

# Geothermal Energy Bill 2010

## Amendments agreed to during Consideration

### 1 **Clause 9 (Act does not affect other rights or remedies)**

Page 45, line 7, after ‘sections 201’—

*insert—*

‘, 353A’.

### 2 **After clause 127**

Page 104, after line 6—

*insert—*

#### **‘127A Obligation to consult with particular owners and occupiers**

- ‘(1) A geothermal tenure holder must consult or use reasonable endeavours to consult with each owner and occupier of private or public land on which authorised activities for the tenure are proposed to be carried out or are being carried out.
- ‘(2) The consultation must be about—
  - (a) access; and
  - (b) the carrying out of authorised activities for the geothermal tenure (including, for example, crossing access land for the tenure) to the extent they relate to the owners and occupiers; and
  - (c) the geothermal tenure holder’s compensation liability to the owners or occupiers.’.

### 3 **Clause 211 (Required contents of entry notice)**

Page 152, after line 3—

*insert—*

‘(aa) the geothermal tenure; and’.

**4 Clause 211 (Required contents of entry notice)**

Page 152, line 9—

*omit, insert—*

‘(a) generally—

- (i) for a geothermal permit—6 months; or
- (ii) for a geothermal lease—1 year; or’.

**5 Clause 246 (General liability to compensate)**

Page 173, lines 6 to 15—

*omit, insert—*

‘*compensatable effect* means all or any of the following—

- (a) all or any of the following relating to the eligible claimant’s land—
  - (i) deprivation of possession of its surface;
  - (ii) diminution of its value;
  - (iii) diminution of the use made or that may be made of the land or any improvement on it;
  - (iv) severance of any part of the land from other parts of the land or from other land that the eligible claimant owns;
  - (v) any cost, damage or loss arising from the carrying out of activities under the geothermal tenure on the land;
- (b) accounting, legal or valuation costs the claimant necessarily and reasonably incurs to negotiate or prepare a conduct and compensation agreement, other than the costs of a person facilitating an ADR;

*Examples of negotiation—*

an ADR or conference

- (c) consequential damages the eligible claimant incurs because of a matter mentioned in paragraph (a) or (b).’.

**6 Clause 250 (Negotiations)**

Page 176, lines 27 to 29—

*omit, insert—*

‘(a) must be at least for the period provided for under section 250A (the *minimum negotiation period*); but’.

**7 After clause 250**

Page 177, after line 5—

*insert—*

**‘250A Provision for the minimum negotiation period**

- ‘(1) Generally, the minimum negotiation period is 20 business days from the giving of the negotiation notice (the *usual period*).
- ‘(2) Either party may, within the usual period, ask the other to agree to a longer minimum negotiation period because of stated reasonable or unforeseen circumstances.
- ‘(3) If the other party so agrees, the longer minimum negotiation period is the minimum negotiation period.’.

**8 Clause 252 (Parties may seek mediation)**

Page 177, lines 17 to 27—

*omit, insert—*

**‘252 Parties may seek conference or independent ADR**

- ‘(1) This section applies if, at the end of the minimum negotiation period, the parties have not entered into a conduct and compensation agreement or deferral agreement.
- ‘(2) Either party may by a notice (an *election notice*)—
  - (a) to the other party and an authorised officer—ask for an authorised officer to call a conference to negotiate a conduct and compensation agreement; or

- (b) to the other party—call upon them to agree to an alternative dispute resolution process (an *ADR*) to negotiate a conduct and compensation agreement.
- ‘(3) If the notice calls for an ADR, it must—
  - (a) identify the ADR; and
  - (b) state that the party giving the notice agrees to bear the costs of the person who will facilitate the ADR (the *facilitator*).
- ‘(4) An ADR may be a process of any kind including, for example, conciliation or mediation.
- ‘(5) However, the facilitator must be independent of either party.

#### **‘252A Conduct of conference or ADR**

- ‘(1) This section applies if an election notice is given.
- ‘(2) If a conference was requested—
  - (a) the authorised officer must take all reasonable steps to ensure the conference is finished within 20 business days after the notice is given (the *usual period*); and
  - (b) chapter 7, part 1 applies for the conference.
- ‘(3) If an ADR was called for, the parties must use reasonable endeavours to finish it within 20 business days after the giving of the notice (also the *usual period*).
- ‘(4) Either party may, within the usual period, ask the other to agree to a longer period to finish the conference or ADR because of stated reasonable or unforeseen circumstances.
- ‘(5) If the parties agree to the longer period, that period applies instead of the usual period.
- ‘(6) If an ADR was called for, section 309 applies to the ADR as if a reference in the section to a conference were a reference to an ADR.

*Editor’s note—*

section 309 (What happens if a party does not attend)’.

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

Page 178, lines 3 to 16—

*omit, insert—*

**‘253 Land Court may decide if negotiation process unsuccessful**

‘(1) This section applies if an election notice is given and—

- (a) a party asked an authorised officer to call a conference and the authorised officer does not finish it within the period required under section 252A (the *required period*); or
- (b) a party called for an ADR and the person facilitating the ADR does not finish it within the period required under section 252A (also the *required period*).

‘(2) This section also applies if an election notice is given and—

- (a) only 1 party attended the conference requested or ADR called for; or
- (b) both parties attended the conference or ADR and, at the end of the required period, there is no conduct and compensation agreement between the parties.’.

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

Page 178, line 31 and page 179, lines 1 to 3—

*omit, insert—*

‘*eligible party* means a party who attended the conference or ADR.’.

**11 After clause 255**

Page 180, after line 7—

*insert—*

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

### **‘255A What sdiv 5A is about**

- ‘(1) This subdivision provides for additional matters for which the Land Court has jurisdiction.
- ‘(2) The jurisdiction is subject to subdivisions 1 to 5.

### **‘255B Additional jurisdiction**

- ‘(1) This section applies to a geothermal tenure holder and an eligible claimant (the *parties*) if any of the following apply—
  - (a) the geothermal tenure holder has carried out a preliminary activity;
  - (b) the parties can not reach agreement about a conduct and compensation agreement;
  - (c) there is a conduct and compensation agreement or deferral agreement between the parties.
- ‘(2) The Land Court may do all or any of the following—
  - (a) assess all or part of the relevant geothermal tenure holder’s compensation liability to another party;
  - (b) decide a matter related to the compensation liability;
  - (c) declare whether or not a proposed authorised activity for the relevant geothermal tenure would, if carried out, interfere with the carrying out of lawful activities by the eligible claimant;
  - (d) make any order it considers necessary or desirable for a matter mentioned in paragraph (a), (b) or (c).

*Example—*

The Land Court declares that a particular proposed authorised activity interferes with the carrying out of lawful activities by the eligible claimant. It may also order that a stated modification of, or reduction in, the activity would remove the interference.

**‘255C Jurisdiction to impose or vary conditions**

- ‘(1) In deciding a matter mentioned in section 255B(2), the Land Court may—
  - (a) impose any condition it considers appropriate for the exercise of the parties’ rights; or
  - (b) vary any existing condition under an agreement between the parties.
- ‘(2) The variation may be made on any ground the Land Court considers appropriate.
- ‘(3) The imposed or varied condition is taken to be—
  - (a) if there is an agreement between the parties—a condition of the agreement; or
  - (b) if there is no agreement between the parties—an agreement between the parties.
- ‘(4) In this section—

*agreement* means a conduct and compensation agreement.

*condition* means a condition of or for a conduct and compensation agreement.’.

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

Page 208, line 19, ‘Mediation’—

*omit, insert*—

‘Conferences’.

**13 Chapter 7, part 1 (Mediation with eligible claimants or owners and occupiers)**

Page 208, lines 21 to 25, page 209, lines 1 to 31, page 210, lines 1 to 25 and page 211, lines 1 to 9—

*omit, insert*—

## **‘Part 1                      Conferences with eligible claimants or owners and occupiers**

### **‘Division 1                Preliminary**

#### **‘306    Application of pt 1**

- ‘(1) This part applies if an authorised officer is given an election notice by a geothermal tenure holder or an eligible claimant asking for a conference.
- ‘(2) This part also applies if—
  - (a) an owner or occupier of land who is concerned about any of the following gives an authorised officer notice of the concerns—
    - (i) that someone claiming to act under a geothermal tenure, or to have entered land on the tenure holder’s instructions—
      - (A) is not authorised to be on the land; or
      - (B) is not complying with a provision of this Act or a condition of the geothermal tenure;
    - (ii) activities being, or proposed to be, carried out on the land apparently under a geothermal tenure (including when the activities are being, or are to be, carried out);
    - (iii) the conduct on the land of someone apparently acting under a geothermal tenure; or
  - (b) a geothermal tenure holder who is concerned about something relevant to the tenure involving the holder and the owner or occupier of land gives an authorised officer notice of the concerns; or
  - (c) for another reason, an authorised officer considers it desirable to call a conference to discuss concerns about a geothermal tenure.



