



## Queensland Resources Law: Landholder rights and resource activities

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### Overview

This factsheet assists landholders understand their rights when a resource company seeks to access and/or impact their land in Queensland. These rights are provided for in the *Mineral and Energy Resources (Common Provisions) Act 2014 (Qld)* (**Act**) and the Land Access Code 2023 (**Code**).

It contains legal information on the rights of landholders with respect to requests to access their land by resource companies for both exploration and production.

Key features of the regime include:

- To conduct preliminary activities, such as driving through an existing road or track, walking the area, taking soil samples or survey pegging, a resource company is required to issue the landholder with, at least, ten business days' written notice.
- To conduct advanced activities, such as drilling wells, sampling or clearing of native vegetation, the landholder has a right to negotiate terms of entry and compensation, via a Conduct and Compensation Agreement (**CCA**) with the resource company.
- If access agreement negotiations are unsuccessful, a landholder or resource company can apply to the Land Court at any time. The Land Court can make a final determination, including what level of compensation is appropriate to give the landholder in exchange for the access and use of the land.
- Landholders have a right to ask the resource company for more information to understand what is proposed, the potential impacts and their rights under the law.

- An agreement is essentially a contract between the landholder and resource company. There is no requirement for the agreement to stipulate conditions which limit the landholders rights to speak to other people or access other legal rights.

This factsheet addresses the following questions:

- What type of activities can a resource company undertake on private land?
- What must a resource company do before accessing private land?
- What are the different types of agreements required to access private land?
- Do landholders have a right to refuse entry to a resource company?
- Can a resource company access private homes, feed lots or bores on private land?
- What happens if an agreement cannot be reached with the resource company?

### **What type of activities can a resource company seek to undertake on private land?**

A resource company may seek to enter private land:

- to carry out an authorised activity, being an activity undertaken under a resource authority, such as a mining lease or petroleum lease or for exploration activities;
- to cross access land, which is land outside the authorised area for the resource authority, that it is reasonably necessary to allow the holder to cross to enter the authorised area<sup>1</sup>; or
- to gain entry to access land.<sup>2</sup>

There are two types of authorised activities a resource company can carry out on private land - preliminary activities and advanced activities. There are different legal requirements for the resource company to meet for both types of activities.

An authorised activity is an activity permitted by a resource authority. A resource authority is a permit, lease, authority licence or claim granted under legislation that deals with resources, for example the *Mineral Resources Act 1989* (Qld).

#### *Preliminary Activities*

A preliminary activity is defined in the Act<sup>3</sup> and includes an activity that has no impact or only a minor impact on “*the business or land use activities*” of private landholders.

Preliminary activities may include:

- walking the area of the approved 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

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<sup>1</sup> *Mineral and Energy Resources (Common Provisions) Act 2014* s 47(3).

<sup>2</sup> *Ibid* s 38.

<sup>3</sup> *Mineral and Energy Resources (Common Provisions) Act 2014* (Qld), s15B.

The Act specifically excludes the following from being characterised as preliminary activities, meaning they are always advanced activities:

- (a) an authorised activity carried out on land that—  
(i) is less than 100ha; and  
(ii) is being used for intensive farming or broadacre agriculture;

*Examples— • land used for dryland or irrigated cropping, plantation forestry or horticulture • a dairy, cattle or sheep feedlot, piggery or poultry farm*

- (b) an authorised activity that affects the lawful carrying out of an organic or bio-organic farming system.<sup>4</sup>

### Advanced Activities

An advanced activity is defined by the Act<sup>5</sup> as an authorised activity “*other than a preliminary activity.*” The Act provides the following examples:

- levelling of drilling pads and digging sumps
- earthworks associated with pipeline installation
- bulk sampling
- open trenching or costeaning with an excavator
- vegetation clear-felling
- constructing an exploration camp, concrete pad, sewage or 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

As stated above, an authorised activity on land less than 100ha and land being used for intensive farming or broadacre farming is an advanced activity and an access agreement is required before the resource company can access the land. This also applies to an authorised activity that affects the lawful carrying out of an organic or bio-organic farming system.

Depending on the type of authorised activity proposed, the resource company must comply with the Act and the Code before accessing private land for the purpose of carrying out an authorised activity.

