



# A guide to land access in Queensland

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

September 2021

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# Summary

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## 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

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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 costeaning 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.





































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. The Land Court also has the discretion to decide how the costs should be distributed.

A Procedural Assistance Service is available through the Land Court website and provides further assistance to stakeholders about court processes in relation to disputes and appeals.

# After a Conduct and Compensation Agreement is in place

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## 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 Conduct and Compensation Agreement 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 Resources for advice on conferencing options
- Pursue private ADR at the party's 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.

Further information can be found on the Land Access Ombudsman website.

### 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

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Since 2016, Queensland's land access laws apply a consistent restricted land framework across all resource authorities.

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.

For resource authorities that were applied for prior to 27 September 2016, the current restricted land framework may not apply. For guidance as to which rules apply in your circumstances, refer to the 'Restricted land' guide on the Queensland Government Business and Industry Portal.

## 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

- 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.

### For landholders

- 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

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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 landowner 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

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

- **Department of Resources Community Infoline:**  
Phone: 137 107  
Email: [resources.info@resources.qld.gov.au](mailto:resources.info@resources.qld.gov.au)
- **Office of the Land Access Ombudsman:**  
[www.lao.org.au](http://www.lao.org.au)  
Phone: 1800 717 550  
Email: [enquiries@lao.org.au](mailto:enquiries@lao.org.au)
- **Queensland GasFields Commission:**  
[www.gasfieldscommissionqld.org.au/gasfields](http://www.gasfieldscommissionqld.org.au/gasfields)
- **Queensland Government 'Business and Industry Portal':**  
[www.business.qld.gov.au/industry/csg-lng-industry](http://www.business.qld.gov.au/industry/csg-lng-industry)
- **Queensland Land Court:**  
[www.courts.qld.gov.au/courts/land-court](http://www.courts.qld.gov.au/courts/land-court)  
Phone: (07) 3406 7777 (during business hours)  
Email: [landcourt@justice.qld.gov.au](mailto:landcourt@justice.qld.gov.au)
- **Queensland Law Society** – Find a solicitor:  
[www.qls.com.au/For\\_the\\_community/Find\\_a\\_solicitor](http://www.qls.com.au/For_the_community/Find_a_solicitor)
- **Resolution Institute:**  
[www.resolution.institute](http://www.resolution.institute)  
Phone: 1800 651 650
- **Supreme Court of Queensland Library:**  
[www.sclqld.org.au/caselaw/QLC](http://www.sclqld.org.au/caselaw/QLC)



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