

Passed by both Houses



New South Wales

# Mining and Petroleum Legislation Amendment (Land Access) Bill 2010

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*I certify that this public bill, which originated in the Legislative Assembly, has finally passed the Legislative Council and the Legislative Assembly of New South Wales.*

*Clerk of the Legislative Assembly.  
Legislative Assembly,  
Sydney, , 2010*



New South Wales

## **Mining and Petroleum Legislation Amendment (Land Access) Bill 2010**

Act No , 2010

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An Act to amend the *Mining Act 1992* and the *Petroleum (Onshore) Act 1991* in relation to rights of access to land for exploration; and for other purposes.

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*I have examined this bill and find it to correspond in all respects with the bill as finally passed by both Houses.*

*Assistant Speaker of the Legislative Assembly.*

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**The Legislature of New South Wales enacts:**

**1 Name of Act**

This Act is the *Mining and Petroleum Legislation Amendment (Land Access) Act 2010*.

**2 Commencement**

This Act commences on the date of assent to this Act.

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## Schedule 1 Amendment of Mining Act 1992 No 29

### [1] Dictionary, definition of “landholder”

Omit paragraph (g) from the definition of *landholder*. Insert instead:

- (g) a person identified in any register or record kept by the Registrar-General as a person having an interest in the land, being:
  - (i) a mortgagee in possession of the land, or
  - (ii) a lessee of the land or other person entitled to an exclusive right of occupation of the land, or
  - (iii) a Minister or public authority having the benefit of a covenant affecting the land that is imposed by a Minister on behalf of the Crown under the *Crown Lands Act 1989*, or
  - (iv) a Minister or public authority having an interest in the land under a conservation, natural heritage or biobanking agreement, or
  - (v) a person prescribed by the regulations for the purposes of this paragraph, or
- (g1) a person identified in any register or record kept by the Registrar-General as a person having an interest in the land, other than a person to whom paragraph (g) applies, but only in a provision of this Act in which a reference to a landholder is expressed to include a *secondary landholder*, or

**Note.** See s 255A, Part 13, s 383C.

### [2] Dictionary

Insert in alphabetical order:

*secondary landholder*—see paragraph (g1) of the definition of *landholder*.

### [3] Section 140

Omit the section. Insert instead:

#### **140 Prospecting to be carried out in accordance with access arrangement**

- (1) The holder of a prospecting title must not carry out prospecting operations on any particular area of land except in accordance

with an access arrangement or arrangements applying to that area of land:

- (a) agreed (in writing) between the holder of the prospecting title and each landholder of that area of land, or
  - (b) determined by an arbitrator in accordance with this Division.
- (2) Separate access arrangements may (but need not) be agreed or determined with different landholders of the same area of land, for different areas of the same landholding or with respect to the different matters to which access arrangements relate.
- (3) Separate access arrangements may be made to preserve the confidentiality of provisions of the arrangements, to deal with persons becoming landholders at different times or for any other reason.

**[4] Section 141 Matters for which access arrangements to provide**

Omit section 141 (1) (i). Insert instead:

- (i) the notification to the holder of the prospecting title of particulars of any person who becomes an additional landholder.

**[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.

**[6] 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.

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**[7] 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.

**[8] Section 142 Holder of prospecting title to seek access arrangement**

Omit section 142 (3). Insert instead:

- (3) The holder of a prospecting title and a landholder of the land concerned may agree in writing (either before or after the prospecting title is granted) on an access arrangement.
- (4) If some but not all of the landholders of any particular land have agreed to an access arrangement, a reference in sections 143–156 to each landholder of the land or to a party to the hearing before an arbitrator does not include a reference to any of those landholders who has agreed to an access arrangement. However, the arbitrator may allow a landholder who has agreed to an access arrangement to become a party to the hearing of the matter in order to ensure consistency in the access arrangements over the same land, and may, for that purpose, replace the agreed access arrangement with the access arrangement determined by the arbitrator.
- (5) In this section, a reference to the holder of a prospecting title includes a reference to the proposed holder of a prospecting title.

**[9] 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.

**[10] Section 155 Review of determination**

Insert after section 155 (6):

- (6A) A review of a determination is to be by way of rehearing, and fresh material or material in addition to, or in substitution for, the material considered on the making of the determination by the arbitrator may be given on the review and taken into consideration by the Land and Environment Court.

