised because they refer to titles of legislation.

Government's Business Queensland website at www.business.qld.gov.au/business/running/environment/licences-permits/financial-assurance-rehabilitation/financial-assurance-security-deposit.

2 Governing legislation and policy

2.1 Ability to require financial assurance

The administering authority² (from herein, the department) may, by condition of an EA or TEP, require the holder to give FA before the relevant activity is carried out. There are also circumstances throughout the life of the EA when the FA will need to be reviewed and amended. FA may also be discharged at the conclusion of activities and at the time of surrendering the EA, subject to successful rehabilitation. However the department may, after approving the surrender of an EA, require that the FA remains in force until it is satisfied that no claim is likely to be made. Refer to section 308 of the EP Act.

2.2 Circumstances when financial assurance can be required

The department, when making a decision about an EA or TEP, must consider whether to impose a condition requiring FA, having regard to the EP Act.

FA may be required for any *prescribed environmentally relevant activities* (ERA) where the activity will result in 'significantly disturbed land'. However, if a prescribed ERA is an authorised ancillary activity under a resource activity EA then it is taken to be calculated under the resource EA, refer to the ERC Guideline.

The following prescribed ERAs are likely to require FA:

Description of activity	List of activities to consider for FA
<i>Oil refining or processing</i>	ERA 11(b) and 11(c)
<i>Dredging and extracting activities</i>	ERA 16(1a to 1d) and ERA 16(2a to 2c)
<i>Metal smelting and refining</i>	ERA 30(c) and ERA 30(d)
<i>Mineral processing</i>	ERA 31 (1-2(b))
<i>Regulated waste recycling or reprocessing</i>	ERA 55(2)
<i>Regulated waste storage</i>	ERA 56
<i>Regulated waste treatment</i>	ERA 58
<i>Waste disposal</i>	ERA 60(1a to 1d) and ERA 60(2d to 2h)
<i>Clinical and regulated waste incineration and thermal treatment</i>	ERA 61(3a) and ERA 61(3b)

² The administering authority is the Department of Environment and Science (the department).

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From 1 July 2019, the ERA definitions will change for some waste activities. The ERAs in the table above will become the following from 1 July 2019:

Description of activity	List of activities to consider for FA
<i>Oil refining or processing</i>	ERA 11(b) and 11(c)
<i>Dredging and extracting activities</i>	ERA 16(1a to 1d) and ERA 16(2a to 2c)
<i>Metal smelting and refining</i>	ERA 30(c) and ERA 30(d)
<i>Mineral processing</i>	ERA 31 (1-2(b))
<i>Mechanical waste reprocessing</i>	ERA 54(3a to 3c) and ERA 54(4a to 4c)
<i>Other waste reprocessing and treatment</i>	ERA 55(2a to 2c) and ERA 55(3a to 3c) and ERA 55(4)
<i>Resource recovery and transfer facility operation</i>	ERA 62(1b to 1d)
<i>Waste disposal</i>	ERA 60(1a to 1d) and ERA 60(2d to 2h)
<i>Thermal waste reprocessing and treatment</i>	ERA 61(2a to 2c) and ERA 61(3a to 3c) and ERA 61(4)

When deciding whether to require FA for prescribed ERAs, the department will consider matters including:

- the nature and location of the proposed activity;
- longevity of the project;
- likelihood of action being required to rehabilitate or restore the environment because of environmental harm caused by the activity; and
- the environmental performance of the operator.

It is important to note that FA may be required regardless of underlying land tenure (i.e. freehold, leasehold etc).

The department does not typically require that local governments provide FA. An operator should discuss the need for FA as early as possible with the department in a pre-lodgement meeting.

2.3 Setting the amount and form of financial assurance

The department must decide the form and amount of FA required, refer to section 310 of the EP Act. The EA holder will propose the amount of FA via an application process for the activities.

The amount of FA should be based on the potential cost to government of having to undertake works and cannot exceed the total or likely costs to rehabilitate or restore and protect the environment. The proposed amount may take into account any discounts being applied for, if applicable. Therefore, the total rehabilitation liability should be calculated by subtracting the proposed discount amount from the 100% rehabilitation liability amount. For full details of how the proposed FA amount should be calculated, refer to Appendix A—Approved calculation method—other environmentally relevant activities and Appendix B—Discount system.

2.4 When financial assurance must be given

For **new EA holders or TEP**, operators with a condition requiring FA to be given will be able to first obtain the EA and then give their FA at a later stage, via a separate application process. Carrying out activities on land without first giving FA to the department may be treated as a breach of the EA condition, could attract fines or prompt government action to suspend or cancel the EA. Refer to sections 430 and 278 of the EP Act.

For **new EA holders, arising from a transfer/change**, FA must be given before the activity is carried out. This may require the operator to give FA prior to any transfer application being approved.

Existing EA holders may need to amend or change the amount of FA if the level of disturbance has. For EA holders with FA that has been discounted in accordance with Appendix A, an FA amendment should also be sought where (a) the holder can no longer meet their discount obligations; or (b) at the end of the nominated FA period. Refer to Appendix B – Discount system, for further details. The replacement documentation should propose the 'revised amount' and the department will review and require any changes after that. So long as FA is already held, the operator will not need to 'stop' operations and the department can nominate any date for when the requirement takes effect. Refer to section 315 of the EP Act.

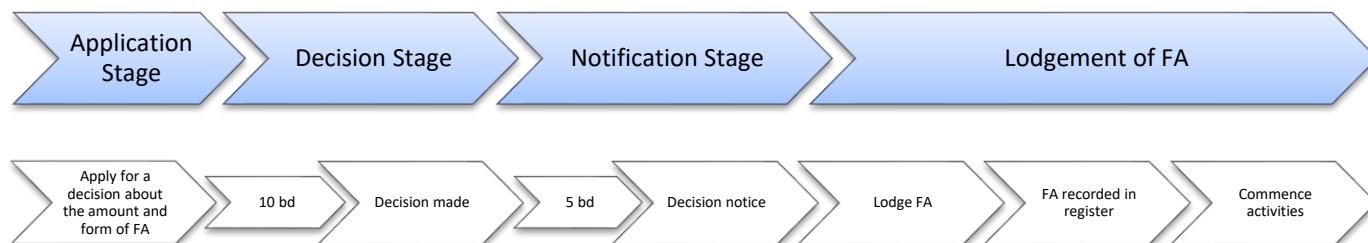
Note: Statutory timeframes apply to some aspects of the process and these are outlined in the relevant sections and/or reflected in the flowcharts throughout this guideline.

2.5 Relationship to security required under other Acts

The government may require security or FA for a range of matters under Queensland legislation. This guideline does not deal with security requirements which are administered by other government departments and required under other Queensland statutes. It does not duplicate security or FA held for any other purpose.