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## **‘Division 2            Calling conference and attendance**

### **‘307    Calling conference**

- ‘(1) If this part applies because of the giving of an election notice, the authorised officer must, by notice, ask the geothermal tenure holder and the eligible claimant (the *parties*) to attend a conference by the authorised officer about negotiating a conduct and compensation agreement.
- ‘(2) If this part applies under section 306(2), the authorised officer may, by notice, ask the geothermal tenure holder and the owner or occupier or other person with an interest in the concerns (also the *parties*) to attend a conference by the authorised officer about the concerns.
- ‘(3) The notice must state when and where the conference will be held and what is to be discussed at the conference.

### **‘308    Who may attend conference**

- ‘(1) Apart from the authorised officer, anyone given notice of the conference may attend and take part in the conference.
- ‘(2) Also, with the authorised officer’s approval, someone else may be present to help a person attending the conference.
- ‘(3) However, a party can not be represented by a lawyer unless the parties agree and the authorised officer is satisfied there is no disadvantage to a party.

### **‘309    What happens if a party does not attend**

- ‘(1) This section applies if a party given notice of the conference does not attend.
- ‘(2) The authorised officer may hold the conference even though someone given notice of it does not attend.

*Note—*

If the conference was called because of an election notice and only 1 party attends, the Land Court may decide the issue of compensation. See section 253.

- ‘(3) A party who attended the conference may apply to the Land Court for an order requiring the party who did not attend to pay the attending party’s reasonable costs of attending.
- ‘(4) The Land Court must not order the party who did not attend to pay costs if it is satisfied the party had a reasonable excuse for not attending.
- ‘(5) If the Land Court makes the order, it must decide the amount of the costs.

### **‘Division 3                    Conduct of conference**

#### **‘310    Authorised officer’s role**

- ‘(1) In conducting the conference, the authorised officer must endeavour to help those attending to reach an early and inexpensive settlement of the subject of the conference.
- ‘(2) Subject to section 252A, the authorised officer is to decide how the conference is to be conducted.

#### **‘311    Statements made at conference**

‘Nothing said by a person at the conference is admissible in evidence in a proceeding without the person’s consent.

#### **‘312    Agreement made at conference**

- ‘(1) If, at the conference, the parties negotiate an agreement about the concerns the subject of the conference, the agreement must be written and signed by or for the parties.
- ‘(2) The agreement—
  - (a) may, if appropriate, be a conduct and compensation agreement or an amendment of an existing conduct and compensation agreement between the parties; and
  - (b) has the same effect as any other compromise.’

**14 After clause 353—**

Page 234, after line 2—

*insert—*

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

- ‘(1) This section applies to an owner or occupier of land in the area of a geothermal tenure if—
- (a) someone else carries out an authorised activity for a geothermal tenure on the land; or
  - (b) someone else carries out an activity on the land and, in doing so, purports to be carrying out an authorised activity for a geothermal tenure.
- ‘(2) The owner or occupier is not civilly liable to anyone else for a claim based in tort for damages relating to the carrying out of the activity.
- ‘(3) However, subsection (2) does not apply to the extent the owner or occupier, or someone else authorised by the owner or occupier, caused, or contributed to, the harm the subject of the claim.
- ‘(4) This section applies—
- (a) despite any other Act or law; and
  - (b) even though this Act or the geothermal tenure prevents or restricts the carrying out of the activity as an authorised activity for the tenure.
- ‘(5) Subject to subsection (2), in this section, the terms *claim*, *damages* and *harm* have the same meaning that they have under the *Civil Liability Act 2003*.’.

**15 After clause 413**

Page 262, after line 22—

*insert—*

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

Section 249(3) to (7)—

*omit, insert—*

- ‘(3) The written consent may be lodged with the mining registrar before—
- (a) if the earlier application is decided by the grant of the permit, licence or lease applied for—20 business days after the permit, licence or lease is granted; or
  - (b) otherwise—the earlier application is decided.
- ‘(4) The later applicant must, within the request period, give the earlier applicant a written request seeking the earlier applicant’s views if—
- (a) the earlier application is for a mining tenement mentioned in subsection (1)(a); and
  - (b) the lease applied for in the later application is—
    - (i) over land covered by the earlier application; and
    - (ii) for different minerals to those covered by the earlier application.
- ‘(5) The written request must—
- (a) state that the earlier applicant may, within the response period, lodge written views on the later application with the mining registrar; and
  - (b) include a copy of the later application, other than any part of the application detailing the later applicant’s financial and technical resources.
- ‘(6) A later applicant to whom subsection (4) applies must lodge with the mining registrar notice of the day the later applicant complied with the obligation under subsection (4).
- ‘(7) An earlier applicant given a written request under subsection (4) may, within the response period, lodge the earlier applicant’s written views with the mining registrar.

- ‘(8) The mining registrar must not deal with the later application until—
- (a) for a later application to which subsection (2) applies—the earlier applicant’s consent is lodged with the mining registrar; or
  - (b) for a later application to which subsection (4) applies—
    - (i) the earlier applicant’s views are lodged with the mining registrar; or
    - (ii) the end of the response period; or
  - (c) for any other later application—the day the earlier application is finally decided.
- ‘(9) In this section—

*request period* means a period of 10 business days starting on the day the later application is lodged.

*response period* means a period of 20 business days starting on the day the earlier applicant is given a notice under subsection (4).’.

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

Page 267, line 25—

*omit, insert—*

‘1968.

## **‘774A Application of amended s 249**

- ‘(1) This section applies if, immediately before the commencement, section 249 applied in relation to an application mentioned in section 249(1).
- ‘(2) Section 249 as in force immediately after the commencement applies in relation to the application.
- ‘(3) For the purpose of subsection (2), the request period under section 249 is the period of 10 business days starting on the commencement.

‘(4) In this section—

*commencement* means the commencement of this section.’.’.

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

Page 283, lines 16 to 19—

*omit, insert—*

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

Section 9(1), after ‘sections 269’—

*insert—*

‘, 338A’.

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

Section 85—

*omit, insert—*

**‘85 Obligation to consult with particular owners and occupiers**

‘(1) A GHG permit holder must consult or use reasonable endeavours to consult with each owner and occupier of private or public land on which authorised activities for the permit are proposed to be carried out or are being carried out.

‘(2) The consultation must be about—

(a) access; and

(b) the carrying out of authorised activities for the GHG permit (including, for example, crossing access land for the permit) to the extent they relate to the owners and occupiers; and

(c) the GHG permit holder’s compensation liability to the owners or occupiers.’.’.

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

Page 284, lines 1 to 4—

*omit, insert—*

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

Section 166—

*omit, insert—*

**‘166 Obligation to consult with particular owners and occupiers**

‘(1) A GHG lease holder must consult or use reasonable endeavours to consult with each owner and occupier of private or public land on which authorised activities for the lease are proposed to be carried out or are being carried out.

‘(2) The consultation must be about—

- (a) access; and
- (b) the carrying out of authorised activities for the GHG lease (including, for example, crossing access land for the lease) to the extent they relate to the owners and occupiers; and
- (c) the GHG lease holder’s compensation liability to the owners or occupiers.’.

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

Page 286, lines 7 to 10—

*omit, insert—*

- ‘(a) the GHG authority; and
- (b) the land access code; and
- (c) any code of practice made under this Act applying to authorised activities for the GHG authority; and
- (d) the relevant environmental authority documentation.’.

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

Page 286, line 12—

*omit, insert—*

‘(a) generally—

- (i) for a GHG permit—6 months; or
- (ii) for another GHG authority—1 year; or’.

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

Page 291, lines 21 to 24 and page 292, lines 1 to 6—

*omit, insert—*

‘*compensatable effect* means all or any of the following—

- (a) all or any of the following relating to the eligible claimant’s land—
  - (i) deprivation of possession of its surface;
  - (ii) diminution of its value;
  - (iii) diminution of the use made or that may be made of the land or any improvement on it;
  - (iv) severance of any part of the land from other parts of the land or from other land that the eligible claimant owns;
  - (v) any cost, damage or loss arising from the carrying out of activities under the GHG authority on the land;
- (b) accounting, legal or valuation costs the claimant necessarily and reasonably incurs to negotiate or prepare a conduct and compensation agreement, other than the costs of a person facilitating an ADR;

*Examples of negotiation—*

an ADR or conference

- (c) consequential damages the eligible claimant incurs because of a matter mentioned in paragraph (a) or (b).’.



