



**WAIVER OF EXEMPTION - REQUEST**

**USE THIS FORM TO:**

Request that a person who has the benefit of an exemption under section 9 of the Act, that is 'exempt land', enter into an agreement with a mining operator to allow exploration and/or mining operations on the land (see Appendix A for details).

**Section A: Applicant(s)**

	NAME OF COMPANY or INDIVIDUAL	% SHARE		ⓘ List all applicants and percentage share in the application.
Applicant 1			%	
Applicant 2			%	

**Note: Each party must complete a separate copy of the 'applicant details' page attached to this form.**

**Section B: For the attention of the person who has the benefit of an exemption<sup>1</sup> under section 9 of the Act.**

Owner of land				ⓘ Please refer to note below for information on who may be considered to be the holder of the benefit of exempt land.
Address line 1				
Address line 2				
Suburb/Locality		State	Postcode	
Type of owner				

<sup>1</sup> Under the *Mining Act 1971*, the following persons shall be regarded as having the benefit of an exemption under section 9:

- a) The owner of the exempt land; and
- b) In the case of land that is exempt from mining operations under section 9(1)(d) by reason of its proximity to other land on which a building, structure, spring, well, reservoir or dam is situated – the owner of that other land.

**Section C: Location, timing and duration of proposed activities on the land**

Section, Hundred		ⓘ Identify the land with as much detail as possible.
Pastoral block		
Land Title reference		
Describe why the land is classified as 'exempt land' under section 9 of the Act.		ⓘ Address at least one requirement. Additional information (including a plan) may be attached.
Describe the place(s) where activities are to be carried out on the land; the nature of the operations; and the proposed timing and duration of the activities.		

**Section D:**

I, the mining operator, request that you, the person who has the benefit of an exemption identified in Section C, enter into an agreement to waive the benefit of the exemption for the operations listed in Section C.

Type	<input type="checkbox"/> Individual		<input type="checkbox"/> Company		<i>i</i> Provide a postal address that can be used to contact you regarding this notice.  <i>i</i> If 'Company', provide ABN/ACN.
Name					
Address line 1					
Address line 2					
Suburb/Locality		State	Postcode		
ABN		ACN			
Contact Name					<i>i</i> A contact person <b>must</b> be nominated.
Email					
Telephone		Mobile			

**Section E: Declaration that application is complete and accurate**

I declare the information provided in this request is complete and accurate and meets the requirements of section 9AA of the Act and regulation 6 of the Mining Regulations 2011, and that *Appendix A: Further information for the owner of land* is attached.

<b>APPLICANT 1</b>	Individual or Company Representative 1		Individual's Witness or Company Representative 2		<i>i</i> Ensure that applicants sign in the correct order, as listed on page 1.
Print Name	1.		2.		
Signature	1.		2.		
<b>APPLICANT 2</b>	Individual or Company Representative 1		Individual's Witness or Company Representative 2		
Print Name	1.		2.		
Signature	1.		2.		

**COMPANY:** Sign in accordance with the *Corporations Act 2001*. If agent, written authority must be provided.

**INDIVIDUAL:** Signature must be witnessed by a person who is not a beneficiary of the application (e.g. not a joint applicant).



## WAIVER OF EXEMPTION - REQUEST

## APPENDIX A: FURTHER INFORMATION FOR THE PERSON WHO HAS THE BENEFIT OF AN EXEMPTION

② The following information is provided as a guide only. You may wish to seek your own advice on this notice.

## Glossary of terms used in this document

- The Act –** the current version of the *Mining Act 1971*
- Mining operator –** the party who served the notice to you. They may already hold, or be applying for, a mining tenement under the Act (including exploration licence or mineral claim)
- Mining operations –** any operations carried out in the course of prospecting, exploring or mining for minerals
- Owner of land –** a person who:
- a) Holds a registered estate or interest in the land conferring a right to immediate possession of the land; or
  - b) Holds native title in the land; or
  - c) Has, by statute, the care, control or management of the land; or
- Is lawfully in occupation of the land.
- Holder of benefit of exemption –**
- a) the owner of the exempt land
  - b) in the case of land that is exempt from mining operations under subsection (1)(d) by reason of its proximity to other land on which a building, structure, spring, well, reservoir or dam is situated – the owner of that other land.

