

**EARTH RESOURCES REGULATION UNIT OF THE
DEPARTMENT OF JOBS, PRECINCTS AND REGIONS**

and

ENVIRONMENT PROTECTION AUTHORITY

Memorandum of Understanding

PARTIES

Earth Resources Regulation Unit (ERR) of the Department of Jobs, Precincts and Regions ABN 83 295 188 244 (DJPR), the department responsible for administering various Victorian earth resources legislation including the *Geothermal Energy Resources Act 2005*, the *Greenhouse Gas Geological Sequestration Act 2008*, the *Mineral Resources (Sustainable Development) Act 1990*, the *Offshore Petroleum and Greenhouse Gas Storage Act 2010*, the *Petroleum Act 1998*, *Mines (Aluminium Agreement) Act 1961* *Underseas Mineral Resources Act 1963*, *Extractive Industries (Lysterfield) Act 1986* and *Nuclear Activities (Prohibitions) Act 1983* and regulations made thereunder the various Acts.

AND

ENVIRONMENT PROTECTION AUTHORITY ABN 85 899 617 894 (EPA), the statutory authority responsible for administering various legislation including but not limited to the *Environment Protection Act 1970*, the *Environment Protection Act 2017*, the *Pollution of Waters by Oil and Noxious Substances Act 1986* and the *National Environment Protection Council (Victoria) Act 1995* and any regulations made thereunder.

(collectively '**the parties**')

1. DEFINITIONS

Confidential information means any technical, scientific, commercial, financial or other information of or about a party, including any information designated by either party as confidential, which is disclosed, made available, communicated or delivered to the other party in connection with this MoU.

Determining authority means the authority that is responsible for making a statutory decision in relation to an earth resources industry.

Earth resource industries means operations which explore for resources from the earth, extract resources from the earth, or store gas within geological structures, and are regulated by ERR and/or EPA.

Earth resource sites means all resource exploration, extraction or gas storage sites that may be the subject of ERR regulation under the following Acts:

- *Mineral Resources (Sustainable Development) Act 1990*
- *Petroleum Act 1998*
- *Offshore Petroleum and Greenhouse Gas Storage Act 2010*
- *Geothermal Energy Resources Act 2005*
- *Greenhouse Gas Geological Sequestration Act 2008*

- *Mines (Aluminium Agreement) Act 1961*
- *Underseas Mineral Resources Act 1963*
- *Extractive Industries (Lysterfield) Act 1986*
- *Nuclear Activities (Prohibitions) Act 1983*

EP Act means *Environment Protection Act 1970* or *Environment Protection Act 2017*, whichever is current.

Joint procedure contact means a person who is designated, under clause 5.2, as the contact of ERR or EPA for a particular joint procedure.

Liaison contact means a person who is designated, under clause 5.2, as the contact of ERR or EPA for this MoU.

MoU means this Memorandum of Understanding.

MRSDA means *Mineral Resources (Sustainable Development) Act 1990*.

Statutory endorsement of work plans has the same meaning as in the MRSDA.

Schedule contact means a person who is designated, under clause 5.2, as the contact of ERR or EPA for a particular area of collaboration.

Statutory referral is a referral that is required under legislation.

Privacy legislation means laws in respect of privacy and the protection of personal information including but not limited to the *Privacy and Data Protection Act 2014* (Vic) and the *Privacy Act 1988* (Cth).

2. PURPOSE

2.1. To make arrangements that enable optimal use of scientific and regulatory capability at EPA and ERR to protect human health and the environment from pollution and waste that arise from earth resource industries. It is an expectation of government, industry, and the community, that ERR and EPA work together in a way that is collaborative, effective and efficient without compromising the protection of human health and the environment.

2.2. This MoU is to facilitate effective and efficient working relationships between ERR and EPA. It is not intended to create legally enforceable obligations between the two parties.

3. TERM

This MoU is effective from the date the last party signs this MoU and continues until the earlier of:

- (a) 3 months from the date of written notice from one of the parties addressed to the other, notifying its intention to withdraw from this MoU; or
- (b) the date upon which the parties agree to withdraw from this MoU.

