Geothermal Energy Bill 2010

Explanatory Notes

Introduction

Geothermal Energy

Geothermal energy is heat energy derived from the Earth's natural (subsurface) heat. It occurs in various forms, including hot geothermal water ("wet" geothermal energy) or as hot dry rocks. This energy can be used in a variety of applications, including heat pumps, industrial applications and electricity generation. Importantly, geothermal energy has the potential to produce virtually carbon dioxide (CO_2) emission-free power.

The purpose of the *Geothermal Energy Bill 2010* (the Bill) is to encourage and facilitate the safe production of geothermal energy for the benefit of all Queenslanders. To achieve this, the Bill will repeal the *Geothermal Exploration Act 2004*, which places limitations on geothermal exploration and, particularly, production. The Bill provides for the granting of geothermal permits to explore for geothermal energy resources across large tracts of the State as well as the granting of geothermal leases for large scale geothermal energy production.

The *Queensland Renewable Energy Plan* (the Plan), launched in June 2009, outlines a road map for the expansion of the renewable energy sector in Queensland. The Plan envisages that 250 megawatts of geothermal energy power will contribute to the generation capacity mix by 2020 and refers to the importance of developing geothermal production legislation to fast track geothermal projects in Queensland. The Bill supports the Plan's aim of advancing geothermal technology.

The Bill establishes a tenure framework that sets out how the State will regulate access to geothermal resources, provides security of tenure to explorers and producers, ensures that geothermal resources are appropriately developed and manages the balance between resource development, environmental and health and safety issues. Permit and lease holders/applicants will be required to pay fees, rent and royalties where

appropriate, and in accordance with the Bill, associated legislation and subordinate legislation.

Land Access

Significant expansion of resource exploration and development activity in key parts of the State has resulted in the agricultural sector becoming increasingly concerned about the adverse impacts of current and potential growth on agricultural enterprises at the property scale. The development of a legislative framework to clarify the rights and responsibilities of tenure holders and rural landholders is necessary to facilitate continued growth in exploration activity across key parts of the State whilst ensuring access to private land is appropriately regulated and occurs in a transparent and equitable manner.

The co-existence and long term sustainability of both the agricultural and resource industries is vital to the Queensland economy. The amendments relating to land access and owners and occupiers (land access amendments) in the Bill implement one of the Queensland Government's strategies to minimise land use conflict between the resource and agricultural sectors. The purpose of the land access amendments is to ensure that resource sector growth is managed and that more equitable outcomes are achieved in terms of access to private land.

The agricultural and resource sectors have worked collaboratively with Government to develop a Land Access Policy Framework, comprising the land access amendments and supporting land access documentation.

The land access amendments establish: a legislative requirement for compliance with a single statutory land access code for tenure/authority holders in all resource sectors; notice of entry requirements for preliminary activities; a requirement for the making of a conduct and compensation agreement prior to entry to land for advanced activities; a graduated negotiation and dispute resolution process to remedy disputes about agreements; and improved compliance and enforcement processes for administering the land access code.

The Land Access documentation that supports the legislative framework includes: a single statutory land access code; standard conduct and compensation agreement; and additional guidelines, information and extension resources to assist with implementation.

Underground Coal Gasification Policy

The Bill also includes amendments to the *Petroleum and Gas (Production and Safety) Act 2004* to implement the government's Underground Coal Gasification (UCG) policy.

Electricity Act 1994 amendments

The Bill will amend section 131A of the *Electricity Act 1994* which states that a regulation may provide for a number of activities associated with a Retailer of Last Resort (ROLR) scheme. The ROLR scheme is designed to protect electricity customers in circumstances where their electricity retailer is no longer able to provide retail services. The proposed amendment will provide a head of power for a regulation to deal with the recovery of costs associated with a ROLR event through distribution entities' network charges

Repeal of the *Timber Utilisation and Marketing Act 1987*

This Bill will repeal the *Timber Utilisation and Marketing Act 1987*.

Caval Ridge Mine and renewal of BMA mining leases

The *Mineral Resources Act 1989* was amended in 2008 to resolve a long-standing mining tenement dispute between BM Alliance Coal Operations Pty Ltd (BMA), which operates a number of coal mines on behalf of the Central Queensland Coal Associates (CQCA), and Cherwell Creek Coal Pty Ltd (Cherwell Creek) and to secure the expansion of the Peak Downs Coal Mine and the construction of the new Caval Ridge Mine. The 2008 amendments reduced Cherwell Creek's exploration permit for coal 545 considerably and gave BMA the right to apply for mining leases over land previously held under tenure by Cherwell Creek.

At the request of Cherwell Creek, amendments to the *Mineral Resources (Peak Downs Mine) Amendment Bill 2008* were made during consideration in detail. This resulted in an oversight that has the potential to adversely impact on the progress of a BMA mining lease application, which in turn would impact on the new Caval Ridge Mine. Because of the oversight, BMA needs Cherwell Creek's consent for the lodgement of its mining lease application over a small area of land still held by Cherwell Creek under its exploration permit. Without that consent, BMA's mining lease application can be prevented from being progressed. The *Mineral Resources Act 1989* is therefore being amended to provide that consent is not required from Cherwell Creek or any other existing tenement holder for the lodgement of the mining lease application.

The State and the CQCA are currently involved in a negotiation about which Act four special coal mining leases, including the mining lease for the Peak Downs and Caval Ridge Mines, must be renewed under. All four mining leases expire on 31 December 2010. The State believes they should be renewed under the *Mineral Resources Act 1989*. The CQCA believe they should be renewed under the *Central Queensland Coal Associates Agreement Act 1968*. Amendments are being made to the MRA to ensure that the CQCA's commercial arrangements are not adversely affected while the State and the CQCA continue their negotiations.

Minor amendments

The Bill also includes minor amendments of the *Petroleum Act 1923*, *Petroleum and Gas (Production and Safety) Act 2004*, *Mineral Resources Act 1989, Greenhouse Gas Storage Act 2009* and the *Geothermal Exploration Act 2004.* A number of these amendments are to confer on the Minister the power to issue practice directions regarding the provision of information.

Short Title of the Bill

The short title of the Bill is the *Geothermal Energy Bill 2010*.

Objectives of the Bill

Geothermal Energy

The Bill supports the Queensland Government's commitment to invest in renewable and low-emission energy technologies to supply cleaner electricity to Queenslanders. The objective of the Bill is to provide a flexible regime to facilitate the granting of geothermal permits. The Bill also facilitates geothermal energy production by providing for the granting of geothermal leases.

The Bill will encourage the production and use of clean energy in Queensland. It will also ensure the following for the carrying out of the activities:

- minimisation of conflict with other land uses;
- constructive consultation with people affected by the activities;
- appropriate compensation for owners or occupiers adversely affected by the activities;

- appropriate safety management of activities conducted in accordance with geothermal tenures; and
- responsible land and resource management.

Land Access

The Bill supports the Queensland Government's commitment to ensure adequate processes are in place to manage land access issues and improve communication between the agriculture and resource sectors. The objectives of the Bill are to:

- facilitate improved relations between resource companies and landholders;
- provide a consistent, transparent and equitable process to facilitate access of private land for authorised activities;
- provide certainty of rights and obligations in relation to land access for exploration;
- define a clear and consistent process to bring permit or authority holders and landholders together to negotiate agreed terms for conduct of authorised activities and compensation; and
- provide clear dispute resolution, compliance and enforcement processes and powers, with legal proceedings considered only as a last resort.

Underground Coal Gasification Policy

The Bill also includes amendments to the *Petroleum and Gas (Production and Safety) Act 2004* to implement the government's UCG policy. The Bill aims to provide three UCG Pilot Projects with certainty regarding the resource rights within their respective Mineral Development Licences (MDLs) while allowing coal seam gas (CSG) explorers to conduct low impact activities within the area of their relevant petroleum tenure that overlaps the UCG related MDLs.

Electricity Act 1994 amendments

The policy objective of this amendment is to improve the ROLR scheme by minimising the cost to small customers in an event where an electricity retailer is no longer able to provide customer retail services and its customers are transferred to a ROLR. The Bill will enable amendments to be made to the *Electricity Regulation 2006* in relation to the recovery of ROLR costs through distribution entities' network charges, to provide a

better balance in meeting the costs associated with managing a ROLR event.

Repeal of the *Timber Utilisation and Marketing Act 1987*

The policy objective of the repeal of the *Timber Utilisation and Marketing Act 1987* is to simplify and reduce the legislative burden and unnecessary impediments to business growth in Queensland.

Caval Ridge Mine and renewal of BMA mining leases

The amendments will remove unintended impediments to the progression of BMA mining lease applications that will facilitate the Caval Ridge Mine and will also ensure the CQCA's commercial arrangements are not adversely affected while the State and the CQCA continue their negotiations about the renewal of the special coal mining leases.

Minor amendments

The Bill also includes minor amendments of the *Petroleum Act 1923*, *Petroleum and Gas (Production and Safety) Act 2004*, *Mineral Resources Act 1989*, *Greenhouse Gas Storage Act 2009* and the *Geothermal Exploration Act 2004*. A number of these amendments are to confer on the Minister the power to issue practice directions regarding the provision of information.

Policy rationale

Geothermal Energy

The amount of greenhouse gases in the atmosphere, particularly carbon dioxide (CO_2), is increasing as a result of human activity. Approximately one third of all CO_2 emissions result from the burning of fossil fuels to generate electricity. In order to maintain international competitiveness and economic growth Australia will need to continue using fossil fuels for energy in the short to medium term while the development of renewable energy sources is fully realised.

Current modelling developed for the review of the National Renewable Energy Target (NRET) suggests geothermal generation could contribute strongly to the NRET. Under this modelling, geothermal energy is projected to make up 17 per cent of all renewable energy generated in Queensland by 2030.

This Bill is an important step towards reducing Queensland's carbon emissions footprint through the exploitation of its geothermal deposits.

Research to date suggests that Queensland has significant geothermal resources, the utilisation of which could prove an ideal energy source to help tackle climate change.

Current knowledge indicates that most geothermal energy reserves are located in rural and regional Queensland. The impacts on rural and regional communities, as a result of the proposed geothermal energy legislation, are expected to be positive and include:

- removal of barriers to geothermal exploration and production, which will encourage development of the industry, thus providing further opportunities for investment and employment in rural and regional areas;
- providing a viable energy source for some isolated rural communities and mines; and
- employment opportunities.

Land Access

Problems associated with access to private land by resource companies have been raised by a range of stakeholders at the Government's Resource Community Summits in November 2008 and a range of other forums. Key issues identified about land access include: a lack of ready information about the legalities of land access; claims of breaches of legislation; a need for more education, compliance and enforcement activities, poor relations between stakeholders; inconsistencies in relevant legislation; and arrangements for compensation for business harm for impacted landholders.

The land access amendments and supporting land access documentation is vital to achieving a balanced approach to private land access and recognises and clarifies the rights of permit or authority holders and landholders in relation to access to private land for resource related activities. In terms of access to land for exploration and development, the provision of consistent legislative requirements and processes will facilitate transparency, equity and co-operation across the agricultural and resource sectors.

Underground Coal Gasification Policy

The aim of the Queensland Government's UCG policy is to provide three UCG pilot projects with the opportunity to demonstrate the technical, environmental and commercial viability of the technology while minimising the impact on prospective investors in CSG production.

Electricity Act 1994 amendments

If an electricity retailer is suspended from the National Electricity Market or otherwise unable to continue to provide retail services to its customers, the ROLR scheme operates to ensure customers of the failed retailer do not suffer loss of electricity supply. In such an event, customers of the failed retailer are automatically transferred by the Australian Energy Market Operator to a pre-determined ROLR.

There is administration and other incremental costs associated with acting as a ROLR. Currently, the ROLR is entitled to recover these costs through charging customers of the failed retailer transferred to it an administration fee, which must be approved by the Queensland Competition Authority. As the ROLR costs are met only by the customers transferred to the ROLR, the fee for each customer could be significant. In place of these current arrangements, it is proposed to establish a cost recovery process which will spread the cost of a ROLR event across all customers through distributors' network charges, thus reducing the cost to an individual customer to a very minor amount.

Repeal of the *Timber Utilisation and Marketing Act 1987*

Since the introduction of the Act in 1987, significant changes have occurred at the industry, technology, consumer and government levels that now warrant the repeal of this Act. The Act has been superseded by broader standards, codes and legislation at the state and national level that provide a basis for protection to consumers, manufacturers and the building and timber industries in relation to treated timber. Consumers will not be worse off with the repeal of this Act, largely because the Act does not contain provisions for consumer redress.

Changes have occurred in the types of timber products being used. In the past, hardwood timbers susceptible to attack by *Lyctus* borers were used extensively in building construction, however these have largely been replaced by softwood timbers which are not *Lyctus* susceptible.

The Act currently duplicates the assessment process undertaken by the Australian Pest and Veterinary Medicines Authority (APVMA) for the

labelling of new wood preservatives, adding a further regulatory burden on Queensland businesses. Repeal of this Act will potentially increase profitability by removing this regulatory burden, and by removing government fees and charges.

Repeal of the Act will remove the inconsistencies and duplication for companies trading in Queensland and for those trading across State borders.

Repeal of the Act will remove the additional restriction on Queensland businesses where Queensland treatment plants are required under the Act to pay plant registration fees, where non-Queensland treatment plants have no such requirement.

Repeal of the Act will clear the way for the Queensland timber industry to innovate and embrace quickly improved standards and practices, unhindered by the red tape imposed by regulation.

Repeal of the Act will clear the way for the Queensland timber industry to shift its long term reliance on government to ensure timber treatment quality standards and move to a national approach to timber treatment standards.

Caval Ridge Mine and renewal of BMA mining leases

The new Caval Ridge Mine is expected to result in up to a further 5.5 million tonnes of coal production per annum, at least 1200 construction-based jobs and 500 operational jobs and the construction of significant new infrastructure (in excess of $1 billion). The commissioning of this new mine will result in significant benefits for Queensland.

The Caval Ridge Mine amendments are consistent with the 2008 amendments to the *Mineral Resources Act 1989.*. Requiring BMA to obtain Cherwell Creek's written consent to its mining lease application over the small parcel of land currently held by Cherwell Creek would be inconsistent with those 2008 amendments, and could jeopardise or significantly delay the commissioning of the new mine. Further, Cherwell Creek already has a statutory entitlement to apply to the Land Court for compensation to be paid by BMA for its loss of opportunity to commercialise its coal resource, which it has done.

It is important that the CQCA's commercial arrangements are not adversely affected while the State and the CQCA continue their negotiations about the renewal of the special coal mining leases, as this might have adverse impacts on employment at their mines and royalty returns for the State.

Minor amendments

The objective of these amendments is to facilitate streamlined processing of applications and efficient administration of the legislation and minimise applications failing that were incorrect or where insufficient information was provided.

How objectives are achieved

Geothermal Energy

The Bill facilitates geothermal energy exploration and production by:

- providing for the granting of authorities (called 'geothermal tenures') to explore for or produce geothermal energy; and
- creating a regulatory system for the carrying out of activities relating to geothermal tenures.

Land Access

The land access amendments facilitate resource sector growth and a process for achieving more equitable outcomes for land access by providing:

- consistent legislative provisions regarding compliance with a land access code under the *Mineral Resources Act 1989; Petroleum and Gas (Production and Safety) Act 2004; Petroleum Act 1923; Geothermal Energy Bill 2010;* and the *Greenhouse Gas Storage Act 2009* (collectively referred to as the 'Resource Acts');
- consistent legislative requirements for notice of entry for 'preliminary' activities;
- consistent legislative provisions requiring that a conduct and compensation agreement be negotiated prior to the entry of private land to undertake authorised advanced activities;
- consistent legislative provisions clearly articulating the process and timeframes associated with forming a conduct and compensation agreement including requirements for mediation; and
- a clear and responsive compliance and enforcement framework in administering the land access code with particular regard to breaches.

Underground Coal Gasification Policy

The objective is achieved through new provisions within a new part 4A in the *Petroleum and Gas (Production and Safety) Act 2004*. Consistent with the objectives of the Government's UCG policy to remove resource rights from petroleum tenure overlapping UCG pilot areas, CSG proponents will be permitted to undertake certain limited activities within existing Authorities to Prospect that overlap the UCG pilot areas. These activities will be at the surface rather than drilling or other subsurface activities that may impact on the UCG pilot and the related future resource under the UCG-related MDL. Permitted activities will also include any activities agreed with the UCG proponent, and an onus is placed on both parties to negotiate in good faith. This will allow CSG production activities in surrounding areas to continue. Until the completion of the UCG pilot phase and the subsequent reports back to Government in 2012, further UCG and CSG overlaps will be prevented through administrative procedures in the State's mining registry.

Electricity Act 1994 amendments

The proposed amendment will provide a specific head of power to include in the *Electricity Regulation 2006* a process to spread the cost of a ROLR event across all customers through distribution entities' network charges.

Repeal of the *Timber Utilisation and Marketing Act 1987*

The repeal will remove the legislative burden and unnecessary impediments to business growth imposed on Queensland timber treatment plants.

Caval Ridge Mine and renewal of BMA mining leases

Amendments are proposed to the *Mineral Resources Act 1989.*

Minor amendments

These amendments are to facilitate streamlined processing of applications, efficient administration of the legislation and minimise applications failing that were incorrect or where insufficient information was provided. All other minor amendments are either administrative or consequential.

Alternative method of achieving policy objectives

Geothermal Energy

There is no alternative method of achieving the policy objective of facilitating a regulatory system that ensures the safe and efficient exploration for, and production of, geothermal energy. Further, as the Queensland Government and ultimately the people of Queensland have ownership of the geothermal energy resource, the introduction of the Bill is necessary to ensure the Government retains stewardship of this resource.

Land Access

There is no alternative method of achieving the policy objectives, particularly achieving legislative consistency in relation to the land access regime across all resources legislation. A detailed analysis of alternative policy options was undertaken as part of the policy development process, with legislative reform being approved as the most appropriate mechanism to achieve the Land Access Policy Framework's stated objectives.

Underground Coal Gasification Policy

The use of the existing excluded land provisions in the *Petroleum and Gas (Production and Safety) Act 2004* was investigated, but these provisions could not be applied to areas of land as large as those covered under some the UCG Pilot Project MDLs. Managing the overlap issues through tenure conditions would not provide sufficient clarity regarding the resource rights and the petroleum tenure activities for all of the UCG pilot projects.

Electricity Act 1994 amendments

None. Without the proposed amendment, there would be no specific head of power for a regulation to deal with the recovery of costs associated with a ROLR event through distribution entities' network charges.

Repeal of the *Timber Utilisation and Marketing Act 1987*

None. The repeal of the Act alone will achieve the policy objective of removing the legislative burden and unnecessary impediment to business growth imposed on Queensland timber treatment plants.

Caval Ridge Mine and renewal of BMA mining leases

Legislation is considered the only suitable mechanism to resolve all of the outstanding issues and to provide certainty.

Minor amendments

Amendments are either administrative or consequential.

Estimated cost for Government implementation

Geothermal Energy

The Bill establishes new administrative arrangements that closely align with Queensland's existing resource-based legislation. The costs will be as follows:

- developing regulations;
- ongoing tenure administration;
- developing directions and guidelines to assist geothermal proponents with their understanding of the new regulatory system;
- training staff who deal with the processing of geothermal permit and geothermal lease and related environmental authority applications;
- upgrading existing resource-based information technology systems to accommodate geothermal tenure processing and administration;
- developing approved forms and work instructions;
- preparing packages pertaining to the Government's release of areas previously restricted to geothermal exploration and production;
- employing staff to review technical data submitted by geothermal proponents;
- costs incurred by Government in assessing and processing and enforcing applications for environmental authorities, water authorities and, if applicable, development approvals that may be required of geothermal proponents under other legislation;
- mapping of geothermal energy resources by the Geological Survey Queensland division of the Department of Employment, Economic Development and Innovation (DEEDI); and
- establishing appropriate data storage systems for the geological data gathered.

Land Access

The land access amendments establish new administrative arrangements that closely align with Queensland's existing resource legislation. The costs will be as follows:

- developing directions and guidelines to assist landholders and resource companies with their understanding of the new legislative requirements;
- training staff dealing with tenure management to implement the new legislative requirements;
- providing staff with mediation and investigation skills training;
- undertaking a series of public information sessions in key resource communities across the State; and
- developing approved forms and work instructions.

Underground Coal Gasification Policy

There are no costs anticipated in implementing the UCG policy proposed in this Bill.

Electricity Act 1994 amendments

There are no costs anticipated.

Repeal of the *Timber Utilisation and Marketing Act 1987*

There are no expected costs to Government from the repeal of the *Timber Utilisation and Marketing Act 1987* (TUM Act). Rather, the repeal of the TUM Act will provide an opportunity for the DEEDI to redirect its current TUM Act funding of approximately $167,400 to an area of higher priority, for example in regard to implementing the Queensland Timber Plantation Strategy.

Caval Ridge Mine and renewal of BMA mining leases

There will be no cost to Government as a result of the legislation.

Minor amendments

There are no additional costs associated with implementing these amendments.

Consistency with Fundamental Legislative Principles

The Bill has been drafted with regard to fundamental legislative principles, as defined in the *Legislative Standards Act 1992*. The Bill includes a number of provisions that may be regarded as breaching fundamental legislative principles. However, any breach can be justified on grounds of meeting the overall policy intent of the legislation and complying with community expectations for appropriate resource management as well as ensuring the State retains stewardship of the overall resource. Additionally, as the geothermal industry is in its infancy in Queensland, it is necessary to include certain aspects of the regulatory regime in subordinate legislation, in order to allow for more efficient amendments to this regime based on ongoing monitoring and assessment of the geothermal industry's development.

The Bill outlines a clear and accountable decision-making process in order to ensure a safe and sustainable geothermal tenure exploration and production regime which will benefit all Queenslanders. The clauses in which fundamental legislative principle issues arise, together with the justification for the breach, are dealt with in the explanation of the relevant clauses.

Land Access

The land access amendments have been drafted with regard to fundamental legislative principles, as defined in the *Legislative Standards Act 1992*. The Bill includes a number of provisions that may be regarded as breaching fundamental legislative principles. However, any such breach can be justified on grounds of meeting the overall policy intent of the legislation and complying with community expectations for appropriate resource management as well as ensuring the State retains stewardship of the overall resource.

Underground Coal Gasification Policy

The proposed amendment is consistent with fundamental legislative principles.

Electricity Act 1994 amendments

The proposed amendment is consistent with fundamental legislative principles.

Repeal of the *Timber Utilisation and Marketing Act 1987*

The proposed repeal, the consequential amendments and the savings and transitional provisions are consistent with fundamental legislative principles.

Caval Ridge Mine and renewal of BMA mining leases

The Caval Ridge Mine amendments will mean that Cherwell Creek and other existing tenure holders will be deprived of the power to veto mining lease applications made by BMA. This would appear to be inconsistent with the intention behind section 4(2) of the *Legislative Standards Act 1992*, which provides that legislation should have sufficient regard to the rights of individuals. However, section 4(2) does not technically apply to Cherwell Creek because it is a company.

These amendments are consistent with the amendments to the *Mineral Resources Act 1989* made by the *Mineral Resources (Peak Downs Mine) Amendment Bill 2008*. The 2008 amendments clearly intended that Cherwell Creek's rights as the holder of exploration permit for coal 545 would be significantly reduced in favour of BMA. Requiring BMA to obtain Cherwell Creek's written consent to its mining lease application over the small parcel of land currently held by Cherwell Creek would therefore be inconsistent with those amendments. Further, Cherwell Creek already has a statutory entitlement to apply to the Land Court for compensation to be paid by BMA for its loss of opportunity to commercialise its coal resource, which it has done.

Minor amendments

The proposed minor amendments are consistent with fundamental legislative principles.

Consultation

Geothermal Energy

The proposed geothermal energy legislation was prepared following extensive consultation with key stakeholders including the peak resource and geothermal energy specific bodies, industry, Government agencies and local government. This was achieved through a series of meetings with the stakeholders mentioned above, which were undertaken during 2009 and 2010 to discuss the policy framework and potential issues.

The draft Bill and a consultation paper were released in August 2009 for public comment. Submissions were received from stakeholders including Government agencies, local government and industry. Subsequent meetings were held with stakeholders to discuss their submissions and provide an update of the geothermal energy framework as a result of the release of the draft Bill.

DEEDI officers also met with interested parties and utilised various industry conferences and seminars to discuss policy matters, in addition to ongoing consultation with Government stakeholders and industry throughout the legislative drafting process.

Land Access

Comprehensive consultation has been undertaken with key external stakeholder groups (APPEA, QRC, AgForce and QFF) and across Government in developing the Land Access Policy Framework though the LAWG. The LAWG has undertaken regular meetings over the past 18 months in relation to resolving an approach to identified land access issues, which resulted in the production of the Land Access Policy Framework.

A consultation draft of the land access amendments has been provided to LAWG member bodies and an opportunity to provide formal feedback to Government provided. This consultation process has resulted in a high level of in-principle agreement about the proposed legislation across Stakeholder groups.

Underground Coal Gasification Policy

The QRC and major UCG and CSG companies were consulted throughout the development of the UCG Policy in 2008 and 2009, which forms the basis of the proposed legislative amendments. CSG and UCG proponents affected by the UCG pilot projects have been consulted in the drafting of the legislative amendments. Other Government departments have also been consulted during the development of the UCG Policy via an inter-departmental working group with representatives from DEEDI, the Department of Environment and Resource Management (DERM), the Department of Infrastructure and Planning (DIP), the Department of the Premier and Cabinet (DPC) and Queensland Treasury. The QRC and the UCG Industry Consultative Committee, which includes CSG and UCG stakeholders, support the proposed legislative amendments to implement the UCG policy.

Electricity Act 1994 amendments

Consultation has occurred with the existing ROLR, the Queensland Competition Authority, Queensland Treasury and the Department of the Premier and Cabinet. There is general support for the proposed method of recovering ROLR costs and the proposed head of power in the *Electricity Act 1994* to facilitate this. All stakeholders will be consulted in developing the details of the proposed cost recovery process, to be implemented through amendments to the *Electricity Regulation 2006.*

Repeal of the *Timber Utilisation and Marketing Act 1987*

During the process of comprehensive review of the Act in 2009, consultation occurred with timber treatment plant stakeholders in Queensland, Australia and New Zealand; notices were placed in industry newsletters; DEEDI officers formally addressed industry meetings convened by Timber Queensland, a peak timber representative body; and DEEDI officers discussed issues with other industry stakeholders. Queensland and interstate agencies were consulted, and discussions were held with the Queensland Departments of Treasury; Premier and Cabinet; Environment and Resource Management; Infrastructure and Planning; and Health. Twenty written submissions were received from industry and government. No submissions were received from consumer representative bodies.

From the timber industry, there was mixed support for either retention or repeal of the Act. Support for retention was strongest from smaller industry companies, while support for repeal of all or some of the provisions of the Act was strongest from the larger industry stakeholders including companies and representative bodies.

All Queensland government agencies consulted supported the repeal of the Act.

Caval Ridge Mine and renewal of BMA mining leases

BMA requested the amendments. No other consultation was undertaken.

Minor amendments

Consultation with government agencies was undertaken and no issues were identified.

Chapter 1 Preliminary

Part 1 Introduction

Short Title

Clause 1 establishes the short title of the Act as the *Geothermal Energy Act 2010*.

Commencement

Clause 2 provides for the commencement of this Act, which will be on assent for the listed chapters, parts and sections, and on a day to be fixed by proclamation for the rest of this Act.

Part 2 Purposes and application of Act

Purposes of Act and their achievement

Clause 3 states the purposes of this Bill and how these purposes will be achieved. This Bill provides a regulatory framework to encourage and facilitate the safe production of geothermal energy as well as supporting the renewable energy industry by regulating large-scale geothermal energy production which can assist in reducing greenhouse gas emissions.

The Bill achieves this by providing that a geothermal authority (also referred to as a geothermal tenure) may be granted to undertake exploration activities required to identify geothermal energy resources. If a geothermal energy resource is discovered and the production of the geothermal energy is defined as large-scale production under the Bill and associated subordinate legislation, an authority holder may conduct relevant activities under a geothermal lease granted pursuant to the Bill.

The Bill also ensures that conflict between activities conducted on geothermal tenures with other land uses is minimised. To this end, the Bill provides for constructive consultation with owners or occupiers of land affected by geothermal activities allowed on a geothermal tenure, and also

provides for appropriate compensation for owners or occupiers of land directly affected by such activities under the Government's Land Access Policy Framework.

The Bill also provides for responsible land management by the holder of a geothermal tenure.

Facilitation of Act by *Petroleum and Gas (Production and Safety) Act 2004*

Clause 4 details the linkages between the *Petroleum and Gas (Production and Safety) Act 2004* and this Bill and how the *Petroleum and Gas (Production and Safety) Act 2004* facilitates the operation of the Bill.

The safety provisions for activities conducted on petroleum authorities under the *Petroleum and Gas (Production and Safety) Act 2004* are extended to include certain authorised activities for a geothermal tenure as defined by the Bill, with the exception of activities associated with production of "wet" geothermal energy, which will be covered by the relevant provisions of the *Workplace Health and Safety Act 1995*.

The investigation provisions and some of the enforcement provisions of the *Petroleum and Gas (Production and Safety) Act 2004* are also extended to include authorised activities for a geothermal tenure.

Act binds all persons

Clause 5 provides that this Bill binds all persons and the State, the Commonwealth and other States to the extent the legislative power of the Parliament permits. However, the clause also specifies that the Commonwealth or a State cannot be prosecuted for any offence against this Bill.

Application of Act to coastal waters of the State

Clause 6 provides that this Bill also applies to the coastal waters of the State but does not apply to the adjacent area under the *Petroleum (Submerged Lands) Act 1982*.

Relationship with *Nature Conservation Act 1992*

Clause 7 provides that this Bill is subject to sections 27 and 70QA of the *Nature Conservation Act 1992* (which place a prohibition on geothermal activities in relation to certain areas, for example forest reserves).

Relationship with GHG Storage Act and principal mining and petroleum Acts

Clause 8 provides that the relationship between this Bill, and certain provisions of the *Greenhouse Gas Storage Act 2009, Mineral Resources Act 1989*, the *Petroleum Act 1923* and the *Petroleum and Gas (Production and Safety) Act 2004*, is provided for in chapter 5, parts 2 to 8 of the Bill (which relates to the coordination of overlapping authorities for different resource extraction on the same area of land). The clause also provides the clauses in the Bill regarding the relationship between certain provisions of these other Acts and the Bill.

Act does not affect other rights or remedies

Clause 9 provides that, subject to certain provisions, the Bill does not affect or limit a civil right or remedy that exists apart from the Bill, whether at common law or otherwise; does not limit a court's powers under the *Penalties and Sentences Act 1992* or another law; nor does a breach of an obligation under the Bill give of itself rise to an action for breach of statutory duty or another civil right or remedy.

This clause also provides that compliance with the Bill does not necessarily show that a civil obligation that exists apart from the Bill has been satisfied or has not been breached.

Part 3 Interpretation

Division 1 Dictionary

Definitions

Clause 10 provides that the dictionary, contained in a schedule of this Bill, defines certain words used in this Bill.

Division 2 Key definitions

Subdivision 1 Key concepts

What is *geothermal energy*

Clause 11 provides that geothermal energy is heat energy derived from the Earth's natural (subsurface) heat. Geothermal energy may be used in a variety of small scale (e.g. heat pumps) and industrial applications, as well as large-scale electricity generation.

What are *geothermal resources*

Clause 12 provides the definition of a geothermal resource. Geothermal resources are geological strata and associated material in which elevated levels of geothermal energy exist. Examples of associated material include fluids and gases that may fill fractures or voids in geological strata. Geothermal resources include geothermal water and steam, or hot dry rocks.

What is *geothermal exploration*

Clause 13 defines geothermal exploration as locating and quantifying geothermal resources, and associated activities.

What is *geothermal production*

Clause 14 defines geothermal production as when geothermal/heat energy is recovered from beneath the surface of the land in which it is contained. Geothermal production may also occur when energy is recovered from a place at which geothermal energy naturally appears at the surface of land (for example, a hot spring). Geothermal production testing is not considered to be geothermal production for the purposes of the Bill.

What is *exempt heat pump production*

Clause 15 provides that exempt heat pump production is geothermal production using a geothermal heat pump if the purpose of the production is to cool or heat buildings and the production is not defined as large scale under the Bill. The purpose of this clause is to clarify that this type of

"small-scale" geothermal energy production is excluded from the provisions for large-scale production and is not regulated by this Bill.

References to large-scale geothermal production

Clause 16 describes the references relating to large-scale geothermal production in the Bill. Geothermal energy production activities may be subject to criteria under subordinate legislation to determine whether the production of geothermal energy will be classified as large-scale production. Geothermal energy production activities that do not meet the criteria under the prescribed subordinate legislation are required to comply with existing legislation and subordinate legislation, for example the:

- *Sustainable Planning Act 2009* (material change of use provisions);
- *Plumbing and Drainage Act 2002* (installation of heat pumps utilising geothermal energy)*;*
- *Water Act 2000* (taking or interfering with water provisions); or
- *Environmental Protection Act 1994* (environmentally relevant activities provisions).

The inclusion of the threshold criteria for large scale production in subordinate legislation may be considered to be a breach of a fundamental legislative principle as it could be a significant grant of power to subordinate legislation. However, as this industry is in its infancy in Queensland, the threshold is subject to change based on ongoing monitoring and assessment of the industry's development. Such change will be more efficiently made via an amendment to subordinate legislation than by amending the proposed Act. The inclusion of the threshold criteria in subordinate legislation is consistent with most other State jurisdictions. Further, including the threshold criteria in subordinate legislation allows sufficient time to undertake further consultation and analysis with stakeholders as to the appropriate criteria and threshold to define large-scale production for the purposes of the Bill.

What is *production testing*

Clause 17 provides that production testing is testing, from a geothermal well, for the purposes of ascertaining the future viability of geothermal energy production in the area.

What is a *geothermal activity*

Clause 18 provides that a geothermal activity is any activity defined under clause 22 that may be undertaken on a geothermal tenure. A geothermal activity may also be undertaken in an area where a geothermal tenure does not exist. For example clause 368 provides that the chief executive may authorise a person to undertake activities on behalf of the State.

Subdivision 2 Definitions relating to authorities under Act

Types of authority under Act

Clause 19 provides for the types of authorities under this Bill - that is geothermal exploration permits (also known as geothermal permits) and geothermal production leases (also known as geothermal leases). Geothermal permits and geothermal leases are collectively referred to as a geothermal tenure.

What are the *conditions* of a geothermal tenure

Clause 20 states the conditions of a geothermal tenure, how they can be imposed pursuant to the Bill and where they are contained throughout the Bill. Certain conditions, listed in the Bill, are mandatory conditions for geothermal tenures, depending on the nature of the tenure (that is, depending on whether it is a geothermal exploration permit or a geothermal lease), whereas certain other conditions are mandatory for all geothermal tenures, regardless of type.

The clause further provides that the holder of a geothermal tenure must ensure that any person carrying out an authorised activity for the tenure must comply with the conditions where relevant.

References to geothermal tenure or provisions of geothermal tenure

Clause 21 provides that any time a geothermal tenure is referenced this includes a reference to its provisions. Provisions of a geothermal tenure are its conditions as imposed on a case by case basis in addition to the mandatory conditions imposed on the tenure.

What is an *authorised activity* for a geothermal tenure

Clause 22 provides the definition of an authorised activity for a geothermal tenure. A geothermal tenure holder is entitled to carry out activities as provided for in the Bill or by the tenure. However, the notes to this clause highlight that the carrying out of these activities are subject to the restrictions contained in the Bill.

Subdivision 3 Other key definitions

Who is an *eligible person*

Clause 23 states who is an eligible person under this Bill – that is, who may apply for an tenure, or be a sublessee of a geothermal lease or a transferee of a geothermal tenure under this Bill.

What is a *work program* for a geothermal permit

Clause 24 describes what a work program for a geothermal permit is. A work program, which can be in the form of an initial work program or later work program, must be approved by the Minister under the Bill in order for an exploration permit to be granted. A work program includes detailed information about the activities proposed to be carried out under a geothermal permit.

What is a *development plan* for a geothermal lease

Clause 25 describes what a development plan for a geothermal lease is. A development plan, which can be in the form of either an initial or later development plan, must be approved by the Minister under the Bill in order for a geothermal lease to be granted. A development plan sets out details regarding how the geothermal resource will be developed, and the proposed rate of energy production.

Graticulation of earth's surface into *blocks* and *sub-blocks*

Clause 26 provides for the division of the earth's surface into blocks and sub-blocks. This will allow for the identification of the area of a geothermal tenure in an orderly manner.

What is a *resource Act*

Clause 27 provides that references to 'resource Act' under the Bill are references to any of the following: *Geothermal Energy Bill 2010; Greenhouse Gas Storage Act 2009; Petroleum and Gas (Production and Safety) Act 2004; Petroleum Act 1923;* and *Mineral Resources Act 1989.*

Part 4 State ownership of geothermal energy

State ownership of geothermal energy

Clause 28 provides that the State is, and is taken to have always been, the owner of geothermal energy on or below any surface land in Queensland. A person does not acquire any property in geothermal energy if the person discovers it or discovers geothermal resources from which geothermal energy can be extracted.

This clause operates regardless of whether the land is freehold or other land and applies despite any other Act, grant, title or other document.

It may be considered that there is a breach of a fundamental legislative principle triggered by this clause, as the Bill claims as property of the State all geothermal energy. It deems, in existing or future tenures, a reservation to the State to carry out, and regulate, activities concerning geothermal tenures. This may be seen as adversely affecting the rights of a freehold landowner. At common law, there is a presumption that a landowner also owns everything on or below the surface of that land (including all minerals on or beneath the surface) subject to an exception for the 'royal metals'. Also, there is a general common law right of an owner of freehold land to use his or her land in whatever manner he or she thinks fit. In Queensland, however, the holder of freehold land may already hold it subject to a number of reservations to the State. The Parliament has already reserved petroleum (under the *Petroleum and Gas (Production and Safety) Act 2004*), geothermal energy (under the *Geothermal Exploration Act 2004*) and greenhouse gas storage reservoirs (under the *Greenhouse Gas Storage Act 2009*) in this manner and is entitled to reserve geothermal energy under this Bill.

Reservation in land grants

Clause 29 provides that any land grants contain a reservation to the State of all geothermal energy on or below any land in Queensland, and that the State may exercise an exclusive right to authorise persons to enter and carry out geothermal activities, and regulate, pursuant to the Bill, geothermal activities carried out by others. This may be considered a breach of a fundamental legislative principle as it provides a right for the State or others authorised by the State to carry out geothermal activities that override the rights of owners and occupiers of land. However, the Bill includes extensive provisions about consultation with landholders, notice of entry and compensation for the carrying out of geothermal activities. The Bill also contains a series of safeguards, including notification of the activities, various restrictions on the activities involved and penalties for noncompliance with the safeguards.

Chapter 2 Geothermal exploration permits

Part 1 Key authorised activities

Operation of pt 1

Clause 30 provides an overview of this part. This part provides for the key authorised activities that may be undertaken by a geothermal permit holder within the permit's area – namely principal authorised activities and incidental activities. This part also notes that the Bill contains requirements and restrictions in relation to the carrying out of these activities, and the obligations of a geothermal permit holder when conducting the activities. The notes to this clause provide references to other authorised activities contained in the Bill (for example, activities that involve accessing land outside the area of a geothermal tenure) and general restrictions and conditions contained in the Bill that are to be imposed on geothermal tenure holders when carrying out authorised activities under a geothermal tenure.

It might be considered that this is a breach of a fundamental legislative principle as the Bill provides that, subject to the Act, the right of an authority holder to carry out geothermal activities overrides the rights of owners and occupiers of land. However, the Bill contains extensive provisions about consultation with landholders and occupiers, notice of entry and compensation for the carrying out of geothermal activities. The Bill also contains a series of safeguards, including notification of the activities, various restrictions on the activities involved and penalties for noncompliance with the safeguards.

Principal authorised activities

Clause 31 provides that the principal authorised activities that may be conducted under a geothermal permit are geothermal exploration and evaluating the feasibility of geothermal production in the area of the geothermal permit (by, for example, production testing, provisions regarding which are contained in this Bill).

Incidental activities

Clause 32 provides for the incidental activities that may be conducted on a geothermal permit. However, the incidental activity must be relevant for the geothermal permit. Examples of incidental activities are outlined in this clause.

This clause also provides that constructing or using a structure that is not a temporary structure for use as an office or residential accommodation is not an incidental activity for the purposes of geothermal exploration carried out under a permit.

Part 2 Obtaining geothermal permit

Division 1 Restricted areas

Minister's power to decide restricted areas for geothermal tenures

Clause 33 provides the Minister with the power to decide a restricted area. Under this provision, the Minister may declare that certain land is a 'restricted area' and therefore a geothermal tenure cannot be applied for or granted over that area. However, the Minister may not declare that an area that is the subject of an existing geothermal tenure is restricted. The ability for the Minister to declare certain areas of the State as restricted for the purpose of geothermal energy exploration and/or production is fundamental to ensure the State's continued stewardship of the geothermal resource and to minimise incompatibility of land use. When an area is declared restricted under this provision, the declaration must be published in the Queensland Government Gazette, or in another manner as outlined in the clause. This is to ensure transparency and public access to this information.

Amendment or cancellation of restricted area

Clause 34 provides that the Minister's power to declare a restricted area also includes the power to amend or cancel a restricted area – such a declaration must also be published. This provision will allow the Minister to release a restricted area that may be considered as highly prospective for geothermal energy production. The intent in this situation is that the Minister would "unrestrict" the area for a set period of time in order to allow geothermal proponents to apply for a permit within that period. After the period ends, all applications will be competitively assessed against each other and a preferred applicant decided upon, or no application granted approval. This clause does not preclude the Minister subsequently declaring the area to be restricted once again.

Division 2 Applying for geothermal permit

Who may apply

Clause 35 provides that a person may apply for a geothermal permit for land other than a restricted area, excluded land (as defined in the Bill), land in the area of an existing geothermal tenure or land that has been in the area of a geothermal tenure within two months before the making of the application. The two month waiting period is to allow the State to reassess the land to establish, for example, whether it is still compatible for future geothermal or other resource exploration and/or extraction.

A geothermal permit application may be made for land the subject of an existing application only if the existing application was made on the same day the new applicant proposes to lodge their application, or if the land is the subject of an area released by the Minister under the Bill and the application in this situation is made during the relevant application period. If more than one application is lodged on the same day, the applications will be assessed against each other in a manner seen fit by the relevant administering agency.

A proponent who wishes to undertake small scale geothermal energy production for the heating and/or cooling of buildings via a geothermal heat pump is not required to apply for a geothermal permit to explore for potential sources of energy for this purpose. This exemption is designed to encourage small-scale geothermal energy use for domestic purposes.

