

20 MAY 2019



Department of
Natural Resources,
Mines and Energy

The Honourable Chris Whiting MP
Chair
State Development, Natural Resources and
Agricultural Industry Development Committee
Parliament House
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Chris
Dear Mr Whiting

I am writing in response to recommendation 3 of the State Development, Natural Resources and Agricultural Industry Development Committee's (the Committee) report on the *Mineral, Water and Other Legislation Amendment Act 2018* (MWOLA Act).

On 19 April 2019, the Department of Natural Resources, Mines and Energy (the department) commenced the remaining MWOLA Act provisions and the Resources Legislation Amendment Regulation 2019. To support the commencement of the land access framework changes, the department prepared a suite of education material which is now publicly available on the Business Queensland webpage and is attached:

- A guide to land access in Queensland
- A guide to landholder compensation for mining claims and mining leases
- A standard compensation agreement template
- An arbitration factsheet.

The department's Mineral and Energy Resources (MER) Engagement and Compliance Unit is proposing a number of information sessions across the state with key stakeholders and industry in 2019. The intention is for MER to provide and advertise the availability of the new materials during those information sessions.

Should you have any further enquiries, please contact Mr Marcus Rees, Minerals and Energy Resources Policy, Department of Natural Resources, Mines and Energy on telephone

Yours sincerely,


James Purtill
Director-General

Att



A guide to land access in Queensland

For the exploration and
development of Queensland's mineral and
energy resources on private land

April 2019



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Summary

The purpose of this guide

This guide has been prepared to assist landholders and resource companies in understanding Queensland's land access laws as provided in the *Mineral and Energy Resources (Common Provisions) Act 2014* and how they relate to the exploration and development of Queensland's mineral and energy resources on private land.

For the purpose of this guide, a landholder means both an owner and occupier of private land. Where the circumstance provides for a distinction between the owner of private land and the occupier of private land, the specific term 'owner' and 'occupier' is used.

Legal advice

This information should not be relied on as legal advice or as a substitute for legal advice.

You are strongly advised to obtain independent advice from a solicitor before signing any agreement. The Queensland Government also recommends you obtain advice from your accountant about tax and GST issues related to any compensation payments you receive.

Key terms

The following terms apply for the purpose of this guide.

Access agreement means a negotiated access agreement formed between a resource company and a private landholder relating to the rights over 'access land'.

Access land means land outside the area of the resource authority over which it is reasonably necessary for a resource company to cross in order to gain access to the land that is subject to their resource authority.

Access right means a resource company's right to:

- Cross access land (where reasonably necessary)
- Carry out activities on the access land that are reasonably necessary to allow the crossing of the land.

Advanced activity means an authorised activity for the resource authority that is not a preliminary activity.

Examples include:

- Levelling of drilling pads and digging sumps
- Bulk sampling
- Open trenching or costeanning with an excavator
- Earthworks associated with pipeline installation
- Vegetation clear-felling
- Constructing an exploration camp, concrete pad, sewage, water treatment facility or fuel dump
- Geophysical surveying with physical clearing
- Carrying out a seismic survey using explosives
- Constructing a track or access road
- Changing a fence line.

Authorised activity means an activity which is permitted (or authorised) for the resource authority by the particular resource Act under which it is granted.

Compensation liability means the resource company's liability to compensate an eligible landholder.

Conduct and Compensation Agreement means a legal agreement made between a landholder and a resource company that relates to authorised activities proposed to be undertaken on the land and, where there is impact on the landholder's business or land use activities, compensation arrangements for those activities.

Deferral Agreement means a legal agreement made between a landholder and resource company that provides that a Conduct and Compensation Agreement can be entered into after the resource company enters the landholder's land.

Exploration Authority means one of the following;

- Authority to prospect
- Exploration permit (for both coal and mineral)
- Mineral development licence
- Geothermal exploration permit
- GHG exploration permit.

Landholder means owner and occupier (e.g. rental tenant) of private land.

Negotiation and preparation costs means accounting costs, legal costs, valuation costs, or the costs of an agronomist the landholder necessarily and reasonably incurs in entering or seeking to enter into a Conduct and Compensation Agreement or Deferral Agreement. Note that in order to recover the costs of an agronomist in the Land Court, the agronomist must be appropriately qualified.

Opt-Out Agreement means a legal agreement in which the landholder chooses to 'opt-out' of the requirement to enter into a Conduct and Compensation Agreement or Deferral Agreement.

Permanent impact means a continuing effect on land, its use, or a permanent or long-term adverse effect on its current use by the land's occupier.

Preliminary activity is an activity that will have no impact or only a minor impact on the business or land use activities of a landholder on which the activity is to be carried out. Examples include:

- Walking the area of the resource authority
- Driving along an existing road or track in the area
- Taking soil or water samples
- Geophysical surveying not involving site preparation
- Aerial, electrical or environmental surveying
- Survey pegging.

However, an activity is not a preliminary activity where:

- It is an authorised activity carried out on land that is less than 100ha in size and is being used for intensive farming or broadacre agriculture (e.g. land used for dryland or irrigated cropping, plantation forestry or horticulture, or as a dairy, cattle or sheep feedlot, piggery or poultry farm).
- It is an authorised activity that affects the lawful carrying out of an organic or bio-organic farming system.

Private land means freehold land or an interest in land less than fee simple held from the State under another Act. However, land is not private land to the extent of an interest in a resource authority under a resource Act. Private land does not include land owned by a public land authority.

Production Authority means one of the following:

- Geothermal production lease
- GHG injection and storage lease
- Petroleum Lease.

Resource Act means the *Mineral Resources Act 1989*, *Petroleum and Gas (Production and Safety) Act 2004*, *Petroleum Act 1923*, *Geothermal Energy Act 2010*, or *Greenhouse Gas Storage Act 2009*.

Resource authority means an authorisation the Queensland Government has granted to a resource company to carry out particular activities over an area of land, including privately owned land.

Resource company means a resource authority holder or its agents or representatives.

Restricted land means land around particular buildings and areas that a resource company cannot enter without written permission from the landholder(s). For more information, see section titled **Restricted land**.

Queensland's land access laws

Mineral and energy resources found in Queensland are not owned by individuals or companies, regardless of who owns the land over which the resource lies. The Queensland Government owns and manages these resources for the benefit of all Queenslanders.

Queensland's land access laws establish differing requirements depending on the impact of the authorised activities being conducted under the resource authority.

The land access framework consists of:

- *Mineral and Energy Resources (Common Provisions) Act 2014*
- Mineral and Energy Resources (Common Provisions) Regulation 2016
- Land Access Code 2016 (Land Access Code).

In general, the land access laws include the following requirements:

- A resource company cannot enter restricted land without the written consent of a landholder
- A resource company must give an entry notice before trying to enter a landholder's property to undertake 'preliminary activities' i.e. activities that will have no or low impact on the landholder's business or land use activities
- A resource company must give an entry notice before seeking to cross or gain entry to private land outside the area of the resource authority and enter into an access agreement
- A Conduct and Compensation Agreement, Deferral Agreement or Opt-Out Agreement must be negotiated before a resource company comes onto a landholder's property to undertake 'advanced activities' i.e. those likely to have more than a minor impact on a landholder's business or land use activities
- A graduated process for negotiation and resolving disputes about Conduct and Compensation Agreements, which ensures matters are only referred to the Land Court as a last resort
- All resource companies must comply with the Land Access Code
- Compliance and enforcement powers for government agencies where breaches of the land access framework occur.

The Land Access Code includes best practice guidelines for landholders and resource companies about how to establish good relations, for example how to manage processes related to consultation and compensation. The Land Access Code also includes mandatory conditions relating to matters of biosecurity and general conduct that resource companies must comply with when undertaking authorised activities on private land.

Legislation and application

The land access laws extend to most resource authorities granted under Queensland's resource Acts, including the *Mineral Resources Act 1989*, the *Petroleum and Gas (Production and Safety Act) 2004*, *Petroleum Act 1923*, *Geothermal Energy Act 2010* and *Greenhouse Gas Storage Act 2009*.

This guide focuses on the land access laws as they apply to the resource authority types outlined in the table below.

This guide does not cover obligations related to mining claims and mining leases. For information about land access for those tenures, see the Queensland Government's *A guide to landholder compensation for mining claims and mining leases* at www.business.qld.gov.au.

Act granting resource authority	Resource authority type
<i>Mineral Resources Act 1989</i>	<ul style="list-style-type: none"> • Exploration permit (for both coal and minerals) • Mineral development licence
<i>Petroleum and Gas (Production and Safety) Act 2004</i>	<ul style="list-style-type: none"> • Authority to prospect • Petroleum lease • Data acquisition authority • Water monitoring authority • Survey licence • Pipeline licence • Petroleum facility licence
<i>Petroleum Act 1923</i>	<ul style="list-style-type: none"> • Authority to prospect • Lease • Water monitoring authority
<i>Geothermal Energy Act 2010</i>	<ul style="list-style-type: none"> • Geothermal exploration permit • Geothermal production lease
<i>Greenhouse Gas Storage Act 2009</i>	<ul style="list-style-type: none"> • GHG exploration permit • GHG injection and storage lease • GHG injection and storage data acquisition authority

There may be some important exceptions or differences to the general application of the land access laws to the resource authorities listed above. Where particular parts of the land access laws do not apply to a resource authority, it is explicitly outlined in this guide. For example, components of the land access laws do not apply to prospecting permits, mining claims and mining leases which have different land access and compensation provisions set out under the *Mineral Resources Act 1989*.

Rights and obligations

Landholder and resource company rights and obligations under the land access framework are determined by the level of impact the authorised activities will have on the landholder's business or land use activities on the land on which the activity is to be carried out.

A resource company is allowed to undertake authorised activities permitted by the resource authority on private land within the area defined by the resource authority. Authorised activities are not permitted to be undertaken on land where the resource authority does not apply – this may mean only part of a property may be affected. Where they are affected by resource company activities, landholders are entitled to know what activities are being undertaken, provide feedback into processes associated with those activities to the extent that they relate to the landholder for advanced activities (e.g. conditions of access and infrastructure layout) and to receive compensation for impacts associated with those activities.

Rights and obligations

For resource companies	For landholders
<ul style="list-style-type: none">• Be respectful of landholder rights and actively engage landholders in good faith• Consult or use reasonable endeavours to consult with landholders about access, planned authorised activities and compensation• Negotiate in good faith during an open and transparent negotiation process with landholders• Ensure timely responses to landholder enquiries• Provide regular operational updates to landholders that are aligned with the level of activity• Avoid unreasonable interference with the landholder's use of their property• Meet all legal obligations, including the mandatory conditions of the Land Access Code.	<ul style="list-style-type: none">• Be respectful of resource company rights• Engage with resource companies in good faith to negotiate agreements regarding access, land use and compensation• Do not obstruct a resource company from entering or crossing their land to carry out authorised activities, if all legal obligations have been met• Negotiate in good faith during an open and transparent negotiation process with resource companies.

Land Access Code

The Land Access Code applies to all resource authorities covered by this guide, with the exception of prospecting permits, mining claims and mining leases granted under the *Mineral Resources Act 1989* and water monitoring authorities granted under the *Petroleum Act 1923*.

The Land Access Code is a key component of Queensland's land access laws. The Land Access Code contains both best practice guidelines for establishing and fostering good relations between resource companies and landholders, as well as mandatory conditions concerning the conduct of resource companies when undertaking authorised activities on private land. Resource companies must comply with the Land Access Code when within the area of their resource authority, as well as when using private land to access the area of their resource authority (access land).

It is a condition of these resource authorities to comply with the mandatory conditions contained in the Land Access Code. Mandatory conditions on activities conducted under the resource authority include:

- Induction training for staff and contractors
- Access points, roads and tracks
- Livestock and property
- Weeds and pests
- Camps
- Items brought onto land
- Gates, grids and fences.

The Land Access Code requires a resource company to notify the landholder in person about incidents. For example, the resource company must notify the landholder of damage caused to access points, road or tracks and repair any damage caused. The notice must be given in person or may be in writing when in person is not practical.

It also places an obligation on the resource company to repair any damage associated with the access to and use of private land.

Notification requirements – preliminary activities

The requirements of the following section apply to all resource authorities covered by this guide, with the exception of prospecting permits, mining claims and mining leases granted under the *Mineral Resources Act 1989*. For guidance on the notification requirements for these resource authority types, visit www.business.qld.gov.au.

Generally, a resource company must provide each landholder with an entry notice at least 10 business days before the date they propose to enter the land if they plan to:

- Enter private land to carry out authorised activities for a resource authority
- Cross access land for the resource authority; or
- Gain entry to access land.

This notice must include:

- A description of the land to be entered
- The period when the land will be entered (the entry period)
- The activities proposed to be carried out on the land
- When and where the activities are to be carried out; and
- Contact details for the resource company or their authorised representative.

Unless otherwise agreed to in writing by each landholder and the resource company, the maximum entry period for a notice is:

- Six months where entry is for the purpose of carrying out authorised activities relating to an exploration authority; or
- One year where entry is for the purpose of carrying out authorised activities relating to a production resource authority.

If this is the first entry notice issued, it must also be accompanied by a copy of:

- The relevant resource authority
- The Land Access Code
- Any relevant environmental authority for the resource authority; and
- Any code of practice made under a relevant resource Act.

