



Guide to Queensland's new land access laws

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INTRODUCTION

Significant growth and expansion in exploration and development of minerals, gas, petroleum and other resources, such as coal seam gas to support the emerging liquefied natural gas industry, presents both opportunities and challenges for the long-term prosperity of Queensland.

The Queensland Government is committed to balancing the interests and sustainable growth of the agriculture and resource sectors for the benefit of our State. Both industries, the jobs they create and income they generate, are vital to our economy and regional communities.

Natural resources, including underground resources such as minerals, petroleum and coal seam gas, are owned by the people of Queensland and are not the property of individuals or companies. The Government manages these resources for the benefit of all Queenslanders.

The Government has listened and responded to the concerns of the agricultural sector and landholders about access to their land for resource exploration and development.

In May 2008, as part of the Government's response to growth of the resources industry and impacts on the agricultural sector, a Land Access Working Group (LAWG) was established to help improve relationships between the agriculture and resources sectors. The LAWG includes key representatives from both sectors including Agforce, the Queensland Farmer's Federation, Queensland Resources Council and Australian Petroleum Production and Exploration Association.

The LAWG has helped guide the Government's response to these issues and in 2009 assisted with development of the Land Access Policy Framework. This policy framework includes a number of land access reforms including legislative amendments and development of supporting land access documents.

New laws strengthening existing land access laws are part of these reforms.

New laws

Queensland's new land access laws came into effect on October 29, 2010. These new laws relate to the *Petroleum and Gas (Production and Safety) Act 2004*, *Petroleum Act 1923*, *Greenhouse Gas Storage Act 2009* and *Geothermal Energy Act 2010*. This follows their passage by the Queensland Parliament on August 19, 2010 and earlier introduction and debate of draft legislation included in the *Geothermal Energy Bill 2010*. Land access laws in the *Mineral Resources Act 1989* will commence later this year. Consistent legislation and processes will improve transparency, equity and co-operation across the agricultural and resources sectors related to land access for resource activities.

The new land access laws are vital to achieving a balanced approach to private land access and compensation. They recognise and clarify the Government's expectations and rights of tenement (resource) authority holders and land holders relating to how resource activities must be undertaken on private land.

Legislation and application

The new land access laws apply to the exploration and development activities of resource companies, access to land and compensation for landholders (owners or occupiers of private land).

The laws apply to the following resource authorities under the following legislation:

- *Mineral Resources Act 1989* – exploration permits and mineral development licenses¹
- *Petroleum and Gas (Production and Safety) Act 2004* – all authorities
- *Petroleum Act 1923* – all authorities
- *Greenhouse Gas Storage Act 2009* – all authorities
- *Geothermal Energy Act 2010* – all authorities.

Key features

The key features of the new land access laws are:

- a requirement that all resource authority holders must comply with a single Land Access Code
- an entry notice requirement for 'preliminary activities' i.e. those that will have no or only a minor impact on landholders
- a requirement that a Conduct and Compensation Agreement be negotiated before a resource authority holder comes onto a landholder's property to undertake 'advanced activities' i.e. those likely to have a significant impact on a landholder's business or land use
- a graduated process for negotiation and resolving disputes about agreements which ensures matters are only referred to the Land Court as a last resort

¹ On commencement of *Mineral Resource Act 1989* land access amendments

- stronger compliance and enforcement powers for government agencies where breaches of the Land Access Code occur.

In addition to the new laws, the Government has produced a suite of land access documents to support implementation of the new framework. These materials provide information to help landholders and resource authority holders' dealings with land access matters. These documents include:

- a single Land Access Code
- standard agreements to help landholders in land access undertake conduct and compensation negotiations related to land access
- a tip sheet to assist landholders negotiating with resource companies.

Land Access Code

A key component of the land access laws is the new Land Access Code. The Code has been developed in consultation with the LAWG.

The Land Access Code comprises:

- best practice guidelines for landholders and companies about how to manage processes related to consultation and compensation
- mandatory conduct conditions that companies must comply with when undertaking authorised activities on private land.

The new Land Access Code replaces the *Queensland Mining, Petroleum and Gas, Geothermal and Greenhouse Gas Storage Land Access Code* and the *Code of Conduct – Procedures for sound landholder/explorer relations* with which companies with exploration permit and mineral development licences under the *Mineral Resource Act 1989* must comply.

For a copy of the Land Access Code visit www.deedi.qld.gov.au

Obligations of companies and landholders

The new laws set out requirements of resource authority holders and landholders related to access to private land and compensation. A resource authority holder is allowed to undertake activities relating to exploration and production of resources on private land in the area of a resource authority, however affected landholders are entitled to know what activities are being undertaken, have input and receive compensation for impacts associated with those activities.

