



Tips for landholders negotiating agreements with resource companies

November 2010

© The State of Queensland, Department of Employment, Economic Development and Innovation, 2010.

This publication has been prepared by the State of Queensland as an information source only.

The State of Queensland makes no statements, representations, or warranties about the accuracy or completeness of, and you and all other persons should not rely on, any information contained in this publication. Any reference to any specific organisation, product or service does not constitute or imply its endorsement or recommendation by the State of Queensland.

The Queensland Government disclaims all responsibility and all liability (including without limitation, liability in negligence) for all expenses, losses, damages and costs you might incur as a result of the information being inaccurate or incomplete in any way, and for any reason.

INTRODUCTION

If you are a landholder and a resource company has been granted a tenement, licence or authority to carry out activities on your land, this fact sheet may be useful. It provides guidelines to help you undertake negotiations about land access and compensation issues with a company so you can develop and enter into a conduct and compensation agreement with that company.

NOTE: This information should not be relied on as legal advice or as a substitute for legal advice. You are strongly advised to obtain 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.

General matters

Resource company obligations

Natural resources, including underground resources such as coal, petroleum or coal seam gas, are owned by the people of Queensland and are not the property of individuals or companies. The Queensland Government manages these resources for the benefit of all Queenslanders.

New land access laws came into effect on 29 October 2010 for the *Petroleum and Gas (Production and Safety) Act 2004*, *Petroleum Act 1923*, *Greenhouse Gas Storage Act 2009* and *Geothermal Energy Act 2010*. This follows their passage through the Queensland Parliament on 19 August 2010 and earlier introduction and debate of draft legislation included in the *Geothermal Energy Bill 2010*. Land access laws for the *Mineral Resources Act 1989* will commence later this year.

The new land access laws are vital to achieving a balanced approach to access to private land. They recognise and clarify the rights of tenement or authority holders and landholders in relation to access to private land for resource activities. In terms of access to land for exploration and development, the provision of consistent legislative requirements and processes will facilitate transparency, equity and co-operation across the agricultural and resources sectors.

The new laws set out requirements of resource companies and landholders related to access to private land and compensation. While a company holding a tenure or authority is allowed to explore and produce resources from private land for the area of tenure, affected landholders are entitled to know what activities are being undertaken, have input and receive compensation for those activities.

Under the new laws a resource company has a statutory obligation to:

- consult or use reasonable endeavours to consult owners and occupiers about access, the way in which authorised activities are carried out and compensation
- avoid any unreasonable interference with anyone else carrying out a lawful activity (i.e. landholder)
- comply with the mandatory provisions of the Land Access Code.

Under the land access laws, a company can only come on to your land to carry out authorised activities if it has:

- provided an entry notice at least ten (10) business days prior relating to preliminary activities (activities likely to cause nil or only minor impact on a landholder's business and land use activities)
- for advanced activities (activities likely to have a significant impact):
 - entered into a conduct and compensation agreement with you or
 - entered into a deferral agreement with you (allowing for a conduct and compensation agreement to be agreed at a later time) or
 - applied to the Land Court for a decision about your compensation entitlement.

Further detailed information about the new land access laws and the Land Access Code can be found at www.deedi.qld.gov.au

Landholder obligations

If a company has met all its legal obligations it is an offence for anyone, without a reasonable excuse, to obstruct a resource company from:

- entering or crossing land to carry out authorised activities or
- carrying out authorised activities.

For example, you cannot obstruct a resource company just because you don't agree with the activities being carried out on your land.

Working together

Regardless of how you feel about the activities taking place on your land, you are encouraged to develop a courteous and co-operative working relationship with the resource company. Companies and landholders should work together to develop workable solutions that, wherever possible, minimise or avoid any adverse impacts of the company's activities. This may require that both parties consider making reasonable adjustments to their proposed activities.

As it's likely you will be working with the company over an extended period of time, it's in both parties interests to share a good working relationship. The negotiated conduct and compensation agreement is the foundation of that relationship and may assist in determining the quality of future interaction you have with the company.

