



Guide to Commercial Consent Agreement for Access to Private Land in Victoria

In Victoria, before an explorer can access privately-owned land and commence exploration activities, the landholder needs to provide consent.

One way to do this is through a written agreement, such as the *Commercial Consent Agreement for Access to Private Land in Victoria (Agreement)*.

The model, voluntary, Agreement should be tailored to meet the needs of the landholder and explorer.

The Agreement covers:

- **Access** to the land
- **Conditions** of access
- **Compensation**, if applicable
- **Dispute resolution**.

The Agreement includes special conditions for an explorer to follow when carrying out exploration work on private property. These conditions align with:

- *Mineral Resources (Sustainable Development) Act 1990 (MRSDA)*, available at legislation.vic.gov.au
- *Code of Practice for Mineral Exploration (Code)*, available at earthresources.vic.gov.au
- industry best practice.

Guide

The purpose of this Guide is to help a landholder and an explorer reach an Agreement for access to private property for exploration activities.

The Guide includes a **Checklist** for landholders and explorers about how to complete the Agreement.

Agreement Checklist

This checklist sets out the **important** parts of the *Commercial Consent Agreement for Access to Private Land in Victoria* that need to be completed by the parties - landholder and/or occupier and explorer.

If the Agreement includes compensation, it should be lodged with the Mining Registrar at Earth Resources Regulation (earthresources.vic.gov.au/regulation).

If the parties choose to use the Agreement, it should be **tailored** to suit your specific circumstances.

MAKE SURE YOU COMPLETE THE FOLLOWING CLAUSES

1. Parties

- Insert the **names** of the landholder and/or occupier (if applicable), and explorer, and **address** details.

2. Commencement

- Insert the **commencement date** and **end date** of the Agreement.

4. Compensation – if applicable

- If applicable, insert the **amount** (or formula to determine the level) of compensation* paid to the landholder and/or occupier, and **when** it will be paid.
- Insert any **further** compensation, as agreed between the parties.

5. Land and Access

- Insert the **land map reference, start date, completion date, access route** and any **hours of restriction** to access the land.

6. Special Conditions

- Insert any **further** conditions, as required.

7. Communication between Parties

- Insert how each party should be **contacted**, including any preferred **time/s**, and **address** or **email** or **phone** number/s.
- Insert **name** of explorer's project manager and contact details.

Execution Page

- The Agreement should be **signed** before a witness.
- If the landholder and/or occupier received any independent assistance** in preparing the Agreement, insert the **name** and **contact** details of that person.

* Compensation includes cash or in-kind payments.

** A landholder and/or occupier may seek independent advice when negotiating the Agreement. An explorer should pay the landholder's and/or occupier's reasonable costs for entering into the Agreement, including determining any compensation.

What the clauses in the Agreement mean:

Clause 1 - Parties

There are at least two parties to the Agreement, the landholder and the explorer.

The first party is the landholder. The landholder is the person or entity listed on the land title as the registered proprietor. When there is more than one person or entity listed as registered proprietor, one nominated person can sign the Agreement on behalf of the others.

The second party is the explorer. The explorer holds an exploration licence over the land.

In some circumstances, there might be a third party known as the occupier. This is where a person or an entity, other than the landholder, uses or occupies the land.

Throughout this Guide the use of the term landholder means landholder and/or occupier.

The parties – landholder, occupier and explorer – should enter their details in clause 1 of the Agreement.

Clause 2 - Commencement

The Agreement is for a set term negotiated between the parties, with a start and end date.

The explorer will have a work program that outlines how long they will explore the land. The landholder should receive the approved work plan and a copy of the exploration licence.

The end date of the Agreement should include at least six months past the end of exploration activities. This should allow enough time for an independent assessment to determine any remedial compensation. Refer to clause 4 about compensation.

Remedial works carried out by the explorer can occur past the expiry date of the exploration licence. Exploration activities can only occur with a valid exploration licence and must cease when the licence expires.

The parties should enter the start and end date in clause 2 of the Agreement.

Clause 3 - Access

Once all the parties sign the Agreement, the obligations of the Agreement are in force. Consent is given for the explorer to access the landholder's property provided they comply with the obligations in the Agreement.

