



New South Wales

Mining and Petroleum Legislation Amendment (Land Access) Bill 2010

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to amend the *Mining Act 1992* and the *Petroleum (Onshore) Act 1991* in relation to access to land by the holders of prospecting titles over the land following the decision of the Supreme Court in *Brown & Anor v Coal Mines Australia; Alcorn & Anor v Coal Mines Australia Pty Ltd* [2010] NSWSC 143. The Bill:

- (a) removes the obligation, before prospecting activities are carried out, for an access arrangement to be made with certain secondary landholders whose interests are recorded on the land register but who are not entitled to possession of the land (such as a financial institution holding a registered mortgage over the land), but retains the obligation on holders of those titles to pay compensation to those secondary landholders for compensable loss caused by their prospecting activities, and
- (b) enables separate land access arrangements to be made where there are multiple landholders of particular land and removes provision for the termination of any arrangement with multiple landholders whenever one of those landholders ceases to be a landholder or when an additional person becomes a landholder, and

- (c) makes a person who becomes an additional landholder of land for which there is an existing access arrangement subject to that arrangement unless the person objects within 7 days after being notified of the arrangement and, if he or she objects, until an access arrangement is agreed or determined or a period of 28 days expires without any such agreement or determination, and
- (d) provides for access arrangements to make provision for the notification to the holder of the prospecting title of particulars of additional landholders and makes it clear that additional provisions may be included in the arrangements if they are not matters already required by or under the Act or the conditions of the prospecting title, and
- (e) enables access arrangements to be varied by agreement of the parties, by the arbitrator who determined the arrangement or by the Land and Environment Court, and
- (f) repeals an uncommenced provision of the *Mining Amendment Act 2008* that would have required the specification of the amount of compensation that is payable in the event of compensable loss before prospecting activities are carried out (in addition to requiring a land access arrangement before those activities are carried out), and
- (g) excludes secondary landholders from various other provisions that require landholders to be notified before leases and other authorities are granted or areas constituted for prospecting, and
- (h) validates existing land access arrangements and leases and other authorities if they comply with the revised requirements set out in the proposed Act.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on the date of assent to the proposed Act.

Schedule 1 Amendment of Mining Act 1992 No 29

Currently, the definition of *landholder* under the *Mining Act 1992* (the *Mining Act*) includes a person identified in any register or record kept by the Registrar-General as a person having an interest in the land. **Schedule 1 [1]** amends the definition of *landholder* to provide that in order to qualify as a person who falls within that part of the definition of landholder, the person must be a mortgagee in possession, the holder of a lease, or other person entitled to an exclusive right of occupation, a Minister or public authority having an interest under a covenant imposed under the *Crown Lands Act 1989* or under a conservation, natural heritage or biobanking agreement or a person prescribed by the regulations.

Any person who does not hold any such interest in the land but who is identified in the land register as a person having an interest in the land (such as a financial

institution holding a registered mortgage over the land) is a secondary landholder. This amendment removes the obligation, before prospecting activities are carried out, for an access arrangement to be made with secondary landholders. It also removes various obligations under the Mining Act to notify those landholders before leases and other authorities are granted or certain prospecting areas are constituted (eg cl 21 of Schedule 1; s 177; s 200; s 221).

Schedule 1 [8] and [9] amend sections 255A, 262, 269 and 271 of the Mining Act to retain the obligation on holders of prospecting titles to give notice to secondary landholders prior to entering their land and to pay compensation to those secondary landholders for compensable loss caused by their prospecting activities. **Schedule 1 [10]** amends section 383C of the Mining Act to retain a general immunity for secondary landholders from any action, liability, claim or demand arising as a consequence of any act or omission of a person authorised to exercise any power or right under the Mining Act or under a prospecting title. **Schedule 1 [2]** inserts a definition of *secondary landholder* for the purpose of the proposed amendments.

Currently, section 140 of the Mining Act requires the holder of a prospecting title to enter into an access arrangement in relation to land that is agreed between the holder of the title and each landholder prior to carrying out prospecting operations on that land. **Schedule 1 [3]** substitutes section 140 to enable separate land access arrangements to be made where there are multiple landholders of particular land, where prospecting occurs progressively in different areas of the same landholding or where separate arrangements are required to preserve the confidentiality of certain provisions in the arrangements. **Schedule 1 [5]** amends section 142 to make provision for circumstances in which some, but not all, landholders of particular land have agreed to an access arrangement with the holder of a prospecting title. In particular, a landholder who has agreed to an access arrangement will not be a party to a hearing before an arbitrator in relation to the landholders who have not agreed to an access arrangement, unless the landholder requests to be made a party to the hearing.