3 Deciding the amount and form of financial assurance

Figure 1: Process for providing financial assurance



3.1 Application stage

3.1.1 How to apply for a decision about the amount and form of financial assurance

All prescribed ERAs must make an application to the department for a decision on the amount and form of FA (the application process). The application must be made (at any time after the EA has been granted) in the approved form, Application for a decision about the amount and form of financial assurance (ESR/2015/1754), and meet the minimum information requirements set out below.

3.1.2 Information requirements

The following information is considered necessary to decide the application and must be included (as per section 309 of the EP Act):

- (a) detailed explanation of disturbance (including scale/area of disturbance and original land use)
- (b) rehabilitation program (including the nature, staging and areas of proposed rehabilitation works including proposed rehabilitation techniques, justification for these techniques, final landform and final land use)
- (c) list of published standards, performance indicators or acceptance criteria that underpin the rehabilitation activities and any other assumptions used to calculate the FA
- (d) list of third party suppliers (including business name and contact details) who have supplied the quotes or *contracted rates*.³
- (e) state the proposed amount and time period for the FA
- (f) supporting information to show how FA has been calculated, such as the electronic worked version of the FA calculator and background calculations
- (g) if applicable, information required in order to demonstrate eligibility for a discount, including any necessary declarations, reports and/or other supporting documentation (refer to Appendix B).

If the approved form is incomplete or the application does not include the above minimum information requirements, the department may not accept the application, in which case the application will be returned without assessment.

3.1.3 Calculating financial assurance

For all prescribed ERA's requiring a decision on the amount and form of financial assurance, the approved calculation method is outlined in Appendix A. In summary this method involves:

³ The department may ask for copies of quotes or contracted rates to validate applications or as part of ongoing compliance activities. EA holders must keep records of current third party quotes and contracted rates.

- **Step 1:** Calculate total (i.e. 100%) rehabilitation liability with respect to significantly disturbed land. The total rehabilitation liability must first be calculated for the EA, for all significantly disturbed land, as per Appendix A.
- **Step 2:** If applicable, apply a discount. In recognition of the low incidence of non-compliance, low risk of default, and good environmental performance/lower risk of environmental harm by some operators, the department has adopted a discount system so that operators may reduce the amount of FA payable, to an amount below 100% rehabilitation liability for significantly disturbed land. Access to the discount is subject to mandatory pre-requisites and the amount of discount attainable is based on a number of criteria (e.g. sound financial health, measures undertaken to reduce rehabilitation liability/risk of environmental harm etc.). These are listed in Appendix B.
- **Step 3:** Calculate proposed FA. The final FA can be calculated by subtracting the discount amount from the 100% rehabilitation liability amount.

3.2 Decision stage

3.2.1 Criteria for deciding the amount and form of financial assurance

The department must decide the amount and form of FA with regard to criteria in a guideline made by the chief executive. Refer to section 310 of the EP Act.

The following criteria must be considered for FA proposed*:

- any relevant rehabilitation plans for the EA
- any relevant report, evaluation, assessment or statement of compliance for the EA
- any relevant standards or rehabilitation requirements such as conditions of the EA
- any relevant decisions for the EA
- any relevant enforcement action or notices about rehabilitation or past environmental performance
- supporting information and assumptions used to calculate the FA
- the submitted statement confirming that the FA has been calculated in accordance with this guideline
- departmental policy (including financial policy) and any other relevant financial policy or legislation about the acceptable form of FA (see below)
- if a discount is sought, the mandatory pre-requisites and discount criteria outlined in Appendix B
- if applicable, other relevant quotes or cost estimates for the work
- if applicable, any compliance statement or declaration given about the environmental authority or in relation to the discounts in Appendix B.

* These criteria also apply to decisions to approve or refuse an application to amend the FA—refer to the relevant section of this guideline below for more information.

3.2.2 The form of financial assurance

The department may decide what form of FA is required. The EP Act, state financial legislation and departmental policy inform the requirements for deciding the form of FA. The *Financial Accountability Act 2009* and the Financial Performance and Management Standard 2009 provide the requirements for how the state accounts for and administers its finances. The department is responsible for managing its financial performance and minimising financial liabilities and risks. It has a comprehensive Financial Management Assurance Framework (FMAF) and, with advice from the finance, audit and governance expertise within the department, the Director-General and Executive Management Group have a hands-on role in monitoring the budget and determining other financial

matters. This includes the form of FA. Departmental policy requires FA to be a financial institution's undertaking in the form of an unconditional, irrevocable and on demand guarantee.

The department has developed a pro-forma (ESR/2016/1980) which is available for download on the Business Queensland website at www.business.qld.gov.au/business/running/environment/licences-permits/financial-assurance-rehabilitation/financial-assurance-security-deposit. Alternatively, the department will provide a copy to the applicant when a decision has been made about the amount and form of FA.

Cash may be accepted in limited circumstances, subject to approval by the department. The request to provide FA in the form of cash should be identified as part of the application.

3.3 Post decision stage—notification

The department must notify the EA holder, via an information notice, about the amount and form of FA within five (5) days of making the decision. Refer to section 311 of the EP Act. To expedite the process of providing the FA before activities are carried out, the department may also arrange to phone the EA holder to give verbal notification of the decision (e.g. phone call). The notice will also include details on review and appeal as the decision is appealable (refer to Schedule 2 Original decisions under the EP Act).

3.4 Lodgement of financial assurance

The correct place for lodgement will be specified in the information notice. The EA holder must give the total amount of FA before activities can be carried out.

FA must be lodged in person with the relevant departmental regional office or via registered post to the relevant officer:

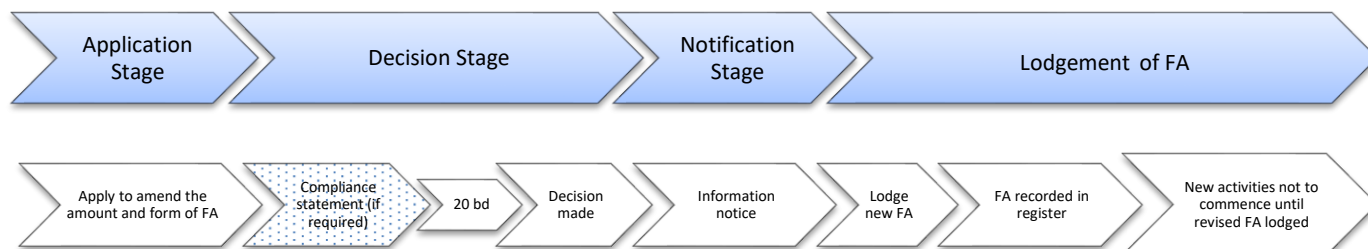
Department of Environment and Science
ESR - Office of the Deputy Director General
C/o- Principal Finance Officer
GPO Box 2454
Brisbane QLD 4001

The department will hold all Financial Assurance in a secure location.

