

## Your rights against coal mines

### INTRODUCTION

Whether a proposed or existing coal mining licence lies over your land, or just in your community, there are a range of legal rights and avenues that you can pursue to stop or slow the expansion of brown coal production.

### BACKGROUND

Coal mining in Victoria is governed by the *Mineral Resources (Sustainable Development) Act 1990 (Vic) (MRSD Act)*. To allow companies and individuals to explore for and mine those minerals, 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.

Parliament has recently passed amendments to the MRSD Act. Amongst other things, the amendments will create two new licences — retention licences and prospecting licences. These licences will provide an intermediate step between exploration and mining licences, allowing exploration and mining on areas of land less than 5 hectares, and allowing the retention of rights to land which is not yet economically viable to mine, respectively. These amendments will commence some time before February 2012.

### COAL MINES IN YOUR COMMUNITY

Members of the community in or around which the coal mine is based or proposed 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 Statewide and local newspapers.<sup>1</sup> Note that the advertisements will usually appear in the Wednesday edition of the Statewide Newspaper.

The holder of an exploration or mining licence (**the licensee**) has a duty to consult with the community throughout the life of that licence.<sup>2</sup> This means that they must share information about any activities under the licence which may affect the community with community members, and give them a reasonable opportunity to express their views about those activities.<sup>3</sup>

If you are a nominated person or a registered Aboriginal party under the Aboriginal Cultural Heritage Act for the land which the licence will apply to, the Head of the Department of Primary Industries must give you notice of the application.<sup>4</sup>

Works<sup>5</sup> done pursuant to an exploration or mining licence must be done in accordance with a works plan approved by the head of the Department of Primary Industries.<sup>6</sup> These plans set out where and what works are to be done.

<sup>1</sup> MRSD Act s 15(5); Mineral Resource Development Regulations 2002 (MRD Reg.s), clauses 16-16A.

<sup>2</sup> MRSD Act s 39A.

<sup>3</sup> MRSD Act s 39A.

<sup>4</sup> MRSD Act s 18

<sup>5</sup> Other than 'low impact' exploration works

<sup>6</sup> MRSD Act s 39

The head of the Department of Primary Industries must keep a register of all exploration and mining licences, as well as a series of other documents that relate to the licences including works plans (discussed below).<sup>7</sup> This register can be accessed by the public. Further, the Department is required to give the public copies of certain documents, including the licences themselves, as well as works plans and works approvals, upon payment of a fee.<sup>8</sup>

## 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.<sup>9</sup> Objections must be made within 21 days after the last date on which the application was advertised.<sup>10</sup> Objections must be made in writing, and must set out reasons for the objection.<sup>11</sup>

Note that the Minister should have regard to the principles of sustainable development set out in section 2A of the MRSD Act, when administering the MRSD Act.<sup>12</sup>

## 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.<sup>13</sup> Before mining commences, the licensee must:

- obtain a planning permit under the *Planning and Environment Act 1987*(Vic) (**P&E Act**);<sup>14</sup> **or**
- undergo an environment effects assessment under the *Environment Effects Act 1978* (Vic) (**EE Act**).<sup>15</sup>

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.<sup>16</sup> 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 summary on Environmental Law Online,<sup>17</sup> and the Objectors Kit and Appeals Kit prepared by the EDO.<sup>18</sup>

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 Inquiry Panels appointed by the Minister for Planning. These submissions, and the EES itself, are not legally binding — but in some rare 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 might 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

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<sup>7</sup> MRSD Act s 69

<sup>8</sup> MRSD Act s 74

<sup>9</sup> MRSD Act s 24(1).

<sup>10</sup> MRSD Act s 24(2)(c).

<sup>11</sup> MRSD Act ss 24(2)(a)-(b).

<sup>12</sup> MRSD Act s 2A(1).

<sup>13</sup> MRSD Acts 43(3).

<sup>14</sup> VPP cl 52.08.

<sup>15</sup> MRSD Act ss 42(6)-(7).

<sup>16</sup> P&E Act s 57

<sup>17</sup> [http://www.envirolaw.org.au/articles/land\\_use\\_planning/planning\\_permit\\_appeal\\_to\\_vcat](http://www.envirolaw.org.au/articles/land_use_planning/planning_permit_appeal_to_vcat);

[http://www.envirolaw.org.au/articles/land\\_use\\_planning/preparing\\_an\\_objection](http://www.envirolaw.org.au/articles/land_use_planning/preparing_an_objection).

