



## Fact Sheet

# Your rights against unconventional gas operations in Victoria

Unconventional gas extraction can involve large and invasive operations that have very significant impacts on both the environment and local communities. Whether a proposed or existing mining or petroleum licence covers your land, or is nearby in your community, you have a range of legal rights if you wish to oppose an unconventional gas operation.

## Background

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The term unconventional gas is used to refer to coal seam gas (CSG), shale gas and tight gas.

The mining of unconventional gas is regulated by the *Mineral Resources (Sustainable Development) Act 1990* (Vic) (**MRSD Act**), *Mineral Resources (Sustainable Development) (Mineral Industries) Regulations 2013* (Vic) (**MRSD Regulations**), *Petroleum Act 1998* (Vic) (**Petroleum Act**) and *Petroleum Regulations 2011* (**Petroleum Regulations**) depending on the type of gas and the geological formation that it is extracted from. CSG is regulated by the MRSD Act and tight gas by the Petroleum Act. Shale gas as a general rule is covered by the Petroleum Act, however sometimes it will be covered by the MRSD Act.

While determining which Act will apply can be difficult and there is significant additional confusion from having two different schemes that regulate largely the same activity, the two schemes are broadly similar. Both the MRSD and Petroleum Acts aim to 'encourage' mining and production of the different gas resources.<sup>1</sup>

The Minister for Energy and Resources (**the Minister**) may grant exploration licences and mining licences under the MRSD Act or exploration permits and production licences under the Petroleum Act. An **exploration licence** or **exploration permit**

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<sup>1</sup> MRSD Act section 2; Petroleum Act section 3.

allows the holder to explore for gas, whereas a **mining licence** or **production licence** allows the holder to explore for and extract gas. Information on what type of licence a gas company is applying for or has been granted for is available on the Department of Economic Development, Jobs, Transport and Resources (**DEDJTR**) website at [www.energyandresources.vic.gov.au/earth-resources/maps-reports-and-data/mining-licences-near-me/mining-licences-near-me](http://www.energyandresources.vic.gov.au/earth-resources/maps-reports-and-data/mining-licences-near-me/mining-licences-near-me).

There are a number of other licences under the respective Acts that may also indicate that unconventional gas activity is proposed near you.

There are two other types of licences, prospecting licences and retention licences, also available under the MRSD Act. Prospecting licences provide for exploration and mining on areas of land less than 5 hectares. Retention licences provide an intermediate step between exploration and mining licences, allowing the retention of rights to land which is not yet economically viable to mine.<sup>2</sup>

Under the Petroleum Act the holder of an exploration permit may also be granted a retention lease that operates similarly to retention licences under the MRSD Act.<sup>3</sup> The Petroleum Act also provides for what is called ‘special access authorisation’ and ‘special drilling authorisation’. A special access authorisation allows the holder of the authorisation to explore for gas but does not allow for the drilling of any wells.<sup>4</sup> A special drilling authorisation allows the holder to drill in an area adjacent to an area covered by their exploration permit or production licence.<sup>5</sup>

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## IMPORTANT NOTE

A moratorium on hydraulic fracturing, exploration drilling and new exploration licences for all onshore gas is in place in Victoria at the moment. This means new licences that involve exploration for unconventional gas and/or fracking cannot be granted. The Victorian Government is currently reviewing the moratorium.

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## Mining and petroleum activities in your community

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Members of the community in or around unconventional gas operations have a series of legal rights and options.

### 1. Your right to be informed and consulted

#### Exploration and Mining Licences under the MRSD Act

An applicant for an exploration or mining licence under the MRSD Act must advertise that they have made an application in a Wednesday edition of a Victorian statewide newspaper and in one or more local newspapers.<sup>6</sup> The applicant must also make the details of their application available on their website.<sup>7</sup>

The holder of an exploration or mining licence (**the licensee**) has a duty to consult with the community throughout the life of that licence.<sup>8</sup> This means that they must share information about any activities under the licence which may affect the community with community members, and give them a reasonable opportunity to express their views about those activities.<sup>9</sup>

If you are a nominated person or a registered Aboriginal party under the *Aboriginal Heritage Act 2006* for the land to which the licence will apply, the Head of DEDJTR must give you notice of the application.<sup>10</sup>

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<sup>2</sup> MRSD Act ss 14B and 14C.

