

# Consultation on draft mining regulations

Draft information  
sheets on revised land  
access provisions

Draft



**Government  
of South Australia**

Department for  
Energy and Mining

## **Mineral Resources Division**

Department for Energy and Mining  
Level 4, 11 Waymouth Street, Adelaide  
GPO Box 320, Adelaide SA 5001

Phone +61 8 8463 3000

Email [DEM.Minerals@sa.gov.au](mailto:DEM.Minerals@sa.gov.au)

[www.energymining.sa.gov.au/minerals](http://www.energymining.sa.gov.au/minerals)

South Australian Resources Information Gateway (SARIG)

[map.sarig.sa.gov.au](http://map.sarig.sa.gov.au)

The information contained in this document has been compiled by the Department for Energy and Mining (DEM) and originates from a variety of sources. Although all reasonable care has been taken in the preparation and compilation of the information, it has been provided in good faith for general information only and does not purport to be professional advice. No warranty, express or implied, is given as to the completeness, correctness, accuracy, reliability or currency of the materials.

DEM and the Crown in the right of the State of South Australia does not accept responsibility, and will not be held liable to any recipient of the information, for any loss or damage however caused (including negligence) which may be directly or indirectly suffered as a consequence of use of these materials. DEM reserves the right to update, amend or supplement the information from time to time at its discretion.

# Contents

Introduction.....	4
Information sheets	
Notice of Entry: your rights.....	5
Your rights to agreement making and compensation .....	7
Exempt land: your rights .....	9
Exempt land: court-imposed conditions and compensation .....	12
Exempt land: supporting landowners with legal fees.....	13
Your rights to apply to the Small Business Commissioner .....	14

Draft

# Introduction

DEM welcomes feedback on these draft land access related information sheets as part of its consultation on the draft mining regulations.

## Information sheets

Mineral rights in South Australia are generally owned by the Crown, not owners of land titles. The Mining Act allows individuals and private companies to conduct mineral exploration and mining on most South Australian land, including freehold and pastoral land, subject to authorisation from the regulator.

Before entering land an explorer or miner must give notice to the owner of the land, using a notice required by the revised Act, or by negotiating an agreement with the owner of land that includes the conditions of entry.

The revised land access provisions require notices to be accompanied by certain types of information that will help the owner of land to understand the notice they have received and their rights regarding objections, agreement making, compensation and mediation.

This document contains draft information sheets about:

- Notice of Entry: your rights
- Your rights to agreement making and compensation
- Exempt land: your rights
- Exempt land: court-imposed conditions and compensation
- Exempt land: supporting landowners with legal fees
- Your rights to apply to the Small Business Commissioner

## Further information

For more information, including how to make a submission, please see the [DEM website](#).

## Information sheet

# Notice of Entry: your rights

You have received a Notice of Entry from an explorer. This may be a new experience so it's important you have the right information to understand the process.

Firstly, an explorer *must* notify you or enter into a land access agreement before entering your land to start any exploration operations.

The notice you have received details the exploration operations that the explorer is proposing to carry out on your property.

There are two types of notices you may receive. Each of them advises you of the explorer's intention to enter your land for exploration and what kind of operations are proposed:

1. Notice of Low Impact Exploration Operations – the explorer proposes to enter your land and carry out exploration operations that have a low level of impact. Low impact or early exploration operations usually have limited or no on-ground disturbance beyond the access requirements.  
  
Before an explorer can undertake operations beyond the scope of this notice, they may be required to give you another notice explaining the advanced exploration operations they propose.
2. Notice of Advanced Exploration Operations – the explorer proposes to enter your land and carry out low impact exploration operations and advanced exploration operations. Advanced exploration operations may include drilling, associated operations and earthworks or trenches.

Other operations may include:

- the establishment of temporary camps and lay down areas for equipment storage
- the use of machinery to create temporary access and drill traverses
- use of water tanks to store water for drilling operations.

Access to your land is not allowed until 42 days after the date of the notice, unless you and the explorer have agreed otherwise.

If you wish to stipulate your own terms and conditions relating to entry onto your land and the proposed operations instead of accepting those set out in the notice, you have the right as a landowner to seek an agreement directly with the explorer.

