

Native Vegetation Regulations Compliance and Enforcement Toolkit

A Guide for Councils



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1. Interpretation

In this toolkit, unless contrary intention appears –

Act means the *Planning and Environment Act 1987*.

Authorised officer means a person appointed by Council under the *Local Government Act 1989*

Council means a municipal council responsible for planning schemes under their authority.

DELWP means the Department of Environment, Land, Water and Planning.

Minister means the Minister administering the Act.

Native vegetation means plants that are indigenous to Victoria, including trees, shrubs, herbs and grasses.

PIN means Planning Infringement Notice.

Planning authority means any person authorised under the Act to prepare a Planning Scheme or an amendment to a Planning scheme

Planning scheme means a legal document containing policies and provisions that control land use and development, prepared by the local council or the Minister for Planning, and approved by the Minister.

Regulations mean native vegetation removal regulations (Clause 12.01-2s Native Vegetation Management of the VPP; 52.16, 52.17 which includes the *Guidelines for the removal, destruction or lopping of native vegetation*).

Removal means to remove, destroy or lop native vegetation.

Responsible authority means the person identified in a planning scheme as the responsible authority for the administration and enforcement of the planning scheme or a provision of the planning scheme pursuant to s13 of the Act or the Minister with duties pursuant to Section 14 of the Act.

VCAT means the Victorian Civil and Administrative Tribunal

VPP means the Victoria- Planning Provisions.

All section references are references to sections of the Act unless otherwise stated.

References to the Minister or Council are references to the Minister or Council's delegate(s), respectively.

2. Introduction

Protecting Victoria's Environment – Biodiversity 2037 notes that a healthy natural environment provides vital life sustaining services for humans and underpins many of the productive activities that generate value for Victorians (see <https://www.environment.vic.gov.au/biodiversity/biodiversity-plan>). An objective of the plan is to cease the decline of Victoria's native plants. This is supported by the objective of clause 12.01-2S (Native Vegetation Management) and purpose of clauses 52.16 (Native Vegetation Precinct Plan) and 52.17 (Native Vegetation) of the VPP, given both include the objective and purpose

(respectively) to ensure that there is no net loss to biodiversity as a result of the removal, destruction or lopping of native vegetation.

Native vegetation removal in Victoria requires a planning permit unless an exemption contained in clause 52.17 or other clauses (e.g. clause 52.12) or schedule to the clauses apply. Native vegetation removal without a permit, where one is required, is an offence under the Act and enforcement action should be taken.

Responsible authorities administer and enforce planning schemes. For effective protection of native vegetation and as good regulatory practice, it is important that the regulated parties are aware of the likely action that will be taken, and that Responsible authorities have clear guidelines governing the decisions they make about enforcement action.

The purpose of the toolkit is to assist:

- Responsible authorities by providing a summary of the statutory obligations regarding native vegetation removal;
- Responsible authorities achieve outcomes consistent with the objectives of the Act;
- Responsible authorities to deter non-compliant behaviour;
- Responsible authorities' selection of the appropriate compliance and enforcement approach to ensure their response is consistent and proportionate ; and
- consistent application of approaches to the enforcement of the Planning Scheme between Responsible authorities.

The toolkit should be read in conjunction with the Compliance and enforcement strategy – Native vegetation removal regulations available at www.environment.vic.gov.au/native-vegetation/native-vegetation/planning-for-native-vegetation-and-biodiversity. The strategy sets out a risk-based approach to compliance and enforcement where the native vegetation removal regulations are concerned

The strategy guides the development and implementation of risk-based programs, that use a range of regulatory and non-regulatory tools to address key compliance issues or significant environmental impacts.

2.1. Scope

The Act and VPP apply to the State of Victoria where there is a relevant Responsible authority for planning schemes under (s13(2)(a)) of the Act. The Minister is the Responsible authority only if the planning scheme applies to land outside a municipal district (s13(2)(b)).

It is important to note that the toolkit:

- Is not legally binding on the Responsible authority or Authorised officer involved in administering and enforcing the Planning Scheme;
- Does not override any provisions or limit any discretion under the Act or VPP;
- Is not enforceable against any person;
- Should not be relied upon as a statement of the law - reference should always be made to the Act, and, where relevant the VPP and Planning Scheme; and
- Is not a legal document and does not contain legal advice. Where needed legal advice should be sought for compliance and enforcement action.

3. Statutory Framework

The Act establishes a planning framework for the use, development and protection of land in Victoria (s1) and includes objectives to protect Victoria's natural resources (s4(1)(b)).

The objective of Clause 12.01-2s (Native Vegetation Management) of the VPP is to ensure that there is no net loss to biodiversity as a result of the removal, destruction or lopping of native vegetation. Clauses 52.16 (Native Vegetation Precinct Plan) and 52.17 (Native Vegetation) of the VPP achieve this by employing the three-step approach of the *Guidelines for the removal, destruction or lopping of native vegetation* (Department of Environment, Land, Water and Planning, 2017):

- **Avoid** the removal, destruction or lopping of native vegetation;
- **Minimise** impacts from the removal, destruction or lopping of native vegetation that cannot be avoided;
- **Provide an offset** to compensate for the biodiversity impact if a permit is granted to remove, destroy or lop native vegetation.