An entry notice given to a landholder that does not meet these requirements may be invalid. If a resource company enters private land without first giving each landholder a valid entry notice, a penalty will apply.

Alternative method of notification

In circumstances where the chief executive considers it is not practical for a resource company to give each landholder an entry notice personally, the chief executive may approve that an entry notice be given by publication. The publication of an entry notice must happen at least 20 business days before the entry. An example is notification via advertisement in a newspaper that is widely distributed within the area being accessed.

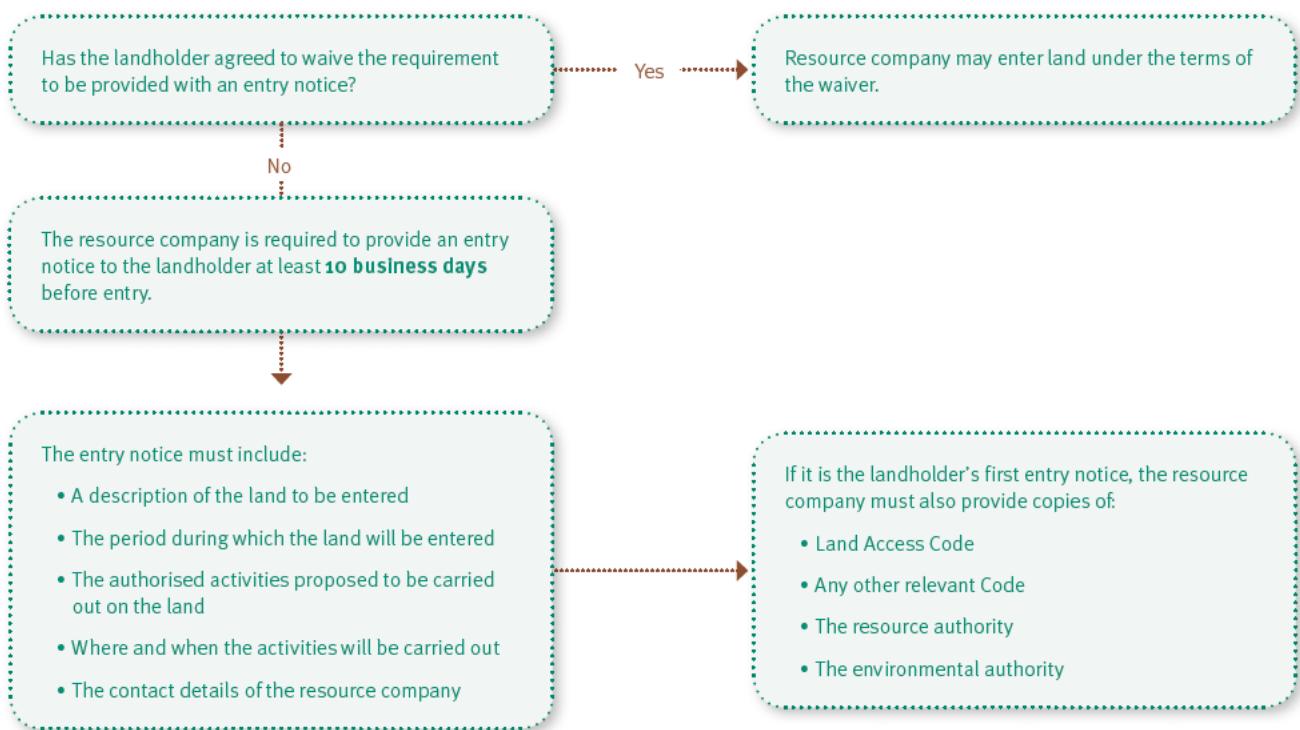
Preliminary activities flowchart

This flowchart is an overview of the entry notice requirements resource companies must follow when entering private land to carry out preliminary activities.

Resource companies may also be required to provide an entry notice under the outlined process when entering land to carry out advanced activities.

There are a limited number of circumstances where a resource company is able to enter private land without following the outlined entry notice requirements:

- Where the resource company owns the land
- Where the resource company has another right of entry; or
- Where entry is to preserve life, property or for an emergency



Waiver of notification requirements

A landholder may decide to waive the notification requirements. Where a landholder decides to waive the notification requirements they must give the resource company a written waiver of entry notice.

A waiver of entry notice must be signed by the landholder who is waiving the entry notification requirements. A waiver of entry notice must include the following information:

- The period of entry
- The authorised activities the resource company proposes to carry out on the land
- When and where the activities are to be carried out; and
- A statement that the resource company has advised the landholder that they are not required to give a waiver of entry notice.

A decision to give a waiver is up to the landholder and a waiver cannot be withdrawn during the period of entry stated on the waiver of entry notice.

Exemption from entry notice requirements

Queensland's land access laws provide some exemptions from the general requirement to provide an entry notice.

In addition to when a landholder has decided to waive the notification requirements, a notice of entry is also not required in the following circumstances:

- If a landholder and resource company have entered into a Conduct and Compensation Agreement for the access of land and it provides for alternative obligations for the entry, which the resource company complies with
- If the landholder and resource company have entered into an Access Agreement which provides for alternative obligations
- If the landholder and resource company have entered into an Opt-Out Agreement
- If the resource company has an independent legal right of entry (such as a contractual right of entry)
- If the entry is to preserve life or property, or prevent or stop an emergency; or
- If entry is otherwise authorised under the resource Act.

Entry report following entry onto private land

Where a resource company enters private land to carry out authorised activities, the resource company must provide the landholder a report about the entry. The report must state whether or not any activities were carried out on the land, and if they were, the nature and extent of those activities and where they were undertaken. The obligation to give a report also applies where a resource company has exercised their access rights under an Access Agreement and entered access land. The matter of access rights and Access Agreements, is covered in more detail in the section titled **Access to private land outside the area of the resource authority**.

The timing for the giving of the entry report differs depending on whether a waiver of entry notice was given or not and whether the resource authority is an exploration resource authority (e.g. authority to prospect, exploration permit, mineral development licence or geothermal exploration permit) or a production resource authority (e.g. petroleum lease or geothermal production lease). In general, the resource company must give the entry report to each landholder either:

- Three months after the period stated in the entry notice
- Six months after the waiver notice was given if the resource authority is an exploration resource authority; or
- One year after the waiver was given for a production resource authority.

Important considerations

Entry notices and change in owner or occupier of private land

An entry notice given by a resource company may have implications for future landholders of the property to which the entry notice or waiver of entry notice applies.

For example, if after an entry notice was given, there was a change in the landholder of the land, the entry notice continues to apply to each new landholder, provided that the resource company gives each new landholder of the land a copy of the entry notice within 15 business days of becoming aware of the new landholder.

Waivers of entry notices and change in owner or occupier of private land

Should a landholder choose to waive the notification requirements, this may have implications for future landholders.

For example, where a landholder has given a waiver of entry notice to a resource company, and subsequently there is a change in the landholder, the waiver of entry notice continues to apply to each new landholder, provided the resource company gives a copy of the waiver of entry notice within 15 business days of becoming aware of the new landholder.

Entry notice rights and obligations

For resource companies	For landholders
<ul style="list-style-type: none">Right to enter private land only if they have given a valid entry notice to each landholder (or an exception to the entry notice requirement applies).Can only conduct preliminary activities that are listed on the entry notice.No obligation to enter into a Conduct and Compensation Agreement, Deferral Agreement or Opt-Out Agreement for preliminary activities conducted under an entry notice.Obligation to comply with the Land Access Code and other relevant Queensland legislation that may apply such as the <i>Biosecurity Act 2014</i>.Obligation to comply with restricted land framework remains (meaning that the requirement for written consent of the landholder remains despite the giving of a valid entry notice).	<ul style="list-style-type: none">Right to receive a valid entry notice at least 10 business days prior to entry.No right to object to the valid entry for the purposes of undertaking activities authorised by the resource authority.Right to consent to entry to areas of restricted land is not limited by the receiving of a valid entry notice.

Negotiated agreement – advanced activities

The requirements of the following section apply to all resource authorities covered by this guide, with the exception of prospecting permits, mining claims and mining leases granted under the *Mineral Resources Act 1989*. For guidance on the requirements for these resource authority types, visit www.business.qld.gov.au.

Due to Queensland's land access laws, a resource company cannot generally enter private land to undertake advanced activities unless they have entered into one of the following:

- A Conduct and Compensation Agreement
- A Deferral Agreement; or
- An Opt-Out Agreement.

These are all legally binding agreements negotiated between the landholder and resource company.

Entry notification requirements

The negotiation of a Conduct and Compensation Agreement or a Deferral Agreement does not necessarily remove the requirement for the resource company to provide the landholder a valid entry notice. For example, the resource company is required to provide the landholder a valid entry notice where a Conduct and Compensation Agreement is negotiated unless that agreement includes alternative entry requirements or the landholder has waived the entry notice requirements.

However, a resource company is exempt from notification requirements where a landholder and the resource company have entered into an Opt-Out Agreement.

A resource company may also enter private land to undertake advanced activities where a landholder and resource company have failed to reach agreement during negotiation and the dispute resolution process and one of the following has occurred:

- the matter has been referred to the Land Court for determination; or
- the parties have agreed to enter an arbitration process.

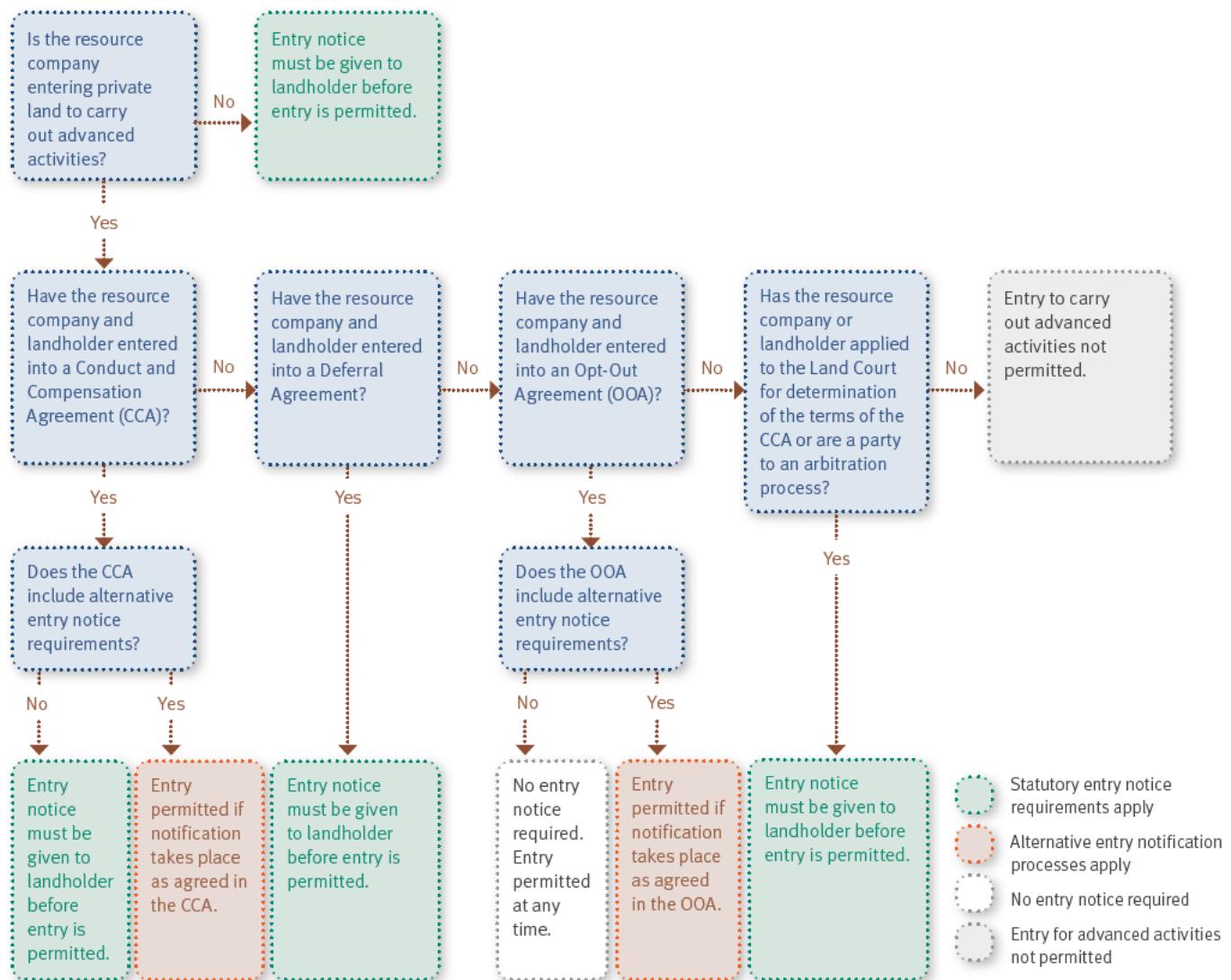
The usual entry notice requirements (including exceptions to the requirement to provide an entry notice) as outlined in the section titled *Notification requirements – preliminary activities* will continue to apply to the resource company.

Advanced activities flowchart

This flowchart is an overview of the entry notice requirements resource companies must follow when entering private land to carry out advanced activities.

There are a limited number of circumstances where a resource company is able to enter private land without following the outlined entry notice requirements:

- Where the resource company owns the land
- Where the resource company has another right of entry
- Where entry is to preserve life, property or for an emergency; or
- Where a landholder has agreed to waive the requirement for an entry notice.



