GUIDEBOOK TO
PUBLIC LAND MANAGEMENT
IN VICTORIA

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Acknowledgment of Country

We acknowledge the Traditional Owners and Original Custodians of the land on which this Guidebook was developed: the Gunaikurnai, Bidwell, Ngarigo, Wurundjeri and Woi Wurrung people and we pay our respects to Elders past, present and emerging. We recognise their continuing connection to land, water and community. We acknowledge the ancient cultural knowledge and practices used to manage land and fire on Country. Sovereignty was never ceded.

We hope this document helps all communities better understand the land on which we live and how we can collectively improve our management of it, including by listening to and learning from the Traditional Owners of our land.
INTRODUCTION

The ‘Guidebook to Public Land Management in Victoria’ (Guidebook) was developed as a collaboration between the Monash University Law School’s Climate Justice Clinic (CJC) and the Gippsland Community Legal Service (GCLS). The Guidebook began its life during the recovery from the Black Summer Bushfires in East Gippsland. The GCLS posed a number of questions to the CJC arising from issues they saw during the recovery.

From this, a key question emerged: “what exactly are the statutory and common law obligations relating to the management of public lands?” The CJC took up that question and has tried to map, understand, and summarise key legislative elements of public land management.

The goal of the Guidebook is to support Victorian Community Legal Centres, especially those in rural and regional areas, by providing an initial reference point for understanding the law and policy framework of public land management in Victoria. It is a “beginner’s guide”, offering information, links, tools and templates to help community lawyers research and respond to legal issues of public land management in their local communities. Whilst the genesis of the Guidebook was focused on bushfire recovery, we tried to consider other climate-related impacts on land and property (e.g., flood, storm, and erosion).

The Guidebook is designed to help identify who in government is responsible for dealing with land management issues that arise and assist with framing those issues. While it may help, it is not designed as a guide to help parties challenge decisions of government.

We share this document with a view to building the capacity of the community legal sector in its efforts to play an effective role in mitigating climate change and its associated damage to natural ecosystems and habitats. Given the rapidly changing and evolving nature of law and policy we hope this Guidebook will grow and develop over time. We welcome feedback and contributions from the community legal sector to ensure ongoing development and improvement of the Guidebook.

GCLS is a community legal centre and service of Anglicare Victoria. GCLS has been providing free legal services to the Gippsland community since 2000. GCLS’ services are available to people who live, work or study in Gippsland and include free legal advice, duty lawyer assistance in family violence intervention order matters, legal education and law reform advocacy. GCLS has provided bushfire recovery legal services in response to the 2019/2020 Black Summer Bushfires to communities in East Gippsland since July 2020, with funding for one lawyer, later increased to two.

East Gippsland sits within Gunaikurnai, Bidwell and Monaro-Ngarigo First Nations country. It comprises 20,940 square kilometres, which is around 50% of the land area of the entire Gippsland region. National parks and other protected land make up 30.5% of East Gippsland land area. Public land management is therefore a significant and critical issue in this region.

The CJC forms part of Monash University’s wider Clinical Legal Education Program, with Monash law students undertaking a placement under the supervision of senior lawyers. Students work on incubating climate litigation ideas, researching climate-related legal issues, and practising movement lawyering within the Climate Justice movement. The CJC works with impacted communities in Australia and around the world on a variety of state, national and regional environmental concerns.
The CJC has worked closely with the GCLS to support them to incubate new ideas and provide important research and legal advice. Through the course of the CJC’s work, it became clear how highly complex Victoria’s system of public land law and management is: with various legislative frameworks operating, extensive policy and multiple responsible departments with internal delegations. This prompted the idea for an all-encompassing guidebook.

Acknowledgements

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The CJC would also like to acknowledge the Government authors of publications and guidelines cited throughout this guidebook, in particular thanks to the Department of Energy, Environment and Climate Change, whose publications we have drawn on as helpful resources. As is so often the case, the Victorian Government’s resources have been invaluable in creating this guide to help navigate this complex area of law and policy.
Structure of Guidebook

The Guidebook is structured to follow our recommended process of inquiry to assist with an approach to Government. It is set out in three distinct parts:

1. **Step 1: Identify the type of land**
   - This details the process of identifying the ‘type’ and legal status of the land.

2. **Step 2: Identify the body responsible for managing land**
   - Once the ‘type’ of land has been identified, the Guidebook sets out the statutory and policy obligations of the relevant authoritative bodies.
   - Under each ‘type’ of land, the Guidebook provides a summary of high level legal and policy obligations. Identifying relevant Government obligations may help with a request to the Government for assistance or action.
   - Finally, the Guidebook provides some examples of where delegation or exceptions may apply.

3. **Step 3: Make contact with Government**
   - The Guidebook provides tips and some sample correspondence to assist lawyers within the community legal sector to approach Government.

**Limitations**

Land management is a complex area of law, and the **Guidebook is not a complete authority**.

For a helpful visual guide, which really demonstrates some of the complexity within this area of law, see the flowcharts located at the end of the Guidebook (see Annexure E – Connections and mind map).

The information in this Guidebook **does not constitute legal advice** and should not be relied upon as such.

This Guidebook does not consider federal law or environmental law regulatory policy which may inform any action or decision, including but not limited to the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) or the *Environment Protection Act 2017* (Vic).
The Guidebook utilises numerous examples pertaining to the Gippsland region to contextualise the obligations discussed but can be applied to any land in Victoria.

This Guidebook contains a number of hyperlinks to ensure that the experience is as user-friendly as possible. These links to external resources are current and valid as at 1 March 2023. These links are likely to change over time.

The Guidebook contains many definitions and acronyms throughout. A list of definition and acronym sections are located at the end of the Guidebook (see DEFINITIONS).

**IMPORTANT NOTE ON DEPARTMENT NAME CHANGES**

From 1 January 2023, the Department of Environment, Water and Planning (DEWLP) is known as the Department of Energy, Environment and Climate Action (DEECA) following machinery of government changes. We have endeavored to use the updated terminology in the Guidebook where appropriate, however some documents, policies and legislation may still be attributed to or refer to DEWLP as the relevant department.

Functions that support the Minister for Planning will be moving to the Department of Transport and Planning (DTP) from 1 January 2023. The DTP is now a centralized department for key planning and land use activities, as well as managing transport functions like VicRoads and Public Transport Victoria.
The table of contents below is interactive. By clicking on the relevant section, you will be taken to that page in the Guidebook.

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IDENTIFY THE TYPE OF LAND

There are two key types of land within Victoria. These are:

- Crown land, which refers to land that is owned by the government (except for government-owned freehold land); and
- Freehold land, which encompasses most developed and privately owned land in Australia. Freehold land allows the landowner to have unrestricted ownership of that land and the right to deal with that land, subject to complying with applicable laws in each State and Territory.

Different types of land have different bodies responsible for land management and associated responsibilities. Therefore, it is important to identify the type of land in question correctly. Figure 1 outlines the types of land which could adjoin a freehold estate.

![Diagram of Types of Land Adjoining Freehold Land](image-url)
Determining the Type of Land

1. Is the land Crown land or freehold land?

Search the address of the land on LASSI or VicPlan

Crown land

Determine the type of Crown land by:

1. Determining the name of the land e.g., Morwell National Park.
2. Is the land Crown Reserve land

Freehold land

Undertake a title search on LANDATA using the Vol/Fol reference number or Lot on Plan number or SPI number found on LASSI/VicPlan

2. Is the land subject to a Native Title claim?

Search the address of the land on Native Title Vision

If the area is highlighted in yellow, a claim has occurred. Click on the area to reveal important info, incl. outcome of the claim.

If the area is highlighted in blue, it is subject to an active claim. Obligations could be owed until a determination is made.