Requirements for making application

Clause 36 describes the requirements for making a geothermal permit application. The application must be made to the Minister using the approved form and accompanied by the prescribed fee.

The application also must include a proposed work program that complies with the relevant provisions contained in the Bill.

The Minister may request any additional further information required to determine the application under clause 358.

Division 3 Deciding application

Restriction on deciding during application period for released area

Clause 37 provides that in the event that the Minister declares an area previously deemed to be a restricted area to be no longer restricted for a period of time, if an application for a geothermal permit is made within this period, the application cannot be decided before the end of that period.

Effect of identification of restricted area on application

Clause 38 provides that if an application for a geothermal permit is lodged and a restricted area is declared over land the subject of the application prior to the application being decided, that application lapses to the extent that the land is then a restricted area. There is no compensation or reimbursement payable to the applicant in this eventuality.

This provision may be considered a breach of a fundamental legislative principle as removing a right from an applicant to have their application considered. However, this can be justified – as the chief steward of the geothermal resource, it is considered that the Government should be able to restrict areas available for geothermal exploration and/or production. Without such a provision, the State's ability to allocate its geothermal resources in the best interests of Queenslanders may be hampered.

Deciding whether to grant geothermal permit

Clause 39 provides that the Minister must decide whether or not to grant the applicant a geothermal permit. Before deciding to grant the geothermal permit, the Minister must decide whether to approve the applicant's proposed initial work program, the requirements for which are prescribed in this Bill.

This clause also provides that unless the applicant is an eligible person (as defined in this Bill), the Minister has approved the applicant's proposed work program (required to be lodged with the application), and a relevant environmental authority under the *Environmental Protection Act 1994* and any relevant authorisation under the *Water Act 2000* have been issued, the geothermal permit cannot be granted.

The clause also allows for the Minister to impose conditions on the granting of the permit, for example, requiring the applicant to pay security or the annual rent for the first year of the proposed geothermal permit.

There is no appeal process under this Bill available to an unsuccessful geothermal permit applicant, or in relation to the provisions/conditions to be imposed on a geothermal permit. This may be considered to be a breach of a fundamental legislative principle. However, the application process for the grant of geothermal permits ensures that the best possible outcome can be obtained in relation to the management of the State's resources. The grant of a geothermal permit is a decision made by the Minister as the steward of the State's resources. Therefore, an appeal against this decision is not considered appropriate. Applicants aggrieved by a decision maintain their right to request a review of the decision under the *Judicial Review Act 1991*. It is considered that this provides adequate protection for geothermal permit applicants. Appeal provisions contained in the Bill largely align with other Queensland resource-based legislation.

Provisions and granting of geothermal permit

Clause 40 describes the provisions the Minister must decide upon for the granting of a geothermal permit. The provisions must include the term of the permit (maximum of 5 years) and the area of the permit (maximum of 50 blocks). The Minister may also impose conditions or other provisions which are not inconsistent with the mandatory conditions provided for in this Bill. These provisions can also not be the same as, similar to or inconsistent with any relevant environmental conditions imposed by an environmental authority for the tenure. This subclause is designed to avoid possible "doubling up" and inconsistencies between environmental conditions imposed pursuant to the *Environmental Protection Act 1994* and conditions imposed under this Bill. The provisions may also exclude or restrict the carrying out of an otherwise authorised activity for the permit under this Bill. The ability to decide these provisions enables conditions to be set addressing issues specific to a particular geothermal permit.

This clause is designed to ensure that the State can manage the permit for the best overall outcome in relation to geothermal energy exploration.

Criteria for decisions

Clause 41 provides the matters that must be considered by the Minister when deciding both whether or not to grant the geothermal permit and the

provisions to be placed on the geothermal permit. These matters are the applicant's proposed initial work program and the capability criteria – that is, whether the applicant has the financial and technical capability to carry out the authorised activities for the proposed geothermal permit and whether the applicant has a general ability to manage geothermal exploration.

Notice of decision

Clause 42 provides that the Minister must provide an applicant with a notice of the decision as soon as practicable after the decision whether or not to grant the applicant a geothermal permit has been made.

Division 4 Priority for deciding competing geothermal permit applications

Priority for deciding competing applications

Clause 43 provides that if two or more applications for a geothermal permit are made on the same day over the same land, or if two or more applications are made within the relevant application period in the event that the Minister releases a previously restricted area for permit applications within a set period pursuant to this Bill, the applications take the priority the Minister decides, after considering the relative merits of each application.

Part 3 Work programs

Division 1 Function and purpose

Function and purpose

Clause 44 describes the functions and purposes of a work program. Requiring a work program to accompany a geothermal permit allows the State to make effective resource management decisions as well as monitor the development of the geothermal resource the subject of the permit.

Division 2 Requirements for proposed initial work programs

Operation of div 2

Clause 45 provides for the operation of this division.

Program period

Clause 46 provides that the initial work program must state the period of the geothermal permit. This period can not be longer than 5 years from when the proposed geothermal permit will take effect. This is because the maximum time an initial geothermal permit can be granted for is 5 years.

General requirements

Clause 47 describes the general requirements for a proposed initial work program. A proposed program must provide its period, the activities proposed to be carried out under the proposed permit, maps showing where the proposed activities will be carried out and any other information relevant to the work program criteria, as outlined in the Bill. For each year of the program period, a proposed program must also outline the extent and nature of the geothermal exploration proposed to be carried out during the year, the location of the proposed activities and the estimated cost of the proposed activities. The clause also provides that no aspect of the work program can be inconsistent with any mandatory conditions for geothermal permits under the Bill.

A regulation may prescribe any other information to be included in a proposed program and can also impose requirements regarding the program's form.

Water issues

Clause 48 provides that a proposed work program must include an assessment of water needed for the proposed activities, the potential for obtaining any relevant authorisations under the *Water Act 2000* in order to conduct these activities; and the potential structural and other impacts of the carrying out of the proposed activities on aquifers. The proposed program must also include a plan for the treatment and disposal of any water taken or that may be taken because of the proposed activities.

Division 3 Approval of proposed initial work programs

Criteria

Clause 49 outlines the criteria the Minister must consider when deciding whether to approve an initial work program – that is, the work program criteria.

The criteria are based on the potential for geothermal exploration of the proposed area to be included in the geothermal permit, the type of work to be undertaken pursuant to the geothermal permit, and when and where the work is to occur. This ensures that the program is adequate to explore the area. The concept of the potential of an area is not to be considered to limit the application of new ideas. The intention is to ensure that the work program adequately tests the applicant's concept regarding the potential of the area to safely and securely explore for geothermal energy.

The Minister must also consider any relevant authorisations under the *Water Act 2000* as well as potential structural or other impacts the proposed activities would have on aquifers.

Verification may be required

Clause 50 allows the Minister to require information supplied or work done by a geothermal permit applicant to be verified by an independent and appropriately qualified person. The cost of meeting this requirement is to be borne by the applicant. This will assist in the decision-making process regarding the approval of the proposed work program.

Division 4 Requirements for proposed later work programs

Operation of div 4

Clause 51 provides for the operation of this division.

General requirements

Clause 52 describes the general requirements for a proposed later work program. A proposed later work program is required under this Bill within a certain time before the end of the program period for a current work program for a geothermal permit. Alternatively, the Minister may withdraw a current work program and require a proposed later work program to be submitted under this Bill. A later work program must comply with the initial work program requirements as outlined in this Bill, in order to provide consistency of content for all proposed programs. Additional requirements relate to the extent of the geothermal permit holder's compliance with the previous work program; whether, if there have been any amendments to the current work program, those changes have been incorporated into the proposed later work program, and the effect any geothermal resource discovery has had on the proposed later work program.

This additional information is to ensure that the proposed later work program is consistent with key factors that may impact upon future activities. For example, if the initial work program has not been completed, the proposed program should reflect the absence of the information that would have been acquired.

Program period

Clause 53 provides that the period of the later work program cannot be longer than the term of the geothermal permit.

Implementation of evaluation program for potential geothermal commercial area

Clause 54 provides that if an evaluation program (which is a requirement for a potential geothermal commercial area application under this Bill) becomes part of an existing work program for a geothermal permit, the proposed later program must include details of the work necessary to implement the evaluation program.

This clause relates to an application made by a geothermal permit holder to have some or part of their geothermal permit area declared a potential geothermal commercial area under the Bill. When making this application, the permit holder must include an evaluation program for potential geothermal production in the proposed area as well as an assessment of market opportunities. If the application is approved (i.e. the area is

declared to be a potential geothermal commercial area) the evaluation program becomes part of the geothermal permit holder's existing work program.

Division 5 Approval of proposed later work programs

Application of div 5

Clause 55 provides that this division applies if a proposed later work program is given to the Minister for approval.

Geothermal permit taken to have work program until decision on whether to approve proposed program

Clause 56 provides that until the later work program application is decided upon, the geothermal permit is taken to have a work program (even though the program may have ended) and the geothermal permit holder is allowed to continue undertaking any authorised activities for the geothermal permit.

Deciding whether to approve proposed program

Clause 57 outlines the matters the Minister must consider when deciding to approve a later work program. The approval process requires the consideration of the standard criteria used in assessing the original work program plus the extent of compliance with, and any change to the existing work program such as the environmental authority or relevant Water Act authorisation, as well as the reasons for the change.

This clause also provides for the consideration of any viability report or independent viability assessment for the geothermal permit. This information is required to ensure that the work program is consistent with the proposed exploration activities within the geothermal permit area. In addition, the Minister's power to require verification of any information supplied or work done by the applicant, for approval for a proposed work program, also applies to an application for approval of a proposed later work program.

Steps after, and taking effect of, decision

Clause 58 details the steps to be taken after the Minister makes a decision to approve or refuse to approve the later work program. The holder is to be notified of the decision. If the Minister decides to refuse to approve the work program, the applicant has a right of appeal against that decision. This right of appeal is necessary as the applicant may have already used significant funds in relation to previous exploration activities and the new program would be likely to be based, at least in part, on the investment already made.

Division 6 Amending work programs

Restrictions on amending work program

Clause 59 places restrictions on the amendments able to be made to work programs, and mandates that an amended work program is subject to approval by the Minister. Restrictions include amendments that would be inconsistent with the mandatory conditions for geothermal permits as outlined in the Bill. The restrictions ensure that there is certainty in relation to circumstances under which amendments to the work program will be considered.

Applying for approval to amend

Clause 60 provides that the application to amend a work program must be made in the approved form and accompanied by the prescribed fee.

Verification

Clause 61 provides that provisions of the Bill that provide for independent verification of information provided or work done regarding a work program also apply to this division.

Deciding application

Clause 62 outlines the matters the Minister must consider in deciding whether to approve or refuse to approve the proposed amended work program. Such considerations include the work program criteria outlined in the Bill, the extent to which the current work program has been complied

with and whether any amendments to any relevant environmental or water authority that will be necessary as a result of the change in activities proposed by the amended work program have been made.

Steps after, and taking effect of, decision

Clause 63 provides for the actions to be taken after the decision is made regarding the application to amend the work program and the date from when the decision is to take effect. If the Minister decides to refuse to approve amendment of the work program, then the applicant has the right of appeal against that decision.

Part 4 Potential geothermal commercial areas

Purpose of potential geothermal commercial area

Clause 64 outlines the purpose of a potential geothermal commercial area. A potential geothermal commercial area allows the holder of a geothermal permit who has discovered a geothermal resource that may be suitable for geothermal production the opportunity to retain an interest in and later develop the discovery. The ability to make a potential geothermal commercial area declaration is particularly important to the developing geothermal industry where delays in bringing a geothermal resource to production could arise from technological challenges, the development of infrastructure and market opportunities. The purpose is achieved through special provisions regarding work programs and relinquishment provisions.

Applying for potential geothermal commercial area

Clause 65 provides for the requirements of the application for a potential geothermal commercial area. The application can be made for more than one part of the geothermal permit's area even if the geothermal permit already has potential geothermal commercial areas declared for other areas of the permit. The application must include a geothermal viability report, the requirements for which are contained in this Bill that is still relevant to the circumstances in the proposed potential geothermal commercial area as

well as an evaluation program outlining potential geothermal production and market opportunities.

The evaluation program may provide for the suspension of all or part of the work program as it applies to the area that is the subject of the application. This is required if, for example, exploration activities have been conducted but it is necessary to suspend them while infrastructure is developed or supply contracts are secured.

Deciding potential geothermal commercial area application

Clause 66 provides for the matters to be considered in relation to the decision to declare a potential geothermal commercial area, including the size of the area and whether geothermal production is likely to become viable within 5 years. The geothermal resource should be well defined to establish whether geothermal production is likely to become viable within 5 years and primary exploration activities should be completed. Evaluation program activities are likely to be of a production testing nature or other activities required to bring the resource to production. Regard will be given to whether or not the holder has complied with existing conditions of the geothermal permit. An information notice will be issued if the application is refused, as this decision is appealable.

Inclusion of evaluation program in work program

Clause 67 provides for the evaluation program that accompanied the application to become part of the approved work program for the geothermal permit. The incorporation of the evaluation program into the work program ensures that there is an obligation for the holder to undertake the evaluation program.

Term of declaration

Clause 68 enables a potential geothermal commercial area to be declared for a maximum term of 5 years. A shorter period may be considered in relation to discoveries known at the time of grant to be in the area of the geothermal permit. When deciding whether to declare an area to be a potential geothermal commercial area for a period of less than 5 years, the Minister must consider when a discovery of any geothermal resource was made, and any geothermal viability report or independent viability assessment relevant to the area. The holder of a geothermal permit is able

to have an area no longer declared a potential geothermal commercial area by giving the Minister a notice to that effect.

Potential geothermal commercial area still part of geothermal permit

Clause 69 states that the potential geothermal potential commercial area remains part of the original geothermal permit and as such the rights and obligations of the holder in relation to that tenure remain. The administration of and obligations in relation to a potential geothermal commercial area are simplified by the area remaining part of the geothermal permit.

Effect of ending of declaration of potential geothermal commercial area

Clause 70 provides that when the term of a potential geothermal commercial area ends, the geothermal permit also ends for that part that was the declared potential geothermal commercial area. If the entire geothermal permit was a declared potential geothermal commercial area then the geothermal permit ceases.

Part 5 Provisions to facilitate transition to geothermal lease

Application of pt 5

Clause 71 applies if the Minister considers that the geothermal permit holder should apply for a geothermal lease within all, or part, of the geothermal permit area because geothermal production is currently of a large scale, or is likely to become large scale within 2 years. The application of the division provides a mechanism for the State to manage its geothermal resources.

Ministerial direction to apply for geothermal lease

Clause 72 provides that the Minister may give a geothermal permit holder notice of action the Minister may take if the holder does not apply for a

geothermal lease. The action may include excision of part of, or the cancellation of the geothermal permit. The basis for this action must be supplied to the holder who has at least 6 months to make a submission as to why a lease application should not be made. The limit of 6 months for the submission is considered sufficient to allow the geothermal permit holder adequate time to assess the basis for the action and undertake a review of the potential for geothermal energy production in the tenure area in order to determine whether the holder wishes to proceed with geothermal production.

Taking proposed action

Clause 73 provides limitations on taking of action proposed by the Minister under the previous clause in relation to the holder of the geothermal permit. The limitations ensure that appropriate consideration has been given to any submissions made by the permit holder in response to a notice regarding the direction given by the Minister and the result of any application for a geothermal lease. The decision to take action does not take effect until an information notice has been issued to the holder and until the end of the appeal period regarding the decision.

Chapter 3 Geothermal production leases

Part 1 Key authorised activities

Operation of Pt 1

Clause 74 provides for the key authorised activities for a geothermal lease.

Principal authorised activities

Clause 75 provides the activities that may be carried out in the geothermal lease's area including geothermal exploration, evaluating the feasibility of

geothermal production (including, for example, production testing) and geothermal production.

Incidental activities

Clause 76 provides that the geothermal lease holder may carry out other activities (incidental activities) if the carrying out of those activities is reasonably necessary for, or incidental to, geothermal production. Some examples of incidental activities may include construction of operating facilities, plants or works, evaporation or storage ponds or tanks.

Activities that are not incidental activities are also outlined. These include the construction or use of a structure (other than a temporary structure) for office or residential accommodation and infrastructure supporting the use of geothermal energy. Such use is not covered by this Bill.

Part 2 Transition from geothermal permit to geothermal lease

Division 1 Applying for geothermal lease

Who may apply

Clause 77 provides that a geothermal permit holder who continues to be an eligible person as defined in the Bill may apply for a geothermal lease over all or part of the geothermal permit's area. However, given that this Bill is intended to regulate large-scale geothermal production only (under criteria to be included in subordinate legislation), the application may only be made for large scale geothermal production. A proponent who applies for a geothermal lease may only apply if that proponent has previously been granted a geothermal permit over that same area. However, this clause allows a person other than the geothermal permit holder to apply for the lease jointly with the geothermal permit holder or with the holder's consent.

Requirements for making application

Clause 78 requires that an application for a geothermal lease be made in the approved form and that certain information be included in the application. This material includes statements in relation to the capability criteria as defined in this Bill, the proposed development plan and how consultation with affected land owners and occupiers will be carried out. This additional information is intended to assist in the timely assessment of the application and improve resource management outcomes for the State by ensuring the applicant has the ability and resources required for the project and aims to give due regard to the owners and occupiers of affected land.

Continuing effect of the geothermal permit for application

Clause 79 provides that if an application for a geothermal lease is not decided before the geothermal permit ends, the geothermal permit continues until the specified events in this clause occur. The land the subject of the geothermal lease application is likely to have completed exploration wells and equipment or infrastructure that the applicant will use as part of geothermal production activities. The continuation of the geothermal permit enables the holder of the geothermal permit to access these wells and equipment or infrastructure, ensuring they are maintained in proper working order. This clause also enables production testing and other authorised activities to continue and further geological data to be gathered which could lead to earlier production commencement.

Division 2 Deciding application

Deciding whether to grant geothermal lease

Clause 80 provides that the Minister may grant the geothermal lease if the Minister is satisfied that the requirements for grant, as outlined in this division, have been met. However, the grant is subject to different requirements if the proposed geothermal lease is for a significant project.

Requirements for grant

Clause 81 provides that the holder of a geothermal permit must meet specific requirements in relation to the application and have substantially complied with the conditions of their relevant geothermal permit. The

Minister must also be of the opinion that the applicant satisfies the capability criteria – that the application has sufficient technical and financial resources and ability required to carry out geothermal production.

The area proposed for the geothermal lease must be appropriate and must contain an adequately defined geothermal resource for production. The geothermal lease can only be granted if production is or is likely to happen within 2 years after the proposed lease is to take effect.

Other requirements, for example the requirement to pay rent and provide security, are also outlined in this clause.

Provisions and granting of geothermal lease

Clause 82 provides the list of provisions to be decided for the geothermal lease. Each lease term must not be greater than 30 years after the lease takes effect. Each lease must outline its term, area and the conditions imposed on the lease by the Minister. The Minister may impose provisions on the lease that restrict the carrying out of otherwise authorised activities for the lease. Lease terms will be determined on a case-by-case basis with reference to the development plan and other information required when applying for a geothermal lease. However, decisions regarding the lease area are subject to the Bill's provisions regarding maximum areas for geothermal leases.

Provisions about grant and conditions of geothermal lease for a significant project

Clause 83 provides for the conditions and grant of a geothermal lease that has been declared a significant project under the *State Development and Public Works Organisation Act 1971*. The Coordinator-General's conditions for the geothermal lease prevail to the extent of any inconsistency over geothermal lease conditions imposed by the Minister under this division. However, if a condition imposed by the Coordinator-General conflicts with a mandatory condition under this Bill, the mandatory condition will prevail to the extent of the inconsistency. This aligns with the process under the *Petroleum and Gas (Production and Safety) Act 2004*.

Information notice about refusal

Clause 84 provides that if the Minister decides to refuse the grant of a geothermal lease, the Minister must give the applicant an information notice about the decision. This is because the Minister's decision is appealable. An appeal right regarding this decision is considered appropriate as the applicant may have already expended significant funds in relation to conducting geothermal exploration activities that led to the geothermal lease application.

When refusal takes effect

Clause 85 states that the refusal to grant the geothermal lease does not take effect until after the end of the appeal period on the decision. This ensures that if the holder decides to appeal and the appeal is successful, then the refusal has not taken effect prematurely.

Part 3 Development plans

Division 1 Function and purpose

Function and purpose

Clause 86 provides for the function and purpose of a development plan. The development plan is the key element in ensuring timely, safe and orderly geothermal production and also forms an important criterion in assessing the holder's performance in undertaking these activities. The provision of this information and the requirement for having an approved development plan in order for a geothermal lease to be granted allows for appropriate management of the geothermal resource and other resources in the area.

Division 2 Requirements for proposed initial development plans

Operation of div 2

Clause 87 provides for the requirements for a proposed initial development plan for a proposed geothermal lease.

Plan period

Clause 88 provides that the proposed development plan period should generally be 5 years from when the proposed geothermal lease takes effect. However, if the applicant is seeking a geothermal lease for less than 5 years, the development plan need only be for the duration of the proposed term of the lease.

General requirements

Clause 89 details the information the initial development plan must contain. This includes information such as the nature of the geothermal resource discovered in the area of the proposed geothermal lease, the extent to which further drilling and artificial fracturing is proposed and the scale and scope of geothermal production proposed. The information enables assessment of whether there are sufficient resources available and whether the activities are appropriate for the development of the geothermal resource.

Specific information must be provided for each year of the plan, as well as a broader overview of activities for the proposed term of the entire plan. This is intended to enable the Minister to monitor the development of the geothermal resource according to the holder's plans. Information about levels of investment and technical expertise of staff will assist the Minister to determine whether the applicant is likely to successfully bring the geothermal lease to production within the specified timeframe.

The clause also requires a risk management plan, which is critical for managing safety and seismicity issues associated with geothermal production activities.

Planning for decommissioning exploration wells and any plant and activities including associated costs provides information about the entire life of the project and how it will be managed.

Water issues

Clause 90 provides that the proposed development plan must include an assessment of the water needed for the proposed activities; the potential for obtaining any relevant authorisation under the *Water Act 2000*; the potential structural and other impacts of the carrying out of the proposed activities on aquifers, as well as a plan for the treatment and disposal of any water taken or that may be taken because of the carrying out of the proposed activities under the proposed development plan.

Division 3 Approval of proposed initial development plans

Criteria

Clause 91 provides the criteria that must be considered in deciding to approve a proposed development plan. These criteria best represent the key elements in determining the appropriateness of a development plan. An important consideration is whether the geothermal production proposed in the development plan will be optimised in the best interests of Queenslanders.

Verification may be required

Clause 92 provides that the Minister may seek verification from the applicant on data supplied, the source of the data or work done to date on the plan. The verification must be undertaken by an independent person who is appropriately qualified and the cost of the verification is to be borne by the applicant. This provision will assist in the decision-making process and will show whether the activities proposed in the plan are achievable technically, financially, practically and in the timeframe proposed.

If the applicant does not comply with the requirement for verification, the Minister may refuse to approve the development plan.

Division 4 Requirements for proposed later development plans

Operation of div 4

Clause 93 provides for the operation of this division.

General requirements

Clause 94 provides for the requirements for a proposed later development plan. A later development plan may be required when, for example, the Minister decides to add land that was previously declared to be excluded land to the area of the geothermal lease or the lease holder proposes to apply for a renewal of their geothermal lease. A later development plan must comply with the initial development plan requirements to ensure that there is consistency in content and form for all development plans. Furthermore, the general intention should remain consistent with that expressed in the initial development plan and overview given when the decision to grant the geothermal lease was made. It is the intention of this clause that the proposed effect of and the reasons for any 'significant changes' – that is differences between an initial and a proposed later plan - should be fully explained in the later development plan, particularly if it is expected that the changes will have an effect on the potential for geothermal production or the market opportunities for the geothermal energy produced.

Division 5 Approval of proposed later development plans

Application of div 5

Clause 95 provides that this division applies if a proposed later development plan is given to the Minister for approval.

Geothermal lease taken to have development plan until decision on whether to approve proposed plan

Clause 96 provides that until the later development plan is decided upon, the geothermal lease is taken to have a development plan (even though the

plan period has actually ended) and the lease holder is allowed to continue to undertake any authorised activities for the geothermal lease.

Deciding whether to approve proposed plan

Clause 97 provides for the matters that must be considered in deciding whether to approve the proposed plan, including the development plan criteria outlined in the Bill, the extent to which the current development plan for the geothermal lease has been complied with and, if a change between the proposed later and initial development plan is proposed that will result in the reduction of the amount of geothermal energy produced, whether the reduction is reasonable and the geothermal lease holder has taken reasonable steps to prevent this reduction. The Minister must also consider any amendments made to the relevant environmental or any relevant Water Act authorisation for the geothermal lease. The criteria have been selected to ensure that continuing geothermal production is active, consistent with the initial development plan or, if there is a reduction, whether it is reasonable and unavoidable despite efforts of the lease holder to avoid the reduction. The Minister is also entitled to require verification of any information supplied or work done by the applicant when deciding whether to approve the proposed later plan, as the Minister is entitled to require when assessing an initial development plan and may refuse approval if verification is not provided.

Steps after, and taking effect of, decision

Clause 98 provides that the Minister must give the geothermal lease holder a notice of a decision to approve the later development plan and that approval takes effect when the holder is given the notice or on a later day, if specified in the notice.

An information notice must be given if the decision is to refuse to approve the proposed later development plan as the decision is appealable. An appeal is appropriate as the geothermal lease holder is likely to have invested in plant and infrastructure for geothermal production under previous development plan/s. The decision to refuse to approve a later development plan takes effect after the time for an appeal ends.

Division 6 Amending development plans

Restrictions on amendment

Clause 99 provides for a lease holder to amend the development plan with some restrictions. The plan cannot be amended if it would result in the cessation of geothermal production, if it is inconsistent with the mandatory conditions of the geothermal lease or if it would be inconsistent with the conditions of any relevant environmental authority.

Applying for approval to amend

Clause 100 provides for the application to amend the development plan to be made to the Minister in the approved form accompanied by the appropriate fee.

Verification

Clause 101 provides that the same verification requirements outlined in the Bill when applying for the initial development plan approval also apply when a geothermal lease holder is applying to amend a development plan.

Deciding application

Clause 102 provides for the matters that should be considered when an application to amend a development plan is decided on.

Steps after, and taking effect of, decision

Clause 103 provides that the Minister must give the lease holder a notice of a decision to approve the amended development plan and when the approval takes effect.

An information notice must be given if the decision is to refuse to approve the proposed later development plan. The refusal takes effect when the holder is given the notice or, if the notice states a later day of effect, on that later day.

Part 4 Royalty on geothermal production

Imposition of geothermal royalty on geothermal producers

Clause 104 provides that a geothermal lease holder who produces geothermal energy must pay the State a royalty for the geothermal energy.

Regulation for geothermal royalty

Clause 105 outlines that a regulation may be made about any matter connected with geothermal royalty.

Including royalty amounts in subordinate legislation rather than the Bill may be seen as a breach of a fundamental legislative principle, by conferring a significant amount of power on subordinate legislation. However, it is considered more appropriate to include royalty amounts and associated issues in subordinate legislation. As the geothermal industry is in its initial stages in Queensland, including detail regarding royalty amounts and associated criteria will enable these criteria to be assessed and amended, as appropriate, based on ongoing monitoring of the industry's development.

Obligation to lodge royalty returns

Clause 106 provides that a geothermal producer must provide information to the chief executive about the energy produced by, or for, the producer. The process for giving such information and information required will be prescribed in subordinate legislation. This information will assist the State to ensure that appropriate royalty payments are received.

Confidentiality

Clause 107 makes it an offence for someone who is, or has been, a public service officer to make a record of information, divulge information or use information gained through the course of their duties in administering this chapter under the Bill. The officer may also not use the information to benefit any person unless it is required by law, used in the course of the person performing their function or they have consent of the information owner to do so. This clause recognises that a public service officer can have access to highly confidential commercial information and that

information must not be passed on in any form unless required or authorised under the Bill.

Refusal of disclosure of particular information

Clause 108 provides that a person engaged in the administration or enforcement of this chapter cannot be compelled to disclose in a court proceeding or to a party to a proceeding certain information obtained under this chapter unless the proceeding is in relation to the administration or enforcement of this chapter.

Chapter 4 General mandatory conditions for geothermal tenures

Part 1 Geothermal permits

Division 1 Standard relinquishment condition and related provisions

Standard relinquishment condition

Clause 109 provides that a geothermal permit holder must relinquish a specified amount of the permit area by the end of each 5 year period of the geothermal permit. This relinquishment condition is in order to make the land available for further exploration. This is intended to provide opportunities for new explorers with different exploration concepts to undertake exploration activities in the area, and promote the growth of the geothermal industry.

The exploration permit holder is required to make the relinquishment by notice to the chief executive. The relinquishment takes effect on the day after the notice is given. The holder of a geothermal permit may also relinquish more than the required amount.

Consequence of failure to comply with relinquishment condition

Clause 110 provides that if the permit holder has failed to comply with its relinquishment obligation, the Minister must provide a notice to the permit holder directing the holder, within a set period, to comply with its obligation. If the holder does not comply with its obligation, its permit is cancelled.

Part usually required to be relinquished

Clause 111 provides that for each 5 year period, an area of the geothermal permit that equates to at least 33.33 per cent of the original area of the permit must be relinquished. However, certain restrictions on the areas that can be relinquished under this provision are outlined later in this division.

Relinquishment must be by blocks or sub-blocks

Clause 112 provides that a relinquishment can only be made by blocks or sub-blocks.

Blocks or sub-blocks that can not be counted towards relinquishment

Clause 113 provides what land cannot be counted as an area relinquished from a geothermal permit for the relinquishment condition. This land includes an area relinquished under a penalty relinquishment. The clause also clarifies that any area that is declared a potential geothermal commercial area under the Bill is not automatically counted as "relinquished" land under this division. However, it is possible for the holder of the geothermal permit to comply with their relinquishment obligations under this division by relinquishing an area that has previously been declared a potential geothermal commercial area.

Adjustments for blocks or sub-blocks that can not be counted

Clause 114 provides that if the amount of land available for relinquishment is less than the amount of land required to be relinquished under this division because part of the area required to be relinquished cannot be used for this purpose, if the balance of the land is relinquished, the condition is considered to have been met. However, if the land is, for example, subject to an application for a potential geothermal commercial area and that

application is subsequently refused, that area is considered available again for relinquishment purposes and must be relinquished in accordance with the requirements under this division.

Adjustment for particular potential geothermal commercial areas

Clause 115 provides that the relinquishment condition has been complied with if all land the subject of the geothermal permit, other than the area of a declared potential commercial area, is relinquished, even though the relinquishment area is less than the area required under this division.

Division 2 Conditions relating to work programs

Requirement to have work program

Clause 116 provides that a geothermal permit holder must have a work program for the permit.

Compliance with activities in work program

Clause 117 requires that the holder of a geothermal permit must comply with its approved work program. The work program describes the work the holder must complete during the program's period.

Obligation to give proposed later work program

Clause 118 requires that the holder of the geothermal permit must submit a later work program, accompanied by a fee prescribed in a regulation, within a defined time period before the end of the current approved work program. The requirement to submit a later work program prior to the end of the current work program will ensure that there is sufficient time for proper assessment and approval of the later program, and allows the permit holder to continue exploration activities in relation to the area of the geothermal permit.

If the holder has not complied with its obligation to provide a proposed later work program within the defined period, the Minister must give a notice to the holder directing it to apply. If the holder has not complied

with the timeframe for submitting the program provided for in the Bill, it is liable to pay a fee of up to 10 times the amount of the fee prescribed.

While this may be considered a breach of a fundamental legislative principle with regard to having sufficient regard to the rights and liberties of individuals, this can be justified as the provision of an increased fee for late lodgement of a later work program is intended to be an incentive to encourage the timely submission of the later work program. The fee for late lodgement is also proportionate to the increased administrative burden.

If the later work program has not been approved before the end of the current work program, the holder is not considered to be in breach of the requirement to have an approved work program.

Consequence of failure to comply with notice to give proposed later work program

Clause 119 provides that if the holder fails to lodge a later work program, as required by the notice given to the holder, the geothermal permit is cancelled. The Minister must provide the holder with a notice to this effect.

Division 3 Conditions relating to production testing

Compliance with test plan for production testing

Clause 120 provides that production testing may be carried out by a geothermal permit holder only in accordance with a test plan approved by the Minister and any conditions imposed by the Minister upon approval. The proposed test plan must comply with any requirements prescribed under a regulation. If the Minister refuses to approve a proposed test plan, or imposes conditions on a plan, the Minister must give the geothermal permit holder an information notice about the decision. This decision is appealable.

Requirement of geothermal tenure holder to report outcome of production testing

Clause 121 provides that at the end of production testing, the holder of a geothermal permit must give the chief executive a report stating the

outcome of the testing. The report must also include information about how much water was taken during the testing.

Part 2 Geothermal leases

Obligation to commence geothermal production

Clause 122 provides that a geothermal lease holder must commence geothermal production before the later of either the end of two years after the geothermal lease took effect, or any production commencement day, provided for under this Bill, for the geothermal lease.

Requirement to have development plan

Clause 123 provides that the holder of a geothermal lease must have a development plan.

Compliance with development plan

Clause 124 provides that a geothermal lease holder must comply with the development plan for the lease.

Obligation to give proposed later development plan

Clause 125 provides that the holder of a geothermal lease must submit a later development plan and the times and occasions when a later development plan is required. The later plan is required because an initial development plan has a maximum term and therefore must be renewed in order for the lease holder to lawfully operate under the lease, or there may be occasions when a significant change to the activities is imminent or the lease holder may become aware that the nature and extent of activities is changing to the extent that a later plan is required. The requirement to submit a later development plan prior to the end of the current development plan will ensure that there is sufficient time for proper assessment and approval of the later program, and allows the lease holder to continue production activities in relation to the area of the geothermal lease.

If the holder has not complied with its obligation to provide a proposed later development plan within the defined period, the Minister must give a

notice to the holder directing it to apply. If the holder has not complied with the timeframe for submitting the program provided for in the Bill, it is liable to pay a fee of up to 10 times the amount of the fee prescribed.

It may be considered that there is a breach of a fundamental legislative principle triggered by this clause. However, this can be justified as the late lodgement fee is designed to encourage the timely submission of later development plans, by geothermal lease holders, for appropriate assessment and Ministerial approval. The time for lodgement of a later development plan has been determined with a view to completing the necessary work of assessing, and approving or rejecting the later development plan before the expiry of the current development plan approved for the geothermal lease. Late lodgement of a later development plan greatly reduces the time for this. To discourage the late lodgement of later development plans, and to reduce unnecessary increases in the Minister and administering department's workloads, an application fee greater than the lodgement fee is considered to be appropriate. The fee for late lodgement is also proportionate to the increased administrative burden.

Consequence of failure to comply with notice to give proposed later development plan

Clause 126 provides that if the holder fails to lodge a later development plan, as required by the notice given to the holder, the geothermal lease is cancelled. The Minister must provide the holder with a notice to this effect.

Part 3 All geothermal tenures

Water Act authorisation required for taking or interfering with water

Clause 127 provides that a geothermal tenure holder must have the relevant authorisations under the *Water Act 2000* for the taking of or interfering with water for the purposes of geothermal exploration and/or production in accordance with the tenure and this Bill.

Compliance with land access code

Clause 128 provides that the geothermal tenure holder and any other person carrying out an authorised activity for the purposes of the geothermal tenure must comply with the mandatory provisions of the land access code to the extent it applies to that holder and anyone acting on the holder's behalf.

Annual rent

Clause 129 provides that rent must be paid by a geothermal tenure holder to the State. The amount, the way the payment is to be made, and the due date for the rent will be prescribed under a regulation.

Civil penalty for nonpayment of annual rent

Clause 130 imposes a civil penalty of either $1000 or 15 per cent of the annual rent (whichever is greater) for the non-payment of the rent required under this division.

This additional penalty may be considered a breach of a fundamental legislative principle with regard to the rights and liberties of individuals. However, this penalty can be justified as it is intended to provide an incentive for the timely payment of the rent. It is considered that the penalty for non-payment of rent is proportionate to the gravity of the noncompliance. This aligns with practice in the *Petroleum and Gas (Production and Safety) Act 2004* and the *Greenhouse Gas Storage Act 2009*.

Obligation to comply with Act and prescribed standards

Clause 131 obligates a geothermal tenure holder to comply with the Bill, any standard imposed by the geothermal tenure and any standard prescribed under a regulation in those circumstances where the tenure does not provide a standard for carrying out an activity. Standards include an Australian standard, international standard or a code or protocol.

Obligation to survey if Minister requires

Clause 132 provides that the Minister may, by notice, require a geothermal tenure holder to survey or re-survey the area of the tenure within a reasonable period as stated in the notice. All costs must be paid by the

holder in complying with the requirement. The geothermal tenure holder must have the survey (or re-survey) carried out in a way prescribed by the Minister and by a person who is registered as a cadastral surveyor under the *Surveyors Act 2003*.

Chapter 5 Coordination with particular authorities under other resource Acts

Part 1 Preliminary

Relationship with chs 2, 3 and 6

Clause 133 provides that the coordination of geothermal exploration and production activities with authorities granted pursuant to other legislation, for example the *Petroleum and Gas (Production and Safety) Act 2004* and the *Greenhouse Gas Storage Act 2009*, is subject to the Bill's provisions regarding geothermal permits, geothermal leases and general provisions for geothermal tenures. However, if a provision of this chapter conflicts with these other provisions in the Bill, the provisions of this chapter prevail to the extent of the inconsistency. If this chapter imposes a requirement for or a restriction on the granting of a geothermal tenure, the tenure cannot be granted if the restriction applies or if the requirement has not been complied with. Likewise, if this chapter imposes a requirement for or a restriction on the carrying out of an authorised activity for a geothermal tenure, the activity is not authorised while the restriction imposed by this chapter applies or a requirement imposed by this chapter has not been complied with.

What is an *overlapping resource authority*

Clause 134 provides for the types of authorities that are considered overlapping authorities for the purposes of the Bill, should a geothermal tenure be granted over all or part of these authorities' areas – these

authorities are an exploration authority (as long as it is not a geothermal permit); a greenhouse gas storage lease, a mining lease or a petroleum lease. Two geothermal tenures cannot co-exist on the same area.

What is an *exploration authority (non-geothermal)*

Clause 135 outlines the different types of non-geothermal exploration authorities.

Relationship with other resource Acts and overlapping resource authorities

Clause 136 provides that, subject to the other provisions of this chapter and any other provisions in this Bill related to the granting of geothermal tenures, where there is another Act relating to the overlapping authority, this does not limit or affect the Minister's power under this Bill to grant an overlapping geothermal tenure. It also does not limit a geothermal tenure holder's right to carry out authorised activities for their tenure.

Part 2 Geothermal coordination arrangements for overlapping resource authorities

Division 1 Making of arrangements

Power to make arrangement

Clause 137 provides that a geothermal coordination arrangement may be made between a geothermal tenure holder and another authority holder, to allow for the orderly and safe coordination of geothermal activities with activities under overlapping authorities. The coordination arrangement will allow for a structured approach to coordinated geothermal activities with greenhouse gas storage, petroleum production or mining activities in the area. The coordination arrangement may relate to the carrying out of any authorised activities for the tenure.

Other provisions about and effect of geothermal coordination arrangement

Clause 138 provides that a geothermal coordination arrangement may be for any term; may involve more than two relevant authorities; and be included in, or form part of, a coordination arrangement under the *Petroleum and Gas (Production and Safety) Act 2004* or a coordination arrangement under the *Greenhouse Gas Storage Act 2009*.

A person other than the holder or proposed holder of a relevant authority may also be a party to the arrangement. This allows independent contractors doing work for an authority holder to be included in the arrangement. A proposed coordination arrangement is subject to Ministerial approval.

Applying for ministerial approval of proposed geothermal coordination arrangement

Clause 139 provides that the parties to any proposed coordination arrangement may apply jointly for the Minister's approval. An application must be made in the approved form and accompanied by a fee prescribed under a regulation.

If the proposed coordination arrangement is for a geothermal permit and it is inconsistent with the permit's current work program, the application must be accompanied by a proposed later work program for that permit that is not inconsistent with the coordination arrangement. Likewise, if the proposed coordination arrangement is for a geothermal lease and is inconsistent with the current development plan for that lease, the application must be accompanied by a proposed later development plan for that lease that is not inconsistent with the coordination arrangement.

Ministerial approval of proposed geothermal coordination arrangement

Clause 140 provides the criteria by which the Minister may approve or refuse to approve a proposed coordination arrangement. The requirement for the Minister's approval acts to ensure that the arrangement is in the best interests of the State, clearly identifies the safety responsibilities of each party to the coordination arrangement and the area the subject of the arrangement, is consistent with the purposes of relevant legislation and is appropriate in the context of the spatial relationship of the relevant authorities.

Approval does not confer right to renew

Clause 141 clarifies that while a coordination arrangement may have a term longer than the term of any relevant authority, the approval of such an arrangement does not oblige the Minister to renew the authority.

Division 2 Amendment and cancellation

Amendment or cancellation by parties to arrangement

Clause 142 provides for a coordination arrangement to be amended or cancelled by the parties to the arrangement with the Minister's approval. The ability to amend or cancel the arrangement is necessary given that circumstances may change and the arrangement may no longer be appropriate. The approval of the Minister is required to ensure that the outcome is in the public interest and that there is no detrimental effect to anyone as an outcome of the amendment or cancellation.

Minister's power to cancel arrangement

Clause 143 provides for the Minister to be able to cancel the coordination arrangement. This power is necessary as there may be reasons the arrangement is considered to no longer be relevant or appropriate. The Minister is required to give the relevant authority holders a notice of intention to cancel the arrangement and must consider any submission made by any party to the arrangement. An information notice and the opportunity to make submissions to the Minister is considered appropriate, as is the right to appeal this decision, as the parties to a coordination arrangement may incur an expense or a disruption to an authorised activity for a geothermal authority as a result of the Minister's decision.

Cancellation does not affect relevant authorities

Clause 144 provides that the cancellation of a geothermal coordination arrangement does not affect any relevant authority that was granted pursuant to the Bill or another Act.

Part 3 Obtaining geothermal lease if overlapping resource authority

Division 1 Preliminary

Application of pt 3

Clause 145 provides how this part applies to applicants for a geothermal lease in an overlapping authority situation.

Division 2 Requirements for application

Requirements for making application

Clause 146 provides details regarding what is required of a geothermal applicant when making a geothermal lease application for an area over which another resource authority exists. These requirements include a geothermal statement (the details of which are provided for in this division) and information addressing the geothermal assessment criteria. The assessment criteria include compliance with relevant requirements of the *Petroleum and Gas (Production and Safety) Act 2004* safety provisions where appropriate; the development plan requirements contained in this Bill; the potential for the parties to make a geothermal coordination arrangement for the proposed geothermal lease; the economic and technical viability of concurrent or coordinated activities; and the public interest. The details provided assist in the decision-making process. Clarity and accuracy are encouraged so that approval decisions may be made in a timely manner.

