

Memorandum of Understanding

Country Fire Authority

and

**Department of Economic Development, Jobs, Transport and
Resources**



Economic Development,
Jobs, Transport
and Resources

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Memorandum of Understanding (MOU)

between

Country Fire Authority

of 8 Lakeside Drive, Burwood East VIC 3151 (CFA)

and

Department of Economic Development, Jobs, Transport and Resources

of 1 Spring Street, Melbourne VIC 3000 (DEDJTR)

Background

- a) CFA is a statutory authority constituted under section 6 of the *Country Fire Authority Act 1958* (Vic) for the effective control of suppression of fires in the country area of Victoria.
- b) Earth Resources Regulation (ERR), on behalf of the Department of Economic Development, Jobs, Transport and Resources (DEDJTR), supports the Minister for Resources as Victoria's resources and mining industry regulator. This role includes licensing, risk management, compliance responsibilities and community engagement.
- c) As a result of the Hazelwood Inquiry conducted in 2014, on 18 September 2015 the previous Minister for Energy and Resources released a Statement of Expectations that specifies ERR will work with various regulators on its obligations consistent with good regulatory practice to develop and manage Victoria's earth resources.
- d) The Victorian Government's Implementation Plan for the Hazelwood Mine Fire Inquiry (Action 7.41) indicates that DEDJTR and the CFA will enter into a Memorandum of Understanding (MOU) that describes their roles and responsibilities in relation to fire risk at mining sites.
- e) The Parties have agreed to enter into this memorandum to give effect to Action 7.41.

The Parties Agree

1. Definitions and Interpretation

1.1 Definitions

In this MOU, unless the contrary intention is stated, the following definitions will apply:

Business Day means any day that is not a Saturday, Sunday or a public holiday (being a public holiday appointed as such under the *Public Holidays Act 1993 (Vic)*) in Melbourne.

Code of Practice means a code of practice as defined in, and approved under, the *Privacy and Data Protection Act 2014*.

Commencement Date means the commencement date of this MOU set out in Item 1 of Schedule 1.

Review Date means the review date of this MOU set out in Item 2 of Schedule 1.

Confidential Information means information (in whatever form) of a Party including but not limited to technical, scientific, commercial and financial information which comes into the possession of the other Party through intentional or unintentional disclosure, excluding information which:

- a) comes into the public domain other than by disclosure in breach of the terms of this MOU;
- b) becomes available to the recipient Party from a third party lawfully in possession of it and with the lawful power to disclose it to the recipient Party;
- c) is rightfully known by the recipient Party (as shown by its written record) prior to the date of disclosure to it under this MOU; or
- d) is independently developed by an employee of the recipient Party who has no knowledge of the disclosure made under this MOU.

Information Privacy Principles means the information privacy principles set out in the *Privacy and Data Protection Act 2014*.

MOU means this Memorandum of Understanding as amended from time to time.

Notice means a written notice in the English language, given under this MOU.

Party and **Parties** means severally the parties to this MOU.

Term means the term of this MOU set out in clause 2 of this MOU.

1.2 Interpretation

In this MOU unless the context indicates to the contrary:

- a) words importing a gender include any other gender;
- b) words importing persons includes a partnership and a body whether corporate or otherwise;
- c) words in the singular include the plural and the words in the plural include the singular;
- d) clause headings are inserted for convenience only and have no effect in limiting or extending the language of provisions to which they refer;

- e) reference to any statute or other legislation (whether primary or subordinate) is to a statute or other legislation of the Commonwealth and the State of Victoria amended or replaced from time to time;
- f) where any word or phrase is given a defined meaning, any other part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning;
- g) reference to a Schedule or an Annexure is a reference to a Schedule or an Annexure to this MOU
- h) a Schedule and any Annexure forms part of this MOU; and
- i) where a conflict or inconsistency arises between the terms and conditions contained in the clauses of this MOU and any part of a Schedule or Annexure, the terms and conditions of the clauses in this MOU prevail to the extent of the conflict or inconsistency.

2. Term

This MOU will commence on the date of execution by the Parties, unless terminated by the Parties in accordance with clause 11.

