



Land Access Ombudsman Act 2017

Current as at 31 August 2018

Warning—Some provisions of this legislation are not in operation. These provisions are italicised. For details, see the List of legislation in the Legislative history.

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Queensland

Land Access Ombudsman Act 2017

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Land Access Ombudsman Act 2017

An Act to provide for a land access ombudsman to investigate and facilitate the resolution of disputes about conduct and compensation agreements and make good agreements, and to amend this Act, the Coal Mining Safety and Health Act 1999, the Integrity Act 2009, the Mineral and Energy Resources (Common Provisions) Act 2014, the Mineral Resources Regulation 2013, the Petroleum and Gas (Production and Safety) Act 2004 and the Public Service Act 2008 for particular purposes

Part 1 Preliminary

Division 1 Introduction

1 Short title

This Act may be cited as the *Land Access Ombudsman Act 2017*.

2 Commencement

- (1) The following provisions commence on 28 September 2017—
 - (a) part 8, divisions 2, 5 and 6;
 - (b) part 8, division 4, other than section 75.
- (2) The remaining provisions of this Act commence on a day to be fixed by proclamation.

3 Purpose of Act

The purpose of this Act is to provide for a way to facilitate the timely resolution of disputes between parties to conduct and compensation agreements and parties to make good agreements.

4 How purpose is achieved

The purpose is to be achieved mainly by—

- (a) providing for the appointment of a land access ombudsman; and
- (b) establishing the Office of the Land Access Ombudsman; and
- (c) authorising the land access ombudsman to investigate, and facilitate the timely resolution of, disputes about conduct and compensation agreements and make good agreements.

5 Act binds all persons

- (1) This Act binds all persons, including the State.
- (2) Nothing in this Act makes the State liable to be prosecuted for an offence.

Division 2 Interpretation

6 Definitions

The dictionary in schedule 1 defines particular words used in this Act.

7 What is a *land access dispute*

A *land access dispute* is—

- (a) a dispute about an alleged breach of a conduct and compensation agreement between—
 - (i) the resource authority holder and the owner or occupier of private land who entered into the agreement; or
 - (ii) the successors and assigns of a party to the agreement mentioned in subparagraph (i) that are bound by the agreement under the *Mineral and Energy Resources (Common Provisions) Act 2014*, section 79; or
- (b) a dispute about an alleged breach of a make good agreement between—
 - (i) the resource tenure holder and the bore owner who entered into the agreement; or
 - (ii) the successors and assigns of a party to the agreement mentioned in subparagraph (i) that are bound by the agreement under the *Water Act 2000*, section 422.

8 What is a *land access dispute referral*

A *land access dispute referral* is a referral, under part 3, division 1, of a land access dispute to the land access ombudsman.

Part 2 Land access ombudsman and office of the land access ombudsman

Division 1 Land access ombudsman

Subdivision 1 Appointment

9 Land access ombudsman

- (1) There is to be a land access ombudsman.
- (2) The land access ombudsman is appointed by the Governor in Council.

10 Disqualification from appointment

- (1) A person is disqualified from becoming the land access ombudsman if the person—
 - (a) has a conviction for an indictable offence; or
 - (b) is an insolvent under administration; or
 - (c) is guilty of misconduct of a type that could warrant dismissal from the public service if the ombudsman were an officer of the public service.
- (2) In this section—
insolvent under administration see the Corporations Act, section 9.

11 Term of appointment

- (1) The land access ombudsman holds office for the term stated in the person's appointment as land access ombudsman.
- (2) The stated term must not be more than 3 years.

- (3) The land access ombudsman may be reappointed.
- (4) However, a person must not be reappointed if the total of the person's term of appointment would be more than 10 years.

12 Conditions of appointment

- (1) The land access ombudsman is to be paid the remuneration and allowances decided by the Governor in Council.
- (2) The remuneration must not be reduced during the land access ombudsman's term of office without the ombudsman's written consent.
- (3) The land access ombudsman is appointed under this Act and not the *Public Service Act 2008*.
- (4) The land access ombudsman is entitled to the leave of absence decided by the Governor in Council.

13 Restriction on outside employment

The land access ombudsman must not, without the Minister's approval in each particular case—

- (a) hold any office of profit other than that of land access ombudsman; or
- (b) engage in any remunerative employment or undertaking outside the duties of that office.

14 Termination of appointment

- (1) The Governor in Council may terminate the appointment of the land access ombudsman if—
 - (a) the ombudsman contravenes section 13; or
 - (b) the ombudsman can not perform the functions of the ombudsman because of physical or mental incapacity.
- (2) The *Acts Interpretation Act 1954*, section 25(1)(b)(i) to (iii) does not apply for the land access ombudsman.

15 Vacancy of office

The office of land access ombudsman becomes vacant if—

- (a) the land access ombudsman—
 - (i) completes a term of office; or
 - (ii) would be disqualified from becoming the land access ombudsman under section 10(1); or
 - (iii) resigns by notice given to the Minister; or
- (b) the land access ombudsman’s appointment is terminated under section 14(1).