Clause 4 - Compensation

Up-front compensation

If applicable, the Agreement sets out any compensation for the landholder from the explorer. Compensation can also be negotiated after landholder consent is given.

Compensation includes an agreed monetary amount negotiated between the parties and paid by the due date. The due date is usually within the first 28 days from the commencement date of the Agreement.

Compensation can be paid for any or all of the following:

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

The MRSDA does not state these are the only factors for which compensation is payable. It also does not stipulate which activities require compensation.

Under the MRSDA, compensation is payable for any damage or loss of income or amenity arising from exploration activities.

The explorer should pay reasonable costs for any independent assessment required for the landholder to determine the appropriate compensation.

A signed Agreement that includes compensation should be lodged for registration with the Mining Registrar at Earth Resources Regulation (earthresources.vic.gov.au/regulation).

Remedial compensation

Compensation includes the costs of rectifying damage and compensating for losses that were unforeseeable. This remedial compensation should also be guided by independent assessment. It should be agreed by the end date of the Agreement.

Remedial compensation in clause 4 (b) of the Agreement can include a monetary sum, minor works and other negotiated terms between the parties, using an independent assessment as a guide.

Who can provide an independent assessment of compensation?

Lawyers, accountants, and other land access advisers can assist a landholder negotiate an Agreement with an explorer, including arranging an independent assessment for compensation.

The explorer will pay for other reasonable costs associated with the Agreement. This includes the landholder's legal and/or professional costs incurred in negotiating the Agreement.

The parties should enter the amount, due date, and any further compensation, in clause 4 (a) and (d) of the Agreement.

Clause 5 – Land and Access

The explorer's work program must include maps indicating sections of the land to be explored.

The explorer may also provide the landholder with aerial images of the land with access areas and access routes marked.

The Agreement will identify the following information about each land section:

- Map Reference
- Start Date of exploration
- End Date of exploration
- Access Route.

The Agreement can allow the landholder to prevent access during certain times. For example, to allow livestock movement, stock feeding or other farming activities, or to limit noise near dwellings.

The parties should enter the land map reference, start date, completion date, access route, and any hours of restriction on access in clause 5 of the Agreement.

What if the weather disrupts planned exploration activities?

Farming and exploration are subject to weather conditions. Through regular communication, changes to access times can be negotiated to allow all parties do what they need to do on the land.

Clause 6 – Special Conditions

Under the Agreement, the explorer is required to comply with a number of special conditions. These conditions are based on the Code, the MRSDA, the exploration licence, approved work plan and best practice. The parties may agree to further conditions, as appropriate.

The explorer must preserve the structure, function and amenity of the landholder's property.

If exploration activities cause disruption to the land's structure, function or amenity, the explorer is required to remediate the land, stock and infrastructure.

Land Visitor Register

The explorer should keep a Land Visitor Register to record the details of their employees, contractors and any other persons who access the land. The landholder can inspect this Register and must be given a copy upon request.

A Land Visitor Register records details including name, position, date and time of entry and exit.

Project Manager

The explorer will provide the landholder with details of the project manager. This person is the key point of contact for all communication. The project manager and landholder should meet regularly to discuss any issues, including the explorer's progress with its work program.

Fire Management, Environmental and Biosecurity Controls

The explorer must comply with the landholder's fire management, environmental and biosecurity measures.

Prior to the explorer commencing exploration, the landholder should orientate the explorer to the land, including all fire management, environmental and biosecurity plans and control measures.

Contamination

The explorer is required to prevent contamination of water and soil. Any contamination needs to be reported to the landholder, and the explorer must undertake appropriate containment measures.

All contaminated water must be replaced by the explorer as soon as possible. All contaminated soil must be removed and replaced with clean soil of the same or better quality.

Any weed, pest and disease contamination introduced by the explorer must be eradicated by the explorer as soon as possible.

The explorer must compensate the landholder for any stock losses or damaged crops due to contaminated water and soil.

Erosion

The explorer is required to prevent erosion of soil and degradation of the environment. The explorer must stop any erosion or environmental degradation caused by exploration and return the affected areas to their original condition.

