

GEOHERMAL EXPLORATION BILL 2004

EXPLANATORY NOTES

Title of the Bill

Geothermal Exploration Bill 2004

Policy Objectives of the Bill

The temperature of the Earth's crust increases with depth but this heat gradient is not uniform and can result in regional and localised "hot spots" with rock temperatures in excess of 200°C. If water already exists in, or can be injected into these rocks, this heated water can potentially then be extracted from the ground and passed through heat exchangers where this heat can be extracted and used in the production of electricity or for other industrial purposes.

Queensland contains significant resources of such rocks, particularly in the State's southwest. Exploration and potential development of this resource is currently hampered because Queensland has no legislative framework under which this activity can take place. Applications for geothermal tenure have already been made under the *Mineral Resources Act 1989* but could not be granted. Development of a full geothermal exploration and development regime is currently underway but will require a longer period to be developed. The Geothermal Exploration Bill 2004 represents an interim approach to allow on the ground exploration as soon as possible.

Active geothermal exploration is already underway in South Australia. Positive results there are anticipated to generate considerable interest in Queensland's geothermal potential by as early as the end of this year.

Enabling geothermal exploration presents a number of potential benefits to the State. These include access to a new and potentially vast energy source, attracting significant exploration and research investment and placing the State at the forefront of a new technology. Geothermal energy is also virtually emissions free and therefore "greenhouse" friendly.

The policy objectives of the Bill are to—

- Manage access to the State’s geothermal resources for the benefit of all Queenslanders;
- Encourage and facilitate the efficient and responsible exploration for the State’s geothermal resources;
- Provide an effective and efficient regulatory system for geothermal exploration;
- Enhance knowledge of the State’s geothermal resources;
- Ensure geothermal exploration is carried out in a way that minimises land use conflict;
- Facilitate constructive consultation with, and appropriate compensation for, persons adversely affected by geothermal exploration;
- Encourage an appropriate level of competition in geothermal exploration;
- Encourage responsible land care management in the carrying out of geothermal exploration; and
- Promote the safety of persons involved in geothermal exploration;

Achieving the Policy Objectives of the Legislation

The Geothermal Exploration Bill 2004 is aimed at providing a timely, effective and efficient regime to allow for the commencement of geothermal exploration in Queensland. To achieve the policy objectives of the Bill, the State will assert control of all geothermal energy within Queensland and assert the State’s right to regulate geothermal exploration. The Bill also provides a form of tenure (the geothermal exploration permit) and a regulatory structure to support it so as to allow geothermal exploration to commence. These tenure will be made available by the State through competitive tender with the successful tenderers required to achieve specified objectives for each year of the permit. An objective based exploration model is favoured over an expenditure based one as this can be directly aligned with achieving the stated objectives of the Bill.

Administrative Cost

As the number of tenure involved will be relatively limited, administration costs are also anticipated to be minimal.

Consistency with Fundamental Legislative Principles

Office of the Queensland Parliamentary Counsel in drafting the Bill has identified a number of issues in respect to certain fundamental legislative principles. These comprise:

- an absence of appeal rights on the merits in respect of certain administrative decisions;
- the grant of power to enter land without consent; and
- the absence of natural justice (procedural fairness) before making a decision for immediate suspension of certain activities.

All administrative decisions proposed under the Bill that would affect existing rights, will be subject to appeal rights on the merits. This appeal right will not extend to proposed decisions regarding the grant of new rights. The applicant in the latter instance will have a right to state their case and be heard, but will not have appeal rights. An unfavourable outcome in these instances would result in no change to the then status quo and as such, would not infringe fundamental legislative principles.

The Bill will create certain rights of access to private land. Access of this nature is, however, already provided to mineral and petroleum explorers under other legislation. Numerous checks and balances are provided in the Bill to minimise and control land use conflict issues arising from this access however. These provisions include a duty of care, compensation and restitution provisions, notification requirements, restrictions on activities that can be undertaken, access only by consent in the vicinity of dwellings or stock watering points and penalties for contravening these requirements.

The provision of access is essential for the exploration to be able to proceed. Given the number of checks and balances provided above, the minimal number of tenure likely to be involved, the relatively small “footprint” of geothermal exploration and the sparsely populated nature of the area of prime interest, this should not, however, be a significant issue.

Clauses 83 and 84 of the Bill provide a very limited head of power for the Minister to immediately suspend some or all of a permit holder’s rights under certain restricted circumstances. While this can be argued as not

providing procedural fairness to the holder before such a decision is made, this needs to be considered in the context of the grounds in which such an immediate suspension applies. Clause 84 limits these grounds to where activities are being undertaken that:

- have caused, are causing, or will probably cause, a risk to health or safety; or
- have caused, are causing, or will probably cause, a private or public nuisance at common law; or
- will unreasonably expose the State to a rectification liability in excess of the security held.

Such an immediate suspension will only be issued in conjunction with a proposed action notice under which the holder can subsequently argue their case for the suspension to be lifted. An immediate suspension will only apply for the limited period under which full due process under the proposed action notice process is undertaken in any case. Under these circumstances, it is believed the proposed immediate suspension power is not unreasonable.

Consultation

As the purpose of this Bill is only to facilitate interim exploration, pending development of a more comprehensive exploration and development legislative regime, only limited community consultation has been undertaken. More extensive consultation has been undertaken within government and comment from both these sources has been taken into account in the drafting of this Bill. The Bill has also been drafted so that it is broadly consistent with other existing resource exploration legislation that addresses similar issues.

A more comprehensive consultation program is proposed in respect of development of the full geothermal exploration and development legislation to follow. It is intended that this draft legislation be released for more widespread public consultation in the second half of 2004.

NOTE: The numbering system used in the following clause-by-clause document follows the numbering system incorporated in draft V016 of the Geothermal Exploration Bill 2004. Further minor quality control corrections may be incorporated in the final draft presented to Parliament. However, at the point of preparation of this document, this final draft was not available, so the latest available draft (V016) has been used.

NOTES ON CLAUSES

CHAPTER 1—PRELIMINARY

PART 1—INTRODUCTION

Clause 1 of the Bill sets out the short title of the Act.

Clause 2 of the Bill provides the commencement date of the Bill. This has been set at a date to be fixed by proclamation. This is to enable sufficient time to finalise the regulations, forms, administrative policies and procedures and delegations necessary to enable the commencement to come smoothly into effect.

Clause 3 of the Bill sets out the purposes of the Act. These comprise:

- Managing access to the State's geothermal resources for the benefit of all Queenslanders;
- Encouraging and facilitate the efficient and responsible exploration for the State's geothermal resources;
- Providing an effective and efficient regulatory system for geothermal exploration;
- Enhancing knowledge of the State's geothermal resources;
- Ensuring geothermal exploration is carried out in a way that minimises land use conflict;
- Facilitating constructive consultation with, and appropriate compensation for, persons adversely affected by geothermal exploration;
- Encouraging an appropriate level of competition in geothermal exploration;
- Encouraging responsible land care management in the carrying out of geothermal exploration; and

- Promoting the safety of persons involved in geothermal exploration.

The intent of this clause is to give fundamental guidance to persons about the activity of geothermal exploration in Queensland. Safety issues are mentioned above in that the Bill does provide the Minister power to close boreholes demonstrated to be a safety risk. General health and safety matters will be dealt with under the *Workplace Health and Safety Act 1995*. Where safety expertise relating to geothermal exploration and development might more readily rest with officers of Natural Resources Mines and Energy (under the *Mining and Quarrying Safety and Health Act 1999*, or *Petroleum Act 1923*), rather than officers of the Department of Industrial Relations (under the *Workplace Health and Safety Act 1995*), a Memorandum of Understanding already exists between the two departments to enable access to this expertise.

PART 2—APPLICATION OF ACT

Clause 4 of the Bill provides that the Act binds all persons, including the State and to the extent that the legislative power of Parliament permits, the Commonwealth. The clause also provides that the Commonwealth and State cannot be prosecuted for an offence against the Act.

Clause 5 of the Bill provides that the Act is to apply to land covered by water only if the land is beneath the internal waters of the State or landward of the territorial sea baseline. The term “territorial sea baseline” has the meaning given under the *Seas and Submerged Lands Act 1973* (Cwlth). The intent of this clause is to limit geothermal exploration to areas where geothermal exploration is likely to be technically feasible and exclude drilling in sensitive marine areas such as the Great Barrier Reef.

Clause 6 of the Bill establishes that the power to grant a mining tenement under the *Mineral Resources Act 1989* over a geothermal exploration permit is not limited. However, an activity under a prospecting permit, mineral development licence or exploration permit is prevented if the activity adversely affects the carrying out of geothermal exploration that has already commenced. This clause [in conjunction with clause 35(2)] acts as a form of “traffic control” that establishes precedence for competing resource activity on the same ground. Effectively, production of

any sort has primary “right of way” with secondary and tertiary “right of way” determined by order of arrival on the ground.

Clause 7 of the Bill establishes that the power to grant an authority to prospect, petroleum lease or pipeline licence under the *Petroleum Act 1923* over a geothermal exploration permit is not limited. However, an activity under an authority to prospect or on land subject to a pipeline licence that is not also subject to an easement granted for the pipeline is prevented if the activity adversely affects the carrying out of geothermal exploration that has already commenced. This clause [in conjunction with clause 35(2)] acts as a form of “traffic control” that establishes precedence for competing resource activity on the same ground. Effectively, production of any sort has primary “right of way” with secondary and tertiary “right of way” determined by order of arrival on the ground.