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**[11] Sections 157 and 158**

Omit the sections. Insert instead:

**157 Variation of access arrangements**

- (1) An access arrangement may be varied in accordance with the terms of the arrangement relating to its variation.
- (2) An access arrangement may also be varied:
  - (a) by the agreement of the parties to the arrangement, or
  - (b) with the consent of all the parties to the arrangement, by the arbitrator who determined the arrangement, or
  - (c) on application by any of the parties to the arrangement, by order of the Land and Environment Court if the arrangement was determined by a court or an arbitrator.
- (3) In this section, *vary* includes terminate.

**158 Change in landholders etc**

- (1) An access arrangement with 2 or more landholders does not terminate because one of those landholders ceases to be a landholder of the land concerned.
- (2) An access arrangement does not terminate because a person becomes a landholder of all or any part of the land concerned after the arrangement was agreed or determined.
- (3) An access arrangement does not run with the land, and accordingly a person does not (except as provided by this section) become a party to the access arrangement merely because the person becomes a landholder of any of the land after the access arrangement was agreed or determined.
- (4) If, after an access arrangement has been agreed or determined, a person becomes a landholder of any of the land to which the arrangement applies in addition to another landholder who continues to be a party to the arrangement, the provisions of the arrangement (other than those relating to the payment of compensation) apply to the new landholder as if the new landholder were a party to the arrangement, but only if the holder of the prospecting title concerned has given the new landholder a copy of the access arrangement.
- (5) If the new landholder objects to the access arrangement within 28 days after being given a copy of the arrangement, the access

arrangement ceases to apply to the new landholder when whichever of the following first happens:

- (a) the new landholder agrees to an access arrangement with the holder of the prospecting title concerned in accordance with this Division,
- (b) an arbitrator is appointed and determines an access arrangement in relation to the new landholder in accordance with this Division,
- (c) at the end of the period of 60 days after the new landholder objects, an access arrangement has not been so agreed or determined.

However, if an arbitrator is appointed or an application for review of a determination of the arbitrator is made, the arbitrator or the Land and Environment Court (as the case requires) may continue the existing access arrangement (with or without variation) until the determination of the arbitration or review.

- (6) Nothing in this section prevents an access arrangement being agreed or determined in respect of a proposed new landholder.

**[12] Section 255A Restriction of power of entry: permit holders**

Insert after section 255A (2):

- (3) In this section, *landholder* includes a secondary landholder.

**[13] Sections 262, 269 and 271**

Insert in alphabetical order in each section:

*landholder* includes a secondary landholder.

**[14] Section 383C General immunity of landholders**

Insert at the end of the section:

- (2) In this section, *landholder* includes a secondary landholder.

**[15] Schedule 4 Regulation making powers**

Omit clause 10. Insert instead:

**10 Arbitration**

Regulating arbitrator's costs under this Act and the procedure of any arbitration conducted under this Act.

**[16] Schedule 6 Savings, transitional and other provisions**

Insert at the end of clause 1 (1):

*Mining and Petroleum Legislation Amendment (Land Access) Act 2010*, but only in relation to the amendments made to this Act

**[17] Schedule 6**

Insert at the end of the Schedule with appropriate Part and clause numbering:

**Part Provisions consequent on enactment of  
Mining and Petroleum Legislation  
Amendment (Land Access) Act 2010**

**Definition**

In this Part:

*the amending Act* means the *Mining and Petroleum Legislation Amendment (Land Access) Act 2010*.

**Existing land access arrangement**

- (1) A land access arrangement purporting to have been agreed or determined under Division 2 of Part 8 of this Act before the commencement of the amending Act that would have been a valid arrangement if agreed or determined after that commencement is taken to be (and always to have been) a valid arrangement under that Division.
- (2) Any action purportedly taken before the commencement of the amending Act in relation to a proposed access arrangement under that Division that would have been validly taken after that commencement is taken to have been (and always to have been) validly taken under that Division.
- (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.
- (4) This clause does not affect any order of a court made before the commencement of the amending Act.

**Existing mining authorities**

- (1) In this clause:  
*mining authority* means an authority or other authorisation granted under this Act or any prospecting area constituted under this Act.
- (2) A mining authority purporting to have been granted or constituted under this Act before the commencement of the amending Act that would have been a valid mining authority if granted or constituted after that commencement is taken to be (and always to have been) a valid mining authority under this Act.
- (3) Any action purportedly taken before the commencement of the amending Act in relation to a proposed mining authority under this Act that would have been validly taken after that commencement is taken to have been (and always to have been) validly taken under this Act.
- (4) This clause does not affect any order of a court made before the commencement of the amending Act.

