

Application of Clause 52.17 exemptions enabling rail operator bushfire risk reduction activities

Sept 2022 – Fact sheet

Clause 52.17 – Victoria Planning Provisions

The *Planning and Environment Act 1987* provides for local planning schemes which set out the way land may be used or developed. Local planning schemes contain state and local planning policies, zones and overlays and other provisions.

Clause 52.17 (Native Vegetation) of all local planning schemes is a statewide provision which requires a permit to remove, destroy or lop native vegetation, including dead native vegetation, unless an exemption applies which removes the permit requirement.

Document Purpose

The Inspector-General for Emergency Management's Inquiry into the 2019-2020 bushfires examined Victoria's preparedness for bushfire. A recommendation from the inquiry was to improve rail operator awareness of Clause 52.17 exemptions which best enable native vegetation removal for bushfire risk reduction activities.

This fact sheet identifies and explains the use of the most appropriate exemptions for rail operators to rely upon to undertake bushfire risk reduction activities.

NOTE:

- The creation of this document has not resulted in changes to exemptions.
- Exemptions listed in both Clause 52.17 and Clause 52.16 are applied in the same manner.
- Exemptions within Clause 52.17 and Clause 52.16 do not apply to requirements under other planning provisions (unless stated in that provision) or pieces of legislation, including the *Flora and Fauna Guarantee Act 1988* (FFG Act) and *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act).

This document is intended to assist those rail staff or volunteers (heritage and tourist railways) which help operational teams navigate regulatory controls for works involving native vegetation removal associated with bushfire risk reduction activities, which often accompany routine maintenance regimes.

It is advised that rail staff seek advice from the Department of Environment, Land, Water and Planning (DELWP) or local government authorities to confirm native vegetation removal regulatory requirements and the appropriate use of exemptions. Operators of heritage and tourist railways should also seek advice from Vic Track.

Exemptions

Clause 52.17 lists exemptions which rail operators can rely on to manage vegetative fuels to reduce the risk or spread of bushfire.

The **most applicable** exemptions enabling rail operators to deliver bushfire risk reduction activities are listed below. Their appropriate use is further explained in Table 1.

- Dead native vegetation
- Fire protection
- Grasses
- Planted vegetation
- Regrowth
- Railways
- Weeds

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Exemptions from requiring a planning permit to remove, destroy or lop native vegetation – Guidance is located on the DELWP [website](#) and explains the correct use of **all exemptions** listed in Clause 52.17.

Planning for bushfire risk reduction activities

Planning bushfire risk reduction should be undertaken well in advance of the bushfire season. Rail operators should:

- Identify high bushfire risk areas along their networks.
- Determine the vegetation treatment method they will use to reduce that risk.
- Document which exemption, or combination of exemptions, will be relied upon for each activity, or whether a permit will be required. If queried, rail operators must be able to explain the correct use of exemptions.
- Identify any requirements that may apply under other pieces of state or commonwealth legislation, including the FFG Act, EPBC Act or planning overlays (e.g., Environmental Significance Overlays).

Flora and Fauna Guarantee Act 1988

The exemptions under Clause 52.17 **do not** apply to requirements under the FFG Act. A permit is required to 'take' any protected flora listed under the Act. The FFG Act defines take to mean kill, injure, disturb, or collect.

As part of preparing to undertake bushfire risk reduction activities, including fuel reduction burns, it is strongly recommended to consult with the relevant DELWP regional team. DELWP staff can provide advice on the process to follow if protected flora listed under the Act will be impacted.

Planned burns, if conducted at the appropriate time of year, are unlikely to be considered take under the FFG Act. However, other activities (e.g., control lines) associated with burn preparation may kill, injure, or disturb protected flora and require a permit before the commencement of the activity.

It is recommended that rail operators include their proposed planned burns on the Joint Fuel Management Plan coordinated by DELWP and the Country Fire Authority. This will allow for proper consideration of impact to biodiversity values and enable FFG Act requirements to be addressed.

For further information regarding requirements under the FFG Act or advice on correct processes to follow, please contact the relevant DELWP region:

- Port Phillip and Westernport ppr.planning@delwp.vic.gov.au
- Barwon South West bsw.environment@delwp.vic.gov.au
- Grampians Grampians.environment@delwp.vic.gov.au
- Loddon Mallee Loddonmallee.environment@delwp.vic.gov.au
- Hume Humeregion.planning@delwp.vic.gov.au
- Gippsland Gippsland.environment@delwp.vic.gov.au

Environmental Protection and Biodiversity Conservation Act 1999

The exemptions under Clause 52.17 **do not** apply to requirements under the EPBC Act. A bushfire risk reduction activity (action) will require approval from the commonwealth minister for the Department of Climate Change, Energy, the Environment and Water, if the action will have, or is likely to have, a significant impact on a matter of national environmental significance (MNES).

As part of preparing to undertake bushfire risk reduction activities it is strongly recommended to conduct a self-assessment to decide whether your action will or is likely to have a significant impact to a MNES. For assistance, refer to *Matters of National Environment Significance – Significant impact guidelines 1.1 Environment Protection and Biodiversity Conservation Act 1999*.