Relevant features of the planning framework are:

- A Planning authority reviews and prepares amendments to the planning scheme for which it is a Planning authority.
- Planning schemes set objectives, policies and controls for the use, development and protection of land.
- Responsible authorities can commence enforcement proceedings for contraventions of the Act, a planning scheme, provision, permit or agreement.

Enforcement options available under relevant Acts include:

- **Official warnings** issued pursuant to section 8 of the *Infringements Act 2006* (IA 2006).
- **Planning infringement notice** (PIN) issued pursuant to the Act (s130).
- **Enforcement orders** and **Interim orders** by applying to VCAT pursuant to the Act (s114 & s120).
- **Prosecution** proceedings in the Magistrates' Court pursuant to the *Magistrates' Court Act 1989* and *Criminal Procedures Act 2009*.

3.1. Administration of the Act

The Act is administered by Councils and the Minister as Responsible authorities. Responsible authorities have duties set out under Section 14 of the Act which include responsibility for enforcing planning schemes (s14(a)).

3.2. Authorised Officers

Authorised officers are appointed under section 224 of the *Local Government Act 1989* (LGA 1989) for administering and enforcing any Act which relates to the functions of the Council (s224(1) LGA 1989). Authorised officers have the power to enter a property (s133), either with consent of the occupier; or after giving two clear days' notice or by obtaining a warrant (s134), for collecting evidence (s135) of a contravention of the Act.

Authorised officers are required to produce their identity card when requested to do so (s224(4) LGA 1989). They may demand the name and address of a person who has committed, or they reasonably suspect has committed, an offence or is about to commit an offence (s224(6) LGA 1989). In making such a demand, officers must inform the person in detail of the grounds on which the demand is made so as the person understands the nature of the offence (s224(6A) LGA 1989).

Authorised officers may serve a PIN on any person they have reason to believe has committed an offence (s130). If the PIN requires remedial action/s, the Authorised officer is to follow up on the PIN once the person served the PIN informs them they have completed the additional steps to expiate the PIN (s130(5)).

4. Compliance with the *Planning and Environment Act 1987*

Responsible authorities should assess all notifications it receives of native vegetation removal without a permit, and based on these assessments and associated investigation, can make decisions as to the appropriate response.

Further details on planning enforcement under *the Planning and Environment Act 1987* can be found on the Victorian Government planning website:

https://www.planning.vic.gov.au/_data/assets/pdf_file/0021/94530/7_Enforcement.pdf

4.1. Illegal native vegetation removal

Native vegetation is not to be removed unless the removal is undertaken in accordance with a relevant clause in the planning scheme or a planning permit. A permit is not required if a schedule to an overlay specifically states one is not required or the native vegetation removal is being undertaken in accordance with the exemptions in Clauses 52.16 (Native Vegetation Precinct Plan), 52.17 (Native Vegetation) and 52.12 (Bushfire Protection) of the VPP.

The Responsible authority is responsible for determining the permit application for removal. It may determine to grant a permit, grant a permit with conditions or refuse a permit application.

Failure to comply with a planning scheme, conditions to a permit or a section 173 agreement is an offence against section 126 of the Act.

A planning permit cannot be granted for retrospective approval after native vegetation has been removed. VCAT (*Mount Alexander vs Felmar Garden Supplies – 2000*) adjudicated ‘an enforcement order is a more appropriate instrument to attempt to remedy as far as possible damage by illegal clearing’. A PIN may be issued with the requirement for remedial action.