No highlight – the area has no history of native title claims.

3. Identify the body responsible for the land (see next step)
To determine whether the land is Crown or freehold land, you can:

1. Search the address of the land on **LASSI**;

2. Select the “Identify Property” icon located on the top bar and select the land in question.

3. Along the right-hand side panel, it will either state “Crown Land” or “Lot/Plan”. This will then tell you whether the property is Crown land.
E.g., Kerry Road, Jeeralang Junction VIC 3840 (Morwell National Park) is Crown land.

An example of privately owned land can be viewed below:

4. The next step is to undertake a title search. Searches are subject to a fee and can be conducted online at LANDATA. To conduct the search, you will need the Volume and Folio reference number of the land. If you do not have this, you can search for it on LANDATA for a small fee.

Alternatively, if you do not have the Volume and Folio reference number, you can use the “Lot on Plan” number or “SPI” number provided by LASSI to search the property.
If the Land is Crown Land

If the land in question is Crown land, the type of Crown land needs to be determined. The process of identifying Crown land is as follows:

1. Determine the name of the land, which should include the type of land in the title. For example, Morwell National Park would suggest that the land is a national park.

2. Search for the land within the schedule of the applicable Act:
   - **State Forests** – Under the *Forests Act 1958 (Vic)* (*Forests Act*), state forests are classified as reserved and protected forests.
     - Reserved forests are determined under section 42(1) of the *Forests Act*. These are unoccupied Crown land within the areas mentioned in Schedule 2 of the *Forests Act*, land dedicated as permanent forest or timber reserved before the commencement of the *Forests (Miscellaneous) (Further Amendment) Regulations 1998 (Vic)*, and all other land determined to be reserved forests pursuant to the *Forests Act*.
     - Protected forests are defined as all unoccupied Crown land proclaimed as a protected forest pursuant to the *Forests Act* or any corresponding previous enactment and every unused road and every water frontage as defined in the *Land Act 1958 (section 3 Forests Act)*.
   - **State Parks** - Schedule 2B of the *National Parks Act 1975 (Vic)* (*NP Act*)
   - **National Parks** - Schedule 2 of the *NP Act*.

Crown Land Reserve

If the land is Crown land, it may have been reserved for a particular public use. Commonly the land held by the Victorian Government is Crown land reserved for national parks, state forests or coastal land. The principal legislation dealing with the reservation and management of Crown lands in Victoria is the *Crown Land (Reserves) Act 1978* (*CLR Act*) which provides critically important legal powers and obligations for the management and control of that land. Reserved Crown Land under the *CLR Act* also is often subject to unique planning permission requirements.

The different types of Crown Land Reserves are listed under Schedule 5 of the *CLR Act*. It is important to ascertain the purpose for which the land has been reserved to understand the relevant body’s obligations and considerations that may affect decisions, e.g., regarding development or licencing within a park.

VicPlan


Many helpful guides and tools exist online and we recommend them to you. For assistance, visit the Victorian Planning department’s [VicPlan Help page](https://mapshare.vic.gov.au/vicplan/) which includes an introductory video and frequently asked questions.

The general process for using VicPlan is as follows:

1. Search the address of the land on VicPlan, e.g., “Kerry Road, Jeeralang Junction” ([site](https://mapshare.vic.gov.au/vicplan/)).

2. Click on the Site area and select “properties”.

4. The Planning Property Report is a document containing detailed planning information about the property, including the relevant local government authority, relevant Victorian Parliament electorate, planning zones, planning overlays, areas of Aboriginal and cultural sensitivity and Designated Bushfire Prone areas. It is important to understand the Planning Controls that affect that property and how they interact with responsible bodies and decision-makers.

**Native Title**

The land in question may also be subject to a Native Title claim, which should be identified before continuing.

Native Title acknowledges the long-standing and deep-rooted relationships that First Nations people had and continue to have with the land. The High Court decision of *Mabo v Queensland (No. 2) (1992) 172 CLR 1* altered the foundation of land law in Australia. The decision recognised the fact that First Nations people had lived in Australia for thousands of years and had enjoyed the land according to their laws and customs. The decision inserted Native Title into general law, replacing the erroneous legal presumption of *terra nullius*.

The Federal Government accepted the *Mabo* decision and introduced the *Native Title Act 1993 (Cth)* to create a process through which Native Title claims could be determined. There has been a total of 571 claims made, with 470 determinations that Native Title exists either in whole or in part of the claim area. Alternatively, the Victorian *Traditional Owner Settlement Act 2010 (Vic)* allows traditional owners to make agreements with the government that recognise traditional owner rights and confer rights on traditional owner groups as to access to or ownership or management of certain public land.

To identify whether land is subject to a Native Title claim under the *Native Title Act 1993 (Cth)* or agreements under the *Traditional Owner Settlement Act 2010 (Vic)*, follow the following steps:

1. Search the address of the land on Native Title Vision (NTV). The location will appear, and claims will appear around it.

2. The highlighted areas are areas where a claim has occurred. Clicking on the area will reveal important information, including the outcome of the claim.

**Native Title groups and Registered Aboriginal Parties**

The *Aboriginal Heritage Act 2006 (Vic)* creates and establishes the functions of Registered Aboriginal Parties (RAPs). RAPs have responsibilities for the protection and management of Aboriginal cultural heritage. While RAPs are not a government department in relation to management and control of public land, they are a critically important to the management of activities that may impact Aboriginal cultural heritage. As such, identifying whether a RAP is allocated to a certain area is an important aspect of land management practices and should form part of your considerations when making requests or in relation to managing land.
IDENTIFY THE BODY RESPONSIBLE FOR THE LAND

- STATE FORESTS
- STATE AND NATIONAL PARKS
- ARTERIAL STATE ROADS
- NON-ARTERIAL STATE ROADS
- GOVERNMENT-OWNED FREEHOLD
- WATER CATCHMENT AREAS
- CROWN LAND RESERVE
- DEECA
- PARKS VICTORIA
- VICROADS OR LOCAL COUNCIL
- DEECA OR PARKS VICTORIA
- REGISTERED PROPRIETOR
- DEECA
- DEECA
STATE FORESTS

**DEECA** is responsible for managing state forests. Thus, they are the first point of contact in relation to state forests.

Exceptions apply where:

- DEECA enters into an agreement with a Committee of Management, Traditional Owner Land Management Board or another entity/person; or
- DEECA delegates its land management functions or powers to the Chief Fire Officer, the Country Fire Authority (CFA) or VicForests; or
- DEECA carries out works on land other than DEECA-managed land and must consult the land manager prior to undertaking works; or
- Forest Fire Management Victoria (FFMV) coordinates fire-related land management initiatives, which may require DEECA to collaborate with other government agencies as FFMV consists of personnel from DEECA, Parks Victoria and VicForests.

State forests are managed in order to balance a variety of purposes. Such purposes include the conservation of flora and fauna, the protection of water catchments and water supply, the provision of timber through sustainable forestry, the protection of landscape, archaeological and historical values, and the provision of recreational and educational opportunities.

This section focuses predominantly on bushfire management as this is a rising threat from global warming in rural areas and is associated with a great deal of complexity.

**Who Has Ultimate Land Management Obligations for State Forests?**

Land management obligations regarding state forests are mainly stipulated in the *Forests Act* which establishes DEWLP (now DEECA) or the Department Secretary as the government body primarily responsible for the control and management of state forests (*section 18 Forests Act*). It also provides immunity to other bodies that may be potentially responsible (sections 61C, 71, 72 *Forests Act*).

