

Geothermal Energy Bill 2010

Explanatory Notes for amendments to be moved during consideration in detail by the Honourable Stephen Robertson MP

Title of the Bill

Geothermal Energy Bill 2010

Objectives of the Amendments

The objectives of the amendments are consistent with the objectives of the land access provisions of the Bill and are to:

- facilitate improved relations between resource companies and landholders;
- provide a consistent, transparent and equitable process to facilitate access to 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.

Consistency with Fundamental Legislative Principles

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, consistency with established legislative principles and complying with

community expectations for appropriate resource management as well as ensuring the State retains stewardship of the overall resource.

Consultation

Consultation on the Bill with both the resource and agricultural sectors was vital to ensure that the policy rationale was reflective of the needs and the operations of both parties. Following the tabling of the Bill in Parliament a number of key issues have been identified by stakeholders which have resulted in these additional amendments to the Bill.

A key issue identified during this consultation process was the need to provide added protection to landholders in terms of exposure to cost and legal risk. This was commensurate with the need for certainty in terms of the timeframes associated with the negotiation and dispute resolution process. As well as building flexibility into that process, the need for the parties to have options for resolving an issue or reaching agreement are key policy developments in these amendments. These developments are designed to assist the parties with achieving successful negotiation.

Detailed consultation on the proposed further amendments has been undertaken with key external stakeholder groups Australian Petroleum Production and Exploration Association, the Queensland Resources Council, AgForce, the Queensland Farmers' Federation, the Basin Sustainability Alliance, and across Government in the development of the amendments. A significant proportion of the stakeholder feedback has been incorporated into these amendments.

Notes on Provisions

Amendment 1(Act does not affect other rights or remedies)

Amendment 1 amends clause 9 of the *Geothermal Energy Bill 2010* to insert a reference to new clause 353A. Amendment 14 inserts the new clause to the *Geothermal Energy Bill 2010*.

Amendment 2 After clause 127

'127A Obligation to consult with particular owners and occupiers

Amendment 2 inserts a new clause 127A to the *Geothermal Energy Bill 2010* which provides that the holder of a geothermal tenure has a statutory obligation to consult with each owner and occupier of private and public land subject to the tenure. The amendment further provides that the subject of the consultation must be about: access to the land, the conduct of the authorised activities on that land and the issue of compensation liability to the owner or occupier. Chapter 6 Part 8 of the *Geothermal Energy Bill 2010* prescribes the process by which parties must consult.

Amendment 3 Clause 211 (Required contents of entry notice)

Amendment 3 amends clause 211 of the *Geothermal Energy Bill 2010*. This amendment provides that the holder of a geothermal tenure must provide a copy of the relevant geothermal tenure document with an entry notice to each owner and occupier of the land subject to the tenure.

Amendment 4 Clause 211 (Required contents of entry notice)

Amendment 4 amends clause 211 of the *Geothermal Energy Bill 2010* to allow for the general period of entry under an entry notice to be 1 year for a geothermal lease or 6 months for a geothermal permit. This is consistent with the general period of entry for petroleum leases under the *Petroleum Act 1923* and the *Petroleum and Gas (Production and Safety Act) 2004*.

Amendment 5 Clause 246 (General liability to compensate)

Amendment 5 amends clause 246 (General liability to compensate) of the *Geothermal Energy Bill 2010*. The term compensatable effect means those matters outlined in section 246(4).

The amendment provides for the term ‘compensatable effect’ to include reasonable and necessary accounting, legal and valuation costs recognising the fact that owners and occupiers of land should not have to incur the cost of engaging relevant professional advice to assist with the negotiation and preparation of an agreement with a geothermal tenure holder to enable access to their land and facilitate appropriate compensation. The range of reasonable and necessary professional costs is effectively limited by this amendment to accountants, lawyers and valuers because the negotiation and preparation of a conduct and compensation agreement is predominantly about determining the quantum of compensation for the impact of authorised activities: for example, seeking legal advice to review

a draft conduct and compensation agreement or obtaining valuation advice to assess impact of authorised activities on property values.

The purpose of the inclusion of examples of negotiation in clause 246(4)(b) is to ensure that the professional costs associated with attending the ADR or conference are included within the meaning of the term ‘compensatable effect’.

The amendment broadens the definition of compensatable effect to put beyond doubt that compensation is payable by a geothermal tenure holder for consequential damages that the eligible claimant incurs because of a compensatable effect mentioned in section 246(4)(a) and 246(4)(b). This amendment affords further protection to owners and occupiers of land subject to resource tenures.

Amendment 6 Clause 250 (Negotiations)

Amendment 7 amends clause 250 of the *Geothermal Energy Bill 2010* and stipulates that the ‘minimum negotiation period’ must be at least the period provided in section 250A. This is to reflect that the minimum negotiation period may now be either at least 20 business days from the giving of the negotiation notice (which is referred to as the ‘usual period’) or a longer minimum negotiation period as agreed between the parties due to reasonable or unforeseen circumstances.

Amendment 7 After clause 250

Amendment 7 inserts new clause 250A after clause 250 of the *Geothermal Energy Bill 2010*.

‘250A Provision for the minimum negotiation period

The previous clause 250 in the *Geothermal Energy Bill 2010* did not permit any flexibility with the statutory imposed timeframes for the minimum negotiation period. In recognition of that lack of flexibility, the amendment empowers either party, within the initial 20 business days from the giving of the negotiation notice, to ask the other party to agree to a longer minimum negotiation period if there are reasonable or unforeseen circumstances.

For example, a geothermal tenure holder and landholder may agree to extend the minimum negotiation period on the basis that the landholder is unable to engage in negotiations until after the standard minimum negotiation period.

Amendment 8 Clause 252 (Parties may seek mediation)

Amendment 8 amends clause 252 of the *Geothermal Energy Bill 2010*.

‘252 Parties may seek conference or independent ADR

The heading of clause 252 has been amended to emulate the amendment to the prescribed dispute resolution process from ‘mediation’ to ‘conference or independent alternative dispute resolution (ADR)’.

The process prescribed by this amendment is triggered if the parties have not entered into a conduct and compensation agreement or a deferral agreement by the end of the minimum negotiation period. The first step is for either party to issue an election notice (which may be in any form so long as it is in writing). That election notice may either ask an authorised officer to call a conference to negotiate a conduct and compensation agreement or to call upon the other party to participate in an ADR. With the latter election, the party calling for the ADR must specify the type of ADR process proposed, for example mediation or conciliation. That party is also liable for the costs of the person facilitating the ADR. The person engaged to facilitate the ADR must be independent of all parties involved in the negotiations.

‘252A Conduct of conference or ADR

This clause will apply if either party issues an election notice. The timeframe for finishing a conference or an ADR is, in either case, 20 business days from the giving of that notice. The parties are able to seek a longer period in which to finish the conference or ADR if there are reasonable or unforeseen circumstances. In the event a party calls for an ADR and the other party having received notice, does not attend, then it is open to the party who called for the ADR to apply to the Land Court in accordance with section 253.

Amendment 9 Clause 253 (Deciding compensation through Land Court if mediation not called or after unsuccessful mediation)

Amendment 9 amends clause 253 of the *Geothermal Energy Bill 2010*.

‘253 Land Court may decide if negotiation process unsuccessful

The purpose of this amendment is to provide a mechanism for referral to the Land Court if the conference or ADR process is unsuccessful. The amendment provides for a party to refer to the Land Court in three

situations: firstly, when either the conference or ADR process is not finished within the usual period of 20 business days from the giving of the election notice (or such longer period as agreed); secondly, when only one party attended the conference or ADR; or thirdly when both parties attended the conference or ADR but were not successful insofar as no conduct and compensation agreement had been entered into.

Amendment 10 Clause 253 (Deciding compensation through Land Court if mediation not called or after unsuccessful mediation)

Amendment 10 amends clause 253 of the *Geothermal Energy Bill 2010* to change the definition of ‘eligible party’ to mean a party who attended the conference or the ADR.

Amendment 11 After clause 255

Amendment 11 inserts after clause 255 new Subdivision 5A into the *Geothermal Energy Bill 2010*.

‘Subdivision 5A Additional Land Court jurisdiction for compensation and related matters

‘255A What sdiv 5A is about

Clause 255A provides for additional matters over which the Land Court has jurisdiction namely, compensation and related matters, subject to subdivisions 1 to 5.

‘255B Additional jurisdiction

This clause empowers the Land Court to assess and decide matters of compensation liability in the instances where: a geothermal tenure holder has carried out a preliminary activity that has caused loss or damage; the parties cannot reach a conduct and compensation agreement; or the parties have entered into a conduct and compensation agreement or a deferral agreement. The clause specifically provides that the Land Court may declare whether a proposed authorised activity would if carried out, interfere with the carrying out of lawful activities by the eligible claimant (refer to section 324 of the *Geothermal Energy Bill 2010*). In seeking to determine this issue, the Land Court may make orders concerning a modification or reduction in the activity that would remove the interference and then determine compensation liability accordingly.

‘255C Jurisdiction to impose or vary agreement conditions

Clause 255C provides that the in deciding a matter stated in section 255B(2), the Land Court may impose any condition or vary any existing conditions on any ground it considers appropriate – for example, when it considers that a condition is unfair to one party.

Amendment 12 Chapter 7, heading (Mediation, enforcement, offences and proceedings)

Amendment 12 amends Chapter 7, headings of the *Geothermal Energy Bill 2010* to replace the term ‘mediation’ with the term ‘conferences’.

Amendment 13 Chapter 7 part 1 (Mediation, enforcement, offences and proceedings)

Amendment 13 omits former clause 306 Chapter 7, part 1 of the *Geothermal Energy Bill 2010* and inserts new Chapter 7, Part 1.

‘Part 1 Conferences with eligible claimants or owners and occupiers

Division 1 Preliminary

‘306 Application of pt 1

Clause 306 sets out the circumstances in which Chapter 7, Part 1 will apply. Those circumstances are if a geothermal tenure holder has not entered into a conduct and compensation agreement with an eligible claimant, by the end of the minimum negotiation period, and either party gives an election notice to an authorised officer asking for a conference. In this case the authorised officer must call a conference. Alternatively, a geothermal tenure holder or an owner or occupier of land may give an authorised officer notice of concern about how a party is conducting itself or its activities, in which case a conference may be called by the authorised officer about these concerns. An authorised officer may also call a

conference to discuss concerns about a geothermal tenure for another reason if the officer considers it desirable.

