



New South Wales

Mining and Petroleum Legislation Amendment (Land Access Arbitration) Bill 2015

Explanatory note

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

This Bill is cognate with the *Mining and Petroleum Legislation Amendment (Grant of Coal and Petroleum Prospecting Titles) Bill 2015*.

Overview of Bill

The object of this Bill is to amend the *Mining Act 1992* (the ***Mining Act***) and the *Petroleum (Onshore) Act 1991* (the ***Petroleum Act***) to give effect to the recommendations of a review undertaken by Mr Bret Walker SC in June 2014 entitled *Examination of the Land Access Arbitration Framework — Mining Act 1992 and Petroleum (Onshore) Act 1991*.

The Bill also makes other miscellaneous amendments to those Acts to make further provision with respect to that land access arbitration framework.

The Bill deals with the following matters:

- (a) the composition of the Arbitration Panel under the Mining Act (which performs the functions of the Arbitration Panel under the Petroleum Act),
- (b) negotiating access arrangements under the Acts,
- (c) enabling an access code to be prescribed for the purposes of the Acts (which may include mandatory provisions that are taken to form part of access arrangements),
- (d) mediation and arbitration of access arrangements,
- (e) enabling the Secretary of the Department of Industry, Skills and Regional Development (the ***Secretary***) to approve arbitration procedures for the purposes of mediations and arbitrations under the Acts,
- (f) costs for negotiating, mediating and arbitrating access arrangements,
- (g) the establishment of public registers of access arrangements under the Acts,

- (h) allowing the Land and Environment Court to determine access arrangements if the court is already considering an application relating to operations near dwelling-houses, gardens or significant improvements on the land concerned,
- (i) clarifying the extent of the general immunity of landholders from liability for other persons' acts or omissions on the landholder's land,
- (j) excluding seismic surveys on certain roads from prohibitions of certain operations within a certain distance of dwelling-houses, gardens or significant improvements,
- (k) clarifying the operation of certain provisions relating to operations in proximity to significant improvements and enabling regulations to specify works and structures that are and are not such improvements,
- (l) renewal of exploration licences and assessment leases under the Petroleum Act over areas of land smaller than that comprised in the application for renewal,
- (m) clarifying the rights of holders of production leases,
- (n) extending the access arrangement regime that applies in relation to exploration licences under the Petroleum Act to production leases under that Act,
- (o) assessment of compensable loss suffered or likely to be suffered as a result of the exercise of rights under petroleum titles,
- (p) savings, transitional and other miscellaneous matters.

The Bill also provides for the cancellation of certain petroleum exploration licences that are comprised of land within national parks.

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 a day or days to be appointed by proclamation.

Schedule 1 Amendment of Mining Act 1992 No 29

Seismic surveys on roads

Schedule 1 [1] and [2] amend sections 31 and 49 of the Mining Act to provide that those provisions (which prohibit the exercise of rights conferred by exploration licences and assessment leases on land on which is situated, or within a specified proximity of, dwelling-houses, gardens or significant improvements) do not apply to seismic surveys on roads, if the licence or lease holder has given written notice of at least 21 days (or such other period as is prescribed by the regulations) of the carrying out of the seismic survey to the owner of the dwelling-house, garden or significant improvement concerned (and, in the case of a dwelling-house, the occupant).

Amendments relating to activities on land on or near dwelling-houses, gardens and significant improvements on land

Schedule 1 [1] and [2] also amend sections 31 and 49 of the Mining Act and **Schedule 1 [3]** amends section 62 of that Act to provide that the holder of the exploration licence, assessment lease or applicant for the mining lease is to pay the costs of the owner of the dwelling-house, garden or improvement (or occupant of the dwelling-house) in those proceedings in the Land and Environment Court relating to resolve disputes as to land is or is not covered by those sections.

Schedule 1 [27] substitutes the definition of *significant improvement* in the Dictionary to the Mining Act. The proposed definition provides that a *significant improvement* on land, in relation to an authorisation or an access arrangement, is a work or structure that:

- (a) is a substantial and valuable improvement to the land, and
- (b) is reasonably necessary for the operation of the landholder's lawful business or use of the land, and

- (c) is fit for its purpose (immediately or with minimal repair), and
- (d) cannot reasonably co-exist with the exercise of rights under the authorisation or the access arrangement without hindrance to the full and unencumbered operation or functionality of the work or structure, and
- (e) cannot reasonably be relocated or substituted without material detriment to the landholder, and includes any work or structure prescribed by the regulations for the purposes of the definition, but does not include any work or structure excluded from the definition by the regulations.

Composition of Arbitration Panel

Schedule 1 [4] substitutes section 139 of the Mining Act relating to the establishment of the Arbitration Panel. The proposed new section 139 establishes the Arbitration Panel and deals with the following matters:

- (a) providing that, when appointing persons as members of the Arbitration Panel, the Minister for Industry, Resources and Energy (the *Minister*) must comply with any processes or procedures for such appointments set out in the regulations,
- (b) setting out that a person is not eligible for appointment as a member of the Arbitration Panel unless the person meets the eligibility criteria (if any) set out in the regulations,
- (c) the term of office and conditions of members of the Arbitration Panel.

The proposed section also requires the Secretary to keep and maintain a register of the following:

- (a) the name, business address and contact information of each member of the Arbitration Panel,
- (b) the qualifications and experience of each member (as at the time of the member's most recent appointment),
- (c) details of any actual and potential conflicts of interest disclosed to the Secretary in compliance with a condition of the member's appointment (if such a condition has been imposed),
- (d) any other matter relating to members of the Arbitration Panel as the regulations may prescribe.

The register must be made available for inspection on the website of the Department of Industry, Skills and Regional Development (the *Department*).

Access arrangements—general

Schedule 1 [7] inserts proposed sections 141A and 141B into the Mining Act.

Proposed section 141A provides that the regulations may prescribe a code (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. The regulations may designate any or all of the provisions of an access code as mandatory provisions. An access code may contain non-binding guidelines relating to negotiating and agreeing access arrangements.

Proposed section 141B provides that all access arrangements are taken to include provisions in the same terms as the mandatory provisions of the access code. A provision of an access arrangement has no effect to the extent that it contains obligations on the holder of the prospecting title that are less stringent than those in a mandatory provision.

Negotiating access arrangements

Schedule 1 [8] amends section 142 of the Mining Act to provide that the holder of a prospecting title and the landholder of the land concerned must negotiate on an access arrangement in good faith.

The amendments to section 142 of the Mining Act also provide that:

- (a) the holder of the prospecting title must pay the reasonable costs of the landholder of the land concerned in participating in negotiating the access arrangement, and

- (b) the maximum amount of those costs is the amount set out by the Minister by order published in the Gazette (and deals with the making of those orders).

Schedule 1 [5] makes a consequential omission.

Mediation and arbitration of access arrangements

Schedule 1 [6] amends section 141 of the Mining Act to provide that both a landholder of land subject to an access arrangement and the holder of the relevant prospecting title may request the appointment of an arbitrator following a contravention of the access arrangement by the title holder.

Schedule 1 [9] substitutes section 144 (2) of the Mining Act to provide that the holder of the prospecting title concerned must pay an application fee for the appointment of an arbitrator under the section.

Schedule 1 [10] substitutes section 145 of, and inserts proposed sections 145A and 145B into, the Mining Act.

Proposed new section 145 provides that, as soon as practicable after having been appointed, an arbitrator must arrange and conduct a mediation of the question of access to the land concerned.

Proposed section 145A contains provisions dealing with the mediation, including the termination of the mediation. The provision requires the parties to a mediation to participate in the mediation in good faith.

Proposed section 145B provides that if the mediation is unsuccessful, the arbitrator must, as soon as practicable after its conclusion arrange and conduct a hearing of the question of access to the land concerned.

Schedule 1 [12] makes a consequential omission.

Schedule 1 [11] substitutes section 146 of the Mining Act to provide that, at any mediation of, or hearing into, the question of access to any land by the holder of a prospecting title, the holder and each landholder:

- (a) are entitled to appear and be heard, and
(b) may be represented by an agent or by an Australian legal practitioner.

Schedule 1 [13] amends section 148 of the Mining Act to provide that the parties to an arbitration must participate in the arbitration in good faith and that an arbitration may be terminated at any time at the request of the parties.

Schedule 1 [14] inserts proposed sections 148A and 148B into the Mining Act.

Proposed section 148A provides that the Secretary may, by order published in the Gazette, approve arbitration procedures for the conduct of mediations and arbitrations under Division 2 (Access arrangements for prospecting titles) of Part 8 (Authorities generally) of the Mining Act (*approved arbitration procedures*). The approved arbitration procedures may include guidance materials for the benefit of the parties and arbitrators. Unless the parties and the arbitrator agree otherwise, mediation and arbitration under Division 2 is to be conducted in accordance with the provisions of the approved arbitration procedures. In the event of an inconsistency between a provision of the approved arbitration procedures and a provision of the Mining Act or of the regulations, the provision of the Mining Act or of the regulations prevails. If a matter is not provided for in the Mining Act, the regulations or the approved arbitration procedures, the procedure at a mediation or a hearing is to be as determined by the arbitrator. The proposed section contains other provisions dealing with the contents and making of approved arbitration procedures.

Proposed section 148B provides that an arbitrator conducting a mediation or a hearing may enter the land concerned and inspect it at a reasonable time after giving reasonable notice to the landholder.

Schedule 1 [17] makes a consequential amendment.

Costs of arbitrating of access arrangements

Schedule 1 [14] also inserts proposed section 148C into the Mining Act.

Proposed section 148C provides that the holder of the prospecting title must pay the reasonable costs of the landholder of the land concerned in participating in the mediation and arbitration. The maximum amount of reasonable costs is the amount set out by the Minister by order published in the Gazette.

Nothing in the proposed section prevents a holder of a prospecting title, at the holder's discretion, paying other amounts to a landholder.

Schedule 1 [15] inserts proposed section 151A into the Mining Act to provide that the arbitrator (as part of the determination of the arbitration or on the termination of the arbitration at the request of the parties) must determine:

- (a) if the parties have disputed a payment to cover the landholder's costs in negotiating the access arrangement (as referred to in section 142 (as amended by **Schedule 1 [8]**)), the amount of that payment, and
- (b) the reasonable costs of the landholder in participating in the mediation and arbitration (as referred to in proposed section 148C).