<sup>3</sup> Petroleum Act ss 36 and 37.

<sup>4</sup> Petroleum Act s 84.

<sup>5</sup> Petroleum Act ss 95A and 95C.

<sup>6</sup> MRSD Act s 15(5); MRSD Regulations regs 20 and 21.

<sup>7</sup> MRSD Regulations regs 20 and 21 and schedules 8 and 9.

<sup>8</sup> MRSD Act s 39A.

<sup>9</sup> MRSD Act s 39A.

<sup>10</sup> MRSD Act s 18.

Works<sup>11</sup> done under an exploration or mining licence must be done in accordance with a work plan approved by the Head of DEDJTR.<sup>12</sup> Work plans set out the location and detail of the mining activity that will be undertaken.<sup>13</sup> Work plans must also set out:

- a rehabilitation plan for the site when works are completed;<sup>14</sup>
- an environmental management plan for managing the environmental impacts and reporting on the environmental outcomes to the local community;<sup>15</sup>
- a description of any significant community facilities that may be affected by the proposed works;<sup>16</sup> and
- a community engagement plan that identifies any community likely to be affected by the mining activities and how the mining operator proposes to engage with the community and respond to community complaints.<sup>17</sup>

The Head of DEDJTR must keep a register of all exploration and mining licences, as well as a number of other documents that relate to the licences including works plans.<sup>18</sup> This register can be accessed by the public. To access the register, contact the DEDJTR. Alternatively details about licences can be found on the DEDJTR website at [www.energyandresources.vic.gov.au/earth-resources/maps-reports-and-data/mining-licences-near-me/mining-licences-near-me](http://www.energyandresources.vic.gov.au/earth-resources/maps-reports-and-data/mining-licences-near-me/mining-licences-near-me). Further, the DEDJTR is required to give the public copies of certain documents, including the licences themselves, as well as work plans, upon request and payment of a fee.<sup>19</sup>

### Exploration Permits and Production Licences under the Petroleum Act

For tight gas and shale gas projects which are covered by the Petroleum Act, unlike under the MRSD Act, applicants for a permit or licence do not need to notify members of the community that exploration permits or production licences have issued or applied for.

However, members of the community can access information about petroleum operations from the DEDJTR website at [www.energyandresources.vic.gov.au/earth-resources/maps-reports-and-data/mining-licences-near-me/mining-licences-near-me](http://www.energyandresources.vic.gov.au/earth-resources/maps-reports-and-data/mining-licences-near-me/mining-licences-near-me) free of charge. Alternatively, information can be obtained from the register<sup>20</sup> maintained by DEDJTR upon request and payment of a fee.<sup>21</sup>

Both exploration and production activity must be undertaken in accordance with an approved operation plan.<sup>22</sup> Additionally production under a production licence cannot take place until petroleum production development plan has also been approved.<sup>23</sup>

Operation plans must include:

- a description of the operation;<sup>24</sup>
- an environmental management plan;<sup>25</sup>
- a statement of any geological, geophysical or geochemical surveys that will be undertaken;<sup>26</sup>
- if wells are being drilled, a well operation management plan;<sup>27</sup>
- details of any facilities that will be built or modified as part of the petroleum operation.<sup>28</sup>

<sup>11</sup> Other than 'low impact' exploration works.

<sup>12</sup> MRSD Act s 39.

<sup>13</sup> MRSD Act s 40; MRSD Regulations schedule 15 part 1 clauses 1-5.

<sup>14</sup> MRSD Act s 40; MRSD Regulations schedule 15 part 1 clause 6.

<sup>15</sup> MRSD Act s 40; MRSD Regulations schedule 15 part 1 clause 7.

<sup>16</sup> MRSD Act s 40; MRSD Regulations schedule 15 part 1 clause 8.

<sup>17</sup> MRSD Act s 40; MRSD Regulations schedule 15 part 1 clause 9.

<sup>18</sup> MRSD Act s 69.

<sup>19</sup> MRSD Act s 74.

<sup>20</sup> Petroleum Act ss 230 and 231.

<sup>21</sup> Petroleum Regulations reg 36.

<sup>22</sup> Petroleum Act s161.