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

Page 295, lines 16 to 18—

*omit, insert—*

‘(a) must be at least for the period provided for under section 324A (the *minimum negotiation period*); but’.

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

Page 295, after line 24—

*insert—*

**‘324A Provision for the minimum negotiation period**

‘(1) Generally, the minimum negotiation period is 20 business days from the giving of the negotiation notice (the *usual period*).

‘(2) Either party may, within the usual period, ask the other to agree to a longer minimum negotiation period because of stated reasonable or unforeseen circumstances.

‘(3) If the other party so agrees, the longer minimum negotiation period is the minimum negotiation period.’.

**24 Clause 435 (Replacement of ch 5, pt 10 (General compensation provisions))**

Page 296, lines 8 to 18—

*omit, insert—*

**‘325A Parties may seek conference or independent ADR**

‘(1) This section applies if, at the end of the minimum negotiation period, the parties have not entered into a conduct and compensation agreement or deferral agreement.

‘(2) Either party may by a notice (an *election notice*)—

(a) to the other party and an authorised officer—ask for an authorised officer to call a conference to negotiate a conduct and compensation agreement; or

- (b) to the other party—call upon them to agree to an alternative dispute resolution process (an *ADR*) to negotiate a conduct and compensation agreement.
- ‘(3) If the notice calls for an ADR, it must—
  - (a) identify the ADR; and
  - (b) state that the party giving the notice agrees to bear the costs of the person who will facilitate the ADR.
- ‘(4) An ADR may be a process of any kind including, for example, arbitration, conciliation, mediation or negotiation.
- ‘(5) However, the facilitator must be independent of either party.

### **‘325AB Conduct of conference or ADR**

- ‘(1) This section applies if an election notice is given.
- ‘(2) If a conference was requested—
  - (a) the authorised officer must take all reasonable steps to ensure the conference is finished within 20 business days after the notice is given (the *usual period*); and
  - (b) chapter 6, part 1A applies for the conference.
- ‘(3) If an ADR was called for, the parties must use reasonable endeavours to finish it within 20 business days after the giving of the notice (also the *usual period*).
- ‘(4) Either party may, within the usual period, ask the other to agree to a longer period to finish the conference or ADR because of stated reasonable or unforeseen circumstances.
- ‘(5) If the parties agree to the longer period, that period applies instead of the usual period.
- ‘(6) If an ADR was called for, section 377D applies to the ADR as if a reference in the section to a conference were a reference to an ADR.

*Editor’s note—*

section 377D (What happens if a party does not attend)’.

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

Page 296, lines 21 to 29 and page 297, lines 1 to 5—

*omit, insert—*

**‘325B Land court may decide if negotiation process unsuccessful**

‘(1) This section applies if an election notice is given and—

- (a) a party asked an authorised officer to call a conference and the authorised officer does not finish it within the period required under section 325AB (the *required period*); or
- (b) a party called for an ADR and the person facilitating the ADR does not finish it within the period required under section 325AB (also the *required period*).

‘(2) This section also applies if an election notice is given and—

- (a) only 1 party attended the conference requested or ADR called for; or
- (b) both parties attended the conference or ADR and, at the end of the required period, there is no conduct and compensation agreement between the parties.’.

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

Page 297, lines 20 to 23—

*omit, insert—*

‘*eligible party* means a party who attended the conference or ADR.’.

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

Page 298, after line 26—

*insert—*

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

### **‘325DA What sdiv 5A is about**

- ‘(1) This subdivision provides for additional matters for which the Land Court has jurisdiction.
- ‘(2) The jurisdiction is subject to subdivisions 1 to 5.

### **‘325DB Additional jurisdiction**

- ‘(1) This section applies to a GHG authority holder and an eligible claimant (the *parties*) if any of the following apply—
  - (a) the GHG authority holder has carried out a preliminary activity;
  - (b) the parties can not reach agreement about a conduct and compensation agreement;
  - (c) there is a conduct and compensation agreement or deferral agreement between the parties.
- ‘(2) The Land Court may do all or any of the following—
  - (a) assess all or part of the relevant GHG authority holder’s compensation liability to another party;
  - (b) decide a matter related to the compensation liability;
  - (c) declare whether or not a proposed authorised activity for the relevant GHG authority would, if carried out, interfere with the carrying out of lawful activities by the eligible claimant;
  - (d) make any order it considers necessary or desirable for a matter mentioned in paragraph (a), (b) or (c).

*Example—*

The Land Court declares that a particular proposed authorised activity interferes with the carrying out of lawful activities by the eligible claimant. It may also order that a stated modification of, or reduction in, the activity would remove the interference.

**‘325DC Jurisdiction to impose or vary conditions**

- ‘(1) In deciding a matter mentioned in section 325DB(2), the Land Court may—
  - (a) impose any condition it considers appropriate for the exercise of the parties’ rights; or
  - (b) vary any existing condition under an agreement between the parties.
- ‘(2) The variation may be made on any ground the Land Court considers appropriate.
- ‘(3) The imposed or varied condition is taken to be—
  - (a) if there is an agreement between the parties—a condition of the agreement; or
  - (b) if there is no agreement between the parties—an agreement between the parties.
- ‘(4) In this section—

*agreement* means a conduct and compensation agreement.

*condition* means a condition of or for a conduct and compensation agreement.’.

**28 After clause 436—**

Page 299, after line 25—

*insert—*

**‘436A Insertion of new s 338A**

Chapter 5, part 12—

*insert—*

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

- ‘(1) This section applies to an owner or occupier of land in the area of a GHG authority if—
  - (a) someone else carries out an authorised activity for a GHG authority holder on the land; or

- (b) someone else carries out an activity on the land and, in doing so, purports to be carrying out an authorised activity for a GHG authority.
- ‘(2) The owner or occupier is not civilly liable to anyone else for a claim based in tort for damages relating to the carrying out of the activity.
- ‘(3) However, subsection (2) does not apply to the extent the owner or occupier, or someone else authorised by the owner or occupier, caused, or contributed to, the harm the subject of the claim.
- ‘(4) This section applies—
  - (a) despite any other Act or law; and
  - (b) even though this Act or the GHG authority prevents or restricts the carrying out of the activity as an authorised activity for the authority.
- ‘(5) Subject to subsection (2), in this section, the terms *claim*, *damages* and *harm* have the same meaning that they have under the *Civil Liability Act 2003*.’.

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

Page 300, lines 1 to 27, page 301, lines 1 to 29 and page 302, lines 1 to 18—

*omit, insert—*

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

Chapter 6, heading—

*omit, insert—*

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**‘Chapter 6            Conferences, investigations  
and enforcement**

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

**‘Division 1            Preliminary**

**‘377A Application of pt 1A**

- ‘(1) This part applies if an authorised officer is given an election notice by a GHG authority holder or an eligible claimant asking for a conference.
- ‘(2) This part also applies if—
- (a) an owner or occupier of land who is concerned about any of the following gives an authorised officer notice of the concerns—
    - (i) that someone claiming to act under a GHG authority, or to have entered land on the authority holder’s instructions—
      - (A) is not authorised to be on the land; or
      - (B) is not complying with a provision of this Act or a condition of the GHG authority;
    - (ii) activities being, or proposed to be, carried out on the land apparently under a GHG authority (including when the activities are being, or are to be, carried out);
    - (iii) the conduct on the land of someone apparently acting under a GHG authority; or
  - (b) a GHG authority holder who is concerned about something relevant to the authority involving the holder

and the owner or occupier of land gives an authorised officer notice of the concerns; or

- (c) for another reason, an authorised officer considers it desirable to call a conference to discuss concerns about a GHG authority.

## **‘Division 2                    Calling conference and attendance**

### **‘377B Calling conference**

- ‘(1) If this part applies because of the giving of an election notice, the authorised officer must, by notice, ask the GHG authority holder and the eligible claimant (the *parties*) to attend a conference by the authorised officer about negotiating a conduct and compensation agreement.
- ‘(2) If this part applies under section 377A(2), the authorised officer may, by notice, ask the GHG authority holder and the owner or occupier or other person with an interest in the concerns (also the *parties*) to attend a conference by the authorised officer about the concerns.
- ‘(3) The notice must state when and where the conference will be held and what is to be discussed at the conference.

### **‘377C Who may attend conference**

- ‘(1) Apart from the authorised officer, anyone given notice of the conference may attend and take part in the conference.
- ‘(2) Also, with the authorised officer’s approval, someone else may be present to help a person attending the conference.
- ‘(3) However, a party can not be represented by a lawyer unless the parties agree and the authorised officer is satisfied there is no disadvantage to a party.

