

# Petroleum Regulations 2020

## Introduction

The Petroleum Regulations 2020 (Regulations) will commence on 1 January 2021. The subordinate legislation will be available at <https://legislation.nt.gov.au/>.

The Regulations will underpin the integrity of shared land use arrangements between petroleum companies and landholders in the Northern Territory.

The Regulations will implement recommendations 14.6 and 14.7 of the [Hydraulic Fracturing Inquiry Final Report](#) by making it a statutory requirement:

- for a petroleum company to reach a land access agreement with a landholder prior to commencing regulated petroleum activities (under a granted petroleum title) on private land; and
- for a land access agreement to contain prescribed minimum contractual provisions to protect the interests of a landholder.

The Regulations will also provide a legislative and governance framework in relation to:

- how parties should reach and vary land access agreements; and
- how party performance, including legislative and contractual non-compliance, should be managed.

## Alternative Dispute Resolution

The Regulations will provide that, where direct negotiations between the parties have failed, the parties may seek to use alternative dispute resolution processes to resolve disputes in relation to:

- reaching a land access agreement; and
- varying a land access agreement.

Parties will be able to use any type of alternative dispute resolution process other than arbitration.

If parties are unable to agree on:

- a type of ADR process; or
- the person to conduct the ADR process (ADR facilitator)

they will be able to make an application to the Chief Executive Officer of the Department of Industry, Tourism and Trade (CEO) who will select a mediator from the Mediators Panel to conduct a mediation between the parties.

## Mediators Panel

The Mediators Panel will be comprised of qualified persons who have been appointed as members of the panel by the Minister of Mining and Industry under the Regulations (Panel members).

Panel members will be selected by the CEO on a rotational basis to conduct mediations between the parties.

Following selection, a Panel member will be required to confirm to the best of their knowledge that:

- they have no actual or potential conflicts of interest; and
- they are available to conduct a mediation process between the parties.

## Mediation Process

Following confirmation of their availability, a Panel member will be required to contact the parties at the earliest opportunity to fix a day and time, and determine the manner and process, for conducting the mediation.

The manner and process for conducting the mediation may include:

- a meeting in person;
- a meeting conducted by telephone, video or other electronic means; or
- a combination of meetings using any meeting facilities or processes.

During the mediation process, a Panel member will be required to:

- use their best endeavours to bring the parties to a negotiated outcome;
- give the parties a reasonable opportunity to be heard but otherwise may use any process they consider appropriate, including by communicating with parties collectively or separately;
- allow parties to be legally represented or assisted by another person if they consider it reasonable and the person suitable; and
- treat information they obtain when communicating separately with a party as confidential, unless otherwise agreed with the party.

The mediation process will conclude if the parties reach a negotiated outcome in relation to a land access agreement (or variation) in writing.

The mediation process may be terminated if:

- it fails to reach a negotiated outcome for a land access agreement after a period of at least 30 days from the date the process was commenced by the Panel member; and
  - the petroleum company requests that the mediation process be brought to an end; or
  - the Panel member decides, after consulting with the parties, to bring the mediation to an end because they consider there to be no reasonable prospect of settling the matter through a mediation process; or
- the parties request for the process to be brought to an end.

Once a mediation process has ended, a Panel member will be required to complete a Mediation Outcome Report to be submitted to the Department of Industry, Tourism and Trade.

If a mediation process has ended and the parties have not reached a land access agreement (or variation) in writing, the relevant party may make an application to the Northern Territory Civil and Administrative Tribunal (NTCAT).

Anything said or done in the course of the mediation process will be inadmissible in an NTCAT proceeding, unless otherwise agreed by the parties.

Following an accepted application, the NTCAT will determine the provisions of the land access agreement, in accordance with the requirements of the Regulations. The parties will be required to abide by the contractual terms of the determined land access agreement.

## Payment of Panel member fees

A Panel member who has conducted a mediation process will be paid by the relevant petroleum company.

Payment requests must:

- be in writing; and
- provide reasonable details and evidence of the costs that are being claimed.

A petroleum company will be required to pay the nominated fees of a Panel member within 30 days after a request for payment is made.