4 Amending the financial assurance by application

The EA holder may apply to amend the amount and form of FA. Refer to section 312 of the EP Act. The processes and requirements are outlined below.

Figure 2: Process for amending the financial assurance



Note: The request for a compliance statement is a step that may or may not be undertaken by the department after the application is made. The statutory timeframe applies from the later of these steps (i.e. after application or after giving of the compliance statement).

4.1 Application stage

4.1.1 How to apply to amend the amount or form of financial assurance

An EA holder may apply to amend the amount or form of FA. FA may need to be amended in response to some change in activities which has changed the area of significant disturbance and thus the total rehabilitation liability on-site. This change may result in an increase or decrease in FA. Where the proposed changes will require an amendment to the EA, an amendment application form must be submitted, and the EA conditions should be decided before the EA holder applies to amend the FA.

The application to amend FA must be made in the approved form, Application to amend or discharge the financial assurance held for an environmental authority (ESR/2015/1752).

4.1.2 Information requirements

If the approved form is incomplete or the application does not include this information, the department may not accept the application. For the purposes of sections 312 of the EP Act, the following information must be provided with the application:

- explanation or reasons for the change (e.g. change in disturbance, new standards, revised quotes, etc.)
- any changes to the existing period that has been nominated for the FA (total period must not be more than five years)
- proposed new amount of FA compared to existing amount held
- if the change is due to a change in disturbance, the revised rehabilitation program including the nature, staging and areas of proposed rehabilitation works
- if the change is due to a change in disturbance, details of any change in the area or type of disturbance proposed, including a comparison to the disturbance area identified in the existing rehabilitation plan. This includes details and area of any land that has been progressively rehabilitated in the previous period
- supporting information to show how FA has been calculated, such as the electronic worked version of the FA calculator and background calculations; updated list of third party suppliers and contracted rates or if applicable
- if applicable, information required in order to demonstrate eligibility for a discount, including any necessary declarations, reports and/or other supporting documentation (refer to Appendix B).

4.1.3 Compliance statements

The department may require a compliance statement to be lodged after receiving an application to amend FA. For example, this may occur when a discount is being applied for or if the FA is proposed to be reduced. The statement must declare the extent to which activities carried out under each relevant authority have complied with the conditions of the EA and state whether or not the amount of the FA has been calculated having regard to the criteria stated in this guideline (for example, the criteria in Appendix A and Appendix B). Refer to section 313 of the EP Act.

4.2 Decision stage

4.2.1 Criteria for deciding an application to amend financial assurance

The department must decide whether to approve or refuse the request to amend FA. The department, when deciding whether to approve or refuse an application to amend FA, must have regard to the same criteria that are used when deciding the amount and form of FA. Refer to section [□](#) above.

4.2.2 Notification

The department will issue an information notice about the decision if the application is refused and will include details on review and appeal as the decision is appealable (refer to Schedule 2 Original decisions under the EP Act). If the decision is approved, the department will provide written advice of the new requirements. Refer to section 314 of the EP Act.

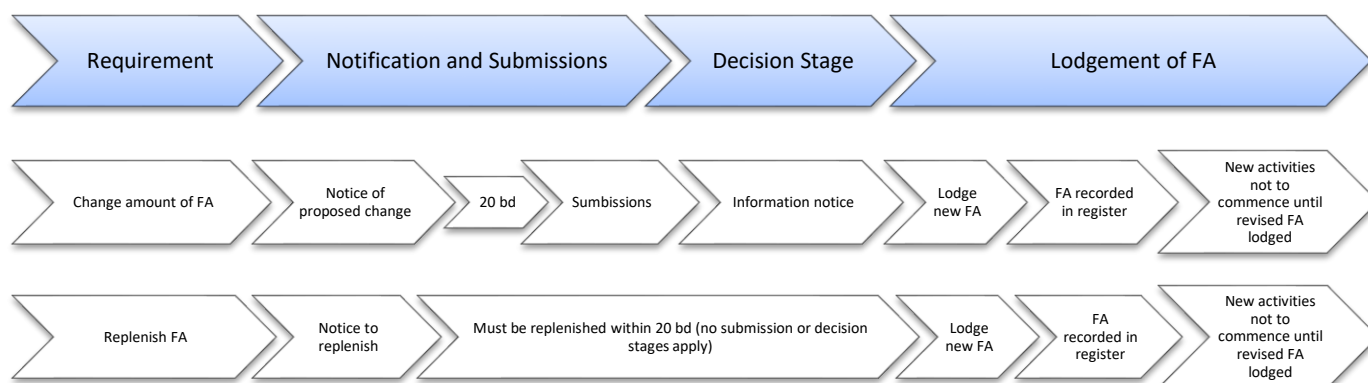
4.3 Lodgement of financial assurance

The same lodgement arrangements outlined in section 3.4 above apply.

5 Requirement to change or replenish the financial assurance

The department may, at any time, require the holder of the EA to change the amount of FA, or replenish their FA. Refer to sections 315 and 316 of the EP Act. There are different processes and requirements, depending on the situation. These are outlined below.

Figure 3: Process for changing or replenishing the financial assurance



5.1 Notification and submissions stage

5.2 Administering authority can change the amount of financial assurance required

When FA has been given for an EA, the department may, at any time, require the holder of the EA to change the amount of FA. The following is a list of examples where the department may review the amount of FA and decide to require a change to the amount of FA held. It may be in response to:

- an amended EA resulting in a change in disturbance
- a report from a compliance inspection, annual return, environmental audit or similar
- information that has identified materially false or misleading declarations were made.

The department must issue a Notice of the Proposed Change under section 315 of the EP Act and invite submissions from the EA holder. The submission period is 20 business days.

5.2.1 Decision stage

Once the submission period has ended, the department must consider any submissions and issue an information notice about the final decision. Whilst the EP Act provides that the requirement can take effect once the holder has been given the notice, the department can nominate a later date in order to provide more lead time for the EA holder to meet their requirements. The department has adopted an administrative policy of 20 business days after the decision has been made as the date of effect. This timeframe is considered reasonable as it gives the EA holder four weeks from the time the notice is given to organise the new FA (e.g. contact and negotiate with financial institutions for a guarantee etc.). This means, at least eight weeks pass from the time an EA holder is notified about the proposed change to the time the requirement takes effect. If the amount is not given within the timeframe, the department may review whether the EA holder is in non-compliance with their information notice or EA condition.

Refer to section 315 of the EP Act. The notice will also include details on review and appeal as the decision is considered an original decision under the EP Act (refer to Schedule 2 Original decisions under the EP Act).