Clause 8 of the Bill provides that other civil rights or remedies that exist apart from the Bill at common law or otherwise, are not affected or limited. This relates to some compensation matters and to compliance with the requirements of other legislation.

PART 3—INTERPRETATION

Clause 9 of the Bill provides that the dictionary of special terms used in the Bill is to be found in the schedule.

Clause 10 of the Bill establishes that for the purpose of identifying land under the Act, the surface of the earth is taken to be divided into blocks and sub-blocks. A block is the land contained within 2 meridians of longitude 5 minutes apart and 2 parallels of latitude 5 minutes apart. Each block has an area of approximately 75 km². A block is divided into 25 sub-blocks each being bounded by 2 meridians of longitude 1 minute apart and 2 parallels of latitude 1 minute apart. Each sub-block has an area of approximately 3 km². A regulation will be made to identify each block and sub-block within the State. The intent of this clause is to ensure a system of identification for the tenure area that is consistent with the system already used for exploration under the *Petroleum Act 1923* and the *Mineral Resources Act 1989*.

CHAPTER 2—STATE OWNERSHIP OF GEOHERMAL ENERGY

Clause 11 of the Bill provides that all geothermal energy below the surface of any land in the State is, and has always been, the property of the State. The clause further provides that a person does not acquire property in geothermal energy merely because the person discovers it or discovers geothermal material from which geothermal energy may be extracted. The clause applies to freehold and non-freehold land. The intent of this clause is to confirm that the heat energy below the surface of land in Queensland is, and has always been, the property of the State.

For the State to be in a position to effectively regulate and administer geothermal exploration, it must establish a clear head of power to do so. Accordingly, under the Bill, all heat energy derived from natural geological processes (geothermal energy) below the surface of all land in the State is declared to be, and to always have been, the property of the State. There is no doubt about the power of the Parliament to make a law of this type under the Queensland Constitution.

The assumption of the right to geothermal energy in this way is arguably a breach of fundamental legislative principles as set out in the *Legislative Standards Act 1992*, on the basis that it would adversely affect the rights of a freehold landowner to the geothermal energy in the freehold land. In Queensland however, the holder of freehold land does not hold an allodial title but a tenurial title based on the Torrens system, which is subject to a number of reservations to the State. The Parliament has already reserved minerals and petroleum in this manner and is entitled to reserve geothermal energy also. The better view is that the holder of a freehold property has never had the right to any geothermal energy within their land.

Clause 12 of the Bill provides that each grant under another Act of a right relating to land, whether made before or after commencement of this provision is taken to contain a reservation to the State of all geothermal energy below the surface of the land and the exclusive right to-

- authorise, under the provision of an Act, persons to carry out exploration for geothermal energy;
- authorise persons to carry out any activity related to exploration for, or extraction of, geothermal energy; and
- regulate, under the provisions of this Act, the exploration for or extraction of geothermal energy.

These provisions are required to ensure that the State does not alienate its right to manage and control geothermal exploration and development and to clarify State ownership of this resource.

Clause 13 of the Bill provides that a person must not carry out geothermal exploration except under a current permit. The penalty for contravention of this clause is 1500 penalty units. The purpose of this clause is to ensure that all geothermal exploration is regulated.

Clause 14 of the Bill prohibits the extraction of geothermal energy unless the extraction is authorised under the Bill or prescribed under a regulation. Extraction activity that can be prescribed under regulation is limited to domestic hot water use and small-scale (less than 250 kW) remote area power generation. Such provision is required to enable existing low-level use of bore water as a source of domestic hot water to continue. Intrusive regulation of such low level use is not the intent of this Bill.

Clause 15 of the Bill provides that the granting of a geothermal exploration permit does not create an interest in land. “Interest” in this context refers to a legal or equitable estate in the land or a right, power or privilege over or in relation to the land. This essentially means that the rights and powers extended to the geothermal exploration permit holder do not over-ride or directly impact on the rights and powers the landholder enjoys in relation to the land.

CHAPTER 3—TENDER PROCESS

PART 1—PRELIMINARY

Clause 16 of the Bill merely provides that a geothermal exploration permit can only be granted under this chapter and by a process of competitive tender. The intent here is to enable the State to regulate the release of prospective ground to competitive tenders so that only the best proposals are selected. This process will help ensure that prospective land is only tied up in active exploration permits held by persons qualified to actively explore them.

PART 2—CALLS FOR TENDERS

Division 1—Calling for tenders

Clause 17 of the Bill provides that the Minister may invite tenders for a geothermal exploration permit for an area of land and outlines the type of information that must be included in such a call for tenders to attract suitable tenders and to ensure that the Minister has all the information that is necessary to make any subsequent decision about the call for tenders. Clause 17 also provides that the call must be publicly gazetted to ensure open competition. The tender process also informs “affected persons” (landholders for the land, a person who has an interest in the land, a local government whose local government area includes the land, a native title body for the land and a person with a mining interest) about their right to make a submission to the Minister about the call for tenders (see also clause 25).

Clause 18 of the Bill sets out the requirements for a tender release area. Under this clause the area must not include land in a forest reserve, protected area under the *Nature Conservation Act 1992*, or other land prescribed under a regulation, collectively termed “excluded land”. This is intended to prevent geothermal exploration occurring in areas on which the State has placed a higher priority for another use.

In general, only whole sub-blocks (see clause 10) can be included in the tender release area. The only exception is where part of the sub-block is excluded land. These part sub-blocks are called “residual sub-blocks”. The area must not be more than 200 sub-blocks or residual sub-blocks in any combination. The area also must not include sub-blocks that consist entirely of embargoed land or sub-blocks that are in the area of an existing geothermal exploration permit. The intent of this clause is to ensure that sufficient suitable land will be open for exploration.

Clause 19 of the Bill provides that if land has been included in a geothermal exploration permit, subsequent events that might otherwise have prevented the grant not retrospectively invalidate the grant. This provides the holder with a protection through natural justice.

Division 2—Tendering

Clause 20 of the Bill provides that any person may make a tender for the whole or part of the tender release area stated in a call for tenders, provided the tender is made by the closing time for the call and provided that a tender for part only of the tender release area must be for whole sub-blocks or residual sub-blocks. The intent of this clause is to ensure that tenders are made in a timely manner and only for available sub-blocks.

Clause 21 of the Bill sets out the requirements for making a tender. The tender must-

- be made to the Minister in the approved form; and
- be lodged at the place stated in the call for tenders; and
- describe the area of the proposed permit; and
- include a proposed work program complies with clause 22; and
- meet any requirements stated in the relevant call for tenders; and
- state the financial and technical resources the tenderer proposes to commit to geothermal exploration under the permit; and
- state the tenderer's access to relevant financial and technical resources; and
- state the tenderer's address for service; and
- state the person to whom service of notices under this Act on the tenderer or the holder of the proposed geothermal exploration permit may be given; and
- be accompanied by the fee prescribed under a regulation; and
- not include land not within the tender release area for the call for tenders.

The intent of this clause is to ensure that the Minister has all the information necessary to make an informed decision about the tenders.

Clause 22 of the Bill sets out the requirements for the proposed work program to be included in the tender. A key element of the work program is that it is objective based and these objectives must seek to achieve the stated objectives of the *Geothermal Exploration Bill 2004* itself.

The tender must accordingly state the proposed specific objectives for each year of the proposed geothermal exploration permit, the means by

which it is proposed to achieve these objectives and an estimate of the cost of the proposed means. The work program must also be appropriate for the size of the area sought. Evidence must be provided that the tenderer has access to the financial and technical resources necessary to carry out the proposed work.

The intent of this clause is that tenderers must clearly demonstrate that they have a clear plan to carry out appropriate exploration during the term of the proposed permit and that the tenderer has access to sufficient financial and technical expertise to carry out the exploration.

The call for tenders must state the minimum requirements for a proposed work program [see clause 17(3)(f)(ii)] where these may be imposed.

Clause 23 of the Bill provides that the Minister may terminate the call for tenders at any time before deciding to grant a geothermal exploration permit. Cancellation is by gazette notice and when the call is terminated, all tenders in response to the call lapse. This provision enables the Minister to terminate a tender process without prejudice to any tenderer where subsequent circumstances warrant.

Clause 24 of the Bill allows a tenderer to amend their tender at any time before the tenders close. The intent of this clause is to provide flexibility for tenderers, but ensure that the process is fair to all parties by providing a date after which no amendments to tenders can be made.

PART 3—SUBMISSIONS BY AFFECTED PARTIES

Clause 25 of the Bill allows an affected person [see clause 17(3)(d)] for land in a tender release area to make a submission to the Minister about the call and also sets out the requirements for such a submission. The submission may relate to the whole or part of the tender release area but to be a properly made submission, it must comply with the requirements of this clause. The purpose of this provision is to ensure that the Minister can be fully informed of issues not directly related to geothermal exploration that should be considered prior to making any decision to grant a geothermal exploration permit or to set tenure conditions for any such permit.