It's important you negotiate the best deal possible for yourself, your family and any future landowner/s. Potential buyers will need to know about conditions related to your land as they will also be legally bound by the terms applying within the identified time frame of an agreement.

Negotiations require give and take from both sides. As with any agreement, compromise may be required and parties don't usually get everything they want. Being rigid and inflexible is unlikely to lead to a successful resolution. Ending up in court could be costly, stressful and time-consuming. Working co-operatively to find solutions will be less stressful and more likely to result in positive or reasonable outcomes that are acceptable to you and the company.

Your goals

While the company is allowed to explore and produce resources on your land, you are entitled to know what they are doing, have input and be compensated for these activities. To get the best from your negotiations, identify any goals or issues you want included in your agreement. These may include setting fair, reasonable and workable solutions to:

- ensure your safety and the safety of your family, employees and animals
- preserve the amenity of your home
- minimise or avoid the impact of resource activities on you, your activities and land
- set out acceptable standards of conduct for anyone coming onto your land
- identify anything the company may be able to do to assist or benefit you
- ensure you don't incur unreasonable out-of-pocket expenses from negotiating agreements
- ensure you receive adequate compensation for impacts to you and your family, animals, crops, business and land
- ensure your rights and those of your family are respected
- reach an agreement that you and the company can live with and will abide by.

Preparation, preparation, preparation

Preparing and knowing what to include in an agreement is important to a successful negotiation. Consider preparing a map of your land before starting negotiations, marking the location of:

- access points, formed roads and tracks
- gates and fences
- cattle yards
- your house and other buildings
- areas or structures of sentimental value (e.g. unused remains of historic homesteads)
- key agricultural areas and infrastructure (e.g. crops, dams, levees, irrigation channels, shade clumps)
- water bores and key watering points or other important infrastructure
- sensitive areas such as vegetation, waterways, erosion prone areas and overland groundwater flow areas
- any plans for expansion or improvement you may have underway.

If you and the company agree that a map needs to be attached to the agreement, the company should have access to cartographers to assist with its preparation.

Under law, the company must provide details about:

- what activities they want to carry out on your land
- where activities will be carried out
- when activities will be carried out – time of year, day/night, over what time period

- a copy of the Land Access Code
- a copy of the relevant environmental authority documentation which may include the environmental authority or a copy of the relevant Code of Environmental Compliance.

You may wish to ask the company to provide additional information such as:

- who will carry out the activities, including the numbers of workers likely to be involved
- detailed work programs for each activity and any potential impacts including noise, dust, lights, vibration, impact on water supply, or any other impacts
- any future interest they anticipate having in your property based on all current information and what might influence future plans
- any safety considerations, proposed emergency plans and important contacts.

Don't be concerned about asking for too much information. The company should have ready access to all information.

Ask for any maps the company may have of the areas they want to work in so you can compare their information with your own map, and identify potential issues. Make sure the company provides you with this information BEFORE commencing formal negotiations so you have enough time for thorough review and to identify potential problems or matters that may need clarifying.

Before beginning formal negotiations, you should consider:

- how you might negotiate over the location and timing of any activities to get a 'win – win' outcome
- any safety issues that could impact on you, your family, friends, workers and animals
- any impacts on future development plans such as house, dam and drainage sites or locations
- the effect of activities on your land including deep tillage, wet weather access over pipelines, use of fire as a management tool, interference with activities such as aerial spraying
- any activities that may affect the amenity (visual, noise, light, dust, vibration, water) of your property and home, and what could be done to minimise those impacts
- any impacts (visual, drill holes, noise, light, dust, vibration, water, subsidence, damage to roads and tracks) from the activities on your livestock, crops, business and measures that could be taken to minimise those impacts
- establishing rules for anyone coming on to your land (e.g. related to traffic, use of gates, behaviour around animals)
- any activities you might be able to benefit from (e.g. the grading of a road or track)
- the cost of any legal, accounting or valuation advice you may incur related to the negotiation of a conduct and compensation agreement
- your business plans for managing your property now and into the future and any precautions that could be taken by the company to reduce interference with those plans.

