
**Memorandum of Understanding between
the Victorian WorkCover Authority**

and

**the Earth Resources Regulation unit of the
Department of Jobs, Precincts and Regions**



PARTIES

Victorian WorkCover Authority ABN 90 296 467 627 trading as WorkSafe Victoria (“**WorkSafe**”), is the statutory authority responsible for administering various Victorian legislation including but not limited to the *Occupational Health and Safety Act 2004*, the *Dangerous Goods Act 1985*, the *Equipment (Public Safety) Act 1994*, the *Accident Compensation Act 1985*, the *Workers Compensation Act 1958*, the *Workplace Injury Rehabilitation and Compensation Act 2013*, the *Occupational Health and Safety Regulations 2017*, the *Dangerous Goods (Storage and Handling) Regulations 2012*, and the *Dangerous Goods (Transport by Road or Rail) Regulations 2008*.

AND

Department of Jobs, Precincts and Regions ABN 83 295 188 244 (“DJPR”), the department responsible for administering various Victorian legislation including but not limited to the *Geothermal Energy Resources Act 2005*, the *Greenhouse Gas Geological Sequestration Act 2008*, the *Mineral Resources (Sustainable Development) Act 1990*, the *Offshore Petroleum and Greenhouse Gas Storage Act 2010*, the *Petroleum Act 1998*, the *Pipelines Act 2005* and regulations made under those Acts.

(collectively ‘**the parties**’)

1. DEFINITIONS AND INTERPRETATION

1.1. Definitions

Business Day means a day other than a Saturday, Sunday or public holiday appointed under the *Public Holidays Act 1993 (Vic)* applying to the Melbourne metropolitan area.

Confidential Information means any technical, scientific, commercial, financial or other information of or about a party, including any information designated by either party as confidential, which is disclosed, made available, communicated or delivered to the other party in connection with this Memorandum of Understanding.

1.2. Interpretation

In this Memorandum of Understanding (‘**MoU**’) and its Schedules, unless the contrary intention appears:

- (a) headings are for convenience only and do not affect the interpretation of the MoU and its Schedules;
- (b) a reference to a clause or schedule is a reference respectively, to a clause of, or schedule of, this MoU;
- (c) a reference to a statute or regulation refers to Victorian legislation unless indicated otherwise, and includes an amendment or re-enactment to that legislation and subordinate instruments enacted under it; and
- (d) the singular includes the plural and vice versa.

2. PURPOSE

2.1. This MoU sets out the common understanding between the parties as a voluntary statement of intent and contains the commitment of both parties at the time the MoU is signed and for the duration of the MoU. The MoU is not intended to create legally enforceable obligations between the parties.

3. TERM

3.1. This MoU is effective from the date the last party signs this MoU and continues until the earlier of:

- (a) 3 months from the date of notice in writing from one of the parties to the other notifying of its intention to withdraw from this MoU; or
- (b) the date upon which the parties agree to withdraw from this MoU.

4. OBJECTIVES

4.1. The parties share the following objectives:

- (a) to assist persons regulated by both of the parties to achieve compliance with legislations administered by the parties;
- (b) minimise the impact on the environment of workplaces or undertakings under the management or control of persons regulated by both of the parties;
- (c) to ensure the effective co-operation of the parties in the administration of their respective requirements; and
- (d) to assist persons regulated by both of the parties and other persons affected by the matters set out in the MoU, to meet the requirements of the parties without any unnecessary duplication of effort.

5. UNDERTAKINGS

5.1. The parties undertake to give effect to the arrangements and procedures set out in this MoU and any Schedules to it.

5.2. The parties undertake to establish and maintain liaison contacts to ensure the effective operation of this MoU. Within 10 Business Days of the signing of this MoU, each party will advise the other of their respective liaison contact to whom any communication about the operation of this MoU may be addressed and provide the contact information for that person. Any change to the liaison contact needs to be communicated to the other party within 10 Business Days of such change and contact information for the new liaison provided.