Under the new laws a resource authority holder must:

- consult or use reasonable endeavours to consult with landholders about access, how authorised activities are carried out and compensation
- avoid any unreasonable interference with the landholder or anyone else carrying out a lawful activity
- comply with the mandatory conditions of the Land Access Code.

If a resource authority holder has met all its legal obligations it is an offence for anyone, without a reasonable excuse, to obstruct a resource authority holder, its staff or agents from:

- entering or crossing land to carry out authorised activities
- carrying out authorised activities.

Preliminary and advanced activities

The land access laws define two different categories of resource activity based on the potential impact they may have on a landholder's business and land use activities. Activities are considered to be either 'preliminary' or 'advanced' activities and different notification requirements exist for each category.

'Preliminary' activities are those where the impacts on the landholder's business or land use are likely to be nil or negligible. Examples include: walking the area, taking soil samples or survey pegging.

'Advanced' activities are those activities that are likely to have a significant impact on the landholder's business or land use. Examples include: constructing a track or access road, constructing a camp or clearing vegetation.

Notification requirements – preliminary activities

Generally, a resource authority holder proposing to carry out preliminary activities must provide the landholder with an entry notice at least 10 business days (two weeks) before coming on to that land. This notice must include details about:

- the land proposed to be entered
- the period when the land will be entered (the entry period)

- the activities proposed to be carried out
- when and where the activities proposed are to be carried out
- contact details for the relevant resource authority holder.

The first entry notice must include a copy of:

- the relevant resource authority document
- the Land Access Code
- documentation of the relevant environmental authority.

The entry period for an entry notice is:

- six (6) months for exploration permits and mineral development licences under the *Mineral Resource Act 1989*
- six (6) months for a geothermal permit under the *Geothermal Exploration Act 2004*, a greenhouse gas permit under the *Greenhouse Gas Storage Act 2009* or authority to prospect under the *Petroleum and Gas Act 2004* and *Petroleum Act 1923* and authorities to prospect, unless the landholder/occupier has otherwise agreed to a longer time
- twelve (12) months for a geothermal lease under the *Geothermal Exploration Act 2004*, a greenhouse gas lease under the *Greenhouse Gas Storage Act 2009*, a petroleum lease under the *Petroleum Act 1923* and all authorities except an authority to prospect under the *Petroleum and Gas Act 2004*.

Under all resource Acts, this entry period may be longer if agreed in writing by the parties.

Conduct and compensation agreements – advanced activities

The new laws require that a resource authority holder, its staff or agents, cannot enter private land to undertake ‘advanced’ activities unless they have entered into one of the following:

- a Conduct and Compensation Agreement
- a Deferral Agreement with the affected landholder
- the matter has been referred to the Land Court for determination.

Both agreements are legally binding contracts negotiated between the resource authority holder and landholder. They allow a landholder to receive compensation for the impact of authorised activities undertaken on their land, have a say in how access and activities are undertaken so any impacts are minimised on their business, land use, family and lifestyle.

A Conduct and Compensation Agreement relates to the activities or conduct proposed to be undertaken and, where there is impact on the landholder, compensation arrangements for those activities.

A Deferral Agreement allows for a Conduct and Compensation Agreement to be entered into at a later date and after access has occurred to undertake ‘advanced’ activities.

In negotiating agreements, both parties are encouraged to develop workable solutions that, wherever possible, minimise or avoid any adverse impacts from the activities and allow the resource authority holder to undertake the activities authorised by the resource authority it holds.

In cases where agreement cannot be reached between the parties, the matter may be referred to the Land Court for determination. In these cases, entry can occur prior to reaching a Conduct and Compensation Agreement, but only once the matter has been referred to the Land Court. An entry notice is also required and the resource authority holder must comply with the Land Access Code.

IMPORTANT NOTE: Parties are strongly urged to always obtain independent legal advice to assist with negotiations or developing agreements, and particularly before signing any document.

Compensation

By law, a resource authority holder is required to compensate a landholder where resource activities carried out on private land have an impact on the landholder’s business or land use. These compensation arrangements are in place to ensure that landholders are not financially disadvantaged by activities carried out on the property.

Landholders are entitled to compensation for any ‘compensatable effects’ related to the impact of the activities on their business operations and land use.

Compensation arrangements are established either through a Conduct and Compensation Agreement between the parties or, if agreement cannot be reached, by the Land Court.

‘Compensatable effects’ are defined in resources legislation. In summary they include:

1. deprivation of possession of land surface

2. reduction in land value
3. reduction in land use including reduced use that could be made through any improvements to it
4. severance of any land from other parts of the land owned by the landholders
5. any cost, damage or loss arising from activities carried out under the land surface
6. accounting, legal or valuation costs reasonably incurred by the landholder to negotiate or prepare a Conduct and Compensation Agreement, other than costs involved to resolve disputes via independent alternative dispute resolution (ADR) *
7. damages incurred by the landholder as a consequence of matters mentioned above.