Subdivision 2 Functions and powers

16 Functions

The land access ombudsman has the following functions—

- (a) to investigate, and facilitate the timely resolution of, land access disputes;
- (b) to refer or recommend to departments the investigation of—
 - (i) possible offences under section 53, 54 or 55; or
 - (ii) possible breaches, relating to access to land, of resource authorities;
- (c) to identify, and advise government entities about, systemic issues arising from land access disputes;
- (d) to promote public awareness of the ombudsman’s functions under paragraphs (a) to (c);
- (e) other functions conferred on the ombudsman under this Act or another Act.

17 Obligations in performing functions

The land access ombudsman must, in performing the ombudsman's functions, act independently and impartially.

18 What land access ombudsman can not deal with

- (1) The land access ombudsman can not accept a land access dispute referral about any of the following matters—
 - (a) a conduct and compensation agreement or make good agreement not yet entered into;
 - (b) a conduct and compensation agreement while subject to a minimum negotiation period under the *Mineral and Energy Resources (Common Provisions) Act 2014*, section 87;
 - (c) a make good agreement the subject of a cooling-off period under the *Water Act 2000*, section 423A;
 - (d) the content of legislation or government policies;
 - (e) a decision made by Cabinet, a Minister or a chief executive;
 - (f) a matter that is or has been the subject of a proceeding or an arbitration;
 - (g) a matter that is, or has been, the subject of an investigation by a department.
- (2) Also, the land access ombudsman can not investigate, or continue to investigate, a matter mentioned in subsection (1).
- (3) For subsection (1)(g), a matter is, or has been, the subject of an investigation by a department if the matter—
 - (a) is being, or was, investigated by the department to decide whether or not to take compliance action against a person under the *Environmental Protection Act 1994*, a Resource Act or the *Water Act 2000*, chapter 3; or
 - (b) is, or was, the subject of compliance action by the department under the *Environmental Protection Act*

1994, a Resource Act or the *Water Act 2000*, chapter 3;
or

- (c) is, or was, the subject of a decision by the department not to take compliance action under the *Environmental Protection Act 1994*, a Resource Act or the *Water Act 2000*, chapter 3.

19 General powers

The land access ombudsman has power to do all things necessary or convenient to be done in performing the ombudsman's functions.

20 Land access ombudsman not subject to direction

The land access ombudsman is not subject to direction by anyone about—

- (a) the way the ombudsman performs the ombudsman's functions; or
- (b) the priority given to investigations of land access dispute referrals; or
- (c) an action taken under part 4.

Subdivision 3 Miscellaneous

21 Preservation of rights

- (1) This section applies if an officer of the public service is appointed as the land access ombudsman.
- (2) The person keeps all rights accrued or accruing to the person as an officer of the public service as if service as the land access ombudsman were a continuation of service as a public service officer.
- (3) At the end of the person's term of office or resignation as the land access ombudsman the person's service as the land

access ombudsman is taken to be service of a like nature in the public service for deciding the person's rights as an officer of the public service.

22 Acting land access ombudsman

- (1) The Minister may appoint a person to act as the land access ombudsman during—
 - (a) any vacancy, or all vacancies, in the office; or
 - (b) any period, or all periods, when the land access ombudsman is absent from duty, or can not, for another reason, perform the duties of the office.
- (2) However, the person can not be appointed for more than 6 months in any 12 month period.
- (3) The acting land access ombudsman is appointed under this Act and not the *Public Service Act 2008*.

Division 2 Office of the Land Access Ombudsman

23 Office of the Land Access Ombudsman

- (1) An office called the Office of the Land Access Ombudsman is established.
- (2) The office's function is to help the land access ombudsman perform the ombudsman's functions.
- (3) The office consists of the land access ombudsman and the officers of the office.

24 Control of office

The land access ombudsman controls the office.

25 Finances of office

The office is part of the department for the *Financial Accountability Act 2009*.

26 Officers

Officers of the office are appointed under the *Public Service Act 2008*.

27 Issue of identity card

- (1) The land access ombudsman must issue an identity card to each officer.
- (2) The identity card must—
 - (a) contain a recent photo of the officer; and
 - (b) contain a copy of the officer's signature; and
 - (c) identify the person as an officer under this Act; and
 - (d) state an expiry date for the card.

28 Production or display of identity card

- (1) In exercising a power in relation to another person in the other person's presence, an officer must—
 - (a) produce the officer's identity card for the other person's inspection before exercising the power; or
 - (b) have the identity card displayed so it is clearly visible to the other person when exercising the power.
- (2) However, if it is not practicable to comply with subsection (1), the officer must produce the identity card for the other person's inspection at the first reasonable opportunity.

29 Return of identity card

If the office of a person as an officer ends, the person must return the person's identity card to the land access

ombudsman within 21 days after the office ends unless the person has a reasonable excuse.

Maximum penalty—20 penalty units.

30 Officers not subject to outside direction

An officer is not subject to direction by anyone, other than from within the office, about—

- (a) the way the land access ombudsman's powers in relation to an investigation under this Act are to be exercised; or
- (b) the priority given to investigations.

31 Alternative staffing arrangements

- (1) The land access ombudsman may arrange with the chief executive of a government entity for the services of officers or employees, or the facilities, of the entity to be made available to the ombudsman.
- (2) An officer or employee whose services are made available under subsection (1)—
 - (a) continues to be an officer or employee of the entity; and
 - (b) continues to be employed or otherwise engaged by the entity on the same terms and conditions applying to the officer or employee before the services were made available; and
 - (c) is, for the period the services are made available and for the carrying out of the ombudsman's functions, taken to be an officer of the office of the land access ombudsman.