### **‘377D What happens if a party does not attend**

- ‘(1) This section applies if a party given notice of the conference does not attend.



- ‘(2) The authorised officer may hold the conference even though someone given notice of it does not attend.

*Note—*

If the conference was called because of an election notice and only 1 party attends, the Land Court may decide the issue of compensation. See section 325B.

- ‘(3) A party who attended the conference may apply to the Land Court for an order requiring the party who did not attend to pay the attending party’s reasonable costs of attending.
- ‘(4) The Land Court must not order the party who did not attend to pay costs if it is satisfied the party had a reasonable excuse for not attending.
- ‘(5) If the Land Court makes the order, it must decide the amount of the costs.

### **‘Division 3                    Conduct of conference**

#### **‘377E Authorised officer’s role**

- ‘(1) In conducting the conference, the authorised officer must endeavour to help those attending to reach an early and inexpensive settlement of the subject of the conference.
- ‘(2) Subject to section 325AB, the authorised officer is to decide how the conference is to be conducted.

#### **‘377F Statements made at conference**

‘Nothing said by a person at the conference is admissible in evidence in a proceeding without the person’s consent.

#### **‘377G Agreement made at conference**

- ‘(1) If, at the conference, the parties negotiate an agreement about the concerns the subject of the conference, the agreement must be written and signed by or for the parties.
- ‘(2) The agreement—

- (a) may, if appropriate, be a conduct and compensation agreement or an amendment of an existing conduct and compensation agreement between the parties; and
- (b) has the same effect as any other compromise.’.

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

Page 304, after line 13—

*insert—*

‘**ADR** see section 325A(2)(b).’.

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

Page 305, after line 5—

*insert—*

‘**election notice** see section 325A(2).’.

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

Page 305, line 16, after ‘who’—

*insert—*

‘, under an Act, or, for freehold land, a lease registered under the *Land Title Act 1994*,’.

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

Page 306, line 1, after ‘business’—

*insert—*

‘or land use’.

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

Page 306, lines 7 to 10—

*omit, insert—*

- geophysical surveying not involving site preparation
- aerial, electrical or environmental surveying’.

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

Page 313, lines 23 to 28, page 314, lines 1 to 29, page 315, lines 1 to 25 and page 316, lines 1 to 9—

*omit, insert—*

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

**‘Subdivision 1 Preliminary**

**‘335F Application of div 1B**

- ‘(1) This division applies if a relevant officer is given an election notice by a mining tenement holder or an eligible claimant asking for a conference.
- ‘(2) This division also applies if—
  - (a) an owner or occupier of land who is concerned about any of the following gives a relevant officer notice of the concerns—
    - (i) that someone claiming to act under a mining tenement, or to have entered land on the tenement holder’s instructions—
      - (A) is not authorised to be on the land; or
      - (B) is not complying with a provision of this Act or a condition of the mining tenement;
    - (ii) activities being, or proposed to be, carried out on the land apparently under a mining tenement (including when the activities are being, or are to be, carried out);
    - (iii) the conduct on the land of someone apparently acting under a mining tenement; or

- (b) a mining tenement holder who is concerned about something relevant to the tenement involving the holder and the owner or occupier of land gives a relevant officer notice of the concerns; or
- (c) for another reason, a relevant officer considers it desirable to call a conference to discuss concerns about a mining tenement.

## **‘Subdivision 2      Calling conference and attendance**

### **‘335G Calling conference**

- ‘(1) If this division applies because of the giving of an election notice, the relevant officer must, by notice, ask the mining tenement holder and the eligible claimant (the *parties*) to attend a conference by the relevant officer about negotiating a conduct and compensation agreement.
- ‘(2) If this division applies under section 335F(2), the relevant officer may, by notice, ask the mining tenement holder and the owner or occupier or other person with an interest in the concerns (also the *parties*) to attend a conference by the relevant officer about the concerns.
- ‘(3) The notice must state when and where the conference will be held and what is to be discussed at the conference.

### **‘335H Who may attend conference**

- ‘(1) Apart from the relevant officer, anyone given notice of the conference may attend and take part in the conference.
- ‘(2) Also, with the relevant officer’s approval, someone else may be present to help a person attending the conference.
- ‘(3) However, a party can not be represented by a lawyer unless the parties agree and the relevant officer is satisfied there is no disadvantage to a party.

### **‘335I What happens if a party does not attend**

- ‘(1) This section applies if a party given notice of the conference does not attend.
- ‘(2) The relevant officer may hold the conference even though someone given notice of it does not attend.

*Note—*

If the conference was called because of an election notice and only 1 party attends, the Land Court may decide the issue of compensation. See schedule 1, section 20.

- ‘(3) A party who attended the conference may apply to the Land Court for an order requiring the party who did not attend to pay the attending party’s reasonable costs of attending.
- ‘(4) The Land Court must not order the party who did not attend to pay costs if it is satisfied the party had a reasonable excuse for not attending.
- ‘(5) If the Land Court makes the order, it must decide the amount of the costs.

### **‘Subdivision 3 Conduct of conference**

#### **‘335J Relevant officer’s role**

- ‘(1) In conducting the conference, the relevant officer must endeavour to help those attending to reach an early and inexpensive settlement of the subject of the conference.
- ‘(2) Subject to schedule 1, section 19A, the relevant officer is to decide how the conference is to be conducted.

#### **‘335K Statements made at conference**

‘Nothing said by a person at the conference is admissible in evidence in a proceeding without the person’s consent.

**‘335L Agreement made at conference**

- ‘(1) If, at the conference, the parties negotiate an agreement about the concerns the subject of the conference, the agreement must be written and signed by or for the parties.
- ‘(2) The agreement—
  - (a) may, if appropriate, be a conduct and compensation agreement or an amendment of an existing conduct and compensation agreement between the parties; and
  - (b) has the same effect as any other compromise.’.

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

Page 318, after line 16—

*insert—*

**‘777A Existing agreements about compensation**

- ‘(1) This section applies if immediately before the commencement of this section an agreement was in force between—
  - (a) an exploration permit holder and an owner about the owner’s entitlement under former section 145; or
  - (b) a mineral development licence holder and an owner about the owner’s entitlement under former section 191.
- ‘(2) On the commencement, the agreement becomes a conduct and compensation agreement under schedule 1.’.

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

Page 319, after line 7—

*insert—*

**‘778A Additional exemption to conduct and compensation agreement requirement**

- ‘(1) This section applies for an exploration permit or mineral development licence holder if the holder has given a converted entry notice.

‘(2) During the term of the converted entry notice under former section 164 or 212, the conduct and compensation agreement requirement under schedule 1 does not apply to the holder.

‘(3) To remove any doubt, it is declared that subsection (2) does not apply for any renewal of the converted entry notice.

‘(4) In this section—

*converted entry notice* means a notice of entry that, under section 778(3), is taken to be an entry notice for schedule 1.’

**38 Clause 455 (Insertion of new sch 1)**

Page 320, line 7, after ‘business’—

*insert—*

‘or land use’.

**39 Clause 455 (Insertion of new sch 1)**

Page 320, lines 14 to 17—

*omit, insert—*

- geophysical surveying not involving site preparation
- aerial, electrical or environmental surveying’.

**40 Clause 455 (Insertion of new sch 1)**

Page 321, after line 20—

*insert—*

‘*ADR* see section 19(2)(b).’.

**41 Clause 455 (Insertion of new sch 1)**

Page 321, after line 25—

*insert—*

‘*election notice* see section 19(2).’.

**42 Clause 455 (Insertion of new sch 1)**

Page 325, lines 10 to 13—

*omit, insert—*

- ‘(a) the exploration tenement; and
- (b) the land access code; and
- (c) any code of practice made under this Act applying to authorised activities for the exploration tenement; and
- (d) the relevant environmental authority documentation.’.

**43 Clause 455 (Insertion of new sch 1)**

Page 330, line 9, ‘cost or loss’—

*omit, insert—*

‘cost, damage or loss’.

**44 Clause 455 (Insertion of new sch 1)**

Page 333, lines 25 to 27—

*omit, insert—*

- ‘(a) must be at least for the period provided for under section 17A (the *minimum negotiation period*); but’.

**45 Clause 455 (Insertion of new sch 1)**

Page 334, after line 3—

*insert—*

**‘17A Provision for the minimum negotiation period**

- ‘(1) Generally, the minimum negotiation period is 20 business days from the giving of the negotiation notice (the *usual period*).
- ‘(2) Either party may, within the usual period, ask the other to agree to a longer minimum negotiation period because of stated reasonable or unforeseen circumstances.