3. Purposes of this MOU

The purposes of this MOU are:

- (a) To establish the rights and obligations governing the roles and responsibilities between the CFA and DEDJTR (ERR) in the carrying out of joint training and exercise activities of fire prevention in or around open cut coal mines.
- (b) To ensure the privacy of individuals and data confidentiality is maintained as a result of the sharing of information between the parties
- (c) To ensure that the CFA and DEDJTR (ERR) work collaboratively in assessing fire risk and identify appropriate measures for the management of fire risk.

4. Co-operation and consultation

The Parties will exercise their rights and perform their obligations under this MOU in a co-operative, consultative and transparent manner with respect to the arrangements and procedures set out in **Schedule 2**.

5. Roles and Responsibilities

The joint roles and responsibilities to be carried out by CFA and DEDJTR are as follows:

- a) Conducting audits of fire prevention and suppression actions in open cut coal mines;
- b) Conducting audits, inspections and assessment of risk of external ignitions impacting on open cut coal mines;
- c) Inspecting and investigating fires occurring in or around open cut coal mines to determine point of origin and cause;
- d) Training in the properties of coal and coal combustion ,propagation of fire on exposed coal batters and the propensity for coal to ignite under varying circumstances;

- e) Planning for emergency events in open cut coal mines where DEDJTR plays a key support role;
- f) Training exercises in the management of fire emergencies in open cut coal mines;
- g) Participating in Emergency Management Teams and Incident Management Teams during fire emergencies involving open cut coal mines;
- h) The Parties agree that risks posed to the environment, to members of the public, or to land, property or infrastructure as a result of any operations undertaken by either party are eliminated or minimised as far as reasonably practicable; and
- i) The parties further agree to work cooperatively to establish a framework, protocols and procedures for working together and/or where appropriate, sharing of resources and knowledge across all facets of emergency service operations related to fires and fire suppression in and around open cut coal mines.

6. Representatives

- a) Each Party will nominate a representative to act as the contact point for all communications and administrative matters under this MOU.
- b) The details of the representative appointed by each Party are contained in **Schedule 1**.
- c) Each party may replace its representative by giving written notice to the other Party.
- d) Each Party acknowledges that its representative is authorised to act as the agent of the Party in relation to the exercise by that Party of its rights, discretions and obligations under this MOU and that each representative has full power and authority to act for and on behalf of and to bind the Party that it represents in relation to the exercise of those rights, discretions and obligations.

7. Confidentiality and Privacy

7.1 Confidentiality

- a) Each Party may use the Confidential Information of the other Party only for the purposes of this MOU.
- b) Each party must keep Confidential Information of the other Party confidential except:
 - i. for disclosures permitted under clause c) and
 - ii. to the extent that a Party is required by law to disclose any Confidential Information.
- c) A Party may disclose Confidential Information of the other Party to its officers or employees who:
 - i. have a need to know for the purposes of this MOU (and only to the extent that each has a need to know); and
 - ii. before disclosure, have been directed to keep confidential all Confidential Information of the other Party.
- d) Each Party's obligations under this section will survive termination of this MOU and will continue in relation to Confidential Information until the Confidential Information disclosed to it lawfully becomes part of the public domain.

7.2 Privacy

- a) The parties acknowledge that they will be bound by the Information Privacy Principles and any applicable Code of Practice with respect to any act done or practice engaged in by the CFA and DEDJTR under or in connection with this MOU.
- b) The Parties will cooperate to ensure that they do not cause the other to breach any privacy obligations that the other Party has at law.

8. Notices

- a) Any Party notifying or giving Notice under this MOU will give Notice in writing addressed to the address of the other Party as specified in **Schedule 1** or as otherwise notified from time to time.
- b) Any Notice will be deemed to have been received by the Party to which it was sent:
 - i. in the case of delivery, upon the date of such delivery;
 - ii. in the case of prepaid post within Australia, on the seventh day next following the date of dispatch; or
 - iii. in the case of e-mail or facsimile transmission, at the time of transmission, provided that, following the transmission, the sender receives a transmission confirmation report on a business day and before 5.00 pm or otherwise it will be deemed to have been received on the next such business day.

9. Dispute Resolution

9.1 Dispute Notice

- a) This dispute resolution process does not apply to any dispute or grievance on an occupational health and safety issue that may arise in the performance of obligations by a party under this MOU.
- b) A Party claiming that a dispute or disagreement has arisen under this MOU must give a Dispute Notice to the other Party, specifying the nature of the dispute.
- c) A Dispute Notice may be withdrawn at any time by the Party that gave the Dispute Notice.