Primary responsibility lies with DEECA as most obligations are vested in the Minister or the Secretary for the Department. Some management responsibilities may be delegated to the Chief Fire Officer, the Country Fire Authority (CFA) or VicForests; or DEECA carries out works on land other than DEECA-managed land and must consult the land manager prior to undertaking works; or DEECA enters into an agreement with a Committee of Management, Traditional Owner Land Management Board or another entity/person; or DEECA delegates its land management functions or powers to the Chief Fire Officer, the Country Fire Authority (CFA) or VicForests; or Forest Fire Management Victoria (FFMV) coordinates fire-related land management initiatives, which may require DEECA to collaborate with other government agencies as FFMV consists of personnel from DEECA, Parks Victoria and VicForests.

**Obligations**

Generally, under legislation including the *Forests Act* and *Catchment and Land Protection Act (CLP Act)*, with respect to land management, DEECA is obliged to:

- prepare and implement fire-related working plans;
• execute planned burns and non-burning fuel management treatments on public land to manage vegetation and limit fuel hazards, prevent and suppress bushfires, and maintain and improve the resilience of natural ecosystems;
• create landscape protection breaks and asset protection breaks to limit the spread of bushfires, minimise the impact of fire on local communities and maintain firefighting access and egress on public lands;
• avoid causing or contributing to land degradation;
• conserve and protect soil and minimise damage to its physical and chemical properties;
• protect water resources and minimise adverse effects of bushfire management on natural water resources; and
• eradicate and prevent the spread of weeds and pests.

Many statutory and policy obligations do not prescribe operational details for how DEECA will achieve these goals.

Statutory Obligations

DEECA is obliged to prepare and implement working plans with respect to the control, maintenance, improvement, protection from destruction or damage by fire, and removal of forest produce in and from a state forest (section 22(1) Forests Act). Such working plans must specify detailed plans for protection of state forest areas from fire (section 22(2) Forests Act).

Under section 20 of the CLP Act DEECA as the landowner must take all reasonable steps to:

• avoid causing or contributing to land degradation that may cause damage to the land of another land owner;
• conserve soil;
• protect water resources;
• eradicate regionally prohibited weeds;
• prevent the growth and spread of regionally controlled weeds; and
• prevent the spread of, and as far as possible eradicate, established pest animals.

Under section 18C Forests Act, DEECA is also obliged to:

• act consistently with the Statement of Planning Policy that is binding on them;
• have regard to parts of the Statement of Planning Policy that are not expressly binding on them; and
• have regard to the principles in section 46AZL of the Planning and Environment Act 1987 (Vic).

Policy Obligations

Several risk assessment tools have been formulated to help mitigate bushfire risks, such as PHOENIX rapidfire and FAME. These platforms use advanced technology to simulate bushfires at local, regional, state, and national scales. These prediction models help fire managers plan where and how to concentrate efforts to manage and reduce bushfire risk.
General Overview of Bushfire Management Policy

Bushfire Management Policy is undertaken at a state, regional and local level. Generally, state and regional policies apply to bushfire management across all types of land. We reproduce below a helpful mind map from the *Code of Practice for Bushfire Management on Public Land (2012) (amended 2022)*, at Figure 2 as it provides an excellent overview of bushfire management on public land.

### Figure 2. Bushfire Management on Public Land in Victoria

State Level Policies

The state level policies overseen by DEECA are:

- The Safer Together program;
- Code of Practice for Bushfire Management on Public Land; and

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• DELWP’s (as it then was) Advanced Forest and Fire Management Strategy, including the Strategic Fuel Breaks Program (SFBP).

The Safer Together program encompasses collaborative initiatives of shared responsibility whereby no single government agency, organisation or group is solely responsible for executing the policy.

The policy objectives of the Safer Together program, as set out in that document, are to:

• collaborate with communities through appropriate and purposeful approaches to identify shared bushfire risk reduction solutions;
• improve the community engagement capacity and capability of agencies and partners;
• build the capacity and capability of bushfire management agencies to work together to manage bushfire risk;
• increasingly integrate partner and community perspectives and activities;
• monitor, evaluate and report on the program to improve its delivery and provide accountability;
• establish a strategy for long-term evaluation of the bushfire management and risk reduction approach; and
• generate, use and share knowledge to enable improved delivery of bushfire management and risk reduction

The SFBP falls under DELWP’s Advanced Forest and Fire Management Strategy and is led by FFMV. There are no express obligations, but there is an aim to create a network of fuel breaks to reduce the rate of spread and intensity of bushfires. These fuel breaks consist of landscape protection breaks and asset protection breaks. We reproduce below a helpful image from the SFBP website (Figure 3) for a visual demonstration of the difference.

Landscape protection breaks are located on forest land. They are created to confine potential fires to the smallest area possible, provide accessibility to fight fires, and limit the impact of fires on local communities. Asset protection breaks are generally located adjacent to townships and assets to provide direct protection to communities and assets from the impacts of fire.

Figure 3. Landscape Protection Breaks and Asset Protection Breaks
We reproduce below a helpful mind map from page 6 of the *Victoria State Government, Safer Together: Monitoring, Evaluation and Reporting Framework* (The State of Victoria Department of Environment, Land, Water and Planning 2019) at Figure 4 for a helpful overview of the Safer Together program.

**Figure 4. Safer Together Program Overview**
The Department of Sustainability and Environment’s Code of Practice for Bushfire Management on Public Land (the Code) applies to bushfire prevention, preparedness, and fuel management on public lands in Victoria.

The Code states that it is not intended to create any legal rights or give rise to any cause of action and that the expiration of the Code takes place ten years from its approval. In June 2022 the Victorian Government published a variation of the Code that extended the Code’s expiry date to December 2024. The variation also made minor changes to legislation and agency names so that they are up to date. The variation instrument can be found here.

Under the Code, DELWP (now DEECA) must:

- undertake patrols to assess compliance with fire legislation and regulations and develop local enforcement strategies;
- prepare strategic bushfire management plans, which use Fire Management Zones to implement local bushfire management objectives;
- seek to use fire in the landscape to maintain or improve the resilience of natural ecosystems and their ability to deliver services such as biodiversity, water, carbon storage and forest products;
- seek to protect soil by measures which minimise damage to its physical and chemical properties, or which promote stabilization of bare earth following a disturbance;
- seek to protect water quantity and quality by measures that minimise the impact of bushfire management activities on the physical, chemical, and biological qualities of streams and wetlands;
- aim to provide relevant, useful, and timely planned burning information, including the location and timing of planned burns; and
- take prompt and safe action to assess and manage a burn escape and treat the escape as a bushfire in accordance with relevant procedural guidelines.

General obligations with respect to planned burns under the Code are:

- to conduct planned burning in accordance with an approved burn plan;
- to ensure that the approved burn plan will include the following:
  - clearly stated management and burn objectives regarding percentage cover and residual fuel hazard and/or ecological outcomes as appropriate;
  - burn size;
  - management zone and associated specification that applies to the burn area; and
  - a reporting mandate regarding the achievement of the burn aims
- prior to the commencement of a planned burn on public land, the Burns Controller will seek to notify the affected neighbours and interested or affected stakeholders; and
- the Burns Controller will seek to notify the owners (where identifiable) of private property/assets such as machinery, beehives, stock or harvested forest produce contained within or adjoining the burn area. The Burns Controller will request that such assets be removed to assist with protection where practicable or that the owners have appropriate risk mitigation measures in place.
Regional Level Policies

The Gippsland Bushfire Management Strategy 2020 replaces the 2014/15 Strategic Bushfire Management Plan for public land. The objectives are executed through the Joint Fuel Management Program. According to the Strategy, bushfire management planning occurs at various levels with varying time frames and focused outputs at strategic, operational, and tactical levels. Bushfire Management Strategies for six Victorian regions can be found at Safer Together.