- 
- ‘(3) If the other party so agrees, the longer minimum negotiation period is the minimum negotiation period.’

**46 Clause 455 (Insertion of new sch 1)**

Page 334, lines 15 to 25—

*omit, insert—*

**‘19 Parties may seek conference or independent ADR**

- ‘(1) This section applies if, at the end of the minimum negotiation period, the parties have not entered into a conduct and compensation agreement or deferral agreement.
- ‘(2) Either party may by a notice (an *election notice*)—
- (a) to the other party and a relevant officer—ask for a relevant officer to call a conference to negotiate a conduct and compensation agreement; or
  - (b) to the other party—call upon them to agree to an alternative dispute resolution process (an *ADR*) to negotiate a conduct and compensation agreement.
- ‘(3) If the notice calls for an ADR, it must—
- (a) identify the ADR; and
  - (b) state that the party giving the notice agrees to bear the costs of the person who will facilitate the ADR.
- ‘(4) An ADR may be a process of any kind including, for example, arbitration, conciliation, mediation or negotiation.
- ‘(5) However, the facilitator must be independent of either party.

**‘19A Conduct of conference or ADR**

- ‘(1) This section applies if an election notice is given.
- ‘(2) If a conference was requested—
- (a) the relevant officer must take all reasonable steps to ensure the conference is finished within 20 business days after the notice is given (the *usual period*); and
  - (b) part 10, division 1B applies for the conference.

- ‘(3) If an ADR was called for, the parties must use reasonable endeavours to finish it within 20 business days after the giving of the notice (also the *usual period*).
- ‘(4) Either party may, within the usual period, ask the other to agree to a longer period to finish the conference or ADR because of stated reasonable or unforeseen circumstances.
- ‘(5) If the parties agree to the longer period, that period applies instead of the usual period.
- ‘(6) If an ADR was called for, section 335I applies to the ADR as if a reference in the section to a conference were a reference to an ADR.

*Editor’s note—*

section 335I (What happens if a party does not attend)’.

#### **47 Clause 455 (Insertion of new sch 1)**

Page 335, lines 3 to 16—

*omit, insert—*

#### **‘20 Land court may decide if negotiation process unsuccessful**

- ‘(1) This section applies if an election notice is given and—
  - (a) a party asked a relevant officer to call a conference and the relevant officer does not finish it within the period required under section 19A (the *required period*); or
  - (b) a party called for an ADR and the person facilitating the ADR does not finish it within the period required under section 19A (also the *required period*).
- ‘(2) This section also applies if an election notice is given and—
  - (a) only 1 party attended the conference requested or ADR called for; or
  - (b) both parties attended the conference or ADR and, at the end of the required period, there is no conduct and compensation agreement between the parties.’.

**48 Clause 455 (Insertion of new sch 1)**

Page 335, line 31 and page 336, lines 1 to 3—

*omit, insert—*

‘*eligible party* means a party who attended the conference or ADR.’.

**49 Clause 455 (Insertion of new sch 1)**

Page 337, after line 7—

*insert—*

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

**‘22A What pt 6A is about**

- ‘(1) This part provides for additional matters for which the Land Court has jurisdiction.
- ‘(2) The jurisdiction is subject to parts 2 to 6.

**‘22B Additional jurisdiction**

- ‘(1) This section applies if—
  - (a) an exploration tenement holder and an eligible claimant can not reach agreement about a conduct and compensation agreement; or
  - (b) there is a conduct and compensation agreement or deferral agreement.
- ‘(2) The Land Court may assess all or part of the relevant exploration tenement holder’s compensation liability to another party.
- ‘(3) In this section—

*party* means any of the following—

  - (a) the relevant exploration tenement holder;

- (b) an eligible claimant mentioned in subsection (1)(a);
- (c) an eligible claimant who is a party to an agreement mentioned in subsection (1)(b).

## **‘22C Jurisdiction to impose or vary conditions**

- ‘(1) In deciding a matter mentioned in section 22B(2), the Land Court may—
  - (a) impose any condition it considers appropriate for the exercise of the parties’ rights; or
  - (b) vary any existing condition under an agreement between the parties.
- ‘(2) The variation may be made on any ground the Land Court considers appropriate.
- ‘(3) The imposed or varied condition is taken to be—
  - (a) if there is an agreement between the parties—a condition of the agreement; or
  - (b) if there is no agreement between the parties—an agreement between the parties.
- ‘(4) In this section—  
*agreement* means a conduct and compensation agreement.  
*condition* means a condition of or for a conduct and compensation agreement.’.

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

Page 337, after line 24—

*insert—*

‘*ADR*, for schedule 1, see schedule 1, section 19(2)(b).’.

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

Page 338, after line 7—

*insert—*

‘*election notice*, for schedule 1, see schedule 1, section 19(2).’

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

Page 338, line 28, after ‘who’—

*insert—*

‘, under an Act, or, for freehold land, a lease registered under the *Land Title Act 1994*,’.

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

Page 340, after line 10—

*insert—*

‘*ADR* see section 79VA(2)(b).’.

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

Page 341, after line 3—

*insert—*

‘*election notice* see section 79VA(2).’.

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

Page 341, line 14, after ‘who’—

*insert—*

‘, under an Act, or, for freehold land, a lease registered under the *Land Title Act 1994*,’.

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

Page 341, line 28, after ‘business’—

*insert—*

‘or land use’.

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

Page 342, lines 5 to 8—

*omit, insert—*

- geophysical surveying not involving site preparation
- aerial, electrical or environmental surveying’.

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

Page 344, lines 1 to 4—

*omit, insert—*

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

Section 74V—

*omit, insert—*

**‘74V Obligation to consult with particular owners and occupiers**

- ‘(1) The holder must consult or use reasonable endeavours to consult with each owner and occupier of private or public land on which authorised activities for the tenure are proposed to be carried out or are being carried out.
- ‘(2) The consultation must be about—
- (a) access; and
  - (b) the carrying out of authorised activities for the tenure (including, for example, crossing access land for the tenure) to the extent they relate to the owners and occupiers; and
  - (c) the holder’s compensation liability to the owners or occupiers.’.

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**59 After clause 460—**

Page 344, after line 14—

*insert—*

**‘460A Insertion of new s 75EA**

Part 6B—

*insert—*

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

- ‘(1) This section applies to an owner or occupier of land in the area of a 1923 Act petroleum tenure if—
- (a) someone else carries out an authorised activity for a 1923 Act petroleum tenure on the land; or
  - (b) someone else carries out an activity on the land and, in doing so, purports to be carrying out an authorised activity for a 1923 Act petroleum tenure.
- ‘(2) The owner or occupier is not civilly liable to anyone else for a claim based in tort for damages relating to the carrying out of the activity.
- ‘(3) However, subsection (2) does not apply to the extent the owner or occupier, or someone else authorised by the owner or occupier, caused, or contributed to, the harm the subject of the claim.
- ‘(4) This section applies—
- (a) despite any other Act or law; and
  - (b) even though this Act or the 1923 Act petroleum tenure prevents or restricts the carrying out of the activity as an authorised activity for the tenure.
- ‘(5) Subject to subsection (2), in this section, the terms *claim*, *damages* and *harm* have the same meaning that they have under the *Civil Liability Act 2003*.’.

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

Page 346, lines 19 to 23—

*omit, insert—*

- ‘(a) the 1923 Act petroleum tenure; and
- (b) the land access code; and
- (c) any code of practice made under this Act applying to authorised activities for the 1923 Act petroleum tenure; and
- (d) the relevant environmental authority documentation.’.

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

Page 346, line 25—

*omit, insert—*

- ‘(a) generally—
  - (i) for an authority to prospect—6 months; or
  - (ii) for a lease—1 year; or’.

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

Page 351, lines 18 to 23—

*omit, insert—*

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

**‘Subdivision 1 Preliminary**

**‘79P Application of div 1**

‘This division does not apply for—

- (a) a public land authority in relation to a notifiable road use; or



- 
- (b) an effect that is, or is required to be, addressed in a make good agreement or a decision under part 6CA, division 6.’.

