

Compliance and enforcement strategy

Native vegetation removal regulations



December 2017

© The State of Victoria Department of Environment, Land, Water and Planning 2017



This work is licensed under a Creative Commons Attribution 4.0 International licence. You are free to re-use the work under that licence, on the condition that you credit the State of Victoria as author. The licence does not apply to any images, photographs or branding, including the Victorian Coat of Arms, the Victorian Government logo and the Department of Environment, Land, Water and Planning (DELWP) logo. To view a copy of this licence, visit <http://creativecommons.org/licenses/by/4.0/>
ISBN 978-1-76047-857-5 (pdf)

Disclaimer

This publication may be of assistance to you but the State of Victoria and its employees do not guarantee that the publication is without flaw of any kind or is wholly appropriate for your particular purposes and therefore disclaims all liability for any error, loss or other consequence which may arise from you relying on any information in this publication.

Cover image: You Yangs, Victoria, DELWP (Penny Croucamp)

Accessibility

If you would like to receive this publication in an alternative format, please telephone the DELWP Customer Service Centre on 136186, email customer.service@delwp.vic.gov.au, or via the National Relay Service on 133 677 www.relayservice.com.au. This document is also available on the internet at www.environment.vic.gov.au/native-vegetation/

Contents

1.	Introduction.....	2
1.1.	Purpose and scope of this strategy	2
1.2.	Objectives of this strategy.....	2
1.3.	Process for update and review of this strategy	2
2.	Overview of compliance and enforcement	3
2.1	What is compliance and enforcement?.....	3
2.2	Why compliance and enforcement is important	3
2.3	Compliance and enforcement principles	3
2.4	Compliance philosophy	4
2.5	Compliance with the native vegetation removal regulations.....	4
2.6	Roles and responsibilities	5
2.7	Resources	5
3.	Risk-based approach to compliance and enforcement.....	6
3.1	Part 1: Risk assessment	6
3.2	Part 2: Compliance and enforcement activities	6
3.3	Part 3: Continuous improvement.....	8
4.	Implementation	9
	Appendix A Risk assessment for non-compliance with native vegetation removal regulations	10
	Appendix B Compliance and enforcement tools	13
	Appendix C Compliance responsibilities	18

1. Introduction

This strategy relates to compliance and enforcement of the native vegetation removal regulations, which govern how the removal, lopping or destruction (hereafter referred to as removal) of native vegetation is assessed, approved and offset in Victoria.

1.1. Purpose and scope of this strategy

This strategy sets out a risk-based approach to promoting compliance and ensuring enforcement of the native vegetation removal regulations.

This 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.

The removal of native vegetation in Victoria is generally governed through local governments' planning schemes, in accordance with the *Guidelines for the removal, destruction or lopping of native vegetation* (Guidelines).

It is intended that this strategy will be used by local government, DELWP and signatories to offset security agreements, to inform compliance activities in relation to the native vegetation removal regulations, including the development of compliance and enforcement plans.

This strategy can also be used by other regulatory agencies to guide compliance and enforcement relating to the removal of native vegetation under approval processes that fall outside planning schemes. For example, approval processes that allow exemptions from requiring a planning permit to be relied upon, or approvals under the *Pipelines Act 2005* or the *Mineral Resources (Sustainable Development) Act 1990*.

This strategy is not intended to prescribe compliance and enforcement activities that must be undertaken. Instead its purpose is to assist regulatory agencies to design and implement a compliance and enforcement approach that is appropriate for, and meets local priorities and needs.

1.2. Objectives of this strategy

A key objective of this strategy is to promote a collaborative approach to compliance and enforcement across government agencies and

organisations. It provides a framework for making consistent and transparent compliance and enforcement decisions.

The objectives of this strategy are to ensure:

- the native vegetation removal regulations are implemented fairly and comprehensively and that, ultimately, they achieve their objectives
- compliance and enforcement activities are focussed on those matters that present the greatest risk of harm to native vegetation and associated values
- a high level of voluntary compliance is promoted
- regulatory agencies work together to identify and address compliance and enforcement issues
- a consistent risk-based and intelligence-led approach to compliance and enforcement is applied across Victoria
- regulatory agencies are aware of the tools available to them to facilitate compliance with and enforcement of the native vegetation removal regulations
- local governments are able to incorporate the approach outlined in this strategy into their municipal compliance and enforcement plans.

1.3. Process for update and review of this strategy

The development and release of this strategy is the first step in a new approach to ensure compliance with and enforcement of the native vegetation removal regulations. The strategy will be reviewed annually and updated as required.

2. Overview of compliance and enforcement

This section provides an introduction to compliance and enforcement and the roles and responsibilities in relation to managing compliance with the native vegetation removal regulations.

2.1 What is compliance and enforcement?

Compliance activities are actions and programs designed to ensure the law is followed.

Enforcement activities are actions undertaken when the law is not followed and help to ensure a return to compliance with the law.

Compliance and enforcement activities usually include three core elements:

- *Encouraging compliance* – through education, providing information and support, incentives for compliance and controls such as licence and permit conditions.
- *Monitoring compliance* – through regular, random and/or targeted inspections, audits, covert and overt patrols, information and intelligence gathering and assessment.
- *Responding to non-compliance* – through investigating suspected breaches of the law and resultant enforcement activities, including issuing official warnings or notices to comply or infringement notices, or undertaking prosecution.

Details of compliance and enforcement tools are provided at Appendix B.

Table 1. Principles of a well-functioning regulatory system

Regulatory principle	Description
Helpful	Regulators provide appropriate and timely information, advice and assistance to help duty holders and the community to understand and meet their compliance obligations
Respectful	Regulators conduct compliance actions professionally and respectfully at all times
Proportionate	Regulators ensure that compliance actions are in proportion to the problem they are intended to address, based on assessment of risk, impact and culpability
Intelligence-led	Decision-making is informed by consistent and comprehensive information collection and analysis at the strategic, operational and tactical levels enabling regulators to quickly identify and assess significant risks, behavioural patterns and trends in offending
Predictable	Regulators apply the regulatory approach predictably for duty holders in equivalent circumstances

2.2 Why compliance and enforcement is important

Compliance and enforcement is essential to ensure the native vegetation removal regulations are implemented fairly and comprehensively and that, ultimately, they achieve their objectives, which are:

- to ensure that there is no net loss to biodiversity as a result of the removal, destruction or lopping of native vegetation
- to manage the removal, destruction or lopping of native vegetation to minimise land and water degradation.