Content requirements for geothermal statement

Clause 147 outlines the matters to be addressed in the geothermal lease applicant's geothermal statement. The statement must include an assessment of the technical and commercial feasibility of the proposed activities, an assessment of the likely effect of the proposed activities on the future use of other resources in the relevant area and proposals for the minimisation of potential adverse effects on the possible future safe and efficient use of those resources.

Division 3 Consultation provisions

Applicant's information obligation

Clause 148 provides that a geothermal lease applicant must give a copy of the geothermal lease application, apart from any information addressing the capability criteria (as defined in the Bill), to the holder of the overlapping authority within a specified timeframe. It is essential that this information is received by any overlapping authority holder, in order for the overlapping authority holder to be able to make submissions responding to the lease proposal. The Minister may refuse the geothermal lease application if this has not been done.

Submissions by overlapping resource authority holder

Clause 149 provides that the overlapping authority holder may make submissions to the Minister about the geothermal lease application within a specified timeframe after receiving the copy of the geothermal lease application. The clause provides a list of possible information that may be addressed in a submission. If a submission is made, a copy must also be given to the geothermal lease applicant.

Division 4 Resource management decision if overlapping exploration authority (non-geothermal)

Application of div 4

Clause 150 provides that this subdivision applies to overlapping exploration resource authority holders who have made a submission within a specified period after receipt of a copy of the geothermal lease application and have requested that the Minister give priority to their own resource authority. This subdivision applies as long as there has been no priority given already under another Act.

Resource management decision

Clause 151 provides that the Minister must make a resource management decision about whether to grant the geothermal lease application, give priority to the overlapping authority holder or do neither.

Criteria for decision

Clause 152 provides that in making a resource management decision under the previous clause, the Minister must have regard to the geothermal statement provided by the geothermal lease applicant; the geothermal assessment criteria outlined in this division; any submissions provided by the overlapping authority holder in response to the geothermal lease application, and the public interest. By considering this information, the Minister can make an informed decision and may decide against granting a geothermal lease over an overlapping authority. For example, such a grant may be detrimental to another resource in the area and it would not be in the public interest to grant a geothermal lease nor would it serve the public interest to prioritise a particular overlapping authority.

Restrictions on giving overlapping authority priority

Clause 153 provides that the Minister may give an overlapping authority priority only if the Minister considers that a coordination arrangement cannot be made between the parties (that is, if the parties cannot reach an agreement regarding the coordination of resource extraction activities over the shared area); or it is not technically or commercially feasible for the geothermal lease applicant to enter into a coordination arrangement with the overlapping authority holder. The clause also only allows the Minister to make this priority decision if it would also not be in the public interest to grant priority to the geothermal lease applicant.

Division 5 Process if resource management decision is to give overlapping authority priority

Application of div 5

Clause 154 provides that this division applies if a resource management decision was required to be made by the Minister and the Minister's

decision was to give the overlapping (exploration) authority holder priority for all or part only of the relevant area.

Notice to applicant and overlapping resource authority holder

Clause 155 provides for a notice to be given to the parties about the decision. Further, this clause provides that an invitation be given to the overlapping authority holder apply for a relevant lease, for all or part of the land as decided, within 6 months after receiving the notice. This period is considered a reasonable amount of time to apply for the relevant lease and is not considered too long for the geothermal lease applicant to wait for an outcome.

Relevant lease application for all of the land

Clause 156 provides for when an overlapping authority holder, whose authority has been given priority under this chapter, is applying for a lease over all of the land the subject of a geothermal lease application. It states that the geothermal lease application cannot proceed until the overlapping authority holder's lease application has been decided. If it is decided to grant all of the relevant land to the overlapping authority holder who is applying for the lease, the geothermal lease application is taken to have lapsed.

Relevant lease application for part of the land

Clause 157 provides that when an overlapping authority holder is applying for a lease over only part of the relevant land the geothermal lease applicant may (within a specified timeframe) amend their lease application so it only applies to all or part of the remainder of the land. Unless this amendment is made, a decision cannot be made about the geothermal lease application until after the overlapping lease application has been decided. However, if an amendment to the geothermal lease application has not been made by the time a decision is made to grant the overlapping lease application over part of the land, the geothermal lease applicant may subsequently amend their application so that it is only sought for all or part of the rest of the land.

No relevant lease application

Clause 158 allows a decision regarding the grant of a geothermal lease to be made if the overlapping authority holder does not apply for the relevant lease within the stated timeframe.

Division 6 Resource management decision not to grant and not to give priority

Lapsing of application

Clause 159 provides that a geothermal lease application is taken to have lapsed if a resource management decision was required under this chapter and the decision was not to give priority to the overlapping authority holder or to grant the geothermal lease application. This clause is included to remove doubt in this situation.

Division 7 Deciding application

Application of div 7

Clause 160 sets out the circumstances under which this division applies – that is if the overlapping authority holder has not made a submission regarding the relevant geothermal lease application within the relevant period; the overlapping authority holder does not wish to have any priority; a resource management decision to not give the overlapping authority priority for the land was made; or a resource management decision did give priority to the overlapping authority but the holder of that authority did not apply for a lease over the relevant land within a reasonable period. This division also applies if the decision was to give the overlapping authority priority, but ultimately the Minister decides to grant a geothermal lease over the land.

Application may be refused if no reasonable prospects of geothermal coordination arrangement

Clause 161 allows the Minister to refuse a geothermal lease application if the Minister is satisfied that the geothermal lease applicant and the overlapping authority holder have attempted to enter into a coordination

arrangement but there are no reasonable prospects that the parties will enter into such an arrangement. This will ensure that lease applications do not remain unresolved for excessive periods.

Additional criteria for deciding provisions of geothermal lease

Clause 162 sets out the additional criteria the Minister must consider when deciding provisions of the geothermal lease in an overlapping resource authority situation. These include the geothermal statement and geothermal assessment criteria (as defined in this chapter), any overlapping authority holder submissions and the safe and efficient use of any resources under any overlapping authority.

Publication of outcome of application

Clause 163 provides that a notice about a decision regarding whether to grant a geothermal lease is to be published. It is in the public interest to publish this notice; however, the provision also provides that, if the chief executive of the department considers certain information in the notice to be commercial-in-confidence, the chief executive may instead of publishing this information publish a statement about its intent.

Part 4 Priority to particular higher tenure applications under other resource Acts

Earlier GHG, mining or petroleum lease application

Clause 164 provides that where a greenhouse gas storage, mining or petroleum lease application has been made but not decided on prior to the making of an application for a geothermal lease (in what would be an overlapping situation), the geothermal lease application cannot be decided before the greenhouse gas storage, mining or petroleum lease application has been decided.

Proposed GHG, mining or petroleum lease for which EIS approval given

Clause 165 provides for priority to be given to those (non-geothermal) proponents who have been granted approval for the preparation of a voluntary Environmental Impact Statement under the *Environmental Protection Act 1994* for a project that is, or includes, a proposed greenhouse gas storage, mining or petroleum lease, even though the relevant lease application has not necessarily been made. This is because the Environmental Impact Statement process is potentially publicly available from that point and so the trigger point for priority has been advanced ahead of the point of application for the lease.

Proposed GHG, mining or petroleum lease declared a significant project

Clause 166 provides for priority to be given to a (non-geothermal) project that is declared a 'significant project' under the *State Development and Public Works Organisation Act 1971* where the project is, or includes, a proposed greenhouse gas storage, mining or petroleum lease, even though the relevant lease application has not necessarily been made. This is because an Environmental Impact Statement is required for a 'significant project' and the Environmental Impact Statement process is potentially publicly available from that point. As such, the trigger point for priority has been advanced ahead of the point of application for the lease.

Part 5 Geothermal lease applications in response to invitation under another resource Act

Application of pt 5

Clause 167 provides that this part applies where a geothermal lease application is made in response to an invitation given because of a resource management decision made under another Act.

Additional ground for refusing application

Clause 168 ensures that the Minister can refuse to grant a geothermal lease application in this situation if it is considered that the application is not being progressed in a timely manner. This is necessary to ensure the integrity of the original resource management decision.

Part 6 Additional provisions for geothermal tenures

Division 1 Restrictions on authorised activities other than for geothermal leases

Overlapping GHG, mining or petroleum lease

Clause 169 applies when land in the area of a greenhouse gas storage, mining or petroleum lease is also in the area of a geothermal permit. The authorised activities for the geothermal permit may only be carried out if any objections properly submitted under this clause by an overlapping authority holder have been decided in favour of allowing the geothermal permit holder to conduct authorised activities for the permit, as outlined in this Bill.

Overlapping exploration authority (non-geothermal)

Clause 170 applies if land is in the area of a geothermal permit and a non-geothermal exploration authority. An authorised activity for the geothermal permit cannot be carried out on the land if carrying it out adversely affects the activities of the other exploration authority and those activities have already started.

Resolving disputes

Clause 171 applies if an overlapping greenhouse gas storage, mining or petroleum lease holder has objected to the carrying out of a geothermal activity by a geothermal permit holder. This clause also applies if there is a dispute between a geothermal permit holder and a non-geothermal exploration authority holder regarding whether an activity can be carried

out by the geothermal permit holder. If there is a dispute in either of these situations, either party to the dispute may ask the Minister to decide. There is opportunity for submissions to be made about the matter to the Minister. The decision made by the Minister binds the parties and conditions may be attached to the decision regarding an authorised activity to be carried out by a geothermal permit holder in the area of a non-geothermal lease. This method of resolving disputes aims to deter a party from objecting to an activity for arbitrary or obstructive reasons.

Division 2 Additional conditions

Notice of grant by particular geothermal permit holders

Clause 172 requires a geothermal permit holder to notify certain other non-geothermal authority holders or applicants for certain other new geothermal authorities in the area of the grant of the geothermal permit, upon receiving notice of the grant of the permit. This is a normal business consideration and has practical application if, for example, infrastructure and costs could be shared.

Condition to notify particular other authority holders of proposed start of particular authorised activities

Clause 173 requires a geothermal authority holder who proposes to start a designated activity (as defined in this clause) on the area of their authority to notify any overlapping authority holders, other authority holders sharing a common boundary with the geothermal tenure, or *Petroleum and Gas (Production and Safety) Act 2004* or *Greenhouse Gas Storage Act 2009* data acquisition authority holders of when the designated activity is to start; where the designated activity is to be carried out; and the nature of the activity.

Where the geothermal authority holder has changed the land to which the authorised activities were going to be undertaken, then a further notice must be given to the other authority holder (overlap tenure holder) at least 30 business days prior to carrying out the activities.

Continuance of geothermal coordination arrangement after transfer

Clause 174 provides that if there is an overlapping resource authority for a geothermal lease that is the subject of a coordination arrangement, and the geothermal lease is transferred, the most recent geothermal lease holder must continue to be a party to the coordination arrangement while the overlapping resource authority is in force.

Division 3 Restriction on Minister's power to amend geothermal lease if overlapping resource authority

Interests of overlapping resource authority holder to be considered

Clause 175 provides that if there is an overlapping authority for a geothermal lease, the geothermal lease may be amended under the provisions in this Bill that allow the Minister to correct or amend a tenure only if the interests of the overlapping authority holder have been considered.

Part 7 Additional provisions for development plans if overlapping resource authority

Operation of pt 7

Clause 176 provides for the operation of this part, which imposes additional requirements for development plans for a geothermal lease or proposed geothermal lease in an overlapping authority situation.

Statement about interests of overlapping resource authority holder

Clause 177 provides that a statement must be included in a geothermal lease applicant's proposed development plan or a geothermal lease holder's

proposed amended plan showing that the applicant has considered the interests of any overlapping authority. The geothermal assessment criteria referred to in this chapter are to be used in compiling this statement.

Consistency with overlapping resource authority's development plan and with any relevant coordination arrangement

Clause 178 provides that to the extent that the area of the geothermal lease and the overlapping resource authority coincide or will coincide, the proposed development plan or amended development plan must be consistent with any relevant coordination arrangement made for that area. The coordination arrangement must make sense and be achievable, hence the requirement for consistency. This clause also outlines additional criteria where the overlapping authority is a petroleum or mining lease.

Additional criteria for approval

Clause 179 provides that the Minister must consider the geothermal assessment criteria (as outlined in this chapter) when deciding whether to approve the proposed development plan or amended development plan for the purposes of this chapter.

Part 8 Additional provisions for safety management plans

Grant of geothermal lease does not affect obligation to make plan

Clause 180 provides that if a geothermal lease applicant makes an application under this chapter which includes the provision of a geothermal statement, and the application is granted, the grant is not of itself evidence of the applicant's compliance with the relevant safety provisions of the *Petroleum and Gas (Production and Safety) Act 2004*.

Requirements for consultation with particular overlapping resource authority holders

Clause 181 provides that for an operating plant (as defined in the *Petroleum and Gas (Production and Safety) Act 2004*) that will be used for geothermal activities, the operator must make reasonable attempts to consult with an overlapping authority holder if the activities may adversely affect the safe and efficient use of the other resources the overlapping authority holder may be exploring for or otherwise developing. The objectives of this provision are to ensure the operators consider the risk of overlapping activities and these are identified and addressed in both safety management plans. References to the safety management plan for the operating plant relate to the relevant sections that address the interacting activities.

Application of P&G Act provisions for resolving disputes about reasonableness of proposed provision

Clause 182 provides that when a dispute arises about the reasonableness of a provision proposed by the overlapping authority holder for the operator's proposed geothermal safety management plan, the relevant dispute provisions under the *Petroleum and Gas (Production and Safety) Act 2004*, will apply.

Chapter 6 General provisions for geothermal tenures

Part 1 Area provisions

Area of geothermal tenure

Clause 183 provides for limitations on the area of both geothermal permits and leases (collectively referred to as geothermal tenures).

These limitations ensure that only one geothermal tenure can be granted over any land; that excluded land, as decided by the Minister under this

part, for the geothermal tenure is not included in the area (unless the tenure is amended by adding the excluded land back into the tenure area under this part) and that the area must form a single contiguous parcel of land unless the Minister decides otherwise. Further, the area may only include a part of a block if the part is the area that remains after areas are excluded under this part; and the tenure area must not exceed 50 blocks for a geothermal permit and must not exceed 25 blocks for a geothermal lease. The maximum areas proposed in the Bill are considered to provide a balance between allowing enough area to encourage the development of geothermal exploration and production activities and minimising the effect on other land uses throughout the State.

References to blocks of geothermal tenure

Clause 184 provides that if the area of a geothermal permit is described in blocks, it is taken to mean that the area includes all sub-blocks within the block, to the extent that the sub-blocks do not include areas of excluded land or land in an area declared to be restricted by the Minister under the Bill. This clause also clarifies, however, that if an area is declared by the Minister to no longer be restricted or excluded; this does not automatically mean that the tenure holder with a tenure adjacent to this area is allowed to extend their tenure to that area. If a tenure holder wishes to extend their tenure to include area that is no longer restricted, or excluded, the holder must apply for a geothermal authority in accordance with the appropriate processes.

Minister's power to decide excluded land

Clause 185 provides that the Minister may decide excluded land that would otherwise form part of a geothermal tenure or proposed geothermal tenure. Excluded land for the purposes of this Bill comprises land that geothermal activities cannot be conducted on. However, the Minister may only decide excluded land for geothermal tenure at the grant or renewal of the geothermal tenure, or when deciding to approve any later work program or later development plan for a geothermal tenure. The exclusion may relate to a specific type of land or a defined area. For example, the Minister may state that the area within a registered plan is excluded land for the geothermal tenure. Land may be excluded from a geothermal tenure if there is an incompatibility between the land use and the purposes of a geothermal tenure. This clause also clarifies that land ceases to be excluded land within the area of the geothermal tenure if the block

identified as containing the excluded land is relinquished pursuant to this Bill or ceases to be within the area of the subject geothermal tenure for any other reason. Excluded land will be determined upon the grant of each geothermal tenure – for example, if a geothermal permit expires and another geothermal tenure is subsequently granted over the same area, the areas that will be declared excluded upon the subsequent grant must be re-determined upon the new grant.

Minister may add excluded land

Clause 186 enables excluded land to be added to a geothermal tenure. The Minister may add excluded land on his or her own initiative if the holder consents. Alternatively, the geothermal tenure holder may apply to the Minister to add certain excluded land to a geothermal tenure. The Minister must ensure that the excluded land proposed to be included in geothermal tenure has a relevant environmental authority. When considering such an application, the Minister may require the applicant to provide an amended work program or development plan to reflect the inclusion of the excluded land that the applicant proposes to include. When approving an application, the Minister may also amend the provisions of the geothermal tenure to reflect the addition of the land. An example of a change in provisions would be a change to the approved work program for a geothermal permit to reflect the additional land over which exploration can be conducted. Any amendments to the tenure must comply with the conditions for the granting of a geothermal permit or the conditions for the granting of a geothermal lease, depending on whether the tenure is a permit or a lease. The Bill does not include appeal rights on the merits against this decision, which may be considered to be a breach of a fundamental legislative principle. However, the decision regarding whether land is appropriate for geothermal energy exploration or production is a decision made by the Minister as the steward of the State's resources. Therefore, an appeal against this decision is not considered appropriate. Applicants aggrieved by a decision in this regard maintain their right to request a review of the decision under the *Judicial Review Act 1991*. It is considered that this provides adequate protection.

Ending of geothermal permit if all of its area relinquished

Clause 187 clarifies that if all of the area of a geothermal permit is relinquished pursuant to the Bill, the permit ends.

Area of geothermal permit reduced on grant of geothermal lease

Clause 188 clarifies that any area of a geothermal permit that becomes an area the subject of a geothermal lease under this Bill ceases to be under a geothermal permit. If the whole of the area of the geothermal permit coincides with the area of a geothermal lease, the geothermal permit ends when the geothermal lease is granted.

Part 2 Reporting and information provisions

Division 1 General reporting provisions

Relinquishment report for partial relinquishment

Clause 189 provides for a relinquishment report to be submitted to the chief executive in the timeframes and format stated. A relinquishment report provides details on areas relinquished (as required by the provisions of this Bill), provided that these areas do not consist of the whole of the area of a geothermal tenure – if they do, an end of tenure report must be submitted pursuant this division. The report must include details about the authorised activities for the geothermal tenure carried out in the relinquished area, the results of these activities, and any other matters prescribed under a regulation.

End of tenure report

Clause 190 provides for an end of tenure report to be submitted to the chief executive in the timeframes stated and in the manner prescribed in the previous clause. An end of tenure report provides details regarding the activities undertaken on the area that was within the geothermal tenure immediately before the tenure ended. The report must include details about the authorised activities for the geothermal tenure carried out in the relevant area, the results of these activities, safety information, any information required to be reported under the Bill that has not been previously reported, and any other matters prescribed under a regulation.

Power to require information or reports about authorised activities to be kept or given

Clause 191 provides for a regulation, or the chief executive, to require a geothermal tenure holder to keep stated information or types of information obtained from authorised activities conducted under the geothermal tenure. This clause also provides for a regulation or the chief executive to require a geothermal tenure holder to lodge a notice at stated times that contains particular information, types of information or reports about activities conducted under the geothermal tenure. This stated information may include exploration data and conclusions based on this data. A notice may state a format required for the giving of the information and the degree of precision required for the giving of the information.

Division 2 Records and samples

Requirement to keep records and samples

Clause 192 provides for a geothermal tenure holder to keep records and samples (as prescribed under a regulation) obtained from authorised activities conducted under the geothermal tenure, for a period prescribed under a regulation. These samples or records may include exploration data or conclusions and opinions based on exploration data.

Requirement to give records and samples

Clause 193 provides that where a geothermal tenure holder is required to keep a record or sample under this division, a copy of the record or part of the sample must be submitted to the chief executive in the timeframes stated. This clause also provides for the chief executive to require the lodgement of more of a sample in the timeframes stated and for the chief executive to extend timeframes if considered necessary. Records and samples about authorised activities form a vital part of any public database regarding geothermal activities that may be established by the State. The State may also use the information for the purposes of geothermal energy exploration.

Division 3 Releasing required information

Meaning of *required information*

Clause 194 provides a definition of "required information". Required information is information, in any form, about authorised activities carried out under the geothermal tenure that the holder must lodge in order to comply with various provisions of the Bill. Examples include records and samples.

Public release of required information

Clause 195 authorises the chief executive to release any required information to the public, after the end of any confidentiality period (prescribed by regulation) has passed. It does so by outlining that the mere existence of a geothermal tenure is taken to be an authorisation by the tenure holder to publish the information, subject to this provision and any relevant regulation. The end of the geothermal tenure does not mean that the authorisation for the public release of information has ended. Any confidentiality period ceases if the required information relates to an authorised activity conducted on the area of a geothermal tenure that is no longer within the area of the tenure. For example, a well may have been drilled within a geothermal tenure area and a well completion report about this drilling may have been submitted to the required office. The area the well was drilled in may be subsequently relinquished from the tenure. The chief executive may then release the report to the public.

Chief executive may use required information

Clause 196 provides for the chief executive to use any required information for purposes related to this Bill, or for the services of the State. It does so by explaining that the mere existence of a geothermal tenure is taken to be an authorisation by the tenure holder to the chief executive to use the information, subject to this provision. This is for the purpose of improving the geoscientific information available regarding the State's geothermal resources. The end of the geothermal tenure does not mean that the authorisation for the use of information allowed in this provision has ended.

Part 3 General provisions for geothermal wells

Division 1 Responsibility for geothermal wells

Requirements for drilling geothermal well

Clause 197 provides for a standard for the drilling of a geothermal well that will be prescribed under a regulation. It also requires that any relevant requirements about construction and drilling standards for water bore drilling activities under the *Water Act 2000* be complied with. The standard will assist in ensuring that wells are drilled safely and minimise the potential for damage to natural underground reservoirs or the possibility of adversely affecting future exploitation of other natural resources in or around the area of the well.

Division 2 Decommissioning of geothermal wells

Application of div 2

Clause 198 provides that the division applies to a geothermal well drilled by or for a geothermal tenure holder.

Obligation to decommission

Clause 199 requires that a geothermal well be decommissioned before the tenure ends or the land on which the well is located is no longer in the tenure's area – for example, the land is relinquished. However, decommissioning of a well is not required if the area ceases to be in the area of a geothermal permit because a geothermal lease is granted to the geothermal permit holder for that area. For a geothermal well to be properly decommissioned, it must be plugged and abandoned in the way prescribed under a regulation and follow any relevant requirements under the *Water Act 2000* for the decommissioning of water wells. The Minister administering the *Water Act 2000* must also be given a notice about the decommissioning in the approved form. The requirement for the well to be

properly decommissioned will ensure that the State does not inherit a liability in relation to the well.

Right of entry to facilitate decommissioning

Clause 200 provides for a right of entry for the geothermal tenure holder or former holder to decommission a geothermal well after a geothermal tenure ends or the land on which the well is located is no longer in the tenure area. This provision enables entry to lands to decommission a well if this obligation had not been met before the geothermal tenure ended or the area on which the well had been located was no longer in the tenure area (because, for example, the area was relinquished). The provisions within this Bill in relation to the entry to public or private land apply as if the geothermal well was still within the area of a geothermal tenure. Even though the geothermal tenure may have ended or the relevant area is no longer in the tenure area, the decommissioning activity may be conducted as if the decommissioning was an authorised activity for the geothermal tenure.

Responsibility for geothermal well after decommissioning

Clause 201 outlines who has the responsibility for a geothermal well upon decommissioning. A geothermal well remains the responsibility of the geothermal tenure holder until the tenure ends or the area in which the well is located ceases to be in the area of a geothermal tenure (for example, the land is surrendered or relinquished under the Bill). When a geothermal well is decommissioned in compliance with this Bill, the well is transferred to the State upon the ending of the geothermal tenure or the removal of the land from the tenure area. The State has ownership of the well despite the well being on land owned by another party.

However, this clause does note that even though the well has been decommissioned, obligations under Chapter 5A of the *Environmental Protection Act 1994* may still apply to the holder of the environmental authority for the geothermal tenure.

Part 4 Security

Operation and purpose of pt 4

Clause 202 allows the Minister to require security for a geothermal tenure or a proposed geothermal tenure. This is designed to ensure compliance with the Bill and any authority issued pursuant to the Bill, or secure any amounts payable by the holder or proposed holder, such as rent and penalties imposed for breaches under the Bill. The security may also be used to pay compensation to an owner or occupier of land in circumstances in which a person authorised by the chief executive has entered the land to exercise remedial powers under this Bill, and the owner or occupier of the land has suffered a cost, damage or loss because of the exercise of those remedial powers.

Power to require security for geothermal tenure

Clause 203 provides that the Minister may, at any time, require security from a geothermal tenure holder or proposed holder. The security does not have to be given by the geothermal tenure holder or applicant until the holder or applicant has either been given a notice of the requirement (where security is of at least the amount and in the form prescribed under a regulation) or an information notice about the decision to require security (in all other cases). The information notice must be given in that circumstance because of a decision to require security to be given in a form other than that outlined in a regulation.

Minister's power to require additional security

Clause 204 provides that the Minister may, at any time, require an increased amount of security to be provided by a geothermal tenure holder. If the security amount prescribed in a regulation is amended and the Minister proposes to increase the amount of security to no more than the amended prescribed amount, the Minister must send a notice to the geothermal tenure holder stating the increased amount. In cases where the proposed increase in security is more than that prescribed in the amended regulation, the procedure to require additional security involves the Minister giving the geothermal tenure holder a notice stating the proposed requirement, and inviting the holder to make written submissions about the requirement within a stated period. The Minister must consider any

submissions from the geothermal tenure holder received within the stated period before making the requirement. If the decision to require more security than that prescribed in a regulation is still made, an information notice must be provided as this decision may be appealed.

Interest on security

Clause 205 provides that the State may keep any interest that accrues on securities given for geothermal tenures under this part.

Power to use security

Clause 206 allows the State to use the security given for a geothermal tenure, as well as any interest accrued on the security, for the matters outlined in this part.

Replenishment of security

Clause 207 provides that at any time the Minister may direct a tenure holder to replenish any utilised security in order to maintain the determined security level for a geothermal tenure. The clause also outlines the procedure the Minister must follow in relation to this requirement to replenish the security.

Security not affected by change in tenure holder

Clause 208 provides that any security held for a geothermal tenure remains as security for the geothermal tenure and may be used by the State, irrespective of whether there has been a been a change in the tenure holder. If the security is in the form of money, it continues in force for the holder until it is either refunded by the State or replaced.

Retention of security after geothermal tenure ends

Clause 209 allows for the security given for a geothermal tenure to be held for one year after the geothermal tenure has ended. If there is a claim for an amount of this security and this claim has not been assessed, this claimed amount may be held until such time as the claim has been assessed.

Part 5 Private land

Division 1 Requirements for entry to private land in geothermal tenure area

Subdivision 1 Entry notice requirement for preliminary activities and particular advanced activities

Entry notice requirement

Clause 210 prescribes the circumstances in which an entry notice is to be given to each owner and occupier of private land before the geothermal tenure holder is permitted to enter the land unless one of the exemptions in section 212 applies. The circumstances are if an authority holder intends entering private land to carry out a preliminary activity or to carry out an advanced activity when either the authority holder has reached a deferral agreement with an eligible claimant or the matter of compensation has been referred to the Land Court. A failure on the part of the authority holder to give the entry notice may lead to the imposition of a maximum penalty of 500 penalty units.

The entry notice must be given to each owner and occupier of land within the geothermal tenure area at least 10 business days before the intended entry (or a shorter period acceptable to the owner or occupier and endorsed on the notice).

There is an obligation on the authority holder to provide a copy of the entry notice to the chief executive as soon as it is given and before entry is made. However, whilst a failure to meet this obligation may result in the imposition of a maximum penalty of 10 penalty units, it does not affect the validity if the entry notice is given to the owner or occupier of the land.

Required contents of entry notice

Clause 211 provides what an entry notice must state and what documentation must accompany the notice. The first entry notice must include a copy of the land access code, any codes of practice made under

this Act applying to authorised activities and any relevant document associated with the environmental authority for the authorised activities.

The duration of the entry notice period must not be longer than six months unless the owner or occupier of the land agrees to a longer period. The purpose of subsection (4) is to confirm that an exploration tenement holder does not have to give entry notices with the same entry period to all owners or occupiers of the land subject to the tenure.

Provisions clearly state that the relevant environmental authority documentation means the relevant code where an authority is code compliant under the *Environmental Protection Act 1994* or the relevant environmental authority if the authority is a non-code compliant authority. Relevant codes can be accessed on the Department of Environment and Resource Management (DERM) website (http://www.derm.qld.gov.au/ecoaccess/codes_of_environmental_compliance/mining.html)

Exemptions from entry notice requirement

Clause 212 prescribes the exemptions from the requirement under section 210(1) of the Bill to give an entry notice.

Provisions for waiver of entry notice

Clause 213 stipulates how a waiver of notice of entry agreement must be executed if it does not form part of a conduct and compensation agreement and what it must state. During the period of effect, the owner/occupier cannot withdraw the waiver. However at the end of the period of the duration, the waiver agreement ceases to have effect.

Giving entry notice by publication

Clause 214 provides that in the event the chief executive is satisfied that it is impracticable for a geothermal tenure holder to give the entry notice to an individual owner or occupier and that by publishing the entry notice in a nominated way, the owner(s) or occupier(s) is reasonably likely to be informed about the proposed entry, then approval may be given to publish the entry notice(s). If approval is given by the chief executive to publish via notice, it must be published at least 20 business days before the intended entry.

Subdivision 2 Conduct and compensation agreement requirement for particular advanced activities

Advanced activities referred to in the subdivision 2 heading, are activities, which are likely to have a significant impact on the business operations of a private landholder. Examples of these types of activities include: drilling pads levelled and sumps dug; vegetation clear felling; exploration camps; concrete pads, sewage treatment facilities or fuel dumps; and conducting a seismic survey. A new definition of 'advanced activity' has been provided for in schedule 3 – dictionary.

The intent of providing a defined threshold between the preliminary and advanced activity is to provide for a streamlined access process (entry notice) where the activity is likely to have a very minor impact on the agricultural operation of the landholder and a more stringent process of negotiation and formal agreement (conduct and compensation agreement) where the impact is likely to be more significant.

This subdivision introduces the concept of a conduct and compensation agreement to the Bill in relation to conducting advanced activities on geothermal tenures and a requirement for such an agreement to be formed prior to entry. The purpose of a conduct and compensation agreement is to allow parties to negotiate and agree on the authority holder's liability to compensate the eligible claimant for the activities proposed to be carried out by the authority holder and their effect on the business enterprise of the eligible claimant. It also allows for parties to negotiate property-specific conduct arrangements associated with the proposed activities to ensure the impact on the landholder is minimised.

An 'eligible claimant' is defined in clause 246 of the Bill as being 'each owner or occupier of private land or public land that is in the area of, or access land for, the geothermal tenure'.

Conduct and compensation agreement requirement

Clause 215 provides that entry to private land in the area of a geothermal tenure to carry out an advanced activity is not permitted unless each eligible claimant (i.e. each owner or occupier) is a party to a conduct and compensation agreement.

Exemptions from conduct and compensation agreement requirement

Clause 216 prescribes when a conduct and compensation agreement is not required in order for a person to enter private land within a geothermal tenure to conduct advanced activities. Subsections(c)(i) and (ii) relate to a deferral agreement and an application to the Land Court to determine compensation, respectively.

Requirements for deferral agreement

Clause 217 prescribes the form and content of a deferral agreement. A deferral agreement is an agreement between an eligible claimant and the holder of a geothermal tenure to which a conduct and compensation agreement can be entered into after entry.

Division 2 Access to private land outside area of geothermal tenure

Subdivision 1 Preliminary

Application of div 2

Clause 218 provides that this division applies for access to private land outside the area of a geothermal tenure.

Subdivision 2 Access rights and access agreements

Access rights of geothermal tenure holder

Clause 219 provides rights (‘access rights’), the exercise of which is restricted under this subdivision, for a geothermal tenure holder to cross land (‘access land’) to access the holder’s geothermal tenure area, or conduct certain activities on access land to assist the geothermal tenure holder to access land in their tenure area. Examples of such activities may include constructing a track and opening and closing of gates.

Restriction on exercise of access rights

Clause 220 outlines the circumstances under which access rights may be exercised. These rights may be exercised due to an existing or emergent dangerous situation, when a written or oral agreement (an 'access agreement') has been obtained from each owner or occupier of the relevant land, for the exercise of the access rights where a permanent impact (for example, the construction of a road) on the land is likely to occur, or each occupier of the land only, where a permanent impact on the land is not likely to occur (for example, the opening or closing of a gate).

Owner or occupier must not unreasonably refuse to make access agreement

Clause 221 provides that the owners or occupiers of the relevant access land cannot unreasonably refuse to make an access agreement. However, relevant owners and occupiers may propose reasonable and relevant conditions as part of the access agreement. If the relevant owners or occupiers have not entered into an access agreement within a set period after the geothermal tenure holder has asked them to do so, the owners or occupiers are taken to have refused to agree to the access. If a refusal is given under this provision, the matter of whether the refusal is unreasonable can be referred to the Land Court (clause 225). The Land Court must take into account certain considerations as outlined in this subdivision when deciding the refusal is unreasonable.

Principles for deciding whether access is reasonable

Clause 222 provides the principles to be applied by the Land Court in deciding whether access to the relevant land is reasonable and whether refusal to allow access is unreasonable. These include whether it is reasonably necessary for the holder to cross the land to allow entry to the geothermal tenure area, or carry out activities on the land to allow for the crossing of the land to enter the geothermal tenure area.

The geothermal tenure holder must first show that they cannot use a formed road (as defined in this clause) to access the geothermal tenure area. If the tenure holder demonstrates that this is not possible, consideration must be given to the nature and extent of any impact the exercise of the access rights will have on the access land and the owner or occupier's use and enjoyment of the land. Additionally, the Land Court must consider matters

including how, when and where the tenure holder proposes to exercise any access rights.

Provisions for access and access agreements

Clause 223 provides that the notice of entry provisions that apply to the entry to land that is in the area of the geothermal tenure by a tenure holder to undertake authorised activities also apply in relation to entry to access land. However, any access agreement made between a tenure holder and the relevant owners and occupiers of access land may contain details about the waiver of this notice requirement or an alternative to the prescribed notice requirements contained under this Part. If an access agreement contains alternative provisions to the prescribed requirements for a notice of entry contained in this Part, the alternative provisions take priority over the prescribed requirements in this situation.

Access agreements may also contain compensation provisions in relation to the exercise of access rights, or future exercise of access rights, by the geothermal tenure holder. It is also provided that this division does not limit relevant owners and occupiers granting a geothermal tenure holder a right of access to the land by means other than an access agreement, for example, by the grant of an easement.

Access agreement binds successors and assigns

Clause 224 provides that the access agreement binds all parties to it and each of their personal representatives. The agreement also binds all future holders in any relevant title and assigns.

Subdivision 3 Land Court resolution

Power of Land Court to decide access agreement

Clause 225 provides for any party to apply to the Land Court to determine if a geothermal tenure holder's proposed access rights are reasonable or whether the relevant owner or occupier has unreasonably refused to make an access agreement. Any conditions imposed by the Land Court about the exercise of the access rights are considered to be the access agreement between the parties (where one does not already exist) or become conditions of the access agreement (where one already exits).

Power of Land Court to vary access agreement

Clause 226 provides for a party to an access agreement to apply to the Land Court to vary any condition of an access agreement, provided there has been a material change in circumstances that the party considers requires the variation. This clause does not prevent the parties agreeing to vary the access agreement outside of the Land Court.

Criteria for deciding access

Clause 227 provides that when making a decision under this subdivision, the Land Court must have regard to whether access to the geothermal tenure area can be reasonably gained through the use of a formed road, the proposed impact on the access land as a result of the entry onto/carrying out of activities on the access land and how, when and where the tenure holder proposes to carry out activities on the access land.

Division 3 Provisions for dealings or change in ownership or occupancy

Entry notice or waiver of entry notice or access agreement not affected by a dealing

Clause 228 states that a dealing with a geothermal tenure (as defined in this Chapter) does not affect an entry notice, waiver of entry notice or access agreement given or made for the tenure.

Change in ownership or occupancy

Clause 229 provides for the procedure when an entry notice has been given to previous owners or occupiers of the relevant land (by a geothermal tenure holder) and there is subsequently a change in occupancy or ownership of the relevant land. In this case, the geothermal tenure holder is taken to have given that notice to the new owner or occupier. The change of ownership or occupancy does not affect the entry period stated in the entry notice.

Where a waiver of entry notice has previously been given by the relevant owners and/or occupiers of the land to the geothermal tenure holder, and the ownership or occupancy of this land changes, the new owners and/or

occupiers of the relevant land are taken to have agreed to that waiver of entry notice.

However, this clause also provides that if the holder of a relevant geothermal tenure becomes aware that there has been a change to the occupancy or ownership of the land the subject of an entry notice or waiver of entry notice, the geothermal tenure holder must, within a prescribed period after becoming aware of the change, supply a copy of the entry notice or waiver of entry notice to the new owners and /or occupiers.

If the geothermal tenure holder does not give a copy of the entry notice or waiver of entry notice to the new owners or occupiers within the prescribed period after becoming aware of the change in ownership or occupancy, a new entry notice or waiver of entry notice must be given or negotiated with the new owners or occupiers.

Division 4 Periodic notice after entry of land

Notice to owners and occupiers

Clause 230 applies when a geothermal tenure holder has entered private land to conduct authorised activities, or access land has been entered and activities carried out on the access land. In these circumstances, the geothermal tenure holder is required to give a notice containing certain details in relation to any activities undertaken after the entry within the timeframes stated. If no activities were undertaken, the notice must state this fact.

Division 5 Access to carry out rehabilitation and environmental management

Right of access for authorised activities includes access for rehabilitation and environmental management

Clause 231 provides that in addition to their right to enter private land to conduct authorised activities under the tenure, a geothermal tenure holder has the right to enter the land to carry out rehabilitation or environmental management activities required of the tenure holder under the *Environmental Protection Act 1994*.

Division 6 Miscellaneous provision

Direction to ease concerns of owner or occupier

Clause 232 provides for the Minister to direct a tenure holder to take or to cease taking action, in order to ease any valid concern of an owner or occupier of land in the area of a geothermal tenure. This direction may only be given by notice and the Minister must give an initial notice to the tenure holder stating details regarding the proposed direction, and must consider any submissions made by the tenure holder in relation to this initial notice before making a decision whether to direct the tenure holder to take or cease taking the relevant action. The Minister's decision is appealable and does not take effect until an information notice is given about the decision.

Part 6 Public land

Division 1 Public roads

Subdivision 1 Preliminary

Significant projects excluded from div 1

Clause 233 states that this division does not apply to a geothermal tenure that is, or forms part of, a project declared to be a significant project under the *State Development and Public Works Organisation Act 1971*. Conditions the Coordinator-General may recommend for the geothermal tenure pursuant to Part 4 of the *State Development and Public Works Organisation Act 1971* are not affected by this provision.

What is a *notifiable road use*

Clause 234 defines the meaning of a notifiable road use for a geothermal tenure – that is, the use of a public road in the tenure's area for transport relating to a seismic survey or drilling activity, or the use of any public road

at more than the threshold rate (as outlined in this clause) if the use relates to the construction of a pipeline.

Subdivision 2 Notifiable road uses

Notice of notifiable road use

Clause 235 provides that a notice must be given to a public road authority by a geothermal tenure holder where the geothermal tenure holder proposes to use the road for a notifiable road use, as defined in this division. This clause also details when the notice is to be given, and the notice's content requirements.

Directions about notifiable road use

Clause 236 provides that a public road authority may issue a geothermal tenure holder a road use direction (as defined in this clause) regarding the manner in which the tenure holder may use the road for notifiable road uses. The road use direction may contain details about the way the notifiable road use is to be carried out, or is proposed to be carried out. The road use direction must be reasonable, and may only be related to preserving the condition of the road or the safety of road users or the public. The decision to impose a road use direction is appealable.

This clause also provides that the road use direction may require the geothermal tenure holder to both assess the likely impacts arising from the notifiable road use and consult with the public road authority in carrying out the assessment. The clause also outlines when an assessment is not required.

Obligation to comply with road use directions

Clause 237 provides that a geothermal tenure holder must comply with any road use direction, unless the holder has a reasonable excuse for not doing so.

Division 2 Other public land

When entry notice has to be given

Clause 238 provides that entry to public land to carry out an authorised activity for a geothermal authority is not lawful unless all of the following can be satisfied: there is a conduct and compensation agreement relating to the land the subject of the authority; each eligible claimant is a party to that agreement; how and when entry is to take place is documented in the agreement; and entry takes place according to the terms of the agreement.

However, such entry may be lawful if the activity is one that may be carried out by a member of the public in the absence of any specific approval from the relevant public land authority; or if an entry notice has been given to the public land authority within the specified timeframe prior to the proposed entry; or if a written agreement that an entry notice is not required is obtained from public land authority. This agreement must comply with the conditions of a waiver of entry notice, as outlined in this Part. Entry to land under this clause is also lawful if it is to preserve life or property due to an emergency or dangerous situation.

Waiver of entry notice

Clause 239 lists the requirements for a waiver of entry notice. The waiver of entry notice must be in writing and signed and state that the public land authority has been told that it is not compulsory that it agrees to the waiver. The notice must also list the authorised activities proposed to be carried out on the land, the period of entry, and when and where on the land the activities are proposed to be carried out.

During the period of entry stated in the waiver of entry notice, the public land authority cannot withdraw the waiver of entry notice. The waiver ceases to have effect after the period of entry stated in the waiver of entry notice.

Required contents of entry notice

Clause 240 provides that an entry notice must be given prior to access to public land other than for a notifiable road use. The clause also provides that the entry notice may generally describe the nature and extent of the activities proposed, if a proposed activity is not likely to significantly

disrupt the activities the public land authority ordinarily carries out on the land.

Conditions public land authority may impose

Clause 241 provides that relevant and reasonable conditions may be imposed (with certain restrictions) on a geothermal tenure holder's activities by a public land authority.

The public land authority may also impose relevant and reasonable conditions upon the tenure holder's entry, subject to the restrictions contained in this clause. The public land authority's decision on conditions is appealable.

Part 7 Access to land in area of particular other authorities

Application of pt 7

Clause 242 provides that this Part applies to land outside a geothermal tenure but in the area of another resource tenure, for example a petroleum tenure or another geothermal tenure. In this Part, the geothermal tenure is called the first authority and the other resource tenure (or other geothermal tenure) is called the second authority.

Access if second authority is a lease

Clause 243 provides that when the second authority is a lease (for example, a petroleum lease), the holder of the first authority may only enter land within the area of the second authority, if the second authority holder has provided written consent. A notice must be given to the chief executive when written consent is obtained.