When determining a payment to cover the reasonable costs of the landholder in participating in the mediation and arbitration, the arbitrator must:

- (a) consider whether or not the landholder has acted unreasonably in the negotiation, mediation or arbitration, and
- (b) deduct an amount that in the opinion of the arbitrator represents the amount by which the unreasonable conduct increased the costs of the negotiation, mediation or arbitration.

Schedule 1 [16] makes a consequential omission.

Schedule 1 [18] makes a consequential amendment.

Schedule 1 [19] inserts proposed section 155 (8) and (9) into the Mining Act to provide that the holder of the prospecting title must pay the reasonable costs of the landholder of the land concerned in a review of a determination of an arbitrator in the Land and Environment Court.

Register of arbitrated access arrangements

Schedule 1 [20] inserts proposed section 156A into the Mining Act to provide that the Secretary is to keep and maintain a register of all final access arrangements provided to him or her. The register is to be made available for public inspection on the Department's website.

As soon as is practicable after an access arrangement is determined by an arbitrator, the holder of the relevant prospecting title must provide the Secretary with a copy of the final access arrangement. Failure to comply with this provision is an offence which carries a maximum penalty of 100 penalty units (in the case of a corporation) or 50 penalty units (in the case of an individual).

Variation of access arrangements

Schedule 1 [21] substitutes section 157 of the Mining Act to deal with variation of access arrangements.

Miscellaneous arbitration amendments

Schedule 1 [22] inserts proposed sections 158A and 158B into the Mining Act.

Proposed section 158A provides that if:

- (a) a party applied to the Land and Environment Court for a determination of a matter under section 31 (5) or 49 (5) (relating to the exercise of rights conferred by exploration licences and assessment leases on land on which is situated, or within a specified proximity to, dwelling-houses, gardens or significant improvements), and

(b) no access arrangement relates to the land concerned,
either party to those Court proceedings may apply to the Court to have the Court determine an access arrangement under Division 2 of Part 8 of the Mining Act in relation to the land.

The proposed section contains provisions dealing with such applications to the Court.

Proposed section 158B provides that the Secretary may remove an arbitrator in certain circumstances and deals with the consequences of such a removal.

Amendments relating to general immunity of landholders

Schedule 1 [23] amends section 383C of the Mining Act to make it clear that the landholder of land within which any person (other than the landholder) is authorised to exercise any power or right by or under any other Act in connection with any activity under an authority, mineral claim, opal prospecting licence or permit under the Mining 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.

Schedule 1 [24] amends section 383C of the Mining Act to make it clear that the section does not apply to the extent that the action, liability, claim or demand arises from anything done by the landholder with the intention to cause harm or recklessly.

Savings and transitional amendments

Schedule 1 [25] and [26] contain amendments of a savings and transitional nature.

Schedule 2 Amendment of Petroleum (Onshore) Act 1991 No 84

Renewal of titles over smaller area of land

Schedule 2 [2] inserts proposed section 19 (6) and (7) into the Petroleum Act to make it clear that an exploration licence or assessment lease may be renewed over a smaller area of land from the area of land over which the renewal of the licence or lease is sought, but not so as to include any land that was not subject to the licence or lease immediately before the renewal. If an exploration licence or assessment lease is renewed as to part only of the land to which the application for renewal relates, the licence or lease ceases to have effect in relation to the remainder of the land on the date on which the renewal takes effect.

Rights of holders of production leases

Schedule 2 [3] substitutes section 41 of the Petroleum Act to more thoroughly set out the rights of holders of production leases. The holder of a production lease may, in accordance with the conditions of the lease:

- (a) prospect in and on the land comprised in the lease for petroleum, and
- (b) conduct petroleum mining operations in and on the land comprised in the lease, and
- (c) construct and maintain on the land such works, buildings, plant, waterways, roads, pipelines, dams, reservoirs, tanks, pumping stations, tramways, railways, telephone lines, electric powerlines and other structures and equipment as are necessary for the full enjoyment of the lease or to fulfil the lessee's obligations under it.

While a production lease is in force, the holder of the lease and any person acting as agent or employee of the holder, or delivering goods or providing services to the holder, for the purpose of a requirement of or an activity authorised by the lease may:

- (a) for that purpose enter and be on the land included in the lease, and
- (b) do anything so authorised or required.

However, the proposed new section provides that despite this, a holder of a production lease may carry out activities on the land comprised in the lease only in accordance with an access arrangement applying to that land.

Access arrangements—general

Schedule 2 [4] and [5] amend section 69D (1) and (2) of the Petroleum Act to provide that an access arrangement must specify the compensation that is payable to each landholder of the land concerned as a consequence of the holder of the prospecting title carrying out prospecting operations on the land (rather than this being a matter that an access arrangement may or may not make provision).

Schedule 2 [7] amends section 69D (4) of the Petroleum Act to provide that both a landholder of land subject to an access arrangement and the holder of the relevant prospecting title may request the appointment of an arbitrator following a contravention of the access arrangement by the title holder.

Schedule 2 [8] inserts proposed sections 69DA and 69DB into the Petroleum Act.

Proposed section 69DA provides that the regulations may prescribe a code (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. The regulations may designate any or all of the provisions of an access code as mandatory provisions. An access code may contain non-binding guidelines relating to negotiating and agreeing access arrangements.

Proposed section 69DB provides that all access arrangements are taken to include provisions in the same terms as the mandatory provisions of the access code. A provision of an access arrangement has no effect to the extent that it contains obligations on the holder of the prospecting title that are less stringent than those in a mandatory provision.

Negotiating access arrangements

Schedule 2 [9] amends section 69E of the Petroleum Act to provide that the holder of a prospecting title and the landholder of the land concerned must negotiate on an access arrangement in good faith.

The amendments to section 69E of the Petroleum Act also provide that:

- (a) the holder of the prospecting title must pay the reasonable costs of the landholder of the land concerned in participating in negotiating the access arrangement, and
- (b) the maximum amount of those costs is the amount set out by the Minister by order published in the Gazette (and deals with the making of those orders).

Schedule 2 [6] makes a consequential omission.

Mediation and arbitration of access arrangements

Schedule 2 [10] substitutes section 69G (2) of the Petroleum Act to provide that the holder of the prospecting title concerned must pay an application fee for the appointment of an arbitrator under the section.

Schedule 2 [11] substitutes section 69H of, and inserts proposed sections 69HA and 69HB into, the Petroleum Act.

Proposed new section 69H provides that, as soon as practicable after having been appointed, an arbitrator must arrange and conduct a mediation of the question of access to the land concerned.

Proposed section 69HA contains provisions dealing with the mediation, including the termination of the mediation. The provision requires the parties to a mediation to participate in the mediation in good faith.

Proposed section 69HB provides that if the mediation is unsuccessful, the arbitrator must, as soon as practicable after its conclusion arrange and conduct a hearing of the question of access to the land concerned.

Schedule 2 [13] makes a consequential omission and **Schedule 2 [19]** makes a consequential amendment.

Schedule 2 [12] substitutes section 69I of the Petroleum Act to provide that, at any mediation of, or hearing into, the question of access to any land by the holder of a prospecting title, the holder and each landholder:

- (a) are entitled to appear and be heard, and
- (b) may be represented by an agent or by an Australian legal practitioner.

Schedule 2 [14] amends section 69K of the Petroleum Act to provide that the parties to an arbitration must participate in the arbitration in good faith.

Schedule 2 [15] inserts proposed sections 69KA and 69KB into the Petroleum Act.

Proposed section 69KA provides that the Secretary may, by order published in the Gazette, approve arbitration procedures for the conduct of mediations and arbitrations under Part 4A (Access arrangements for prospecting titles) of the Petroleum Act (*approved arbitration procedures*). The approved arbitration procedures may include guidance materials for the benefit of the parties and arbitrators. Unless the parties and the arbitrator agree otherwise, mediation and arbitration under Part 4A is to be conducted in accordance with the provisions of the approved arbitration procedures. In the event of an inconsistency between a provision of the approved arbitration procedures and a provision of the Petroleum Act or of the regulations, the provision of the Petroleum Act or of the regulations prevails. If a matter is not provided for in the Petroleum Act, the regulations or the approved arbitration procedures, the procedure at a mediation or a hearing is to be as determined by the arbitrator. The proposed section contains other provisions dealing with the contents and making of approved arbitration procedures.

Proposed section 69KB provides that an arbitrator conducting a mediation or a hearing may enter the land concerned and inspect it at a reasonable time after giving reasonable notice to the landholder.

Schedule 2 [18] makes a consequential amendment.

Costs of arbitrating access arrangements

Schedule 2 [15] also inserts proposed section 69KC into the Petroleum Act.

Proposed section 69KC provides that the holder of the prospecting title must pay the reasonable costs of the landholder of the land concerned in participating in the mediation and arbitration. The maximum amount of reasonable costs is the amount set out by the Minister by order published in the Gazette.

Nothing in the proposed section prevents a holder of a prospecting title, at the holder's discretion, paying other amounts to a landholder.

Schedule 2 [16] inserts proposed section 69NA into the Petroleum Act to provide that the arbitrator (as part of the determination of the arbitration or on the termination of the arbitration at the request of the parties) must determine:

- (a) if the parties have disputed a payment to cover the landholder's costs in negotiating the access arrangement (as referred to in section 69E (as amended by **Schedule 2 [9]**)), the amount of that payment, and
- (b) the reasonable costs of the landholder in participating in the mediation and arbitration (as referred to in proposed section 69KC).

When determining a payment to cover the reasonable costs of the landholder in participating in the mediation and arbitration, the arbitrator must:

- (a) consider whether or not the landholder has acted unreasonably in the negotiation, mediation or arbitration, and
- (b) deduct an amount that in the opinion of the arbitrator represents the amount by which the unreasonable conduct increased the costs of the negotiation, mediation or arbitration.

Schedule 2 [17] makes a consequential omission.

Schedule 2 [20] inserts proposed section 69R (8) and (9) into the Petroleum Act to provide that the holder of the prospecting title must pay the reasonable costs of the landholder of the land concerned in a review of a determination of an arbitrator in the Land and Environment Court.