Detailed information about the types of exploration, landowner rights, agreement making and possible compensation available is available on [DEM's website](#).

## Objection rights

If you are a freehold landowner or pastoral lessee and you are unable to come to an agreement with the explorer about entry onto your land, you have the right to object to their proposed entry.

You can object to entry onto your land by lodging a Notice of Objection in the relevant

court. In South Australia this means the Warden's Court, Environment, Resources and Development Court or Supreme Court.

You have three months to lodge a Notice of Objection after receiving the Notice of Entry. This may be after the 42-day period of notice has finished and after the explorer has entered your property and commenced operations.

Departmental forms and templates can be downloaded from [http://energymining.sa.gov.au/minerals/exploration/forms\\_and\\_fees/forms\\_and\\_templates](http://energymining.sa.gov.au/minerals/exploration/forms_and_fees/forms_and_templates)

Further information on court-determined conditions and compensation is provided in a separate information sheet attached to this notice.

## Landowner Information Service

Rural Business Support (RBS) is a not-for-profit organisation that provides independent services and support to families and individuals involved in primary industries to help them manage change, risk and business challenges.

The Landowner Information Service, established in July 2020, is a free, independent information service for South Australian landowners on matters related to exploration, extractives or mining regulatory processes.

Its core function is to offer information to help you to make informed decisions when liaising with representatives from the resources industry including to explain your options, rights and responsibilities. The service does not provide legal, commercial, compensatory or financial advice.

## Contacts

### Department for Energy and Mining

[www.energymining.sa.gov.au](http://www.energymining.sa.gov.au)

Phone: 08 8463 3000

Email: [DEM.CustomerServices@sa.gov.au](mailto:DEM.CustomerServices@sa.gov.au)

L4, 11 Waymouth Street

Adelaide SA 5000

GPO Box 320

Adelaide SA 5001

### Landowner Information Service

[www.ruralbusinesssupport.org.au](http://www.ruralbusinesssupport.org.au)

Phone: 1800 836 211

Email: [admin@ruralbusinesssupport.org.au](mailto:admin@ruralbusinesssupport.org.au)

## Information sheet

# Your rights to agreement making and compensation

### Agreement making, compensation and conditions

Landowners may enter into an agreement with a tenement holder that lays out the conditions for access to your land. Agreements are a way to legally document commitments between parties and describe the behaviours expected from the tenement holder and their contractor personnel who wish to conduct operations on the land.

You have the right to negotiate the terms and conditions with the tenement holder including:

- *how, where, when and how often* the operations will occur on the land
- compensation due for the economic loss, hardship and inconvenience caused by the operations conducted on your land
- how the tenement holder will protect and preserve your personal and commercial use of your land and minimise the inconvenience of the operations as much as possible.

The agreement should detail procedures that both parties should follow to maximise cooperation. It must:

- be in writing
- include all the terms and conditions agreed to by the parties.

### Compensation

Compensation is negotiated between the landowner and explorer or miner. The amount of compensation depends on your set of circumstances.

It is your legal right to seek fair compensation for economic loss, hardship and disturbance.

You have the right to seek agreement on the processes to determine the value of compensation.

Information on your rights to legal advice is provided in a separate information sheet attached to this notice.

Detailed information about landowner rights, agreement making and compensation is available on [DEM's website](#).

### Options for information and mediation

If you need more information about your rights to agreement making, compensation and conditions, the Landowner Information Service provides free, independent and easy-to-understand information to any individual or business who feels affected by operations conducted by the state's mineral exploration and mining sectors.

If you are unable to reach an agreement on terms and conditions, small business owners such as farmers can also request mediation services by applying to the Office of the Small Business Commissioner under the *Fair Trading (Mining and Resources Industry Land Access Dispute Resolution Code) Regulations 2018*.

