

MARCH 2017

Introduction to Victoria's **Mineral Resources (Sustainable Development) Act 1990**

A joint publication of the Minerals Council of Australia Victoria and Victorian Farmers Federation



Victorian
Farmers
Federation



Minerals
Council of
Australia

VICTORIAN
DIVISION



VICTORIAN
DIVISION



About this guide

The purpose of a joint guide is to provide general information to private landholders about the *Mineral Resources (Sustainable Development) Act 1990 (the Act)*. This is the central legislation regarding minerals exploration, development and operations in Victoria.

In providing this information, it is acknowledged that the prospect of exploration can be deeply concerning for landholders. This can be particularly so for farmers, who often have a long-standing and, sometimes intergenerational, connection to their land.

For this reason, the guide aims to simply answer common questions about the Act and its purpose.

Links to additional information and resources, including the Act itself as well as the Mineral Exploration Code of Practice and Earth Resources Regulation, are also provided.

A standard compensation template is available from the VFF.

Contents

1 Purpose, objectives and principles of the Act	4
2 Why is exploration undertaken?	5
3 Exploration licences and work plans	6
4 Retention licences and work plans	7
5 Consent and compensation	8
6 Minimising impacts	9
7 State Mining Warden	10
8 Other exploration approvals	10
9 About mining	11
More information	12
Questions for landholders to ask a licensee	13
Endnotes	14

Introduction to Victoria's Mineral Resources (Sustainable Development) Act 1990
was prepared jointly by the Minerals Council of Australia Victoria and the Victorian Farmers Federation.

Earth Resources Regulation was consulted in preparation of this document.
Document current at February 2017.

1

Purpose, objectives and principles of the Act

Victoria's *Mineral Resources (Sustainable Development) Act 1990* (the Act) aims to encourage minerals exploration and development in a way that makes best use of, and is 'compatible with the economic, social and environmental objectives of the state'.

In this context, compatibility means all factors, including agricultural activity and environmental management, must be considered.

The objectives of the Act include to ensure:

- Risks posed to the environment, members of the public, or to land, property or infrastructure by work being done under a licence or extractive industry work authority are identified and are eliminated or minimised as far as reasonably practical
- Consultation mechanisms are effective and appropriate access to information is provided
- Just compensation is paid for the use of private land for exploration and mining
- Conditions in licences and approvals are enforced.

The Act states principles of sustainable development that must be considered. These principles include that:

- Biological diversity should be protected and ecological integrity maintained
- Both long and short term economic, environmental, social and equity considerations should be effectively integrated into decision-making
- Development should make a positive contribution to regional development and respect the aspirations of the community and of Indigenous peoples.

Agricultural land and the Act

The Act provides that a holder of a mining or prospecting licence covering agricultural land must prepare a statement of the economic significance of mining. The statement must contain an assessment of the economic benefits of the proposed mining, including employment and revenue considerations. This must also be provided to the landholder.

Note: a mining licence is different to an exploration or retention licence.

Owners or occupiers of the agricultural land (landholders) can apply to the minister for the exclusion of the land from the mining or prospecting licence. The minister can exclude the land if the licensee consents to the excursion or if there would be a greater economic benefit to Victoria in continuing agricultural use of the land.

Earth Resources Regulation (ERR)

is the regulator of resources and mining activity in Victoria. ERR is a branch of the Department of Economic Development, Jobs, Transport and Resources (DEDJTR). ERR's central office is in Melbourne with regional offices in the north-east, north-west, south-west and Gippsland regions.

2

Why is exploration undertaken?

Exploration is undertaken to identify new mineral deposits for development and mining. Minerals extracted during mining are used in modern processes and products, including information and telecommunications technologies (phones, computers and equipment), manufacture of steel, wiring and piping and chemical compounds.

Does exploration always mean a mine?

In 2012, the Victorian Economic Development and Industry Committee Inquiry into Greenfields* Minerals Exploration and Project Development (the EDIC Inquiry) heard that the likelihood of exploration

activity leading to an operating mine are very low. It noted estimates of 300-1000 exploration projects for every one mine developed.¹

Even if a viable resource is identified, the average time between exploration and mining commencement is between 15 and 20 years.² This is due to the need for detailed geological studies over vast areas to identify an economic mineral resource, high development costs and stringent approval processes.