N.B. This flowchart does not apply to prospecting permits, mining claims or mining leases granted under the *Mineral Resources Act 1989*.

- Statutory entry notice requirements apply
- Alternative entry notification processes apply
- No entry notice required
- Entry for advanced activities not permitted

Conduct and Compensation Agreements

A landholder and resource company may enter into a Conduct and Compensation Agreement. This is the main type of agreement and is a legal document negotiated and agreed upon between landholders and resource companies. It generally details how advanced activities will be conducted on the property and ensures landholders are properly compensated for the compensatable effects of those activities.

Compensatable effect means:

- Deprivation of possession of land's surface
- Diminution or decrease in land value
- Diminution or decrease in land use, including reduced use that could be made through any improvements to it
- Severance of any part of the land from other parts of the land, or from other land that the landholder owns
- Any cost, damage or loss arising from the carrying out of activities on the land.

The resource company is also liable to pay the negotiation and preparation costs necessarily and reasonably incurred in the negotiation of a Conduct and Compensation Agreement.

Where the resource company decides not to continue the negotiation of a Conduct and Compensation Agreement and therefore an agreement is never reached, the landholder will be entitled to recover the necessarily and reasonably incurred costs of the negotiations from the resource company. To ensure both parties have an understanding of the potential necessarily and reasonable costs, it is suggested that discussions regarding these costs are held at the beginning of the negotiation for a Conduct and Compensation Agreement.

Ultimately, if the parties cannot agree on these negotiation and preparation costs, the dispute can be referred to the Land Court.

Preparing for negotiations

A landholder who is preparing for negotiations with a resource company should consider preparing a map of the land and marking the location of key areas and infrastructure. This may include:

- Access points, formed roads and tracks
- Gates and fences
- Stockyards
- Homes and other buildings
- Areas or structures of sentimental value (e.g. unused remains of historic homesteads)
- Key agricultural areas and infrastructure (e.g. crops, dams, levees, irrigation channels, shade clumps)
- Water bores and key watering points or other important infrastructure
- Sensitive areas such as vegetation, waterways, erosion prone areas and overland groundwater flow areas
- Areas containing restricted matter (e.g. invasive weeds, diseases, parasites and insect pests) as listed in Schedule 2 of the *Biosecurity Act 2014*
- Any plans for expansion or improvement the landholder may have underway
- Indication of preferred property access timing (e.g. avoiding access during harvesting of cropped land)
- Property management practices.

For a petroleum or gas authority, a landholder may also wish to ask the resource company to provide detail around the decommissioning process for wells, pipelines and other related infrastructure.

Landholders should also consider preparing a biosecurity management plan that identifies the activities carried out by the landholder and the controls in place to help manage biosecurity risks on the landholder's property.

The landholder and resource company may agree that a map needs to be attached to the Conduct and Compensation Agreement.

A resource company must provide the landholder with details including:

- What activities they plan to carry out on the private land
- Where activities will be carried out
- When activities will be carried out (including time of the year, day or night, over what time period, etc.).

Resource companies should consider providing landholders with additional information, such as:

- Who will carry out the activities, including the number of workers and the number and types of vehicles likely to be involved
- Detailed work programs for each activity and any potential impacts including noise, dust, lights, vibration, impact on water supply, or other impacts
- Any future interest they anticipate having in the landholder's property based on all current information and what might influence future plans
- Any safety considerations, proposed emergency plans and important contacts
- What controls the resource company has in place regarding access during or post inclement weather (e.g. high rainfall)

What to include in a Conduct and Compensation Agreement

What should be included in a Conduct and Compensation Agreement is detailed in the Mineral and Energy Resources (Common Provisions) Regulation 2016 and includes:

- How and when a resource company can enter the land
- How authorised activities must be carried out
- The resource company's compensation liability or future compensation liability
- If the agreement is for all or part of the compensation liability
- If the agreement is for only part of the compensation liability, it should state:
 - Details of each activity, or the effect of the activity, to which the agreement relates
 - How long the agreement is for
- The amount of compensation and how and when the compensation liability will be met (if compensation is monetary)
- That the resource company must provide the registrar with notice of the agreement; and
- The agreement must be signed for or by both parties.

In addition, the law also provides that a Conduct and Compensation Agreement must be consistent with the following:

- *Mineral and Energy Resources (Common Provisions) Act 2014*
- The resource Act that the resource authority is granted under
- A condition of the resource authority
- A mandatory provision of the Land Access Code.

There are also a number of discretionary matters that should be considered for inclusion in a Conduct and Compensation Agreement. This includes:

- Extending the resource company's compensation liability to the landholder or any future compensation liability that the resource company may have to the landholder to any renewal of the resource authority
- Whether compensation under the agreement is monetary compensation, or non-monetary compensation or a combination of both. An example of non-monetary compensation would be the construction of a road for the landholder
- A process by which the agreement may be reviewed or amended
- A process by which the agreement may be enforced (e.g. referral to a court of competent jurisdiction or a duly appointed arbitrator); or
- A review of the agreement and amendment of the provision for compensation on the happening of a material change in circumstances for the resource authority including a change in the extent of authorised activities.

Permitted conduct

Landholders and resource companies may also negotiate what conduct is and is not permitted on the land. This may include entry times, what a resource company can and can't do on the land, where they can carry out activities on the land, and the conduct provisions and guidelines contained in the Land Access Code.

Registration of agreement on land title

A Conduct and Compensation Agreement or Opt-Out Agreement must be registered on the title of the property by the resource company.

Resource companies are required to provide written notice of the Conduct and Compensation Agreement or Opt-Out Agreement to the Registrar of Titles within 28 days after entering into the agreement. Please note that a full copy of each agreement is not recorded, but rather a notation is made on the relevant title of the existence of the agreement.

If the land is later subdivided and the agreement does not apply to the new lot or lots created, the resource company must remove the notation within 28 days of becoming aware of the subdivision.

A valid Conduct and Compensation Agreement will be binding on future landholders of the property as well as any new holder of the resource authority.

Deferral Agreements

A resource company and the landholder of private land may enter into a Deferral Agreement. This means that the resource company and the landholder agree to defer the creation of a Conduct and Compensation Agreement until a later date as agreed by the parties.

What to include in a Deferral Agreement

A Deferral Agreement must state:

- That the resource company told the landholder that they are not required to enter into a Deferral Agreement
- The period during which the land is to be entered
- The authorised activities proposed to be carried out on the land and when and where the activities are to be carried out
- The period for which the Deferral Agreement has effect; and
- When a Conduct and Compensation Agreement is to be entered into.

Opt-Out Agreements

An Opt-Out Agreement is a legal agreement (executed as a deed) made between a landholder and a resource company for land access arrangements. It enables a landholder to elect to opt-out of negotiating a Conduct and Compensation Agreement, allowing the landholder flexibility to reach an agreement in a way that best suits them.

Entering into an Opt-Out Agreement is at the discretion of the landholder. A landholder cannot be forced to enter the agreement by the resource company. In fact, land access laws require that a resource company notify the landholder that they are under no obligation to enter into an Opt-Out Agreement.

An Opt-Out Agreement does not absolve the resource company of compensation liability. However, there is no statutory negotiation process or dispute resolution process and the Land Court will not be able to examine the issue of compensation liability. There is also no requirement for the resource company to provide the landholder with an entry notice when an Opt-Out Agreement is in place. Landholders may consider including additional provisions related to compensation, dispute resolution and notification of entry onto land.

What must an Opt-Out Agreement contain?

An Opt-Out Agreement must be made using the approved form provided by the Department of Natural Resources, Mines and Energy, available at www.business.qld.gov.au. The resource company must provide a copy of the Opt-Out information sheet to the landholder before the landholder signs the agreement.

The approved form includes the mandatory provisions that a valid Opt-Out Agreement must contain, for example:

- The landholder has been given a copy of the Opt-Out Information Sheet and the Land Access Code 2016
- The mandatory conditions of the Land Access Code that must be complied with
- The landholder has been made aware by the resource company that the landholder is entitled to negotiate a Conduct and Compensation Agreement, and is not required to enter into an Opt-Out Agreement
- An acknowledgement that the resource company's liability to compensate the landholder is not negated
- The Registrar of Titles must be given notice of the agreement within 28 days where the existence of the agreement will be recorded on the property title; and
- The landholder has been made aware by the resource company that the agreement can be terminated by written notice within 10 business days of receiving a signed copy.

The approved form allows the flexibility for the parties to include additional conditions. For example, the landholder may wish to specify:

- A term for the agreement
- What activities can be carried out, stipulating that if operations exceed or change from what is specified, the landholder can require that a Conduct and Compensation Agreement be negotiated instead, or require the terms of the Opt-Out Agreement be renegotiated
- The specific impact area of land to ensure landholders retain the right to negotiate a Conduct and Compensation Agreement for activities undertaken on other parts of the land; or
- Details of any compensation.

Landholders are strongly encouraged to seek independent legal advice prior to signing an Opt-Out Agreement.

Registration of agreement on property title

As with a Conduct and Compensation Agreement, the existence of an Opt-Out Agreement is recorded on the property title.

A valid Opt-Out Agreement will be binding on future landholders of the property as well as any new holder of the resource authority.

Opt-Out Agreement rights and obligations

For resource companies	For landholders
<ul style="list-style-type: none">• Entering into an Opt-Out Agreement does not negate resource company's liability to compensate an eligible landholder.• Resource company must advise the landholder that they are under no obligation to agree to enter into an Opt-Out Agreement.	<ul style="list-style-type: none">• Decision to enter into an Opt-Out Agreement is at the complete discretion of the landholder.• Right to negotiate additional provisions in the Opt-Out Agreement.

Statutory negotiation process

Queensland's land access laws provide a statutory negotiation process for the negotiation of a Conduct and Compensation Agreement. Parts of the process are also applicable to Deferral Agreements.

The negotiation stages are:

1. Notice of intent to negotiate
2. Alternative dispute resolution (ADR)
3. Arbitration or Land Court determination.

If an agreement (being a Conduct and Compensation Agreement or Deferral Agreement or the landholder agrees to enter into an Opt-Out Agreement) is reached at any stage, the subsequent stages will not apply.

Conference with a departmental officer

Outside of the following statutory negotiation process, resource companies and landholders may decide to participate in a conference about:

- How and when the resource company may enter the landholder's land
- How the authorised activities must be carried out (but only to the extent that they relate to the landholder)
- The resource company's compensation liability and any future compensation liability.

However, landholders and resource companies will not be able to attend a conference if stage 2 of the statutory negotiation process (below) has begun, or if the parties have agreed to attend arbitration. Any conference will also come to an end if either of these processes start during a conference.

Stage 1: Notice of intent to negotiate

A resource company wishing to begin formal negotiations with a landholder may give the landholder a negotiation notice. This period is 20 business days and provides a formal window for negotiation of a Conduct and Compensation Agreement. The notice will state whether the resource company wishes to negotiate a Conduct and Compensation Agreement or a Deferral Agreement.

The notice must:

- State whether they want to negotiate all or part of the resource company's compensation liability
- State which part of the liability the resource company wants to negotiate, if they only want to negotiate part of their whole liability
- Contain a description of the land to be entered
- Detail the activities to be carried out on the land and when and where they will be carried out
- Provide the contact details for the resource company or, if the resource company is a corporation, an individual authorised to negotiate for the resource company; and
- Provide a copy of the Land Access Code.

The land access laws provide a minimum negotiation period of 20 business days after the notice of intent to negotiate is given by the resource company; or a longer period as agreed in writing by both parties.

If, during the minimum negotiation period, the parties agree to a Conduct and Compensation Agreement or Deferral Agreement, either party has until the end of the minimum negotiation period to terminate the agreement.

The resource company is not permitted to enter the land to conduct advanced activities during this minimum negotiation period.

Stage 2: Alternative dispute resolution

If no agreement has been reached by the end of the minimum negotiation period, any party (the landholder or the resource company) may provide the other side a written notice seeking ADR to negotiate a Conduct and Compensation Agreement. This written notice is called an 'ADR election notice'. The ADR must be finished within 30 business days of the ADR facilitator being appointed, unless parties agree to extend the period due to stated reasonable or unforeseen circumstances.

ADR offers strategies for resolving conflicts, avoiding potentially costly and time-consuming litigation. This can involve any type of non-binding dispute resolution elected by a party such as case appraisal, conciliation, mediation or negotiation.

The party that receives the ADR election notice has 10 business days to accept or refuse the type of ADR and the ADR facilitator proposed in the notice. If the notice is refused the party that issued the notice may:

- Give a new notice with different proposals; or
- Obtain a decision from the Land Court or a prescribed ADR institute about the matter not accepted.

The resource company is responsible for the cost of the ADR facilitator and the facilitator must be independent to either party.

Prescribed ADR institute

Prescribed ADR institutes and the Land Court of Queensland can help landholders and resource companies that have not been able to agree amongst themselves:

- who should be their ADR facilitator in a proposed ADR process, or
- what type of ADR they should undertake.

The Resolution Institute is the prescribed ADR institute under the Mineral and Energy Resources (Common Provisions) Regulation 2016.

