



# A guide to landholder compensation for mining claims and mining leases

For the grant and renewal of mining claims, mining  
leases and related access land in Queensland

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This publication has been compiled by Land and Mines Policy, Department of Natural Resources, Mines and Energy.

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# Summary

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## The purpose of this guide

This guide has been prepared to assist landholders and miners to understand compensation obligations for the grant and renewal of mining claims, mining leases, and related access land. Land owners entitled to compensation include owners of freehold land, *Land Act 1994* lessees, trustees of reserves, and lessees under the *Aboriginal and Torres Strait Land Holding Act 2013*.<sup>1</sup>

This guide does **not** discuss conduct and compensation agreements (CCAs) that are required to access private land by holders of exploration permits, mineral development licences, authorities to prospect, petroleum leases and other petroleum authorities.

A CCA may be required before a holder can undertake advanced activities on private land. If you require information on CCAs, you can read the Queensland Government's *A guide to land access in Queensland* at [www.dnrme.qld.gov.au](http://www.dnrme.qld.gov.au)

## Legal advice

This information should not be relied on as legal advice or as a substitute for legal advice.

You are strongly advised to obtain independent advice from a solicitor before signing any agreement.

The Queensland Government also recommends you obtain advice from your accountant about tax and GST issues related to any compensation payments you receive.

## Key concept

As a landholder you are entitled to have compensation determined before a mining claim, mining lease or access for either tenure is granted over the surface of your land.<sup>2</sup> Compensation is determined through an enforceable compensation agreement between you and the miner or Land Court determination. If agreed, the fully signed compensation agreement must be lodged with the Department.

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<sup>1</sup> For the full list, see the "owner" definition in schedule 2 of the *Mineral Resources Act 1989*. Only owners as defined in the *Mineral Resources Act* are entitled to compensation for the grant of a mining claim or lease.

<sup>2</sup> If there is no surface area included in the mining lease, the landholder may seek a compensation agreement with a mining lease holder if there is damage caused to the surface of the land.

# Key terms

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The following terms apply in this guide.

**Access land** means land outside the area of the mining claim or lease that is needed to get to and from the claim or lease.

**Authorised activity** means an activity that is permitted (or authorised) for the mining claim, mining lease or access land under the *Mineral Resources Act 1989*.

**Compensation agreement** means an agreement relating to compensation for a mining claim, mining lease or related access land, and lodged with the Department.

**Department or DNRME** means the Department of Natural Resources, Mines and Energy.

**Landholder** includes owners of freehold land, *Land Act 1994* lessees, trustees of reserves, and lessees under the *Aboriginal and Torres Strait Land Holding Act 2013*. For the full list of landholders see the definition of "owner" in Schedule 2 of the *Mineral Resources Act 1989*.

**Miner** means the holder of or applicant for a mining claim or mining lease.

**Restricted land** means land around particular buildings and areas that cannot be included in a mining claim or mining lease without the written permission of the relevant owner(s) or occupier(s).

# Key contacts

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You can access further information through:

- Queensland Government 'Business and Industry Portal' [www.business.qld.gov.au/industries/mining-energy-water/resources/minerals-coal](http://www.business.qld.gov.au/industries/mining-energy-water/resources/minerals-coal)
- DNRME Resource Community Infoline – phone 13 71 07 or email [resources.info@dnrme.qld.gov.au](mailto:resources.info@dnrme.qld.gov.au)
- Queensland Law Society find a solicitor at [www.qls.com.au/For\\_the\\_community/Find\\_a\\_solicitor](http://www.qls.com.au/For_the_community/Find_a_solicitor)
- Queensland Land Court:  
Land Court Registry  
363 George Street, Brisbane QLD 4000  
Phone: (07) 3406 7777 (during business hours)  
Email: [landcourt@justice.qld.gov.au](mailto:landcourt@justice.qld.gov.au)  
Web: [www.courts.qld.gov.au/courts/land-court](http://www.courts.qld.gov.au/courts/land-court)

# Mining claims, mining leases and access land

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Except in rare circumstances, minerals found in Queensland are not owned by land owners. The Queensland Government owns and manages these resources for the benefit of all Queenslanders.