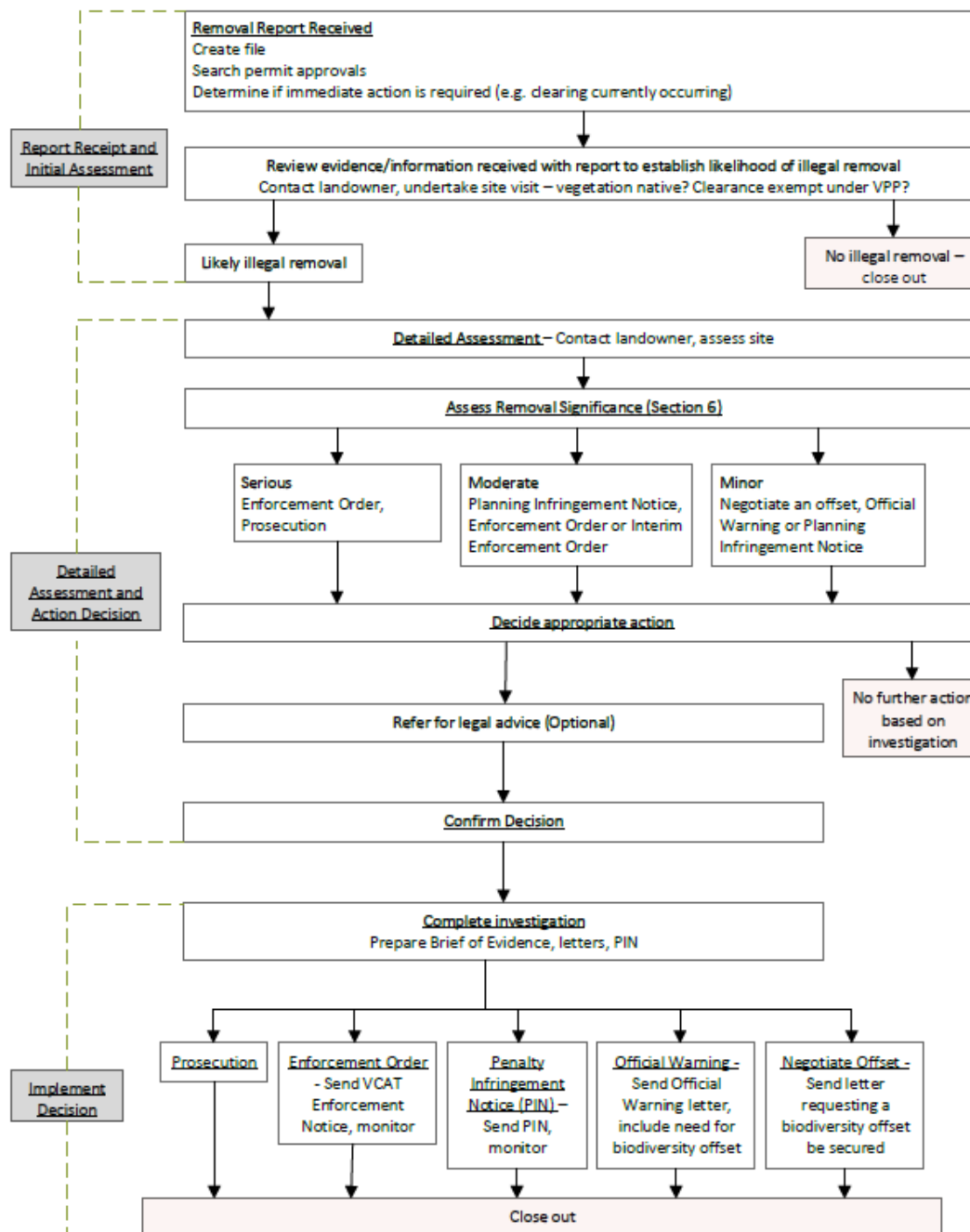
Any action taken to address unauthorised native vegetation removal should require that a biodiversity offset be secured. If the significance of the removal does not warrant a PIN, then responsible authorities should negotiate with the offender on them obtaining and securing a suitable biodiversity offset.

4.2. Exemptions requiring no permit to remove native vegetation under VPP

Native vegetation requires a planning permit under the Planning Scheme unless one of the exemptions in clause 52.17 (Native Vegetation) or another relevant clause (e.g. clause 52.12) applies. The use of an exemption may require the written permission or agreement of the Minister, Secretary of DELWP, or the funding authority (e.g. planted native vegetation). In some instances, an exemption may apply where the native vegetation removal is undertaken in accordance with other legislation.

5. Enforcement process

The flowchart below is an example of the enforcement process that may be followed in investigating a case of illegal vegetation removal.



6. Assessing the significance of native vegetation removal

Environmental harm is any impact on the environment as a result of human activity that has the effect of degrading the environment, whether temporarily or permanently. The following factors should be considered when deciding the significance of illegal native vegetation removal:

- Extent of the removal – hectares of patches and trees including number of large trees;
- Native vegetation condition – how close is it to its mature, natural state, as represented by the benchmarks for the relevant Ecological Vegetation Class (EVC) – this information can be obtained from Native Vegetation Information Management (NVIM) system;
- Strategic Biodiversity Value – location’s contribution for biodiversity relative to other locations across Victoria – this information can be obtained from NVIM;
- Large old trees – number of large old trees removed
- Species - Impact on rare or threatened species-specific habitat; and
- Wetlands, EVC – sensitive wetlands or endangered EVCs present

The compliance history or culpability of the person(s) responsible should be considered in assessing the most appropriate enforcement action, including where the person has

- previously sought, or been provided advice about or issued a permit involving native vegetation removal
- had a previous warning for native vegetation removal without a permit
- been served with a PIN and/or enforcement order in the past for native vegetation removal without a permit
- received a real or potential financial benefit from the illegal activity

Table 1 below sets out a suggested scoring system to assess the significance of the native vegetation removal.

Part 1 uses NVIM to calculate the extent, native vegetation condition and strategic biodiversity value of the native vegetation removed, scoring each component between 1 and 3. Part 2 considers the impact removal has on rare or threatened species, sensitive wetlands or endangered EVCs. One point is added for every threatened species or community impacted.

Table 1: Factors for assessing Significance of removal for a Patch +/- Large Trees

Factors	Significance		
	Score - 1 point	Score - 2 points	Score - 3 points
Part 1			
Extent (including the extent of scattered trees)	Removal of less than 0.5 hectares & no large trees	Removal of less than 0.5 hectares but includes one or more large trees.	Removal of 0.5 hectares or more
Location risk	Location 1	Location 2	Location 3
Native Vegetation Condition (excludes damage through fire or drought)	Score 0.0 to 0.2	Score 0.21 to 0.60	Score greater than 0.60
Strategic Biodiversity Value	Value 0.0 to 0.2	Value 0.21 to 0.60	Value greater than 0.60
Compliance History/Culpability	No compliance history or little benefit gained	Previous compliance history (education letter, official warning), moderate benefit gained	Previous PIN, enforcement order or prosecution, significant benefit gained
Part 2			
Large old trees	1-4	4-9	10 or more
Species	Per species specific habitat present	-	-
Wetlands, endangered EVC	Sensitive wetlands or endangered EVC present	-	-

Note: Table 1 is a guide only and there may be additional factors to consider, such as the presence of environmental overlays or identified landscape values.