Stage 3: Arbitration or Land Court determination

Arbitration

Arbitration provides an opportunity for the parties to resolve a dispute with a legally binding resolution that is private rather than making an application to the Land Court for a determination of the Conduct and Compensation Agreement that will be published. It is a voluntary process so it is important that each party understands the risks associated with electing to undertake arbitration. It is also important to note that arbitration can only take place if both parties agree to enter the process to resolve the dispute. If one party does not agree to arbitration, then the parties may either:

- Proceed to the non-binding ADR process if the arbitration election notice was issued at the end of the negotiation notice period; or
- Apply to the Land Court for a decision.

Arbitration may only apply if:

- A negotiation notice has been issued and at the end of the minimum negotiation period, the parties have not negotiated a Conduct and Compensation Agreement; or
- Parties have undertaken an ADR process following an unsuccessful minimum negotiation period but have still not reached a Conduct and Compensation Agreement following the conclusion of the ADR

To enter an arbitration process, a party may provide an arbitration election notice to the other party requesting participation in the process. The other party has 15 business days to accept or refuse the request. If the parties agree to arbitration, neither party can then make an application to the Land Court.

If the parties have agreed to arbitration, they may jointly appoint an arbitrator. If the parties cannot agree on an arbitrator, then the party that initially gave the arbitration election notice must then require a prescribed arbitration institute to appoint an independent arbitration.

The arbitrator's fees and expenses are to be shared equally unless:

- Either party agree otherwise;
- Arbitrator decides how the costs should be distributed; or
- A resource company will be liable to pay the fees and expense of the arbitrator if parties have not participated in an ADR process.

Parties are able to be legally represented in an arbitration, however, regardless of where the obligation to pay the arbitrator's fees and expenses falls, the parties are to bear their own costs (including the cost of legal representation) unless the parties have reached an alternative agreement or the arbitrator decides otherwise.

Prescribed arbitration institute

Prescribed arbitration institutes can help landholders and resource companies that have not been able to agree amongst themselves who should be their arbitrator in a proposed arbitration process.

Resolution Institute and the Queensland Law Society are both prescribed arbitration institutes under the Mineral and Energy Resources (Common Provisions) Regulation 2016.

Land Court

A resource company or a landholder may apply to the Land Court for resolution of the Conduct and Compensation Agreement process if:

- The ADR facilitator failed to finish the ADR prior to the end of 30 business days; or
- Only one party attended the requested ADR; or
- At the end of ADR attended by both parties, no Conduct and Compensation Agreement had been agreed; or
- An arbitration election notice has not been given or a request for arbitration about the dispute was not accepted.

The Land Court can order:

- Non-monetary or monetary compensation
- That a party not engage in particular conduct; or
- That the parties engage in further ADR.

In addition, a landholder or resource company can apply to the Land Court at any time for a determination (provided they have not attended arbitration on the same dispute) about whether or not a proposed activity would interfere with the carrying out of lawful activities by the landholder. The Land Court can make any order it considers necessary or desirable in relation to the matter.

After a Conduct and Compensation Agreement is in place

Material change in circumstances

If there is a material change in circumstances that affects the compensation liability or future compensation liability previously agreed to in a Conduct and Compensation Agreement (CCA), ordered by the Land Court or awarded by an arbitrator, the parties may in good faith jointly agree to amend the CCA to account for the change.

Alternatively, if the parties are unable to agree to the material change in circumstances then either party may apply to the Land Court for a determination. The Land Court will review the original compensation only to the extent it is affected by the change and make a decision.

Breach of a Conduct and Compensation Agreement

If there is a dispute with regards to a breach of the conditions in the CCA, it is best if both parties attempt to resolve the dispute between themselves in the first instance. Alternatively, there are options available if the parties are unable to resolve the dispute.

1. CCA Dispute Resolution Clauses

There are some CCAs that include resolution clauses if a dispute is to arise in the future. For example, the parties may have included a dispute resolution clause that requires the parties to attend mediation or arbitration in the event of a dispute.

2. Land Access Ombudsman

The Land Access Ombudsman (LAO) has been established to provide a free, fair and independent service to investigate and resolve land access disputes. The LAO provides advice and recommendations to help parties achieve resolution. Where parties are unable to reach an agreement, the LAO will provide advice and recommendations to the parties on how to resolve the dispute based on the investigative process.

If there is an existing CCA or Make Good Agreement and a party believes the other party has breached the conditions, the LAO can help resolve the dispute by:

- Offering an opinion on the merits of each party's position
- Advising on a way forward
- Making practical recommendations based on the specific facts and circumstances of each dispute.

To do this, the LAO may use a range of alternative dispute resolution (ADR) options to help resolve the issues. These include, but are not limited to:

- Mediation
- Conciliation
- Case appraisal.

If the dispute continues to exist and/or a party is not satisfied with the recommendation at the end of the process, either party may:

- Apply to the Land Court for a binding decision
- Contact the Department of Natural Resources, Mines and Energy for advice on conferencing options
- Pursue private ADR at the parties own expense.

The other roles the LAO performs include:

- Refer or recommend possible offences and breaches of resource authority conditions to appropriate government departments for investigation
- Provide advice to government agencies about systemic issues arising from land access disputes
- Promote public awareness of the Ombudsman's functions.

For further information on the Land Access Ombudsman, please refer to: <https://www.lao.org.au/services/how-we-help>

3. Land Court

The Land Court also has the power to make an order if a party to a CCA believes there has been a breach of a condition in the agreement. To access the Land Court, either party may make an application during the term of the CCA, or after the end of the CCA. The Land Court will assess the application and make an order it considers appropriate.

Restricted land

Queensland's land access laws apply a consistent restricted land framework across all resource authorities, except for mining claims and mining leases which have their own framework under the *Mineral Resources Act 1989*.

The restricted land framework provides protections to landholders where a resource company is wanting to undertake authorised activities on or below the surface of land that is near homes, businesses and certain key agricultural infrastructure.

The protections offered under the restricted land framework can apply to landholders even though their property is not located within the boundaries of the resource authority.

What is restricted land?

Where the resource company is seeking to undertake any activities authorised by an exploration authority or a production authority, the following restricted land areas apply.

Restricted land is the area within **200 metres** of:

- A permanent building used for the purpose of a residence, business, childcare centre, hospital, library, or place of worship
- A permanent building used for a community, sporting or recreational purpose; or
- An area used as a school, or for 'environmentally relevant activities' that are aquaculture, intensive animal feedlotting, pig keeping or poultry farming (as within the meaning of the Environmental Protection Regulation 2008, schedule 2, part 1).

Restricted land is also the area within **50 metres** of:

- An artesian well, bore, dam or water storage facility
- A principal stockyard; or
- A cemetery or burial place.

For all other resource authority types (e.g. prospecting permits, water monitoring authorities, survey licences and data monitoring authorities), restricted land is the land within **50 metres** of the buildings, structures or areas listed above.

It is important to note that land occupied by an interconnecting water pipeline that is providing water supply to or between an artesian well, bore, dam, water storage facility or principal stockyard is not in itself considered restricted land. However, land occupied by an interconnecting water pipeline is restricted land where it is connected to an artesian well, bore, dam, water storage facility or principal stockyard and is within the **50 metre** restricted land area that would normally apply to this key agricultural infrastructure.

Consent and entry to restricted land

Under the restricted land framework, a resource company cannot enter land within an area classed as restricted land without the written consent of the landholder. There is no obligation for a landholder to allow a resource company to enter restricted land. However, if a landholder does decide to allow entry they may choose to attach conditions to their consent; for example limiting entry to a certain time of day or reducing the speed limit of vehicles near the restricted land. These conditions become conditions of the resource authority, meaning that a breach of these conditions is a breach of the conditions of the resource authority.

Consent for entry can be given for any period of time. However, a landholder cannot withdraw consent during that period.

There is no obligation for a landholder to allow a resource company to enter restricted land.

Exceptions to restricted land

There are some exemptions to restricted land that allow a resource company to enter land that would normally be considered restricted land to conduct certain authorised activities. These authorised activities include:

- The installation of an underground pipeline or cable if the installation, including the placing of backfill, is completed within 30 days after the start of the installation
- The operation, maintenance or decommissioning of an underground pipeline or cable
- An activity that may be carried out on land by a member of the public without requiring specific approval of an entity (e.g. travelling on a public road); or
- Crossing access land in order to enter the area of a resource authority if the only entry to the area is through the land and either each owner and occupier has agreed in writing (e.g. Access Agreement), or the landholder has refused to make an Access Agreement and the refusal is considered unreasonable.

When is restricted land created?

During the term of an exploration resource authority, a landholder can continue to make improvements to the property that could generate new restricted land.

However, for production resource authorities (such as a petroleum lease), what is considered to be restricted land is set at the point in time when the application for the production authority is lodged. However, this does not mean that landholders cannot continue to make improvements to their land.

It is important that future property improvements planned by the landholder be discussed with the resource company at the earliest opportunity and addressed in a Conduct and Compensation Agreement.

Dispute resolution

If parties are unable to reach an agreement on whether a certain building, structure or area is restricted land, either party can apply to the Land Court for an order declaring whether particular land is restricted land for a resource authority, and whether a particular activity is a prescribed activity for the purpose of applying restricted land protections.

Rights and obligations

For resource companies	For landholders
<ul style="list-style-type: none">• Must not enter areas of restricted land without the written consent of the landholder.• May seek to negotiate access to restricted land as part of Conduct and Compensation negotiations with the landholder.	<ul style="list-style-type: none">• Right to say no to a resource company seeking to enter restricted land.• Right to not negotiate access to restricted land as part of conduct and compensation negotiations.• Landholders cannot establish new areas of restricted land following the lodgement of an application for a production authority over the land.• Landholders can continue to make improvements to their land.

Access to private land outside the area of the resource authority

The ‘access land’ provisions of the land access framework apply to all resource authorities covered by this guide, with the exception of prospecting permits, mineral development licences, mining claims and mining leases granted under the *Mineral Resources Act 1989*. The access land provisions do not apply to mineral development licences, mining claims and mining leases because the *Mineral Resources Act 1989* requires that issues related to access land be determined prior to the grant of the resource authority. The access land provisions do not apply to prospecting permits as alternative provisions related to consent and entry notices apply to this resource authority type.

Access Agreement

It may be necessary for a resource company, when accessing the authorised area of the resource authority, to cross private land or conduct certain limited activities on private land that is outside the area of the resource authority (called access land). A resource company seeking to enter access land must negotiate an Access Agreement either orally or in writing with either the owner or occupier of the property, and in some circumstances both.

Where the entry to and related use of access land is not likely to have a permanent impact on the land (e.g. opening and closing a gate), the resource company is required to make an Access Agreement with each occupier of the access land.

Alternatively, if the entry to and related use of access land is likely to have a permanent impact on the land (e.g. the resource company builds a road), the resource company must make an Access Agreement with each owner and occupier of the access land.

Entry to access land

The normal entry notice requirements outlined above in **Notification requirements – preliminary activities** apply to access land. However, the parties may choose to make alternative entry notice arrangements and include these in the Access Agreement.

Refusal to make an Access Agreement

Landholders cannot unreasonably refuse to make an Access Agreement with a resource company. This does not mean that a landholder cannot negotiate conditions for an Access Agreement that are reasonable and relevant to their situation.

The land access laws establish a statutory timeframe for the making of an Access Agreement. If an Access Agreement is not made within 20 business days after it has been requested by a resource company, the landholder is taken to have refused to make an Access Agreement.

Where a dispute arises about whether a landholder has unreasonably refused access, either the landholder or the resource company may refer the matter to the Land Court for resolution.

Deciding whether or not access is reasonable

To decide whether or not it is reasonably necessary for a resource company to enter access land, the resource company must show it is not possible or reasonable to exercise the access rights by using an already formed road. If the resource company can show this, consideration must be given to:

- The nature or extent of the impact that exercising the access rights will have on the access land and the land owner or occupier's use and enjoyment of it; and
- How, when, where and the period during which the resource company will exercise the access rights.

Land Court jurisdiction

The Land Court has power to decide disputes regarding Access Agreements. Where there has been a material change in circumstances, the Land Court can vary an Access Agreement on application by either party to the agreement.

Land Access Code applies

The Land Access Code applies to resource companies entering and using access land. This means that the mandatory provisions of the Land Access Code, which are detailed in the section titled **Land Access Code**, apply to access land areas outside the area of the resource authority.

Access Agreements are binding on successors and assigns

A written Access Agreement is binding on the relevant landholder and resource company and each of their personal representatives, successors in title and assigns.

Key contacts

Landholders and resource companies may access further information and guidance through:

- Queensland Government 'Business and Industry Portal': www.business.qld.gov.au/industry/csg-lng-industry
- Department of Natural Resources, Mines and Energy, Resource Community Infoline:
 - » Phone: 137 107
 - » Email: resources.info@dnrme.qld.gov.au
- Queensland Gasfields Commission: www.gasfieldscommissionqld.org.au/gasfields
- Queensland Law Society – Find a solicitor: www.xls.com.au/For_the_community/Find_a_solicitor
- Office of the Land Access Ombudsman – www.lao.org.au
 - » Phone: 1800 717 550
- Queensland Land Court: www.courts.qld.gov.au/courts/land-court
 - » Phone: (07) 3406 7777 (during business hours)
 - » Email: landcourt@justice.qld.gov.au
- Resolution Institute: www.resolution.institute
 - » Phone: 1800 651 650



Department of Natural Resources, Mines and Energy

www.dnrme.qld.gov.au



A guide to landholder compensation for mining claims and mining leases

For the grant and renewal of mining claims,
mining leases and related access land
in Queensland

April 2019

This publication has been compiled by Land and Mines Policy, Department of Natural Resources, Mines and Energy.

