

LAND ACCESS AGREEMENTS

ACT NOW – KNOW WHAT MINING OR GAS INTERESTS AFFECT YOUR LAND

BEFORE YOU ARE GIVEN AN ENTRY OR NEGOTIATION NOTICE

A Conduct and Compensation Agreement, or a Deferral Agreement, is to be entered into between affected landholders and energy companies before higher impact activities are carried out on private land.

If an agreement is not negotiated, the matter may end up in the Land Court for determination.

This brochure provides an outline of the new access regime and is not intended as legal advice. For legal advice that addresses your particular circumstances, please contact

Lestar Manning or Clare Farley on 1300 303 866

or email lestar@paelaw.com or clare@paelaw.com

p&e Law is one of the few and largest specialist planning, environment and native title law practices in Queensland. We aim to provide exceptional advice to clients throughout Queensland. The strength of our team of specialist solicitors is enhanced by our highly-skilled support team.

p&e Law acts for a range of clients from the rural, development, government and community sectors, allowing us to bring a balanced perspective to our work. Our lawyers are experienced in the specialised areas of Planning & Environment and Native Title Law. Our core areas of practice are:

- Town Planning
- Cultural Heritage
- Pollution
- Native Title
- Property Rights
- Vegetation & Wildlife
- Farming
- Water
- Governance

LAND ACCESS

Land access laws that came into effect on 29 October 2010 now regulate entry onto private land by petroleum, gas, greenhouse gas and geothermal energy companies.

Private land includes freehold and leasehold land, but does not include a mining interest, a petroleum authority or tenure under the Petroleum Act 1923, a greenhouse gas authority, a geothermal tenure, an occupation right under a permit under the Land Act 1994, or land owned by a public land authority.

The new laws grant the energy companies greater powers to enter land. In some cases it is an offence for an owner or occupier to obstruct, or attempt to obstruct, access to land for the purpose of carrying out preliminary activities or advanced activities.

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'PRELIMINARY ACTIVITIES'

A preliminary activity is an activity authorised to be carried out under the relevant law and resource authority that will have no or only minor impact on the business or land use activities of an owner or occupier of the land. Examples of preliminary activities are walking the area; driving along an existing road or track; taking soil or water samples; geophysical surveying not involving site preparation; aerial, electrical or environmental surveying; or survey pegging.

Entry Notice

Generally, a written Entry Notice is to be given to each owner and occupier of private land at least 10 business days prior to entry, unless a shorter period is agreed in writing.

The first Entry Notice must be accompanied by the relevant resource authority, the Land Access Code, any relevant code of practice and environmental authority.

The Entry Notice may be delivered personally, but if the chief executive of the Department of Employment, Economic Development and Innovation considers it is impracticable to give the notice personally, it may be published at least 20 business days prior to entry.

The notice may be published in a journal issued by the Department, in a publication considered appropriate by the Minister, on the Department's website, or by another nominated method. There is no requirement for the publication to be in a newspaper circulating in the area of the land. Nor does the chief executive have to be satisfied the publication is likely to inform the correct person.

You should bear this in mind, especially if you are planning to be away from your land for any length of time. If an energy company considers it is not practicable to deliver an Entry Notice to you personally, it may end up being published by one of the above methods. If you are not vigilant, you may miss this important notification.

ENTRY TO LAND

*Preliminary
Activities*

10 business days

'ADVANCED ACTIVITIES'

An *advanced activity* is any activity, other than a preliminary activity discussed above, which may be carried out on the land under the relevant law and resource authority. Examples of advanced activities are leveling of drilling pads; digging sumps; earthworks associated with pipeline installation; vegetation clearing; constructing an exploration camp, concrete pad, sewage or water treatment facility, fuel dump, track or access road; geophysical surveying with physical clearing; seismic survey using explosives; changing a fence line; and all other authorised higher-impact operations.

The following are also advanced activities:

- activities carried out within 600 metres of a school or an occupied residence,
- activities that affect the lawful carrying out of an organic or bio-organic farming system, or
- activities carried out on land that is less than 100 hectares and is being used for intensive farming or broadacre agriculture, for example, land use for dryland or irrigated cropping, plantation forestry or horticulture; dairy, cattle or sheep feedlot, piggery or poultry farm.

Access requirements for advanced activities are triggered by receipt from an energy company of a Negotiation Notice.

Negotiation Notice

Before an energy company can undertake advanced activities on private land, it must give a Negotiation Notice to each owner or occupier of the land to whom compensation is payable for any 'compensatable effects' caused by the activities.

Compensatable effects are:

- deprivation of possession of the land's surface
- diminution of the land's value
- diminution of the use made or that may be made of the land or any improvement on it
- severance of any part of the land from other parts of the land or from other land owned by the land owner or occupier
- any cost, damage or loss arising from the carrying out of an authorised activity on the land
- consequential damage incurred because of the above matters
- legal, accounting and valuation costs necessarily and reasonably incurred in negotiating an agreement.

The Negotiation Notice must state:

- whether the negotiations relate to all or part of the compensation liability, and if only part, what part
- whether a Deferral Agreement (discussed later) is required and, if so, why
- the land proposed to be entered



- the activities proposed to be carried out on the land
- when and where the activities are proposed to be carried out
- the authorised contact details of a resource authority holder corporation

The Notice must be accompanied by a copy of the Land Access Code.

A Conduct and Compensation Agreement is an agreement between a land owner or occupier whose land is affected by mining, gas or other energy interests, and the energy company. The agreement will set terms for the energy company's conduct whilst they are on the land and will provide for compensation which is payable to the land owner or occupier. An agreement must be in place before the company, its subcontractors or associates enter the land to carry out **advanced activities**; however, this requirement can be deferred to a later date by entering into Deferral Agreement (discussed below).