Schedule 1 [4] amends section 141 of the Mining Act to provide that access arrangements may make provision for the notification to the holder of the prospecting title of particulars of additional landholders and to make it clear that additional provisions may be included in the arrangements if they are not matters already required by or under the Act or the conditions of the prospecting title.

Schedule 1 [6] inserts proposed section 155 (6A) which provides that a review of a determination made by an arbitrator is to be by way of rehearing in the Land and Environment Court.

Schedule 1 [7] substitutes sections 157 and 158 of the Mining Act. Proposed section 157 enables an access arrangement to be varied or terminated by the agreement of the parties to the arrangement, by the arbitrator who determined the arrangement or by the Land and Environment Court.

Proposed section 158 provides that an access arrangement does not terminate if a person becomes a landholder of all or any part of the land concerned after the arrangement was agreed or determined, or if one landholder to an arrangement with 2 or more landholders ceases to be a landholder of the land concerned.

A person who becomes an additional landholder of land for which there is an existing access arrangement is subject to that arrangement unless the person objects within 7 days after being notified of the arrangement and, if he or she so objects, until an access arrangement is agreed or determined, or a period of 28 days expires without any such arrangement or determination. If land subject to an access arrangement ceases to be subject to a particular prospecting title, and instead becomes subject to another prospecting title that is either held by the same title holder or by a person who is assigned the rights of the holder under the access arrangement, the access arrangement does not terminate and the arrangement becomes an access arrangement in respect of that other prospecting title.

Schedule 1 [11] permits, in addition to the regulation of arbitrator's costs, the making of provisions to regulate the procedure of any arbitration conducted under the Mining Act.

Schedule 1 [12] permits regulations under the Mining Act to contain provisions of a savings or transitional nature consequent on the enactment of the proposed Act.

Schedule 1 [13] contains savings and transitional provisions consequent on the enactment of the proposed Act, which validate existing land access arrangements and leases or other authorities if they comply with the revised requirements set out in the proposed Act.

Schedule 2 Amendment of Mining Amendment Act 2008 No 19

Schedule 2 [2] amends an uncommenced provision of the *Mining Amendment Act 2008* (the *2008 Act*) to retain the obligation on the holder of a prospecting title to pay compensation to a secondary landholder for compensable loss caused by the holder's prospecting activities.

Schedule 2 [3] and [4] repeal uncommenced provisions of the 2008 Act that would have required the specification of the amount of compensation that is payable in the event of compensable loss before prospecting activities are carried out. **Schedule 2 [1] and [5]** repeal uncommenced provisions of the 2008 Act consequential on the amendments made by Schedule 1 to the proposed Act.

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

Currently, the definition of *landholder* under the *Petroleum (Onshore) Act 1991* (the *Petroleum Act*) includes a person identified in any register or record kept by the

Registrar-General as a person having an interest in the land. **Schedule 3 [1]** amends the definition of *landholder* to provide that in order to qualify as a person who falls within that part of the definition of landholder, the person must be a mortgagee in possession, the holder of a lease, or other person entitled to an exclusive right of occupation, a Minister or public authority having an interest under a covenant imposed under the *Crown Lands Act 1989* or under a conservation, natural heritage or biobanking agreement or a person prescribed by the regulations.

Any person who does not hold any such interest in the land but who is identified in the land register as a person having an interest in the land (such as a financial institution holding a registered mortgage over the land) is a secondary landholder. This amendment removes the obligation, before prospecting activities are carried out, for an access arrangement to be made with secondary landholders. It also removes various obligations under the Petroleum Act to obtain the consent of those landholders before certain operations under leases may be carried out (eg s 71). **Schedule 3 [8]** amends section 101 of the Petroleum Act to retain the obligation on holders of prospecting titles to give notice to secondary landholders prior to entering their land. **Schedule 3 [2]** inserts a definition of *secondary landholder* for the purpose of the proposed amendments.