## Mining claims

A mining claim allows small-scale mining operations such as prospecting and hand-mining to take place within its boundaries. If the mining claim is ‘prescribed’, the miner can use machinery to prospect, explore or mine. A person or company can hold a maximum of two mining claims at once.

A mining claim can be issued for any mineral other than coal, while a prescribed mining claim is only for corundum, gemstones or other precious stones. The miner has exclusive access to the surface of the mining claim area for purposes authorised by the claim while it is in force.

Applicants for a mining claim are not required to have an environmental authority if their activities meet the criteria for a small-scale mining activity. Instead, their activities need to comply with the Small Scale Mining Code. The Code can be downloaded from the Queensland Government’s Business Queensland website [here](#).<sup>3</sup>

## Mining leases

A mining lease is a resource authority that allows larger scale mining operations. Mining leases can be issued for any specified mineral including coal or a specific purpose and allow the holders of these authorities to mine using machinery and other activities related to mining (such as constructing a processing plant or installing powerlines). The miner has exclusive access for any purposes authorised by the lease to any surface land included in the mining lease while it is in force.

Mining lease holders are required to operate under an Environmental Authority issued by the Department of Environment and Science.

## Access land

When applying for a mining claim or mining lease, the applicant is required to specify how they will get to and from the claim or lease area – this is referred to as the “access” for the claim or lease. An access is needed when the mining claim or lease does not directly adjoin a public road. The access land will apply for the duration of the mining claim or lease (unless the miner applies to the Department to change its location).

In some cases only an access for a mining claim or lease will run over your land, not the claim or lease itself.

The miner does not get exclusive rights to use the access land. Both you and the miner can use the access and cannot adversely affect each other’s activities.

The miner may use the access land to:

- transport by road items reasonably necessary to carry out authorised activities
- transport by road any minerals mined by the miner
- construct road transport infrastructure reasonably necessary to allow it to transport the items or mined minerals.

Compensation for the miner’s use of the access over your land must be agreed or determined by the Land Court before the mining claim or mining lease can be granted.

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<sup>3</sup> [https://www.dnrm.qld.gov.au/\\_\\_data/assets/pdf\\_file/0006/262374/small-scale-mining-code.pdf](https://www.dnrm.qld.gov.au/__data/assets/pdf_file/0006/262374/small-scale-mining-code.pdf)

# Negotiating a compensation agreement

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While in force, the miner has exclusive rights to be on the mining claim or lease for authorised purposes, however the owner can enter and use the land with the miner's consent. For land used to access a mining lease or mining claim, the miner must co-exist with the landholder and their activities. It is important to remember these points when negotiating compensation.

## Being notified of the mining claim or lease application

The miner must notify landholders of the mining claim or lease application and provide the following documents:

- the mining claim or lease notice
- the application for the mining claim or lease
- for small scale mining activities – a copy of the Small Scale Mining Code
- this guide.

These documents contain important information about your rights to object to the grant of a mining claim or lease and also provide you with details of the activities the miner wants to do. The information in these documents will also be relevant when you start negotiating compensation.

## Preparing to negotiate compensation

The miner should contact you about making a compensation agreement. This could be before or after you are formally notified of the application being made. You can also contact the miner directly if you wish, using the details in their application form.

The miner should provide the land owner with details including:

- what surface area will be included in the mining claim or lease
- what activities they plan to carry out on the claim or lease
- where activities will be carried out and how they will affect existing structures and improvements
- when activities will be carried out (including time of the year, day or night, over what time period, etc.).

Miners should consider providing land owners with additional information, such as:

- who will carry out the activities, including the number of workers likely to be involved
- work programs and information about any potential impacts including noise, dust, lights, vibration, impact on water supply or water quality or other impacts
- any safety considerations, proposed emergency plans and important contacts
- what controls the miner has in place regarding access during or after inclement weather (e.g. high rainfall).