To meet these objectives, permits to remove native vegetation must be obtained, and offsets secured when native vegetation removal is approved.

Improving compliance with the native vegetation removal regulations will help protect Victoria's environment. This will result in more proposals to remove native vegetation being assessed, more opportunities to avoid and minimise impacts on native vegetation being taken, and appropriate offsets being secured if a permit is granted. This ensures incentives to not comply with the regulations are minimised and that the objectives for the native vegetation removal regulations can be achieved.

2.3 Compliance and enforcement principles

The best practice approach to compliance and enforcement states that regulators should deliver a consistent stakeholder experience, and efficient and effective regulatory activities. This is achieved by applying the regulatory principles outlined in Table 1.

Regulatory principle	Description
Clear	Regulators clearly explain compliance decisions and such decisions will be subject to public scrutiny
Transparent	Regulators are open about the way in which they regulate
Targeted	Compliance activity is targeted to areas of priority; resources and activities will be directed to unacceptable or poorly managed high risks and lower risks will be addressed through less resource-intensive or broader-reach activities—such as advocacy and education approaches to promote voluntary compliance
Effective	Compliance activities focus on achieving the intended policy and legislative objectives. Activities will be timely with investigation processes and the resolution of enforcement matters will be conducted as efficiently as possible
Accountable	Regulators report regularly on its compliance outcome performance
Adaptable	Regulators regularly review and, if required, update its compliance approaches.

2.4 Compliance philosophy

This strategy seeks to ensure compliance with the native vegetation removal regulations by encouraging regulators to:

- actively apply the compliance and enforcement principles
- promote voluntary compliance
- use an intelligence-led and risk-based approach to prioritise compliance issues and select regulatory and non-regulatory tools
- collaborate with stakeholders
- monitor compliance
- take action for non-compliance
- identify areas for improvement in relation to how compliance and enforcement is undertaken.

By applying these practices, it is intended that proponents and the community will:

- better understand and value the importance of native vegetation
- know what to do to comply with the native vegetation removal regulations
- expect that the native vegetation removal regulations will be enforced as necessary and understand that the consequences of non-compliance are fair and appropriate, and proportional to impacts
- trust and have confidence that the respective regulators will undertake their compliance support, monitoring and enforcement functions as efficiently and effectively as possible.

2.5 Compliance with the native vegetation removal regulations

The native vegetation removal regulations are the rules governing the removal of native vegetation in Victoria. These regulations are generally implemented through all Victorian planning schemes, in accordance with the Guidelines. The overarching legislation is the *Planning and Environment Act 1987*, which is administered by local government and the Minister for Planning. The regulations require landholders to obtain a planning permit to remove, destroy or lop native vegetation.

In some circumstances, the native vegetation removal regulations are implemented under other approval processes that do not require a planning permit. For example, approval processes that allow exemptions from requiring a planning permit to be relied upon, or approvals under the *Pipelines Act 2005* or the *Mineral Resources (Sustainable Development) Act 1990*.

When native vegetation removal is permitted or approved, an offset must be secured in accordance with the Guidelines. The offset requirements form part of the conditions of the planning permit (or other approval) to remove native vegetation.

An offset site is actively managed for ten years and protected in perpetuity through an on-title agreement to deliver a no net loss outcome for Victoria's biodiversity. Offsets are secured with an on-title agreement under section 69 of the *Conservation Forest and Lands Act 1987*, section 173 of the *Planning and Environment Act 1987* (Section 173 agreement) or the *Victorian Conservation Trust Act 1972*.

Activities to monitor compliance with the native vegetation removal regulations are intended to be undertaken across three key areas to ensure:

- a planning permit or approval is obtained to remove native vegetation when one is required
- compliance with the permit conditions for native vegetation removal, including the requirement to secure offsets
- compliance with management plans and on-title security agreement requirements for offset sites.

2.6 Roles and responsibilities

The roles and responsibilities for compliance and enforcement of the native vegetation removal regulations sit across a range of statutory authorities for different parts of the compliance framework.

A key objective of this strategy is to promote a collaborative approach to compliance and enforcement across these statutory authorities.

The responsibilities for public agencies within the native vegetation removal regulations are:

- responsible authorities are required to ensure compliance with the relevant planning scheme, including that a permit is obtained when one is required, and that permit conditions are complied with.
- authorities that are party to offset agreements are responsible for ensuring the requirements of the agreement are complied with.

The Department of Environment, Land, Water and Planning (DELWP) plays a key role in ensuring compliance with the regulatory system through good regulatory design; system stewardship to ensure that the native vegetation removal regulations continue to meet objectives; and as a supporter and facilitator of the compliance and enforcement activities undertaken by responsible authorities.

Roles and responsibilities are discussed in more detail at Appendix C.

2.7 Resources

For detailed information about how Victoria's planning system works, see:

Using Victoria's Planning System: A technical guide to interpretation and administrative procedures under the Planning and Environment Act 1987 and the Planning and Environment Regulations 2005 (Using Victoria's Planning System).

Chapter 7 of *Using Victoria's Planning System* covers enforcement. This document is available

online at: www.planning.vic.gov.au/planning-in-victoria/a-guide-to-the-planning-system.

DELWP produces a range of useful supporting material that can assist in ensuring compliance with the regulations. They are available at www.environment.vic.gov.au/native-vegetation/native-vegetation

- *Assessor's handbook – applications to remove, destroy or lop native vegetation* (Assessor's handbook)
- *Applicant's guide – Applications to remove, destroy or lop native vegetation* (Applicant's guide)
- *Exemptions from requiring a planning permit to remove native vegetation – Guidance* (Exemption Guidance).

