

REGULATION EXPLAINED FOR VICTORIAN LAND ACCESS

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Land access for mineral exploration in Victoria is governed by legislative and regulatory requirements that are different from other States or Territories. This fact sheet provides an overview of these requirements in plain English for mineral exploration and land access in Victoria.

This fact sheet is based on current Victoria 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.

REGULATORY REQUIREMENTS FOR LAND ACCESS IN VICTORIA

In Victoria, requirements and guidance for access to land for exploration are detailed in:

- *Mineral Resources (Sustainable Development) Act 1990 (MRSDA 1990) and Mineral Resources (Sustainable Development) (Mineral Industries) Regulations 2019*
- *Code of Practice for Mineral Exploration*, published by the Victorian Government, November 2014
- Related Victorian Government policy and guidance documents

The Victorian legislation details clear rights and responsibilities for both mineral explorers and owners/occupiers regarding access to land.

In short, this includes:

- Requirement for an access arrangement to be in place prior to any onsite exploration.
- Requirement for all access arrangements between land owner/occupiers and explorers to be in writing, or the 'informed verbal consent' of the owner/occupier of the land affected if the land affected is private land and the work being carried out involves only 'low impact exploration' as defined under schedule 4A, MRSDA 1990.
- Details on the process, procedure, and requirements for explorers to seek land access including the specific requirements for any land access arrangement.
- Provide seven days' notice – In addition to an access agreement, notice of seven (7) days is required to be provided to the Chief Inspector and land owner/occupiers of the licensee's intention to commence work (section 42(1)(g), MRSDA 1990).
- Registering any compensation agreement with the owner/occupier with the Mining Registrar.
- Areas where exploration may not occur without the written permission of the owner/occupier include within 100m of a dwelling house or areas affected by 'significant improvement' (section 45(1)).

DEFINITION OF OWNER AND OCCUPIER

'Owner' is clearly defined in the MRSDA 1990 and includes "owners in relation to private land under the Transfer of Land Act 1958; the person who is registered or entitled to be registered as the proprietor of the land including, if the land is mortgaged, the mortgagor."

'Occupier' in relation to private land, is defined as "any person lawfully in possession of the land."

KEY REQUIREMENTS UNDER LEGISLATION EXPLAINED

The following outlines the key requirements under the legislation regarding access for mineral exploration:

- **Consent** - The explorer (licensee) must have obtained all the necessary consents and other authorities relating to the land affected, including the written or informed verbal consent of all owners and occupiers impacted (section 43(1)(c, ea)).

On private land, consent to undertake reconnaissance or low impact exploration activities (exploration that involves the use of non-mechanical hand-held equipment with no use of explosives or removal/damaging of any tree or shrub) requires the licensee to obtain the written consent or informed verbal consent of the owners and/or occupiers of the affected land.

Land owner/occupier consent allowing the exploration of minerals cannot be withdrawn by the land owner/occupier or any subsequent land owner/occupier (section 45(3)).

Disputes regarding access to land can be referred to the Tribunal or Supreme Court for the purposes of determining compensation (sections 88, 110AE).

- **Informed verbal consent** - Where low impact exploration is proposed, the land owner/occupier may elect to give informed verbal consent instead of written consent (section 43 (1) (ea)).

Informed verbal consent is not permitted for low impact exploration activities that include ground disturbing work or the removal of native vegetation.

To qualify as informed verbal consent the land owner/occupier must be informed regarding: the nature and location of the works proposed; their right to choose to give written consent; their rights as a land owner/occupier; and the circumstances under which compensation may be payable. (sections 42 and 43).

- **Compensation** – Compensation is payable by the licensee to the land owner/occupier 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 (section 85(1)).

The licensee and the landowner/occupier of land may enter into a written agreement as to the amount or kind of compensation payable by the licensee 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 licensee's licence (section 87(1-4)).

The licensee must lodge any compensation agreement with the Mining Registrar for registration prior to any work commencing.

See separate [AMEC VIC Fact Sheet - Compensation](#) for more information.

- **Register written agreement** - The holder of an exploration licence or retention licence must not carry out any work on any affected private land covered by the licence unless the licensee has made and registered compensation agreements with those owners and occupiers (section 43(1)(e)(ii)).

- **Disputes** – the land owner/occupier or the licensee may:

(a) apply to the Tribunal for determination of a disputed claim for compensation; or

(b) refer a disputed claim for compensation to the Supreme Court for determination in accordance with Part 10 of the *Land Acquisition and Compensation Act 1986* (section 88(1-3)).

The licensee must pay their own costs and the costs of the other party unless the other party is not the owner or occupier of the land affected; or the other party has been frivolous or vexatious or has otherwise acted unreasonably - in which case the Tribunal or the Court may award such costs.

REFERENCES

Legislation - legislation.vic.gov.au

Victorian Government information - earthresources.vic.gov.au

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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