At a strategic level, bushfire management plans will identify, evaluate and select strategies most likely to achieve the primary objectives for bushfire management. Strategic bushfire management planning will inform more detailed operational-level planning such as municipal fire prevention planning, fire operations planning, and readiness and response planning.

At an operational level, fire operations planning will outline a forward-looking program of works and prioritise the annual implementation of actions. Readiness and response planning will define the readiness and initial attack procedures to be adopted by DEECA and its partner agencies. Each year, DEECA will prepare fire operations plans which are informed by strategic bushfire management plans.

At a tactical level, planning will outline specific actions, including community engagement plans, planned burns and fuel-break or track construction and maintenance. DEECA will prepare tactical plans including burn plans, incident action plans and recovery plans.

The obligations specific to Gippsland are to reduce bushfire spread and severity and reduce the physical effects of bushfires in inhabited areas. This includes:

- planned burning based on tenure-blind risk;
- reintroduction of fire into fire scars across the landscape;
- strategic fuel breaks and burn unit boundary standards;
- flexible delivery of burning (e.g. managed bushfire, unbounded burns);
- fuel management (e.g. slashing, spraying, mulching), particularly in high-risk areas where planned burning is not suitable;
- identify and effectively manage fuel hazard reduction on private bush;
- bolster domestic property preparedness in towns, including fire prevention notices, penalties, and cost recovery;
- vegetation management on public and private land within or immediately bordering towns, including implementation of fire prevention notices;
- identification, prioritisation, and treatment of risk to critical infrastructure;
- maintain access and egress (roadside vegetation/tree maintenance) pre- and post-fire; and
- maintain asset protection (on-ground).

There are specific obligations assigned to different zones. For example:

- Asset Protection Zones:
  - areas around properties and infrastructure where DEECA intensively manages fuel to provide localised protection to reduce radiant heat and ember attacks on life and property in the event of a bushfire.
• Bushfire Moderation Zones:
  o areas around properties and infrastructure where DEECA must manage fuel to reduce the speed and intensity of bushfires and to protect nearby assets, particularly from ember attack in the event of a bushfire.

• Landscape Management Zones:
  o areas where DEECA manages fuel to minimise the impact of major bushfires, to improve ecosystem resilience and for other purposes (such as to regenerate forests and protect water catchments); and

• Planned Burning Exclusion Zone:
  o areas where DEECA try to avoid planned burning, mainly because ecological assets in this zone cannot tolerate fire.

The Joint Fuel Management Program seeks to manage fuel on public and private land. The Joint Fuel Management Program was developed to implement the Gippsland Bushfire Management Strategy. It has been developed by FFMV and the CFA and forms part of DELWP’s Safer Together Policy.

The program integrates a risk-focused bushfire management approach. Each region has provided maps and plans that explain how long-term strategic planning is guiding the development of the program. Each map and plan show projected residual risk reduction and ecological outcomes from 2021 to 2024.

The aims set out in the Joint Fuel Management Program include:

• reducing or maintaining residual risk;
• reducing the size and risk of bushfire in the landscape to reduce the risk to ecosystems, communities, and industries; and
• preventing continuous fuel build-up by removing leaves, bark, twigs, and shrubs from the landscape.

The aims are to be achieved by:

• planned burning;
• non-burning treatments where burning is impractical, or it is more suitable for certain vegetation types (mulching, slashing, mowing, herbicide treatments); and
• dividing forest landscape into units through strategic fuel breaks and landscape protection breaks to help to reduce the fire to the smallest size possible and provide a platform for fighting fires.

Commercial Logging Areas

Commercial logging is a distinct subtopic of state forestry. DEECA and VicForests must regulate the timber production and logging industry by restricting and allocating parties’ use of the forest area.
The DEECA Secretary has exclusive control and management of the granting and issuing of licences and permits under the *Forests Act*, which includes those for logging and timber harvesting (*section 5(1)* *Forests Act*).

Under *section 21(1)* of the *Forests Act*, DEECA may:

- take and sell any timber or forest produce in any state forest;
- construct and maintain roads, tracks and tramways, and other works for the transport of timber; and
- purchase cattle and pasture them on state forests and sell such cattle.

Further, under *section 21(1A)* of the *Forests Act*, DEECA may temporarily or permanently close any road, track, tramway or other works if it is considered to be dangerous for public use.

Under the *Forests Act*, DEECA has general authority to:

- vary the commencement or end date of any firewood collection season if it is considered necessary because of a fire danger that poses a risk or likely risk to public safety (*section 57T*);
- determine an area within a state forest to be a firewood collection area and may determine that only a specified class of persons may cut or take away fallen or felled trees in that firewood collection area (*section 57U(1), (4)*). Any such determination must be displayed via signs or notices in a way reasonably likely to be seen by a person entering the relevant firewood collection area (*section 57V(1)*);
- by notice, suspend any timber harvesting operations in a fire-protected area, if there is the existence of a likely or existent acute fire danger in a fire-protected area (*section 64*); and
- cut and remove any tree, sapling, shrub, underwood or timber on any road that is on or adjoins any state forest boundary, provided it is done for the purpose of protecting any state forest from fire (*section 77(6)*).

Note that the authorisation of the DEECA Secretary is required to mark, cut, split, break or otherwise kill, destroy, damage or injure or remove the whole or any part of any tree sapling, shrub, underwood or timber in or on any road that passes through or is within any State forest (*section 77(1) Forests Act*).

The *Sustainable Forests (Timber) Act 2004 (Vic)* (*SF Act*) promotes principles of ecologically sustainable development (*section 5 SF Act*).

Under *section 5(4)* of the *SF Act*, the guiding principles of ecologically sustainable development are:

- that decision-making processes should effectively integrate both long-term and short-term economic, environmental, social and equity considerations;
- if there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation;
- the need to consider the global dimension of environmental impacts of actions and policies;
- the need to develop a strong, growing and diversified economy which can enhance the capacity for environmental protection;
• the need to maintain and enhance international competitiveness in an environmentally sound manner;
• the need to adopt cost-effective and flexible policy instruments such as improved valuation, pricing and incentive mechanisms;
• the need to facilitate community involvement in decisions and actions on issues that affect the community.

Under section 13 of the SF Act, the Minister may make an allocation order. The order must include a description of the forest and details regarding its location (section 15 SF Act). Any timber harvesting operation that takes place in a state forest must be carried out in accordance with the allocation order set out by the Minister (section 45(2) SF Act).

Part 8 of the SF Act pertains to fire prevention and suppression. Notably, VicForests and the Secretary may enter into an agreement or arrangement regarding the prevention and suppression of fire (section 78 SF Act). The Secretary may direct VicForests or any of the staff to undertake fire suppression works if the Secretary and VicForests have entered into an agreement or arrangement (section 79 SF Act).

Protest Laws

The Sustainable Forests Timber Amendment (Timber Harvesting Safety Zones) Act 2022 (Vic) (SFAA) came into effect in August 2022, expanding the scope of offences under the SF Act and imposing further penalties for protesting at Victorian logging sites.

The SFAA increases the penalties for protesting at logging sites, raising the maximum penalty to 12 months imprisonment or a $21,000 fine (section 17(1) SFAA).

Under section 22 of the SFAA, authorised officers may give a banning notice to individuals suspected or found committing specified offences. Banning notices ban individuals from a safety zone where timber harvesting occurs, which in effect prohibits protestors from commercial logging sites. We note these anti-protest provisions may be susceptible to legal challenge, including in relation to human rights.

Arrangements/Exceptions/Delegation

The following bodies could also have obligations in relation to the management of state forests:

• Parks Victoria;
• CFA;
• Chief Fire Officer;
• Traditional Owner Land Management Board;
• Appointed Committee of Management;
• FFMV (consisting of personnel from DEECA, Parks Victoria and VicForests); and
• Emergency Management Victoria.

