

# Opt-Out Agreement – Information Sheet

## Opting-out of a Conduct and Compensation Agreement

The *Mineral and Energy Resources (Common Provisions) Act 2014*'s land access provisions require a resource authority holder to negotiate either a Conduct and Compensation Agreement (CCA) or a Deferral Agreement with a landholder before they can enter the landholder's property to undertake advanced resource activities.

Alternatively, a landholder can choose to 'opt-out' of entering a CCA if it suits their needs. There is no obligation for a landholder to agree to an Opt-Out Agreement and they cannot be forced by a resource authority holder to opt-out of negotiating a CCA or a Deferral Agreement. The choice to enter into an Opt-Out Agreement is at the complete discretion of the landholder.

*It is a mandatory requirement of an Opt-Out Agreement that the resource authority holder provide a copy of this information sheet to the landholder prior to an Opt-Out Agreement being made.*

## What is an Opt-Out Agreement?

An Opt-Out Agreement is a legally binding arrangement between a landholder and a resource authority holder for land access arrangements in which the landholder agrees to 'opt out' of entering into a CCA or a Deferral Agreement, including some of the rights and obligations normally associated with those agreements.

An Opt-Out Agreement must be made using the approved form. If the approved form is not used the Opt-Out Agreement will be invalid. Item 6 of the approved form contains clauses that set out the prescribed requirements for an Opt-Out Agreement. The parties to the Opt-Out Agreement cannot amend or remove these prescribed requirements, even if both parties agree.

Item 7 of the approved form also provides the flexibility for additional clauses to be included. Examples of additional conditions may include:

- a term for the agreement and what activities will be carried out, stipulating that if operations exceed or change from what is specified, the landholder can require a CCA be negotiated instead, or require the terms of the Opt-Out Agreement be renegotiated
- conditions relating to entry to the land, for example timing and proposed activities
- the specific impact area of land to ensure the landholder retains the right to negotiate a CCA for activities undertaken on other parts of the land
- details of any compensation for example how and when any compensation liability will be met, including alternative dispute resolution provisions.

## Cooling-off period

A 10 business day cooling-off period applies to all Opt-Out Agreements. During this period a landholder or a resource authority holder is able to end the agreement by providing the other party with a written notice.

A resource authority holder cannot enter land to conduct advanced activities until the cooling-off period has ended.

The cooling-off period starts when a copy of the signed Opt-Out Agreement is given to the landholder. The Opt-Out Agreement prescribes when an Opt-Out Agreement is considered 'given', and therefore when the cooling-off period begins. A copy of an Opt-Out Agreement is considered 'given':

- at the time it was hand delivered to the landholder
- at the time it was faxed to the landholder
- on the fifth day after it was posted to the landholder.

Opt-Out Agreements may only be given to a landholder in person, by fax or by pre-paid post.

## **What is the effect of entering an Opt-Out Agreement?**

There are a number of statutory requirements about the content of an agreement that apply to a CCA that are not required in an Opt-Out Agreement. While the resource authority holder must provide a written description of the activities proposed on the land under the Opt-Out Agreement, there is no requirement to negotiate matters such as:

- how and when the resource authority holder can enter land
- how activities must be carried out
- what the compensation liability is.

By opting-out of negotiating a CCA or a Deferral Agreement, a landholder is agreeing to forego particular prescribed requirements that would have otherwise applied for negotiation a CCA. Therefore, opting-out will only be appropriate in some circumstances.

An Opt-Out Agreement gives the resource authority holder the right to enter the private land to carry out advanced activities authorised under the resource authority following the 10 business day cooling off period. There is no requirement for the resource authority holder to give the landholder an entry notice prior to entry, unless such a requirement is included in the Opt-Out Agreement.

The existence of the agreement will be noted on the property title and the conditions of an Opt-Out Agreement are binding on future owners or occupiers of the property. An Opt-Out Agreement is also binding on future holders of the resource authority.

Entering into an Opt-Out Agreement does not remove a resource authority holder's general liability to compensate each owner and occupier under section 81 of the *Mineral and Energy Resources (Common Provisions) Act 2014*. However, a resource authority holder is not liable to compensate a landholder for any costs incurred by an owner or occupier in negotiating an Opt-Out Agreement, for example legal or valuation costs, that may apply when a CCA is negotiated.