Register of arbitrated access arrangements

Schedule 2 [21] inserts proposed section 69SA into the Petroleum Act to provide that the Secretary is to keep and maintain a register of all final access arrangements provided to him or her. The register is to be made available for public inspection on the Department's website.

As soon as is practicable after an access arrangement is determined by an arbitrator, the holder of the relevant prospecting title must provide the Secretary with a copy of the final access arrangement. Failure to comply with this provision is an offence which carries a maximum penalty of 100 penalty units (in the case of a corporation) or 50 penalty units (in the case of an individual).

Variation of access arrangements

Schedule 2 [22] substitutes section 69T of the Petroleum Act to deal with variation of access arrangements.

Miscellaneous arbitration amendments

Schedule 2 [23] inserts proposed sections 69V and 69W into the Petroleum Act.

Proposed section 69V provides that if:

- (a) a party applied to the Land and Environment Court for a determination of a matter under section 72 (4) (relating to the exercise of rights conferred by exploration licences and assessment leases on land on which is situated, or in specified proximity to, dwelling-houses, gardens, vineyards, orchards or significant improvement), and
- (b) no access arrangement relates to the land concerned,

either party to those Court proceedings may apply to the Court to have the Court determine an access arrangement in relation to the land.

The proposed section contains provisions dealing with such applications to the Court.

Proposed section 69W provides that the Secretary may remove an arbitrator in certain circumstances and deals with the consequences of such a removal.

Access arrangements for production leases

Schedule 2 [24] inserts Part 4B (section 69X) into the Petroleum Act. The new Part provides that Part 4A (which relates to access arrangements for prospecting titles) is, with certain exceptions, to extend to access arrangements for the purpose of conducting petroleum mining operations under a production lease as if references in that Part to:

- (a) a prospecting title were references to a production lease, and
- (b) prospecting operations were references to petroleum mining operations.

The extension of Part 4A by this proposed section is to be subject to any necessary changes and any other modification prescribed by the regulations.

Schedule 2 [1] makes a consequential amendment.

Amendments relating to activities on or near land with dwelling-houses, gardens, vineyards, orchards or significant improvements

Schedule 2 [25]–[27] amend section 72 of the Petroleum Act to provide for a definition of *significant improvement* for the purposes of that section (which prohibits the exercise of rights conferred by a petroleum title on land on which is situated, or within a specified proximity to, dwelling-houses, gardens, vineyards, orchards or certain improvements). The proposed definition provides that a *significant improvement* on land, in relation to a petroleum title or an access arrangement, is a work or structure that:

- (a) is a substantial and valuable improvement to the land, and

- (b) is reasonably necessary for the operation of the landholder's lawful business or use of the land, and
- (c) is fit for its purpose (immediately or with minimal repair), and
- (d) cannot reasonably co-exist with the exercise of rights under the petroleum title or the access arrangement without hindrance to the full and unencumbered operation or functionality of the work or structure, and
- (e) cannot reasonably be relocated or substituted without material detriment to the landholder, and includes any work or structure prescribed by the regulations for the purposes of the definition, but does not include any work or structure excluded from the definition by the regulations.

Schedule 2 [27] also amends section 72 of that Act to provide that the holder of the petroleum title is to pay the costs of the owner of the dwelling-house, garden, vineyard, orchard or significant improvement (or occupant of the dwelling-house) in proceedings in the Land and Environment Court relating to resolve disputes as to whether land is or is not covered by the section.

Seismic surveys on roads

Schedule 2 [27] also provides that section 72 (which prohibits the exercise of rights conferred by a petroleum title on land on which is situated, or within a specified proximity to, dwelling-houses, gardens, vineyards, orchards or significant improvements) is not to apply to seismic surveys on roads, if the title holder has given written notice of at least 21 days (or such other period as is prescribed by the regulations) of the carrying out of the seismic survey to the owner of the dwelling-house, garden, vineyard, orchard or significant improvement concerned (and, in the case of a dwelling-house, the occupant).

Compensation for loss

Schedule 2 [28] inserts proposed section 107A into the Petroleum Act to provide for a definition of *compensable loss* for the purposes of Part 11 (Compensation) of that Act. The definition is substantially the same as the definition in section 262 of the Mining Act.

Schedule 2 [29] amends section 107 of the Petroleum Act to make it clear that on the granting of a petroleum title, each person having any estate or interest in any land becomes entitled to compensation for any such compensable loss suffered, or likely to be suffered, by the person as a result of the exercise of the rights conferred by the title or by an access arrangement in respect of the title.

Schedule 2 [30] inserts proposed section 108 (3) into the Petroleum Act to make it clear that section 108 (2) (which enables the Land and Environment Court to assess the amount of compensation in certain circumstances) does not apply to compensation that is to be determined under an access arrangement that is required to be agreed or determined in accordance with Part 4A or 4B of the Petroleum Act.

Schedule 2 [31]–[34] and [36] make consequential and law revision amendments.

Schedule 2 [35] inserts proposed section 109 (4) into the Petroleum Act to make it clear that any court, person or body making an assessment of compensation under that section is to have regard to the matters (if any) prescribed by the regulations.

Amendments relating to general immunity of landholders

Schedule 2 [37] inserts proposed section 141 (1) (a1) into the Petroleum Act to make it clear that the landholder of land within which any person (other than the landholder) is authorised to exercise any power or right by or under any other Act in connection with any activity under a petroleum title under the Petroleum 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.

Schedule 2 [38] inserts proposed section 141 (1A) into the Petroleum Act to make it clear that the section does not apply to the extent that the action, liability, claim or demand arises from anything done by the landholder with the intention to cause harm or recklessly.

Savings and transitional amendments

Schedule 2 [39] and [40] contain amendments of a savings and transitional nature.

Cancellation of titles relating to national parks

Schedule 2 [41] inserts a Schedule into the Petroleum Act to cancel any exploration licence, or part of an exploration licence, that is comprised of land within a national park (either wholly or in part, as the case requires). The proposed Schedule contains other provisions dealing with the consequences of such cancellations.



New South Wales

Mining and Petroleum Legislation Amendment (Land Access Arbitration) Bill 2015

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New South Wales

Mining and Petroleum Legislation Amendment (Land Access Arbitration) Bill 2015

No. , 2015

A Bill for

An Act to amend the *Mining Act 1992* and the *Petroleum (Onshore) Act 1991* in relation to land access mediation and arbitration processes; and for related 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 Arbitration) Act 2015</i> .	3 4
2 Commencement	5
This Act commences on a day or days to be appointed by proclamation.	6

Schedule 1	Amendment of Mining Act 1992 No 29	1
[1] Section 31 Dwelling-houses, gardens and significant improvements		2
Insert after section 31 (5):		3
(6) The holder of the exploration licence is to pay the costs of the owner of the dwelling-house, garden or improvement (or occupant of the dwelling-house) in those proceedings in the Land and Environment Court.		4 5 6
(7) This section does not apply to the holder of an exploration licence who carries out a seismic survey on a road within the meaning of the <i>Road Transport Act 2013</i> , but only if the holder has given written notice of at least 21 days (or such other period as is prescribed by the regulations) of the carrying out of the seismic survey to the owner of the dwelling-house, garden or significant improvement concerned (and, in the case of a dwelling-house, the occupant).		7 8 9 10 11 12
[2] Section 49 Dwelling-houses, gardens and significant improvements		13
Insert after section 49 (5):		14
(6) The holder of the assessment lease is to pay the costs of the owner of the dwelling-house, garden or improvement (or occupant of the dwelling-house) in those proceedings in the Land and Environment Court.		15 16 17
(7) This section does not apply to the holder of an assessment lease who carries out a seismic survey on a road within the meaning of the <i>Road Transport Act 2013</i> , but only if the holder has given written notice of at least 21 days (or such other period as is prescribed by the regulations) of the carrying out of the seismic survey to the owner of the dwelling-house, garden or significant improvement concerned (and, in the case of a dwelling-house, the occupant).		18 19 20 21 22 23
[3] Section 62 Dwelling-houses, gardens and significant improvements		24
Insert after section 62 (6A):		25
(6B) The applicant for the mining lease is to pay the costs of the owner of the dwelling-house, garden or improvement (or occupant of the dwelling-house) in those proceedings in the Land and Environment Court.		26 27 28
[4] Section 139		29
Omit the section. Insert instead:		30
139 Arbitration Panel		31
(1) There is to be an Arbitration Panel.		32
(2) When appointing a person as a member of the Arbitration Panel, the Minister must comply with any processes or procedures for such appointments set out in the regulations.		33 34 35
(3) A person is not eligible for appointment as a member of the Arbitration Panel unless the person meets the eligibility criteria (if any) set out in the regulations.		36 37
(4) A person is to be appointed as a member of the Arbitration Panel for the term of office specified in the person's instrument of appointment, being a term not exceeding the maximum period prescribed by the regulations. However, a person may be appointed for an additional term or terms of office if:		38 39 40 41
(a) the person is eligible for appointment, and		42
(b) the Minister considers it appropriate to do so.		43

(5)	The appointment of a member of the Arbitration Panel is subject to such conditions as are determined by the Minister from time to time.	1 2
(6)	Without limiting subsection (5), the Minister may determine conditions relating to the following:	3 4
(a)	remuneration and travelling and subsistence allowances,	5
(b)	the disclosure to the Secretary of information, including any actual and potential conflicts of interest,	6 7
(c)	performance requirements to be met by the members of the Arbitration Panel.	8 9
(7)	The Secretary is to keep and maintain a register of the following:	10
(a)	the name, business address and contact information of each member of the Arbitration Panel,	11 12
(b)	the qualifications and experience of each member (as at the time of the member's most recent appointment),	13 14
(c)	details of any actual and potential conflicts of interest disclosed to the Secretary in compliance with a condition of the member's appointment (if such a condition has been imposed),	15 16 17
(d)	any other matter relating to members of the Arbitration Panel as the regulations may prescribe.	18 19
(8)	The register must be made available for public inspection on the Department's website.	20 21
[5]	Section 141 Matters for which access arrangement to provide	22
	Omit section 141 (2A).	23
[6]	Section 141 (4)	24
	Insert "or the holder of a prospecting title" after "by the landholder".	25
[7]	Sections 141A and 141B	26
	Insert after section 141:	27
141A	Access code	28
(1)	The regulations may prescribe a code (an <i>access code</i>) 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.	29 30 31
(2)	The regulations may designate any or all of the provisions of an access code as mandatory provisions.	32 33
(3)	An access code may contain non-binding guidelines relating to negotiating and agreeing access arrangements.	34 35
141B	Application of mandatory provisions of access codes	36
(1)	An access arrangement is taken to include provisions in the same terms as the mandatory provisions of the access code.	37 38
(2)	A provision of an access arrangement has no effect to the extent that it contains obligations on the holder of the prospecting title that are less stringent than those in a mandatory provision.	39 40 41
	Note. See also section 141 (3) which deals with inconsistency between provisions of access arrangements and provisions of regulations.	42 43