<sup>23</sup> Petroleum Act s64.

<sup>24</sup> Petroleum Regulations reg 6(1)(a)(i).

<sup>25</sup> Petroleum Regulations regs 6(1)(a)(ii) and 8.

<sup>26</sup> Petroleum Regulations reg 6(1)(a)(iii).

<sup>27</sup> Petroleum Regulations reg 6(1)(a)(iv).

<sup>28</sup> Petroleum Regulations reg 7.

Petroleum production development plans must include:

- a description of the operation and facilities to be used;<sup>29</sup>
- a description of the relevant geological and reservoir data;<sup>30</sup>
- details of any proposed additional data acquisition from the project;<sup>31</sup>
- a reservoir management plan.<sup>32</sup>

The Petroleum Act and regulations do not require a community consultation plan to be conducted as part of the preparation of either the operation plan or petroleum production development plan, or that either plan include a plan for ongoing community consultation.

The Minister must keep a register of all exploration permits and production licences, as well as a number of other documents that relate to the licences.<sup>33</sup> This register can be accessed by the public.<sup>34</sup> To access the register, contact the DEDJTR. Alternatively, details about permits and licences can be found on the DEDJTR website at [www.energyandresources.vic.gov.au/earth-resources/maps-reports-and-data/mining-licences-near-me/mining-licences-near-me](http://www.energyandresources.vic.gov.au/earth-resources/maps-reports-and-data/mining-licences-near-me/mining-licences-near-me). Further, the DEDJTR is required to give the public copies of documents, including the permits and licences as well as operation and petroleum production plans, upon request and payment of a fee.<sup>35</sup>

## 2. Objections to unconventional gas operations

### Exploration and Mining Licences under the MRSD Act

Any person may object to an exploration or mining licence being granted.<sup>36</sup> Objections must be made in writing, must set out the reasons for the objection and must be made within **21 days** after the last date on which the application was advertised.<sup>37</sup> The advertisement in the newspaper and on the mining company's website will tell you where to send your objection.<sup>38</sup>

When deciding whether to grant or refuse the licence the Minister must consider any objections received<sup>39</sup> and should have also have regard to the principles of sustainable development set out in section 2A of the MRSD Act.<sup>40</sup>

The principles of sustainable development set out in the MRSD Act include:

- intergenerational equity;<sup>41</sup>
- the protection of biodiversity;<sup>42</sup>
- recognition of the need for a competitive economy that can enhance the capacity for environment protection;<sup>43</sup>
- the integration of short and long term economic, social and environmental impacts in decision-making;<sup>44</sup>
- the precautionary principle;<sup>45</sup>
- community involvement and positive community outcomes.<sup>46</sup>

You can refer to these principles together with any other impacts that you believe the mine will have both on you

<sup>29</sup> Petroleum Regulations reg 16(1)(a).

<sup>30</sup> Petroleum Regulations reg 16(1)(b).

<sup>31</sup> Petroleum Regulations reg 16(1)(c).

<sup>32</sup> Petroleum Regulations reg 16(1)(d).

<sup>33</sup> Petroleum Act ss 230-233.

<sup>34</sup> Petroleum Act s 236.

<sup>35</sup> Petroleum Act s236.

<sup>36</sup> MRSD Act s 24(1).

<sup>37</sup> MRSD Act s 24(2).

<sup>38</sup> MRSD Regulations schedules 8 and 9.

<sup>39</sup> MRSD Act s 25(2).

<sup>40</sup> MRSD Act s 2A(1).

<sup>41</sup> MRSD Act s 2A(2)(b).

<sup>42</sup> MRSD Act s 2A(2)(c).

<sup>43</sup> MRSD Act s 2A(2)(d).

<sup>44</sup> MRSD Act s 2A(2)(f).

<sup>45</sup> MRSD Act s 2A(2)(g). The precautionary principle provides that "if there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation and decision-making should be guided by: (i) a careful evaluation to avoid serious or irreversible damage to the environment wherever practicable; and (ii) an assessment of the risk-weighted consequences of various options."

<sup>46</sup> MRSD Act s 2A(2)(h) and (i).

personally and on your community more broadly in your objections to any CSG and shale gas operation under the MRSD Act.