If the vegetation removed is no longer onsite or is dead, the vegetation nearby or surrounding the removal site can be used as a reference to estimate the site condition and EVC. If this is not available, the use of standard mapping from the NVIM or NatureKit is advised.

Table 2 below converts the overall score to a significance rating.

Table 2: Significance of impact from illegal removal (using summary score from Table 1)

Score	Significance Rating
4 – 8	Minor
9 – 12	Moderate
13 or more	Serious

Once the significance of removal has been established Table 3 provides a guide to proportionate compliance and enforcement action.

Table 3: Compliance and enforcement action to take depending on Significance Rating

Significance Rating	Action
Minor	Negotiate an offset, Official Warning or Planning Infringement Notice
Moderate	Planning Infringement Notice, Enforcement Order or Interim Enforcement Order
Serious	Enforcement Order, Prosecution

7. Enforcement Actions

In general terms the relevant Responsible authority, is responsible for enforcement where an offence has occurred. Depending on the nature and seriousness of the offence, the Responsible authority can take one or more of the following:

- Administrative actions (negotiation, information letter) – (toolkit section 7.2.1);
- Official warning - (toolkit section 7.2.2);
- Planning Infringement Notice – (toolkit section 7.3);
- Enforcement Order/Interim Enforcement Order - (toolkit section 7.4);
- Prosecution – (toolkit section 7.5)

7.1 Determining appropriate enforcement action

Considerations for determining the appropriate enforcement action include :

- The seriousness of the offence;
- The deterrence value of the action;
- The offender's willingness to cooperate or conversely the extent and nature of any obstruction; and
- The nature and speed of corrective action that is required.

In determining the appropriate enforcement action to be taken, a decision should never be influenced by:

- The race, religion, sex, national origin or political associations, activities or beliefs of the alleged offender or any other person involved;
- Personal feelings concerning the alleged offender, or the subject matter of any damage caused by the offence;
- Possible political advantage or disadvantage to the Government or any political group or party; and
- The possible effect of the decision on the personal or professional circumstances of those responsible for the enforcement decision.

7.2. Administrative actions

7.2.1 Negotiation, Information letter

Where the native vegetation removal is less serious and occurs by accident or through unfamiliarity with the Act and the regulations, and is not a repeat offence, it may be appropriate to negotiate with the alleged offender initially advising them of the offence in writing. If investigations reveal the removal is exempt close the matter by sending information about native vegetation, its value, and obligations about its protection.

If investigations determine the native vegetation removal has a significance rating of minor an option is to advise the offender in writing that the removal is contrary to the Act and regulations and they are required to secure a biodiversity offset. Where this does not occur, this may require further action including serving a Planning Infringement Notice (PIN). It should be noted that an option to issue both a PIN and seek securing of offsets could be taken.

7.2.2. Official warning

An official warning is issued pursuant to the *Infringements Act 2006* (s8 IA 2006) and should be applied when a planning infringement notice is considered excessive under the circumstances.

An official warning should be issued where:

- There is inadequate evidence to proceed formally;
- The native vegetation removal is minor and accidental or mistaken (but not where it is a repeat occurrence);
- there is little likelihood of a reoccurrence, and either does not require remediation (e.g. lopping) or did require a minor level of remediation which is either complete or underway. and
- The need for general or specific deterrence is low.

Issuing an official warning does not affect the ability to pursue a biodiversity offset, serve a PIN, commence prosecution proceedings or take any other enforcement action (s10 IA 2006). This may be required where additional clearing occurs, where required remedial action is not action or new information about the offence comes to light. However, before a PIN can be served, or a prosecution commences the official warning must be withdrawn in writing (s11 IA 2006).

7.3. Planning Infringement Notice (s130)

A PIN is a fine and doesn't exclude the option for the Responsible authority to require remedial action. A PIN must be served by an Authorised officer within 12 months of an alleged offence (s7(1) *Criminal Procedure Act 2009*).

A PIN may be appropriate where:

- The offence is minor or moderate – for instance in circumstances that would attract an official warning but for the fact that the offence is a repeat occurrence;
- It is immediately evident the offence does not require remediation, either because of the nature of the offence or because it has already been rectified; and
- The breach can be remediated by entering into an agreement under section 173 of the Act or another mechanism.

A PIN should not be served unless there is enough evidence about the offence to take the case to court as the offender is entitled to have the matter of an infringement offence heard and determined in the Magistrates' Court.

A PIN can be withdrawn if it becomes clear the offence is more serious than first thought and it is more appropriate to prosecute; or if there is a repeat or ongoing offence; or any remedial action required has not been completed (s18 IA 2006).