[8] Section 142 Holder of prospecting title to seek access arrangement	1
Insert after section 142 (2):	2
(2A) The holder of the prospecting title must pay the reasonable costs of the landholder of the land concerned in participating in negotiating the access arrangement.	3 4 5
(2B) The maximum amount of reasonable costs payable by the holder of the prospecting title is the amount set out by the Minister by order published in the Gazette.	6 7 8
(2C) In making the order, the Minister must have regard to the following:	9
(a) time spent participating in negotiating the access arrangement,	10
(b) legal costs of negotiating the access arrangement,	11
(c) costs of engaging experts as part of the negotiation process.	12
(2D) Nothing in this section prevents a holder of a prospecting title, at the holder's discretion, paying other amounts to a landholder.	13 14
(2E) An order relating to costs may:	15
(a) apply generally or be limited in its application by reference to specified exceptions or factors, or	16 17
(b) apply differently according to different factors of a specified kind, or	18
(c) authorise any matter or thing to be from time to time determined, applied or regulated by any specified person or body,	19 20
or may do any combination of those things.	21
(2F) The regulations may make provision for or with respect to the payment of costs under this section, including, but not limited to, the following:	22 23
(a) the timing or frequency of payments,	24
(b) evidence of costs incurred to be provided to the holder of the prospecting title.	25 26
(2G) The holder of a prospecting title and the landholder of the land concerned must negotiate on an access arrangement in good faith.	27 28
[9] Section 144 Appointment of arbitrator in default of agreement	29
Omit section 144 (2). Insert instead:	30
(2) At the same time as, or after, an application is made under this section, but before an arbitrator is appointed, the holder of the prospecting title concerned must pay the application fee prescribed by the regulations for the purposes of this section.	31 32 33 34
[10] Sections 145, 145A and 145B	35
Omit section 145. Insert instead:	36
145 Arbitration process—mediation before arbitration hearing	37
(1) As soon as practicable after having been appointed, an arbitrator:	38
(a) must fix a time and place for conducting a mediation of the question of access to the land concerned, and	39 40
(b) must cause notice of his or her appointment, and of the time and place fixed for conducting the mediation, to be given to the holder of the prospecting title and to each landholder.	41 42 43

- (2) The arbitrator may, by a further notice served on the holder of the prospecting title and on each landholder, vary the time or place fixed for conducting the mediation. 1
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- (3) The arbitrator must, at the time and place fixed under this section, conduct a mediation of the question of access to the land concerned. 4
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- 145A Mediation** 6
- (1) An arbitrator conducting a mediation under this Division: 7
- (a) must use his or her best endeavours to bring the parties to a settlement acceptable to all of them, and 8
9
- (b) may communicate with the parties collectively or separately, and 10
- (c) must treat information obtained by the arbitrator from a party with whom he or she communicates separately as confidential, unless that party otherwise agrees. 11
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- (2) The parties to a mediation must participate in the mediation in good faith. 14
- (3) A mediation terminates if: 15
- (a) the parties agree to terminate the mediation, or 16
- (b) any party terminates the mediation, by notice in writing, served on the other parties and the arbitrator, or 17
18
- (c) the arbitrator terminates the mediation, or 19
- (d) the parties agree on an access arrangement. 20
- (4) An arbitrator who has acted as mediator in a mediation that is terminated under subsection (3) (a)–(c): 21
22
- (a) may refuse to conduct the subsequent arbitration, and 23
- (b) must not conduct the subsequent arbitration unless, at the time of or after the termination of the mediation, all the parties to the arbitration (including the arbitrator) consent in writing. 24
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- (5) If: 27
- (a) an arbitrator has obtained confidential information from a party during a mediation, and 28
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- (b) the mediation has been terminated under subsection (3) (a)–(c), and 30
- (c) the parties have consented to the arbitrator conducting the subsequent arbitration, 31
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- the arbitrator must, as soon as reasonably practical after that consent has been given, disclose to all other parties to the arbitration so much of the information as the arbitrator considers material to the arbitration. 33
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- (6) If the parties consent under subsection (4) (b), no objection may be taken to the conduct of the subsequent arbitration by the arbitrator solely on the ground that he or she has previously conducted a mediation in accordance with this section. 36
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- (7) If the arbitrator refuses to conduct the subsequent arbitration under subsection (4) (a) or the parties do not consent under subsection (4) (b), the arbitrator's mandate is taken to have been terminated and a substitute arbitrator may be appointed: 40
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- (a) by the parties, or 44

(b)	by the Secretary, but only if the parties have been unable to agree on the appointment of an arbitrator by the end of 7 days after the termination of the mediation.	1 2 3
(8)	Before a substitute arbitrator is appointed under this section, the holder of the prospecting title concerned must pay the application fee prescribed by the regulations for the purposes of this section.	4 5 6
(9)	The substitute arbitrator is not required to conduct a mediation under this Division.	7 8
145B	Arbitration hearing	9
(1)	If the mediation is unsuccessful, the arbitrator must, as soon as practicable after its conclusion:	10 11
(a)	fix a time and place for conducting a hearing of the question of access to the land concerned, and	12 13
(b)	cause notice of the time and place fixed for conducting the hearing to be given to the holder of the prospecting title and to each landholder.	14 15
(2)	The arbitrator may, by a further notice served on the holder of the prospecting title and on each landholder, vary the time or place fixed for conducting the hearing.	16 17 18
(3)	The arbitrator must, at the time and place fixed under this section, conduct a hearing into the question of access to the land concerned.	19 20
[11]	Section 146	21
	Omit the section. Insert instead:	22
146	Right of appearance	23
	At any mediation of, or hearing into, the question of access to any land by the holder of a prospecting title, the holder and each landholder:	24 25
(a)	are entitled to appear and be heard, and	26
(b)	may be represented by an agent or by an Australian legal practitioner.	27
[12]	Section 147 Conciliation	28
	Omit the section.	29
[13]	Section 148 Conduct of arbitration	30
	Omit section 148 (1). Insert instead:	31
(1)	The parties to an arbitration must participate in the arbitration in good faith.	32
(1A)	An arbitrator may terminate an arbitration at any time at the request of the parties.	33 34
[14]	Sections 148A, 148B and 148C	35
	Insert after section 148:	36
148A	Approved arbitration procedures	37
(1)	The Secretary may, by order published in the Gazette, approve arbitration procedures for the conduct of mediations and arbitrations under this Division (<i>approved arbitration procedures</i>).	38 39 40

- (2) The approved arbitration procedures may include guidance materials for the benefit of the parties and arbitrators. 1
2
- (3) The approved arbitration procedures may also include, but are not limited to, the following: 3
4
- (a) objectives and principles for arbitration, 5
 - (b) responsibilities of parties and the arbitrator in the arbitration process, 6
 - (c) stages and timeframes for the arbitration framework, 7
 - (d) processes for dealing with significant improvements, 8
 - (e) confidentiality, 9
 - (f) suspension of mediation or arbitration proceedings in certain circumstances, 10
11
 - (g) production of evidence of costs incurred by landholders. 12
- (4) Unless the parties and the arbitrator agree otherwise, mediation and arbitration under this Division is to be conducted in accordance with the provisions of the approved arbitration procedures. 13
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- (5) In the event of an inconsistency between a provision of the approved arbitration procedures and a provision of this Act or of the regulations, the provision of this Act or of the regulations prevails. 16
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- (6) If a matter is not provided for in this Act, the regulations or the approved arbitration procedures, the procedure at a mediation or a hearing is to be as determined by the arbitrator. 19
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- (7) Approved arbitration procedures take effect on the day on which the procedures are published in the Gazette or, if a later day or days are specified for that purpose, on the later day or days so specified. 22
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- (8) Sections 40 and 41 of the *Interpretation Act 1987* apply to the approved arbitration procedures under this section in the same way as they apply to statutory rules within the meaning of that Act. 25
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- 148B Site inspection by arbitrator** 28
- An arbitrator conducting a mediation or a hearing may enter the land concerned and inspect it at a reasonable time after giving reasonable notice to the landholder. 29
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- 148C Costs of landholder participation in mediation and arbitration** 32
- (1) The holder of the prospecting title must pay the reasonable costs of the landholder of the land concerned in participating in the mediation and arbitration. 33
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- (2) The maximum amount of reasonable costs is the amount set out by the Minister by order published in the Gazette. 36
37
- (3) In making the order, the Minister must have regard to the following: 38
- (a) time spent participating in the mediation and arbitration, 39
 - (b) legal costs in participating in the mediation and arbitration, 40
 - (c) costs of engaging experts as part of the mediation and arbitration process. 41
42
- (4) Nothing in this section prevents a holder of a prospecting title, at the holder's discretion, paying other amounts to a landholder. 43
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(5)	An order relating to costs may:	1
(a)	apply generally or be limited in its application by reference to specified exceptions or factors, or	2
(b)	apply differently according to different factors of a specified kind, or	3
(c)	authorise any matter or thing to be from time to time determined, applied or regulated by any specified person or body, or may do any combination of those things.	4
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[15]	Section 151A	8
	Insert after section 151:	9
151A	Determination as to costs	10
(1)	This section applies to an arbitrator in the following circumstances:	11
(a)	as soon as practicable after an interim determination is taken to be a final determination,	12
(b)	on making a final determination under this Division,	13
(c)	before terminating an arbitration at the request of the parties.	14
(2)	The arbitrator must determine the following:	15
(a)	if the parties have disputed a payment to cover the landholder's costs in negotiating the access arrangement, the amount of that payment (in accordance with section 142), and	16
(b)	the reasonable costs of the landholder in participating in the mediation and arbitration (in accordance with section 148C).	17
(3)	When determining a payment to cover the reasonable costs of the landholder in participating in the mediation and arbitration, the arbitrator must:	18
(a)	consider whether or not the landholder has acted unreasonably in the negotiation, mediation or arbitration, and	19
(b)	deduct an amount that in the opinion of the arbitrator represents the amount by which the unreasonable conduct increased the costs of the negotiation, mediation or arbitration.	20
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[16]	Section 152 Costs of mediation and arbitration hearing	29
	Omit section 152 (1).	30
[17]	Section 154 Liability	31
	Insert "a mediation or" after "purposes of".	32
[18]	Section 155 Review of determination	33
	Omit "(other than a determination referred to in section 147 (2))" from section 155 (1).	34
[19]	Section 155 (8) and (9)	35
	Insert after section 155 (7):	36
(8)	The holder of the prospecting title must pay the reasonable costs of the landholder of the land concerned in a review of a determination under this section.	37
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(9)	The Land and Environment Court, in determining those reasonable costs, must consider whether or not the landholder has acted unreasonably in the negotiation, mediation, arbitration or review proceedings.	40
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[20] Section 156A	1
Insert after section 156:	2
156A Register of arbitrated access arrangements	3
(1) As soon as is practicable after an access arrangement is determined by an arbitrator, the holder of the prospecting title must provide the Secretary with a copy of the final access arrangement.	4 5 6
Maximum penalty: 100 penalty units (in the case of a corporation) or 50 penalty units (in the case of an individual).	7 8
(2) The Secretary is to keep and maintain a register of all final access arrangements provided to him or her.	9 10
(3) The Secretary is not required to include in the register:	11
(a) personal information (within the meaning of the <i>Privacy and Personal Information Protection Act 1998</i>) about an individual, or	12 13
(b) any other information prescribed by the regulations, or	14
(c) any other information that the Secretary determines should be kept confidential.	15 16
(4) The register is to be made available for public inspection on the Department's website.	17 18
[21] Section 157	19
Omit the section. Insert instead:	20
157 Variation of access arrangements	21
(1) An access arrangement may be varied:	22
(a) in accordance with the terms of the arrangement relating to its variation, or	23 24
(b) by the agreement of the parties to the arrangement, or	25
(c) by an arbitrator under this section (whether or not the access arrangement was determined by an arbitrator), or	26 27
(d) 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.	28 29 30
(2) A party to an access arrangement may, by written notice served on all the other parties to the arrangement, request the parties to agree to the appointment of an arbitrator.	31 32 33
(3) The parties to an access arrangement may agree to the appointment of any person as an arbitrator.	34 35
(4) Sections 144–151 and 152–156 apply, with all necessary changes, in relation to an arbitration under this section, subject to the following modifications:	36 37
(a) in the application of section 144 (1), the reference to a notice served in accordance with section 143 is taken to be a reference to a notice served in accordance with subsection (2),	38 39 40