4. OBJECTIVES

The parties share the following objectives:

- (a) to ensure the effective co-operation of the parties in the administration of their respective legislative frameworks

- (b) to create the framework for co-regulatory activity including joint regulatory compliance and enforcement actions
- (c) to create the framework for co-regulatory activity in rehabilitating resources sites
- (d) to ensure the efficient use and application of ERR and EPA resources
- (e) to ensure early and constructive engagement to identify and resolve issues
- (f) to assist persons regulated by both of the parties to achieve compliance with legislation administered by each of the parties
- (g) to minimise the impact on human health and the environment from activities performed under the management or control of persons regulated by both of the parties
- (h) to assist persons regulated by both of the parties and other persons affected by the matters set out in the MoU, to meet the requirements of the parties without the unnecessary duplication of effort
- (i) to provide a framework for ERR and EPA (subject to the application of relevant laws) for the exchange of information, data and intelligence
- (j) to provide a framework for rehabilitating abandoned and legacy sites in the relevant area of the MoU.

5. UNDERTAKINGS

5.1. The parties undertake to give effect to the arrangements and procedures set out in this MoU and any Schedules to it.

5.2. Each party undertakes to establish and maintain the following to ensure the effective operation of this MoU:

- (a) a liaison contact to administer this MoU and be the party's primary contact point for questions about this MoU
- (b) a schedule contact for each area of collaboration described in the schedules to this MoU, whose responsibilities are specified in the relevant schedule
- (c) a joint procedure contact for each joint procedure developed under clause 7, to administer that procedure and be the party's primary contact point for questions about that procedure.

5.3. Any change to a liaison, schedule or joint procedure contact needs to be communicated to the other party within 10 Business Days of such change and contact information for the new contact person provided.

5.4. The parties undertake to inform their staff of their roles and responsibilities under this MoU.

5.5. The parties undertake to provide information to each other from time to time to the extent permitted by law for the purpose of identifying areas of potential overlap in the roles and responsibilities of the parties and any relevant changes to the subordinate instruments overseen by each of them, with the aim of improving consistency and reducing uncertainty.

6. CAPABILITY BUILDING

6.1. ERR has responsibilities to develop and maintain a level of capability for regulating impacts from earth resource activities and EPA has existing skills and resources that may assist ERR to meet its obligations and vice versa. Where appropriate, a planned approach to capability building will be used, such as sharing training resources and materials. For emerging or more complex issues at sites, a joint assessment approach will be used to help to develop capability and understanding between agencies.

6.2. The objective of the EPA is to protect human health and the environment by reducing the harmful effects of pollution and waste. In fulfilling this obligation, EPA may request technical advice and expertise from ERR.

6.3. ERR's objective is to establish a legal framework aimed at ensuring that risks posed to the environment, people, land, property or infrastructure under a licence or work authority is eliminated or minimised as far as reasonably practicable. In fulfilling this obligation, ERR may request technical advice and expertise from EPA.

7. JOINT PROCEDURES AND ACTION PLAN

7.1. The parties will develop a number of joint procedures, to be maintained by the joint procedure contacts, describing how collaboration will occur in detail.

7.2. The joint procedures will be reviewed on an annual basis, or more frequently as required. Reviews will be initiated by the joint procedure contacts.

7.3. The joint procedures will be updated by the parties as frequently as required. Updates to a joint procedure will be made through written agreement by the joint procedure contacts. When a joint procedure requires amendment, the joint procedure contacts are responsible for identifying the required change and informing the liaison contacts.

7.4. The parties will develop an action plan to detail how they will collaborate to resolve complex and emerging issues with the commencement of the *Environment Protection Act 2017*. This action plan will be managed by the liaison contacts.

7.5. Existing practices and procedures as set out in Schedule 2 and 3 of the 2018 MoU remain effective until they are replaced by updated joint procedures.

8. PRIVACY

The parties agree not to use, disclose, store, transfer or handle personal information collected in accordance with this MoU, except in accordance with applicable privacy legislation.

9. CONFIDENTIAL INFORMATION

9.1. With respect to any information supplied by one party to the other in connection with this MoU which is designated as confidential information 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 legislation and professional standards
- (b) subject to clause 9.2, use and reproduce confidential information only for the purposes set out in this MoU and only disclose it to its personnel who have a need to know the information to give effect to the purposes set out in this MoU.

9.2. The parties must comply with any relevant secrecy or other provisions regulating the use or disclosure of information in earth resource legislation.

9.3. Clause 9.1 shall not apply to information which is:

- (a) publicly known
- (b) already known to the receiving party
- (c) permitted by law to be disclosed by either party to a third party without restriction or
- (d) permitted by law to be disclosed by the parties subject to restriction or limitation, provided that such restriction or limitation is observed.

