

Request for expressions of interest – Mediators Panel members

Context

The Northern Territory Government is calling for expressions of interest from suitably experienced and qualified persons to become members of a Mediators Panel to assist with the resolution of disputes between petroleum companies and landholders in the Northern Territory.

Primary objective

Members of the Mediators Panel will conduct mediation processes between petroleum companies and landholders to assist with dispute resolution and achieve agreed land access arrangements for a range of resource activities.

The role of a Mediators Panel member will be to independently manage a mediation process between a petroleum company and a landholder to support the settlement of a statutory land access agreement or variation to a land access agreement, and the resolution of land access related disputes. Further information is outlined at Attachment A.

Appointment criteria and term of appointment

With reference to the impending changes to regulation 21 of the Regulations, made by the *Petroleum Legislation Amendment Act 2022* assented to on 16 December 2022, a person may be appointed as a member of the Mediators Panel by the Minister for Mining and Industry and will be deemed to be suitably experienced and qualified if they:

- are an accredited mediator under the National Mediator Accreditation System established and maintained by the Mediator Standards Board; or
- hold practitioner membership (or advanced practitioner membership) with the Mediator Standards Board; and
- are a legal practitioner with at least seven years' experience as a legal practitioner; or
- have, in the opinion of the Minister for Mining and Industry, significant experience in primary industry or the resources industry.

Mediator Panel members will be appointed for a term not exceeding five years, with the possibility of reappointment.

Selection process

Where direct negotiations and other alternative dispute resolution processes between parties have been unsuccessful, a petroleum company or landholder may apply to the Chief Executive Officer of the Department of Industry, Tourism and Trade (CEO) to request that a Mediators Panel member conduct a mediation process.

The CEO will select a Mediators Panel member to conduct a mediation. Selection will be carried out on a rotational basis after actual or potential conflicts of interest, and such other matters, are considered.

Register for Mediators Panel

The CEO maintains a register containing the:

- name and contact details of each Mediators Panel member; and
- qualifications and experience of each Mediators Panel member (as at the time of the member's most recent appointment).

The register is published on the Agency's website.

Remuneration

A Mediators Panel member who has conducted a mediation process will be paid for their services by:

- the relevant petroleum company seeking a land access agreement; or
- the relevant party that is seeking a variation to a land access agreement.

Remuneration will be the fees nominated by the individual Mediators Panel member.

How to apply

Written applications should include:

- a current résumé;
- a letter outlining expertise with reference to the appointment criteria; and
- details of nominated fees.

Applications should be directed to:

Land Access Team
Energy Development Branch
Department of Industry, Tourism and Trade
GPO Box 4550
Darwin NT 0801

landaccess.ditt@nt.gov.au

Persons operating locally with a significant permanent presence in the Northern Territory are encouraged to apply.

Enquiries should be directed to the acting Land Access Manager, Department of Industry, Tourism and Trade on 08 8999 5240.

This request closes on 20 February 2023.

Attachment A

Petroleum Regulations 2020

Introduction

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

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

The Regulations implemented recommendations 14.6 and 14.7 of the [Hydraulic Fracturing 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 operations (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 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 provide that, where direct negotiations between the parties have failed, the parties may seek to use an alternative dispute resolution (ADR) process to resolve disputes in relation to:

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

Parties may use any type of ADR 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 may apply to the Chief Executive Officer of the Department of Industry, Tourism and Trade (CEO) who will select a member from the Mediators Panel to conduct a mediation between the parties.

Mediators Panel

The Mediators Panel is 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 are selected by the CEO on a rotational basis to conduct mediations between the parties.

Following selection, a Panel member is 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 is 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 is 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 within a reasonable time; or
- the parties request for the process to be brought to an end.

Once a mediation process has ended, a Panel member is 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 is inadmissible in an NTCAT proceeding, unless otherwise agreed by the parties.

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; or
- make an order for the variation of a 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 seeking a land access agreement; or
- the relevant party that is seeking a variation to a land access agreement.

Payment requests must:

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

The nominated fees of a Panel member must be paid within 30 days after a request for payment is made.