Currently, section 69C of the Petroleum Act requires the holder of a prospecting title to enter into an access arrangement in relation to land that is agreed between the holder of the title and each landholder prior to carrying out prospecting operations on that land. **Schedule 3 [3]** substitutes section 69C to enable separate land access arrangements to be made where there are multiple landholders of particular land, where prospecting occurs progressively in different areas of the same landholding or where separate arrangements are required to preserve the confidentiality of certain provisions in the arrangements. **Schedule 3 [5]** amends section 69E to make provision for circumstances in which some, but not all, landholders of particular land have agreed to an access arrangement with the holder of a prospecting title. In particular, a landholder who has agreed to an access arrangement will not be a party to a hearing before an arbitrator in relation to the landholders who have not agreed to an access arrangement, unless the landholder requests to be made a party to the hearing.

Schedule 3 [4] amends section 69D of the Petroleum Act to provide that access arrangements may make provision for the notification to the holder of the prospecting title of particulars of additional landholders and to make it clear that additional provisions may be included in the arrangements if they are not matters already required by or under the Act or the conditions of the prospecting title.

Schedule 3 [6] inserts proposed section 69R (6A), which provides that a review of a determination made by an arbitrator is to be by way of rehearing in the Land and Environment Court.

Schedule 3 [7] substitutes sections 69T and 69U of the Petroleum Act. Proposed section 69T enables an access arrangement to be varied or terminated by the agreement of the parties to the arrangement, by the arbitrator who determined the arrangement or by the Land and Environment Court.

Proposed section 69U provides that an access arrangement does not terminate if a person becomes a landholder of all or any part of the land concerned after the arrangement was agreed or determined, or if one landholder to an arrangement with 2 or more landholders ceases to be a landholder of the land concerned.

A person who becomes an additional landholder of land for which there is an existing access arrangement is subject to that arrangement unless the person objects within 7 days after being notified of the arrangement and, if he or she so objects, until an access arrangement is agreed or determined, or a period of 28 days expires without any such arrangement or determination. If land subject to an access arrangement ceases to be subject to a particular prospecting title, and instead becomes subject to another prospecting title that is either held by the same title holder or by a person who is assigned the rights of the holder under the access arrangement, the access arrangement does not terminate and the arrangement becomes an access arrangement in respect of that other prospecting title.

Schedule 3 [9] allows the making of regulations to regulate arbitrator's costs and the procedure of any arbitration conducted under the Petroleum Act.

Schedule 3 [10] inserts proposed section 141 to provide a general immunity to landholders (including secondary landholders) from any action, liability, claim or demand arising as a consequence of any act or omission of a person authorised to exercise any power or right under the Petroleum Act or under a petroleum title.

Schedule 3 [11] allows regulations under the Petroleum Act to contain provisions of a savings or transitional nature consequent on the enactment of the proposed Act.

Schedule 3 [12] contains savings and transitional provisions consequent on the enactment of the proposed Act, which validate existing land access arrangements and petroleum titles if they comply with the revised requirements set out in the proposed Act.

First print



New South Wales

Mining and Petroleum Legislation Amendment (Land Access) Bill 2010

Contents

	Page
1 Name of Act	2
2 Commencement	2
Schedule 1 Amendment of Mining Act 1992 No 29	3
Schedule 2 Amendment of Mining Amendment Act 2008 No 19	9
Schedule 3 Amendment of Petroleum (Onshore) Act 1991 No 84	10



New South Wales

Mining and Petroleum Legislation Amendment (Land Access) Bill 2010

No. , 2010

A Bill for

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.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Mining and Petroleum Legislation Amendment (Land Access) Act 2010</i> .	3 4
2 Commencement	5
This Act commences on the date of assent to this Act.	6