10. RESTRICTIONS ON THE SHARING OF INFORMATION

Nothing in this MoU requires either party to share or disclose information or documents in circumstances where such information sharing or disclosure would:

- (a) be contrary to law, including section 119 of the MRSDA
- (b) waive legal privilege over such information
- (c) compromise a party's investigation; or
- (d) not be in the public interest to share or disclose information that relates to matters of state, having regard to the considerations included at section 130(4) of the *Evidence Act 2008* (Vic).

11. DISPUTE RESOLUTION

The parties agree to co-operate and use best endeavours to resolve any disputes or differences between them. As a first step, the liaison contacts will try to resolve the disputes. Disputes which remain unresolved for 30 days or more and/or require escalation will be referred to ERR's Executive Director and EPA's Chief Executive Officer or their respective nominees, for joint determination.

12. REVIEW AND OVERSIGHT

12.1. This MoU will be jointly reviewed by the liaison contacts on an annual basis or otherwise as agreed in writing between the parties.

12.2. Executive Director, ERR and Executive Director, Regulatory Policy and Permissioning, EPA are responsible for meeting as a minimum once a year on a mutually agreed date to discuss the implementation of this MoU. The Executive Directors have oversight over the implementation of this MoU.

13. ENTIRE AGREEMENT

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 either party, whether oral or in writing prior to the date of this MoU.

14. OWNERSHIP OF INFORMATION

All original documents (including written, visual or electronic forms) will remain the property of the originating party.

15. AMENDMENT, VARIATION OR MODIFICATION

15.1. This MoU may be amended, varied or modified by a further MoU in writing signed by the parties.

15.2. Notwithstanding the above, any schedules to this MoU may be added, amended, varied or modified by the insertion of one or more new schedules duly signed by the parties. Any schedules to this MoU may be removed by agreement between the parties by a note to that effect signed by the parties and appended to this MoU.

16. GENERAL

16.1. Counterparts

This MoU may be executed in any number of counterparts.

16.2. Costs and Expenses

Each party will bear its own costs and expenses in relation to negotiation, preparation, execution, delivery and completion of the MoU and any other related documentation.

16.3. Guidelines

Both EPA and ERR regulate earth resources industries. Both parties regulate these industries in line with Acts and subordinate legislation. Guidelines may be developed by both regulators.

When EPA or ERR develops a guideline (or other similar instrument) that will impact the regulation of earth resources industries, the liaison contacts will advise each other of the guideline.

**Executed for Environment Protection Authority Victoria by the Chief Executive Officer,
Lee Miezi:**

Signature:



Date: 23/06/2021

**Executed for Earth Resources Regulation Branch, Department of Jobs, Precincts and Regions
by the Acting Executive Director:
Jenine Smith:**



Signature:

Date: 23/6/2021

SCHEDULE 1

ASSESSMENTS

1. REGULATORY RESPONSIBILITIES

1.1. Regulatory Role

ERR and EPA are both responsible for assessment and regulatory oversight of earth resources industries in Victoria. Both agencies have mechanisms through their respective legislation that provide for referrals to each other during assessment processes.

1.2. Overlapping Responsibilities

- 1.2.1. ERR is responsible for assessing and approving activities on earth resource sites in line with the Act relevant for the industry.
- 1.2.2. EPA has a regulatory role in issuing permissions or approval for aspects of earth resources industries. It is also responsible for other approvals related to earth resource industries, including but not limited to, coal processing, oil and gas refining and research projects such as carbon capture and storage.
- 1.2.3. Complex or significant earth resource projects often require an Environment Effects Statement (EES). Both EPA and ERR could be made parties to such assessment and approval processes, which are led by the Department of Environment, Land, Water and Planning (DELWP).

2. WORKING TOGETHER

2.1. Work outside of statutory decision process

- 2.1.1. Both parties are responsible for issuing statutory approvals to earth resources industries. Leading up to the submission of applications and post decision there is a need for the parties to work together. Further details outlining collaboration outside of the statutory process will be found in the joint procedures.
- 2.1.2. Whilst ERR and EPA will collaborate on statutory approvals, this MOU acknowledges that each party is required by its laws to make independent statutory decisions.

2.2. Referrals of applications

- 2.2.1. EPA and ERR have legislated requirements to refer certain earth resources industry applications to the other party.
- 2.2.2. For all non-legislated referrals, EPA and ERR will establish joint procedures under this MOU that enable referrals between the parties to the extent permitted by law.
- 2.2.3. Despite anything to the contrary in this MOU, both parties retain the right as a determining authority, to proceed with decisions.
- 2.2.4. When either of the parties has been made a referral authority, either when required by legislation or under the joint procedure, the determining authority will provide the outcome of the assessment process.