## Contacts

### Department for Energy and Mining

[www.energymining.sa.gov.au](http://www.energymining.sa.gov.au)

Phone: 08 8463 3000

Email: [DEM.CustomerServices@sa.gov.au](mailto:DEM.CustomerServices@sa.gov.au)

L4, 11 Waymouth Street  
Adelaide SA 5000  
GPO Box 320  
Adelaide SA 5001

### Landowner Information Service

[www.ruralbusinesssupport.org.au](http://www.ruralbusinesssupport.org.au)

Phone: 1800 836 211

Email: [admin@ruralbusinesssupport.org.au](mailto:admin@ruralbusinesssupport.org.au)

### Officer of the Small Business Commissioner

<https://www.sasbc.sa.gov.au>

Phone: 08 8303 2026

Email: [sasbc@sa.gov.au](mailto:sasbc@sa.gov.au)

Ground Floor, 99 Gawler Place  
Adelaide SA 5000  
GPO Box 1264  
Adelaide SA 5001

## Information sheet

# Exempt land: your rights

### Exempt land

You have received a Waiver of Exemption notice from an explorer or miner. This may be a new experience so it's important you have the right information to understand the process.

Some areas of land in South Australia are treated differently and are considered exempt from exploration and mining operations without permission from the landowner or by order of the relevant court. Explorers or miners cannot access exempt land until both parties reach agreement or the court grants access under specific conditions.

As an owner of exempt land, you have rights under the Mining Act to waive the benefit of that exemption by coming to an agreement with the explorer or miner (often referred to as the tenement holder – a tenement holder is someone who has a claim, lease or licence under the Mining Act).

The notice you have received is a request from the explorer or miner seeking your agreement to remove the exemption over your land to allow operations to be undertaken on your property or near your property.

### Agreement making, compensation and conditions

Landowners have the right to enter into an agreement with a tenement holder that lays

out the conditions for access to your land. Agreements are a way to legally document commitments between parties and describe the behaviours expected from the tenement holder and their contractor personnel who wish to conduct operations on the land.

You have the right to negotiate the terms and conditions with the tenement holder including:

- *how, where, when and how often* the operations will occur on the land
- compensation due for the economic loss, hardship and inconvenience caused by the operations conducted on your land
- how the tenement holder will protect and preserve your personal and commercial use of your land and minimise the inconvenience of the operations as much as possible.

The agreement should detail procedures that both parties should follow to maximise cooperation. It must:

- be in writing
- include all the terms and conditions agreed to by the parties
- take effect on the expiry of the cooling-off period, unless the agreement is revoked or cancelled before the cooling-off period ends.

The cooling-off period is five days after signing the agreement.

If agreement cannot be reached, you have the right apply to the court for determinations

to be made on the exempt land, access conditions and compensation amounts. In South Australia a determination can be made by the Warden's Court, Environment, Resources and Development Court or Supreme Court.

## Compensation

Compensation is negotiated between the landowner and explorer or miner. The amount of compensation depends on your set of circumstances.

It is your legal right to seek fair compensation for economic loss, hardship and disturbance.

You have the right to seek agreement on the processes to determine the value of compensation.

Your right to compensation is in addition to any legal assistance rights you may have in relation to the exempt land provisions under the Mining Act.

## Owners of exempt land have the right to be reimbursed for legal costs

As an owner of exempt land, when you are approached by an explorer or miner about operations that could impact on your land, you may wish to obtain legal advice to assist you to understand your rights and determine whether or not you should waive the benefit of your exemption.

Under the *Mining Act 1971* you are able to claim up to \$2500 from an explorer or miner who has requested access to your exempt land, to

reimburse you for legal costs that you incur in the process of considering their request.

Your right to claim legal assistance is not restricted to a single time. It is also reset whenever there is a change in the explorer or miner seeking access to your exempt land, a change in the operations being proposed, or a significant change in the location of the proposed operations.

To make a claim for reimbursement of legal costs you will need to provide the explorer or miner with a copy of a relevant invoice from your legal representative or other reasonable evidence that costs were incurred.

Your right to claim up to \$2500 in legal costs is in addition to any compensation rights you may have under section 61 of the *Mining Act 1971*. You may also seek to negotiate with the explorer or miner for additional funding for legal assistance, including as part of the development of a formal land access agreement.

Detailed information about landowner rights, agreement making and compensation is available on [DEM's website](#).