Schedule 1	Amendment of Mining Act 1992 No 29	1
[1]	Dictionary, definition of “landholder”	2
	Omit paragraph (g) from the definition of <i>landholder</i> . Insert instead:	3
	(g) a person identified in any register or record kept by the Registrar-General as a person having an interest in the land, being:	4
	(i) a mortgagee in possession of the land, or	5
	(ii) a lessee of the land or other person entitled to an exclusive right of occupation of the land, or	6
	(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 <i>Crown Lands Act 1989</i> , or	7
	(iv) a Minister or public authority having an interest in the land under a conservation, natural heritage or biobanking agreement, or	8
	(v) a person prescribed by the regulations for the purposes of this paragraph, or	9
	(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 <i>secondary landholder</i> , or	10
	Note. See s 255A, Part 13, s 383C.	11
		12
		13
		14
		15
		16
		17
		18
		19
		20
		21
		22
		23
		24
		25
[2]	Dictionary	26
	Insert in alphabetical order:	27
	<i>secondary landholder</i> —see paragraph (g1) of the definition of <i>landholder</i> .	28
		29
[3]	Section 140	30
	Omit the section. Insert instead:	31
	140 Prospecting to be carried out in accordance with access arrangement	32
		33
	(1) The holder of a prospecting title must not carry out prospecting operations on any particular area of land except in accordance	34
		35

with an access arrangement or arrangements applying to that area of land:	1
(a) agreed (orally or in writing) between the holder of the prospecting title and each landholder of that area of land, or	2
(b) determined by an arbitrator in accordance with this Division.	3
(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.	4
(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.	5
[4] Section 141 Matters for which access arrangements to provide	6
Omit section 141 (1) (i). Insert instead:	7
(i) the notification to the holder of the prospecting title of particulars of any person who becomes an additional landholder,	8
(j) such other matters not otherwise required by or under this Act or the conditions of the prospecting title as the parties to the arrangement may agree to include in the arrangement.	9
[5] Section 142 Holder of prospecting title to seek access arrangement	10
Omit section 142 (3). Insert instead:	11
(3) The holder of a prospecting title and a landholder of the land concerned may agree (either orally or in writing and either before or after the prospecting title is granted) on an access arrangement.	12
(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.	13
	14
	15
	16
	17
	18
	19
	20
	21
	22
	23
	24
	25
	26
	27
	28
	29
	30
	31
	32
	33
	34
	35
	36
	37
	38
	39
	40

(5)	In this section, a reference to the holder of a prospecting title includes a reference to the proposed holder of a prospecting title.	1 2
[6]	Section 155 Review of determination	3
	Insert after section 155 (6):	4
(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.	5 6 7 8 9
[7]	Sections 157 and 158	10
	Omit the sections. Insert instead:	11
157	Variation of access arrangements	12
(1)	An access arrangement may be varied in accordance with the terms of the arrangement relating to its variation.	13 14
(2)	An access arrangement may also be varied:	15
(a)	by the agreement of the parties to the arrangement, or	16
(b)	with the consent of all the parties to the arrangement, by the arbitrator who determined the arrangement, or	17 18
(c)	on application by any of the parties to the arrangement, by order of the Land and Environment Court.	19 20
(3)	In this section, <i>vary</i> includes terminate.	21
158	Change in landholders etc	22
(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.	23 24 25
(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.	26 27 28
(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.	29 30 31 32 33
(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	34 35 36

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.	1 2 3 4 5 6
(5) If the new landholder objects to the access arrangement within 7 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:	7 8 9 10
(a) the new landholder agrees to an access arrangement with the holder of the prospecting title concerned in accordance with this Division,	11 12 13
(b) an arbitrator is appointed and determines an access arrangement in relation to the new landholder in accordance with this Division,	14 15 16
(c) at the end of the period of 28 days after the new landholder objects, an access arrangement has not been so agreed or determined.	17 18 19
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.	20 21 22 23 24
(6) Nothing in this section prevents an access arrangement being agreed or determined in respect of a proposed new landholder.	25 26
(7) An access arrangement agreed with the holder of a prospecting title does not terminate:	27 28
(a) if land subject to the access arrangement ceases to be subject to that prospecting title and becomes subject to another prospecting title, and	29 30 31
(b) if that other prospecting title is held by the same person or by a person who is assigned the rights of the holder under the access arrangement.	32 33 34
In that case, the arrangement becomes an access arrangement under this Division in respect of that other prospecting title.	35 36
[8] Section 255A Restriction of power of entry: permit holders	37
Insert after section 255A (2):	38
(3) In this section, <i>landholder</i> includes a secondary landholder.	39

