



Small Business
Commissioner
SOUTH AUSTRALIA

Fair Trading (Mining and Resources Industry Land Access Dispute Resolution Code) Regulations 2018

OVERVIEW OF THE MINING AND RESOURCES INDUSTRY LAND ACCESS DISPUTE RESOLUTION CODE

The Mining and Resources Industry Land Access Dispute Resolution Code (the Code) promotes the successful resolution of mining-related land access disputes in a streamlined and balanced manner.

Minerals are the property of the Crown in South Australia and are managed on behalf of all South Australians. Access to the minerals is controlled through the *Mining Act 1971* and the *Mining Regulations 2011*, and access to petroleum is controlled through the *Petroleum and Geothermal Energy Act 2000* and *Petroleum Regulations 2000*. These Acts and Regulations establish a strict regulatory framework for access to land, environmental management and the payment of fees and mineral royalties.

Factors relating to land access are numerous and complex, and disputes about access have the potential to end up in costly, time-consuming and stressful litigation.

The Code sets out a series of actions that can be taken by the Small Business Commissioner to help bring the parties together with the intention of assisting them to resolve the dispute in a timely and mutually beneficial manner.

How the Code helps farmers and resource companies

The Code helps farmers and resource companies by providing mandatory alternative dispute resolution processes on a low (or no) cost basis overseen by the Small Business Commissioner.

This independent process is designed to help resolve farming land access disputes as quickly and cheaply as possible, so that everyone can get on with doing what they do best – running their business.

Why do we need the Code?

The introduction of the Code is part of the Government's election commitment to help farmers deal with resource companies seeking access to their land.

The powers of the Commissioner under the Code can facilitate the resolution of disputes in a timely and cost effective way, thereby avoiding expensive, drawn out and often stressful court action.

Who is covered by the Code?

The Code covers disputes between a farmer and one or more mining or resource operators over access to land used by the farmer for the business of primary production. This includes the business of agriculture, pasturage, horticulture, viticulture, apiculture, poultry farming, dairy farming, forestry or any other business consisting of the cultivation of soils, the gathering in of crops, the rearing of livestock or the propagation or harvesting of fish or other aquatic organisms.

How it works in practice

The Office of the Small Business Commissioner will arrange to bring the parties together as soon as practicable once a written application regarding a dispute has been received.



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Overview of the Mining and Resources Industry Land Access Dispute Resolution Code

Do I still need legal or other advice and support?

Yes. Farmers are strongly encouraged to seek advice as soon as they are approached by a resource company. Information sources include the Office of the Small Business Commissioner, Primary Producers SA, the Department for Energy and Mining (DEM) and the Department of Primary Industries and Regions South Australia (PIRSA).

A land access agreement may be drafted by a lawyer, the miner and/or the farmer. It should specify the conditions that have been negotiated and agreed to by the parties; for example, the timing of entry and/or method used by a miner to communicate with the farmer. This is only a starting point for negotiations.

It is recommended to seek legal advice when negotiating and before signing a Land Use Agreement, as it is a legally binding document.

It is important to note that an application to the Office of the Small Business Commissioner to mediate a particular land access matter is not a replacement for lodging an objection to a notice of entry with the relevant court; this is the responsibility of the landowner.

The Commissioner will endeavour to complete mediation within the three month objection period of the *Mining Act 1971* or within the two month period of fixed mediation under the *Petroleum and Geothermal Energy Act 2000*. However, the Commissioner does not have the power of the Environment, Resources and

Development or Warden's Courts, and cannot make determinations to prevent entry (only the Court can make that determination), nor can the Commissioner extend the right to object.

Where do I find information on land access in general?

DEM has published detailed information for farmers on the issues to be aware of and how access to farm land works in general. Information is also provided for resource companies.

Visit the DEM website for further information.

http://www.energymining.sa.gov.au/mineral_resources

<http://www.energymining.sa.gov.au/petroleum>

Powers to resolve disputes

The Code gives the Commissioner a variety of powers to expedite the resolution of a dispute, including the power to require parties to attend meetings, exchange information, answer questions, and participate in the alternative dispute resolution process under the Code.

Compliance with the Code

There are two levels of financial penalties for breaches of the Code. Firstly, the Commissioner can issue a civil expiation notice (\$4,000 fine for corporations and \$500 fine for individuals) for a breach. If the circumstances warrant, the Commissioner may instead take court action to obtain a civil penalty of up to \$50,000 for corporations and \$10,000 for individuals.

How to Obtain Help

Phone the Office of the Small Business Commissioner, send us an e-mail or fax with your request for assistance or visit our website for further information.



Toll Free 1800 072 722 or (08) 8303 2026



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