7.4. Enforcement order and Interim enforcement order (s114)

Responsible authorities can apply to VCAT for an enforcement order. An Enforcement order is designed to prevent or stop illegal native vegetation removal and seek reinstatement. It is a written order issued by the Victorian Civil and Administrative Tribunal (VCAT) against an owner, occupier or any other person who has removed native vegetation (s114).

Enforcement orders and Interim enforcement orders are binding on the owner or occupier and any subsequent owners or occupiers (s124).

A failure to comply with an enforcement order is an offence under section 133 of the *Victorian Civil and Administrative Tribunal Act 1998* (VCATA 1998). Offenders not complying with an Enforcement order can be prosecuted in the Supreme Court (s122 VCATA 1998).

7.5. Prosecution

Responsible authorities or Authorised officers are responsible for prosecuting.

Prosecutions for a serious offence under section 126 of the Act take place in the Magistrates' Court. Proceedings must commence within twelve months after the date on which the offence is alleged to have been committed (s7(1)) *Criminal Procedure Act 2009*. This limitation means a Responsible authority cannot pursue enforcement action beyond 12 months of the alleged offence. The standard of proof is beyond reasonable doubt.

Body corporates can be prosecuted. If a body corporate is guilty of an offence, then an officer of the body corporate (such as a board member or CEO) is also guilty of an offence (s128). An officer of a body corporate may commit an offence whether or not the body corporate has been prosecuted or found guilty of that offence (s128(5)).

8. Community of Practice

A Native Vegetation Compliance Community of Practice (NVCCoP) was established to provide a forum for Local Government officers (biodiversity and compliance staff) and DELWP staff (NEP and NVR) with specific interest in native vegetation regulation, compliance and enforcement with an aim to:

- Develop resources that can be shared amongst members of the group
- Capture existing knowledge and information about native vegetation regulation and compliance.
- Support collaborative processes to solve compliance and enforcement cases.

The Municipal Association of Victoria (MAV) hosts the Community of Practice (NVCCoP) virtual team room and holds seminars to bring practitioners together to discuss and share approaches and opportunities.

The NVCCoP is coordinated by a group comprising representatives from Local Government, MAV, DELWP Natural Environment Programs and DEWLP Native Vegetation Regulation.

A website hosted by MAV will provide a place with information on:

- Investigative tools: guides for use of tools to gather, assess and record potential illegal clearing activities such as satellite imagery, aerial photography and drones.

- Case studies: outline of investigations or compliance activities or problem solving, approaches, lessons learned, and outcomes achieved.
- Support material: templates of letters, biodiversity assessment approaches, investigation project plans, flow charts that may be of use for others.

Appendix 1 – Native Vegetation Removal Report

Officer taking report

Name:	
Title:	
Contact Numbers:	
Actioning Officer:	

Information/Observations

Address/ Lot, Plan Number/Location of removal:	
Dates & Times of observations:	
Estimate of area/extent removal: <i>(hectares, m x m or tree numbers/size)</i>	
Could an exemption be involved? <i>(fences, fire protection, regrowth, site area)</i>	
Type of vegetation removed: <i>(species, rare etc - groundcover/trees - wetland)</i>	
Condition/maturity of vegetation removed:	
Chances of regeneration: <i>(completely or partially removed)</i>	
How? <i>(chainsaw, ploughed, bulldozer, fire)</i>	
Why? <i>(building, centre pivot, grazing, vineyard, other)</i>	
Is the removal ongoing?	
Date of removal: <i>(When did it occur? recent or old)</i>	
Evidence that someone other than property owner may have done the removal. <i>(contractor, council)</i>	
Equipment or Vehicles observed:	
Other comments/observations: <i>(any photographic evidence)</i>	

Appendix 2 – Letter Templates Examples

Show Cause Letter

Our ref: <ref number>

<Date>

<Name>
<Address>
<Suburb & Postcode>

Dear Sir / Madam.

Re: Alleged Removal of Native Vegetation

It has come to the attention of Council that removal of native vegetation has occurred on your property at <address>, which is more formally described as <Lot>.

Under Clause 52.17 of <Council's> Planning Scheme, a planning permit is required to remove, destroy or lop native vegetation (including dead vegetation). Council's records indicate that no planning approval has been granted for the removal of native vegetation.

The purpose of this letter is to provide you with an opportunity to clarify the circumstances of the matter. You are invited to respond to this letter by return mail, email to <email address>, or by contacting <name> on <phone> within **2 weeks** from the date of this letter.

In the meantime, it is requested that the removal of native vegetation on this property cease immediately and that the felled timber remains untouched and kept on the property <delete where appropriate> until further notice.

Council is interested in resolving this issue without delay and looks forward to your prompt response.

Yours sincerely

<Name>
<Position>

Escalation Letter

Our ref: <ref number>

<Date>

<Name>
<Address>
<Suburb & Postcode>

Dear Sir / Madam.

Re: Alleged Removal of Native Vegetation

<Council> wrote to you <dd/mm/yyyy> advising that native vegetation has been removed on <address> (<lot>). A search of Council records shows <property owner> to be the registered owner(s) of that land.

To date, Council has not received a response from you. The purpose of this letter is to give you a final opportunity to provide details on the circumstances of the removal before further investigation by Council occurs.