3. Risk-based approach to compliance and enforcement

This section outlines a risk-based approach to compliance and enforcement activities for the native vegetation removal regulations. Considering risk when making decisions about compliance and enforcement means that:

- effort is focussed on matters that present the greatest risk of harm to the environment and to achieving the objectives of the regulations
- the level of intervention is in proportion to the likelihood of non-compliance and the consequence of non-compliance (i.e. environmental harm)
- compliance and enforcement is undertaken based on the effectiveness and efficiency of actions, and therefore makes the best use of existing resources.

Effective risk management needs to be intelligence-led and evidence-based. This requires a good understanding of the regulatory environment and drivers of compliance and non-compliance. Adopting a risk-based approach will help responsible authorities to make informed decisions, respond to compliance and environmental risks appropriately and proportionately and develop their own cost-effective compliance and enforcement strategies.

This strategy covers proactive compliance and enforcement activities, including education, monitoring and auditing. These activities are undertaken based on the risk of environmental harm and are aimed at encouraging regulated entities to voluntarily comply with the regulations and deterring non-compliance. The strategy also covers reactive compliance and enforcement activity.

Set out below is a three-part benchmark approach for how to undertake compliance and enforcement of the regulations. This approach can be embedded into an organisation's existing compliance plan, or developed into a specific native vegetation removal compliance plan.

3.1 Part 1: Risk assessment

Regulatory agencies must ensure that compliance and enforcement activities are focussed on those matters that present the greatest risk of harm to native vegetation and associated values.

Part 1 of this approach is a risk assessment of the consequence and likelihood of non-compliance with the regulations. The risk assessment will:

- identify areas of native vegetation, particularly those with high biodiversity or other values where the consequence of non-compliance will be high
- identify factors that impact on the likelihood of non-compliance
- use a matrix to combine this information to determine whether a low, moderate or high level of intervention is appropriate to manage the level of risk associated with a location, activity, or cohort of proponents
- embed outcomes of this risk assessment into compliance plans, approaches and responses.

Appendix A includes a risk assessment tool that can be used to prioritise compliance and enforcement activities, and determine appropriate responses to compliance and enforcement issues. The risk assessment can be applied across a region to develop a compliance plan, or at a site level to determine the approach when a non-compliance is detected.

3.2 Part 2: Compliance and enforcement activities

Part 2 of the approach is undertaking activities to ensure compliance with the regulations. These activities are organised around:

- encouraging compliance
- monitoring compliance
- responding to non-compliance.

All the steps below should be undertaken, but to what degree, and where they are focussed must be based on the risk assessment developed in Part 1.

Appendix B sets out more further guidance and the compliance tools that can be utilised at each step.

Information on other relevant legislation, the planning scheme and the conduct of on-site inspections is available in *Using Victoria's Planning System*.

Step 1. Encourage compliance

Undertake risk-based activities to encourage compliance. This can include:

- training staff responsible for administering planning schemes and providing information to proponents about the native vegetation removal regulations

- communicating to the community their obligations under the regulations, the value of native vegetation and impact of non-compliance on the environment, and the likelihood of detection and consequences of non-compliance. This includes running risk-based programs to address key compliance issues or significant environmental impacts. This may involve information sessions, websites, letters, advertising and media
- providing education and guidance materials describing how planning systems work and proponents' statutory obligations. This includes use and provision DELWP guidance materials
- providing accurate and clear advice to proponents before or at permit application lodgement, and undertaking pre-planning meetings
- ensuring the regulations are applied correctly and in accordance with Guidelines (see the Assessor's handbook for more detail). This includes:
 - the consideration of native vegetation and biodiversity implications in planning scheme amendments
 - how exemptions from requiring permits can be relied on (including associated procedures for alternative approvals)
 - the application of the planning permit or approvals assessment process
 - correct conditions to secure offsets are included on permits to remove native vegetation
 - offset agreements include all relevant information and are appropriately recorded.
- checking that offset evidence provided is adequate and is received before native vegetation is removed (see the *Assessor's handbook* for information about adequate offset evidence)
- following up on permits issued where no offset evidence has been provided after a certain period of time has elapsed since the permit was issued (such as 12 months). After two years, if the native vegetation has not been removed, an offer to extend the permit can be considered.

Undertake risk-based activities to monitor compliance with offset agreements, including Section 173 agreements. These include:

- recording the agreements existence, including spatial information. This should occur both in the local government's records and on the DELWP managed Offset register
- checking annual reports are provided about the delivery of the offset's management plan and that they are complete
- undertaking periodic monitoring of the site to verify that the agreement is being complied with.

For offsets listed on the Native Vegetation Credit Register (offsets for which a credit extract is provided) compliance and enforcement of those offset agreements is undertaken by the Native Vegetation Credit Register and Trust for Nature, using an approach consistent with this strategy.

Step 3. Respond to non-compliance

Undertake risk-based activities to respond to non-compliance. This includes:

- taking appropriate enforcement action in response to unauthorised removal of native vegetation or non-compliance with permit conditions
- requiring environmental rectification and remediation for unauthorised removal of native vegetation. This involves the following (Appendix B provides more detail):
 - securing offsets, in accordance with the Guidelines, for the native vegetation removed without authorisation. Mapped information can be used to determine the offset requirements for native vegetation removed without authorisation, and
 - remediation of the area where native vegetation was removed without authorisation, where practicable.
- taking appropriate enforcement action in response to breach of agreements for offset sites.

Step 2. Monitor compliance

Undertake risk-based activities to monitor compliance in relation to potential unauthorised removal of native vegetation, including:

- following up and acting on reports of potential unauthorised removal of native vegetation, in accordance with this strategy
- monitoring of aerial imagery and other information to detect unauthorised removal of native vegetation.

Undertake risk-based activities to monitor compliance with the conditions on permits to remove native vegetation, including:

- checking sites where permits have been issued and native vegetation has been removed to ensure they comply with permit or approval conditions

Note that for offset agreements secured via an on-title agreement under section 69 of the *Conservation Forest and Lands Act 1987* or the *Victorian Conservation Trust Act 1972*, enforcement activities relate to those prescribed within the relevant Act.