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

Page 352, lines 13 to 23—

*omit, insert—*

*‘compensatable effect* means all or any of the following—

- (a) all or any of the following relating to the eligible claimant’s land—
  - (i) deprivation of possession of its surface;
  - (ii) diminution of its value;
  - (iii) diminution of the use made or that may be made of the land or any improvement on it;
  - (iv) severance of any part of the land from other parts of the land or from other land that the eligible claimant owns;
  - (v) any cost, damage or loss arising from the carrying out of activities under the 1923 Act petroleum tenure on the land;
- (b) accounting, legal or valuation costs the claimant necessarily and reasonably incurs to negotiate or prepare a conduct and compensation agreement, other than the costs of a person facilitating an ADR;

*Examples of negotiation—*

an ADR or conference

- (c) consequential damages the eligible claimant incurs because of a matter mentioned in paragraph (a) or (b).’.

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

Page 356, lines 12 to 14—

*omit, insert—*

- ‘(a) must be at least for the period provided for under section 79UA (the *minimum negotiation period*); but’.

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

Page 356, after line 20—

*insert—*

**‘79UA Provision for the minimum negotiation period**

- ‘(1) Generally, the minimum negotiation period is 20 business days from the giving of the negotiation notice (the *usual period*).
- ‘(2) Either party may, within the usual period, ask the other to agree to a longer minimum negotiation period because of stated reasonable or unforeseen circumstances.
- ‘(3) If the other party so agrees, the longer minimum negotiation period is the minimum negotiation period.’.

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

Page 357, lines 3 to 13—

*omit, insert—*

**‘79VA Parties may seek conference or independent ADR**

- ‘(1) This section applies if, at the end of the minimum negotiation period, the parties have not entered into a conduct and compensation agreement or deferral agreement.
- ‘(2) Either party may by a notice (an *election notice*)—
- (a) to the other party and an authorised officer—ask for an authorised officer to call a conference to negotiate a conduct and compensation agreement; or
- (b) to the other party—call upon them to agree to an alternative dispute resolution process (an *ADR*) to negotiate a conduct and compensation agreement.

- ‘(3) If the notice calls for an ADR, it must—
  - (a) identify the ADR; and
  - (b) state that the party giving the notice agrees to bear the costs of the person who will facilitate the ADR.
- ‘(4) An ADR may be a process of any kind including, for example, arbitration, conciliation, mediation or negotiation.
- ‘(5) However, the facilitator must be independent of either party.

### **‘79VAB Conduct of conference or ADR**

- ‘(1) This section applies if an election notice is given.
- ‘(2) If a conference was requested—
  - (a) the authorised officer must take all reasonable steps to ensure the conference is finished within 20 business days after the notice is given (the *usual period*); and
  - (b) part 6R applies for the conference.
- ‘(3) If an ADR was called for, the parties must use reasonable endeavours to finish it within 20 business days after the giving of the notice (also the *usual period*).
- ‘(4) Either party may, within the usual period, ask the other to agree to a longer period to finish the conference or ADR because of stated reasonable or unforeseen circumstances.
- ‘(5) If the parties agree to the longer period, that period applies instead of the usual period.
- ‘(6) If an ADR was called for, section 103D applies to the ADR as if a reference in the section to a conference were a reference to an ADR.

*Editor’s note—*

section 103D (What happens if a party does not attend)’.

### **67 Clause 463 (Replacement of part 6K (General compensation provisions))**

Page 357, lines 16 to 29—

*omit, insert—*

**‘79VB Land court may decide if negotiation process unsuccessful**

- ‘(1) This section applies if an election notice is given and—
- (a) a party asked an authorised officer to call a conference and the authorised officer does not finish it within the period required under section 79VAB (the *required period*); or
  - (b) a party called for an ADR and the person facilitating the ADR does not finish it within the period required under section 79VAB (also the *required period*).
- ‘(2) This section also applies if an election notice is given and—
- (a) only 1 party attended the conference requested or ADR called for; or
  - (b) both parties attended the conference or ADR and, at the end of the required period, there is no conduct and compensation agreement between the parties.’.

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

Page 358, lines 15 to 18—

*omit, insert—*

‘*eligible party* means a party who attended the conference or ADR.’.

**69 Clause 463 (Replacement of part 6K (General compensation provisions))**

Page 359, after line 21—

*insert—*

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

### **‘79VDA What sdiv 5A is about**

- ‘(1) This subdivision provides for additional matters for which the Land Court has jurisdiction.
- ‘(2) The jurisdiction is subject to subdivisions 1 to 5.

### **‘79VDB Additional jurisdiction**

- ‘(1) This section applies to a 1923 Act petroleum tenure holder and an eligible claimant (the *parties*) if any of the following apply—
  - (a) the 1923 Act petroleum tenure holder has carried out a preliminary activity;
  - (b) the parties can not reach agreement about a conduct and compensation agreement;
  - (c) there is a conduct and compensation agreement or deferral agreement between the parties.
- ‘(2) The Land Court may do all or any of the following—
  - (a) assess all or part of the relevant 1923 Act petroleum tenure holder’s compensation liability to another party;
  - (b) decide a matter related to the compensation liability;
  - (c) declare whether or not a proposed authorised activity for the relevant 1923 Act petroleum tenure would, if carried out, interfere with the carrying out of lawful activities by the eligible claimant;
  - (d) make any order it considers necessary or desirable for a matter mentioned in paragraph (a), (b) or (c).

*Example—*

The Land Court declares that a particular proposed authorised activity interferes with the carrying out of lawful activities by the

eligible claimant. It may also order that a stated modification of, or reduction in, the activity would remove the interference.

### **‘79VDC Jurisdiction to impose or vary conditions**

- ‘(1) In deciding a matter mentioned in section 79VDB(2), the Land Court may—
- (a) impose any condition it considers appropriate for the exercise of the parties’ rights; or
  - (b) vary any existing condition under an agreement between the parties.
- ‘(2) The variation may be made on any ground the Land Court considers appropriate.
- ‘(3) The imposed or varied condition is taken to be—
- (a) if there is an agreement between the parties—a condition of the agreement; or
  - (b) if there is no agreement between the parties—an agreement between the parties.
- ‘(4) In this section—

*agreement* means a conduct and compensation agreement.

*condition* means a condition of or for a conduct and compensation agreement.’.

### **70 After clause 463**

Page 360, after line 7—

*insert—*

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

Section 88—

*omit, insert—*

### **‘88 Duty to avoid interference in carrying out authorised activities**

‘A person who carries out an authorised activity for a 1923 Act petroleum tenure must carry out the activity in a way that

does not unreasonably interfere with anyone else carrying out a lawful activity.

Maximum penalty—500 penalty units.’.’.

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

Page 360, lines 8 to 27, page 361, lines 1 to 27 and page 362, lines 1 to 26—

*omit, insert—*

**‘464 Insertion of new pt 6R**

After part 6Q—

*insert—*

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

**‘Division 1 Preliminary**

**‘103A Application of pt 6R**

‘(1) This part applies if an authorised officer is given an election notice by a 1923 Act petroleum tenure holder or an eligible claimant asking for a conference.

‘(2) This part also applies if—

(a) an owner or occupier of land who is concerned about any of the following gives an authorised officer notice of the concerns—

(i) that someone claiming to act under a 1923 Act petroleum tenure, or to have entered land on the tenure holder’s instructions—

(A) is not authorised to be on the land; or

- (B) is not complying with a provision of this Act or a condition of the 1923 Act petroleum tenure;
- (ii) activities being, or proposed to be, carried out on the land apparently under a 1923 Act petroleum tenure (including when the activities are being, or are to be, carried out);
- (iii) the conduct on the land of someone apparently acting under a 1923 Act petroleum tenure; or
- (b) a 1923 Act petroleum tenure holder who is concerned about something relevant to the tenure involving the holder and the owner or occupier of land gives an authorised officer notice of the concerns; or
- (c) for another reason, an authorised officer considers it desirable to call a conference to discuss concerns about a 1923 Act petroleum tenure.

## **‘Division 2                    Calling conference and attendance**

### **‘103B Calling conference**

- ‘(1) If this part applies because of the giving of an election notice, the authorised officer must, by notice, ask the 1923 Act petroleum tenure holder and the eligible claimant (the *parties*) to attend a conference by the authorised officer about negotiating a conduct and compensation agreement.
- ‘(2) If this part applies under section 103A(2), the authorised officer may, by notice, ask the 1923 Act petroleum tenure holder and the owner or occupier or other person with an interest in the concerns (also the *parties*) to attend a conference by the authorised officer about the concerns.
- ‘(3) The notice must state when and where the conference will be held and what is to be discussed at the conference.



### **‘103C Who may attend conference**

- ‘(1) Apart from the authorised officer, anyone given notice of the conference may attend and take part in the conference.
- ‘(2) Also, with the authorised officer’s approval, someone else may be present to help a person attending the conference.
- ‘(3) However, a party can not be represented by a lawyer unless the parties agree and the authorised officer is satisfied there is no disadvantage to a party.