## Options for information and mediation

If you need more information about your rights regarding exempt land, agreement making, compensation and conditions, the Landowner Information Service provides free, independent and easy-to-understand information to any individual or business who feels affected by operations conducted by the state's mineral exploration and mining sectors.

If you are unable to reach an agreement on terms and conditions, small business owners such as farmers can also request mediation services by applying to the Office of the Small Business Commissioner under the *Fair Trading (Mining and Resources Industry Land Access Dispute Resolution Code) Regulations 2018*.

## Contacts

### **Department for Energy and Mining**

[www.energymining.sa.gov.au](http://www.energymining.sa.gov.au)

Phone: 08 8463 3000

Email: [DEM.CustomerServices@sa.gov.au](mailto:DEM.CustomerServices@sa.gov.au)

L4, 11 Waymouth Street  
Adelaide SA 5000  
GPO Box 320  
Adelaide SA 5001

### **Landowner Information Service**

[www.ruralbusinesssupport.org.au](http://www.ruralbusinesssupport.org.au)

Phone: 1800 836 211

Email: [admin@ruralbusinesssupport.org.au](mailto:admin@ruralbusinesssupport.org.au)

### **Officer of the Small Business Commissioner**

<https://www.sasbc.sa.gov.au>

Phone: 08 8303 2026

Email: [sasbc@sa.gov.au](mailto:sasbc@sa.gov.au)

Ground Floor, 99 Gawler Place  
Adelaide SA 5000  
GPO Box 1264  
Adelaide SA 5001

## Information sheet

# Exempt land: court-imposed conditions and compensation

### Purpose of exempt land

Some areas of land in South Australia are treated differently and are considered exempt from exploration and mining operations without permission from the landowner or by order of the relevant court.

### Court-imposed conditions and compensation

Where you and the explorer or miner are unable to come to an agreement in relation to exempt land, you or the explorer or miner may apply to the court for a determination to be made on the proposed operations. In South Australia a determination can be made by the Warden's Court, Environment, Resources and Development Court or the Supreme Court.

If a court process begins, a series of hearings may occur. When these are completed, the court may determine:

- conditions and compensation arrangements under which the proposed operations may be carried out on your land by the explorer or miner, minimising any impact to your land or enjoyment of your land; or
- proposed operations cannot proceed on some or all of your land as conditions or compensation cannot sufficiently address a potential impact to your land or enjoyment of your land.

During the court process, you can submit to the court the conditions and compensation you think are reasonable and the proposed operations you agree to be undertaken, however, the ultimate decision-making on the conditions to be applied, compensation that may be payable and the extent of authorised operations will be determined by the Court. The court's determination may not reflect your submissions as the court must make determinations in accordance with the Mining Act after considering any submissions from you and the explorer or miner.

A court determination is an enforceable court order. Any breach of the conditions or compensation elements of a determination by either party is a serious matter and can result in penalties.

### Contacts

#### Department for Energy and Mining

[www.energymining.sa.gov.au](http://www.energymining.sa.gov.au)

Phone: 08 8463 3000

Email: [DEM.CustomerServices@sa.gov.au](mailto:DEM.CustomerServices@sa.gov.au)

L4, 11 Waymouth Street  
Adelaide SA 5000  
GPO Box 320  
Adelaide SA 5001

## Information sheet

# Exempt land: supporting landowners with legal fees

### **Purpose of exempt land**

Some areas of land in South Australia are treated differently and are considered exempt from exploration and mining operations without permission from the landowner or by order of the relevant court.

### **Owners of exempt land have the right to be reimbursed for legal costs**

As an owner of exempt land, when you are approached by an explorer or miner about operations that could impact on your land, you may wish to obtain legal advice to assist you to understand your rights and determine whether or not you should waive the benefit of your exemption.

Under the *Mining Act 1971* you are able to claim up to \$2500 from an explorer or miner who has requested access to your exempt land, to reimburse you for legal costs that you incur in the process of considering their request.

Your right to claim legal assistance is not restricted to a single time. It is also reset whenever there is a change in the explorer or miner seeking access to your exempt land, a change in the operations being proposed, or a significant change in the location of the proposed operations.