Securing Plant, Equipment and Waste

The explorer might leave equipment and potential contaminants including petrols, diesels, oils and lubricants unattended on the land overnight. The explorer should erect a secure compound to house their equipment and store potential contaminants in approved containers to minimise any contamination risk.

Waste must be kept in vermin-proof storage and should be appropriately disposed of at least weekly. The explorer must provide appropriate toilet facilities.

Livestock and Crops

The explorer must compensate the landholder for any stock losses due to exploration. Compensation should be determined using the market value of the livestock. The explorer should pay for any damaged crops.

The parties may seek assistance from lawyers, accountants and other land access advisers to determine the appropriate amount of compensation for any stock losses or disruption to crops due to exploration.

Animals and Firearms

The explorer is not permitted to bring any animals or firearms on to the land.

Access Routes and Tracks

The explorer, in consultation with the landholder, should develop a plan for monitoring and maintaining access routes in good working order. Access routes can become impassable during high rainfall and attempts to traverse these routes can cause significant damage. Identifying secondary access routes early will relieve the impact on primary access routes and minimise surface damage.

Explorers should plan for multiple access routes to the landholder's property to minimise traffic burden and surface damage to the primary access route.

Noise

The explorer will manage noise in line with the approved work plan and any local noise restrictions.

The explorer must take all reasonable measures to avoid nuisance noise.

Soil Chemical Data

The explorer should share any soil chemical characteristic data with the landholder, if requested, so the landholder can optimise their soil profiles to improve pasture, cropping and horticulture.

The parties can agree to any further special conditions, as required. These additional conditions should be entered in clause 6 of the Agreement.

Clause 7 – Communication between Parties

Regular communication between the explorer and the landholder is essential to creating a good working relationship. It can also minimise the risk of disputes.

It is important to make sure all parties know the best way to contact each other.

Each party must nominate their preferred contact method, including specific contact details and preferred times.

Contact details need to include an address where correspondence can be sent. This can be a postal or email address. If possible, include a contact phone number.

Landholder and explorer contact details should be entered in clause 7 of the Agreement.

Clause 8 – Indemnity

The explorer indemnifies the landholder from any loss or damage to neighbouring properties, public roads and places, and people, caused by exploration, whether directly or indirectly.

Clause 9 – Disputes

When a party has an unresolved concern, it can escalate into a dispute.

A dispute is in no one's best interest.

All parties should minimise the risk of disputes by regularly communicating with each other.

When entering into this Agreement, all parties commit to acting in good faith. Under this Agreement, both parties should act honestly and fairly and not do anything to limit the other party's rights.

Figure 1 sets out the process for how to resolve a dispute under the Agreement.

What if we cannot resolve a dispute?

If the parties cannot resolve a dispute, either the landholder or explorer should refer the dispute to an independent body for Alternative Dispute Resolution (ADR).

ADR enables parties to resolve a dispute without taking legal action through the court or tribunal system. ADR generally involves the use of:

- preliminary assistance
- mediation.

Preliminary assistance involves talking to the independent body about the dispute. The independent body will provide information and assistance to help you resolve the matter.

Mediation is a confidential process to resolve the dispute using a trained, impartial, mediator. A mediator doesn't make a decision. The mediator helps you reach your own decision.

Under the Agreement, the following independent bodies can assist a landholder and explorer resolve a dispute:

- Mining Warden
- Victorian Small Business Commission.

Mining Warden
 Telephone: 8392 2218
 miningwarden.vic.gov.au

Victorian Small Business Commission
 Telephone: 13 VSBC (13 8722)
 vsbc.vic.gov.au

Mining Warden

The Mining Warden is an independent statutory office holder appointed under the MRSDA.

The Mining Warden seeks to resolve disputes by mediation, conciliation or arbitration. Conciliation and arbitration are other types of ADR.

In most disputes, the Mining Warden will bring the parties together for a preliminary hearing and conference. Hearings can be conducted in Melbourne or regional Victoria.

The Mining Warden can assist in resolving a dispute between a landholder – consumer, farmer or small business – and an explorer.

