

Fact Sheet

Your rights against coal mines in Victoria

Introduction

Coal mining involves large and invasive operations that have very significant impacts on both the environment and local communities. Whether a proposed or existing mining licence covers your land, or is nearby in your community, you have a range of legal rights if you want to oppose the approval or expansion of a mining operation.

Background

Coal mining in Victoria is governed by the *Mineral Resources (Sustainable Development) Act 1990* (Vic) (**MRSD Act**) and *Mineral Resources (Sustainable Development) (Mineral Industries) Regulations 2013* (Vic) (**MRSD Regulations**). To allow companies and individuals to explore for and mine coal, the MRSD Act provides that the Minister for Energy and Resources (**the Minister**) may grant exploration licences and mining licences. An **exploration licence** allows the holder to explore for minerals on that land, whereas a **mining licence** allows the holder to explore and mine for minerals on that land.

There are two other types of licences, prospecting licences and retention licences, also available under the MRSD Act. **Prospecting licences** provide for exploration and mining on areas of land less than 5 hectares and **retention licences** provide an intermediate step between exploration and mining licences, allowing the licence holder to retain the right to explore and mine land which is not yet economically viable to mine.¹

¹ MRSD Act ss 14B and 14C.

Coal mines in your community

Members of the community affected by coal mines have a series of legal rights and options.

1. Your right to be informed and consulted

An applicant for an exploration or mining licence must advertise the application in a Wednesday edition of a Victorian state-wide newspaper and in one or more local newspapers.² The applicant must also make the details of their application available on their website.³

The holder of an exploration or mining licence (**the licensee**) has a duty to consult with the community throughout the life of that licence.⁴ This means that they must share information with community members about any activities under the licence which may affect the community, and give them a reasonable opportunity to express their views about those activities.⁵

If you are a nominated person or a registered Aboriginal party under the *Aboriginal Heritage Act 2006* for the land to which the licence will apply, the Secretary of the Department of Economic Development, Jobs, Transport and Resources (**Department**) must give you notice of the application.⁶

Works⁷ done pursuant to an exploration or mining licence must be done in accordance with a work plan approved by the Secretary of the Department.⁸ Work plans set out the location and detail of the mining activity that will be undertaken.⁹ Work plans must also set out:

- a rehabilitation plan for the site when works are completed;¹⁰
- an environmental management plan for managing the environmental impacts and reporting on the environmental outcomes to the local community;¹¹
- a description of any significant community facilities that may be affected by the proposed works;¹²
- a community engagement plan that identifies any community likely to be affected by the mining activities and how the mining operator proposes to engage with the community and respond to community complaints.¹³

The Secretary of the Department must keep a register of all exploration and mining licences, as well as a number of other documents that relate to the licences including work plans.¹⁴ This register can be accessed by the public. To access the register, contact the Department. Alternatively details about licences can be found on the [Department website](#)¹⁵. Further, the Department is required to give the public copies of certain documents, including the licences themselves and work plans, upon request and payment of a fee.¹⁶

2. You can object to the grant of an exploration or mining licence

Any person may object to an exploration or mining licence being granted.¹⁷ Objections must be made in writing, must set out the reasons for the objection and must be made within **21 days** after the last date on which the application was advertised.¹⁸ The advertisement in the newspaper and on the mining company's website will tell you where to send your objection.¹⁹

² MRSD Act s 15(5); MRSD Regulations regs 20 and 21.

³ MRSD Regulations regs 20 and 21 and schedules 8 and 9.

⁴ MRSD Act s 39A.

⁵ MRSD Act s 39A.

⁶ MRSD Act s 18.

⁷ Other than 'low impact' exploration works.

⁸ MRSD Act s 39.

⁹ MRSD Act s 40; MRSD Regulations schedule 15 part 1 clauses 1-5.

¹⁰ MRSD Act s 40; MRSD Regulations schedule 15 part 1 clause 6

¹¹ MRSD Act s 40; MRSD Regulations schedule 15 part 1 clause 7.

¹² MRSD Act s 40; MRSD Regulations schedule 15 part 1 clause 8.

¹³ MRSD Act s 40; MRSD Regulations schedule 15 part 1 clause 9.

¹⁴ MRSD Act s 69.

¹⁵ <http://www.energyandresources.vic.gov.au/earth-resources/maps-reports-and-data/mining-licences-near-me/mining-licences-near-me>

¹⁶ MRSD Act s 74.

¹⁷ MRSD Act s 24(1).

¹⁸ MRSD Act s 24(2).

¹⁹ MRSD Regulations schedules 8 and 9.

When deciding whether to grant or refuse the licence the Minister must consider any objections received²⁰ and should also have regard to the principles of sustainable development set out in section 2A of the MRSD Act.²¹

The principles of sustainable development set out in the MRSD Act include:

- intergenerational equity;²²
- the protection of biodiversity;²³
- recognition of the need for a competitive economy that can enhance the capacity for environment protection;²⁴
- the integration of short and long term economic, social and environmental impacts in decision making;²⁵
- the precautionary principle;²⁶ and
- community involvement and positive community outcomes.²⁷

You can refer to these principles in your objections to any coal mines, together with any other impacts that you believe the mine will have both on you personally and on your community more broadly.