Unless information is received by the <date> indicating that an offence has not occurred, it is Council's intention to escalate the investigation of this report.

You are invited to respond to this letter by return mail, email to <email address>, or by contacting <name> on <phone>. When responding please quote <ref number>.

Council looks forward to your response.

Yours sincerely

<Name>
<Position>

Closing Letter

Our ref: <ref number>

<Date>

<Name>
<Address>
<Suburb & Postcode>

Dear Sir / Madam.

Re: Report of Native Vegetation Removal

Thank you for your response to <Council's> letter dated <dd/mm/yyyy>.

I am writing to inform you that no further action will be taken in regard to the matter. Council has conducted an investigation and determined <give reason/s if applicable>.

Council appreciates the honesty with which you replied to our request for information.

I take this opportunity to provide a copy of Council's planning scheme relating to native vegetation outlining requirements for permissible native vegetation removal for your information.

If you have any questions or require further information regarding this matter or the planning process, please contact me on <phone>.

Yours Sincerely,

<Name>
<Position>

Negotiated Outcome

Our ref: <ref number>

<Date>

<Name>
<Address>
<Suburb & Postcode>

Dear Sir / Madam.

Re: Native Vegetation Removal

<Council> has conducted an investigation into a report of native vegetation removal within <lot> (<Street Address>). In order to remove native vegetation, you must apply to Council for a Planning Permit or the removal must comply with <Council> Planning Schemes.

The removal is contrary to the *Planning and Environment Act 1987* (the Act). It does not comply with the native vegetation regulations and no consent to remove native vegetation was granted by Council.

You are required to contact council within 14 days from the date of this letter to discuss the minimum requirements necessary to obtain a biodiversity offset and comply with the Act.

Failure to do this may result in Council serving a Planning Infringement Notice.

If you have any questions or require further information regarding this matter, please contact <Name> on <phone>.

Yours sincerely

<Name>
<Position>

Official Warning

Our ref: <ref number>

<Date>

<Name>
<Address>
<Suburb & Postcode>

Official Warning

Dear Sir / Madam.

<Council> has conducted an investigation into a report of native vegetation removal within <lot> (<Street Address>). The removal is contrary to the *Planning and Environment Act 1987*(the Act). It does not comply with the native vegetation regulations and no consent to remove native vegetation was granted by Council.

This is an official warning and you are required to purchase a biodiversity offset to compensate for the unauthorised removal of native vegetation.

You are required to contact council within 14 days of the date of this letter to discuss the minimum requirements necessary to obtain a biodiversity offset and comply with the Act.

Failure to do this may result in Council withdrawing the official warning and serving a Planning Infringement Notice.

Be aware that in order to remove native vegetation you must apply to Council for a Planning Permit or the removal must comply with <Council> Planning Schemes.

If you have any questions or require further information regarding this matter, please contact <Name> on <phone>.

Yours sincerely

<Name>
<Position>

Planning Infringement Notice Cover Letter

Our ref: <ref number>

<Date>

<Name>
<Address>
<Suburb & Postcode>

Dear Sir/Madam

Removal of Native Vegetation Without a Permit

On <dd/mm/yyyy> <Council> received a report of the removal of native vegetation on <lot> (<Street Address>).

<Council> has investigated the incident and has determined that the removal of native vegetation is contrary to <Council> Planning Scheme. The removal was not undertaken in accordance with the native vegetation exemptions and no permit to remove native vegetation was granted by <Council>.

<Council> options for an offence under the *Planning and Environment Act 1987 Act* range from initiating criminal proceedings through the courts, issuing a planning infringement notice or issuing an official warning. Having regard to the specific circumstances of this matter <Council> has decided against initiating prosecution proceedings and determined a Planning Infringement Notice be issued.

<Council> has authorised the issue of Planning Infringement Notice number <number> for the removal of native vegetation on <lot> (<Street Address>) without a permit.

The Infringement Notice requires you to comply with the following directions:

1. <if applicable outline/list remediation work or offset requirements/cease development>

Proof the above directions have been completed by <date>.

If you have any queries in relation to this matter, please contact me on <phone>.

Yours sincerely,

<Name>
<Position>

Appendix 3

Planning Infringement Notice – Example 1

See Over

PLANNING INFRINGEMENT NOTICE

Infringements Act 2006

Planning Infringement Notice Number:	Date of Notice

Name of person served with notice (or company name)

Address of person or registered address of company

Address of the place where the infringement offence was committed

Act of instrument creating offence

Section 126 of the Planning and Environment Act 1987

BREIF DESCRIPTION OF INFRINGEMENT OFFENCE ALLEGED TO HAVE BEEN COMMITTED	INFRINGEMENT PENALTY	DUE DATE

Approximate time of offence

Date of offence

--	--

Name of Issuing Officer

Signature of Issuing Officer

--	--

Issuing Agency and Location of Issuing Officer

Penalty Enquiries

--	--

IN ADDITION TO THE ABOVE PENALTY YOU MUST TAKE THE FOLLOWING STEPS TO EXPIATE THE OFFENCE

DUE DATE

1.	
----	--

NOTE: IF YOU ARE REQUIRED TO CARRY OUT ANY ADDITIONAL STEPS TO EXPIATE THIS OFFENCE YOU SHOULD INFORM THE RESPONSIBLE AUTHORITY WHEN THE STEPS HAVE BEEN CARRIED OUT

MANNER IN WHICH INFRINGEMENT PENALTY MAY BE PAID

NOTE: FAILURE TO PAY THE INFRINGEMENT PENALTY BY THE SPECIFIED DUE DATE MAY RESULT IN FURTHER ENFORCEMENT ACTION BEING TAKEN AND THE INCURRING OF FURTHER COSTS.