### **‘103D What happens if a party does not attend**

- ‘(1) This section applies if a party given notice of the conference does not attend.
- ‘(2) The authorised officer may hold the conference even though someone given notice of it does not attend.

*Note—*

If the conference was called because of an election notice and only 1 party attends, the Land Court may decide the issue of compensation. See section 79VB.

- ‘(3) A party who attended the conference may apply to the Land Court for an order requiring the party who did not attend to pay the attending party’s reasonable costs of attending.
- ‘(4) The Land Court must not order the party who did not attend to pay costs if it is satisfied the party had a reasonable excuse for not attending.
- ‘(5) If the Land Court makes the order, it must decide the amount of the costs.

## **‘Division 3                    Conduct of conference**

### **‘103E Authorised officer’s role**

- ‘(1) In conducting the conference, the authorised officer must endeavour to help those attending to reach an early and inexpensive settlement of the subject of the conference.

- ‘(2) Subject to section 79VAB, the authorised officer is to decide how the conference is to be conducted.

**‘103F Statements made at conference**

‘Nothing said by a person at the conference is admissible in evidence in a proceeding without the person’s consent.

**‘103G Agreement made at conference**

- ‘(1) If, at the conference, the parties negotiate an agreement about the concerns the subject of the conference, the agreement must be written and signed by or for the parties.
- ‘(2) The agreement—
- (a) may, if appropriate, be a conduct and compensation agreement or an amendment of an existing conduct and compensation agreement between the parties; and
  - (b) has the same effect as any other compromise.’.

**72 After clause 466**

Page 364, after line 15—

*insert—*

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

Section 7(1), after ‘sections 294’—

*insert—*

‘, 563A’.

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

Page 365, lines 12 to 15—

*omit, insert—*

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

Section 74—

*omit, insert—*

**‘74 Obligation to consult with particular owners and occupiers**

‘(1) An authority to prospect holder must consult or use reasonable endeavours to consult with each owner and occupier of private or public land on which authorised activities for the authority are proposed to be carried out or are being carried out.

‘(2) The consultation must be about—

(a) access; and

(b) the carrying out of authorised activities for the authority to prospect (including, for example, crossing access land for the authority) to the extent they relate to the owners and occupiers; and

(c) the authority to prospect holder’s compensation liability to the owners or occupiers.’.’.

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

Page 365, lines 16 to 19—

*omit, insert—*

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

Section 153—

*omit, insert—*

**‘153 Obligation to consult with particular owners and occupiers**

‘(1) A petroleum lease holder must consult or use reasonable endeavours to consult with each owner and occupier of private or public land on which authorised activities for the lease are proposed to be carried out or are being carried out.

- ‘(2) The consultation must be about—
- (a) access; and
  - (b) the carrying out of authorised activities for the petroleum lease (including, for example, crossing access land for the lease) to the extent they relate to the owners and occupiers; and
  - (c) the petroleum lease holder’s compensation liability to the owners or occupiers.’.

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

Page 367, lines 28 to 30 and page 368, line 1—

*omit, insert—*

- ‘(a) the petroleum authority; and
- (b) the land access code; and
  - (c) any code of practice made under this Act applying to authorised activities for the petroleum authority; and
  - (d) the relevant environmental authority documentation.’.

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

Page 368, line 3—

*omit, insert—*

- ‘(a) generally—
- (i) for an authority to prospect—6 months; or
  - (ii) for another petroleum authority—1 year; or’.

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

Page 371, lines 12 to 16—

*omit, insert—*

- ‘(b) the holder has a right to enter the land to carry out the activity and the right—

- (i) exists other than under this Act; and
- (ii) is not under an easement;’.

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

Page 373, lines 3 to 8—

*omit, insert—*

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

**‘Subdivision 1 Preliminary**

**‘531 Application of div 1**

‘This division does not apply for—

- (a) a public land authority in relation to a notifiable road use; or
- (b) an effect that is, or is required to be, addressed in a make good agreement or a decision under chapter 2, part 9, division 6.’.

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

Page 373, lines 21 to 24 and page 374, lines 1 to 6—

*omit, insert—*

**‘*compensatable effect* means all or any of the following—**

- (a) all or any of the following relating to the eligible claimant’s land—
  - (i) deprivation of possession of its surface;
  - (ii) diminution of its value;

- (iii) diminution of the use made or that may be made of the land or any improvement on it;
  - (iv) severance of any part of the land from other parts of the land or from other land that the eligible claimant owns;
  - (v) any cost, damage or loss arising from the carrying out of activities under the petroleum authority on the land;
- (b) accounting, legal or valuation costs the claimant necessarily and reasonably incurs to negotiate or prepare a conduct and compensation agreement, other than the costs of a person facilitating an ADR;
- Examples of negotiation—*  
an ADR or conference
- (c) consequential damages the eligible claimant incurs because of a matter mentioned in paragraph (a) or (b).’.

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

Page 374, after line 30—

*insert—*

- ‘(4) If the petroleum authority is a pipeline licence or petroleum facility licence, a compensation agreement about the holder’s compensation liability may be included in an easement relating to the licence.’.

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

Page 377, lines 16 to 18—

*omit, insert—*

- ‘(a) must be at least for the period provided for under section 536A (the *minimum negotiation period*); but’.

---

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

Page 377, after line 24—

*insert—*

**‘536A Provision for the minimum negotiation period**

- ‘(1) Generally, the minimum negotiation period is 20 business days from the giving of the negotiation notice (the *usual period*).
- ‘(2) Either party may, within the usual period, ask the other to agree to a longer minimum negotiation period because of stated reasonable or unforeseen circumstances.
- ‘(3) If the other party so agrees, the longer minimum negotiation period is the minimum negotiation period.’.

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

Page 378, lines 8 to 18—

*omit, insert—*

**‘537A Parties may seek conference or independent ADR**

- ‘(1) This section applies if, at the end of the minimum negotiation period, the parties have not entered into a conduct and compensation agreement or deferral agreement.
- ‘(2) Either party may by a notice (an *election notice*)—
  - (a) to the other party and an authorised officer—ask for an authorised officer to call a conference to negotiate a conduct and compensation agreement; or
  - (b) to the other party—call upon them to agree to an alternative dispute resolution process (an *ADR*) to negotiate a conduct and compensation agreement.
- ‘(3) If the notice calls for an ADR, it must—
  - (a) identify the ADR; and
  - (b) state that the party giving the notice agrees to bear the costs of the person who will facilitate the ADR.

- ‘(4) An ADR may be a process of any kind including, for example, arbitration, conciliation, mediation or negotiation.
- ‘(5) However, the facilitator must be independent of either party.

### **‘537AB Conduct of conference or ADR**

- ‘(1) This section applies if an election notice is given.
- ‘(2) If a conference was requested—
  - (a) the authorised officer must take all reasonable steps to ensure the conference is finished within 20 business days after the notice is given (the *usual period*); and
  - (b) chapter 10, part 1AA applies for the conference.
- ‘(3) If an ADR was called for, the parties must use reasonable endeavours to finish it within 20 business days after the giving of the notice (also the *usual period*).
- ‘(4) Either party may, within the usual period, ask the other to agree to a longer period to finish the conference or ADR because of stated reasonable or unforeseen circumstances.
- ‘(5) If the parties agree to the longer period, that period applies instead of the usual period.
- ‘(6) If an ADR was called for, section 734E applies to the ADR as if a reference in the section to a conference were a reference to an ADR.

*Editor’s note—*

section 734E (What happens if a party does not attend)’.

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

Page 378, lines 21 to 29 and page 379, lines 1 to 5—

*omit, insert—*

### **‘537B Land court may decide if negotiation process unsuccessful**

- ‘(1) This section applies if an election notice is given and—



- (a) a party asked an authorised officer to call a conference and the authorised officer does not finish it within the period required under section 537AB (the *required period*); or
  - (b) a party called for an ADR and the person facilitating the ADR does not finish it within the period required under section 537AB (also the *required period*).
- ‘(2) This section also applies if an election notice is given and—
- (a) only 1 party attended the conference requested or ADR called for; or
  - (b) both parties attended the conference or ADR and, at the end of the required period, there is no conduct and compensation agreement between the parties.’.

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

Page 379, lines 20 to 23—

*omit, insert—*

‘*eligible party* means a party who attended the conference or ADR.’.

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

Page 380, after line 26—

*insert—*

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

**‘537DA What sdiv 5A is about**

- ‘(1) This subdivision provides for additional matters for which the Land Court has jurisdiction.
- ‘(2) The jurisdiction is subject to subdivisions 1 to 5.