Arrangements

With respect to DEECA’s obligation to control and manage state forests lands, the Minister may:
• appoint a committee of management, which may consist of a council or Parks Victoria (section 14(2) CLR Act); or
• enter into a management agreement with a Traditional Owner Land Management Board (section 28 Forests Act).

Liability for any act or omission ultimately attaches to DEECA regardless of any arrangement with a committee of management, Traditional Owner Land Management Board, or the Chief Fire Officer (sections 71, 72 Forests Act).

Similarly, DEECA may:

• enter into an agreement or arrangement with any person or body in Victoria or elsewhere relating to the prevention and suppression of fires and recovery from fires (section 62C Forests Act); or
• enter into a management agreement with any person with respect to the whole or part of reserved Crown land or any specific function or power in relation to that land (section 18B Forests Act); or
• jointly determine with the CFA that sole responsibility for the suppression of fire in any part of Victoria which lies outside the Fire Rescue Victoria fire district lies with the Secretary or the CFA (section 36A(1) Country Fire Authority Act 1958 (Vic) (CFA Act))

Further, then DELWP and Fire Rescue Victoria formally signed an agreement for fire prevention and suppression activities. The agreement allows personnel from DEECA, Parks Victoria and VicForests to carry out certain fire suppression activities in the Fire Rescue Victoria Fire District when they operate as part of FFMV and in the circumstances set out in the agreement.

**Exception**

Despite DEECA having responsibility for all matters relating to fire in Parks Victoria recorded state forests, Parks Victoria must control and manage the land with respect to all other matters (sections 18A, 18AA Forests Act).

DEECA must collaborate and consult with Emergency Management Victoria when carrying out works for the immediate or planned prevention and suppression of fire in state forests (sections 61D, 62(2) Forests Act).

DEECA must not carry out any planned prevention of fire work on non-DEECA land unless they have consulted about the work proposed to be undertaken with the person or body responsible for the control and management of the land (sections 61D, 62(3) Forests Act).

Note that pursuant to Recommendation 6 of the Inspector-General’s review into non-burning fuel management, the Department of Transport, Country Fire Authority, and local governments can act as supporting bodies in the SFBP.
Delegation

DEECA may:

- authorise the Chief Fire Officer to perform any functions of the Secretary regarding fire-related activities in every state forest (section 29 Forests Act). However, liability for an act or omission by the Chief Fire Officer will attach to DEECA (section 61C Forests Act).

Similarly, the Minister may:

- delegate any power, function or duty “except the powers, functions and duties under Parts 2, 5 and 8 and under section 19 and this power of delegation” to VicForests or an employee of VicForests (section 11 Conservation, Forests and Land Act 1987 (Vic)).

RESOURCES


- Forest Fire Management Victoria, Strategic Fuel Breaks Program (7 December 2021)
STATE AND NATIONAL PARKS

Parks Victoria has the responsibility to manage state and national parks. The first point of contact should be Parks Victoria.

Exceptions apply where:
- an agreement exists to manage land between DEECA, a Traditional Owner Land Management Board or other bodies; or
- Parks Victoria has delegated its powers and duties to a committee established under section 25 of the Parks Victoria Act 2018 (Vic) (PV Act) or DEECA; or
- National parks are Commonwealth national parks managed by the federal government, as opposed to state based national parks.

All Victorian national parks are covered by the NP Act. National parks are parks defined in section 17 of the NP Act listed in Schedule 2. State parks are generally smaller than national parks and are listed in Schedule 2B of the NP Act. As an example, there are no Commonwealth national parks in Gippsland.

Who Has Ultimate Land Management Obligations for State and National Parks?

Parks Victoria is the body responsible for land management for state and national parks under section 17(2)(b) of the NP Act.

Note that a decision-maker may be bound by other legislative frameworks such as planning controls or policy considerations under the planning scheme. For example, any development within parks that are Crown Reserve Land needs to be consistent with the Reserve purpose.

Obligations

Parks Victoria has a general duty to manage national and state parks. A helpful summary of these duties and obligations can be found in the Park Victoria’s Statement of Obligations in the Victoria Government Gazette. In ascertaining Parks Victoria’s obligations, consideration needs to be given to whether Parks Victoria:

- has a long-term management plan;
- is protecting and conserving the natural environment;
- is adhering to the state-wide and regional fire management plans; and
- is adhering to the specific parks management plan. For example, if the land in question is the Morwell National Park, Parks Victoria must:
  - maintain access tracks;
  - undertake fuel reduction burns in accordance with established burn zones; and
  - liaise with private landholders for fire management within the park or on adjacent land in areas of ecological and cultural significance.
Statutory Obligations

Parks Victoria must ensure that each park is appropriately and sufficiently controlled and managed, per the objects of the *PV Act* (section 17(2)(a)-(b) *NP Act*).

According to the *NP Act*, Parks Victoria:

- must ensure that each remote and natural area is controlled and managed in accordance with the objects in a manner that will protect and preserve the natural environment of the area, including indigenous flora and fauna and features of ecological, geological, scenic, archaeological, historic or scientific significance (section 21C(1) *NP Act*); and
- may (with the approval of the Minister) do anything else that Parks Victoria considers is essential for the responsible management of a remote and natural area or necessary to be done in the public interest in relation to a remote and natural area and does not degrade the natural condition or appearance of the area (section 21D(5) *NP Act*).

Parks Victoria’s statutory obligations impose a duty to create a long-term management strategy (section 38(1)(a) *PV Act*) and a plan which sets out how they will manage the state or national park (section 46(1)(a) *PV Act*).

Policy Obligations

Parks Victoria is under an obligation to adhere to state and regional policy obligations created by DEWLP (now DEECA), which influence state and national parks. These are:

- **Joint Fuel Management Program**;
- **Gippsland Bushfire Management Strategy**; and
- **Code of Practice for Bushfire Management on Public Land**.

See the above state forests section for a detailed description of these policies.

In addition to these policies, Parks Victoria’s management and key policies are outlined in the *National Parks Act Annual Report 2020-21*. This document provides an overview of all applicable strategies, programs and plans for national and state parks, as well as other types of land managed by Parks Victoria:

- as of 30 June 2021, there were approved management plans for all or parts of 45 national parks and 26 state parks in Victoria;
- Conservation Action Plan seeks to protect threatened species and habitats from invasive species, bushfires, water regimes and overabundant native species. The program aims to deliver a best practice approach to conservation planning and managing parks across Victoria; and
- in April 2021, the Parks Victoria board endorsed the Nature Conservation Strategy, which provides direction and action for Parks Victoria to conserve and protect nature.
Long-Term Management Strategies

State management strategies provide general obligations and goals for bushfire land management within Victoria. Parks Victoria Draft Land Management Strategy outlines general long-term directions, strategies, and priorities for protecting Victorian state and national parks. This long-term strategy aims to guide the adaptation of the park estate and consider contemporary challenges such as climate change. Within the strategy, Parks Victoria has emergency management roles and responsibilities, such as preparing and maintaining emergency management planning for parks, reserves, rivers and waterways, which are set out in the Emergency Management Manual Victoria.

The Emergency Management Manual is authorised under the Emergency Management Act 2013 (Vic) and contains provisions providing for the mitigation of, response to and recovery from emergencies, and specifies the roles and responsibilities of agencies in relation to emergency management.