You should establish any issues and requests you want to raise or put to the company. Be fair and realistic about your expectations. Consider providing the company with details about how you manage your business and land before starting formal negotiations. This will help the company understand your point of view and identify how it can work with you to minimise any impacts from its activities on your business and your land.

Legal, accounting and valuation advice

The new land access laws provide for compensation to be recoverable for legal, accounting and valuation costs reasonable and necessary to negotiate or prepare a conduct and compensation agreement.

The Government strongly recommends you engage a solicitor as your legal representative during the negotiation, particularly before you sign any agreement. Remember, you are granting legal rights to others and the outcome of any agreement will bind future owners.

Your solicitor should contact the company before negotiations begin to outline the likely legal costs that will be incurred by you to negotiate and prepare an agreement. Resource companies are now required by law to compensate you for your reasonable and necessary legal costs incurred in the negotiating and preparation of a conduct and compensation agreement. This also extends to costs associated with accountancy and valuation services.

Government offers landholders a Legal Aid service that provides, free, non-means tested legal advice in relation to interactions with resource companies. The Legal Aid service can be contacted by phoning 1300 65 1188.

Even if you do have a solicitor, you may find it helpful to take a support person with you to the negotiations. This may help you feel more confident and comfortable.

As you will be negotiating with a company representative, find out what authority that person has to make decisions on behalf of the company and how they will obtain formal approval for any in-principle agreement that is reached.

It may also be in your interest to engage professional expertise in relation to any valuation or business finance issue or impacts you think may be associated with the resource activities. This will assist you in the negotiation process as you will have information at your fingertips that clearly demonstrates the potential impact of activities on your business or property.

Venue

The company is likely to suggest meeting somewhere neutral for the negotiations. You can advise the company if this is inconvenient or not practical because of travel distances and time you'd have to take off work.

Choose a place where all parties can sit down comfortably and quietly. Negotiations don't have to be formal or heavily structured; an informal setting often means a more informal negotiation.

If you would prefer a less formal approach, you may want to consider suggesting this to the company.

Venues may include your solicitor's office or at your home. Your home may suit both parties, particularly as the company is going to be spending a lot of time on your land in the next few years. You should only choose this option if you feel comfortable about it and have support available.

Standard agreements

The Queensland Government has developed a standard conduct and compensation agreement and a standard deferral agreement to assist the development of legal contracts and negotiations with a resource company.

While it is not compulsory to use these agreements, they reflect Queensland's new land access laws and recommend important terms to include in any legally binding contract with a company.

They include provisions related to disclosure of information and confidentiality and support your right to determine how, when and where activities on your land should take place.

- The standard conduct and compensation agreement sets out proposed terms to include when developing a contract with a resource company before entry on to your property. The agreement covers possible compensation arrangements, land access rules, dispute processes, expected conduct of company staff or agents and landholder obligations.
- The standard deferral agreement sets out proposed terms to include in a contract if you choose to hold off entering into a conduct and compensation agreement with the company until a later time. This option allows further information to be gathered to determine the possible impacts of the company's activities.

Both agreements are available from any DEEDI office, by phoning 1300 363 711, or via the website at www.deedi.qld.gov.au

The negotiation

Before negotiation starts, agree on some ground rules from the beginning. For example:

- keep the negotiations as informal and as friendly as possible
- take turns speaking and don't talk over each other so that each party has a chance to tell their side of the story
- remain courteous and civil to each other.

Even if you do not agree on all matters, both parties are entitled to have their say.

- If discussions get heated, take a break until feelings cool down, and arrange to meet again to continue discussions. Consider any other information that the company may need to provide, to help you decide on an acceptable outcome.
- Try and work together to find solutions to any problems.
- Ask the resource company to prepare a written agreement in plain English reflecting any in-principle agreements reached during the negotiation.

Try to maintain a fair, firm and friendly approach as being aggressive can put people off and make them more entrenched in their views.

Don't feel pressured into making snap decisions or reaching agreement in one meeting. These agreements are important legal documents and you are under no obligation to agree to anything that is not acceptable to you.

Ask for more time if needed to consider an issue. Make notes during, or as soon as possible after, every discussion you have with the resource company so you can make sure any draft written agreements provided by the resource company accurately reflect what you negotiated.