A landholder preparing for negotiations with a miner should consider preparing a map of their land and marking the location of key areas and infrastructure. You and the miner may agree that a map needs to be attached to the compensation agreement.

The map could include:

- access points, formed roads and tracks
- gates and fences
- stockyards
- homes and other buildings



- areas or structures of sentimental value (e.g. unused remains of historic homesteads)
- key agricultural areas and infrastructure (e.g. crops, dams, levees, irrigation channels, shade clumps)
- water bores and key watering points or other important infrastructure
- sensitive areas such as vegetation, waterways, erosion prone areas and overland groundwater flow areas
- any plans for expansion or improvement you may have underway
- an indication of when a miner accessing the property would be inconvenient (e.g. avoiding access during harvesting of cropped land or mustering stock).

## Standard compensation agreement template

The Department has developed a standard compensation agreement template that you may wish to use when negotiating compensation. The template can be accessed [here](#).<sup>4</sup>

This template agreement has been developed particularly with small scale mining operations in mind, for example mining claims and small mining leases under 20 hectares where the miner does not require exclusive access to the whole area of the mining claim or mining lease.

This template includes provisions for you to agree on compensation (monetary, in-kind or a combination) as well as rules about conduct. The conduct parts of the template agreement cover topics like access tracks, use of infrastructure and machinery, and fencing.

If you have any questions about the template agreement please contact the Resources Community Infoline or seek legal advice.

## Negotiating compensation

There are a number of things you can do to get a mutually beneficial agreement. Understanding what you want to get out of the process is the first step, because it helps to choose which approach you should take.

If you would like to include in-kind assistance in your agreement, then direct negotiation with the miner is the best approach because in a direct negotiation you can agree to non-monetary compensation. In-kind assistance might mean that the miner agrees to build a fence line or irrigation system for you, or dig a dam. In order for these obligations to be clear and reduce the risk of disputes, the agreement should also include dates and standards against the agreed items – for example, specify the type of fencing to be used, when it is to be built by, and to which measurements. Being specific helps to prevent misunderstandings and ensure that you get what you agreed on.

Alternatively, the miner may offer you an amount of money through direct negotiation, or you might want to negotiate an amount of money rather than in-kind assistance. It can be hard to know whether you have received a fair offer from the miner, or what value you should put on the parts of your property affected by a mining claim or lease, but there are steps you can take to be better informed.

The agreement you negotiate should compensate you for:

- the loss you suffer because you can no longer use the surface of your land
- any loss of value to the land or the improvements
- any loss caused by the fact you can no longer make use of your land or the improvements on it
- any loss caused because one part of your land is separated from the rest of your land
- any direct losses or expenses that arise as a consequence of the grant or renewal of the mining claim or lease (this does not include what you spend on legal advice)
- all reasonable costs incurred or likely to be incurred in obtaining replacement land of a similar productivity, nature and area or to resettle yourself or to relocate your livestock or possessions on other parts of your land or on the replacement land, where it is necessary to do so
- any special value as a result of the current status and use of the land
- loss of profits.

<sup>4</sup> <https://www.business.qld.gov.au/industries/mining-energy-water/resources/landholders/landholder-compensation/approaches>



You're also entitled to an 10% uplift to the compensation amount because it is compulsory for you to participate in the process.

It is important to understand what the minimum amount you are likely to receive is, and use this as a basis for your negotiations. To do this, it is vital to know your land valuation. Information on land valuations is available from the Queensland Government land valuation website [here](#),<sup>5</sup> or via 13 QGOV (13 74 68). You can also find information about your land value in your latest rates notice from your local council.

In cases where the mining activities are more than small scale mining, getting advice from a registered valuer will be important to help determine how much compensation you are entitled to.

It is important to remember a compensation agreement or determination binds future landholders of the property as well as any new holder of the mining claim or lease in relation to objections that were not withdrawn.

## Getting help negotiating

The department has the ability to assist parties in negotiations around compensation. If you have some concerns around the way in which negotiations are occurring or a dispute is emerging, contact the Resource Community Infoline or an appropriate advisor for assistance.

