



### ISSUE

Under NSW law, the Government owns and controls mineral and petroleum resources under the surface of your land. With the increase in mineral, coal, coal seam gas and gas infrastructure activities across NSW, the Association has prepared a summary of key points for property owners to consider when negotiating access agreements. This summary is intended to complement the suite of documents already available to members regarding exploration access and land access agreements, available from the NSW Farmers Association website at:

[http://www.nswfarmers.org.au/policy\\_committees/crm/priority\\_issue\\_9](http://www.nswfarmers.org.au/policy_committees/crm/priority_issue_9).

### EXPLORATION LICENCE

Once an Exploration Licence is granted by the NSW State Government over an area of land that includes your property, the miner (holder of the licence) has the statutory right to explore for the specified mineral on your property.

- Despite the right to explore, the *Mining Act 1992*, *Petroleum (Onshore) Act 1991* and the *Pipelines Act 1967* does not grant the holder of the licence an automatic right of entry to any property within the licence area.
- The holder of the licence must have an access arrangement with the property owner in order to gain access to the property, and will always try first to negotiate such access with the landholder.

to the landholder; to a person apparently above the age of 16 at the landholder's place of residence or business; by posting it duly stamped and addressed to the landholder at the place last shown on the records of the DPI; by fax; or by email.

- If a mining or energy company representative visits your property unannounced, you are not required to meet with them, and should ask them to make an appointment to meet with you at a time and place (not necessarily the property) that suits you, to ensure you are prepared for the meeting (see points below).
- Under Section 142 of the *Mining Act 1992* and Section 69E of the *Petroleum (Onshore) Act 1991*, this notice **must also** contain:
  - A detailed plan and description of the area of land to which access is sought, (including the number and location of boreholes), and
  - A **full** description of the prospecting methods to be used.
- Landholders should ensure the accuracy of any notices served on them by the mining company, and discuss any errors with their legal advisors.

### LAND ACCESS AGREEMENTS

- The holder of the licence will then usually also serve the landholder with a copy of their generic access agreement. **It is important to note that the landholder is under absolutely no obligation at all to sign, or agree to any terms contained in this agreement**, and should view it as a starting point from which to begin their negotiations.

*Records of each Exploration Licence, Assessment Lease, Mining Lease application and petroleum titles are kept at the Minerals and Petroleum section of Industry and Investment NSW.*

*For information on coal matters, please contact I&I NSW on (02) 4931 6512.*

*For information on other mineral matters, please contact I&I NSW on (02) 4931 6500.*

*A map showing current coal, petroleum and mineral titles and applications can also be generated by visiting <http://www.minerals.nsw.gov.au/mv2web/mv2?>*

*Under Section 141 of the Mining Act 1992 and Section 69D(2A) of the Petroleum (Onshore) Act 1991, the explorer must pay "reasonable legal costs of the landholder in obtaining initial advice about the making of the arrangement".*

*There has been no maximum amount set yet for these costs, so it is a good point of negotiation!*

### INITIAL CONTACT WITH MINING/ENERGY COMPANIES

- The mining/energy company should begin the negotiation by serving the landholder with written notice of the mining company's intention to obtain an access agreement in respect of the land. The notice must be delivered personally

- Generic access agreements can be very brief and may not address unique attributes or circumstances specific to your property and operations. As such, the Association encourages landholders to request that as much detail as possible be included in the agreement, including definitive start and finish dates.

**Please note there is no current NSW Farmers endorsed template access agreement. If you are presented with an agreement which claims to be endorsed by NSW Farmers you should still seek independent legal advice.**



# Negotiating Access Agreements

## PROPERTY OWNER BASICS

- It is important to note that exploration under the *Petroleum (Onshore) Act 1991* includes exploratory bores, but also the more extensive process known as 'Pilot Test Production'. This should be recognised when considering the required elements of exploratory land access agreements.
- Access agreements should have clear start and finish dates, to ensure the landholder is clear on the period in which exploration activities could take place. The agreement should also include specific information about the times of day and days of the week that exploration activities will be undertaken. Landholders could consider agreeing to separate access agreements for each exploration activity, eg, in the case of coal seam gas exploration, a separate agreement for exploratory drilling, and a separate agreement for pilot test production.
- If, after a further 28 days, the parties cannot agree on the appointment of an arbitrator, then either party may apply to the Director-General for the appointment of a member of the Arbitration Panel as an arbitrator.
- Under Section 147 of the *Mining Act 1992* and Section 69J of the *Petroleum (Onshore) Act 1991*, the arbitrator must conciliate, "use their best endeavours", and must act according to "equity, good conscience, and the substantial merits of the case" to bring both parties together to reach a settlement acceptable to all of them. If the parties are still unable to agree, then the arbitrator may impose an access arrangement which may be appealed firstly to the same arbitrator, or then further to the Land and Environment Court.

*A number of conditions that may be included in access agreements to protect landholders and their property rights are listed at Section 141 of the Mining Act 1992 and Section 69D(1) of the Petroleum (Onshore) Act 1991.*

- Landholders should ensure that they give careful consideration to their own farm biosecurity and quality assurance programmes, farm seasonal workplan, family life, cost of legal advice, impact of access on daily and work routines and possible access routes. Arrangements pertaining to any of these are all seen as reasonable conditions to include in an access agreement.
- Similarly, occupational health and safety requirements are also an important consideration. Landholders should consult with both employees and the mining/energy company to adopt processes that ensure the health and safety of all people accessing the property. These processes should be detailed in the access agreement.
- Under Section 31 of the *Mining Act 1992*, the mining company must not explore within a certain range of improvements, such as fences, gardens etc, so it is important to ensure that this section is complied with. This section is largely untested in court.

### WHAT HAPPENS IF NEGOTIATIONS BREAK DOWN

- If, after 28 days of negotiating, the mining/energy company and the landholder cannot reach agreement as to the terms of the access agreement, either party may request that an arbitrator be appointed. The parties may agree to the appointment of any person as an arbitrator.

### COMMUNICATION STRATEGIES

- Mining/energy companies often prefer to deal with landholders on a "one-on-one" basis. Landholders must be aware, however, that often the professionalism, experience, and negotiating ability of the mining/energy team can place the landholder at a distinct disadvantage. It is recommended either that the landholders form small groups and request that they meet together, (for Association Members, local Branches and/or District Councils may be available to coordinate) or else that the landholder engage a solicitor or experienced negotiator to assist them.
- It is also helpful if the landholder keeps accurate diary notes of every contact made to them by the mining/energy company, including the nature of such contact, and the persons involved. Likewise, every piece of correspondence either to or from the mining/energy company should be retained. Landholders may also wish to send a letter or email to the mining/energy company confirming in writing the key points of their conversation.

*If the landholder desires, the mining/energy company can be directed to contact them only through their solicitor, or legal advisor. This is best done in writing, and signed by the landholder.*

### DISCLAIMER:

The material contained in this document does not constitute legal advice. The information provided is of a general nature only. The document is not to be relied upon in substitution for detailed legal advice. NSW Farmers' Association is not responsible for any action taken in reliance on any information contained in this document. Readers of this document should not act upon information contained in this document without consulting legal counsel.

For more information please contact:

Member Service Centre  
T: 1300 794 000

[www.nswfarmers.org.au](http://www.nswfarmers.org.au)