‘Division 2 Calling conference and attendance

‘307 Calling conference

Clause 307 requires the authorised officer by notice to request the parties attend a conference if a party, by way of an election notice, asks for a conference about negotiating a conduct and compensation agreement. If the authorised officer receives stated concerns from the owner of the land or the geothermal tenure holder or for any other reason considers it desirable to discuss concerns about a geothermal tenure; then the authorised officer may by notice ask the parties to attend a conference. In all cases, the notice issued by the authorised officer must state when and where the conference will be held and what is to be discussed at the conference.

‘308 Who may attend conference

Clause 308 provides for who may attend a conference. Apart from the authorised officer, anyone given notice of the conference may attend and take part in the conference. With the authorised officer’s approval, someone else may be present to help a person attending a conference. Lawyers may only be present where the parties agree and the authorised officer is satisfied there is no disadvantage to a party.

‘309 What happens if a party does not attend

Clause 309 outlines what happens if a party does not attend a conference. If an authorised officer gives notice of a conference and one of the parties does not attend, the authorised officer may still hold the conference. In the instance where one party does not attend, the attending party may seek an order in the Land Court against the non attending party to pay the attending party’s reasonable costs. However, the Land Court must not make such an order if satisfied that the non-attending party had a reasonable excuse.

‘Division 3 Conduct of conference

‘310 Authorised officer’s role

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

‘311 Statements made at conference

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

‘312 Agreement made at conference

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

Amendment 14 After clause 353

Amendment 14 inserts new clause 353A after clause 353 of the *Geothermal Energy Bill 2010*.

353A Limitation of owner’s or occupier’s tortious liability for authorised activities

The purpose of this new clause is to expressly provide that the civil liability for a claim based in tort for damages is limited for owners and occupiers of land the subject of a geothermal tenure. This clause is most likely to apply to claims for negligence by a third party. This clause will apply when someone else carries out an authorised activity for the geothermal tenure or someone else carries out an activity on the land which is purportedly an authorised activity for the geothermal tenure, to claims related to the carrying out of the activity.

An owner’s or occupier’s tortious liability is limited to the extent to which the harm claimed was caused or contributed to by the owner or occupier.

Clause 353A(6) provides for the application of this clause despite any other Act or law, even though this Act or the geothermal tenure prevents or restricts the activity.

Clause 353A(5) states that the terms *claim*, *damages* and *harm* mean the same as they do for the *Civil Liabilities Act 2003*.

Clause 335A breaches fundamental legislative principles on the basis that it affects the rights of others; particularly if they lack redress against the tenure holder. However, the protection of landholders from civil liability for claims, damage and harm of others due to activities carried out under tenure is critical particularly given the potential risks and impact on the landholder of having activities conducted on their land.

Amendment 15 After clause 413

Amendment 15 inserts clause 413A after clause 413 of the *Geothermal Energy Bill 2010*.

‘413A Amendment of s 249 (Later applicant must obtain consent or views of earlier applicant if same land affected)

Amendment 15 replaces section 249(3) to (7) of the *Mineral Resources Act 1989*.

Section 249(3) provides a timeframe of 20 business days from the date of grant of the permit, licence or lease applied for or at any time before the grant of an earlier application, for an earlier applicant to lodge consent to a later application with the Mining Registrar.

Section 249(4) provides that a later applicant for a mining tenement which is for different minerals, must within the 10 business days of lodgement of the application, provide the earlier applicant with a written request to provide views to the later application.

Section 249(5) provides that a written request for views must state the timeframe (20 business days) in which the earlier application may lodge views with the Mining Registrar. The section also provides that a later applicant is provide a copy of their application (excluding any of the later applicants financial and technical resources) to the earlier application.

Section 249(6) imposes an obligation on the later applicant to notify the Mining Registrar when they have complied with the requirement to provide a written request for views to an earlier applicant.

Section 249(7) provides that an earlier applicant who has been provided with a written request for views may within the response period (20 business days) lodge their written views with the Mining Registrar.

Section 249(8) provides that for the purpose of mining tenements with the same minerals, a Mining Registrar must not deal with a later application until an earlier applicant provided consent to the later application. For the purposes of mining tenements for different minerals, a Mining Registrar must not deal with a later application until the earlier applicant has provided views to the later application or the response period (20 business days) has lapsed.

Section 249(9) defines request period as 10 business days from the day the later application is lodged and the response period as 20 business days starting the day the earlier applicant has been given a written notice for views.

Amendment 16 Clause 416 (Replacement of pt 19, div 12)

Amendment 16 inserts section 774A to the *Mineral Resources Act 1989* to provide for transitional arrangements to allow the amended section to apply to any later mining tenement applications which are yet to be decided.

Amendment 17 Clause 430 (Omission of s 85 (Obligation to consult with particular owners and occupiers))

Amendment 17 replaces clause 430 of the *Geothermal Energy Bill 2010* with new clauses 430 and 430A.

‘430 Amendment of s 9 (Act does not affect other rights or remedies)

New clause 430 inserts a reference to new section 338A into section 9 of the *Greenhouse Gas Storage Act 2009*. The new section 338A is to be inserted by a new clause 436A of the Bill, to be inserted by Amendment 26.

‘430A Replacement of s 85 (Obligation to consult with particular owners and occupiers)

‘85 Obligation to consult with particular owners and occupiers

This amendment replaces the previous section 85 of the *Greenhouse Gas Storage Act 2009* relating to the obligations of a holder of a permit under the *Greenhouse Gas Storage Act 2009* to consult with landholders and provides that the holder of a permit under the *Greenhouse Gas Storage Act 2009* has a statutory obligation to consult with each owner and occupier of

private and public land subject to the tenure. The amendment further provides that the subject of the consultation must be about: access to the land, the conduct of the authorised activities on that land and the issue of compensation liability to the owner or occupier. Chapter 5, Part 10 of the *Greenhouse Gas Storage Act 2009* prescribes the process by which parties must consult.

Amendment 18 Clause 431 (Omission of s 166 (Obligation to consult with particular owners and occupiers))

Amendment 18 omits the existing clause 431 of the *Geothermal Energy Bill 2010* and replaces it with a new clause 431.

‘431 Replacement of s 166 (Obligation to consult with particular owners and occupiers)

‘166 Obligation to consult with particular owners and occupiers

This amendment replaces the previous section 166 of the *Greenhouse Gas Storage Act 2009* which relates to obligations of a holder of a lease under the *Greenhouse Gas Storage Act 2009* to consult with landholders and provides that the holder of a lease under the *Greenhouse Gas Storage Act 2009* has a statutory obligation to consult with each owner and occupier of private and public land subject to the authority. The amendment further provides that the subject of the consultation must be about: access to the land, the conduct of the authorised activities on that land and the issue of compensation liability to the owner or occupier. Chapter 5, Part 10 of the *Greenhouse Gas Storage Act 2009* prescribes the process by which parties must consult.

Amendment 19 Clause 432 (Replacement of ch 5, pt 7, divs 1 to 3)

Amendment 19 amends clause 432 of the *Geothermal Energy Bill 2010*. This amendment adds the requirement that the holder of an authority under the *Greenhouse Gas Storage Act 2009* must provide a copy of the relevant authority document with the first entry notice given to each owner and occupier of the land subject to the authority.

Amendment 20 Clause 432 (Replacement of ch 5, pt 7, divs 1 to 3)

Amendment 20 amends clause 432 of the *Geothermal Energy Bill 2010* to allow for the general period of entry under an entry notice to be 1 year for a greenhouse gas lease or 6 months for a greenhouse gas authority. This is consistent with the general period of entry previously contained in the *Greenhouse Gas Storage Act 2009*.

Amendment 21 Clause 435 (Replacement of ch 5, pt 10 (General compensation provisions))

Amendment 21 amends clause 435 of the *Geothermal Energy Bill 2010*. The amendment broadens the definition of ‘compensatable effects’ in the new section 320(4) of the *Greenhouse Gas Storage Act 2009*.

The amendment provides for the term ‘compensatable effect’ to include reasonable and necessary accounting, legal and valuation costs, recognising the fact that owners and occupiers of land should not have to incur the cost of engaging relevant professional advice to assist with the negotiation and preparation of an agreement with a greenhouse gas authority holder to enable access to their land and facilitate appropriate compensation. The range of reasonable and necessary professional costs is effectively limited by this amendment to accountants, lawyers and valuers because the negotiation and preparation of a conduct and compensation agreement is predominantly about determining the quantum of compensation for the impact of the authorised activities: for example, seeking legal advice to review a draft conduct and compensation agreement or obtaining valuation advice to assess impact of authorised activities on property values.

The purpose of the inclusion of examples of negotiation in clause 320(4)(b) is to ensure that the professional costs associated with attending the ADR or conference are included within the meaning of the term ‘compensatable effect’.

The amendment broadens the definition of compensatable effect to put beyond doubt that compensation is payable by a greenhouse gas authority holder for consequential damages that the eligible claimant incurs because of a compensatable effect mentioned in section 320(4)(a) and 320(4)(b). This amendment affords further protection to owners and occupiers of land subject to resource tenures and re-inserts a provision that was

unintentionally omitted during drafting of the *Geothermal Energy Bill 2010*.

Amendment 22 Clause 435 (Replacement of ch 5, pt 10 (General compensation provisions))

Amendment 22 amends clause 435 of the *Geothermal Energy Bill 2010* and stipulates that the ‘minimum negotiation period’ must be at least the period provided in section 324A. This is to reflect that the minimum negotiation period may now be either at least 20 business days from the giving of the negotiation notice (which is referred to as the ‘usual period’) or a longer minimum negotiation period as agreed between the parties due to reasonable or unforeseen circumstances.

Amendment 23 Clause 435 (Replacement of ch 5, pt 10 (General compensation provisions))

Amendment 23 amends clause 435 of the *Geothermal Energy Bill 2010* to insert new section 324A into the *Greenhouse Gas Storage Act 2009*.

