

# Land Access Information

July 2021



## What to do when someone wants to use your land

Private property may be accessed by government, agencies or companies for proposed infrastructure development, or for surveys and investigations. Infrastructure development may include pipelines, power lines, roads, rail or property purchase. The word 'company' will be used as a generic term throughout to cover all forms of organisation. The successful development of infrastructure requires the co-operation of both the company and the landowner.

This information sheet provides basic information to landowners on their rights and the issues that parties should address covering entry and access for works, and payment/compensation. This information sheet provides an outline of the general process of land access, with information on what to expect, appropriate actions for both landowner and company, and advice for landowners.

It is not however intended to be a complete description of the rights and obligations of the parties involved, and further independent advice should be sought.

Property owners should ensure that nobody enters their land without appropriate notification and a signed entry or access agreement. This agreement should cover payment for use of your time and or use of your property/asset.

### Request to access land for an initial survey

The request to survey the land may be the first contact that the landowner will have with a company intending to use the property for investigation or infrastructure development.

The company must always obtain consent from the landowner before entry to the property for any of the following activities:

- Surveying potential routes for a project
- Testing and sampling of ground conditions
- Undertaking cultural, heritage and environmental surveys

The landowner is advised to require a signed Property Entry Agreement or Land Access Agreement (proformas can be found on the internet). This is to ensure that all parties understand the landowner's requirements to granting access to the property. It is a voluntary legal agreement between the landowner and the company that allows the company to access the landowner's property to carry out agreed activities.



The agreement will include any conditions or requirements the landowner may have. These may include:

- Locking the gates
- Livestock instructions
- Times of access

The agreement will also outline the type of work the company may undertake on the landowners property and any agreed site rehabilitation commitments, communication processes, complaints mechanisms and insurance.

*The VFF advises landowners to keep a diary of events and contacts, and to log time spent liaising with the company or its representatives. Use this record when seeking payment for your time. It is also recommended you keep a photographic record.*

It is noted that if the company and the landowner cannot reach agreement about property entry, the company may, depending on the relevant Act, seek Ministerial permission or use other statutory intervention processes to gain access to the property.

## Approval Process

- Depending on the Act(s) applicable, the company may be required to obtain Ministerial approval or a permit to own and use the land.
- Some Acts provide for community comments to the Minister. This will be indicated by an advertisement in a newspaper or by a letter from the company.
- Environmental issues may be addressed through an environmental report or an environment effects statement which is prepared by the company/agency and made available to the public for comment.
- Comments may be made in writing and for some projects a public hearing is held.

## Easement Acquisition Process

### Easement agreements between the parties

An easement is a legal right of way that gives a person the right to make limited use of another person's land. It enables the company to construct and operate the pipeline/power line/other including making routine safety inspections. The easement is registered on the certificate of title to the land and remains indefinitely, or until deregistered.

A pipeline or power company will seek to negotiate an easement with a landowner.

*However, most Acts allow for other arrangements and the **VFF recommends that landowners discuss with a lawyer other arrangements such as leases or contracts.***



Easement negotiations between the parties may include but not be limited to the following: (Landowners can negotiate specific clauses to address individual circumstances.)

- The location of the easement, i.e. an easement route plan
- Company obligations i.e. minimise damage to land, minimise disturbance to farming operations, rehabilitation of the land
- Landowner obligations i.e. to obtain the consent of the company for any excavations, alterations or tree planting on the easement area
- Compensation and payment for easement. Note that compensation should also be paid for any use of farm assets or land outside the easement for the duration of the construction period.
- Further independent valuations of the land subject to the easement
- Professional advice from a farm consultant/legal advice covered by the company
- Rehabilitation costs are part of the work program. Ensure that costs cover a performance measure. (The land and improvements disturbed must be restored to at least pre-project condition). These are not usually signed off until 2 years after the work's completion
- Ensure the easement agreement covers only the current proposed use of the easement. Stipulate that any other uses require your approval and further compensation.
- Insert a clause that should the easement no longer be required by the company, it be returned to the landowner without cost. This must include the easement's removal from the title.
- Farm management agreement – to cover conditions of future access (which may include payment. It should also cover access arrangements for subsequent maintenance where these may affect farm operations). The company should also indemnify the landholder from future harm or loss occasioned by the infrastructure's presence or the construction process.

### **Option Agreements**

- Some companies encourage the signing of an 'option agreement' as an interim step. The VFF supports this as final agreements often take time to negotiate.
- Landowners should ensure that there are options for them in an interim agreement and may seek an interim payment from the company.



## Compulsory acquisition of an easement

If agreement about an easement cannot be reached, in most cases the company may apply for the compulsory acquisition of an easement.

- The compulsory acquisition process is outlined in the Land Acquisition and Compensation Act 1986.
- If this process is used, the landowner will initially receive a Notice of Intention to Acquire accompanied by a Statement of Rights and Obligations.

Generally companies use this process as a last resort. It is a very formal procedure and includes various strict time frames for all parties to abide by. Matters in dispute will ultimately be resolved by the Victorian Civil and Administrative Tribunal.

*The **Land Acquisition and Compensation Act** has very strong clauses covering compensation so landowners should not be overly concerned about this process.*

## Construction Arrangements

Before construction begins, representatives from the company and their contractors will discuss details with landowners about how to minimise the impact of the construction process on the day-to-day operations of the farm.

Some of the matters which may be discussed are:

- Contact information for construction emergencies
- Preferred locations for entry points and tracks and work areas etc. to avoid existing assets such as water pipelines, dams, etc. and minimise disturbance to farm operations.
- Maintenance of biosecurity for the property.
- Provision of electric or other temporary fencing if necessary while construction is in process.
- Land which will be disturbed (and for which compensation will be due).
- Disposal of construction waste.
- Condition reports on assets which may be temporarily disturbed.
- Restoration or renewal of any assets damaged during construction, including fences and pastures. (See easement agreement).
- Arrangements for the operation of the property including movement of livestock, or other arrangements which may have been agreed during the easement negotiation phase.



The construction contractor and landowner may make additional arrangements which should be ratified by a representative of the company.

## **Restoration and Rehabilitation**

Following successful restoration of the area disturbed during the construction phase, a representative from the company and or construction contractor will visit each landowner and establish that they are satisfied with the quality of restoration and negotiate compensation due to the landowner or occupier as a result of the works on the land. Landholders should also ensure they are given adequate time for the restoration works to settle properly. A 'warranty' period of two years is suggested before releasing the company from further obligation.

## **Ongoing arrangements**

- It is recommended an agreement should cover conditions of future access to the easement (if this may disrupt farm operations), and any maintenance arrangements for the easement itself, such as for weed control. The landowner may seek payment where appropriate.
- The company should also indemnify the landholder from future harm or loss occasioned by the infrastructure's presence or the construction process.
- The company will provide each landowner with the name of a regular contact for any future liaison required.

In the event of inability to agree, disputes may be lodged with the Victorian Civil and Administrative Tribunal for resolution.

*The VFF has further information specific to water and mining companies' wishing to enter and use private land, this information can be found on the VFF website.*