Access if second authority is not a lease

Clause 244 provides that when the second authority is not a lease (for example, an authority to prospect under the *Petroleum and Gas (Production and Safety) Act 2004*), and the first authority holder wishes to enter land within the area of a second authority, the first authority holder

does not need to obtain the consent of the first authority holder in the circumstances outlined in this clause. However, the entry can not adversely affect the carrying out of an authorised activity being carried out pursuant to the second authority.

Part 8 Compensation and negotiated access

Division 1 Compensation other than for notifiable road uses

Subdivision 1 Preliminary

Application of div 1

Clause 245 provides that this division does not apply for a public land authority in relation to a notifiable road use.

Subdivision 2 General provisions

General liability to compensate

Clause 246 imposes a liability on the holder of each geothermal tenure to compensate each owner or occupier of private and public land that is in the area of, or access land for, the authority for any compensatable effect caused by the authorised activities carried out by the holder or a person authorised by the holder. In this instance, each owner or occupier is defined as an 'eligible claimant'. The section clarifies the meaning of 'compensation liability' as being the liability of a geothermal tenure holder to an eligible claimant and defines the term 'compensatable effect', which is consistent across all the resource legislation.

Subdivision 3 General provisions for conduct and compensation agreements

Conduct and compensation agreement

Clause 247 provides that an eligible claimant and a geothermal tenure holder may enter into a conduct and compensation agreement about: access to land to carry out an advanced activity: how authorised activities must be carried out to the extent that they relate to the eligible claimant; and the authority holder's liability to compensate the eligible claimant, including any future liability. A conduct and compensation agreement cannot be inconsistent with a mandatory provision of the land access code, the Act or a condition of the authority and to the extent that it is, it will be deemed unenforceable. The agreement may relate to all or part of the liability or future liability.

Content of conduct and compensation agreement

Clause 248 prescribes what a conduct and compensation agreement must contain but does not limit what else such an agreement may include.

Subdivision 4 Negotiation process

The purpose of this subdivision is primarily to provide statutory provisions which prescribe the process for making a conduct and compensation agreement and the options available to parties should negotiations break down. The amendments will implement a graduated negotiation and dispute resolution process in relation to the forming of conduct and compensation agreements, with clearly articulated statutory timeframes. The subdivision also contemplates the authority holder wishing to negotiate a deferral agreement with an eligible claimant.

Notice of intent to negotiate

Clause 249 provides that the notice of intent to negotiate a conduct and compensation agreement or a deferral agreement will trigger the start of statutory timeframes. If the Geothermal authority holder wishes to negotiate a conduct and compensation agreement or deferral agreement with an eligible claimant, the holder may give the claimant a notice to this

effect which is described as a 'negotiation notice'. The section prescribes the statement and information that must be included in the notice and that it must be accompanied by a copy of the land access code.

There is also an obligation on the authority holder to give a copy of the negotiation notice to the chief executive as soon as it is given to the eligible claimant.

Negotiations

Clause 250 provides that the giving of a negotiation notice places an obligation on the geothermal tenure holder and the eligible claimant to use all reasonable endeavours to negotiate a conduct and compensation agreement or a deferral agreement. The negotiation period must be at least 20 business days but may be as long as the parties agree to.

In the event the parties reach agreement within the minimum negotiation period, the geothermal tenure holder cannot enter the land until that 20 business day period has elapsed, despite the terms of the agreement.

Cooling-off period during minimum negotiation period

Clause 251 provides that in the event the parties enter into a conduct and compensation agreement or a deferral agreement within 20 business days after the giving of the negotiation notice, either party is permitted to terminate the agreement within that period by notice to the other party. The agreement is deemed never to have had any effect on the giving of the notice of termination. However, notwithstanding this, the time at which the negotiation notice was initially given does not change.

Parties may seek mediation

Clause 252 provides that if a conduct and compensation agreement has not been reached between an eligible claimant and a geothermal tenure holder by the end of the minimum negotiation period either party may ask an authorised officer to call a mediation conference. The authorised officer is obligated to take all reasonable steps to finish the conference within 20 business days after it was called for.

Subdivision 5 Deciding compensation through Land Court

Deciding compensation through Land Court if mediation not called or after unsuccessful mediation

Clause 253 applies if either the authorised officer has not finished the mediation within 20 business days after receiving the request to hold a mediation or if one or both parties attend the mediation and no conduct or compensation agreement is reached within 20 business days after the calling of the mediation. In the former circumstance, either party can make application to the Land Court to decide either the compensation liability to an eligible claimant or future compensation liability for an authorised activity proposed to be carried out. In the later circumstance, only a party that attended the mediation can make such an application to the Land Court. The jurisdiction of the Land Court in deciding the liability or future liability is limited to the extent it is not subject to a conduct and compensation agreement.

In hearing an application made under this section, the Land Court must as much as practicable, hear it with or as closely to the hearing of any application made for compensation under the *Environmental Protection Act 1994*.

Land Court review of compensation

Pursuant to clause 254, the Land Court may review the compensation liability or future compensation liability agreed to by the parties in a conduct and compensation agreement or decided by the Land Court, if there has been a material change in circumstances since the original agreement or decision. The Land Court may only review the original compensation to the extent it is affected by the material change in circumstances. If the Land Court does amend the compensation after carrying out the review, that compensation is taken to be the original compensation for the purposes of the Bill.

Orders Land Court may make

Clause 255 provides that the Land Court, in seeking to meet or enforce its decision on an application to decide or review the compensation liability or future compensation liability, may make any order it considers appropriate.

The Land Court may make orders regarding non-monetary and monetary compensation.

Subdivision 6 Miscellaneous provision

Compensation not affected by change in ownership or occupancy

Clause 256 provides that any relevant conduct and compensation agreement or Land Court decision is not affected if there is a change in ownership or occupancy of the affected land or if there is a change in the geothermal tenure (or authority) holder.

Division 2 Compensation for notifiable road uses

Liability to compensate public road authority

Clause 257 provides for compensation to be paid by a geothermal tenure holder to a public road authority for damage caused or damage that may be caused by notifiable road uses (defined as the use of a public road in the geothermal tenure's area for transport relating to a seismic survey or drilling activity; or the use of a public road at more than the threshold rate – as outlined in this Chapter, if the haulage relates to the construction of a pipeline). This liability is called the holder's 'compensation liability' to the public road authority.

Compensation agreement

Clause 258 provides that a geothermal tenure holder and the relevant public road authority may enter into an agreement (called a 'compensation agreement') regarding the tenure holder's compensation liability in relation to the public authority's road. This clause also outlines what the compensation agreement relates to, what it must detail, and lists other matters that may be addressed in the agreement.

Deciding compensation through Land Court

Clause 259 provides for either the public road authority or the geothermal tenure holder to apply to the Land Court to determine the tenure holder's compensation liability to the public road authority relating to the road. In making its determination, the Land Court may consider whether there has been any attempt made to mediate or negotiate the compensation liability. However, the Land Court can only determine the compensation liability to the extent that the liability is not already covered in an existing compensation agreement between the public road authority and the tenure holder.

Criteria for decision

Clause 260 provides the criteria the Land Court must consider in making a determination about the geothermal tenure holder's compensation liability to the public road authority.

Land Court review of compensation

Clause 261 provides that either the geothermal tenure holder or the public road authority may apply to the Land Court for a review of the original compensation if there has been a material change in circumstances (i.e. a significant increase or decrease in the geothermal tenure holder's use of the road). Such a review should be conducted as if it were a determination regarding an original compensation application. This clause also outlines issues the Land Court must consider before making its decision.

Compensation to be addressed before carrying out notifiable road use

Clause 262 provides that no notifiable road use may be carried out on a public road, unless a compensation agreement is in place, the public road authority has given written authorisation to the geothermal tenure holder to conduct the notifiable road use, or an application has been made to the Land Court to make a decision about compensation.

Compensation not affected by change in administration or holder

Clause 263 provides that the compensation agreement or a Land Court decision about compensation liability binds all parties to it and each of

their personal representatives, regardless of any change in the tenure holder or public road authority.

Part 9 Ownership of equipment and improvements

Application of pt 9

Clause 264 provides that this Part applies when equipment is taken on to, or improvements are placed on, land in the area of a geothermal tenure that is in force, provided the movement of equipment, improvements being made or construction of equipment is for an authorised activity under the tenure. This Part is subject, however, to this Chapter's provisions regarding enforcement of end of tenure and area reduction obligations. This clause also provides definitions for 'equipment' and 'improvements', as used in this Part.

Ownership of equipment and improvements

Clause 265 provides the circumstances in which equipment or improvements are taken to be the personal property of the holder of a geothermal tenure, and how the equipment or improvements can and cannot be treated by other parties in the circumstances listed in the clause.

Part 10 Geothermal register

Geothermal register

Clause 266 provides that the chief executive must keep a register of details regarding areas declared to be restricted areas or excluded land under the Bill, geothermal tenures and geothermal coordination arrangements made pursuant to the Bill and dealings with geothermal authorities (as provided for in this Chapter). The chief executive also has the discretion to keep any other information related to this Bill or another Act that the chief executive considers appropriate.

Keeping of register

Clause 267 provides for the chief executive to include information prescribed under a regulation in the geothermal register. This clause also provides a requirement for the chief executive to amend the register to reflect changes to any information required to be or deemed appropriate to be recorded in the register.

The chief executive must record when the information was amended and in the circumstance if a dealing, when the dealing took effect. The clause outlines when the change is taken to have been made.

Access to register

Clause 268 requires the chief executive to keep the geothermal register open for public inspection during listed times at locations deemed appropriate by the chief executive. This clause also provides that information from the register prescribed under a regulation may be searched for and obtained upon payment of a prescribed fee.

If a person asks for a copy of all or part of a notice, document or information held in the register the copy must be given to the person upon the payment of a fee prescribed under a regulation.

Arrangements with other departments for copies from geothermal register

Clause 269 provides that the chief executive may enter into an arrangement to allow other government departments to obtain information from the geothermal register, without requiring that those departments pay a fee.

However, the chief executive cannot enter into such an agreement unless the chief executive is satisfied that the information will not be used for commercial purposes. Further, government departments cannot include this information on another database without the chief executive's approval.

Supply of statistical data from geothermal register

Clause 270 provides that the chief executive may enter into an agreement with another party to supply the party with statistical data derived from information contained in the geothermal register. Any fees and charges associated with the supply are to be contained in the agreement. The

agreement must also take into consideration certain conditions on the supply of the information as detailed in this clause. For example, the chief executive must exclude any geothermal tenure particulars and personal information that may identify a person or a geothermal tenure to whom or which the information relates. The provision also contains examples of terms that may be included in such an agreement, for example, terms that limit the use to which the data supplied may be put. If information is to be made publicly available under this division, the party to a proposed agreement must obtain the information under those provisions, as opposed to attempting to enter into an agreement with the chief executive under this clause.

Chief executive may correct register

Clause 271 provides that the chief executive may correct the geothermal register, provided that the chief executive is satisfied that the information in the register is incorrect, the correction will not prejudice the rights of the parties listed in this clause and the chief executive publishes the circumstances of the correction and other required information relating to the correction in the register.

The clause also clarifies that the power to correct information in the register includes the power to correct information in a document forming part of the register.

Part 11 Dealings

Division 1 Preliminary

What is a *dealing* with a geothermal tenure

Clause 272 outlines what constitutes a dealing in relation to a geothermal tenure.

Prohibited dealings

Clause 273 prohibits a dealing that would result in the transfer of a divided part of a geothermal tenure area such as a specific part of the surface area or a specific strata beneath the surface of the area of the tenure area.

What is a *third party transfer*

Clause 274 defines a third party transfer of a geothermal tenure.

Division 2 Registration of dealings generally

Registration required for all dealings

Clause 275 provides that a dealing with a geothermal tenure has no effect until it has been registered. This clause also provides that a registered dealing takes effect on the day the transfer was concluded (for a third party transfer) or on the day the dealing was given to the chief executive for registration (for all other dealings provided for under this Part).

Approval requirement for third party transfer or sublease

Clause 276 provides that a third party transfer or sublease must be approved by the Minister before it is able to be registered.

Obtaining registration other than third party transfer or sublease

Clause 277 provides that a dealing other than a third party transfer or a sublease must be registered by giving the chief executive a notice of the dealing in the approved form, accompanied by the prescribed fee. Approval for these dealings is not required.

Effect of approval and registration

Clause 278 provides that the mere registration, or approval and registration, of a dealing does not give the dealing any more validity or effect than it would have had, had the provision requiring the registration of dealings not taken effect.

Division 3 Approval of third party transfers and subleases

Who may apply

Clause 279 provides that only an eligible person, defined in this Bill, may apply for approval and registration of a third party transfer or sublease of a geothermal tenure. However, provided that they are an eligible person, any party to a third party transfer or sublease may apply for registration of the transfer or sublease.

Requirements for application

Clause 280 provides the content requirements for an application for approval of a third party transfer or sublease.

Deciding application

Clause 281 outlines the matters the Minister must take into consideration when deciding whether to approve a third party transfer or sublease.

Security may be required

Clause 282 provides that the Minister, when deciding whether to approve a third party transfer or sublease, may require the proposed transferee or sublessee to give security for the geothermal tenure as if the transferee or sublessee were an applicant for the geothermal tenure. If this security is not provided, the Minister may refuse to approve the proposed third party transfer or sublease.

Information notice about refusal

Clause 283 provides that if the Minister decides not to approve a proposed third party transfer of a geothermal tenure or sublease of a geothermal lease, the Minister must give the applicant an information notice about the decision, as this is an appealable decision.

Part 12 Renewals

General conditions for renewal application

Clause 284 provides the conditions for renewal of a geothermal tenure. To renew a geothermal tenure, the holder must show that they have met all obligations in relation to payments of annual rent for any tenure, any penalties imposed for non payment of annual rent, interest payable on rent or penalties, security required for any geothermal tenure and geothermal royalty.

The application cannot be made more than a set period before the end of the existing geothermal tenure's term. This is so the extent of compliance with the conditions of the existing geothermal tenure can be properly considered. Also, the renewal application may not be made after the geothermal tenure (the subject of the renewal application) has ended.

Restriction on applying for renewal of geothermal permit

Clause 285 provides that a geothermal permit holder cannot be granted a renewal of the permit if the renewal would result in the holding of the permit for more than 15 years from when the permit originally took effect.

Requirements for making application

Clause 286 outlines the requirements for a renewal application for a geothermal tenure. The application must include a proposed later work program (for an exploration permit), or development plan (for a production lease) that complies with the relevant requirements for later plans and programs contained in the Bill.

The applicant for a renewal must pay an application fee prescribed under a regulation. If an applicant does not lodge their application within the timeframe specified in the clause, the applicant must pay an increased application fee. It may be considered that there is a breach of a fundamental legislative principle triggered by this clause. However, the time for lodgement of a renewal application has been determined with a view to completing the necessary work of assessing, and approving or rejecting the renewal application before the expiry of the current geothermal tenure. The late lodgement of a renewal application greatly reduces the time for this. To discourage late lodgement, and to reduce

unnecessary increases in the Minister's and administering department's workloads, an application fee greater than the lodgement fee is considered appropriate.

Continuing effect of geothermal tenure for renewal application

Clause 287 provides that when an application for renewal has been lodged and the geothermal tenure's term ends before a renewal application is decided, the geothermal tenure remains in force until either the start of any renewed term, a refusal of the application takes effect, the application is withdrawn or the geothermal tenure is cancelled under the Bill.

If a geothermal permit holder has applied for a renewal and also for a declaration of a potential geothermal commercial area, the permit will remain in force until a decision has been made regarding the declaration, but only for the area subject of the declaration application. In this scenario, the evaluation program that is required to be lodged with a potential geothermal commercial area application under the Bill is taken to be the permit holder's work program for the geothermal permit. This is because if the permit remains in force under this section, but would have lapsed otherwise, the permit holder must have a valid work program to keep undertaking activities on the relevant tenure area whilst the declaration application is decided.

Deciding application

Clause 288 lists the issues the Minister must take into account when making a decision regarding whether to approve an application for renewal of a geothermal tenure. A renewal application may only be approved if the applicant continues to satisfy the capability criteria. Likewise, the applicant must have substantially complied with the conditions of the current geothermal tenure and the provisions of this Bill, have in place an approved later work program or development plan, and have obtained the relevant environment authority under the *Environmental Protection Act 1994* and authorisations under the *Water Act 2000* for the proposed renewed tenure.

If the renewal application is for a geothermal permit, but the applicant has previously been directed by the Minister to apply for a geothermal lease (because the Minister, for example, considers that the production testing being carried out under a permit will within a set period result in large scale geothermal energy production), the renewal application for the permit must

not be decided until the lease application required to be made has been decided.

The applicant may be required to pay the first year's annual rent and give security for the proposed renewed tenure before the Minister decides to approve the renewal. This is to ensure that all of the administrative arrangements have been completed prior to the permit being renewed.

Provisions and term of renewed geothermal permit

Clause 289 outlines restrictions regarding the provisions of a renewed geothermal permit.

Although a renewed geothermal permit cannot be granted for more than a term of 5 years, if the renewed permit includes a previously declared potential geothermal commercial area, the term for the potential geothermal commercial area does not end until the time at which the geothermal commercial area declaration of that area ends.

Provisions of renewed geothermal lease

Clause 290 outlines the issues to be taken into consideration by the Minister when deciding the provisions of a renewed geothermal lease.

Additional provisions for term of any renewed geothermal tenure

Clause 291 provides that the conditions the Minister may impose on a renewed geothermal tenure may be different to the conditions imposed on the existing tenure. However, the provisions of the existing tenure remain until the start of the renewed tenure, even if the renewed tenure is approved and its provisions decided upon before this time. If the renewed tenure is approved and its provisions are decided upon after the term of the previous tenure expires, the provisions of the renewed tenure begin immediately upon the renewed tenure's commencement, provided that the tenure holder has been given notice of the new conditions to be imposed.

Criteria for decisions

Clause 292 provides for the matters that must be considered by the Minister when deciding whether or not to grant the renewal application or the provisions of the renewed tenure.

Information notice about refusal

Clause 293 provides for the applicant to be given an information notice by the Minister if the application for the renewal of the geothermal tenure is refused, as this is an appealable decision.

When refusal takes effect

Clause 294 states that the refusal to renew a geothermal tenure does not take effect until the end of the appeal period for the decision to refuse renewal. This ensures that if the holder decides to appeal and the appeal is successful, the geothermal tenure continues and would not have to be reinstated if the outcome of the appeal was to renew the tenure.

Part 13 Surrenders

Requirements for surrender

Clause 295 provides that if a tenure holder wishes to surrender all or part of their tenure area, the surrender must be approved by the Minister. The provision also clarifies the distinction between a surrender and a relinquishment of land as required under other provisions of the Bill.

Requirements for making surrender application

Clause 296 outlines the requirements for a surrender application. These requirements include a report attached to the application containing details regarding the activities that were conducted under the geothermal tenure on the area that the tenure holder wishes to surrender.

Deciding application

Clause 297 provides that the Minister may only approve the surrender if the requirements listed in this clause have been met. The clause also states that a geothermal tenure holder who wishes to surrender only part of the tenure area must agree in writing to any amendment of the conditions applying to the rest of tenure area that the Minister considers appropriate.

Notice and taking effect of decision

Clause 298 provides for the Minister, on approval of the surrender, to give the applicant for the surrender a notice about the decision. The surrender then takes effect the day after the decision is made. If the Minister decides to refuse the application to surrender, an information notice must be provided to the applicant regarding the decision, as this is an appealable decision.

Part 14 Enforcement of end of tenure and area reduction obligations

Power of authorised person to ensure compliance

Clause 299 provides for the chief executive to authorise any person to enter either the area of the former tenure or land required to access the area of the former tenure in order to exercise remedial powers in accordance with the requirements in this Part. This authorisation is necessary if the geothermal tenure holder or former tenure holder has not complied with their obligation to remove equipment and improvements on the former tenure area; decommission any well in an area that no longer remains in the area of the geothermal tenure; or meet any environmental requirement under the *Environmental Protection Act 1994* that applied to their operations on the tenure area. The authorisation must be in writing and may be subject to conditions deemed appropriate by the chief executive. This clause also provides that the authorised person cannot enter residential structures without the consent of the occupier.

This may be considered a breach of a fundamental legislative principle as it may be considered a power to enter premises without a warrant. However, the powers in this Part contain a number of safeguards for the owner or occupier of the land (for example identification of the authorised person, exclusion of entry to residences without the consent of the occupier, a duty to avoid damages, notice of damage and compensation for damage). Further, it is anticipated that typically the owner of the land would instigate the remedial procedure and the purpose of the power is to protect their interests.

Requirements for entry to ensure compliance

Clause 300 provides that if an authorised person proposes to enter land to exercise their authorised remedial powers, a notice of entry must be given to the occupier of the land, or, where there is no occupier, to the owner, at least 10 business days before the proposed entry. If the occupier of the land is present on the land at the time of the proposed entry, the authorised person must also show the occupier the person's authorisation. This clause also details the notice's content requirements, and provides for the chief executive to approve, in certain listed circumstances, the giving of the entry notice by publication rather than directly to the owner or occupier of the land.

Duty to avoid damage in exercising remedial powers

Clause 301 provides that the authorised person must take all reasonable steps to avoid or minimise damage to the land and inconvenience to the owner or occupier of the land whilst exercising their remedial powers on the land.

Notice of damage because of exercise of remedial powers

Clause 302 provides that, whilst exercising remedial powers under this Part, if the authorised person damages land or something on the land, the person must provide a notice of damage directly to the owner and any occupier of the land where possible, or display the notice in a prominent place where it is likely to come to the attention of the owner or occupier. The notice must state the particulars of the damage, and that the owner or occupier may claim compensation from the State as a result of the damage, in accordance with the procedure outlined in this Part.

Compensation for exercise of remedial powers

Clause 303 provides that an owner or occupier of land who suffers a cost, damage or loss due to an authorised person carrying out remedial powers authorised under this part may apply for compensation from the State, via a proceeding in a court of competent jurisdiction. The clause also outlines the circumstances in which the court may order the compensation.

Ownership of thing removed in exercise of remedial powers

Clause 304 provides that when an authorised person removes a thing that was, prior to the removal, the property of the holder or former holder of the geothermal tenure or an agent or contractor for the holder, the thing becomes the property of the State. This clause also lists the manner in which the State may deal with the removed thing.

It may be considered that there is a breach of a fundamental legislative principle triggered by this clause, as there is an effect on the property rights of the holder or the former holder of the geothermal tenure. However, the transfer of property flows from a noncompliance of the former geothermal tenure holder. Its purpose is to protect the interests of owners and occupiers who may not be left with a remedy for noncompliance. The Bill empowers the State to sell the "thing", but the proceeds of the sale less the costs of sale and the remediation may be returned to the former holder.

Recovery of costs of and compensation for exercise of remedial power

Clause 305 provides that the State may recover reasonable costs and compensation, brought about by the exercise of the remedial powers, from the holder or former holder of the geothermal tenure (the 'responsible person') about whom the remedial powers were exercised. However, the relevant net proceeds of the sale (as defined in this clause) of any items that were removed under this part must be deducted from the amount proposed to be recovered.

Chapter 7 Mediation, enforcement, offences and proceedings

Part 1 Mediation with eligible claimants or owners and occupiers

Application of Pt 1

Clause 306 sets out the circumstances in which clause 306 will apply. If at the end of the minimum negotiation period of 20 business days, the geothermal authority holder has not entered into a conduct and compensation agreement with an eligible claimant, then either party may call on a relevant officer to hold a mediation conference.

Alternatively, if either the authorised officer, owner or occupier of land within a geothermal authority's area or authority holder has concerns about how a party is conducting itself or its activities, a mediation may be requested.

Mediation may be called

Clause 307 prescribes the process that must be followed to call a mediation conference for the range of circumstances provided in section 306.

The relevant officer must request the parties' attendance at a mediation if it is regarding the negotiation of a conduct and compensation agreement. The authorised officer may call and hold a mediation if it is regarding the concerns of the owner/occupier, authority holder or authorised officer.

The notice requesting attendance at a mediation conference must state what the subject is and when and where the mediation conference is to be held.

Who may attend mediation

Clause 308 states that apart from the authorised officer, anyone given notice of a mediation may attend and a party attending the mediation may only be represented by an agent if the authorised officer agrees. Representation by a lawyer at a mediation will not be permitted unless the

parties agree and the authorised officer is satisfied that no party is disadvantaged.

Who may attend mediation

Clause 308 provides that anyone given a notice under this Part may attend a mediation. However, a party attending the mediation may be represented by an agent only with the agreement of the mediator and parties cannot be represented by a lawyer unless all parties agree to the representation and the mediator considers that no party will be disadvantaged by the legal representation.

What happens if a party does not attend

Clause 309 provides what may happen if a party given written of the notice of the mediation does not attend. In the event that a party does not attend, mediation is taken to have been concluded for the purposes of the party who attended being able to refer the matter to the Land Court.

In this circumstance, the party who attended can make an application to the Land Court for an order that the non-attending party pay their reasonable costs of attending the mediation. In the event the Land Court is satisfied that the non-attending party had a reasonable excuse for not attending, the Court must not grant the order to pay the other parties cost of attending the mediation. However, if the Land Court does make such an order, it must decide the amount to be paid by the non-attending party.

Conduct of mediation

Clause 310 places an obligation on the authorised officer when conducting a mediation to endeavour to assist the attending parties to settle the matter that is the subject of the mediation in an expedient and in expensive manner. The manner in which the mediation is to be conducted is a decision for the authorised officer.

Statements made at mediation

Clause 311 contains the common provision that nothing said by a person at the mediation is admissible in a proceeding without the person's consent.

Mediated agreement

Clause 312 provides that if an agreement is negotiated at the mediation, it must be documented and signed by or for the parties at the conclusion of the mediation session. An agreement reached at the mediation may be a conduct and compensation agreement or a variation of an existing conduct and compensation agreement between the parties. An agreement reached at mediation has the same effect as any other compromise.

Part 2 Noncompliance action for geothermal tenures

Division 1 Preliminary

Operation of div 1

Clause 313 provides a process for action against the holder of a geothermal tenure for noncompliance with a relevant provision of the Bill. It is noted that this division does not limit the ability to take other noncompliance action under this Bill or the *Petroleum and Gas (Production and Safety) Act 2004*. It is particularly important, for safety management reasons, that action under the *Petroleum and Gas (Production and Safety) Act 2004* is applicable to activities carried out under the Bill.

Division 2 Noncompliance action by Minister

Types of noncompliance action that may be taken

Clause 314 provides for a number of noncompliance actions that may be taken by the Minister, which may depend on the geothermal tenure type. Such actions include reducing the area or term of a geothermal tenure, amending or imposing conditions on the tenure, requiring relinquishment of part of the tenure, suspension or cancellation of the tenure and withdrawing work program or development plan approval and directing the tenure holder to provide a later work program or development plan. This clause also provides for payment of a monetary penalty to be required if the

tenure holder has agreed to that requirement being made instead of other compliance action.

It may be considered that there is a breach of a fundamental legislative principle triggered by the subclause that imposes a monetary penalty for noncompliance as it may be considered a quasi-judicial power. However, this provision is similar to the noncompliance powers under the *Petroleum and Gas (Production and Safety) Act 2004* and the *Greenhouse Gas Storage Act 2009* and is considered proportionate to the gravity of offences.

In addition, the Bill contains procedural fairness provisions for taking noncompliance action and rights of appeal against a Ministerial decision regarding noncompliance. This is considered adequate protection.

When noncompliance action may be taken

Clause 315 outlines when noncompliance action may be taken. Reasons for taking noncompliance action include a geothermal tenure being obtained falsely, any noncompliance with provisions in the Bill, the failure to pay an amount due under the Bill and other improper actions undertaken under a geothermal tenure.

Division 3 Procedure for noncompliance action

Notice of proposed noncompliance action

Clause 316 provides that the Minister must give notice to the geothermal tenure holder that noncompliance action is proposed to be taken, the action proposed and details regarding the grounds for the action. The notice must include provision for the geothermal tenure holder to lodge a submission about the proposal within a stated period. The notice may also include other relevant information.

Considering submissions

Clause 317 provides that the Minister must consider any submission made by a geothermal tenure holder that has received a notice that noncompliance action is proposed to be taken. If the Minister decides not to take noncompliance action against the holder, that holder must be given notice of the decision.

Decision on proposed noncompliance action

Clause 318 provides that the Minister, after considering any submissions made by the geothermal tenure holder, may take the proposed noncompliance action. The Minister, in deciding the action, must consider whether the person is a suitable person to hold or continue to hold a geothermal tenure, having regard to the listed criteria.

Notice and taking effect of decision

Clause 319 provides that a tenure holder and any other person who holds an interest in the geothermal tenure must be given notice of the decision to take noncompliance action and the date it takes effect. If the decision is to cancel the geothermal tenure, the decision does not take effect until the end of the appeal period for the decision. The decision to take any action for noncompliance is appealable.

Consequence of failure to comply with relinquishment requirement

Clause 320 provides for the consequence of a failure to comply with a requirement under this Part that the tenure holder relinquish a stated part of their tenure area. This clause specifies that if the holder of the geothermal tenure does not comply with the relinquishment requirement before a day specified in a notice given by the Minister, the geothermal tenure is cancelled.

It may be considered that there is a breach of a fundamental legislative principle triggered by this clause in that it provides for an automatic cancellation of a geothermal tenure without a right of appeal if the holder fails to comply with the relinquishment requirement. The holder of a geothermal tenure must be given a notice stating that it must comply with the relinquishment requirement within the specified timeframe and the holder has the opportunity to make submissions in relation to the proposed action under other clauses in this Part. Only if the holder does not comply with the relinquishment requirement is the tenure cancelled. The cancellation does not take effect until a further notice is given stating that the tenure is cancelled. Further, the decision is appealable.

Part 3 General offences

Restriction on carrying out geothermal activities

Clause 321 restricts the carrying out of geothermal activities in relation to land, except in the circumstances listed in this clause. The clause provides that a person must not conduct geothermal exploration and/or production activities in relation to land unless the activity is carried out under a geothermal tenure or in other allowable circumstances detailed in this clause. A maximum penalty of 2000 penalty units is specified.

It may be considered that there is a breach of a fundamental legislative principle triggered by this clause in that it provides a maximum penalty of 2000 penalty units to a person who breaches this provision. However, similar penalties exist under the *Petroleum and Gas (Production and Safety) Act 2004*, the *Mineral Resources Act 1989* and the *Greenhouse Gas Storage Act 2009* and are considered proportionate to the gravity of the offence.

Defence if geothermal activity is for GHG storage injection

Clause 322 provides a defence to a proceeding for an offence against the restriction on carrying out geothermal activities if the defendant can prove: that the geothermal activity that was conducted consisted of the injection into an underground reservoir of a greenhouse gas stream as defined in the *Greenhouse Gas Storage Act 2009*; was for the purpose of greenhouse gas storage injection testing or greenhouse gas stream storage as defined under that Act; and that the activity was authorised under that Act.

Geothermal tenure holder's measurement obligations

Clause 323 provides that the holder of a geothermal tenure must measure any geothermal energy produced from the geothermal tenure's area and give the chief executive details of the measurement at the times and in the way prescribed under a regulation.

Duty to avoid interference in carrying out geothermal activities

Clause 324 requires a person carrying out authorised activities for a geothermal tenure to carry out these activities without unreasonably interfering with other activities being properly conducted by other persons.

As authorised activities under a geothermal tenure may impinge on the rights of the other tenure holders, as well as landowners and occupiers, there is a need for the geothermal tenure holder to take all reasonable steps to minimise the effect of their activities on any other activity being undertaken by another person. For example, a person carrying out an authorised activity under a geothermal tenure must not unreasonably interfere with a grazier going about their day-to-day business.

Obstruction of geothermal tenure holder

Clause 325 prohibits a person, without reasonable excuse, from obstructing a geothermal tenure holder from the holder's right of access to land to carry out activities authorised under the geothermal tenure. Similarly, a person is prohibited from obstructing the tenure holder while the holder carries out activities authorised under the geothermal tenure. However, when entering land to conduct authorised activities, the geothermal tenure holder must comply with the relevant clauses of the Bill.

False or misleading information

Clause 326 provides that a person must not make an entry in a document required to be kept under the Bill knowing that it is false or misleading in a material particular. In addition, when a person is directed or required under the Bill to give information, the person must not give information that they know to be false or misleading in a material particular in response to the direction or requirement.

Executive officers must ensure corporation does not commit particular offences

Clause 327 requires the executive officers of a corporation to ensure that the corporation complies with certain provisions ('designated provisions') of the Bill, as listed in this clause. If a corporation commits an offence against one of the Bill's designated provisions, each of the executive officers commits the offence of failing to ensure that the corporation complies with the provision. Also, it is specified that it is evidence that each of the executive officers failed to ensure the corporation complied with the designated provisions of the Bill if there is evidence that the corporation has been convicted of an offence against a designated provision of the Bill. The clause also provides defences for an executive officer of a corporation in relation to the offence.

It may be considered that there is a breach of a fundamental legislative principle triggered by this clause, as there is a reversal of the onus of proof.

However, this provision is a standard clause in many pieces of legislation, including the *Greenhouse Gas Storage Act 2009* and the *Environmental Protection Act 1994*. It is appropriate that an executive officer, who is in a position to influence the conduct of a corporation, should be accountable for offences committed against provisions of this Bill by the corporation. Apart from the Bill's general offences provisions, the duty to ensure compliance is confined to specific operational or administrative requirements such as the lodging of required reports.

There are also standard defences within this clause relating to whether the executive officer was in a position to influence the corporation's conduct in relation to the offence or, if the executive officer was in this position, that the officer exercised reasonable diligence to ensure the corporation complied with the provision.

Attempts to commit offences

Clause 328 provides that it is an offence if a person attempts to commit an offence against the Bill. Section 4 of the Criminal Code applies to this situation.

Part 4 Appeals

Who may appeal

Clause 329 provides that a person whose interests are affected by a decision by the Minister, detailed in the relevant schedule to the Bill, may appeal against the decision to the Land Court. Any person who has been, or is entitled to be given, an information notice under the Bill is considered a person affected by the relevant decision.

Period to appeal

Clause 330 details when an appeal must commence, and allows for the Land Court to extend the appeal making period.

Starting appeal

Clause 331 outlines the process by which an appeal to the Land Court is commenced.

Stay of operation of decision

Clause 332 provides the Land Court with the ability to grant a stay of a decision to secure the effectiveness of an appeal. The Land Court may decide the conditions of the stay and amend or cancel it. The period of a stay is not to extend past the time when the Land Court decides the appeal. The appeal affects the decision, or the carrying out of the decision, only if the decision is stayed.

Hearing procedures

Clause 333 provides for the appeal hearing procedure, which must be in accordance with the rules for the Land Court, or by direction of the Land Court where the rules make no provision for the appeal. The appeal is by way of rehearing.

Land Court's powers on appeal

Clause 334 provides that the Land Court may confirm a decision, set the decision aside and substitute another decision, or set the decision aside and return the issue to the Minister with appropriate directions. Where the Land Court sets aside and substitutes another decision, the substituted decision is taken to be the original decider's (that is the Minister's) decision. These powers are subject to the restrictions on the Land Court's powers outlined in this Part.

Restriction on Land Court's powers for decision not to grant geothermal lease

Clause 335 provides that if the Land Court is to decide an appeal against the Minister's decision not to grant a geothermal lease in an overlapping authority situation under this Bill, the Land Court cannot exercise its power to set aside the Minister's decision and substitute another decision, or its power to set aside the decision and return the issue to the Minister with directions, on the ground that any resource management decision for the application has to give the overlapping authority priority. This is considered an appropriate matter for the Minister to decide, given the

Government's role as steward of the resources to which overlapping authorities relate.

Part 5 Evidence and legal proceedings

Division 1 Evidentiary provisions

Application of div 1

Clause 336 describes when this division applies.

Authority

Clause 337 provides that it is not necessary to prove the chief executive's, Minister's, or auditor's (appointed to assess a geothermal royalty for the purposes of the Bill) power to do anything under the Bill, unless a party to a proceeding requires proof of it.

Signatures

Clause 338 provides that a signature purporting to be the signature of the chief executive or the Minister is evidence of the signature it claims to be.

Other evidentiary aids

Clause 339 provides that a certificate, purporting to be signed by the chief executive and stating certain matters as outlined in this clause, is to be taken as evidence of the matter.

Division 2 Offence proceedings

Offences under Act are summary

Clause 340 provides that offences against the Bill are summary offences. This clause also provides the timelines in which a proceeding for an offence must be brought.

Statement of complainant's knowledge

Clause 341 provides that, in the case of a complainant initiating a proceeding, a statement that the matter of the complaint came to the complainant's knowledge on a stated day is evidence that the matter came to the complainant's knowledge on that day.

Conduct of representatives

Clause 342 applies to a proceeding for an offence if it is relevant to prove a person's (or a representative of a person's) state of mind. The clause also provides that conduct engaged in for a person by a representative within the scope of the representative's actual or apparent authority is taken to have been engaged in also by the person, unless the person proves certain circumstances apply.

It may be considered that there is a breach of a fundamental legislative principle triggered by this clause, as this clause may be considered to imply a reversal of the onus of proof. However, it is appropriate that a person, who is in a position to influence the conduct of their representative, should be accountable for offences committed against provisions of this Bill by the representative. However, it should be noted that there are defences within this provision relating to whether the person was in a position to influence the representative's conduct in relation to the offence or, if the person was in such a position, that the person took reasonable steps to prevent the conduct.

Additional orders that may be made on conviction

Clause 343 provides for additional orders a court may make on the conviction of a person for an offence against the Bill, including forfeiture of certain things to the State.

Chapter 8 Miscellaneous provisions

Part 1 Provisions about geothermal tenures

Division 1 General provisions

Geothermal tenure does not create an interest in land

Clause 344 provides that the granting of a geothermal tenure does not create an interest in any land.

Joint holders of a geothermal tenure

Clause 345 provides for dealing with joint holders of a geothermal tenure. This section is inserted to remove any doubt as to how joint ownership will be dealt with in the geothermal register. A person who is eligible to hold a geothermal tenure under this Bill may hold it as a joint tenant or as a tenant in common. However, if an application for approval to transfer a geothermal tenure to more than one proposed geothermal tenure holder or transferee is made but the application does not indicate whether the proposed holders or transferees are to hold the tenure as joint tenants or as tenants in common, and that application is granted, the presumption is that the applicants will hold the tenure as tenants in common.

Minister's power to ensure compliance by geothermal tenure holder

Clause 346 provides power for the Minister to take action to ensure compliance by a geothermal tenure holder, where the holder has not complied with a requirement under the Bill and no other provision of the Bill allows someone other than the holder to ensure compliance with the requirement.

This clause provides for the Minister to take any action the Minister considers appropriate to ensure all or part of the requirement is complied with. However, in deciding whether to take compliance action under this

clause, the Minister must issue a notice to the tenure holder and must consider any submissions made by the holder within a stated period. The decision does not take effect until the holder receives an information notice about the decision, as the decision is appealable.

If any costs are incurred by the State in ensuring compliance with a requirement under the Bill, the State is entitled to recover these costs from the holder, provided that these costs are reasonable.

Power to correct or amend tenure

Clause 347 provides that the Minister may amend a geothermal tenure at any time to correct a clerical error or state more accurately the tenure boundaries following a survey. The Minister may amend a condition of a tenure at any time with written consent from the geothermal tenure holder.

However, an amendment under this clause is not permissible if it would result in a provision that is inconsistent with the tenure's mandatory conditions, it amends the tenure's term, or it is an amendment of a tenure holder's work program or development plan. Nor can the amendment result in a provision that is the same or substantially the same as, or inconsistent with, a relevant environmental condition for the tenure.

Replacement of instrument for geothermal tenure

Clause 348 provides for the replacement of an instrument for a geothermal tenure if it has been lost, stolen or destroyed.

The geothermal tenure holder must apply to the Minister for the replacement. The Minister must consider the application and, if reasonably satisfied that the instrument has been lost, destroyed or stolen, replace the instrument.

If the Minister decides to refuse the application, the Minister must give the applicant an information notice about the decision, as the decision is appealable.

Joint and several liability for conditions and for debts to State

Clause 349 states that if more than one person holds a geothermal tenure, each holder is jointly and severally responsible for complying with the conditions of the tenure and liable for all debts payable under the Bill to the State.

Division 2 General provisions about authorised activities

Authorised activities may be carried out despite rights of owner or occupier

Clause 350 provides that authorised activities for a geothermal tenure may be conducted, irrespective of the rights of an owner or occupier of the land on which the activities are carried out, subject to certain restrictions. This may be considered to be a breach of a fundamental legislative principle in that the rights of a land owner or occupier could be construed as being overridden by the rights of the tenure holder as a result of this clause. However, the Bill includes extensive provisions about consultation with landholders, notice of entry and compensation for the carrying out of geothermal activities. The Bill also contains a series of safeguards, including notification of the activities, various restrictions on the activities involved and penalties for noncompliance with the safeguards.

General restrictions on right to carry out authorised activity

Clause 351 provides a list of the restrictions on the right of a geothermal tenure holder, as well as obligations on the holder, to carry out authorised activities for the tenure.

Restrictions on carrying out authorised activities on particular land

Clause 352 provides that authorised activities on a geothermal tenure cannot be carried out within a certain distance of another geothermal tenure's boundary.

Additionally, authorised activities may only be carried out within a certain distance of specified buildings and other structures as listed in this clause only if written consent from the owner or occupier of the building has been obtained. The purpose of this clause is to recognise the rights of owners and occupiers of structures on land the subject of a geothermal tenure to use these structures with minimal disruption, and to encourage constructive relationships between all parties.

Who may carry out authorised activity for geothermal tenure holder

Clause 353 provides a list of which persons may carry out authorised activities on behalf of a geothermal tenure holder. The persons carrying out the authorised activities for the holder must be acting within the scope of the person's authority from the holder. This clause also provides that the authority may be implied in certain circumstances, and contains provisions allowing for the carrying out of authorised activities by a registered tenure sublessee.

Division 3 Provisions for when geothermal tenure ends or area reduced

Obligation to remove equipment and improvements

Clause 354 imposes an obligation on a geothermal tenure holder to remove equipment or improvements from land in the area of a geothermal tenure and/or access land for a geothermal tenure in the circumstances listed in this clause, and by a specified date, unless the owner of the land agrees otherwise.

The intention of this clause is to ensure that the removal of the equipment or improvements is undertaken by the geothermal tenure holder (or former holder) rather than the State, the landowner, or the occupier of the land.

Authorisation to enter to facilitate compliance

Clause 355 provides that the Minister may, by notice, authorise a former holder of a geothermal tenure to either enter the land that was previously the subject of the geothermal tenure or the access land to the geothermal tenure in order to comply with the holder's obligations under this division to remove equipment and improvements from the subject land, or the holder's obligations with regard to complying with mandatory provisions of the land access code as defined in this Bill. The right to enter land in these circumstances is subject to conditions and restrictions as outlined in this clause.