5.3. The parties undertake to provide information from time to time for the purpose of identifying areas of potential overlap in the roles and responsibilities of the parties and any relevant changes to the regulatory instruments overseen by them.

5.4. This MoU will be jointly reviewed by the liaison contacts on an annual basis or otherwise as agreed in writing between the parties.

6. PRIVACY

The parties respectively agree:

- (a) that they will be bound by the relevant Privacy Legislation with respect to any act done or practice engaged in by them under or in connection with this MoU;
- (b) to assure each other that any Personal or Health Information as defined in the Privacy Legislation disclosed by one to the other in connection with this MoU has been collected in accordance with applicable Privacy Legislation, that the individual to whom the information relates has been made aware of the identity of the organisation collecting the information and of the other matters of which the individual is required to be informed under applicable Privacy Legislation, and that the disclosure of the information to, and its use by, the organisation to which it is disclosed is authorised by the individual or by law;
- (c) not to use, disclose, store, transfer or handle Personal Information collected in connection with this MoU except in accordance with applicable Privacy Legislation; and
- (d) to co-operate with any reasonable request of the other relating to the protection of personal information or the investigation of a complaint about the handling of Personal Information.

Privacy Legislation means laws in respect of privacy and the protection of personal and health information including, without limitation, the *Privacy and Data Protection Act 2014* (Vic), the *Health Records Act 2001* (Vic) and the *Privacy Act 1988* (Cth).

7. CONFIDENTIAL INFORMATION

7.1. With respect to any information supplied by one party to the other in connection with this MoU which is designated as confidential by the supplying party, each party agrees to:

- (a) protect the confidential information in a reasonable and appropriate manner and in accordance with any applicable legislation and professional standards;
- (b) use and reproduce confidential information only for the purposes set out in this MoU; and
- (c) not disclose or otherwise make available confidential information other than to its personnel who have a need to know the information to give effect to the purposes set out in this MoU.

7.2. Paragraph 7.1 shall not apply to information which is:

- (a) publicly known;
- (b) already known to the receiving party;
- (c) permitted by law to be disclosed by either party to a third party without restriction;
or

- (d) information permitted by law to be disclosed by the parties subject to restrictions or limitation, provided that such restriction or limitation is observed.

8. RESTRICTIONS ON THE SHARING OF INFORMATION

Notwithstanding anything in this MoU, which may be amended or varied from time-to-time under paragraph 11 of this MOU, nothing permits either party to share or disclose information or documents in circumstances where such information sharing or disclosure would:

- (a) be contrary to law;
- (b) waive legal privilege over such information;
- (c) compromise a party's investigation;
- (d) not be in the public interest to share or disclose information that relates to matters of state, having regard to the considerations included at section 130(4) of the *Evidence Act 2008* (Vic); or
- (e) contravene the respective privacy provisions of either party which prescribe circumstances in which either party may disclose or share information with others.

9. DISPUTE RESOLUTION

The parties agree to co-operate and use best endeavours to resolve any disputes or differences between them. Disputes which remain unresolved for 30 days or more will be referred to DJPR's Deputy Secretary Resources and WorkSafe's Chief Executive or their respective nominees, for binding resolution.

10. ENTIRE AGREEMENT

This MoU contains the whole of the agreement between the parties with respect to its subject matter and supersedes any and all other MoUs, representations or statements in relation to its subject matter, by either party, whether oral or in writing prior to the date of this MoU.

11. AMENDMENT, VARIATION OR MODIFICATION

- 11.1.** This MoU may be amended, varied or modified by a further MoU in writing duly signed by the parties.
- 11.2.** Notwithstanding the above, any Schedules to this MoU may be added, amended, varied or modified by the insertion of one or more new schedules duly signed by the parties. Any schedules to this MoU may be removed by agreement between the parties, such agreement to be attested by a note to that effect duly signed by the parties and appended to this MoU.

12. GENERAL

12.1. No authority

Neither party may enter into any agreement or incur any liabilities on behalf of the other party without that other party's prior written consent and may not represent to any person that it has any authority to do so.