PART 4—DECIDING TENDERS

Clause 26 of the Bill provides the Minister with a head of power to grant or not grant geothermal exploration permits in response to a call for tenders. In making this decision, the Minister must consider all properly made submissions, all properly made tenders and the suitability criteria under clause 25. These provisions are intended to ensure that geothermal exploration permits are only granted to tenderers demonstrably capable of undertaking the work.

Clause 26 also provides that if there is more than 1 tenderer, the Minister may use any process to make the decision the Minister considers appropriate, including for example the process of appointing a preferred tenderer. This provides the Minister with sufficient flexibility to enable the best resource allocation outcome for the State.

Clause 27 of the Bill allows the Minister to cancel the appointment of a preferred tenderer only after affording the preferred tenderer natural justice.

Clause 28 of the Bill sets out the matters that the Minister must consider in making a decision under clause 26. These matters include, but are not limited to whether the granting of the permit is in the interests of the State and whether the tenderer is seeking the permit to genuinely carry out geothermal exploration under the permit. The intent of this clause is to provide the Minister with guidance on issues that the Minister should consider to ensure that the Minister's decision delivers the best outcome for the State.

Clause 29 of the Bill allows the Minister to impose tenure conditions on the geothermal exploration permit so long as these are not inconsistent with mandatory conditions under the Bill. Because the management of environmental matters is dealt with under the *Environmental Protection Act 1994*, this clause also provides that a tenure condition cannot be imposed if it relates to the management of environmental impacts or where it authorises unlawful environmental harm. The ability to set tenure conditions gives the Minister the necessary flexibility to deal with tenure specific issues not otherwise adequately covered by the legislation. The need to consider properly made submissions made under clause 25 also ensures that the Minister considers other land use issues when imposing tenure conditions.

Clause 30 of the Bill provides that the Minister may, in deciding to grant a geothermal exploration permit require the tenderer to obtain a relevant

licence, approval or authority under another Act. Examples are given of requiring an environmental authority under the *Environmental Protection Act 1994* or a water entitlement under the *Water Act 2000* other than under clause 39. The intent of this clause is to make the decision to grant contingent on the tenderer first obtaining specified authorities where this is considered necessary to support the intention of Parliament in relation to these other statutory requirements.

Clause 31 of the Bill sets up certain conditions precedent to the grant. Until each condition is met, the geothermal exploration permit must not be granted. This ensures that the rights and interests of both the State and the potential holder are both protected and understood.

Clause 32 of the Bill provides that when the Minister decides to grant the geothermal exploration permit and the restrictions on grant under clauses 30 and 31 do not apply or are satisfied, the Minister is taken to have granted the permit on the first day of the next month. This establishes a clear commencement date for the geothermal exploration permit consistent with the majority of other resource tenure in Queensland. Details of the exploration permit are recorded by the chief executive through the creation of an instrument for the permit, which is kept on the register. The permit holder is also given a copy of this instrument. The instrument clearly details the rights and obligations of the holder and the State in respect of the permit for future reference.

Clause 33 of the Bill provides that the term of a geothermal exploration permit is the term decided by the Minister, but that this term must be in a multiple of whole years and must not end later than three years after it is granted. The intent of this clause is not to limit geothermal exploration to a three-year period, rather to reflect the effective “use-by date” of this interim legislation. The full production and exploration regime currently in development proposes terms of up to four years with renewal for further terms where warranted.

Clause 34 of the Bill requires the chief executive to notify unsuccessful tenderers as soon as practicable after the Minister makes the decision not to grant a geothermal exploration permit to a tenderer. This provision is to provide a measure of common courtesy to unsuccessful tenderers and ensure that these parties are informed of the outcome of their tender.

CHAPTER 4—GEOTHERMAL EXPLORATION PERMITS

PART 1—RIGHTS UNDER GEOTHERMAL EXPLORATION PERMITS

Clause 35 of the Bill provides that a permit holder may, subject to the Act and conditions of the permit, carry out geothermal exploration in any part of the area of the permit to which access is provided. This clause essentially provides the means by which authorised geothermal exploration can take place.

Clause 36 of the Bill extends the rights granted to a permit holder under clause 35 to other authorised persons. This enables employees, contractors and others to undertake authorised activities relating to geothermal exploration on behalf of the actual holder.

Clause 37 of the Bill provides that, subject to chapter 5, a permit holder or an authorised person for the permit is allowed to enter the area of the permit to exercise the power under clause 35(1) above. The purpose of this clause is to ensure that necessary access to carry out responsible geothermal exploration is available.

This clause does create certain restricted rights of access to private land for geothermal explorers [see also clause 97 regarding entry authorities for certain limited activities]. Numerous checks and balances to these access rights are however provided in the Bill to minimise and control land use conflict and other issues arising from this access. These checks and balances include:

- Clause 25, which enables an affected landholder to make a submission prior to any grant;
- Clause 42, which prohibits the explorer from undertaking activities, not associated with exploration;
- Clause 45, which prohibits the explorer from unreasonably obstructing access;
- Clause 46, which requires the permit holder to restore any improvements damaged by exploration;

- Clause 87, which requires the permit holder to gain permission to enter land in the vicinity of dwellings, stock watering points and other infrastructure;
- Clause 91, which requires the permit holder to give notice prior to any entry on any land;
- Clause 98, which imposes a duty of care on the permit holder to avoid damage;
- Clause 100 and clause 101, which provide landholder access to compensation;
- Clause 102, which provides the Minister a head of power to issue directions to ease landholder concerns; and
- Clause 103, which provides the Minister a head of power to close a geothermal bore found to be dangerous or a public nuisance.

Access of this nature is already provided to mineral and petroleum explorers under other legislation and is often essential for the exploration to be able to proceed. Given the number of checks and balances provided above, the minimal number of tenure likely to be involved, the relatively small “footprint” of geothermal exploration and the sparsely populated nature of the area of prime interest, this should not be a significant issue.

NOTE: In addition to clauses 36 and 37, transitional provisions currently under development for the full geothermal regime will also provide the holder of a geothermal exploration permit with the exclusive right to apply for production tenure within the area of the permit. As production tenure are not covered under the current Bill, such a right is not provided at this time.

Clause 38 of the Bill provides that a person who has a right to enter the area of a geothermal exploration permit, other than the geothermal permit holder or authorised person, must not unreasonably obstruct the permit holder or authorised person from exercising their powers under clause 37. The intent of this clause is to ensure that a permit holder or authorised person is not unreasonably impeded in carrying out their lawful activities on the area of the permit. This clause is reciprocal with clause 45, which prevents a holder or authorised person from unreasonably impeding the access of others with a right to be on the land.

Clause 39 of the Bill gives a permit holder or authorised person a limited right to take and use underground water for geothermal exploration if the water is necessarily taken during the carrying out of the exploration. This provision merely reflects that a deep borehole drilled in a sedimentary

basin must invariably intersect water, and as a result some of this water will enter the hole and become part of the circulation and lubricating fluid. The volume of water necessarily taken will be small but unavoidable if exploration is to take place at all. Rather than leaving this minor interference, taking and use as a technical breach of the *Water Act 2000*, an exemption is provided. This is not an exemption for the geothermal exploration permit holder to drill a hole specifically to obtain water for use in another hole elsewhere. Such activity will still require the appropriate authority under the *Water Act 2000*.

PART 2—MANDATORY CONDITIONS

Clause 40 of the Bill provides for the imposition of mandatory conditions on each geothermal exploration permit under this part. If a mandatory condition conflicts with a tenure condition, the mandatory condition prevails to the extent of the inconsistency, which will help prevent any Henry the VIII situations arising.

Clause 41 of the Bill provides that the permit holder must achieve agreed specific objectives for the permit within the timeframe provided for in the objectives. These specific objectives are a critical component and the minimum requirements for the permit. Clause 41 also provides that a geothermal permit holder may carry out authorised geothermal exploration activities in excess of the specific objectives.

Conditioning a geothermal exploration permit to achieve **agreed specific objectives** is an outcome-based measure of how well the tenure meets the stated objectives of the Geothermal Exploration Bill and these “objectives” are also directly comparable, unlike process-based criteria like expenditure. While superficially easy to measure, expenditure, as such, is not an objective of the geothermal regime and is actually not that easy to validate. Even “valid” expenditure claims made under the *Mineral Resources Act 1989* and the *Petroleum Act 1923* for desktop studies, data bases, office overheads and consultants fees also often fail to generate any “new” information or to actually meet any of the actual objectives of the particular legislation in any case. It is the meeting of legislative objectives that is important to the State – not how much it allegedly cost.

Quanta of work are also merely means to an end. Why require ten holes to be drilled, if the objective can be demonstrably be achieved with five?

Why accept 15 holes that prove absolutely nothing because they were either not drilled deep enough or were drilled in the wrong place? Once again it is the outcome that is important. How it was achieved (so long as it was safely and responsibly done) is largely immaterial.

Clause 42 of the Bill provides that a permit holder must not carry out or authorise the carrying out of activities in the area of the permit that are not authorised or provided for under this Bill or another Act. The intent of this clause is to limit activities undertaken by holders or authorised persons to those consistent with geothermal exploration so as to minimise the potential impact on other land users to the bare minimum consistent with achieving the objectives of this Bill.