3.3 Part 3: Continuous improvement

To ensure the compliance and enforcement approach continues to be effective the Part 1 risk assessment should be monitored and updated over time.

In addition, performance monitoring, reporting and management systems, and processes should be used to identify continuous improvement initiatives.

Continuous improvement activities need to:

- reflect the objectives, compliance and enforcement principles, and the compliance philosophy outlined in this strategy
- have a clear rationale and priority relative to other planning enforcement activities
- articulate the intended outcomes of the activities
- be supported by data that is reported to management so operational effectiveness and improvement initiatives can be evaluated
- be reflective of work with other regulatory agencies to identify areas where improvements can be made and opportunities to collaborate.

4. Implementation

Local governments, signatories to offset agreements and other relevant regulatory agencies should incorporate native vegetation into their compliance and enforcement approach. This strategy can be used to inform their compliance activities, including the development of compliance and enforcement plans.

DELWP will work with local government and other agencies to assist in implementing this strategy. This may include assistance in developing compliance and enforcement plans, or in how to incorporate the approach outlined in this strategy into existing compliance and enforcement plans. DELWP will also develop templates and resources to assist local government in their compliance and enforcement activities.

Regional working groups comprising local government or offset agencies and DELWP will help identify common issues with compliance and enforcement and develop targeted responses to these issues and share local knowledge, expertise and experiences.

Other opportunities to work together to address compliance and enforcement can be identified through these regional working groups.

Appendix A Risk assessment for non-compliance with native vegetation removal regulations

The following tables and matrix can be used to assess the risk of non-compliance with the native vegetation removal regulations, as described in Part 1 of the risk-based approach described in this document. The risk assessment can be applied at a number of levels:

- across a municipality or region to develop a compliance plan or focus effort on the highest risk areas for compliance and enforcement activities described in section 3.1 of this document
- at a site or permit level to determine the approach when non-compliance is detected.

Step 1: Consider the consequence for native vegetation from non-compliance

Use the descriptions in Table 2 to determine the value of the native vegetation. This table can be used to identify areas of native vegetation with high biodiversity or other values within a municipality where the consequence for native vegetation of non-compliance with the regulations will be high. This information is then used to focus compliance and enforcement efforts, to assess the risk posed to native vegetation by a particular cohort or activity, or assess the impact of a particular incidence of non-compliance. This information can be obtained through aerial imagery, photos, site visits and by mapping native vegetation using either:

- the native vegetation removal tool in the Native Vegetation Information Management system, available at <https://nvim.delwp.vic.gov.au>
- DELWP's Ensym tool. Contact nativevegetation.support@delwp.vic.gov.au to access this tool.

Table 2. Consequence for native vegetation from non-compliance

Consequence of non-compliance	Description
High	<p>High value native vegetation has one or more of the following characteristics:</p> <ul style="list-style-type: none"> • large in area and in good condition* and/or well connected to other areas of native vegetation • important habitat for many dispersed rare or threatened species • highly localised habitat for any rare or threatened species • native vegetation removal requires species offsets • very high strategic biodiversity value scores** • many large trees, including consideration for the number of large trees, their age and size • includes sensitive wetlands or coastal areas • native vegetation removal significantly impacts on an endangered EVC • includes other values of native vegetation, i.e. it plays an important role in land and water protection, has identified landscape values, or is protected under the <i>Aboriginal Heritage Act 2006</i>.
Moderate	<p>Moderate value native vegetation has one or more of the following characteristics:</p> <ul style="list-style-type: none"> • moderate to large in area • moderate to high condition score* • moderate to high strategic biodiversity value scores** • includes some large trees • includes a wetland • includes an endangered EVC • includes other values of native vegetation, i.e. it plays an important role in land and water protection, has identified landscape values, or is protected under the <i>Aboriginal Heritage Act 2006</i>.

Consequence of non-compliance	Description
Low	Low value native vegetation has one or more of the following characteristics: <ul style="list-style-type: none"> • small in area • degraded (i.e. has a low condition score) • moderate to low strategic biodiversity value scores.

* the condition score of native vegetation can be between 0.2 (lowest) to 1 highest. Native vegetation is highly unlikely to have a condition score of 1. Native vegetation with a condition score greater than 0.6 is considered to be in good condition.

** the strategic biodiversity value score of native vegetation can be between 0.1 (lowest) to 1 (highest).

When undertaking the risk assessment local governments may also wish to consider native vegetation of local importance, such as native vegetation that is specified in local planning policies or overlays.

Step 2: Consider other factors that influence the likelihood of non-compliance

Consider factors that influence the likelihood of non-compliance with the native vegetation removal regulations.

Use the description of other factors in Table 3 to determine the likelihood of non-compliance with the native vegetation removal regulations. This table can be used to identify a particular cohort or activity that has a high likelihood of non-compliance.

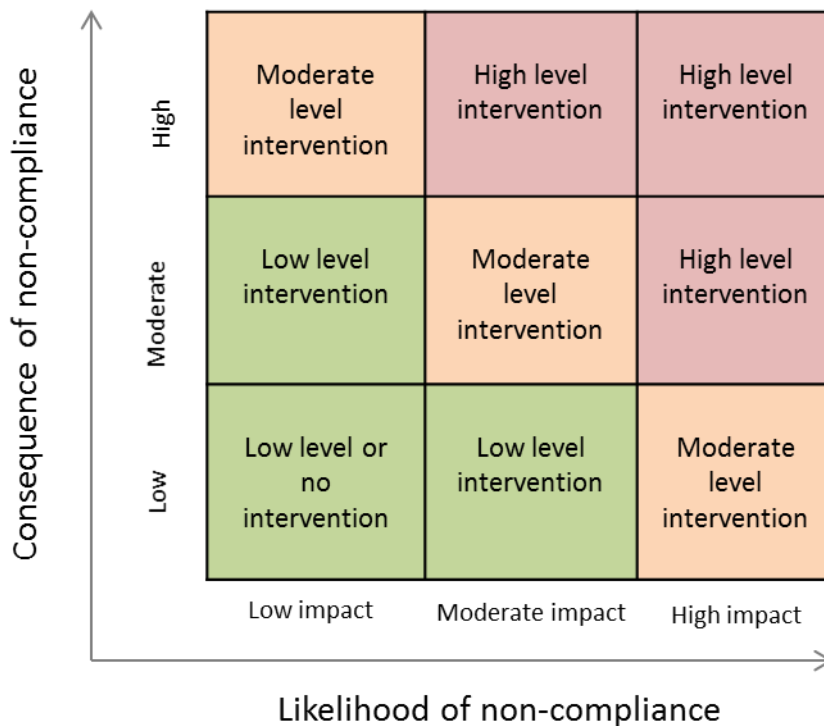
Table 3. Factors that influence the likelihood of non-compliance