* *Greenfields exploration called exploration throughout this document, refers to new areas of interest.*

What are common exploration activities?

Exploration is similar to market research with studies required over vast areas of land to identify a viable mineral deposit. Exploration activities vary depending on what, if any, exploration activities have been previously undertaken.

Common exploration activities include:

- Aircraft, satellite or ground mapping of the area's geology and topography
- Use of geophysical techniques to obtain information about an area's geology. This may include a seismic survey, which uses highly-sensitive vibrations from cables and geophones to create an image of the geology underground.
- Walking over the area, taking occasional hand samples of surface rock, soil or stream sediment or sometimes vegetation
- Sampling of a grid pattern or grid and/or on-ground geophysical measurements using hand-portable instruments. Some geophysical equipment is quite heavy and is transported in a trailer or four-wheel drive vehicle
- Reconnaissance drilling to obtain samples of rock and mineralisation at depth. This

involves placing a drill rig (similar to a water bore rig) at selected positions. Drilling may occur for a few minutes or a few weeks depending on the type of drilling, depth and number of holes.

On-site exploration work is usually undertaken seasonally (during the dry season) with data analysis and planning undertaken during the wet season. Activities may, therefore, be undertaken over an extended period (months or years) due to the time it takes to review results and plan for new activities.

For a few projects, more intensive exploration activities may follow. This may include close spaced drilling to build a 3 dimensional (3D) model to better understand a mineral deposit.

Suggestion

A joint visit between the landholder and licensee to exploration sites prior to, during and following, exploration work is recommended. Regular communication, including before, during and after on-field activities, is also recommended.

3

Exploration licences and work plans

There is a 'two-step process' under the Act for gaining approval to conduct exploration. The first step involves the granting and registration of an exploration licence. The second step involves gaining approval to undertake work. Mining cannot occur under an exploration licence.³

What is an exploration licence?

As all minerals are owned by the State of Victoria, exploration licences are issued by the state to allow licensees to explore for minerals on specific areas of land. If an area is available for exploration, an explorer can apply for a licence over an area up to 500 square kilometres (or greater if allowed by the minister).

An exploration licence is granted for a period of up to five years from when it is registered. Once registered, the explorer can start the second step of the process.⁴

Who can get an exploration licence?

Licences can only be held by individuals or companies controlled by individuals who have passed the 'fit and proper person test'.

What approvals are required for work to start?

The second step of the process involves the licensee obtaining necessary approvals, including work plan approval (except for low impact exploration), submitting a rehabilitation bond, obtaining any other necessary consent and having public liability insurance. Further information can be found under section 43 of the Act.

The licensee must also have informed verbal consent or written consent or made a compensation agreement with relevant landholders. Exploration work cannot commence without these agreements.

What is a work plan?

A work plan outlines how a licensee intends to undertake the exploration work proposed.

A work plan will address risks and include information about the type of activities proposed, existing land use and potential impacts of the work.

ERR assesses each work plan to ensure compliance with licence conditions and legislative and other requirements.⁵

What is low impact exploration?

Low impact exploration refers to exploration activities with a low social and environmental impact on the area where it is undertaken.

It may involve mapping and geological surveys, soil and rock sampling and surveys, and in some circumstances, drilling.

Low impact exploration does not involve the use of explosives, taking of certain flora or fauna, clearing of large areas of native vegetation, the construction of roads or structures without the consent of the landholder or occupier or use of any closed road without the consent of the landholder or occupier.

It also does not include ground intrusive work that is within 200 metres of a 'waterway', on a slope steeper than 1 vertical: 3 horizontal, greater than two hectares in an area of cultural heritage sensitivity under certain conditions, taking water from an aquifer or excavation using heavy earth equipment.

While a work plan is not required, the licensee must adhere to standard licence conditions and the Code of Practice for Mineral Exploration.

