

GUIDE TO COMPENSATION FOR VICTORIAN EXPLORERS

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Victoria has significant mineral potential as well as many alternative land users and private landholdings, so it is critical for explorers to get land access right. To accompany AMEC information on land access for mineral exploration in Victoria, this fact sheet provides further detail on compensation related to exploration in Victoria.

This fact sheet is based on current Victorian legislative requirements and common practice only and is not applicable in other States or Territories. This fact sheet provides general information to support the development of land access arrangements, each of which must be tailored to accommodate the individual needs of the land owner/occupier and explorer. This guide provides general information but does not constitute legal advice and the information should always be confirmed for currency.

REQUIREMENTS FOR COMPENSATION FOR EXPLORERS IN VICTORIA

In Victoria, Part 8 of the *Mineral Resources (Sustainable Development) Act 1990* (MRSDA 1990) details clear rights and responsibilities for both mineral explorers and land owner/occupiers regarding compensation. In short, this includes:

- Requirement for access agreements between land owner/occupiers and explorers to be written or with informed verbal consent.
- Requirement for compensation agreements (usually included in access agreements) to be in place and registered prior to any onsite exploration activity.

The MRSDA 1990 also details the requirements for mineral explorers to seek access on private land. One section that is important for all parties to remember is:

“The holder of an exploration licence or retention licence must not carry out any work on the land covered by the licence unless the licensee has obtained the written consent of the owners and occupiers of the land affected; or the licensee has made and registered compensation agreements with those owners and occupiers.”

MRSDA 1990, section 43 (1)(e)(i)(ii)

Key requirements under the legislation regarding access for mineral exploration:

- Compensation is not payable for the value of any mineral in or under the surface of land covered by a licence.
- Any amount of compensation paid, agreed to be paid, or determined is not affected by any subsequent change in the ownership or occupancy of land. New owners or occupiers cannot seek further compensation. The compensation agreement remains with the land not the land owner/occupier.
- A compensation agreement may be about the amount or kind of compensation payable (section 85(1) or (1A)).

- If a land owner/occupier does not provide consent, an appropriate amount of compensation cannot be agreed upon or there is a disputed claim over compensation, under section 88(1) either party may refer the matter to the Victorian Civil & Administrative Tribunal (VCAT), in accordance with Part 10 of the *Land Acquisition and Compensation Act 1986*. If the amount of compensation in dispute exceeds \$50,000, either party can seek to have the matter resolved by the Supreme Court.



Compensation should be negotiated by each explorer and land owner/occupier. Often compensation is not simply monetary but may include in-kind activities such as upgrading a track, installing a gate, or fixing a fence.

GUIDE ON COMPENSATION

Compensation should be negotiated by each explorer and land owner/occupier as appropriate, but also with consideration for equity with any neighbouring land owner/occupier. Compensation is defined in MRSDA 1990 section 85(1) as follows:

“compensation is payable by the licensee to the owner(s) or occupier(s) of private land that is land affected for any loss or damage that has been or will be sustained as a direct, natural and reasonable consequence of the approval of the work plan or the doing of work under the licence including —

- a) deprivation of possession of the whole or any part of the surface of the land; and
- b) damage to the surface of the land; and
- c) damage to any improvements on the land; and
- d) severance of the land from other land of the owner or occupier; and
- e) loss of amenity, including recreation and conservation values; and
- f) loss of opportunity to make any planned improvement on the land; and
- g) any decrease in the market value of the owner or occupier's interest in the land; and
- h) loss of opportunity to use tailings disposed of with the consent of the Minister under section 14(2)"

The amount of compensation payable is also detailed in MRSDA 1990 section 85(2) as follows:

“(a) must, if it is necessary for the owner or occupier of land to obtain replacement land, take account of the reasonable incidental expenses incurred in obtaining and moving to that land; and

(b) may be increased by up to 10% by way of solatium [consolation] to compensate the owner or occupier for intangible and non-pecuniary disadvantages that are not otherwise compensable and that result from the approval of the work plan or the doing of work under the licence”.

The following table is a guide to compensation rates based on activity. This offers indicative ranges for compensation rates based on industry feedback from Victorian exploration programs. Note that these rates are a guide only and not mandatory.

Activity	Guide rate (\$)	Detail on Activity
Drilling	\$100 - \$300	per diamond drill hole or mud drill hole or bore hole
	\$50 - \$150	per reverse circulation (RC) or percussion drill hole
	\$5 - \$30	per rotary air blast (RAB) or air core drill hole
	\$1 - \$5	per auger hole
Costeaming or backhoe trenching	\$1	per square metre of land surface disturbed
Bulk sampling	\$1	per square metre of land surface disturbed
Track construction	\$100 - \$125	per kilometre of track constructed with earthmoving equipment
Disturbed crop		calculated through area disturbed [area disturbed (ha) x crop yield (t/ha) x commodity price (\$/t)]
Other		

Compensation for loss and/or damage may not be simply monetary (Under Section 85(1) of MRSDA 1990) but may include in-kind activities such as the upgrade or grading of a track, installing a gate, fixing a fence, or making any soil testing results available.

Common industry practice is for compensation to be based on the type of work being done on the land, e.g., the number of drill holes, or the length of track constructed to provide an equitable compensation process.

Note, however that compensation, as defined under the MRSDA 1990, is for loss and/or damage as outlined above and not for the type of activities undertaken.

REFERENCES

Legislation - legislation.vic.gov.au

Victorian Government information - earthresources.vic.gov.au

Image courtesy of AMEC members

Prepared by Association of Mining and Exploration Companies Inc (AMEC)

AMEC is a leading national minerals industry body representing over 450 member companies across Australia. Our members are explorers, emerging miners, producers, and a wide range of businesses and services working in and for the minerals industry. AMEC represents a growing number of companies investing in Victoria.

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