



LAND OWNERS' QUESTIONS ANSWERED

Minerals and Petroleum Division

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LAND OWNERS' QUESTIONS ANSWERED

1. INTRODUCTION

This booklet has been prepared for the information of owners and occupiers of private land whose land may be subject to an application for an exploration licence or a mining licence under the *Mineral Resources Development Act 1990*, or who may be approached by the holder of a miner's right for permission to search for minerals.

The Act is administered by the Department of Primary Industries.

This booklet is intended as a guide only and is not a replacement for the relevant legislation, namely the *Mineral Resources Development Act 1990*, and supporting Regulations, which can be purchased from Information Victoria, 356 Collins Street, Melbourne, telephone 1300 366 356.

2. WHO OWNS THE MINERAL?

The Mineral Resources Development Act 1990 is based on the principle of Crown ownership of minerals, a policy maintained by successive governments in Victoria over many years.

With limited exceptions, all minerals in the State of Victoria are the property of the Crown. Following from this concept the Crown reserves the right to issue licences for the exploration, mining and development of those resources. Mineral ownership transfers to the holder of an exploration licence or a mining licence when the minerals are separated from the land in accordance with a licence.

3. WHAT IS THE DIFFERENCE BETWEEN EXPLORATION AND MINING?

Exploration

Exploration is the search for economic mineral deposits by a variety of methods. The holder of an exploration licence may only explore for minerals and is not permitted to engage in mining.

An exploration licence holder would usually carry out a range of surveys in investigations in the initial stages of an exploration program and proceed to exploratory drilling if mineralisation was indicated. The licensee may take samples for the purposes of chemical or other analysis and may extract minerals from the land, other than for the purpose of producing them commercially.

An exploration licence is generally issued for 5 years and may be renewed for up to five years. An exploration licence may cover an area of up to 500 km², or larger if allowed by the Minister.

Mining

Mining means extracting minerals from land for the purpose of producing them commercially, and includes processing and treating ore. A mining licence may be issued for a term of up to 20 years and may be renewed. The licence area is normally limited to a maximum of 260 hectares.

4. WILL EXPLORATION LEAD TO MINING?

A decision to mine is usually dependent on the discovery of a mineral deposit of a size and concentration, which is commercially viable. While useful information may be gained from a number of areas within a large exploration licence, the more intensive exploration activities would normally only be worthwhile in the small number of more highly prospective areas, in the hope that such a deposit may be discovered.

While exploration takes place over very large areas, the area subsequently mined, if at all, is very small.

5. WHO MAY APPLY FOR A LICENCE?

Any person may apply for an exploration licence or a mining licence. An applicant for a licence must satisfy the Minister that the applicant:

- is a fit and proper person to hold the licence.
- intends to comply with the Act.
- has an appropriate program of work, and
- is likely to be able to finance the proposed work and rehabilitation of the land.

6. HOW WILL I KNOW IF AN APPLICATION FOR AN EXPLORATION LICENCE HAS BEEN MADE OVER MY LAND?

An applicant must advertise the application within 14 days of being advised by the Department that the application is being processed. The advertisement must be inserted in a newspaper circulating in the locality of the licence application area, and a Wednesday edition of a newspaper circulating generally throughout Victoria.

The advertisement in the local paper must include a map which clearly identifies the area of the application.

It does not automatically follow that, because your property falls within the area of application, entry on to your land will be required. If the licence is granted and entry is required, this might only be for very brief sampling or surveying rather than the more intensive exploration activities. Before any work other than low impact exploration (see definition next page) is undertaken on your land, the licensee is required to consult with you and obtain your consent or make arrangement regarding compensation.

A licensee must have public liability insurance before doing any work under a licence.

Low impact exploration is defined by the *Mineral Resources Development Act 1990*, s.(4) as:

Exploring for minerals on land –

without using equipment (other than non-mechanical hand tools) to excavate on the land; and

without using explosives on the land; and

without removing or damaging any tree or shrub on the land; and

without disturbing any Aboriginal place or Aboriginal object on the land; and

without disturbing any place or object on the Victorian Heritage Register, or any archaeological site or relic included on the Heritage Inventory, under the *Heritage Act 1995*.

7. HOW WILL I KNOW IF AN APPLICATION FOR A MINING LICENCE HAS BEEN MADE OVER MY LAND?

Advertisement

Within 14 days of being advised by the Department that an application is being processed, the applicant must advertise the application in a newspaper circulating in the locality of the licence application area, and in the case of an application exceeding 5ha, in a Wednesday edition of a newspaper circulating generally throughout Victoria.