9.2 Good Faith Discussions

- a) Within 10 Business Days of the date of issue of the Dispute Notice the Parties must enter into good faith discussions in an attempt to resolve the issues between them.
 - (i) Should discussions in clause 9.2(a) fail to resolve the dispute, the matter should be referred to the Chief Executive Officer, CFA and the Deputy Secretary Resources. The Chief Executive Officer and the Deputy Secretary will discuss the matter and resolve the dispute which may result in an amendment to this MOU.

9.3 Performance of Obligations

Notwithstanding the existence of a dispute, the Parties to the dispute will continue to perform their obligations under this MOU.

10. Media

Each party will ensure its members do not make any public comment to the media about activities contemplated in this MOU without the prior written consent of the other Party, which consent will not be unreasonably withheld.

11. Liability

Liability for employee safety will rest with each agency in relation to occupational health and safety issues that arise from any activities contemplated under clause 5 or Schedule 2.

12. Review of MOU

- a) The parties will review the operation and effectiveness of the MOU prior to the Review Date.
- b) The parties will agree any revision to the MOU arising from the annual review within two months of the Review Date.
- c) Any amendments arising from a review under clause 12(a) must be made in accordance with clause 14.3.

13. Termination

This MOU may be terminated by either Party giving four (4) weeks' written notice to the other Party.

14. General

14.1 Entire agreement

This MOU forms the entire agreement of the Parties on the subject matter. All representations, communications and prior agreements in relation to the subject matter are merged in and superseded by this MOU.

14.2 Severability

Any provision of this MOU that is invalid or unenforceable will be read down so as to be valid and enforceable, and if that is not possible, the provision will be severed to the extent of the invalidity or unenforceability, without affecting the remaining provisions of the MOU.

14.3 Variation or amendment

No variation or amendment of this MOU is binding unless it is agreed in writing between the parties.

14.4 Counterparts

This MOU may be executed in any number of counterparts. All counterparts together will be taken to constitute one instrument.

14.5 Costs

Unless otherwise agreed by the Parties, each Party will pay its own legal costs and other expenses for and incidental to the preparation, negotiation and completion of this MOU and other documents referred to in it, unless expressly stated otherwise.

14.6 Time to act

If the time for a Party to do something is not specified in this MOU, the party will do what is required within a reasonable time based on available resources.

14.7 Compliance with Laws

Each Party must comply with all Laws.

14.8 Status of MOU

The Parties do not intend this document to create legal relations or constitute a legally binding contractual agreement between them, or to be the subject of any court, mediation, or arbitration proceedings. Notwithstanding this clause, the parties agree to comply with the terms of this MOU.

Signed by the parties as a deed.

Signed for and on behalf of Department of Economic Development, Jobs, Transport and Resources by **Luke Wilson** in the presence of:

Signature:



Witness (signature)

ANNA SONG

Witness Name (print)

Date 27 / 1 / 2017

**Luke Wilson, Acting Secretary,
Department of Economic Development,
Jobs, Transport and Resources**

Signed for and on behalf of Country Fire Authority by **Frances Diver** in the presence of:

Signature:



Witness (signature)

CHERYL PHILIP

Witness Name (print)

Date 1 / 2 / 2017

**Frances Diver, Chief Executive Officer
Country Fire Authority Victoria**

Schedule 1 Particulars

Item 1	Commencement Date:	On execution of this MOU, being the last date the MOU is signed by a Party
Item 2	Review Date:	Annually from the Commencement Date of this MOU.
Item 3	Address for ERR Notice:	Earth Resources Regulation Branch Level 15 1 Spring St Melbourne Vic 3001
Item 4	Address for CFA Notice:	Country Fire Authority 8 Lakeside Drive Burwood East Vic 3151
Item 5	ERR Representative	
	Name:	Geoff Conway
	Position:	General Manager, Mine Fire & Emergency Unit
	Telephone:	03 5160 9001
	Email:	geoffrey.conway@ecodev.vic.gov.au
Item 6	CFA Representative	
	Name:	Gwynne Brennan
	Position:	Executive Manager Community Safety
	Telephone:	03 9262 8201
	Email:	g.brennan@cfa.vic.gov.au

Schedule 2 Coal Mines

DEFINITIONS

“**coal mine**” means any land on which mining for coal from that land is taking place under a licence granted under the *Mineral Resources (Sustainable Development) Act 1990*.

