

Memorandum of Understanding Victorian WorkCover Authority and Department of Primary Industries



PARTIES

Victorian WorkCover Authority ABN 90 296 467 627 ("WorkSafe Victoria"), is the statutory authority responsible for administering the *Occupational Health and Safety Act 2004*, the *Dangerous Goods Act 1985*, the *Equipment (Public Safety) Act 1994*, the *Road Transport (Dangerous Goods) Act 1995*, the *Accident Compensation Act 1985*, the *Accident Compensation (WorkCover Insurance) Act 1993*, the *Workers Compensation Act 1958* and regulations pursuant to those Acts.

AND

Department of Primary Industries ABN 90 719 052 204 ("Department of Primary Industries"), the authority responsible for administering various legislation including but not limited to the *Geothermal Energy Resources Act 2005*, the *Mineral Resources (Sustainable Development) Act 1990*, the *Extractive Industries Development Act 1995*, the *Petroleum Act 1998*.

1. PURPOSE

- 1.1 This Memorandum of Understanding (MOU) sets out the common understanding between the parties as a voluntary statement of intent and contains the commitment of both parties at the time the MOU is signed and for the duration of the MOU. The MOU is not intended to create legally enforceable obligations between the parties.

2. TERM

- 2.1 This MOU is effective from 1 January 2008 and continues until the earlier of:
- (a) 31 December 2010; or
 - (b) 3 months from the date of one party's notice in writing to the other notifying of its intention to withdraw from this MOU;
 - (c) immediately where both parties notify each other in writing of their intention to withdraw from it.

3. OBJECTIVES

- 3.1 WorkSafe Victoria and the Department of Primary Industries share the following objectives:
- (a) to assist Victorian earth resources workplaces achieve best practice levels of health and safety for workers and the public and to minimise the impact on the environment; and
 - (b) to ensure the effective co-operation of both parties in the administration of their respective requirements in relation to the matters set out in the Schedules.

- 3.2 This MOU and its associated Schedules establishes arrangements for the administration of occupational health and safety in the earth resources sector after the transfer of responsibility to WorkSafe Victoria from 1 January 2008.

4. UNDERTAKINGS

- 4.1 WorkSafe Victoria and the Department of Primary Industries undertake to give effect to the arrangements and procedures set out in the Schedules.
- 4.2 WorkSafe Victoria and the Department of Primary Industries undertake to establish and maintain liaison contacts to ensure the effective operation of this MOU. Within 14 days of the signing of this MOU, each party will advise the other of their respective liaison contact to whom any communication about the operation of this MOU may be addressed.
- 4.3 WorkSafe Victoria and the Department of Primary Industries undertake to provide information from time to time to inform each other's staff of their roles and responsibilities in areas of potential overlap, and any relevant changes to the regulatory instruments overseen by them.
- 4.4 This MOU will be jointly reviewed by the liaison contacts as agreed in writing between the parties.
- 4.5 WorkSafe Victoria and the Department of Primary Industries will participate and adequately resource the Transition Steering Group established to manage the transfer of health and safety responsibility in the earth resources sectors to WorkSafe Victoria.
- 4.6 WorkSafe Victoria and the Department of Primary Industries will participate in the Earth Resources Tripartite Safety Forum.

5 PRIVACY

- 5.1 WorkSafe Victoria and the Department of Primary Industries agree:
- (a) that any Personal Information as defined in the Privacy Legislation and disclosed by or in connection with this MOU has been collected in accordance with applicable Privacy Legislation, 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 applicable Privacy Legislation, 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;
 - (b) agree not to use, disclose, store, transfer or handle Personal Information collected in connection with this MOU except in accordance with applicable Privacy Legislation; 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.
- 5.2 Privacy Legislation means laws in respect of privacy and the protection of

personal and health information including, without limitation, the *Information Privacy Act 2000* (Vic), the *Health Records Act 2001* (Vic) and the *Privacy Act 1988* (Cth).