Part 3 **Referral and investigation of land access disputes**

Division 1 **Referral of land access disputes**

32 **Land access dispute may be referred**

- (1) *A party to a land access dispute may refer the dispute to the land access ombudsman.*
- (2) *However, a party to a land access dispute may not refer the dispute unless the party has made a reasonable attempt to resolve the dispute with the other party to the dispute.*
- (3) *A land access dispute may not be referred for a party by another person, unless the party is a person with impaired capacity.*
- (4) *In this section—*
impaired capacity *has the meaning under the Guardianship and Administration Act 2000.*

33 **How land access dispute may be referred**

- (1) *A land access dispute may be referred to the land access ombudsman orally or in the approved form.*
- (2) *However, the land access ombudsman may refuse to investigate or continue to investigate a land access dispute referred orally until the referral is made in the approved form.*
- (3) *The land access ombudsman may assist a party to refer a land access dispute if the party asks for assistance.*

34 **Protection from liability for referring land access dispute**

- (1) *This section applies if—*
 - (a) *a party refers a land access dispute to the land access ombudsman; and*

- (b) *the conduct and compensation agreement or make good agreement the subject of the dispute contains a condition about a dispute resolution process other than the process under this Act (a **dispute resolution condition**).*
- (2) *The party does not incur any civil liability for breach of the dispute resolution condition for referring the land access dispute to the land access ombudsman.*

35 Preliminary inquiry

- (1) *The land access ombudsman may make reasonably necessary inquiries to decide whether a land access dispute referral should be accepted.*
- (2) *The parties to the land access dispute must give the land access ombudsman reasonable help in the conduct of the inquiries.*

36 Acceptance or refusal of referral

- (1) *If a party (the **referring party**) refers a land access dispute to the land access ombudsman, the ombudsman may—*
 - (a) *accept the land access dispute referral; or*
 - (b) *refuse to accept the land access dispute referral; or*
 - (c) *give a direction under section 37 in relation to the land access dispute referral.*
- (2) *The land access ombudsman must refuse to accept the land access dispute referral if—*
 - (a) *the referral is about a matter mentioned in section 18(1); or*
 - (b) *the ombudsman is satisfied—*
 - (i) *the referring party has not complied with section 32(2); or*
 - (ii) *the land access dispute referral is frivolous or vexatious or has not been made in good faith; or*

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- (iii) *the subject of the land access dispute is trivial; or*
 - (iv) *in the circumstances, the investigation of the matter the subject of the land access dispute is unnecessary or unjustifiable; or*
 - (c) *the referring party has not given the ombudsman reasonable help as required under section 35(2).*
- (3) *For subsection (2)(b)(i), the land access ombudsman may be satisfied the referring party has complied with section 32(2) regardless of whether the referring party has used, or attempted to use—*
 - (a) *for a conduct and compensation agreement—the dispute resolution process, if any, in the agreement; or*
 - (b) *for a make good agreement—*
 - (i) *the dispute resolution process, if any, in the agreement; or*
 - (ii) *the process under the Water Act 2000, chapter 3, part 5, division 4.*

37 Direction to make reasonable attempt to resolve

- (1) *This section applies if the land access ombudsman is satisfied a referring party has not complied with section 32(2).*
- (2) *Instead of refusing to accept the land access dispute referral, the land access ombudsman may direct the referring party to make a reasonable attempt to resolve the land access dispute with the other party.*
- (3) *If, after giving a direction under subsection (2), the land access ombudsman is satisfied the referring party has made a reasonable attempt to resolve the land access dispute, the ombudsman may accept the referral.*

38 Actions by land access ombudsman after refusal

- (1) *This section applies if the land access ombudsman refuses to accept a land access dispute referral.*

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- (2) *The land access ombudsman must, as soon as practicable, in a way the ombudsman considers appropriate, give the referring party notice of the decision and reasons for the decision.*
- (3) *Also, the land access ombudsman may, in relation to a matter arising from the land access dispute referral, refer the matter to a regulator.*
- (4) *In this section—*
land access code see the Mineral and Energy Resources (Common Provisions) Act 2014, section 36.

regulator means—

- (a) *for a matter about a requirement under a Resource Act—the chief executive of the department in which the Resource Act is administered; or*
- (b) *for a matter about a condition of a resource authority—the chief executive of the department in which the relevant Resource Act for the resource authority is administered; or*
- (c) *for a matter about a mandatory condition of a land access code—the chief executive (natural resources and mines); or*
- (d) *for a matter about a requirement under the Environmental Protection Act 1994 or a condition of an environmental authority—the chief executive (environment protection); or*
- (e) *for a matter about a requirement under the Water Act 2000, chapter 3—the chief executive (water).*

39 Withdrawal of land access dispute referral

- (1) *A referring party may, by notice given to the land access ombudsman, withdraw the party's land access dispute referral.*

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- (2) *In withdrawing the referral the party must comply with any requirements for the withdrawal under a procedural guideline made under section 65.*
- (3) *The land access ombudsman must, as soon as practicable after receiving the notice, give the other party to the land access dispute notice of the withdrawal.*

