

Memorandum of Understanding for Earth Resource Industries Approvals and other Obligations and Responsibilities

Department of Jobs, Precincts and Regions
ABN 69 981 208 782

Department of Environment, Land, Water and Planning
ABN 90 719 052 204

TABLE OF CONTENTS

HEAD DOCUMENT

PREAMBLE

HOW TO READ THIS DOCUMENT

PARTIES

1. DEFINITIONS

2. PURPOSE AND SCOPE OF THIS MEMORANDUM

3. TERM

4. CONTENT

5. RESPONSIBILITIES OF DJPR

6. RESPONSIBILITIES OF DELWP

7. OBJECTIVES

8. UNDERTAKINGS

9. CONSULTATION

10. TRAINING

11. CONFIDENTIAL INFORMATION

12. SECRECY

13. PRIVACY

14. ENTIRE AGREEMENT

15. OWNERSHIP OF INFORMATION

16. REVIEW, PERFORMANCE MONITORING AND REPORTING

17. VARIATION OF THE HEAD DOCUMENT

18. VARIATION OF THE SCHEDULES

19. DISPUTE RESOLUTION

20. GENERAL

21. PRIORITY AREAS OF COLLABORATION FOR THIS MEMORANDUM OF UNDERSTANDING

SCHEDULES

DEPARTMENT OF JOBS, PRECINCTS AND REGIONS

and

DEPARTMENT OF ENVIRONMENT, LAND, WATER AND PLANNING

**MEMORANDUM OF UNDERSTANDING FOR EARTH RESOURCE INDUSTRIES
APPROVALS AND OTHER OBLIGATIONS AND RESPONSIBILITIES**

PREAMBLE

Earth resources – minerals, oil and gas, and stone – are essential underpinnings of modern society. The Victorian earth resources industries make a significant contribution to our economy. In 2015-16 the annual value of mining was calculated to be \$13.6 billion and provided 121,000 direct and indirect jobs (Minerals Council of Australia 2020). Extractive industries (quarries) underpin our \$23 billion building and construction industries, with an annual production of around 50 million tonnes (DJPR 2018). Victoria's oil and gas industry fuels our economy and jobs growth (earth resources regulation (ERR) website).

While earth resources are essential for the development of the state, mining, quarrying and gas/oil production can have lasting and far reaching economic, cultural, social and environmental impacts. With the increasing demand for exploration for, and extraction of, minerals, stone and hydrocarbons on Crown lands, it is critical that these activities are effectively managed, and the Crown land values are appropriately protected.

The Department of Jobs, Precincts and Regions (DJPR) has overall statutory responsibility for the regulation of earth resources industries. The Department of Environment, Land, Water and Planning (DELWP), usually on behalf of the Minister for Energy, Environment and Climate Change (generally referred to in earth resources legislation as the Crown land Minister), has a range of obligations and responsibilities under this legislation, including provision of consents to earth resources activities on public lands and comments on work plans and work plan variations. Interactions between DJPR and DELWP are assisted by this Memorandum of Understanding (MoU) that has been updated several times since its inception in 2003.

*In 2020, the Victorian Auditor General's Office (VAGO) completed the VAGO Rehabilitating Mines Report to determine if the state is effectively managing its exposure to liabilities from the rehabilitation of mines on private and public land. VAGO made 10 recommendations aimed at improving the rehabilitation of mines and quarries in the state. DJPR and DELWP are jointly responsible for implementing two recommendations in the Report (including in relation to the development of this MoU and the development of frameworks for the management of legacy and abandoned mines**).*

The purpose of this Memorandum of Understanding is to facilitate the working relationship between DJPR and DELWP in the administration of earth resources legislation and joint implementation of relevant recommendations in the VAGO Rehabilitating Mines Report.

**** Discharge of obligations and responsibilities of the Parties in relation to the administration and management of legacy and abandoned mines and quarries is guided by a joint DJPR, DELWP, Parks Victoria statement - Management of Legacy and Abandoned Mines on Crown Land - published on the DJPR website on 29 December 2020. The publication of the statement resulted from a commitment made to VAGO by DJPR and DELWP.**

HOW TO READ THIS DOCUMENT

This Memorandum of Understanding (**MoU**) consists of the Head Document, List of Schedules, Group 1 Schedules and Group 2 Schedules.

