

15 August 2016

Our ref:JKC/Mining&Resources/Land Access

Resources Policy and Projects Team
Department of Natural Resources and Mines
ResourcesPolicy@dnrm.qld.gov.au

Dear Resources Policy and Projects Team

Queensland Law Society Submission on the Land Access Code 2016

Thank you for the opportunity to comment on the above. Queensland Law Society (the Society) appreciates being consulted on this important document.

Our policy committees and working groups are the engine rooms for the Society's policy and advocacy to government. The Society, in carrying out its central ethos of advocating for good law and good lawyers, endeavours to ensure that its committees and working groups comprise members across a range of professional backgrounds and expertise. In doing so, the Society achieves its objective of proffering views which are truly representative of the legal profession on key issues affecting practitioners in Queensland and the industries in which they practise. This furthers the Society's profile as an honest, independent broker delivering balanced, evidence-based comment on matters which impact not only our members, but also the broader Queensland community.

This response has been compiled with the assistance of the Society's Mining and Resources Committee who have substantial expertise in this area.

The submissions below are made on the basis set out in respect of each of them, and irrespective of whether or not similar provisions exist in the current Land Access Code.

The Society notes that very few changes are proposed to the structure and content of the existing 2010 Land Access Code. Nonetheless, the Society wishes to offer these submissions.

The Land Access Code retains the distinction between "guidance" type provisions in Part 2 (Good Relations) and mandatory conditions for resource authorities in Part 3.

A significant purpose of the Land Access Code, as the Society understands it, is to ensure that landholders are given information appropriate to the process in which they are required to engage ("communication" elements, principally those in Part 2), and to impose on tenement holders specific obligations with which they must comply in undertaking activities on the land ("conduct" related obligations in the mandatory conditions in Part 3).

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In preparing these submissions, some consideration was given to suggesting that the Schedule 1 mandatory conditions should be extended to require the observance of a “best practice” requirement for the negotiation of conduct and compensation agreements with landholders. We appreciate that may be a matter warranting more extensive consultation, and would encourage further liaison with the Society in respect of that issue.

Paragraph Part 2, section 5 (Communication): it is submitted that in making arrangements for a visit to a landholder’s property, it should be acknowledged that the property may also be a place of work of the landholder and that time is of the premium to the landholder so the tenement holder should be courteous in respect of visit times and length of visits.

It is submitted that the responsible person for the landholder and the tenement holder should also, to the extent possible, remain the same throughout the entire project.

In Part 2, section 5 on page 6, it would be helpful if the tenement holder were also required to provide the landholder with time lines for any expected phases of the intended program as opposed to simply a description of the program and its duration.

In Part 3, mandatory conditions, section 10, giving notice, a concern has been raised about the giving of notices orally. Under the Code, notices are to be given under sections 13(7)(a), 14(2), 14(3), 14(4) and 18(2)(a). In each case, these concern risk, loss or damage. The Society recommends that if oral notice is given, this be confirmed in writing.

Also in Part 3, section 15(4), consideration should be given to redrafting to make it clearer that this is an obligation that the tenement holder is required to meet, not a matter for its discretion. It is also suggested that the landholder may have local knowledge that is not available to the tenement holder and so there is utility in requiring that the landholder’s wishes as to wash down be ascertained and taken into account.

The Society commends the Department and the Resources Policy and Projects Team for providing the draft Land Access Code for review and submissions well in advance of the intended start date of the Act.

If you have any queries regarding the contents of this letter, please contact our Policy Solicitor Julia Connelly, on (07) 3842 5884 or J.Connelly@qls.com.au.

Yours faithfully



Bill Potts
President