Notification

Within the same period, the applicant must give notice of the application to the owner and occupier of any land to which entry will be required under the licence.

Before any work may be carried out under a mining licence, further requirements, including approval of work plan and settlement of compensation, must be satisfied. (See Question 13)

8. CAN I OBJECT TO THE GRANT OF A LICENCE?

Advertisements advising of applications for licences must be advertised in a newspaper circulating in the locality of the licence application area and, if the application is for an exploration licence or a mining licence over 5 hectares, in a Wednesday edition of a newspaper circulating generally throughout Victoria. Any person may object to the licence being granted or renewed.

An objection must be in writing, includes the grounds on which it is made, and be forwarded to the Minister within 21 days after the latest date on which the application was advertised.

Copies of objections are available for inspection by any person during office hours at the enquiries counter, Minerals and Petroleum Business Centre, 16th Floor, 1 Spring Street, Melbourne, until such time as the application is granted or refused. There is no charge for the inspection of the objections.

A decision to grant or refuse the licence will not be made during the objection period.

9. WHEN IS THE MINING LICENCE MARKED OUT ON THE LAND?

Once a mining licence has been granted, the licence holder must mark out the land covered by the mining licence with corner posts, identification plates and trenches so that the licence boundaries are readily ascertainable by a person in the area. The boundaries must also be surveyed if the mining licence is larger than 5 hectares.

The mining licence holder must obtain the written consent of the landowner or occupier before entering the land to mark out and survey. If the licensee has been unable to contact the owner or occupier or has been unable to obtain consent, despite reasonable attempts to do so, the Department Head may grant an authority to enter the land for the purposes of marking out and survey.

Before going on the land, the mining licence holder must be insured against any risk that might arise if the land owner or occupier were to sustain a personal injury as a result of the licensee's activities on the land.

The mining licence holder must mark out the land within four weeks after grant of the licence; or within four weeks after grant of the authority to enter if that was required.

10. WHAT IF MY AGRICULTURAL LAND HAS MORE ECONOMIC POTENTIAL THAN THE PROPOSED MINING?

A Mining Licence holder who proposes to carry out work on agricultural land not owned by the licensee must prepare a statement of economic significance of the work.

The statement must refer to each separately owned or occupied property that comprises the agricultural land and be given to the owners and occupiers before lodgement of the work plan with the Department or within 6 months of licence grant (whichever is earlier).

The owners or occupiers of the agricultural land may apply to the Minister responsible for the *Mineral Resources Development Act 1990* to excise the land from the mining licence.

"agricultural land" means private land that is used primarily for—

- a. cultivation for the purpose of selling the produce of the cultivation; or
- b. keeping animals or poultry for the purpose of selling them or produce derived from them; or
- c. keeping bees for the purpose of selling their honey; or
- d. commercial fishing; or
- e. the cultivation or propagation for sale of plants;

The following text is extracted from the *Mineral Resources Development Act 1990*. The text is for information purposes only and is not the official or authorised version.

26A. Statement of economic significance if agricultural land covered by licence

- (1) This section applies if a licensee holding a mining licence that covers agricultural land that is not owned by the licensee proposes to carry out work on that land.
- (2) The licensee must prepare a statement of the economic significance of the work—

- (a) that contains an assessment of the benefits to Victoria of the proposed work, including employment and revenue considerations; and
- (b) that contains an assessment of those benefits if it was not possible to do the work on the agricultural land.
- (3) The assessment required by sub-section (2)(b) must be made with respect to each separately owned or occupied property that comprises the agricultural land.
- (4) The licensee must give the statement of economic significance to the owners and occupiers of the agricultural land—
 - (a) if the proposed work forms part of the work proposed to be carried out under the licensee's initial work plan, no later than—
 - (i) 6 months after the date the licensee was notified that the licence had been granted; or
 - (ii) the date the licensee lodges the work plan under section 40(1)—whichever is the earlier;
 - (b) in any other case, no later than the date the licensee lodges the relevant variation of the work plan under section 41.