This information should not be relied on as legal advice or as a substitute for legal advice.

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Summary

The purpose of this guide

This guide has been prepared to assist landholders and miners to understand compensation obligations for the grant and renewal of mining claims, mining leases, and related access land. Land owners entitled to compensation include owners of freehold land, *Land Act 1994* lessees, trustees of reserves, and lessees under the *Aboriginal and Torres Strait Land Holding Act 2013*.¹

This guide does **not discuss conduct and compensation agreements (CCAs) that are required to access private land by holders of exploration permits, mineral development licences, authorities to prospect, petroleum leases and other petroleum authorities.**

A CCA may be required before a holder can undertake advanced activities on private land. If you require information on CCAs, you can read the Queensland Government's *A guide to land access in Queensland* at www.dnrme.qld.gov.au

Legal advice

This information should not be relied on as legal advice or as a substitute for legal advice.

You are strongly advised to obtain independent advice from a solicitor before signing any agreement.

The Queensland Government also recommends you obtain advice from your accountant about tax and GST issues related to any compensation payments you receive.

Key concept

As a landholder you are entitled to have compensation determined before a mining claim, mining lease or access for either tenure is granted over the surface of your land.² Compensation is determined through an enforceable compensation agreement between you and the miner or Land Court determination. If agreed, the fully signed compensation agreement must be lodged with the Department.

¹ For the full list, see the “owner” definition in schedule 2 of the *Mineral Resources Act 1989*. Only owners as defined in the *Mineral Resources Act* are entitled to compensation for the grant of a mining claim or lease.

² If there is no surface area included in the mining lease, the landholder may seek a compensation agreement with a mining lease holder if there is damage caused to the surface of the land.

Key terms

The following terms apply in this guide.

Access land means land outside the area of the mining claim or lease that is needed to get to and from the claim or lease.

Authorised activity means an activity that is permitted (or authorised) for the mining claim, mining lease or access land under the *Mineral Resources Act 1989*.

Compensation agreement means an agreement relating to compensation for a mining claim, mining lease or related access land, and lodged with the Department.

Department or DNRME means the Department of Natural Resources, Mines and Energy.

Landholder includes owners of freehold land, *Land Act 1994* lessees, trustees of reserves, and lessees under the *Aboriginal and Torres Strait Land Holding Act 2013*. For the full list of landholders see the definition of "owner" in Schedule 2 of the *Mineral Resources Act 1989*.

Miner means the holder of or applicant for a mining claim or mining lease.

Restricted land means land around particular buildings and areas that cannot be included in a mining claim or mining lease without the written permission of the relevant owner(s) or occupier(s).

Key contacts

You can access further information through:

- Queensland Government 'Business and Industry Portal' www.business.qld.gov.au/industries/mining-energy-water/resources/minerals-coal
- DNRME Resource Community Infoline – phone 13 71 07 or email resources.info@dnrme.qld.gov.au
- Queensland Law Society find a solicitor at www.qls.com.au/For_the_community/Find_a_solicitor
- Queensland Land Court:
Land Court Registry
363 George Street, Brisbane QLD 4000
Phone: (07) 3406 7777 (during business hours)
Email: landcourt@justice.qld.gov.au
Web: www.courts.qld.gov.au/courts/land-court

Mining claims, mining leases and access land

Except in rare circumstances, minerals found in Queensland are not owned by land owners. The Queensland Government owns and manages these resources for the benefit of all Queenslanders.

Mining claims

A mining claim allows small-scale mining operations such as prospecting and hand-mining to take place within its boundaries. If the mining claim is 'prescribed', the miner can use machinery to prospect, explore or mine. A person or company can hold a maximum of two mining claims at once.

A mining claim can be issued for any mineral other than coal, while a prescribed mining claim is only for corundum, gemstones or other precious stones. The miner has exclusive access to the surface of the mining claim area for purposes authorised by the claim while it is in force.

Applicants for a mining claim are not required to have an environmental authority if their activities meet the criteria for a small-scale mining activity. Instead, their activities need to comply with the Small Scale Mining Code. The Code can be downloaded from the Queensland Government's Business Queensland website here.³

Mining leases

A mining lease is a resource authority that allows larger scale mining operations. Mining leases can be issued for any specified mineral including coal or a specific purpose and allow the holders of these authorities to mine using machinery and other activities related to mining (such as constructing a processing plant or installing powerlines). The miner has exclusive access for any purposes authorised by the lease to any surface land included in the mining lease while it is in force.

Mining lease holders are required to operate under an Environmental Authority issued by the Department of Environment and Science.

Access land

When applying for a mining claim or mining lease, the applicant is required to specify how they will get to and from the claim or lease area – this is referred to as the "access" for the claim or lease. An access is needed when the mining claim or lease does not directly adjoin a public road. The access land will apply for the duration of the mining claim or lease (unless the miner applies to the Department to change its location).

In some cases only an access for a mining claim or lease will run over your land, not the claim or lease itself.

The miner does not get exclusive rights to use the access land. Both you and the miner can use the access and cannot adversely affect each other's activities.

The miner may use the access land to:

- transport by road items reasonably necessary to carry out authorised activities
- transport by road any minerals mined by the miner
- construct road transport infrastructure reasonably necessary to allow it to transport the items or mined minerals.

Compensation for the miner's use of the access over your land must be agreed or determined by the Land Court before the mining claim or mining lease can be granted.

³ https://www.dnrm.qld.gov.au/__data/assets/pdf_file/0006/262374/small-scale-mining-code.pdf

Negotiating a compensation agreement

While in force, the miner has exclusive rights to be on the mining claim or lease for authorised purposes, however the owner can enter and use the land with the miner's consent. For land used to access a mining lease or mining claim, the miner must co-exist with the landholder and their activities. It is important to remember these points when negotiating compensation.

Being notified of the mining claim or lease application

The miner must notify landholders of the mining claim or lease application and provide the following documents:

- the mining claim or lease notice
- the application for the mining claim or lease
- for small scale mining activities – a copy of the Small Scale Mining Code
- this guide.

These documents contain important information about your rights to object to the grant of a mining claim or lease and also provide you with details of the activities the miner wants to do. The information in these documents will also be relevant when you start negotiating compensation.

Preparing to negotiate compensation

The miner should contact you about making a compensation agreement. This could be before or after you are formally notified of the application being made. You can also contact the miner directly if you wish, using the details in their application form.

The miner should provide the land owner with details including:

- what surface area will be included in the mining claim or lease
- what activities they plan to carry out on the claim or lease
- where activities will be carried out and how they will affect existing structures and improvements
- when activities will be carried out (including time of the year, day or night, over what time period, etc.).

Miners should consider providing land owners with additional information, such as:

- who will carry out the activities, including the number of workers likely to be involved
- work programs and information about any potential impacts including noise, dust, lights, vibration, impact on water supply or water quality or other impacts
- any safety considerations, proposed emergency plans and important contacts
- what controls the miner has in place regarding access during or after inclement weather (e.g. high rainfall).

A landholder preparing for negotiations with a miner should consider preparing a map of their land and marking the location of key areas and infrastructure. You and the miner may agree that a map needs to be attached to the compensation agreement.

The map could include:

- access points, formed roads and tracks
- gates and fences
- stockyards
- homes and other buildings

- areas or structures of sentimental value (e.g. unused remains of historic homesteads)
- key agricultural areas and infrastructure (e.g. crops, dams, levees, irrigation channels, shade clumps)
- water bores and key watering points or other important infrastructure
- sensitive areas such as vegetation, waterways, erosion prone areas and overland groundwater flow areas
- any plans for expansion or improvement you may have underway
- an indication of when a miner accessing the property would be inconvenient (e.g. avoiding access during harvesting of cropped land or mustering stock).

Standard compensation agreement template

The Department has developed a standard compensation agreement template that you may wish to use when negotiating compensation. The template can be accessed here.⁴

This template agreement has been developed particularly with small scale mining operations in mind, for example mining claims and small mining leases under 20 hectares where the miner does not require exclusive access to the whole area of the mining claim or mining lease.

This template includes provisions for you to agree on compensation (monetary, in-kind or a combination) as well as rules about conduct. The conduct parts of the template agreement cover topics like access tracks, use of infrastructure and machinery, and fencing.

If you have any questions about the template agreement please contact the Resources Community Infoline or seek legal advice.

Negotiating compensation

There are a number of things you can do to get a mutually beneficial agreement. Understanding what you want to get out of the process is the first step, because it helps to choose which approach you should take.

If you would like to include in-kind assistance in your agreement, then direct negotiation with the miner is the best approach because in a direct negotiation you can agree to non-monetary compensation. In-kind assistance might mean that the miner agrees to build a fence line or irrigation system for you, or dig a dam. In order for these obligations to be clear and reduce the risk of disputes, the agreement should also include dates and standards against the agreed items – for example, specify the type of fencing to be used, when it is to be built by, and to which measurements. Being specific helps to prevent misunderstandings and ensure that you get what you agreed on.

Alternatively, the miner may offer you an amount of money through direct negotiation, or you might want to negotiate an amount of money rather than in-kind assistance. It can be hard to know whether you have received a fair offer from the miner, or what value you should put on the parts of your property affected by a mining claim or lease, but there are steps you can take to be better informed.

The agreement you negotiate should compensate you for:

- the loss you suffer because you can no longer use the surface of your land
- any loss of value to the land or the improvements
- any loss caused by the fact you can no longer make use of your land or the improvements on it
- any loss caused because one part of your land is separated from the rest of your land
- any direct losses or expenses that arise as a consequence of the grant or renewal of the mining claim or lease (this does not include what you spend on legal advice)
- all reasonable costs incurred or likely to be incurred in obtaining replacement land of a similar productivity, nature and area or to resettle yourself or to relocate your livestock or possessions on other parts of your land or on the replacement land, where it is necessary to do so
- any special value as a result of the current status and use of the land
- loss of profits.

⁴ <https://www.business.qld.gov.au/Industries/mining-energy-water/resources/landholders/landholder-compensation/approaches>

You're also entitled to an 10% uplift to the compensation amount because it is compulsory for you to participate in the process.

It is important to understand what the minimum amount you are likely to receive is, and use this as a basis for your negotiations. To do this, it is vital to know your land valuation. Information on land valuations is available from the Queensland Government land valuation website here,⁵ or via 13 QGOV (13 74 68). You can also find information about your land value in your latest rates notice from your local council.

In cases where the mining activities are more than small scale mining, getting advice from a registered valuer will be important to help determine how much compensation you are entitled to.

It is important to remember a compensation agreement or determination binds future landholders of the property as well as any new holder of the mining claim or lease in relation to objections that were not withdrawn.

Getting help negotiating

The department has the ability to assist parties in negotiations around compensation. If you have some concerns around the way in which negotiations are occurring or a dispute is emerging, contact the Resource Community Infoline or an appropriate advisor for assistance.

The Land Court also has a panel of independent facilitators who can help you to agree on compensation without a formal hearing. Some of the forms of alternative dispute resolution that are offered are conferences, mediations, and case appraisal. For more information visit the Land Court website.⁶

Timeframes for negotiating compensation

There is no time limit by which compensation must be finalised. You and the miner can continue negotiating until an agreement is reached. Alternatively, either of you may apply to the Land Court to determine compensation (see below).

However, the Minister may refuse to grant the mining claim or lease if compensation has not been agreed or referred to the Land Court within three months of:

- the last day an objection could be made to the grant of the claim or lease (if no objections were lodged) or
- the Land Court's recommendation or instruction about the mining claim or lease in relation to objections that were not withdrawn.

Having the Land Court determine compensation

If you are unable to negotiate an outcome with the miner, or you have decided not to negotiate compensation or require conditions about conduct or access, then the Land Court can determine the monetary compensation you will receive.

Importantly, the Land Court can only award monetary compensation, not in-kind compensation or conditions about conduct or access.

The Land Court determines compensation based on the criteria in the *Mineral Resources Act 1989*, which are outlined above:⁷

You or the miner can apply to the Land Court to have it determine how much compensation you will receive using Form 1 on the Queensland Courts website.⁸ The Court has issued a Practice Direction⁹ about the process to have the Land Court determine compensation for mining claims and mining leases that you should refer to.

⁵ www.qld.gov.au/environment/land/title/valuation

⁶ www.courts.qld.gov.au/courts/land-court/resolving-disputes-without-a-hearing

⁷ Sections 85(5) and (6) outline the criteria for compensation for a mining claim and s281(3) and (4) for mining leases.

⁸ www.courts.qld.gov.au/courts/land-court/forms

⁹ https://www.courts.qld.gov.au/__data/assets/pdf_file/0008/597500/lc-pd-3of2019.pdf

In the Land Court, compensation is not assessed separately and then added together. Rather, the Court will look at what factors are relevant to your situation to make sure the amount of compensation sufficiently accounts for each of the relevant compensation factors.

It is important to provide the Court with evidence to back up the amount of compensation sought. For example, this could include getting a report from a registered valuer about the impacts of the grant of a mining lease on a property and its operations.

For matters that go to the Land Court, a minimum of 10% is added to the final compensation figure because it is compulsory for you to participate in the process.