6 CONFIDENTIAL INFORMATION

- 6.1 With respect to any information supplied by one party to the other in connection with this MOU designated as confidential, each party agrees to:
- (a) protect the confidential information in a reasonable and appropriate manner and in accordance with any applicable professional standards;
 - (b) use and reproduce confidential information only for the purposes set out in this MOU;
 - (c) not disclose or otherwise make available confidential information other than to its personnel, legal advisers, or Minister who have a need to know the information to give effect to the purposes set out in this MOU.
 - (d) requested under an Act or by a Court
- 6.2 Paragraph 6.1 shall not apply to information which is:
- (a) publicly known;
 - (b) already known to the receiving party; or
 - (c) disclosed by either WorkSafe Victoria or the Department of Primary Industries to a third party without restriction.

7 AMENDMENT, VARIATION OR MODIFICATION

- 7.1 This MOU may be amended, varied or modified by a further MOU in writing duly signed by the parties.
- 7.2 Notwithstanding the above, 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. Schedules to this MOU may be removed by agreement between the parties, such agreement to be attested by a note to that effect duly signed by the parties and appended to this MOU.

**Signed by Victorian WorkCover Authority by
its Chief Executive, Greg Tweedly:**

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Dated: *Greg Tweedly*
21/12/07

**Signed by Department of Primary Industries by
its Executive Director – Minerals and Petroleum, Richard Aldous:**

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Dated: *Richard Aldous*
24/12/07.

**Memorandum of Understanding Between the
WorkSafe Victoria and the
Department of Primary Industries**

SCHEDULES

SCHEDULE 1 Transitional Arrangements

(Expires on 1 July 2008)

1. Transitional arrangements

1.1. First six months

1.1.1 The transitional arrangements contained in schedule 1 will as agreed by both parties, expire on 1 July 2008.

1.2 Incident Notification

1.2.1 Receipt and follow-up of OHS and DG incidents becomes WorkSafe Victoria's responsibility from 1 January 2008 however, it is possible that duty holders may continue to use existing familiar mechanisms during times of stress involving an incident. If an OHS or DG complaint is received at any DPI office or to any DPI staff member:-

- DPI will forward to WorkSafe Victoria any written information received and notify WorkSafe Victoria as soon as possible on 132 360; and
- DPI will advise the Duty holder of the correct procedure

1.3 Open Notices and Directions

1.3.1 Notices issued by DPI staff under WorkSafe Victoria's legislation that have not been finalised will be closed out by WorkSafe Victoria staff working in cooperation with the DPI staff who issued the Notices.

1.4 Inquiries and Complaints

1.4.1 Receipt and follow-up of OHS and DG complaints becomes WorkSafe Victoria's responsibility from 1 January 2008 however, it is possible that Duty holders may continue to use existing familiar mechanisms and not be aware of the change of responsibility and will need to be advised accordingly. The subject of some complaints may relate to areas of overlapping of responsibility. WorkSafe Victoria is to be notified of any OHS or DG complaints through the Advisory Service on 1800 136 089.

1.5 Explosives licences and high consequence dangerous goods licences and permits

1.5.1 WorkSafe Victoria is responsible for processing of these licences from 1 January

2008. For applications received by DPI after 1 November 2007 but not completed, processing will be completed by WorkSafe Victoria.

	DPI	WorkSafe Victoria
Applications and enquiries	<ul style="list-style-type: none"> • Forward applications or parts thereof (including Police and ASIO reports) received in error to WorkSafe Victoria's licensing branch as soon as possible • Forward telephone enquiries to WorkSafe Victoria's licensing branch on telephone 1300 852 652. 	Process applications and handle telephone enquiries.
Technical advice	Provide technical advice upon request from WorkSafe Victoria	Conduct assessment process
RTO arrangements	Assist WorkSafe Victoria in the conduct of an initial audit of the activities of the Registered Training Organisation to ensure the process is sufficiently rigorous and meets Duty holder needs.	Oversee arrangements with the Registered Training Organisation through monitoring and auditing activities.

1.6 OHS Regulations transfer from DPI to WorkSafe Victoria Steering Committee

- 1.6.1 After the OHS Regulations transfer from DPI to WorkSafe Victoria, the Steering Committee will continue to meet to deal with transition issues until 30 June 2008. DPI and WorkSafe Victoria will jointly review the need for the steering committee to continue beyond 1 July 2008.