26B. *Excision of agricultural land from a licence*

- (1) On the application of an owner or occupier of agricultural land, the Minister must excise the land from the area covered by a mining licence if—
 - (a) the licensee consents to the excision; or
 - (b) the Minister decides, in accordance with section 26D, that there would be greater economic benefit to Victoria in continuing the use of the land as agricultural land than in carrying out the work proposed to be carried out on that land under the licence.
- (2) An application for excision must be made to the Minister in writing within 30 days after the owner or occupier receives a copy of the statement of economic significance provided in relation to the land.
- (3) The application must include—
 - (a) an assessment of the benefits to Victoria in continuing the use of the land as agricultural land; and
 - (b) if the owner disputes anything contained in the statement of economic significance, details of the matters the owner disputes, including the reasons why the owner disputes those matters.
- (4) The owner must also give a copy of the application to the licensee within the 30 days referred to in sub-section (2).

26C. *Notice of excision dispute*

- (1) If the licensee wishes to dispute an application for excision, the licensee must give a notice of dispute to—
 - (a) the Minister; and
 - (b) the person applying for the excision; and
 - (c) the President of the Australian Institute of Valuers and Land Economists—within 30 days after receiving the copy of the application.
- (2) The notice of dispute must include details of the matters in the application that the licensee disputes, including the reasons why the licensee disputes those matters.
- (3) The licensee is deemed to consent to the excision of the land that is the subject of the application if the licensee does not give a notice of dispute to the people specified in sub-section (1) within the time required by that sub-section.

26D. Resolution of excision disputes

- (1) As soon as possible after receiving notice of a dispute under section 26C, the President of the Australian Institute of Valuers and Land Economists must appoint a person who is appropriately qualified, in the President's opinion, to act as an independent expert to consider the application.
- (2) The independent expert must consider the application, the statement of economic significance, the notice of dispute and any other material submitted to the expert within any time specified by the expert.
- (3) Within 60 days after her or his appointment, the independent expert must make a recommendation to the Minister, supported by reasons, in relation to the dispute.
- (4) The Minister must consider the recommendation and decide whether there would be greater economic benefit to Victoria in continuing the use of the land as agricultural land than in carrying out the work proposed to be carried out on that land under the licence.
- (5) The President of the Australian Institute of Valuers and Land Economists, after considering the advice of the independent expert, may direct the licensee or the person who applied for the excision to pay the whole or any part of the reasonable fees and expenses of the independent expert.
- (6) A direction under sub-section (5) creates a debt due to the independent expert.

26E. Offence to divulge details of a statement of economic significance

- (1) A person who is given a copy of—
 - (a) a statement of economic significance prepared under section 26A; or
 - (b) an assessment prepared under section 26B—

must not divulge or communicate to any person (other than a professional advisor retained by the person) or publish any information contained in the statement or assessment unless the divulgence, communication or publication is made with the written consent of the person on whose behalf the statement or assessment was prepared.

Penalty: 100 penalty units.

- (2) A professional advisor to whom any information is divulged or communicated under sub-section (1) must not divulge or communicate that information to any other person, or publish it.

Penalty: 100 penalty units."

11. AM I ENTITLED TO COMPENSATION?

Compensation is payable when the holder of an exploration licence or a mining licence proposes to undertake work on private land - being either land affected¹ or land on which the work will have an indirect impact.

Work undertaken on private land within a licence may be directly compensable. The same work may have an impact on adjoining land, which although is not part of the licence, may be similarly compensable. While compensation is not payable for work undertaken on Crown land, it may be payable in respect of adjoining private land if the work has an impact on that land.

Compensation is payable by the licensee to the owner or occupier of private land for any loss or damage that has been or will be sustained as a direct, natural and reasonable consequence of the approval of the work plan or the doing of work under the licence including:

¹ "Land affected" is land to which entry is required during work under a licence and includes the surface of the land to a depth of 100 metres.

- a. deprivation of possession of the whole or any part of the surface of the land,
- b. damage to the surface of the land,
- c. damage to any improvements on the land,
- d. severance of the land from other land of the owner or occupier
- e. loss of amenity, including recreation and conservation values,
- f. loss of opportunity to make any planned improvement on the land,
- g. any decrease in the market value of the owner or occupier's interest in the land,
- h. loss of opportunity to use tailings disposed of with the consent of the Minister.

Compensation is not payable for the value of any mineral in or under the surface of land covered by a licence.

To compensate the owner or occupier for intangible and non-pecuniary disadvantages, an additional amount of compensation (a solatium) of up to 10 per cent may be payable.

