



LAND ACCESS
OMBUDSMAN



Resource
Industry
Handbook

www.lao.org.au



Providing an independent, fair, and accessible dispute resolution service that promotes sustainable working relationships between Queensland's landholders and resource companies.

What we do

The Land Access Ombudsman (LAO) provides free, independent and impartial dispute resolution services for land access issues between resource companies and landholders. We operate independently and are not subject to direction by anyone.

We:

- > investigate disputes involving alleged breaches of Conduct and Compensation Agreements (CCAs) and Make Good Agreements (MGAs)
- > give advice and make recommendations about how disputes can be resolved.

Both landholders and resource companies can seek our assistance. We aim to resolve disputes quickly and efficiently, with as little formality and technicality as possible.

We also identify systemic issues in the land access space, and provide advice on these issues to government and industry.

Why would a resource company come to the Land Access Ombudsman?

Dispute resolution services

If your company is in a dispute with a landholder regarding a CCA or MGA, there are several benefits to bringing the issue to us rather than going it alone.

- > We're free, fast and efficient, with no need for either side to have legal representation - reducing costs and human resource drains.
- > There is no winner or loser – we work in the best interests of you and the landholder having a productive relationship going forward.

Information and training services

Outside disputes, you can also arrange to have someone from LAO talk to your team or help with onboarding new staff members. This could be anything from a quick introductory phone call on what we do, to a presentation on our role, learnings and trends at a staff meeting - get in touch for options.

What we can and can't investigate

We help to resolve issues where there has been an alleged breach of a term or condition of a Conduct and Compensation Agreement (CCA) or Make Good Agreement (MGA).

There are a number of ways an agreement can be breached, including:

- > failure to complete work or activities within the agreed time frames
- > not performing in accordance with the terms and conditions
- > failure to complete work or agreed activities whatsoever.

Matters we can investigate

For us to be able to investigate an alleged breach, you must:

- > have an existing CCA or MGA
- > reasonably believe the other party is not complying with their obligations under the agreement
- > have made a reasonable attempt to resolve the situation informally.

Matters we cannot investigate

We cannot help with the **negotiation** of CCAs or MGAs. We also can't investigate:

- > a CCA or MGA still subject to a minimum negotiation period or cooling off period
- > the content of legislation or government policies
- > a decision made by Cabinet, a Minister or a chief executive of a government department
- > a matter that is, or has been, the subject of a court proceeding, an arbitration or an investigation by a government department
- > compensation agreements for mining leases and mining claims under the Mineral Resources Act 1989
- > access agreements.

There is no winner or loser – we work in the best interests of you and the landholder having a productive relationship going forward.

Matters brought to us so far

A number of recurring issues have been relayed to our team, both through disputes brought to us for investigation and those reported anecdotally.

Examples of disputes that can be brought to us include:

- > biosecurity and washdown concerns
- > rectification works not being completed to standard or on time
- > damage and disrespect to property or equipment
- > gate and access issues (e.g. gates left open, or either party being locked out)
- > inadequate noise, smell or dust suppression
- > contractors not complying with the conditions of the agreement.



What to do if you're in a dispute

If you want to refer a dispute to us

If you want to bring a dispute to us, first contact the other party to try to come to a resolution. You don't have to follow the dispute resolution process in your agreement, as long as you can show us that you've made a reasonable attempt to resolve the situation.

If you have not been able to resolve the issue with the other party, you can refer the dispute to us by:

- > calling 1800 717 550 (freecall)
- > emailing enquiries@lao.org.au
- > visiting www.lao.org.au/refer-dispute/, where you can complete the online form or download a PDF to complete and send back via post.

If a dispute is raised against you

It's natural to feel defensive if you receive notice that someone has referred an issue with you to the Ombudsman.

But instead of resisting or hesitating, engaging in good faith can help ensure a smooth process, and a better working relationship moving forward.

If they've brought the dispute to us, chances are it's a pain point for you too, and this is your chance to get it resolved.

See "Tips for a Smooth Process" (page 6) for more.

Both landholders and resource companies can seek our assistance. We aim to resolve disputes quickly and efficiently, with as little formality and technicality as possible.

What happens when a dispute comes to us ?

ASSESSMENT

One party brings the dispute to us, and we find out as much information as we can to determine if we can formally investigate the issue.

This might include:

- > finding out what (if any) attempts have been made to resolve the dispute before (including if it's previously been before court or investigated by government)
- > reviewing your CCA or MGA
- > requesting further information from both parties
- > finding out if the issue has previously been investigated by government or been before court.

INVESTIGATION

If we decide to investigate, our dispute resolution team will take reasonable steps to look into and help resolve the issue. This could include:

- > requesting additional information from both parties, and (potentially) government agencies
- > holding meetings and interviews with each party, either separately or together
- > undertaking site visits and inspections
- > providing alternative dispute resolution options
- > consulting with entities with required technical expertise.