### Exploration Permits and Production Licences under the Petroleum Act

There is no explicit provision in the Petroleum Act that provides an opportunity for a person to object to Petroleum Act permits or licences. However, anyone who objects to the granting of a permit or licence or a particular activity proposed under a licence can still write to the Minister expressing those concerns and explaining why they believe that the project should not be able to go ahead. When making a decision to grant the permit or licence the Minister is required to consider the merits of the application,<sup>47</sup> which in some circumstances could include issues raised in correspondence from the public.

## 3. You may be able to object under planning and environment laws

### Mining Licences under the MRSD Act

To commence mining (*not* exploration) the proponent must obtain approval under Victoria's planning and environment laws.<sup>48</sup> Before mining commences, the licensee must:

- obtain a planning permit under the *Planning and Environment Act 1987*(Vic) (**P&E Act**);<sup>49</sup> *or*
- undergo an environment effects assessment under the *Environment Effects Act 1978* (Vic) (**EE Act**).<sup>50</sup>

Local councils are usually responsible for deciding whether or not to grant a planning permit. If a planning permit is required, any person who may be affected by the grant of the permit may object to it being granted. The objection must be in writing and set out the reasons why the permit should not be granted.<sup>51</sup> If the planning permit is granted despite your objection, you may appeal the decision to the Victorian Civil and Administrative Tribunal (**VCAT**) within **21 days** after being notified of the decision. For more information on how to object to or appeal a planning permit decision, see the *Objections Kit* and *Appeals Kit* prepared by Environmental Justice Australia available on our website.<sup>52</sup>

If an environment effects assessment under the EE Act is required, there are a number of different opportunities for public comment. Members of the public can make submissions on the scoping and preparation of an environment effects statement (**EES**), and to the Inquiry Panel appointed by the Minister for Planning. These submissions, and the EES itself, are not legally binding, but in some cases the EES may lead the Government to stop the project going ahead.

### Production Licences under the Petroleum Act

Similar to under the MRSD, an exploration permit for shale or tight gas does not require a planning permit. However, production operations do require a planning permit unless the operation has been approved by the Minister after an EES has been prepared under the EE Act.<sup>53</sup>

Local Councils are usually responsible for deciding whether or not to grant a planning permit. If a planning permit is required, any person who may be affected by the grant of the permit may object to it being granted. The objection must be in writing and set out the reasons why the permit should not be granted.<sup>54</sup> If the planning permit is granted despite your objection, you may appeal the decision to VCAT within **21 days** after being notified of the decision. For more information on how to object to or appeal a planning permit decision, see the *Objections Kit* and *Appeals Kit* prepared by Environmental Justice Australia available on our website.<sup>55</sup>

If an environment effects assessment under the EE Act is required, there are a number of different opportunities for public comment. Members of the public can make submissions on the scoping and preparation of an EES, and to the Inquiry Panel appointed by the Minister for Planning. These submissions, and the EES itself, are not legally binding, but in some cases the EES may lead the Government to stop the project going ahead.

47 Petroleum Act s20B.

48 MRSD Act s 43(3).

49 VPP cl 52.08.

50 MRSD Act ss 42(6)-(7).

51 P&E Act s 57.

52 [www.envirojustice.org.au/cels/kits-and-fact-sheets](http://www.envirojustice.org.au/cels/kits-and-fact-sheets).

53 Petroleum Act s 120.

54 P&E Act s 57.

55 [www.envirojustice.org.au/cels/kits-and-fact-sheets](http://www.envirojustice.org.au/cels/kits-and-fact-sheets).

## 4. You may make informal objections to existing licences

In addition to the formal objection process under the relevant planning scheme for applications for new mining and production licences, you can informally lobby the Minister to suspend, cancel, vary, or refuse to renew an existing licence under either the MRSD or Petroleum Act. Neither Act provides a formal mechanism for objecting to existing licences, however, under the MRSD Act the Minister is given a broad discretion to decide to cancel, vary or refuse to renew a licence.<sup>56</sup> While the Petroleum Act does not provide the same level of discretion as the MRSD Act there are still mechanisms available to the Minister if the Minister decides to hear your concerns.<sup>57</sup>

## Tight, shale and coal seam gas licences on your land

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If a CSG, tight or shale gas exploration or mining licence falls directly on land that you own or occupy, you have some further rights in addition to those listed above.

