



WAIVER OF EXEMPTION - REQUEST

USE THIS FORM TO:

Request that an owner of land 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: For the attention of the Owner of Land¹ that is exempt land

Owner of land name/s			ⓘ 'Owner of land' has several definitions – see notes below.
Address line 1			
Address line 2			
Suburb/Locality	State	Postcode	
Type of owner			

¹ Under the *Mining Act 1971*, **owner of land** includes (but is not limited to) –

- a freehold landowner; or
- a native title holder; or
- a person who controls or manages the land; or
- a person who is lawfully in occupation of the land.

Refer to Part 1, section 6 of the Act for the full definition of **owner of land**.

Section B: Location of exempt land

Location		ⓘ Clearly define the area of the land with as much detail as possible. Complete as many fields as you have information for.
Section		
Hundred		
Pastoral block		
Other		
Describe why the land is classified as 'exempt land' under section 9 of the Act.		ⓘ See Appendix A for prescribed definitions.

Section C: I, the mining operator, request that you, the owner of the exempt land identified in Section B, enter into an agreement to waive the benefit of the exemption for the operations listed in Section D.

Client type	<input type="checkbox"/> Individual <input type="checkbox"/> Company		ⓘ Provide a postal address that the owner of land can use to contact you. If 'Company', provide ABN/ACN.
Name			
Address line 1			
Address line 2			
Suburb/Locality	State	Postcode	
ABN	ACN		

Mining operator (continued)

Contact Name			ⓘ A contact person must be nominated, and may be an agent of the operator.
Email			
Telephone		Fax	

Section D: Location of proposed operations

Describe the location/s where the operations are intended to be carried out, within the land specified in Section B.

	ⓘ Detail specific locations within the land, using directions, coordinates etc. and/or A plan may be attached.

Section E: Details of proposed operations

Describe the operations and activities that the operator intends to carry out.

	ⓘ Provide specific details of the mining operations and activities. Attach additional information as necessary.

Section F: Mining operator certification

<input type="checkbox"/> This notice is complete and correct	ⓘ Check that these items are complete.
<input type="checkbox"/> Appendix A: Further information for the owner of land is attached	

	COMPANY REPRESENTATIVE OR INDIVIDUAL		COMPANY REPRESENTATIVE OR INDIVIDUAL'S WITNESS		ⓘ COMPANY: must be signed by appropriate representative/s. INDIVIDUAL: witness certifies that the individual named above is the person whose signature appears here.
Print Name	1.		2.		
Role	1.		2.		
Date Signed	1.		2.		
Signature	1.		2.		
Applications in an individual's name must be witnessed by a person who is not a beneficiary of the application (e.g. not a joint applicant).					



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APPENDIX A: FURTHER INFORMATION FOR THE OWNER OF LAND

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

Glossary of terms used in this document

The Act –	the <i>Mining Act 1971</i>
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 –	see Section A of this form for a definition
Benefit holder –	the owner of the exempt land, or the owner of nearby land that is exempt land by reason of its proximity to the mining operations

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

The benefit of an exemption under the Act may be waived by a written agreement between the mining operator and the benefit holder, 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 must first serve a Waiver of Exemption – Request (Form 23A) to the benefit holder, and secondly enter into an agreement with that person to waive the exemption.

If the benefit holder 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 23A (Waiver of Exemption – Request) and 23B (Waiver of Exemption – Agreement) together, when completed correctly, will meet these requirements and may be lodged together for registration with the Mining Registrar as the Waiver of Exemption agreement.

Alternatively the operator and the benefit holder may enter into a written Waiver of Exemption agreement, in accordance with the requirements listed above. The mining operator **must** still serve Form 23A on the benefit holder to request an agreement.

In accordance with section 9AA of the Act, a benefit holder 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 benefit holder, 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 benefit holder 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 benefit holder reasonable costs of obtaining legal assistance up to \$500, or some other amount as prescribed. The benefit holder must provide a copy of an account or other reasonable evidence relating to the cost of obtaining that assistance.



WAIVER OF EXEMPTION - AGREEMENT

USE THIS FORM TO: Enter into an agreement with an owner of exempt land to allow exploration and/or mining operations on the land, following service of Form 23A to request the agreement

Section G: Details of Agreement

Describe the details of the exemption provided under this agreement.

	Provide specific details of the exemption provided, such as the agreed location, timing and details of operations, and any exempt land that is not part of this agreement.


Conditions of Agreement

Describe any conditions that apply to this agreement.


	Provide specific details of any conditions that apply and any recourse if the conditions are not met.

Section H: Owner of exempt land consent

I hereby waive the exemption in relation to the location identified in Section D above and subject to the conditions stated above –


from Start Date	/ /	to End Date	/ /	 The agreement ceases when operations are complete.
The exemption will cease when mining operations are completed, or at the end date of this agreement, whichever comes first.				

Cooling off period – In accordance with section 9AA(5) of the Act, the owner of exempt land may rescind this agreement by giving written notice to the mining operator before the expiry of the cooling off period (five clear business days after the day on which the agreement is made).

Owner of exempt land	COMPANY REPRESENTATIVE OR INDIVIDUAL		COMPANY REPRESENTATIVE OR INDIVIDUAL'S WITNESS		 COMPANY: must be signed by appropriate representative/s. INDIVIDUAL: witness certifies that the individual named above is the person whose signature appears here.
Print Name	1.		2.		
Role	1.		2.		
Date Signed	1.		2.		
Signature	1.		2.		
Applications in an individual's name must be witnessed by a person who is not a beneficiary of the application (e.g. not a joint applicant).					

Section I: Mining operator certification

I certify that the statements above are the matters agreed between the owner of land and myself as the mining operator.

Mining operator	COMPANY REPRESENTATIVE OR INDIVIDUAL		COMPANY REPRESENTATIVE OR INDIVIDUAL'S WITNESS		 COMPANY: must be signed by appropriate representative/s. INDIVIDUAL: witness certifies that the individual named above is the person whose signature appears here.
Print Name	1.		2.		
Role	1.		2.		
Date Signed	1.		2.		
Signature	1.		2.		
Applications in an individual's name must be witnessed by a person who is not a beneficiary of the application (e.g. not a joint applicant).					

NOTE: Forms 23A and 23B must be lodged together to be a valid Waiver of Exemption agreement.