5.3 Administering authority can require financial assurance to be replenished

When FA has been given for an EA that is still in force, and all or part of the FA has been realised, the department must give the EA holder a notice directing them to replenish the FA within 20 business days. The objective of this is to bring the FA balance back up to the rightful amount. Refer to section 316 of the EP Act. It is a condition of the EA that the holder must comply with the direction. Failure to replenish FA may be treated as a breach of condition and

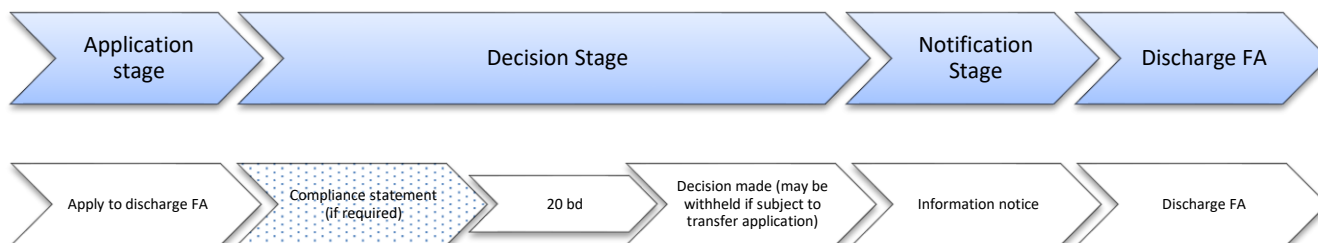
could result in a heavy penalties or action to suspend or cancel the EA. Refer to sections 278 and 430 of the EP Act.

5.4 Lodgement of financial assurance

The same lodgement arrangements outlined in section 3.4 of this guideline (above) apply.

6 Discharging financial assurance

Figure 4: Process for discharging the financial assurance



Note: The compliance statement is a step that may or may not be required by the department. The statutory timeframe applies from the later of these steps (i.e. after application or after compliance statement). However if there is a transfer application, the decision may be withheld for a longer period, until the transfer is approved, new FA is given and the transfer is effective.

6.1 Application stage

6.1.1 Holder can apply to discharge financial assurance

The EA holder may apply to discharge the FA. The application may arise from a transfer or surrender of an EA. Refer to section 312 of the EP Act. As per section 312 of the EP Act, the current EA holder (transferor) must complete the application in the approved form, Application to amend or discharge the financial assurance held for an environmental authority (ESR/2015/1752).

6.1.2 Information requirements

An application to discharge FA should refer to the approved form only. There are no additional information requirements in this guideline. If the application is related to an application to surrender an EA, sufficient information will be provided in the Application to surrender an environmental authority for a prescribed ERA (ESR/2015/1719). If the approved form is incomplete or the application does not include the above information, the department may not accept the application.

6.1.3 Compliance statements

The department may, after receiving an application to discharge FA, require a compliance statement to be lodged. The statement will outline the extent to which activities carried out under each relevant authority have complied with the conditions of the EA. Refer to section 313 of the EP Act.

6.2 Decision stage

6.2.1 Criteria for deciding an application to discharge financial assurance

The administering authority must decide whether to approve or refuse the request to discharge FA. Section 314 of the EP Act states that the department, when deciding whether to approve or refuse an application to discharge financial assurance may only approve an application to discharge a FA if the authority is satisfied that no claim is likely to be made on the assurance. This is the only legislative criteria for discharging FA.

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If an application to discharge FA coincides with an application to surrender the EA (section 264 of the EP Act), the department may consider the *final rehabilitation report*⁴ along with other documentation. The final rehabilitation report includes information about compliance with conditions of the EA, the extent of rehabilitation, ongoing environmental management and monitoring requirements, environmental risks and residual risks. If there is a transfer application, the decision on discharging FA given by the transferor may be withheld until the transfer is approved, new FA is given by the transferee and the transfer is effective.

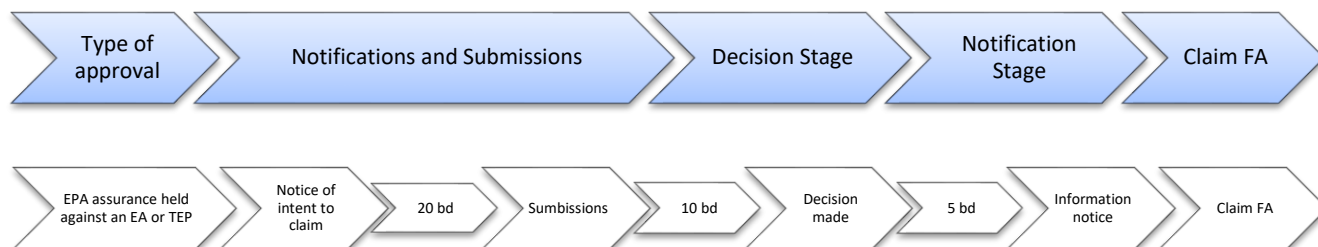
6.2.2 Notification

The department will advise the EA holder in writing about the decision to discharge FA. Refer to section 314 of the EP Act. The advice will also include details on review and appeal as the decision is appealable (refer to Schedule 2 Original decisions under the EP Act). The department will then discharge the amount of FA owing to the applicant.

⁴ The approved form for a final rehabilitation report is the Rehabilitation report (ESR/2015/1616). This is available on the Business Queensland website at www.business.qld.gov.au/running-business/environment/licences-permits/surrender-transfer/surrender.

7 Claiming financial assurance

Figure 5: Process for claiming the financial assurance



7.1 Notification and submissions stage

The department may decide to claim FA if it incurs or might reasonably incur costs or expenses in taking action to prevent or minimise environmental harm, restore the environment or secure compliance with an EA (in-force, cancelled, surrendered) for which FA has been given. It is important to note that, while the amount of FA held is determined on the basis of rehabilitation liability, this does not prevent the administering authority from making a claim on FA to recover costs or expenses that it incurs in taking action to prevent or minimise environmental harm arising from an incident that occurs on site. Before making a claim on financial assurance the department must give written notice of the intent to claim, provide a period for submissions to be made and then consider those submissions when making the final decision. Refer to sections 316A-316G of the EP Act.

7.2 Decision stage

7.2.1 Notification

If the department decides to claim part or all of the FA, it must issue an information notice about the decision. The notice will also include details on the holder's review and appeal rights as the decision is considered an original decision under the EP Act (refer to Schedule 2 Original decisions under the EP Act).