You must do one of the following by the due date:

1. **Pay in full** by using one of the payment methods available or, if you are eligible, apply for a payment plan* and make the first payment within the time required under that plan; **OR**
2. Have the matter dealt with in a Court or, in the case of a child, in the Children's Court, by completing the Application for Action by a Court on the back of this Infringement Notice; **OR**
3. You, or a person acting on your behalf, may apply to have the decision to serve this Infringement Notice internally reviewed.

*You may be eligible for a payment plan. Further information relating to eligibility for payment plans and applying for an internal review can be obtained by contacting <name> on <phone>.

PLANNING INFRINGEMENT NOTICE

IF YOU DON'T PAY ON TIME

Failure to pay the infringement penalty by the specified due date may result in further enforcement action being taken and the incurring of further costs.

If the matter is referred to the Magistrates' Court, you are entitled to defend any such proceedings.

The Issuing Officer may withdraw this notice within 28 days of it being issued. However, this happens only rarely. If it happens in this case, the Issuing Officer will write to you and your payment will be refunded.

APPLICATION FOR ACTION BY A COURT

I,

(Full name)

decline to be dealt with under the Infringement Notice Enforcement provisions and want to have the matter dealt with by a court. I understand I may receive a summons for this offence.

Signed:

Address for the service of documents:

APPLICATION TO HAVE THE INFRINGEMENT NOTICE INTERNALLY REVIEWED[#]

I,

(Full name)

believe the decision to issue this Infringement Notice (strike through non-applicable):

1. was contrary to law; OR
2. involved a mistake of identity; OR
3. that special circumstances[^] apply in my case: OR
4. my conduct for which the infringement notice was served should be excused having regard to my exceptional circumstances.

I have enclosed an accompanying statement to support my application.

Signed:

Address for the service of documents:

*Section 22(2)(ii)(d) in the Infringements Act 2006 requires you to provide your current address.

#Your application must be in writing and needs to be accompanied by a statement and any evidence such as medical, psychological, or case worker reports.

^ 'Special Circumstances' are defined by the Infringements Act 2006 and relate to a person with a mental or intellectual disability, disorder, disease or illness or a serious addiction to drugs or alcohol which results in a person being unable to understand the offending conduct or unable to control the conduct. Special circumstances also extend to the homeless, where homelessness results in the person being unable to control the offending conduct.

If you have been served with more than one infringement notice, an application for internal review will need to be completed and submitted for **each infringement notice** that you wish to have reviewed. Only one application for internal review can be made regarding any one infringement offence.

As part of the internal review process you may be asked for additional information and, if this occurs, you must provide that information within 14 days. The person conducting the internal review may decide, in all the circumstances, to:

- withdraw the infringement notice and refer the matter for prosecution in court; OR
- confirm the decision to issue the infringement notice; OR
- withdraw the infringement notice and serve an official warning in its place; OR
- withdraw the infringement notice; OR
- waive all or any prescribed costs; OR
- approve a payment plan; OR
- any combination of these actions.

Further information and information relating to eligibility for payment plans and applying for internal review can be obtained by telephoning <name> on <phone>. Send correspondence relating to this infringement notice to: <mailing address>.

Appendix 4

Planning Infringement Notice Example 2

See Over

PLANNING INFRINGEMENT NOTICE

Infringements Act 2006

Planning Infringement Notice Number:	Date of Notice
INF16159/2018	30 June 2019 (must be within 12 months of when offence occurred)

Name of person served with notice (or company name)

John Smith

Address of person or registered address of company

555 Longreach Rd Mount Fabulous

Address of the place where the infringement offence was committed

555 Longreach Rd Mount Fabulous

Act of instrument creating offence

Section 126 of the *Planning and Environment Act 1987*

BREIF DESCRIPTION OF INFRINGEMENT OFFENCE ALLEGED TO HAVE BEEN COMMITTED	INFRINGEMENT PENALTY	DUE DATE
The owner of the land has developed land in contravention of a Planning Scheme and as such failed to comply with ABC Shire's Planning Scheme. The owner has contravened Clause 42.02-2 (Vegetation Protection Overlay) of ABC Shire's Planning Scheme by the removal of native vegetation without the appropriate planning permit and approval.	\$ 826.10 (5 penalty units for individual, 10 penalty units for body corporate)	31 July 2019 (must not be less than 21 days from date of notice being served)

Approximate time of offence

(if known)

Date of offence

5 March 2019

Name of Issuing Officer

William Jones

Signature of Issuing Officer

Issuing Agency and Location of Issuing Officer

ABC Shire, 123 Government Rd ABC Valley VIC 3999

Penalty Enquiries

(Shire phone number)

IN ADDITION TO THE ABOVE PENALTY YOU MUST TAKE THE FOLLOWING STEPS TO EXPIATE THE OFFENCE	DUE DATE
1. Obtain a biodiversity impact and offset requirements report that will calculate the offsets for the vegetation that has been removed. 2. Purchase the offset calculated in the above biodiversity impact and offset requirements report. 3. Provide proof to ABC shire of the offset purchase.	30 November 2019

NOTE: IF YOU ARE REQUIRED TO CARRY OUT ANY ADDITIONAL STEPS TO EXPIATE THIS OFFENCE YOU SHOULD INFORM THE RESPONSIBLE AUTHORITY WHEN THE STEPS HAVE BEEN CARRIED OUT

Continued over page.