2.3. Environmental Effects Statements (EES)

- 2.3.1. Both parties will provide clear consistent advice regarding their regulatory processes in responding to the requirements of an EES. The parties will collaborate on their respective submissions to an EES.
- 2.3.2. Both parties will work together to resolve regulatory policy issues as required, on a case-by-case basis.

3. MOU GOVERNANCE

3.1. Schedule contacts

- 3.1.1. Schedule contacts are responsible for implementing commitments in the MoU.

3.2. Meetings

- 3.2.1. The schedule contacts will meet a minimum of every six months, or at a higher frequency as required.

4. SCHEDULE CONTACTS

ERR	Director, Statutory Authorisations
EPA	To be advised

SCHEDULE 2

OPERATIONS AND COMPLIANCE

5. REGULATORY RESPONSIBILITIES

5.1. Regulatory Role

- 5.1.1. ERR and EPA both have statutory responsibilities relating to the regulation of earth resource industries. This includes compliance monitoring, responding to reports of non-compliance, community complaints and, where necessary, conducting enforcement action.
- 5.1.2. ERR is responsible for undertaking enforcement action in relation to non-compliance with its approvals and the legislation. EPA is responsible for undertaking enforcement actions under the EP Act.

5.2. Overlapping Responsibilities

- 5.2.1. The parties will consider and discuss compliance and enforcement action being taken where there are common or overlapping powers to the extent permitted by law. The agencies agree that EPA has a broad role in regulating the impacts of earth resource industries to environment and human health from pollution and waste, and this role is not limited to the specific activity permissioned by EPA.
- 5.2.2. Under the Environment Protection Act 2017, with the introduction of a preventative duties model, both parties agree to work together to establish an agreed and documented approach to regulation where there is overlapping legislation. This agreed approach cannot compromise responsibilities and obligations imposed by legislation. The action plan will detail the work to establish an agreed approach. Ultimately this approach will be detailed in a joint procedure.

6. WORKING TOGETHER

6.1. Proactive operational compliance

- 6.1.1. ERR and EPA may decide to undertake proactive joint inspections on earth resources sites when it has been agreed between relevant regional managers. This will allow for knowledge sharing between organisations (e.g. sharing of work programs), and lead to better coordinated site-based management strategies, compliance, and remedial and enforcement work.

6.2. Reactive operational compliance

- 6.2.1. ERR is the lead regulator for impacts to the environment and public safety from earth resources industries. ERR may request specialist advice and support from EPA as is necessary and to the extent permitted by law.
- 6.2.2. EPA also has a regulatory role when dealing with significant community concern regarding environmental and human health impacts related to earth resource industries. EPA and ERR will exercise its compliance powers within its own authorising environment and will inform each other as appropriate and to the extent permitted by law.

6.3. Joint inspections

- 6.3.1. The parties can undertake joint inspections on shared issues and interests. Such assessments will be captured in a joint procedure managed under this MoU.

7. MOU GOVERNANCE

7.1. Annual joint operations plan

- 7.1.1. The agencies can, at a regional level, commit to an annual joint operations plan, established via a planning phase, to progress issues of joint interest.
- 7.1.2. The schedule contacts, or a delegated regional manager, for both parties will be responsible for following the annual joint operations plan and the processes outlined in this MoU.

7.2. Schedule contacts

- 7.2.1. Schedule contacts are responsible for implementing commitments in the MoU.

7.3. Meetings

- 7.3.1. The schedule contacts will meet a minimum of every six months, or at a higher agreed frequency as required.

8. SCHEDULE CONTACTS

ERR	Director, Regulatory Compliance
EPA	To be advised

SCHEDULE 3

REHABILITATION

9. REGULATORY RESPONSIBILITIES

9.1. Definitions

- 9.1.1. Abandoned earth resources sites are defined as sites that were in operation or approved after 1990, but which are no longer operational and have no licence holder, individual or company that can be allocated responsibility for rehabilitation.
- 9.1.2. Legacy earth resources sites are historic sites that were closed or ceased operation before 1990, and that have no licence holder, individual or company that can be allocated responsibility for rehabilitation.