‘324A Provision for the minimum negotiation period

The previous section 324 in the *Geothermal Energy Bill 2010* did not permit any flexibility with the statutory imposed timeframes for the minimum negotiation period. In recognition of that lack of flexibility the amendment empowers either party, within the initial 20 business days from the giving of the negotiation notice, to ask the other party to agree to a longer minimum negotiation period if there are reasonable or unforeseen circumstances.

For example, a greenhouse gas authority holder and landholder may agree to extend the minimum negotiation period on the basis that the landholder is unable to engage in negotiations until after the standard minimum negotiation period.

Amendment 24 Clause 435 (Replacement of ch 5, pt 10 (General compensation provision))

Amendment 24 amends clause 435 of the *Geothermal Energy Bill 2010* to insert new sections 325A and 325AB into the *Greenhouse Gas Storage Act 2009*.

‘325A Parties may seek conference or independent ADR

The heading of section 325A has been amended to emulate the amendment to the prescribed dispute resolution process from ‘mediation’ to ‘conference or independent alternative dispute resolution (ADR)’. The process prescribed by this amendment is triggered if the parties have not entered into a conduct and compensation agreement by the end of the minimum negotiation period. The first step is for either party to issue an election notice (which may be in any form so long as it is in writing). That election notice may either ask an authorised officer to call a conference to negotiate a conduct and compensation agreement or call upon the other party to participate in an ADR. With the latter election, the party calling for the ADR must specify the type of ADR process proposed, for example mediation or conciliation. That party is also liable for the costs of the person facilitating the ADR. The person engaged to facilitate the ADR must be independent of all parties involved in the negotiations.

‘325AB Conduct of conference or ADR

This section will apply if either party gives an election notice. The timeframe for finishing a conference or an ADR is, in either case 20 business days from the giving of that notice. The parties are able to seek a longer period in which to finish the conference or ADR if there are reasonable or unforeseen circumstances.

In the event a party calls for an ADR and the other party having received notice, does not attend, then it is open to the party who called for the ADR to apply to the Land Court in accordance with section 325B.

Amendment 25 Clause 435 (Replacement of ch 5, pt 10 (General compensation provisions))

Amendment 25 amends Clause 435 of the *Geothermal Energy Bill 2010* to insert a new section 325B of the *Greenhouse Gas Storage Act 2009*.

‘325B Land Court may decide if negotiation process unsuccessful

The purpose of this is to provide a mechanism for referral to the Land Court if the conference or the ADR process is unsuccessful. The amendment provides for a party to refer to the Land Court in three situations: firstly, when either the conference or ADR process is not finished within the usual period of 20 business days from the giving of the election notice (or such longer period as agreed); secondly, when only one party attended the conference or ADR; or thirdly when both parties

attended the process but were not successful insofar as no conduct and compensation agreement had been entered into.

Amendment 26 Clause 435 (Replacement of ch 5, pt 10 (General compensation provisions))

Amendment 26 amends clause 435 of the *Geothermal Energy Bill 2010* to change the definition of ‘eligible party’ in new section 325B of the *Greenhouse Gas Storage Act 2009* to mean a party who attended the conference or the ADR.

Amendment 27 Clause 435 (Replacement of ch 5, pt 10 (General compensation provisions))

Amendment 27 amends clause 435 of the *Geothermal Energy Bill 2010* to insert new Subdivision 5A to the *Greenhouse Gas Storage Act 2009*.

‘Subdivision 5A Additional Land Court jurisdiction for compensation and related matters

‘325DA What sdiv 5A is about

Section 325DA provides for additional matters for which the Land Court has jurisdiction namely, compensation and related matters, subject to subdivisions 1 to 5.

‘325DB Additional jurisdiction

This clause empowers the Land Court to assess and decide matters of compensation liability in the instances where: a GHG authority holder has carried out a preliminary activity that has caused loss or damage; the parties cannot reach a conduct and compensation agreement; or the parties have entered into a conduct and compensation agreement or a deferral agreement. The clause specifically provides that the Land Court may decide whether a proposed authorised activity would if carried out, interfere with the carrying out of lawful activities by the eligible claimant (refer to section 388 of the *Greenhouse Gas Storage Act 2009*). In seeking to determine this issue, the Land Court may make orders concerning a modification or reduction in the activity that would remove the interference and then determine compensation liability accordingly.

‘325DC Jurisdiction to impose or vary agreement conditions

Clause 325DC provides that the in deciding a matter stated in section 325DB(2), the Land Court may impose any condition or vary any existing

conditions on any ground it considers appropriate – for example, when it considers that a condition is unfair to one party.

Amendment 28 After clause 436

Amendment 28 inserts new clause 436A after clause 436 in the *Geothermal Energy Bill 2010*. This clause inserts a new section 338A into the *Greenhouse Gas Storage Act 2009*.

‘436A Insertion of new s 338A

338A Limitation of owner’s or occupier’s liability for authorised activities

The purpose of this new clause is to expressly provide that the civil liability for a claim based in tort for damages is limited for owners and occupiers of land the subject of a greenhouse gas storage authority, to claims related to the carrying out of the activity. This clause is most likely to apply to claims for negligence by a third party. This clause will apply when someone else carries out an authorised activity for the greenhouse gas storage authority or someone else carries out an activity on the land which is purportedly an authorised activity for the greenhouse gas storage authority, to claims related to the carrying out of the activity.

An owner’s or occupier’s tortious liability is limited to the extent to which the harm claimed was caused or contributed to by the owner or occupier.

Clause 338A(4) provides for the application of this clause despite any other Act or law, even though this Act or the greenhouse gas storage authority prevents or restricts the activity.

Clause 338A(5) states that the terms *claim*, *damages* and *harm* mean the same as they do for the *Civil Liabilities Act 2003*.

Clause 338A breaches fundamental legislative principles on the basis that it affects the rights of others; particularly if they lack redress against the tenure holder. However, the protection of landholders from civil liability for claims, damage and harm to others due to activities carried out under tenure is critical particularly given the potential risks and impact on the landholder of having activities being conducted on their land.

Amendment 29 Clause 437 (Replacement of ch 6, hdg (Enforcement, offences and proceedings))

Amendment 29 amends Clause 437 of the *Geothermal Energy Bill 2010* which inserts new Chapter 6 in the *Greenhouse Gas Storage Act 2009*.

‘437 Replacement of ch 6 hdg (Enforcement, offences and proceedings)

‘Chapter 6 Conferences, investigations and enforcement

‘Part 1A Conferences with eligible claimants or owners and occupiers

Division 1 Preliminary

‘377A Application of pt 1A

Section 377A sets out the circumstances in which Chapter 6, Part 1 will apply. Those circumstances are if a greenhouse gas authority holder has not entered into a conduct and compensation agreement with an eligible claimant by the end of the minimum negotiation period and either party gives an election notice to an authorised officer and the other party, asking for a conference. In this case the authorised officer must call a conference.

Alternatively, a greenhouse gas authority holder or an owner of the land may give an authorised officer notice of their concerns about how a party is conducting itself or its activities, in which case a conference may be called by the authorised officer about these concerns. An authorised officer may also call a conference to discuss concerns about a GHG authority for another reason if the officer considers it desirable.

Division 2 Calling conference and attendance

‘377B Calling conference

Section 377B requires the authorised officer by notice to request the parties attend a conference if a party, by way of an election notice, asks for a conference about negotiating a conduct and compensation agreement. If the authorised officer receives stated concerns from the owner of the land

or the authority holder or for any other reason considers it desirable to discuss concerns about an authority, then the authorised officer may by notice ask the parties to attend a conference. In the event a conference is called about stated concerns on the part of the authorised officer then he or she may call the conference. In all cases, the notice issued by the authorised officer must state when and where the conference will be held and what is to be discussed at the conference.

‘377C Who may attend conference

Section 377C provides for who may attend a conference. Apart from the authorised officer, anyone given notice of the conference may attend and take part in the conference. With the authorised officer’s approval, someone else may be present to help a person attending a conference. Lawyers may only be present where the parties agree and the authorised officer is satisfied there is no disadvantage to a party.

‘377D What happens if a party does not attend

Section 377D outlines what happens if a party does not attend a conference. If an authorised officer gives notice of a conference and one of the parties does not attend, the authorised officer may still hold the conference. In the instance where one party does not attend, the attending party may seek an order in the Land Court against the non-attending party to pay the attending party’s reasonable costs. However, the Land Court must not make such an order if satisfied that the non-attending party had a reasonable excuse.

Division 3 Conduct of conference

‘377E Authorised officer’s role

Section 377E places an obligation on the authorised officer when conducting a conference to endeavour to assist the attending parties to settle the matter that is the subject of the conference in an expedient and inexpensive manner. The manner in which the conference is to be conducted is a decision for the authorised officer.

‘377F Statements made at conference

Section 377F contains the common provision that nothing said by a person at the conference is admissible in a proceeding without the person’s consent.

‘377G Agreement made at conference

Clause 377G provides that if an agreement is negotiated at the conference, it must be documented and signed by or for the parties at the conclusion of the conference. An agreement reached at the conference may be a conduct and compensation agreement or a variation of an existing conduct and compensation agreement between the parties. An agreement reached at a conference has the same effect as any other compromise which means an enforceable contract.

Amendment 30 Clause 439 (Amendment of sch 2 (Dictionary))

Amendment 30 amends clause 439 of the *Geothermal Energy Bill 2010* and inserts a reference to ADR in the dictionary, as defined in section 325A(2)(b). This ensures the definition of ADR is clear.

Amendment 31 Clause 439 (Amendment of sch 2 (Dictionary))

Amendment 31 amends clause 439 of the *Geothermal Energy Bill 2010* to insert the definition of ‘election notice’, by reference to section 325A(2) which describes what constitutes an election notice.

Amendment 32 Clause 439 (Amendment of sch 2 (Dictionary))

Amendment 32 amends clause 439 of the *Geothermal Energy Bill 2010* to amend the definition of occupier in the *Greenhouse Gas Storage Act 2009*. The definition has been tightened to only include occupiers under an Act or registered lessees under the *Land Title Act 1994*. The previously proposed ‘occupier’ definition was too broad in nature and would have included anyone given a right to occupy land (for example camper on private property). Given the notices associated with land access and compensation are required to be served by authority holders on ‘occupiers’, this amendment was deemed appropriate.