It may be considered that there is a breach of a fundamental legislative principle triggered by this clause, as there is a power to enter without a warrant and this will have an effect on the rights of owners or occupiers.

However, the authorisation contains a number of safeguards for the owner or occupier of the land (for example presentation of the authorisation to the occupier of the land, exclusion of entry to residences and the need for the former tenure holder to follow the Bill's relevant provisions regarding access to land as if the tenure were still in force). It is also anticipated that typically the owner or occupier would instigate the entry procedure and the main purpose of the authorisation would be to protect their interests.

Part 2 Applications, lodging documents and making submissions

Place for making applications, lodging documents or making submissions

Clause 356 provides where an application, document or submission made under this Bill is to be lodged.

Requirements for making an application

Clause 357 provides that if an application is submitted and not all requirements for making the application have been met, the Minister may allow the application to proceed if the Minister is satisfied that the application substantially complies with the requirements.

Request to applicant about application

Clause 358 provides that when the Minister is making a decision about an application, the Minister may request the applicant to provide further information, either by the applicant or an appropriately qualified person, as listed in this clause, regarding the application, in order to properly assess the application. The Minister may also, under this clause, request that the applicant complete or correct their application if it appears to the Minister that the application is incorrect, incomplete or defective. All costs in complying with this clause must be borne by the applicant. The Minister may refuse to decide the application until the request is complied with. However, this clause also gives the Minister the discretion to extend the period within which the extra information is required.

Refusing application for failure to comply with request

Clause 359 provides that the Minister may refuse an application if the Minister has given a notice under this Part to an applicant requesting further information, the period stated in the notice for complying with this request has ended and the request has not been complied with to the Minister's satisfaction.

Particular criteria generally not exhaustive

Clause 360 provides that, unless a provision otherwise provides, where the Minister must or may consider particular criteria in making a decision about an application, the Minister is not limited to considering only the particular criteria, but may also take into consideration any other criteria the Minister considers relevant.

Particular grounds for refusal generally not exhaustive

Clause 361 provides that, unless a provision otherwise provides, the Minister may, where particular grounds exist upon which the Minister may also refuse an application, refuse the application on another reasonable and relevant ground.

Amending applications

Clause 362 provides that a person who has made an application under the Bill may amend the application before it has been decided, provided that the Minister agrees to the amendment. Where the amendment to the application is to change the applicant, all other applicants and proposed applicants must agree to this change. The new applicant will then be considered to be the applicant from the time it was made, for the purposes of deciding the application.

Withdrawal of application

Clause 363 provides that a person may withdraw their application before a decision takes effect by providing the chief executive with a notice of this. The withdrawal takes effect when the notice is provided.

Minister's power to refund application fee

Clause 364 provides the Minister with the discretion to refund the whole or part of an application fee paid for the application if the application is withdrawn.

Part 3 Other miscellaneous provisions

Interest on amounts owing to the State

Clause 365 provides for interest to accrue, and become available to the State, when any amounts (such as rent, a civil penalty for non-payment of rent, or an annual licence fee) are owed under this Bill. This clause provides details regarding the amount of interest payable and when the interest begins to accrue.

Recovery of unpaid amounts

Clause 366 provides for the State to recover an amount, including interest, as a debt, when a provision of this Bill requires a geothermal tenure holder to pay the amount.

General public interest criteria for particular Ministerial decisions

Clause 367 provides that in making certain decisions about applications or grants under this Bill, the Minister must take into account the public interest. Also, irrespective of whether this Bill requires or permits the Minister to make a decision giving consideration to the public interest, the Minister may still consider the public interest in making the decision.

Provision for entry by State to carry out geothermal activity

Clause 368 provides that in exercising a right to enter land to carry out any geothermal related activity, the right may be exercised for the State by any person authorised by the chief executive. With the exception of an inspector or authorised officer performing functions under the *Petroleum and Gas (Production and Safety) Act 2004* that are related to this Bill (e.g. safety monitoring functions), it is a requirement before entry that the

person authorised by the chief executive gives the owner of the land a notice of the proposed entry within the stated timeframe.

Name and address for service

Clause 369 provides for a person, who has lodged a signed notice with the chief executive, to nominate another person at a stated address as being the address for the service of a notice or other document under this Bill.

Notice of agents

Clause 370 provides that, where a person claims to be acting on behalf of a geothermal tenure holder as an agent, any person carrying out functions under the Bill may refuse to deal with the agent unless the person has been provided with a notice of the agency by the geothermal tenure holder.

Additional information about reports and other matters

Clause 371 provides for the Minister or chief executive to request, by notice, written information about a notice or copy of a document, report or information that is required to be provided to the Minister or chief executive. The person must comply with the Minister's or chief executive's notice within the timeframe stated in the notice. This timeframe must be reasonable.

References to right to enter

Clause 372 provides details of rights conferred on a person who, under the Bill, has a right to enter a place, in relation to that entry.

Application of provisions

Clause 373 provides the relationship between provisions of this Bill, another law, or a provision of another law, if those other provisions or laws apply.

Protection from liability for particular persons

Clause 374 provides that a 'designated person' (ie the Minister, a public service officer or employee, a person authorised to carry out an activity for the State, or a person who is required to comply with a direction given under the Bill) who is complying with the direction is protected from civil

liability for an act done, or omission made, honestly and without negligence under this Bill.

In this situation, the liability instead attaches to the State. A definition of 'civil liability' is also provided in this clause.

It may be considered that this provision breaches the fundamental legislative principle of equality before the law. However, this can be justified because, given the shifting of the liability to the State, nobody's interests are adversely affected by this provision.

Delegation by Minister or chief executive

Clause 375 provides for the Minister or chief executive to delegate their respective powers under this Bill to an appropriately qualified public service officer or employee.

Practice manual

Clause 376 provides for the chief executive to create and maintain a manual about tenure administration practice to guide and inform persons dealing with the relevant Government department. The manual may include statements about what material a person must give to the department and how and when that material must be given. The chief executive must make the manual available to the public in the way the chief executive considers appropriate.

The making, publishing and maintenance of directions under this clause aims to provide clear guidance about any information required to be provided with, or in support of, an application for, or the continuing administration of, any geothermal tenure granted under this Bill.

This clause is designed to place the onus of responsibility on applicants and holders to be aware of the information required to be given to the Minister or chief executive relating to applications (or in other circumstances required by this Bill) and to ensure the information provided is correct.

All directions, and a record of directions made, must be kept by the chief executive and be available for viewing by the public. A record will also be kept of the dates the directions were published and, if any directions are superseded, when they were superseded.

Approved forms

Clause 377 provides for the chief executive to approve forms for use under this Bill.

Regulation-making power

Clause 378 provides for the Governor in Council to make regulations about matters including fees payable under this Bill and the conditions of geothermal tenures. A regulation may also provide for the imposition of minor penalties for a contravention of a provision of a regulation.

Chapter 9 Repeal and transitional provisions

Part 1 Repeal provisions

Repeal of *Geothermal Exploration Act 2004*

Clause 379 provides that the *Geothermal Exploration Act 2004* will be repealed on commencement of the relevant provisions of this Bill.

Repeal of *Timber Utilisation and Marketing Act 1987*

Clause 380 provides for the repeal of the *Timber Utilisation and Marketing Act 1987*.

Part 2 Transitional provisions

Division 1 Preliminary

Definitions for pt 2

Clause 381 provides the definitions for this Part.

Division 2 Provisions for Ergon Energy geothermal production near Birdsville

Subdivision 1 Grant of and provisions about Birdsville lease

Geothermal lease for Ergon Energy

Clause 382 provides that on assent of the relevant provisions of the Bill, Ergon Energy will be taken to have a geothermal production lease for its existing Birdsville geothermal operation ('Birdsville lease') for a term of 5 years. This clause also refers to the area and location of the lease.

Authorised activities

Clause 383 provides that Ergon Energy may carry out any authorised activity (as defined in this Bill) for its production lease for the Birdsville operation on assent of the relevant provisions of the Bill. This is despite the fact that these provisions may not have commenced by this stage.

Conditions

Clause 384 provides that Ergon Energy will not be required to pay annual rent for the Birdsville operation until the third anniversary of assent. However, all other mandatory conditions in the Bill will apply to the Birdsville lease.

Land access provisions until the new land access provisions start day

Clause 385 provides that the Birdsville lease holder (Ergon Energy) must comply with the new land access provisions contained in the Bill once the provisions commence.

Subdivision 2 Development plan provisions

Deferral of development plan requirement

Clause 386 provides that Ergon Energy is not obliged to apply for a development plan for the Birdsville operation until the later of 12 months after the commencement of section 665 of the *Environmental Protection Act 1994* (which similarly defers the requirement to apply for an environmental authority). If Ergon Energy submits an earlier application for approval of a development plan, section 123 of this Bill applies the day the application is decided.

Provisions for approval of development plan

Clause 387 provides that Ergon Energy may apply to the Minister for approval of a proposed development plan for the Birdsville operation at any time. The requirements for a development plan outlined in the Bill will apply even though those provisions may not be have commenced at the time.

Exemption from geothermal royalty

Clause 388 provides that Ergon Energy does not have to comply with the royalty requirements contained in this Bill for the Birdsville lease.

Division 3 New land access provisions for 2004 Act permits until 2010 Act start day

Application of div 3

Clause 389 provides that this division applies the new land access provisions (as defined in the previous division) contained in the Bill to a

geothermal exploration permit granted under the *Geothermal Exploration Act 2004*, and when these provisions will apply.

Compliance with land access code

Clause 390 provides that a geothermal exploration permit holder under the *Geothermal Exploration Act 2004* must comply with the mandatory provisions of the land access code referenced in this Bill. If a condition of a geothermal exploration permit under the *Geothermal Exploration Act 2004* is inconsistent with a mandatory provision of the land access code under this Bill, the mandatory provision of the land access code will prevail to the extent of the inconsistency.

Application of particular provisions of this Act

Clause 391 provides that on commencement of the new land access provisions, the *Geothermal Exploration Act 2004* land access provisions will no longer apply to a geothermal exploration permit holder under that Act. Rather, the geothermal exploration permit holder must comply with the relevant land access provisions of this Bill.

This clause also outlines that if before the commencement of the new land access provisions of the Bill there is a proceeding for compensation under the *Geothermal Exploration Act 2004*, the proceeding may be finished as if the new provisions did not apply.

Division 4 General provisions

Conversion of 2004 Act permits on 2010 Act start day

Clause 392 provides that a geothermal permit issued under the *Geothermal Exploration Act 2004* is defined as an 'old permit'. On commencement of this Bill, the old permit will become a 2010 Act permit and will be referred to as a converted permit. The converted permit will continue in force, subject to this Bill, for the rest of the old permit's term. The conditions of the old permit continue in force for the converted permit, and the proposed work program included in the tender for the permit made under the *Geothermal Exploration Act 2004* remains as the work program for the converted permit. However, if a condition of the old permit conflicts with a mandatory condition for a geothermal permit or a mandatory provision of

the land access provisions under this Bill, the mandatory condition or provision will prevail to the extent of any inconsistency.

Outstanding tenders under 2004 Act

Clause 393 provides that a geothermal permit application under the repealed Act that has not been decided by the proposed day of commencement of the relevant provisions of the new Bill is taken to be an application under the new Bill, and the tender is taken to comply with the requirements for making the application under the new Bill.

Subsection 4 clarifies that where further information or verification is required to decide the application, the Minister may request information as provided for in sections 92 and 358.

Other undecided applications

Clause 394 provides that any application about a 2004 Act permit under the existing *Geothermal Exploration Act 2004*, once it is repealed, is taken to become an application under the new Act, and is taken to comply with the application requirements under the new Act. Again, the clause does not prevent the requesting of additional information under section 358.

Decisions or documents under 2004 Act

Clause 395 provides that on the day this Bill commences, a decision or document in forced under the *Geothermal Exploration Act 2004* will be taken to have been given under this Bill.

Outstanding appeals

Clause 396 provides that if a decision has not been made on an appeal under the repealed Act, the appeal will become an appeal under this Bill, on commencement.

Chapter 10 Amendment of Acts

Part 1 Amendments commencing on date of assent

Division 1 Amendment of *Electricity Act 1994*

Act amended

Clause 397 provides that this division amends the *Electricity Act 1994*.

Amendment of s 131A (Retailer of last resort scheme)

Clause 398 amends section 131A to insert a new subsection to enable a regulation to be made to provide for the recovery of a distribution entity's costs associated with a Retailer of Last Resort event.

Division 2 Amendment of *Geothermal Exploration Act 2004*

Act amended

Clause 399 provides that this division amends the *Geothermal Exploration Act 2004*.

Replacement of s 138A (Ministerial directions about the giving of information)

Clause 400 amends the *Geothermal Exploration Act 2004* by omitting section 138A and inserting a new section 138A that provides for the chief executive to create and maintain a manual about tenure administration practice to guide and inform and guide persons dealing with the department. The manual may include statements about what material a person must give to the department and how and when that material must

be given. The chief executive must make the manual and the record available to the public in the way the chief executive considers appropriate.

Division 3 Amendment of *Greenhouse Gas Storage Act 2009*

Act amended

Clause 401 provides that this division; part 2, division 1; part 3, division 3; and schedule 2, parts 1, 2 and 4 amend the *Greenhouse Gas Storage Act 2009.*

Omission of s 10 (Native title)

Clause 402 omits section 10 (Native title) from the Act.

Amendment of s 23 (What is a GHG *storage activity*)

Clause 403 expands the definition of a GHG storage activity to include whether or not a GHG authority has been granted for the activity.

Amendment of s 28 (Reservation in land grants)

Clause 404 removes the term 'authority-related' in relation to an activity and replaces it with a direct reference to a 'GHG storage' activity.

Amendment of s 35 (Requirements for making tender)

Clause 405 omits section 35(b)(iii) from the Act, removing the requirement to submit a verification statement with a tender for a GHG permit.

Omission of s 36 (Requirements for verification statement)

Clause 406 omits section 36 which outlines the requirements for a verification statement because verification statements are no longer required to be submitted with a tender for a GHG permit.

Amendment of s 56 (Verification may be required)

Clause 407 amends section 56 to insert new subsection (1)(d), allowing the Minister to require verification that, in the opinion of an appropriately qualified person, the applicant has the financial and technical ability to carry out authorised activities and manage GHG storage exploration.

Amendment of s 114 (Requirements for making permit-related application)

Clause 408 replaces 114(c)(iii) and inserts a provision to provide that a permit-related application must include a statement about the extent to which the applicant has the financial and technical resources to carry out authorised activities for the proposed GHG lease and the ability to manage GHG stream storage.

Omission of s 115 (Requirements for verification statement)

Clause 409 omits section 115 which outlines the requirements for a verification statement because verification statements are no longer required to be submitted with a permit-related application for a GHG lease.

Amendment of s 125 (Call for tenders)

Clause 410 expands the call for tender provisions for a GHG lease to make clear that a tender can only be called for land other then unavailable land for a GHG lease.

Amendment of s 148 (Verification may be required)

Clause 411 amends section 148 to insert new subsection (1)(d), allowing the Minister to require verification that, in the opinion of an appropriately qualified person, the applicant has the financial and technical ability to carry out authorised activities and manage GHG stream storage.

Replacement of s 427 (Ministerial directions about the giving of information)

Clause 412 amends the *Greenhouse Gas Storage Act 2009* by omitting the current section 427 and inserting a new section 427 that provides for the chief executive to create and maintain a manual about tenure administration practice to guide and inform persons dealing with the department. The

manual may include statements about what material a person must give to the department and how and when that material must be given. The chief executive must make the manual and the record available to the public in the way the chief executive considers appropriate.

Division 4 Amendment of *Mineral Resources Act 1989*

Act amended

Clause 413 provides that this division; part 2, division 2; part 3, division 5; and schedule 2, part 2 amend the *Mineral Resources Act 1989.*

Replacement of s 416B (Ministerial directions about the giving of information)

Clause 414 amends the *Mineral Resources Act 1989* by omitting the current section 416B and inserting a new section 416B that provides for the chief executive to create and maintain a manual about tenure administration practice to guide and inform persons dealing with the department. The manual may include statements about what material a person must give to the department and how and when that material must be given. The chief executive must make the manual and the record available to the public in the way the chief executive considers appropriate.

Insertion of new ss 722EA and 722EB

Clause 415 of the Bill inserts new sections 722EA and 722 EB into the *Mineral Resources Act 1989* after section 722E.

No consent required for application for mining tenement for particular land

Clause 415 inserts a new section 722EA. Sub-section 722EA(1) provides that section 722EA applies to an application for a mining lease by the holders of mining lease 1775 for any prescribed land under section 722D or 722E of the *Mineral Resource Act 1989* where that land also happens to be covered by an existing exploration permit, mineral development license or mining lease held by someone else.

Sub-section 722EA(2) provides that where the lease applied for by the holders of mining lease 1775 is for the same mineral as the existing exploration permit, mineral development license or mining lease, the applicants do not require the written consent of the holder of that existing authority for the application. In practice, this will mean the holders of mining lease 1775 will not require written consent from Cherwell Creek to make the application over the small number of sub-blocks that are with the prescribed land under section 722E of the *Mineral Resource Act 1989* and are also currently held by Cherwell Creek under exploration permit for coal 545.

Sub-section 722EA(3) makes it clear the applicant is not required to lodge the existing authority holder's consent with the mining registrar before the last objection day for the application and that this prevent the granting of the mining lease.

Sub-section 722EA(4) makes it clear that section 722EA applies to any mining lease application by the holders of mining lease 1775 for any prescribed land, regardless of whether the application was made before or after section 722EA commenced.

The insertion of new section 722EA may be considered to be a breach of a fundamental legislative principle. However, it is consistent with the amendments to the *Mineral Resources Act 1989* made by the *Mineral Resources (Peak Downs Mine) Amendment Bill 2008*. The 2008 amendments clearly intended that Cherwell Creek's rights as the holder of exploration permit for coal 545 would be significantly reduced in favour of BMA.

Requiring the holder of mining lease 1775 to obtain Cherwell Creek's written consent to its mining lease application over a small part of land currently held by Cherwell Creek would be inconsistent with the 2008 legislative amendments. Further, Cherwell has a statutory entitlement to apply to the Land Court for compensation to be paid by BMA for its loss of opportunity to commercialise the coal resource, which it has done.

Deciding application to add excluded land to EPC 545

Clause 415 inserts a new section 722EB. Sub-section 722EB(1) provides that section 722EB applies to any application by Cherwell Creek to add excluded land back into exploration permit for coal 545, regardless of when the application was made.

Sub-section 722EB(2) provides that if the application involves prescribed land under section 722D or 722E of the *Mineral Resources Act 1989* and the holders of mining lease 1775 have applied for a mining lease over that land, the Minister is not obliged to decide the application, to the extent it relates to that land, until after each mining lease application in respect of that land has been decided. This means the Minister is not required to make a decision that may later become redundant when the mining lease applications are decided.

Sub-section 722EB(3) provides that if the Minister defers deciding a part of the excluded land application, that application is taken not to have been finally decided until the day the Minister decides that part. This avoids the applicant having to make a subsequent application for the deferred part of the application.

Sub-section 722EB(4) defines "excluded land" for section 722EB.

The insertion of new section 722EB may be considered to be a breach of a fundamental legislative principle. However, it is consistent with the amendments to the *Mineral Resources Act 1989* made by the *Mineral Resources (Peak Downs Mine) Amendment Bill 2008*. The 2008 amendments clearly intended that Cherwell Creek's rights as the holder of exploration permit for coal 545 would be significantly reduced in favour of BMA.

Requiring the holder of mining lease 1775 to obtain Cherwell Creek's written consent to its mining lease application over a small part of land currently held by Cherwell Creek would be inconsistent with the 2008 legislative amendments. Further, Cherwell has a statutory entitlement to apply to the Land Court for compensation to be paid by BMA for its loss of opportunity to commercialise the coal resource, which it has done.

Replacement of pt 19, div 12

Clause 416 of the Bill replaces part 19, division 12 of the *Mineral Resources Act 1989* with new part 19, divisions 12 and 13, which in turn insert new sections 773 and 774.

Division 12 Transitional provision for *Mines and Energy Legislation Amendment Act 2010*

Existing mining lease applications

Clause 416 replaces section 773 of the *Mineral Resources Act 1989*. The replacement of section 773 provides transitional provisions for mining lease applications, where no properly made objections have been lodged. These applications will not be referred to the Land Court. Where applications without objections have already been referred to the Land Court, the referral is deemed not to have happened.

Division 13 Transitional provisions for amendments under *Geothermal Energy Act 2010*

Subdivision 1 Provision for amendments commencing on date of assent

Reference to particular leases

Clause 416 inserts a new section 774. Sub-section 774(1) provides that a reference in an Act, lease, contract or other document to a *Central Queensland Coal Associates Agreement Act 1968 (*CQCAA) lease is, if the context permits, taken to include a reference to a CQCAA lease that is renewed under this Act (ie. the *Mineral Resources Act 1989*) or any other Act relating to mining (e.g. the *Central Queensland Coal Associates Agreement Act 1968)*.

Sub-section 774(2) provides that "CQCAA lease" in section 774 means a special coal mining lease granted under the *Central Queensland Coal Associates Agreement Act 1968*.

The State and the Central Queensland Coal Associates disagree about which Act a CQCAA lease must be renewed under. The State believes they should be renewed under the *Mineral Resources Act 1989*. The Central

Queensland Coal Associates believe they should be renewed under the *Central Queensland Coal Associates Agreement Act 1968*.

Section 774 is designed to ensure that the Central Queensland Coal Associates commercial arrangements are not adversely affected by the current disagreement between the QCCA and the State about which Act applies to the renewal of the CQCAA leases.

Division 5 Amendment of *Petroleum Act 1923*

Act amended

Clause 417 provides that this division; part 2, division 3; part 3, division 7; and schedule 2, parts 2 and 4 amend the *Petroleum Act 1923.*

Replacement of s 142 (Ministerial directions about the giving of information)

Clause 418 amends the *Petroleum Act 1923* by omitting section 142 and inserting a new section 142 that provides for the chief executive to create and maintain a manual about tenure administration practice to guide and inform persons dealing with the department. The manual may include statements about what material a person must give to the department and how and when that material must be given. The chief executive must make the manual and the record available to the public in the way the chief executive considers appropriate.

Division 6 Amendment of *Petroleum and Gas (Production and Safety) Act 2004*

Act amended

Clause 419 provides that this division; part 2, division 4; part 3, division 8; and schedule 2, parts 1, 2 and 4 amend the *Petroleum and Gas (Production and Safety) Act 2004*.

Amendment of s 31 (Operation of div 1)

Clause 420 amends section 31 of the *Petroleum and Gas (Production and Safety) Act 2004* to make the carrying out of authorised activities under an authority to prospect subject to provisions implementing the Government's UCG Policy.

Amendment of s 121 (Requirements for grant)

Clause 421 amends section 121 to include a reference to 'resources'. This makes clear that a regulation made under section 121 can specify that a petroleum lease applicant is required to have a level of knowledge of resources and reserves.

Amendment of s 304 (Application of div 1)

Clause 422 amends section 304 of the *Petroleum and Gas (Production and Safety) Act 2004* to exclude the application of division 1; part 2, chapter 3 of that Act to a UCG Pilot Project. This part deals with obtaining petroleum leases over land in the area of a coal or oil shale exploration tenement.

Amendment of s 331 (Application of div 2)

Clause 423 amends section 331 of the *Petroleum and Gas (Production and Safety) Act 2004* to exclude the application of division 2; part 2, chapter 3 of the Act to UCG Pilot Project tenure.

Amendment of s 344 (Application of div 2)

Clause 424 amends section 344 of the *Petroleum and Gas (Production and Safety) Act 2004* to exclude the application of division 2; part 3, chapter 3 of that Act to UCG Pilot Project tenure.

Insertion of new ch 3, pt 4A

Clause 425 provides that a new Part of Chapter 3 be included in the *Petroleum and Gas (Production and Safety) Act 2004* which includes provisions to apply to petroleum tenures where they overlap with Mineral Development Licences (granted under the *Mineral Resources Act 1989*) for three existing UCG Pilot Projects. The new Part will be titled "Part 4A Additional provisions if overlapping mineral (f) pilot tenure". This Part

will have four Divisions: Division 1 – Preliminary, Division 2 – General Suspension, Division 3 – Resolving Disputes, Division 4 – Obtaining petroleum lease if overlapping mineral (f) land or land in area of MDLA 407.

Division 1 provides for special conditions to be attached to the granting of petroleum tenure applications which overlap the three existing UCG Pilot Projects and one Mineral Development Licence application which are indentified in the UCG Policy.

Division 2 sets out the particular authorised activities which will be permitted to be carried out on petroleum tenure which overlaps the three existing UCG Pilot Projects.

Division 3 sets out a process for negotiating agreements and resolving disputes in relation to the undertaking of the activities authorised under Division 2.

Division 4 excludes UCG Pilot Project land from the grant of any petroleum lease and provides a process for dealing with previously granted petroleum tenure which overlaps an existing UCG Pilot Project should the UCG Pilot Project end.

The intent of each new section within each of the four Divisions inserted by clause 431 is explained below:

Part 4A Additional provisions if overlapping mineral (f) pilot tenure

Division 1 Preliminary

Definitions for pt 4A

Clause 425 inserts new section 363A which defines the terminology used in relation to UCG tenure and UCG Pilot Projects which are subject to the UCG Policy.

Application of pt 4A

Clause 425 inserts new section 363B which identifies the particular Mineral Development Licences (under the *Mineral Resources Act 1989*) to which the additional provisions will relate. Specifically, it applies to land on three existing UCG Pilot Projects, and a separate Mineral Development Licence application submitted by one of the operators of an existing UCG Pilot Project prior to the release date of the UCG Policy, which is overlapped by petroleum tenure applications.

Relationship with other provisions

Clause 425 inserts new section 363C which will provide for these additional provisions to apply to the identified Mineral Development Licences to the exception of other provisions stated in this Act or the *Mineral Resources Act 1989*.

Division 2 General Suspension

Suspension of authorised activities for authority to prospect

Clause 425 inserts new section 363D which will provide for the suspension of activities that are likely to impact on the current UCG Pilot Project trials, and any future recovery of the resource, until the outcomes of the UCG pilot phase are determined by Government.

The petroleum and UCG (mineral (f)) tenure holder can agree in writing to permit any activity authorised under the petroleum tenure. A responsibility is placed on the UCG tenure holder to agree to the activity if it does not adversely affect the current UCG Pilot Project trials, and any future recovery of the resource. This will allow the petroleum tenure holder to progress work on the remainder of its tenement(s) which surround the UCG Pilot Project until the completion of the UCG pilot phase.

Entry rights for particular activities during suspension

Clause 425 inserts new section 363E which will provide a mechanism for a petroleum tenure holder subject to overlap with existing UCG Pilot Project land to carry out various monitoring and maintenance activities, as specified under any environmental requirements under the *Environmental Protection Act 1994*, on the overlapped area. The petroleum tenure holder

is obliged to notify the UCG tenure holder of the intended activity. This will allow the petroleum tenure holder to meet its obligations under the *Environmental Protection Act 1994*.

Notice of entry under s 363F

Clause 425 inserts new section 363F which will put in place procedures for the petroleum tenure holder's entry onto UCG Pilot Project land to undertake low impact activities as set out in s363E (Entry rights for particular activities during suspension).

Ministerial power to suspend authority to prospect requirements

Clause 425 inserts new section 363G which will provide for the waiver of certain obligations under petroleum tenure as a consequence of any decision made under section 363D (suspension of authorised activities for authority to prospect).

Division 3 Resolving disputes

Negotiation and request to Minister

Clause 425 inserts new section 363H which will set out the process for parties to resolve disputed matters in relation to section 363D (suspension of authorised activities for authority to prospect) and section 363E (entry rights for particular activities during suspension). This resolution process follows a similar procedure as set out in other Parts of this Act.

There is an obligation on both parties to the dispute to negotiate in good faith. However, should such negotiations not result in an agreement between the parties concerned, the Minister will have the power to resolve the matter. The Minister must give both parties the opportunity to make submissions, with the timeframe for such submissions to be informed by the complexities of the matter under dispute. If upon reviewing the submissions the Minister considers the complexities of the matter would benefit from review by an independent arbitrator, the Minister will have the power to refer the matter to the Land Court for recommendations.

Reference to Land Court

Clause 425 inserts new section 363I which will set out the process for the Minister's referral of a dispute to the Land Court.

Decision by Minister

Clause 425 inserts new section 363J which will set out the matters the Minister will consider in making his decision. It will also give the Minister the power to apply additional conditions on the entry requirements or authorised activities as set out in section 363E (entry rights for particular activities during suspension)

Division 4 Obtaining petroleum lease if overlapping mineral (f) land or land in area of MDLA 407

Additional provision about area of petroleum lease

Clause 425 inserts new section 363K which will set out the particular land areas, as set out in section 363B (Application of pt 4A), that are within the Minister's power to set aside, in accordance with the provisions of Part 4A, from the granting of a petroleum lease.

Minister may add land to petroleum lease if mineral (f) tenure ends

Clause 425 inserts new section 363L which will refer to any land area set aside under the application of section 363K (additional provision about area of petroleum lease) and will provide for such land to be added to the relevant petroleum lease should a UCG Pilot Project not proceed to production phase. The section will include provisions about associated changes to the development plan for the lease.

Replacement of s 858A (Ministerial directions about the giving of information)

Clause 426 amends the *Petroleum and Gas (Production and Safety) Act 2004* by omitting section 858A and inserting a new section 858A that provides for the chief executive to create and maintain a manual about

tenure administration practice to guide and inform persons dealing with the department. The manual may include statements about what material a person must give to the department and how and when that material must be given. The chief executive must make the manual and the record available to the public in the way the chief executive considers appropriate.

Insertion of new ch 15, pt 10 hdg and div 1

Clause 427 provides that a new Part of Chapter 15 be included in *the Petroleum and Gas (Production and Safety) Act 2004* that includes provisions setting out the commencement date and the particular petroleum leases to which Chapter 4A will apply. The new part will be titled "Part 10 Transitional provisions for *Geothermal Energy Act 2010"*.

Part 10 Transitional provisions for amendments under Geothermal Energy Act 2010

Division 1 Provisions about mineral (f) pilot tenures

Applications for particular petroleum leases

Clause 427 inserts new section 947 which sets out the particular petroleum lease applications to which section 363K will apply.

Amendment of sch 2 (Dictionary)

Clause 428 amends Schedule 2 (Dictionary) of the *Petroleum and Gas (Production and Safety) Act 2004* and will provide definitions of terminology used in relation to UCG tenure and UCG Pilot Projects.

Part 2 Amendments relating to land access and owners and occupiers

Division 1 Amendment of *Greenhouse Gas Storage Act 2009*

Act amended

Clause 429 states that part 1, division 3; part 3; division 3; and schedule 2, parts 1, 2 and 4 of the Bill amend the *Greenhouse Gas Storage Act 2009*.

Omission of s 85 (Obligation to consult with particular owners and occupiers)

Clause 430 omits section 85 of the *Greenhouse Gas Storage Act 2009*.

Omission of s 166 (Obligation to consult with particular owners and occupiers)

Clause 431 omits section 166 of the *Greenhouse Gas Storage Act 2009*.

Replacement of ch 5, pt 7, divs 1 to 3

Clause 432 inserts a new chapter 5, part 7, divisions 1 to 3 into the *Greenhouse Gas Storage Act 2009*.

Division 1 Requirements for entry to private land in GHG authority area

Subdivision 1 Entry notice requirement for preliminary activities and particular advanced activities

Entry notice requirement

Clause 432 inserts section 278 which prescribes the circumstances in which an entry notice is to be given to each owner and occupier of private land before the GHG authority holder is permitted to enter the land unless one of the exemptions in section 164A applies. The circumstances are if an authority holder intends entering private land to carry out a preliminary activity, or private land to carry out an advanced activity when either the authority holder has reached a deferral agreement with an eligible claimant or the matter of compensation has been referred to the Land Court. A failure on the part of the authority holder to give the entry notice may lead to the imposition of a maximum penalty of 500 penalty units.

The entry notice must be given to each owner and occupier of land within the GHG authority area at least 10 business days before the intended entry (or a shorter period acceptable to the owner or occupier and endorsed on the notice).

There is an obligation on the authority holder to provide a copy of the entry notice to the chief executive as soon as it is given to each owner and occupier of land. However, whilst a failure to meet this obligation may result in the imposition of a maximum penalty of 10 penalty units, it does not affect the validity if the entry notice given to the owner or occupier of the land.

Required contents of entry notice

Clause 432 inserts section 279 provides what an entry notice must state and what documentation must accompany the notice. The first entry notice must include a copy of the land access code, any codes of practice made under this Act applying to authorised activities and any relevant document associated with the environmental authority for the authorised activities.

The duration of the entry notice period must not be longer than six months unless the owner or occupier of the land agrees to a longer period. The purpose of subsection (4) is to confirm that the GHG authority holder does not have to give entry notices with the same entry period to all the owners or occupiers of the land subject to the tenure.

Provisions clearly state that the relevant environmental authority documentation means the relevant code where an authority is code compliant under the *Environmental Protection Act 1994* or the relevant environmental authority if the authority is a non-code compliant authority. . Relevant codes can be accessed on the Department of Environment and Resource Management (DERM) website (http://www.derm.qld.gov.au/ecoaccess/codes_of_environmental_compliance/mining.html).

Exemptions from entry notice requirement

Clause 432 inserts section 280 which prescribes the exemptions from the requirement under new section 278(1) to give an entry notice.

Provisions for waiver of entry notice

Clause 432 inserts section 281 which stipulates how a waiver of notice of entry agreement must be executed if it does not form part of a conduct and compensation agreement and what it must state. During the period of effect, the owner/occupier cannot withdraw the waiver. However at the end of the period, the waiver agreement ceases to have effect.

Giving entry notice by publication

Clause 432 inserts section 282 which provides that in the event the chief executive is satisfied that it is impracticable for a GHG authority holder to give the entry notice to an individual owner or occupier and that by publishing the entry notice in a nominated way, the owner(s) or occupier(s) is reasonably likely to be informed about the proposed entry, then approval may be given to publish the entry notice(s) in a stated way. If approval is given by the chief executive to publish via notice, it must be published at least 20 business days before the intended entry.

Subdivision 2 Conduct and compensation agreement requirement for particular advanced activities

Advanced activities are activities which are likely to have a significant impact on the business operations of a private landholder. Examples of these type of activities include: drilling pads levelled and sumps dug; vegetation clear felling; exploration camps; concrete pads, sewage treatment facilities or fuel dumps; and conducting a seismic survey. A new definition of 'advanced activity' has been provided for in Schedule 2 – Dictionary.

The intent of providing a defined threshold between preliminary and advanced activities is to provide for a streamlined access process (entry notice) where the activity is likely to have a very minor impact on the agricultural operation of the landholder and a more stringent process of negotiation and formal agreement (conduct and compensation agreement) where the impact is likely to be more significant.

This subdivision introduces the concept of a conduct and compensation agreement to the *Greenhouse Gas Storage Act 2009* in relation to conducting advanced activities on GHG authorities and a requirement for such an agreement to be formed prior to entry. The purpose of a conduct and compensation agreement is to allow parties to negotiate and agree on the authority holder's liability to compensate the eligible claimant for the activities proposed to be carried out by the authority holder and their effect on the business enterprise of the eligible claimant. It also allows for parties to negotiate property-specific conduct arrangements associated with the proposed activities to ensure the impact on the landholder is minimised.

An 'eligible claimant' is defined in section 320 of the *Greenhouse Gas Storage Act 2009* as being 'each owner or occupier of private land or public land that is in the area of, or access land for, the GHG authority.

Conduct and compensation agreement requirement

Clause 432 inserts section 283 which provides that entry to private land in the area of a GHG authority to carry out an advanced activity is not permitted unless each eligible claimant (i.e. each owner or occupier) is a party to a conduct and compensation agreement.

Exemptions from conduct and compensation agreement requirement

Clause 432 inserts section 284 which prescribes when a conduct and compensation agreement is not required in order for a person to enter private land within a GHG authority to conduct advanced activities. Subsections (c)(i) and (c)(ii) relate to a deferral agreement and an application to the Land Court to determine compensation, respectively.

Requirements for deferral agreement

Clause 432 inserts section 285 which prescribes the form and content of a deferral agreement. A deferral agreement is an agreement between an eligible claimant and the holder of a GHG authority holder agree that a conduct and compensation agreement can be entered into after entry.

Amendment of s 297 (Change in ownership or occupancy)

Clause 433 amends section 297 to make it clear the authority holder is not required to provide a new owner or occupier with copies of the land access code, other codes of practice or the environmental authority for the tenure.

Amendment of s 314 (Required contents of entry notice)

Clause 434 amends section 314 of the *Greenhouse Gas Storage Act 2009* by omitting the words 'for a GHG lease' from subsection (3). The effect of this amendment is to permit a public land authority agreeing in writing to a longer entry period for both a GHG permit and a GHG lease.

Replacement of ch 5, pt 10 (General compensation provisions)

Clause 435 replaces Chapter 5, part 10 of the *Greenhouse Gas Storage Act 2009* (general compensation provisions).

Part 10 Compensation and negotiated access

Division 1 Compensation other than for notifiable road uses

Subdivision 1 Preliminary

Application of div 1

Clause 435 inserts section 319 which states that division 1 does not apply for a public land authority in relation to a notifiable road use.

Subdivision 2 General provisions

General liability to compensate

Clause 435 inserts section 320 which imposes a liability on the holder of each GHG authority to compensate each owner or occupier of private and public land that is in the area of, or access land for, the authority for any compensatable effect caused by the authorised activities carried out by the holder or a person authorised by the holder. In this instance, each owner or occupier is defined as an 'eligible claimant'. The section clarifies the meaning of 'compensation liability' as being the liability of a GHG authority holder to an eligible claimant and defines the term 'compensatable effect', which is consistent across all the resource legislation.

Subdivision 3 General provisions for conduct and compensation agreements

Conduct and compensation agreement

Clause 435 inserts section 321 which provides that an eligible claimant and a GHG authority holder may enter into an conduct and compensation

agreement about: access to land to carry out an advanced activity; how authorised activities must be carried out to the extent that they relate to the eligible claimant; and the authority holder's liability to compensate the eligible claimant, including any future liability. A conduct and compensation agreement cannot be inconsistent with a mandatory provision of the land access code, the Act or a condition of the authority and to the extent that it is, it will be deemed unenforceable. The agreement may relate to all or part of the liability or future liability.

Content of conduct and compensation agreement

Clause 435 inserts section 322 which prescribes what a conduct and compensation agreement must contain but does not limit what else such an agreement may include.

Subdivision 4 Negotiation process

The purpose of this new subdivision is primarily to provide statutory provisions which prescribe the process for making a conduct and compensation agreement and the options available to parties should negotiations break down. The amendments will implement a graduated negotiation and dispute resolution process in relation to the forming of conduct and compensation agreements, with clearly articulated statutory timeframes. The subdivision also contemplates the authority holder wishing to negotiate a deferral agreement with an eligible claimant.

Notice of intent to negotiate

Clause 435 inserts section 323 which provides that the notice of intent to negotiate a conduct and compensation agreement or a deferral agreement will trigger the start of statutory timeframes. If the GHG authority holder wishes to negotiate a conduct and compensation agreement or deferral agreement with an eligible claimant, the holder may give the claimant a notice to this effect, which is described as a 'negotiation notice'. The section prescribes the statements and information that must be included in the notice and that it must be accompanied by a copy of the land access code.

There is also an obligation on the authority holder to give a copy of the negotiation notice to the chief executive as soon as it is given to the eligible claimant.

Negotiations

Clause 435 inserts section 324 which provides that the giving of a negotiation notice places an obligation on the GHG authority holder and the eligible claimant to use all reasonable endeavours to negotiate a conduct and compensation agreement or a deferral agreement. The negotiation period must be at lease 20 business days from the giving of the negotiation notice but may be as long as the parties agree to.

In the event the parties reach agreement within the minimum negotiation period, the GHG authority holder cannot enter the land until that 20 business day period has elapsed, despite the terms of the agreement.

Cooling-off during minimum negotiation period

Clause 435 inserts section 325 which provides that in the event the parties enter into a conduct and compensation agreement or a deferral agreement within 20 business days after the giving of the negotiation notice, either party is permitted under this section to terminate the agreement by notice to the other party. However, the termination of the agreement must be within that same 20 business day period. The agreement is deemed never to have had any effect on the giving of the notice of termination. However, notwithstanding this, the time at which the negotiation notice was initially given does not change.

Parties may seek mediation

Clause 435 inserts section 325A which provides that if a conduct and compensation agreement has not been reached between an eligible claimant and a GHG authority holder by the end of the minimum negotiation period either party may ask an authorised officer to call a mediation conference. The authorised officer is obligated to take all reasonable steps to finish the conference within 20 business days after it was called for.

Subdivision 5 Deciding compensation through Land Court

Deciding compensation through the Land Court if mediation not called or after unsuccessful mediation

Clause 435 inserts section 325B which applies if either the authorised officer has not finished the mediation within 20 business days after receiving the request to call a mediation or if one or both parties attend the mediation and no conduct or compensation agreement is reached within 20 business days after the mediation was called. In the former circumstance, either party can make application to the Land Court to decide either the compensation liability to an eligible claimant or future compensation liability for an authorised activity proposed to be carried out. In the later circumstance, only the attending a party that attended the mediation can make such an application to the Land Court. The jurisdiction of the Land Court in deciding the liability or future liability is limited to the extent it is not subject to a conduct and compensation agreement.

Land Court review of compensation

Clause 435 inserts section 325C which provides that the Land Court may review the compensation liability or future compensation liability agreed to by the parties in a conduct and compensation agreement or decided by the Land Court, if there has been a material change in circumstances since the original agreement or decision. The Land Court may only review the original compensation to the extent it is affected by the material change in circumstances. If the Land Court does amend the compensation after carrying out the review, that compensation is taken to be the original compensation for the purposes of this Bill.

Orders Land Court may make

Clause 435 inserts section 325D which provides that the Land Court, in seeking to meet or enforce its decision on an application to review the compensation liability or future compensation liability, may make any order it considers appropriate. The Land Court may make orders regarding non-monetary and monetary compensation.

Subdivision 6 Miscellaneous provision

Compensation not affected by change in ownership or occupancy

Clause 435 inserts section 325E which provides that any relevant conduct and compensation agreement or Land Court decision is not affected if there is a change in ownership or occupancy of the affected land or there is a change in the GHG authority holder.

Division 2 Compensation for notifiable road uses

Replacement of s 329 and 330

Clause 436 of the Bill replaces sections 329 and 330 of the *Greenhouse Gas Storage Act 2009* with a new section 329.