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Table 1: Clause 52.17 exemptions most applicable for bushfire risk reduction activities

The requirement to obtain a Clause 52.17 permit does not apply to:	
Dead native vegetation	<p>Native vegetation that is dead.</p> <p>This exemption does not apply to a standing dead tree with a trunk diameter of 40cm or more at a height of 1.3 metres above the ground level</p> <p>This enables the removal of dead vegetation when required to reduce bushfire risk. This includes the removal of:</p> <ul style="list-style-type: none"> • Fallen trees and branches • Dead limbs on standing trees regardless of size • Dead shrubs • Standing dead trees with a diameter of less than 40 cm at 1.3 metres above ground level.
Fire protection	<p>Native vegetation that is to be removed, destroyed, or lopped to the minimum extent necessary to carry out any of the following fire protection activities:</p>
	<p>Fire fighting</p> <p>This enables the removal of native vegetation during a firefighting event to suppress fire or remove an immediate risk to fire fighters.</p>
	<p>Planned burning</p> <p>This enables impact to native vegetation when required to reduce bushfire risk through:</p> <ul style="list-style-type: none"> • Planned burns (fuel reduction and ecological) • Planned burn preparation work (fire control lines).
	<p>The making or maintenance of a fuel break or firefighting access track (or a combination thereof) that does not exceed a combined width of 6 metres</p> <p>This enables the removal of native vegetation when required to reduce bushfire risk through:</p> <ul style="list-style-type: none"> • The construction or maintenance of a 6-metre-wide fuel break • The construction or maintenance of a 6-metre-wide fire fighting access track. <p>There must be a clear need to reduce bushfire risk when relying on this exemption, and the combined width of the fuel break and fire fighting access track cannot exceed 6 metres.</p> <p>Best practice application of this exemption advises consultation with DELWP during the planning process to get an understanding of biodiversity impacts from construction of new fuel breaks or fire fighting access tracks.</p>
	<p>In accordance with a fire prevention notice issued under either:</p> <ul style="list-style-type: none"> – Section 65 of the <i>Forests Act 1958</i>: or – Section 41 of the <i>Country Fire Authority Act 1958</i>.
	<p>This enables the removal of native vegetation to reduce bushfire risk when complying with a fire protection notice issued under the relevant Act.</p>

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	<p>Keeping native vegetation clear of, or minimising the risk of bushfire ignition from an electric line in accordance with a code of practice prepared under Part 8 of the <i>Electricity Safety Act 1998</i></p>
	<p>This enables the removal of native vegetation when required to reduce bushfire risk around an electric line when that native vegetation removal is in accordance with a code of practice prepared under the Part 8 of the <i>Electricity Safety Act 1998</i>.</p> <p>The <i>Code of Practice for Electric Line Clearance</i> is in Schedule 1 of Electricity Safety (Electric Line Clearance) Regulations 2020.</p>
<p>Grasses</p>	<p>Native grass that is to be mowed or slashed for maintenance only, provided that the grass is:</p> <ul style="list-style-type: none"> • Located within a lawn, garden or other landscaped area; or • Maintained at a height of at least 10 centimetres above ground level.
	<p>This enables the removal of native grasses by mowing or slashing, when required to reduce bushfire risk.</p> <p>This exemption does not enable the removal of herbs, bushes, and trees.</p>
<p>Planted vegetation</p>	<p>Native vegetation that is to be removed, destroyed or, lopped that was either planted or grown as a result of direct seeding.</p> <p>This exemption does not apply to native vegetation planted or managed with public funding for the purpose of land protection or enhancing biodiversity values unless the removal, destruction or lopping of the native vegetation is in accordance with written permission of the agency (or its successor) that provided the funding.</p>
	<p>This enables the removal of planted vegetation when required to reduce bushfire risk. This includes vegetation planted as a seedling or established plant, or from direct seeding.</p> <p>This exemption does not provide for the removal of plants which have recruited from the planted vegetation, nor does it provide for the removal of native vegetation planted with government funding for the <u>primary purpose</u> of enhancing biodiversity or land protection with government funding, without agreement from the funding agency.</p>
<p>Railways</p>	<p>Native vegetation that is to be removed, destroyed or, lopped to the minimum extent necessary to maintain the safe and efficient function of an existing railway, or railway access road, in accordance with the written agreement of the Secretary to the department of Environment, Land, Water and Planning (as constituted under Part 2 of the <i>Conservation, Forests and Lands Act 1987</i>).</p>
	<p>This enables the rail operators to maintain rail infrastructure when native vegetation removal is in accordance with the <u><i>Procedure to rely on the railways exemption in the planning schemes</i></u>. The Railways exemption procedure provides a description of what is considered maintenance of rail infrastructure, which may contribute to bushfire risk reduction.</p>

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Regrowth

Native vegetation that is to be removed, destroyed or, lopped that has naturally established or regenerated on land lawfully cleared of naturally established native vegetation, and is:

- Less than 10 years old; or
- Bracken

This exemption does not apply to land where native vegetation has been destroyed or otherwise damaged as a result of flood, fire or other natural disaster.

This enables the removal of native vegetation when required to reduce bushfire risk by exempting the removal of native vegetation which has re-established on an area that was lawfully cleared of native vegetation in the previous 10 years ago. This exemption also enables the removal of bracken.

Native vegetation impacted or removed due to natural disasters is not exempt.

Weeds

Native vegetation that is to be removed, destroyed or lopped to the minimum extent necessary to enable the removal or destruction of a weed listed in the schedule to Clause 52.17.

The maximum extent of native vegetation that may be removed, destroyed or lopped under this exemption on contiguous land in the same ownership in a five-year period must not exceed any of the following:

- 1 hectare of native vegetation which does not include a tree.
- 15 native trees with a trunk diameter of less than 20 centimetres at a height of 1.3 metres above ground level

This enables the removal of weeds (native or exotic), which have been listed in local planning schemes as a schedule to Clause 52.17 on condition that any native vegetation removal in addition to the listed weed is limited to that specified above.

Weed lists are individual to each council. Rail operators are advised to be aware of any weeds listed in the planning schemes of the council area they operate within.

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