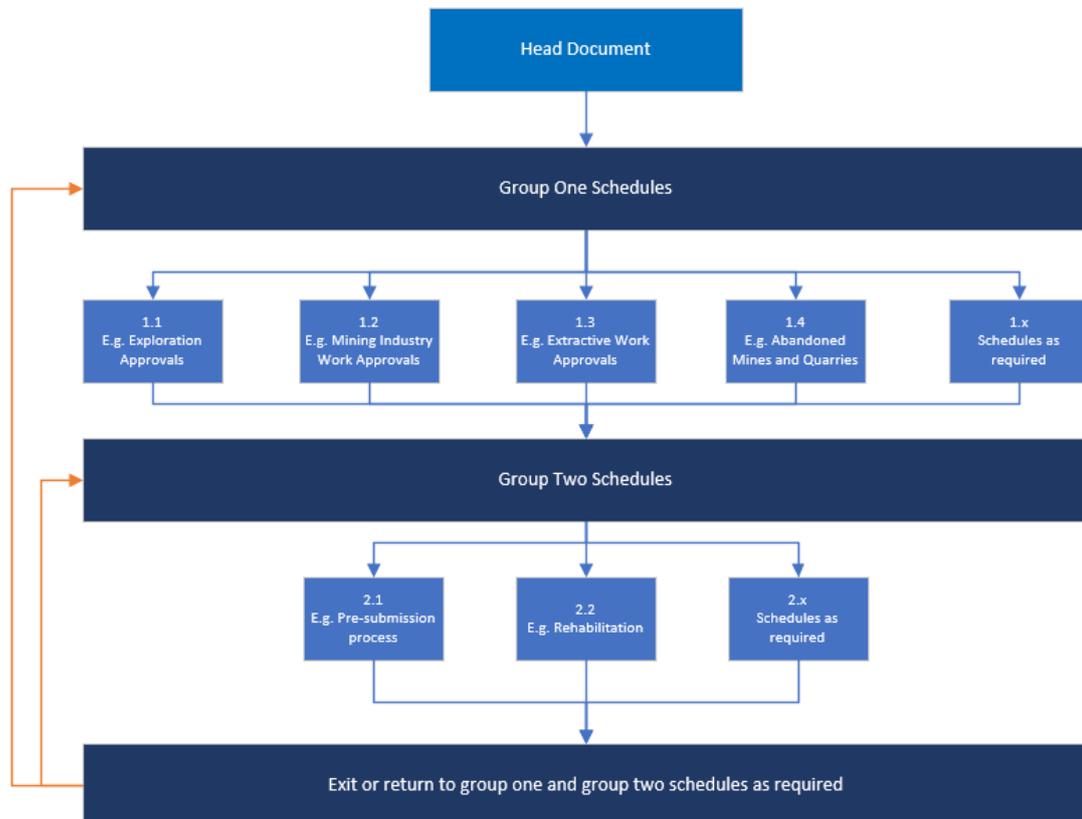
The List of Schedules (updated as required) sets out the complete list of Group 1 and Group 2 Schedules attached to the Head Document.

The Group 1 Schedules set out the working arrangements between the Parties when processing and considering plans and approvals for specific earth resources industry activities (for example, exploration, mining, and extractive industry) under earth resources legislation.

The Group 2 Schedules set out principles, additional considerations and other matters that apply to specific procedural steps identified in the Group 1 Schedules (for example, matters relating to pre-submission of application processes and rehabilitation).

Step 1	Read the Head Document to understand the purpose, scope and objectives of the MoU.
Step 2	Referring to the List of Schedules, identify and go to the Schedule in the Group 1 Schedules relevant to the earth resources industry activity.
Step 3	Go to the Schedule(s) in the Group 2 Schedules as directed in the relevant Group 1 Schedule identified at Step 2.

Figure 1: The structure and mechanics of the MoU illustrated



Note: As this MoU is subject to change, the reader is advised to refer only to the online version.

PARTIES

This Memorandum of Understanding (**MoU**) is made between:

DEPARTMENT OF JOBS, PRECINCTS AND REGIONS ABN 69 981 208 782 (DJPR)

And

DEPARTMENT OF ENVIRONMENT, LAND, WATER AND PLANNING ABN 90 719 052 204 (DELWP)

(collectively '**the Parties**')

1. DEFINITIONS

In this MoU, unless the context requires otherwise:

DELWP Minister means:

- (a) the Minister responsible for administering any of the following Acts:
 - (1) *Planning and Environment Act 1987*; and
 - (2) *Environment Effects Act 1978*; and
 - (3) *Water Act 1989*; and
- (b) the Minister responsible for administering the Act under which Crown land is controlled or managed.

earth resources legislation means the *Geothermal Energy Resources Act 2005*, *Greenhouse Gas Sequestration Act 2008*, *Mineral Resources (Sustainable Development) Act 1990*, *Offshore Petroleum and Greenhouse Gas Storage Act 2010* and *Petroleum Act 1998*, and any regulations made under those Acts.

