



Negotiating your Conduct and Compensation Agreement: Never sign a “Standard” Agreement

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Why Underground Resources Matter

If you have underground resources at your property, such as coal, minerals, petroleum, or coal seam gas, you may be approached by a resource company about gaining access to your land to extract these resources in exchange for compensation. These agreements are commonly known as “Conduct and Compensation Agreements”. Without voluntarily entering into a Conduct and Compensation Agreement, the resource company cannot be granted land access to conduct their preliminary or advanced activities. While these agreements may seem harmless, or even “standard”, they are one of the most important

documents you can sign. This is because it attaches to the title of your land and binds all future owners (and often occupiers).

Who Foots the Bill?

Since the Queensland Government mandated that resource companies must pay a landholder's reasonable legal costs to negotiate Conduct and Compensation Agreements, some landholders are missing out on a no-cost opportunity to engage lawyers to negotiate their conduct and compensation agreement and maximise their interests. McInnes Wilson Lawyers is experienced in negotiating agreements such as Conduct and Compensation Agreements with our many agribusiness clients.

How do I negotiate a Conduct and Compensation Agreement?

The Conduct and Compensation Agreement will grant exploration permits or mineral development licenses, for example, to the resource holder and determine the activities that can be conducted on your land, the process to compensate you, the terms of access, rehabilitation of the environment, and insurance and indemnities.

Due to all of these important considerations, it is not always easy to come to an agreement with the resource company. However, it is important that you are fully informed and given adequate information about their proposed activities so that you can properly engage in the negotiation process. Unfortunately, some resource companies overlook their obligation to provide you with full details of their proposed activities, but it is not enough for a general proposal to be presented to you. If this happens, you are within your rights to insist that further information is provided to you during the negotiation process.

If the resource company does not provide you with adequate disclosure, they may have failed to use reasonable endeavours to negotiate the Conduct and Compensation Agreement with you, and therefore have not lawfully engaged in the negotiation process. This could result in the resource company from being restrained from lawfully entering upon your land.

The good news, however, is that most resource companies appreciate that landholders have a right and need to be fully informed about the proposed activities and want to engage meaningfully with landholders.

Why is it Important to Negotiate?

To ensure that your interests as a landholder are protected, it is important that the impacts of each activity are outlined in the Conduct and Compensation Agreement. This will ensure that:

- a) The resource company is authorised to enter your land and undertake their activities;
- b) If the activities of the resource company change significantly, that you are able to engage in a review of the compensation you are entitled to; and
- c) The resource company's liability is clearly articulated.

How can we help?

McInnes Wilson Lawyers can work with you to ensure negotiations around your Conduct and Compensation Agreement to ensure fair dealings and to maximise your position by including terms that will:

- a) set acceptable terms of access and standards of conduct for any person entering your land;
- b) ensure that your family, employees and animals are safe;
- c) preserve the amenity of your family home;
- d) avoid impacts to the flora, fauna, and crops on your property;
- e) prevent the spread of noxious weeds on your property;
- f) identify appropriate compensation for your participation in the agreement;
- g) ensure you are not incurring unreasonable out-of-pocket expenses in the process of negotiating the conduct and compensation agreement;
- h) ensure the Conduct and Compensation Agreement will not disturb your business;

- i) protect genetic bloodlines of cattle or other animals that are bred on your property;
- j) to ensure that if there is a material change of circumstances, that a review of compensation can be readily determined; and
- k) agree to terms that are both practical for your family and business and have longevity.

Ultimately it will benefit both you and the resource company to ensure that the Conduct and Compensation Agreement is correctly entered into and drafted. This will ensure that dealings, the limits of the resource tenure holder's activities, and the extent of compensation liability are clearly understood and agreed upon by both parties. This will prevent arguments down the line and avoid costly dispute resolution procedures including appearances in the Land Court.

The McInnes Wilson Lawyers Commercial Division is experienced in reviewing and negotiating Conduct and Compensation Agreements from the perspective of landholders. If you've been approached about a Conduct and Compensation Agreement, please contact our team for an obligation free conversation.

Contact the article author for more info



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