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<sup>4</sup> Ibid at s15B(2).

<sup>5</sup> *Mineral and Energy Resources (Common Provisions) Act 2014* s.15A.

## What must a resource company do prior to accessing land?

### *Preliminary Activities*

Prior to entering land to undertake preliminary activities, the resource company is required to give the landholder at least 10 business days written notice,<sup>6</sup> unless the landholder agrees to a shorter notice period.<sup>7</sup>

The written notice to the landholder must include:

- the description of the land to be entered;
- the period when they will be accessing the land;
- the activities proposed to be carried out on the land;
- when and where the activities are to be carried out; and
- their contact details.<sup>8</sup>

### *Advanced Activities*

Before a resource company can carry out an advanced activity on private land, they must enter into one of the following types of agreements:<sup>9</sup>

- Conduct and Compensation Agreement (**CCA**); or
- Deferral Agreement; or
- Opt-Out Agreement.

These access agreements are explained in more detail below.

A landholder can refuse to make an access agreement if the terms of access and agreement proposed by the resource company are not 'reasonable'.<sup>10</sup> The landholder or resource company may refer a question to the Land Court on whether a condition of an agreement is considered reasonable.<sup>11</sup>

If a landholder decides not to enter into an access agreement with a resource company within 20 business days (**minimum negotiation period**) it will be assumed the landholder has refused the agreement.<sup>12</sup>

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<sup>6</sup> *Mineral and Energy Resources (Common Provisions) Act 2014* (Qld) s 39(2)(c).

<sup>7</sup> *Mineral and Energy Resources (Common Provisions) Act 2014* (Qld) s 39(3).

<sup>8</sup> *Mineral and Energy Resources (Common Provisions) Regulation 2016* (Qld) s 17(2).

<sup>9</sup> *Mineral and Energy Resources (Common Provisions) Act 2014* (Qld) s 43.

<sup>10</sup> *Ibid* s 48.

<sup>11</sup> *Ibid* s 48, see Note.

<sup>12</sup> *Ibid* s 85(2)(a).

The resource company is not permitted by law to enter the land during the minimum negotiation period.<sup>13</sup>

If no agreement has been reached after the minimum negotiation period ends, either the landholder or the resource activity may provide a written request to seek Alternative Dispute Resolution (**ADR**) to negotiate a Conduct and Compensation Agreement.<sup>14</sup>

If the ADR process is not successful, the matter may be referred to the Land Court to decide if the refusal was unreasonable or not based on the criteria for deciding if access is reasonable.<sup>15</sup>

The ADR and Land Court processes are explained in more detail below.

### **What are the different types of agreements required to access private land?**

As stated above, before a resource company can carry out an advanced activity on private land, they must enter into one of the following types of agreements a CCA, a Deferred Agreement or an Opt-Out Agreement.<sup>16</sup>

A resource company must put the landholder on notice if they wish to negotiate a CCA.<sup>17</sup>

#### Conduct and Compensation Agreement

A CCA will generally include the following details:

- how and when the resource company will enter the land;
- details about the types of authorised activities that will be carried out on the land; and
- that the resource company might be liable to provide the landholder with compensation.<sup>18</sup>

#### *Compensation*

Compensation can be either financial or non-financial. For example, there may be a term in the CCA that directs the resource company to erect a fence or dig a well in lieu of payment of a cash sum.

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<sup>13</sup> Ibid s 86.

<sup>14</sup> Ibid, s 88(2).

<sup>15</sup> Ibid s 49.

<sup>16</sup> Ibid s 43.

<sup>17</sup> Ibid s 84.

<sup>18</sup> Ibid s 83.

The resource company must cover the costs associated with negotiating a CCA to the extent that the costs are necessary and reasonably incurred.

If the resource company decides not to continue with the negotiations for a CCA, the landholder is entitled to recover the negotiation and preparation costs necessarily and reasonably incurred for the purpose of the negotiations from the resource company.<sup>19</sup> It is important to seek independent legal advice about the compensation process.

### Deferral Agreement

A landholder may enter into a Deferral Agreement with a resource company. A Deferral Agreement is an agreement that a CCA can be entered into after entry to the land.<sup>20</sup> It is essentially a delayed CCA.