## **When may an Opt-Out Agreement be suitable?**

There a number of circumstances in which a landholder may consider an Opt-Out Agreement appropriate. Examples include:

- the resource authority holder is the owner of the private land
- the proposed authorised activities are likely to have little or no impact upon a landholder's business
- there are minimal conduct and compensation related conditions that require negotiation

- the proposed authorised activities are being undertaken in a remote, unused area of the landholder's property
- a long standing positive relationship between the landholder and resource authority holder exists.

A landholder may consider a CCA more suitable where access arrangements involve detailed and multiple conditions such as conditions on how and when entry occurs and the conduct of activities. A landholder should also consider requiring that a CCA be negotiated if they are concerned that a dispute may arise regarding the resource authority holder's compensation liability.

## **Differences between an Opt-Out Agreement and a CCA**

An Opt-Out Agreement and a CCA both require certain mandatory provisions for the agreement to be valid. For an Opt-Out Agreement these are contained in the approved form, and for a CCA these are contained in the Mineral and Energy Resources (Common Provisions) Regulation 2016. Both agreements are required to be in writing and signed by both parties.

There are a number statutory requirements and opportunities to receive information about the project that may be foregone when a landholder chooses to enter into an Opt-Out Agreement over a CCA. Some of these are outlined below.

### **Entry notices are not automatically required**

Under an Opt-Out Agreement a resource authority holder is not required to give an entry notice to a landholder prior to entering the property. A landholder can negotiate and include their own terms for notification if required.

### **Resource authority holder not obligated to pay landholder's negotiation costs**

Unlike when negotiating a CCA, there is no statutory obligation for a resource authority holder to compensate a landholder for the accounting, legal or valuation costs reasonably incurred by the landholder when negotiating an Opt-Out Agreement. A landholder and a resource authority holder may agree to include a provision regarding these costs in Item 7 of the Opt-Out Agreement. Alternatively, if a landholder would like to recover these costs, they should consider negotiating a CCA.

### **No requirement to outline compensation liability**

CCAs must contain agreement as to the resource authority holder's compensation liability owed to the landholder, and detail how and when the compensation will be met. There is no requirement for this in an Opt-Out Agreement. Parties may decide to agree to additional terms in Item 7 of the Opt-Out Agreement Approved Form. However, if a landholder wishes to negotiate an agreement as to compensation, they should consider negotiating a CCA.

### **No legislated dispute resolution process or Land Court review**

Entering into an Opt-Out Agreement stops the need for a legislated dispute resolution process and the Land Court review processes under the land access laws that would normally apply for the negotiation of a CCA. For example, parties will not be able to access the review powers of the Land Court in relation to any compensation related matters that may be included in an Opt-Out Agreement.

Disputes can still arise; even between parties with long standing, positive relationships. Conferences with departmental officers and civil court action are available; but if a landholder is concerned about this, they may wish to consider including a dispute resolution process in the Opt-Out Agreement, or whether a CCA is more suitable.

## Legal advice

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A landholder should consider if entering into an Opt-Out Agreement suits their specific circumstances. Any signed agreement will become a legally binding document that grants legal rights to others, and may also affect future property owners. It is recommended that a landholder seek legal representation during negotiations, and particularly before any documents are signed.

## Further information

Further information is available through:

- Prescribed Opt-Out Agreement Form  
[www.business.qld.gov.au/industry/mining/applications-compliance/forms-fees#land](http://www.business.qld.gov.au/industry/mining/applications-compliance/forms-fees#land)
- Land Access Code  
[www.business.qld.gov.au/industry/mining/land-access-environment/land-access-requirements/land-access-code](http://www.business.qld.gov.au/industry/mining/land-access-environment/land-access-requirements/land-access-code)
- Land access guide  
[www.dnrm.qld.gov.au/\\_data/assets/pdf\\_file/0003/442632/guide-land-access-qld.pdf](http://www.dnrm.qld.gov.au/_data/assets/pdf_file/0003/442632/guide-land-access-qld.pdf)
- Queensland Law Society find a solicitor database  
[www.qls.com.au/For\\_the\\_community/Find\\_a\\_solicitor](http://www.qls.com.au/For_the_community/Find_a_solicitor)
- DNRM CSG Compliance Unit – phone hotline (07) 4529 1500  
Email: [csq.enquiries@dnrm.qld.gov.au](mailto:csq.enquiries@dnrm.qld.gov.au)
- Queensland Gasfields Commission at [www.gasfieldscommissionqld.org.au/gasfields/](http://www.gasfieldscommissionqld.org.au/gasfields/)