The Land Court also has a panel of independent facilitators who can help you to agree on compensation without a formal hearing. Some of the forms of alternative dispute resolution that are offered are conferences, mediations, and case appraisal. For more information visit the [Land Court website](#).<sup>6</sup>

## Timeframes for negotiating compensation

There is no time limit by which compensation must be finalised. You and the miner can continue negotiating until an agreement is reached. Alternatively, either of you may apply to the Land Court to determine compensation (see below).

However, the Minister may refuse to grant the mining claim or lease if compensation has not been agreed or referred to the Land Court within three months of:

- the day the chief executive received written notice of the last withdrawal of the objections made to the grant of the claim or lease (if all objections were withdrawn);
- the last day an objection could be made to the grant of the claim or lease (if no objections were lodged) or
- the day the Land Court hands down its recommendation or instruction about the mining claim or lease in relation to objections that were not withdrawn (for objections that went to hearing).

## Having the Land Court determine compensation

If you are unable to negotiate an outcome with the miner, or you have decided not to negotiate compensation or require conditions about conduct or access, then the Land Court can determine the monetary compensation you will receive.

Importantly, the Land Court can only award monetary compensation, not in-kind compensation or conditions about conduct or access.

The Land Court determines compensation based on the criteria in the *Mineral Resources Act 1989*, which are outlined above:<sup>7</sup>

You or the miner can apply to the Land Court to have it determine how much compensation you will receive using Form 1A on the [Queensland Courts website](#).<sup>8</sup> The Court has issued a [Practice Direction](#)<sup>9</sup> about the process to have the Land Court determine compensation for mining claims and mining leases that you should refer to.

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5 [www.qld.gov.au/environment/land/title/valuation](http://www.qld.gov.au/environment/land/title/valuation)  
6 [www.courts.qld.gov.au/courts/land-court/resolving-disputes-without-a-hearing](http://www.courts.qld.gov.au/courts/land-court/resolving-disputes-without-a-hearing)  
7 Sections 85(5) and (6) outline the criteria for compensation for a mining claim and s281(3) and (4) for mining leases.  
8 [www.courts.qld.gov.au/courts/land-court/forms](http://www.courts.qld.gov.au/courts/land-court/forms)  
9 [https://www.courts.qld.gov.au/\\_\\_data/assets/pdf\\_file/0008/597500/lc-pd-30f2019.pdf](https://www.courts.qld.gov.au/__data/assets/pdf_file/0008/597500/lc-pd-30f2019.pdf)

In the Land Court, compensation is not assessed separately and then added together. Rather, the Court will look at what factors are relevant to your situation to make sure the amount of compensation sufficiently accounts for each of the relevant compensation factors.

It is important to provide the Court with evidence to back up the amount of compensation sought. For example, this could include getting a report from a registered valuer about the impacts of the grant of a mining lease on a property and its operations.

For matters that go to the Land Court, a minimum of 10% is added to the final compensation figure because it is compulsory for you to participate in the process.

To give you additional certainty, you can also ask for compensation to be paid upfront for the whole term of the tenure. If you do this you should be aware it may affect negotiations for the sale of the property in the future.

## Optional matters for a compensation agreement

There are a number of discretionary matters that could be included in a compensation agreement.

These include:

- the compensation agreement can also apply to the renewal of the mining claim or mining lease
- a process by which the agreement may be reviewed or amended by the parties (e.g. if the extent of the authorised activities change)
- dispute resolution provisions in the case of a dispute between the parties, e.g. the use of mediation or an arbitrator.

## Conduct conditions in a compensation agreement

Terms in a compensation agreement about conduct are not conditions of the mining claim or lease so they are not able to be enforced by the Department. However, you can still include conduct conditions in your agreement.

Landholders and miners may negotiate what conduct is and is not permitted on the mining claim, mining lease or related access land. This may include entry times, speed limits, and specifying activities that will not occur without notifying the landholder first. The Department's template compensation agreement contains some conduct conditions that may be suitable.

