



**Trade &
Investment**
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Code of Practice for Land Access

made under section 69DB of the Petroleum
(Onshore) Act 1991.



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1. Preliminary

Title

1.1. This is the Code of Practice for Land Access (the Code).

This Code

1.2. This Code is the prescribed code for the purpose of s 69DB of the Petroleum (Onshore) Act 1991 (the Act) and cl XX of the Petroleum (Onshore) Regulation 2007 (the Regulation).

Purpose

- 1.3. Under s 69C of the Act, explorers must not carry out prospecting operations on any land, except in accordance with an access arrangement applying to that land.
- 1.4. The purpose of the Code is to establish a best practice framework for explorers when negotiating these access arrangements with landholders.
- 1.5. The Code also prescribes mandatory provisions for access arrangements. These are set out in Part 3.

Effect of mandatory provisions

- 1.6. Section 69DC of the Act provides that an access arrangement is taken to include provisions in the same terms as the mandatory provisions of this Code, unless the arrangement expressly excludes or varies the terms of the mandatory provisions.
- 1.7. If the provisions of an access arrangement are inconsistent with the mandatory provisions, those provisions have no effect to the extent of the inconsistency, unless the access arrangement expressly excludes or varies the mandatory provisions.
- 1.8. In practice, this means that all negotiated access arrangements will include the mandatory provisions, unless the parties expressly agree to exclude or vary them to suit their specific requirements.

Review

- 1.9. The Code may be amended from time to time (or may be revoked) by regulation amendment.
- 1.10. The Code will be reviewed by the Land and Water Commissioner as necessary and at least one year after it commences.
- 1.11. The development of a mandatory provision which deals with water testing is the subject of ongoing discussions between the stakeholders. Once agreed, the Code will be amended to include a “water testing clause”.

Definitions

Throughout this Code, the word ‘should’ indicates a recommended course of action.

In this Code:

Access arrangement means an access arrangement under Part 4A of the Act.

Act means the *Petroleum (Onshore) Act 1991*.¹

Activity approval means an approval required under a petroleum exploration licence or petroleum assessment lease.

Approval means a petroleum exploration licence, assessment lease or special prospecting authority granted under the Act, a development consent under the *Environmental Planning and Assessment Act 1979*, or an activity approval.

Approved activity means an exploration activity the subject of an approval.²

CSG means coal seam gas.

Exploration activity means any prospecting activity pursuant to a petroleum exploration licence or assessment lease granted under the Act.

Explorer means the holder of a petroleum exploration licence, assessment lease or special prospecting authority granted under the Act.

Landholder has the same meaning as “landholder” in the Act.

Petroleum has the same meaning as “petroleum” in the Act. This includes both CSG and conventional petroleum.

Petroleum assessment lease means a petroleum assessment lease under Division 3 of Part 3 of the Act.

Petroleum exploration licence means a petroleum exploration licence under Division 2 of Part 3 of the Act.

Prospect means to carry out works on, or to remove samples from, land for the purpose of testing the quality and quantity of petroleum in the land and the potential to recover petroleum from the land, but does not include any activity declared by the regulations not to constitute prospecting.

Regulation means the *Petroleum (Onshore) Regulation 2007*, or its replacement.³

Responsible person means the person authorised by an Explorer to negotiate an Access arrangement in relation to land within the area of their petroleum exploration licence, petroleum assessment lease or special prospecting authority.

Special prospecting authority means a special prospecting authority under Division 4 of Part 3 of the Act.

¹ The current version of the Act is available at www.legislation.nsw.gov.au.

² This involves consideration of an environmental assessment prepared in accordance with the *Environmental Planning and Assessment Act 1979* and NSW Trade & Investment’s *Environmental Impact Assessment Guidelines* (ESG2)

³ The current version of the Regulation is available at www.legislation.nsw.gov.au.