MANNER IN WHICH INFRINGEMENT PENALTY MAY BE PAID

NOTE: FAILURE TO PAY THE INFRINGEMENT PENALTY BY THE SPECIFIED DUE DATE MAY RESULT IN FURTHER ENFORCEMENT ACTION BEING TAKEN AND THE INCURRING OF FURTHER COSTS.

You must do one of the following by the due date:

4. **Pay in full** by using one of the payment methods available or, if you are eligible, apply for a payment plan* and make the first payment within the time required under that plan; **OR**
5. Have the matter dealt with in a Court or, in the case of a child, in the Children's Court, by completing the Application for Action by a Court on the back of this Infringement Notice; **OR**
6. You, or a person acting on your behalf, may apply to have the decision to serve this Infringement Notice internally reviewed.

*You may be eligible for a payment plan. Further information relating to eligibility for payment plans and applying for an internal review can be obtained by contacting <name> on <phone>.

PLANNING INFRINGEMENT NOTICE

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The Issuing Officer may withdraw this notice within 28 days of it being issued. However, this happens only rarely. If it happens in this case, the Issuing Officer will write to you and your payment will be refunded.

APPLICATION FOR ACTION BY A COURT

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(Full name)

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Signed:

Address for the service of documents:

APPLICATION TO HAVE THE INFRINGEMENT NOTICE INTERNALLY REVIEWED#

I,

(Full name)

believe the decision to issue this Infringement Notice (strike through non-applicable):

5. was contrary to law; **OR**

6. involved a mistake of identity; OR
7. that special circumstances[^] apply in my case: OR
8. my conduct for which the infringement notice was served should be excused having regard to my exceptional circumstances.

I have enclosed an accompanying statement to support my application.

Signed:

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[^] 'Special Circumstances' are defined by the Infringements Act 2006 and relate to a person with a mental or intellectual disability, disorder, disease or illness or a serious addiction to drugs or alcohol which results in a person being unable to understand the offending conduct or unable to control the conduct. Special circumstances also extend to the homeless, where homelessness results in the person being unable to control the offending conduct.

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Appendix 5 – Case Studies

Successful Enforcement outcomes

A landholder within Bass Coast Shire Council removed approximately 4,000 square metres of native vegetation without a planning permit for a residential subdivision. Council applied to VCAT and obtained an enforcement order for a breach of Clause 52.17. The order required the offender to cease removal and develop a 10-year vegetation management plan for the area where native vegetation removal occurred.

Upon application the Council granted the subdivision with the following conditions; the land covered by the enforcement order be preserved as a conservation area, ownership of said land to be passed to council and payment be provided to council to maintain the area for 10 years.

In late 2018 Hobsons Bay City Council received a report of native vegetation impacted by soil dumping. The impact triggered offences under the EPBC Act and the Commonwealth were advised (still awaiting on their determination). Council issued \$9000 worth of PIN's as multiple offences to their Planning Scheme were committed and used the PIN requirements to require removal of the soil and implementation of an onsite rehabilitation plan.

In 2015 Wellington Shire Council and DELWP contributed to a combined prosecution for the unauthorised removal of approximately 3 hectares (1.2km x 25m) along a fence line within public land at Gormandale. Prosecution was led by DELWP with assistance from the Shire. The offender was fined \$5000 and the matter covered by the local papers.

Within Mansfield Shire Council over 73 hectares of unauthorised removal occurred 2015 and 2017, which was reported to council in May 2017. Upon Council's request the value and extent of removed native vegetation was assessed a consultant hired at the landowner's cost. Council negotiated an agreement, getting the offender to enter into a Trust for Nature Conservation Covenant to protect 60 hectares of native vegetation on the property with additional offsets purchased within the Goulburn Broken Catchment region, at an estimated cost of \$300,000. Council issued a press release to publicise the outcome of this negotiation.

A landholder in Northern Grampians Council area developed his land as a motor-cross track, without obtaining appropriate planning permits. Approximately 13.5km of track was developed. The land is zoned as a Rural Conservation Zone and, as such, a motor-cross track is not an allowable use of the land. Complaints from neighbours resulted in Council becoming involved. Council were unable to convince the landholder to cease the use of the motocross track and, therefore, took the case to VCAT (P882/2011) to obtain an enforcement order.

VCAT issued an enforcement order to:

- cease the use of the motocross track within 7 days
- restore the land as near as practical to its previous condition
- exclude vehicle access and allow the area to regenerate
- protect the regenerated area via a Section 173 agreement on the land title.