



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 costeaning with an excavator
- 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 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 the activities or conduct proposed to be undertaken and, where there is impact on the landholder, compensation arrangements for those activities.

Deferral Agreement means a legal agreement in which a landholder and resource company agree to defer the negotiation of Conduct and Compensation Agreement until a later date and after the resource company has accessed the land to undertake advanced activities.

Landholder means owner and occupier (e.g. rental tenant) of private land.

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.

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 given 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 their 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.

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
- 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 in 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.

Act granting resource authority	Resource authority type
<i>Mineral Resources Act 1989</i>	<ul style="list-style-type: none"> • Prospecting permit • Exploration permit (for both coal and minerals other than coal) • Mineral development licence • Mining claim • Mining lease
<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 granted under the *Mineral Resources Act 1989*. This is because different land access and compensation provisions, set out in the *Mineral Resources Act 1989*, apply to these resource authority types. However, the restricted land provisions of the *Mineral and Energy Resources (Common Provisions) Act 2014* apply to prospecting permits, mining claims and mining leases.

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 and obligations

For resource companies	For landholders
<ul style="list-style-type: none">• 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• 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.	<ul style="list-style-type: none">• 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.

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 that have breached the mandatory conditions. 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.

Restricted land

The restricted land framework applies to all resource authorities covered by this guide.

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.

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. 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, what is considered to be restricted land is set at the point in time when the application for the production authority is lodged.

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	For landholders
<ul style="list-style-type: none"> • 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. 	<ul style="list-style-type: none"> • Right to say no to a resource company seeking to enter restricted land. • Right to not to negotiate access to restricted land as part of conduct and compensation negotiations. • Landholder cannot establish new areas of restricted land following the lodgement of an application for a production authority over the 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 www.business.qld.gov.au.

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 resource 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 2016
- Any relevant environmental authority for the resource authority; and
- Any code of 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.

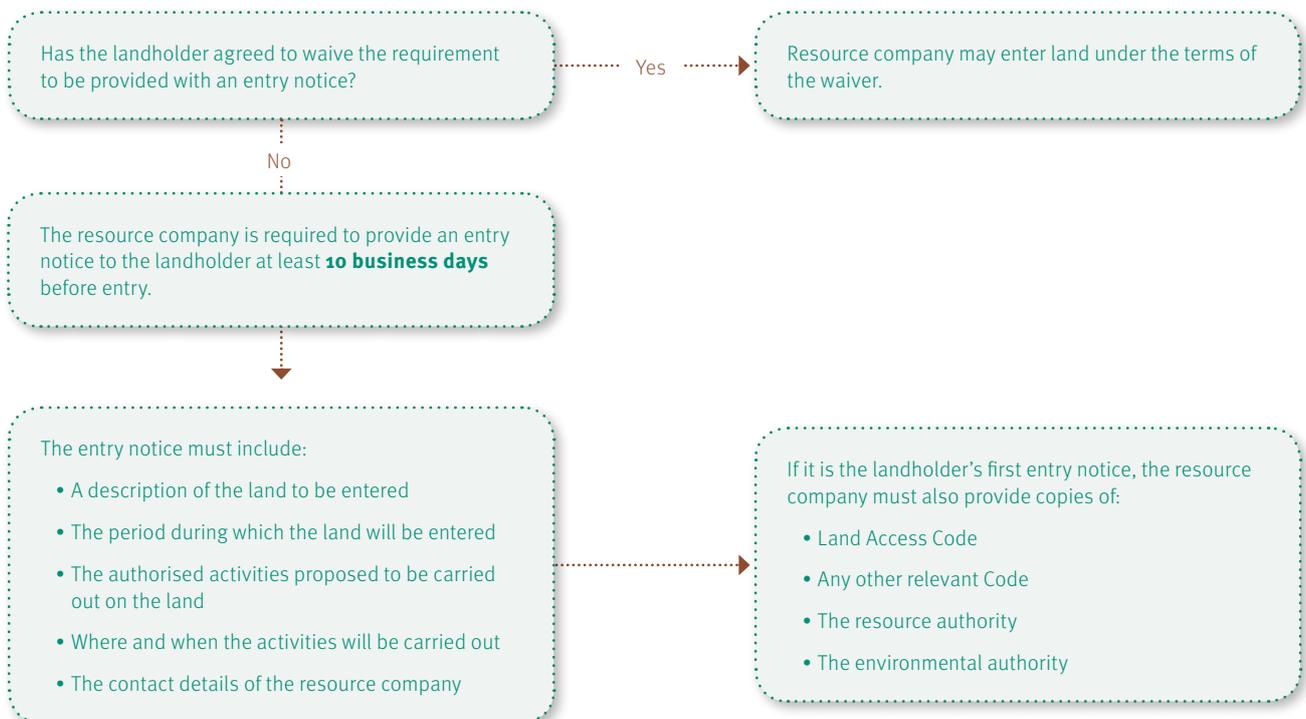
Preliminary activities flowchart

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— for example, where an easement has been agreed, or other written permission has been given in relating to a pipeline licence.