The time to negotiate an agreement is **20 business days**.

NEGOTIATION

*Advanced
Activities*

20 business days

Conference or Alternative Dispute Resolution (ADR)

If a finalised agreement has not been achieved by the end of the 20 business-day negotiation period (or longer time if agreed between the land owner/occupier and energy company), then either party may, by a notice:

- ask for an authorised officer of the Department to call a conference, or
- call upon the other party to agree to an alternative dispute resolution (ADR) process to negotiate a Conduct and Compensation Agreement.

If ADR is sought, the notice must identify the ADR process (e.g. arbitration, conciliation, mediation or negotiation). The costs of an independent ADR facilitator are not 'compensatable effects' but are to be borne by the party seeking ADR, and this must also be stated in the notice.

A common method of ADR is mediation, at which an impartial, experienced mediator assists the parties to negotiate their own agreement and is meant to minimise any power imbalance between the parties.

At a conference, a party may be represented by a lawyer if both parties agree and the authorised Departmental officer is satisfied there is no disadvantage to a party.

The role of the authorised officer is to help those attending to reach an early and inexpensive settlement.

If a conference is called and a party does not attend, the attending party may apply to the Land Court for the non-attending party to pay its reasonable costs of the conference.

The time to enter into a Conduct and Compensation Agreement via a conference or other ADR process is 20 business days.

Unless a Conduct and Compensation Agreement includes a term waiving the entry notice requirement, an Entry Notice must be given as outlined above prior to the energy company coming onto your land.

CONFERENCE or ADR

*Advanced
Activities*

20 business days

Land Court

If a Conduct and Compensation Agreement is not concluded during the conference or ADR, or only one party attended the conference or ADR, or the conference or ADR was not finished within the 20 business-day period, then a party who attended the conference or ADR may apply for the Land Court to decide the compensation liability.

Note that the Land Court will only decide the compensation payable and will not decide whether or not entry is permitted.

If the matter ends up in the Land Court, the energy company can enter the land to conduct **advanced activities** after giving a land owner or occupier **10 business days** notice of entry.

The Entry Notice is to be given in the same manner as set out above for entry for preliminary activities. **Advanced activities** can be carried out while the Land Court considers and decides the energy company's compensation liability.

LAND COURT ENTRY TO LAND

*Advanced
Activities*

10 business days

ACCESS AGREEMENTS

Under the laws, a land owner or occupier cannot 'opt out' of making an agreement with the energy company about the conduct of and compensation for advanced activities. Either a Conduct and Compensation Agreement is to be concluded as outlined above or, if the parties agree, it can be deferred to a later date after the company has come onto the land. In that case, a Deferral Agreement must be entered into.

The Department has published standard agreements as a starting point for negotiations. These standard agreements are not mandatory and should not be used. Please refer to our website for our conduct and compensation agreement standard clauses.

Before negotiations commence, consider other terms that should be part of any agreement such as site-specific conditions, alternatives to cash compensation, and matters that are not addressed to your satisfaction in the standard conditions. We are able to assist you to make an agreement to suit you.

An access agreement with an energy company, or a Land Court decision, is binding on the parties' successors in title (e.g. incoming purchasers) and assigns.

Deferral Agreement

A Deferral Agreement must state:

- the activities proposed to be carried out on the land
- the period during which the land will be entered
- when and where the activities are proposed to be carried out
- the period for which the Deferral Agreement has effect
- when it is proposed to enter into a Conduct and Compensation Agreement, and
- that the land owner or occupier has been told that there is no obligation to enter into a Deferral Agreement before entering to a Conduct and Compensation Agreement.

Conduct and Compensation Agreement

A Conduct and Compensation Agreement must set out, among other things:

- how and when the energy company or its representatives may enter the land
- how the proposed activities, to the extent they relate to you and your use of the land, must be carried out
- the energy company's compensation or future compensation liability to you
- whether the agreement is for all or part of the compensation liability, and
- details of monetary or non-monetary compensation.

Mandatory provisions for agreement

The energy company must comply with the mandatory provisions of the Land Access Code, relating to:

- induction training of each person acting for the energy company about the company's obligations under the relevant law, Land Access Code and agreement with land owner or occupier
- access points, roads and tracks on the land
- minimisation of disturbance to livestock and property
- prevention of spread of declared pests
- location and management of any camp to be established on the land
- disposal of rubbish or waste
- use of gates, grids and fences on the land.

The energy company must also ensure any other person carrying out an authorised activity on the land complies with the mandatory provisions of the Land Access Code.

SUMMARY

An energy company can access your land to carry out low-impact preliminary activities 10 business days after giving you an Entry Notice.

For advanced activities that will have high impact upon your land, an energy company may come onto your land after 10 business days of entering into a Conduct and Compensation Agreement or Deferral Agreement with you, or after 10 business days from commencement of a Land Court action to decide compensation.

The Court proceedings do not have to be finalised before entry to carry out advanced activities.

In light of the tight timeframes within which to negotiate an access agreement that protects your land to the highest extent possible, we recommend that, **before negotiations commence** you:

- are aware of all mining or gas interests that affect your land, and
- have fully considered all matters you wish to be included in any access and compensation agreement.

We are available to advise you further of your rights in relation to the new land access laws and to assist with achieving the best possible negotiated outcome for your land.

Please contact **Lestar Manning** or **Clare Farley** of our office on **1300 303 866** or by email at lestar@paelaw.com or clare@paelaw.com for assistance with the access requirements.



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