Amendment 33 Clause 439 (Amendment of sch 2 (Dictionary))

Amendment 33 amends clause 439 of the *Geothermal Energy Bill 2010* and provides for an expanded definition of ‘preliminary activities’ under the *Greenhouse Gas Storage Act 2009*. The definition now includes reference to both ‘land use’ and ‘business’ impacts. This is appropriate given that authorised activities have potential impacts on existing land use and a business carried out on private property.

Amendment 34 Clause 439 (Amendment of sch 2 (Dictionary))

Amendment 34 amends clause 439 of the *Geothermal Energy Bill 2010* and refines the examples provided in relation to ‘preliminary activities’ in the Bill. Amendment has been made to omit drilling activities as an example of a preliminary activity. Drilling was deemed to have a potential significant land use and business impact. The wording of the example of geophysical surveys has also been amended to make clear that only geophysical surveys that do not require site preparation (disturbance to the land) are considered an example of a preliminary activity.

Amendment 35 Clause 451 (Insertion of new pt 10, divs 1A and 1B)

Amendment 35 amends clause 451 of the *Geothermal Energy Bill 2010* which inserts new Division 1B in the *Mineral Resources Act 1989*.

‘Division 1B Conferences with eligible claimants or owners and occupiers

Subdivision 1 Preliminary

‘335F Application of div 1B

Clause 335F sets out the circumstances in which Division 1B will apply. Those circumstances are if a mining tenement holder (which, for the purposes of this section can only be a holder of an exploration permit or a mineral development licence) has not entered into a conduct and compensation agreement with an eligible claimant by the end of the minimum negotiation period and, either party gives an election notice to a relevant officer and the other party asking for a conference. In this case the relevant officer must call a conference.

Alternatively, a mining tenement holder or an owner of land within the mining tenement holder’s area may give a relevant officer notice of their concerns about how a party is conducting itself or its activities, in which case a conference may be called by the relevant officer about these concerns. A relevant officer may call a conference to discuss concerns

about a mining tenement for another reason if the officer considers it desirable

Subdivision 2 Calling conference and attendance

‘335G Calling conference

Section 335G requires the relevant officer by notice to request the parties attend a conference if a party, by way of an election notice, asks for a conference about negotiating a conduct and compensation agreement. If the relevant officer receives stated concerns from the owner of the land or the mining tenement holder or for any other reason considers it desirable to discuss concerns about a mining tenement; then the relevant officer may by notice ask the parties to attend a conference. In all cases, the notice issued by the relevant officer must state when and where the conference will be held and what is to be discussed at the conference.

‘335H Who may attend conference

Section 335H provides for who may attend a conference. Apart from the relevant officer, anyone given notice of the conference may attend and take part in the conference. With the relevant officer’s approval, someone else may be present to help a person attending a conference. Lawyers may only be present where the parties agree and the relevant officer is satisfied there is no disadvantage to a party.

‘335I What happens if a party does not attend

Section 335I outlines what happens if a party does not attend a conference. If a relevant officer give notice of a conference and one of the parties does not attend, the relevant officer may still hold the conference. In the instance where one party does not attend, the attending party may seek an order in the Land Court against the non-attending party to pay the attending party’s reasonable costs. However, the Land Court must not make such an order if satisfied that the non-attending party had a reasonable excuse.

Subdivision 3 Conduct of conference

‘335J Relevant officer’s role

Section 335J places an obligation on the relevant officer when conducting a conference to endeavour to assist the attending parties to settle the matter that is the subject of the conference in an expedient and in expensive manner. The manner in which the conference is to be conducted is a decision for the relevant officer.

‘335K Statements made at conference

Section 335K contains the common provision that nothing said by a person at the conference is admissible in a proceeding without the person’s consent.

‘335L Agreement made at conference

Section 335L provides that if an agreement is negotiated at the conference, it must be documented and signed by or for the parties at the conclusion of the conference. An agreement reached at the conference may be a conduct and compensation agreement or a variation of an existing conduct and compensation agreement between the parties. An agreement reached at a conference has the same effect as any other compromise, which means an enforceable contract.

Amendment 36 Clause 454 (Insertion of new pt 19, div 13, sdiv 2)

Amendment 36 amends clause 454 of the *Geothermal Energy Bill 2010* to insert a new section 777A in the *Mineral Resources Act 1989*.

‘777A Existing agreements about compensation

This amendment inserts a new section in the *Mineral Resources Act 1989* that recognises existing agreements for compensation made for exploration tenements. It allows for an agreement reached and in force prior to the commencement of the new legislation about an owner’s entitlements under either former section 145 or former section 191, to become a conduct and compensation agreement for the purposes of the new Schedule 1.

This new section recognises that a significant number of mineral exploration tenure holders have gone beyond their current statutory obligation under the *Mineral Resources Act 1989* and have struck up-front

compensation agreements with landholders and provides for recognition of these agreements.

Amendment 37 Clause 454 (Insertion of new pt 19, div 13, sdiv 2)

Amendment 37 amends clause 454 of the *Geothermal Energy Bill 2010* to insert a new section 778A in the *Mineral Resources Act 1989*.

‘778A Additional exemption to conduct and compensation agreement requirement

Many exploration tenement holders are already carrying out lawful advanced activities having given the owner of the land an entry notice. Despite the fact that these activities may have a significant impact on the business or land use of the landholder, it is not the legislative intention to bring current lawful operations to an immediate cessation.

This amendment provides that for the term of the current notice of entry (current as at commencement start date) an exploration permit or mineral development licence holder may continue these advanced activities, without having to reach a conduct and compensation agreement. Once the term of the current entry notice expires, the tenement holder will be required to negotiate a conduct and compensation agreement, should they wish to continue carrying out advanced activities. It is not permissible to renew the current entry notice, with the exception of a deferral agreement being in place between the parties or the matter of determining compensation having been referred to the Land Court.

Amendment 38 Clause 455 (Insertion of new sch 1)

Amendment 38 amends clause 455 of the *Geothermal Energy Bill 2010*. This amendment provides for an expanded definition of ‘preliminary activities’ under the *Mineral Resources Act 1989*. The definition now includes reference to both ‘land use’ and ‘business’ impacts. This is appropriate given that authorised activities have potential impacts on existing land use and a business carried out on private property.

Amendment 39 Clause 455 (Insertion of new sch 1)

Amendment 39 amends clause 455 of the *Geothermal Energy Bill 2010* and refines the examples provided in relation to the definition of ‘preliminary activities’. Amendment has been made to omit drilling

activities as an example of a preliminary activity. Drilling was deemed to have a potential significant land use and business impact. The wording of the example of geophysical surveys has also been amended to make clear that only geophysical surveys that do not require site preparation (disturbance to the land) are considered an example of a preliminary activity.

Amendment 40 Clause 455 (Insertion of new sch 1)

Amendment 40 amends clause 455 of the *Geothermal Energy Bill 2010* to insert a reference to ADR in the dictionary, by reference to in section 19(2)(b). This ensures the definition of ADR is clear.

Amendment 41 Clause 455 (Insertion of new sch 1)

Amendment 41 amends clause 455 of the *Geothermal Energy Bill 2010* to insert the definition of ‘election notice’ by reference to section 19(2) which describes what constitutes an election notice.

Amendment 42 Clause 455 (Insertion of new sch 1)

Amendment 42 amends clause 455 of the *Geothermal Energy Bill 2010* to insert the requirement that the holder of a exploration tenement under the *Mineral Resources Act 1989* must provide a copy of the exploration tenement document with the first entry notice given to each owner and occupier of the land subject to the tenement.

Amendment 43 Clause 455 (Insertion of new sch 1)

Amendment 43 amends clause 455 of the *Geothermal Energy Bill 2010* which inserts new Schedule 1 of the *Mineral Resources Act 1989*, to broaden the definition of ‘compensatable effects’ to include any damages and puts beyond doubt that compensation is payable by a geothermal tenure holder for consequential damages (including consequential loss) that occurs as a result of authorised activities being carried out on an exploration tenement. This amendment affords further protection to owners and occupiers of land subject to resource tenures.

Amendment 44 Clause 455 (Insertion of new sch 1)

Amendment 44 amends clause 455 of the *Geothermal Energy Bill 2010* and provides that the ‘minimum negotiation period’ must be at least the period stipulated in section 17A of Schedule 1 of the *Mineral Resources Act 1989*. This is to reflect that the minimum negotiation period may now be either at least 20 business days from the giving of the negotiation notice (which is referred to as the ‘usual period’) or a longer minimum negotiation period as agreed between the parties due to reasonable or unforeseen circumstances.

Amendment 45 Clause 455 (Insertion of new sch 1)

Amendment 45 inserts new section 17A into new Schedule 1 of the *Mineral Resources Act 1989*.

‘17A Provision for the minimum negotiation period

New section 17A provides flexibility in the minimum negotiation period. It provides that either party may, within the initial 20 business days from the giving of the negotiation notice, ask the other party to agree to a longer minimum negotiation period if there are reasonable or unforeseen circumstances. For example, an exploration tenement holder and landholder may agree to extend the minimum negotiation period on the basis that the landholder is unable to engage in negotiations until after the usual minimum negotiation period.

Amendment 46 Clause 455 (Insertion of new sch 1)

Amendment 46 amends clause 455 of the *Geothermal Energy Bill 2010* and replaces section 19 within new schedule 1, of the *Mineral Resources Act 1989* with new sections 19 and 19A.

‘19 Parties may seek conference or independent ADR

The heading of section 19 has been amended to emulate the amendment to the prescribed dispute resolution process from ‘mediation’ to ‘conference or independent alternative dispute resolution (ADR)’.