Consent from the landholder or a compensation agreement is also required before exploration can commence.

4

Retention licences and work plans

What about rehabilitation?

A condition of every licence is that satisfactory rehabilitation work must be carried out either progressively or at the end of the exploration work. For low impact exploration, rehabilitation is conducted in accordance with licence conditions and the Mineral Code of Practice.⁶

For other exploration, the rehabilitation plan must be prepared after consultation with the landholder as part of a work plan and take into account environmental and land use characteristics (such as agricultural activity).⁷

As a precaution, a rehabilitation bond is lodged with ERR before work commences (standard \$10,000 for exploration licences).

ERR may use all or part of the bond if a licensee does not undertake agreed rehabilitation. If, after expiry of the licence the minister determines further rehabilitation is required, DEDJTR can recover the cost from the former licensee.

How long will work continue for?

Exploration licences are usually granted for five years and may be renewed in exceptional circumstances for another five years with ministerial approval.⁸ Strict requirements apply. A licensee must undertake agreed expenditure each year and relinquish certain portions of the licence at stated times.

What is a retention licence?

In some cases, a retention licence can follow an exploration licence. It is the intermediate licence between an exploration licence and a mining licence. Its purpose is to allow licensees to undertake further exploration, research and other non-mining activities if a viable mineral resource has been identified. Mining is not allowed under a retention licence.

If a retention licence is granted, it is likely that exploration has been undertaken on the land for some time. Differences between exploration and retention licences include:

- An application for a retention licence should include a report that describes, among other aspects, whether the identified mineral resource is economically viable to mine. This reflects the fact that past exploration work will have been done
- A retention licence can be granted for up to 10 years and may be renewed twice (however the second renewal can only be given in exceptional circumstances).⁹

How is a retention licence granted?

To obtain a retention licence, an explorer will submit a work program, mineralisation report and financial and technical evidence to ERR to support their application.¹⁰

What happens after a retention licence is granted?

The licensee must again talk to the landholder about consent or compensation, even if there is a prior agreement. As with an exploration licence, a holder of a retention licence must lodge a rehabilitation bond, have obtained consent or compensation agreements to work on private land and have public liability insurance.¹¹

Specific approvals are also required for work on restricted Crown and Crown Land.

5

Consent and compensation

Licence holders require consent prior to entering your land. For low impact exploration, informed verbal consent or written consent is required. For all other exploration, consent must be given in writing.

What is informed verbal consent for low impact exploration?

Informed verbal consent is not defined in the Act. DEDJTR has developed [guidelines](#) to inform licensees and landholders. Informed consent can only be given if the licensee has fully informed you about what they are asking you to consent to.

As a minimum, the licensee should provide the landholder with the following information:

- That the exploration work (including low impact exploration) can only be undertaken on private land with landholders' consent, or alternatively, there is a written, signed and registered compensation agreement with any relevant landowners and occupiers
- That landholders and occupiers electing to consent to may choose to do so in writing or verbally
- The nature, extent, duration and potential impacts of the proposed exploration on the land
- That compensation is payable for loss or damage that may be or has been sustained as a result of exploration.¹²

Suggestion

Questions to assist landholders in these discussions are available on page 13. *It is strongly recommended that a formal consent agreement be made and signed by both parties.*

This should clearly document all arrangements, including access arrangements, operating hours, planned exploration activities and other conditions. Signed copies should be kept by both parties.

What compensation am I entitled to?

Licence conditions require a licensee to take all reasonable steps to minimise the impact of exploration on a landholder. Under the Act, compensation is payable for any or all of the following should they arise from exploration work or a proposal to carry out the activity on or below private land:

- a) Deprivation of possession of the whole or part of the surface of the land
- b) Damage to the surface of the land and to any improvements on the land
- c) Severance of the land from other land of the owner or occupier
- d) Loss of amenity including recreational and conservation values
- e) Loss of opportunity to make planned improvements
- f) Any decrease in market value of the owner's or occupier's interest in the land
- g) Increase in compensation by up to 10 per cent by way of solatium
- h) Any reasonable incidental expense in obtaining or moving to replace land (when required).