### 1. You have the right to be informed

#### MRSD Act

Under the MRSD Act the proponent must give notice of a licence application to the owners and occupiers of land affected by the application, within two weeks of being notified by the DEDJTR that their application is valid.<sup>58</sup> Further, the proponent must give notice to the owners and occupiers of affected land seven days before commencing works on their land.<sup>59</sup>

#### Petroleum Act

Before any activity can be undertaken on private land under either an exploration permit or production licence the proponent must give the owner, occupier or person or body responsible for the land at least 21 days notice of the works.<sup>60</sup>

### 2. Licensees must ask for consent and/or provide compensation before entering your land

Before commencing work under either the MRSD Act or the Petroleum Act which directly affects your land, the licensee must:

- obtain your written consent;<sup>61</sup> *or*
- make a compensation agreement with you to reimburse you for the use of your land;<sup>62</sup> *or*
- if you cannot agree on compensation, obtain a compensation determination from VCAT.<sup>63</sup>

It is possible to simply give verbal consent for low-impact exploration works that involve no excavation of the land and no clearing of vegetation. However, we recommend that if you give your consent for the licensee to enter your land for any purpose, you enter into a written agreement setting out the terms of your consent, including where and what exploration and mining activities will take place, over what time period and what compensation is payable.

It is important to remember that once you have given consent for a licensee to enter your land you cannot cancel that consent unless the licensee agrees. Make sure that you carefully consider what you are consenting to and if possible seek independent legal advice.

If you can't reach agreement with the mining company about access to your land, the mining company may apply to VCAT for a compensation order which determines how much compensation you are entitled to for the mining company using

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<sup>56</sup> MRSD Act s 34.

<sup>57</sup> See Petroleum Act ss 12, 102 and 113.

<sup>58</sup> MRSD s 15(5).

<sup>59</sup> MRSD Act ss 42(1)(g) and 43(1)(d).

<sup>60</sup> Petroleum Act ss 145 and 147.

<sup>61</sup> MRSD Act ss 42(2)(c)(i), 43(1)(e)(i); Petroleum Act s 128(1)(a).

<sup>62</sup> MRSD Act ss 42(2)(c)(ii), 43(1)(e)(ii); Petroleum Act s 128(1)(b).

<sup>63</sup> MRSD Act ss 42(c)(iii), 43(e)(iii); Petroleum Act s 128(1)(c).

your land. If this happens the mining company must pay your reasonable legal expenses.<sup>64</sup>

### 3. Works on your land

When carrying out works on your land, the mining company must ensure that its operations, as far as possible, minimise any interference with activities of any other person who is using the land. When works are completed mining companies must rehabilitate, as far as practicable, any land that was used to carry out their operations.<sup>65</sup>

**In most cases, under the MRSD Act the exploration or mining must be at least 100 metres away from your home.**

Normally, no mining works can take place within 100 metres of a dwelling house (including 100 metres below it) without your consent. However, in certain cases under the Minister can authorise works closer than 100 metres to a house.<sup>66</sup>

There is no 100-metre exclusion zone under the Petroleum Act, i.e. for activities involving tight gas and most shale gas.

### 4. Under the MRSD Act land may be excluded from a license if it is more valuable to use it for agriculture

If your land is primarily used for agriculture,<sup>67</sup> then the licensee must prepare a statement of economic significance.<sup>68</sup> That statement must assess the benefit to Victoria of the proposed mining work and the benefits that could be achieved without using your land.<sup>69</sup> The licensee must give you a copy of the statement of economic significance before they start work and no more than six months after the licence was granted or when the licensee lodges the work plan.<sup>70</sup>

If you receive a statement of economic significance from the landholder you must not divulge or communicate to any person (other than a professional advisor retained by you, for example your lawyer) any of the information in the statement without the consent of the licensee.<sup>71</sup>

A landholder can apply to the Minister to excise their land from the mining licence if there would be a greater economic benefit to Victoria in continuing to use the land for agriculture.<sup>72</sup> You must apply to have your land excised within **30 days** of receiving the statement of economic significance.<sup>73</sup> Your application must set out the economic benefits of agriculture on that land, and any concerns you have with the licensee's statement.<sup>74</sup> If the licensee disputes your application within 30 days, the matter will be referred to an independent expert appointed by the President of the Australian Property Institute.<sup>75</sup> After receiving the report and recommendation of the independent expert, the Minister will then make a decision on whether there is a greater economic benefit to Victoria from the mining activity or from continuing to use your land for agriculture.<sup>76</sup> If the Minister decides that there is greater economic benefit from using the land for agriculture, the Minister must excise your land from the licence, meaning that mining cannot occur on your land.<sup>77</sup>

There is no agricultural land exemption under the Petroleum Act.

