



A FARMER'S GUIDE TO LAND ACCESS

FOR PETROLEUM EXPLORATION ACTIVITIES UNDER THE *PETROLEUM AND GEOTHERMAL ENERGY RESOURCES ACT 1967*



THE PURPOSE OF THIS GUIDE

Western Australia's farming and petroleum industry leaders have been working together to produce an information package to help rural land owners negotiate fair and equitable agreements for exploration on private land. The project fills the need for a balanced and easy-to-understand guide to the rights and responsibilities of the parties to an agreement.

To produce this guide we have involved experienced farmers, petroleum operators, government representatives and legal advisers. The contents are based on input from the Australian Petroleum Production and Exploration Association, WAFarmers, WA Pastoralists and Graziers' Association, vegetablesWA and the Department of Mines and Petroleum.

The guide is part of a package of information designed to make negotiations easier and co-existence simpler. This supporting information makes it easier for farmers to be directly involved in the negotiating process - but it isn't a replacement for specialist advice on legal, financial and agricultural matters.

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The package includes:

- An agreement template which can be used as a model for individual agreements between property owners and oil and gas companies;
- A summary of key laws and regulations covering exploration;
- A checklist of some of the issues the land holder needs to know – and questions which need to be asked;
- A brief introduction to typical exploration programs; and
- Contacts for more information.

The guide deals specifically with the exploration phase of petroleum development. Proposals for field development and commercial production would need to be the subject of a separate agreement.

WHAT TO SAY AND WHAT TO ASK

The most important priority in dealing with petroleum companies is to get a clear idea of the exploration program envisaged.

So the first question when the explorer comes knocking is: What are your plans and when do you think work will start?

Other points the farmers should consider are listed below.

CHOOSE THE RIGHT TIME

Don't try to manage the negotiation around seeding, planting, harvesting, lambing or other priorities. Talk to the petroleum company about scheduling discussions during a time which suits the farming activities.

WORK ON A COOPERATIVE PROGRAM

Make sure you know what's planned and when. At the same time ensure the petroleum operator understands your farm programs and how to minimise the impacts of exploration.

TALK TO NEIGHBOURS INVOLVED IN THE SAME EXPLORATION PROJECT

Share ideas and knowledge about potential impacts and appropriate compensation.

The first question to ask is 'What are your plans and when do you think work will start?'

GET INDEPENDENT ADVICE

Use advisers of your choice, and see assistance from the operator to pay for such advice. These costs should be discussed and agreed up front.

CONSIDER HOW THE EXPLORATION ACTIVITIES CAN PROVIDE LASTING IMPROVEMENTS FOR THE FARM

The exploration activities might involve infrastructure like roads, water bores, fencing and power supply. In some cases, these infrastructures can be retained and subsequently used by the farmer. In a similar context, the operator might hire the farmer to carry out rehabilitation work – providing this meets with the approval of the regulators.

GET YOUR FARM PLANNING UP TO DATE BEFORE YOU NEGOTIATE A DEAL

You need to make sure that future activities are not compromised by exploration impacts.

FIND OUT ABOUT ENVIRONMENTAL MONITORING AND REGULATION

It will help to know how and where to get information about environmental management requirements - and who to talk to if you need to have the information interpreted. You are entitled to be consulted about the rehabilitation plans – and to monitor the way these programs are implemented. In a similar context, you can get detailed and comprehensive information about the requirements for construction, well integrity and safety.

TALK TO THE COMPANY DECISION-MAKERS

Each oil and gas project has a designated "responsible person" to liaise with land holders and other stakeholders. Make sure you have all the necessary contact details and a clear understanding of how the relationship will work.

WHAT THE LAW SAYS

Petroleum activities in Western Australia are governed by the *Petroleum and Geothermal Energy Resource Act 1967*. This Act and the associated regulations and guidelines were updated in 2013. Copies are available online from the State Law Publisher (www.slp.wa.gov.au).

Some of the key provisions are listed below:

GAINING ACCESS TO PRIVATE LAND

- Prior to accessing private land, an Operator must first obtain consent in writing and negotiate a compensation package, if any, with the private Land Holder.

- Operations cannot commence on private land until any compensation is paid to the owner and occupier of the land or agreement has been reached as to the payment of compensation.

CAN ACCESS TO LAND BE DENIED TO A PETROLEUM TITLE HOLDERS?

- Access can be denied where the land is: private land less than 2000 m² (one fifth of a hectare); land used as a cemetery or burial place; or land within 150 m laterally from such cemetery, burial place, reservoir or any substantial improvement.
- In this context a reservoir is defined as any natural storage or accumulation of water, spring, dam, bore or artesian well. The Minister is responsible for determining whether an improvement is substantial.
- It is at the discretion of the Land Holder as to whether access would be granted to a property that meets these criteria.