The Act does not state that these are only factors for which compensation is payable. It also does not stipulate which type of activity requires compensation to be paid. Therefore the landowner may seek compensation for matters such as access and land use required for any exploration work.

The written compensation agreement must be lodged with the mining registrar for registration.

Suggestion

Compensation is usually agreed by negotiation between the landholder and licensee. It can include a financial payment but may also involve work in lieu of a financial payment. For example, a landholder may request a licensee undertake road grading or earth works on their property using their equipment in lieu of payment.

A standard compensation template is available from the VFF to assist its members.

How is compensation determined?

Usually compensation is agreed by negotiation between the landholder and explorer.

What should a compensation agreement include?

If compensation is agreed, [the Act states that a](#)

6

Minimising impacts

compensation agreement may include (among other things):

- The amount or kind of compensation payable
- A description of the licensee's proposed work, including location and areas of the proposed work
- Agreed points of entry onto and exit from the land for the purposes of the proposed work
- Type of plant, vehicles and equipment to be used
- A description of facilities to be used.

The compensation agreement must be lodged with DEDJTR. Following this, and receipt of all necessary approvals, the licensee must give seven days' notice of intention to enter the area. A lesser period of notice is allowed by agreement between a landholder and licensee.¹³

Can exploration work be undertaken without my consent?

ERR will only grant permission to start work on private land under an exploration licence (including for low impact exploration) once written or informed verbal consent has been obtained or a compensation agreement has been made between the landholder and licensee.

What if the explorer and landholder cannot agree?

In most cases, arrangements can be negotiated between an explorer and landholder.

If agreement cannot be reached, the Act provides that the matter may be referred to the land valuation list of Victorian Civil and Administrative Tribunal (VCAT). However VCAT may refer the parties to the State Mining Warden for mediation. If agreement is then not reached through mediation (facilitated by the mining warden) then the matter would be assessed by VCAT.

The registrar of the land valuation list will then seek to resolve the matter in a private voluntary conference. The registrar of the list also has the power to order a compulsory private conference.

Either party can seek to have the matter resolved by the Victorian Supreme Court if there is a dispute about an amount of compensation exceeding \$50,000.¹⁴

Will exploration impact on my stock/crop/activities?

Licence conditions require a licensee to minimise disturbance to a landholder, including that:

- Exploration should be timed to minimise disturbance to stock and/or crops, where practical
- All reasonable steps to be taken by licensee to inform the landowner of any possible disturbance to crops/stock and their protection of potential hazards
- Gates must be left as found
- The owner/occupier is to be informed and repairs undertaken to fencing or gates immediately
- Domestic animals should not be taken onto licence areas (including dogs and cats).¹⁵

What about biosecurity and waste?

Licence conditions stipulate that a licensee must:

- Take all reasonable measures to minimise the spread of weeds, pest animals and plant diseases while undertaking exploration activities
- Adhere to any biosecurity protocols that have been adopted on private or Crown Land
- Take all reasonable measures to prevent adverse impacts to livestock and crops
- Dispose of all waste generated at a site in an appropriate waste management facility.

Suggestion

Given the importance of biosecurity to landholders, this should be discussed at length between the landholder and licensee. These discussions should include agreement on appropriate protocols, such as sign-on books, vehicle washing and equipment movement arrangements.

For peace of mind, **it is recommended that these protocols be documented in the consent and/or compensation agreement and reviewed regularly.**

7

State Mining Warden

The mining warden is appointed by the Governor in Council and reports directly to the minister responsible for the Act (as of 2016, the *Minister for Resources*).

The minister may refer any matter concerning mining to the warden for investigation, report and recommendations. Individuals, including landholders, may also refer a dispute (including a dispute between a landholder and a licensee) directly to the mining warden.

The mining warden must investigate the dispute and attempt to settle it or arbitrate in relation to it and, where appropriate, make recommendations to the minister.

What powers does the warden have?