Under the Emergency Management Act 2013 (Vic), “emergency” is defined in section 3 to mean:

“actual or imminent occurrence of an event which in any way endangers or threatens to endanger the safety or health of any person in Victoria or which destroys or damages, or threatens to destroy or damage, any property in Victoria or endangers or threatens to endanger the environment or an element of the environment in Victoria including, without limiting the generality of the foregoing —

   a) an earthquake, flood, wind-storm or other natural event;
   b) a fire;
   c) an explosion;
   d) a road accident or any other accident;
   e) a plague or an epidemic or contamination;
   f) a warlike act or act of terrorism, whether directed at Victoria or a part of Victoria or at any other State or Territory of the Commonwealth;
   g) a hi-jack, siege, or riot; and
   h) a disruption to an essential service.”

Further, "emergency management" is defined in section 3 as:

“arrangements for or in relation to —
   a) the mitigation of emergencies;
   b) the response to emergencies; and
   c) the recovery from emergencies.”

Park Specific Management Plans and Strategies

Each national and state park has their own land management strategy. All the management plans can be located at Parks Victoria Management plans and strategies. For example, the Morwell National Park Management Plan (Morwell) includes a fire management section covering the national parks aims and management strategies. The Morwell management plan refers to the Yarram Region Fire Protection Plan, which covers maintenance of the parks system of fire protection access tracks, recommendations for fuel reduction burning, and liaising with private landholders for the common purpose of fire management within the park on adjacent land and in areas of ecological and cultural significance. The management plan also outlines three different burning zones which seek to manage bushfires:
• priority 2 burning zones, which are expected to be burnt every 5 to 8 years;
• priority 4 burning zones where protection burning can occur only when it is compatible with habitat management and ecological requirements are satisfied; and
• no burning zones such as Fosters Gully, a wet Sclerophyll Forest which is sensitive to fire.

This is consistent with the DEECA Bushfire Management Policy.

**Arrangements/Exceptions/Delegation**

**Arrangements**

Although Parks Victoria has general management responsibility, it can enter into agreements and delegate statutory obligations.

The following bodies may have obligations in relation to the management of state and national parks:

- DEECA;
- Committee established under section 25 PV Act;
- CFA;
- FFMV; and
- Traditional Owner Land Management Boards.

**DELWP Arrangements and Consultation**

Parks Victoria may enter an agreement or arrangement with DEECA for the carrying out of services (section 11(1) PV Act) or the provision of services in relation to the prevention or suppression of or recovery from fire or another emergence on land (section 11(1)(d) PV Act).

Parks Victoria is also under a general obligation to confer and cooperate with DEECA in relation to the management of state and national parks (section 8(1)(c) PV Act).

There are also consultation obligations on Parks Victoria in relation to fire:

- Parks Victoria must consult, as far as is practicable, with DEECA to ensure that appropriate and sufficient measures are taken to protect each national park and state park from injury by fire (section 17(2)(b) NP Act);
- subject to Parks Victoria’s control and management of state and national parks under section 17(2)(d) of the NP Act DEECA may do anything it considers necessary for the prevention and control of fire within remote and natural areas; and
  - This could include any rehabilitation work or other methods that DEECA considers necessary to prevent or minimise loss or degradation because of activities relating to the prevention or control of fire carried out under subsection 4A (section 21D(7) NP Act).
- Parks Victoria must consult with DEECA to ensure that proper and sufficient management and control of landscape conservation areas are sufficient to protect the area from injury by fire (section 17F(b) NP Act).
General Agreements with Other Bodies

Parks Victoria also can enter into agreements or arrangements with a person or body in relation to:

- the management of land (section 11(1) PV Act); or
- the prevention, suppression, or recovery from fire (section 11(3) PV Act).

However, to make an agreement or arrangement in relation to fire management, Parks Victoria requires written approval from the Minister (section 11(5) PV Act).

Under section 12(1) PV Act, Parks Victoria may enter into an agreement or arrangement to provide services, of a kind related to its functions, powers or duties, with any person or body whether the services are to be provided in Victoria, another State or a Territory of the Commonwealth or another country. This would encompass their obligation to manage land. Parks Victoria cannot enter into an agreement or arrangement unless the agreement is in the public interest and Parks Victoria has obtained written approval from the Minister (section 12(2) PV Act).

Agreements with Traditional Owner Land Management Board

Section 16A(a) NP Act provides for a Traditional Owner Land Management Board to manage any land in a park that would otherwise be managed by Parks Victoria, which means that Parks Victoria does not have the power to manage that land to the extent of the agreement.

Parks Victoria must be consulted before DEECA can enter into a management agreement with the Gurnaikurnai Land and Waters Aboriginal Corporation, which is the Traditional Owner Land Management Board for the Gippsland area (section 16A NP Act).

Regarding the administration of any land in a park that is designated as land of the Board, management agreements can relate to the carrying out of specific functions, powers, and duties in the relevant land.

Delegation

In addition, Parks Victoria may delegate any of its powers and duties to a committee established under section 25 of the PV Act or DEECA (section 13(1) PV Act).
RESOURCES


- **Department of Sustainability and Environment, Code of Practice for Bushfire Management on Public Land** (Victorian Government Department of Sustainability and Environment Melbourne, June 2012)


- **Parks Victoria, Draft Land Management Strategy: Protecting out Natural and Cultural Heritage for Future Generations** (September 2021)

- **Parks Victoria, Management Plan (Morwell National Park Management Plan, November 1998)**

- **Parks Victoria, National Parks Act Annual Report 2020-21** (State of Victoria, 2021)
  https://www.parks.vic.gov.au/-/media/project/pv/main/parks/documents/about-us/annual-reports/national-parks-act-annual-report-2020-21.pdf?la=en&rev=c95b0439afdb4decb027ea995049a8bf&hash=72CF8E43D3281D098685C921911F540F1BBA03E0#:~:text=As%20at%2030%20June%202021,management%20plans,in%20place%20in%202019%20there%20were%20approved%20management%20plans.
Most of Victoria’s traffic is carried on freeways and arterial roads. Arterial roads are defined in section 3 of the Road Management Act 2004 (Vic) (RM Act) as roads declared to be as such under section 14 of the RM Act. To be declared as an arterial road, one of the following characteristics must apply (section 14(3) RM Act):

- provide a principal route for the movement of people and goods;
- be major routes for public transport services;
• have state-wide economic or tourism significance; or
• provide necessary connections between roads.

Who Has Ultimate Land Management Obligations for Roads?

For arterial roads, VicRoads has ultimate responsibility for the management of the ‘through roadway’, which is the actual road (section 36 RM Act). The municipal council is responsible for roadside areas (section 37 RM Act).

In rural areas, the entire road and roadside (excluding footpaths) are the responsibility of VicRoads. We respectfully reproduce the ‘Typical Road Type Cross Section’ from page 25 of the Victorian Government’s Road Management Act 2004 ‘Code of Practice Operational Responsibility for Public Roads’ (see Figure 6).

Figure 6. Urban and Rural Road Management Responsibility

According to the ‘Codes of Practice under the Road Management Act’, there is an agreement between VicRoads and the municipal council in the management of arterial state roads.

Obligations

VicRoads and municipal councils have a responsibility to prevent the occurrence of fires on roads and minimise the danger of the spread of fires on roads.

VicRoads and municipal councils should manage arterial state roads based on the roads’ functions. For example:

• the municipal council has responsibility for the management of vegetation in roadside areas;
• VicRoads has the responsibility to maintain roads; and
VicRoads and the municipal council have a joint responsibility to prevent the occurrence of fires and minimise the danger of the spread of fire.

**Statutory Obligations**

**VicRoads Obligations**

VicRoads, as the road authority, may perform any road management functions on arterial roads to facilitate road safety and traffic management (sections 119, 120 RM Act).

When managing roads, VicRoads must consider the principal objective of road management and the works and infrastructure management principles (section 33 RM Act). The principal objective is to ensure that a network of roads is provided primarily for the movement of persons and as part of an integrated transport system and that road reserves are available for other appropriate uses (section 20 RM Act).