A Deferral Agreement must state:

- that the resource company has 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 applies; and
- When a Conduct and Compensation Agreement is to be entered into.<sup>21</sup>

A Deferral Agreement will be invalid if it does not comply with the above requirements.<sup>22</sup>

It is important to note that a CCA or a Deferred Agreement will be registered on title by the resource company. This means that it will be a formal recognition of the agreement over the land for any future owners of the land.

### Opt-Out Agreement

An owner can elect to opt out of a CCA within 10 business days of signing the agreement.<sup>23</sup> The effect of opting out is that there are no terms for access or impact on the land and no compensation payable to the landholder. This is not a recommended option for landholders who are seeking to protect their interests.

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<sup>19</sup> *Mineral and Energy Resources (Common Provisions) Act 2014* s 91.

<sup>20</sup> *Ibid* s 44(1).

<sup>21</sup> *Mineral and Energy Resources (Common Provisions) Regulation 2016* cl 21.

<sup>22</sup> *Mineral and Energy Resources (Common Provisions) Act 2014* s 44(2).

<sup>23</sup> *Ibid* s 45.

## **Does a landholder have a right to refuse entry?**

A landholder can reasonably refuse to enter into an access agreement with a resource company, for example where the terms of the agreement are not considered to be reasonable.<sup>24</sup>

If a landholder decides not to enter into one of the above access agreements at the end of the minimum negotiation period, the agreement is assumed to be refused. If this happens, the matter may be referred to the Land Court to decide whether the refusal was *unreasonable* or not based on the criteria for deciding if access is *reasonable*.<sup>25</sup>

Queensland's land access laws provide a criteria for determining whether land access by a resource company is reasonable to allow access to the authorised area . The criteria assists in the determination of whether access to your land is reasonably necessary, whether the proposed activities are reasonably necessary or whether the landholder<sup>26</sup> has unreasonably refused to make an access agreement.<sup>27</sup>

### When is access considered reasonably necessary?

The criteria states that the following must be considered when negotiating whether access is reasonably necessary:

- the nature and extent of any impact the exercise of the access rights will have on access to land and the owner or occupier's use and enjoyment of it; and
- how, when and where, and the period during which, the resource authority holder proposes to exercise access rights.<sup>28</sup>

## ***Can a resource company access private homes, feed lots or bores on private land?***

Some areas of land and buildings are considered 'restricted land', typically due to the sensitivity of these site. Restricted land enjoys stronger protections against access and impacts from proposed authorised activities. A buffer must be typically provided around these activities, unless a landholder has agreed otherwise that the buffer is not necessary.

### *Restricted access to private land*

*Restricted land* is defined by the Act as:

- Land within 200m laterally of a permanent building for the following purposes:
  - a) a residence;
  - b) a childcare centre, hospital or library;
  - c) a community, sporting or recreational purpose or as a place of worship; or

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<sup>24</sup> Ibid s 48.

<sup>25</sup> Ibid s. 49.

<sup>27</sup> Ibid.

<sup>28</sup> Ibid.

d) a business.<sup>29</sup>

- Land within 50m of an area used for:
  - a) An artesian well, bore, dam or water storage facility;
  - b) A principal stockyard
  - c) A burial place

For the purpose of the 'restricted land provisions',<sup>30</sup> *prescribed activity* is an authorised activity that is carried out on the surface of the land or below the surface of the land that is likely to cause an impact on the surface, for example subsidence.<sup>31</sup>

A *prescribed activity* does not include:

- The installation of underground pipeline or cable that is completed within 30 days, or the operation, maintenance or decommissioning of an underground pipeline.<sup>32</sup>
- Preliminary surveying associated with the installation of an underground pipeline.<sup>33</sup>

A resource company must not enter restricted land to carry out a *prescribed activity*, unless the landholder has given written consent to the resource authority holder to carry out the activity.<sup>34</sup>

Under Part 4 of the Act, either party can apply to the Land Court for a declaration as to whether the proposed activity is a prescribed activity over restricted land.<sup>35</sup>

### **What happens if an agreement cannot be reached with the resource company?**

Queensland's land access laws provide a statutory negotiation process for the negotiation of a CCA. The negotiation stages are:

- Provide written notice (see above)
- ADR
- Arbitration or Land Court determination

### Alternative Dispute Resolution

If all attempts have been exhausted and no agreement has been reached by the end of the minimum negotiation period, any party can give the other party written notice of their intention to seek ADR to negotiate a CCA, using the nominated form provided at the end of this factsheet via link.