Head Document means clauses 1 to 21 of this MoU.

Joint Statement means the *Joint Statement on Management of legacy and abandoned mines on Crown land* approved by DJPR, DELWP and Parks Victoria and published on the DJPR website on 29 December 2020.

non-statutory referral means a request to DELWP because DJPR wishes to obtain technical or other assistance from DELWP relevant to the administration of earth resources legislation and which is not a statutory referral.

Personal Information means *Personal Information* as defined under the *Privacy and Data Protection Act 2014*.

pre-application referral means a referral of a matter to DELWP because DJPR wishes to facilitate discussions with DELWP (and potentially other parties) before a statutory referral is made.

Schedule means the List of Schedules, Group 1 Schedules and Group 2 Schedules in this MoU.

Schedule Contact means the person nominated by each Party in accordance with clause 8.2.

Schedule Signatories means the Executive Director, Earth Resources Regulation, DJPR, or the DJPR signatory of this MoU and the Secretary to the Department of Environment, Land, Water and Planning (or nominee).

statutory referral means a referral of a matter in accordance with any requirement in earth resources legislation that requires the consent of, consultation with, or referral to, a DELWP Minister or the Secretary to the Department of Environment, Land, Water and Planning (as constituted under Part 2 of the *Conservation, Forest and Lands Act 1987*).

VAGO Rehabilitating Mines Report means the *Victorian Auditor-General's Office Rehabilitating Mines Independent Assurance Report to Parliament 2020-21:1* (August 2020).

2. PURPOSE AND SCOPE OF THIS MEMORANDUM

- 2.1 The purpose of this MoU is to facilitate the working relationship between the Parties in the administration of earth resources legislation, including in relation to:
- (a) carrying out their respective roles and responsibilities under earth resources legislation; and
 - (b) providing advice and assistance on policy issues relevant to approvals under earth resources legislation; and
 - (c) collaborating to improve rehabilitation outcomes under earth resources legislation.
- 2.2 This MoU is not intended to create legally enforceable obligations between the Parties or to restrict or limit the application of relevant laws.

3. TERM

- 3.1 This MoU is effective from the date the last Party signs this MoU and continues until the earlier date of:
- (a) three months from the date that a Party gives written notice to the other Party, notifying of its intention to withdraw from this MoU; or
 - (b) the date upon which the Parties agree to withdraw from the MoU; or
 - (c) the date upon which a new MoU is entered into.

4. CONTENT

- 4.1 This MoU consists of the following:
- (a) the Head Document; and
 - (b) the List of Schedules; and
 - (c) the Group 1 Schedules and Group 2 Schedules.
- 4.2 As the MoU may be subject to variation, DJPR will ensure that only the most up to date version of the MoU is published on the DJPR website.

5. RESPONSIBILITIES OF DJPR

- 5.1 In referring a matter to DELWP for consideration or comment under earth resources legislation, DJPR will provide sufficient and relevant information to DELWP in writing to enable it to properly understand why the matter has been referred.
- 5.2 To facilitate this outcome, DJPR will identify for each referral whether it is:
- (a) a statutory referral; or
 - (b) a non-statutory referral; or
 - (c) a pre-application referral in anticipation of a statutory referral.
- 5.3 If the referral is a statutory referral, DJPR will identify the relevant legislative or regulatory provision(s) that require the matter to be referred to DELWP and any applicable statutory timeframe within which DELWP must respond.
- 5.4 If the referral is a non-statutory referral, DJPR will identify the policy or technical assistance or advice it is seeking from DELWP and the timeframe within which it would like DELWP to respond.
- 5.5 If the referral is a pre-application referral, DJPR will identify the legislative or regulatory provision(s) relevant to the referral and the legislative or regulatory basis upon which DJPR anticipates that the statutory referral will be made to DELWP.

6. RESPONSIBILITIES OF DELWP

6.1 When DJPR refers a matter to DELWP, DELWP will:

- (a) provide coordinated and consistent responses via a single point of contact wherever possible; and
- (b) respond in a timely manner (including within the timeframe specified in the relevant earth resources legislation or as extended under the relevant earth resources legislation or as otherwise set out in the Schedules to this MoU).

