

Information sheet

Environmental Protection Act 1994

Re-application for estimated rehabilitation cost decision

This document provides information on the circumstances when a holder of an environmental authority (EA) for a resource activity must re-apply for a new estimated rehabilitation cost (ERC) decision, pursuant to sections 302, 303 and 304 of the Environmental Protection Act 1994 (EP Act).

Introduction

In certain circumstances, a holder of an EA for a resource activity may be required to re-apply for a new ERC decision. Provided that the EA holder has complied with the requirements of the *Mineral and Energy Resources (Financial Provisioning) Act 2018* (MERFP Act) for paying a contribution to the scheme fund, or giving a surety for the authority, and a new application is made under section 298 of the EP Act, the operator will not need to 'stop' operations while the new application for an ERC decision is considered. Where the application is made under section 298 of the EP Act, the current ERC decision continues to have effect until the new ERC decision is made, as per section 305 of the EP Act.

Requirement to re-apply for ERC decision before expiry

A holder of an EA for a resource activity for which an ERC decision is in force must apply, under section 298 of the EP Act, for a new ERC decision prior to the end of the ERC period to which the decision relates. Pursuant to section 302 of the EP Act, a holder must be re-apply for a new ERC decision—

- for an environmental authority for a petroleum activity to which a PoO applies—
 - if the day the holder gives the administering authority a PoO to replace the PoO that applies to the activity is at least 20 business days before the ERC period to which the decision relates ends—on that day; or
 - otherwise—at least 20 business days before the ERC period to which the decision relates ends; or
- otherwise—at least 3 months before the ERC period to which the decision relates ends.

Administering authority may direct holder to re-apply for ERC decision

Throughout an ERC decision period, there may be instances where the administering authority may direct a holder of an EA for a resource activity to re-apply for a new ERC decision. Under section 303 of the EP Act, a holder of an EA for a resource activity may be directed to re-apply if the administering authority—

- becomes aware of a change relating to the carrying out of a resource activity by a holder of an EA that may result in an increase in the ERC for the activity; or
- approves an application to amalgamate an EA with another EA section 247 of the EP Act; or
- becomes aware an ERC decision was made on the basis of materially incorrect or misleading information.



Re-application for estimated rehabilitation cost decision

In these circumstances, the administering authority may direct the holder or, for a de-amalgamated EA, each of the holders, to re-apply, under section 298 of the EP Act, for an ERC decision for the resource activity. The administering authority will give the holder(s) an information notice to give a direction to re-apply for a new ERC decision. This notice will also state the period within which the holder(s) must comply with the direction.

When a holder must re-apply for an ERC decision

During an ERC decision period there may also be circumstances, under section 304 of the EP Act, when the holder of an EA for a resource activity to which the decision relates, is required to re-apply for a new ERC decision. A holder must re-apply, under section 298 of the EP Act, for a new ERC decision if–

- there is an increase in the likely maximum disturbance to the environment as a result of the holder carrying out the resource activity (must re-apply within 10 business days after becoming aware of the increase); or
- there is a change relating to the carrying out of the resource activity that may result in an increase in the ERC for the activity (must re-apply within 10 business days after becoming aware of the change); or
- the holder's annual return given under section 316IA of the EP Act states there has been a change to the carrying out of the activity that may affect the ERC (must re-apply within 10 business days after giving the annual return to the administering authority); or
- the administering authority approves an application to amalgamate the environmental authority with another environmental authority under section 247 of the EP Act (must re-apply within 10 business days after the administering authority amalgamates the EA under section 248 of the EP Act).

Under section 250B, in circumstances where a de-amalgamation application is submitted for an EA, if an ERC decision is, or has been in effect for the EA, the application must be accompanied by an application under section 298 for an ERC decision for each of the proposed de-amalgamated authorities.

Failure to re-apply for ERC decision

If the holder of an EA for a resource activity fails to re-apply for a new ERC decision when required under section 302, 303 or 304 of the EP Act, the maximum penalty is 100 penalty units.

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Enquiries:

Please contact your relevant Business Centre if you have any enquiries in relation to this Information sheet.

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Version history

Version	Effective date	Description of changes
1.00	01 April 2019	First version of information sheet
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1.02	29 March 2023	Updated to reflect changes introduced by the <i>Environmental Protection and Other Legislation Amendment Act 2023</i> .