Likelihood of non-compliance	Influencing factors
High	Any or a combination of the following: <ul style="list-style-type: none"> • Low level or no community awareness or interest in the regulations • Proponent(s) has a history of not complying with the regulations or planning scheme • Proponent(s) gain significant benefit from the non-compliance • Proponent(s) has a low level of understanding of the regulations and requirements. • A number of similar cases of suspected or confirmed unauthorised removal of native vegetation.
Moderate	Any or a combination of the following: <ul style="list-style-type: none"> • Some level of community awareness or interest in the regulations • Proponent(s) has possible history of not complying with the regulations or planning scheme • Proponent(s) may gain some benefit from non-compliance • Proponent(s) has a moderate level of awareness of the regulations and requirements • Some similar cases of suspected or confirmed unauthorised removal of native vegetation.
Low	Any or a combination of the following: <ul style="list-style-type: none"> • High level of community awareness or interest in the regulations (self-regulating) • Proponent(s) has no history of not complying with the regulations or planning scheme • Proponent(s) does not gain much from non-compliance • No similar cases of suspected or confirmed unauthorised removal of native vegetation.

Step 3: Determine the appropriate level of intervention to encourage compliance or respond to non-compliance

Once the consequence and likelihood of non-compliance have been determined, use the risk matrix at Figure 1 to determine which level of intervention is appropriate to encourage compliance or respond to the non-compliance.

Figure 1. Risk matrix to determine the appropriate level of intervention



Appendix B Compliance and enforcement tools

There are a range of tools that can be used by regulators to encourage and monitor compliance and, where non-compliance occurs, to enforce the law.

Step 1 and Step 2: Tools to encourage and monitor compliance

Table 4 sets out a range of tools that can be used to encourage and monitor compliance with the regulations to build a strong compliance culture and detect non-compliance. Many activities that can be undertaken to encourage compliance are low cost and reach a large number of proponents, so they can be cost effective approaches to ensuring that a high level of voluntary compliance is promoted. In addition, undertaking monitoring activities increases the risk of detection of non-compliance, which in turn encourages compliance.

Table 4. Tools to encourage and monitor compliance with the native vegetation removal regulations

Tool	Description	Encourage compliance	Monitor compliance
Engagement and advice	<ul style="list-style-type: none"> Respond to direct queries for advice from members of the public and stakeholder groups. Proactively engage with particular members of the public and stakeholder groups as appropriate, to ensure that they are aware of their obligations and understand how to meet those obligations. 	✓	
Provision of guidance and supporting materials	<ul style="list-style-type: none"> Guidance materials such as fact sheets and practice notes are made available online or at local government offices outlining compliance obligations for land owners and members of the public. 	✓	
Education	<ul style="list-style-type: none"> Information on websites, fact sheets, advertising, letters and media can be used to inform landowners and members of the public to comply and raise awareness. Campaigns can address the negative impacts of non-compliance and focus on the reasons why the regulations are in place. Campaigns may target groups with a higher risk of non-compliance, e.g. a letter campaign targeting new landowners to educate them of their obligations and the rules around removing native vegetation. Publishing the outcomes of compliance and enforcement activities demonstrates to the community the responsible authority's ability to detect and appropriately respond to non-compliance and act as a deterrent to non-compliance. 	✓	
Training of staff	<ul style="list-style-type: none"> Staff providing information to the public or assessing applications for permits to remove native vegetation must be adequately trained so they are able to provide timely and accurate information and effectively assist and encourage proponents to comply with the regulations. 	✓	
Pre-planning meetings	<ul style="list-style-type: none"> Engaging with landholders who intend to remove native vegetation enables them to understand what will be required to comply with the regulations. Pre-planning discussions allow consideration of site-specific issues and can be used to promote opportunities to avoid and minimise impacts on native vegetation. Pre-planning reduces the chance of non-compliance with permit conditions as the landholder understands 	✓	

Tool	Description	Encourage compliance	Monitor compliance
	obligations and knows what to expect.		
Encouraging the use of offsets registered on the credit register (including over the counter offsets)	<ul style="list-style-type: none"> A high level of monitoring and compliance is undertaken for offsets registered on the credit register. Using these offsets to satisfy permit conditions ensures that the offset has been secured and will deliver benefits to the environment as required. Third party offsets may be easier, quicker and cheaper to access for landholders removing native vegetation, compared to delivering a first party offset on their own land There is a higher level of compliance with the requirement to secure an offset when they are secured with credits. 	✓	
Respond to public reporting	<ul style="list-style-type: none"> Respond and act on public reports of unauthorised removal of native vegetation. 	✓	✓
Surveillance and information gathering	<ul style="list-style-type: none"> Gathering intelligence from public reports, overt or covert surveillance or other sources (e.g. satellite imagery) to detect incidents of unauthorised removal of native vegetation. 	✓	✓
Checking compliance with conditions on a planning permit	<ul style="list-style-type: none"> The conditions on permits to remove native vegetation require that an offset is secured. Checking that evidence of the secured offset has been submitted and is to the required standard at the time when the native vegetation is removed should be undertaken for all issued planning permits to remove native vegetation requiring offsets. 	✓	✓
Extensions for permits when native vegetation has not yet been removed and the permit is due to expire	<ul style="list-style-type: none"> When a permit to remove native vegetation is due to expire, an extension of that permit can be considered so that it can be complied with. 	✓	✓
Inspections and audits	<ul style="list-style-type: none"> Targeted inspection program to understand and address high risk areas for non-compliance with the regulations. Obtain information for regulatory compliance purposes through property inspections. Site inspections and field visits can indicate potential non-compliances with native vegetation removal regulations which can be followed up with compliance and enforcement actions. 		✓