(b)	section 144 (2) does not apply and instead the following applies:	1
(2)	Before an arbitrator is appointed under this section, the party requesting the appointment of an arbitrator must pay the application fee prescribed by the regulations for the purposes of this section.	2 3 4 5
(c)	section 148C does not apply and instead the following provision applies:	6 7
	148C Costs	8
	Each party to the mediation and hearing conducted by the arbitrator is to bear his or her own costs in relation to the hearing.	9 10 11
(d)	any other modification prescribed by the regulations.	12
(5)	In this section, <i>vary</i> includes terminate.	13
[22]	Sections 158A and 158B	14
	Insert after section 158:	15
158A	Court may determine access arrangement if already considering significant improvements etc	16 17
(1)	If:	18
(a)	a party applied to the Land and Environment Court for a determination of a matter under section 31 (5) or 49 (5), and	19 20
(b)	no access arrangement relates to the land concerned, either party to those Court proceedings may apply to the Court to have the Court determine an access arrangement under this Division in relation to the land.	21 22 23 24
(2)	An application under this section must not be lodged within 28 days after the holder of the prospecting title has served notice under section 142 of an intention to obtain an access arrangement in respect of the land concerned.	25 26 27
(3)	The Land and Environment Court may accept or reject the application.	28
(4)	Subject to any order of the Land and Environment Court, an application under this section operates to stay any other access arrangement mediation or arbitration in relation to the land until the decision of the Land and Environment Court on the application.	29 30 31 32
(5)	If the Land and Environment Court decides to accept the application:	33
(a)	the Land and Environment Court is, subject to the regulations, to determine an access arrangement under this Division in relation to the land, and	34 35 36
(b)	any other access arrangement mediation or arbitration in relation to the land is terminated.	37 38
158B	Removal of Arbitration Panel arbitrator	39
(1)	The Secretary may, subject to the regulations, remove an arbitrator who has been appointed under section 144 or 145A (7) (b) if, after an investigation by the Secretary following a complaint, the Secretary is satisfied:	40 41 42
(a)	that:	43
(i)	circumstances exist that give rise to justifiable doubts as to the arbitrator's impartiality, or	44 45

	(ii) the arbitrator is incapable of conducting the proceedings or there are justifiable doubts as to the arbitrator's capacity to do so, or	1 2
	(iii) the arbitrator has refused or failed properly to conduct the proceedings, and	3 4
	(b) that substantial injustice has been caused or will be caused to one or more of the parties.	5 6
(2)	If an arbitrator has been removed under subsection (1), the arbitrator's mandate is taken to have been terminated and a substitute arbitrator is to be appointed:	7 8 9
	(a) by the parties, or	10
	(b) by the Secretary, but only if the parties have been unable to agree on the appointment of an arbitrator by the end of 7 days after the removal.	11 12
(3)	The regulations may make provision for or with respect to the removal of arbitrators under this section, including, but not limited to:	13 14
	(a) the making of complaints to the Secretary, and	15
	(b) investigations by the Secretary of complaints.	16
[23]	Section 383C General immunity of landholders	17
	Insert after section 383C (1) (a):	18
	(a1) by or under any other Act in connection with any activity under an authority, mineral claim, opal prospecting licence or permit under this Act, or	19 20 21
[24]	Section 383C (1A)	22
	Insert after section 383C (1):	23
	(1A) For the avoidance of doubt, subsection (1) does not apply to the extent that the action, liability, claim or demand arose from anything done by the landholder:	24 25
	(a) with the intention to cause harm, or	26
	(b) recklessly.	27
[25]	Schedule 6 Savings, transitional and other provisions	28
	Insert after clause 1 (3):	29
	(4) Any provision of the regulations made under this clause has effect despite anything to the contrary in this Schedule. The regulations may make separate savings and transitional provisions or amend this Schedule to consolidate the savings and transitional provisions.	30 31 32 33
[26]	Schedule 6	34
	Insert at the end of the Schedule with appropriate Part and clause numbering:	35
Part	Provisions consequent on enactment of Mining and Petroleum Legislation Amendment (Land Access Arbitration) Act 2015	36 37 38
	Definition	39
	In this Part, <i>2015 amending Act</i> means the <i>Mining and Petroleum Legislation Amendment (Land Access Arbitration) Act 2015</i> .	40 41

Application of amendments relating to general arbitration procedures to existing access arrangements and proposed access arrangements	1 2
(1) This clause applies to a proposed access arrangement for which notice had been given under section 142 before the commencement of this clause, but which was not agreed or determined before that commencement.	3 4 5
(2) Sections 144 (2), 145, 146, 147, 148 (1) and 155 (1), as in force immediately before their amendment, substitution or repeal by the 2015 amending Act continue to apply to access arrangements and proposed access arrangements to which this clause applies.	6 7 8 9
(3) Sections 145A, 145B, 148B and 156A do not apply to access arrangements and proposed access arrangements to which this clause applies.	10 11
Application of amendments relating to costs to existing access arrangements and proposed access arrangements	12 13
(1) This clause applies to a proposed access arrangement for which notice had been given under section 142 before the commencement of this clause, but which has not been agreed or determined before that commencement.	14 15 16
(2) Sections 141 (2A) and 152 (1) as in force immediately before their repeal by the 2015 amending Act continue to apply to access arrangements and proposed access arrangements to which this clause applies.	17 18 19
(3) Sections 142 (2A)–(2D), 148C, 151A and 158A do not apply to access arrangements and proposed access arrangements to which this clause applies.	20 21
Application of amendments relating to costs in Land and Environment Court	22
Sections 31 (6), 49 (6), 62 (6B) and 155 (8) and (9), as inserted by the 2015 amending Act, do not apply to proceedings in the Land and Environment Court commenced, but not finally determined, before the commencement of this clause.	23 24 25 26
Application of amendments relating to the definition of “significant improvement”	27 28
The substitution of the definition of <i>significant improvement</i> in the Dictionary to the Act by the 2015 amending Act does not apply in relation to the following:	29 30 31
(a) any proceedings in the Land and Environment Court under section 31, 49, 62 or 188 of the Act, or	32 33
(b) any proceedings in that Court in relation to a dispute concerning an access arrangement for which notice had been given under section 143 before the commencement of this clause, that were commenced, but not finally determined, before the commencement of this clause.	34 35 36 37 38
[27] Dictionary	39
Omit the definition of <i>significant improvement</i> . Insert instead:	40
<i>significant improvement</i> on land, in relation to an authorisation or an access arrangement, means a work or structure that:	41 42
(a) is a substantial and valuable improvement to the land, and	43
(b) is reasonably necessary for the operation of the landholder’s lawful business or use of the land, and	44 45
(c) is fit for its purpose (immediately or with minimal repair), and	46

- (d) cannot reasonably co-exist with the exercise of rights under the authorisation or the access arrangement without hindrance to the full and unencumbered operation or functionality of the work or structure, and 1
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- (e) cannot reasonably be relocated or substituted without material detriment to the landholder, 5
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and includes any work or structure prescribed by the regulations for the 7
purposes of this definition, but does not include any work or structure 8
excluded from this definition by the regulations. 9