### **‘537DB Additional jurisdiction**

- ‘(1) This section applies to a petroleum authority holder and an eligible claimant (the *parties*) if any of the following apply—
- (a) the petroleum authority holder has carried out a preliminary activity;
  - (b) the parties can not reach agreement about a conduct and compensation agreement;
  - (c) there is a conduct and compensation agreement or deferral agreement between the parties.
- ‘(2) The Land Court may do all or any of the following—
- (a) assess all or part of the relevant petroleum authority holder’s compensation liability to another party;
  - (b) decide a matter related to the compensation liability;
  - (c) declare whether or not a proposed authorised activity for the relevant petroleum authority would, if carried out, interfere with the carrying out of lawful activities by the eligible claimant;
  - (d) make any order it considers necessary or desirable for a matter mentioned in paragraph (a), (b) or (c).

*Example—*

The Land Court declares that a particular proposed authorised activity interferes with the carrying out of lawful activities by the eligible claimant. It may also order that a stated modification of, or reduction in, the activity would remove the interference.

### **‘537DC Jurisdiction to impose or vary conditions**

- ‘(1) In deciding a matter mentioned in section 537DB(2), the Land Court may—
- (a) impose any condition it considers appropriate for the exercise of the parties’ rights; or
  - (b) vary any existing condition under an agreement between the parties.
- ‘(2) The variation may be made on any ground the Land Court considers appropriate.

- 
- ‘(3) The imposed or varied condition is taken to be—
- (a) if there is an agreement between the parties—a condition of the agreement; or
  - (b) if there is no agreement between the parties—an agreement between the parties.

‘(4) In this section—

*agreement* means a conduct and compensation agreement.

*condition* means a condition of or for a conduct and compensation agreement.’.

**87 After clause 473—**

Page 381, after line 25—

*insert—*

**‘473A Insertion of new s 563A**

Chapter 5, part 8, division 3—

*insert—*

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

- ‘(1) This section applies to an owner or occupier of land in the area of a petroleum authority if—
- (a) someone else carries out an authorised activity for a petroleum authority on the land; or
  - (b) someone else carries out an activity on the land and, in doing so, purports to be carrying out an authorised activity for a petroleum authority.
- ‘(2) The owner or occupier is not civilly liable to anyone else for a claim based in tort for damages relating to the carrying out of the activity.
- ‘(3) However, subsection (2) does not apply to the extent the owner or occupier, or someone else authorised by the owner or occupier, caused, or contributed to, the harm the subject of the claim.
- ‘(4) This section applies—

- (a) despite any other Act or law; and
  - (b) even though this Act or the petroleum authority prevents or restricts the carrying out of the activity as an authorised activity for the authority.
- ‘(5) Subject to subsection (2), in this section, the terms *claim*, *damages* and *harm* have the same meaning that they have under the *Civil Liability Act 2003*.’.

**88 Clause 474 (Replacement of ch 10, hdg (Investigations and enforcement))**

Page 382, lines 1 to 28, page 383, lines 1 to 30 and page 384, lines 1 to 18—

*omit, insert—*

**‘474 Replacement of ch 10, hdg (Investigations and enforcement)**

Chapter 10, heading—

*omit, insert—*

**‘Chapter 10 Conferences, investigations and enforcement**

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

**‘Division 1 Preliminary**

**‘734B Application of pt 1AA**

- ‘(1) This part applies if an authorised officer is given an election notice by a petroleum authority holder or an eligible claimant asking for a conference.
- ‘(2) This part also applies if—

- (a) an owner or occupier of land who is concerned about any of the following gives an authorised officer notice of the concerns—
  - (i) that someone claiming to act under a petroleum authority, or to have entered land on the authority holder’s instructions—
    - (A) is not authorised to be on the land; or
    - (B) is not complying with a provision of this Act or a condition of the petroleum authority;
  - (ii) activities being, or proposed to be, carried out on the land apparently under a petroleum authority (including when the activities are being, or are to be, carried out);
  - (iii) the conduct on the land of someone apparently acting under a petroleum authority; or
- (b) a petroleum authority holder who is concerned about something relevant to the authority involving the holder and the owner or occupier of land gives an authorised officer notice of the concerns; or
- (c) for another reason, an authorised officer considers it desirable to call a conference to discuss concerns about a petroleum authority.

## **‘Division 2                    Calling conference and attendance**

### **‘734C Calling conference**

- ‘(1) If this part applies because of the giving of an election notice, the authorised officer must, by notice, ask the petroleum authority holder and the eligible claimant (the *parties*) to attend a conference by the authorised officer about negotiating a conduct and compensation agreement.
- ‘(2) If this part applies under section 734B(2), the authorised officer may, by notice, ask the petroleum authority holder and the owner or occupier or other person with an interest in the

concerns (also the *parties*) to attend a conference by the authorised officer about the concerns.

- ‘(3) The notice must state when and where the conference will be held and what is to be discussed at the conference.

#### **‘734D Who may attend conference**

- ‘(1) Apart from the authorised officer, anyone given notice of the conference may attend and take part in the conference.
- ‘(2) Also, with the authorised officer’s approval, someone else may be present to help a person attending the conference.
- ‘(3) However, a party can not be represented by a lawyer unless the parties agree and the authorised officer is satisfied there is no disadvantage to a party.

#### **‘734E What happens if a party does not attend**

- ‘(1) This section applies if a party given notice of the conference does not attend.
- ‘(2) The authorised officer may hold the conference even though someone given notice of it does not attend.

*Note—*

If the conference was called because of an election notice and only 1 party attends, the Land Court may decide the issue of compensation. See section 537B.

- ‘(3) A party who attended the conference may apply to the Land Court for an order requiring the party who did not attend to pay the attending party’s reasonable costs of attending.
- ‘(4) The Land Court must not order the party who did not attend to pay costs if it is satisfied the party had a reasonable excuse for not attending.
- ‘(5) If the Land Court makes the order, it must decide the amount of the costs.

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**‘Division 3                      Conduct of conference**

**‘734F Authorised officer’s role**

- ‘(1) In conducting the conference, the authorised officer must endeavour to help those attending to reach an early and inexpensive settlement of the subject of the conference.
- ‘(2) Subject to section 537AB, the authorised officer is to decide how the conference is to be conducted.

**‘734G Statements made at conference**

‘Nothing said by a person at the conference is admissible in evidence in a proceeding without the person’s consent.

**‘734H Agreement made at conference**

- ‘(1) If, at the conference, the parties negotiate an agreement about the concerns the subject of the conference, the agreement must be written and signed by or for the parties.
- ‘(2) The agreement—
  - (a) may, if appropriate, be a conduct and compensation agreement or an amendment of an existing conduct and compensation agreement between the parties; and
  - (b) has the same effect as any other compromise.’.

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

Page 386, line 5, ‘part 3’—  
*omit, insert—*  
‘part 5’.

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

Page 387, after line 2—

*insert—*

‘**ADR** see section 537A(2)(b).’.

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

Page 387, after line 24—

*insert—*

‘**election notice** see section 537A(2).’.

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

Page 388, line 17, after ‘business’—

*insert—*

‘or land use’.

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

Page 388, lines 23 to 26—

*omit, insert—*

- geophysical surveying not involving site preparation
- aerial, electrical or environmental surveying’.

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

Page 390, line 21, after ‘person’—

*insert—*

‘, under an Act, or, for freehold land, a lease registered under the *Land Title Act 1994*.’.

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

Page 406, lines 4 to 16—

*omit, insert—*



‘Section 249(1)(a), ‘geothermal exploration permit,’—  
*omit.*’.

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

Page 497, line 16—

*omit, insert*—

‘ ‘section 335F(2)(a)’.’.

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

Page 498, line 9—

*omit, insert*—

‘ ‘section 335F(2)(a)’.’.

**98 Schedule 3 (Dictionary)**

Page 524, after line 7—

*insert*—

‘**ADR** see section 252(2)(b).’.

**99 Schedule 3 (Dictionary)**

Page 526, after line 15—

*insert*—

‘**election notice** see section 252(2).’.

**100 Schedule 3 (Dictionary)**

Page 530, line 13, after ‘who’—

*insert*—

‘, under an Act, or, for freehold land, a lease registered under the *Land Title Act 1994*.’.

**101 Schedule 3 (Dictionary)**

Page 533, line 30, after ‘business’—

*insert—*

‘or land use’.

**102 Schedule 3 (Dictionary)**

Page 534, lines 4 to 7—

*omit, insert—*

- geophysical surveying not involving site preparation
- aerial, electrical or environmental surveying’.

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