Step 3: Tools for responding to non-compliance with permit requirements or conditions

Rectification and remediation for unauthorised removal of native vegetation

To meet the 'not net loss' objective for native vegetation removal, and to provide adequate incentives to comply with the native vegetation removal regulations, when a permit is required to remove native vegetation an offset needs to be secured. Where possible and appropriate the requirement to secure an offset should be a component of enforcement responses to confirmed cases of unauthorised native vegetation removal.

This is in accordance with the requirements of Clause 52.16-6 and Clause 52.17-5 that state that 'If a permit is required to remove, destroy or lop native vegetation the biodiversity impacts from the removal, destruction or lopping of native vegetation must be offset, in accordance with the Guidelines.' This requirement applies regardless of whether the permit is obtained or not.

In addition to securing an offset, the site of the unauthorised native vegetation removal may be required to be revegetated, where practicable. Revegetation of the site alone is not sufficient to meet the no net loss objective or satisfy the offset requirements for the native vegetation removal. Only requiring revegetation of the site is also not adequate to act as a disincentive to illegally remove native vegetation. This is due to the following:

- revegetating the area where native vegetation was removed without authorisation can only provide a fraction of the required compensation for the impacts on biodiversity. The time and risk involved in achieving biodiversity gain from revegetating native vegetation means that when revegetation is used as an offset for native vegetation removal, in accordance with the Guidelines, it is usually around eight times the size of the area of native vegetation removed.
- in some cases, it may not be feasible to require that the area where native vegetation was removed without authorisation to be revegetated, such as when a building has already been constructed on the site
- the cost of revegetating the site where native vegetation was removed without authorisation is likely to be significantly less than the cost of securing an offset for the removal of native vegetation. This does not provide an adequate disincentive to remove native vegetation without authorisation. A requirement to secure an offset in accordance with the Guidelines, along with a fine, is a more commensurate financial penalty.

In some cases, revegetation of the site may contribute towards the offset requirement for the native vegetation removal.

DELWP has mapped data and tools that can be used to determine offset requirements when unauthorised removal of native vegetation has occurred and site-based information about the native vegetation can no longer be observed.

Enforcement orders are a tool that can be used to require offsets for unauthorised removal of native vegetation.

Enforcement responses

Table 5 sets out a range of enforcement responses that can be used when the correct permit has not been obtained for native vegetation removal, or where conditions on permits have not been met. The level of intervention applied relates to the risk level of the scenario or case as determined in Part 1 of the compliance approach.

Table 5. Tools for responding to non-compliance with the regulations

Tool	Description	Level of intervention
Informal negotiations	<ul style="list-style-type: none"> • Negotiate informally with the alleged offender. <ul style="list-style-type: none"> – This often includes educating an alleged offender who may not be conversant with planning considerations and laws. – This may include requiring offsets for unauthorised native vegetation removal 	Low - Moderate

Tool	Description	Level of intervention
	<ul style="list-style-type: none"> This action should be taken early on in the process and may avoid the need for more formal action. 	
Warning letters	<ul style="list-style-type: none"> Warning letters can be issued where non-compliance is detected. This can be an official warning pursuant to the <i>Infringements Act 2006</i>. If the severity of the offence and the culpability of the offender are low, then an infringement notice or prosecution may not be warranted. 	Low - Moderate
Notice to comply	<ul style="list-style-type: none"> A notice to comply requires the landholder to cease the non-compliant action. If the landholder does not follow the notice to comply they may be subject to a magistrates' court penalty. 	Low - Moderate
Infringement notices	<ul style="list-style-type: none"> Where appropriate, a Planning Infringement Notice (PIN) can be issued for a breach of a regulatory requirement. A PIN provides a monetary penalty and gives the responsible authority the option to require remediation. This is usually for less serious breaches. 	Low - Moderate
Remedial plan	<ul style="list-style-type: none"> Landholders voluntarily sign up to a plan to undertake remedial action which is attached to a Section 173 agreement. This can encourage future compliance and avoid the need to take a landholder to court. 	Low - Moderate
Require rectification for unauthorised native vegetation removal and site remediation	<ul style="list-style-type: none"> Mapped information, photos and previous ecological reports can be used to estimate the loss in biodiversity value as a result of the native vegetation removal. Rectification and remediation include: <ul style="list-style-type: none"> – securing offsets, either on site or by purchasing credits from a third party, and – Where practicable, the area where native vegetation was removed should be revegetated. Revegetation is undertaken in line with DELWP standards and secured with a Section 173 agreement until the native vegetation reaches the estimated condition and extent of the native vegetation removed. 	Low - Moderate - High
Enforcement order	<ul style="list-style-type: none"> Apply for an enforcement order through the Victorian Civil and Administrative Tribunal (VCAT) to achieve compliance. Enforcement orders can be used to require rectification and remediation for unauthorised native vegetation removal or to enforce permit conditions, including requiring that offsets are secured and that the site is revegetated. 	High
Injunctions and interim enforcement orders	<ul style="list-style-type: none"> An injunction or interim enforcement order can be used to prevent further activities occurring on the land where there is serious risk of environmental harm and a need for immediate action. An injunction or interim enforcement order can also be sought where other enforcement measures have been unsuccessful. 	High
Permit revocations	<ul style="list-style-type: none"> Where a person holds a permit to undertake a certain activity and the conditions of the permit have been breached an application can be made to VCAT to cancel or amend a permit – for example for a substantial failure to comply with the conditions of a permit. 	High
Prosecutions	<ul style="list-style-type: none"> Court proceedings may be appropriate, particularly where other enforcement measures are inadequate, or unlikely, to ensure ongoing compliance. This may include a court order requiring the undertaking or ceasing of certain actions. 	High