Compliance with land access code

Clause 436 replaces sections 329 and 330 with a new section 329 which provides that a GHG authority holder must comply with the mandatory provisions of the land access code to the extent applicable to the holder and must also ensure that any other person carrying out authorised activities complies with the mandatory provisions of the land access code.

Replacement of ch 6 hdg (Enforcement, offences and proceedings)

Clause 437 of the Bill replaces the chapter 6 heading and inserts a new part 1A.

Chapter 6 Mediation, investigations and enforcement

Part 1A Mediation with eligible claimants or owners and occupiers

Application of pt 1A

Clause 437 inserts section 377A which sets out the circumstances in which part 1A will apply. If at the end of the minimum negotiating period of 20 business days, the GHG authority holder has not entered into a conduct and compensation agreement with the eligible claimant, then either party may call on a relevant officer to hold a mediation conference.

Alternatively, if either the authorised officer, owner or occupier of land within a GHG authority's area or authority holder has concerns about how a party is conducting itself or its activities, a mediation may be requested.

Mediation may be called

Clause 437 inserts section 377B which prescribes the process that must be followed to call a mediation conference for the range of circumstances provided in this section.

The relevant officer must request the parties' attendance at a mediation if it is regarding the negotiation of a conduct and compensation agreement. The authorised officer may call and hold a mediation if it regarding the concerns of the owner/occupier, authority holder or authorised officer.

The notice requesting attendance at a mediation conference must state what the subject is and when and where to the mediation is to be held.

Who may attend mediation

Clause 437 inserts section 377C which states that apart from the authorised officer, anyone given notice of a mediation may attend and a party attending the mediation may only be represented by an agent if the authorised officer agrees. Representation by a lawyer at a mediation will

not be permitted unless the parties agree and the authorised officer is satisfied that no party is disadvantaged.

What happens if a party does not attend

Clause 437 inserts section 377D which provides what may happen if a party given written notice of the mediation does not attend. In the event that a party does not attend, mediation is taken to have been concluded for the purposes of the party who attended being able to refer the matter to the Land Court.

In this circumstance, the party who attended can make an application to the Land Court for an order that the non-attending party pay their reasonable costs of attending the mediation. In the event the Land Court is satisfied that the non-attending party had a reasonable excuse for not attending, the Court must not grant the order to pay the other parties cost of attending the mediation. However, if the Land Court does make such an order, it must decide the amount to be paid by the non-attending party.

Conduct of mediation

Clause 437 inserts section 377E which places an obligation on the authorised officer when conducting a mediation to endeavour to assist the attending parties to settle the matter that is the subject of the mediation in an expedient and inexpensive manner. The manner in which the mediation is to be conducted is a decision for the authorised officer.

Statements made at mediation

Clause 437 inserts section 377F which expressly provides that in a proceeding anything said by a person attending the mediation is inadmissible in a proceeding without the person's consent.

Mediated agreement

Clause 437 inserts section 377G which provides that if an agreement is negotiated at the mediation, it must be documented and signed by or for the parties. An agreement reached at the mediation may be a conduct and compensation agreement or a variation of an existing conduct and compensation agreement between the parties. An agreement reached at mediation has the same effect as any other compromise.

Insertion of new ch 8, pt 2

Clause 438 of the Bill inserts a new chapter 8, part 2 after section 436 of the *Greenhouse Gas Storage Act 2009*.

Part 2 Transitional provisions for amendments under *Geothermal Energy Act 2010*

Land access code prevails over conditions

Clause 438 inserts section 437 which provides that in the event of inconsistency between a condition of a GHG authority and a mandatory provision of the land access code, the later prevails to the extent of the inconsistency.

Existing compensation agreements other than for notifiable road uses

Clause 438 inserts section 438 which provides that if an agreement about compensation was in force immediately prior to the commencement of this section, it is deemed to be a conduct and compensation agreement under chapter 5, part 6A, division 1 of the *Greenhouse Gas Storage Act 2009*.

Existing entry notices

Clause 438 inserts section 439 which provides that if an entry notice given to carry out authorised activities under a GHG authority was in force prior to the commencement of this section, the entry notice continues to be valid for the purposes of carrying out the authorised activity notwithstanding that a copy of the land access code did not accompany the original notice.

Reference to geothermal tenure

Clause 438 inserts section 440 which states that reference in the *Greenhouse Gas Storage Act 2009* to a geothermal tenure is taken to be a reference to a geothermal exploration permit until chapter 9, part 1 of the *Geothermal Energy Bill 2010* commences.

Amendment of sch 2 (Dictionary)

Clause 439 lists the definition amendments to the *Greenhouse Gas Storage Act 2009*.

"Advanced activity" and *"preliminary activity"* definitions are provided. This provides clear guidance (including examples) of what is considered to be a preliminary and advanced activity for the purposes of a GHG authority.

"*Compensation liability,* and *eligible claimant*" and other land access related terms are defined consistent with provisions contained in the Bill.

"*Land access code"* is defined with reference to the provisions of the *Petroleum and Gas (Production and Safety) Act 2004* that provide for the Code.

"*Mandatory provision"* of the land access code is defined as meaning a provision of that Code that the code requires compliance with.

Division 2 Amendment of the *Mineral Resources Act 1989*

Act Amended

Clause 440 provides that this division, part 1; division 4, part 3; division 5 and schedule 2, part 2 of the Bill amend the *Mineral Resources Act 1989*.

Amendment of s 10A (Extension of certain entitlements to registered native title bodies corporate and registered native title claimants)

Clause 441 amends section 10A(3) of the *Mineral Resources Act 1989* which prescribes that a reference to the owner of land in specified sections is taken to include a reference to any registered native title body corporate or registered native title claimant under the Commonwealth *Native Title Act 1993*. The amendment removes reference to two sections which are omitted by this Bill and inserts reference to new Part 10, division 1B. This Part of the Bill provides provisions relating to mediation with eligible claimants or owners and occupiers.

Amendment of s 141 (Conditions of exploration permit)

Clause 442 provides that it is a condition of each exploration permit that the holder must comply with mandatory provisions of the land access code to the extent applicable to the holder. The holder of each exploration permit must also ensure that any person carrying out authorised activities complies with the land access code to the extent applicable to the other person.

Omission of s 145 (Compensation)

Clause 443 omits section 145 of the *Mineral Resources Act 1989* as provisions in relation to conduct and compensation agreements are inserted subsequently.

Replacement of ss 163 and 164

Clause 444 replaces sections 163 and 164 of the *Mineral Resources Act 1989* (which related to when a notice of entry had to be given for access to land under an exploration permit (section 163) and the term and renewal of that notice (section 164)) with a new section 163 which states that schedule 1 of the Act contains provisions about access, compensation and related matters for exploration permits.

Omission of ss 169 – 174

Clause 445 provides that sections 169 to 174 of the *Mineral Resources Act 1989* are to be omitted. These sections relate to the ability of a Mining Registrar to call a conference in some cases about an exploration permit and have been replaced by a new Part 10, Division 1B, section 335G, which has very similar effect but is broader in nature.

Omission of s 191 (Compensation)

Clause 446 omits section 191 of the *Mineral Resources Act 1989*.

Amendment of s 194 (Conditions of mineral development licence)

Clause 447 amends section 194(1) to provide that it is a condition of each mineral development licence that the holder must comply with the mandatory provisions of the land access code to the extent applicable to the

holder. The holder of each mineral development licence must also ensure that any person carrying out authorised activities complies with the mandatory provisions of the land access code.

Replacement of ss 211 and 212

Clause 448 replaces sections 211 and 212 of the *Mineral Resources Act 1989* (which related to when a notice of entry had to be given for access to land under a mineral development licence (section 211) and the term and renewal of that notice (section 212)) with a new section 211 which states that schedule 1 of the Act contains provisions about access, compensation and related matters for mineral development licences.

Omission of ss 217-222

Clause 449 provides that sections 217 to 222 of the *Mineral Resources Act 1989* are to be omitted. These sections relate to the ability of a Mining Registrar to call a conference in some cases about a mineral development licence and have been replaced by a section 335F in new Part 10, division 1B of the *Mineral Resources Act 1989*.

Omission of ss 254-259

Clause 450 provides that sections 254 to 259 of the *Mineral Resources Act 1989* are to be omitted. These sections relate to the ability of a Mining Registrar to call a conference in some cases about a mining lease and have been replaced by a section 335F in new Part 10, division 1B of the *Mineral Resources Act 1989*.

Insertion of new pt 10, divs 1A and 1B

Clause 451 inserts new divisions 1A 'direction to remedy contravention' and 1B 'mediation with eligible claimants or owners and occupiers' into the *Mineral Resources Act 1989*.

Division 1A Directions to remedy contravention

The intent of division 1A is to ensure that the administering authority has a clear and responsive compliance and enforcement framework associated

with the land access code. Having a range of compliance and enforcement powers available to the administering authority staff and the Minister will ensure that compliance and enforcement action is relative to the scale and significance of a breach of a mandatory provision of the land access code of conduct, tenure conditions or the Act itself. Under this division, 'a relevant officer' means a mining registrar, deputy mining registrar, field officer or person appointed under section 336 of the *Mineral Resources Act 1989*.'

Power to give compliance direction

Clause 451 inserts section 335A(1) which provides the head of power for a relevant officer to give a written compliance direction to a person who the relevant officer reasonably believes either has contravened or is contravening the Act or a mandatory provision of the land access code; or is involved in an activity that is likely to result in contravention of the Act or a mandatory provision of the code. The purpose of the relevant officer giving the person a compliance direction is to require action that is reasonably necessary to remedy the contravention or prevent its likely occurrence.

Section 335A(3) provides what the relevant officer may state in the compliance direction.

Requirements for giving compliance direction

Clause 451 inserts section 335B which prescribes what the compliance direction must state and stipulates that a review and appeal notice about the decisions to give the compliance direction and to fix the period to remedy or avoid the contravention must be included or accompany the written compliance direction.

A relevant officer may give a verbal compliance direction if it is not practical to give same in writing. The relevant officer must warn the person that failure to comply with the direction is an offence under the *Mineral Resources Act 1989*. However, in the event the relevant officer gives a verbal compliance direction, the same direction must also be provided to the person in writing as soon practicable after giving the verbal direction. Section 335B(5) provides what a review and appeal notice referred to in section 335B(2) must contain.

Failure to comply with compliance direction

Clause 451 inserts section 335C which provides that unless a person to whom a compliance direction is given has a reasonable excuse, that direction must be complied with. A person will have complied with a compliance direction if all the steps stated in that direction have been taken to remedy or avoid the likely contravention. However, a person is not prevented from complying with a compliance direction in a different way. There is a maximum penalty of 500 penalty units for non-compliance with this provision.

Compliance and enforcement is a key focus of the land access amendments and to reflect this, the imposition of a penalty for breach of this provision is both consistent with the intent of this legislation and with the section 782 of the *Petroleum and Gas (Production and Safety) Act 2004*. The penalty is at an appropriate level to encourage compliance with the direction notice.

Right of internal review and appeal against compliance direction

Clause 451 inserts section 335D which applies if a person is given a compliance direction. An internal review may be requested by the person.

For the purposes of this section the *Petroleum and Gas (Production and Safety) Act 2004*, chapter 12, other than section 817(2), applies with necessary changes as if a decision made to give a compliance direction under section 335A of the *Mineral Resources Act 1989* were one mentioned in schedule 1, table 1 of the *Petroleum and Gas (Production and Safety) Act 2004*.

The provisions of the *Petroleum and Gas (Production and Safety) Act 2004* applicable to an internal review application under the *Mineral Resources Act 1989* are referred to as the 'applied provisions'. A reference to an information notice in chapter 12 of the *Petroleum and Gas (Production and Safety) Act 2004* is taken to be a reference to an information notice under section 335B of the *Mineral Resources Act 1989*. An internal review application made pursuant to the applied provisions may only be made: to the mining registrar if the compliance direction was given by a deputy mining registrar or field officer; or to the chief executive if the compliance direction was given by a mining registrar.

Other relevant officer's powers not affected

Clause 451 inserts section 335E which prescribes that a relevant officer's powers under other provisions of the *Mineral Resources Act 1989* are not limited or otherwise affected by division 1A of that Act.

Division 1B Mediation with eligible claimants or owners and occupiers

Clause 451 inserts Division 1B which deals with mediation between tenure holders and eligible claimants or owners and occupiers of land in relation to the entry into a conduct and compensation agreement.

Application of div 1B

Clause 451 inserts section 335F which provides the circumstances in which division 1B will apply. If at the end of the minimum negotiating period of 20 business days from the giving of the negotiation notice, the tenure holder has not entered into a conduct and compensation agreement with the eligible claimant, then either party may ask the relevant officer to call a mediation conference. Further, if either the relevant officer, owner/occupier of land or tenement holder has concerns about how a party is conducting itself or its activities, a mediation may be called.

Mediation may be called

Clause 451 inserts section 335G which prescribes the process that must be followed to call a mediation conference for the range of circumstances provided in section 335F. The relevant officer must, by written notice, request the parties' attendance at a mediation if it is regarding the negotiation of a conduct and compensation agreement.

The relevant officer may also call a mediation if it is regarding the concerns of the owner/occupier, permit or licence holder or relevant officer. The notice requesting attendance at a mediation must state what the subject is and where the mediation will be held.

Who may attend mediation

Clause 451 inserts section 335H which states that apart from the relevant officer, anyone given notice of a mediation may attend and that a party attending the mediation may only be represented by an agent if the relevant officer agrees. Representation by a lawyer at a mediation will not be permitted unless the parties agree and the relevant officer is satisfied that no party is disadvantaged.

What happens if a party does not attend

Clause 451 inserts section 335I which provides what may happen if a party given notice of a mediation does not attend. In the event that a party does not attend, mediation is taken to have been concluded for the purposes of the attending party who attended being able to refer the matter to the Land Court under section 325B.

In this circumstance, the party who attended may make an application to the Land Court for an order that the non-attending party pay their reasonable costs of attending the mediation. In the event the Land Court is satisfied that the non-attending party had a reasonable excuse for not attending, the Court must not grant the order to pay the other party's cost of attending the mediation. However, if the Land Court does make such an order, it must decide the amount to be paid by the non-attending party.

Conduct of mediation

Clause 451 inserts section 335J which places an obligation on the relevant officer when conducting a mediation to endeavour to assist the attending parties to settle the matter the subject of the mediation in an expedient and inexpensive manner. The manner in which the mediation is to be conducted is a decision for the relevant officer.

Statements made at mediation

Clause 451 inserts section 335K which provides that in a proceeding, anything said by a person attending a mediation is inadmissible in a proceeding without the person's consent.

Mediated agreement

Clause 451 inserts section 335L which provides that if an agreement is negotiated at a mediation, it must be documented and signed by, or for, the parties at the conclusion of the mediation session. An agreement reached at the mediation may be a conduct and compensation agreement or a variation of an existing compensation agreement between the parties. An agreement reached at mediation has the same effect as any other compromise.

Amendment of s 336 (Appointment of mining registrars and other officers)

Clause 452 states that the chief executive is empowered to appoint other persons as a relevant officer to perform the functions under division 1A or 1B or schedule 1. The chief executive may only make such an appointment, however, if the chief executive is satisfied the person has the necessary qualifications, standing or experience.

Amendment of s 405 (Directions to be complied with)

Clause 453 amends section 405 of the *Mineral Resources Act 1989*. This section currently provides that a person must comply with a direction given by a mining registrar, deputy mining registrar or field officer unless that person has a reasonable excuse and specifies a maximum penalty. Clause 453 of the Bill amends this section by inserting sub-section (2) which states that section 405 does not apply if the direction is a compliance direction. New section 335C deals with failure to comply with a compliance direction.

Insertion of new pt 19, div 13 and sdiv 2

Clause 454 operates to insert a new Part 19, division 13 heading and subdivision 2 into the *Mineral Resources Act 1989*.

Subdivision 2 Provisions for amendments about compensation and the land access code

Old access code ceases to apply

Clause 454 inserts section 775 which provides that this section will apply if a exploration permit or mineral development licence is conditioned so as to require the holder's compliance with the old access code. The 'old access code' is defined in this section as meaning the document called "Code of Conduct-Procedures for Sound Landowner/Explorer Relations' approved by the Minister on 20 September 1990'. The section provides that on commencement, the condition ceases to apply. On commencement of the Bill, all exploration permits and mineral development licences granted under the *Mineral Resources Act 1989* will be conditioned to require the holder to comply with the mandatory provisions of the land access code of conduct to the extent it applies to the holder or any person carrying out an authorised activity.

Land access code prevails over conditions

Clause 454 inserts section 776 which provides that in the event of inconsistency between a condition of an exploration permit or mineral development licence and a mandatory provision of the land access code, the later prevails to the extent of the inconsistency.

Existing compensation decisions and proceedings continue

Clause 454 inserts section 777 which provides that a decision of the Land Court about compensation under the former sections 145 and 191 of the *Mineral Resources Act 1989,*, made prior to the commencement of this section, is deemed to be the compensation for the matter. If a proceeding in the Land Court seeking a determination of compensation under the former sections 145 and 191 had been started immediately prior to the commencement of this section, then the proceeding may be finished as if schedule 1 had not been enacted. Compensation decided for the matter in those proceedings is then deemed to be the compensation for the matter.

This section further provides that in relation to existing decisions and proceedings, the Land Court when carrying out a review of the compensation or the decided compensation must apply the former sections

145 and 191 of the *Mineral Resources Act 1989***.** This section applies despite the fact that a mediation has not been conducted.

Existing notices of entry

Clause 454 inserts section 778 which will apply if a notice of entry had been given to an owner of land by an exploration permit or mineral development licence holder under the former section 163 or 211 of the *Mineral Resources Act 1989* before this section commenced.

If this section does apply, the notice of entry may be renewed under the former sections 164 and 212 of the *Mineral Resources Act 1989* but only to the extent it relates to either a preliminary activity or an advanced activity that was started by the tenement holder before the section commenced. The notice and any renewal is deemed to be an entry notice under schedule 1 and remain valid for the tenement holder to undertake the relevant activity. To remove any doubt surrounding the application of this section, it is expressly declared that the notice and any renewal of the notices continues to be valid notwithstanding that a copy of the land access code did not accompany the notice of entry.

Reference to geothermal tenure

Clause 454 inserts section 779 which states that reference in the *Mineral Resources Act 1989* to a geothermal tenure is taken to be a reference to a geothermal exploration permit until chapter 10, part 1 of the *Geothermal Energy Bill 2010* commences.

Insertion of new sch 1

Schedule 1 Access and compensation provisions for exploration permits and mineral development licences

Clause 455 of the Bill inserts a new schedule 1 after part 19.

Part 1 Preliminary

Division 1 Key definitions for schedule 1

1 Meaning of *exploration tenement*

Clause 455 inserts section 1 which states that the meaning of exploration tenement is an exploration permit or a mineral development licence.

2 What is a *preliminary activity*

Clause 455 inserts section 2 which prescribes what a preliminary activity means in respect of an exploration tenement. The threshold test is whether the authorised activity proposed to be carried out will have no impact or only a minor impact on the business operations of the relevant owner or occupier of land. Examples of 'preliminary activities' are given. To provide certainty, the section clarifies that certain authorised activities are not preliminary activities.

3 What is an *advanced activity*

Clause 455 inserts section 3 which prescribes what an advanced activity means in respect of an exploration tenement. An authorised activity, which is not a preliminary activity, is deemed to be an advanced activity. In practice, the carrying out of an advanced activity is likely to have a significant impact on the business operations of the relevant owner or occupier of land. Examples of 'advanced activities' are given under this section.

Division 2 Other definitions for schedule 1

Clause 455 inserts 4 section which lists all the relevant definitions for this schedule.

Part 2 Requirements for entry to exploration tenement area

Division 1 Entry notice requirement for preliminary activities and particular advanced activities

Entry notice requirement for particular authorised activities

Clause 455 inserts section 5 which prescribes the circumstances in which an entry notice is to be given to each owner and occupier before the exploration tenement holder is permitted to enter the land within a tenement's area unless one of the exemptions in section 164A of the *Mineral Resources Act 1989* applies. The circumstances are if a tenement holder intends entering; private land to carry out a preliminary activity; or to carry out an advanced activity when either the tenement holder has reached a deferral agreement with an eligible claimant or the matter of compensation has been referred to the Land Court; or public land to conduct an authorised activity. A failure on the part of the exploration tenement holder to give the entry notice may lead to the imposition of a maximum penalty of 500 penalty units

The entry notice must be given to each owner and occupier of land within the tenement's area at least 10 business days before the intended entry (or a shorter period acceptable to the owner and endorsed on the notice). The amendment from 5 business days to 10 business days is to provide consistency with the other resource legislation where the established notice period is 10 business days.

There is an obligation on the tenement holder to provide a copy of the entry notice to the mining registrar as soon as it is given to each owner and occupier of land, prior to entry. However, whilst a failure to meet this obligation may result in the imposition of a maximum penalty of 10 penalty units, it does not affect the validity if the entry notice is given to the owner or occupier of the land.

Required contents of entry notice

Clause 455 inserts section 6 which what an entry notice must state and what documentation must accompany the notice. The first entry notice

must include a copy of the land access code, any codes of practice made under this Act applying to authorised activities and any relevant document associated with the environmental authority for the authorised activities.

The duration of the entry notice period must not be longer than six months unless the owner or occupier of the land agrees to a longer period. The purpose of subsection (4) is to confirm that an exploration tenement holder does not have to give entry notices with the same entry period to all owners or occupiers of the land subject to the tenure.

Provisions clearly state that the relevant environmental authority documentation means the relevant code where an authority is code compliant under the *Environmental Protection Act 1994* or the relevant environmental authority if the authority is a non-code compliant authority. Relevant codes can be accessed on the Department of Environment and Resource Management (DERM) website (http://www.derm.qld.gov.au/ecoaccess/codes_of_environmental_compliance/mining.html)

Exemptions from entry notice requirement

Clause 455 inserts section 7 which prescribes the exemptions from the requirement under section 163(1) of the *Mineral Resources Act 1989* to give an entry notice.

Provisions for waiver of entry notice requirement

Clause 455 inserts section 8 which stipulates how a waiver of notice of entry agreement must be executed if it does not form part of a conduct and compensation agreement and what it must state. During the period of effect, the owner/occupier cannot withdraw the waiver. However at the end of the period, the waiver agreement ceases to have effect.

Giving entry notice by publication

Clause 455 inserts section 9 which provides that in the event a mining registrar is satisfied that it is impracticable for an exploration tenement holder to give the entry notice to an individual owner or occupier and that by publishing the entry notice in a stated way, the owner(s) or occupier(s) is reasonably likely to be informed about the proposed entry, then approval may be given to publish the entry notice(s) in that way. If approval is given

by the chief executive, it must be published at least 20 business days before the intended entry.

Division 2 Conduct and compensation agreement requirement for particular advanced activities

Advanced activities referred to in the subdivision 2 heading are activities which are likely to have a significant impact on the business operations of a private landholder. Examples of these types of activities include: drilling pads levelled and sumps dug; bulk sampling; open trench/costeaning with excavator; vegetation clear felling; exploration camps; concrete pads, sewage treatment facilities or fuel dumps; and conducting a seismic survey. A new definition of 'advanced activity' has been provided for in part 1, division 1; section 3 of the *Mineral Resources Act 1989*.

The intent of providing a defined threshold between the preliminary and advanced activity is to provide for a streamlined access process (entry notice) where the activity is likely to have a very minor impact on the agricultural operation of the landholder and a more stringent process of negotiation and formal agreement (conduct and compensation agreement) where the impact is likely to be more significant.

This subdivision introduces the concept of a conduct and compensation agreement to the *Mineral Resources Act 1989* in relation to conducting advanced activities on exploration permits and mineral development licences and a requirement for such an agreement to be formed prior to entry. The purpose of a conduct and compensation agreement is to allow parties to negotiate and agree on the tenement holder's liability to compensate the eligible claimant for the activities proposed to be carried out by the tenement holder and their effect on the business enterprise of the eligible claimant. It also allows for parties to negotiate property-specific conduct arrangements associated with the proposed activities to ensure the impact on the landholder is minimised.

An 'eligible claimant' is defined in schedule 1, part 3 compensation liability as being 'each owner or occupier of private land or public land that is in the area of the exploration tenement'.

Conduct and compensation agreement requirement for particular advanced activities

Clause 455 inserts section 10 which provides that entry to private land in the area of an exploration tenement to carry out an advanced activity is not permitted unless each eligible claimant (i.e. each owner or occupier) is a party to a conduct and compensation agreement.

Exemptions from conduct and compensation agreement requirement

Clause 455 inserts section 11 which prescribes when a conduct and compensation agreement is not required in order for a person to enter private land within an exploration tenement to conduct advanced activities. Subsection (c) (i) and (ii) relate to a deferral agreement and an application to the Land Court to determine compensation, respectively.

Requirements for deferral agreement

Clause 455 inserts section 12 which prescribes the form and content of a deferral agreement. A deferral agreement is an agreement between an eligible claimant and the holder of an exploration tenement holder that a conduct and compensation agreement can be entered into after entry.

Part 3 Compensation liability

General liability to compensate eligible claimants

Clause 455 inserts section 13 which imposes a liability on the holder of each exploration tenement to compensate each owner or occupier of private and public land that is in the exploration tenement area for any compensatable effect suffered as a result of the authorised activities carried out by the holder or a person authorised by the holder. In this instance, each owner or occupier is defined as an 'eligible claimant'. The section clarifies the meaning of 'compensation liability' as being the liability of an exploration tenement holder to an eligible claimant and defines the term 'compensatable effect', which is defined consistently across all the resource legislation.

Part 4 General provisions for conduct and compensation agreements

Conduct and compensation agreement

Clause 455 inserts section 14 which provides that an eligible claimant and exploration tenement holder may enter into a conduct and compensation agreement about: access to land to carry out an advanced activity; how authorised activities must be carried out to the extent that they relate to the eligible claimant; and the tenement holder's liability to compensate the eligible claimant, including any future liability. Any conduct and compensation agreement must not be inconsistent with a mandatory provision of the land access code, the Act or a condition of the exploration tenement and to the extent that it is, it will be unenforceable. The agreement may relate to all or part of the liability or future liability.

Content of conduct and compensation agreement

Clause 455 inserts section 15 which prescribes what a conduct and compensation agreement must contain but does not limit what else such an agreement may include.

Part 5 Negotiation process

Notice of intent to negotiate

Clause 455 inserts section 16 which provides statutory provisions which prescribe the process for making a conduct and compensation agreement and the options available to parties should negotiations break down. The amendments will implement a graduated negotiation and dispute resolution process in relation to the forming of conduct and compensation agreements, with clearly articulated statutory timeframes. This section also contemplates the authority holder wishing to negotiate a deferral agreement with an eligible claimant.

The notice of intent to negotiate a conduct and compensation agreement or a deferral agreement will trigger the start of statutory timeframes. If the exploration tenement holder wishes to negotiate a conduct and

compensation agreement or a deferral agreement with an eligible claimant, the holder may give the claimant a notice to this effect, which is described as a 'negotiation notice'. Section 16 prescribes the statements and information that must be included in the notice and that it must be accompanied by a copy of the land access code.

There is also an obligation on the tenement holder to give a copy of the negotiation notice to the mining registrar as soon as it is given to the eligible claimant.

Negotiations

Clause 455 inserts section 17 which provides for the giving of a negotiation notice and places an obligation on the exploration tenement holder and the eligible claimant to use all reasonable endeavours to negotiate a conduct and compensation agreement or a deferral agreement within the minimum negotiation period of 20 business days from the giving of the negotiation notice or for however long the parties agree to.

In the event the parties reach agreement within the minimum negotiation period, the tenement holder cannot enter the land until that 20 business day period has elapsed, despite the terms of the agreement

Cooling-off during minimum negotiation period

Clause 455 inserts section 18 which provides that in the event the parties enter into a conduct and compensation agreement or a deferral agreement within 20 business days after the giving of the negotiation notice, either party is permitted under this section to terminate the agreement by notice to the other party. However, the termination of the agreement must be within that same 20 business day timeframe. The agreement is deemed never to have had any effect on the giving of the notice of termination. However, notwithstanding this, the time at which the negotiation notice was initially given does not change.

Parties may seek mediation

Clause 455 inserts section 19 which provides that if a conduct and compensation agreement has not been reached between an eligible claimant and an exploration tenement holder by the end of the minimum negotiation period either party may ask a relevant officer to call a mediation conference. The relevant officer is obligated to take all

reasonable steps to finish the conference within 20 business days after it was called for.

Part 6 Deciding compensation through Land Court

Deciding compensation through Land Court if mediation not called or after unsuccessful mediation

Clause 455 inserts section 20 which applies if either the relevant officer has not finished the mediation within 20 business days after receiving the request to call a mediation or if one or both parties within 20 business days after the mediation was called attend the mediation and no conduct or compensation agreement is reached. In the former circumstance, either party can make application to the Land Court to decide either the compensation liability to an eligible claimant or future compensation liability for an authorised activity proposed to be carried out. In the later circumstance, only a party that attended the mediation can make such an application to the Land Court. The jurisdiction of the Land Court in deciding the liability or future liability is limited to the extent it is not subject to a conduct and compensation agreement.

Land Court review of compensation

Clause 455 inserts section 21, the Land Court may review the compensation liability or future compensation liability agreed to by the parties in a conduct and compensation agreement or decided by the Land Court, if there has been a material change in circumstances since the original agreement or decision. The Land Court may only review the original compensation to the extent it is affected by the material change in circumstances. If the Land Court does amend the compensation after carrying out the review, that compensation is taken to be the original compensation for the purposes of this Act.

Orders Land Court may make

Clause 455 inserts section 22 which provides that the Land Court, in seeking to meet or enforce its decision on an application to review the

compensation liability or future compensation liability, may make any order it considers appropriate. The Land Court may make orders regarding non-monetary and monetary compensation.

Part 7 Miscellaneous provisions

Compensation not affected by change in ownership or occupancy

Clause 455 inserts section 23 which provides that any relevant conduct and compensation agreement or Land Court decision is not affected if there is a change in ownership or occupancy of the affected land or there is a change in the exploration tenement holder.

Amendment and renumbering of schedule (Dictionary)

Clause 456 lists the amendments to numbering and insertion of new definitions.

New definitions of "*preliminary activity*" and "a*dvanced activity"* are specified consistent with provisions contained in the Bill.

The provisions provide clear guidance (including examples) of what is considered to be a preliminary and advanced activity for the purposes of exploration permits and mineral development licences.

"*Compensation liability,* "c*ompliance direction"*, "*eligible claimant*" are defined consistent with provisions contained in the Bill.

"*Land access code"* is defined with reference to the provisions of the *Petroleum and Gas (Production and Safety) Act 2004* that provide for the code.

"*Mandatory provision"* of the land access code is defined to mean a provision of that code that the code requires compliance with.

An additional definition has been added – "*mining interest"*. This has been added to clarify that a mining interest takes in a mining tenement or other resource legislation tenure (i.e. *Greenhouse Gas Storage Act 2009* or *Geothermal Energy Bill 2010*).

Division 3 Amendment of *Petroleum Act 1923*

Act amended

Clause 457 states that this division, part 1, division 5; part 3, division 7; and schedule 2, parts 2 and 4 amend the *Petroleum Act 1923* (PA 1923).

Amendment of s 2 (Definitions)

Clause 458 lists omissions, amendments to numbering and insertion of new definitions.

Omission of s 74V (Obligation to consult with particular owners and occupiers)

Clause 459 omits section 74V of the *Petroleum Act 1923*, consistent with the insertion of new land access provisions by this Bill.

Replacement of ss 74X and 74Y

Clause 460 replaces sections 74X and 74Y of the *Petroleum Act 1923* with a new section 74X, requiring compliance with the mandatory provisions of the land access code.

Compliance with land access code

Clause 460 inserts section 74X which provides that a 1923 petroleum tenure holder must comply with the mandatory provisions of the land access code of conduct to the extent applicable to the holder and must also ensure that any person carrying out authorised activities complies with the mandatory provisions of the land access code of conduct.

Omission of pt 6H, divs 1 to 3

Clause 461 provides that part 6H, divisions 1 to 3 of the *Petroleum Act 1923* are to be omitted and replaced by a new division 1.

Division 1 Requirements for entry to private land in 1923 Act petroleum tenure area

Subdivision 1 Entry notice requirement for preliminary activities and particular advanced activities

Entry notice requirement

Clause 461 inserts section 78L which prescribes the circumstances in which an entry notice is to be given to each owner and occupier of private land before the 1923 Act petroleum tenure holder is permitted to enter the land unless one of the exemptions in section 78N applies. The circumstances are if a tenure holder intends entering private land either to carry out a preliminary activity; or to carry out an advanced activity when either the tenure holder has reached a deferral agreement with an eligible claimant or the matter of compensation has been referred to the Land Court. A failure on the part of the tenure holder to give the entry notice may lead to the imposition of a maximum penalty of 500 penalty units.

The entry notice must be given to each owner and occupier of land with the petroleum tenure area at least 10 business days before the intended entry (or a shorter period acceptable to the owner or occupier and endorsed on the notice).

There is an obligation on the tenure holder to provide a copy of the entry notice to the chief executive as soon as it is given to each owner and occupier of land and prior to entry. However, whilst a failure to meet this obligation may result in the imposition of a maximum penalty of 10 penalty units, it does not affect the validity of the entry notice given to the owner or occupier of the land.

Required contents of entry notice

Clause 461 inserts section 78M which provides what an entry notice must state and what documentation must accompany the notice. The first entry notice must include a copy of the land access code, any codes of practice made under this Act applying to authorised activities and any relevant document associated with the environmental authority for the authorised activities.

The duration of the entry notice period must not be longer than six months unless the owner or occupier of the land agrees to a longer period. The purpose of subsection (4) is to confirm that an exploration tenement holder does not have to give entry notices with the same entry period to all owners or occupiers of the land subject to the tenure.

Provisions clearly state that the relevant environmental authority documentation means the relevant code where an authority is code compliant under the *Environmental Protection Act 1994* or the relevant environmental authority if the authority is a non-code compliant authority. Relevant codes can be accessed on the Department of Environment and Resource Management (DERM) website (http://www.derm.qld.gov.au/ecoaccess/codes_of_environmental_compliance/mining.html)

Exemptions from entry notice requirement

Clause 461 inserts section 78N which provides the exemptions from the requirement under section 78L of the *Petroleum Act 1923* to give an entry notice.

Provisions for waiver of entry notice

Clause 461 inserts section 78O which stipulates how a waiver of notice of entry agreement must be executed if it does not form part of a conduct and compensation agreement and what it must state. During the period of effect, the owner/occupier cannot withdraw the waiver. However at the end of the period, the waiver agreement ceases to have effect.

Giving entry notice by publication

Clause 461 inserts section 78P which provides that in the event the chief executive is satisfied that it is impracticable for *Petroleum Act 1923* petroleum tenure holder to give the entry notice to an individual owner or occupier and that by publishing the entry notice in a nominated way, the owner(s) or occupier(s) is reasonably likely to be informed about the proposed entry, then approval may be given to publish the entry notice(s) in that way. If approval is given by the chief executive, it must be published at least 20 business days before the intended entry.

Subdivision 2 Conduct and compensation agreement requirement for particular advanced activities

Advanced activities referred to in the subdivision 2 heading are activities which are likely to have a significant impact on the business operations of a private landholder. Examples of these types of activities include: drilling pads levelled and sumps dug; open trench; vegetation clear felling; exploration camps; concrete pads, sewage treatment facilities or fuel dumps; and conducting a seismic survey. A new definition of 'advanced activity' has been provided in an amended section 2 (definitions) of the *Petroleum Act 1923*.

The intent of providing a defined threshold between the preliminary and advanced activity is to provide for a streamlined access process (entry notice) where the activity is likely to have a very minor impact on the agricultural operation of the landholder and a more stringent process of negotiation and formal agreement (conduct and compensation agreement) where the impact is likely to be more significant.

This subdivision introduces the concept of a conduct and compensation agreement to the *Petroleum Act 1923* in relation to conducting advanced activities on 1923 Act petroleum tenures and a requirement for such an agreement to be formed prior to entry. The purpose of a conduct and compensation agreement is to allow parties to negotiate and agree on the tenure holder's liability to compensate the eligible claimant for the activities proposed to be carried out by the tenure holder and their effect on the business enterprise of the eligible claimant. It also allows for parties to negotiate property-specific conduct arrangements associated with the proposed activities to ensure the impact on the landholder is minimised.

An 'eligible claimant' is defined in a new section 79Q of the *Petroleum Act 1923* as being 'each owner or occupier' of private land or public land that is in the area of the petroleum tenure.

Conduct and compensation agreement requirement

Clause 461 inserts section 78Q which provides that entry to private land in the area of a 1923 Act petroleum tenure to carry out an advanced activity is not permitted unless each eligible claimant (i.e. each owner or occupier) is a party to a conduct and compensation agreement.

Exemptions from conduct and compensation agreement requirement

Clause 461 inserts section 78R which prescribes when a conduct and compensation agreement is not required in order for a person to enter private land within a 1923 Act petroleum tenure to conduct advanced activities. Subsections (c) (i) and (ii) relate to a deferral agreement and an application to the Land Court to determine compensation, respectively.

Requirements for deferral agreement

Clause 461 inserts section 78S which prescribes the form and content of a deferral agreement. A deferral agreement is an agreement between an eligible claimant and the holder of a 1923 Act petroleum tenure that a conduct and compensation agreement can be entered into after entry.

Amendment of s 78U (Change in ownership or occupancy)

Clause 462 amends section 78U of the *Petroleum Act 1923* to ensure continuing effectiveness of the existing entry notice where there is a change in ownership or occupancy.

Replacement of part 6K (General compensation provisions)

Clause 463 provides that part 6K of the *Petroleum Act 1923* is to be omitted and replaced by a new part 6K.

Part 6K Compensation and negotiated access

Division 1 Compensation other than for notifiable road uses

Subdivision 1 Preliminary

Application of div 1

Clause 463 inserts section 79P which confirms that division 1 does not apply for a public land authority in relation to a notifiable road use.

Subdivision 2 General Provisions

General liability to compensate

Clause 463 inserts section 79Q which imposes a liability on the holder of each 1923 Act petroleum tenure to compensate each owner or occupier of private and public land that is within the area of, or is access land for, the tenure. In this instance, each such owner or occupier is defined as an 'eligible claimant'. A 1923 Act petroleum tenure holder is liable to compensate an eligible claimant for compensatable effects suffered and consequential damages incurred as a result of authorised activities being carried out by the holder or a person authorised by the holder. The section also defines compensatable effect relating to the eligible claimants land. The authority holder's 'compensation liability' means the liability of the holder to the eligible claimant.

Subdivision 3 General provisions for conduct and compensation agreements

Conduct and Compensation Agreement

Clause 463 inserts section 79R which provides that an eligible claimant and a 1923 Act petroleum tenure holder may enter into an conduct and compensation agreement about: access to land to carry out an advanced activity; how activities authorised under the tenure must be carried out to the extent that they relate to the eligible claimant; and the tenure holder's liability to compensate the eligible claimant, including any future liability. A conduct and compensation agreement cannot be inconsistent with a mandatory provision of the land access code and to the extent that it is, it will be unenforceable. The agreement may relate to all or part of the liability or future liability.

Content of conduct and compensation agreement

Clause 463 inserts section 79S which prescribes what a conduct and compensation agreement must contain but does not limit what else such an agreement may include.

Subdivision 4 Negotiation process

The purpose of this subdivision is to primarily provide statutory provisions which prescribe the process for making a conduct and compensation agreement and the options available to parties should negotiations breakdown. The amendments will implement a graduated negotiation and dispute resolution process in relation to the forming of conduct and compensation agreements, with clearly articulated statutory timeframes. The section also contemplates the authority holder wishing to negotiate a deferral agreement with an eligible claimant.

Notice of intent to negotiate

Clause 463 inserts section 79T which provides the notice of intent to negotiate a conduct and compensation agreement or a deferral agreement will trigger the start of statutory timeframes. If the 1923 Act petroleum tenure holder wishes to negotiate a conduct and compensation agreement

or a deferral agreement with an eligible claimant, the holder may give the claimant a notice to this effect, which is described as a 'negotiation notice'. The section prescribes the statements that must be included in the notice and that it must be accompanied by a copy of the land access code.

There is also an obligation on the tenure holder to give a copy of the negotiation notice to the chief executive as soon as it is given to the eligible claimant.

Negotiations

Clause 463 inserts section 79U which provides for the giving of a negotiation notice places an obligation on the 1923 Act petroleum tenure holder and the eligible claimant to use all reasonable endeavours to negotiate a conduct and compensation agreement or a deferral agreement. The period of the negotiations must be at lease 20 business days from the giving of the negotiation notice but may be however long the parties agree to. In the event the parties reach agreement within the minimum negotiation period, the petroleum tenure holder cannot enter the land until that 20 business day period has elapsed, despite the terms of the agreement.

Cooling-off during minimum negotiation period

Clause 463 inserts section 79V which provides that in the event the parties enter into a conduct and compensation agreement within 20 business days after the giving of the negotiation notice, either party is permitted under this section to terminate the agreement by notice to the other party. However, the termination of the agreement must be within that same 20 business day period. The agreement is deemed never to have had any effect on the giving of the notice of termination. However, notwithstanding this, the time at which the negotiation notice was initially given does not change.

Parties may seek mediation

Clause 463 inserts section 79VA which provides that if a conduct and compensation agreement has not been reached between an eligible claimant and an 1923 Act petroleum tenure holder by the end of the minimum negotiation period either party may ask an authorised officer to call a mediation conference. The authorised officer is obligated to take all reasonable steps to finish the conference within 20 business days after it was called for.

Subdivision 5 Deciding compensation through Land Court

Deciding compensation through Land Court if mediation not called or after unsuccessful mediation

Clause 463 inserts section 79VB which applies if either the authorised officer has not finished the mediation within 20 business days after receiving the request to call a mediation or if one or both parties attend the mediation and no conduct or compensation agreement is reached within 20 business days after the mediation was called. In the former circumstance, either party can make application to the Land Court to decide either the compensation liability to an eligible claimant or future compensation liability for an authorised activity proposed to be carried out. In the later circumstance, only a party that attended the mediation can make such an application to the Land Court. The jurisdiction of the Land Court in deciding the liability or future liability is limited to the extent it is not subject to a conduct and compensation agreement.

Land Court review of compensation

Clause 463 inserts section 79VC, the Land Court may review the compensation liability or future compensation liability agreed to by the parties in a conduct and compensation agreement or decided by the Land Court, if there has been a material change in circumstances since the original agreement or decision. The Land Court may only review the original compensation to the extent it is affected by the material change in circumstances. If the Land Court does amend the compensation after carrying out the review, that compensation is taken to be the original compensation for the purposes of this Act.