SCHEDULE 2 On-going Arrangements

1. Working together

1.1 Field Staff Communication

- 1.1.1 All field staff whose work relates to health and safety will have a copy of this Schedule or have access to it.
- 1.1.2 Relevant publications (hard copy and electronic) produced by WorkSafe Victoria and the Department of Primary Industries will be circulated and used by both organisations.
- 1.1.3 WorkSafe Victoria and the Department of Primary Industries will liaise in regard to arranging for appropriate staff to participate in relevant training conducted by either organisation.

1.2 Overlapping responsibilities

- 1.2.1. Both agencies have objectives in their legislation that dictate responsibility for public safety matters and the use of explosives. WorkSafe Victoria has responsibility for public safety arising from work-related activities.
- 1.2.2. WorkSafe Victoria and DPI will consult on matters where their jurisdictions overlap with the lead agency being the agency with the highest degree of control over the issue. (Note safety aspects of gathering lines under the Petroleum Act 1998 will also be referred to EnergySafe Victoria [ESV].)

Safety related elements	DPI	WorkSafe Victoria
Public safety and amenity	✓ Lead Agency	✓ Support Agency
Public safety (work related)	✓ Support Agency	✓ Lead Agency
Operation design and licensing	✓ Lead Agency	✓ Support Agency
Variations to operation plans and licences	✓ Lead Agency	✓ Support Agency
Occupational health and safety	✓ Support Agency	✓ Lead Agency
Explosives	✓ Support Agency	✓ Lead Agency
Blasting impacts (airblast and ground vibration)	✓ Lead Agency	✓ Support Agency
Site rehabilitation	✓ Lead Agency	

1.3. Provision of Advice to External Stakeholders

- 1.3.1 WorkSafe Victoria and DPI will work together to ensure good communication of advice which will assist both WorkSafe Victoria and DPI to effectively administer their respective legislation and to inform and educate Duty holders

accordingly.

	DPI	WorkSafe Victoria
Technical advice	<ul style="list-style-type: none"> Sustainable development including design, safe operating standards, approval of work and operations plans, protection of people and site rehabilitation. 	<ul style="list-style-type: none"> Occupational health and safety; Dangerous Goods including licensing.

1.4. Investigations and Enforcement

- 1.4.1 Any reports resulting from investigations of incidents covered by this Schedule will be made available to both parties (subject to legislated restrictions on disclosure of information).
- 1.4.2. Investigations into occupational health and safety matters will be conducted by WorkSafe Victoria.
- 1.4.3. DPI will where practicable provide advice and specialist support where requested by WorkSafe Victoria.
- 1.4.4. Prosecutions for offences under legislation administered by WorkSafe Victoria will be the responsibility of WorkSafe Victoria.
- 1.4.5. Where investigations disclose evidence that offences involving the jurisdictions of both organisations have arisen from the same set of facts and circumstances, WorkSafe Victoria and DPI will consult with a view to determining the most appropriate legislation to be used for enforcement and or prosecution.
- 1.4.6. Both WorkSafe Victoria and the Department of Primary Industries retain their right to take enforcement actions and prosecute alleged offenders under their respective legislation.
- 1.4.7. Both WorkSafe Victoria and the Department of Primary Industries agree to cooperate in providing information relevant to any investigations and prosecutions and to provide assistance from relevant staff (where permitted by overarching legislation).

1.5 Emergency / crisis response

- 1.5.1 Both agencies will discharge their duties in accordance with the Emergency Management Act. WorkSafe Victoria will request technical assistance from DPI as required.

1.6 Work and Operations Plans

- 1.6.1 OHS is a component of work and operations plans submitted to DPI for approval/acceptance prior to initial commencement of works as well as variations to existing operations. Previously DPI has completed the assessment of the OHS component of the plans as well as the other

components. WorkSafe Victoria will now become a referral agency for the conduct of the assessment of the OHS component of these plans. In some cases, a variation submission will not fundamentally affect OHS on site. In such circumstances WorkSafe Victoria only wishes to be notified of the variation. The triggers for notification as opposed to referral for assessment as well as the criteria assessed by WorkSafe Victoria are contained in the respective service level agreements. The service level agreement will be available to the public via the respective agencies' web sites.