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## **Schedule 2      Amendment of Mining Amendment Act 2008 No 19**

**[1]    Schedule 1 [99], proposed section 140**

Omit the item.

**[2]    Schedule 1 [208]**

Insert in alphabetical order in proposed section 242B (6):  
*landholder* includes a secondary landholder.

**[3]    Schedule 1 [225]**

Omit the item.

**[4]    Schedule 1 [226]**

Omit “Omit section 264 (4). Insert instead:” and proposed section 264 (4).  
Insert instead “Insert after section 264 (4):”.

**[5]    Schedule 1 [273]**

Omit proposed clause titled “Access arrangements”.

## Schedule 3 Amendment of Petroleum (Onshore) Act 1991 No 84

### [1] Section 3 Definitions

Omit paragraph (g) of the definition of *landholder* in section 3 (1).

Insert instead:

- (g) a person identified in any register or record kept by the Registrar-General as a person having an interest in the land, being:
  - (i) a mortgagee in possession of the land, or
  - (ii) a lessee of the land or other person entitled to an exclusive right of occupation of the land, or
  - (iii) a Minister or public authority having the benefit of a covenant affecting the land that is imposed by a Minister on behalf of the Crown under the *Crown Lands Act 1989*, or
  - (iv) a Minister or public authority having an interest in the land under a conservation, natural heritage or biobanking agreement, or
  - (v) a person prescribed by the regulations for the purposes of this paragraph, or
- (g1) a person identified in any register or record kept by the Registrar-General as a person having an interest in the land, other than a person to whom paragraph (g) applies, but only in a provision of this Act in which a reference to a landholder is expressed to include a *secondary landholder*, or

**Note.** See sections 101 and 141.

### [2] Section 3 (1)

Insert in alphabetical order:

*secondary landholder*—see paragraph (g1) of the definition of *landholder*.

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**[3] Section 69C**

Omit the section. Insert instead:

**69C Prospecting to be carried out in accordance with access arrangement**

- (1) The holder of a prospecting title must not carry out prospecting operations on any land except in accordance with an access arrangement or arrangements applying to the land:
  - (a) agreed (in writing) between the holder of the prospecting title and each landholder of the land, or
  - (b) determined by an arbitrator in accordance with this Part.
- (2) Separate access arrangements may (but need not) be agreed or determined with different landholders of the same area of land, for different areas of the same landholding or with respect to the different matters to which access arrangements relate.
- (3) Separate access arrangements may be made to preserve the confidentiality of provisions of the arrangements, to deal with persons becoming landholders at different times or for any other reason.

**[4] Section 69D Matters for which access arrangements to provide**

Omit section 69D (1) (i). Insert instead:

- (i) the notification to the holder of the prospecting title of particulars of any person who becomes an additional landholder.

**[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.

**[6] 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.

**[7] 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.

**[8] Section 69E Holder of prospecting title to seek access arrangement**

Omit section 69E (3). Insert instead:

- (3) The holder of a prospecting title and a landholder of the land concerned may agree in writing (either before or after the prospecting title is granted) on an access arrangement.
- (4) If some but not all of the landholders of any particular land have agreed to an access arrangement, a reference in sections 69F–69S to each landholder of the land or to a party to the hearing before an arbitrator does not include a reference to any of those landholders who has agreed to an access arrangement. However, the arbitrator may allow a landholder who has agreed to an access arrangement to become a party to the hearing of the matter in order to ensure consistency in the access arrangements over the same land, and may, for that purpose, replace the agreed access arrangement with the access arrangement determined by the arbitrator.
- (5) In this section, a reference to the holder of a prospecting title includes a reference to the proposed holder of a prospecting title.

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**[9] 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.

**[10] Section 69R Review of determination**

Insert after section 69R (6):

- (6A) A review of a determination is to be by way of rehearing, and fresh material or material in addition to, or in substitution for, the material considered on the making of the determination by the arbitrator may be given on the review and taken into consideration by the Land and Environment Court.

**[11] Sections 69T and 69U**

Omit the sections. Insert instead:

**69T Variation of access arrangements**

- (1) An access arrangement may be varied in accordance with the terms of the arrangement relating to its variation.
- (2) An access arrangement may also be varied:
  - (a) by the agreement of the parties to the arrangement, or
  - (b) with the consent of all the parties to the arrangement, by the arbitrator who determined the arrangement, or
  - (c) on application by any of the parties to the arrangement, by order of the Land and Environment Court if the arrangement was determined by a court or an arbitrator.
- (3) In this section, *vary* includes terminate.