Any draft agreements or legal documents should be easy to understand. If you don't understand something in the agreement, seek clarification from the company or your solicitor and ask for the clause to be changed so it makes sense to you. While the agreement is a legal document, it should be easily understood and written in plain English.

Specific matters

The Queensland Government has identified a number of specific issues you may need to consider when negotiating with a resource company, depending on the types of activities carried out on your land. This is not an exhaustive list; it is a guide to assist you. There may be other issues you may also want to consider.

Land Access Code

Under Queensland's land access laws, companies are required to comply with the mandatory provisions of the Land Access Code. The Land Access Code contains mandatory provisions for:

- induction training
- access points, roads and tracks
- livestock and property
- obligation to prevent spread of declared pests
- camps
- items brought on to land
- gates, grids and fences.

It is critical that the Land Access Code mandatory conditions are used as a starting point for any property, with specific conditions around conduct, as these conditions must not be inconsistent with the Land Access Code. The provisions contained in the Land Access Code are general. As such, it is appropriate to consider negotiating property specific conduct conditions that provide more detailed guidance on how the Land Access Code provisions will be met.

For example, one of the mandatory conditions in the Code is 'a relevant person must use a landholder's land in a way that minimises disturbance to people, livestock and property.' In this instance, you may wish to negotiate a specific condition that relates to how this may be achieved. For example, a condition that relates to avoiding certain parts of the property during key periods (calving, harvesting) may be appropriate.

Term of agreement

Consider whether you want an agreement that lasts for the life of the tenure, or any renewal of it, or for a shorter term. Longer terms may mean more impacts if your farming practices change.

Will payments be reviewed periodically if you agree to a long term? Consider negotiating an agreement to a set time frame so payments or provisions can be revisited.

Compensation payments

The type of payment will depend on the nature of the resource activity proposed. For example, the coal seam gas industry commonly pays compensation for each well/hole drilled, however other arrangements can be made. Depending on what the compensation is for, it may be appropriate to negotiate an annual payment, rather than one upfront payment. For example, if a coal seam gas drill hole is to be used for an indefinite period an annual payment might be more appropriate.

Adjustments to any annual compensation payments should be built into the agreement. The agreement should consider consumer price index (CPI) changes or reflect current market arrangements of the company.

Impacts on your business

Consider any costs, losses or consequential damages you may incur from the company's activities being carried out on your property.

You may need to obtain specific advice from your solicitor or accountant regarding tax and other business implications.

Think carefully before agreeing to an upfront compensation amount related to future costs or losses from the activities being carried out on your land. Will this arrangement be to your advantage and can you fully understand now the impacts those activities may have in the short and long term?

Some losses will be unforeseeable and unquantifiable at the time of negotiations. The agreement should include a process for submitting claims to the company for loss or damage to your property and how a claim that may be disputed will be assessed. We recommend that a claim should specify:

- the loss or damage suffered
- whether part or all of the damage is capable of repair and, if so, how you require repairs to be made
- any compensation claimed for the loss or damage.

The agreement should impose clear obligations on the resource company to:

- repair any damage to your satisfaction and
- reimburse you for any loss or damage to your property (including crops, livestock, buildings, structures or works).

Consider negotiating a provision setting out that, if the company does not repair any damage within your required time frame, you may carry out the repairs and the costs will be reimbursed by the company.

Compensation should also be negotiated to cover the time you spend away from work in negotiating this agreement. For examples of such terms, refer to the Queensland Government's Standard Conduct and Compensation Agreement.

Indemnity

Try to negotiate the inclusion of an indemnity from the resource company to you in the conduct and compensation agreement. This should cover anything done on your land by the resource company and its employees and agents. It will protect you against legal claims being made against you as result of the company's activities, its employees and agents over which you have no control.

We strongly recommend you seek legal advice before you agree to give any indemnity to the company as you could inadvertently give away some of your legal rights. For an example of an indemnity provision, refer to the Queensland Government's Standard Conduct and Compensation Agreement.