To give you additional certainty, you can also ask for compensation to be paid upfront for the whole term of the tenure. If you do this you should be aware it may affect negotiations for the sale of the property in the future.

Optional matters for a compensation agreement

There are a number of discretionary matters that could be included in a compensation agreement.

These include:

- the compensation agreement can also apply to the renewal of the mining claim or mining lease
- a process by which the agreement may be reviewed or amended by the parties (e.g. if the extent of the authorised activities change)
- dispute resolution provisions in the case of a dispute between the parties, e.g. the use of mediation or an arbitrator.

Conduct conditions in a compensation agreement

Terms in a compensation agreement about conduct are not conditions of the mining claim or lease so they are not able to be enforced by the Department. However, you can still include conduct conditions in your agreement.

Landholders and miners may negotiate what conduct is and is not permitted on the mining claim, mining lease or related access land. This may include entry times, speed limits, and specifying activities that will not occur without notifying the landholder first. The Department's template compensation agreement contains some conduct conditions that may be suitable.

The Land Court is not able to require conduct conditions when determining compensation in a Court hearing.

Filing the agreement with the Department

In order to be valid the signed compensation agreement must be filed with the Department through the relevant hub or your nearest district office.¹⁰

Where relevant, the Land Court will provide its compensation determination directly to the Department and the parties.

¹⁰ Contact details for hubs and district offices can be found at <https://www.dnrme.qld.gov.au/mining-resources>.

After the mining claim or mining lease is granted

Notification of grant

The mining claim or mining lease holder will notify you once the claim or lease has been granted. The miner has 20 business days to notify you from the date the Department tells them about the grant.¹¹

Entry to land

The miner can access the mining claim or mining lease after the tenure has been granted. The miner is not required to notify you of their entry to your land unless your compensation agreement requires it.

Additionally, you can only enter the area of the mining claim or mining lease with the miner's permission; this consent may be given in your compensation agreement.

If the miner has an existing tenement over the land, such as an exploration permit or mineral development licence, they may be able to continue to access the land under the land access framework until the mining claim or lease is granted. Any entry under an exploration permit or mineral development licence does not authorise mining activities to take place until a mining claim or lease has been granted.

Complying with the compensation agreement

The miner is required to comply with your compensation agreement or Land Court determination.

If you think the miner isn't complying with the compensation agreement or determination, your first step should be to contact them and discuss it together. It may be there has been a simple misunderstanding and the miner agrees to fix the problem.

Your compensation agreement may include a dispute resolution clause that sets out the process to follow in the event of disagreement between the parties. If it does then follow that process to see if the issue can be resolved.

You and the miner may also agree to alternative dispute resolution to resolve the issue.

If your agreement does not include a dispute resolution process or you want assistance from the Department, you can contact the Department's Resource Community Infoline¹². The Department may be able to assist you by organising a conference with the miner to see if the issue can be resolved.

Finally, you can also apply to the Land Court to have it enforce the terms of the compensation agreement.¹³

Compliance action for non-payment of compensation

It is a condition of the mining claim or lease that compensation is paid in accordance with your agreement or determination. This means the agreed amount of compensation has to be paid when and how your agreement or Land Court determination requires.

An example of a miner not complying with a compensation requirement could be them not paying a yearly instalment of compensation (if you've agreed for it to be paid yearly, not up front) or them not installing a fence that was agreed as compensation.

If you are not receiving the compensation you should be under a compensation agreement, or determination, and discussing it with the miner does not solve the problem, then you should contact the Department's Resource Community Infoline. The Department will investigate and may take compliance action against the miner.

¹¹ Sections 74(5) and (6), s80(3) and (4) and s288 of the *Mineral Resources Act 1989*

¹² www.dnrme.qld.gov.au/mining-resources/contacts/resource-community-Infoline

¹³ Section 363(1)(g) *Mineral Resources Act 1989*

Material change in circumstances

A material change in circumstances may affect the amount of compensation payable. This may occur if the original compensation agreement or determination was based on a mining method that causes minimal disturbance to the land, and the miner is now going to mine in a way that causes greater disturbance. An example of this sort of change would be if an underground mining operation has now changed to open cut mining. In some cases the level of disturbance could decrease, e.g. from open cut to mostly underground mining, and so the miner may wish to renegotiate a lower amount of compensation.

The parties may in good faith jointly agree to amend the compensation agreement to account for the change. An updated agreement must be in writing, signed, and filed with the Department.

Alternatively, if the parties are unable to agree to revising the compensation agreement, either party may apply to the Land Court for a determination.

The Land Court will review the original compensation only to the extent it is affected by the change and make a decision.

Compensation for renewals of mining claims or leases

Getting notified of the renewal application

The miner **must** notify you within five business days of them applying to renew their mining claim or mining lease. You will receive a copy of the mining claim or lease renewal application, a copy of your existing compensation agreement or determination, and a copy of this guide.

Mining claim or lease holders can apply to renew their claim or lease up to 12 months before the current term expires.

Compensation for renewed mining claims or leases

Some compensation agreements also apply to the renewed term of a mining claim or lease. If this is the case you and the miner do not need to negotiate a new agreement.

However, if your compensation agreement was only for one term of the claim or lease or the subject of a Land Court determination, compensation will need to be negotiated again.

Once you've been notified that a renewal application has been made, you should think about whether your existing compensation agreement is working for you and if you'd be happy to continue with the same level of compensation for the next term of the mining claim or mining lease. This may involve making contact with the miner to discuss your future plans for the property and their future plans for mining.

If you're happy with your existing compensation agreement you should notify the miner that you don't wish to negotiate a new agreement. The miner should give you a new agreement to sign on the same terms.

If you want to negotiate a new compensation agreement, then start thinking about what compensation you think is suitable. If the miner hasn't contacted you it would be a good idea to contact the miner as soon as possible to start discussions and negotiations.

There is no time limit by which compensation must be finalised. You and the miner can continue negotiating until an agreement is reached. Alternatively, either of you may apply to the Land Court to determine compensation.

However, if compensation has not been agreed or referred to the Land Court within three months after the expiry date for the mining claim or lease then the Minister may refuse to renew it.

The miner is able to continue accessing their mining claim or lease to conduct authorised activities unless the Minister refuses the renewal application. This is the case even if the expiry date for the claim or lease has passed and a new agreement has not been filed with the Department.

Restricted land

Land owners and occupiers have rights when it comes to restricted land – you are free to consent (or not) to the grant of a mining claim or lease over the surface of restricted land.

Restricted land protects certain areas from being included in the surface of a mining claim or lease without land owner or occupier consent.¹⁴ There is no obligation on the land owner or occupier to give this consent. If consent is given, it cannot be withdrawn. Consent to these areas being included can be given at any time.

The protections offered by restricted land apply to land even if the relevant building or improvement is not located within the boundaries of the mining claim or mining lease.

¹⁴ For the full list of owners and occupiers who need to give consent, see section 69 and schedule 1 of the *Mineral and Energy Resources (Common Provisions) Act 2014*.

What is restricted land?

For mining claims and mining leases restricted land is the area within **200 metres** of:

- a permanent building used for the purpose of a residence, business, childcare centre, hospital, library, or place of worship
- a permanent building used for a community, sporting or recreational purpose
- an area used as a school, or for 'environmentally relevant activities' that are aquaculture, intensive animal feedlotting, pig keeping or poultry farming (as within the meaning of the Environmental Protection Regulation 2008, schedule 2, part 1).

Restricted land is also the area within **50 metres** of:

- an artesian well, bore, dam or water storage facility
- a principal stockyard
- a cemetery or burial place.

Restricted land is set at the point in time when the application for the mining claim or mining lease is lodged.

Land occupied by an interconnecting water pipeline that is providing water supply to or between an artesian well, bore, dam, water storage facility or principal stockyard is not in itself considered restricted land. However, land occupied by an interconnecting water pipeline is restricted land where it is connected to an artesian well, bore, dam, water storage facility or principal stockyard and is within the **50 metre** restricted land area that would normally apply to this key agricultural infrastructure.

Dispute resolution

If parties are unable to reach an agreement on whether a certain building, structure or area is restricted land, either party can apply to the Land Court for an order declaring whether particular land is restricted land.

If you are unable to agree on compensation for including restricted land within a mining lease, either party can apply to the Land Court for it to determine compensation.



Department of Natural Resources, Mines and Energy

www.dnrme.qld.gov.au

Compensation Agreement

for small-scale mining operations

Mineral Resources Act 1989

This document is an example compensation agreement which contains provisions parties may wish to consider when negotiating compensation for a small-scale mining claim, mining lease or associated access under the *Mineral Resources Act 1989 (MRA)*. Parties can use this document as a template for a compensation agreement.

This is an example document only.

It is intended only to be a starting point for negotiations and is no substitute for obtaining professional advice.

Each party should seek independent legal advice before signing any agreement.

In order to finalise this agreement, the parties must:

1. fill out the details of each party in **clause 1**;
2. specify the land that this agreement relates to in **clause 2**;
3. specify the type and number of the tenement that the land relates to in **clause 3**;
4. detail the activities authorised under the tenement in **clause 4**;
5. indicate the term of the agreement by marking the appropriate box in **clause 5**;
6. provide details of the respective contact person for each party in **clause 6**;
7. identify the applicable section of the MRA by marking the appropriate box in **clause 7**;
8. negotiate and agree the amount of compensation and insert the agreed amount in **clause 8**;
9. negotiate and agree the additional conduct rules (if any) which will apply to the mining activities by marking the boxes next to the agreed conditions and inserting relevant information where required (strike out any that do not apply);
10. include a map or plan of the land and tenement area with specific features marked as required in **schedule 1**;
11. include a copy of the current mining program or work program in **schedule 2**;
12. negotiate and agree any further matters which are to be covered by this agreement; and
13. once the terms are agreed, sign on **page 11** using the appropriate execution block for each party and insert the date that the last party signed the agreement on **page 1**.

The Miner must lodge the signed agreement with the Department of Natural Resources, Mines and Energy (**Department**) before a mining claim or mining lease can be granted or renewed.

Compensation Agreement

Dated:

1 Parties	<p>(1) The parties to this Agreement are:</p> <p>Landholder(s): _____ ABN (if applicable):_____</p> <p>Address: _____</p> <p>Postal address: _____</p> <p>Telephone: _____ Mobile: _____</p> <p>Email: _____</p> <p>Miner(s): _____ ABN (if applicable):_____</p> <p>Address: _____</p> <p>Postal address: _____</p> <p>Telephone: _____ Mobile: _____</p> <p>Email: _____</p> <p><i>[Drafting note: legal advice should be sought in relation to the legal ramifications of joint and several liability.]</i></p> <p>(2) The Miner warrants that it is, or has applied to be, the holder of the Tenement and where more than one person holds the Tenement, this Agreement binds them jointly and each of them individually.</p> <p>(3) The Landholder warrants that it is the owner (as defined in the MRA) of the Land and where more than one person is the Landholder, this Agreement binds them jointly and each of them individually.</p> <p>(4) A party that is a trustee is bound both personally and in its capacity as trustee.</p> <p>(5) A party may perform its obligations and exercise its rights under this Agreement by its Associates and must ensure that those persons comply with this Agreement.</p>
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<p>2 Land that the Agreement relates to</p> <p><i>[Drafting note: if the Agreement is for part of the Land only, insert e.g. "that part of the land described below as shown on the plan," and attach a plan.]</i></p>	<p>(1) The Landholder is the owner (as defined in the MRA) of the Land described below:</p> <p>Description: _____</p> <p>Lot: _____ Plan: _____</p> <p>(2) <input type="checkbox"/> A plan of the Land is included in Schedule 1.</p>
<p>3 Tenement</p> <p><i>[Drafting note: select all relevant matters and insert details of the tenement, such as an application number.]</i></p>	<p>(1) <input type="checkbox"/> The Miner holds or has applied for:</p> <p>(a) <input type="checkbox"/> mining lease number/s _____; or</p> <p>(b) <input type="checkbox"/> mining claim number/s _____.</p> <p>(2) <input type="checkbox"/> The Miner holds or has applied for Access associated with:</p> <p>(a) <input type="checkbox"/> mining lease number/s _____; or</p> <p>(b) <input type="checkbox"/> mining claim number/s _____.</p>
<p>4 Activities</p> <p><i>[Drafting note: For mining claims, the MRA requires that the Miner provide the Landholder with a copy of the Small Scale Mining Code or Environmental Authority. The Miner should also provide a copy of the Mining Program, which will detail the mining activities authorised under the mining lease or the work program which will detail the activities authorised under the mining claim.]</i></p>	<p>(1) The Miner will be carrying out Activities in accordance with the:</p> <p>(a) <input type="checkbox"/> Small Scale Mining Code (mining claims that meet eligibility criteria); or</p> <p>(b) <input type="checkbox"/> Environmental Authority (other mining claims and all mining leases), a copy of which has been provided to the Landholder.</p> <p>(2) The Miner has provided the Landholder with a copy of its proposed:</p> <p>(a) <input type="checkbox"/> Work Program (mining claims); or</p> <p>(b) <input type="checkbox"/> Mining Program (mining leases), as at the date of this Agreement, a copy of which is included in Schedule 2.</p>
<p>5 Term</p> <p><i>[Drafting note: parties to agree term of Agreement.]</i></p>	<p>This Agreement operates for:</p> <p>(1) <input type="checkbox"/> the term of the Tenement; or</p> <p>(2) <input type="checkbox"/> the term of the Tenement and the period of any renewal.</p>
<p>6 Contact Person</p>	<p>The Contact Person for each party is:</p> <p>Landholder</p> <p>Name: _____</p> <p>Address: _____ _____</p> <p>Telephone: _____ Mobile: _____</p> <p>Email: _____</p>

