

LAND ACCESS AND COMPENSATION FOR LANDHOLDERS

Granting access to privately owned land to exploration companies

Exploration companies must have the informed consent of a landholder or a written compensation agreement before they can enter privately owned property or commence exploration work on that land.

While informed verbal consent is not defined in the *Mineral Resources (Sustainable Development) Act 1990*, the *Code of Practice for Mineral Exploration* suggests that as a minimum, the licensee should provide the landholder with the following information:

- 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

- that exploration work can only be undertaken on private land with landholders' consent
- or alternatively, there is a written, signed and registered compensation agreement.

When consenting to allow access, landholders and occupiers should put this consent and any conditions of entry in writing and have it signed by both parties.

Written or verbal agreement

Minerals exploration licence holders can obtain landholder consent verbally only if they are undertaking reconnaissance exploration such as rock and surface water sampling, aerial surveying, and geological mapping.

If the exploration work to be undertaken includes the use of equipment (other than non-mechanical hand tools) to excavate or involves the removal of or damage to any tree or shrub, then written consent is required from the landholder.

If the exploration work to be undertaken is not low impact and requires an approved Work Plan from the Department of Jobs, Precincts and Regions, then a written compensation agreement (which includes land access consent) is required.

Land Access Agreement Tool

The department has developed a land access tool to help you understand the exploration process and reach an agreement with an explorer.

During this process, landowners and occupiers have the opportunity to highlight critical farming activities such as cropping, livestock movements, calving or lambing, establish access points, biosecurity protocols, fire plans and to work through any other potential impacts on the farm business.

Our Commercial Consent Agreement for Access to Private Land in Victoria is a simple, voluntary agreement, which may include compensation, and can be tailored to your needs.

It can be accessed here: <https://earthresources.vic.gov.au/landaccess>

Who owns the land and the minerals?

Generally, landholders own their land to a depth of 15 metres, depending upon the land title. Like elsewhere in Australia, the Crown (State) owns minerals on behalf of the whole community.

The State is able to issue licences to companies to explore for minerals over Crown land and freehold land.

What compensation am I entitled to?

Exploration licence conditions require a licensee to take all reasonable steps to minimise the impact of exploration on a landholder. Under the *Mineral Resources (Sustainable Development) Act 1990*, compensation is also payable for any or all the following should they arise from exploration work or a proposal to carry out the activity on or below private land:

- deprivation of possession of the whole or part of the surface of the land;
- damage to the surface of the land and to any improvements on the land;
- severance of the land from other land of the owner or occupier;
- loss of amenity including recreational and conservation values;
- loss of opportunity to make planned improvements;
- any decrease in market value of the owner's or occupier's interest in the land;
- any reasonable incidental expense in obtaining or moving to replace land (when required).

The *Mineral Resources (Sustainable Development) Act 1990* 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. Landholders may seek compensation for matters such as access and land use required for any exploration work.

Written compensation agreements must be lodged with the mining registrar for registration. Compensation may include a cash payment or in-kind payments (including things of value to the landholder, such as a new access road or fences).

Did you know?

Minerals exploration companies must meet biosecurity obligations set out in legislation. For example, licensees must take all reasonable measures to minimise the spread of weeds, pest animals and plant diseases and to prevent adverse impacts to livestock and crops whilst undertaking exploration activities.

What if we cannot reach an agreement?

If agreement cannot be reached, landholders and exploration companies can seek mediation through the Mining Warden. If mediation does not achieve an outcome, the landholder does not provide consent and/or an appropriate amount of compensation cannot be agreed, then either party may refer to the Victorian Civil and Administrative Tribunal (VCAT).

VCAT does not determine the right to access land, rather the amount of compensation to be paid to the landholder. VCAT is available where conciliation between the parties has failed to achieve a satisfactory settlement negotiation and should be used as a last resort.

Guides to assist landholders

Landholders seeking to understand more about their rights in relation to minerals exploration on their property can access several guides.

These can be found at earthresources.vic.gov.au/community-and-land-use/landholder-information, including the *Guide to Commercial Consent Agreement for Access to Private Land in Victoria*.

FURTHER INFORMATION

For detailed information and to register to receive updates visit:

earthresources.vic.gov.au

Alternatively, we can be contacted via email at mdv@ecodev.vic.gov.au or call **1300 366 356**

The information above is provided for information purposes only.

It should not be considered to be advice or relied on as such.

Parties are required to make their own enquiries.

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