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 and obligations

For resource companies	For landholders
<ul style="list-style-type: none">• Right to enter private land only if they have given a valid entry notice to each landholder.• 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.• 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).	<ul style="list-style-type: none">• Right to receive a valid entry notice at least 10 business days prior to entry.• No right to object to the 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.

Negotiated agreement – 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 www.business.qld.gov.au.

Due to Queensland's land access laws, a resource company cannot 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.

A **Conduct and Compensation Agreement** relates to the activities or conduct proposed to be undertaken and, where there is impact on the landholder, compensation arrangements for those activities.

A **Deferral Agreement** allows for a Conduct and Compensation Agreement to be entered into at a later date and after the resource company has accessed the land to undertake advanced activities.

An **Opt-Out Agreement** provides an alternative to entering into a Conduct and Compensation Agreement or a Deferral Agreement. It is a legally binding arrangement between a landholder and resource company where the landholder is agreeing to opt-out of negotiating a Conduct and Compensation Agreement.

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.

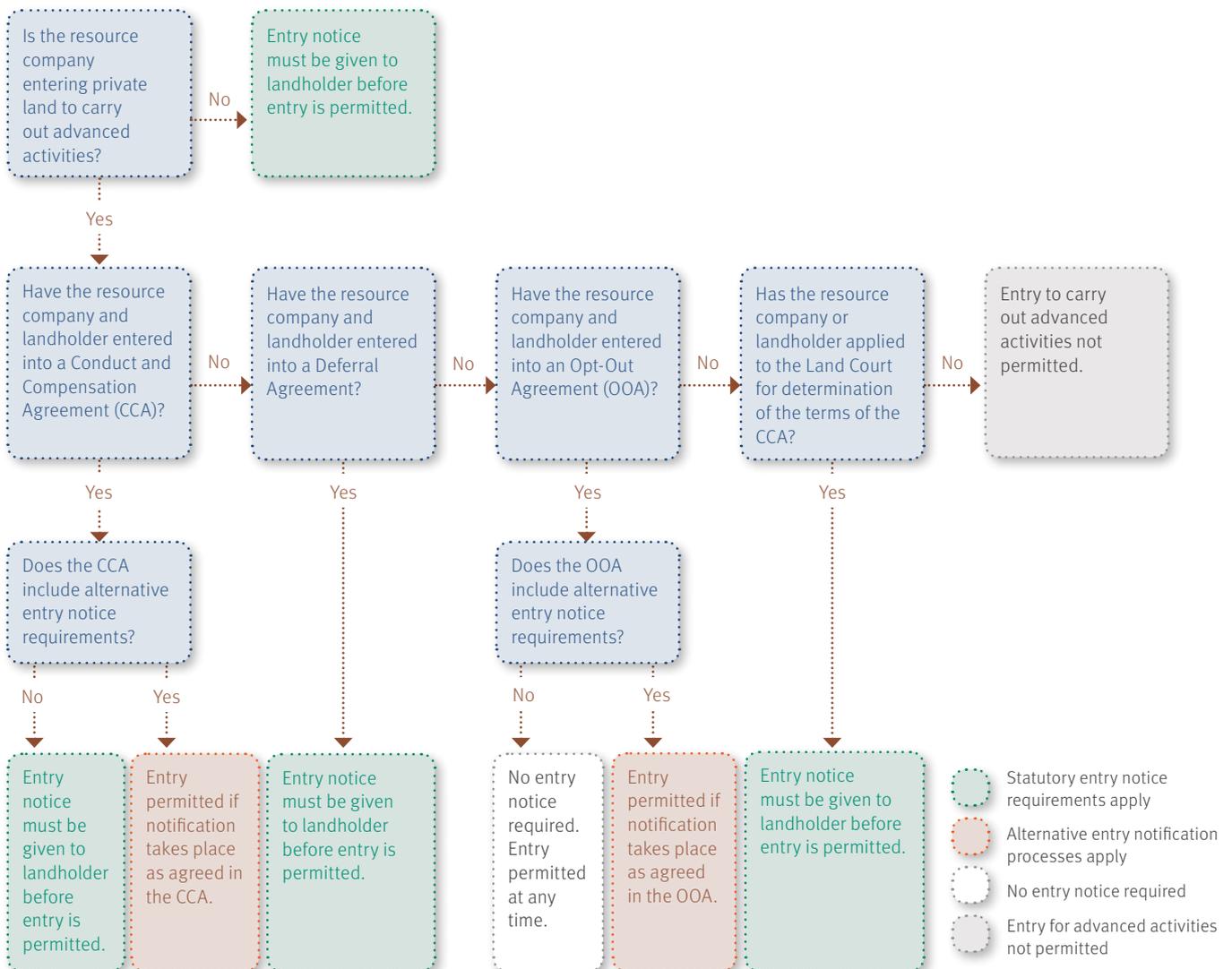
A resource company may also enter private land to undertake advanced activities where a landholder and resource company have failed to reach agreement during negotiation and the dispute resolution process, and the matter has been referred to the Land Court for determination. The usual entry notice requirements (outlined in the section titled **Notification requirements – preliminary activities**) will continue to apply to the resource company in this circumstance.