Division 2 Investigation of land access dispute referrals

Subdivision 1 General

40 Notice of investigation

- (1) *If the land access ombudsman decides to accept a land access dispute referral from a referring party, the ombudsman must, as soon as practicable, give a notice (an **investigation notice**) to the other party to the land access dispute the subject of the referral.*
- (2) *The investigation notice must state—*
 - (a) *the subject of the land access dispute referral; and*
 - (b) *sufficient details to identify the referring party and the land the subject of the referral; and*
 - (c) *when the ombudsman proposes to start to investigate the land access dispute referral.*
- (3) *The notice need not be given if the land access dispute referral has been withdrawn.*
- (4) *The land access ombudsman may give the information mentioned in subsection (2) to the other party orally before giving the investigation notice.*

41 Investigation procedure

- (1) *Subject to this Act, the procedure for investigating a land access dispute referral is the procedure decided by the land access ombudsman.*
- (2) *If practicable, the procedure must involve an alternative dispute resolution process to resolve the land access dispute.*
- (3) *The alternative dispute resolution process—*
 - (a) *may be a process of any type, including, for example, case appraisal, conciliation or mediation; and*
 - (b) *must not bind the parties.*
- (4) *The land access ombudsman, in carrying out an investigation—*
 - (a) *is not bound by the rules of evidence, but must comply with natural justice; and*
 - (b) *may, but is not required to, hold meetings and conduct interviews for the investigation; and*
 - (c) *may make inquiries the ombudsman considers appropriate, including consulting with an entity with relevant technical expertise about the land access dispute referral and requesting information from government entities relevant to a land access dispute referral; and*
 - (d) *may advise each party about the merits of their position in relation to the land access dispute referral; and*
 - (e) *may, if the ombudsman considers a party would benefit from health advice, treatment or care, provide the party with information about entities that provide the advice, treatment or care; and*
 - (f) *must act in a way that is fair, reasonable, just, timely and maintains confidentiality.*
- (5) *Nothing said by a person to the land access ombudsman or an officer in an alternative dispute resolution process during an investigation is admissible in evidence in a proceeding without the person's consent.*

Subdivision 2 Powers to require information or attendance

42 Power to require particular information

- (1) *If a land access dispute referral has been accepted by the land access ombudsman, the ombudsman may, by notice given to a party to the land access dispute the subject of the referral, require the party to give the ombudsman—*
 - (a) *a stated document or information at a stated reasonable time and place; or*
 - (b) *access to a stated document or information.*
- (2) *A requirement under subsection (1) may relate only to documents or information related to the investigation of the land access dispute referral.*
- (3) *A requirement under subsection (1) may be included in an investigation notice.*
- (4) *A party of whom a requirement is made under subsection (1) must comply with the requirement unless the party has a reasonable excuse.*

Maximum penalty—100 penalty units.
- (5) *It is a reasonable excuse for a party not to comply with the requirement if—*
 - (a) *the document or information is not in the party's possession or control; or*
 - (b) *the document or information is in another person's possession and—*
 - (i) *the party has taken all reasonable steps to obtain the document or information from the other person; and*
 - (ii) *the other person has not given it to the party; or*
 - (c) *the party is an individual and complying with the requirement might tend to incriminate the individual or expose the individual to a penalty.*

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- (6) *A party is not obliged to disclose a document or information under this section if the document or information—*
- (a) *is protected by legal professional privilege; or*
 - (b) *is a communication of an admission made by a party before the land access referral was made, and in the course of negotiations to attempt to settle the land access dispute between the parties.*

43 Power to require attendance

- (1) *If a land access dispute referral has been accepted by the land access ombudsman, the ombudsman may, by notice given to a party to the land access dispute the subject of the referral, require the party to—*
- (a) *attend a meeting with the land access ombudsman at a stated reasonable time and place; and*
 - (b) *answer questions, related to the investigation of the land access dispute referral, asked by the ombudsman.*
- (2) *A party of whom a requirement is made under subsection (1) must comply with the requirement unless the party has a reasonable excuse.*

Maximum penalty—100 penalty units.

- (3) *It is a reasonable excuse for a party who is an individual to fail to answer a question if answering the question might tend to incriminate the individual or expose the individual to a penalty.*
- (4) *A party may be represented by someone at a meeting only with the leave of the land access ombudsman.*
- (5) *The land access ombudsman must not unreasonably withhold leave for a party to be represented at a meeting.*
- (6) *A party must bear the party's own costs of representation for a meeting.*

Subdivision 3 Power to enter

44 Definitions for subdivision

In this subdivision—

coal mine *see the Coal Mining Safety and Health Act 1999, section 9.*

dispute land *see section 45(1) and (2).*

mine *see the Mining and Quarrying Safety and Health Act 1999, section 9.*

operating plant *see the Petroleum and Gas (Production and Safety) Act 2004, section 670.*

safety and health management system—

(a) *for a coal mine, see the Coal Mining Safety and Health Act 1999, schedule 3, definition safety and health management system, first mention; or*

(b) *for a mine, see the Mining and Quarrying Safety and Health Act 1999, schedule 2.*

safety management system, *for an operating plant, see the Petroleum and Gas (Production and Safety) Act 2004, schedule 2.*

45 Power to enter dispute land

(1) *If a land access dispute referral about a conduct and compensation agreement has been accepted by the land access ombudsman, the ombudsman may enter land the subject of the agreement (the **dispute land**) if—*

