



A guide to land access in Queensland

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

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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 on the business and industry portal](#).

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 rights and resource company obligations are determined by the level of impact the authorised activities will have on the business activities or land use activities of the landholder of 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, have input in to processes associated with those activities (e.g. conditions of access and infrastructure layout) and to receive compensation for impacts associated with those activities.

Rights, obligations and best practice approaches

For resource companies

- 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.

For landholders

- 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 the [Queensland Government Business and Industry Portal](#).

Not every entry to private land by a resource company will require the negotiation of a conduct and compensation agreement. This includes preliminary activities (refer to key definitions on page 3) being undertaken by the resource company on the land. In these cases, an entry notice is required to inform the landholder of the activities.

Examples of preliminary activities

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

All of these are examples of activities that have no or minor impact on the business or land use activities of a landholder. This list is not exhaustive and there are other activities which—depending on the level of impact—will need to be considered on a case-by-case basis. An example of these types of activities is directionally drilling under a landholder's property where there is otherwise no gas infrastructure or activities occurring on the surface (further information on directional drilling can be found in the directional drilling factsheet, available on the Queensland Business and Industry Portal).

Notification requirements

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.

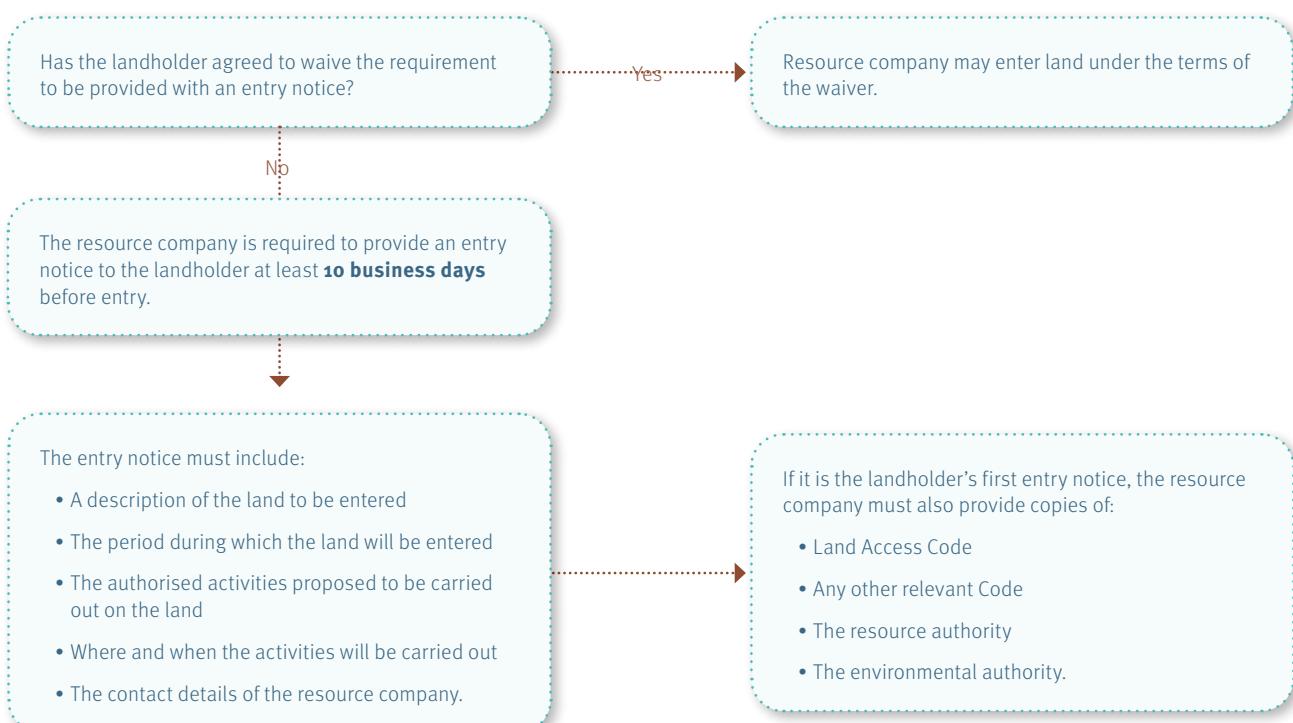
Preliminary activities flowchart

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.

Rights, obligations and best practice approaches

For resource companies

- 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 *Biosecurity Act 2014*.
- 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).

For landholders

- 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.

Notification requirements – 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 notification requirements for these resource authority types, visit the [Queensland Government Business and Industry Portal](#).