Clause 43 of the Bill provides that a permit holder must pay the State annual rent for the permit in the way and on or before the day prescribed by regulation. This rental rate is currently proposed at \$35 per sub-block. If the permit holder does not pay the annual rent as prescribed, the holder must also pay the State interest at the rate prescribed under a regulation until the day the unpaid rent is paid in full. The purpose of this clause is to ensure that the State is compensated for the costs associated with providing access to a resource owned by the State and to ensure the State is not disadvantaged by the late payment of rent by a permit holder.

Clause 44 of the Bill provides that if the permit holder is a company and there is a significant change in the membership of the permit holder or any holding company of the holder, the holder must, as soon as practicable, give the Minister notice of the change. This provision enables the Minister to be kept informed of, and potentially react to, significant changes that may impact on the holder's ability to effectively explore any geothermal exploration permits held by them.

Clause 45 of the Bill provides that the permit holder or an authorised person must not unreasonably obstruct another person who has a right to enter the area of the permit. This provision is reciprocal to the protection of the right of entry enjoyed by the holder at clause 38

Clause 46 of the Bill provides that if the holder causes damage to an improvement on or attached to land in the area of the permit, the holder must, within a reasonable period restore or replace the improvement. The intent of this clause is to ensure that a permit holder deals with landholders in a responsible and reasonable fashion.

Clause 47 of the Bill requires the permit holder or an authorised person to remove their plant and equipment from the land once work requiring the presence of the plant and equipment has been completed. The intent of this

clause is to ensure that a permit holder imposes the minimum imposition on landholders necessary to carry out the objectives of this Bill.

Clause 48 of the Bill requires the permit holder to give the chief executive notice in relation to a change in the permit holder's address for service or a change of the person to whom service of notices may be given. The notice must be given within 30 days of the change. This provision helps ensure that correspondence from the Department or Minister reaches the holder in a timely manner.

Clause 49 of the Bill provides that the permit holder must report to the chief executive about geothermal exploration carried out in the permit area and the results of exploration in the way and at the times prescribed by regulation. The intent of this clause is to ensure that the permit holder keeps the State adequately informed of developments in relation to the exploration.

Clause 50 of the Bill provides that the permit holder or an authorised person must give the chief executive notice as soon as practicable of the discovery of geothermal material, petroleum under the *Petroleum Act 1923* or a mineral under the *Mineral Resources Act 1989*. The purpose of this clause is to ensure that the State is informed of significant discoveries at the earliest possible opportunity so that knowledge of the State's resources is enhanced and appropriate resource management decisions can be made.

Clause 51 of the Bill provides that the permit holder must comply with any lawful direction given to them under the Bill. This clause provides the Minister and administering department with a single trigger mechanism to enable them to undertake administrative action against the holder should they not comply with the directions rather than requiring a number of such identical triggers to be inserted throughout the Bill.

Clause 52 of the Bill provides that the permit holder must comply with any conditions for the permit prescribed by regulation. Conditions in this category are anticipated to include requirements to comply with certain codes of conduct and with exploration standards that are subject to periodic review and improvement.

PART 3—SECURITY

Clause 53 of the Bill sets out the circumstances in which security for a geothermal exploration permit may be realised. The giving of security to the State is to ensure that costs arising from the actions of the holder of a geothermal exploration permit are paid for by the offending party and not the State or some third party.

Clause 54 of the Bill provides that before security for a geothermal exploration permit may be realised, the Minister must give the permit holder a notice setting out the matter for which the security is proposed to be realised, the amount of security proposed to be realised, that the holder may make a written submission about the proposed realisation and a reasonable period for the submission to be made. The Minister must consider any submission made by the holder before making a decision about realising the security. The intent of this clause is to afford a permit holder natural justice in relation to any proposal to realise security.

Clause 55 of the Bill provides for the replenishment of security for a geothermal exploration permit where security has been realised in whole or in part and the permit is still in force. The purpose of this provision is to ensure that adequate security for the permit is held by the State at all times.

Clause 56 of the Bill gives a head of power for security to be held for up to six months after the permit ends or for a longer period if a claim for an amount payable under the security has been made but the amount has not been assessed. The purpose of this clause is to ensure that the holder is refunded any unused security within a reasonable timeframe while still providing reasonable access to this security to meet emergent issues not immediately apparent at termination of the permit or to satisfy claims made but not yet resolved at that point.

PART 4—AMENDMENTS, DEFERRALS, CANCELLATION, SURRENDERS AND TRANSFERS

Division 1—Applications

Subdivision 1—General provisions

Clause 57 of the Bill is a general provision that gives a permit holder the right to make the following applications-

- Amend a tenure condition of the permit; or
- Defer compliance with clauses 49 or 107 in relation to the giving of a particular report or samples; or
- Defer the time provided for achievement of an agreed specific objective for the permit; or
- Surrender the permit, in whole or part; or
- Transfer the permit, in whole or part.

The applications must be in the approved form and be accompanied by the prescribed fee. The applications must also comply with any additional requirements set out under subdivisions 2 to 6.

This clause provides a necessary degree of flexibility to the system that enables the holder of a geothermal exploration permit to seek changes in the permit to allow for changed circumstances that may apply. Without this mechanism, the State would run the risk of denying the holder natural justice in some cases and impeding free trade in others.

NOTE: The Geothermal Exploration Bill 2004 does not provide for amendments to extend the term of a geothermal exploration permit (renewal). Renewal provisions were not included in this Bill, as the intent is for replacement legislation in the form of the full geothermal exploration and production regime to be in place long before the three year term allowed under this Bill would be completed. Transitional provisions will enable permits granted under the Geothermal Exploration Bill 2004 to be transferred to the full geothermal regime, which will include renewal provisions. There seemed little point in including provision for renewals in this Bill, if this power was never realistically likely to be utilised.

Clause 58 of the Bill provides the head of power for the Minister to decide an application made under clause 57. For applications that are refused, there is a right of appeal. Ministerial discretion provides a means of protecting the State's interests, when the holders seek amendments to a geothermal exploration permit.

Subdivision 2—Additional provisions for amendment of tenure conditions

Clause 59 of the Bill provides that an application to amend a tenure condition must state sufficient grounds to justify the amendment. This is intended to place the onus to provide grounds on the potential beneficiary of the change rather than on the Minister to provide grounds why he should not maintain the status quo.

Clause 60 of the Bill requires the Minister to have regard to the suitability criteria in deciding the application. The suitability criteria remain relevant to this decision making process because they form the basis of why the current holder obtained the tenure, in preference to all others, in the first place.

Subdivision 3—Additional provisions for deferral for agreed specific objective

Clause 61 of the Bill prevents applications to defer the time for achievement of an agreed specific objective in the following circumstances-

- A previous application has been made to defer the specific agreed specific objective; or
- The extension sought is for more than 12 months; or
- The extension, if granted, would extend the period beyond the current term of the permit.

These restrictions are justified on the basis that the agreed specific objectives are fundamental to the permit for the following reasons-

- The decision of the Minister about the tender and in particular, how the holder's tender was superior to other tenders was based in part on the objectives stated in the tender [clause 22].

- In order to make the grant the Minister and the tenderer must have agreed about the specific objectives for the permit [clause 31].
- The term of the permit being a period of whole years not greater than 3 years.

In addition, the application must state sufficient grounds to justify the amendment. This is intended to place the onus to provide grounds on the potential beneficiary of the change rather than on the Minister to provide grounds why he should not maintain the status quo.

Clause 62 of the Bill provides that the Minister may grant the application to defer the agreed specific objectives only if satisfied that the need to defer is due to events beyond the holder's control. The clause further provides that failure to obtain sufficient financial resources is not a matter beyond the holder's control, however a failure to obtain enough technical resources may be if there is clear evidence that reasonable endeavours have been made to obtain the resources.

The intent of this clause is to avoid land being tied up by holders either unable or unwilling to fund active ongoing exploration of the tenure. The exemption for failure to obtain technical resources acknowledges that geothermal exploration is a highly specialised technical endeavour in its infancy and realistically it may not always be possible to secure necessary specialised equipment without impediments and delays.

Subdivision 4—Additional provisions for deferral of submission of reports and samples

Clause 63 of the Bill provides that an application to defer compliance with reporting (clause 49) and providing samples (clause 107) cannot be made if an application to defer the compliance has previously been made or the extension sought is more than 3 months. The application must also provide sufficient grounds to justify why the Minister should consider the deferral.

The obligation to report and provide samples are key elements of the Bill and these are required to enable informed decisions to best manage the State's geothermal resources for the benefit of all Queenslanders and enhance knowledge of the State's geothermal resources. These decisions also often need to be timely and thus require the provision of information to be timely also.

Clause 64 of the Bill provides that the Minister may grant the application only if satisfied events beyond the holder's control justify the deferral. The intent of this clause is to ensure that only extraordinary and unforeseen events necessitate deferral of these obligations, not just potential laxness on the part of the holder.

Subdivision 5—Additional provisions for surrenders

Clause 65 of the Bill provides that an application to surrender a geothermal exploration permit must be accompanied by a report about the exploration under clause 49 and evidence that the holder has attended to any improvement restoration and removal of plant and equipment as required by clause 46 and clause 47. This clause is intended to ensure that a minimum of (and optimally, no) unfinished business remains outstanding when the holder seeks to walk away from the land.