7. OBJECTIVES

7.1 The Parties share the following objectives:

- (a) To ensure the effective co-operation of and communications between the Parties in the administration and implementation of their respective obligations and responsibilities in relation to the matters set out in the Schedules.
- (b) To enter early and constructive engagement (e.g. pre-submission processes, including attendance at initial consultation meetings, as relevant) to identify and resolve issues.
- (c) To facilitate provision of efficient, streamlined and timely discharge of the Parties respective obligations and responsibilities regarding the range of earth resources activities.
- (d) To assist the implementation of the VAGO Rehabilitating Mines Report recommendations for which DJPR and DELWP are jointly responsible, and the Joint Statement.
- (e) To collaborate, share learnings and promote best practice in:
 - (i) meeting their respective obligations and responsibilities in regard to Traditional Owner Procedural Rights in the consideration/approval of earth resources activities on Crown land; and
 - (ii) actively seeking to identify opportunities for and better enable Traditional Owner self-determination.
- (f) To achieve excellence in the identification, management and mitigation of economic, environmental, cultural and social impacts.
- (g) To minimise liabilities accruing to the state, including liabilities that may arise from rehabilitation that is unsafe, unstable or unsustainable.

8. UNDERTAKINGS

8.1 The Parties undertake to give effect to the objectives, arrangements and procedures set out in this MoU, any Schedules to it and relevant laws.

8.2 The Parties undertake to establish and maintain Schedule 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 Schedule Contact and provide the contact information for that person. Any change to the Schedule Contact needs to be communicated to the other Party within 10 Business Days of such change and contact information for the new Schedule Contact provided.

Note: Schedule Contacts are representatives of each of the Parties:

- (a) to whom any communication about the operation of this MoU may be addressed; and
- (b) having responsibilities for various administrative, advisory and coordination roles as set out in the clauses of this MoU.

8.3 The Parties undertake to inform their staff of their roles and responsibilities under this MoU, and any relevant changes to the regulatory instruments overseen by them in a timely manner as they arise.

9. CONSULTATION

9.1 **Preparation of guidelines and codes of practice and guidance.** The Parties will consult each other in the preparation of any guidelines, codes of practice, guidance notes, protocols or similar materials that are developed to assist their operational and policy practitioners

and/or earth resources proponents/operators and tenement holders to meet their legislative obligations.

9.2 **Changes to policy.** The Parties will endeavour to advise each other of any proposed changes to their policies, legislation or regulations that are likely to impact on the administration or implementation of the matters set out in the Schedules.

10. TRAINING

10.1 The Parties will notify each other as soon as reasonably practicable of any relevant training courses or workshops they conduct. Where a Party is interested in participating in a course being conducted by the other Party, the Party conducting the course will endeavour to make at least one place available for appropriate personnel from that Party.

10.2 The Parties agree to ensure, as far as reasonably practicable, that staff are provided with appropriate training and cross training of staff occurs where opportunities arise.

11. CONFIDENTIAL INFORMATION

11.1 **Treatment of confidential information.** With respect to any information supplied by one Party to another 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 legal requirements and professional standards; and
- (b) use and reproduce confidential information only for the purposes set out in this MoU or in accordance with any law or court order; and
- (c) not disclose or otherwise make available confidential information other than, where permitted by law, to its personnel who have a need to know the information to give effect to the purposes set out in this MoU; and
- (d) maintain the confidential use, disclosure and security of the confidential information consistent with relevant privacy laws, statutory requirements and any applicable professional standards.

11.2 **No confidentiality in certain instances.** Clause 11.1 does not apply to information which is:

- (a) publicly known; or
- (b) already known to the receiving Party; or
- (c) authorised in writing by the Parties to be disclosed to each other; or
- (d) permitted by law to be disclosed by a Party to a third party without restriction; or
- (e) information permitted by law to be disclosed by the Parties subject to restrictions or limitation, provided that such restriction or limitation is observed.

12. SECRECY

12.1 The Parties must comply with any relevant secrecy or other provisions regulating the use or disclosure of information in earth resources legislation.

13. PRIVACY

13.1 The Parties agree:

- (a) that any Personal Information as defined in the *Privacy and Data Protection Act 2014* and disclosed by or in connection with this MoU, where it is lawful to do so and, where appropriate, has been collected in accordance with the applicable law, 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 the applicable law, 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; and
- (b) not to use, disclose, store, transfer or handle Personal Information collected in connection with this MoU except in accordance with applicable law; and

- (c) 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.

14. ENTIRE AGREEMENT

14.1 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 a Party or Parties, whether oral or in writing prior to the date of this MoU.

15. OWNERSHIP OF INFORMATION

15.1 All original documents (including written, visual or electronic forms) will remain the property of the originating Party and not be shared without the written permission of the originating Party.

15.2 The Parties agree to acknowledge the source of all documents used by the Parties in carrying out their responsibilities under this MoU.