Schedule 2	Amendment of Petroleum (Onshore) Act 1991 No 84	1 2
[1] Section 3 Definitions		3
	Insert in alphabetical order in section 3 (1):	4
	<i>access arrangement</i> means an access arrangement under Part 4A or 4B.	5
[2] Section 19 Renewal of title		6
	Insert after section 19 (5):	7
	(6) The area of land over which an exploration licence or assessment lease is renewed may differ from the area of land over which the renewal of the licence or lease is sought, but not so as to include any land that was not subject to the licence or lease immediately before the renewal.	8 9 10 11
	(7) If an exploration licence or assessment lease is renewed as to part only of the land to which the application for renewal relates, the licence or lease ceases to have effect in relation to the remainder of the land on the date on which the renewal takes effect.	12 13 14 15
[3] Section 41		16
	Omit the section. Insert instead:	17
41 Rights of holders of production leases		18
	(1) The holder of a production lease may, in accordance with the conditions of the lease:	19 20
	(a) prospect in and on the land comprised in the lease for petroleum, and	21
	(b) conduct petroleum mining operations in and on the land comprised in the lease, and	22 23
	(c) construct and maintain on the land such works, buildings, plant, waterways, roads, pipelines, dams, reservoirs, tanks, pumping stations, tramways, railways, telephone lines, electric powerlines and other structures and equipment as are necessary for the full enjoyment of the lease or to fulfil the lessee's obligations under it.	24 25 26 27 28
	(2) While a production lease is in force, the holder of the lease and any person acting as agent or employee of the holder, or delivering goods or providing services to the holder, for the purpose of a requirement of or an activity authorised by the lease may:	29 30 31 32
	(a) for that purpose enter and be on the land included in the lease, and	33
	(b) do anything so authorised or required.	34
	(3) Despite subsections (1) and (2), a holder of a production lease may carry out activities on the land comprised in the lease only in accordance with an access arrangement applying to that land.	35 36 37
[4] Section 69D Matters for which access arrangement to provide		38
	Omit section 69D (1) (f).	39

[5] Section 69D (2)	1
Omit the subsection. Insert instead:	2
(2) An access arrangement must specify the compensation that is payable to each landholder of the land concerned as a consequence of the holder of the prospecting title carrying out prospecting operations on the land.	3 4 5
[6] Section 69D (2A)	6
Omit the subsection.	7
[7] Section 69D (4)	8
Insert “or the holder of a prospecting title” after “by the landholder”.	9
[8] Sections 69DA and 69DB	10
Insert after section 69D:	11
69DA Access code	12
(1) The regulations may prescribe a code (an <i>access code</i>) 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.	13 14 15
(2) The regulations may designate any or all of the provisions of an access code as mandatory provisions.	16 17
(3) An access code may contain non-binding guidelines relating to negotiating and agreeing access arrangements.	18 19
69DB Application of mandatory provisions of access codes	20
(1) An access arrangement is taken to include provisions in the same terms as the mandatory provisions of the access code.	21 22
(2) A provision of an access arrangement has no effect to the extent that it contains obligations on the holder of the prospecting title that are less stringent than those in a mandatory provision.	23 24 25
Note. See also section 69D (3) which deals with inconsistency between provisions of access arrangements and provisions of regulations.	26 27
[9] Section 69E Holder of prospecting title to seek access arrangement	28
Insert after section 69E (2):	29
(2A) The holder of the prospecting title must pay the reasonable costs of the landholder of the land concerned in participating in negotiating the access arrangement.	30 31 32
(2B) The maximum amount of reasonable costs payable by the holder of the prospecting title is the amount set out by the Minister by order published in the Gazette.	33 34 35
(2C) In making the order, the Minister must have regard to the following:	36
(a) time spent participating in negotiating the access arrangement,	37
(b) legal costs of negotiating the access arrangement,	38
(c) costs of engaging experts as part of the negotiation process.	39
(2D) Nothing in this section prevents a holder of a prospecting title, at the holder’s discretion, paying other amounts to a landholder.	40 41

(2E)	An order relating to costs may:	1
(a)	apply generally or be limited in its application by reference to specified exceptions or factors, or	2
(b)	apply differently according to different factors of a specified kind, or	3
(c)	authorise any matter or thing to be from time to time determined, applied or regulated by any specified person or body, or may do any combination of those things.	4
(2F)	The regulations may make provision for or with respect to the payment of costs under this section, including, but not limited to, the following:	5
(a)	the timing or frequency of payments,	6
(b)	evidence of costs incurred to be provided to the holder of the prospecting title.	7
(2G)	The holder of a prospecting title and the landholder of the land concerned must negotiate on an access arrangement in good faith.	8
[10]	Section 69G Appointment of arbitrator in default of agreement	9
	Omit section 69G (2) and (3). Insert instead:	10
(2)	At the same time as, or after, an application is made under this section, but before an arbitrator is appointed, the holder of the prospecting title concerned must pay the application fee prescribed by the regulations for the purposes of this section.	11
[11]	Sections 69H, 69HA and 69HB	12
	Omit section 69H. Insert instead:	13
69H	Arbitration process—mediation before arbitration hearing	14
(1)	As soon as practicable after having been appointed, an arbitrator:	15
(a)	must fix a time and place for conducting a mediation of the question of access to the land concerned, and	16
(b)	must cause notice of his or her appointment, and of the time and place fixed for conducting the mediation, to be given to the holder of the prospecting title and to each landholder.	17
(2)	The arbitrator may, by a further notice served on the holder of the prospecting title and on each landholder, vary the time or place fixed for conducting the mediation.	18
(3)	The arbitrator must, at the time and place fixed under this section, conduct a mediation of the question of access to the land concerned.	19
69HA	Mediation	20
(1)	An arbitrator conducting a mediation under this Part:	21
(a)	must use his or her best endeavours to bring the parties to a settlement acceptable to all of them, and	22
(b)	may communicate with the parties collectively or separately, and	23
(c)	must treat information obtained by the arbitrator from a party with whom he or she communicates separately as confidential, unless that party otherwise agrees.	24
(2)	The parties to a mediation must participate in the mediation in good faith.	25

(3)	A mediation terminates if:	1
(a)	the parties agree to terminate the mediation, or	2
(b)	any party terminates the mediation, by notice in writing, served on the other parties and the arbitrator, or	3 4
(c)	the arbitrator terminates the mediation, or	5
(d)	the parties agree on an access arrangement.	6
(4)	An arbitrator who has acted as mediator in a mediation that is terminated under subsection (3) (a)–(c):	7 8
(a)	may refuse to conduct the subsequent arbitration, and	9
(b)	must not conduct the subsequent arbitration unless, at the time of or after the termination of the mediation, all the parties to the arbitration (including the arbitrator) consent in writing.	10 11 12
(5)	If:	13
(a)	an arbitrator has obtained confidential information from a party during a mediation, and	14 15
(b)	the mediation has been terminated under subsection (3) (a)–(c), and	16
(c)	the parties have consented to the arbitrator conducting the subsequent arbitration,	17 18
	the arbitrator must, as soon as reasonably practical after that consent has been given, disclose to all other parties to the arbitration so much of the information as the arbitrator considers material to the arbitration.	19 20 21
(6)	If the parties consent under subsection (4) (b), no objection may be taken to the conduct of the subsequent arbitration by the arbitrator solely on the ground that he or she has previously conducted a mediation in accordance with this section.	22 23 24 25
(7)	If the arbitrator refuses to conduct the subsequent arbitration under subsection (4) (a) or the parties do not consent under subsection (4) (b), the arbitrator’s mandate is taken to have been terminated and a substitute arbitrator may be appointed:	26 27 28 29
(a)	by the parties, or	30
(b)	by the Secretary, but only if the parties have been unable to agree on the appointment of an arbitrator by the end of 7 days after the termination of the mediation.	31 32 33
(8)	Before a substitute arbitrator is appointed under this section, the holder of the prospecting title concerned must pay the application fee prescribed by the regulations for the purposes of this section.	34 35 36
(9)	The substitute arbitrator is not required to conduct a mediation under this Part.	37
69HB	Arbitration hearing	38
(1)	If the mediation is unsuccessful, the arbitrator must, as soon as practicable after its conclusion:	39 40
(a)	fix a time and place for conducting a hearing of the question of access to the land concerned, and	41 42
(b)	cause notice of the time and place fixed for conducting the hearing to be given to the holder of the prospecting title and to each landholder.	43 44

(2)	The arbitrator may, by a further notice served on the holder of the prospecting title and on each landholder, vary the time or place fixed for conducting the hearing.	1 2 3
(3)	The arbitrator must, at the time and place fixed under this section, conduct a hearing into the question of access to the land concerned.	4 5
[12]	Section 69I	6
	Omit the section. Insert instead:	7
	69I Right of appearance	8
	At any mediation of, or hearing into, the question of access to any land by the holder of a prospecting title, the holder and each landholder:	9 10
	(a) are entitled to appear and be heard, and	11
	(b) may be represented by an agent or by an Australian legal practitioner.	12
[13]	Section 69J Conciliation	13
	Omit the section.	14
[14]	Section 69K Conduct of arbitration	15
	Omit section 69K (1). Insert instead:	16
	(1) The parties to an arbitration must participate in the arbitration in good faith.	17
	(1A) An arbitrator may terminate an arbitration at any time at the request of the parties.	18 19
[15]	Sections 69KA, 69KB and 69KC	20
	Insert after section 69K:	21
	69KA Approved arbitration procedures	22
	(1) The Secretary may, by order published in the Gazette, approve arbitration procedures for the conduct of mediations and arbitrations under this Part (<i>approved arbitration procedures</i>).	23 24 25
	(2) The approved arbitration procedures may include guidance materials for the benefit of the parties and arbitrators.	26 27
	(3) The approved arbitration procedures may also include, but are not limited to, the following:	28 29
	(a) objectives and principles for arbitration,	30
	(b) responsibilities of parties and the arbitrator in the arbitration process,	31
	(c) stages and timeframes for the arbitration framework,	32
	(d) processes for dealing with significant improvements,	33
	(e) confidentiality,	34
	(f) suspension of mediation or arbitration proceedings in certain circumstances,	35 36
	(g) production of evidence of costs incurred by landholders.	37
	(4) Unless the parties and the arbitrator agree otherwise, mediation and arbitration under this Part is to be conducted in accordance with the provisions of the approved arbitration procedures.	38 39 40

