MARYLOU POTTS PTY LTD
ACN 074 696 263

113b Carabella Street
Kirribilli NSW 2061

14 June 2015

Mr John Smith
NSW 2871

By email:

Dear Mr Smith,

Submission to IPART on Compensable Loss under the Petroleum (Onshore) Act

I hope to be able to make a comprehensive submission if given the opportunity later this year.

My practice specializes in acting for landholders who have miners or explorers seeking access to their property. I have been involved in 12 access arbitrations acting for landholders since 2011.

My experience is that a landholder is currently in no way compensated for the loss suffered as a consequence of a title holder seeking access.

I submit "*compensable loss*" should be based on a principle that the landholder and the land should be no worse off as a consequence of the title holder's seeking and undertaking activities on a landholder's property.

Inaccurate statement of the law in the IPART paper

The IPART Issues Paper misstates the law on page 10, the last paragraph in paragraph 2.4. It states "*Landholders do not have a legal right to deny a petroleum title holder access to their land.*" This is plainly inaccurate.

Until an access arrangement is either negotiated or determined a landholder has an absolute right to deny access to a title holder. The title holder has no right to a site visit or any other right to access the landholders land under the provisions of the *Petroleum (Onshore) Act* (**Act**) until an access arrangement is negotiated or determined. Even when an access arrangement is determined, a landholder can deny access until the result of a review of the determined access arrangement in the Land and Environment Court, if the landholder remains aggrieved and makes an application for that review.

There is no "*right to enter*" within the *Petroleum (Onshore) Act* (**Act**) or the *Mining Act* of NSW [unlike in other jurisdictions e.g. Qld].

A right to prospect is not a right to enter.

Section 69C of the *Petroleum (Onshore)* Act states a title holder cannot carry out prospecting operations except in accordance with an access arrangement with the landholder which is either agreed or determined.

If an access arrangement is not agreed, the title holder generally seeks that an arbitrator determine the access arrangement [see ss69E, 69F, s69G of the Act].

Sections 69L(1)(a) and 69N(2)(a) *Petroleum (Onshore) Act* make it clear that an arbitrator has the power to determine "*whether or not*" to grant access to the land.

It may be, as a simple and typical example, that the approved drilling is positioned within the "no go" zones set out in s72 of the Act [that is within the 200m zone, or 50m zone, or on an improvement] and the landholder does not give consent of the title holder to conduct the prospecting operations within that zone. These are circumstances where it is clear on the face of the Act that a landholder can deny access to a titleholder and an arbitrator would/should do the same.

The Walker Report refers to these as "no go zones" [the equivalent in the Mining Act is s31] and also speaks of instances where access should/can be denied.

The *Brown v Coal Mines Australia [2010] NSWSC* case also speaks of instances where access should be denied.

There are numerous other instances where access may be denied, for example, if prospecting operations are proposed within the zones protected in the SEPP (Mining Petroleum and Extractive Industries), the title holder does not have approval, the title holder is seeking to undertake prospecting operations outside the title area, or the prospecting operations are too close to a water body. In all these instances, a landholder can legitimately argue access should be denied.

I note IPART's acceptance of this fundamental error. Yet I do not accept its proposed change or the manner in which it proposes to make that change. IPART has refused to put an addendum on its website alerting others of this error. It has proposed to make a change to the sentence some time later. I submit this continued deception of the landholder is unfathomable. It is also fundamental to a landholders bargaining position for compensation. A landholder needs to be provided with a clear and unbiased interpretation of the law, particularly by government bodies.

I submit this sentence in para 2.4 of the Issues Paper must be corrected. A landholder not only has a "general" right to deny access until an access arrangement is negotiated or determined. That landholder may also have a general right to deny access if its entire property is covered with improvements. If for example the entire property is cropped. As long as the landholder has reasonable grounds he may refuse access without sanction pursuant to the Act.

Yours sincerely,

Marylou Potts