When investigating a dispute or other matter, the warden may conduct a hearing, enter or inspect relevant land, make an order for the inspection or retention of any minerals, restrain a person from removing minerals from Victoria and/or require ERR officers to provide information.

The warden is bound by the rules of natural justice, rather than the rules of evidence when conducting a hearing. The rules of natural justice (or procedural fairness) aim to ensure all parties are heard and that administrative decision-makers and tribunals follow a fair and unbiased procedure when making decisions.

How is a hearing usually conducted?

Hearings are usually conducted informally. While not necessary in most cases, evidence may be given under oath at the hearing or in writing. If the mining warden grants leave and other parties agree, a party may be represented by an agent who is an Australian lawyer.¹⁶

8

Other exploration approvals

The Act is not the only legislation to apply to exploration and mining licences. Other key legislative and regulatory requirements at various stages of activity may include:

- Compliance with permitted clearing of native vegetation – biodiversity assessment guidelines (various statutes)
- Licence to take and use water (*Water Act 1989*)
- Works approval – *Environment Protection Act 1970*
- Compliance with the *Aboriginal Heritage Act 2006*
- Consent to access restricted Crown Land
- *Environment Protection and Biodiversity Conversation Act 1999*.¹⁷

9

About mining

Mining is the process of extracting and processing minerals for use.

The process of mining a viable minerals deposit varies depending on the type, size and quality of a minerals deposits, its depth below the surface, the surrounding environment (including local land usage) and other factors.

Some deposits are best accessed via an underground operation while others are close enough to the surface for an open-cut operation. These aspects are considered during project feasibility studies.

Approximately 0.2 per cent of Victoria's total land area is covered by an inactive or active mining licence and prospecting licences.¹⁸

Significant improvements in remediation, the result of extensive research and practice, are resulting in successful remediation and post-mining land uses.

What is a mining licence?

Can work be undertaken with just a mining licence?

A mining licence differs from exploration and retention licences. Mining cannot be undertaken on an exploration and retention licence.

If a viable mineral resource is identified, the licensee will need to gain a mining licence and other necessary approvals. Relevant legislation includes the Act, the *Environment Effects Act 1978* and the *Environment Protection Act 1970*.

Gaining the necessary approvals to commence mining is usually a lengthy and complex process with local, state and federal approvals required. Given the amount of approvals required, this can take several years. If all approvals are received, the process of construction can also take many years.

Is an environment effects statement required?

An environment effects statement may be required. *The Environment Effects Act 1978* provides for assessment of proposed projects (works) that are capable of having a significant effect on the environment. The Minister for Planning might require a proponent to prepare an ESS when:

- There is a likelihood of a regionally or state significant adverse effect on the environment
- There is a need for integrated assessment of potential environment effects (including economic and social) of a project and relevant alternatives
- Normal statutory processes would not provide a sufficiently comprehensive, integrated and transparent process.

More information

This guide aims to answer common questions about the Act. For full details, landholders should refer directly to the Act, regulations and code of practice and/or seek professional advice.

Minerals Council of Australia

The Minerals Council of Australia Victoria represents companies involved in minerals exploration, mining and minerals processing in Victoria. This includes companies providing services to the minerals industry.

MCA's aim is for a safe, responsible and strong Victorian minerals industry, which provides jobs and employment opportunities and contributes to economic diversification and development in regional Victoria.



Level 8, 10-16 Queen Street
Melbourne VIC 3000
T 03 8614 1851
www.minerals.org.au/victoria

Victorian Farmers Federation

The Victorian Farmers Federation (VFF) is Australia's largest state farmer organisation and the only recognised, consistent voice on issues affecting rural Victoria.

Each VFF member is represented locally by one of the 230 VFF branches across Victoria and through their commodity representatives at local, district, state and national levels. The VFF also represents farmers' views at industry and government forums.



Contact the VFF

Level 5, 24 Collins Street
Melbourne VIC 3000
T 1300 882 833 or 03 9207 5555
www.vff.org.au

Earth Resources Regulation

1 Spring Street
Melbourne VIC 3000
T 1300 366 356

State Mining Warden

Victorian Mining Warden's Office
Level 16, 121 Exhibition Street
Melbourne VIC 3000
T 03 8392 2218
F 03 9092 2066

Suggestion

Questions for landholders to ask a licensee

These questions may help landholders and licensees initiate discussions. While not exhaustive, they are intended to assist the landholder in early discussions.