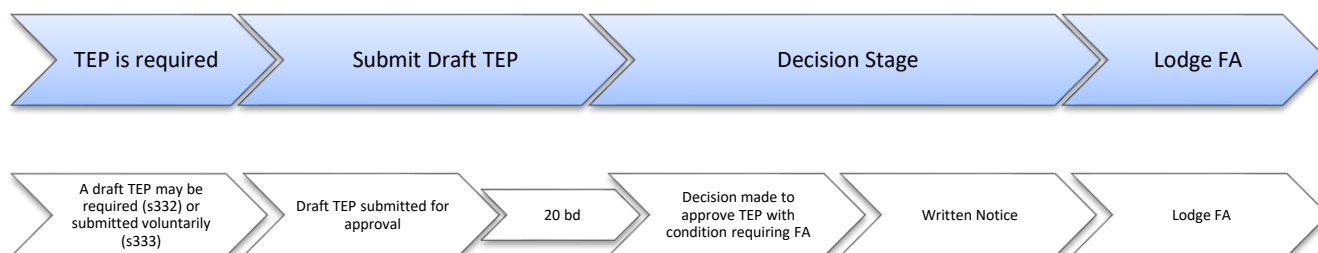
7.3 Claim financial assurance

Once the decision to claim is confirmed and communicated, the department will access the cash deposit (if cash) or request funds from the Financial Institution under the terms of the Guarantee. The department will utilise funds to commence work for the specific FA site.

8 Financial assurance for transitional environmental programs

A transitional environmental program (TEP) is a specific program that reduces environmental harm by identifying a program to bring an activity up to the standards specified in a relevant EA. The department may, by condition of a TEP, require the holder of the EA to give FA as security for compliance with the program and costs or expenses. Refer to section 339 of the EP Act.

Figure 6: Financial assurance for a transitional environmental program



8.1 Requirement for TEP

Applicants should discuss the likelihood of a FA condition being imposed during discussions with the department prior to submitting a draft TEP. If it is likely that FA will be required, the amount of FA should be proposed as part of the TEP to avoid delays in the assessment of the draft program. The department may, by written notice, also request information about of FA (refer to s 334A of the EP Act). If a condition to impose FA is made, the condition must also require the giving of the FA before activities under the TEP commence.

8.2 Notification

The department will issue a decision notice within 8 business days of making the decision (refer to s340) and will also note the existence of the TEP on the EA (refer to section 343A of the EP Act).

8.3 Lodgement of financial assurance

FA must be lodged as per the requirements in the decision notice. All FA for TEPs is to be lodged with the department. Once accepted by the department, activities may commence.

8.4 Discharge financial assurance

At the end of the period over which the program is carried out, the department must discharge the FA (refer to section 344D of the EP Act).

Further information can be found in the guideline for TEPs (available at www.des.qld.gov.au using the publication number ESR/2016/2277 as a search term).

9 Glossary

Contracted rates	<p>Contracted rates provided by the EA holder must:</p> <ul style="list-style-type: none"> • be from a service provider who is a separate legal entity to the EA holder, and who is appropriately qualified and experienced to safely and competently do the works • reflect the true cost to government (not the EA holder) to commission the works and include all EA holder supplied costs (costs that have been subsidised by the EA holder) e.g. diesel, accommodation, access to site workshops • include the technical specifications, scope of works and schedule of rates and should be clearly itemised to reflect a detailed breakdown of works involved (e.g. cost/machinery hire, labour, materials, etc.) • be from a formal written contract awarded and executed in the previous 12 month period from the date of the FA application • be for the site the FA application relates to.
Decommission	To close down (a facility, as a power station, sewerage plant, etc).
Environmental authority (EA)	Means an environmental authority issued by the administering authority under Chapter 5 of the <i>Environmental Protection Act 1994</i> .
Final rehabilitation report	<p>A final rehabilitation report prepared by or for an environmental authority holder, under the <i>Environmental Protection Act 1994</i>. The report assesses the extent to which the environmental conditions and any additional conditions of the environmental authority have been met. It is associated with an application to surrender an environmental authority.</p> <p>Note: The approved form for a final rehabilitation report is Rehabilitation report (ESR/2015/1616).</p>
Prescribed ERAs	A prescribed ERA is an environmentally relevant activity prescribed under section 19 of the <i>Environmental Protection Act 1994</i> . A list of prescribed ERAs appears at Schedule 2 of the Environmental Protection Regulation 2019.
Resource activities	<p>Section 107 of the <i>Environmental Protection Act 1994</i>: A resource activity is:</p> <ol style="list-style-type: none"> (a) a geothermal activity (b) a GHG storage activity (c) a mining activity (d) a petroleum activity.

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Significantly disturbed land	<p>Land that is contaminated or has been disturbed and human intervention is needed to rehabilitate it. For the purposes of this guideline, this includes activities that may result in:</p> <ul style="list-style-type: none"> • clearing vegetation • negative effects on the viability of root quality • stability of mature vegetation • negative effects on soil structure and soil quality • removal or disturbance of habitat features such as ground cover and fallen or hollow vegetation to an extent that the viability of the habitat is reduced • introduction or spread of invasive plant or animal species • bank instability • erosion and sedimentation to land.
Standard, variation or site-specific applications	<p>A standard application for an environmental authority is one that can comply with the eligibility criteria that are prescribed under the Environmental Protection Regulation 2019 and the standard conditions as notified in the gazette. A variation application is one which can comply with the eligibility criteria but not all standard conditions. If the eligibility criteria can't be complied with, an application must be site-specific. Refer to sections 121-124 of the <i>Environmental Protection Act 1994</i>.</p>
Third party quote	<p>A third party quote must:</p> <ul style="list-style-type: none"> • be prepared by a service provider who is a separate legal entity to the EA holder and who is appropriately qualified and experienced to safely and competently do the works or estimate the cost of the works • reflect the true cost to government (not the environmental authority holder) to commission the works and include all EA holder supplied costs (costs that have been subsidised by the EA holder) e.g. diesel, accommodation, access to site workshops. • be valid for the duration of the plan of operations or relevant disturbance period within which FA is being calculated. • include the technical specifications, scope of works and schedule of rates and should be clearly itemised to reflect a detailed breakdown of works involved (e.g. cost/machinery hire, labour, materials, etc.). • be calculated within the previous 12 month period from the date of the FA application.
Transitional environmental program (TEP)	<p>A transitional environmental program is a specific program that reduces environmental harm by identifying a program to bring an activity up to the standards specified in a relevant EA, development approval, or a prescribed condition for a prospecting permit.</p>

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Disclaimer:

While this document has been prepared with care it contains general information and does not profess to offer legal, professional or commercial advice. The Queensland Government accepts no liability for any external decisions or actions taken on the basis of this document. Persons external to the Department of Environment and Science should satisfy themselves independently and by consulting their own professional advisors before embarking on any proposed course of action.