Summary of legislative framework for Petroleum and CSG in NSW

- 1.12. Exploration and production activities for petroleum and CSG, are regulated under several pieces of legislation, including the ones set out below. Petroleum and CSG approvals are granted by the Minister and regulated by the Office of Coal Seam Gas under the Petroleum (Onshore) Act 1991.
- 1.13. The proponent must also obtain development consent for production activities and certain exploration activities (which are State Significant Development) under the Environmental Planning and Assessment Act 1979.
- 1.14. All CSG activities, from exploration to assessment to production are required to hold an environment protection licence, issued by the Environment Protection Authority under the Protection of Environment Operations Act 1997.⁴
- 1.15. In addition, titleholders must comply with the relevant requirements under the Water Management Act 2000 and/or the Water Act 1912, and where it applies address the criteria in the NSW Aquifer Interference Policy.
- 1.16. Explorers must also comply with the Work Health and Safety Act 2011 (WHS Act). Contractors and subcontractors must fulfil their health and safety duties under the WHS Act to anyone who may be affected by their operations.
- 1.17. In addition to the NSW statutory requirements, some petroleum and CSG activities will require assessment and approval under the Commonwealth Environmental Protection and Biodiversity Conservation Act 1999 (Cth).

⁴ From 1 July 2013.

2. Initiating land access negotiations

Note: This Part of the Code sets out best practice guidelines for how Explorers are expected to initiate and negotiate land access arrangements. It applies to the period before an access arrangement is finalised.

Landholders or Explorers can seek assistance from the Land and Water Commissioner about how this Code applies.

Principles

2.1. Explorers should be guided by the following principles when initiating negotiations for land access under Part 4A of the Act with a Landholder:

- (a) The development of good relations between Landholders and Explorers requires good communication, including the provision of clear, accurate and easy to understand information.
- (b) The development of good relations between Landholders and Explorers requires recognition of the rights and responsibilities of both parties.
- (c) In particular, respect for the privacy, property rights and water entitlements of Landholders is critical to building trust and good long term relationships.
- (d) Explorers should be courteous, consult regularly, and comply with statutory and contractual obligations.
- (e) Explorers should negotiate in good faith.

Appointing a Responsible person

2.2. To facilitate effective communication when seeking to initiate negotiations for land access under Part 4A of the Act, the Explorer should appoint a Responsible person.

2.3. The Responsible person should be authorised to negotiate an access arrangement on behalf of the Explorer and be the primary point of contact for all communications for the Landholder until an access arrangement is executed.

2.4. The Responsible person should have appropriate knowledge of the project and the proposed exploration activities and experience in liaising with Landholders.

Initial contact

2.5. The first contact between the Explorer and the Landholder will depend on the circumstances. For example, it may be by phone, at a community information session or at a formal meeting initiated by a Landholder's representative.

2.6. The Explorer should abide by the principles set out above in paragraph 2.1.

2.7. If the Landholder is receptive and wishes to continue, the Explorer should provide the contact details for its Responsible person.

Initiating negotiations

2.8. If following the initial contact, the Landholder and the Explorer agree that negotiations for a land access arrangement should commence the Explorer should write to the Landholder and provide the following information:

- (a) the contact details for the Explorer's Responsible person;
- (b) a clear map of the title area;
- (c) an acknowledgement that the Explorer will pay the reasonable legal costs of the Landholder as required by s.69DA of the Act;
- (d) a copy of this Code, any current standard template and any information package approved by the Land and Water Commissioner; and
- (e) a proposed time for the first meeting.

Note: s.69E of the Act requires the titleholder to serve written notice on a landholder of the titleholder's intention to obtain an access arrangement. The notice must include certain information. Under s.69DA of the Act the titleholder is required to pay the reasonable legal fees of the landholder from when this notice is served.

First meeting

2.9 At the first meeting between the Landholder and the Explorer, the Explorer should seek information from the Landholder about the way the Landholder uses the land and the general terms on which the Landholder would be willing to allow access to their land for the proposed exploration activities.