(a) *the party to the land access dispute who is an owner or occupier of the dispute land consents under this subdivision to the entry and section 48 has been complied with for the party; and*

(b) *any owner of the dispute land who is not a party to the land access dispute consents under this subdivision to*

-
- the entry and section 48 has been complied with for the owner; and*
- (c) *any occupier of the dispute land who is not a party to the land access dispute consents under this subdivision to the entry and section 48 has been complied with for the occupier; and*
 - (d) *for dispute land on which there is a coal mine with a safety and health management system for the coal mine—*
 - (i) *the party to the land access dispute who is the resource authority holder consents under this subdivision to the entry; and*
 - (ii) *section 48 has been complied with for the party; and*
 - (e) *for dispute land on which there is a mine with a safety and health management system for the mine—*
 - (i) *the party to the land access dispute who is the resource authority holder consents under this subdivision to the entry; and*
 - (ii) *section 48 has been complied with for the party; and*
 - (f) *for dispute land on which there is an operating plant with a safety management system for the operating plant—*
 - (i) *the party to the land access dispute who is the resource authority holder consents under this subdivision to the entry; and*
 - (ii) *section 48 has been complied with for the party.*
- (2) *If a land access dispute referral about a make good agreement has been accepted by the land access ombudsman, the ombudsman may enter land the subject of the agreement (also the **dispute land**) if—*

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- (a) *the party to the land access dispute who is the bore owner consents under this subdivision to the entry and section 48 has been complied with for the party; and*
 - (b) *any owner of the dispute land who is not a party to the land access dispute consents under this subdivision to the entry and section 48 has been complied with for the owner; and*
 - (c) *any occupier of the dispute land who is not a party to the land access dispute consents under this subdivision to the entry and section 48 has been complied with for the occupier.*
- (3) *The power to enter dispute land under this section is subject to any conditions of a consent given for the entry and ceases if the consent is withdrawn.*

46 Application of ss 47–49

Sections 47 to 49 apply if the land access ombudsman intends to ask a person to consent to the ombudsman entering dispute land under section 45.

47 Incidental entry to ask for access

- (1) *For the purpose of asking a person for consent, the land access ombudsman may, without the person’s consent—*
- (a) *enter land around premises on the dispute land to an extent that is reasonable to contact the person; or*
 - (b) *enter part of the dispute land the ombudsman reasonably considers members of the public ordinarily are allowed to enter when they wish to contact an occupier of the dispute land.*
- (2) *In this section—*
- premises includes—***
- (a) *a building or other structure; and*
 - (b) *a part of a building or other structure; and*

- (c) *a caravan or vehicle; and*
- (d) *a cave or tent; and*
- (e) *premises held under more than 1 title or by more than 1 owner.*

48 Matters land access ombudsman must tell person

Before asking for the consent, the land access ombudsman must give a reasonable explanation to the person—

- (a) *about the purpose of the entry, including the powers intended to be exercised; and*
- (b) *that the person is not required to consent; and*
- (c) *that the consent may be given subject to conditions and may be withdrawn at any time.*

49 Consent by acknowledgement

- (1) *If the consent is given, the land access ombudsman may ask the person to sign an acknowledgement of the consent.*
- (2) *The acknowledgement must state—*
 - (a) *the purpose of the entry, including the powers to be exercised; and*
 - (b) *the following has been explained to the person—*
 - (i) *the purpose of the entry, including the powers intended to be exercised;*
 - (ii) *that the person is not required to consent;*
 - (iii) *that the consent may be given subject to conditions and may be withdrawn at any time; and*
 - (c) *the person gives the land access ombudsman consent to enter the land and exercise the powers; and*
 - (d) *the time and day the consent was given; and*
 - (e) *any conditions of the consent.*

(3) *If the person signs the acknowledgement, the land access ombudsman must immediately give a copy to the person.*

(4) *If—*

(a) *an issue arises in a proceeding about whether the person consented to the entry; and*

(b) *an acknowledgement complying with subsection (2) for the entry is not produced in evidence;*

the onus of proof is on the person relying on the lawfulness of the entry to prove the party consented.

50 General powers of land access ombudsman after entering dispute land

(1) *If the land access ombudsman enters dispute land under section 45, the ombudsman may do anything on the dispute land that is reasonably necessary for performing the ombudsman's function under section 16(a).*

(2) *However—*

(a) *the power under subsection (1) is subject to any conditions of the consent; and*

(b) *the land access ombudsman may not take for examination a thing, or a sample of or from a thing, on the dispute land.*

Part 4 Actions by land access ombudsman

51 Notice about outcome of investigation

(1) *This section applies to an investigation of a land access dispute referral unless—*