(5)	In the event of an inconsistency between a provision of the approved arbitration procedures and a provision of this Act or of the regulations, the provision of this Act or of the regulations prevails.	1 2 3
(6)	If a matter is not provided for in this Act, the regulations or the approved arbitration procedures, the procedure at a mediation or a hearing is to be as determined by the arbitrator.	4 5 6
(7)	Approved arbitration procedures take effect on the day on which the procedures are published in the Gazette or, if a later day or days are specified for that purpose, on the later day or days so specified.	7 8 9
(8)	Sections 40 and 41 of the <i>Interpretation Act 1987</i> apply to the approved arbitration procedures under this section in the same way as they apply to statutory rules within the meaning of that Act.	10 11 12
69KB	Site inspection by arbitrator	13
	An arbitrator conducting a mediation or a hearing may enter the land concerned and inspect it at a reasonable time after giving reasonable notice to the landholder.	14 15 16
69KC	Costs of landholder participation in mediation and arbitration	17
(1)	The holder of the prospecting title must pay the reasonable costs of the landholder of the land concerned in participating in the mediation and arbitration.	18 19 20
(2)	The maximum amount of reasonable costs is the amount set out by the Minister by order published in the Gazette.	21 22
(3)	In making the order, the Minister must have regard to the following:	23
	(a) time spent participating in the mediation and arbitration,	24
	(b) legal costs in participating in the mediation and arbitration,	25
	(c) costs of engaging experts as part of the mediation and arbitration process.	26 27
(4)	Nothing in this section prevents a holder of a prospecting title, at the holder's discretion, paying other amounts to a landholder.	28 29
(5)	An order relating to costs may:	30
	(a) apply generally or be limited in its application by reference to specified exceptions or factors, or	31 32
	(b) apply differently according to different factors of a specified kind, or	33
	(c) authorise any matter or thing to be from time to time determined, applied or regulated by any specified person or body,	34 35
	or may do any combination of those things.	36
[16]	Section 69NA	37
	Insert after section 69N:	38
69NA	Determination as to costs	39
(1)	This section applies to an arbitrator in the following circumstances:	40
	(a) as soon as practicable after an interim determination is taken to be a final determination,	41 42
	(b) on making a final determination under this Part,	43
	(c) before terminating an arbitration at the request of the parties.	44

(2)	The arbitrator must determine the following:	1
(a)	if the parties have disputed a payment to cover the landholder's costs in negotiating the access arrangement, the amount of that payment (in accordance with section 69E), and	2 3 4
(b)	the reasonable costs of the landholder in participating in the mediation and arbitration (in accordance with section 69KC).	5 6
(3)	When determining a payment to cover the reasonable costs of the landholder in participating in the mediation and arbitration, the arbitrator must:	7 8
(a)	consider whether or not the landholder has acted unreasonably in the negotiation, mediation or arbitration, and	9 10
(b)	deduct an amount that in the opinion of the arbitrator represents the amount by which the unreasonable conduct increased the costs of the negotiation, mediation or arbitration.	11 12 13
[17]	Section 69O Costs of mediation and arbitration hearing	14
	Omit section 69O (1).	15
[18]	Section 69Q Liability	16
	Insert "a mediation or" after "purposes of".	17
[19]	Section 69R Review of determination	18
	Omit "(other than a determination referred to in section 69J (2))" from section 69R (1).	19
[20]	Section 69R (8) and (9)	20
	Insert after section 69R (7):	21
(8)	The holder of the prospecting title must pay the reasonable costs of the landholder of the land concerned in a review of a determination under this section.	22 23 24
(9)	The Land and Environment Court, in determining those reasonable costs, must consider whether or not the landholder has acted unreasonably in the negotiation, mediation, arbitration or review proceedings.	25 26 27
[21]	Section 69SA	28
	Insert after section 69S:	29
69SA	Register of arbitrated access arrangements	30
(1)	As soon as is practicable after an access arrangement is determined by an arbitrator, the holder of the prospecting title must provide the Secretary with a copy of the final access arrangement.	31 32 33
	Maximum penalty: 100 penalty units (in the case of a corporation) or 50 penalty units (in the case of an individual).	34 35
(2)	The Secretary is to keep and maintain a register of all final access arrangements provided to him or her.	36 37
(3)	The Secretary is not required to include in the register:	38
(a)	personal information (within the meaning of the <i>Privacy and Personal Information Protection Act 1998</i>) about an individual, or	39 40
(b)	any other information prescribed by the regulations, or	41

(c)	any other information that the Secretary determines should be kept confidential.	1 2
(4)	The register is to be made available for public inspection on the Department's website.	3 4
[22]	Section 69T	5
	Omit the section. Insert instead:	6
69T	Variation of access arrangements	7
(1)	An access arrangement may be varied:	8
(a)	in accordance with the terms of the arrangement relating to its variation, or	9 10
(b)	by the agreement of the parties to the arrangement, or	11
(c)	by an arbitrator under this section (whether or not the access arrangement was determined by an arbitrator), or	12 13
(d)	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.	14 15 16
(2)	A party to an access arrangement may, by written notice served on all the other parties to the arrangement, request the parties to agree to the appointment of an arbitrator.	17 18 19
(3)	The parties to an access arrangement may agree to the appointment of any person as an arbitrator.	20 21
(4)	Sections 69G–69N and 69O–69S apply, with all necessary changes, in relation to an arbitration under this section, subject to the following modifications:	22 23
(a)	in the application of section 69G (1), the reference to a notice served in accordance with section 69F is taken to be a reference to a notice served in accordance with subsection (2),	24 25 26
(b)	section 69G (2) does not apply and instead the following applies:	27
(2)	Before an arbitrator is appointed under this section, the party requesting the appointment of an arbitrator must pay the application fee prescribed by the regulations for the purposes of this section.	28 29 30 31
(c)	section 69KC does not apply and instead the following provision applies:	32 33
	69KC Costs	34
	Each party to the mediation and hearing conducted by the arbitrator is to bear his or her own costs in relation to the hearing.	35 36 37
(d)	any other modification prescribed by the regulations.	38
(5)	In this section, <i>vary</i> includes terminate.	39

[23] Sections 69V and 69W	1
Insert after section 69U:	2
69V Court may determine access arrangement if already considering significant improvements etc	3 4
(1) If:	5
(a) a party applied to the Land and Environment Court for a determination of a matter under section 72 (4), and	6 7
(b) no access arrangement relates to the land concerned, either party to those Court proceedings may apply to the Court to have the Court determine an access arrangement under this Part in relation to the land.	8 9 10
(2) An application under this section must not be lodged within 28 days after the holder of the prospecting title has served notice under section 69E of an intention to obtain an access arrangement in respect of the land concerned.	11 12 13
(3) The Land and Environment Court may accept or reject the application.	14
(4) Subject to any order of the Land and Environment Court, an application under this section operates to stay any other access arrangement mediation or arbitration in relation to the land until the decision of the Land and Environment Court on the application.	15 16 17 18
(5) If the Land and Environment Court decides to accept the application:	19
(a) the Land and Environment Court is, subject to the regulations, to determine an access arrangement under this Part in relation to the land, and	20 21 22
(b) any other access arrangement mediation or arbitration in relation to the land is terminated.	23 24
69W Removal of Arbitration Panel arbitrator	25
(1) The Secretary may, subject to the regulations, remove an arbitrator who has been appointed under section 69G or 69HA (7) (b) if, after an investigation by the Secretary following a complaint, the Secretary is satisfied:	26 27 28
(a) that:	29
(i) circumstances exist that give rise to justifiable doubts as to the arbitrator's impartiality, or	30 31
(ii) the arbitrator is incapable of conducting the proceedings or there are justifiable doubts as to the arbitrator's capacity to do so, or	32 33
(iii) the arbitrator has refused or failed properly to conduct the proceedings, and	34 35
(b) that substantial injustice has been caused or will be caused to one or more of the parties.	36 37
(2) If an arbitrator has been removed under subsection (1), the arbitrator's mandate is taken to have been terminated and a substitute arbitrator is to be appointed:	38 39 40
(a) by the parties, or	41
(b) by the Secretary, but only if the parties have been unable to agree on the appointment of an arbitrator by the end of 7 days after the removal.	42 43
(3) The regulations may make provision for or with respect to the removal of arbitrators under this section, including, but not limited to:	44 45
(a) the making of complaints to the Secretary, and	46

	(b) investigations by the Secretary of complaints.	1
[24] Part 4B		2
	Insert after Part 4A:	3
	Part 4B Access arrangements for production leases	4
	Note. Section 41 (3) provides that a holder of a production lease may conduct activities on the land comprised in the lease only in accordance with an access arrangement applying to that land.	5 6
69X Part 4A extends to access arrangements for production leases		7
	(1) Part 4A (other than sections 69A–69C and 69D (4) and (5)) extends to access arrangements for the purpose of conducting petroleum mining operations under a production lease as if references in that Part to:	8 9 10
	(a) a prospecting title were references to a production lease, and	11
	(b) prospecting operations were references to petroleum mining operations.	12
	(2) The extension of Part 4A by this section is subject to any necessary changes and any other modification prescribed by the regulations.	13 14
[25] Section 72 Restrictions on rights of holders of titles over other land		15
	Omit section 72 (1) (c). Insert instead:	16
	(c) on which is situated any significant improvement, other than an improvement constructed or used for mining or prospecting operations,	17 18
[26] Section 72 (3)		19
	Omit the subsection.	20
[27] Section 72 (5)–(7)		21
	Insert after section 72 (4):	22
	(5) The holder of the petroleum title is to pay the costs of the owner of the dwelling-house, garden, vineyard or orchard or improvement (or occupant of the dwelling-house) in those proceedings in the Land and Environment Court.	23 24 25
	(6) In this section, significant improvement on land, in relation to a petroleum title or an access arrangement, means a work or structure that:	26 27
	(a) is a substantial and valuable improvement to the land, and	28
	(b) is reasonably necessary for the operation of the landholder’s lawful business or use of the land, and	29 30
	(c) is fit for its purpose (immediately or with minimal repair), and	31
	(d) cannot reasonably co-exist with the exercise of rights under the petroleum title or the access arrangement without hindrance to the full and unencumbered operation or functionality of the work or structure, and	32 33 34 35
	(e) cannot reasonably be relocated or substituted without material detriment to the landholder,	36 37
	and includes any work or structure prescribed by the regulations for the purposes of this definition, but does not include any work or structure excluded from this definition by the regulations.	38 39 40
	(7) This section does not apply to the holder of a petroleum title who carries out a seismic survey on a road within the meaning of the <i>Road Transport Act 2013</i> , but only if the holder has given written notice of at least 21 days (or such other	41 42 43