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 effects and impacts of authorised activities (compensatable effects).

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.

Compensatable effect may also include any necessary accounting, legal or valuation costs reasonably incurred for the negotiation or preparation of a Conduct and Compensation Agreement. This does not include the costs of an Alternative Dispute Resolution facilitator that may be incurred during the dispute resolution phase of the statutory negotiation process.

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
- 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).

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 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 their property based on all current information and what might influence future plans

- Any safety considerations, proposed emergency plans and important contacts
- What controls the resource company has in place regarding access during or post inclement weather (e.g. high rainfall)
- 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.

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 holder's compensation liability to the landholder or any future compensation liability that the holder 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.

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 of Natural Resources and Mines, 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.

Rights and obligations

For resource companies	For landholders
<ul style="list-style-type: none">• 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.	<ul style="list-style-type: none">• 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. Negotiations begin
3. Conference or alternative dispute resolution (ADR)
4. 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.

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. 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 holder's compensation liability
- State which part of the liability the holder 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 holder; and
- Provide a copy of the Land Access Code.

Stage 2: Negotiations begin

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 3: Conference and 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 either a conference run by the Department of Natural Resources and Mines or Alternative Dispute Resolution (ADR) to negotiate a Conduct and Compensation Agreement. This written notice is called an 'election notice'.

Either party can submit an election notice to the other party and the Department of Natural Resources and Mines.

The conference or ADR must be finished within 20 business days of the election notice being given.

Department-run conference

Department of Natural Resources and Mines officers are available to either party to request a conference. Discussions between the parties have the aim of reaching a Conduct and Compensation Agreement. This is a low-cost option that gives each party an opportunity to discuss matters together in a facilitated setting.

Alternative Dispute Resolution

ADR offers strategies for resolving conflicts, avoiding potentially costly and time-consuming litigation. This can involve any type of dispute resolution elected by a party such as arbitration, conciliation, mediation or negotiation.

If the election notice requests ADR, the notice must say what form it will take. The party asking for ADR must bear the costs of engaging the facilitator. The facilitator must be independent to either party.

Stage 4: Land Court determination

A resource company or a landholder may apply to the Land Court for resolution of the Conduct and Compensation Agreement process if:

- The authorised officer of the Department of Natural Resources and Mines failed to finish the conference prior to the end of 20 business days
- The ADR facilitator failed to finish the ADR prior to the end of 20 business days
- Only one party attended the requested ADR or conference; or
- At the end of a conference or ADR attended by both parties, no Conduct and Compensation Agreement had been agreed.

The Land Court can order:

- Non-monetary or monetary compensation
- That a party not engage in particular conduct; or
- That the parties attend a departmental conference or engage in further ADR.

In addition, a landholder or resource company can apply to the Land Court at any time for a determination 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.

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 land owner 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:

- Queensland Government 'Business and Industry Portal' – www.business.qld.gov.au/industry/csg-lng-industry
- DNRM CSG Compliance Unit – phone hotline (07) 4529 1500 or email csg.enquiries@dnrm.qld.gov.au
- DNRM MyMinesOnline helpline – (07) 3199 8133
- Queensland Gasfields Commission at www.gasfieldscommissionqld.org.au/gasfields
- Queensland Law Society find a solicitor at www.qls.com.au/For_the_community/Find_a_solicitor



Department of Natural Resources and Mines

www.dnrm.qld.gov.au