12.2. Counterparts

This MoU may be executed in any number of counterparts.

12.3. Costs and Expenses

Each party will bear its own costs and expenses in relation to the negotiation, preparation, execution, delivery and completion of the MoU and any other related documentation.

13. CONTACT INFORMATION

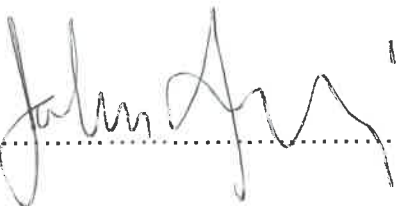
Both parties will exchange and maintain up-to-date lists of contact persons for Mines, Extractive Industries and Petroleum/Geothermal areas.

Executed for WorkSafe Victoria by its Chief Executive, Clare Amies:


.....

Dated: 14/5/19

Executed for the Department of Jobs, Precincts and Regions by its Acting Head Resources, John Krbaleski:


.....

Dated: 12/4/19

SCHEDULE 1

Earth Resources Sector

Earth Resources Regulation

The Earth Resources Regulation Unit ('ERR') is part of DJPR. ERR regulates the mineral, extractive, petroleum, pipeline, greenhouse gas storage and geothermal industries in Victoria and off-shore Victorian waters.

1. DEFINITIONS

ERR operational definitions

Audit means a systematic review of management systems, data, records and operations conducted under tenements administered by ERR, within a defined scope.

Inspection means an examination or a formal evaluation of data, records and operations conducted under tenements administered by ERR. This may include inspections that are planned or unplanned.

Major Investigation means a formal inquiry in response to an incident or event at sites that are subject to the legislation administered by ERR, to which thresholds described in ERR procedures apply.

Response Investigation means a formal inquiry in response to an incident or event at sites that are subject to the legislation administered by ERR.

WorkSafe operational definitions

Verification means a formally planned systematic review of the implementation and functionality of safety management systems, data, records, processes and operations conducted under tenements administered by WorkSafe. Such WorkSafe reviews evaluate the compliance tenement owners have with their own systems and that of legislation administered by WorkSafe.

Oversight Visit means a formally planned examination and evaluation of predetermined specific topics including their systems, data, records, processes and operations conducted under tenements administered by WorkSafe. Such WorkSafe reviews evaluate the compliance tenement owners have with their own systems and that of legislation administered by WorkSafe.

Response Visit means an examination and evaluation of systems, data, records, processes and operations conducted under tenements administered by WorkSafe in response to an incident (defined under the *Occupational Health and Safety Act 2004*) or a service request. Such visits may initiate further WorkSafe intervention through follow-up visits or a comprehensive investigation subject to legislation.

Comprehensive Investigation means a formal inquiry to determine whether a contravention of the legislation administered by WorkSafe has occurred.

2. REGULATORY RESPONSIBILITIES

2.1. Regulatory Role

- 2.1.1. WorkSafe's regulatory role involves (amongst other things) preventing workplace injuries, illness and fatalities by monitoring and enforcing compliance with Victoria's occupational health and safety laws and regulations, and providing guidance, education and support to employers and employees to maximise regulatory compliance. WorkSafe also regulates the manufacture, storage, sale, transport, use, disposal and importation into Victoria of dangerous goods (such as explosives) to prevent fatalities, injuries and accidents resulting from their use, and manages Victoria's workers compensation scheme.
- 2.1.2. ERR regulates the mineral, extractive, petroleum, pipeline, greenhouse gas storage and geothermal industries in Victoria and off-shore Victorian waters. ERR's regulatory role is the assessment of applications, issuing of licences, approval of works, inspection of operations and enforcement activities.

2.2. Overlapping Responsibilities

- 2.2.1. The parties agree that regulatory responsibilities overlap in the areas of:
- (a) Mine stability;
 - (b) Mine fire prevention, mitigation and suppression;
 - (c) Explosives, including blasting; and
 - (d) Well integrity.
- 2.2.2. Without limiting any provision set out in clause five above, the parties will work together to actively manage areas of overlapping responsibility to deliver effective and efficient regulatory services as set out in paragraph 4 of this MoU.