**ADR is an option available when parties have not been able to enter into an agreement. This process may include conciliation, mediation or negotiation and in most cases will be undertaken by an authorised government officer.*

Standard agreements

To complement the new land access laws, standard agreements have been prepared to assist landholders and companies negotiate legal contracts and guide negotiations about conduct and compensation.

These agreements set out important terms that the Government recommends landholders and companies include when negotiating matters such as arrangements related to compensation, disclosure of information, confidentiality and conduct proposed to be undertaken by the resource authority holder. Provisions supporting a landholder's right to negotiate how, when and where activities on their land should take place are also included.

The available standard agreements are:

- a *Standard Conduct and Compensation Agreement* setting out important terms for inclusion when developing a contract with a resource authority holder before entry onto a landholder's property. The agreement covers possible compensation arrangements, land access rules, dispute processes, expected conduct of resource authority holder staff or agents and landholder obligations.
- a *Standard Deferral Agreement* setting out terms for inclusion in a contract if the landholder/occupier chooses to hold off entering into a conduct and compensation agreement with the resource authority holder until a later point in time. This option allows further information to be gathered to determine the possible impacts of the authorised activities.

These agreements have been developed with guidance and input from legal advisers, both internal and external to government, in the primary and resource industry sectors and government agencies. The agreements are available at: www.deedi.qld.gov.au

IMPORTANT REMINDER: *While the standard agreements are available to assist with negotiating legally binding contracts, the Government strongly urges that landholders seek independent legal advice to assist with negotiations or developing agreements, and particularly before signing any document.*

Negotiations and resolving disputes

Both landholders and resource authority holders have obligations they must comply with under the new land access laws. These include a graduated negotiation and dispute resolution process that must be followed before access to land for advanced activities is permitted or referral of the matter to the Land Court.

The stages (see Figure 1) in this process are:

1. Formal negotiation – begins with issue of a notice of intention to negotiate (*negotiation notice*) a conduct and compensation agreement. This notice triggers the start of a “minimum negotiation period” of 20 business days* during which time access cannot occur to carry out advanced activities, even if a conduct and compensation agreement is signed.
2. Where an agreement cannot be reached, the matter may be referred for dispute resolution which may be one of the following:
 - a ‘conference’ held by authorised officers from the Department of Employment, Economic Development and Innovation
 - an alternative dispute resolution process (e.g. conciliation, mediation) conducted by an appropriately qualified person independent of Government and the parties.
3. Where the dispute resolution process does not result in the parties reaching a conduction and compensation agreement or deferral agreement, the matter may be referred to the Land Court for determination. At this point access to the land is permitted but only after having given the landholder an entry notice and waiting for the notice period to end.

* N.B. This is a minimum period only and with agreement negotiations may be on-going.

Figure 1 Summary of negotiation process and timeframes



A *Tips for Landholders* fact sheet is available to help guide negotiations and the development of agreements about land access and compensation between landholders and resource authority holders. This information identifies general and specific issues for landholders to consider as conditions. These include obligations of the resource authority holder and landholder, compensation, impacts on land, water and vegetation management, access periods, cropping, livestock and rehabilitation.

To access this fact sheet visit www.deedi.qld.gov.au

Enforcement

Compliance action can be taken against a resource authority holder who fails to comply with appropriate notification processes or breaches a mandatory condition of the Land Access Code. Compliance and enforcement of the new laws and Land Access Code is overseen by the Department of Employment, Economic Development and Innovation.

Compliance action may include:

- reducing the area of a resource authority
- imposing a new condition on a resource authority
- a financial penalty.

Complaints

Concerns regarding compliance and enforcement of the new land access laws and Land Access Code should be referred to your regional Mining Registrar or the Department of Employment, Economic Development and Innovation. For details phone 13 25 23 or visit www.deedi.qld.gov.au.

Legal advice

Any signed agreement will become a legally binding document that grants legal rights to others, and may also affect future property owners. The government recommends that landholders/owners engage a solicitor or legal representative during negotiations, and particularly before any documents are signed.

The new land access laws require a resource authority holder to compensate a landholder for reasonable and necessary legal, accounting and valuation costs incurred in the negotiating and preparing agreements.

Legal Aid assistance is also available. For further information phone 1300 65 1188.

Further information and resources

Telephone **13 2523**

Visit www.deedi.qld.gov.au to access other resources linked to the new land access laws including:

- the Land Access Code
- the Tips for Landholders fact sheet
- a Standard Conduct and Compensation Agreement
- a Standard Deferral Agreement.



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