

PROPERTY RIGHTS IN RELATION TO ADVICE ON MINING MATTERS

Initial contact

An owner or occupier of land (the **Eligible Claimant**) may be contacted by a representative of the Holder of a Petroleum Authority (the **Holder**) personally, by telephone, by letter or other means. The Holder's representative may attend at your door and ask for permission to discuss the exploration with you. You may require them to leave and they must do so directly. Alternatively you may discuss matters with them or make arrangements to meet with them at a later time at an agreed location.

Access

The Holder cannot enter onto private land unless:

- an Entry Notice has been given 10 business days earlier;
- the Eligible Claimants have agreed not to require an Entry Notice by signing a Waiver of Entry Notice; or
- in the event of an emergency, to preserve life or property.

A Waiver of Entry Notice must acknowledge that there is no obligation for it to be signed, identify the activities to be carried out, when they will be carried out and where they are to be carried out. A Waiver of Entry Notice is current for the stated period only. Once signed by you it cannot be withdrawn.

Entry Notice

An entry notice must identify the land to be entered, the period of entry, the activities to be carried out, when and where the activities are to be carried out, provide details of the Holder's representative, cannot be for longer than six months for an authority to prospect or one year for another petroleum authority and must be accompanied by an information statement in the approved form about your rights and obligations. A copy of the information statement may be obtained from **Property Rights Australia** on (07) 49213430 or from **p & e law** on (07) 54790155.

Alternatively, the government may allow the Entry Notice to be given by publication in a newspaper only if satisfied it is likely to adequately inform you.

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Compensation

Prior to access being granted you should agree on the compensation payable. You may claim compensation for:

- (a) loss of access to the surface of your land;
- (b) loss of value of your land;
- (c) inability to use your land or improvements;
- (d) impacts of separation of one part of your land from another; and

(e) any other cost impacts arising from the Holder's activities on your land.

You may enter into a Compensation Agreement dealing with all or part of the current or future liability of the Holder to pay you compensation. It must be signed, indicate whether it is for all part of the liability and if it is for part, expressly identify that part and how it will be met. It can be met by monetary compensation or otherwise. A compensation agreement can contain matters not identified above. A Compensation Agreement or a decision of the Land Court is binding on you and future buyers and occupiers of your land.

You may choose to defer entering into a Compensation Agreement until after the access has occurred.

All of the material set out above is what the government will tell you. The material set out below will not be shown to you unless you request it.

EPA conditions

You should request and receive a copy of the Environmental Authority under which the Holder intends to operate before negotiating. It will provide conditions dealing with matters such as erosion and sedimentation, water emissions, environmentally sensitive areas, water management including groundwater, emergency release of contaminants, noise, sewage and other contaminant disposal, monitoring, land management, infrastructure, rehabilitation and other matters. These are all matters that you need to consider in relation to granting access. Ask for it prior to commencing negotiations.

When you read the Environmental Authority you will think of things that you want to have considered in relation to access to your property. When you read the conditions of the Environmental Authority you may think your rights have not been protected. You do not have to accept minimum standards put forward in the Environmental Authority in your negotiations in relation to access or compensation.

Negotiations

In addition to the matters identified in the Environmental Authority there will also be matters that you wish to have specifically considered such as the introduction of pest species, hours of operation, transport routes, impacts upon water recharge and the like.

You should list all of the matters you want to have considered prior to the meeting.

There are ramifications for you depending upon whether you enter into a Compensation Agreement prior to or after access. There is significantly more leverage available to you in agreeing compensation prior to the grant of access. The Holder cannot gain access until you agree or a Land Court determines access and compensation.

However, you are obliged to forecast the likely impacts of the access and petroleum activities and either quantify the amount of compensation or draft a term of the Compensation Agreement. Some agreement may provide a formula by which compensation can be calculated. Determining those terms would best be done with the assistance of appropriate consultants. Those consultants can be present for the negotiations.

One term which should be fundamental to a Compensation Agreement is that the Holder be required to pay your reasonable consultant fees.

An example of a Compensation Agreement with draft terms has been provided on the **PRA** website and may be obtained from **p & e Law** on (07) 54790155. It is not intended to provide legal advice but give examples of the matters that can be considered in a Compensation Agreement. Individual circumstances should be taken into account in any negotiating and drafting of an Agreement.

Damages

Damages may be claimed from the Holder in various circumstances arising out of the petroleum activities provided the Compensation Agreement does not remove those rights.

Disputes

If you consider that the Holder is being unreasonable in relation to access, the conditions of access or compensation either of you can refer a dispute to the Land Court. The Land Court has power to make a decision granting access with or without conditions, refusing access and determining compensation.

Contact

Should you wish to discuss issues relating to access or compensation please do not hesitate to contact **PRA** on (07) 49213430 or **p & e Law** on (07) 54790155 or **Phil Sheridan** Barrister at Law on (07) 32364422

Disclaimer

This information sheet is not legal advice and independent legal advice should be obtained.