Clause 66 of the Bill provides that the Minister may decide to grant the surrender only if the applicant has attended to any reporting, improvement restoration and removal of plant and equipment as required by clause 46, clause 47 and clause 49. In conjunction with clause 65 above, this clause is intended to ensure that a minimum of (and optimally, no) unfinished business remains outstanding when the holder seeks to walk away from the land

If the decision is to accept the surrender in whole or part, the surrender takes effect on the last day of the month in which the acceptance was made and the Minister must refund any annual rent overpaid because of the surrender pro rata based on whole months. This preserves administrative simplicity while ensuring the holder has not unfairly paid rent for land not used.

Subdivision 6—Additional provisions for transfers

Clause 67 of the Bill provides that a transfer of a geothermal exploration permit is only effective if it is made under this part.

Clause 68 of the Bill provides that an application to transfer a geothermal exploration permit can only be made by all holders of the permit and all proposed transferees. Restrictions are placed on the application so that it can only be made if the permit has been granted for

more than 1 year and that there has been no contravention of the permit that has not been remedied and either no proposed action notice has been given or if one has been given, the Minister has given notice that action will not be taken or that the action has been resolved.

The application must also show that the proposed transferee can meet the suitability criteria set out in clause 28 so that the integrity of the original grant can be maintained.

The intent of this clause is to ensure that only holders that have met their obligations, and transferees who can continue to meet the obligations under the permit are able to effect a transfer of the permit. This is a fundamental requirement for proper management of the State's geothermal resources for the benefit of all Queenslanders. It also provides protection to potential investors to ensure that they are not sold a "pig in a poke" and prevents less scrupulous holders from profiting from abandoning their existing obligations.

Clause 69 of the Bill provides that the Minister must have regard to the suitability criteria when deciding the application. The intent of this clause is to ensure the decision delivers the best outcome for the State and that any new holder is in a position to, and capable of meeting their obligations under the Bill.

Clause 70 of the Bill sets out the steps to be taken if the application to transfer is approved. The chief executive must give notice to the applicants as soon as practicable after the decision. The transfer will only take effect on a day fixed by a notice from the applicants to the chief executive provided the notice is given within 3 months of the notice of approval given by the chief executive. This clause is included to ensure the decision to approve a transfer remains timely and remains based on valid current grounds.

Division 2—Amendment and cancellation by Minister or chief executive

Subdivision 1—Amendment and cancellation powers

Clause 71 of the Bill provides that the chief executive may amend a geothermal exploration permit to correct an error. The intent of this clause is to enable the correction of trivial and inconsequential errors such as typographical errors without the need for excessive process.

Clause 72 of the Bill provides that the Minister may amend a geothermal exploration permit by amending any of its tenure conditions or reducing its area. These amendments can only be made with the agreement in writing of the holder and if the Minister considers the amendment is necessary or desirable because of a ground mentioned in clause 73 for amendment of a tenure condition or clause 74 for reducing the permit area and the procedure under subdivision 2 is followed. This clause provides the means and head of power for the Minister to make more substantive changes to a permit. The intent of this clause is to ensure that a permit is only substantially amended where there is a genuine need acceptable to both parties.

Clause 73 of the Bill provides the following grounds for amending the tenure conditions of a geothermal exploration permit-

- A contravention of this bill or a tenure condition by the permit holder or an authorised person for the permit;
- A reduction of area of the permit;
- A release of embargoed land for the permit;
- If there is more than 1 holder of the permit—the interest of any of the holders in the permit changes by more than 10%;
- If the holder is a company—there is a significant change in its membership.

All these occurrences represent potentially significant changes in the circumstances surrounding a particular geothermal exploration permit. This clause enables the Minister to respond appropriately to these changed circumstances where and if necessary. Amended tenure conditions can only be imposed with the agreement of the holder or after due process in which the holder has ample opportunity to argue their case on the merits.

Clause 74 of the Bill provides the following grounds for amending the area of a geothermal exploration permit-

- A contravention of this Act or a tenure condition by the permit holder or an authorised person for the permit;
- If the holder is a company—there is a significant change in its membership and, after the change, the Minister is of the opinion that the holder is no longer suitable to hold the permit;
- The holder obtained the permit because of a materially false or misleading declaration or representation, made orally or in writing.

This clause is intended to give the Minister a head of power to ensure land is only held under a geothermal exploration permit only where the holder is willing and able to undertake exploration in an effective and responsible manner over all the total land held.

Clause 75 of the Bill gives the Minister power to suspend or cancel a geothermal exploration permit in specific circumstances. In relation to cancellation, this can be over part only of the area of the permit. In relation to suspension, this may either be complete suspension of the permit or a limited suspension of only certain powers and access. This clause provides a disciplinary tool and sanctions for the Minister to deal with holders that fail to comply with their obligations and responsibilities under this Bill.

Clause 76 of the Bill deals with the grounds for suspension of a geothermal exploration permit. The grounds are-

- A contravention of this Act or a tenure condition by the permit holder or an authorised person for the permit;
- The Minister is of the opinion that the holder is no longer suitable to hold the permit;
- The giving of a direction under clause 102 to ease landholder concerns or a direction under clause 103 to close a bore;
- Security for the permit is, or may be, insufficient to remedy the contravention and any other contraventions by the permit holder or an authorised person for the permit of this Act or the conditions of the permit.

This clause places reasonable limits on the Minister's power to cancel or suspend geothermal tenure and helps ensure that any such cancellation or suspension only takes place for a good reason.

Subdivision 2—General procedure for amendment, cancellation and suspension by Minister

Clause 77 of the Bill sets out that any amendment, cancellation or suspension of the geothermal exploration permit initiated by the Minister must follow the due process set out in the following clauses. These provide the holder (and in certain instances, other affected parties) with an opportunity to be heard and to argue their case on the merits.

Clause 78 of the Bill provides that where the Minister is intending to make a decision or take an action that impacts on the holder's rights under

a geothermal exploration permit, he must first give the holder notice of this intent through a proposed action notice and notify the holder of their right to be heard and to argue their case before final determination of the matter. This helps ensure procedural fairness is extended to the holder. Reasonable time limits (20 to 40 business days) are imposed on the holder to respond to this notice to ensure timely closure of the matter.

Clause 79 of the Bill provides that the Minister may seek written submissions about the proposed action from an affected person or another relevant person. This is to help ensure that any decision made considers all issues and is as well informed as possible.

Clause 80 of the Bill provides that the Minister must consider any written submissions from the holder or an affected person within the submission period. This is to help ensure that any decision made by the Minister has considered all issues and is as well informed as possible

Clause 81 of the Bill provides the Minister with the head of power to amend, cancel or suspend the geothermal exploration permit without the agreement of the holder, so long as the due process has been followed. The decision takes effect on the day the chief executive gives the permit holder an information notice or the day stated in the information notice. There is a right of appeal from this decision (see Chapter 7, Part 2 for details). If the Minister decides not to take any action, the chief executive must give the permit holder notice of this decision. The various notification provisions are included to ensure administrative closure of the matter for both parties.

Subdivision 3—Immediate suspension

Clause 82 of the Bill provides that the Minister may immediately suspend a geothermal exploration permit under certain restricted circumstances as set out under clause 83. In order to take this action, the Minister must give the permit holder an immediate suspension notice. The suspension takes place immediately after the permit holder is given the notice and continues until the Minister either makes a decision under clause 81 or the holder is given notice that the Minister has decided not to take the proposed action.

Clause 83 of the Bill sets out the following grounds for immediate suspension-

- The Minister reasonably believes the permit holder or an authorised person for the permit has contravened, is contravening or may contravene this Act or a condition of the permit; or
- The Minister has given the permit holder a notice under clause 102 to ease the landholder's concern; or
- The Minister has given the permit holder a notice under clause 103 to close a bore.

Where these grounds also-

- have caused, are causing, or will probably cause, a risk to health or safety; or
- have caused, are causing, or will probably cause, a private or public nuisance at common law; or
- will unreasonably expose the State to a rectification liability in excess of the security held.

The intent of this clause is to ensure that the actions of the permit holder are consistent with the interests of the State and the welfare of the neighbours of the permit holder and the general public.

While clauses 82 and 83 can be argued as not providing procedural fairness to the holder before such a decision is made, this needs to be considered in the context of the grounds in which such an immediate suspension applies. An immediate suspension will also only be issued in conjunction with a proposed action notice, under which the holder can subsequently argue their case for the suspension to be lifted. An immediate suspension will also only apply for the limited period under which full due process under the proposed action notice process is undertaken. Under these circumstances, it is believed the immediate suspension power is not unreasonable.

CHAPTER 5—ACCESS

PART 1—EMBARGOED LAND

Clause 84 of the Bill introduces the concept of embargoed land for the tenure release area or the area of a geothermal exploration permit. In both circumstances, the Minister decides embargoed land. The concept of embargoed land is to cater for situations where the status of background land remains uncertain, as for example, where subject to a national park proposal. As embargoed land the national park “values” are not threatened by geothermal exploration but the geothermal permit holder retains priority to the land should the park proposal subsequently be abandoned.