Access periods

Consider times you feel are reasonable for the resource company to start and finish activities they are carrying out on your land. Identify any days when activities should NOT be carried out or if activities should be restricted in specified areas of your land during identified times, for example, during harvesting/sowing/picking seasons.

You may need some areas of your land to carry out your own business activities (e.g. calving or cropping). If it's not possible early in the agreement process to identify when these areas will be available, you could negotiate a condition that the company must not conduct authorised activities in these areas until a date specified by you.

Access points, roads and tracks

The Land Access Code places mandatory conditions on resource companies as they relate to access points, roads and tracks. These mandatory conditions must be used as a starting point in any negotiations around access point roads and tracks.

Consider any reasons why you don't want the resource company to use access points, formed road or tracks on your land. This may include access points, roads or tracks used to muster cattle, potential interference or disturbance to your business activities, or where you are upgrading existing roads.

If so, consider whether it is necessary to prohibit or restrict the use of any access point, formed road or track to certain times or subject to appropriate conditions.

It is reasonable to require the resource company to:

- ensure their or their agent's vehicles are easily identified
- not use farm roads as short cuts across your property, without your consent, or as alternative routes to public roads
- ensure they consult with you after wet weather about access to farm roads and tracks

Your home and other buildings

Consider negotiating conditions like:

- excluding authorised activities within a certain distance of your home

- imposing a speed limit for any vehicles using access tracks or formed roads close to your home (e.g. if you have children or because dust may be exacerbated by vehicles travelling at unreasonable speeds). A maximum speed of 20 km/hr within 100 metres of your home could be considered reasonable
- imposing a similar maximum speed limit within 100 metres of any other buildings or structures used for livestock or heavy machinery on your land.

Protecting livestock and property

The Land Access Code places mandatory conditions on resource companies relating to livestock and property. These mandatory conditions must be used as a starting point in any negotiations around conditions to minimise impact on and protect livestock and property.

Consider any special conditions you need to negotiate to protect and minimise disturbance to your livestock and property. This could include requiring the resource company to:

- repair any damage caused to your property by their activities within a time frame and manner reasonably required by you
- observe a speed limit of 60 km/h within 100 metres of any livestock on your land
- mitigate impacts of overland flow from construction of roads and pipelines, or slumping where pipelines have been buried
- not drive on soft soils, especially after rain as vehicles and machinery can be bogged
- prevent drilling spoils from entering waterways, containments, troughs or groundwater
- provide you with a list of chemicals, including their trade name and active ingredients and material safety data sheets (MSDS), used as part of their processes or activities
- consult to identify the location of equipment and infrastructure (water lines, underground power lines and gas lines) on your land (e.g. long grass can hide irrigation riser mains or equipment not used frequently, such as harrows).

Gates, grids and fences

The Land Access Code places mandatory conditions on resource companies relating to gates, grids and fences. These mandatory conditions must be used as a starting point in any negotiations around conditions to minimise impact on gates, grids and fences.

Pest and weeds

The Land Access Code places mandatory conditions on resource companies relating to obligations to prevent the spread of declared pests. These mandatory conditions must be used as a starting point in any negotiations around conditions to minimise pest and weed spread risk.

In addition, consider stating in the agreement that the company must:

- consult with you and check with Biosecurity Queensland about weeds and decontamination as notifiable weeds could exist on your land (e.g. giant rat's tail grass which is found on some properties in company activity areas)
- decontaminate (wash down) vehicles before leaving and then entering other properties
- seek advice about livestock biosecurity requirements (e.g. ticks, enzootic bovine leucosis (EBL), or check with Biosecurity Queensland about quarantine restrictions).

