



New South Wales

Petroleum (Onshore) Legislation Amendment (Arbitration and Compensation) Regulation 2016

under the

Petroleum (Onshore) Act 1991

His Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Petroleum (Onshore) Act 1991*.

ANTHONY ROBERTS, MP
Minister for Industry, Resources and Energy

Explanatory note

The object of this Regulation is to make the following amendments, which are consequential on the enactment of the *Mining and Petroleum Legislation Amendment (Land Access Arbitration) Act 2015*:

- (a) amendments to the *Petroleum (Onshore) Regulation 2016*:
 - (i) to make it clear that nothing in the *Petroleum (Onshore) Act 1991* or the *Petroleum (Onshore) Regulation 2016* requires the boundaries of an area comprised in a petroleum title to match or mirror the boundaries of 1 or more blocks, and
 - (ii) to prescribe an access code containing provisions relating to access to land by the holder of a prospecting title and the carrying out of activities on that land by the holder and to designate which provisions of that code are mandatory, and
 - (iii) to provide for the making and investigation of complaints against arbitrators who are members of the Arbitration Panel, and
 - (iv) to provide for the payment of costs concerned in negotiating access arrangements and the provision of evidence of the incurring of those costs, and
 - (v) to specify the matters for consideration in determining the compensation to be paid to a landholder,
- (b) an amendment to a transitional provision inserted into the *Petroleum (Onshore) Act 1991*, including for law revision purposes.

This Regulation is made under the *Petroleum (Onshore) Act 1991*, including sections 13, 69DA, 69E (2F), 69W, 109 (4) and 138 (the general regulation-making power), clause 6 (1) (c) of Schedule 1B and clause 2 of Schedule 1.

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Petroleum (Onshore) Act 1991

1 Name of Regulation

This Regulation is the *Petroleum (Onshore) Legislation Amendment (Arbitration and Compensation) Regulation 2016*.

2 Commencement

This Regulation commences on 1 December 2016 and is required to be published on the NSW legislation website.

Schedule 1 Amendment of Petroleum (Onshore) Act 1991 No 84

Schedule 1 Savings and transitional provisions

Omit the clause headed “**Application of amendment relating to the definition of “significant improvement”**” from the Part headed “**Provisions consequent on enactment of Mining and Petroleum Legislation Amendment (Land Access Arbitration) Act 2015**”.

Insert instead, with appropriate clause numbering:

Application of amendments relating to the definition of “significant improvement”

The insertion of the definition of *significant improvement* into section 72, and the other amendments made to that section, by the 2015 amending Act do not apply in relation to the following:

- (a) any proceedings in the Land and Environment Court under that section that were commenced, but not finally determined, before the commencement of this clause,
- (b) any proceedings in that Court in relation to a dispute concerning an access arrangement, or the variation of an access arrangement, for which notice had been given under section 69E before the commencement of this clause:
 - (i) that had not commenced before the commencement of this clause, or
 - (ii) that had commenced, but had not been finally determined, before the commencement of this clause.

Schedule 2 Amendment of Petroleum (Onshore) Regulation 2016

[1] Clause 4 Drawing of plans: section 13

Insert at the end of clause 4 (1):

Note. Nothing in the Act or this Regulation requires the boundaries of an area that is intended to be comprised in a petroleum title to match or mirror the boundaries of 1 or more blocks.

[2] Part 2A

Insert after Part 2:

Part 2A Land access arbitration

16A Access code: section 69DA

- (1) For the purposes of section 69DA (1) of the Act, the document entitled “Exploration Code of Practice: Petroleum Land Access” published by the Department on 1 December 2016 is prescribed.
- (2) For the purposes of section 69DA (2) of the Act, the provisions of that code that appear under the heading “Part C—Mandatory Provisions” are designated as mandatory provisions.
- (3) This clause does not apply in relation to an access arrangement where notice of intention to seek the access arrangement was given before 1 December 2016.

16B Making of complaints about Arbitration Panel arbitrators: section 69W (3) (a)

For the purposes of section 69W (3) (a) of the Act, a complaint made about an arbitrator appointed under section 69G or 69HA (7) (b) of the Act:

- (a) must be made in writing to the Secretary, and
- (b) must be made within 14 days after the subject matter of the complaint first becomes known to the person making the complaint, unless the Secretary considers special circumstances exist that warrant a complaint being permitted to be made after that date.

16C Investigation by Secretary of complaints about Arbitration Panel arbitrators: section 69W (3) (b)

- (1) For the purposes of section 69W (3) (b) of the Act:
 - (a) the Secretary must provide notice of a complaint made under section 69W (1) of the Act by a party to an arbitration to:
 - (i) the other party to the arbitration, and
 - (ii) the arbitrator who is the subject of the complaint, and
 - (b) that notice must include:
 - (i) the name and address of the party making the complaint, and
 - (ii) details about the nature of the complaint, and
 - (iii) details of any evidence provided by the party making the complaint that supports the complaint.

- (2) The Secretary must:
 - (a) provide an arbitrator the subject of a complaint under section 69W (1) of the Act with a reasonable opportunity to make any submissions about the complaint, and
 - (b) take any submissions made by the arbitrator into consideration when determining whether to remove the arbitrator under section 69W (1) of the Act.
- (3) Any determination of the Secretary after the investigation of a complaint against an arbitrator must:
 - (a) be in writing, and
 - (b) set out the reasons for the determination made in relation to the complaint, and
 - (c) be given to the party that made the complaint, and the arbitrator who is the subject of the complaint, as soon as practicable.

16D Costs relating to access arrangements: section 69E (2F)

For the purposes of section 69E (2F) of the Act, the payment of costs is not required unless documentary evidence of the incurring of those costs (including costs relating to time spent participating in negotiating the access arrangement) has been provided to the holder of the prospecting title.

[3] Clause 30A

Insert after clause 30:

30A Matters for consideration by court, person or body in determining compensation: section 109 (4)

For the purposes of section 109 (4) of the Act, in making an assessment of the compensation to be paid to a person having any estate or interest in land, the following matters are prescribed:

- (a) the nature, quality, area and particular characteristics of the land concerned,
- (b) the proximity of the land to any building, structure, road, track or other facility,
- (c) the purpose for which the land is normally used,
- (d) the use of the land that is approved under any development consent under the *Environmental Planning and Assessment Act 1979* that is in force in respect of the land.

[4] Clause 31, heading

Insert “**by Land and Environment Court**” after “**compensation**”.