The process prescribed by this amendment is triggered if the parties have not entered into a conduct and compensation agreement by the end of the minimum negotiation period. The first step is for either party to issue an election notice (which may be in any form so long as it is in writing). That election notice may either ask an authorised officer to call a conference to

negotiate a conduct and compensation agreement or call upon the other party to participate in an ADR. With the latter election, the party calling for the ADR must specify the type of ADR process proposed, for example mediation or conciliation. That party is also liable for the costs of the person facilitating the ADR. The person engaged to facilitate the ADR must be independent of all parties involved in the negotiations.

‘19A Conduct of conference or ADR

This section will apply if either party issues an election notice. The timeframe for finishing a conference or an ADR is, in either case, 20 business days from the giving of that notice. The parties are able to seek a longer period in which to finish the conference or ADR if there are reasonable or unforeseen circumstances.

In the event a party calls for an ADR and the other party having received notice, does not attend, then it is open to the party who called for the ADR to apply to the Land Court in accordance with section 335I of the *Mineral Resources Act 1989*.

Amendment 47 Clause 455 (Insertion of new sch 1)

Amendment 47 amends clause 455 of the *Geothermal Energy Bill 2010* and omits former schedule 1, section 20 of the *Mineral Resources Act 1989* and inserts a new schedule 1, section 20.

‘20 Land court may decide if negotiation process unsuccessful

The purpose of this amendment is to provide a mechanism for referral to the Land Court if the conference on ADR process is unsuccessful. The amendment provides for a party to refer to the Land Court in three situations: firstly when either the conference or ADR process is not finished within the usual period of 20 business days from the giving of the election notice or such longer period as agreed; secondly when only one party attended the conference or ADR; or thirdly if both parties attended but the process was not successful in that no conduct and compensation agreement has been entered into.

Amendment 48 Clause 455 (Insertion of new sch 1)

Amendment 48 amends clause 455 of the *Geothermal Energy Bill 2010* to change the definition of ‘eligible party’ to mean a party who attended the conference or the ADR.

Amendment 49 Clause 455 (Insertion of new sch 1)

Amendment 49 amends clause 455 of the *Geothermal Energy Bill 2010* and inserts new Part 6A in new schedule 1 of the *Mineral Resources Act 1989*.

‘Part 6A Additional Land Court jurisdiction for compensation and related matters

‘22A What pt 6A is about

Section 22A provides for additional matters over which the Land Court has jurisdiction namely, compensation and related matters, subject to parts 2 to 6.

‘22B Additional jurisdiction

This clause empowers the Land Court to assess and decide matters of compensation liability in the instances where: the parties cannot reach a conduct and compensation agreement; or the parties have entered into a conduct and compensation agreement or a deferral agreement.

‘22C Jurisdiction to impose or vary conditions

Clause 22C provides that in deciding a matter stated in section 22B(2), the Land Court may impose any condition or vary any existing conditions on any ground it considers appropriate – for example, when it considers that a condition is unfair to one party.

Amendment 50 Clause 456 (Amendment and renumbering of schedule (Dictionary))

Amendment 50 amends clause 456 of the *Geothermal Energy Bill 2010* and inserts a reference to ADR in the dictionary, by reference to schedule 1 section 19(2)(b) of the *Mineral Resources Act 1989*. This ensures the definition of ADR is clear.

Amendment 51 Clause 456 (Amendment and renumbering of schedule (Dictionary))

Amendment 51 amends clause 456 of the *Geothermal Energy Bill 2010* to insert a definition of ‘election notice’ by reference to schedule 1, section 19(2) of the *Mineral Resources Act 1989* which describes what constitutes an election notice.

Amendment 52 Clause 456 (Amendment and renumbering of schedule (Dictionary))

Amendment 52 amends clause 456 of the *Geothermal Energy Bill 2010* to amend the definition of occupier in the *Mineral Resources Act 1989*. The definition has been tightened to only include occupiers under an Act or registered lessees under the *Land Title Act 1994*. The previously proposed ‘occupier’ definition was too broad in nature and would have included anyone given a right to occupy land (for example a camper on private property). Given the notices associated with land access and compensation are required to be served by exploration tenement holders on ‘occupiers’, this amendment was deemed appropriate.

Amendment 53 Clause 458 (Amendment of s 2 (Definitions))

Amendment 53 amends clause 458 of the *Geothermal Energy Bill 2010*. This amendment inserts a reference to ADR in the dictionary, by reference to section 79VA(2)(b) of the *Petroleum Act 1923*. This ensures the definition of ADR is clear.

Amendment 54 Clause 458 (Amendment of s 2 (Definitions))

Amendment 54 amends clause 458 of the *Geothermal Energy Bill 2010* to insert a definition of ‘election notice’ by reference to section 79VA(2) of the *Petroleum Act 1923* which describes what constitutes an election notice.

Amendment 55 Clause 458 (Amendment of s 2 (Definitions))

Amendment 55 amends clause 458 of the *Geothermal Energy Bill 2010* to amend the definition of occupier in the *Petroleum Act 1923*. The definition has been tightened to only include occupiers under an Act or registered lessees under the *Land Title Act 1994*. The previously proposed ‘occupier’ definition was too broad in nature and would have included anyone given a

right to occupy land (for example a camper on private property). Given the notices associated with land access and compensation are required to be served by authority holders on ‘occupiers’, this amendment was deemed appropriate.

Amendment 56 Clause 458 (Amendment of s 2 (Definitions))

Amendment 56 amends clause 458 of the *Geothermal Energy Bill 2010*. This amendment provides for an expanded definition of ‘preliminary activities’ under the *Petroleum Act 1923*. The definition now includes reference to both ‘land use’ and ‘business’ impacts. This is appropriate given that authorised activities have potential impacts on existing land use and a business carried out on private property.

Amendment 57 Clause 458 (Amendment of s 2 (Definitions))

Amendment 57 amends clause 458 of the *Geothermal Energy Bill 2010*. This amendment refines the examples provided in relation to ‘preliminary activities’. Amendment has been made to omit drilling activities as an example of a preliminary activity. Drilling was deemed to have a potential significant land use and business impact. The wording of the example of geophysical surveys has also been amended to make clear that only geophysical surveys that do not require site preparation (disturbance to the land) are considered an example of a preliminary activity.

Amendment 58 Clause 459 (Omission of s 74V (Obligation to consult with particular owners and occupiers))

Amendment 58 omits the existing clause 459 of the *Geothermal Energy Bill 2010* and replaces it with a new clause 459.

‘459 Replacement of s 74V (Obligation to consult with particular owners and occupiers)

‘74V Obligations to consult with particular owners and occupiers

This amendment replaces the existing section 74V of the *Petroleum Act 1923* which relates to the *Petroleum Act 1923* tenure holder’s obligations to consult with landholders and provides that the holder of a *Petroleum Act 1923* tenure has a statutory obligation to consult with each owner and occupier of private and public land subject to the tenure. The amendment further provides that the subject of the consultation must include: access to the land; the conduct of the authorised activities on that land; and the issue

of compensation liability to the owner or occupier. Part 6K of the *Petroleum Act 1923* prescribes the process by which the parties must consult.

Amendment 59 After clause 460

Amendment 59 inserts new clause 460A after clause 460 of the *Geothermal Energy Bill 2010*.

‘460A Insertion of new s 75EA

‘75EA Limitation of owner’s or occupier’s tortious liability for authorised activities

The purpose of this new clause is to expressly provide that the civil liability for a claim based in tort for damages is limited for owners and occupiers of land the subject of a *Petroleum Act 1923* tenure. This clause is most likely to apply to claims for negligence by a third party. This clause will apply when someone else carries out an authorised activity for the *Petroleum Act 1923* tenure or someone else carries out an activity on the land which is purportedly an authorised activity for the *Petroleum Act 1923* tenure, to claims related to the carrying out of the activity.

However, clause 75EA(2) does not apply if the owner or occupier, or someone else authorised by the owner or occupier causes or authorised the carrying out of the activities. In this instance, the owner or occupier will be liable for a claim to the extent they caused or contributed to the harm that is the subject of the claim.

Clause 75EA(4) provides for the application of this clause despite any other Act or law, even though the *Petroleum Act 1923* or the tenure prevents or restricts the activity.

Clause 75EA(5) states that the terms *claim*, *damages* and *harm* mean the same as they do for the *Civil Liabilities Act 2003*.

Clause 75EA breaches fundamental legislative principles on the basis that it affects the rights of others; particularly if they lack redress against the tenure holder. However, the protection of landholders from civil liability for claims, damage and harm of other due to activities carried out under tenure is critical particularly given the potential risks and impact on the landholder of having activities being conducted on their land.

Amendment 60 Clause 461 (Replacement of pt 6H, divs 1 to 3)

Amendment 60 amends clause 461 of the *Geothermal Energy Bill 2010* to provide in section 78M(2) that the holder of a *Petroleum Act 1923* tenure must provide a copy of the relevant *Petroleum Act 1923* tenure document with the first entry notice given to each owner and occupier of the land subject to the tenure.

Amendment 61 Clause 461 (Replacement of pt 6H, divs 1 to 3)

Amendment 61 amends clause 461 of the *Geothermal Energy Bill 2010* to allow for the general period of entry under an entry notice to be 1 year for a petroleum lease or 6 months for an authority to prospect. This is consistent with the general period of entry under the current *Petroleum Act 1923* entry notice provisions.

Amendment 62 Clause 463 (Replacement of part 6K (General compensation provisions))

Amendment 62 amends clause 463 of the *Geothermal Energy Bill 2010* and amends part 6K, division 1 of the *Petroleum Act 1923*.

‘Division 1 Compensation other than for notifiable road uses and make good obligation

‘Subdivision 1 Preliminary

‘79P Application of div 1

Section 79P re-inserts a clause that was unintentionally omitted. It provides that Division 1 does not apply for an effect that is required to be addressed in a ‘make good’ agreement relating to impacts on water bores. This is an important amendment as it clarifies that make good arrangements are separate from other compensation arrangements agreed on as part of land access.

Amendment 63 Clause 463 (Replacement of part 6K (General compensation provisions))

Amendment 63 amends clause 463 of the *Geothermal Energy Bill 2010* to broaden the definition of compensatable effect under the *Petroleum Act 1923*.