3. You may be able to object to a mine under planning and environment laws

To commence coal mining (*not* exploration) the mine proponent must obtain approval under Victoria's planning and environment laws.²⁸ Before mining commences, the licensee must:

- obtain a planning permit under the *Planning and Environment Act 1987*(Vic) (**P&E Act**);²⁹ *or*
- undergo an environment effects assessment under the *Environment Effects Act 1978* (Vic) (**EE Act**).³⁰

Local Councils are usually responsible for deciding whether or not to grant a planning permit. If a planning permit is required, any person who may be affected by the grant of the permit may object to it being granted. The objection must be in writing and set out the reasons why the permit should not be granted.³¹ If the planning permit is granted despite your objection, you may appeal the decision to the Victorian Civil and Administrative Tribunal (**VCAT**) within **21 days** after being notified of the decision. For more information on how to object to or appeal a planning permit decision, see the *Objectors Kit* and *Appeals Kit* prepared by Environmental Justice Australia available [on our website](#).³²

If an environment effects assessment under the EE Act is required, there are a number of different opportunities for public comment. Members of the public can make submissions on the scoping and preparation of an environment effects statement (**EES**), and to the Inquiry Panel appointed by the Minister for Planning. These submissions, and the EES itself, are not legally binding, but in some cases the EES may lead the Government to stop the mine going ahead.

4. You may make informal objections to existing licences

In addition to the formal objection process for applications for new licences, you can informally lobby the Minister to suspend, cancel, vary, or refuse to renew an existing licence. The MRSD Act does not provide a formal mechanism for objecting to existing licences, however the Minister is given a broad discretion by the Act and the Minister may decide to hear your concerns.³³

20 MRSD Act s 25(2).

21 MRSD Act s 2A(1).

22 MRSD Act s 2A(2)(b).

23 MRSD Act s 2A(2)(c).

24 MRSD Act s 2A(2)(d).

25 MRSD Act s 2A(2)(f).

26 MRSD Act s 2A(2)(g).

27 MRSD Act s 2A(2)(h) and (i).

28 MRSD Act s 43(3).

29 VPP cl 52.08. Note that in some areas in the Latrobe Valley, a planning permit is not required for mines (cl37 of the Latrobe Planning Scheme)

30 MRSD Act ss 42(6)-(7).

31 P&E Act s 57.

32 <http://www.envirojustice.org.au/cels/kits-and-fact-sheets>.

33 MRSD Act s 34.

Coal licences on your land

If a coal exploration or mining licence falls directly on land that you own or occupy, you have some further rights in addition to those listed above.

1. You have the right to be informed

For mining licence applications, the applicant must give a copy of the notice to the owners and occupiers of land affected by the application, within two weeks of being notified by Department that their application is valid.³⁴ Further, at least 7 days before commencing work under an exploration or mining licence, the licensee must give notice to the owners and occupiers of affected land.³⁵

The Head of the Department must keep a register of all exploration and mining licences, as well as a series of other documents that relate to the licences including work plans.³⁶ This register can be accessed by the public. To access the register, contact the Department. Additionally, the Department is required to give the public copies of certain documents, including the licences themselves and work plans, upon request and payment of a fee.³⁷

2. Licensees must ask for consent and/or provide compensation before entering your land

Before commencing work under an exploration or mining licence which affects your land, the licensee must:

- obtain your written consent;³⁸ *or*
- make a compensation agreement with you to reimburse you for the use of your land;³⁹ *or*
- if you cannot agree on compensation, obtain a compensation determination from VCAT or the Supreme Court.⁴⁰

It is possible to simply give verbal consent for low-impact exploration works that involve no excavation of the land and no clearing of vegetation. However it is advisable that if you do give your consent for the licensee to enter your land for any purpose you enter into a written agreement setting out the terms of your consent, including what exploration and mining activities will take place, where they will be, over what time period and what compensation is payable.

It is important to remember that once you have given consent for a licensee to enter your land you cannot cancel that consent unless the licensee agrees. Make sure that you carefully consider what you are consenting to and if possible seek independent legal advice.

If you can't reach agreement with the mining company about access to your land the mining company may apply to VCAT for a compensation order which determines how much compensation you are entitled to for the mining company using your land. If this happens the mining company must pay your reasonable legal expenses.⁴¹

Once a mining licence has been granted, the licensee must visibly mark out the boundaries of that licence on your land.⁴² They may not enter onto your land to do that unless you have provided written consent.⁴³ If you do not consent, the licensee may apply to the Head of the Department for an authority to enter your land for that purpose.⁴⁴

³⁴ MRSD Act s 15(5); MRSD Regulations regs 15-15A.

³⁵ MRSD Act ss 42(b), 43(d).

³⁶ MRSD Act s 69.

³⁷ MRSD Act s 74.

³⁸ MRSD Act ss 42(2)(c)(i), 43(1)(e)(i).

³⁹ MRSD Act ss 42(2)(c)(ii), 43(1)(e)(ii).