<sup>18</sup> [http://www.edo.org.au/edovic/publications/kits/edo\\_objectionskit0807.pdf](http://www.edo.org.au/edovic/publications/kits/edo_objectionskit0807.pdf);

[http://www.edo.org.au/edovic/publications/kits/edo\\_appealskit0707.pdf](http://www.edo.org.au/edovic/publications/kits/edo_appealskit0707.pdf).

objecting to or making submissions on these decisions. However, the Minister's discretion to make these decisions is broad, and the Minister may decide to hear your concerns.

## 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 the Department of Primary Industries (**DPI**) that their application is valid.<sup>19</sup> 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.<sup>20</sup>

The head of the Department of Primary Industries must keep a register of all exploration and mining licences, as well as a series of other documents that relate to the licences including works plans and approvals.<sup>21</sup> This register can be accessed by the public. Further, the Department is required to give the public copies of certain documents, including the licences themselves, as well as works plans and works approvals upon payment of a fee.<sup>22</sup>

### 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;<sup>23</sup> *or*
- make a compensation agreement with you to reimburse you for the costs of losing the use of your land;<sup>24</sup>
- if you cannot agree on compensation, obtain a compensation determination from the Mining Warden (or failing that, VCAT or the Supreme Court).<sup>25</sup>

It is advisable that if you do give your consent to a licensee conducting exploration or mining works on your land that you enter into a written agreement setting out the terms of your consent, including where and what exploration and mining activities will take place, over what time period and what compensation is payable.

Once a mining licence has been granted, the licensee must visibly mark out the boundaries of that licence on your land.<sup>26</sup> They may not enter onto your land to do that unless you have provided written consent.<sup>27</sup> If you do not consent, the licensee may apply to DPI for an authority to enter your land for that purpose.<sup>28</sup>

### 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 meters of a dwelling house (including 100 meters below it) without your consent.<sup>29</sup> However, in certain cases the Minister can authorise this.<sup>30</sup>

<sup>19</sup> MRSD Act s 15(5); MRSD Regulations regs 15-15A.

<sup>20</sup> MRSD Act ss 42(b), 43(d).

<sup>21</sup> MRSD Act s 69

<sup>22</sup> MRSD Act s 74

<sup>23</sup> MRSD Act ss 42(c)(i), 43(e)(i).

<sup>24</sup> MRSD Act ss 42(c)(ii), 43(e)(ii).

<sup>25</sup> MRSD Act ss 42(c)(iii), 43(e)(iii).

<sup>26</sup> MRSD Act s 38AA(1).

<sup>27</sup> MRSD Act s 38AA (3)(a).

<sup>28</sup> MRSD Act s 38AB.

#### 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,<sup>31</sup> then the licensee must prepare a statement of economic significance.<sup>32</sup> That statement must assess the benefit to Victoria of the proposed work, and the benefits that could be achieved without using your land.<sup>33</sup> They must give it to you before they start work, and no more than 6 months after the licence was granted.<sup>34</sup>

The Minister can excise your land from the mining licence if there would be a greater economic benefit to Victoria in continuing to use it for agriculture.<sup>35</sup> You must apply to have your land excised within 30 days of receiving the statement of economic significance,<sup>36</sup> setting out the economic benefits of agriculture on that land, and any concerns you have with the licensee's statement.<sup>37</sup> If the licensee disputes that application within 30 days, the matter will be referred to an independent expert appointed by the President of the Australian Property Institute.<sup>38</sup> The Minister will make a decision after receiving the report and recommendation of that independent expert.<sup>39</sup>

#### ASK A LAWYER - IT'S FREE!

There are a number of other ways in which a licence or decision of the Minister might be legally invalid, allowing you to challenge them in court. To bring this kind of challenge you will need a lawyer. If you would like further information on your rights against coal mines, or ways you can challenge new coal developments in your area, please call the **Environment Defenders Office**. We can provide you with free legal information and advice over the phone, and provide legal representation in some cases. You can call us on **(03) 8341 3100 (metropolitan)** or **1300 336 842 (regional)**.

#### DISCLAIMER

While all care has been taken in preparing the information on this fact sheet, it is not a substitute for legal advice. For any specific questions seek legal advice. The Environment Defenders Office accepts no responsibility for any loss or damage suffered by people relying on the information on this fact sheet.

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<sup>29</sup> MRSD Act ss 45(1)(a)(i), (b).

<sup>30</sup> MRSD Act s 46.

<sup>31</sup> MRSD Act s 4.

<sup>32</sup> MRSD Act s 26A(1).

<sup>33</sup> MRSD Act s 26A(2).

<sup>34</sup> MRSD Act s 26A(4).

<sup>35</sup> MRSD Act s 26B(1).

<sup>36</sup> MRSD Act s 26B(2).

<sup>37</sup> MRSD Act s 26B(3).

<sup>38</sup> MRSD Act s 26D.

<sup>39</sup> MRSD Act s 26D.