(a) *the investigation has been discontinued because of section 18(2); or*

(b) *the land access dispute referral has been withdrawn; or*

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- (c) *the land access dispute the subject of the referral has been resolved between the parties other than by way of investigation by the land access ombudsman under this Act.*
- (2) *After finishing the investigation, the land access ombudsman must give the parties a notice about the investigation.*
- (3) *Before the land access ombudsman gives a notice under subsection (2), the ombudsman must—*
- (a) *give the parties a draft of the notice; and*
 - (b) *invite the parties to make submissions to the ombudsman, within a stated reasonable period, about the draft of the notice.*
- (4) *A party may make submissions orally or in writing.*
- (5) *The land access ombudsman must have regard to any submissions made by the parties within the stated period before giving a notice under subsection (2).*
- (6) *The notice under subsection (2) must include—*
- (a) *if the land access dispute referral is resolved as a result of the investigation—the details of the resolution of the dispute; or*
 - (b) *if the land access dispute referral is not resolved as a result of the investigation—*
 - (i) *advice about the merits of the parties' positions in the land access dispute referral; and*
 - (ii) *recommendations about how the land access dispute referral could be resolved; and*
 - (iii) *reasons for the advice and recommendations mentioned in subparagraphs (i) and (ii).*
- (7) *The notice is not binding on the parties and is by way of information or advice only to the parties.*
- (8) *Subsection (9) applies if—*
- (a) *a party has given the land access ombudsman a document or information for an inquiry under section*

35 about, or an investigation into, a land access dispute referral; and

- (b) the ombudsman relied on the document or information to decide the land access dispute referral; and*
 - (c) the ombudsman is satisfied the document or information is confidential and that disclosing it might be detrimental to the party's commercial interests.*
- (9) The land access ombudsman must, in giving reasons under subsection (6)(b)(iii), state that the ombudsman has relied on a confidential document or information given by the party, without disclosing what that document or information is.*

52 Evidentiary provision

- (1) A notice given by the land access ombudsman under section 51 for a land access dispute referral about a conduct and compensation agreement is admissible in a proceeding about the agreement before the Land Court under the Mineral and Energy Resources (Common Provisions) Act 2014, section 99A, as evidence of the matters in the notice.*
- (2) A notice given by the land access ombudsman under section 51 for a land access dispute referral about a make good agreement is admissible in a proceeding about the agreement before the Land Court under the Water Act 2000, section 434, as evidence of the matters in the notice.*
- (3) A notice given by the land access ombudsman under section 51 for a land access dispute referral about a conduct and compensation agreement or a make good agreement is admissible in an arbitration about the agreement as evidence of the matters in the notice.*

53 Recommendation about Resource Act offence or resource authority breach

- (1) This section applies if, at any time after a land access dispute referral has been accepted, the land access ombudsman reasonably suspects a party to the land access dispute the*

subject of the referral who is a resource authority holder for a conduct and compensation agreement or a resource tenure holder for a make good agreement—

- (a) has committed, is committing, or is likely to commit, an offence against a Resource Act (the **possible offence**); or*
 - (b) has breached, is breaching, or is likely to breach, a condition of a resource authority that relates to land access (the **possible authority breach**).*
- (2) The land access ombudsman may give the chief executive (natural resources and mines) a notice stating—*
- (a) the name of the party; and*
 - (b) details of the possible offence or possible authority breach; and*
 - (c) the land access ombudsman recommends the investigation of the possible offence or possible authority breach.*
- (3) Before taking action under subsection (2), the land access ombudsman must give the party a notice—*
- (a) stating the proposed action; and*
 - (b) inviting the party to make a submission to the ombudsman, within a stated reasonable period, about the proposed action.*
- (4) The party may make submissions orally or in writing.*
- (5) The land access ombudsman must have regard to any submissions made by the party within the stated period before giving a notice under subsection (2).*
- (6) The notice under subsection (2) may also—*
- (a) disclose information given to the land access ombudsman by either party in relation to the land access dispute referral that is relevant to the possible offence or possible authority breach; and*

- (b) *include a copy of a notice given to the parties under section 51(2).*

54 Recommendation about offence against Water Act 2000

- (1) *This section applies if, at any time after a land access dispute referral has been accepted, the land access ombudsman reasonably suspects a party to the land access dispute the subject of the referral who is a resource authority holder for a conduct and compensation agreement or a resource tenure holder for a make good agreement has committed, is committing, or is likely to commit, an offence against the Water Act 2000, chapter 3 (the **possible offence**).*
- (2) *The land access ombudsman may give the chief executive (water) a notice stating—*
- (a) *the name of the party; and*
 - (b) *details of the possible offence; and*
 - (c) *the land access ombudsman recommends the investigation of the possible offence.*
- (3) *Before taking action under subsection (2), the land access ombudsman must give the party a notice—*
- (a) *stating the proposed action; and*
 - (b) *inviting the party to make a submission to the ombudsman, within a stated reasonable period, about the proposed action.*
- (4) *The party may make submissions orally or in writing.*
- (5) *The land access ombudsman must have regard to any submissions made by the party within the stated period before giving a notice under subsection (2).*
- (6) *The notice under subsection (2) may also—*
- (a) *disclose information given to the land access ombudsman by either party in relation to the land access dispute referral that is relevant to the possible offence; and*