Tool	Description	Level of intervention
	<ul style="list-style-type: none"> Prosecution proceedings in the Magistrates' Court must be commenced within 12 months of the alleged offence. Responsible authority should be aware that continuing to negotiate to secure compliance could result in the opportunity to prosecute becoming unavailable. Prosecution in the Magistrates' Court may be needed to follow up non-compliance with either an infringement notice or an enforcement order. 	
Court injunction	<ul style="list-style-type: none"> An injunction can be sought from a court of competent jurisdiction (Supreme, County or Magistrates' Court) to restrain a person from contravening an enforcement order or interim enforcement order. 	High

Step 3: Tools for monitoring compliance and enforcement with offset agreements

Table 6 sets out tools that can be used for monitoring compliance and responding to non-compliance in relation to offset agreements. If the responsible authority enters into an agreement to secure an offset, they are responsible for monitoring and enforcement of these agreements to ensure environmental compensation for the removal of native vegetation is delivered.

Table 6. Compliance and enforcement of agreements for offset sites

Tool	Description
Quality checking	Check that the agreement is of an acceptable standard, including the relevant information and appropriate end date
Record keeping	Record the agreement's existence, including spatially and list it on the DELWP managed Offset Register.
Report checking	Check annual reports are provided and that they are complete.
Site monitoring	Undertake periodic monitoring of the site to verify that the agreement is being complied with.
Enforcement of agreements	<p>The offset agreement is a legal contract that is recorded on the title to the land so that the owner's obligations under the agreement bind future owners and occupiers of the land.</p> <p>A Section 173 agreement can be enforced in the same way as a permit condition or planning scheme, see Table 5 for details.</p> <p>Offset agreements under section 69 of the <i>Conservation Forest and Lands Act 1987</i>, or the <i>Victorian Conservation Trust Act 1972</i> can be enforced using mechanisms within the relevant Act.</p>

Appendix C Compliance responsibilities

A wide range of organisations have a role to play in the regulation of native vegetation removal. This includes at Commonwealth level through the *Environment Protection and Biodiversity Conservation Act 1999*, as well as at state and local government levels. These regulatory roles include responsibilities for assessment and approval of native vegetation removal, through to ensuring compliance with the regulations or other planning instruments or legislation.

For effective compliance and enforcement of the native vegetation removal regulations it is important that those agencies with regulatory responsibilities, such as local government and DELWP, have taken a cooperative and supportive co-regulatory approach.

A summary of state and local government roles and responsibilities is provided below. Table 8 provides information on lead and support roles in relation to various compliance responsibilities.

Figure 2 provides an overview of compliance responsibilities in relation to the regulations.

Victorian Government

The Victorian Government sets the objectives for how the removal of native vegetation is managed and determines how the native vegetation removal regulations are designed and implemented. It also sets the parameters for maximum penalties for non-compliance.

The role of the Department of Environment, Land, Water and Planning (DELWP)

DELWP supports the Victorian Government in implementing the regulations. DELWP develops the information tools and maps used in the native vegetation removal regulations, and guidance material for the application of the regulations. DELWP develops and delivers training and plays a coordinating role for local government. DELWP also develops and provides information and tools to the community to assist them in complying with the regulations.

DELWP is a recommending referral authority for planning permit applications to remove native vegetation over certain thresholds. In this role DELWP provides a recommendation as to whether the permit should or should not be granted based on the biodiversity impacts, and specifies any conditions that should be included on the permit. In this role DELWP has a responsibility to validate the information provided by the responsible authority and ensure the proponents' application is compliant. This includes having confidence that proponents can secure a compliant offset.

DELWP supports responsible authorities by providing statewide strategic advice on matters relating to the implementation of the regulations and may assist responsible authorities undertaking enforcement action.

DELWP is responsible for ensuring that offsets secured under a Section 69 agreement under the *Conservation, Forests and Lands Act 1987* are delivered in accordance with the conditions of the agreement and their management plan.

The role of responsible authorities, including local government

Responsible authorities have the primary role in assessing permit applications and monitoring compliance with the regulations and the permits they issue. The relevant local government is, in the majority of cases, the responsible authority for dealing with applications for permits to remove native vegetation, and plays a key role in monitoring compliance.

Planning permit applications are submitted to local government. Local government is responsible for assessing the information provided, making a decision to grant or refuse the permit application and, if the permit is granted, issuing the permit and permit conditions.

Local governments have the primary role in monitoring compliance with the regulations and with the permits they issue. They are responsible for monitoring unauthorised removal of native vegetation and monitoring compliance with permit conditions within their municipality. Local government may choose to undertake enforcement action where they are aware of a breach or may assist other agencies in undertaking such action.

In addition to the regulations that apply across the State, local governments establish local controls that sit within their Local Planning Policy Framework such as environmental overlays. These include Environmental Significance Overlays and Vegetation Protection Overlays. Local policies can affect the operation of the statewide controls by adding additional controls within a defined area. While these local policies are not the

subject of this strategy, there may be some overlap which will help local governments deliver consistent and cost effective compliance and enforcement activities in relation to these local native vegetation objectives.

Local governments are responsible for ensuring that offsets secured in their municipal area under an agreement in Section 173 of the *Planning and Environment Act 1987* are of an acceptable standard and are delivered in accordance with the conditions of the agreement and their management plan.

The role of other authorities

Other agencies may act as the responsible authority for the regulations, such as the Minister for Planning in Alpine Resorts and wind energy facilities.

Agencies that oversee an exemption that gives effect to a parallel approval process for the removal of native vegetation play a role in ensuring compliance and enforcement with this agreement. DELWP enforces the requirements of Procedures that relate to exemptions from requiring a permit to remove native vegetation that it enters into with agencies and local governments. However, if unauthorised removal of native vegetation occurs by these authorities this is a matter for local government to enforce under the *Planning and Environmental Act 1987*.

In addition, other agencies may undertake joint compliance monitoring action when there is cross-over between the regulations and another Act e.g. the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999*.