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15 January 2019

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Version history

Version	Effective date	Description of changes
1.00	31 May 2013	Converts former administrative FA Guideline to statutory FA Guideline and incorporates Greentape Reduction Act 2012 streamlining initiatives which apply across the resources sector and prescribed ERA's.
2.00	7 March 2014	Revises discount system and introduces DES FA calculator.
3.00	4 March 2016	Publication number changed from EM1010 to ESR/2015/1758. Excludes GST from FA calculations, introduces contracted rates and clarifies requirements for suitable infrastructure, prescribed ERAs and industry calculators.
3.01	14 June 2018	The document template, header and footer have been updated to reflect current Queensland Government corporate identity requirements and comply with the Policy Register.
3.02	Approved: 15 January 2019 Commenced: 1 April 2019	Updates statutory guideline to remove references to resource activities and update sections of the EP Act. These changes were made based on the Mineral and Energy Resource (Financial Provisioning) Bill 2018.
3.03	1 November 2019	Minor updates to reflect the remake of the Environmental Protection Regulation 2019.
3.04	04 May 2022	Facsimile number removed.

Appendix A—Approved calculation method

The following methodology applies prescribed environmentally relevant activities (e.g. landfills, quarries).

The department has developed a resource Estimated Rehabilitation Cost (ERC) calculator to help facilitate consistency in calculating FA. The calculators can be downloaded from the Business Queensland website at www.business.qld.gov.au/business/running/environment/licences-permits/financial-assurance-rehabilitation/financial-assurance-security-deposit. EA holders must ensure that they use the latest version of the relevant FA calculator each time they recalculate their proposed amount of FA.

EA holders who calculate their FA using the departmental ERC calculator will find that the assessment of their FA application is significantly streamlined.

EA holders that do not calculate their FA using the departmental ERC calculator can still achieve a streamlined assessment of their FA if they have previously had their calculator recognised by the department. Industry calculators can achieve recognition if they follow the recognition process outlined below in Part 2.

All other industry calculations will undergo a complete assessment which may include the department comparing the industry calculation of FA against the departmental calculator values.

Regardless of which type of calculator is used, all FA calculations must follow the steps outlined in Part 1 below.

Part 1: Criteria for calculating financial assurance

Step 1: Calculate 100% rehabilitation liability

The total rehabilitation liability reflects the total potential costs to rehabilitate significantly disturbed land, in a way that will ensure compliance with environmental conditions of the EA. The total rehabilitation liability must:

- be calculated on a project basis (i.e. may cover several activities on one or more authorities)
- be calculated for all land that has been or is proposed to be significantly disturbed
- be based on the rehabilitation costs for the year in which the maximum liability is incurred within the nominated disturbance period⁵
- costs must be a site-specific independently certified, *third party quote* or a contracted rate to undertake the full extent of work necessary to meet all EA conditions including the following activities:
 - (a) *decommission* and remove all *infrastructure* and terminate all services⁶
 - (b) constituent tasks or activities required for rehabilitation

⁵ The disturbance period provides for a regular review in recognition of the variable nature of disturbance (e.g. due to activities expanding or being rehabilitated) and the subsequent rehabilitation liability. If this period is less than 1 year, FA should be calculated based on the maximum rehabilitation liability within the nominated disturbance period.

⁶ Note: Some costs may not need to be included for certain suitable infrastructure if the EA holder can provide a written agreement (between the EA holder and the land owner) or a statement (if the EA holder is the underlying landowner) that the infrastructure can remain onsite and can demonstrate that the retention of the infrastructure is consistent with achieving the general rehabilitation goals of a site that is safe to humans and wildlife, non-polluting, and stable. Examples of suitable infrastructure include bores, clean water dams and access roads. This does not negate the need to obtain any other authorisations as required under the EP Act or other legislation.

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(c) project management⁷ costs (10% of the total rehabilitation liability is recommended)⁸

(d) maintenance and monitoring⁹. It is recommended that 5% of the total rehabilitation liability be added to account for maintenance and monitoring costs. In some circumstances it may be appropriate to determine actual maintenance and monitoring costs rather than applying 5%⁸. An example is where maintenance and monitoring costs are likely to account for more than 5% of the total rehabilitation liability for the site,

(e) if the project produces hazardous contaminants or includes notifiable activities (in relation to contaminated land), the cost of completing a site investigation report to verify that the conditions of the environmental authority have been met

The total rehabilitation liability does not:

- need to be calculated for disturbance authorised under an EA if FA has already been given under the same or another EA and where there is colocation of infrastructure resulting in no change to the rehabilitation activities or disturbance.
- include the costs of responding to an incident (e.g. a spill or accidental release to waters that has downstream impacts).

The total rehabilitation liability must not:

- assume that the liability can be reduced or offset by deducting the value of on-site infrastructure or other assets (including scrap metal). This does not satisfy the requirements for an acceptable form of FA (which must be unconditional; immediately payable on demand and payable without reference to another person and available until all obligations have been performed). The department does not accept this method due to risks and uncertainty associated with the department's ability to inherit and on-sell these assets and commercial factors (i.e. depreciation and saleability) which could affect the value of the item.

Step 2: If applicable, apply the discount and then calculate proposed financial assurance

In recognition of the low incidence of non-compliance, low risk of default, and good environmental performance/lower risk of environmental harm by some operators, the department has adopted a discount system so that operators may reduce the amount of FA payable, to an amount below 100% rehabilitation liability for significantly disturbed land. Access to the discount is subject to mandatory pre-requisites and the amount of discount attainable is based on a number of criteria (e.g. financial stability, measures undertaken to reduce rehabilitation liability/risk of environmental harm etc.). The maximum allowable discount is 30%. The criteria are listed in Appendix B.

Step 3: Calculate proposed financial assurance

The final FA can be calculated by subtracting the discount amount from the 100% rehabilitation liability amount.

⁷ This reflects the costs to government to project manage, schedule or oversee the required works.

⁸ The EA holder may nominate an alternative amount for these components (or variable amounts across each itemised activity). If the non-recommend value is used, quotes must then be attached with the application/information supplied to the department.

⁹ This reflects the cost to government to do ongoing monitoring and maintenance required of rehabilitation works.

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Part 2: Recognising industry calculators

EA holders that do not calculate their FA using the departmental FA calculator can still achieve a streamlined assessment of their FA if they have previously had their calculator recognised by the department. In order to gain confidence in a calculator, the department will need sufficient time to properly review its contents.

Industry calculators can achieve recognition if they follow the recognition process outlined below.

Step 1: Presentation of calculator to the department

EA holders should submit calculators to the department for recognition before making an application for a decision on the amount and form of FA. The time that it will take to assess a calculator will vary depending on its complexity. Experience has shown that it can take upwards of three months to fully assess some of the more complex calculators.

The purpose and intent of presenting the calculator to the department is to:

- demonstrate its functions and methodology to officers (i.e. aid familiarity and understanding of the tool which will build confidence in the method of FA calculation, prior to an FA calculation being submitted for assessment);
- obtain formal recognition that the calculator complies with the approved calculation method as laid out in this guideline. This will streamline the FA application process by reducing the level of assessment that is needed in the official statutory timeframes.

This should be the relevant regional office or if the calculator is used across multiple parts of Queensland, it is recommended to approach the office from which most of the EAs are supervised and managed. The relevant regional office can facilitate meetings to ensure the right combination of staff are in attendance (i.e. depending on the region/s in which the company operates).