COMPENSATION TO BE NEGOTIATED WITH PRIVATE LAND HOLDER/OCCUPIER

- Operations cannot be commenced on private land unless agreement on compensation (if any) has been reached with the Land Holder.
- Compensation should cover the Land Holder being deprived of the land and for damage to the land and / or improvements.
- Compensation cannot include payment for the value of petroleum resources on or under the land as the law recognises that these belong to all Western Australians.

IF COMPENSATION CANNOT BE AGREED

- If compensation cannot be agreed after three months (from the date the Operator approached the Land Holder with a notice of intent to commence operations) either party may apply to the Magistrates Court to fix the amount of compensation.

IDENTIFYING THE ISSUES FOR NEGOTIATION

One of the most important elements of a successful agreement is the identification of the key issues, potential impacts and compensation costs in the early stages of the negotiation process. Some of the priorities include:

THE EXPLORATION PROGRAM

The operator needs to provide the farmer with a clear outline of the activities and likely time frames for exploration.

THE FARMING PROGRAM

In a similar context, the farmer should provide the exploration company with the following information:

- the annual farm program;
- potential impacts of exploration from the land holders' perspective; and
- any future plans for the property.

COMPENSATION AND FARM MANAGEMENT PROTOCOLS

The agreements between farmers and petroleum explorers will include provision for compensation for any losses, damage or other impacts from petroleum exploration. Where appropriate, the agreement will also outline protocols for stock movement, fencing, gates, biosecurity, fire risk management and a range of additional farming priorities

RECOMPENSE FOR “REASONABLE COSTS”

The operator will pay the land holder's agreed costs to secure legal, financial or technical advice. Both parties are expected to identify and agree to these costs before advice is sought.

REHABILITATION

Under law, the Operator is required to rehabilitate the land to pre-disturbance conditions. The Operator will consult with the Land Holder, as well as regulatory authorities, on appropriate rehabilitation strategies before the exploration program begins. The Land Holder should identify any infrastructure installed by the Operator, such as water wells, that the Land Holder intends to utilise into the future and which would not be included in the rehabilitation program. The resulting operational plan will be provided to the Land Holder and used as a reference for subsequent remedial work.

COMMUNICATION PROTOCOLS

This covers regular meetings, notice periods, contact information and access to the operators' designated representatives who are expected to keep the land holders fully informed about company activities. The representatives are available to address any issues raised by the land holder.

NEGOTIATING A FAIR AGREEMENT

A model agreement has been developed by farming and petroleum industry peak bodies to help the negotiation process. The model agreement can be obtained by contacting one of the representatives listed at the end of this document.

This model agreement aims to deliver fairness and equity to all parties in negotiations for access and compensation agreements. At the same time, the conditions in the agreement should help to protect the long term productivity and amenity of farmland.

Some of the most important elements of the model agreement include:

- Requirements for the operator (exploration company) to minimise any disturbance to farming assets and operations;
- Requirements for the land owner to allow the exploration to go ahead without unnecessary disruption once an agreement has been reached;
- Advance communication on operational activities, locations, equipment use, fire management and other relevant information;
- The operator's obligations to cover reasonable costs, including proposals for:
 - Legal and financial advice;
 - Other costs directly related to preparing the agreement; and
 - Technical advice on the impacts of petroleum exploration.

COMPENSATION

Each agreement will include a provision for compensation payments, specific to each project and land holder. Recognising that each property and farming enterprise is unique, the model agreement does not attempt a prescriptive formula for compensation on private land. However, the agreement is based on a set of overarching principles:

1. The Land Holder should not be financially disadvantaged by the exploration activity.
2. The Land Holder will be compensated for any loss of income, damage, inconvenience or loss of amenity.
3. The Operator will pay reasonable costs incurred by the Land Holder in seeking professional advice or information. These costs should be considered in the initial negotiations and incorporated in the agreement.
4. Provision for compensation should consider potential long term losses as well as immediate impacts.
5. Compensation – or an agreed portion of the compensation – will be paid before the start of any exploration activity.
6. Apart from the specifics listed below, Operators agree to compensate farmers for any losses which are shown to be attributable to exploration activity.

Impacts to be considered in a compensation package for exploration include:

- The cost of securing independent expert advice on legal, financial and technical matters (outlined in Item 3 in this section)
- Loss of income from cropping, grazing, horticulture or other agricultural activity
- Disruptions to farm management, including stock movement, fencing changes, livestock breeding, transport and other disturbances
- The cost of rehabilitation and biosecurity measures such as weed control (additional to conditions imposed by Government regulators)
- Seasonal restrictions on vehicle movements
- Soil compaction and other ground disturbance
- Potential agistment costs
- Reduced efficiency in disturbed paddocks
- Cropping delays
- Access to water
- Management of fire risks
- Monitoring and assessment of rehabilitation and other remedial work
- Temporary disturbance during drilling, well construction and hydraulic fracturing
- Land use for flaring and management of hydraulic fracture fluid or produced water.
- Vehicle movement and storage areas
- Devaluation of land as a consequences of the Operator's activities.