The amendment provides for the term ‘compensatable effect’ to include reasonable and necessary accounting, legal and valuation costs, recognising the fact that owners and occupiers of land should not have to incur the cost of engaging relevant professional advice to assist with the negotiation and preparation of an agreement with a *Petroleum Act 1923* tenure holder to enable access to their land and facilitate appropriate compensation. The range of reasonable and necessary professional costs is effectively limited by this amendment to accountants, lawyers and valuers because the negotiation and preparation of a conduct and compensation agreement is predominantly about determining the quantum of compensation for the impact of the authorised activities: for example, seeking legal advice to review a draft conduct and compensation agreement, or obtaining valuation advice to assess impact of authorised activities on property values.

The purpose of the inclusion of examples of negotiation in clause 320(4)(b) is to ensure that the professional costs associated with attending the ADR or conference are included within the meaning of the term ‘compensatable effect’.

The amendment broadens the definition of compensatable effect to put beyond doubt that compensation is payable by a petroleum tenure holder for consequential damages that the eligible claimant incurs because of a compensatable effect mentioned in section 79Q(4)(a) and 79Q(4)(b). This amendment affords further protection to owners and occupiers of land subject to resource tenures and re-inserts a provision that was unintentionally omitted during drafting of the *Geothermal Energy Bill 2010*.

Amendment 64 Clause 463 (Replacement of part 6K (General compensation provisions))

Amendment 64 amends clause 463 of the *Geothermal Energy Bill 2010* to stipulate in section 79U of the *Petroleum Act 1923* that the ‘minimum negotiation period’ must be at least for the period provided in section 79UA. This is to reflect that the minimum negotiation period may now be

either at least 20 business days from the giving of the negotiation notice (which is referred to as the ‘usual period’) or a longer minimum negotiation period as agreed between the parties due to reasonable or unforeseen circumstances.

Amendment 65 Clause 463 (Replacement of part 6K (General compensation provisions))

Amendment 65 amends clause 463 of the *Geothermal Energy Bill 2010* to insert new section 79UA in the *Petroleum Act 1923*.

‘79UA Provision for the minimum negotiation period

The previous provisions of the Bill did not permit any flexibility with the statutory imposed timeframes for the minimum negotiation period. In recognition of that lack of flexibility the amendment empowers either party, within the initial 20 business days from the giving of the negotiation notice, to ask the other party to agree to a longer minimum negotiation period if there are reasonable or unforeseen circumstances. For example, a *Petroleum Act 1923* tenure holder and landholder may agree to extend the minimum negotiation period on the basis that the landholder is unable to engage in negotiations until after the usual minimum negotiation period.

Amendment 66 amends Clause 463 (Replacement of part 6K (General compensation provisions))

Amendment 66 amends clause 463 of the *Geothermal Energy Bill 2010*, to replace previous section 79VA and insert new sections 79VA and 79VAB in the *Petroleum Act 1923*.

‘79VA Parties may seek conference or independent ADR

The heading of section 79VA has been amended to emulate the amendment to the prescribed dispute resolution process from ‘mediation’ to ‘conference or independent alternative dispute resolution (ADR)’.

The process prescribed by this amendment is triggered if the parties have not entered into a conduct and compensation agreement or deferral agreement by the end of the minimum negotiation period. The first step is for either party to issue an election notice (which may be in any form so long as it is in writing). That election notice may either ask an authorised officer to call a conference to negotiate a conduct and compensation agreement or to call upon the other party to participate in an ADR. With the latter election, the party calling for the ADR must specify the type of

ADR process proposed, for example mediation or conciliation. That party is also liable for the costs of the person facilitating the ADR. The person engaged to facilitate the ADR must be independent of all parties involved in the negotiations.

‘79VAB Conduct of conference or ADR

This section will apply if either party issues an election notice. The timeframe for finishing a conference or an ADR is, in either case, 20 business days from the giving of that notice. The parties are able to seek a longer period in which to finish the conference or ADR if there are reasonable or unforeseen circumstances.

In the event a party calls for an ADR and the other party having received notice, does not attend, then it is open to the party who called for the ADR to apply to the Land Court in accordance with section 79VB.

Amendment 67 amends Clause 463 (Replacement of part 6k (General compensation provisions))

Amendment 67 amends clause 463 of the *Geothermal Energy Bill 2010* and replaces subsections 1 and 2 of new section 79VB to be inserted in the *Petroleum Act 1923* by that clause.

‘79VB Land Court may decide if negotiation process unsuccessful

The purpose of this amendment is to allow for the conference and ADR process to be a mechanism for referral to the Land Court. The amendment provides for a party to refer to the Land Court in three situations: firstly when either the conference or ADR process is not finished within the usual period of 20 business days from the giving of the election notice or such longer period as agreed; or secondly when only one party attended the conference or ADR; or finally when both parties attended the process but were not successful in that no conduct and compensation agreement has been entered into by the parties.

Amendment 68 Clause 463 (Replacement of part 6K (General compensation provisions))

Amendment 68 amends clause 463 of the *Geothermal Energy Bill 2010* to change the definition of ‘eligible party’ to mean a party who attended the conference or the ADR.

Amendment 69 Clause 463 (Replacement of part 6k (General compensation provisions))

Amendment 69 amends clause 463 of the *Geothermal Energy Bill 2010* to insert new Subdivision 5A to the *Petroleum Act 1923*.

‘Subdivision 5A Additional Land Court jurisdiction for compensation and related matters

‘79VDA What sdiv 5A is about

Section 79VDA provides for additional matters for which the Land Court has jurisdiction namely, compensation and related matters, subject to subdivisions 1 to 5.

‘79VDB Additional jurisdiction

This clause empowers the Land Court to assess and decide matters of compensation liability in the instances where: a 1923 Act petroleum tenure holder has carried out a preliminary activity that has caused loss or damage; the parties cannot reach a conduct and compensation agreement; or the parties have entered into a conduct and compensation agreement or a deferral agreement. The clause specifically provides that the Land Court may decide whether a proposed authorised activity would if carried out, interfere with the carrying out of lawful activities by the eligible claimant (refer to clause 463A of the *Geothermal Energy Bill 2010*). In seeking to determine this issue, the Land Court may make orders concerning a modification or reduction in the activity that would remove the interference and then determine compensation liability accordingly.

‘79VDC Jurisdiction to impose or vary conditions

Clause 79VDC provides that in deciding a matter stated in section 79VDB(2), the Land Court may impose any condition or vary any existing conditions on any ground it considers appropriate – for example, when it considers that a condition is unfair to one party.

Amendment 70 After clause 463

Amendment 70 inserts new clause 463A in the *Geothermal Energy Bill 2010*.

‘463A Replacement of s 88 (Conduct of operations on land)

‘88 Duty to avoid interference in carrying out authorised activities

This additional clause omits the previous section 88 of the *Petroleum Act 1923* and replaces it with wording consistent with the *Petroleum and Gas (Production and Safety) Act 2004*. It imposes a statutory obligation on a *Petroleum Act 1923* tenure holder that it must not unreasonably interfere with a lawfully conducted land use.

This provision ensures that it is an offence for a *Petroleum Act 1923* tenure holder to unreasonably interfere with a landholder’s lawful existing land use. This is an important provision as it provides certainty to landholders that they have a statutory right to engage with resource companies to ensure that they carry out activities in a way that avoids or minimises the impact on them.

Amendment 71 Clause 464 (Insertion of new pt 6R)

Amendment 71 amends clause 464 and replaces the new part 6R to be inserted by that clause. in the *Petroleum Act 1923*.

‘464 Insertion of new pt 6R

‘Part 6R Conferences with eligible claimants or owners and occupiers

‘Division 1 Preliminary

‘103A Application of pt 6R

Clause 103A sets out the circumstances in which Part 6R will apply. Those circumstances are if the 1923 Act petroleum tenure holder has not entered into a conduct and compensation agreement with an eligible claimant at the end of the minimum negotiation period, either party gives an election notice to an authorised officer and the other party asking for a conference. In this case the authorised officer must call a conference. Alternatively, a 1923 Act petroleum tenure holder or an owner of land subject to that tenure

may give an authorised officer notice of concerns about how a party is conducting itself or its activities, in which case a conference may be called by the authorised officer about these concerns. An authorised officer may call a conference to discuss concerns about a 1923 Act petroleum tenure for another reason if the officer considers it desirable.

‘Division 2 Calling conference and attendance

‘103B Calling conference

Section 103B requires the authorised officer by notice to request the parties attend a conference if a party, by way of an election notice, asks for a conference about negotiating a conduct and compensation agreement. If the authorised officer receives stated concerns from the owner of the land or the tenure holder or for any other reason considers it desirable to discuss concerns about a petroleum authority, then the authorised officer may by notice ask the parties to attend a conference. In all cases, the notice issued by the authorised officer must state when and where the conference will be held and what is to be discussed at the conference.

‘103C Who may attend conference

This section provides for who may attend a conference. Apart from the authorised officer, anyone given notice of the conference may attend and take part in the conference. With the authorised officer’s approval, someone else may be present to help a person attending a conference. Lawyers may only be present where the parties agree and the authorised officer is satisfied there is no disadvantage to a party.

‘103D What happens if a party does not attend

This section outlines what happens if a party does not attend a conference. If an authorised officer give notice of a conference and one of the parties does not attend, the authorised officer may still hold the conference. In the instance where one party does not attend, the attending party may seek an order in the Land Court against the non-attending party to pay the attending party’s reasonable costs. However, the Land Court must not make such an order if satisfied that the non-attending party had a reasonable excuse.

‘Division 3 Conduct of conference

‘103E Authorised officer’s role

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

‘103F Statements made at conference

This section contains the common provision that nothing said by a person at the conference is admissible in a proceeding without the person’s consent.

‘103G Agreement made at conference

This section provides that if an agreement is negotiated at the conference, it must be documented and signed by or for the parties at the conclusion of the conference. An agreement reached at the conference may be a conduct and compensation agreement or a variation of an existing conduct and compensation agreement between the parties. An agreement reached at a conference has the same effect as any other compromise, which means an enforceable contract.

Amendment 72 After clause 466

Amendment 72 inserts new clause 466A in the *Geothermal Energy Bill 2010* after clause 466.