It is recommended that a presentation be provided for each substantive revision of the calculator so as to outline any changes, provide a refresher to staff and familiarise new staff. This will facilitate the recognition of subsequent versions of calculator.

Step 2: Statement of recognition

After the presentation of the industry calculator to staff, the department will check the calculator against the requirements of Appendix A, Part 1, Step 1. The following lists some key features that a calculator will need to include in order to satisfy these requirements and obtain a statement of recognition:

- Clear identification of all domains / types of disturbance associated with the project(s) for which it will be used.
- Clear identification of all rehabilitation activities required for each of type of disturbance identified (including decommissioning and removal of all infrastructure and services, and contaminated land investigations). The disturbance and rehabilitation work must be consistent with requirements of the environmental authority and other relevant documents.
- The calculator should clearly identify the year to which the FA calculations apply. The method that the EA holder will use to determine the year of maximum liability within the nominated disturbance period (if more than 1 year) should be stated.
- The unit costs and methods used to calculate rehabilitation liability for each area of disturbance must be reasonable and clearly explained. It should be confirmed that the rates provided reflect current pricing. Note: Unit costs can be reviewed without the need for a new statement of recognition provided that the EA holder provides an explanation of changes when FA calculations are submitted. Any assumptions

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that will be made when using the calculator must be clearly stated (e.g. the reasons and justification for the rehabilitation methodology proposed where there are multiple options). The intended scope of use for the calculator should also be clear; i.e. whether it will be used for one project or multiple.

- If the calculator is intended to be used for multiple projects, the following will also need to be demonstrated:
 - (i) That rehabilitation rates are applicable to each of the sites for which the calculator will be used. The calculator may include options (similar to the department's FA calculators) that enable some rates to be itemised based on haulage distances (e.g. to source materials for rehabilitation, to dispose of wastes, or to determine mobilisation costs for equipment).
 - (ii) The extent and method of rehabilitation work that can be input to the calculator is sufficient to meet EA requirements for each site.

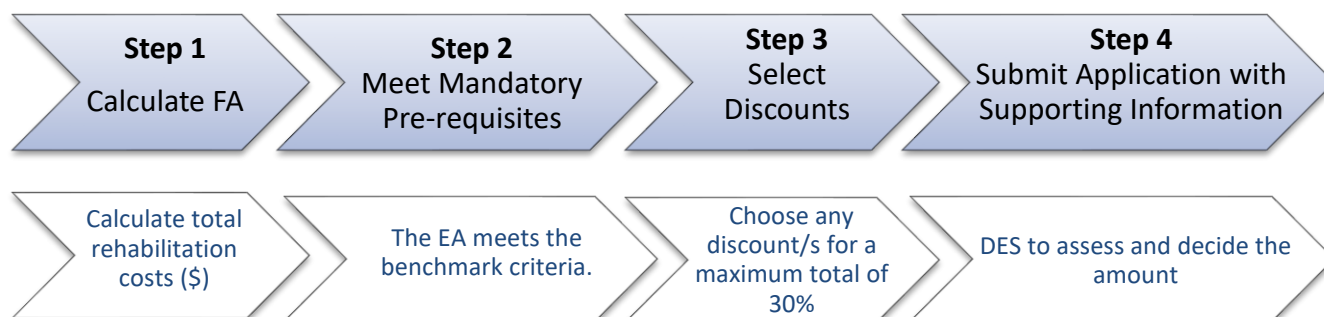
The department must be satisfied with the rehabilitation methodology proposed and costed for FA calculations. In determining whether a proposed rehabilitation methodology is acceptable, the department may take into consideration the results of any predictive studies that assess the likelihood of success of proposed rehabilitation methods. This may be particularly relevant to waste rock dumps containing acid-generating material, or brine / solid salt residues, where rehabilitation methods or disposal options require further investigation or site-specific trials.

If the department is satisfied that the calculator meets the above requirements it can provide a Statement of Recognition to acknowledge acceptance of the calculator. The statement can be in the form of a letter on departmental letterhead and can be used in subsequent dealings/applications to aid acceptance of the calculator each time. Once an EA holder receives their statement, they can submit it with their FA application. The statement should be specific to a version of the calculator. Substantive revisions would need to obtain a new statement (notification of changed costings with an accompanying explanation is sufficient and would not trigger a need for a new statement).

Step 3: Declaration of version

When an EA holder submits their proposed FA calculations using a recognised industry calculator, they will be required to declare that the calculation methodology and the rates used in the submission have not changed from the calculator presented to, and recognised by the department, and that the rates are appropriate for the nominated disturbance period. This declaration will be integrated into the declaration that already exists in the application for deciding the amount and form of FA. If the calculator relates to a lease, it is recommended that a statement be included in the Compliance Statement.

Appendix B—Discount system



Discount system for Prescribed ERAs

A discount will apply to the gross FA liability for an EA, where the EA holder can demonstrate that it meets all mandatory pre-requisites (listed in Table 1 below) and the discount criteria (outlined in Tables 2-4 below) which are relevant to the discount they are applying for.

The discount system is EA specific, meaning that any requirements which must be met and any discount that is applied only relate to the EA in question. For example, if a mandatory pre-requisite is not met because the EA holder has not complied with certain EA conditions, a discount cannot be applied to that specific EA. However, a discount can still be applied for in relation to other EAs held by the same EA holder.

If a discount is achieved, it applies only for the FA period nominated by the EA holder. At each new FA period, the EA holder will need to demonstrate it meets the mandatory pre-requisites and discount criteria, otherwise the amount of FA needed will revert to its undiscounted value. In some cases there are also annual reporting requirements.

Mandatory pre-requisites

The mandatory pre-requisites outlined in Table 1 are benchmarks that each EA must meet in order to apply for any subsequent discounts.

Discounts

There are 3 discount categories and an EA holder may choose any discount to apply for, however the maximum discount that can be awarded is 30%. The following explains the purpose of awarding discounts under each category:

1. Financial (Table 2): This discount category provides a discount where an EA holder submits certified documentation to demonstrate sound financial health and a declaration that the costs of rehabilitation have been adequately budgeted for.
2. Progressive rehabilitation and certification (Table 3): This discount category provides a discount to EA holders that avoid impacting areas of remnant vegetation or where areas of significant disturbance are being proactively rehabilitated or revegetated.
3. Waste management (Table 4): This discount category provides a discount to an EA holder where they can demonstrate they are not undertaking significant high risk storage activities (waste rock dumps, regulated dams, brine and landfill waste) or they have implemented measures that reduce the amount of waste that would otherwise be stored in onsite high risk storage activities.