Orders Land Court may make

Clause 463 inserts section 79VD which provides that the Land Court, in seeking to meet or enforce its decision on an application to review the compensation liability or future compensation liability, may make any order it considers appropriate. The Land Court may make orders regarding non-monetary and monetary compensation.

Subdivision 6 Miscellaneous provision

Compensation not affected by change in ownership or occupancy

Clause 463 inserts section 79VE which provides that any relevant conduct and compensation agreement or Land Court decision is not affected if there is a change in ownership or occupancy of the affected land or there is a change in the 1923 Act petroleum tenure holder.

Division 2 Compensation for notifiable road uses

Insertion of new pt 6R

Clause 464 provides that a new part 6R is to be inserted after part 6Q of the *Petroleum Act 1923*.

Part 6R Mediation with eligible claimants or owners and occupiers

Application of pt 6R

Clause 464 inserts section 103A which provides the circumstances in which this part will apply. If at the end of the 20 business day minimum negotiation period from the giving of a negotiation notice, the parties have not entered into a conduct and compensation agreement, then either party may ask on the authorised officer to call a mediation conference. Alternatively, if either the authorised officer, an owner/occupier of land within the tenure area or the tenure holder has concerns about how a party is conducting itself or its activities, a mediation may be called.

Mediation may be called

Clause 464 inserts section 103B which prescribes the process that must be followed to call a mediation conference for the range of circumstances

provided in section 103A. The authorised officer must by written notice, request the parties' attendance at a mediation, if it is regarding the negotiation of a conduct and compensation agreement. An authorised officer may call for a mediation if it is regarding the concerns of either the owner/occupier, authority holder or authorised officer. The notice requesting attendance at a mediation must state what the subject is and where the mediation is to be held.

Who may attend mediation

Clause 464 inserts section 103C which states that apart from the authorised officer, anyone given notice of a mediation may attend and that a party attending the mediation may only be represented by an agent if the authorised officer agrees. Representation by a lawyer at a mediation will not be permitted unless the parties agree and the authorised officer is satisfied that no party is disadvantaged.

What happens if a party does not attend

Clause 464 inserts section 103D which provides what happens if a party given written notice of the mediation does not attend. In the event that a party does not attend, mediation is taken to have been concluded for the purposes of the party who attended being able to refer the matter to the Land Court.

In this circumstance, the party who attended may make an application to the Land Court for an order that the non-attending party pay their reasonable costs of attending the mediation. In the event the Land Court is satisfied that the non-attending party had a reasonable excuse for not attending, the Court must not grant the order to pay the other parties cost of attending the mediation. However, if the Land Court does make such an order, it must decide the amount to be paid by the non-attending party.

Conduct of mediation

Clause 464 inserts section 103E which places an obligation on the authorised officer when conducting a mediation to endeavour to assist the attending parties to settle the matter the subject of the mediation in an expedient and inexpensive manner. The manner in which the mediation is to be conducted is a decision for the authorised officer.

Statements made at mediation

Clause 464 inserts section 103F which expressly provides that anything said by a person attending the mediation is inadmissible in a proceeding without the person's consent.

Mediated agreement

Clause 464 inserts section 103G which provides that if an agreement is negotiated at the mediation, it must be documented and signed by or for the parties at the conclusion of the mediation session. An agreement reached at the mediation may be a conduct and compensation agreement or a variation of an existing conduct and compensation agreement between the parties. An agreement reached at mediation has the same effect as any other compromise.

Insertion of new pt 13

Clause 465 of the Bill inserts a new part 13 into the *Petroleum Act 1923*.

'Part 13 Transitional provisions for *Geothermal Energy Act 2010*

Land access code prevails over conditions

Clause 465 inserts section 186 is that in the event of inconsistency between a condition of a 1923 Act petroleum tenure and a mandatory provision of the land access code, the later prevails to the extent of the inconsistency.

Existing compensation agreements other than for notifiable road uses

Clause 465 inserts section 187 which provides that if an agreement about compensation was in force immediately prior to the commencement of this section, it is deemed to be a conduct and compensation agreement under part 6K, division 1 of the *Petroleum Act 1923*.

Existing entry notices

Clause 465 inserts section 188 which provides that if an entry notice given to carry out authorised activities under a 1923 Act petroleum tenure was in force prior to the commencement of this section, the entry notice continues to be valid for the purposes of carrying out the authorised activity notwithstanding that a copy of the land access code did not accompany the notice.

Reference to geothermal tenure

Clause 465 inserts section 189 which states that reference in the *Petroleum Act 1923* to a geothermal tenure is taken to be a reference to a geothermal exploration permit until chapter 9, part 1 of the *Geothermal Energy Bill 2010* commences.

Division 4 Amendment of *Petroleum and Gas (Production and Safety) Act 2004*

Act amended

Clause 466 states that this division, part 1, division 6; part 3, division 8; and schedule 2, parts 1, 2 and 4 amend the *Petroleum and Gas (Production and Safety) Act 2004*.

Insertion of new ch 1, pt 3, div 3

Clause 467 inserts a new division 3 into chapter 1, part 3 of the *Petroleum and Gas (Production and Safety) Act 2004*.

Division 3 Land access code

Making of code

Clause 467 inserts 24A which provides that a single access code for all resource Acts may be made by regulation which is applicable to certain authorities. The section outlines what the code may cover, including best practice guidance for communication between parties and imposes

mandatory conduct conditions that apply to the physical conduct of the activities.

Main purpose of the code

Clause 467 inserts 24B which provides that the purpose of the code is to provide a simple, user friendly document that clearly spells out legislative requirements and best practice guidance for interactions between parties and articulates mandatory conduct conditions that apply to the physical conduct of the activities.

Omission of s 74 (Obligation to consult with particular owners and occupiers)

Clause 468 omits section 74 of the *Petroleum and Gas (Production and Safety) Act 2004*, consistent with the insertion of new land access provisions by this Bill.

Omission of s 153 (Obligation to consult with particular owners and occupiers)

Clause 469 omits section 153 of the *Petroleum and Gas (Production and Safety) Act 2004*, consistent with the insert of new land access provisions by this Bill.

Replacement of ch 5, pt 2, divs 1 to 2A

Clause 470 omits chapter 5, part 2, divisions 1 to 2A of the *Petroleum and Gas (Production and Safety) Act 2004* and inserts new division 1 and subdivision 1.

Division 1 Requirements for entry to private land in petroleum authority area

Subdivision 1 Entry notice requirement for preliminary activities and particular advanced activities

Entry notice requirement

Clause 470 inserts section 495 which prescribes the circumstances in which an entry notice is to be given to each owner and occupier before the petroleum authority holder is permitted to enter the land unless one of the exemptions in section 497 applies. The circumstances are if an authority tenure holder intends entering private land to carry out a preliminary activity; or to carry out an advanced activity when either the authority holder has reached a deferral agreement with the eligible claimant or the matter of compensation has been referred to the Land Court. A failure on the part of the tenure holder to give the entry notice may lead to the imposition of a maximum penalty of 500 penalty units.

The entry notice must be given to each owner and occupier of land within the petroleum authority area at least 10 business days before the intended entry (or a shorter period acceptable to the owner or occupier and endorsed on the notice).

There is an obligation on the petroleum authority holder to provide a copy of the entry notice to the chief executive as soon as it is given to each owner and occupier of land. However, whilst a failure to meet this obligation may result in the imposition of a maximum penalty of 10 penalty units, it does not affect the validity of the entry notice given to the owner or occupier of the land.

Required contents of entry notice

Clause 470 inserts section 496 which provides what an entry notice must state and what documentation must accompany the entry notice. The first entry notice must include a copy of the land access code, any codes of practice made under this Act applying to authorised activities and any relevant document associated with the environmental authority for the authorised activities.

The duration of the entry notice period must not be longer than six months unless the owner or occupier of the land agrees to a longer period. The purpose of subsection (4) is to confirm that an exploration tenement holder does not have to give entry notices with the same entry period to all owners or occupiers of the land subject to the tenure.

Provisions clearly state that the relevant environmental authority documentation means the relevant code where an authority is code compliant under the *Environmental Protection Act 1994* or the relevant environmental authority if the authority is a non-code compliant authority. Relevant codes can be accessed on the Department of Environment and Resource Management (DERM) website (http://www.derm.qld.gov.au/ecoaccess/codes_of_environmental_compliance/mining.html).

Exemptions from entry notice requirement

Clause 470 inserts section 497 which provides the exemptions from the requirement under section 495 of the *Petroleum and Gas (Production and Safety) Act 2004* to give an entry notice.

Provisions for waiver of entry notice

Clause 470 inserts section 498 which stipulates how a waiver of notice of entry agreement must be executed if it does not form part of a conduct and compensation agreement and what it must state. During the period of effect, the owner/occupier cannot withdraw the waiver. However at the end of the period, the waiver agreement ceases to have effect.

Giving entry notice by publication

Clause 470 inserts section 499 which provides that in the event the chief executive is satisfied that it is impracticable for a petroleum authority holder to give the entry notice to an individual owner or occupier and that by publishing the entry notice in a nominated way, the owner(s) or occupier(s) is reasonably likely to be informed about the proposed entry, then approval may be given to publish the entry notice(s). If approval is given by the chief executive, it must be published at least 20 business days before the intended entry.

Subdivision 2 Conduct and compensation agreement requirement for particular advanced activities

Advanced activities referred to in the subdivision 2 heading are activities which are likely to have a significant impact on the business operations of a private landholder. Examples of these type of activities include: drilling pads levelled and sumps dug; open trench; vegetation clear felling; exploration camps; concrete pads, sewage treatment facilities or fuel dumps; and conducting a seismic survey. A new definition of 'advanced activity' has been provided for in schedule 2, dictionary.

The intent of providing a defined threshold between the preliminary and advanced activity is to provide for a streamlined access process (entry notice) where the activity is likely to have a very minor impact on the agricultural operation of the landholder and a more stringent process of negotiation and formal agreement (conduct and compensation agreement) where the impact is likely to be more significant.

This subdivision introduces the concept of a conduct and compensation agreement to the *Petroleum and Gas (Production and Safety) Act 2004* in relation to conducting advanced activities on petroleum authorities and a requirement for such an agreement to be formed prior to entry. The purpose of a conduct and compensation agreement is to allow parties to negotiate and agree on the authority holder's liability to compensate the eligible claimant for the activities proposed to be carried out by the holder and their effect on the business enterprise of the eligible claimant. It also allows for parties to negotiate property-specific conduct arrangements associated with the proposed activities to ensure the impact on the landholder is minimised.

An 'eligible claimant' is defined in a new section 532, general liability to compensate as being each owner or occupier of private land or public land that is in the area of, or access land for, the petroleum authority.

Conduct and compensation agreement requirement

Clause 470 inserts section 500 which provides that entry to private land in the area of a petroleum authority to carry out an advanced activity is not permitted unless each eligible claimant (i.e. each owner or occupier) is a party to a conduct and compensation agreement.

Exemptions from conduct and compensation agreement requirement

Clause 470 inserts section 500A which prescribes when a conduct and compensation agreement is not required in order for a person to enter private land within a petroleum authority to conduct advanced activities. Subsections (e) (i) and (ii) relates to a deferral agreement and an application to the Land Court to determine compensation, respectively.

Requirements for deferral agreement

Clause 470 inserts section 500B which prescribes the form and content of a deferral agreement. A deferral agreement is an agreement between an eligible claimant and the holder of a petroleum authority that a conduct and compensation agreement can be entered into after entry.

Amendment of s 512 (Change in ownership or occupancy)

Clause 471 amends section 512 of the *Petroleum and Gas (Production and Safety) Act 2004* to ensure the continuing effectiveness of the existing entry notice when there is a change of ownership or occupancy.

Replacement of ch 5, pt 5 (General compensation provisions)

Clause 472 provides that chapter 5, part 5 of the *Petroleum and Gas (Production and Safety) Act 2004* (general compensation provisions) is to be omitted and replaced by a new chapter 5, part 5.

Part 5 Compensation and negotiated access

Division 1 Compensation other than for notifiable road uses

Subdivision 1 Preliminary

Application of div 1

Clause 472 inserts section 531 which confirms that division 1 does not apply for a public land authority in relation to a notifiable road use.

Subdivision 2 General Provisions

General liability to compensate

Clause 472 inserts section 532 which imposes a liability on the holder of a petroleum authority to compensate each owner or occupier of private and public land that is within the area of, or is access land for, the tenure. In this instance, each such owner or occupier is defined as an 'eligible claimant'. A petroleum authority holder is liable to compensate an eligible claimant for compensatable effects suffered and consequential damages incurred as a result of authorised activities being carried out. The section also defines compensatable effect relating to the eligible claimants land. The authority holder's 'compensation liability' means the liability of the holder to the eligible claimant.

Subdivision 3 General provisions for conduct and compensation agreements

Conduct and Compensation Agreement

Clause 472 inserts section 533 which provides that an eligible claimant and a petroleum authority holder may enter into an conduct and compensation

agreement about: access to land to carry out an advanced activity; how activities authorised under the tenure must be carried out to the extent that they relate to the eligible claimant; and the tenure holder's liability to compensate the eligible claimant, including any future liability. A conduct and compensation agreement must not be inconsistent with a mandatory provision of the land access code and to the extent that it is, it will be unenforceable. The agreement may relate to all or part of the liability or future liability.

Content of conduct and compensation agreement

Clause 472 inserts section 534 which prescribes what a conduct and compensation agreement must contain but does not limit what else such an agreement may include.

Subdivision 4 Negotiation process

The purpose of this new subdivision is primarily to provide statutory provisions which prescribe the process for making a conduct and compensation agreement and the options available to parties should negotiations break down. The amendments will implement a graduated negotiation and dispute resolution process in relation to the forming of conduct and compensation agreements, with clearly articulated statutory timeframes. This subdivision also contemplates the authority holder wishing to negotiate a deferral agreement with an eligible claimant.

Notice of intent to negotiate

Clause 472 inserts section 535 which provides that the notice of intent to negotiate a conduct and compensation agreement or a deferral agreement will trigger the start of statutory timeframes.

If the petroleum authority holder wishes to negotiate a conduct and compensation agreement with an eligible claimant, the holder may give the claimant a notice to this effect, which is described as a 'negotiation notice'. The section prescribes the statements that must be included in the notice and that it must be accompanied by a copy of the land access code.

There is also an obligation on the authority holder to give a copy of the negotiation notice to the chief executive as soon as it is given to the eligible claimant.

Negotiations

Clause 472 inserts section 536 which provides for the giving of a negotiation notice places an obligation on the petroleum authority holder and the eligible claimant to use all reasonable endeavours to negotiate a conduct and compensation agreement or a deferral agreement. The negotiation period must be at least 20 business days from the giving of the negotiation notice but may be as long as the parties agree to. In the event the parties reach agreement within the minimum negotiation period, the petroleum authority holder cannot enter the land until that 20 business day period has elapsed, despite the terms of the agreement.

Cooling-off during minimum negotiation period

Clause 472 inserts section 537 which provides that in the event the parties enter into a conduct and compensation agreement or a deferral agreement within 20 business days after the giving of the negotiation notice, either party is permitted under this section to terminate the agreement by notice to the other party. However, the termination of the agreement must be within that same 20 business day timeframe. The agreement is deemed never to have had any effect on the giving of the notice of termination. However, notwithstanding this, the time at which the negotiation notice was initially given does not change.

Parties may seek mediation

Clause 472 inserts section 537A which provides that if a conduct and compensation agreement has not been reached between an eligible claimant and a petroleum authority holder by the end of the minimum negotiation period either party may ask an authorised officer to call a mediation conference. The authorised officer is obligated to take all reasonable steps to finish the mediation within 20 business days after it was called for.

Subdivision 5 Deciding compensation through Land Court

Deciding compensation through Land Court if mediation not called or after unsuccessful mediation

Clause 472 inserts section 537B which applies if either the authorised officer has not finished the mediation within 20 business days after receiving the request to call a mediation or if one or both parties attend the mediation and no conduct or compensation agreement is reached within 20 business days after mediation was called. In the former circumstance, either party can make application to the Land Court to decide either the compensation liability to an eligible claimant or future compensation liability for an authorised activity proposed to be carried out. In the later circumstance, only a party that attended the mediation can make such an application to the Land Court. The jurisdiction of the Land Court in deciding the liability or future liability is limited to the extent it is not subject to a conduct and compensation agreement..

Land Court review of compensation

Clause 472 inserts section 537C, the Land Court may review the compensation liability or future compensation liability agreed to by the parties in a conduct and compensation agreement or decided by the Land Court, if there has been a material change in circumstances since the original agreement or decision. The Land Court may only review the original compensation to the extent it is affected by the material change in circumstances. If the Land Court does amend the compensation after carrying out the review, that compensation is taken to be the original compensation for the purposes of this Act.

Orders Land Court may make

Clause 472 inserts section 537D which provides that the Land Court, in seeking to meet or enforce its decision on an application to review the compensation liability or future compensation liability, may make any order it considers appropriate. The Land Court may make orders regarding non-monetary and monetary compensation.

Subdivision 6 Miscellaneous provision

Compensation not affected by change in ownership or occupancy

Clause 472 inserts section 537E which provides that any relevant conduct and compensation agreement or Land Court decision is not affected if there is a change in ownership or occupancy of the affected land or there is a change in the petroleum authority holder.

Division 2 Compensation for notifiable road uses

Replacement of ss 555 and 556

Clause 473 replaces sections 555 and 556 of the *Petroleum and Gas (Production and Safety) Act 2004* with a new section 555 requiring compliance with the mandatory provisions of the land access code.

Compliance with land access code

Clause 473 inserts section 555 which provides that a petroleum authority holder must comply with the mandatory provisions of the land access code to the extent it is applicable to the holder and must also ensure that any person carrying out authorised activities complies with the mandatory provisions of the land access code.

Replacement of ch 10, hdg (Investigations and enforcement)

Clause 474 replaces the chapter 10 heading and inserts a new part 1AA.

Chapter 10 Mediation, investigations and enforcement

Part 1AA Mediation with eligible claimants or owners and occupiers

Application of pt 1AA

Clause 474 inserts section 734B which provides the circumstances in which this part will apply. If at the end of the 20 business day minimum negotiation period, the parties have not entered into a conduct and compensation agreement, then either party may ask the authorised officer to hold a mediation conference. Alternatively, if either the authorised officer, owner/occupier of land or petroleum authority holder has concerns about how a party is conducting itself or its activities, a mediation may be requested.

Mediation may be called

Clause 474 inserts section 734C which prescribes the process that must be followed to call a mediation conference for the range of circumstances provided in section 734B. The authorised officer must by written notice, request the parties' attendance at a mediation, if it is regarding the negotiation of a conduct and compensation agreement. An authorised officer may call for a mediation if it is regarding the concerns of the owner/occupier, authority holder or authorised officer. The notice requesting attendance at a mediation must state what the subject is and where the mediation is to be held.

Who may attend mediation

Clause 474 inserts section 734D which states that apart from the authorised officer, anyone given notice of a mediation may attend and that parties attending the mediation may only be represented by an agent if the authorised officer agrees. Representation by a lawyer at a mediation will not be permitted unless the parties agree and the authorised officer is satisfied that no party is disadvantaged.

What happens if a party does not attend

Clause 474 inserts section 734E which provides what may happen if a party given written notice of the mediation does not attend. In the event that a party does not attend, mediation is taken to have been concluded for the purposes of the party who attended being able to refer the matter to the Land Court.

In this circumstance, the attending party may make an application to the Land Court for an order that the non-attending party pay their reasonable costs of attending the mediation. In the event the Land Court is satisfied that the non-attending party had a reasonable excuse for not attending, the Court must not grant the order to pay the other party's cost of attending the mediation. However, if the Land Court does make such an order, it must decide the amount to be paid by the non-attending party.

Conduct of mediation

Clause 474 inserts section 734F which places an obligation on the authorised officer when conducting a mediation to endeavour to assist the attending parties to settle the matter the subject of the mediation in an expedient and inexpensive manner. The manner in which the mediation is to be conducted is a decision for the authorised officer.

Statements made at mediation

Clause 474 inserts section 734G which expressly provides that in a proceeding, anything said by a person attending the mediation is inadmissible in a proceeding without the person's consent.

Mediated agreement

Clause 474 inserts section 735H which provides that if an agreement is negotiated at a mediation, it must be documented and signed by or for the parties at the conclusion of the mediation session. An agreement reached at the mediation may be a conduct and compensation agreement or a variation of an existing conduct and compensation agreement between the parties. An agreement reached at mediation has the same effect as any other compromise.

Amendment of s 780 (Power to give compliance direction)

Clause 475 of the Bill amends sections 780(1)(a) and (b) of the *Petroleum and Gas (Production and Safety) Act 2004* by replacing those subsections with new subsections (1) (a) and (b). The amendments provide that an inspector or authorised officer may give a person a written compliance direction if they reasonably believe that the person has, or is, relevantly contravening a mandatory provision of the land access code, the *Petroleum and Gas (Production and Safety) Act 2004* or the *Greenhouse Gas Storage Act 2009*, which under the *Petroleum and Gas (Production and Safety) Act 2004* is one of a number of enforced instruments.

Amendment of s 781 (Requirements for giving compliance direction)

Clause 476 amends section 781 of the *Petroleum and Gas (Production and Safety) Act 2004* by inserting new subsections (3) and (4) which provide that it is lawful for the authorised officer to give a compliance direction verbally if it is not practical to give same in writing and the authorised officer warns the person that failure to comply with the direction is an offence under the *Petroleum and Gas (Production and Safety) Act 2004*. In the event the authorised officer gives a verbal compliance direction, the same direction must also be provided to the person in writing as soon practicable after giving the verbal direction.

Insertion of new ch 15, pt 10, div 2

Clause 477 inserts a new chapter 15, part 10, division 2 into the *Petroleum and Gas (Production and Safety) Act 2004*.

Division 2 Provisions about land access and compensation

Land access code prevails over conditions

Clause 477 inserts section 948 which provides that in the event of inconsistency between a condition of a petroleum authority and a mandatory provision of the land access code, the later prevails to the extent of the inconsistency.

Existing compensation agreements other than for notifiable road uses

Clause 477 inserts section 949 which provides that if an agreement about compensation was in force immediately prior to the commencement of this section, it is deemed to be a conduct and compensation agreement under chapter 5, part 3 of the *Petroleum and Gas (Production and Safety) Act 2004*.

Existing entry notices

Clause 477 inserts section 950 which provides that if an entry notice given to carry out authorised activities under a petroleum authority was in force prior to the commencement of this section, the entry notice continues to be valid for the purposes of carrying out the authorised activity notwithstanding that a copy of the land access code did not accompany the notice.

Reference to geothermal tenure

Clause 477 inserts section 951 which states that reference in the *Petroleum and Gas (Production and Safety) Act 2004* to a geothermal tenure is taken to be a reference to a geothermal exploration permit until chapter 9, part 1 of the *Geothermal Energy Bill 2010* commences.

Amendment of sch 2 (Dictionary)

Clause 478 lists amendments to numbering and insertion of new definitions.

"Advanced activity" and *"preliminary activity"* activity definitions are provided. This provides clear guidance (including examples) of what is considered to be a preliminary and advanced activity for the purposes of a petroleum authority.

"*Compensation liability,* "c*ompliance direction"*, "*eligible claimant*" are defined consistent with provisions contained in the Bill.

"*Land access code"* is defined consistent with provisions in the Bill.

"*Mandatory provision"* of the land access code is defined as meaning a provision of that Code that the code requires compliance with.

Part 3 Other amendments

Division 1 Amendment of *Aboriginal Land Act 1991*

Act amended

Clause 479 provides that this division and schedule 2, part 4 amends the *Aboriginal Land Act 1991*.

Replacement of s 42 (Reservations of minerals and petroleum)

Clause 480 provides that a deed of grant of transferred land must contain reservations to the State taken to be contained in the grant under the *Geothermal Energy Bill 2010*, section 29; *Greenhouse Gas Storage Act 2009*, section 28; *Mineral Resources Act 1989,* section 8; *Petroleum Act 1923*, section 10 and the *Petroleum and Gas Production and Safety) Act 2004*, section 27.

Replacement of s 80 (Reservations of minerals and petroleum)

Clause 481 provides that a deed of grant of granted land and an Aboriginal lease must contain the reservations to the State taken to be contained in the grant under the *Geothermal Energy Bill 2010*, section 29; *Greenhouse Gas Storage Act 2009*, section 28; *Mineral Resources Act 1989,* section 8; *Petroleum Act 1923*, section 10 and the *Petroleum and Gas (Production and Safety) Act 2004*, section 27.

Division 2 Amendment of *Environmental Protection Act 1994*

Act Amended

Clause 482 provides that this division and schedule 2, part 4 amend the *Environmental Protection Act 1994.*

Amendment of s 309A (What this chapter is about)

Clause 483 amends section 309A, which describes which environmentally relevant activities are regulated by chapter 5A of the *Environmental Protection ct 1994*. This clause amends section 309A to provide that geothermal activities are an environmentally relevant activity to which chapter 5A relates, except for geothermal activities that relate to: exploration for heat pump production or evaluating the feasibility of heat pump production; heat pump production; or geothermal production that is not large-scale. This is consistent with the geothermal activities that will be regulated by the Bill.

Amendment of s 309D (What is a relevant resource authority)

Clause 484 amends section 309D, to state that a 'relevant resource authority' for a chapter 5A activity will also include a geothermal tenure under the Bill.

Amendment of s 309I (Restriction)

Clause 485 inserts a note for section 309I to remove any doubt that a person can not apply for an environmental authority (chapter 5A activities) for geothermal exploration activities, for exempt heat pump production or to evaluating the feasibility of heat pump production; or for geothermal production that is not large-scale.

Insertion of new ch 13, pt 16

Clause 486 inserts a new chapter titled 'Part 16 Transitional Provisions for *Geothermal Energy Bill 2010* and provides for the operation of Ergon Energy's Birdsville geothermal facility.

The clause provides transitional provisions which defer the offence of operating a geothermal activity without the relevant environmental authority. This deferral applies to geothermal activities authorised under the repealed *Geothermal Exploration Act 2004.*

These provisions are necessary to transition geothermal permit holders under the repealed Act to the new Bill which requires all geothermal tenure holders to have the relevant environmental authority before the geothermal tenure can be granted.

Part 16 Transitional provisions for *Geothermal Energy Act 2010*

Deferral of requirement for environmental authority for existing authorised geothermal activities

Clause 486 inserts section 664 which provides for the deferral grants a 12 month grace period from the offence under section 426A of the *Environmental Protection Act 1994* for operating without an environmental authority. The offence provision under section 426A will not apply to the person authorised to carry out the geothermal activity under the repealed *Geothermal Exploration Act 2004,* for 12 months from the date of commencement or, if they have applied within the 12 month period for an environmental authority, until the application has been decided. This provision means that penalties for not holding an appropriate relevant environmental authority will not apply during the 12 month grace period.

Deferral of requirement for environmental authority for Birdsville geothermal lease

Clause 486 inserts section 665 which provides that persons carrying out geothermal activities on the lease do not require an environmental authority for 12 months and until an environmental authority applied for during that period is granted.

On assent of this Bill Ergon Energy will be granted a geothermal lease under section 382(1) so as to continue to carry out production activities at Birdsville.

Amendment of sch 4 (Dictionary)

Clause 487 amends the Dictionary in schedule 4 of the *Environmental Protection Act 1994* to insert definitions of the *Geothermal Act*, *geothermal activities* and to amend the definition of *greenhouse gas storage activities*.

Division 3 Amendment of *Greenhouse Gas Storage Act 2009*

Act Amended

Clause 488 provides that this division, part 1; division 3, part 2; division 1 and schedule 2, parts 1, 2 and 4 amend the *Greenhouse Gas Storage Act 2009*.

Amendment of s 183 (What is an *overlapping authority*)

Clause 489 provides that an overlapping authority, for a GHG authority, includes any geothermal lease all or part of the area of which is in the GHG authority's area. The geothermal lease is in addition to the existing overlapping authorities, i.e. a mining lease, a petroleum lease and an exploration authority (non GHG).

Amendment of s 187 (Other provisions about and effect of GHG coordination arrangement)

Clause 490 expands the provisions relating to GHG coordination arrangements so that they may be included in, or form part of, a geothermal coordination agreement under the Bill.

Amendment of s 197 (Content requirements for GHG statement)

Clause 491 amends section 197 of the *Greenhouse Gas Storage Act 2009* so that a safety management plan is no longer required to be submitted as part of a GHG statement. However, this does not preclude a safety management plan, as detailed under chapter 9 of *the Petroleum and Gas (Production and Safety) Act 2004*, being required when operating plant is to be operated under the GHG lease, if and when the GHG lease is granted.

Replacement of ch 4, pt 4 (Priority to particular mining or petroleum lease applications)

Clause 492 replaces chapter 4, part 4 with a new part titled 'priority to particular lease applications'.

Part 4 Priority to particular lease applications

Earlier geothermal, mining or petroleum lease application

Clause 492 inserts section 214 which provides that where a geothermal, mining or petroleum lease application has been made prior to the application for the GHG lease (in an overlapping situation) the GHG lease application cannot be decided before the geothermal, mining or petroleum application has been decided.

Proposed geothermal, mining or petroleum lease for which EIS approval given

Clause 492 inserts section 215 which provides for priority to be given to those proponents who have been granted approval for the preparation of a voluntary Environmental Impact Statement under the *Environmental Protection Act 1994* for a project that is, or includes, a proposed geothermal lease, mining lease or petroleum lease. This is because the Environmental Impact Statement may be publicly available from that point, and so the trigger point for priority has been advanced ahead of the point of application for the lease.

Proposed geothermal, mining or petroleum lease declared a significant project

Clause 492 inserts section 216 which provides for priority to be given to proponents of a project that is declared a 'significant project' under the *State Development and Public Works Organisation Act 1971* where the project is, or includes, a proposed geothermal lease, mining lease or petroleum lease. This is because, where an Environmental Impact Statement is required for a 'significant project', the Environmental Impact Statement process may be publicly available from that point, and so the trigger point for priority has been advanced ahead of the point of application for the lease.

The priority remains for two years after the grant of the approval or, if an appropriate lease application is made within that time, until the application is decided.

Replacement of s 219 (Overlapping mining or petroleum lease)

Clause 493 replaces section 219 to provide that when land in the area of a GHG authority, other then a GHG lease, is also land for a geothermal lease, mining lease or petroleum lease the authorised activities for the GHG authority may be carried out only if the lease holder has not objected to the carrying out of the activities; or to any required safety management plan; or, if the lease holder does object, the Minister has deemed the activities may be carried out.

Section 219 does not apply if the same person holds the GHG authority and the relevant lease.

Amendment of s 228 (Consistency with overlapping authority's development plan and with any relevant coordination arrangement)

Clause 494 amends section 228 to provide that the existing requirement for a proposed development plan to be consistent with any relevant coordination arrangements should also apply to geothermal coordination arrangements.

Amendment of s 257 (Power to require information or reports about authorised activities to be kept or given)

Clause 495 amends section 257(1)(b) to clarify that the GHG authority holder is required to give a notice with relevant information to the chief executive in the approved form.

Clause 495 omitted section 257(3) and inserts a new provision to clarify that the chief executive may issue a notice to the authority holder which may state a format required for giving information and a degree of precision required for the giving of the information.

Amendment of s 263 (Former petroleum wells assumed by GHG tenure holder)

Clause 496 expands the existing general well provisions in part 5 to provide that the GHG applies for a well under the *Petroleum Act 1923* for which the responsibility has been assumed by the GHG tenure holder, as if the well was a GHG well.

Amendment of s 265 (Application of div 2)

Clause 497 expands the existing general well provisions in part 5, division 2 about decommissioning of wells to include a well under the *Petroleum Act 1923* for which the responsibility has been assumed by a GHG tenure holder.

Amendment of s 316 (Application of pt 9)

Clause 498 amends section 316 to expand the provisions of part 9 of the *Greenhouse Gas Storage Act 2009* `to apply to a geothermal tenure which includes a geothermal permit and a geothermal lease. This part as amended applies to land outside the area of a GHG authority (called 'the first authority'), that is within the area of another GHG authority, petroleum tenure or authority, a mining tenement or a geothermal tenure.

Amendment of s 317 (Access to land in area of mining lease or petroleum lease)

Clause 499 amends section 317 of the *Greenhouse Gas Storage Act 2009* to provide more generally that the provisions apply to 'a lease' which includes a mining, petroleum or geothermal lease.

Amendment of s 318 (Access to land in area of another type of authority)

Clause 500 amends section 318 to provide more generally that the provisions apply when the second authority is not a lease i.e. that is not a petroleum, mining or geothermal lease.

Amendment of s 386 (Restriction on GHG storage activities)

Clause 501 amends clause 386 to provide that a defence to a proceeding for an offence about carrying out a GHG storage activity can be made if the GHG injection was for the purpose of production testing or geothermal production authorised under the *Geothermal Energy Bill 2010*. These amendments in relation to geothermal activities recognise that current research is underway in Australia concerning the use of carbon dioxide as a circulating fluid for geothermal production.

Amendment of s 413 (Additional information may be required about application)

Clause 502 omits section 413 and inserts a provision to provide that a statutory declaration may be provided by a qualified independent person or if the applicant is a corporation that it is made by the executive officer.

Amendment of sch 2 (Dictionary))

Clause 503 amends the Dictionary to include references to the Bill and additional terms relevant to that Act.

Division 4 Amendment of *Land Title Act 1994*

Act Amended

Clause 504 provides that this division amends the *Land Title Act 1994*.

Amendment of s 185 (Exceptions to s 184)

Clause 505 provides that the exceptions to section 184 of the *Land Title Act 1994* are extended to include the interest of a geothermal tenure holder under the Bill under an access agreement under that Act that was made before the registered proprietor became the registered proprietor of the lot and under that Act, binds the registered proprietor.

Division 5 Amendment of *Mineral Resources Act 1989*

Act amended

Clause 506 provides that this division, part 1; division 4, part 2; division 2 and schedule 2, part 2 amend the *Mineral Resources Act 1989*.

Replacement of s 3B (Relationship with *Greenhouse Gas Storage Act 2009)*

Clause 507 replaces the current section 3B of the *Mineral Resources Act 1989* with a new section that clarifies the relationships between the *Mineral*

Resources Act 1989, the *Geothermal Energy Bill 2010* and the *Greenhouse Gas Storage Act 2009.*

Amendment of s 51 (Land for which mining claim not to be granted)

Clause 508 omits section 51(1)(f) which currently provides that a mining claim shall not be granted over land covered by a geothermal exploration permit.

Amendment of s 248 (Applicant must obtain consent or views of existing authority holders)

Clause 509 amends section 248(1) so that this section applies when a mining lease application has been lodged over land that includes the area of an existing exploration permit, mineral development licence or mining lease held by someone else.

Section 248(3) is amended to clarify that if a lease application is for different minerals has been applied for over an existing authority holder, then the applicant must obtain written views.

Provisions relating to mining lease applications over geothermal exploration permits are removed from section 248 as these are now contained in part 7AAC.

Amendment of s249 (Later applicant must obtain consent or views of earlier applicant if same land affected)

Clause 510 amends section 249(1)(a) to remove the reference to 'geothermal exploration permit'

Clause 510 amends section 249(3) to clarify that this section applies when a later application has been lodged over land covered by the earlier application and for different minerals and to remove references to geothermal exploration permits.

Clause 510 amends section 249(6) to clarify that the earlier application must be decided before the mining registrar considers the later application unless the earlier applicant's consent has been lodged with the mining registrar.

The clause also omits section 249(7) which currently clarifies what is meant by an application for a geothermal exploration permit.

Provisions relating to a later mining lease application that contains land within the area of an earlier geothermal permit application are now provided in part 7AAC.

Replacement of pt 7AAC(Provisions for GHG authorities)

Clause 511 replaces part 7AAC with new provisions.

Part 7AAC Provisions for geothermal tenures and GHG authorities

Division 1 Preliminary

Relationship with pts 3 to 7AAB

Clause 511 inserts section 318ELAM which provides how the new part 7AAC will function with the existing parts 3 through to 7AAB. Restrictions and requirements remain but if a provision in this part conflicts with a provision of any of parts 3 to 7AAB, this part prevails to the extent of the inconsistency.

What is an *overlapping authority (geothermal or GHG)*

Clause 511 inserts section 318ELAN which provides that an overlapping geothermal tenure or GHG authority is any geothermal tenure or GHG authority all or part of which is in the area of a mining tenement or proposed mining tenement.

General provision about mining tenements for land subject to geothermal or GHG authority

Clause 511 inserts section 318ELAO which describes the general provision about mining tenements for land subject to a geothermal tenure or GHG authority. Unless stated otherwise under the *Geothermal Energy Bill 2010* or *Greenhouse Gas Storage Act 2009* the geothermal tenure or GHG authority does not limit or otherwise affect the grant of a mining tenement

over land in the area of a geothermal tenure or GHG authority or the carrying out of authorised activities for a mining tenement.

Division 2 Obtaining mining lease if overlapping tenure

Subdivision 1 Preliminary

Application of div 2

Clause 511 inserts section 318ELAP which provides that this division will apply when a person wishes to make a mining lease application where it will overlap with a geothermal tenure or GHG authority (the overlapping tenure).

Subdivision 2 Requirements for application

Requirements for making application

Clause 511 inserts section 318ELAQ which specifies the additional requirements for a mining lease application over a geothermal tenure or GHG authority. These additional requirements include information statements and other information that addresses the specified assessment criteria. If the Minister is required to make a resource management decision this information will form part of the criteria for making the decision.

Content requirements for information statement

Clause 511 inserts section 318ELAR which specifies the content requirement of the information statement. The statement should assess how the proposed mining activities may impact on future geothermal or GHG activities and whether or not it is technically and commercially feasible to carry out coordinated activities.

Subdivision 3 Consultation provisions

Applicant's information obligation

Clause 511 inserts section 318ELAS which provides for the mining lease applicant to provide a copy of the mining lease application to the geothermal tenure or GHG authority holder within 10 business days of making the application. If this requirement is not complied with properly the Minister may refuse the mining lease application.

Submissions by overlapping tenure holder

Clause 511 inserts section 318ELAT which provides that the overlapping tenure holder may make submissions in respect of the mining lease application within 4 months of receiving a copy of the application. The submissions may include that the overlapping tenure holder does not object to the granting of the lease; or the holder does not wish priority for any future use and may include a proposal for the authorised activities for which overlapping priority is sought. This submission can also include information about the authorised activities carried out under the overlapping tenure and/or information relevant to the assessment criteria. The overlapping tenure holder must give a copy of their submission to the mining lease applicant.

Subdivision 4 Resource management decision if overlapping permit

Application of sdiv 4

Clause 511 inserts section 318ELAU which provides that this subdivision will apply if the overlapping tenure referred to is a geothermal or GHG exploration permit (the overlapping permit) and:

- the holder of the overlapping permit has made submissions within the 4 months timeframe; and
- has stated the overlapping permit holder wishes to be granted priority in the overlapping area.

If priority has already been given for any of the overlapping land, this subdivision does not apply.

Operation of sdiv 4

Clause 511 inserts section 318ELAV which provides for the Minister to make a resource management decision about whether to:

a. recommend grant of the mining lease; or

b. give all or part of any overlapping authority priority; or

c. not recommend grant of the mining lease or give priority for any overlapping authority.

Criteria for decision

Clause 511 inserts section 318ELAW which sets out the criteria the Minister must consider in making the resource management decision. The criteria include the information statement, the assessment criteria, the holder submissions and the public interest.

Restrictions on giving overlapping authority priority

Clause 511 inserts section 318ELAX which provides restrictions on giving priority to the overlapping authority holder. Overlapping priority may only be given if the Minister considers it is unlikely a geothermal or GHG coordination arrangement will be reached, or such an arrangement is not technically or commercially feasible, and the public interest would be best served by not granting a mining lease to the applicant first.

Subdivision 5 Process if resource management decision is to give overlapping authority priority

Application of sdiv 5

Clause 511 inserts section 318ELAY which details when this subdivision applies, which is if the decision was to give priority to the overlapping permit holder.

Notice to applicant and overlapping permit holder

Clause 511 inserts section 318ELAZ which provides for the applicant and the overlapping permit holder to be given notice of the resource

management decision, and that the overlapping permit holder be given six months from the time of the notice to apply for a geothermal or GHG lease over that area for which priority was given, within the mining lease application area.

Overlapping lease application for all of the land

Clause 511 inserts section 318ELBA which provides for when the geothermal or GHG lease applicant, who has been given priority, lodges a geothermal or GHG lease application for all of the land within the area of the mining lease application. The mining lease application cannot be advanced until the overlapping lease application has been decided. If a decision is made to grant the geothermal or GHG lease, the mining lease application lapses.

Overlapping lease application for part of the land

Clause 511 inserts section 318ELBB which provides that when the geothermal or GHG lease applicant, who has been given priority, lodges a geothermal or GHG lease application for part of the land within the area of the mining lease application, the mining lease applicant may amend their application to include all or part of the remaining land. If the mining lease applicant decides not to amend their application, then their application cannot be advanced until the geothermal or GHG lease application is decided. If a decision is made to grant the geothermal or GHG lease over only part of the land, the mining lease holder may still amend their application to include all or part of the remaining area.

No overlapping lease application

Clause 511 inserts section 318ELBC which provides that the mining lease application may be decided if the overlapping permit holder does not apply for an overlapping lease for any of the land within the application period.

Subdivision 6 Resource management decision not to recommend grant and not to give priority

Lapsing of application

Clause 511 inserts section 318ELBD which provides that a mining lease application is taken to have lapsed if a resource management decision was required and the decision was not to recommend the granting of the mining lease to or to give priority to the geothermal or GHG lease applicant. This clause is to remove doubt in that situation.

Subdivision 7 Deciding application

Application of sdiv 7

Clause 511 inserts section 318ELBE which sets out the circumstances when this subdivision applies. This subdivision applies only if:

- the overlapping tenure holder has not made a submission within the relevant period; or
- the overlapping tenure holder has lodged a submission stating that the holder does not wish any overlapping authority priority; or
- a resource management decision is required as outlined under subdivision 4 and the decision was not to give overlapping authority priority; or
- a resource management decision is required and the decision was to give the overlapping authority priority for all or part of the land and, after subdivision 5 has been complied with, the Minister decides to recommend granting of a mining lease.

Application may be refused if no reasonable prospects of future geothermal or GHG coordination arrangement

Clause 511 inserts section 318ELBF which ensures that applications do not remain unresolved for excessive periods. If there are no reasonable prospects for a geothermal or GHG coordination arrangement to be made, as indicated by a written notice or failure to lodge the relevant arrangement,

the Minister may refuse the application without making any recommendation to the Governor in Council.

Additional criteria for deciding provisions of mining lease

Clause 511 inserts section 318ELBG which provides that prescribed criteria must be considered when recommending the term and conditions of the mining lease. The clause goes on to prescribe the criteria which must be considered.