9.2. Regulatory Role

- 9.2.1. ERR is primarily responsible for ensuring that rehabilitation of earth resource sites is carried out appropriately. It also determines when rehabilitation is complete and if the relevant elements of the bond can be returned. EPA may be involved in an advisory capacity or if it becomes evident that there are environmental impacts requiring a broader regulatory approach.
- 9.2.2. ERR is primarily responsible for ensuring appropriate rehabilitation of current earth resources sites.
- 9.2.3. In the case of abandoned (post 1990) earth resources sites, the Department of Jobs, Precincts and Regions, drawing on ERR's expertise, would typically be the project lead, working in partnership with the Crown Land Manager to rehabilitate an abandoned mine before the site is transferred to the Land Owner or Crown Land Manager. DJPR is not the duty holder for these sites.
- 9.2.4. Management of legacy earth resources sites is the responsibility of the land owner. If a legacy site is located on Crown land, the Crown land manager is responsible.
- 9.2.5. EPA has a regulatory role with respect to long term management of human health and environmental risks arising from pollution and waste on land. EPA will consult

with ERR before taking any long-term management measures relevant to land. As an independent statutory authority, EPA is required to fulfill its objective and perform the functions and exercise powers established under the Environment Protection Act 2017. This may include, but is not limited to, issuing a Site Management Order pursuant to section 275 of the Environment Protection Act 2017.

- 9.2.6. DJPR is currently developing a framework for rehabilitation of abandoned and legacy sites. This schedule will be reviewed on completion of the framework.

9.3. Overlapping Responsibilities

- 9.3.1. The parties recognise that further work is required to better understand and assess potential risks associated with abandoned sites. A joint procedure, to be developed under this MoU, will be updated as these issues are better understood.

9.4. Working together

- 9.4.1. Rehabilitation plans form part of approvals issued by ERR. Criteria for referring these plans to EPA will be detailed in the joint procedures.
- 9.4.2. How ERR and EPA will work together in relation to managing existing sites under rehabilitation regulated by ERR will be specified in the joint procedures.

10. MOU GOVERNANCE

10.1. Schedule contacts

- 10.1.1. Schedule contacts are responsible for implementing commitments in the MoU.

10.2. Meetings

- 10.2.1. The schedule contacts will meet every six months, or more frequently as required.

ERR	Director, Regulatory Compliance
EPA	To be advised

SCHEDULE 4

TECHNICAL CAPABILITIES

11. REGULATORY RESPONSIBILITIES

11.1. Regulatory Role

- 11.1.1. The parties both have science advisory capabilities to inform regulatory decisions. Some expertise exists within both organisations and other expertise is only found in one of the organisations. With both parties responsible for decisions aimed at reducing risk to the environment and human health, it is important to work together and provide science based regulatory advice.

11.2. Overlapping Responsibilities

- 11.2.1. Both parties have units that provide scientific advice that is used in approvals, compliance and enforcement. The parties have different responsibilities as outlined under the Acts administered by both organisations.

12. WORKING TOGETHER

12.1. Advice

- 12.1.1. Formal and informal technical advice can be sought from either of the parties. Seeking formal and informal technical advice will be explained in a joint procedure to be developed under this MoU.

12.2. Working groups

- 12.2.1. For technically complex proposals, emerging issues or when developing standards, either of the parties can establish a working group. Membership and attendance at these working groups will be prioritised within each organisation based on the current workload and priorities at that time.

13. MOU GOVERNANCE

13.1. Schedule contacts

- 13.1.1. Schedule contacts are responsible for implementing commitments in the MoU.

13.2. Meetings

- 13.2.1. The schedule contacts will meet at a minimum of every six months, or at a higher frequency as required.

14. SCHEDULE CONTACTS

ERR	Assistant Director, Technical Services
EPA	To be advised

Schedule 5

PETROLEUM

15. REGULATORY RESPONSIBILITIES

15.1. Regulatory role

- 15.1.1. ERR is currently planning for an orderly restart of Victoria's petroleum industry on 1 July 2021. New legislation and guidance for the industry is under development.
- 15.1.2. The parties' intent is that once roles, responsibilities and specific areas of cooperation are identified, a schedule specific to the *Petroleum Act 1998* will be developed.
- 15.1.3. Once developed, the new schedule will replace this schedule in accordance with this MoU.
- 15.1.4. If both parties determine this schedule is not required, it will be deleted in accordance with this MoU.

16. WORKING TOGETHER

- 16.1.1. A joint procedure may be developed at a later time, once it becomes apparent where additional guidance is needed on the processes for working together.
- 16.1.2. Until such time as a specific petroleum schedule and joint procedure is developed, the parties will continue to work together under this MoU.

17. MOU GOVERNANCE

17.1. Schedule contacts

- 17.1.1. Schedule contacts are responsible for developing this schedule of the MoU.

17.2. Meetings

- 17.2.1. The schedule contacts will meet on a needs basis.

18. SCHEDULE CONTACTS

ERR	Assistant Director Petroleum Operations
EPA	To be advised