2.10 At the first meeting the Explorer should be prepared to provide the Landholder with the following information:

- (a) details of the petroleum exploration licence, assessment lease or special prospecting authority, including the number and term of the licence, lease or authority and the area it covers;
- (b) a description of the work program for the proposed exploration activities, including:
 - (i) the extent and type of operations proposed to be conducted on the land;
 - (ii) the duration of the program;
 - (iii) whether chemicals are to be used as part of the proposed or Approved activity; and
 - (iv) if chemicals are to be brought onto the land for the purpose of undertaking the proposed or Approved activity, a list of the general types of chemicals that will be used.
- (c) relevant documentation relating to exploration activities proposed or approved to be carried out on the land, such as:

- (i) a map including:
 - the proposed location of any exploration activities;
 - proposed access routes and, if required, camp locations;
 - any other relevant spatial information;
 - (ii) a general description of vehicles and equipment proposed to be used in carrying out the exploration activity on the land;
 - (iii) any activity approval (when available), Agricultural Impact Statement or Review of Environmental Factors;
 - (iv) an overview of environmental management plan(s) including proposed remediation and/or rehabilitation works.
- (d) plain language explanation of the water regulatory framework which applies to the activities being undertaken in the title area.

3. Mandatory Provisions

Note: This Part of the Code sets out the mandatory provisions, as prescribed under the Regulation. The mandatory provisions must be included in all access arrangements, unless the access arrangement excludes them or varies them. In addition, individual access arrangements may include more stringent or rigorous requirements than the requirements in the mandatory provisions.

Where words in this Part are defined in the Definitions section at 1.6, those definitions are taken to form part of the mandatory provisions.

Access arrangements

3.1. The Explorer must:

- (a) ensure this access arrangement clearly states what is agreed between the parties and complies with the Act;
- (b) pay the reasonable legal costs of the Landholder as required by s.69DA of the Act;
- (c) promptly pay the compensation as agreed in this access arrangement; and
- (d) treat as confidential any information obtained about the Landholder's property or operations.

Notice period

- 3.2. The Explorer must notify the Landholder in the manner required in this access arrangement before first accessing the land to carry out the exploration activity.
- 3.3. This notification procedure is to be agreed between the Landholder and the Explorer.
- 3.4. The minimum period of notice for entry under an access arrangement is 5 business days before the commencement of operations unless otherwise agreed by the Landholder, except in the case of an emergency.
- 3.5. In an emergency an Explorer must use its best endeavours to notify the Landholder prior to entry.

Before and during activities

3.6. The Explorer must:

- (a) keep the Landholder informed of the progress of, and variations to, an exploration activity on their land;
- (b) minimise potential for any damage to the Landholder's property during the exploration activity;
- (c) be responsible for all actions undertaken by employees and contractors of the explorer;
- (d) notify the Landholder of any damage to the Landholder's land, livestock or property caused or contributed to by the carrying out of the exploration activity; and

- (e) rectify, without undue delay, any damage to the Landholder's property to the extent caused or contributed to by the carrying out of the exploration activity.

Access points, roads and tracks

3.7. The Explorer must:

- (a) where practicable and agreed, use an existing access point, road or track to enter a Landholder's land (provided these are suitable for the intended traffic loads);
- (b) locate any new access points, roads or tracks to minimise the impact to the Landholder's business or land use activities, unless otherwise agreed by the Landholder.
- (c) ensure existing access points, roads or tracks used by the explorer for the activity are maintained, and returned to the Landholder, in the condition they were in or better prior to commencement of the Petroleum activity.
- (d) operate a vehicle in wet conditions on a Landholder's land in a way that minimises damage to access points, roads and tracks on the land.

Induction training

3.8. The Explorer must ensure that each contractor and employee of the explorer who enters the Landholder's land receives information and training on the obligations of the explorer and its contractors and employees under:

- (a) the Act;
- (b) the Code;
- (c) this Access arrangement;
- (d) any relevant Approvals; and
- (e) any relevant emergency plans and safety procedures as set out by the landholder on his or her property.

Water regulation

3.9. The Explorer must provide the Landholder with a written plain language explanation of the way in which the water regulatory requirements are being implemented in relation to the title.

3.10. The Explorer must provide any available monitoring/testing results carried out under the water regulation requirements listed in clause 3.9 to the landholder and/or his or her representative at the Landholder's request.