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.

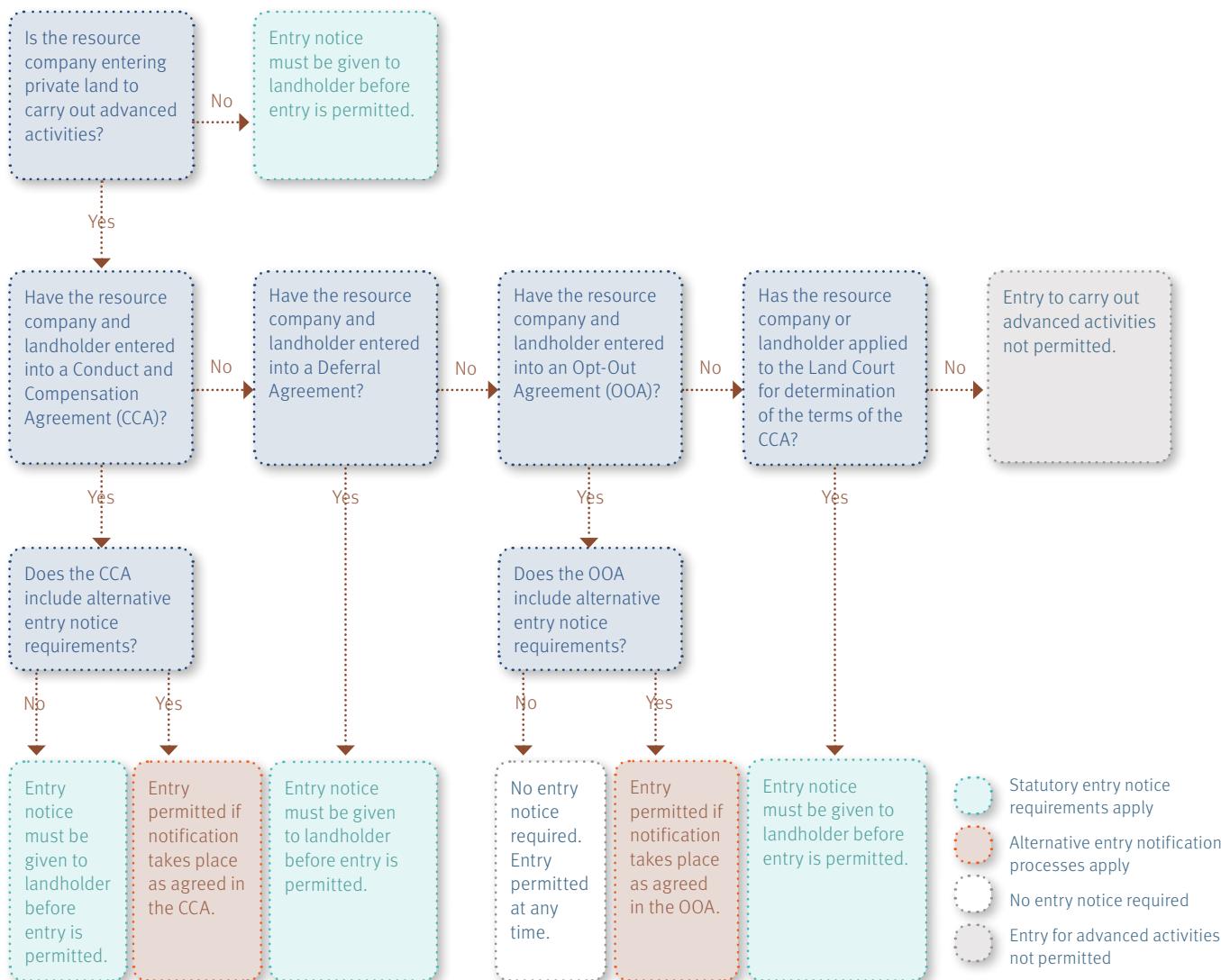
The usual entry notice requirements (including exceptions to the requirement to provide an entry notice) as outlined in the section titled Notification requirements – preliminary activities will continue to apply to the resource company.

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*.

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.

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; and
- 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.

Negotiation and preparation costs

A resource company is responsible for paying negotiation and preparation costs necessarily and reasonably incurred by a landholder in negotiating a Conduct and Compensation Agreement. Negotiation and preparation costs include legal, accounting and valuation costs as well as the costs of an agronomist.