Victorian Small Business Commission

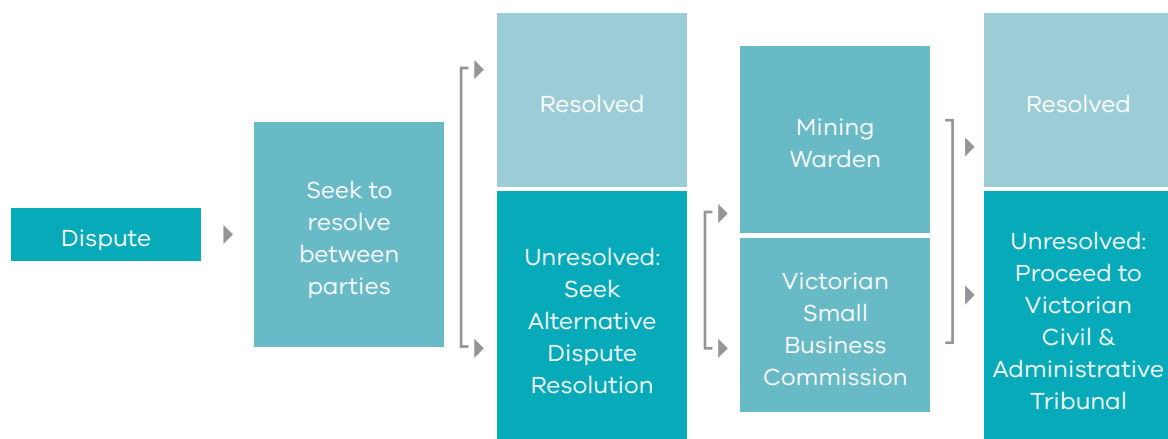
The Victorian Small Business Commission (VSBC) is an independent office established under the *Small Business Commission Act 2017*. Its purpose is to create a fair and competitive environment for Victorian small business to operate, grow and prosper.

The VSBC provides a dispute resolution service for Victorian small business, including farmers, and explorers.

The VSBC seeks to resolve disputes by providing information and education, preliminary assistance and its mediation service. When a party contacts the VSBC for assistance, it will engage with the parties to see if the dispute can be resolved before mediation. Mediation can be conducted in Melbourne or regional Victoria.

The VSBC can assist in resolving a dispute between a landholder – small business or farmer – and an explorer.

Figure 1: How to resolve a dispute under the Agreement



Consider seeking professional assistance throughout this process

Victorian Civil and Administrative Tribunal

If a dispute between a landholder and an explorer cannot be resolved by the Mining Warden or the VSBC, either party can commence a separate action at the Victorian Civil and Administrative Tribunal (VCAT). VCAT is a tribunal that hears and decides various cases in Victoria.

Victorian Civil and Administrative Tribunal

Telephone: 1300 01 8228
vcat.vic.gov.au

Clause 10 – Applicable Law

The Agreement is governed by the laws of the state of Victoria.

Clause 11 – Agreement Assistance

While there is no requirement for either party to seek advice before entering into this Agreement, either party may seek independent advice.

The explorer should pay for the landholder's reasonable costs of entering into the Agreement, including determining any compensation.

Temporary Restriction on Access to Land

In the event of an alleged serious breach of the Agreement, the landholder may temporarily restrict the explorer's access to the land. However, before any restriction can be placed on the explorer's access to the land, the landholder must:

- contact the explorer to discuss their concerns and seek resolution. This includes the landholder setting out the nature of the dispute and advising that if the dispute can't be resolved, a temporary restriction on access to the land is being considered
- contact either the Mining Warden or VSBC for help resolving the dispute with the explorer.

If, following Alternative Dispute Resolution, the dispute remains unresolved, the landholder may temporarily restrict the explorer's access to land. Either party can commence further action at VCAT.

Disclaimer

This guidance material is not a substitute for independent professional advice and you should obtain any appropriate professional advice relevant to your particular circumstances before entering into any commercial consent agreement. The Department of Jobs, Precincts and Regions makes no representations regarding the content contained within this guidance material or the Commercial Consent Agreement template itself. You must exercise your own judgement and carefully evaluate this material.