⁴⁰ MRSD Act ss 42(c)(iii), 43(e)(iii).

⁴¹ MRSD Act s 88(3).

⁴² MRSD Act s 38AA(1).

⁴³ MRSD Act s 38AA (3)(a).

⁴⁴ MRSD Act s 38AB.

3. In most cases the exploration or mining must be at least 100 metres away from your home

Normally, neither exploration nor mining work can take place within 100 metres of a residential house (including 100 metres below it) without your consent.⁴⁵ However, in certain cases the Minister can authorise mining activity within 100 metres of a residence.⁴⁶

4. You can exclude your land from the licence if it is more valuable to use it for agriculture

If your land is primarily used for agriculture,⁴⁷ then the licensee must prepare a statement of economic significance.⁴⁸ That statement must assess the benefit to Victoria of the proposed work and the benefits that could be achieved without using your land.⁴⁹ The licensee must give you a copy of the statement of economic significance before they start work, and no more than 6 months after the licence was granted or when the licensee lodges the work plan.⁵⁰

If you receive a statement of economic significance from the landholder you must not divulge or communicate to any person (other than a professional advisor retained by you, for example your lawyer) any of the information in the statement without the consent of the licensee.⁵¹

A landholder can apply to the Minister to excise their land from the mining licence if there would be a greater economic benefit to Victoria in continuing to use the land for agriculture.⁵² You must apply to have your land excised within **30 days** of receiving the statement of economic significance.⁵³ Your application must set out the economic benefits of agriculture on that land, and any concerns you have with the licensee's statement.⁵⁴ If the licensee disputes your application within 30 days, the matter will be referred to an independent expert appointed by the President of the Australian Property Institute.⁵⁵ After receiving the report and recommendation of the independent expert, the Minister will then make a decision on whether there is a greater economic benefit to Victoria from the mining activity or from continuing to use your land for agriculture.⁵⁶ If the Minister decides that there is greater economic benefit from using the land for agriculture the Minister must excise your land from the licence, meaning that mining cannot occur on your land.⁵⁷

5. Ministerial exemption

Finally the Minister also has a general discretion to exempt land from an exploration or mining licence.⁵⁸ If you have not been successful in any of the other mechanisms you can ask the Minister to exercise this discretion to prevent the exploration or mining.

45 MRSD Act ss 45(1)(a)(i), (b).

46 MRSD Act s 46.

47 MRSD Act s 4 definition.

48 MRSD Act s 26A(2).

49 MRSD Act s 26A(2).

50 MRSD Act s 26A(4).

51 MRSD Act s 26E(1).

52 MRSD Act s 26B(1).

53 MRSD Act s 26B(2); Additionally you must give a copy of your application to the licensee within the same timeframe.

54 MRSD Act s 26B(3).

55 MRSD Act s 26D.

56 MRSD Act s 26D.

57 MRSD Act s 26B.

58 MRSD Act s 7.

Where can I get more information?

If you require specific legal advice about an existing or proposed coal mine you can contact:

- **Community Environmental Legal Service:** A program of Environmental Justice Australia, the Community Environmental Legal Service can provide legal advice and sometimes representation in Victorian matters which may have a significant impact on the environment or where the matter raises important issues of public policy or with respect to the operation of environmental laws.
Phone: 8341 3100 (metropolitan) or 1300 336 842 (regional)
Website: www.envirojustice.org.au/cels
- **Community Legal Centres:** Community Legal Centres are independent community organisations that provide legal advice to the public, particularly for those facing economic and social disadvantage. Victoria has 49 Community Legal Centres based all around the State. To find your nearest Community Legal Centre, contact the Federation of Community Legal Centres.
Phone: 9652 1500
Website: www.communitylaw.org.au

About the Community Environmental Legal Service (CELS)

Providing legal help to Victorians as part of the Community Environmental Legal Service (CELS) program is one of the many ways Environmental Justice Australia pursues access to justice.

The CELS program provides legal help for Victorians through the publication of kits, fact sheets and videos which provide accessible and practical environmental law information to the Victorian community. Through the CELS program we also conduct legal workshops in Victoria, run by one of our expert environmental lawyers to suit the needs of community groups or groups of individuals concerned about or impacted by environmental issues.

Environmental Justice Australia believes that all Australians have a right to clean air, clean water, and intact ecosystems. It's also crucial that our communities have a real say over what happens to our environment, and that means participating in decision-making processes. We're working to pursue environmental justice for communities affected by environmental harm by supporting their right to information, their right to participate in the legal and legislative process, and their right to participate in decision-making about their communities and the places where they live.

If you have a query about anything in this Fact Sheet, or would like the Community Environmental Legal Service to assist you to protect the environment, please call us:

8341 3100 (metropolitan) or 1300 336 842 (regional)

Donate at: www.envirojustice.org.au/donate

SEEK LEGAL ADVICE REGARDING SPECIFIC CASES

While all care has been taken in preparing this publication, it is not a substitute for legal advice in individual cases. For any specific questions, seek legal advice. Environmental Justice Australia accepts no responsibility for any loss or damage suffered by people relying on the information on this fact sheet.

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