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<sup>29</sup> Ibid s 68.

<sup>31</sup> *Mineral and Energy Resources (Common Provisions) Act 2014* s 67(a).

<sup>32</sup> *Mineral and Energy Resources (Common Provisions) Act 2014* s 67(b).

<sup>33</sup> *Mineral and Energy Resources (Common Provisions) Regulation 2016* s 29.

<sup>34</sup> *Mineral and Energy Resources (Common Provisions) Act 2014* s 70.

<sup>35</sup> Ibid s 72.



As stated above, the resource company cannot access private land during the minimum negotiation period.<sup>36</sup>

Landholders have 10 business days to decide whether to accept or refuse 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.<sup>37</sup>

The ADR process must be finished within 30 business days of the ADR facilitator being appointed unless the parties agree to extend the period due to stated reasonable or unforeseen circumstances.<sup>38</sup>

The resource company is responsible for the cost of the ADR facilitator and the facilitator must be independent.<sup>39</sup> The resource company is also liable for all other costs reasonably occurred.<sup>40</sup>

### Arbitration

Either party may request arbitration if a CCA cannot be agreed between the parties,<sup>41</sup> or if an ADR notice has been given and no CCA has been entered into.<sup>42</sup> Arbitration is a dispute resolution method that is an alternative to going to the Land Court.

To enter an arbitration process, a party may provide an arbitration election notice to the other party requesting participation in the process.<sup>43</sup>

The notice must state the following information:<sup>44</sup>

- details of the matters the subject of the dispute; and
- the name of an arbitrator; and
- that if the request for arbitration is accepted, an application to the Land Court cannot be made; and
- that the costs of the arbitration process are payable by the resource company.

The other party has 15 business days to accept or refuse the request.<sup>45</sup> If the parties agree

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<sup>36</sup> Ibid s 86.

<sup>37</sup> Ibid s 88.

<sup>38</sup> Ibid s 89(2).

<sup>39</sup> Ibid s 89(6).

<sup>40</sup> Ibid s 91.

<sup>41</sup> Ibid s 91A(1)(a).

<sup>42</sup> Ibid s 91A(1)(b).

<sup>43</sup> Ibid s 91A(2).

<sup>44</sup> Ibid s 91A(3).

<sup>45</sup> Ibid s 91A(4).

to arbitration, neither party can make an application to the Land Court.<sup>46</sup> If the request is accepted, the parties may jointly appoint an arbitrator within 10 business days.<sup>47</sup>

### Land Court Determinations

Either party can apply to the Land Court for resolution of the CCA 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
- no CCA was agreed to between the parties; or
- an Arbitration election notice was issued but the request was not accepted.<sup>48</sup>

Either party can also apply to the Land Court for a determination (provided they have not attended arbitration on the same dispute) about an access agreement if they are unable to reach an agreement or the conditions of an agreement.<sup>49</sup>

The Land Court may make any order it considers appropriate to enable or enforce its decision on an application. This may include, but is not limited to:

- non-monetary or monetary compensation;
- that a party do not engage in particular conduct; or
- that the parties engage in further ADR.<sup>50</sup>

In considering whether to make an order, the Land Court may have regard to the behaviour of the parties in the process leading to the application, for example whether any party behaved unreasonably.

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<sup>46</sup> Ibid s 91A(3)(c).

<sup>47</sup> Ibid s 91A(5).

<sup>48</sup> Ibid s 96.

<sup>49</sup> Ibid s 52.

<sup>50</sup> Ibid s 97.

## Resources

### General resources

- The Queensland Government's , ['Guide to land access in Queensland'](#).

### Agreements

- [Information sheet on Opt-Out Agreements](#)

*Forms for land access notices provided by the Queensland Government:*

- [Entry notice for private land](#)
- [ADR election notice](#)
- [Arbitration election notice](#)
- [Negotiation notice](#)
- [Opt-out agreement form](#)