In addition, if it is necessary for the owner or occupier to obtain replacement land, the amount of compensation must take account of the reasonable incidental expenses incurred in obtaining and moving to that land.

A licensee may by agreement with the landowner purchase that area of private land within a licence on which work is to be carried out. In this situation, no further compensation is payable in respect of the area of land purchased, although compensation may still be payable if the work has an impact on adjoining private land.

There is no provision in the *Mineral Resources Development Act 1990* for the compulsory acquisition of private land for mining purposes.

If a licensee does not purchase the land affected, the licensee must do one of the following before commencing work:

- (a) Obtain the consent of the owners and occupiers of the land.
This may or may not involve the payment of compensation. If compensation is involved, and a written compensation agreement is to be entered into, step (b) applies.
- (b) Make compensation agreements with the owners and occupiers of the land.
If a written compensation agreement is entered into, the licensee must lodge the agreement with the Mining Registrar for registration.
There is no restriction on the amount or the basis of compensation agreed voluntarily between the parties.
- (c) Have the amount of compensation determined by a Land Valuation Board of Review or the Supreme Court.

Where the licensee and the owner or occupier cannot agree on the amount of compensation, any of the parties may refer the disputed claim to a Land Valuation Board of Review, or the Supreme Court where the amount of compensation sought exceeds \$50,000 for determination, provided that the party making the referral has first attempted to settle the claim by conciliation.

If the owner and occupier of the land are not the same person, the Board or the Court may determine that compensation is payable to both.

However, the amount of compensation payable in that circumstance cannot be greater than it would be if they were the same person. This limitation does not apply to the payment of a solatium, which is based on the total (combined) amount of compensation and may be paid to both the owner and the occupier.

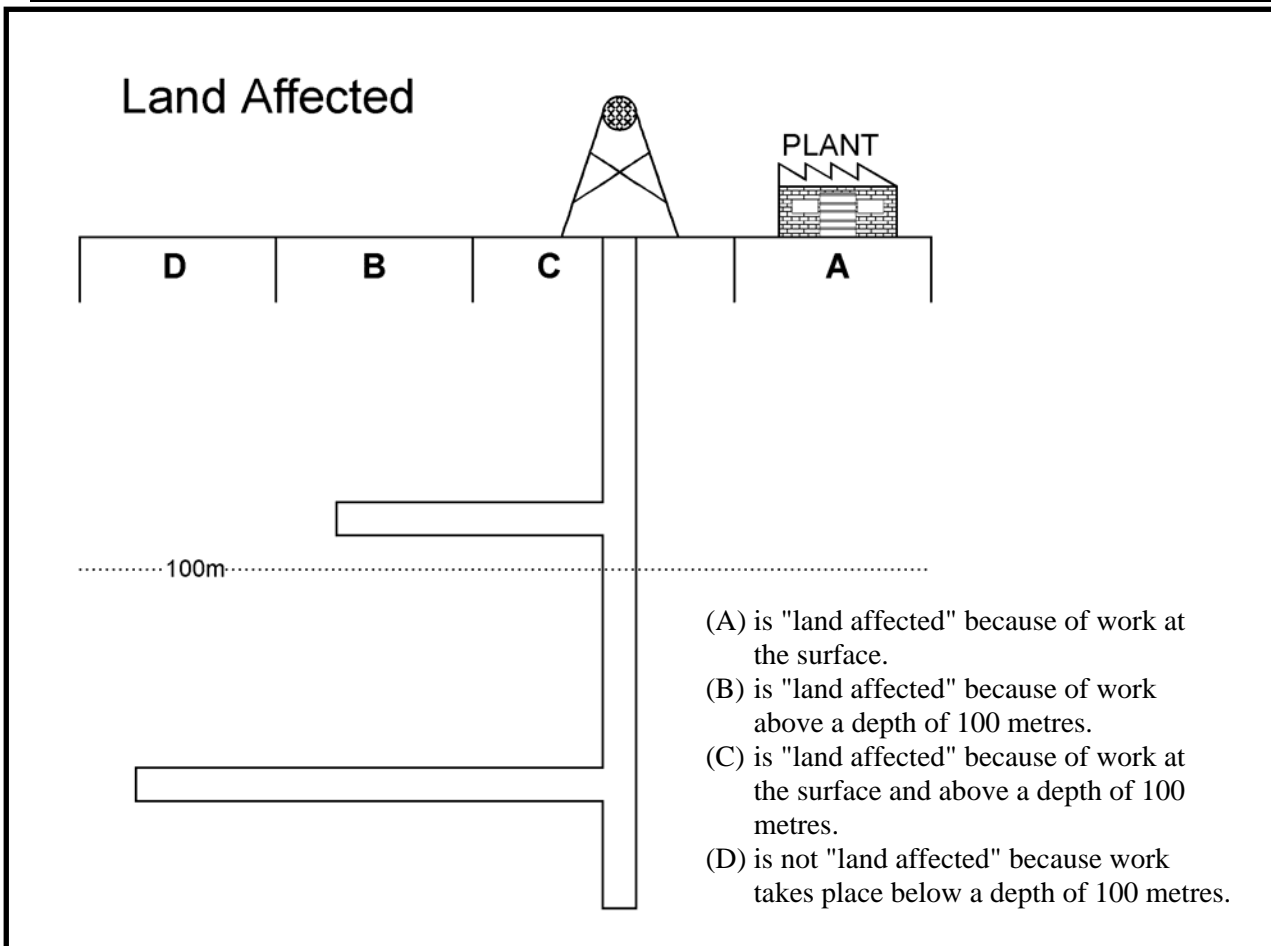
If a claim for compensation is referred to a Board or the Court, the licensee is required to pay both his or her own costs and the costs of the other party unless:

- (a) the other party is not the owner or occupier of land covered by the licence (that is, an owner or occupier of land outside the licence area), or
- (b) the other party has been frivolous or vexatious or has otherwise acted unreasonably,

in which case costs may be awarded as the Board or Court thinks proper.

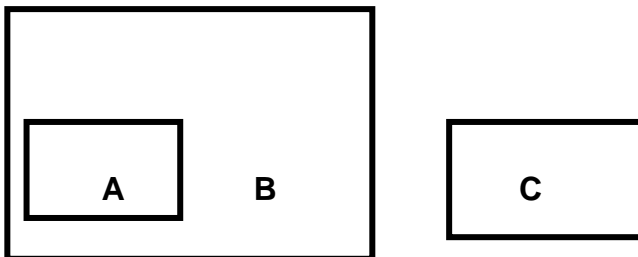
A claim for compensation for any loss or damage which is not the subject of a registered compensation agreement must be made within three years after the occurrence of the loss or damage, or the expiration of the licence, whichever is the earlier.

Compensation for loss of amenity that a Court or Board may order to be paid, is limited to \$10,000.



Compensation (Private Land)

Licensee **must** have agreement/consent for **land affected**. Compensation may be payable for other land



- A. Land affected:** Licensee must have consent or compensation agreement before work commences. If agreement cannot be reached, determination by LVBR - licensee pays costs.
- B. Land within licence:** No agreement required to commence work, but compensation may still be payable. If no agreement is reached, determination by LVBR - licensee pays costs.
- C. Land outside licence:** Landowner may seek compensation. If determined by LVBR - landowner pays costs.

LVBR = Land Valuation Board of Review

12. IS THE LAND REHABILITATED AFTER WORK TAKES PLACE?

The holders of exploration licences and mining licences are required to rehabilitate any land disturbed by the carrying out of work under the licence.

For a mining licence, the rehabilitation work must be in accordance with a rehabilitation plan lodged as part of the work plan and approved by the Department. For an exploration licence, the rehabilitation work must be in accordance with the licence conditions.

A rehabilitation plan must take into account any special characteristics of the land; the surrounding environment; the need to stabilise the land; the desirability or otherwise of returning agricultural land to a state which is as close as is reasonably possible to its former state before mining; and potential long term degradation of the environment.

When preparing a rehabilitation plan for private land, a mining licence holder must consult with the owner of the land. The owner of land may request the licensee to enter into a written agreement as to the rehabilitation plan.

A licensee is required to lodge a rehabilitation bond with the Department as a guarantee that the obligation to rehabilitate the land will be met. For private land, the Minister will consult the council of the municipality in which the land is situated, and, where the licence is a mining licence, the owner of the land, before determining the level of the bond.

If it becomes apparent during the term of a licence that the amount of the rehabilitation bond previously determined is insufficient, the licensee may be required to lodge a further bond.

Rehabilitation works should be carried out progressively in conjunction with mining or exploration activities under a licence and must, as far as practicable, be completed prior to the expiry of the licence.