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Table 1: Mandatory pre-requisites

Mandatory pre-requisites	
General	<ul style="list-style-type: none"> • FA must be calculated in accordance with Appendix A of the FA Guideline. • The EA condition must be worded in a way that triggers a recalculation of FA, where there is an increase to the FA as a result of an event or change in circumstance (i.e. once the discount for the nominated FA period runs out or where the EA no longer meets the mandatory pre-requisites or applicable discount criteria).
Financial Standing	<ul style="list-style-type: none"> • The EA annual fees must be up to date. • The EA holder must be solvent and not in external administration (i.e. liquidation, voluntary administration, under supervision of a court-appointed trustee). Supporting information to provide evidence that the EA holder is solvent (for example, attaching a company search from the ASIC company register or if the EA holder is a joint venture, copies of participating company searches or equivalent searches; or if the EA holder is incorporated in another jurisdiction, copies of relevant company searches from equivalent registers).
Environmental Performance	<ul style="list-style-type: none"> • In the previous FA period, the EA holder must have complied with or achieved any historical discount obligations. • In the past 2 years, an EA holder must not have had a <i>relevant compliance action</i>* in relation to the following EA conditions: <ul style="list-style-type: none"> ○ Conditions that set limits on disturbance; ○ Conditions that limit the release of contaminants to water or land; or ○ Conditions around rehabilitation requirements. <p>*<i>relevant compliance action</i> means, for the relevant environmental authority, the issue or occurrence of:</p> <ul style="list-style-type: none"> • 3 or more Penalty Infringement Notices (under the <i>State Penalties Enforcement Act 1999 / Environmental Protection Act 1994</i>) • an environmental protection order • a Transitional Environmental Program (TEP). Note: voluntary TEPs relating to approved water releases from 2011 floods, where operators are transitioning from Special Agreement Acts or where EA holders are phasing out evaporation dams are an exception to this rule) • a cost recovery notice (which has not been fully paid and is still in effect (e.g. not withdrawn)) • a direction notice • a proceeding or conviction for an environmental offence or a notice offence

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Table 2: Financial discount

Discount Description	Discount Criteria
<p>1. Financial</p>	
<p>A 10% discount for demonstrating sound financial health and adequate budgeting for the scheduled rehabilitation in the upcoming FA period.</p>	<p>To determine eligibility, the EA holder must provide:</p> <ul style="list-style-type: none"> • The previous year's annual financial statements, which have been audited by a <i>suitably qualified financial auditor</i>*. This will be assessed for evidence of a sound financial position. • A <i>declaration</i>* stating that: <ol style="list-style-type: none"> 1. The information provided is accurate, complete and not misleading; 2. the costs of scheduled rehabilitation (in the upcoming FA period) have been budgeted for; and 3. the entity can pay its debts if and when they fall due. <p>To maintain eligibility, the EA holder will need to submit the above statements for each remaining year of the FA period. The department will use this information to review and monitor eligibility for the discount.</p> <p>* <i>suitably qualified financial auditor</i> means someone who is a member of the Institute of Chartered Accountants or Certified Practising Accountants.</p> <p>* the <i>declaration</i> must be completed in the required departmental pro-forma document (ESR/2015/1822).</p>

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Table 3: Progressive rehabilitation and certification discount

Discount description	Discount criteria
2. Progressive rehabilitation & certification	
(AVOID) A 10% discount for avoiding any impacts to remnant vegetation.	<ul style="list-style-type: none"> The EA holder provides a map to show remnant vegetation (as mapped under the <i>Vegetation Management Act 1999</i>) has been identified. The EA has a condition that does not authorise impacts to remnant vegetation. <p>Note: Any amendment to the EA to allow impacts to remnant vegetation will forfeit this discount.</p>
(STABILISE) A 10% discount for undertaking proactive rehabilitation work to reduce the total area of disturbance (irrespective of final land use).	<ul style="list-style-type: none"> In the previous FA period, the EA holder completes earthworks and soil stabilisation (irrespective of final land use) for an area that is 10% of the total area of disturbance (minimum of 1 ha). A total area of disturbance and a rehabilitation report provided which outlines the completed works and how it is compliant with EA rehabilitation outcomes (suitably qualified person to sign off). Note - total area of disturbance includes all disturbance, regardless of whether it is 'permanent' or 'unavailable for rehabilitation' at that particular point in time. <p>Note: In order to access this discount the EA needs to have rehabilitation outcomes that require the area to be a non-polluting and stable landform with covering that provides appropriate erosion and sediment control (e.g. areas of rehabilitation must be geophysically and geochemically stable).</p>
(RESTORE) A 10% discount for undertaking proactive revegetation of a woody regional ecosystem.	<ul style="list-style-type: none"> In the previous FA period, the EA holder demonstrates that 10% of total area of disturbance (minimum of 1 ha) has been revegetated with a woody Regional Ecosystem (RE) - non-grassland RE as defined in the <i>Vegetation Management Regulation 2012</i>). Revegetation must include all required species having been seeded/planted and that the area has undergone 2 years of maintenance and monitoring. A rehabilitation report outlining the work completed and how that work is in accordance with EA revegetation outcomes (suitably qualified person to sign off that only maintenance and monitoring is needed). Maintenance and monitoring is to continue at least until the end of the next FA period. <p>Note: In order to access this discount the EA needs to have revegetation outcomes that define what quantum of vegetation species are required (e.g. areas of revegetation must include 70% of the regional ecosystem vegetation species).</p>

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Table 4: Waste management discount

Discount Description	Discount Criteria	
3. Waste management		
(LOW RISK) A 10% discount for only undertaking activities that are considered to have a low environmental risk.	The EA holder has a Prescribed EA approved via a standard or variation application (or a conversion application) and has not amended the eligibility criteria and standard conditions in regard to <i>high risk storage activities</i> *.	
(HIGH RISK) A 10% discount for undertaking activities that reduce the amount of waste stored onsite (10% discount for each waste management measure).	EA holder demonstrates they have undertaken measures which have reduced (for each year in the previous FA period) annual waste disposal by the minimum amount specified in the below Performance Outcome column (as relevant to the type of waste being disposed) that would otherwise have been stored onsite in a high risk storage activity.	
	Performance Outcome	
	Acceptable Solution (examples)	
	○ 10% of waste rock	i. The waste rock was used to backfill a void.
	○ 10% of brine waste water	i. The brine waste water was injected into a deep geological storage formation.
	○ 30% of landfill waste	i. The landfill waste was sorted with 30% found as recyclable material
○ 50% of waste water	i. The waste water was re-injected into an aquifer ii. The waste water was beneficially used	
<p>* <i>high risk storage activities</i> are waste rock dumps, regulated dams and landfill sites.</p> <p>Note: Reducing waste already disposed in storage can be counted. Disposal offsite (i.e. not for reuse/recycling) at a waste disposal facility will not qualify as a measure. All measures will need to have been approved on the EA or on a BUA and already in operation to receive the discount.</p>		