	DPI	WorkSafe Victoria
Assessment	<ul style="list-style-type: none"> Refer work and operations plans for assessment in accordance with the agreed trigger points at the earliest opportunity. Seek clarification if required following receipt of assessment report from WorkSafe Victoria. 	<ul style="list-style-type: none"> Assess work and operations plans OHS components using the agreed criteria. Provide a written recommendation. Complete the assessment within the agreed time.
Notification of receipt of variations	Advise WorkSafe Victoria of newly received variations that do not trigger the requirement to re-assess OHS via the agreed mechanism.	Allocate a coordinator to receive and action the report accordingly.

1.7 Operational issues arising from Earth Resources legislation

1.7.1 With OHS no longer being the responsibility of DPI, this creates some operational issues due to the provisions in the existing Earth Resources legislation. Both agencies commit to working collaboratively to reform the legislation so that OHS issues are dealt with under the OHS Act and relevant regulations and to resolve these issues ensuring clarity for both Duty holders and the two agencies.

2. Sharing Information

Exchange of relevant information and records will assist both WorkSafe Victoria and DPI to effectively administer their respective legislation.

2.1 Tenement Numbers and Licensee details

2.1.1 DPI issues a unique identifier (tenement number) for each parcel of land for mining, exploration, quarrying, petroleum and geothermal activities. This tenement number is a key piece of information to aid communication between the two agencies and for WorkSafe Victoria to be able to identify and physically locate each site. The issuing of tenements is an on-going

process and therefore will require on-going communication between the two agencies.

	DPI	WorkSafe Victoria
Tenement number and licensee details report	On a monthly basis, generate and send electronically to WorkSafe Victoria, a tenement number report(s) of the current tenement numbers and the licensee contact details as agreed. Part A being the full listing of tenements, Part B changes since the last report.	Allocate a coordinator to receive and action the report(s) received from DPI accordingly.
Future access to the above information directly from GeoVic	View the above as an interim measure until a secure layer of information for WorkSafe Victoria to access can be integrated into GeoVic.	Coordinator to work with DPI to define requirements for access to desired information directly from GeoVic thus no longer requiring the generation of a specific report for WorkSafe Victoria.

2.2 Sharing Intelligence

2.2.1 Inspectors will be in a position to share relevant information about potential identified breaches of the other agency's legislation. Both agencies agree to ensure that such information will be recorded and shared. Where the potential breach involves an area of overlapping or inter-related responsibility, Inspectors from both agencies will work together to resolve the matter.

	DPI	WorkSafe Victoria
Intelligence sharing	<p>If whilst on site, a possible breach of WorkSafe Victoria's legislation is identified, the DPI Inspector will:-</p> <ul style="list-style-type: none"> • Advise the Duty holder verbally; • Include their observation in the body of their field report; and • Advise WorkSafe Victoria as soon as possible via the Advisory Service (1800 136 089) 	<p>If whilst on site, a possible breach of DPI's legislation is observed, the WorkSafe Victoria Inspector will:-</p> <ul style="list-style-type: none"> • Advise the Duty holder verbally; • Include their observation in the body of their entry report; and • Advise DPI as soon as possible via the relevant District or Operational Manager

2.3 Historical records

- 2.3.1. Copies of recent OHS information pertaining to sites have been provided to WorkSafe Victoria electronically. There is some information located on hard copy files that will remain with DPI. In the future WorkSafe Victoria may wish to view this historical information. The agencies will share access to current information as arranged and agreed through local managers.

	DPI	WorkSafe Victoria
Historical records	Store relevant files and allow WorkSafe Victoria to access this information upon request.	Inspectors, Investigators, Lawyers and Managers to request access to historical records via the relevant District or Operational Manager.

