
Mining and Petroleum Legislation Amendment (Land Access) Bill 2010

Amendments proposed by Legislative Council on 19 May 2010.

No. 1 Page 4, Schedule 1 [3], line 3. Omit “orally or”.

No. 2 Page 4, Schedule 1 [4], lines 21–24. Omit all words on those lines.

No. 3 Page 4. Insert after line 24:

[5] Section 141 (1A)

Insert after section 141 (1):

- (1A) The Director-General may, with the concurrence of the NSW Farmers Association and the NSW Minerals Council, publish templates for use for standard access arrangements. The use of any such template is not mandatory.

No. 4 Page 4, Schedule 1. Insert after line 24:

[5] Section 141 (2A)

Insert after section 141 (2):

- (2A) An access arrangement must (if the landholder so requests) specify that the holder of the prospecting title is required to pay the reasonable legal costs of the landholder in obtaining initial advice about the making of the arrangement. Those costs are not to exceed the maximum amount set by the Director-General, with the concurrence of the NSW Farmers Association and the NSW Minerals Council, by order published in the Gazette.

No. 5 Page 4. Insert after line 24:

[5] Section 141 (4)

Omit the subsection. Insert instead:

- (4) If the holder of a prospecting title contravenes an access arrangement, a landholder of the land concerned may deny the holder access to the land until:
- (a) the holder ceases the contravention, or
 - (b) the contravention is remedied to the reasonable satisfaction of, or in the manner directed by, an arbitrator appointed by the Director-General.

The Director-General is to make such an appointment within 48 hours after being requested to do so by the landholder and the arbitrator is to deal with the matter within 5 business days of the appointment. If the arbitrator does not deal with the matter within that time, the

landholder may deny the holder of the prospecting title access to the land until such time as the matter is determined by the arbitrator.

No. 6 Page 4, Schedule 1 [5], line 28. Omit “(either orally or in writing and either”. Insert instead “in writing (either”.

No. 7 Page 5, Schedule 1. Insert after line 2:

[6] Section 142A

Insert after section 142:

142A Notice to mortgagees of making of access arrangements

- (1) Within 14 days after an access arrangement is agreed between a landholder and the holder of a prospecting title, the holder is to serve notice of the making of the arrangement on each person (other than that landholder) who is identified in any register or record kept by the Registrar-General as a person having an interest as mortgagee in the land concerned.
- (2) Notice is not required to be served on a mortgagee under this section:
 - (a) if the mortgagee has been given a copy of the written notice referred to in section 142 to the landholder of the intention to obtain the access arrangement, or
 - (b) if the landholder with whom the access arrangement was made is not the mortgagor.
- (3) If notice is required to be served on a mortgagee under this section, the access arrangement does not come into force until the end of the period of 14 days after the notice is served, unless the holder of the prospecting title has reasonable cause to believe that the mortgagee is not a mortgagee in possession of the land concerned.
- (4) The requirement imposed by this section on the holder of a prospecting title is taken to be a condition of the prospecting title.
- (5) This section applies only to access arrangements made after the commencement of this section.

Note. If the person is a mortgagee in possession of the land, an access arrangement with that person is also required under section 140 before prospecting operations may be carried out on the land.

No. 8 Page 5, Schedule 1 [7], line 20. After “Court” insert “if the arrangement was determined by a court or an arbitrator”.

No. 9 Page 6, Schedule 1 [7], line 8. Omit “7 days”. Insert instead “28 days”.

No. 10 Page 6, Schedule 1 [7], proposed section 158 (5) (c), line 17. Omit “28 days”. Insert instead “60 days”.

No. 11 Page 6, Schedule 1 [7], lines 27–36. Omit all words on those lines.

No. 12 Page 8, Schedule 1 [13]. Insert after line 5:

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- (3) Any amendment made by the amending Act that requires the agreement for an access arrangement to be in writing does not affect the operation of any access arrangement, in force immediately before the commencement of that amendment, that was agreed to orally.