3. WORKING TOGETHER

3.1. Field Staff Communication

- 3.1.1. All parties' field staff will have a copy of this MoU or have access to it.
- 3.1.2. Relevant publications produced by the parties will be respectively circulated and used by both organisations.
- 3.1.3. The parties will liaise in regard to arranging for appropriate staff to participate in relevant training conducted by either organisation.
- 3.1.4. The parties will invite the other to industry forums (including national forums) where matters of overlapping responsibility are being discussed.
- 3.1.5. The parties will aim to cooperate and provide advice and specialised support to each other when requested.

3.2. Provision of advice to external stakeholders

3.2.1. Each of the parties will ensure the timely communication of advice to the other if that advice will:

- (a) assist the other of the party to perform a function under the legislation administered by it; and/or
- (b) identifies an area where the parties' functions overlap; and /or
- (c) may benefit persons regulated by both of the parties.

3.3. Joint verification / audit

3.3.1. The parties will plan and carry out joint verifications/audits.

3.3.2. ERR and WorkSafe schedule their own audits/verifications in advance and are able to share these schedules showing all planned activities to identify which activities should be conducted jointly. Each agency that has planned audits/verifications will specify and communicate those audits/verifications where they believe the other agency should be in attendance. Agencies should also communicate where they believe they should attend, if they have not been nominated for attendance.

3.3.3. A minimum of three joint audits/verifications will be conducted each year spread across regional areas to ensure regional staff has the opportunity to participate.

3.3.4. ERR and WorkSafe will agree a lead agency for each audit/verification conducted, with the other agency participating in a supporting or observing role. The lead agency will conduct the audit/verification using their own processes, tools and report formats.

3.4. Joint oversight visit / Inspection

3.4.1. The parties will plan and carry out joint oversight visits/inspections.

3.4.2. These activities are generally unplanned insofar as they are not scheduled in advance in the same way as verifications/audits. As such, ERR and WorkSafe will not prepare a timetable setting out joint activities, but instead will keep a record of when such joint activities occur. ERR and Worksafe regional staff will communicate at a regional level regarding upcoming visits/inspections, and jointly attend Earth Resources sites when personal schedules allow, there is benefit in jointly attending and with the approval from their team managers. Oversight visits could include joint visits where topics of mutual interest exist.

3.5. Response Visit / Response Investigation

3.5.1. Where an incident occurs, or issue arises, ERR and WorkSafe will notify each other if it concerns their overlapping areas of responsibility (as set out below), so that each agency is able to undertake their respective regulatory responsibilities:

- (a) Mine stability;

- (b) Mine fire prevention, mitigation and suppression;
- (c) Explosives, including blasting;
- (d) Well integrity; and
- (e) Health and safety of nearby communities impacted by the mine/quarry.

3.5.2. The parties, on a case by case basis, will determine how to manage their overlapping regulatory responsibilities prior to, during and after a response visit/response investigation.

3.6. Comprehensive Investigations / Major investigations

Comprehensive Investigations / Major Investigations and any subsequent actions will be managed by the parties separately under their respective legislation.

3.7. Emergency / crisis response

Both parties will discharge their duties in accordance with the *Emergency Management Act 2013* (Vic). The parties will provide technical assistance to the other as required.

4. SHARING INFORMATION

Exchange of relevant information and records will assist the parties to effectively administer their respective legislation.

4.1 Tenement numbers, licensee details and site operations

- 4.1.1 ERR issues a unique identifier (tenement number) for each mining, exploration, quarrying, petroleum and geothermal title. This tenement number is a key piece of information to aid communication between the two parties and for WorkSafe to be able to identify and physically locate each site. The issuing of tenements is an on-going process and therefore will require on-going communication between the two parties.
- 4.1.2 On an annual basis, ERR will generate and send electronically to WorkSafe, a tenement number report(s) of the current tenement numbers and the licensee contact details as agreed. Part A being the full listing of tenements, Part B changes since the last report. WorkSafe will allocate a co-ordinator or mailbox to receive and action the report(s) received from ERR accordingly.
- 4.1.3 ERR will provide details of site operations to WorkSafe on an annual basis in the form of aggregated production values.
- 4.1.4 Each party will maintain its own list of site operations, and these will be shared at least annually across the agencies to the extent permitted by law.