2.4 Incident Notification

- 2.4.1 WorkSafe Victoria administers notification requirements under the Occupational Health and Safety Act 2004, the Equipment (Public Safety) Act 1994, the Dangerous Goods Act 1985 and the Dangerous Goods (Road Transport) Act 1995 and their regulations.
- 2.4.2 DPI administers the *Petroleum Act 1998* and *Geothermal Energy Resources Act 2005* which require certain incidents to be notified.

	DPI	WorkSafe Victoria
OHS and DG Incident notification	Advise clients to notify incidents to WorkSafe Victoria through the Incident Notification number 132 360	WorkSafe Victoria jurisdiction – accept notifications
	Forward any written notifications received to WorkSafe Victoria	Record any notifications received from DPI
	Where there is interrelationship – coordinate with WorkSafe Victoria	Coordinate with DPI where interrelationship exists
Petroleum Act 1998 and Geothermal Energy Resources Act 2005	Copies of information received to be provided to WorkSafe Victoria	DPI jurisdiction - incidents to be notified to DPI

2.5 Inquiries and Complaints

2.5.1 The following are the arrangements applying to how DPI and WorkSafe Victoria will handle OHS complaints:

	DPI	WorkSafe Victoria
Inquiries and Complaints	Advise clients to report OHS complaints to WorkSafe Victoria through the Advisory Service on 1800 136 089.	WorkSafe Victoria jurisdiction – respond to complaints as necessary.
	Forward any OHS complaints received to WorkSafe Victoria through the Advisory Service on 1800 136 089.	Record OHS complaints received and resolve.
	Where there is interrelationship – coordinate with WorkSafe Victoria.	Coordinate with DPI where interrelationship exists.
		Refer non OHS DPI inquiries and complaints to DPI

2.6 Statistical Reporting

2.6.1 Previously DPI has performed the statistical reporting function for both OHS and production statistics. These functions will now be split between the respective agencies. The two agencies agree to work collaboratively in sharing the results of the statistical reporting as well as the mechanisms used to collect and analyse the data particularly, so as to minimise any “red-tape” or financial burdens placed on Duty holders as a result of the split responsibility. The production statistics will be of interest to WorkSafe Victoria in terms of the level of production activity within the sectors. Both agencies will work collaboratively to implement actions that seek to minimise “red-tape” for Duty holders to provide the raw data.

	DPI	WorkSafe Victoria
Statistical reporting	<ul style="list-style-type: none"> Collect and analyse production data and forward to the Minerals Council. Send analysis of production data to WorkSafe Victoria six monthly or as required under NMSF agreement. Advise WorkSafe Victoria of current definitions and methodology used in reports. 	<ul style="list-style-type: none"> Collect and analyse OHS data and forward to the Minerals Council. Send analysis of OHS data to DPI six monthly or as required under NMSF agreement. Advise DPI of current definitions and methodology used in reports.

3. Representation and consultation forums

- 3.1 WorkSafe Victoria and DPI will continue to be represented in consultative forums. The DPI Minister represents both agencies at Ministerial Council level (MCMPR) which is responsible for the National Mine Safety Framework.

	DPI	WorkSafe Victoria
National Mine Safety Framework	Consults and advises with Senior Managers on agenda items, joint policy positions, decisions and actions. At steering committee and working group levels, DPI representatives act in a supporting role.	Minister for WorkCover and Senior Managers contribute to decision making and carry out agreed actions. At steering committee and working group levels, WorkSafe Victoria representatives act in the lead role.
Chief Inspectors of Mines Conference (annual)	Representative.	Representative – lead role.
Victorian OHS stakeholder consultation forum(s)	Representative.	Chair and administrator.

4. Memorandum of Understanding (MoU) Governance

- 4.1 The MoU is an important document contributing to the way the two agencies interact on a daily basis. Directors and Operational Managers commit to meeting at least six monthly to review the relevance of the MoU and to discuss learnings especially those associated with areas of overlapping responsibility.

5. Mines

- 5.1 The Department of Primary Industries staff will be involved in mining workplaces (including tourist mines) under the *Mineral Resources (Sustainable Development) Act 1990*. Department of Primary Industries staff will be responsible for carrying out their normal field work in connection with this Act.
- 5.2 Both agencies will maintain and exchange up-to-date lists of contact persons for matters covered in this part of the Schedule.