Clause 85 of the Bill provides that for a geothermal exploration permit, embargoed land forms part of the tenure area, however, no rights can be exercised over the embargoed land. As such, a permit holder cannot access this land to undertake any exploration activity. The effect of this clause is to include the subject land in the exploration permit but protect it from geothermal exploration until the circumstances causing the land to be embargoed are resolved.

Clause 86 of the Bill allows the Minister to release embargoed land for the permit if the permit holder consents and the Minister forms the view that the circumstances leading to the land becoming embargoed land no longer applies. The intent of this clause is to allow geothermal exploration activities over land that was formally embargoed land in appropriate circumstances.

PART 2—RESTRICTED LAND

Clause 87 of the Bill introduces the concept of restricted land. Restricted land forms part of the geothermal exploration permit but requires prior written consent before it can be entered by the permit holder or authorised persons under the permit. This consent can be subject to reasonable conditions. The intent of this clause is to safeguard the interests of landholders and production tenure holders under the *Mineral Resources*

Act 1989 and the *Petroleum Act 1923* through their being able to control access in the vicinity of infrastructure. Access consent can be provided either by the holder of the relevant interest in the land or by the Land and Resources Tribunal under the provisions of clause 89.

Clause 88 of the Bill sets out the requirements for an access consent set out in clause 86. The access consent must identify the land for which the consent applies, the period to which the consent applies and any conditions the access may be subject to.

Clause 89 of the Bill provides the head of power for the Land and Resources Tribunal to give or vary access consent. Recourse to the Tribunal, to give or vary access consent, is only permissible where either:

- the consent is effectively unobtainable [the inability of the permit holder, after reasonable attempts, to identify or contact the landholder or person who has the production interest]; or
- the permit holder has used reasonable attempts over a period of at least 3 months to negotiate the access consent but the landholder or person who has the production interest has unreasonably refused to give the consent or imposed, or sought to impose, unreasonable conditions on the consent.

The intent of this clause is to allow, in appropriate and reasonable circumstances, the holder of a geothermal exploration permit to gain access to particular restricted land.

PART 3—NOTICE OF ENTRY

Clause 90 of the Bill provides that a notice of entry is required in respect of all land in the area of a geothermal exploration permit, save for access along a road dedicated under the *Land Act 1994* or to preserve life or property because of an emergency. Though the holder of a permit under the Bill has a right of access, the requirement for a notice of entry in all circumstances is intended to improve the relationship between explorers, landholders and native title bodies by ensuring that the landholders and native title bodies are kept aware of planned exploration activities on the land and are given sufficient prior notice to enable them to plan around it.

Clause 91 of the Bill requires a permit holder or authorised person to give each landholder of the land and each native title body for the land a

notice of entry at least 7 days before entry. This is extended as a courtesy and does not of itself provide a right of entry. In response, a landholder or native title body cannot object to or prevent this access to land where a right of access exists.

Clause 92 of the Bill allows the holder of a geothermal exploration permit to apply to the chief executive to waive the requirement to give a notice under clause 91 in situations where the party to be notified is effectively uncontactable [the holder has not been able to identify and/or locate the party despite demonstrated reasonable effort]. To ensure procedural fairness for the party to be notified, the chief executive may require the holder of the permit to undertake steps such as advertising before making a decision on the application. If the chief executive decides not to waive the requirement, the chief executive must give the permit holder a notice of the decision. There is no right of appeal against a decision to refuse the application.

Clause 93 of the Bill provides that a landholder or native title body may waive the requirement to be given prior notice of entry, provided the waiver is in writing and is given to the chief executive. The reason for this provision is to acknowledge that there will be circumstances where the relationship between the explorer and landholder or native title body is such that a notice of entry is unnecessary.

Clause 94 of the Bill sets out the requirements for a notice of entry. This clause has been drafted to ensure that a landholder or native title body has all relevant information about the proposed entry.

Clause 95 of the Bill provides that the notice of entry ceases to have force at the end of the period stated in the notice. The clause also clarifies that a subsequent notice of entry can be given at any time. This provision is intended to ensure that notifications remain current and relevant.

Clause 96 of the Bill provides that it is a mandatory condition of the permit that the holder must give the chief executive a copy of each notice of entry, however, failure to do so does not invalidate or otherwise affect the entry. The intent of this clause is to ensure that the chief executive is kept informed of activities to be undertaken for the permit. Failure to give a copy of the notice does not invalidate the entry because the holder has a right of entry under the Bill, however, failure to do so may lead to compliance action because of breach of a mandatory condition of the permit. This requirement is given the status of a mandatory condition for the permit because the State regards the relationship between explorers, landholders and native title bodies as fundamental to the good management of the tenure and the resource.

PART 4—ACCESS AFTER PERMIT CEASES OR PERMIT AREA REDUCED

Clause 97 of the Bill enables the Minister to provide a restricted form of access to land formerly in but no longer in the area of a geothermal exploration permit. The entry authority must not be for a period longer than 3 months from when the authority issues. The entering person must also give each landholder a notice of entry and a copy of the entry authority at least 7 days before the entry and the entering person may bring with them equipment necessary to carry out the purpose stated in the entry authority. The intent of this clause is to ensure that a person had a power of entry to undertake all necessary work, such as remediation, following the ending of their rights of access under a permit in respect of an area.

CHAPTER 6—DAMAGE AND COMPENSATION

Clause 98 of the Bill imposes a general obligation on a person exercising their rights under a geothermal exploration permit, including the right of access or under an entry authority, to ensure the person causes as little inconvenience and does as little damage as is practicable. The intent of this obligation is to ensure that an explorer is sensitive to the rights and property of others in relation to the land.

Clause 99 of the Bill requires a person who damages the land or an item on the land while exercising, or purportedly exercising their rights, under this Bill to give written notice of the damage as soon as practicable to the relevant landholder, holder of a mining interest under the *Mineral Resources Act 1989* or the *Petroleum Act 1923* or owner of the item. Where it is not practicable to give the notice directly, a copy of the notice must be left in a conspicuous position and in a secure way at the place where the damage happened. The intent of this clause is to give clear notice of damage at an early stage so that the person who suffered the damage may seek compensation under the Bill.

Clause 100 of the Bill establishes a right to compensation for any cost, damage or loss suffered by that each landholder, each holder of a mining claim or mining lease under the *Mineral Resources Act 1989* and each petroleum lessee or the holder of an easement granted for a pipeline licence

under the *Petroleum Act 1923* as a result of the exercise of rights under a geothermal exploration permit, including the right of access or under an entry authority.

Under this clause compensation is only payable for damage that has occurred. It is not intended that compensation be paid for prospective damage. Compensation is payable to the claimant by the holder, however, compensation is not payable for action taken by a person who was not authorised by the holder to do the activity. Redress through civil action still remains possible in the latter instance.

Clause 101 of the Bill gives the Land and Resources Tribunal a head of power to hear and make orders in respect of claims for compensation. The Tribunal may make an order for payment of compensation only if it is satisfied that it is just to make the order in the circumstances of the case. The intent of this clause is to provide an independent body that can consider the issue of compensation if the parties cannot reach agreement.

CHAPTER 7—MISCELLANEOUS PROVISIONS

PART 1—DIRECTIONS

Clause 102 of the Bill gives the Minister the power to give a direction to the permit holder to take action or cease taking action if the Minister considers it necessary in order to ease a valid concern of a landholder. Before such a direction can be given, the Minister must comply with due process and give the holder an opportunity to be heard and to argue their case.

The intent of this clause is to ensure that at all times the conduct and activities of the holder of a geothermal exploration permit are appropriate and sensitive to the rights and interests of relevant landholders.

Clause 103 of the Bill gives the Minister power at any time to direct the responsible person for an exploration bore to close the bore to the extent directed, either for a stated period or permanently in the following circumstances-

- If the bore is dangerous to persons, or may damage property; or
- If the bore is adversely affecting another bore, an aquifer, a mineral or petroleum deposit or a natural spring; or
- If the bore is causing a private or public nuisance at common law; or
- If the bore has been abandoned or discontinued.

Before such a direction can be given, the Minister must comply with due process and give the holder an opportunity to be heard and to argue their case.

It is the intention that this clause applies to whoever is responsible for the bore, even after the geothermal exploration permit has ended. For example, the bore may have been transferred to a landholder of the land in which the bore is located or a person who has a mining interest in the land.

Clause 104 of the Bill provides that a person to whom a direction to close a bore under clause 103 has been given must comply with the direction. A maximum penalty of 1200 penalty units is given for contravention of this direction. This provides both a penalty for non-compliance and potentially places enough money in consolidated revenue to enable the State to pay for the work without being out of pocket.

Clause 105 of the Bill provides that the Minister may direct the holder of a geothermal exploration permit, at its own cost, to survey the location of a bore or other activity carried out by the holder in the area of the permit. A cadastral surveyor under the *Surveyors Act 2003* must carry out the survey. The purpose of this clause is to ensure the State has accurate and consistent information in relation to key activities in the area of a geothermal exploration permit.

Clause 106 of the Bill provides a head of power for the chief executive to direct that the holder of a geothermal exploration permit gives a revised statement of the holder's financial or technical resources. The financial and technical resources of the holder form part of the suitability criteria that the Minister considered when deciding whether the grant of the permit was in the interests of the State. This clause is necessary because change in circumstances relating to the holder that may affect the holder's ability to carry out the work program is relevant to the management of the State's resources for the benefit of all Queenslanders.