[9] Sections 262, 269 and 271	1
Insert in alphabetical order in each section:	2
<i>landholder</i> includes a secondary landholder.	3
[10] Section 383C General immunity of landholders	4
Insert at the end of the section:	5
(2) In this section, <i>landholder</i> includes a secondary landholder.	6
[11] Schedule 4 Regulation making powers	7
Omit clause 10. Insert instead:	8
10 Arbitration	9
Regulating arbitrator's costs under this Act and the procedure of any arbitration conducted under this Act.	10
	11
[12] Schedule 6 Savings, transitional and other provisions	12
Insert at the end of clause 1 (1):	13
<i>Mining and Petroleum Legislation Amendment (Land Access) Act 2010</i> , but only in relation to the amendments made to this Act	14
	15
[13] Schedule 6	16
Insert at the end of the Schedule with appropriate Part and clause numbering:	17
Part Provisions consequent on enactment of Mining and Petroleum Legislation Amendment (Land Access) Act 2010	18
	19
	20
Definition	21
In this Part:	22
<i>the amending Act</i> means the <i>Mining and Petroleum Legislation Amendment (Land Access) Act 2010</i> .	23
	24
Existing land access arrangement	25
(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.	26
	27
	28
	29
	30
	31

- (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. 1
2
3
4
5
- (3) This clause does not affect any order of a court made before the commencement of the amending Act. 6
7
- (4) If, before the commencement of the amending Act, an access arrangement determined by an arbitrator, or by a court following a review of a determination made by an arbitrator, was set aside by a court, any party to the access arrangement may apply to the Land and Environment Court for the determination of an access arrangement in accordance with Division 2 of Part 8 of this Act, as amended by the amending Act. This subclause does not prevent an access arrangement being agreed to or determined by an arbitrator in accordance with that Division, as so amended. 8
9
10
11
12
13
14
15
16
- Existing mining authorities** 17
- (1) In this clause:
mining authority means an authority or other authorisation granted under this Act or any prospecting area constituted under this Act. 18
19
20
21
- (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. 22
23
24
25
26
27
- (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. 28
29
30
31
32
- (4) This clause does not affect any order of a court made before the commencement of the amending Act. 33
34

Schedule 2	Amendment of Mining Amendment Act	1
	2008 No 19	2
[1]	Schedule 1 [99], proposed section 140	3
	Omit the item.	4
[2]	Schedule 1 [208]	5
	Insert in alphabetical order in proposed section 242B (6):	6
	<i>landholder</i> includes a secondary landholder.	7
[3]	Schedule 1 [225]	8
	Omit the item.	9
[4]	Schedule 1 [226]	10
	Omit “Omit section 264 (4). Insert instead:” and proposed section 264 (4).	11
	Insert instead “Insert after section 264 (4):”.	12
[5]	Schedule 1 [273]	13
	Omit proposed clause titled “Access arrangements”.	14

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*.

[3] Section 69C	1
Omit the section. Insert instead:	2
69C Prospecting to be carried out in accordance with access arrangement	3
	4
(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:	5
	6
	7
(a) agreed (orally or in writing) between the holder of the prospecting title and each landholder of the land, or	8
	9
(b) determined by an arbitrator in accordance with this Part.	10
(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.	11
	12
	13
	14
(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.	15
	16
	17
	18
[4] Section 69D Matters for which access arrangements to provide	19
Omit section 69D (1) (i). Insert instead:	20
(i) the notification to the holder of the prospecting title of particulars of any person who becomes an additional landholder,	21
	22
	23
(j) such other matters not otherwise required by or under this Act or the conditions of the prospecting title as the parties to the arrangement may agree to include in the arrangement.	24
	25
	26
	27
[5] Section 69E Holder of prospecting title to seek access arrangement	28
Omit section 69E (3). Insert instead:	29
(3) The holder of a prospecting title and a landholder of the land concerned may agree (either orally or in writing and either before or after the prospecting title is granted) on an access arrangement.	30
	31
	32
(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	33
	34
	35
	36
	37
	38