The Land Court is not able to require conduct conditions when determining compensation in a Court hearing.

## Filing the agreement with the Department

In order to be valid the signed compensation agreement must be filed with the Department through the relevant hub or your nearest district office.<sup>10</sup> A complete copy of the signed compensation agreement must be filed with the department. A redacted version of the agreement will not be accepted.

Where relevant, the Land Court will provide its compensation determination directly to the Department and the parties.

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<sup>10</sup> Contact details for hubs and district offices can be found at <https://www.dnrme.qld.gov.au/mining-resources/contacts/mines-lodgement>

# After the mining claim or mining lease is granted

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## Notification of grant

The mining claim or mining lease holder will notify you once the claim or lease has been granted. The miner has 20 business days to notify you from the date the Department tells them about the grant.<sup>11</sup>

## Entry to land

The miner can access the mining claim or mining lease after the tenure has been granted. The miner is not required to notify you of their entry to your land unless your compensation agreement requires it.

Additionally, you can only enter the area of the mining claim or mining lease with the miner's permission; this consent may be given in your compensation agreement.

If the miner has an existing tenement over the land, such as an exploration permit or mineral development licence, they may be able to continue to access the land under the land access framework until the mining claim or lease is granted. Any entry under an exploration permit or mineral development licence does not authorise mining activities to take place until a mining claim or lease has been granted.

## Complying with the compensation agreement

The miner is required to comply with your compensation agreement or Land Court determination.

If you think the miner isn't complying with the compensation agreement or determination, your first step should be to contact them and discuss it together. It may be there has been a simple misunderstanding and the miner agrees to fix the problem.

Your compensation agreement may include a dispute resolution clause that sets out the process to follow in the event of disagreement between the parties. If it does then follow that process to see if the issue can be resolved.

You and the miner may also agree to alternative dispute resolution to resolve the issue.

If your agreement does not include a dispute resolution process or you want assistance from the Department, you can contact the [Department's Resource Community Infoline](#).<sup>12</sup> The Department may be able to assist you by organising a conference with the miner to see if the issue can be resolved.

Finally, you can also apply to the Land Court to have it enforce the terms of the compensation agreement.<sup>13</sup>

## Compliance action for non-payment of compensation

It is a condition of the mining claim or lease that compensation is paid in accordance with your agreement or determination. This means the agreed amount of compensation has to be paid when and how your agreement or Land Court determination requires.

An example of a miner not complying with a compensation requirement could be them not paying a yearly instalment of compensation (if you've agreed for it to be paid yearly, not up front) or them not installing a fence that was agreed as compensation.

If you are not receiving the compensation you should be under a compensation agreement, or determination, and discussing it with the miner does not solve the problem, then you should contact the Department's Resource Community Infoline. The Department will investigate and may take compliance action against the miner.

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11 Sections 74(5) and (6), s80(3) and (4) and s288 of the *Mineral Resources Act 1989*  
12 [www.dnrme.qld.gov.au/mining-resources/contacts/resource-community-infoline](http://www.dnrme.qld.gov.au/mining-resources/contacts/resource-community-infoline)  
13 Section 363(1)(g) *Mineral Resources Act 1989*

# Material change in circumstances

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A material change in circumstances may affect the amount of compensation payable. This may occur if the original compensation agreement or determination was based on a mining method that causes minimal disturbance to the land, and the miner is now going to mine in a way that causes greater disturbance. An example of this sort of change would be if an underground mining operation has now changed to open cut mining. In some cases the level of disturbance could decrease, e.g. from open cut to mostly underground mining, and so the miner may wish to renegotiate a lower amount of compensation.

The parties may in good faith jointly agree to amend the compensation agreement to account for the change. An updated agreement must be in writing, signed, and filed with the Department.

Alternatively, if the parties are unable to agree to revising the compensation agreement, either party may apply to the Land Court for a determination.

The Land Court will review the original compensation only to the extent it is affected by the change and make a decision.