- (b) *include a copy of a notice given to the parties under section 51(2).*

55 Recommendation about offence against Environmental Protection Act 1994

- (1) *This section applies if, at any time after a land access dispute referral has been accepted, the land access ombudsman reasonably suspects a party to the land access dispute the subject of the referral who is a resource authority holder for a conduct and compensation agreement or a resource tenure holder for a make good agreement has committed, is committing, or is likely to commit, an offence against the Environmental Protection Act 1994 (the **possible offence**).*
- (2) *The land access ombudsman may give the chief executive (environment protection) a notice stating—*
- (a) *the name of the party; and*
 - (b) *details of the possible offence; and*
 - (c) *the land access ombudsman recommends the investigation of the possible offence.*
- (3) *Before taking action under subsection (2), the land access ombudsman must give the party a notice—*
- (a) *stating the proposed action; and*
 - (b) *inviting the party to make a submission to the ombudsman, within a stated reasonable period, about the proposed action.*
- (4) *The party may make submissions orally or in writing.*
- (5) *The land access ombudsman must have regard to any submissions made by the party within the stated period before giving a notice under subsection (2).*
- (6) *The notice under subsection (2) may also—*
- (a) *disclose information provided to the ombudsman by either party in relation to the land access dispute referral that is relevant to the possible offence; and*

- (b) *include a copy of a notice given to the parties under section 51(2).*

56 Advice about systemic issues

- (1) *This section applies if the land access ombudsman identifies a systemic issue relating to access to land arising from 1 or more land access dispute referrals.*
- (2) *If the land access ombudsman considers it appropriate, the ombudsman may—*
 - (a) *for a systemic issue relating to a particular matter for which the chief executive of a department is responsible—advise that chief executive about the issue; or*
 - (b) *advise a government entity about the systemic issue.*
- (3) *The advice—*
 - (a) *must be in writing and state the systemic issue; and*
 - (b) *may include the land access ombudsman’s opinion or advice about the issue; and*
 - (c) *must not include information the ombudsman is satisfied is confidential and the disclosure of which might be detrimental to a person’s commercial interests.*

Part 5 Dealing with documents or information under this Act

57 Document in land access ombudsman’s custody

- (1) *If a document is produced to the land access ombudsman for an investigation, the ombudsman may—*
 - (a) *keep it for a reasonable period to carry out the investigation; and*
 - (b) *take extracts from or make copies of it.*

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- (2) *While the land access ombudsman has custody of the document, the ombudsman must allow it to be inspected at any reasonable time by a person who would have the right to inspect it if it were not in the ombudsman's possession.*

58 Protection from liability for giving agreement to land access ombudsman

- (1) *This section applies if—*
- (a) *a party to a conduct and compensation agreement or a make good agreement gives a copy of the agreement, or part of the agreement, to the land access ombudsman—*
 - (i) *because of a requirement under section 42; or*
 - (ii) *on the party's own initiative; and*
 - (b) *the agreement contains a condition prohibiting the disclosure of all or any part of the agreement.*
- (2) *The party does not incur any civil liability for breach of the condition by giving the agreement, or part of the agreement, to the land access ombudsman.*

59 Confidentiality requests

- (1) *This section applies if a party to a conduct and compensation agreement or a make good agreement believes—*
- (a) *a document or information to be made available by the party to the land access ombudsman is confidential; or*
 - (b) *the disclosure of a document or information to be made available by the party to the ombudsman might be detrimental to the party's commercial activities.*
- (2) *When giving the document or information to the land access ombudsman, the party may inform the ombudsman of the party's belief.*

60 Secrecy

- (1) *This section applies to a person who—*
- (a) *is, or has been, the land access ombudsman or an officer; and*
 - (b) *obtains confidential information in the course of, or because of, the person’s functions under this Act.*
- (2) *The person must not—*
- (a) *make a record of the information; or*
 - (b) *whether directly or indirectly, disclose the information to a person; or*
 - (c) *use the information to benefit any person.*

Maximum penalty—100 penalty units.

- (3) *However, subsection (2) does not apply to a person if the record is made, or the information is disclosed or used—*
- (a) *in the performance of the person’s functions under this Act; or*
 - (b) *with the consent of the person to whom the information relates; or*
 - (c) *as required by law.*

- (4) *In this section—*

confidential information *means information, other than information that is publicly available—*

- (a) *about a person’s personal affairs or reputation; or*
- (b) *that would be likely to damage the commercial activities of a person to whom the information relates.*

Part 6 Miscellaneous provisions

61 Delegation

- (1) The land access ombudsman may delegate any of the ombudsman's functions to an appropriately qualified officer.
- (2) However, the land access ombudsman must not delegate the giving of advice, recommendations or reasons under section 51(6)(b).
- (3) In this section—
functions includes powers.

62 Protection from liability

- (1) The land access ombudsman does not incur civil liability for an act done, or omission made, honestly and without negligence under this Act.
- (2) If subsection (1) prevents a civil liability attaching to the land access ombudsman, the liability instead attaches to the State.

Note—

For protection from civil liability in relation to State employees, see the *Public Service Act 2008*, section 26C.

63 Annual report

- (1) *As soon as practicable after the end of each financial year, but within 3 months after the end of the financial year, the land access ombudsman must prepare and give to the Minister a written report about the operation of the office during the year.*
- (2) *Without limiting subsection (1), the report must include—*
 - (a) *a description of the following matters for the year—*
 - (i) *land access dispute referrals made;*

- (ii) *land access dispute referrals that the land access ombudsman decided, under section 36, not to investigate or continue to investigate;*
 - (iii) *land access dispute referrals investigated;*
 - (iv) *notices given under section 51;*
 - (v) *notices given to a chief executive under section 53, 54 or 55; and*
 - (b) *details of other functions performed by the ombudsman or officers during the year.*
- (3) *The report must not be prepared in a way that discloses the identity of a party to a land access dispute.*
- (4) *The land access ombudsman must publish on the office's website a copy of the report as soon as practicable after the report is given to the Minister.*

64 Approved forms

The land access ombudsman may approve forms for use under this Act.