	<p>Miner</p> <p>Name: _____</p> <p>Address: _____ _____</p> <p>Telephone: _____ Mobile: _____</p> <p>Email: _____</p>
<p>7 Scope of Agreement</p> <p><i>[Drafting note: parties to select the appropriate section. For a mining claim, this will be section 85. For a mining lease this will be section 279.]</i></p>	<p>The parties acknowledge that this Agreement is entered into as a compensation agreement pursuant to:</p> <p>(1) <input type="checkbox"/> section 85 of the MRA (mining claim/ mining claim Access); or</p> <p>(2) <input type="checkbox"/> section 279 of the MRA (mining lease/ mining lease Access).</p>
<p>8 Consent to Restricted Land</p> <p><i>[Drafting note: this clause may be used if the Landholder agrees to the mining lease being granted over the surface of restricted land under section 238 of the MRA. The categories of restricted land (e.g. dam, stock yard or building (refer to section 68 of the Minerals and Energy Resources (Common Provisions) Act 2014 (Qld) for a full list of categories)) should be listed and GPS coordinates or a map provided.]</i></p>	<p><input type="checkbox"/> The Landholder consents to the grant of the mining lease over the surface of the following Restricted Land areas under section 238 of the MRA:</p> <p>(1) _____</p> <p>(2) _____</p> <p>(3) _____</p> <p>(4) _____</p> <p>(5) _____</p>
<p>9 Compensation</p> <p><i>[Drafting note: Parties to consider amount and mechanics of monetary compensation as well consider whether any non-monetary compensation is also agreed.]</i></p>	<p>(1) The Miner agrees to pay the Landholder the amount of:</p> <p>(a) <input type="checkbox"/> \$_____ (for the Term of the agreement) within 10 Business Days of the grant of the Tenement; or</p> <p>(b) <input type="checkbox"/> an annual payment of \$_____ to be paid on the anniversary of the grant of the Tenement each year during the Term,</p> <p>in full and final satisfaction of the Miner's obligation to pay compensation to the Landholder under the MRA for the grant or renewal of the Tenement.</p> <p>(2) Nothing in this Agreement limits the rights of the parties to seek to amend compensation in accordance with the MRA.</p>
<p>10 Public liability insurance</p> <p><i>[Drafting note: if parties agree that no insurance is required, specify "nil".]</i></p>	<p>(1) The Miner must effect and maintain public liability insurance in respect of its Activities on the Land for the amount of \$_____ for the Term.</p> <p>(2) If requested by the Landholder, the Miner must provide the Landholder with evidence of the insurance.</p>

<p>11 Obligations of parties</p>	<p>(1) The parties agree to:</p> <ul style="list-style-type: none"> (a) comply with the Additional Conduct Rules set out in clause 13; and (b) use all efforts to cooperate with respect the privacy of and establish and maintain good relations with each other. <p>(2) The Landholder must not, and must ensure that its Associates do not:</p> <ul style="list-style-type: none"> (a) enter the Tenement unless the Miner has provided consent; and (b) interfere with or cause or permit to be interfered with: <ul style="list-style-type: none"> (i) the Activities; and (ii) the Miner's rights to Access the Land and carry out the Activities, <p>except as permitted by this Agreement or the MRA.</p>
<p>12 Continued use of the Land</p> <p><i>[Drafting note: if parties are in agreement as to the Landholder's continued use of parts of the land, this box should be ticked.]</i></p>	<p>(1) <input type="checkbox"/> The Miner:</p> <ul style="list-style-type: none"> (a) consents to the Landholder continuing its existing _____ use on those parts of the Land which are not required for the Activities; and (b) will notify the Landholder when any part of the Land is available, or when it requires a part of the Land to be returned for its Activities. <p>(2) The Landholder agrees that its use of the Land is at its own risk.</p>
<p>13 Additional Conduct Rules</p> <p><i>[Drafting note: these rules are examples of conduct rules that may be agreed between the parties.</i></p> <p><i>These are examples only, and may not be appropriate depending on the specific circumstances of Tenement or Access. They have been drafted with smaller mining lease operations in mind.</i></p> <p><i>Parties may wish to agree different or additional conditions, or not agree to any conduct conditions, as the circumstances may require.</i></p> <p><i>Unchecked boxes indicate that the Parties agree Additional Conduct Rules do not apply to this Agreement.]</i></p>	<p>The parties agree that where indicated the following Additional Conduct Rules <i>will apply</i> to the Parties and their Associates:</p> <p>(1) _____</p> <p>(2) _____</p> <p>(3) _____</p> <p>(4) _____</p> <p>(5) _____</p> <p>(6) _____</p> <p>Access and roads</p> <p>The Miner will be responsible for building and maintaining any additional access roads, gates and grids required on or to Access the Land and will consult with the Landholder about the preferred location of these items. <input type="checkbox"/></p> <p>The Miner must provide the Landholder with details identifying each person and vehicle accessing and being brought onto the Land. <input type="checkbox"/></p>

	<p>If the Landholder requests, the Miner must leave for the Landholder's use any roads and tracks that the Miner has improved or constructed unless the Miner is otherwise required by the MRA or any other law or approval to remove them.</p> <p>The Miner must leave all gates in the position found unless otherwise advised by the Landholder.</p> <p>The Miner and Landholder have agreed that the Miner must report to the Landholder within the following agreed timeframes of _____ when access to the Land occurs.</p>	<input type="checkbox"/>
	Infrastructure, machinery, equipment	<input type="checkbox"/>
	<p>The Miner and Landholder have agreed that the Miner will install and maintain fencing to exclude people and livestock from areas the Miner is using for accommodation, equipment / storage, campsite/s, workshop/s, machinery shed/s and the Activities.</p> <p>At the end of the Term, any fencing constructed by the Miner must be:</p> <p>removed <input type="checkbox"/> retained <input type="checkbox"/>.</p> <p>The Miner will not erect fences or build a grid or gate without first consulting with the Landholder regarding the proposed location of the structure and obtaining the Landholder's consent.</p> <p>The Miner must safely store and secure all equipment, machinery and materials or consumables it has brought within the boundary of the Tenement.</p> <p>The Miner must maintain all their infrastructure, equipment and machinery in a safe condition and in a good and substantial state of repair.</p>	<input type="checkbox"/>
	Camp and facilities	<input type="checkbox"/>
	<p>The Miner must not bring any firearms on the Land without the prior written consent of the Landholder.</p> <p>The Miner must not bring dogs on the Land, or hunt, shoot or fish on the Land without the Landholder's prior written consent</p> <p>Unless authorised by a law or permit, the Miner must not draw water from any of the constructed or natural watering points on the Land without the Landholder's prior written consent.</p> <p>The Miner must not light a fire without the prior consent of the Landholder.</p>	<input type="checkbox"/>
	Operations	<input type="checkbox"/>
	<p>The Miner must conduct all operations so as to cause as little inconvenience and hindrance to the Landholder's infrastructure already in place such as dams, fences, airstrips, buildings, yards and access roads.</p> <p>The Miner must drive all vehicles at no more than _____ kilometres per hour and on established tracks and roads and comply with the relevant road rules as well as the directions of the Landholder while on the Land.</p>	<input type="checkbox"/>

[Drafting note: if this condition applies, specify how rubbish should be disposed of, e.g. buried at least 2 metres underground or removed from the Land.]

The Miner must ensure that all rubbish and waste is stored securely so it does not leave the boundaries of the Tenement. The Miner must ensure rubbish and waste is disposed of by _____.

The Miner must ensure that no waste is directly or indirectly released into any watercourse, waterway, groundwater, wetland or lake on the Land.

The Miner must not allow more than _____ number of people on the Tenement at any one time.

In the event the Miner requires more than _____ people on the Tenement at any one time, it will notify the Landholder.

Weeds and biosecurity

The Miner must refrain from and take all reasonable precautions against the transportation of restricted matter and prohibited matter such as noxious weeds and seeds, including undertaking wash down procedures as notified by the Landholder.

The Miner must adhere, where practicable, to the Landholder's Biosecurity Management Plan relevant to the Land, a copy of which is included in Schedule [#].

[Drafting note: if the parties agree to this conduct rule applying, a copy of the Biosecurity Management Plan as at the date of the agreement should be scheduled to the Agreement and the relevant schedule number noted in this clause.]

Property management requirements

The Miner must notify the Landholder of any safety concerns or of any damage to any of the Landholder's crops, livestock, buildings, structures, plant, equipment, works, pipes, bores or other improvements on or under the Land that the Miner or its Associates discover.

The Landholder must notify the Miner of any activity that may be a safety concern, e.g. shooting activity, prior to the activity taking place on the Land.

The Landholder discloses to the Miner the following issues in relation to the management of the Land that the Miner should be aware of when conducting the Activities:

(1)

(2)

(3)

Other matters

The parties agree on the following further conduct matters:

(1)

(2)

(3)

<p>14 Special conditions / other agreed terms</p> <p><i>[Drafting note: the parties may wish to agree further matters or amendments to the provisions specified in this Agreement. These should be included in this clause.]</i></p>	<p>(1) _____</p> <p>_____</p> <p>(2) _____</p> <p>_____</p> <p>(3) _____</p> <p>_____</p> <p>(4) _____</p> <p>_____</p> <p>(5) _____</p> <p>_____</p> <p>(6) _____</p> <p>_____</p>
<p>15 Indemnity</p>	<p>The Miner indemnifies and will keep indemnified the Landholder from and against any Claim made against or properly incurred by the Landholder, except to the extent the Claim:</p> <p>(1) is settled by compensation or other payments contemplated in this Agreement; or</p> <p>(2) is caused or contributed to by the negligence or act or omission of the Landholder or its Associates.</p>
<p>16 Transfer of Land or Tenement</p>	<p>If a party transfers its interest in the Land or Tenement, it must:</p> <p>(1) promptly notify the other party;</p> <p>(2) provide the incoming party with a copy of this Agreement; and</p> <p>(3) ensure the incoming party executes a deed agreeing to be bound by the terms of this Agreement.</p>
<p>17 Dispute resolution</p>	<p>(1) All disputes under this Agreement must be resolved in accordance with this clause 17.</p> <p>(2) A party may give notice to the other party that a dispute exists, describing the dispute.</p> <p>(3) The Contact Person for the Landholder and the Contact Person for the Miner must in the first instance use reasonable endeavours to resolve the dispute.</p> <p>(4) If the parties are unable to resolve the dispute in accordance with clause 17(3), the parties may appoint a mutually agreed mediator to mediate the dispute on agreed terms and in the absence of agreement either party may apply to the Queensland Law Society for the appointment of a mediator and terms of mediation.</p> <p>(5) If the dispute is not resolved within 20 Business Days, either party may seek to resolve the dispute in a court of competent jurisdiction.</p> <p>(6) Notwithstanding the existence of any dispute, each party must continue to comply with the terms of this Agreement.</p>

<p>18 Confidentiality</p> <p><i>[Drafting note: this clause is optional.]</i></p>	<ul style="list-style-type: none"> (1) The parties acknowledge that the existence and terms of, and the identity of the parties to, this Agreement are strictly confidential (Confidential Information). (2) Except as stated in this Agreement, each party must not permit any of its officers, employees, agents, contractors or related bodies corporate to disclose any Confidential Information to any person, other than its professional advisers or as required by law, without the prior written consent of the party to whom the Confidential Information relates. (3) Despite subclause (2), the parties: <ul style="list-style-type: none"> (a) acknowledge that this Agreement will be lodged with the Department as required by the MRA; and (b) give their consent for this Agreement to be disclosed to bona fide potential purchasers of the Tenement or the Land. (4) This clause operates for the benefit of all parties and continues despite termination of the Agreement.
<p>19 Notices</p>	<ul style="list-style-type: none"> (1) A notice under this Agreement must be in writing and must be sent by prepaid priority post, email or delivered by hand to the relevant contact person listed in clause 6. (2) In the absence of reasonable proof to the contrary, a notice will be deemed to be given: <ul style="list-style-type: none"> (a) if sent by post, when in the ordinary course of the post it would be delivered; (b) if sent by email before 5pm on a Business Day at the place of receipt, on the day it is sent and otherwise on the next Business Day at the place of receipt; or (3) if otherwise delivered before 5pm on a Business Day at the place of delivery, upon delivery, and otherwise on the next Business Day at the place of delivery.
<p>20 GST</p>	<ul style="list-style-type: none"> (1) In this clause: <ul style="list-style-type: none"> (a) GST means GST as defined in <i>A New Tax System (Goods and Services Tax) Act 1999</i> as amended (GST Act) or any replacement or other relevant legislation and regulations; and (b) words or expressions used in this clause which have a particular meaning in the GST law (as defined in the GST Act), any applicable legislative determinations and Australian Taxation Office public rulings, have the same meaning, unless the context otherwise requires. (2) Unless GST is expressly included, the consideration to be paid or provided under any other clause of this Agreement for any supply made under or in connection with this Agreement does not include GST. (3) To the extent that any supply made under or in connection with this Agreement is a taxable supply, the GST exclusive consideration to be paid or provided for that taxable supply is increased by the amount of any GST payable in respect of that taxable supply and that amount must be paid at the same time as the GST exclusive consideration is to be paid or provided. (4) A party's right to payment under subclause (3) is subject to a valid tax invoice being delivered by the supplier to the recipient of the taxable supply. (5) To the extent that a party is required to reimburse or indemnify another party for a loss, cost or expense incurred by that other party, that loss,