## Purpose of this form

You have received Form 23A (Waiver of Exemption – Request) because the mining operator is requesting that you enter into an agreement to allow mining operations on your land, and your land is considered to be 'exempt land'.

## Exempt land

Under section 9 of the Act the following land is exempt from mining operations-

- (a) land that is lawfully and genuinely used –
  - (i) as a yard, garden, cultivated field, plantation, orchard or vineyard;
  - (ii) as an airfield, railway or tramway;
  - (iii) as the grounds of a church, chapel, school, hospital or institution; or
- (b) land that constitutes any parklands or recreation grounds under the control of a council; or
- (ba) land –
  - (i) that is dedicated or reserved, pursuant to statute, for the purpose of waterworks; or
  - (ii) that is vested in the Minister of Public Works for the purpose of waterworks; or
  - (iii) that is comprised within an easement in favour of the Minister of Public Works;
 or
- (bb) land that constitutes a forest reserve under the Forestry Act 1950; or
- (c) any separate parcel of land of less than 2 000 square metres within any city, town or township; or
- (d) land that is situated –
  - (i) within 400 metres of a building or structure used as a place of residence (except a building or structure of a class excluded by regulation from the ambit of this paragraph); or
  - (ii) within 150 metres of –
    - (A) a building or structure, with a value of \$200 or more, used for an industrial or commercial purpose; or
    - (B) a spring, well, reservoir or dam

The land is not exempt land if a mining tenement (claim, lease or licence) is pegged or granted before the land falls into one of the above categories. For example, land will not be classed as exempt land if a dwelling or structure is built after a mining tenement is pegged or granted.

## Waiver of exemption agreement

The benefit of an exemption under the Act may be waived by a written agreement between the mining operator and the person who has the benefit of the exemption or by an ERD Court order if an agreement cannot be reached.

Mining operations cannot commence until after the exemption has been waived (through an agreement or court order), however the mining operator may enter the exempt land and/or peg a claim before the exemption has been waived.

Section 9AA of the Act outlines a two-step process whereby the operator first serves a *Form 23: Waiver of Exemption – Request* (Form 23) on the person who has the benefit of the exemption, and also enters into an agreement with that person to waive the exemption.

If the person who has the benefit of the exemption consents to enter into an agreement, the Waiver of Exemption agreement document must comply with section 9AA of the Act and regulation 6(1) of the *Mining Regulations 2011*.

Form 23 and an agreement to waive the benefit of an exemption, once negotiated, will meet these requirements and may be lodged together for registration with the Mining Registrar.

In accordance with section 9AA of the Act, a person who has the benefit of the exemption may rescind the Waiver of Exemption agreement, by giving the mining operator written notice before the expiration of the cooling off period (five clear business days after the day on which the agreement is made).

If an agreement cannot be reached between the mining operator and the person who has the benefit of the exemption, the mining operator may apply to the Environment, Resource and Development (ERD) Court for an order waiving the benefit of the exemption.

If the mining operator satisfies the ERD Court that adverse effects from mining operations can be addressed by imposing conditions, the Court may make an order waiving the benefit of the exemption (including conditions and compensation). If the Court is not satisfied it may refuse the application.

The Court may not make an order for costs against the person who has the benefit of the exemption unless the person has obstructed or delayed the proceedings or the person has failed to attend any proceedings or failed to comply with a rule, order or direction of the Court.

If the benefit of an exemption is waived by agreement or Court order, the land ceases to be exempt land until mining operations have been completed, or such time as stipulated in the agreement or Court order, whichever comes first.

An agreement or order to waive the benefit of exemption under the Act is binding on and carries forward to –

- (a) successors in title to those owners of the land who had the benefit of the former exemption; and
- (b) the holders from time to time of any mining tenement under which mining operations are carried out.

The mining operator who gives notice under this section is liable to pay to the person who has the benefit of the exemption reasonable costs of obtaining legal assistance up to \$500, or some other amount as prescribed. The person who has the benefit of the exemption must provide a copy of an account or other reasonable evidence relating to the cost of obtaining that assistance.