Grazing activities

Consider stating in the agreement that the resource company must:

- leave gates as found unless otherwise directed, as closing gates may prevent livestock from accessing water and leaving closed gates open may result in mixing of segregated herds
- secure behind fenced areas all equipment that could be damaged by or harmful to stock
- consult with you about any broken gates, fences and wires
- remove all waste products and litter as it may be hazardous to livestock
- avoid bulls and horses as they might be aggressive
- establish procedures with you to immediately report sick, down or lame animals, calving problems, livestock entangled in wire, as an animal isolated or laying down may need attention
- immediately report straying stock on roads or in crops
- confirm if you have any special requirements related to livestock management (e.g. lambing or calving paddocks, integrity of stallion or ram enclosures, certified production systems like organic or cattle care)

- take measures to reduce excessive dust that could render grass unpalatable and impact on production
- take measures to reduce impacts on animal welfare (e.g. stress) from noise, dust, light and vibration where wells are drilled near livestock sheds or yards
- mitigate impacts on aquifers used to supply stock or wash down water
- be aware of the behavioural impacts their activities may have on stock (e.g. stock can behave erratically to noise or strange vehicles)
- not drive through a herd. They are to drive around it.

Cropping

Consider if the agreement should include that the resource company must:

- be familiar with the Farm Biosecurity Manual for the Grains Industry (Plant Health Australia)
- immediately report any stray stock in crops etc
- consult to identify the location of equipment and infrastructure (water lines, underground power lines and gas lines) on your land (e.g. long grass can hide irrigation riser mains or equipment not used frequently, such as harrows)
- immediately report any problems with unattended machinery or infrastructure (e.g. travelling irrigators not travelling, leaking pipes, stuck valves on troughs or overflowing tanks)
- avoid traffic damage to pastures and cropping areas (e.g. where possible stay on existing roads)
- consult on farm-based spraying activities with herbicides and insecticides
- consult on farm machinery operations. If you are operating a harvester or large tractor your presence – and your visibility – may be obscured by dust or other equipment and the company may be unaware that you are working nearby
- consult on laser levelled paddocks that rely on precise fall of the land to optimise water use efficiency and capture. Access roads will impede this and should be avoided on laser levelled land. This should also apply to essential services for resource extraction such as pipelines and other easements
- consult on controlled traffic and precision agriculture activities. These activities aim to minimise impacts on soil, conserve sub-soil moisture, reduce erosion, enable better control of weeds and help maintain soil structure. Alterations to the shape and contours of the land may effect the return on significant capital infrastructure investments required for precision agriculture.

Dairy

Consider if the agreement should include that the resource company's staff or agents must:

- not drive through a dairy herd
- consult with you on regular livestock movements – times/locations.

Fire

Consider if the agreement should include that the resource company must:

- ensure cigarette butts are stubbed out and are not left on your land
- be careful when using equipment that may cause fire (welders and grinders)
- check for local/regional fire bans and reports
- check with you about farm burning activities.

Land, water and vegetation management

Consider if any specific erosion control or contamination measures are needed. If so, try to negotiate a requirement that the resource company:

- implement appropriate erosion control measures around the site of the authorised activities and agreed access routes
- take all reasonable measures to prevent erosion of land including bed or banks of any watercourse
- take all reasonable measures to prevent excavated material or eroded material entering any watercourse
- consult with you, obtain relevant information and develop appropriate procedures to deal with issues such as notifiable weeds and decontamination, livestock biosecurity requirements and agricultural biosecurity requirements
- not destroy, remove or clear trees, timber and scrub to an extent greater than is necessary, having regard to the nature of the activities.

- sets a baseline for water bore levels so you can determine any impacts on your bores
- only removes water from above ground sources, when and where you have agreed this can be undertaken.

Camps

The Land Access Code places mandatory conditions on resource companies relating to camps. These mandatory conditions must be used as a starting point in any negotiations around location of camps.

Ask the resource company if they intend to establish a camp on your land. If so, determine if the proposed camp location and management plan is acceptable. If you are not satisfied, consider negotiations around alternative locations or changes to the plan.

Items brought on to land

The Land Access Code places mandatory conditions on resource companies relating to items brought on to land. These mandatory conditions must be used as a starting point in any negotiations around what companies bring on to the property.

Future compensation claim

By preparing early in the negotiation process and keeping records you are better able to plan for the future. Keep baseline documents recording information or details for future reference? This will help identify any impacts on your business resulting from the company's activities.

More information

- Call 13 25 23
- Visit www.deedi.qld.gov.au



Department of **Employment, Economic Development and Innovation**
13 2523 (Interstate callers • 07 3001 6359)
www.deedi.qld.gov.au