If the exploration is successful and the operators seeks approval for commercial production the potential impacts would be the subject of separate negotiations.

The model agreement makes it clear that statutory laws and regulations would take precedence over the contents of any agreement between land holders and exploration companies.

IF YOU CAN'T REACH AGREEMENT

Most agreements for exploration on private farmland in Western Australia have been reached without any form of formal intervention or determination. The processes developed by farming and petroleum industry peak bodies have recognised the critical importance of participants negotiating in good faith and acting on the basis of goodwill.

Occasionally, the parties will not be able to agree on specific issues. In these cases, the Agreement encourages the Parties to pursue mediation, rather than recourse to litigation. The following outlines the steps to initiating mediation:

- The disputing Party should give notice to the other Party setting out the nature of the dispute.
- Both Parties are encouraged to try to resolve the dispute between themselves in the first instance. Both Parties should retain records detailing the original dispute and efforts to resolve the matter, including details of any meetings held.
- If the dispute has not been resolved in 30 days, the matter can be referred to mediation.
- Mediation will be facilitated by a three-person panel, including an independent chairperson, a petroleum representative and a farming representative.
- The disputing Party should contact their representative body (listed at the end of this document). In the course of mediation, the disputing party should be prepared to forward any details of the dispute and efforts to resolve it. The other Party will also be requested for their records.
- The panel will schedule a date for the matter to be discussed between both Parties. Any mediation will be conducted in line with the rules of the Institute for Arbitrators and Mediators Australia, which can be downloaded from www.iama.org.au.
- The cost of mediation should be shared by the Parties in equal shares unless the panel advises otherwise or the Parties agree otherwise.
- If either Party is not satisfied with the outcome of mediation, they may refer the matter to the Magistrate's Court for determination. Information relating to the Magistrate's Court is available at www.magistratescourt.wa.gov.au.

EXPLORING FOR ONSHORE OIL AND GAS – POTENTIAL ACTIVITIES

Oil and gas exploration programs involve a range of technologies and strategies to find new resources – and meet the expectations and communities and regulators. These include:

ENVIRONMENTAL AND HERITAGE STUDIES

Before any exploration work can begin, the petroleum operator must conduct environmental, heritage and engineering studies to secure approval from State and Federal regulatory authorities.

NEGOTIATIONS WITH THE LAND HOLDER

The company must negotiate a land access and compensation agreement with the land holder ahead of any petroleum exploration or development.

AERIAL SURVEYS AND DATA REVIEWS

Most petroleum exploration programs begin with data from past exploration programs. Follow-up magnetic and radiometric surveys of the sub-surface geology often use fixed wing aircraft flying 300 metres above the ground.

SEISMIC STUDIES

One of the key exploration tools - seismic surveys - use trucks with vibrator pads to send sound and energy waves deep below the ground. Recordings are digitally enhanced to create three-dimensional pictures of the geological structures.

Where possible, the exploration crews use existing tracks for seismic studies, but sometimes they need to clear survey lines to get an accurate picture of the sub-surface geology. These tracks are rehabilitated once the survey work is finished.

EXPLORATION DRILLING

Oil and gas exploration wells help to determine the quantity and viability of petroleum discoveries.

HYDRAULIC FRACTURING

If the first stages of exploration identify a promising shale or tight gas prospect the operator will consider hydraulic fracturing to test the potential for commercial production. In this process, exploration teams pump a fluid of water, sand and diluted chemical additives down the well at high pressure. The fluid opens up narrow fractures in the rock and the sand helps to keep the fissures open - allowing trapped natural gas to flow into the well. The water which flows back to the surface is either recycled or stored in sealed evaporation ponds.

REHABILITATION

When the work is complete, wells are capped for possible use in future production and the company works with the land owner to restore any disturbed areas.

CONTACTS FOR MORE INFORMATION

| Organisation | Email | Phone |
|---|--|----------------|
| WAFarmers Federation | reception@wafarmers.org.au | (08) 9486 2100 |
| WA Pastoralists and Grazier's Association | pga@pgaofwa.org.au | (08) 9212 6900 |
| vegetablesWA | office@vegetableswa.com.au | (08) 9481 0834 |
| APPEA | perth@appea.com.au | (08) 9426 7208 |
| Department of Mines and Petroleum | Petroleum.Land.Access@dmp.wa.gov.au | (08) 9222 3133 |

DISCLAIMER

This document has been prepared to provide a guide for farmers, graziers and petroleum companies for land access negotiations.

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