‘466A Amendment of s 7 (Act does not affect other rights or remedies)

The new clause amends clause 7 of the *Petroleum and Gas (Production and Safety) Act 2004*, to insert a reference to new section 563A (see amendment 85)

Amendment 73 Clause 468 (Omission of s 74 (Obligation to consult with particular owners and occupiers))

Amendment 73 omits the existing clause 468 of the *Geothermal Energy Bill 2010* and replaces it with a new clause 468.

‘468 Replacement of s 74 (Obligation to consult with particular owners and occupiers

’74 Obligation to consult with particular owners and occupiers

This amendment replaces the previous section 74 of the *Petroleum and Gas (Production and Safety) Act 2004* which relates to the petroleum authority holder’s obligations to consult with landholders, and provides that the holder of an authority to prospect has a statutory obligation to consult with each owner and occupier of private and public land subject to the tenure. The amendment further provides that the subject of the consultation must include: access to the land; the conduct of the authorised activities on that land; and the issue of compensation liability to the owner or occupier. Chapter 5, part 5 of the *Petroleum and Gas (Production and Safety) Act 2004* prescribes the process by which the parties must consult.

Amendment 74 Clause 469 (Omission of s 153 (Obligation to consult with particular owners and occupiers))

Amendment 74 omits the existing clause 469 of the *Geothermal Energy Bill 2010* and replaces it with a new clause 469.

‘469 Replacement of s 153 (Obligation to consult with particular owners and occupiers)

‘153 Obligation to consult with particular owners and occupiers

This amendment replaces the previous section 153 of the *Petroleum and Gas (Production and Safety) Act 2004* which relates to a petroleum lease holder’s obligations to consult with landholders and provides that the holder of a petroleum lease has a statutory obligation to consult with each owner and occupier of private and public land subject to the tenure. The amendment further provides that the consultation is to be about: access to the land; the conduct of the authorised activities on that land; and the issue of compensation liability to the owner or occupier. Chapter 5, part 5 of the *Petroleum and Gas (Production and Safety) Act 2004* prescribes the process by which the parties must consult.

Amendment 75 Clause 470 (Replacement of ch 5, pt 2, divs 1 to 2A)

Amendment 75 amends clause 470 of the *Geothermal Energy Bill 2010*. This amendment provides that the holder of a petroleum authority must

provide a copy of the relevant authority document with the first entry notice given to each owner and occupier of the land subject to the authority.

Amendment 76 Clause 470 (Replacement of ch 5, pt 2, divs 1 to 2A)

Amendment 76 amends clause 470 of the *Geothermal Energy Bill 2010* to allow for the general period of entry under an entry notice to be 1 year for a petroleum lease or 6 months for an authority to prospect. This is consistent with current entry notice provisions of the *Petroleum and Gas (Production and Safety) Act 2004*.

Amendment 77 Clause 470 (Replacement of ch 5, pt 2, divs 1 to 2A)

Amendment 77 amends clause 470 of the *Geothermal Energy Bill 2010*. The amendment provides for an exemption from the requirement for a conduct and compensation agreement to be entered into prior to entry, if the holder has a right that is under another Act and the right is not under an easement.

Amendment 78 Clause 472 (Replacement of ch 5, pt, 5 (General compensation provisions))

Amendment 78 amends clause 472 of the *Geothermal Energy Bill 2010* to insert a new heading for division 1 and insert section 531(b).

**‘Division 1 Compensation other than for
 notifiable road uses and make good
 obligation**

‘Subdivision 1 Preliminary

‘531 Application of div 1

Consistent with Amendment 63 in relation to the *Petroleum Act 1923*, this amendment re-inserts a provision that was unintentionally omitted. It provides that Division 1 does not apply for an effect that is required to be addressed in a ‘make good’ agreement relating to impacts on water bores.

Amendment 79 amends Clause 472 (Replacement of ch 5, pt, 5 (General compensation provisions))

Amendment 79 Amendment 80 amends clause 472 of the *Geothermal Energy Bill 2010* to broaden the ambit of the definition of ‘compensatable effect’ in section 532(4) of the *Petroleum and Gas (Production and Safety) Act 2004*.

The amendment also provides for the term ‘compensatable effect’ to include reasonable and necessary accounting, legal and valuation costs, recognising the fact that owners and occupiers of land should not have to incur the cost of engaging relevant professional advice to assist with the negotiation and preparation of an agreement with a petroleum authority holder to enable access to their land and facilitate appropriate compensation. The range of reasonable and necessary professional costs is effectively limited by this amendment to accountants, lawyers and valuers because the negotiation and preparation of a conduct and compensation agreement is predominantly about determining the quantum of compensation for the impact of authorised activities: for example, seeking legal advice to review a draft conduct and compensation agreement or obtaining valuation advice to assess the impact of authorised activities on property values.

The purpose of the inclusion of examples of negotiation in section 532(4)(b) is to ensure that the professional costs of attending the ADR or conference are included within the meaning of the term ‘compensatable effect’.

The amendment broadens the definition of compensatable effect to put beyond doubt that compensation is payable by a petroleum and gas authority holder for consequential damages that the eligible claimant incurs because of a compensatable effect mentioned in section 532(4)(a) and 532(4)(b). This amendment affords further protection to owners and occupiers of land subject to resource tenures and re-inserts a provision that was unintentionally omitted during drafting of the *Geothermal Energy Bill 2010*.

Amendment 80 Clause 472 (Replacement of ch 5, pt, 5 (General compensation provisions))

Amendment 80 amends clause 472 of the *Geothermal Energy Bill 2010*. This amendment re-inserts a provision that was unintentionally omitted during the drafting of the Bill. It enables a pipeline licence or petroleum

facility licence holder to enter in a conduct and compensation agreement as part of an easement relating to the licence.

Amendment 81 Clause 472 (Replacement of ch 5, pt, 5 (General compensation provisions))

Amendment 81 amends clause 472 of the *Geothermal Energy Bill 2010* to stipulate that the ‘minimum negotiation period’ must be at least the period provided in section 536A. This is to reflect that the minimum negotiation period may now be either at least 20 business days from the giving of the negotiation notice (which is referred to as the ‘usual period’) or a longer minimum negotiation period as agreed between the parties due to reasonable or unforeseen circumstances.

Amendment 82 Clause 472 (Replacement of ch 5, pt, 5 (General compensation provisions))

Amendment 82 amends clause 472 of the *Geothermal Energy Bill 2010* and inserts a new section 536A in the *Petroleum and Gas (Production and Safety) Act 2004*.

‘536A Provision for the minimum negotiation period

The previous section 536 to be inserted in the *Petroleum and Gas (Production and Safety) Act 2004* did not provide any flexibility with the statutory timeframes for the minimum negotiation period. In recognition of that lack of flexibility the amendment empowers either party, within the initial 20 business days from the giving of the negotiation notice, to ask the other party to agree to a longer minimum negotiation period if there are reasonable or unforeseen circumstances.

For example, a petroleum authority holder and landholder may agree to extend the minimum negotiation period on the basis that the landholder is unable to engage in negotiations until after the usual minimum negotiation period.

Amendment 83 Clause 472 (Replacement of ch 5, pt, 5 (General compensation provisions))

Amendment 83 amends clause 472 of the *Geothermal Energy Bill 2010* to insert new sections 537A and 537AB in the *Petroleum and Gas (Production and Safety) Act 2004*.

‘537A Parties may seek conference or independent ADR

The heading of section 537A has been amended to reflect the amendment to the prescribed dispute resolution process from ‘mediation’ to ‘conference or independent alternative dispute resolution (ADR)’.

The process prescribed by this amendment is triggered if the parties have not entered into a conduct and compensation agreement by the end of the minimum negotiation period. The first step is for either party to issue an election notice (which may be in any form so long as it is in writing). That election notice may either ask an authorised officer to call a conference to negotiate a conduct and compensation agreement or call upon the other party to participate in an ADR. With the latter election, the party calling for the ADR must specify the type of ADR process proposed, for example mediation or conciliation. That party is also liable for the costs of the person facilitating the ADR. The person engaged to facilitate the ADR must be independent of all parties involved in the negotiations.

‘537AB Conduct of conference or ADR

This section will apply if either party gives an election notice. The timeframe for finishing a conference or an ADR is, in either case 20 business days from the giving of that notice. The parties are able to seek a longer period in which to finish the conference or ADR if there are reasonable or unforeseen circumstances.

In the event a party calls for an ADR and the other party, having received notice, does not attend, then it is open to the party who called for the ADR to apply to the Land Court in accordance with section 537B.

Amendment 84 Clause 472 (Replacement of ch 5, pt, 5 (General compensation provisions))

Amendment 84 amends clause 472 of the *Geothermal Energy Bill 2010*. This clause inserts section 537B of the *Petroleum and Gas (Production and Safety) Act 2004*.

‘537B Land Court may decide if negotiation process unsuccessful

The purpose of this amendment is to provide a mechanism for referral to the Land Court if the conference or ADR process is unsuccessful. The amendment provides for a party to refer to the Land Court in three situations: firstly, when either the conference or ADR is not finished within the usual period of 20 business days from the giving of the election notice or such longer period as agreed; secondly, when only one party attended

the conference or ADR; or finally when both parties attended the process but were not successful in that no conduct and compensation agreement has been entered into.

Amendment 85 Clause 472 (Replacement of ch 5, pt, 5 (General compensation provisions))

Amendment 85 amends clause 472 of the *Geothermal Energy Bill 2010* to change the definition of ‘eligible party’ to mean a party who attended the conference or the ADR.

Amendment 86 Clause 472 (Replacement of ch 5, pt, 5 (General compensation provisions))

Amendment 86 amends clause 472 of the *Geothermal Energy Bill 2010* to insert a new Subdivision 5A in the *Petroleum and Gas (Production and Safety) Act 2004*.

‘Subdivision 5A Additional Land Court jurisdiction for compensation and related matters

‘537DA What sdiv 5A is about

Section 537DA provides for additional matters for which the Land Court has jurisdiction namely, compensation and related matters, subject to subdivisions 1 to 5.