# Compensation for renewals of mining claims or leases

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## Getting notified of the renewal application

The miner **must** notify you within five business days of them applying to renew their mining claim or mining lease. You will receive a copy of the mining claim or lease renewal application, a copy of your existing compensation agreement or determination, and a copy of this guide.

Mining claim or lease holders can apply to renew their claim or lease up to 12 months before the current term expires.

## Compensation for renewed mining claims or leases

Some compensation agreements also apply to the renewed term of a mining claim or lease. If this is the case you and the miner do not need to negotiate a new agreement.

However, if your compensation agreement was only for one term of the claim or lease or the subject of a Land Court determination, compensation will need to be negotiated again.

Once you've been notified that a renewal application has been made, you should think about whether your existing compensation agreement is working for you and if you'd be happy to continue with the same level of compensation for the next term of the mining claim or mining lease. This may involve making contact with the miner to discuss your future plans for the property and their future plans for mining.

If you're happy with your existing compensation agreement you should notify the miner that you don't wish to negotiate a new agreement. The miner should give you a new agreement to sign on the same terms.

If you want to negotiate a new compensation agreement, then start thinking about what compensation you think is suitable. If the miner hasn't contacted you it would be a good idea to contact the miner as soon as possible to start discussions and negotiations.

There is no time limit by which compensation must be finalised. You and the miner can continue negotiating until an agreement is reached. Alternatively, either of you may apply to the Land Court to determine compensation.

However, if compensation has not been agreed or referred to the Land Court within three months after the expiry date for the mining claim or lease then the Minister may refuse to renew it.

The miner is able to continue accessing their mining claim or lease to conduct authorised activities unless the Minister refuses the renewal application. This is the case even if the expiry date for the claim or lease has passed and a new agreement has not been filed with the Department.

## Restricted land

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**Land owners and occupiers have rights when it comes to restricted land – you are free to consent (or not) to the grant of a mining claim or lease over the surface of restricted land.**

Restricted land protects certain areas from being included in the surface of a mining claim or lease without land owner or occupier consent.<sup>14</sup> There is no obligation on the land owner or occupier to give this consent. If consent is given, it cannot be withdrawn. Consent to these areas being included can be given at any time.

The protections offered by restricted land apply to land even if the relevant building or improvement is not located within the boundaries of the mining claim or mining lease.

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<sup>14</sup> For the full list of owners and occupiers who need to give consent, see section 69 and schedule 1 of the *Mineral and Energy Resources (Common Provisions) Act 2014*.

## What is restricted land?

For mining claims and mining leases restricted land is the area within **200 metres** of:

- a permanent building used for the purpose of a residence, business, childcare centre, hospital, library, or place of worship
- a permanent building used for a community, sporting or recreational purpose
- an area used as a school, or for 'environmentally relevant activities' that are aquaculture, intensive animal feedlotting, pig keeping or poultry farming (as within the meaning of the Environmental Protection Regulation 2008, schedule 2, part 1).

Restricted land is also the area within **50 metres** of:

- an artesian well, bore, dam or water storage facility
- a principal stockyard
- a cemetery or burial place.

Restricted land is set at the point in time when the application for the mining claim or mining lease is lodged.

Land occupied by an interconnecting water pipeline that is providing water supply to or between an artesian well, bore, dam, water storage facility or principal stockyard is not in itself considered restricted land. However, land occupied by an interconnecting water pipeline is restricted land where it is connected to an artesian well, bore, dam, water storage facility or principal stockyard and is within the **50 metre** restricted land area that would normally apply to this key agricultural infrastructure.

## Dispute resolution

If parties are unable to reach an agreement on whether a certain building, structure or area is restricted land, either party can apply to the Land Court for an order declaring whether particular land is restricted land.

If you are unable to agree on compensation for including restricted land within a mining lease, either party can apply to the Land Court for it to determine compensation.





Department of Natural Resources, Mines and Energy

[www.dnrme.qld.gov.au](http://www.dnrme.qld.gov.au)