Clause 107 of the Bill gives the chief executive a head of power to direct a permit holder to give the chief executive samples of materials obtained in the carrying out of activities under the geothermal exploration permit. The

direction may state the way and the times or intervals the samples are to be given. Access to these materials is necessary to ensure that the State maintains enhanced knowledge of the State's geothermal resources.

Clause 108 of the Bill gives the Minister and chief executive a head of power to require the holder of a geothermal exploration permit to give additional written information about a document, report or information given by the holder of the permit under the Bill. The intent of this general provision is to ensure that the Minister and chief executive are provided with all relevant information necessary to properly manage the resources of the State for the benefit of all Queenslanders.

PART 2—APPEALS

Clause 109 of the Bill provides that a person who has been given an information notice about a decision of the Minister or chief executive may appeal against the decision to the Land and Resources Tribunal. The intent of this clause is to ensure that wherever a decision affects the rights of a person, that person is given an appropriate right of appeal.

This appeal right does not extend to decisions regarding the grant of new rights. The applicant in this instance will still have a right to state their case and be heard, but a negative outcome will result in no change of actual rights and as such, would not infringe any fundamental legislative principles.

Clause 110 of the Bill provides that the appeal must be started within 20 business days after the day the person is given an information notice or, if no notice is given, the day the person otherwise becomes aware of the decision. The Land and Resources Tribunal may extend the 20 business day period for making an appeal provided an application for extension is made to the Tribunal within the 20 day period.

The intent of this clause is to ensure that these matters are resolved in a timely and efficient manner while still affording reasonable time to prepare and present argument.

Clause 111 of the Bill provides that filing a written notice of appeal with the Tribunal starts an appeal. A copy of the notice must be served on the decision-maker. This clause provides closure for the period initiated in

clause 110 above and ensures that the decision maker is informed of the commencement of an appeal in the Tribunal

Clause 112 of the Bill gives a head of power to the Land and Resources Tribunal to grant a stay of the decision to secure the effectiveness of the appeal. A stay may be given on conditions, be for a fixed period and may be amended or cancelled by the Tribunal. The purpose of this clause is to enable an appellant to seek a stay of a decision so that the benefit of the appeal is not adversely affected.

Clause 113 of the Bill sets out the powers of the Land and Resources Tribunal on appeal. The appeal is by way of rehearing, unaffected by the decision. In deciding the appeal, the Tribunal has the same powers as the decision-maker, is not bound by the rules of evidence, must comply with natural justice and may hear the appeal in court or chambers. The Tribunal may direct the procedure for the appeal and make rules for the hearing of appeals under this part. This clause provides ground rules that will apply in hearing an appeal.

Clause 114 of the Bill provides the necessary head of power, so that in deciding the appeal, the Land and Resources Tribunal may confirm the decision, set aside the decision and substitute another decision or set aside the decision and return the issue to the decision-maker with the directions that the Tribunal considers appropriate. If the Tribunal substitutes a decision, the substituted decision is taken to be the decision of the decision-maker.

PART 3—PROCEEDINGS

Division 1—Offence provisions

The clauses in this division are standard provisions that similarly apply in other resource legislation.

Clause 115 of the Bill provides that all offences against the Bill are summary offences. A proceeding for an offence must start within the later of the following periods to end-

- 1 year after the commission of the offence; or

- 6 months after the offence comes to the complainant's knowledge, but 2 years after the commission of the offence.

Clause 116 of the Bill is an evidentiary provision. This clause provides that in a complaint starting a proceeding, a statement that the matter of the complaint came to the complainant's knowledge on a stated day is evidence the matter came to the complainant's knowledge on that day.

Clause 117 of the Bill relates to an action against a person for providing false or misleading information in response to a direction under the Bill. This clause provides that the complaint starting the proceeding state that the relevant document or statement was false or misleading to the defendant's knowledge without specifying which. In the proceeding, evidence that the document or statement was given or made recklessly is evidence that it was given or made so as to be false or misleading.

Division 2—Evidentiary provisions for proceedings

The clauses in this division are standard provisions that similarly apply in other resource legislation.

Clause 118 of the Bill provides that this division applies to a proceeding under or in relation to this Bill.

Clause 119 of the Bill provides that the power of the Minister or the chief executive to do anything under this Bill must be presumed unless a party to the proceeding, by reasonable notice, requires proof of it.

Clause 120 of the Bill provides that a signature purporting to be the signature of the Minister or chief executive is evidence of the signature it purports to be.

Clause 121 of the Bill provides that a certificate purporting to be signed by the chief executive in relation to the following matters is evidence of the matter-

- a stated document is a thing as follows given, issued, kept or made under this Act including an instrument for a geothermal exploration permit; a direction, notice or requirement; the geothermal register; or another record;
- a stated document is another document kept under this Act;
- a stated document is a copy of, or an extract from or part of a document or a thing;

- that, on a stated day a stated person was given a stated decision, direction or notice under this Act; or a stated requirement under this Act was made of a stated person;
- on a stated day, or during a stated period, a geothermal exploration permit was, or was not, in force; or was, or was not, subject to a stated condition; or was, or was not, cancelled; or
- a stated amount is payable under this Act by a stated person and has not been paid.

PART 4—THE GEOTHERMAL REGISTER

Part 4 provides a number of clauses to ensure that accurate and appropriate records of geothermal exploration in the State are kept and maintained and that access to these records [except exempt matter under the *Freedom of Information Act 1992*] is publicly available.

Clause 122 of the Bill provides that the chief executive must keep a register for geothermal permits and sets out the requirements for the register.

Clause 123 of the Bill provides that the chief executive must maintain the geothermal register and may copy, correct or replace any item in the register.

Clause 124 of the Bill provides that the chief executive must give a person who asks, a copy of the geothermal register, or part of it, on payment of the fee prescribed under a regulation. This clause provides that the chief executive must not give a copy of the register, or part of the register that is exempt matter under the *Freedom of Information Act 1992*.

PART 5—TRANSFER OF CONTROL OF AND RESPONSIBILITY FOR BORES

Clause 125 of the Bill defines the term “transfer “ of a bore to mean a transfer of control and responsibility for the actual hole or bore and a

transfer of ownership of any works [such as casing] constructed in connection with the bore. This distinction is necessary, as technically the void [the actual hole] in the land could be argued to be part of the land, and as such “owned” by the owner of the land – potentially a third party. Control and responsibility for the hole however rests under other legislation such as the *Water Act 2000*, *Mineral Resources Act 1989*, the *Petroleum Act 1923* and under the provisions of this Bill.

Clause 126 of the Bill allows a person who, under another Act has control of a bore in the area of a geothermal exploration permit to apply to the Minister to transfer control of and responsibility for the bore to the permit holder. The intent of this clause is to allow the geothermal exploration permit holder to avoid unnecessary expense by enabling them to utilise existing bores for geothermal exploration purposes rather than forcing them to drill expensive duplicate holes.

Clause 127 of the Bill is a reciprocal arrangement to clause 126 and allows the holder of a geothermal exploration permit to apply to the Minister to transfer an exploration bore to either the landholder of the land in which the bore is located or a person who has a mining interest in the land. As long as other legislative requirements are met, this will enable geothermal bores to be transferred as going concerns to other explorers and to landholders as a potential water source.

Applications under clause 126 and clause 127 can only take place with the agreement of the transferor, transferee and the State. This ensures that the rights and obligations of all three parties are respected and protected. Applications that have been refused under clauses 126 and 127 can be appealed to the Land and Resources Tribunal.

Clause 128 of the Bill enables the transfer of an exploration bore to the State. Generally this will only occur after the bore has been fully decommissioned and the geothermal exploration permit has expired. However, sufficient flexibility has been incorporated to allow these bores to be transferred to the State as a going concern where this may be in the State’s interest. Applications refused under this clause can be appealed to the Land and Resources Tribunal.

Clause 129 of the Bill outlines the effects of a transfer under clause 128 of an exploration bore to the State. This clause provides closure so that legal obligations the transferor may have in regard to the bore [with the exception of those under the *Environmental Protection Act 1994*] can end with the transfer. This clause also enable the State to dispose of its interest in the hole to another appropriate party [a landholder, holder of a mining interest or the holder of a geothermal exploration permit] at a later date.

Clause 130 of the Bill requires that the Regulator under the *Water Act 2000* be informed of any transfer of an exploration bore for subsequent use as a water bore. This clause is to ensure that water bore records can be accurately maintained.

PART 6—DELEGATIONS

Clause 131 of the Bill provides that the Minister may delegate his functions and powers under the Bill to an appropriately qualified public service officer or employee.

Clause 132 of the Bill provides that the chief executive may delegate his functions and powers under the Bill to an appropriately qualified public service officer or employee.

Given the potential volume and technical nature of the workload arising from the administration of this Bill, it is necessary that the Minister and chief executive have a power to delegate various functions and powers under the Bill to competent persons in their departments. Such delegation will help ensure that the administration of the Bill can take place in a timely and competent manner.