16. REVIEW, PERFORMANCE MONITORING AND REPORTING

16.1 The Parties agree that the Executive Director, Earth Resources Regulation, DJPR, and the Executive Director, Land Management Policy, DELWP will:

- (a) review and monitor the performance of this MoU, including meeting at least once per year on a mutually agreed date to undertake this function; and
- (b) report to the signatories of this MoU (or their successors) annually, or at some other interval as agreed by the Parties in writing, on the implementation and performance of the MoU and any variations to the Schedules.

16.2 The Parties agree to establish an ***Earth Resources Operations and Policy Practitioners Forum*** to be convened annually or more frequently as otherwise agreed by the Parties in writing to:

- (a) discuss the performance and utility of the MoU; and
- (b) discuss any procedural, legislative, policy and operational changes relevant to the MoU; and
- (c) facilitate the development of networks and relationships between staff; and
- (d) consider any other matters as agreed to by the Parties in writing.

16.3 The Schedule Contacts are responsible for convening the ***Earth Resources Operations and Policy Practitioners Forum*** referred to in clause 16.2 and reporting to the Executive Director, Earth Resources Regulation, DJPR, and the Executive Director, Land Management Policy, DELWP on the outcomes of meetings of the forum.

17. VARIATION OF THE HEAD DOCUMENT

17.1 The Head Document may be varied by a further MoU in writing signed by the Parties.

17.2 In varying the Head Document, the Parties will consider any relevant report prepared under clauses 16.1 and 16.3.

17.3 If a Party seeks to vary the Head Document, it must provide 28 calendar days written notice to the other Party of the proposed variation including the reasons for the proposed variation.

17.4 A variation to the Head Document takes effect on the date it is signed by the Parties or on a date agreed by the Parties in writing.

18. VARIATION OF THE SCHEDULES

18.1 The Schedules may be varied by:

- (a) inserting one or more new Schedules; or
- (b) amending or deleting one or more existing Schedules.

18.2 Any variation to the Schedules must be consistent with this MoU, including the objectives (clause 7) and the priority areas of collaboration (clause 21).

18.3 Any variation to the Schedules must be in writing and signed by the Executive Director, Earth Resources Regulation, DJPR, and the Secretary to DELWP (or nominee) (Schedule Signatories).

18.4 A variation to the Schedules takes effect on the date that it is signed by the Schedule Signatories or on a date agreed by the Schedule Signatories in writing.

18.5 DJPR is responsible for updating the List of Schedules and maintaining only the most up to date Schedules on its website (clause 4).

18.6 The Schedule Contacts are responsible for ensuring that any variations to the Schedules are communicated to relevant staff in a timely way.

19. DISPUTE RESOLUTION

19.1 The Parties agree to:

- (a) use best endeavours to resolve any dispute arising during the course of this MoU; and
- (b) to do so within 28 calendar days through direct negotiation by persons who they have given authority to resolve the dispute.

19.2 If there is no resolution of the dispute under clause 19.1 within 28 calendar days, the dispute will be referred to the Executive Director, Earth Resources Regulation, DJPR, and the Executive Director, Land Management Policy, DELWP for joint determination.

20. GENERAL

20.1 Each Party must pay its own expenses incurred in negotiating, executing and implementing this MoU.

20.2 Each Party must do anything and must ensure that its employees and agents do anything that the other Party may reasonably require to give full effect to this MoU.

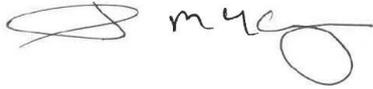
21. PRIORITY AREAS OF COLLABORATION FOR THIS MEMORANDUM OF UNDERSTANDING

21.1 Within the context of government acceptance of the recommendations of the VAGO Rehabilitating Mines Report and the Joint Statement, the Parties have identified the following priority areas of collaboration for this MoU in order to improve rehabilitation outcomes:

- responsibilities over abandoned mines and quarries on Crown land, including the orderly transfer of responsibility back to the Crown land manager, and water quality during rehabilitation; and
- work plan referral and rehabilitation bond consultation processes; and
- monitoring and implementation of progressive rehabilitation and final rehabilitation; and
- sharing of information on operators' rehabilitation objectives; and
- addressing ongoing management responsibilities for tailings dams, including responsibilities for managing the risk and any environmental impacts downstream in the event of dam failure.

SIGNED ON BEHALF OF DJPR:

Executed on the 13 day of September 2021



.....
Penelope McKay
Associate Secretary
For Department of Jobs, Precincts and Regions

SIGNED ON BEHALF OF DELWP:

Executed on the 17th day of August 2021



.....
John Bradley
Secretary
For Department of Environment, Land, Water and Planning