65 Procedural guidelines

- (1) The land access ombudsman may make procedural guidelines about practices and procedures for land access dispute referrals and investigations under this Act.
- (2) Without limiting subsection (1), a procedural guideline may be about what constitutes a reasonable attempt to resolve a dispute under section 32(2).
- (3) A procedural guideline must not be inconsistent with this Act.

66 Regulation-making power

The Governor in Council may make regulations under this Act.

Part 7 **Transitional provision**

67 **Pre-commencement agreements may be referred and dealt with**

- (1) *A land access dispute referral may be made and dealt with under this Act even if—*
- (a) *the conduct and compensation agreement or make good agreement the subject of the referral was entered into before the commencement; or*
 - (b) *the land access dispute the subject of the referral arose before the commencement.*
- (2) *This section applies subject to section 18.*

Part 8 **Amendment of legislation**

Division 1 **Amendment of this Act**

68 **Act amended**

This division amends this Act.

69 **Amendment of long title**

*Long title, from ‘, and to amend’—
omit.*

Division 4 Amendment of Mineral and Energy Resources (Common Provisions) Act 2014

74 Act amended

This division amends the *Mineral and Energy Resources (Common Provisions) Act 2014*.

75 Insertion of new s 99A

*Chapter 3, part 7, division 5, subdivision 2—
insert—*

99A Jurisdiction to decide alleged breach of conduct and compensation agreement

- (1) *Subsection (2) applies if a party to a conduct and compensation agreement believes the other party has breached a condition of the agreement.*
- (2) *The party may apply to the Land Court for an order about the alleged breach.*
- (3) *An application may be made during the term, or after the end, of the agreement.*
- (4) *The Land Court may make any order it considers appropriate on an application under this section.*
- (5) *In this section—*

***conduct and compensation agreement** means a conduct and compensation agreement for which the minimum negotiation period has ended.*

party, to a conduct and compensation agreement, means—

- (a) *the following persons who entered into the agreement—*
 - (i) *the resource authority holder;*

- (ii) the owner or occupier of private land;
or*
- (b) the successors and assigns of a party
mentioned in paragraph (a) that are bound
by the agreement under section 79.*

Schedule 1 Dictionary

section 6

approved form means a form approved under section 64.

bore owner see the *Water Act 2000*, section 362.

chief executive (environment protection) means the chief executive of the department in which the *Environmental Protection Act 1994* is administered.

chief executive (natural resources and mines) means the chief executive of the department in which this Act is administered.

chief executive (water) means the chief executive of the department in which the *Water Act 2000*, chapter 3 is administered.

coal mine, for part 3, division 2, subdivision 3, see section 44.

conduct and compensation agreement see the *Mineral and Energy Resources (Common Provisions) Act 2014*, section 83.

dispute land, for part 3, division 2, subdivision 3, see section 45(1) and (2).

environmental authority means an environmental authority under the *Environmental Protection Act 1994*.

government entity see the *Public Service Act 2008*, section 24.

investigation notice see section 40(1).

land access dispute see section 7.

land access dispute referral see section 8.

land access ombudsman means the land access ombudsman appointed under section 9.

make good agreement see the *Water Act 2000*, section 420.

mine, for part 3, division 2, subdivision 3, see section 44.

notice means a written notice.

occupier, other than for section 45(1)(c) or (2)(c), see the *Mineral and Energy Resources (Common Provisions) Act 2014*, schedule 2.

office means the office of the land access ombudsman.

office of the land access ombudsman means the Office of the Land Access Ombudsman established under section 23.

officer means an officer mentioned in section 26.

operating plant, for part 3, division 2, subdivision 3, see section 44.

owner, other than for section 45(1)(b) or (2)(b), see the *Mineral and Energy Resources (Common Provisions) Act 2014*, section 12.

private land see the *Mineral and Energy Resources (Common Provisions) Act 2014*, section 13.

referring party see section 36(1).

relevant Resource Act, for a resource authority, means the particular Resource Act under which the resource authority is granted.

Resource Act means each of the following—

- (a) the *Mineral Resources Act 1989*;
- (b) the *Petroleum and Gas (Production and Safety) Act 2004*;
- (c) the *Petroleum Act 1923*;
- (d) the *Geothermal Energy Act 2010*;
- (e) the *Greenhouse Gas Storage Act 2009*;
- (f) the *Coal Mining Safety and Health Act 1999*;
- (g) the *Mining and Quarrying Safety and Health Act 1999*.

resource authority means a resource authority mentioned in the *Mineral and Energy Resources (Common Provisions) Act 2014*, section 10, other than the following—

- (a) a prospecting permit;
- (b) a mining claim;
- (c) a mining lease.

resource authority holder means the person who is the holder of the resource authority under the relevant Resource Act for the authority.

resource tenure holder see the *Water Act 2000*, schedule 4.

safety and health management system, for part 3, division 2, subdivision 3, see section 44.

safety management system, for an operating plant, for part 3, division 2, subdivision 3, see section 44.