Obligation to prevent spread of weeds, pests and diseases

3.11. The Explorer must:

- (a) take reasonable steps to prevent the spread of weeds, pests or diseases;
- (b) take reasonable steps to ensure that, in entering or leaving the land, the explorer does not spread weeds, pests or diseases;

- (c) ensure each employee or contractor washes down vehicles and machinery before entering or leaving a Landholder's land, if the risk of spreading a weed, pest or disease is likely to be reduced by the wash-down;
- (d) keep a record (the wash-down record) of all wash-downs under subsection (c) carried out during the period in which the explorer accesses the Landholder's land;
- (e) if requested by the Landholder, provide a copy of the wash-down record to the Landholder;
- (f) abide by obligations contained in the Noxious Weeds Act 1993, Stock Diseases Act 1923 and Plant Diseases Act 1914 where the Landholder has advised that notifiable weeds, pests and diseases are present and the control provisions of these Acts apply to the land, crops or livestock.

For the purpose of 3.11(d), the meaning of "wash-down" is to be agreed between the parties.

Livestock and property

3.12. The Explorer must use the Landholder's land in a way that minimises disturbance to existing land uses (including crops), livestock and property, including roads, gates, grids and fences.

Gates, grids and fences

3.13. The Explorer must, after using a gate, return the gate to its original position unless otherwise agreed with the Landholder.

3.14. The Explorer must:

- (a) obtain the Landholder's consent before erecting a gate on the Landholder's land;
- (b) ensure any gate erected is stock-proof, unless otherwise agreed by the Landholder; and,
- (c) notify the Landholder if livestock stray as a result of the explorer's activities.

3.15. The Explorer must not cut a fence on the Landholder's land without the Landholder's consent.

3.16. If the Landholder allows a fence to be cut by the Explorer, the explorer must, as soon as possible after carrying out the activity:

- (a) repair the fence; or
- (b) erect a stock-proof gate, if requested by the Landholder, where the fence was cut.

Items brought onto land

3.17. The Explorer must:

- (a) collect any rubbish produced in carrying out the Exploration activity and deposit it at a suitable waste facility; and
- (b) not bring firearms, domestic animals or alcohol onto a Landholder's land.

- 3.18. Prior to accessing the land to undertake the Approved activity, the Explorer must give the Landholder:
- (a) a plain English list of the chemicals to be brought onto the land for the purpose of carrying out the Approved activity;
 - (b) where fracture stimulation forms part of the Approved activity, the approved Fracture Stimulation Management Plan.
- 3.19. If additional chemicals are approved for use during the Approved activity, then the Explorer must give the Landholder a plain English list of any additional chemicals prior to bringing them onto the land.

After completion of activities

- 3.20. The Explorer must undertake all required rehabilitation work in consultation with the Landholder, having regard to the requirements of:
- (a) the Act
 - (b) this Access arrangement; and
 - (c) any relevant Approvals.
- 3.21. The Explorer must:
- (a) rehabilitate the land, in consultation with the Landholder, to a standard that is equal to or better than its original condition, unless otherwise agreed with the Landholder;
 - (b) if applicable and lawful, leave in place such works as agreed by the Landholder; and
 - (c) request the Landholder to sign-off on the rehabilitation (unless special circumstances are shown to exist).
- 3.22. Upon completion of the work program on the land, the Responsible person for the Explorer must:
- (a) inform the Landholder about the potential ongoing use for future Exploration activities of any incidental infrastructure (e.g. drill pads, access tracks, borrow pits, casing etc);
 - (b) inform the Landholder about the likelihood of any subsequent Exploration activities being proposed on the land (e.g. seismic program, further drilling, etc);
 - (c) invite the Landholder to inspect the work area when the activity is finished so that any preferences or problems can be discussed prior to rehabilitation;
 - (d) if the Landholder requests, provide general information on the outcomes of the Exploration activities unless that information is commercial in confidence;

Note: this information may not be available for several months after the Exploration activity is completed.

- (e) upon request, provide to the Landholder copies of any Australian Stock Exchange announcements made in relation to exploration results relating to the Landholder's property; and
- (f) outline the potential for further activities, including production activities, pending the results of the Exploration activities.