

Geothermal Energy Act 2010: Queensland's new regime for land access for resource tenements - Part 1

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Key Points:

Holders of Resource Authorities should ensure that their actions comply with the new land access policy framework before entering the land.

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- The new regime applies now to exploration and production tenements under petroleum, geothermal and greenhouse gas storage legislation, and will soon apply to exploration permits and mineral development licences (but not mining leases) under mining legislation

A new land access policy framework (**Land Access Regime**) has been introduced in Queensland with the intention that it apply to almost all resource tenements (**Resource Authorities**) in Queensland including under the

- Petroleum Act 1923 (Qld);
- Petroleum and Gas (Production and Safety) Act 2004 (Qld);
- Mineral Resources Act 1989 (Qld);
- Geothermal Energy Act 2010 (Qld); and
- Greenhouse Gas Storage Act 2009 (Qld).

Only mining leases under the Mineral Resources Act 1989 (Qld) will have a separate regime.

It commenced with respect to petroleum, geothermal and greenhouse gas storage tenements (both exploration and production) on 29 October 2010. Its application to mining exploration permits and mineral development licences is expected in December 2010.

Under the new Land Access Regime, entry onto land can only occur if certain procedures have been followed. The procedure to be followed in any given circumstance will depend on whether the activities to be carried out are "preliminary activities" or "advanced activities".

The first step that will need to be taken by the holder of any Resource Authority preparing to enter the land the subject of the Resource Authority is therefore to determine whether their proposed activities are preliminary activities or advanced activities.

In this first part of a two-part article we'll deal with the requirements for entry onto land under the new regime. Part 2 will set out details about the process for negotiating a conduct and compensation agreement, and the content of those agreements.

Preliminary activities and entry requirements

In general, "preliminary activities" are activities that will have no impact or only a minor impact on the business or land use activities of the owner or occupier of the land. Examples given in the legislation include walking on the area, driving along existing tracks, taking soil samples and survey pegging.

However, certain activities that would normally fall within this general definition of preliminary activities are expressly excluded from the definition. Activities that:

- are carried out on land that is less than 100ha and used for intensive farming or broadacre agriculture;

- are carried out within 600m of a school or occupied residence; or
- affect the lawful carrying out of an organic or bio-organic farming system,
- are expressly excluded from the definition of preliminary activities.

In assessing whether activities are preliminary or not, the Resource Authority holder will need to have regard to this extended definition and will need to check whether the proposed activities are to be carried out on land which would exclude it from the definition of preliminary activities.

If it is determined that the proposed activities are preliminary activities, the Resource Authority holder will need to give the owner or occupier an entry notice at least 10 business days prior to entry. Upon the giving of that notice and the expiry of the 10 business days, entry to the land can lawfully occur.

Advanced activities and entry requirements

Any activity which is not a preliminary activity will be an "advanced activity".

In order to enter land to conduct advanced activities, the Resource Authority holder will need to either enter into a conduct and compensation agreement or a deferral agreement or, in the event that the such agreements are unable to be negotiated, commence proceedings in the Land Court.

Further details about the negotiation process for conduct and compensation agreements and the content of those agreements will be addressed in Part 2 of this series. However, it should be noted that the Land Court proceedings can only be commenced when the statutory processes relating to conduct and compensation agreements in the relevant legislation have been complied with.

Conclusion

As the regime has now commenced for some Resource Authorities, and will commence for the balance shortly, holders of Resource Authorities should ensure that their actions comply with the relevant legislation before entering the land.

The first step to ensure compliance is to assess whether the proposed activities are preliminary or advanced. Once that step is completed, the relevant entry requirements can be commenced.