4.2 Licensee Employees and Incident Analysis

4.2.1 WorkSafe receives employee statistics from sites it manages across Victoria. WorkSafe will (to the extent permitted by law) annually provide ERR details of the number of employees of each tenement holder, along with details of the number of incidents, hours worked at each site, frequency and other statistics developed.

4.3 Sharing Intelligence and Incident Notification

4.3.1 Inspectors will be in a position to share relevant information about purported breaches of the other party's legislation. Both parties agree to ensure that such information will be shared to the extent permitted by the law. Where the potential breach involves an area of overlapping responsibility, the parties will work together to resolve the matter.

4.3.2 Where ERR or WorkSafe receive an incident notification that falls within the jurisdiction of the other party, the notifier will be directed to contact the appropriate party. Where the incident involves an area of overlapping responsibility, the parties will share the relevant information to the extent permitted by the law.

5. MEMORANDUM of UNDERSTANDING GOVERNANCE

5.1. Meetings

The parties will meet on a quarterly basis to discuss learnings, especially those associated with areas of overlapping responsibility including emerging issues. Twice per year representatives from each party's regional offices will meet to report on relevant activities in their regions.

5.2. MoU Implementation

The effectiveness of the implementation of the MoU will be assessed using the criteria set out in the table below. The results of this assessment will inform an overall review of the MoU to assist in determining whether changes are necessary.

1. Met target timelines arising from actions as detailed in paragraph 5.3 of Schedule 1 of the MoU.
2. Met information sharing commitments in paragraph 4 of Schedule 1 of the MoU.
3. Held meetings as per paragraph 5.4 of the MOU and paragraph 5.1 of Schedule 1 of the MoU.

5.3. Accountability

- 5.3.1 Any action plans arising from meetings and workshops will be assigned to a specific action officer from the relevant agency (or both where necessary), who will be responsible for ensuring the action is completed satisfactorily.
- 5.3.2 Documents containing commitments made between ERR and WorkSafe will be approved by an appropriate senior officer of each agency to ensure appropriate governance and oversight of the work being undertaken.
- 5.3.3 Joint agency management meetings will be the forum for discussing accountability against commitments.

5.4. Communication

- 5.4.1 The MoU commits ERR and WorkSafe to sharing specific information, to ensure that each agency has the best information to effectively administer its legislation.
- 5.4.2 ERR and WorkSafe will share contact lists when significant personnel changes occur and at least every six-months, so that each agency has details of appropriate cross-agency liaison points.

5.5. Timeliness

ERR and WorkSafe will be responsive in communicating with each other. The severity of the issue under consideration will be taken into account when determining the timing and means of communication. However, both agencies commit to providing an initial response to queries from the other agency within two business days, and where required, detailed response within five business days.

5.6. Regulatory Overlap

- 5.6.1 Nominating a lead agency for joint regulatory activities maintains clarity for the regulated party in terms of which compliance requirements are being assessed. However, it still offers an opportunity for inspectors from the support agency to identify potential issues arising under the regulatory framework they administer, and to follow up on the spot, if immediate risk is observed, or during a subsequent visit.
- 5.6.2 The lead agency for joint activity will be determined by those taking part in the joint activity. If it cannot be resolved at this level, the determination is to be escalated to management to agree the lead.
- 5.6.3 Where a decision is required whether to conduct a site visit as a joint activity, the following principles will be used as a guide:
 - (a) Nature and reason for the visit;
 - (b) Risk profile of the site;
 - (c) Impact on site resources and activities;
 - (d) Use of inter-agency expertise;

- (e) Opportunity for communication, shared learning or intelligence between agencies; and
- (f) Regulatory requirements or restrictions.