FACILITATION

Because we're focused on preserving your long term relationship and finding a mutually satisfactory outcome, the investigation might evolve into a facilitation stage, where we keep the case open and regularly check in until agreed actions have been completed.

OUTCOME

Once our investigation is complete, we will issue a Draft Notice of Investigation Outcome and invite both parties to respond. We will consider comments from both parties before issuing a final notice.

If your dispute has been resolved as a result of our investigation, the notice will include details of the resolution.

If either party does not feel the dispute is resolved, the notice will include:

- > advice about the merits of each party's position
- > our recommendations about how the dispute could or should be resolved
- > reasons for said advice and recommendations.

Tips for a smooth process

and your best chance of an amicable, mutually beneficial outcome



1. First do your best to resolve the issue, before coming to us

We can't investigate a dispute until you've first made a reasonable attempt to resolve it. This isn't just a box to be quickly ticked, but a valuable opportunity for a positive outcome. The more you communicate and try to work with the other party, the more informed you'll be if you do need to refer to the dispute to us. Better yet, you may find you don't need to come to us at all.



2. Come to the table with ideas of how the issue could be resolved

Being able to clearly outline what you want, what you'd consider and what is unacceptable to you can help speed up the process. Before your first meeting or conference call with us, ask yourself:

- > What is at the core of this dispute?
- > What effect is this having on you and/or your business?
- > What information can you share, or would you need to know, to help a decision be made?
- > What would an agreement resolving the issue/s look like to you?
- > What are the possible ways this could play out? Which is best case and worst case for you?



3. Have your supporting evidence ready

From your first contact with us, get ready to provide a copy of your CCA or MGA, as well as any relevant communications, photos or other supporting documents. Giving a detailed picture of the situation will help us understand the issues and deal with your dispute more efficiently, so the more you can give us the better.



4. Participate in Good Faith

We're independent, impartial, and in every dispute we aim to find a practical solution that satisfies both parties. To help us find an outcome that suits both parties, and for your best chance of a more productive relationship and less future angst, be open-minded, understanding and communicative throughout the investigation.



5. Be prompt in responding to requests for information

Keeping the process moving along will get you to your resolution sooner, reducing time, money and effort costs for both sides.



6. Remember that this isn't a legal proceeding

The Ombudsman acts as a referee, not a judge. To resolve your case as efficiently as possible and with the intent to repair or preserve your working relationship, we're looking for what would be considered fair and reasonable to the average person. We'll avoid jargon and complex legal phrasing, and ask that you do the same in the interest of transparency, accessibility and good will.



7. Contact us if you have questions or concerns

If at any stage you're not clear on what's next, the status of the investigation, or what an email or document means, reach out to our team. We're here to help and keep things running as smoothly, efficiently and clearly as possible.

After the outcome

Our recommendations are not binding - we cannot force you or the other party to follow our recommendations, but it is expected that they would be accepted.

If the matter remains unresolved even after following the recommendations, or you're unhappy with the outcome, you can:

- > ask us for a review of the Ombudsman's recommendations
- > contact the Department of Resources for conferencing options that may be available to you
- > apply to the Land Court for a binding decision (our Notice may be used as evidence)

- > pursue an alternative dispute resolution pathway, such as the Dispute Resolution Branch of the Department of Justice and Attorney General.

Subsequent disputes

We can't investigate the same matter twice, but if another dispute with the same party occurs, you can bring that subsequent dispute to us.

Who you'll hear from and when

Jane Pires - LAND ACCESS OMBUDSMAN

Jane has been Land Access Ombudsman since our doors opened in September 2018. She has also been Queensland's Energy and Water Ombudsman since 2016.

Jane has more than 25 years' experience in customer service, complaints management, mediation, conciliation and dispute resolution, and holds an MBA majoring in dispute resolution. Having grown up in rural New South Wales, she understands the complex and often highly emotional nature of relationships between business, industry and landholders.

When you will hear from her:

You will hear from Jane in the final outcome and recommendation stages of the process, when she has reviewed the information put forward by the investigation team. You can also contact her should you wish to appeal her decision.

Dispute Resolution Team

With extensive experience in resolving disputes through mediation, negotiation and complaints management, our dispute resolution officers are your primary points of contact. They undertake the initial assessments and investigations, and advise the Ombudsman on the circumstances and potential solutions.

When you'll hear from them

You will hear from our Dispute Resolution Team throughout the assessment and investigation processes. In order to gather the necessary information and form recommendations, they might get in touch to request photos, documents and first-hand reports, invite you to a meeting or site visit, or seek your thoughts on proposed solutions. They'll also keep you updated of the investigation's progress along the way.



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For more information

Visit our website: www.lao.org.au

Sign up for our newsletter and quarterly insights:

www.lao.org.au/publications/lao-eneews

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