6. Extractive Industries

- 6.1 The Department of Primary Industries staff will be involved in quarrying workplaces under the *Extractive Industries Development Act 1995*. Department of Primary Industries staff will be responsible for carrying out their normal field work in connection with this Act.
- 6.2 Both agencies will maintain and exchange up-to-date lists of contact persons for matters covered in this part of the Schedule.

7. Petroleum/Geothermal

- 7.1 The Department of Primary Industries staff will be involved in exploration and production workplaces under the *Petroleum Act 1998* and *Geothermal Energy Resources Act 2005*. Department of Primary Industries staff will be responsible for carrying out their normal field work in connection with these Acts.
- 7.2 Both agencies will maintain and exchange up-to-date lists of contact persons for matters covered in this part of the Schedule.

8. Definitions

“DPI” means Department of Primary Industries.

“DG” means dangerous goods.

“OHS” means occupational health and safety.

“respond” means that the relevant party/parties will respond in accordance with documented organisational response procedures.

“notify” means that both parties will contact and inform the other in accordance with agreed documented procedures.

“incident” means an incident defined in Part 5 of the *Occupational Health and Safety Act 2004*.

“Petroleum site” means: a workplace at which work is being done on the portion of land covered by an exploration permit, retention lease or production licence and extends to the centre of the earth under the *Petroleum Act 1998*.

“Geothermal site” means: a workplace at which work is being done on the portion of land covered by an exploration permit, retention lease or production licence and extends to the centre of the earth under the *Geothermal Act 2005*.

“quarry” means:

(a) a pit or excavation made in land below the natural surface for the purpose of extracting or removing stone if the primary purpose of the extraction or removal is the sale or commercial use of the stone or the use of the stone in construction, building, road or manufacturing works; or

(b) any place or operation declared by the Minister by notice published in the Government Gazette to be a quarry—

and includes access ways on private land and the works, machinery, plant, equipment, buildings and structures above or below ground used for or in connection with—

(c) making, enlarging or deepening the pit or excavation; or

(d) carrying on the operation; or

(e) the extraction or removal of stone from the pit or excavation; or

(f) the treatment on or adjacent to the land in which the pit or excavation is made of stone extracted or removed from the land or the manufacture on or adjacent to that land of bricks, tiles, pottery or cement products substantially from stone so extracted or removed;

“stone” means:

(a) sandstone, freestone or other building stone; or

(b) basalt, granite, limestone or rock of any kind ordinarily used for building, manufacturing, road making or construction purposes; or

(c) quartz (other than quartz crystals); or

(d) slate or gravel; or

(e) clay (other than fine clay, bentonite or kaolin); or

(ea) peat; or

(f) sand, earth or soil; or

(g) other similar materials;

‘quarrying operations’ means all operations up to and including all the pit area, workshops, administration buildings, crushers, screen houses including conveyors and product stockpiles.

‘mine’ means:

(a) a workplace at which work is being done under a mining licence granted under the *Mineral Resources (Sustainable Development) Act 1990*;

(b) a workplace at which exploration within the meaning of the *Mineral Resources (Sustainable Development) Act 1990*, in the form of-

(i) underground work of any kind; or

(ii) drilling from the surface for coal- bed methane-

is being done under an exploration licence granted under the *Mineral Resources (Sustainable Development Act) 1990*; or

(c) a workplace at which work is being done under a mining licence granted under the Mines (Aluminium Agreement) Act 1961 i.e. Alcoa Anglesea coal mine; or

- (d) in relation to a tourist mine within the meaning of the *Mineral Resources (Sustainable Development) Act 1990*, those parts of the mine that are underground and all infrastructure and plant associated with the underground workings.

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IN WITNESS TO THE ABOVE UNDERSTANDINGS, this Schedule is signed for and on behalf of the parties on the 24th day of December 2007.

Greg Tweedly

on behalf of the
Victorian WorkCover Authority

GREG TWEEDLY
Chief Executive

Date: _____

Richard Aldous

on behalf of the
Department of Primary Industries

RICHARD ALDOUS
Executive Director – Minerals and
Petroleum

Date: 24/12/07