Under the CFA Act, VicRoads and the local council have a duty to take all practical steps (including burning) to prevent fires and minimise the danger of the spread of fire on and from land:

- vested in or under their control or management; or
- any road under their care and management (section 43 CFA Act)

This duty imposes a broad power to undertake anything necessary or expedient to fulfil their duty (section 43(2) CFA Act).

**Council Obligations**

Councils have obligations regarding local council roads under the RM Act and the Local Government Act 1989 (Vic) (LG Act). Under these Acts, local councils are responsible for ensuring the maintenance and inspection of roads deemed to be council roads. The obligations within the relevant provisions may limit fire risk through requiring preventive action by councils.

**Road Management Act**

Under the RM Act, municipal councils are defined as a road authority. As per section 11(7), if a road authority declares a road, it is a municipal road.

Under section 40 of the RM Act, councils have a statutory duty to inspect, maintain and repair public roads. Under subsection 40(1)(a), this duty is to be carried out to the standard specified in the road management plan or specified class of public road. If no standard is specified, then this duty is to be carried out to a ‘reasonable level’ (section 40(1)(c) RM Act).

Under section 40(2) of the RM Act, this statutory duty does not create a duty to upgrade a road or maintain a road to a higher standard than the road’s construction standard.

Further, under section 40(5) of the RM Act, a road authority has a discretionary power to inspect, maintain or repair a road that is not a public road. However, this power is not to be construed as imposing a duty.

Under section 41 of the RM Act, the relevant road authority may determine the standard to which they will construct, inspect, maintain and repair roadways, pathways, road infrastructure and road-related infrastructure (see Figure 7 for an example of road infrastructure).
Local Government Act

Under Part 9 of the *LG Act*, councils have the power to make, maintain and repair roads, as well as to fix and alter the level of roads. Under section 2 of Schedule 10 of the *LG Act*, the council also has the power to deviate roads through private land.

Under section 203 of the *LG Act*, a council may develop and implement a transport plan that facilitates a sustainable transport system that effectively integrates transport and land use.

Under section 205 of the *LG Act*, a council has the care and management of certain roads, including:

- public highways vested in the council;
- all roads that are subject of a declaration under section 204(2);
- all public highways on Crown land and roads vested in a Minister; and
- all roads that the council has agreed to have care and management of.

Policy Obligations

Code of Practice

The [Code of Practice](#) under the *RM Act* is the principal guide that sets the benchmarks for good practice in relation to the performance of road management functions by road authorities and sets the operational responsibility for different parts or elements of road reserves (section 24(1) *RM Act*).

Roadside Management Strategy

The [Roadside Management Strategy](#) provides a framework for the consideration of the four roadside management objectives, which are to:

- enhance road safety and vehicle movement;
- protect environmental and cultural heritage values;
- manage fire risk; and
- preserve and enhance roadside amenity.

Priorities for roadside management depend on the location and nature of the road. For example, a rural arterial road may be important for strategic fire management or environmental protection. The vegetation management in roadside areas can play a key role in minimizing bushfire risk, both in the choice of species grown and/or retained and in the programming of work such as grass cutting and vegetation removal.

Roadside fire management strategies are a part of Victoria’s Integrated Fire Management Planning process, so roadside management must complement the fire management process and respond appropriately to its requirements with a co-operative approach between government agencies.

Management Plans

VicRoads publishes a yearly Road Management Plan. The current version is the [Road Management Plan 2021](#), which sets out the circumstances, manner and standards to which the road authority will perform its inspection, maintenance and repair responsibilities required to discharge its duties in the road management functions. These involve:

- developing standards and guidance in relation to the management of roads;
• developing the maintenance program, which includes assessing the network demand and conducting risk assessments that include potential fire risk, and repairing and replacing old infrastructure;
• implementing and developing specifications for delivering the maintenance program;
• conducting an audit of completed maintenance works, including the procedures for collecting and storing information regarding road infrastructure condition and use; and
• reviewing road infrastructure performance.

**Maintaining the State’s Regional Arterial Road Network**

Like the Road Management Plan, the **Maintaining the State’s Regional Arterial Road Network Policy** outlines VicRoads obligations to:

• develop and publish an enhanced suite of indicators to better represent the condition of road infrastructure assets;
• further develop the roadside asset strategy to define service levels that promote a consistent approach to managing risks and set maintenance priorities across its regions;
• better quantify and document the costs and benefits of alternative maintenance options as part of its decision-making processes;
• adopt a standard practice in its funding bids for new road infrastructure and allowance for the recurrent resources required to maintain these assets;
• develop ways to retain the practical knowledge of experienced staff regarding road maintenance;
• formulate initiatives to improve how it delivers routine maintenance contracts and their performance; and
• use the current review of its information systems to make critical improvements to the enquiry tracking system.

To illustrate these obligations we reproduce at **Figure 7** with thanks, a helpful image from the **Maintaining the State’s Regional Arterial Road Network Policy** at page 6.
Road Bushfire Risk Assessment and Mapping

In partnership with CFA, VicRoads developed a map called the ‘Road Bushfire Risk Assessment Guideline and Risk Mapping Methodology’ which outlines factors that influence the likelihood and consequences of a bushfire starting from a road network. These factors are:

- potential for ignition by road users;
- fuel on road reserve;
- history of ignitions;
- fire behaviour on/near road reserve; and
- ability for fire to spread across the landscape.

These factors class the road risks as low, medium or high based on the likelihood and spread of fire beyond road reserve (we reproduce an example of this from the ‘Road Bushfire Risk Assessment Guideline and Risk Mapping Methodology’ page 10, at Figure 8).

- Low-risk roads (marked in green on the maps) are those where the level of bushfire risk does not warrant specific bushfire mitigation works. However, they may still include the standard routine maintenance program;
- Moderate-risk roads (marked in yellow on the maps) will receive the standard suite of treatments from the routine maintenance program; and
- High-risk roads (marked in red on the maps) require additional detailed assessment and may warrant additional fire risk mitigation treatments. Risk cannot be managed on the roadside alone; as a result, consideration needs to be given to broader treatments.
Arrangements/Exceptions/Delegation

The responsibility of VicRoads and local councils in relation to arterial road management may be altered by:

- an arrangement to transfer road management functions to another road authority, utility, or public transport provider (section 15 RM Act); or
- delegation of road management to any person; or
- partnerships between DEECA and VicRoads.

In addition, where there is vegetation adjoining a state forest, the control and management of the vegetation is the local council’s responsibility (section 77(4) Forests Act).

Exception

VicRoads can delegate to any person any function or power by instrument, such as road management (section 118 RM Act). This includes management functions under the RM Act on any road (section 119 RM Act).

Delegation

Department of Transport and DEECA will work with the other road and rail managers, the CFA and local government to identify key arterial roads that provide strategic advantages for firefighting and work together to conduct priority fuel treatment works ahead of an upcoming fire season.
RESOURCES

- ‘Codes of practice under the Road Management Act’, *VicRoads* (Web Page) [Codes of practice under the Road Management Act: VicRoads](https://www.vicroads.vic.gov.au/)


NON-ARTERIAL STATE ROADS

As a general rule, the land management bodies responsible for non-arterial state roads are Councils, DEECA or Parks Victoria.

DEECA manages non-arterial state roads within state forests, national parks and most Crown land, and Parks Victoria manages roads when they are a Committee of Management under the CLR Act.

In some circumstances VicRoads have responsibility for a small number of non-arterial state roads.

Non-arterial state roads are defined in section 3 of the RM Act as “a state road that is not a freeway or an arterial road”.

Who has Ultimate Land Management Obligations for Non-Arterial State Roads?