	period as is prescribed by the regulations) of the carrying out of the seismic survey to the owner of the dwelling-house, garden, vineyard, orchard or improvement concerned (and, in the case of a dwelling-house, the occupant).	1 2 3
[28]	Section 107A	4
	Insert before section 107:	5
	107A Definition	6
	In this Part:	7
	<i>compensable loss</i> means loss caused, or likely to be caused, by:	8
	(a) damage to the surface of land, to crops, trees, grasses or other vegetation (including fruit and vegetables) or to buildings, structures or works, being damage which has been caused by or which may arise from prospecting or mining operations, or	9 10 11 12
	(b) deprivation of the possession or of the use of the surface of land or any part of the surface, or	13 14
	(c) severance of land from other land of the landholder, or	15
	(d) surface rights of way and easements, or	16
	(e) destruction or loss of, or injury to, disturbance of or interference with, stock, or	17 18
	(f) damage consequential on any matter referred to in paragraphs (a)–(e).	19
[29]	Section 107 Compensation	20
	Omit section 107 (1). Insert instead:	21
	(1) On the granting of a petroleum title, each person having any estate or interest in any land becomes entitled to compensation for any compensable loss suffered, or likely to be suffered, by the person as a result of the exercise of the rights conferred by the title or by an access arrangement in respect of the title.	22 23 24 25
	Note. A <i>petroleum title</i> is an exploration licence, assessment lease, production lease or special prospecting authority in force under this Act.	26 27
[30]	Section 108 Parties to agree as to compensation	28
	Insert after section 108 (2):	29
	(3) Subsection (2) does not apply to compensation that is to be determined under an access arrangement that is required to be agreed or determined in accordance with Part 4A or 4B of this Act.	30 31 32
[31]	Section 109 Measure of compensation	33
	Omit section 109 (1).	34
[32]	Section 109 (2)	35
	Omit “Without affecting the generality of subsection (1), where:”. Insert instead “Where:”	36
[33]	Section 109 (2) (b)	37
	Omit “by the Land and Environment Court”. Insert instead “by any court, person or body”.	38
[34]	Section 109 (3)	39
	Omit “the Land and Environment Court”. Insert instead “a court, person or body”.	40

[35] Section 109 (4)	1
Insert after section 109 (3):	2
(4) In making an assessment of compensation regard is to be had to the matters (if any) prescribed by the regulations.	3 4
[36] Section 111 Additional assessment	5
Omit “further loss has been caused to the land to which the assessment relates, or to other land, being loss arising from any one or more of the causes mentioned in section 109 (1)” from section 111 (b).	6 7 8
Insert instead “further compensable loss has been caused to the land to which the assessment relates or to other land”.	9 10
[37] Section 141 General immunity of landholders	11
Insert after section 141 (1) (a):	12
(a1) by or under any other Act in connection with any activity under a petroleum title under this Act, or	13 14
[38] Section 141 (1A)	15
Insert after section 141 (1):	16
(1A) For the avoidance of doubt, subsection (1) does not apply to the extent that the action, liability, claim or demand arose from anything done by the landholder:	17 18
(a) with the intention to cause harm, or	19
(b) recklessly.	20
[39] Schedule 1 Savings and transitional provisions	21
Insert after clause 2 (3):	22
(4) Any provision of the regulations made under this clause has effect despite anything to the contrary in this Schedule. The regulations may make separate savings and transitional provisions or amend this Schedule to consolidate the savings and transitional provisions.	23 24 25 26
[40] Schedule 1	27
Insert at the end of the Schedule with appropriate Part and clause numbering:	28
Part Provisions consequent on enactment of Mining and Petroleum Legislation Amendment (Land Access Arbitration) Act 2015	29 30 31
Definition	32
In this Part, <i>2015 amending Act</i> means the <i>Mining and Petroleum Legislation Amendment (Land Access Arbitration) Act 2015</i> .	33 34
Application of amendments relating to general arbitration procedures to existing access arrangements and proposed access arrangements	35 36
(1) This clause applies to a proposed access arrangement for which notice had been given under section 69E before the commencement of this clause, but which was not agreed or determined before that commencement.	37 38 39

(2)	Sections 69D (1) (f) and (2), 69G (2), 69H, 69I, 69J, 69K (1) and 69R (1) as in force immediately before their amendment, substitution or repeal by the 2015 amending Act continue to apply to access arrangements and proposed access arrangements to which this clause applies.	1 2 3 4
(3)	Sections 69HA, 69HB, 69KB and 69SA do not apply to access arrangements and proposed access arrangements to which this clause applies.	5 6
Application of amendments relating to costs to existing access arrangements and proposed access arrangements		7 8
(1)	This clause applies to a proposed access arrangement for which notice had been given under section 69E before the commencement of this clause, but which has not been agreed or determined before that commencement.	9 10 11
(2)	Sections 69D (2A) and 69O (1) as in force immediately before their repeal by the 2015 amending Act continue to apply to access arrangements and proposed access arrangements to which this clause applies.	12 13 14
(3)	Sections 69E (2A)–(2D), 69KC, 69NA and 69V do not apply to access arrangements and proposed access arrangements to which this clause applies.	15 16
Application of amendments relating to costs in Land and Environment Court		17
	Section 69R (8) and (9), as inserted by the 2015 amending Act, do not apply to proceedings in the Land and Environment Court commenced, but not finally determined, before the commencement of this clause.	18 19 20
Application of amendments relating to production leases		21
	Section 41 (3) and Part 4B, as inserted by the 2015 amending Act, do not apply in relation to a production lease granted before the commencement of this clause.	22 23 24
Application of amendments relating to determination of compensation		25
	The amendments to the Act made by Schedule 2 [27]–[34] to the 2015 amending Act do not apply to the following:	26 27
(a)	an arbitration commenced, but not completed, before the commencement of this clause,	28 29
(b)	proceedings in the Land and Environment Court commenced, but not determined, before the commencement of this clause.	30 31
Application of amendment relating to the definition of “significant improvement”		32 33
	The insertion of the definition of <i>significant improvement</i> into section 72, and the other amendments to that section, by the 2015 amending Act do not apply in relation to the following:	34 35 36
(a)	any proceedings in the Land and Environment Court under that section, or	37 38
(b)	any proceedings in that Court in relation to a dispute concerning an access arrangement for which notice had been given under section 69F before the commencement of this clause,	39 40 41
	that were commenced, but not finally determined, before the commencement of this clause.	42 43

[41] Schedule	1
Insert at the end of the Act with an appropriate Schedule number:	2
Schedule Cancellation of titles relating to national parks	3 4
1 Cancellation of certain exploration licences	5
An exploration licence, or part of an exploration licence, that is comprised of land within a national park (within the meaning of the <i>National Parks and Wildlife Act 1974</i>) as at the commencement of this Schedule is cancelled by this Schedule, either wholly or in part, as the case requires.	6 7 8 9
2 Compensation not payable	10
(1) Compensation is not payable by or on behalf of the State:	11
(a) because of the enactment or operation of this Schedule or any Act that amends this Schedule, or	12 13
(b) because of any direct or indirect consequence of any such enactment or operation (including any conduct under the authority of any such enactment), or	14 15 16
(c) because of any conduct relating to any such enactment or operation.	17
(2) This clause extends to conduct and any other matter occurring before the commencement of this clause.	18 19
(3) In this clause:	20
<i>compensation</i> includes damages or any other form of compensation.	21
<i>conduct</i> includes any statement, or any act or omission:	22
(a) whether unconscionable, negligent, false, misleading, deceptive or otherwise, and	23 24
(b) whether constituting an offence, tort, breach of contract, breach of statute or otherwise.	25 26
<i>statement</i> includes a representation of any kind, whether made orally or in writing.	27 28
<i>the State</i> means the Crown within the meaning of the <i>Crown Proceedings Act 1988</i> or an officer, employee or agent of the Crown.	29 30
3 State not liable for certain conduct	31
(1) The State is not liable, and is taken never to have been liable, whether vicariously or otherwise, for any conduct (<i>relevant conduct</i>) before an exploration licence's cancellation under this Schedule in relation to an exploration licence or prospecting on land (whether occurring before or after the grant of the licence).	32 33 34 35 36
(2) In addition, the State is not liable, and is taken never to have been liable, whether under any contract, policy or other arrangement for self-insurance or otherwise, to indemnify any person against any personal liability of the person for relevant conduct.	37 38 39 40
(3) This clause extends to all types of civil liability, whether at law or in equity, and whether arising in tort or contract, or under an enactment or otherwise.	41 42

- (4) An employee (or former employee) of the State acting honestly and in good faith in the performance or purported performance of his or her functions as an employee of the State has the same protections and immunities as the State under this clause. 1
2
3
4
- (5) This clause applies despite the *Law Reform (Vicarious Liability) Act 1983* and the *Civil Liability Act 2002*. 5
6
- (6) In this clause: 7
employee of the State means a person employed under the *Government Sector Employment Act 2013*. 8
the State means the Crown in right of New South Wales and includes a statutory body representing the Crown. 9
10
11
- 4 Continuing obligation to provide reports** 12
- The obligation of the holder of an exploration licence to provide a report under this Act continues despite the cancellation of the licence under this Schedule. 13
14
- 5 Access arrangements** 15
- (1) The cancellation of an exploration licence by this Schedule does not affect any liabilities of a holder or former holder of the licence under an access arrangement. 16
17
18
- (2) The cancellation of an exploration licence by this Schedule operates, for the purposes of any access arrangement relating to the licence: 19
20
- (a) as an occasion of the holder of the licence ceasing to hold an authority over the exploration area, and 21
22
- (b) as a cancellation of the licence for the purpose of any provision of the access arrangement that deals with the cancellation of an authority. 23
24
- (3) The regulations may make provision for or with respect to the termination of any access arrangements relating to an exploration licence cancelled under this Schedule. 25
26
27