“**Work Plan**” means a Work Plan approved under section 40 of the *Mineral Resources (Sustainable Development) Act 1990*.

“**Variation to a Work Plan**” means a variation to a Work Plan approved under section 41 of the *Mineral Resources (Sustainable Development) Act 1990*.

JURISDICTION

- (a) Through administration of the *Mineral Resources (Sustainable Development) Act 1990* DEDJTR has jurisdiction over licensed coal mines.
- (b) CFA may provide a consultative role to ERR in its role to ensure applications for new Work Plans, or to variations to existing Work Plans for coal mines are risk-based.

PRINCIPLES

The following general principles will apply in relation to ERR and CFA activities on open cut coal mines:

- (a) ERR and CFA will share information on coal mines which are of interest to the parties, including information on Work Plans, fire safety studies, significant audits and investigations.
- (b) ERR and CFA will collaborate to set and achieve strategic objectives ensuring that fire risks posed to the environment, to members of the public, or to land, property or infrastructure are eliminated or minimised as far as reasonably practicable.
- (c) ERR and CFA may undertake joint inspections of coal mines in accordance with their respective legislative and regulatory powers with the objective on avoiding unnecessary duplication or overlap.
- (d) Where it is necessary for a party to conduct an urgent audit or investigation of an incident at an coal mine, the party will notify the other party as soon as practicable of the action being taken.
- (e) CFA will support ERR in the assessment of relevant elements of a Work Plan or variation to a Work Plan of coal mines which are of interest to the parties. In assessing a Work Plan, ERR will take into account the views of the CFA so that an informed decision can be reached which considers any concerns arising from the assessment of those relevant elements.
- (f) In carrying out its responsibilities in relation to risk identification and mitigation of fire hazards in the coal mining industry, each party will have regard to the interests of the other, and will consult such other relevant third parties as it deems appropriate and necessary to fulfil its obligations under this MOU.

ARRANGEMENTS

To give effect to the principles outlined above:

Cooperation on new and existing Coal Mines

- (a) ERR will advise CFA within 10 Business Days of a new or existing coal mine that:-
 - (i) **has been notified to ERR;**
 - (ii) **or has come to ERR's attention by some other means,**and will provide information for the purpose of ensuring that both ERR and CFA are aware of sites that may pose a risk to the environment, members of the public, or to land, property or infrastructure.
- (b) ERR will make available to CFA a list (as updated from time to time by ERR) of all coal mines located in the country area of Victoria.
- (c) CFA will inform ERR Victoria within 20 Business Days of receiving advice of a new or existing coal mine, the extent of its interest in the facility and the extent of its desired involvement with ERR in relation to that coal mine.
- (d) ERR and CFA will consult, share information and cooperate on new coal mine developments that become known to the parties. The parties will cooperate to provide consistent and timely advice to mine proponents on emergency planning, fire protection and risk control measures for fire hazards to enable proponents to develop and submit Work Plans.

Cooperation on Registered and Licensed Coal Mines

- (a) ERR will consult with CFA in relation to the assessment of Work Plans or Work Plan variations for coal mines located in the country area of Victoria where CFA has a statutory obligation for the effective control of the prevention and suppression of fires.
- (b) Each party will invite the other party to participate in any audits, inspections or other activities that involve coal mines where ERR or CFA has skills, knowledge or relevant expertise in order to ensure that the most effective process and procedure is carried out for the purposes of achieving the statutory obligations of each.
- (c) The parties will meet periodically to set and review objectives pertaining to fire risks posed to the environment, to members of the public, or to land, property or infrastructure of coal mining.

Cooperation on Licence Assessment

- (a) CFA and ERR agree to consult where there is a proposal to amend licence conditions that relate to fire risk or risk mitigation for fire hazards.
- (b) CFA and ERR agree to consult where the provisions of the licence call on the Chief Officer to make requirements in relation to firefighting equipment to be held on site by a licensee.

Incidents, Investigations and Prosecutions

- (a) Upon becoming aware of an incident at a coal mine, and as soon as practicable, a party will provide information to the other party about the incident.
- (b) Where agreed, ERR and CFA may undertake joint investigation of the circumstances relating to any fire in a coal mine to determine the point of origin, cause and development of that fire.