General

What company do you work for?

What is your role within the company?

What mineral/s are you searching for?

Communication

Who will my regular contact at the exploration site be? What are their contact details?
Who is an alternate contact?

How will we stay in contact? How will I be advised if circumstances change?

You may wish to establish a regular meeting/communication schedule

When can I visit the proposed exploration site with you? Can I/my staff visit regularly?
(If desired)

Work plan

What exploration activities do you plan to undertake?

What impact will these exploration activities have on the surrounding area, if any?

Where and when do you plan to undertake your activities?

It is recommended that the licensee and landholder mark out key locations on a map for clarity. This should include proposed entry and exit points and work areas.

How many people do you expect to work at the exploration site? How will you monitor their entry to the site?

How will you ensure that the exploration work does not affect my activities?

Possible items to discuss: noise, dust, vibration, gate management, site access, working hours, working days, stock movement

Do you need to use existing or are you proposing temporary road construction? How can we make this work for both parties?

How will you ensure that gates are left as they are found?

How will you ensure that biosecurity is protected on my land?

Possible items to discuss: a sign-in book or travel log, weed management and travel protocols)

What waste do you expect to generate? What is your plan to remove waste from the site?

What is your proposed method of rehabilitation? How does this consider the environmental and other aspects of the land? Why have you chosen this method?

Safety and health

What is your plan if there is an injury or incident on site?

Department details

Who is the Chief Inspector of Mines?

Who can I contact at the department if I have any concerns?

Who is the Regional Manager of Earth Resources Regulation? How can I contact them?

Endnotes

- ¹ Economic Development and Infrastructure Committee, *Inquiry into greenfields minerals exploration and project development in Victoria – Final report*, Parliament of Victoria, Melbourne, 2012, p. 10.
- ² Ibid., p.15.
- ³ State of Victoria, *Minerals Exploration and Mining in Victoria: Landholder Information Booklet*, Department of Economic Development, Jobs, Transport and Resources, viewed 10 Nov 2016.
- ⁴ Mineral Resources (Sustainable Development) Act 1990 Section 15.
- ⁵ State of Victoria, *Code of Practice for Minerals Exploration*, Department of Economic Development, Jobs, Transport and Resources, 2014.
- ⁶ State of Victoria, *Code of Practice for Mineral Exploration*, Department of Economic Development, Jobs, Transport and Resources, 2014.
- ⁷ Mineral Resources (Sustainable Development) Act 1990 Section 79.
- ⁸ Mineral Resources (Sustainable Development) Act 1990 Section 13.
- ⁹ State of Victoria, *Retention Licence Guidelines*, Department of Economic Development, Jobs, Transport and Resources, viewed 10 Nov 2016.
- ¹⁰ Ibid.
- ¹¹ Ibid.
- ¹² State of Victoria, *Guidelines and Codes of Practice – Informed verbal consent for low impact exploration*, Department of Economic Development, Jobs, Transport and Resources, viewed 20 Dec 2016.
- ¹³ Mineral Resources (Sustainable Development) Act 1990 Section 87.
- ¹⁴ Mineral Resources (Sustainable Development) Act 1990 Section 88.
- ¹⁵ State of Victoria, *Exploration and rehabilitation of mineral exploration sites*, Department of Economic Development, Jobs, Transport and Resources, viewed 10 Nov 2016.
- ¹⁶ State of Victoria, *Victorian Mining Warden*, Department of Economic Development, Jobs, Transport and Resources, viewed 12 Dec 2016.
- ¹⁷ State of Victoria, *Licensing and Approvals*, Department of Economic Development, Jobs, Transport and Resources, viewed 10 Nov 2016.
- ¹⁸ Data from Earth Resources Regulation, current as at 31 Jan 2017.



VICTORIAN
DIVISION