### 5. Ministerial exemption

Finally the Minister also has a general discretion under both the MRSD Act and the Petroleum Act to exempt land from a permit or licence.<sup>78</sup> If you have not been successful in any of the other mechanisms you can ask the Minister to exercise this discretion to prevent the exploration or mining.

<sup>64</sup> MRSD Act s 88(3); Petroleum Act s 134.

<sup>65</sup> MRSD Act s 78; Petroleum Act s 170.

<sup>66</sup> MRSD Act ss 45 and 46;

<sup>67</sup> MRSD Act s 4 definition.

<sup>68</sup> MRSD Act s 26A(2).

<sup>69</sup> MRSD Act s 26A(2).

<sup>70</sup> MRSD Act s 26A(4).

<sup>71</sup> MRSD Act s 26E(1).

<sup>72</sup> MRSD Act s 26B(1).

<sup>73</sup> MRSD Act s 26B(2); Additionally you must give a copy of your application to the licensee within the same timeframe.

<sup>74</sup> MRSD Act s 26B(3).

<sup>75</sup> MRSD Act s 26D.

<sup>76</sup> MRSD Act s 26D.

<sup>77</sup> MRSD Act s 26B.

<sup>78</sup> MRSD Act s 7; Petroleum Act s 12.

## Where can I get more information?

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If you require specific legal advice about an existing or proposed unconventional gas extraction you can contact:

- **Community Environmental Legal Service:** A program of Environmental Justice Australia, the Community Environmental Legal Service can provide legal advice and sometimes representation in Victorian matters which may have a significant impact on the environment or where the matter raises important issues of public policy or with respect to the operation of environmental laws.  
Phone: 8341 3100 (metropolitan) or 1300 336 842 (regional)  
Website: [www.envirojustice.org.au/cels](http://www.envirojustice.org.au/cels)
- **Community Legal Centres:** Community Legal Centres are independent community organisations that provide legal advice to the public, particularly for those facing economic and social disadvantage. Victoria has 49 Community Legal Centres based all around the State. To find your nearest Community Legal Centre, contact the Federation of Community Legal Centres.  
Phone: 9652 1500  
Website: [www.communitylaw.org.au](http://www.communitylaw.org.au)

## About the Community Environmental Legal Service (CELS)

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Providing legal help to Victorians as part of the Community Environmental Legal Service (CELS) program is one of the many ways Environmental Justice Australia pursues access to justice.

The CELS program provides legal help for Victorians through the publication of kits, fact sheets and videos which provide accessible and practical environmental law information to the Victorian community. Through the CELS program we also conduct legal workshops in Victoria, run by one of our expert environmental lawyers to suit the needs of community groups or groups of individuals concerned about or impacted by environmental issues.

Environmental Justice Australia believes that all Australians have a right to clean air, clean water, and intact ecosystems. It's also crucial that our communities have a real say over what happens to our environment, and that means participating in decision-making processes. We're working to pursue environmental justice for communities affected by environmental harm by supporting their right to information, their right to participate in the legal and legislative process, and their right to participate in decision-making about their communities and the places where they live.

If you have a query about anything in this Fact Sheet, or would like the Community Environmental Legal Service to assist you to protect the environment, please call us:

**8341 3100 (metropolitan) or 1300 336 842 (regional)**

**Donate at:** [www.envirojustice.org.au/donate](http://www.envirojustice.org.au/donate)

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### SEEK LEGAL ADVICE REGARDING SPECIFIC CASES

**While all care has been taken in preparing the information on this fact sheet, it is not a substitute for legal advice. For any specific questions seek legal advice. Environmental Justice Australia accepts no responsibility for any loss or damage suffered by people relying on the information on this fact sheet.**

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