Resolution of other disputes

Under the Regulations, the parties are 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 or variation:

Initiation of direct negotiation process			
Negotiation of land access agreement			
Item	Description	Timeframe	Relevant regulation
1	A petroleum company may give notice of its 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 at least 60 days from the date of the notice.	Regulation 10 Subregulation 16(1) Subregulation 16(2)
3	Parties must agree on a land access agreement in writing.	-	Subregulation 16(4)
4	A petroleum company must pay a landholder's reasonable costs.	A petroleum company must pay the costs within 30 days after a request for payment is made, unless costs are disputed.	Regulation 17
Negotiation of variation to land access agreement			
5	An approved land access agreement may be varied: <ul style="list-style-type: none"> • in accordance with the terms of the land access agreement relating to its variation; or • by an agreement between the parties to the land access agreement; or • by further processes and proceedings under Part 4 of the Regulations 	-	Regulation 37

ADR process triggered			
5	<p><u>Land Access Agreement</u></p> <p>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.</p> <p><u>Variation to Land Access Agreement</u></p> <p>A party to a land access agreement may by notice to each other party, request the parties to agree to an ADR process using a facilitator or mediator to achieve a negotiated outcome for varying the land access agreement.</p>	The nominated period included in the notice must be at least 14 days after the notice is given.	<p>Subregulation 16(2)(a)</p> <p>Subregulation 18(1)</p> <p>Subregulation 18(2)</p> <p>Subregulation 18(3)(d)</p> <p>Subregulation 37(2)</p>
6	<p><u>Land Access Agreement</u></p> <p>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.</p> <p><u>Variation to Land Access Agreement</u></p> <p>If a party has not responded to a the notice within the nominated period, or parties cannot reach an agreement on an ADR process or ADR facilitator, the party who gave the notice may apply to the CEO for the appointment of a member of the Mediators Panel to conduct mediation.</p>	A party may only apply to the CEO once the nominated period has lapsed.	<p>Regulation 19</p> <p>Regulation 38</p>
ADR process conducted			
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 earliest opportunity .	Regulation 25(3)

8	<p><u>Land Access Agreement</u></p> <p>A petroleum company must provide a draft land access agreement, a landholder may also choose to provide a draft land access agreement.</p> <p><u>Variation to Land Access Agreement</u></p> <p>The party seeking the variation must provide a draft of the variation, or of the land access agreement as varied, for the purposes of the ADR process</p>	-	<p>Subregulation 25(7)</p> <p>Subregulation 38(3)(a)</p>
9	<p>Parties must negotiate in good faith and may be legally represented.</p> <p>An ADR convenor must use their best endeavours to bring the parties to a negotiated outcome.</p>	-	<p>Regulation 10</p> <p>Subregulation 25(6)(c)</p> <p>Subregulation 25(6)(a)</p>
ADR process terminated			
10	If parties reach a land access agreement or variation in writing, the ADR process can be concluded.	-	<p>Subregulation 26(1)(c)</p> <p>Subregulation 26(2)</p>
11	<p>The ADR process may be terminated if:</p> <ul style="list-style-type: none"> parties cannot reach a negotiated outcome for a land access agreement/variation after a period of at least 30 days from the commencement date fixed by the ADR convenor and: <ul style="list-style-type: none"> the interest holder requests the ADR process be brought to an end (if negotiating a land access agreement); or the party seeking the variation requests the ADR process be brought to an end the ADR convenor decides there is no reasonable prospect that the matter will be settled within a reasonable time and brings the process to an end; or the parties request to terminate the ADR process. 	An ADR process must be conducted for at least 30 days from the commencement date fixed by the ADR convenor before it can be terminated.	<p>Subregulation 26(1)(a)</p> <p>Subregulation 26(1)(b)</p> <p>Subregulation 38(3)(b)</p>

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	<p><u>Land Access Agreement</u> 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.</p> <p><u>Variation to Land Access Agreement</u> The party seeking the variation will be responsible for any reasonable costs and other costs associated with the ADR process that have been necessarily incurred. The party seeking the variation must also pay the costs of the ADR convenor.</p>	A petroleum company must pay the costs within 30 days after a request for payment is made, unless costs are disputed.	<p>Regulation 28</p> <p>Subregulation 38(3)(c)</p>
Litigation process triggered			
15	<p><u>Land Access Agreement</u> 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.</p> <p><u>Variation to Land Access Agreement</u> If an ADR process terminates without the parties agreeing on a variation, the party who proposed the variation may apply to the NTCAT for the resolution of the matter.</p>	-	<p>Subregulation 29(1)</p> <p>Subregulation 38(4)</p>
16	<p><u>Land Access Agreement</u> 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.</p> <p><u>Variation to Land Access Agreement</u> The NTCAT may make an order for the variation of a land access agreement.</p>	-	<p>Subregulation 29(2)</p> <p>Subregulation 29(3)</p> <p>Subregulation 29(4)</p> <p>Subregulation 40(2)(g)</p>

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.