‘537DB Additional jurisdiction

This clause empowers the Land Court to assess and decide matters of compensation liability in the instances where: a geothermal tenure holder has carried out a preliminary activity that has caused loss or damage; the parties cannot reach a conduct and compensation agreement; or the parties have entered into a conduct and compensation agreement or a deferral agreement. The clause specifically provides that the Land Court may decide whether a proposed authorised activity would if carried out, interfere with the carrying out of lawful activities by the eligible claimant (refer to section 804 of the *Petroleum and Gas (Production and Safety) Act 2004*). In seeking to determine this issue, the Land Court may make orders concerning a modification or reduction in the activity that would remove the interference and then determine compensation liability accordingly.

‘537DC Jurisdiction to impose or vary conditions

Clause 537DC provides that the in deciding a matter stated in section 537DB(2), the Land Court may impose any condition or vary any existing conditions on any ground it considers appropriate – for example, when it considers that a condition is unfair to one party.

Amendment 87 After clause 473

Amendment 87 inserts new clause 473A of the *Geothermal Energy Bill 2010* to insert a new section 563A in the *Petroleum and Gas (Production and Safety) Act 2004*.

‘473A Insertion of new s 563A

‘563A Limitation of owner’s or occupier’s tortious liability for authorised activities

The purpose of this new clause is to expressly provide that the civil liability for a claim based in tort for damages is limited for owners and occupiers of land the subject of a petroleum authority. This clause is most likely to apply to claims for negligence by a third party. This clause will apply when someone else carries out an authorised activity for the petroleum authority or someone else carries out an activity on the land which is purportedly an authorised activity for the petroleum authority, to claims relating to the carrying out of the activity.

However, clause 563A(2) does not apply if the owner or occupier, or someone else authorised by the owner or occupier caused or contributed to the harm that is the subject of the claim.

Clause 563A(4) provides for the application of this clause despite any other Act or law, even though this *Petroleum and Gas (Production and Safety) Act 2004* authority prevents or restricts the activity.

Clause 563A(5) states that the terms *claim*, *damages* and *harm* mean the same as they do for the *Civil Liabilities Act 2003*.

Amendment 85 breaches fundamental legislative principles on the basis that it affects the rights of others; particularly if they lack redress against the tenure holder. However, the protection of landholders from civil liability for claims, damage and harm of other due to activities carried out under tenure is critical particularly given the potential risks and impact on the landholder of having activities being conducted on their land.

Amendment 88 Clause 474 (Replacement of ch10, hdg (Investigations and enforcement))

Amendment 88 amends clause 474 of the *Geothermal Energy Bill 2010* which replaces chapter 10 of the *Petroleum and Gas (Production and Safety) Act 2004*. The heading to the existing chapter 10 will be amended to ‘conferences, investigations and enforcement.’

‘Chapter 10 Conferences, investigations and enforcement

‘Part 1AA Conferences with eligible claimants or owners and occupiers

Division 1 Preliminary

‘734B Application of pt1AA

Section 734B sets out the circumstances in which Part 1AA will apply. If the petroleum authority holder has not entered into a conduct and compensation agreement with an eligible claimant at the end of the minimum negotiation period, either party may provide an election notice to an authorised officer asking for a conference.

Alternatively, the owner of land within a petroleum authority’s area or authority holder may give an authorised officer notice of their concerns about how a party is conducting itself or its activities.

The part also applies if an authorized officer considers it desirable for another reason to call a conference to discuss concerns about a petroleum authority.

Division 2 Calling conference and attendance

‘734C Calling conference

Section 734C requires the authorized officer by notice to request the parties attend a conference if a party, by way of an election notice, asks for a

conference about negotiating a conduct and compensation agreement. If the authorised officer receives stated concerns from the owner of the land or the petroleum authority holder or for any other reason considers it desirable to discuss concerns about a petroleum authority, then the authorised officer may by notice ask the parties to attend a conference. In all cases, the notice issued by the authorised officer must state when and where the conference will be held and what is to be discussed at the conference.

‘734D Who may attend conference

Section 734D provides for who may attend a conference. Apart from the authorised officer, anyone given notice of the conference may attend and take part in the conference. With the authorised officer’s approval, someone else may be present to help a person attending a conference. Lawyers may only be present where the parties agree and the authorised officer is satisfied there is no disadvantage to a party.

‘734E What happens if party does not attend

Section 734E outlines what happens if a party does not attend a conference. If an authorised officer gives notice of a conference and one of the parties does not attend, the authorised officer may still hold the conference. In instances where one party does not attend, the person who attended the conference may apply to the Land Court for an order requiring the party that did not attend to pay the attending party’s reasonable costs of attending. However, the Land Court must not order the party not attending to pay costs if it is satisfied the party had a reasonable excuse.

Division 3 Conduct of conference

‘734F Authorised officer’s role

Section 734F places an obligation on the authorised officer when conducting a conference to endeavour to assist the attending parties to settle the matter that is the subject of the conference in an expedient and inexpensive manner. The manner in which the conference is to be conducted is a decision for the authorised officer.

‘734G Statements made at conference

Section 734G contains the common provision that nothing said by a person at the conference is admissible in a proceeding without the person’s consent.

‘734H Agreement made at conference

Section 734H provides that if an agreement is negotiated at the conference, it must be documented and signed by or for the parties at the conclusion of the conference. An agreement reached at the conference may be a conduct and compensation agreement or a variation of an existing conduct and compensation agreement between the parties. An agreement reached at a conference has the same effect as any other compromise which means an enforceable contract.

Amendment 89 Clause 477 (Insertion of new ch 15, pt 10 div 2)

Amendment 89 amends clause 477 of the *Geothermal Energy Bill 2010* to correct a reference.

Amendment 90 Clause 478 (Amendment of sch 2, (Dictionary))

Amendment 90 amends clause 478 of the *Geothermal Energy Bill 2010* to insert a reference to ADR in the dictionary to the *Petroleum and Gas (Protection and Safety) Act 2004*, by reference to section 537A(2)(b). This ensures the definition of ADR is clear.

Amendment 91 Clause 478 (Amendment of sch 2 (Dictionary))

Amendment 91 amends clause 478 of the *Geothermal Energy Bill 2010* to define ‘election notice’ by reference to section 537A(2), which describes what constitutes an election notice.

Amendment 92 Clause 478 (Amendment of sch 2 (Dictionary))

Amendment 92 amends clause 478 of the *Geothermal Energy Bill 2010*. This amendment provides for an expanded definition of ‘preliminary activities’ under the *Petroleum and Gas (Production and Safety) Act 2004*. The definition now includes reference to both ‘land use’ and ‘business’ impacts. This is appropriate given that authorised activities have potential impacts on existing land use and a business carried out on private property.

Amendment 93 Clause 478 (Amendment of sch 2 (Dictionary))

Amendment 93 amends clause 478 of the *Geothermal Energy Bill 2010*. This amendment to the dictionary affects the examples given for preliminary activities. The example of ‘drilling without constructing earthworks’ has been deleted as further consultation revealed this could have a significant impact on landholders. The geophysical surveying example has been amended to geophysical surveying that does not involve site preparation.

Amendment 94 Clause 478 (Amendment of sch 2 (Dictionary))

Amendment 94 amends clause 478 of the *Geothermal Energy Bill 2010* to amend the definition of ‘occupier’ in the *Petroleum and Gas (Production and Safety) Act 2004*. The definition has been tightened to only include occupiers under an Act or registered lessees under the *Land Title Act 1994*. The previously proposed ‘occupier’ definition was too broad in nature and would have included anyone given a right to occupy land (for example a camper on private property). Given the notices associated with land access and compensation are required to be served by authority holders on ‘occupiers’, this amendment was deemed appropriate.

Amendment 95 Clause 510 (Amendment of s 249 (Later applicant must obtain consent or views of earlier applicant if same land affected))

Amendment 95 omits clause 510 of the *Geothermal Energy Bill 2010*. Clause 510 has been replaced with amendment 16.

Amendment 95 also amends section 249(1)(a) to remove the reference to “geothermal exploration permit”.

Amendment 96 Schedule 2 (Minor and consequential amendments of Acts)

Amendment 96 amends schedule 2 of the *Geothermal Energy Bill 2010* and is a consequential amendment to include reference to section 335F(2)(a) in section 491(2) of the *Mineral Resources Act 1989*.

Amendment 97 Schedule 2 (Minor and consequential amendments of Acts)

Amendment 97 amends schedule 2 of the *Geothermal Energy Bill 2010* and is a consequential amendment to include reference to section 335F(2)(a) in section 547(3) of the *Mineral Resources Act 1989*.

Amendment 98 Schedule 3 (Dictionary)

Amendment 98 amends Schedule 3 of the *Geothermal Energy Bill 2010* and inserts a reference to ADR in the dictionary, by reference to section 252(2). This ensures the definition of ADR is clear.

Amendment 99 Schedule 3 (Dictionary)

Amendment 99 amends Schedule 3 of the *Geothermal Energy Bill 2010* and defines an ‘election notice’ by reference to section 252(2) which describes what constitutes an election notice.

Amendment 100 Schedule 3 (Dictionary)

Amendment 100 amends Schedule 3 of the *Geothermal Energy Bill 2010* and amends the definition of ‘occupier’. The definition has been tightened to only include occupiers under an Act or registered lessees under the *Land Title Act 1994*. The previously proposed ‘occupier’ definition was too broad in nature and would have included anyone given a right to occupy land (for example a camper on private property). Given the notices associated with land access and compensation are required to be served by authority holders on ‘occupiers’, this amendment was deemed appropriate.

Amendment 101 Schedule 3 (Dictionary)

Amendment 101 amends schedule 3 of the *Geothermal Energy Bill 2010*. This amendment provides for an expanded definition of ‘preliminary activities’. The definition now includes reference to both ‘land use’ and ‘business’ impacts. This is appropriate given that authorised activities have potential impacts on existing land use and a business carried out on private property.

Amendment 102 Schedule 3 (Dictionary)

Amendment 102 amends schedule 3 of the *Geothermal Energy Bill 2010*. This amendment to the dictionary affects the examples given for preliminary activities. The example of ‘drilling without constructing earthworks’ has been deleted as further consultation revealed this could have a significant impact on landholders. The geophysical surveying example has been amended to geophysical surveying that does not involve site preparation.

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