Trust for Nature is responsible for ensuring that offsets secured with a Trust for Nature Covenant under the *Victorian Conservation Trust Act 1972* are delivered in accordance with the conditions of the agreement and their management plan.

Proponents and offset providers

Under the native vegetation removal regulations proponents include Crown land managers, local governments, statutory authorities such as CMAs and water corporations, private landowners, developers, mining and excavation groups, and managers of infrastructure (such as roads, telecommunications, power lines and pipelines).

Proponents are required to comply with the regulations under the local planning scheme, and are required to obtain a permit to remove, destroy or lop native vegetation unless their actions are exempt from these requirements.

When a permit has been granted for the removal of native vegetation, the proponent is obliged to comply with the conditions of the permit, including securing an offset.

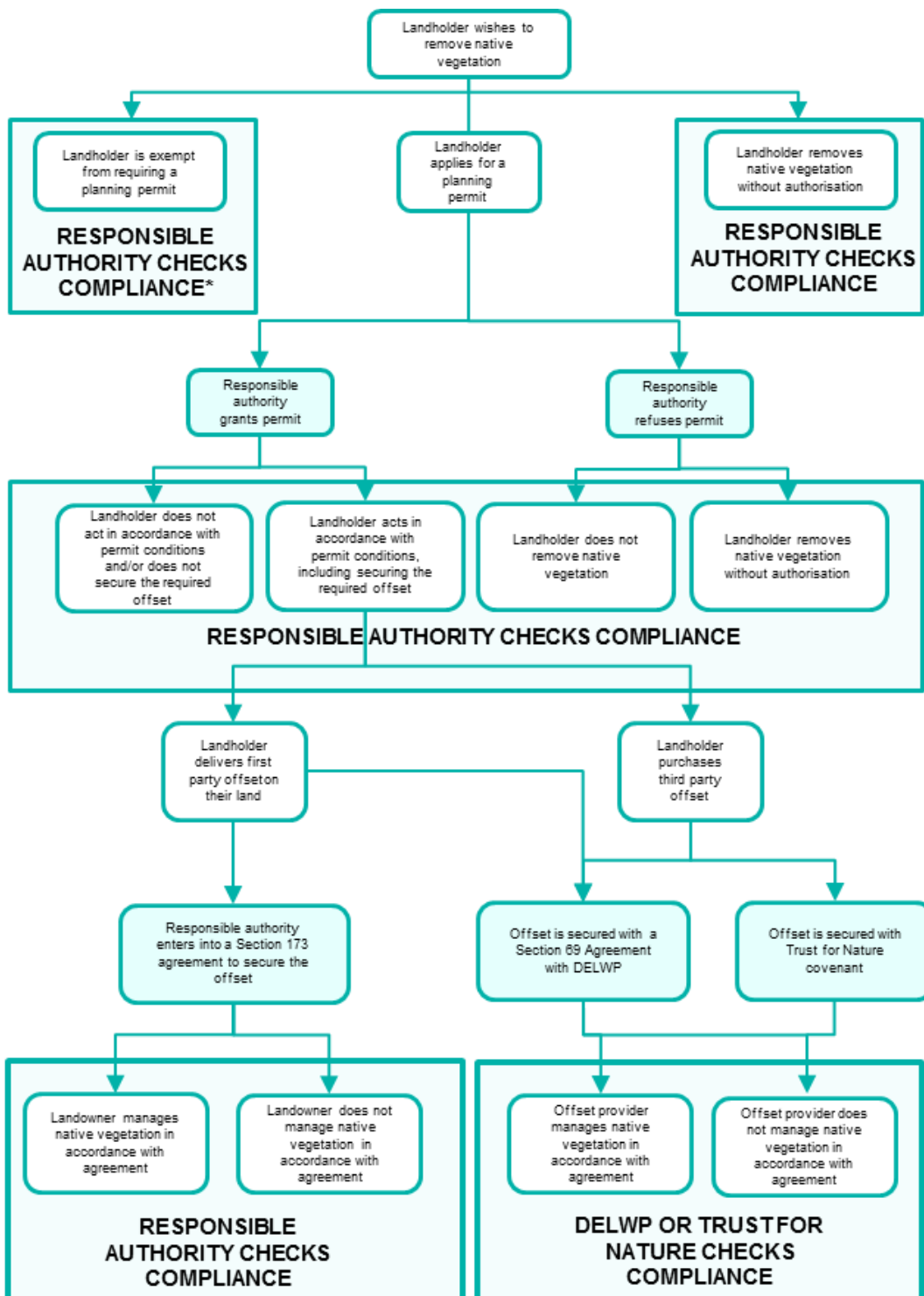
In relation to the provision of offsets, proponents who have entered into an agreement to deliver an offset on their land must manage the offset site and complete the management actions specified in the management plan for a ten-year period. Following this period, the offset must remain secured in perpetuity.

Table 7. Compliance responsibilities

Compliance area	Lead	Support
Policy and direction setting	Victorian Government	DELWP
Regulatory design and support	DELWP	Local government and stakeholders
Developing compliance plans and approaches	Responsible authorities	DELWP
Proactive compliance activities	Responsible authorities	DELWP
Addressing unauthorised removal of native vegetation	Responsible authorities	DELWP
Planning permits assessment	Responsible authorities	DELWP
Ensuring compliance with planning permit conditions	Responsible authorities	DELWP
Ensuring compliance with approval processes, that are referenced in the exemptions, which the Secretary of	DELWP	Responsible authorities

Compliance area	Lead	Support
DELWP provides agreement for proponents to rely on.		
Offsets secured with Section 173 Agreements	Local government with which the agreement is made	DELWP
Offsets secured with Section 69 Agreements	DELWP	
Offsets secured with Trust for Nature covenants	Trust for Nature	
Offsets secured on Crown land or by transferring land to the Crown land estate	Crown land manager	

Figure 2 Compliance responsibilities for the native vegetation removal regulations



*When there is an agreement under an exemption with DELWP, DELWP checks compliance with the requirements of agreement