Negotiations between a landholder and a resource company for a Conduct and Compensation Agreement can be time consuming and complex. To help achieve a smooth process, landholders and the resource company are encouraged to discuss, at an early stage in the negotiation for a Conduct and Compensation Agreement, what negotiation and preparation costs may be required, and when they may be payable. This will aid in developing a clear understanding of the anticipated costs.

The landholder should be mindful that they can only recover negotiation and preparation costs that are necessarily and reasonably incurred from the resource company. It is the responsibility of the resource company to keep landholders fully informed as to when the negotiation process is commencing and when a negotiation process has been put on hold or is no longer being pursued by the resource company. Where the resource company decides not to continue with negotiations for a Conduct and Compensation Agreement and no agreement is reached, the landholder will be entitled to recover the negotiation and preparation costs necessarily and reasonably incurred for the purpose of the negotiations from the resource company.

The resource company is not subject to any legal obligation to pay negotiation and preparation costs that are not necessarily and reasonably incurred in the negotiation of a Conduct and Compensation Agreement. For example, the cost of legal advice about a preliminary activity for which a Conduct and Compensation Agreement is not required would not be recoverable. On the other hand, the cost of legal advice on appropriate terms for a Conduct and Compensation Agreement to protect the landholder's interests would likely be considered to have been necessarily and reasonably incurred.

Landholders should also take reasonable steps to ensure they are obtaining advice from a lawyer who holds a current practicing certificate. Where the landholder is uncertain, they should make enquiries as to the expert's qualifications.

Valuations are an important input into the negotiations for compensation between the landholder and the resource authority holder. Valuation should only be obtained from a valuer who is registered under the *Valuers Registration Act 1992*, and who is preferably a member of a relevant professional association (for example, the Australian Property Institute or the Royal Institution of Chartered Surveyors). A registered valuer must also comply with the Australian Property Institute's Rules of Professional Conduct in providing their valuation, including the requirements that apply for written reports.

The registered valuer, when preparing a valuation report, must include:

- details of the valuer's qualifications relevant to the valuation
- the valuer's number in the register
- the date any inspection relevant to the valuation was carried out by the valuer
- the date the valuation was made
- the date of the report; and
- signature of the registered valuer.

Valuations that do not comply with the Australian Property Institutes Rules of Professional Conduct should not be used for the purposes of informing land access negotiations.

In the event that the parties cannot agree on the negotiation and preparation costs, either party to the Conduct and Compensation Agreement can refer the dispute to the Land Court. If this occurs, the Land Court may make:

- a declaration that all or part of the costs are payable, or
- an order requiring the payment of negotiation and preparation costs.

Past Land Court judgments regarding determination of negotiation and preparation costs are available on the Supreme Court Library Queensland website.

Negotiation and preparation cost rights, obligations and best practice approaches

For resource companies

- Pay for a landholder's necessarily and reasonably incurred negotiation and preparation costs for a Conduct and Compensation Agreement.
- Ensure valuations for the purposes of informing land access negotiations comply with the Australian Property Institute's Rules of Professional Conduct.
- Provide the landholder with clarity regarding commencement and completion of negotiations for a CCA.
- Discuss negotiation and preparation costs with the landholder early in the negotiation process for a CCA.

For landholders

- Seek expert advice from qualified lawyers, accountants, valuers, and agronomists.
- Ensure valuations for the purposes of informing land access negotiations comply with the Australian Property Institute's Rules of Professional Conduct.
- Ensure that negotiation and preparation costs are reasonable and necessary to the CCA negotiation.
- Discuss negotiation and preparation costs with the resource company early in the negotiation process for a CCA.
- Regularly discuss and update the resource company on the negotiation and preparation costs incurred during the negotiation period.

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 Resources, 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

- 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.

For landholders

- 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. 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

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

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

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

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
- **Office of the Land Access Ombudsman:**
www.lao.org.au
Phone: 1800 717 550
Email: enquiries@lao.org.au
- **Queensland GasFields Commission:**
www.gasfieldscommissionqld.org.au/gasfields
- **Queensland Government ‘Business and Industry Portal’:**
www.business.qld.gov.au/industry/csg-lng-industry
- **Queensland Land Court:**
www.courts.qld.gov.au/courts/land-court
Phone: (07) 3406 7777 (during business hours)
Email: landcourt@justice.qld.gov.au
- **Queensland Law Society** – Find a solicitor:
www.qls.com.au/For_the_community/Find_a_solicitor
- **Resolution Institute:**
www.resolution.institute
Phone: 1800 651 650
- **Supreme Court of Queensland Library:**
www.sclqld.org.au/caselaw/QLC



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