	<p>cost or expense does not include any amount in respect of GST for which that other party is entitled to claim an input tax credit.</p> <p>(6) To the extent that any consideration to be paid or provided under this Agreement represents a decreasing or increasing adjustment because of an adjustment event in relation to a taxable supply:</p> <ul style="list-style-type: none"> (a) the supplier must notify the recipient of the refund, credit or further amount payable on account of GST by the supplier issuing to the recipient an adjustment note (or a cancellation note together with a tax invoice) within 5 Business Days of becoming aware of the adjustment event; and (b) the supplier must provide a refund or credit to the recipient, or the recipient must pay a further amount to the supplier, as appropriate on account of GST within 10 Business Days of receipt of the adjustment note or tax invoice.
<p>21 General</p>	<ul style="list-style-type: none"> (1) This Agreement contains the entire agreement, arrangement and understanding between the parties on everything connected with the subject matter of this Agreement and supersedes any prior agreement, arrangement or understanding on anything connected with that subject matter. (2) A party may not assign or otherwise deal with this Agreement without the prior written consent of the other party, which consent must not be unreasonably withheld. (3) This Agreement may be executed in any number of counterparts. Each counterpart is an original but the counterparts together are one and the same agreement. (4) The law of Queensland governs this Agreement and the parties submit to the non-exclusive jurisdiction of the courts of Queensland and of the Commonwealth of Australia.
<p>22 Definitions and interpretation</p>	<ul style="list-style-type: none"> (1) In this Agreement, unless the context otherwise requires: <ul style="list-style-type: none"> (a) headings do not affect the meaning or interpretation; (b) the singular includes the plural and vice versa; (c) all dollar amounts refer to Australian currency; (d) a party includes its executors, administrators, liquidators, successors and permitted assigns; (e) if any expression is defined, other grammatical forms of that expression have corresponding meanings; (f) if a day on or by which an act is to be done is not a Business Day, the act may be done the next Business Day; and (g) a reference to any legislation includes all subordinate legislation made under it and any legislation amending, consolidating or replacing it. (2) Activities means the activities that the Miner is authorised to carry out under the Tenement. (3) Access means the area of Land outside of the Tenement approved by the Minister as the way the Miner can access the Tenement. (4) Additional Conduct Rules means those rules specified as applying to the parties in clause 13. (5) Agreement means this compensation agreement between the Landholder and the Miner, including any schedule to it. (6) Associates:

	<p>(a) in respect of the Landholder, includes that person's family, employees, agents, contractors and other invitees; and</p> <p>(b) in respect of the Miner, includes that person's employees, agents, contractors and other invitees.</p>
(7)	Business Day means a day that is not a Saturday, Sunday or any other day which is a public holiday or a bank holiday in the place where an act is to be performed or a payment is to be made.
(8)	Claim includes any claim, demand, action, suit or proceeding in respect of any Loss .
(9)	Contact Person for the Miner or the Landholder means the person specified in clause 6.
(10)	Environmental Authority means, if applicable, the environmental authority issued to the Miner by the Department of Environment and Science.
(11)	Land means the land described in clause 2, a map of which is in Schedule 1.
(12)	Landholder means the person described in clause 1.
(13)	Loss means any cost, damage or loss suffered or incurred by the Landholder arising from the Miner's conduct on the Land.
(14)	Miner means the person described in clause 1.
(15)	MRA means the <i>Mineral Resources Act 1989 (Qld)</i> .
(16)	Restricted Land has the meaning given in section 68 of the <i>Minerals and Energy Resources (Common Provisions) Act 2014 (Qld)</i> .
(17)	Small Scale Mining Code means the code published by the Department of Natural Resources, Mines and Energy.
(18)	Tenement means the tenement described in clause 3.
(19)	Term means the duration of this Agreement as stated in clause 5.

Executed as an agreement by

[Drafting note: select execution block from below options for each party.]

The Miner**OPTION 1 – IF PARTY IS AN INDIVIDUAL**

Signed by [name of individual] in the presence
of:

Signature of witness

Signature of individual

Date

Name and address of witness (BLOCK LETTERS)**OPTION 2 – IF SIGNING AS AUTHORISED REPRESENTATIVE OF A PARTY THAT IS A COMPANY**

Signed for and on behalf of [Company name]
[ACN number] by its authorised representative in
the presence of:

Signature of witness

Signature of authorised representative

Date

Name and address of witness
(BLOCK LETTERS)

Name of authorised representative
(BLOCK LETTERS)**OPTION 3 – IF PARTY IS COMPANY WITH SOLE DIRECTOR AND SOLE COMPANY SECRETARY**

Executed by [insert company name] [insert ACN]
in accordance with section 127 of the *Corporations
Act 2001*:

Name of sole director and sole company secretary
(BLOCK LETTERS)

Signature of sole director and sole company
secretary

Date**OPTION 4 – IF PARTY IS A COMPANY**

Executed by [insert company name] [insert ACN]
in accordance with section 127 of the *Corporations
Act 2001*:

Director/company secretary

Director

Name of director/company secretary
(BLOCK LETTERS)

Name of director
(BLOCK LETTERS)

The Landholder

OPTION 1 – IF PARTY IS AN INDIVIDUAL

Signed by [name of individual] in the presence of:

Signature of witness

Signature of individual

Date

Name and address of witness (BLOCK LETTERS)

OPTION 2 – IF SIGNING AS AUTHORISED REPRESENTATIVE OF A PARTY THAT IS A COMPANY

Signed for and on behalf of [Company name]
[ACN number] by its authorised representative in
the presence of:

Signature of witness

Signature of authorised representative

Date

Name and address of witness
(BLOCK LETTERS)

Name of authorised representative
(BLOCK LETTERS)

OPTION 3 – IF PARTY IS COMPANY WITH SOLE DIRECTOR AND SOLE COMPANY SECRETARY

Executed by [insert company name] [insert ACN]
in accordance with section 127 of the *Corporations
Act 2001*:

Name of sole director and sole company secretary
(BLOCK LETTERS)

Signature of sole director and sole company
secretary

Date

OPTION 4 – IF PARTY IS A COMPANY

Executed by [insert company name] [insert ACN]
in accordance with section 127 of the *Corporations
Act 2001*:

Director/company secretary

Director

Name of director/company secretary
(BLOCK LETTERS)

Name of director
(BLOCK LETTERS)

Schedule 1 – Map

Schedule 2 – Work Program / Mining Program



Business Queensland (<https://www.business.qld.gov.au>)

[Home](#) > [Industries](#) > [Mining, energy and water](#) > [Mining and resources](#) > [Minerals and coal](#) >
[Accessing private land for resource activities](#) > [Arbitration process for conduct and compensation agreements](#)

Arbitration process for conduct and compensation agreements

Arbitration is a process where parties to a dispute choose an independent third party (known as an arbitrator) to resolve the dispute.

It is one of the options available under the [statutory negotiation process](#) (<https://www.business.qld.gov.au/industries/mining-energy-water/resources/minerals-coal/accessing-private-land/landholder-agreements>) for conduct and compensation agreements.

This information outlines the arbitration process. You can find more details in the [guide to land access in Queensland \(PDF, 1.8MB\)](#) (https://www.dnrme.qld.gov.au/_data/assets/pdf_file/0018/1442223/guide-to-land-access-in-queensland-2019.pdf) or the [Mineral and Energy Resources \(Common Provisions\) Act 2014](#) (<https://www.legislation.qld.gov.au/view/html/inforce/current/act-2014-047>).



Key points to remember

- Arbitration is a voluntary process – both parties need to agree to it.
- The arbitrator needs to be independent of both parties.
- Decisions are legally binding.
- You can be legally represented in arbitration – we suggest you seek legal assistance before entering arbitration.

Reasons for choosing arbitration

Depending on your circumstances, arbitration can offer a number of benefits:

- The process is flexible and can be tailored to suit the needs of participants.
- Costs can be lower than court proceedings (see below).
- Outcomes can generally be achieved faster than for court proceedings.
- Decisions are legally binding and final, providing certainty for all participants.
- Decisions are confidential, unless the parties agree otherwise.

Alternatives to arbitration

If you don't agree to arbitration, the matter may be referred to the Land Court for determination. In some circumstances, non-binding alternative dispute resolution under the statutory negotiation process may then be used.

Read the [guide to land access in Queensland \(PDF, 1.8MB\)](#)

(https://www.dnrme.qld.gov.au/data/assets/pdf_file/0018/1442223/guide-to-land-access-in-queensland-2019.pdf) for details.

Costs of arbitration

Costs of arbitration vary according to the:

- complexity of the matter
- willingness of parties to have the matter settled
- legal representation and advice that is needed.

Overall costs are generally lower than for court proceedings, as they can be contained by negotiating such things as:

- timeframes for submissions
- size of submissions
- which aspects of the matter will be included or excluded
- how many meetings are to be held
- whether meetings will be in person or online.

Who pays the costs?

Arbitrator's costs

If you participated in an alternative dispute resolution process (ADR) as part of the [statutory negotiation process](#) (<https://www.business.qld.gov.au/industries/mining-energy-water/resources/minerals-coal/accessing-private-land/landholder-agreements>), then the arbitrator's fees and expenses are shared equally between the parties unless:

- the parties agree otherwise
- the arbitrator decides otherwise.

If you didn't participate in an ADR process, then the resource company pays for the arbitrator.

Other costs

Each party is responsible for their own costs (including the cost of legal representation) unless:

- the parties agree otherwise
- the arbitrator decides otherwise.

Steps in the arbitration process

Arbitration election notice

To start an arbitration process, the landholder or resource authority holder provides an arbitration election notice (<https://www.business.qld.gov.au/industries/mining-energy-water/resources/minerals-coal/authorities-permits/forms#land>) to the other party. The election notice must state:

- details of the matters in dispute
- name of the proposed arbitrator (who is independent of both parties)
- the following conditions
 - if a party accepts the request for arbitration, neither party can make an application to the Land Court for a determination of the dispute
 - the parties are liable to pay the costs of the arbitration as prescribed in section 91E of the *Mineral and Energy Resources (Common Provisions) Act 2014*
 - the party receiving the arbitration election notice is not required to agree to enter into arbitration
 - parties are able to be legally represented in an arbitration.

Both parties have to agree to attend arbitration before the process can proceed.

Choosing an arbitrator

There are number of organisations that can help you find an accredited arbitrator, including the Queensland Law Society (<https://www.qls.com.au/Home>) or the Resolution Institute (<https://www.resolution.institute/>).

Appointment of arbitrator

If the other party agrees to the proposed arbitrator, the parties can appoint the arbitrator within 10 business days.

If the parties don't agree to the proposed arbitrator, the party who gave the arbitration election notice must ask either the [Queensland Law Society](https://www.qls.com.au/Home) (<https://www.qls.com.au/Home>) or the [Resolution Institute](https://www.resolution.institute/) (<https://www.resolution.institute/>) to appoint one.

Arbitrator's decision

Once appointed, the arbitrator has 6 months to issue their decision.

The decision is final and has the same effect as a binding and enforceable agreement. The decision cannot be appealed except in rare and exceptional circumstances (e.g. serious unfairness in the arbitration process).

Also consider...

- Find out about lodging [land access notifications for coal and mineral activities](https://www.business.qld.gov.au/industries/mining-energy-water/resources/minerals-coal/reports-notices/land-access) (<https://www.business.qld.gov.au/industries/mining-energy-water/resources/minerals-coal/reports-notices/land-access>) and [land access notifications for petroleum and gas activities](https://www.business.qld.gov.au/industries/mining-energy-water/resources/petroleum-energy/reports-notices/land-access) (<https://www.business.qld.gov.au/industries/mining-energy-water/resources/petroleum-energy/reports-notices/land-access>).
- Download the [Standard conduct and compensation agreement \(DOCX, 123KB\)](https://www.dnrm.qld.gov.au/_data/assets/word_doc/0006/1395024/standard-conduct-compensation-agreement.doc) (https://www.dnrm.qld.gov.au/_data/assets/word_doc/0006/1395024/standard-conduct-compensation-agreement.doc).
- [Make an enquiry or complaint](https://www.business.qld.gov.au/industries/mining-energy-water/resources/landholders/csg/monitoring-complaints) (<https://www.business.qld.gov.au/industries/mining-energy-water/resources/landholders/csg/monitoring-complaints>) about land access.
- Read details about land access requirements in [A guide to land access in Queensland \(PDF, 1.8MB\)](https://www.dnrme.qld.gov.au/_data/assets/pdf_file/0018/1442223/guide-to-land-access-in-queensland-2019.pdf) (https://www.dnrme.qld.gov.au/_data/assets/pdf_file/0018/1442223/guide-to-land-access-in-queensland-2019.pdf).
- Learn how the [Land Access Ombudsman](https://www.lao.org.au/services/how-we-help) (<https://www.lao.org.au/services/how-we-help>) can help if there's a dispute over a finalised Conduct and Compensation Agreement.

Last reviewed: 24 Apr 2019

Last updated: 24 Apr 2019

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