The return of a rehabilitation bond to a licensee is conditional on the Minister being satisfied that rehabilitation has been carried out in accordance with the rehabilitation plan or licence conditions and is likely to be successful. The Minister must also consult the landowner and the municipal council about the return of the bond and may require a further bond if any part of the land has not been rehabilitated or requires further rehabilitation.

The Minister may take action to rehabilitate land if the land has not been rehabilitated in accordance with the rehabilitation plan, or if the Minister believes that further work is necessary, or on the request of the land owner. Where landowner requests further work to be carried out and the Minister refuses the request, the owner must be informed of the reasons.

The Minister may only take action to rehabilitate the land if the licensee fails to do so after being given a reasonable period in which to undertake the work. The Minister may use the bond to fund the necessary works and may, if the amount of the bond is not sufficient to fund all the works required, take action to recover the necessary additional funds from the licensee. The Minister may retain any remaining bond if there is a possibility that some of the damage caused to the land by the licence activities may not become evident for some time.

13. ARE PLANNING PERMITS REQUIRED FOR EXPLORATION?

No. Exploration is carried out under a licence issued under *the Mineral Resources Development Act 1990* and does not require a planning permit.

14. ARE PLANNING PERMITS REQUIRED FOR MINING?

A mining project requires a planning permit unless it has been the subject of an Environmental Effects Statement and an assessment has been submitted to the Minister

15. WHEN MAY THE HOLDER OF A LICENCE COMMENCE WORK?

The major prerequisites for the commencement of work under an exploration licence or a mining licence are that the licensee has:

- an approved work plan,
- entered into a rehabilitation bond
- obtained all necessary consents and other authorities (This includes planning approval where required). The Department of Primary Industries will provide assistance on this matter.
- given 7 days notice of intention to commence work to the owner and occupier of the land and to the Director of Mines (the owner and occupier may agree to a shorter period of notice)
- settled compensation or obtained consent with the owners and occupiers of private land
- public liability insurance

Note: An Approved Work Plan is not required for Low Impact Exploration

16. CAN WORK TAKE PLACE NEAR MY HOUSE?

There is a protection zones (buffer) of 100 metres around and to a depth of 100 metres below:

- a dwelling house,
- a substantial farm building,
- windmills, bores, springs, dams (except dams used for mining or which hold less than 0.3 megalitres),
- a garden, orchard or vineyard,
- a reservoir or lake,
- a church,
- a hospital,
- a public building
- a cemetery
- an archaeological relic or site (that meets certain conditions).

Under normal circumstances, a licensee may only work in a protection zone with the consent of the owner and occupier or appropriate heritage protection agency. However, the Minister, after considering the advice of the Mining and Environment Advisory Committee, may authorise a licensee to do work within the protection zone, having regard to the circumstances applying in each case. Work may also be allowed if it was considered as part of a completed EES process.

17. CAN THE HOLDER OF A MINER'S RIGHT SEARCH FOR MINERALS ON PRIVATE LAND

The holder of a miner's right may only search for minerals on private land with the consent of the owner or occupier of the land. The existence of an exploration licence over the land has no effect on this arrangement.

The holder of a miner's right is not permitted to:

- use any equipment for the purposes of excavation other than non-mechanical hand tools.
- use explosives
- remove or damage any tree or shrub,
- and must repair any damage to the land arising out of the search.

18. WHERE CAN I GET FURTHER INFORMATION?

Information on mining and exploration licences is available from:

Minerals and Petroleum Business Centre
Department of Primary Industries
16th Floor, 1 Spring Street
Melbourne, Victoria 3000
Telephone (03) 9658 4600
Facsimile (03) 9658 4460

The Mining Register may be viewed at the Minerals and Petroleum Business Centre. The Register provides a record of the significant events in the life of a licence. Upon payment of the appropriate fee, a person may have access to the mining register or obtain a copy of a registered licence.

Copies of the *Mineral Resources Development Act 1990* and supporting Regulations are available from:

Counter Sales
Information Victoria Bookshop
356 Collins St, Melbourne Victoria 3000
Telephone 1300 366 356 Facsimile (03) 9603 9920

Guidelines for Voluntary Conferences and other information concerning the operation of Land Valuation Boards of Review may be obtained from:

The Registrar
Land Valuation Boards of Review
55 King Street, Melbourne Victoria 3000
Telephone (03) 9628 9766