To make a claim for reimbursement of legal costs you will need to provide the explorer or miner with a copy of a relevant invoice from your legal representative or other reasonable evidence that costs were incurred.

Your right to claim up to \$2500 in legal costs is in addition to any compensation rights you may have under section 61 of the Mining Act 1971. You may also seek to negotiate with the explorer or miner for additional funding for legal assistance, including as part of the development of a formal land access agreement.

Departmental forms and templates can be downloaded from [http://energymining.sa.gov.au/minerals/exploration/forms\\_and\\_fees/forms\\_and\\_templates](http://energymining.sa.gov.au/minerals/exploration/forms_and_fees/forms_and_templates).

### **Contacts**

**Department for Energy and Mining**  
[www.energymining.sa.gov.au](http://www.energymining.sa.gov.au)

Phone: 08 8463 3000

Email: [DEM.CustomerServices@sa.gov.au](mailto:DEM.CustomerServices@sa.gov.au)

L4, 11 Waymouth Street  
Adelaide SA 5000  
GPO Box 320  
Adelaide SA 5001

## Information sheet

# Your rights to apply to the Small Business Commissioner

If you are the owner of land that is used for a primary production business eg horticulture, viticulture or agriculture and an explorer or miner wants access to that land, you have the right to seek mediation under the Small Business Commissioner's *Fair Trading (Mining and Resources Industry Land Access Dispute Resolution Code) Regulations 2018*. This is often referred to as the [Mining and Resources Industry Land Access Dispute Resolution Code](#).

Explorers and miners have the same right as farmers to resolve a dispute through mediation provided under the Mining and Resources Industry Land Access Dispute Resolution Code.

### Applying for and participating in alternative dispute resolution

Farmers, explorers or miners seeking to have a dispute resolved under the Mining and Resources Industry Land Access Dispute Resolution Code *must* first submit a written application to the Office of the Small Business Commissioner.

The application can be lodged electronically at [Lodge a Mining and Resource Industry Land Access Dispute online](#) or an [Application to Lodge a Dispute form](#) can be printed and posted to the Office of the Small Business Commissioner.

The Small Business Commissioner will decide whether to mediate a dispute under the Code.

If the Commissioner uses an alternative dispute resolution procedure under the Code, each party must attend and participate in the procedure.

You may represent yourself or provide written authorisation to have an authorised person represent you. All parties, or their representatives, must act reasonably, fairly, honestly and cooperatively. They must not mislead, harass, intimidate or oppress another party to the dispute.

Each of the parties will need to pay a \$195 fee for each day that mediation occurs. The Commissioner may choose to waive the fee.

The Small Business Commissioner is not able to impose decisions on parties or prevent an explorer or mining operator from entering the land.

The Small Business Commissioner will try to provide mediation services on a case by case basis – eg where a landowner has lodged or intends to lodge a Notice of Objection with the court and the parties would like the matter to be resolved outside of court.

## **The Small Business Commissioner cannot receive a Notice of Objection**

If you have received a notice seeking access to your land and you wish to lodge an objection, you must lodge a Notice of Objection with the relevant court.

While the Small Business Commissioner can provide mediation services under the Mining and Resources Industry Land Access Dispute Resolution Code, the Commissioner is unable to assist you with lodging an objection.

This applies regardless of any negotiations you may be involved in with the explorer or miner directly or through the Small Business Commissioner.

## **Contacts**

### **Officer of the Small Business Commissioner**

<https://www.sasbc.sa.gov.au>

- [Lodge a Mining and Resource Industry Land Access Dispute online](#)
- [Application to Lodge a Dispute form](#)

Phone: 08 8303 2026

Email: [sasbc@sa.gov.au](mailto:sasbc@sa.gov.au)

Ground Floor, 99 Gawler Place  
Adelaide SA 5000  
GPO Box 1264  
Adelaide SA 5001

Mineral Resources Division  
Department for Energy and Mining  
Level 4, 11 Waymouth Street, Adelaide  
GPO Box 320, Adelaide SA 5001  
T +61 8 8463 3000  
E DEM.Minerals@sa.gov.au  
[www.energymining.sa.gov.au/minerals](http://www.energymining.sa.gov.au/minerals)