No. 13 Page 8, Schedule 1 [13], lines 8–16. Omit all words on those lines.

No. 14 Page 11, Schedule 3 [3], line 8. Omit “orally or”.

No. 15 Page 11, Schedule 3 [4], lines 24–27. Omit all words on those lines.

No. 16 Page 11. Insert after line 27:

[5] Section 69D (1A)

Insert after section 69D (1):

- (1A) The Director-General may, with the concurrence of the NSW Farmers Association and the NSW Minerals Council, publish templates for use for standard access arrangements. The use of any such template is not mandatory.

No. 17 Page 11, Schedule 1. Insert after line 27:

[5] Section 69D (2A)

Insert after section 69D (2):

- (2A) An access arrangement must (if the landholder so requests) specify that the holder of the prospecting title is required to pay the reasonable legal costs of the landholder in obtaining initial advice about the making of the arrangement. Those costs are not to exceed the maximum amount set by the Director-General, with the concurrence of the NSW Farmers Association and the NSW Minerals Council, by order published in the Gazette.

No. 18 Page 11. Insert after line 27:

[5] Section 69D (4)

Omit the subsection. Insert instead:

- (4) If the holder of a prospecting title contravenes an access arrangement, a landholder of the land concerned may deny the holder access to the land until:
- (a) the holder ceases the contravention, or
 - (b) the contravention is remedied to the reasonable satisfaction of, or in the manner directed by, an arbitrator appointed by the Director-General.

The Director-General is to make such an appointment within 48 hours after being requested to do so by the landholder and the arbitrator is to deal with the matter within 5 business days of the appointment. If the arbitrator does not deal with the matter within that time, the landholder may deny the holder of the prospecting title access to the land until such time as the matter is determined by the arbitrator.

No. 19 Page 11, Schedule 3 [5], line 31. Omit “(either orally or in writing and either”. Insert instead “in writing (either”.

No. 20 Page 12, Schedule 3. Insert after line 7:

[6] Section 69EA

Insert after section 69E:

69EA Notice to mortgagees of access arrangements

- (1) Within 14 days after an access arrangement is agreed between a landholder and the holder of a prospecting title, the holder is to serve notice of the making of the arrangement on each person (other than that landholder) who is identified in any register or record kept by the Registrar-General as a person having an interest as mortgagee in the land concerned.
- (2) Notice is not required to be served on a mortgagee under this section:
 - (a) if the mortgagee has been given a copy of the written notice referred to in section 69E to the landholder of the intention to obtain the access arrangement, or
 - (b) if the landholder with whom the access arrangement was made is not the mortgagor.
- (3) If notice is required to be served on a mortgagee under this section, the access arrangement does not come into force until the end of the period of 14 days after the notice is served, unless the holder of the prospecting title has reasonable cause to believe that the mortgagee is not a mortgagee in possession of the land concerned.
- (4) The requirement imposed by this section on the holder of a prospecting title is taken to be a condition of the prospecting title.
- (5) This section applies only to access arrangements made after the commencement of this section.

Note. If the person is a mortgagee in possession of the land, an access arrangement with that person is also required under section 69C before prospecting operations may be carried out on the land.

No. 21 Page 12, Schedule 3 [7], line 25. After “Court” insert “if the arrangement was determined by a court or an arbitrator”.

No. 22 Page 13, Schedule 3 [7], line 12. Omit “7 days”. Insert instead “28 days”.

No. 23 Page 13, Schedule 3 [7], proposed section 69U (5) (c), line 22. Omit “28 days”. Insert instead “60 days”.

No. 24 Page 13, Schedule 3 [7], lines 32–41. Omit all words on those lines.

No. 25 Page 15, Schedule 3 [12]. Insert after line 19:

- (3) Any amendment made by the amending Act that requires the agreement for an access arrangement to be in writing does not affect the operation of any access arrangement, in force immediately before the commencement of that amendment, that was agreed to orally.

No. 26 Page 15, Schedule 3 [12], lines 22–30. Omit all words on those lines.