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.	1 2 3 4 5
(5) In this section, a reference to the holder of a prospecting title includes a reference to the proposed holder of a prospecting title.	6 7
[6] Section 69R Review of determination	8
Insert after section 69R (6):	9
(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.	10 11 12 13 14
[7] Sections 69T and 69U	15
Omit the sections. Insert instead:	16
69T Variation of access arrangements	17
(1) An access arrangement may be varied in accordance with the terms of the arrangement relating to its variation.	18 19
(2) An access arrangement may also be varied:	20
(a) by the agreement of the parties to the arrangement, or	21
(b) with the consent of all the parties to the arrangement, by the arbitrator who determined the arrangement, or	22 23
(c) on application by any of the parties to the arrangement, by order of the Land and Environment Court.	24 25
(3) In this section, <i>vary</i> includes terminate.	26
69U Change in landholders etc	27
(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.	28 29 30
(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.	31 32 33
(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	34 35 36

-
- person becomes a landholder of any of the land after the access arrangement was agreed or determined. 1
2
- (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. 3
4
5
6
7
8
9
10
11
- (5) If the new landholder objects to the arrangement within 7 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: 12
13
14
15
- (a) the new landholder agrees to an access arrangement with the holder of the prospecting title concerned in accordance with this Part, 16
17
18
- (b) an arbitrator is appointed and determines an access arrangement in relation to the new landholder in accordance with this Part, 19
20
21
- (c) at the end of the period of 28 days after the new landholder objects, an access arrangement has not been so agreed or determined. 22
23
24
- 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. 25
26
27
28
29
- (6) Nothing in this section prevents an access arrangement being agreed or determined in respect of a proposed new landholder. 30
31
- (7) An access arrangement agreed with the holder of a prospecting title does not terminate: 32
33
- (a) if land subject to the access arrangement ceases to be subject to that prospecting title and becomes subject to another prospecting title, and 34
35
36
- (b) if that other prospecting title is held by the same person or by a person who is assigned the rights of the holder under the access arrangement. 37
38
39
- In that case, the arrangement becomes an access arrangement under this Part in respect of that other prospecting title. 40
41
-

[8] Section 101 Notice to landholder	1
Insert after section 101 (2):	2
(3) In this section, <i>landholder</i> includes a secondary landholder.	3
[9] Section 138 Regulations	4
Insert at the end of section 138 (1) (p):	5
, and	6
(q) regulating arbitrator's costs under this Act and the procedure of any arbitration conducted under this Act.	7 8
[10] Section 141	9
Insert after section 140:	10
141 General immunity of landholders	11
(1) The landholder of land within which any person (other than the landholder) is authorised to exercise any power or right:	12 13
(a) by or under this Act, or	14
(b) by any petroleum title under this Act,	15
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.	16 17 18
(2) This section extends to anything done or omitted to be done before the commencement of this section.	19 20
(3) In this section, <i>landholder</i> includes a secondary landholder.	21
[11] Schedule 1 Savings and transitional provisions	22
Insert at the end of clause 2 (1) (b):	23
<i>Mining and Petroleum Legislation Amendment (Land Access) Act 2010</i> , but only in relation to amendments made to this Act	24 25

[12] Schedule 1	1
Insert at the end of the Schedule with appropriate Part and clause numbering:	2
Part Provisions consequent on enactment of Mining and Petroleum Legislation Amendment (Land Access) Act 2010	3
	4
	5
Definition	6
In this Part, <i>the amending Act</i> means the <i>Mining and Petroleum Legislation Amendment (Land Access) Act 2010</i> .	7
	8
Existing land access arrangement	9
(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.	10
	11
	12
	13
	14
(2) Any action purportedly taken before the commencement of the amending Act in relation to a proposed access arrangement under 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.	15
	16
	17
	18
	19
(3) This clause does not affect any order of a court made before the commencement of the amending Act.	20
	21
(4) If, before the commencement of the amending Act, an access arrangement determined by an arbitrator, or by a court following a review of a determination made by an arbitrator, was set aside by a court, any party to the access arrangement may apply to the Land and Environment Court for the determination of an access arrangement in accordance with Part 4A of this Act, as amended by the amending Act. This subclause does not prevent an access arrangement being agreed to or determined by an arbitrator in accordance with that Part, as so amended.	22
	23
	24
	25
	26
	27
	28
	29
	30
Existing petroleum titles	31
(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.	32
	33
	34
	35
	36

Mining and Petroleum Legislation Amendment (Land Access) Bill 2010

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

- | | | |
|-----|--|-----------------------|
| (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. | 1
2
3
4
5 |
| (3) | This clause does not affect any order of a court made before the commencement of the amending Act. | 6
7 |