PART 7—OTHER MISCELLANEOUS PROVISIONS

Clause 133 of the Bill provides that under the Bill, a document that is to be made or given to the Minister or chief executive must be lodged at the location prescribed by regulation. The intent of this clause is to administratively streamline the receipt of documents by allowing them to be lodged in the appropriate central location.

Clause 134 of the Bill is a head of power for the Minister or chief executive to require an applicant to additional information about, or a document relevant to an application under the Act within a stated reasonable period. This clause also applies to a tender. If the information is not provided by the stated date, the application may be refused on that ground alone. The intent of this clause is to ensure that a decision maker

has all relevant information in relation to an application provided in a timely manner. It is fundamental to the appropriate management of the State's geothermal resources for the benefit of all Queenslanders.

Clause 135 of the Bill provides that it is an offence if a person of whom a direction or requirement has been made states anything or gives a document or thing in response to the direction or requirement that the person knows is false or misleading in a material particular. The intent of this clause is to ensure that a decision maker has all relevant information in relation to an application provided in a timely manner. It is fundamental to the appropriate management of the State's geothermal resources for the benefit of all Queenslanders.

Clause 136 of the Bill provides that if under the Bill the holder of a geothermal exploration permit is required to pay the State an amount, including interest, the State may recover the amount from the holder as a debt.

Clause 137 of the Bill provides that despite section 50(1) of the *Land and Resources Tribunal Act 1999*, the Tribunal may award costs in a proceeding started before it under this Bill.

Clause 138 of the Bill that the chief executive may approve forms for use under the Bill. This provision helps ensure that applications and tenders contain all the necessary information and that information is treated in a consistent and standard manner.

Clause 139 of the Bill provides that the Governor in Council may make regulations under the Act. Clause 139 provides that regulations may be made in relation to fees, how information and materials must be given and imposing a penalty of no more than 20 penalty units for a contravention of a provision of the regulation. Other clauses throughout the Bill provide for specific regulations in respect to:

- Clause 10 – The location and identification of blocks and sub-blocks;
- Clause 14 – Authorisation of limited forms of geothermal extraction;
- Clause 18 - Land or categories of land to be excluded from a tender release area;
- Clause 21 – The setting of the tender application fee;
- Clause 31 – The setting of the amount and form of security to be paid

- Clause 43 – The setting of the annual rental rate for a geothermal exploration permit and the setting of the interest rate to be paid on overdue rent monies;
- Clause 48 – The setting of the fee to register a change of address;
- Clause 49 – The setting of the way and timing of reporting requirements;
- Clause 52 – The setting of mandatory tenure conditions;
- Clause 57 – The setting of the application fee for amendment, deferral, surrender or transfer of a geothermal exploration permit;
- Clause 92 – The setting of the fee to apply for a waiver of the requirement for a notice of entry;
- Clause 122 – Additional information to be kept on the geothermal register;
- Clause 124 – The setting of the application fee to obtain copies of material held on the geothermal register;
- Clause 126, Clause 127 and Clause 128 - The setting of the application fee to transfer an exploration bore to another party; and
- Clause 133 – Determining the location where documents or samples must be lodged.

CHAPTER 8—AMENDMENT OF OTHER ACTS

PART 1—AMENDMENT OF ABORIGINAL LAND ACT 1991

Clause 140 of the Bill provides that the *Aboriginal Land Act 1991* is amended by this part.

Clause 141 of the Bill amends the definition of “interest” in section 3 of the *Aboriginal Land Act 1991* to include a geothermal exploration permit.

Clause 142 of the Bill amends section 131(1)(a) and section 131(3)(a) of the *Aboriginal Land Act 1991* to include a reference to a geothermal exploration permit.

The purpose of the amendments under this part is to ensure that, for land under the *Aboriginal Land Act 1991*, it is permissible for the Minister to create an interest in that land if the interest is a geothermal exploration permit.

PART 2—AMENDMENT OF INTEGRATED PLANNING ACT 1997

Clause 143 of the Bill provides that this part amends the *Integrated Planning Act 1997*.

Clause 144 of the Bill amends schedule 8 of the *Integrated Planning Act 1997* by inserting clause 10D relating to geothermal exploration activities.

PART 3—AMENDMENT OF INTEGRATED PLANNING AND OTHER LEGISLATION AMENDMENT ACT 2003

Clause 145 of the Bill provides that this part amends the *Integrated Planning and Other Legislation Amendment Act 2003*.

Clause 146 of the Bill amends schedule 9, table 5 of the *Integrated Planning and Other Legislation Amendment Act 2003* by inserting clause 3A relating to geothermal exploration activities.

The purpose of parts 2 and 3 is to exempt from the operation of the *Integrated Planning Act 1997* any aspect of development for geothermal exploration carried out under a geothermal exploration permit, other than the clearing of native vegetation, unless the clearing is necessary for essential management or by fire under the *Fire and Rescue Authority Act 1990*.

PART 4—AMENDMENT OF LAND AND RESOURCES TRIBUNAL ACT 1999

Clause 147 of the Bill provides that this part amends the *Land and Resources Tribunal Act 1999*.

Clause 148 of the Bill amends schedule 1 of the *Land and Resources Tribunal Act 1999* by inserting a clause that provides that for all matters within the Tribunal's jurisdiction, the Tribunal is to be constituted by a presiding member.

PART 5—AMENDMENT OF MINERAL RESOURCES ACT 1989

Clause 149 of the Bill provides that this part amends the *Mineral Resources Act 1989*.

Clause 150 of the Bill amends section 51 of the *Mineral Resources Act 1989* to prevent the grant of a mining claim over a pre-existing geothermal exploration permit unless the holder of the geothermal exploration permit first agrees in writing. This clause extends the protection already extended to exploration permits granted under the *Mineral Resources Act 1989* to prevent relatively low-value mining activities on a mining claim from disrupting higher value activities and resources contained within other resource tenure.

Clause 151 of the Bill amends section 248 of the *Mineral Resources Act 1989* so as to require an applicant for a mining lease to obtain the views of the holder of any overlapping geothermal exploration permit prior to the close of objections. This enables the Minister to be in a position where the Minister can consider best utilisation of the State's resources prior to making any recommendation regarding the grant of the mining lease.

Clause 152 of the Bill amends section 403(1)(d) to provide that a person shall not enter or be upon land, use or occupy land or erect any building or structure on or make any other improvement to land that is subject to the Bill. This helps to protect geothermal resources from illegal mining activity.

Clause 153 of the Bill defines the meaning of the term "geothermal exploration permit" under the *Mineral Resources Act 1989* to mean a geothermal exploration permit granted under the *Geothermal Exploration Act 2004*, if passed.

PART 6—AMENDMENT OF PETROLEUM ACT 1923

Clause 154 of the Bill provides that this part amends the *Petroleum Act 1923*.

Clause 155 of the Bill inserts a new section 24A, which provides that an authority to prospect holder must not carry out an activity authorised under the authority or the *Petroleum Act 1923* if under clause 6(2) of the Bill the activity is prohibited.

Clause 156 of the Bill inserts a new section 69A, which provides that a licence holder must not carry out an activity authorised under the licence, or the *Petroleum Act 1923*, if under clause 6(2) of the Bill, the activity is prohibited.

The purpose of the amendments under this part are to ensure that the interrelationships between geothermal and petroleum tenure can be effectively recognised and administered under the appropriate legislation.

PART 7—AMENDMENT OF STATE DEVELOPMENT AND PUBLIC WORKS ORGANISATION ACT 1971

Clause 157 of the Bill provides that this part amends the *State Development and Public Works Organisation Act 1971*.

Clause 158 of the Bill amends section 26 to provide that if the project involves the proposed use of geothermal energy, the Coordinator-General must also give a copy of the gazette notice to the Minister administering the *Geothermal Exploration Act 2004* (if passed).

The purpose of the amendments under this part are to ensure that the Minister administering the *Geothermal Exploration Bill 2004* is involved in

any process that directly impacts on the management of the State's geothermal resources.

PART 8—AMENDMENT OF TORRES STRAIT ISLANDER LAND ACT 1991

Clause 159 of the Bill provides that the *Torres Strait Islander Land Act 1991* is amended by this part.

Clause 160 of the Bill amends the definition of “interest” in section 3 of the *Torres Strait Islander Land Act 1991* to include a geothermal exploration permit.

Clause 161 of the Bill amends section 128(1)(a) and section 128(3)(a) of the *Torres Strait Islander Land Act 1991* to include a reference to a geothermal exploration permit.

The purpose of the amendments under this part is to ensure that, for land under the *Torres Strait Islander Land Act 1991*, it is permissible for the Minister to create an interest in that land if the interest is a geothermal exploration permit.

PART 8A—AMENDMENT OF WATER ACT 2000

Clause 162 of the Bill provides that the *Water Act 2000* is amended by this part.

Clause 163 of the Bill includes the holder of a geothermal exploration permit as an “owner” under section 203 of the *Water Act 2000*. This amendment enables the holder of a geothermal exploration permit to obtain a water licence to take water.

SCHEDULE

The schedule contains the dictionary for the Bill referred to in clause 9. This is a list of terms used under the Bill that have a specific intended meaning that may be narrower or broader than might be implied from common English usage. This Dictionary needs to be read in conjunction with the Dictionary provided in the *Acts Interpretation Act 1954*, which provides the legal interpretation of common terms used more widely in Queensland legislation.