Publication of outcome of application

Clause 511 inserts section 318ELBH which ensures that a notice about the outcome of the mining lease application including any resource management decision and the reasons for that decision are published, aside from any commercial in confidence information. The intention is to provide greater transparency of decision making.

Division 3 Priority to particular geothermal or GHG lease applications

Earlier geothermal or GHG lease application

Clause 511 inserts section 318ELBI which provides that if application is made for a geothermal or GHG lease and a later mining lease application is made in respect of the same land then the mining lease can not be decided until the geothermal or GHG lease has been decided.

Proposed geothermal or GHG lease for which EIS approval given

Clause 511 inserts section 318ELBJ which provides for priority to be given to those proponents who have been granted approval for the preparation of a voluntary Environmental Impact Statement under the *Environmental Protection Act 1994* for a project that is, or includes, a proposed geothermal or GHG lease. This is because the Environmental Impact Statement process may be publicly available from that point and so the trigger point for priority has been advanced ahead of the point of application for the lease.

Proposed GHG lease declared a significant project

Clause 511 inserts section 318ELBK which provides for priority to be given to those proponents of a project that is declared a "significant project" under the *State Development and Public Works Organisation Act 1971*. The mining lease application must not be decided until one year after the declaration or, if an application for the proposed geothermal or GHG lease is made within that time, when it is decided.

Division 4 Mining lease applications in response to invitation under Geothermal Act or GHG storage Act

Application of div 4

Clause 511 inserts section 318ELBL which provides for the application of this division if a mining lease application is made in response to an invitation given because of a resource management decision under the *Geothermal Energy Bill 2010* or the *Greenhouse Gas Storage Act 2009*, within six months of the invitation.

Minister may refuse application

Clause 511 inserts section 318ELBM which ensures that the Minister can refuse the application for a mining lease if it is considered that an application invited as a result of a resource management decision is not being progressed in a timely manner. This is necessary to ensure the integrity of the original resource management decision.

Division 5 Additional provisions for particular mining tenements

Subdivision 1 Restrictions on authorised activities for particular mining tenements

Prospecting permit overlapping with geothermal or GHG lease

Clause 511 inserts section 318ELBN which provides that if land is in the area of a prospecting permit and a geothermal lease or GHG lease, the authorised activities for the prospecting permit may only be carried out if the geothermal lease or GHG lease holder has not objected to the carrying out of the activity or if an objection was made, the Minister has decided the authorised activities may be carried out.

Other overlapping authorities

Clause 511 inserts section 318ELBO which applies if land is in the area of a mining tenement and a geothermal tenure or GHG authority and section 318ELBN does not apply. Authorised activities for the mining tenement cannot be carried out on the land if carrying it out adversely affects the geothermal tenure or GHG authority activities and these activities have already started.

Resolving disputes

Clause 511 inserts section 318ELBP which applies if the holder of a geothermal lease or GHG lease has objected under section 318ELBN to the carrying out of authorised activities by a prospecting permit holder. This clause also applies if there is a dispute between the holders about whether an authorised activity for a mining tenement can be carried out under section 318ELBO. Either party may apply to the Minister to decide if the authorised activity may be carried out. Before making the decision, the Minister must allow the parties the opportunity to make submissions about the request. The Minister's decision binds the parties and conditions may be attached to the decision.

Subdivision 2 Provisions about conditions

Notice by particular mining tenement holders to particular geothermal tenure or GHG authority holders or applicants

Clause 511 inserts section 318ELBQ which applies if a mining tenement, including a mining claim, mineral development licence or exploration permit is granted in the area of, or in a proposed area under an application for, a geothermal tenure or GHG authority other than a geothermal lease or GHG lease. The holder of the mining tenement, within 20 business days of grant, must give the holder of, or applicant for, the geothermal tenure or GHG authority, a notice giving details of the mining tenement. This is a normal business consideration and has practical application if, for example, infrastructure or costs could be shared.

Restriction on recommendation to vary conditions of particular mining leases

Clause 511 inserts section 318ELBR which provides that if there is an overlapping authority for a mining lease, the interests of the authority holder must be considered before a decision is made to vary a condition of the mining lease.

Condition to notify particular authority holders of proposed start of designated activities

Clause 511 inserts section 318ELBS which requires a mining tenement holder to give any overlapping geothermal tenure or GHG authority holders, or a geothermal tenure or GHG authority holder sharing a common boundary, at least 30 business days written notice of the following:

- when a designated activity is to start; and
- where the designated activity is to be carried out; and
- the nature of the activity.

Before changing the land on which the designated activity is being carried out, the mining tenement holder must give the other authority holder at least 30 business days notice in writing stating where the activity is to be carried out.

Requirement to continue geothermal or GHG coordination arrangement after renewal of or dealing with mining lease

Clause 511 inserts section 318ELBT which provides that if a mining lease is renewed, assigned, consolidated or sublet and the mining lease holder had an overlapping geothermal lease or GHG lease and coordination arrangement, then the mining lease must continue with the coordination arrangement while there is the overlapping situation with the geothermal or GHG lease.

Amendment of s 403 (Offences regarding land subject to mining claim or mining lease)

Clause 512 amends section 403 by changing the reference to the *Geothermal Exploration Act 2004* to "the Geothermal Act".

Insertion of new pt 19, div 13, sdiv 3

Clause 513 inserts new part 19, division 13 and subdivision 3, transitional provisions for Bill.

Subdivision 3 Provisions for enactment of *Geothermal Energy Act 2010*

Definitions for sdiv 3

Clause 513 inserts section 780 which defines certain expressions used in the Bill.

Existing mining tenement applications

Clause 513 inserts section 781 which applies to a mining tenement application if it was made before the commencement of the Act and there is an overlapping geothermal tenure for the proposed mining tenement. The repealed coordination provisions cease to apply to the mining tenement application and the new part 7AAC applies to the application.

Existing mining claims consented to by geothermal permit holder

Clause 513 inserts section 782 which applies if a mining claim was granted, before the commencement of the Act, in respect of a geothermal exploration permit granted under the *Geothermal Exploration Act 2004*. Part 7AAC, division 5, subdivision 1 does not apply if the permit holder's written consent to the grant was given under section 51(1)(f) as in force before the commencement.

Amendment of sch 2 (Dictionary)

Clause 514 amends the schedule to the *Mineral Resources Act 1989*, the dictionary. Certain expressions and their definitions are deleted and new expressions are defined as follows:

"*application period*", for Part 7AAC, see section 318ELAZ(2).

"*assessment criteria*", for Part 7AAC, see section 318ELAQ(1)(b).

"*Geothermal Act*" see section 3B.

"*geothermal coordination arrangement*" see the Geothermal Act, section 144(4).

"*geothermal lease*" see the Geothermal Act, section 16(1)(b).

"*geothermal permit*" see the Geothermal Act, section 16(1)(a).

"*geothermal tenure*" see the Geothermal Act, section 16(2).

"*information statement*", for Part 7AAC, see section 318ELAQ(1)(a).

Division 6 Amendment of *Pest Management Act 2001*

Act amended

Clause 515 indicates that this division in the Bill contains amendments to the *Pest Management Act 2001*. These amendments are consequential to the repeal of the *Timber Utilisation and Marketing Act 1987* as provided for by clause 380 of this Bill.

Amendment of s 7 (Non-application of Act)

Clause 516 amends section 7 (Non-Application of Act) of the *Pest Management Act 2001* by omitting the existing paragraph (f) which excludes from the provisions of that Act the use of an approved preservative treatment under the *Timber Utilisation and Marketing Act 1987* by a person authorised under that Act to use the treatment, and replacing it with a new paragraph (f). The new paragraph allows for the continuing non-application of the *Pest Management Act 2001* to commercial timber treaters in Queensland by which pest activities are excluded if they, firstly, are related to using a chemical to treat timber for preservation on a commercial basis and, secondly, fall within the definition of an 'environmentally relevant activity' under the *Environmental Protection Act 1994*.

Amendment of pt 7 hdg (Savings and transitional provisions)

Clause 517 amends the part 7 heading (savings and transitional provisions) of the *Pest Management Act 2001* to clarify that part 7 refers to savings and transitional provisions for that Act as originally enacted, to distinguish that part from the following transitional provision that is being inserted into the Act consequential to the repeal of the *Timber Utilisation and Marketing Act 1987*.

Insertion of new pt 8

Clause 518 inserts a new part 8 after section 144 of the *Pest Management Act 2001*. The new part 8 contains a new section 145.

Part 8 Transitional provision for repeal of Act No. 30 of 1987

Non-application of Act to use of timber preservative treatment under authorisation

Clause 518 inserts new section 145 subsection (1) which provides that the *Pest Management Act 2001* does not apply for a person using a preservative treatment under an existing authorisation that is in force. A note to subsection (1) refers readers to the *Land Protection (Pest and Stock Route)*

Management Act 2002, chapter 11, part 3 (Savings and transitional provisions for repeal of *Timber Utilisation and Marketing Act 1987)* under which particular existing approvals and authorisations will continue in force for a limited period (dealt with in Schedule 2, Part 4 of the Bill).

Clause 518 inserts new section 145 which subsection (2) defines terms used in subsection (1), including definitions for "existing approvals" and "existing authorisations" as being those approved and authorised under the repealed Act.

Division 7 *Amendment of Petroleum Act 1923*

Act Amended

Clause 519 provides that this division; part 1, division 5; part 2, division 3; and schedule 2, parts 2 and 4 amend the *Petroleum Act 1923*.

Amendment of s 2 (Definitions)

Clause 520 inserts new definitions for Geothermal Act, geothermal activity, geothermal coordination arrangement, geothermal lease, geothermal permit, geothermal tenure, overlapping authority and overlapping tenure.

Clause 520 also expands the definition for authorised activities to include activities that a geothermal tenure holder is authorised to carry out under the Geothermal Act.

Replacement of s 4A (Relationship with Greenhouse Storage Act 2009)

Clause 521 omits section 4A and replaces it with a new section outlining that the relationship between the *Petroleum Act 1923*, the *Geothermal Energy Bill 2010*, and the *Greenhouse Gas Storage Act 2009* and authorities under them, are provided for under the sections and chapters specified.

Omission of s 24A (Prohibition on carrying out activities prohibited under Geothermal Exploration Act 2004)

Clause 522 omits section 24A from the Act because the *Geothermal Exploration Act 2004* will be repealed by the *Geothermal Energy Bill 2010*.

Amendment of s 40 (Lease to holder of authority to prospect)

Clause 523 expands section 40 which provides that a holder of an authority to prospect can apply to the Minister for the grant of a lease of land such as is reasonably required to develop and produce payable deposits of petroleum within the land the subject of the authority to prospect, provided the proposed lease is not in the area of a GHG authority or a geothermal tenure.

Replacement of s 75R (Transfer of well to holder of geothermal exploration permit or miming tenement)

Clause 524 omits section 75R from the Act and replaces it with a new section that provides that a petroleum tenure holder may transfer a well within the area of the *Petroleum Act 1923* tenure to the holder of a geothermal tenure or mining tenement within the provisions outlined in the section.

Replacement of pt 6FA (Provisions for GHG authorities)

Clause 525 omits part 6FA replaces it with the new part 6FA 'provisions for geothermal tenure and GHG authorities'.

Part 6FA Provisions for geothermal tenures and GHG authorities

Division 1 Preliminary

Relationship with other provisions

Clause 525 inserts new section 78CA which provides how the new part will function as well as the existing provisions of the *Petroleum Act 1923*, and do not otherwise limit or effect restrictions and requirements under other provisions of the Act.

What is an *overlapping authority (geothermal or GHG)*

Clause 525 inserts new section 78CB which provides that an overlapping authority for a *Petroleum Act 1923* tenure is any geothermal tenure or GHG authority, which is all or partly, in the *Petroleum Act 1923* tenure's area.

General provision about 1923 Act petroleum tenures for land subject to geothermal or GHG authority

Clause 525 inserts new section 78CC which provides that subject to this part the *Greenhouse Gas Storage Act 2009, Geothermal Energy Bill 2010,* geothermal tenure or GHG authorities do not limit or affect carrying out authorised activities for petroleum authorities under the *Petroleum Act 1923*.

Division 2 Restrictions on authorised activities for authorities to prospect

Overlapping geothermal or GHG lease

Clause 525 inserts new section 78CD which provides that when land in the area of an authority to prospect is also in the area of a geothermal lease or GHG lease land, the authorised activities for the authority to prospect may only be carried out if the geothermal lease or GHG lease holder has not objected to the activity, or if an objection has been made and the Minister has decided the activity may be carried out.

Overlaps with geothermal permit or particular GHG authorities

Clause 525 inserts new section 78CE which applies if land is in the area of an authority to prospect and a GHG authority other than a GHG lease. Authorised activities for the authority to prospect cannot be carried out on the land if carrying it out adversely affects the carrying out of an authorised activity for the other authority and that authorised activity has already started.

Resolving disputes about the restrictions

Clause 525 inserts new section 78CF which applies if the holder of a geothermal lease or GHG lease has objected regarding the carrying out of authorised activities by an authority to prospect holder. This clause also applies if there is a dispute between an authority to prospect holder and geothermal permit on GHG authority holder about whether an authorised activity for an authority to prospect can be carried out. Either party may apply to the Minister to decide if the authorised activity may be carried out. Before making the decision, the Minister must allow the parties the opportunity to make submissions about the request. The Minister's decision binds the parties and conditions may be attached to the decision.

Division 3 Leases with overlapping geothermal or GHG authority

Subdivision 1 Continuance of coordination arrangements after renewal or dealing

Requirement to continue geothermal or GHG coordination arrangement

Clause 525 inserts new section 78CG which provides that if a petroleum lease is renewed, transferred or sublet and the petroleum lease has in place a coordination arrangement with an overlapping geothermal or GHG lease holder, then the petroleum lease must continue with the coordination arrangement while there is the overlapping situation with the geothermal or GHG lease.

Subdivision 2 Later development plans

Operation of sdiv 2

Clause 525 inserts new section 78CH which imposes additional requirements for proposed later development plans if there is an overlapping authority that is a geothermal lease or a GHG tenure.

Statement about interests of overlapping tenure holder

Clause 525 inserts new section 78CI which requires a proposed plan or amendment to include a statement of how the effects on and the interests of the overlapping tenure holder have or have not been considered having regard to the assessment criteria outlined.

Consistency with overlapping tenure's development plan and with any relevant coordination arrangement

Clause 525 inserts new section 78CJ which requires to ensure the proposed development plan must be consistent with any relevant geothermal or GHG coordination arrangement. If the overlapping tenure is a lease, to the extent the petroleum lease and the overlapping lease coincide or will coincide, the proposed plan must be consistent with the development plan for the overlapping lease.

Division 4 Provisions for all 1923 Act petroleum tenures

Subdivision 1 Safety management plans

Requirements for consultation with particular overlapping tenure holders

Clause 525 inserts new section 78CK which provides that for any person proposing to be an operator using operating plant that will be used for petroleum activities the operator under the 1923 Act must make reasonable attempts to consult with an overlapping authority holder if the activities may adversely affect the safe and efficient carrying out of authorised

activities for the overlapping authority. The safety management plan may be amended to incorporate any reasonable suggestions made by the overlapping authority holder if these are commercially and technically feasible. This is a common-sense provision to maximise safety for all operators and others who may be in the area, for example independent contractors.

Application of 2004 Act provisions for resolving disputes about reasonableness of proposed provision

Clause 525 inserts new section 78CL which provides that when a dispute occurs between an operator and an overlapping tenure holder regarding the proposed safety management plan, the parties must comply with the relevant provisions under section 387, chapter 12 and schedule 1 of the *Petroleum and Gas (Production and Safety) Act 2004*.

Subdivision 2 Other provisions

Condition to notify particular authority holders of proposed start of designated activities

Clause 525 inserts new section 78CM which requires the petroleum tenure holder to notify any overlapping geothermal or GHG authority holders or a holder sharing a common boundary with the petroleum tenure holder of the following:

- when the designated activity is to start; and
- where the designated activity is to be carried out; and
- the nature of the activity.

Notification must be given again if the *Petroleum Act 1923* Act tenure holder is changing the land where the activities will be carried out.

At least 30 business days notice must be given.

Restriction on power to amend

Clause 525 inserts new section 78CN which provides that a petroleum tenure may be amended under section 125 only if the interests of any overlapping tenure holder have been considered.

Replacement of pt 6J hdg (Access to land in area of another 1923 Act petroleum tenure, a 2004 Act petroleum authority or a mining tenement)

Clause 526 omits the previous section heading and inserts 'part 6J access to land in area of particular other authorities' to reflect the broader application of the part to include geothermal tenures.

Part 6J Access to land in area of particular other authorities

Amendment of s 79M (Application of pt 6J)

Clause 527 amends section 79M to enable the part to also apply to geothermal authorities.

Amendment of s 79N (Access to land in area of lease under this Act, a 2004 Act lease or a mining lease)

Clause 528 amends section 79N to expand the provisions by providing that a petroleum tenure holder under this Act may only enter land in the area of a geothermal lease if consent of entry is given first and the consent has been properly lodged.

Amendment of s 79O (Access to land in area of another type of mining tenement or 1923 Act petroleum tenure)

Clause 529 amends section 79O to expand the provisions by providing that a petroleum tenure holder under this Act may access land in the area of a geothermal tenure, other than a lease, provided it is necessary to access land or carry out activities that will enable them to access land within their own tenure.

Division 8 Amendment of *Petroleum and Gas (Production and Safety) Act 2004*

Act amended

Clause 530 provides that this division; part 1, division 6; part 2, division 4; and schedule 2, parts 1, 2 and 4 amend the *Petroleum and Gas (Production and Safety) Act 2004*.

Amendment of s 3A (Secondary purpose—facilitation of *Geothermal Exploration Act 2004* and *Greenhouse Gas Storage Act 2009*)

Clause 531 removes the references to the '*Geothermal Exploration Act 2004*' under section 3A and inserts '*Geothermal Energy Act 2010'* also referred to as 'the Geothermal Act'.

This clause also defines how the Bill is facilitated in regard to safety management.

Replacement of s 6B (Relationship with GHG storage Act)

Clause 532 amends section 6B to include references to the Geothermal Act. This clause identifies the relevant chapters in the Act which detail the relationship between the *Petroleum and Gas (Production and Safety*) *Act 2004*, the Geothermal Act and the *Greenhouse Gas Storage Act 2009* as well as the authorities under them.

Amendment of s 22 (What is an *authorised activity*)

Clause 533 inserts a new section describing what an authorised activity is for a geothermal tenure. An authorised activity is an activity the geothermal tenure holder is able to carry out under the Bill.

Replacement of s 289 (Transfer of petroleum well to holder of geothermal exploration permit or mining tenement)

Clause 534 omits and replaces section 289 to remove the reference to geothermal exploration permit and replace it with a reference to a geothermal tenure. Geothermal tenure is the terminology used when referencing both geothermal exploration permits and geothermal leases.

The *Geothermal Exploration Act 2004* only regulated geothermal permits. With the addition of geothermal leases, the introduction of the Bill regulates the exploration for and production of geothermal energy.

Replacement of ch 3A (Provisions for GHG authorities)

Clause 535 replaces chapter 3A (provisions for GHG authorities) to include geothermal tenures.

Chapter 3A Provisions for geothermal tenures and GHG authorities

Part 1 Preliminary

Relationship with chs 2 and 3

Clause 535 inserts new section 392AA which provides how the new chapter 3A will function with the existing chapters 2 and 3. Restrictions and requirements remain but if a provision in this chapter conflicts with a provision of chapters 2 or 3 this chapter will prevail to the extent of the inconsistency for geothermal tenures and GHG authorities.

What is an *overlapping authority (geothermal or GHG)*

Clause 535 inserts new section 392AB which provides that an overlapping geothermal tenure or GHG authority is all or part of any geothermal tenure or GHG authority in the area of a petroleum authority or proposed petroleum authority.

General provision about petroleum authorities for land subject to geothermal or GHG authority

Clause 535 inserts new section 392AC which provides that the Geothermal Act, *Greenhouse Gas Storage Act 2009,* a geothermal tenure or a GHG authority do not limit or affect the power under the *Petroleum and Gas*

(Production and Gas) Act 2004 to grant an authority or the carrying out of authorised activities for a petroleum authority.

Part 2 Obtaining petroleum lease if overlapping tenure

Division 1 Preliminary

Application of pt 2

Clause 535 inserts new section 392AD which provides that part 2 will apply when a person wishes to make a petroleum lease application where there is an overlapping authority for a geothermal tenure or GHG tenure for the proposed lease area.

Division 2 Requirements for application

Requirements for making application

Clause 535 inserts new section 392AE which provides for additional requirements, over and above the regular application requirements, for the proposed petroleum lease application. These additional requirements include an 'information statement', and other information that addresses the 'assessment criteria'. The clause defines the 'assessment criteria'. If the Minister is required to make a resource management decision these criteria will be considered when making the decision. The criteria include the potential for the parties to make a coordination arrangement and the public interest.

Content requirements for information statement

Clause 535 inserts new section 392AF which sets out to insert the requirements for an information statement.

The statement should assess how the proposed petroleum authorised activities may impact on future geothermal or GHG authorised activities

and whether or not it is technically and commercially feasible to carry out coordinated activities.

Division 3 Consultation provisions

Applicant's information obligation

Clause 535 inserts new section 392AG which requires the applicant to provide a copy of the petroleum lease application to the overlapping tenure holder within 10 business days of making the application. If this requirement is not complied with properly the Minister may refuse the petroleum lease application.

Submissions by overlapping tenure holder

Clause 535 inserts new section 392AH which allows the overlapping tenure holder to make submissions about the proposed petroleum lease within 4 months after receiving the copy of the application. The submissions may include that the holder does not object to the granting of the lease, or the holder does not wish priority and may include a proposal for the authorised activities for which overlapping priority is sought. This submission can also include information about the authorised activities carried out under the overlapping tenure and/or information relevant to the assessment criteria and propose reasonable provisions for the safety management plan. The overlapping tenure holder must give a copy of any relevant submissions to the petroleum lease applicant.

Division 4 Resource management decision if overlapping permit

Application of div 4

Clause 535 inserts new section 392AI which provides that this division will apply if the overlapping tenure referred to is a geothermal or GHG permit and:

- the holder of this permit has made submissions in time; and

- has stated the permit holder wishes to be granted priority in the overlapping area.

If priority has already been given for any of the relevant land under the *Geothermal Energy Bill 2010*, chapter 5 or the *Greenhouse Gas Storage Act 2009*, chapter 4 this division does not apply.

Resource management decision

Clause 535 inserts new section 392AJ which provides that the Minister must make a resource management decision about whether to grant the petroleum lease, give priority to the overlapping authority holder, or to do neither.

Criteria for decision

Clause 535 inserts new section 392AK which provides for a number of matters the Minister must consider in making the resource management decision. The criteria includes the information statement, the assessment criteria, the holder submissions and the public interest.

Restrictions on giving overlapping authority priority

Clause 535 inserts new section 392AL which provides that overlapping priority may only be given if the Minister considers it unlikely a geothermal or GHG coordination arrangement will be reached or such an arrangement is not technically or commercially feasible, and the public interest would be best served by not granting a petroleum lease to the applicant first.

Division 5 Process if resource management decision is to give overlapping authority priority

Application of div 5

Clause 535 inserts new section 392AM which details when this division applies, which is if the decision was to give priority to the overlapping permit holder.

Notice to applicant and overlapping permit holder

Clause 535 inserts new section 392AN which provides for the applicant and overlapping permit holder to be given notice of the resource management decision, and the overlapping permit holder to be given six months from the time of the notice to apply for a geothermal or GHG lease over that area for which priority was given within the petroleum lease application area.

Overlapping lease application for all of the land

Clause 535 inserts new section 392AO which provides for when an overlapping permit holder, who has been given priority, lodges a geothermal or GHG lease application for all of the land within the petroleum lease application. The petroleum lease application cannot then be progressed until the geothermal or GHG lease application has been decided. If a decision is made to grant the geothermal or GHG lease, the petroleum lease application lapses.

Overlapping lease application for part of the land

Clause 535 inserts new section 392AP which provides that when the overlapping permit holder, who has been given priority, lodges a geothermal or GHG lease application for part of the land within the area of the petroleum lease application, the petroleum lease applicant may amend their application to include all or part of the remaining land. If the petroleum lease applicant decides not to amend their application, then their application cannot be advanced until the geothermal or GHG lease application is decided. When a decision is made to grant the geothermal or GHG lease over only part of the land, the petroleum lease holder may still amend their application to include all or part of the remaining area.

No overlapping lease application

Clause 535 inserts new section 392AQ which provides that if the overlapping permit holder does not lodge a geothermal or GHG lease application for all or part of that land within the application period, then the petroleum lease application can be decided.

Division 6 Resource management decision not to grant and not to give priority

Lapsing of application

Clause 535 inserts new section 392AR which provides that the petroleum lease application is taken to have lapsed if a resource management decision was required and the decision was neither to recommend the granting of the petroleum lease nor to give overlapping authority priority for any of the relevant land. This clause is to remove doubt in that situation.

Division 7 Deciding application

Application of div 7

Clause 535 inserts new section 392AS which sets out the circumstances when this division applies. The division applies if:

- the overlapping tenure holder has not made a submission within the relevant period; or
- the overlapping tenure holder has lodged a submission stating that the holder does not wish any overlapping authority priority; or
- a resource management decision is required as outlined under division 4 and the decision was not to give the overlapping authority priority; or
- a resource management decision was required and the decision was to give the overlapping authority priority and, after division 5 has been complied with, the Minister decides to grant a petroleum lease.

Application may be refused if no reasonable prospects of future geothermal or GHG coordination arrangement

Clause 535 inserts new section 392AT which provides that applications do not remain unresolved for excessive periods. If there are no reasonable prospects for a coordination arrangement to be made, as indicated by a written notice or failure to lodge the relevant arrangement, the Minister may refuse the petroleum lease application.

Additional criteria for deciding provisions of petroleum lease

Clause 535 inserts new section 392AU which provides that regard must be had to the assessment criteria, the information statement, any holder submissions and safety and efficiency issues for the petroleum lease or any future lease activities arising from the overlapping permits, when deciding the provisions of the petroleum lease.

Publication of outcome of application

Clause 535 inserts new section 392AV which ensures that a notice of the outcome of the petroleum lease application, including any resource management decision and the reasons for that decision are published, apart from any commercial-in-confidence information. The intention is to provide transparency of decision making.

Part 3 Priority to particular geothermal or GHG lease applications

Earlier geothermal or GHG lease application

Clause 535 inserts new section 392AW which provides that where a geothermal or GHG lease application has been made prior to the application for the petroleum lease (in what would be an overlapping situation) the petroleum lease application cannot be decided before the geothermal or GHG lease application has been decided.

Proposed geothermal or GHG lease for which EIS approval given

Clause 535 inserts new section 392AX which provides for priority to be given to those proponents who have been granted approval for the preparation of a voluntary Environmental Impact Statement under the *Environmental Protection Act 1994* for a project that is, or includes, a proposed geothermal or GHG lease. This is because the Environmental Impact Statement process is potentially publically available from that point and so the trigger point for priority has been advances ahead of the point of application for the lease.

Proposed geothermal or GHG lease declared a significant project

Clause 535 inserts new section 392AY which provides for priority to be given to those proponents of a project that is declared a "significant project" under the *State Development and Public Works Organisation Act 1971* where the project is, or includes, a proposed geothermal lease or GHG lease.

Part 4 Petroleum lease applications in response to invitation under Geothermal Act or GHG storage Act

Application of pt 4

Clause 535 inserts new section 392AZ which provides for the application of this part whereby a petroleum lease application is made in response to an invitation given because of a resource management decision under the *Geothermal Energy Bill 2010* or *Greenhouse Gas Storage Act 2009.*

Additional ground for refusing application

Clause 535 inserts new section 392BA which provides that the Minister can refuse the application for a petroleum lease if it is considered that an application that was invited as a result of a resource management decision is not being progressed in a timely manner. This is necessary to ensure the integrity of the original resource management decision.

Part 5 Additional provisions for petroleum authorities

Division 1 Restrictions on authorised activities for particular petroleum authorities

Overlapping geothermal or GHG lease

Clause 535 inserts new section 392BB which provides for when a petroleum authority, such as an authority to prospect, a data acquisition authority or a water monitoring authority, is in the area of a geothermal lease or GHG lease. The petroleum authority holder may only carry out authorised activity on the land if the geothermal lease or GHG lease holder has not objected to the activity or to the safety management plan. If an objection has been made, the Minister may decide the authorised activity may be carried out.

However, this section does not apply if the same person holds the petroleum authority and the geothermal lease or GHG lease.

Overlapping geothermal permit or particular GHG authorities

Clause 535 inserts new section 392BC which applies if land is in the area of the listed petroleum authorities and a geothermal permit or GHG authority (other than a GHG lease). Authorised activities for the petroleum authority cannot be carried out on the land if carrying it out adversely affects the authorised activities of the geothermal permit or the GHG authority and these activities have already started.

Resolving disputes

Clause 535 inserts new section 392BD which applies if a petroleum authority overlaps a geothermal lease or GHG lease and the lease holder has objected to the carrying out of a petroleum authority activity. This clause also applies if there is a dispute between the holders about whether an authorised activity for the petroleum authority can be carried out under section 392BB. Either party may ask the Minister to decide the matter. There is opportunity for submissions to be made, about the matter, to the

Minister. The decision made by the Minister is binding on the parties and conditions may be attached to the decision.

Division 2 Additional conditions

Notice by authority to prospect holder to particular geothermal or GHG authority holders or applicants

Clause 535 inserts new section 392BE which applies if an authority to prospect is granted in the area of, or a proposed area under an application for, a geothermal permit, a GHG permit or a GHG data acquisition authority (the other authority). The holder of the authority to prospect, within 20 business days of grant, must give the other authority holder (or applicant) a notice giving details of the authority to prospect. This is a normal business consideration and has practical application if, for example, infrastructure could be shared.

Condition to notify particular geothermal or GHG authority holders of proposed start of particular authorised activities

Clause 535 inserts new section 392BF which requires the petroleum authority holder to notify any overlapping geothermal or GHG authority holder or a holder sharing a common boundary with the petroleum authority holder of the following:

- when the designated activity is to start; and
- where the designated activity is to be carried out; and
- the nature of the activity.

Notification must be given again if the geothermal or GHG authority holder is changing the land where the activities will be carried out.

At least 30 business days notice must be given.

Requirement to continue geothermal or GHG coordination arrangement after renewal of or dealing with petroleum lease

Clause 535 inserts new section 392BG which provides that if a petroleum lease, the subject of a coordination arrangement with a geothermal or GHG lease, is renewed, transferred, or sublet, the petroleum lease holder must

continue with the coordination arrangement while there is the overlapping situation with the geothermal or GHG lease.

Division 3 Restriction on Minister's power to amend petroleum lease if overlapping tenure

Interests of overlapping tenure holder to be considered

Clause 535 inserts new section 392BH which provides that if there is an overlapping tenure for a petroleum lease, the petroleum lease may be amended under section 848 only if the interests of the overlapping tenure holder have been considered.

Part 6 Additional provisions for development plans if overlapping tenure

Operation of pt 6

Clause 535 inserts new section 392BI which provides for the operation of this part, which imposes additional requirements for development plans where there is an overlapping tenure (geothermal or GHG).

Statement about interests of overlapping tenure holder

Clause 535 inserts new section 392BJ which requires a proposed plan or amendment to include a statement of how the effects on and the interests of the overlapping tenure holder have or have not been considered, having regard to the assessment criteria.

Consistency with overlapping tenure's development plan and with any relevant coordination arrangement

Clause 535 inserts new section 392BK which requires the proposed development plan to be consistent with any relevant geothermal or GHG

coordination arrangement. If the overlapping tenure is an overlapping lease, to the extent the petroleum lease and the overlapping lease coincide or will coincide, the proposed plan must be consistent with the development plan for the overlapping lease.

Additional criteria for approval

Clause 535 inserts new section 392BL which provides that the Minister must consider the additional information provided when deciding whether to approve the proposed plan or amendment.

Part 7 Additional provisions for safety management plans

Grant of petroleum lease does not affect obligation to make plan

Clause 535 inserts new section 392BM which provides that regardless of the petroleum lease applicant providing an information statement as required, a safety management plan under the *Petroleum and Gas (Production and Safety) Act 2004* is still required. The safety management plan may be audited at any time.

Requirements for consultation with particular overlapping tenure holders

Clause 535 inserts new section 392BN which provides that for an operating plant that will be used for petroleum activities the operator must use reasonable attempts to consult with an overlapping authority holder if the activities may adversely affect the safe and efficient carrying out of authorised activities for the overlapping authorities. The plans may be amended to incorporate any reasonable suggestions made by the overlapping authority if these are commercially and technically feasible. This is a common-sense provision to maximise safety for all operators and others who may be in the area, for example independent contractors.

Application of provisions for resolving disputes about reasonableness of proposed provision

Clause 535 inserts new section 392BO which provides that if a dispute occurs between an operator and an overlapping tenure regarding the proposed safety management plan, the parties must comply with the relevant provisions under section 387, chapter 12 and schedule 1.

Amendment of s 400 (Restriction if there is an existing mining lease or GHG lease)

Clause 536 amends section 400 to include geothermal leases with others that may restrict activities under a pipeline licence.

Amendment of s 528 (Application of pt 4)

Clause 537 amends section 528 to extend the application of part 4 to include a geothermal tenure.

Amendment of s 529 (Access to land in area of mining lease, a 1923 Act lease or a petroleum lease)

Clause 538 amends section 529 to replace 'mining lease, a 1923 Act lease or a petroleum lease' with 'lease', which under section 528 includes GHG leases and geothermal leases.

Amendment of s 530 (Access to land in area of another type of mining tenement or petroleum authority)

Clause 539 amends section 530 to replace the references to 'mining tenement or petroleum authority' as an authority and 'mining lease, a 1923 Act lease or a petroleum lease' as a lease, which under section 528, includes geothermal tenure and GHG authorities.

Amendment of s 669 (Making safety requirement)

Clause 540 amends section 669 to extend the regulation making power in regard to the making of safety requirements to include geothermal activities, other than wet geothermal production.

Amendment of s 670 (What is an *operating plant*)

Clause 541 amends section 670 to include that a facility used for geothermal exploration or production within the area of a geothermal tenure other than a facility used for wet geothermal production is operating plant. The section clarifies that facilities using the produced energy are not operating plant. The isolation valve or distribution point on a pipeline transferring the energy from the well/production facility to the utilisation facility is identified as the cut-off point.

The definition of facilities used in relation to GHG activities is widened to be consistent with the application in geothermal and petroleum areas. Facilities used for GHG storage exploration, stream storage or injection testing are all operating plant. The section clarifies that facilities used to produce the GHG stream such as at a power station are not operating plant.

Facilities that are part of the process of taking and processing water produced as part of the petroleum production process are identified as operating plant. This is because gas and petroleum products could still be associated with the water and the risks should be managed under the operating plant obligations.

Clarification is also provided in regard to the 'authority operating plant' definition in subsection 6. The intention is that the operating plant obligations apply to the authorised activities (as a whole) for an authority. Thus as an example the operator of a petroleum authority would have to have an overarching safety management plan for all authorised activities on the authority but the individual authorised activities are not in themselves operating plant unless they are particularly specified in subsection (2) and (5). This applies to all petroleum and GHG authorities, geothermal tenures and mineral hydrocarbon mining leases.

Amendment of s 672 (What is a *stage* of an operating plant)

Clause 542 amends section 672 to clarify that a 'stage' of an operating plant includes construction work for a proposed operating plant but only to the extent of work within an existing plant or if adjacent to an existing operating plant where the safety management plan applies to this construction work.

Amendment of s 675 (Content requirements for safety management plans)

Clause 543 amends section 675 to extend the provision to include geothermal tenure.

Amendment of s 687 (Who is the *executive safety manager* of an operating plant)

Clause 544 amends section 687 to clarify who is the executive safety manager for an 'authority operating plant'. This is, other than when the holder of the authority is an individual, the senior managing officer of the corporation or organisation responsible for the safe management and operation of the authorised activities on the authority. That is the organisation which is appointed/nominated by the tenure holders to manage the operations on the tenure.

Insertion of new s 687A

Clause 545 inserts a new section 687A which describes the requirements of joint holders to give information about the executive safety manager.

The purpose of this new clause is to ensure the chief inspector is notified of which corporation or organisation, if there is more than 1 holder of a petroleum authority, geothermal tenure or GHG tenure, is responsible for the management and safe operation of the operating plant in the area.

Amendment of s 690 (Content requirements for safety reports)

Clause 546 amends section 690 to renumber the provision.

Replacement of s 691 (Obligation to give information to particular authority holders)

Clause 547 amends section 691 to include the obligation to give information to a coal or oil shale exploration tenement holder.

Amendment of s 699A (Operator's obligation for particular adjacent or overlapping authorities)

Clause 548 amends section 699A to extend the provision to include geothermal tenure.

Amendment of s 705 (Application of sdiv 1)

Clause 549 amends section 705 to provide that this subdivision applies if an operating plant is in the area or adjacent to the area of a coal or oil shale mining lease. This clause also omits the reference to GHG storage activities under the GHG lease because it is considered the issues can be dealt with under the safety management plan of the facility without the need for a special principal hazard management plan.

Amendment of s 705A (Requirement to have principal hazard management plan

Clause 550 amends section 705A to omit the requirement for the operator to consult with the GHG lease holder or GHG tenure holder about the principal hazard management plant as a consequence of the amendment to section 705.

Amendment of s 705B (Content requirements for principal hazard management plan)

Clause 551 amends section 705B to omit reference to GHG wells as a consequence of the amendment to section 705.

Amendment of s 705C (Resolving disputes about provision proposed by mining lease or GHG lease holder)

Clause 552 amends section 705C to remove the reference to GHG lease as a consequence of the amendment to section 705.

Amendment of s 708B (Chief inspector may issue safety alerts and instructions)

Clause 553 amends section 708B to extend the provision to include geothermal activities. This clause also removes the reference to 'the petroleum or fuel gas industry' from subsection 4 and instead cross references to subsection 3.

Amendment of s 736 (Functions)

Clause 554 amends section 736 to remove the reference to the *Geothermal Exploration Act 2004* and replace it with 'Geothermal Act'. When the *Geothermal Energy Bill 2010* commences, the *Geothermal Exploration Act*

2004 will be repealed. For consistency purposes, 'geothermal energy activity and GHG streams' has been replaced with 'geothermal activity or GHG storage activity'.

Amendment of s 744 (Inspector's additional entry power for emergency or incident)

Clause 555 amends section 744 to remove the terminology 'geothermal energy activity or a GHG stream' to 'geothermal activity or a GHG storage activity'.

Amendment of s 746 (Authorised officer's additional entry power for petroleum authority, geothermal exploration permit or GHG authority)

Clause 556 amends section 746 to remove 'geothermal permit' and replace with 'geothermal tenure'. This is a consequence of the implementation of the *Geothermal Energy Bill 2010* which regulates both exploration and production.

Amendment of s 769 (Testing seized things)

Clause 557 amends section 769 to include 'geothermal energy' at section 769(2)(a) for when testing on a thing which may destroy a sample of the geothermal energy, petrol or fuel gas or a part of a GHG stream. The definition of 'geothermal energy' has been inserted as section 769(7).

Amendment of s 780 (Power to give compliance direction)

Clause 558 amends section 780 to extend the provision to include the Geothermal Act.

Amendment of s 781 (Requirements for giving compliance direction)

Clause 559 amends section 781 to remove the reference to the *Geothermal Exploration Act 2004* and replace it with 'Geothermal Act'. When the *Geothermal Energy Bill 2010* commences, the *Geothermal Exploration Act 2004* will be repealed.

Amendment of sch 2 (Dictionary)

Clause 560 amends schedule 2 of the *Petroleum and Gas (Production and Safety) Act 2004* to include a definition of 'operate' in the dictionary where used under section 670. Wet geothermal production is also defined. The intention is that facilities exploring for or producing geothermal energy from hot water (as opposed to hot dry rock geothermal energy producing steam) are not included as operating plant.

Clause 566 amends schedule 2 (dictionary) of the *Petroleum and Gas (Production and Safety) Act 2004* and will provide definitions of terminology used in relation to UCG tenure and UCG Pilot Projects.

Division 9 Amendment of *Torres Strait Islander Land Act 1991*

Act amended

Clause 561 provides that this division and schedule 2, part 4 amend the *Torres Strait Islander Land Act 1991*.

Replacement of s 39 (Reservations of minerals and petroleum)

Clause 562 inserts a new section 39 which details that a deed of grant of transferred land must contain the reservations to the State taken to be contained in the grant under the listed legislation.

Replacement of s 77 (Reservations of minerals and petroleum)

Clause 563 inserts a new section 77 which details that a deed of grant of granted land and a Torres Strait Islander lease must contain the reservations to the State taken to be contained in the grant under the listed Acts.

Division 10 Amendment of *Valuation of Land Act 1944*

Act amended

Clause 564 provides that this division and schedule 2, part 4 amend the *Valuation of Land Act 1944*.

Replacement of s 16 (Exclusion of timber and minerals)

Clause 565 inserts a new section 16 which describes that a valuation for the unimproved value of land is not to include the value of geothermal energy, GHG storage reservoirs, minerals, petroleum or timber as defined by the listed relevant Acts.

Division 11 Amendment of *Water Act 2000*

Act amended

Clause 566 provides that this division amends the *Water Act 2000.*

Amendment of s 203 (Definitions for pt 6)

Clause 567 amends the definition of 'owner' under section 203 to include a geothermal tenure holder and GHG storage tenure holder.

Amendment of sch 4 (Dictionary)

Clause 568 amends the dictionary to include a definition of 'owner'.

Division 12 Amendment of *Workplace Health and Safety Act 1995*

Act amended

Clause 569 provides that this division amends the *Workplace Health and Safety Act 1995*.

Amendment of s 3 (Application of Act)

Clause 570 amends section 3 to clarify that the *Workplace Health and Safety Act 1995* does not apply to specific individual operating plant on particular authorities, tenures or tenements defined within the *Petroleum and Gas (Production and Safety) Act 2004*. The exception is that the *Workplace Health and Safety Act 1995* does apply in relation to an 'authority operating plant' as defined under section 670(6)(a) and (7) meaning both acts apply in that case. It is also clarified that the *Workplace Health and Safety Act 1995* does apply to all construction work on operating plant or proposed operating plant other than the commissioning of operating plant, and the moving, and rigging up and down of drilling rigs.

Division 13 Amendment of other Acts

Clause 571 provides that schedule 2 amends the Acts it mentions.

Schedule 1 Decisions subject to appeal

The insertion of this schedule provides details of which decisions, made under this Act, may be appealed.

Schedule 2 Minor and consequential amendments of Acts

The schedule contains minor and consequential amendments that are needed as a result of amendments contained in the Act.

Schedule 3 Dictionary

The insertion of this schedule provides details of definitions used in this Act.