## Resolution of other disputes

Under the Regulations, the parties will also be able to make applications to the NTCAT to obtain orders to resolve a range of other land access disputes, including:

- disputes about the operation or effect of an approved land access agreement;
- alleged breaches of an approved land access agreement; and
- disputes about costs and payment of costs.

These types of disputes between parties will not require the services of the Mediators Panel.

## Summary of key legislative provisions

The below table is intended to provide a high level overview of the key provisions under the Regulations and outline how ADR processes fit into the legislative framework.

Regulation references listed in the table are correct as at the date of publication of this document.

### Reaching a land access agreement:

Initiation of direct negotiation process			
Item	Description	Timeframe	Relevant regulation
1	A petroleum company may give notice of their intention to obtain a land access agreement to a landholder.	-	Subregulation 15(1)
2	Parties must take reasonable steps to negotiate a land access agreement and negotiate in good faith.	Parties must negotiate for a period of <b>at least 60 days</b> from the date the notice.	Regulation 10 Subregulation 16(1) Subregulation 16(2)
3	Parties must agree on a land access agreement in writing.	-	Regulation 16(4)
4	A petroleum company must pay a landholder's reasonable costs.	A petroleum company must pay the costs <b>within 30 days</b> after a request for payment is made, unless costs are disputed.	Regulation 17
ADR process triggered			
5	If parties cannot reach a land access agreement in writing via direct negotiations, a petroleum company may issue a notice requesting that a landholder participates in an ADR process within a nominated period.	The nominated period included in the notice must be <b>at least 14 days</b> after the notice is given.	Subregulation 16(2)(a)  Subregulation 18(1) Subregulation 18(2)  Subregulation 18(3)(d)

6	If a landholder does not respond to the notice within the nominated period, or parties cannot reach an agreement on an ADR process or ADR facilitator, the parties may apply to the CEO for the appointment of a member of the Mediators Panel to conduct mediation.	A petroleum company may only apply to the CEO once the nominated period has lapsed.	Regulation 19
<b>ADR process conducted</b>			
7	An ADR convenor will notify the parties of the date, time, manner and process of the ADR process.	An ADR convenor should notify parties at the <b>earliest opportunity</b> .	Regulation 25(3)
8	A petroleum company must provide a draft land access agreement, a landholder may also choose to provide a draft access agreement.	-	Subregulation 25(7)
9	Parties must negotiate in good faith and may be legally represented.  An ADR convenor must use their best endeavours to bring the parties to a negotiated outcome.	-	Regulation 10 Subregulation 25(6)(c)  Subregulation 25(6)(a)
<b>ADR process terminated</b>			
10	If parties reach a land access agreement in writing, the ADR process can be concluded.	-	Subregulation 26(1)(c) Subregulation 26(2)
11	If parties cannot reach a land access agreement and: the petroleum company requests to terminate the ADR process; or the ADR convenor decides to terminate the ADR process; or the parties request to terminate the ADR process; the ADR process may be terminated.	An ADR process must be conducted for <b>at least 30 days</b> from the commencement date fixed by the ADR convenor before it can be terminated.	Subregulation 26(1)(a) Subregulation 26(1)(b)
12	Anything said or done in the course of an ADR process is inadmissible in a proceeding before the NTCAT, except with the consent of the parties.	-	Regulation 27

13	A petroleum company must pay a landholder's reasonable costs and other costs associated with the ADR process that have been necessarily incurred. A petroleum company must also pay the costs of the ADR convenor.	A petroleum company must pay the costs <b>within 30 days after</b> a request for payment is made, unless costs are disputed.	Regulation 28
<b>Litigation process triggered</b>			
14	If parties have not reached a land access agreement in writing and an ADR process is terminated, a petroleum company may apply to the NTCAT for a land access agreement to be determined.	-	Subregulation 29(1)
15	The NTCAT may determine the provisions to a land access agreement, in accordance with regulation 14 and Schedule 2 of the Regulations. The agreement will have effect as if those provisions were embodied in a land access agreement signed by parties.	-	Subregulation 29(2) Subregulation 29(3) Subregulation 29(4)

## Flowchart: Reaching a land access agreement

The below flowchart is intended to provide a high level overview of the three stages to reaching a land access agreement under the Regulations.