**69U Change in landholders etc**

- (1) An access arrangement with 2 or more landholders does not terminate because one of those landholders ceases to be a landholder of the land concerned.
- (2) An access arrangement does not terminate because a person becomes a landholder of all or any part of the land concerned after the arrangement was agreed or determined.
- (3) An access arrangement does not run with the land, and accordingly a person does not (except as provided by this section) become a party to the access arrangement merely because the person becomes a landholder of any of the land after the access arrangement was agreed or determined.
- (4) If, after an access arrangement has been agreed or determined, a person becomes a landholder of any of the land to which the arrangement applies in addition to another landholder who continues to be a party to the arrangement, the provisions of the arrangement (other than those relating to the payment of compensation) apply to the new landholder as if the new landholder were a party to the arrangement, but only if the holder of the prospecting title concerned has given the new landholder a copy of the access arrangement.
- (5) If the new landholder objects to the arrangement within 28 days after being given a copy of the arrangement, the access

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arrangement ceases to apply to the new landholder when whichever of the following first happens:

- (a) the new landholder agrees to an access arrangement with the holder of the prospecting title concerned in accordance with this Part,
- (b) an arbitrator is appointed and determines an access arrangement in relation to the new landholder in accordance with this Part,
- (c) at the end of the period of 60 days after the new landholder objects, an access arrangement has not been so agreed or determined.

However, if an arbitrator is appointed or an application for review of the determination of the arbitrator is made, the arbitrator or Land and Environment Court (as the case requires) may continue the existing access arrangement (with or without variation) until the determination of the arbitration or review.

- (6) Nothing in this section prevents an access arrangement being agreed or determined in respect of a proposed new landholder.

**[12] Section 101 Notice to landholder**

Insert after section 101 (2):

- (3) In this section, *landholder* includes a secondary landholder.

**[13] Section 138 Regulations**

Insert at the end of section 138 (1) (p):

, and

- (q) regulating arbitrator's costs under this Act and the procedure of any arbitration conducted under this Act.

**[14] Section 141**

Insert after section 140:

**141 General immunity of landholders**

- (1) The landholder of land within which any person (other than the landholder) is authorised to exercise any power or right:
  - (a) by or under this Act, or
  - (b) by any petroleum title under this Act,is not subject to any action, liability, claim or demand arising as a consequence of that person's acts or omissions in the exercise, or purported exercise, of any such power or right.
- (2) This section extends to anything done or omitted to be done before the commencement of this section.
- (3) In this section, *landholder* includes a secondary landholder.

**[15] Schedule 1 Savings and transitional provisions**

Insert at the end of clause 2 (1) (b):

*Mining and Petroleum Legislation Amendment (Land Access) Act 2010*, but only in relation to amendments made to this Act

**[16] Schedule 1**

Insert at the end of the Schedule with appropriate Part and clause numbering:

**Part Provisions consequent on enactment of  
Mining and Petroleum Legislation  
Amendment (Land Access) Act 2010**

**Definition**

In this Part, *the amending Act* means the *Mining and Petroleum Legislation Amendment (Land Access) Act 2010*.

**Existing land access arrangement**

- (1) A land access arrangement purporting to have been agreed or determined under Part 4A of this Act before the commencement of the amending Act that would have been a valid arrangement if agreed or determined after that commencement is taken to be (and always to have been) a valid arrangement under that Part.
- (2) Any action purportedly taken before the commencement of the amending Act in relation to a proposed access arrangement under

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that Part that would have been validly taken after that commencement is taken to have been (and always to have been) validly taken under that Part.

- (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.
- (4) This clause does not affect any order of a court made before the commencement of the amending Act.

**Existing petroleum titles**

- (1) A petroleum title purporting to have been granted under this Act before the commencement of the amending Act that would have been a valid petroleum title if granted after that commencement is taken to be (and always to have been) a valid petroleum title under this Act.
- (2) Any action purportedly taken before the commencement of the amending Act in relation to a proposed petroleum title under this Act that would have been validly taken after that commencement is taken to have been (and always to have been) validly taken under this Act.
- (3) This clause does not affect any order of a court made before the commencement of the amending Act.