The RM Act identifies DEECA as the responsible body for public roads in state forests, national parks and most Crown lands, except where Parks Victoria is a Committee of Management under the CLR Act (sections 37(1)(d) and 38 RM Act).

Obligations

Statutory Obligations

DEECA has an obligation under the CFA Act to take all practicable steps to prevent the occurrence of fires on and minimise the danger of the spread of fires on and from any non-arterial road under its care and management.

According to the road classification and maintenance standard, DEECA and Parks Victoria have different purposes and functions in managing non-arterial state roads.

Policy Obligations

Road Management Plan 2019

The Road Management Plan 2019, published by Parks Victoria and then DELWP, outlines the management of non-arterial state roads. The categorisation of non-arterial state roads and the classification of roads determine the management level of the road. Roads are hierarchically classified. For example, roads managed by DEECA and Parks Victoria are defined as Rural Class 5 roads. Within this class, there are public roads and operational roads:

- public roads are primarily used to provide public access and are listed in the Register of Public Roads (this generally includes Class 5A and 5B roads and some Class 5C, 5D and 5E roads); and
• operational roads are used for management purposes, including fire prevention and suppression.

The Road Management Plan outlines the maintenance standards for the different classes of roads, this includes the expected road inspection frequency and the response time. Figure 9 provides an extract from page 8 of the Parks Victoria Road Management Plan 2019.

![Figure 9. Road Classification](image)

**Arrangements/Exceptions/Delegation**

In some circumstances, non-arterial state roads may be managed by VicRoads.

**Exception**

DEECA and Parks Victoria generally manage non-arterial state roads. However, see section 37 of the RM Act for other bodies that may be declared as the responsible road authority.

Further, a small number of non-arterial state roads are managed by VicRoads. These can be determined by searching for the road on VicRoads Maps.

**RESOURCES**

- VicRoads, Map of Declared Roads, (Website) [https://vicroadsmaps.maps.arcgis.com/apps/webappviewer/index.html?id=8fa546b7853433eb58e51584b36f681](https://vicroadsmaps.maps.arcgis.com/apps/webappviewer/index.html?id=8fa546b7853433eb58e51584b36f681)
WATER CATCHMENT AREA

DEECA has ultimate responsibility to manage water catchments. However, in practice, water catchments are managed by Catchment Management Authorities (CMA).

In Victoria, the water catchment and land protection areas are divided into 10 regions, each managed by its respective CMA.

The first point of contact in relation to water catchments is the relevant CMA.

Figure 10. Division of the 10 Regions – reproduced from Vic Catchments

This Guidebook does not consider groundwater, as it is not relevant to the parameters that we focused on – namely the management of land arising out of a natural disaster like bushfire. The Guidebook focuses on surface water for that reason. There are other unique and important factors that apply to groundwater, which is managed by DEECA. Helpful resources can be found on the Victorian Water Register website and DEECA’s Groundwater page.

What CMA Manages Water Catchment Areas in the Gippsland Region?

East Gippsland:
East Gippsland Catchment Management Authority
Contact: (03) 5152 0600 or egcma.com.au.

West Gippsland:
West Gippsland Catchment Management Authority
Contact: (03) 5175 7800 or wgcma.vic.gov.au.

North East:
North East Catchment Management Authority
Contact: (02) 6043 7600 or necma.vic.gov.au.
Obligations

CMAs are obliged to manage Victoria’s catchments and waterways and oversee bushfire recovery, flood management, water pollution, blockages, land erosion and overflowing catchments near properties.

Statutory Obligations

Victoria’s catchment management system is established under the CLP Act, which sets out the divisions of the catchment regions and their key responsibilities.

The primary objective of the CLP Act is to establish a framework for the integrated and coordinated management of catchments which will:

- maintain and enhance long-term land productivity while also conserving the environment; and
- aim to ensure that the quality of the State’s land and water resources and their associated plant and animal life is maintained and enhanced (section 4 CLP Act).

Under the CLP Act, CMAs must:

- prepare a regional catchment strategy and special area plans for the region and coordinate and monitor their implementations (section 12); and
- promote the cooperation of persons and bodies involved in the management of land and water resources in the region, including representatives of specified Aboriginal parties, in preparing and implementing the strategy and special area plans (section 12); and
- take all reasonable steps to avoid causing or contributing to land degradation that may cause damage to the land of another land owner, and protect water resources (section 20).

The Water Act 1989 (Vic) (Water Act) also sets out the functions and obligations of CMAs to ensure the responsible management and protection of water catchments.

Relevant sections of the Water Act include:

- section 157 states that if a water flow occurs as a result of intentional or negligent conduct on the part of a CMA in the exercise of their function and that water flows onto any land causing injury to any other person, damage to the property of any other person, or causes any other person to suffer economic loss, the CMA is liable to pay damages to that other person in respect of the harm;
- section 16 confers additional liabilities on incorporated authorities and persons if they have interfered with the flow of water which has led to damage, injury, or monetary loss;
- section 218 gives CMAs the right to require a landowner or occupier to remove anything obstructing or interfering with the flow of water in the drainage course; or carry out any works that are reasonably necessary to control that flow or to maintain any structure or works in the drainage course in such a condition so as not to obstruct or interfere with that flow;
• section 219 gives CMAs the right to implement by-laws with respect to prevention, minimization and regulation of water obstruction and pollution; and

• section 22 provides that the Minister may implement a sustainable water strategy identifying threats, setting priorities and ways to improve the management of water catchments. This strategy would be enforceable on CMAs.

Statement of Planning Policy

Under section 12AA of the CLP Act and section 124B(1) of the Water Act, CMAs are obliged to act consistently with a Statement of Planning Policy that is binding on them and to have regard to parts of the Statement of Planning Policy that are not expressly binding on them.

Statement of Planning Policies are created under section 46AT of the Planning and Environment Act 1987 (Vic). The purpose of a Statement of Planning Policy is to create a framework for the future use and development of land in a declared area to ensure the protection and conservation of the distinctive attributes of the area (see section 46AU of the Planning and Environment Act 1987 (Vic)).

In East Gippsland, there are ten ‘declared water supply catchment areas’ (see Figure 10). When performing a function or duty or exercising a power provided under the Water Act or CLP Act in these areas, CMAs must conform to the Statement of Planning Policy (section 12AA CLP Act; section 124B Water Act). Further, CMAs must have regard to the principles in section 46AZL of the Planning and Environment Act 1967 (Vic).

As of the time of publishing we are unaware of any publication of a Statement of Planning Policy for these areas in the Gippsland region.

Arrangements/Exceptions/Delegation

Exception

Note section 17 of the Water Act provides protection from liability under section 16 and section 157 of the Water Act.

RESOURCES

• Vic Catchments, Our CMA Regions, Victorian Catchment Management Authorities

• Victorian Water Register, Groundwater

• Department of Energy, Environment and Climate Action, Victoria’s groundwater resources,
DEECA has ultimate responsibility to manage Crown land reserves. However, exceptions may apply where:

- DEECA enters into an agreement with a Traditional Owner Land Management Board;
- a Committee of Management has been appointed to manage the land; or
- the land is a Forest Park, in which case the ultimate responsibility lies with Parks Victoria.

If a Committee of Management has been appointed to manage the land, they should be the first point of contact. Otherwise, DEECA is the first point of contact.

A Crown land reserve is public land that has been set aside for public purposes for the enjoyment and benefit of the people of Victoria. Crown land reserves support a range of amenities and uses such as halls, libraries, theatres, showgrounds, gardens, bushland, zoos, foreshores, sports ovals, tennis courts, playgrounds, swimming pools and rail trails. The principal legislation dealing with the reservation and management of Crown lands in Victoria is the CLR Act and the Land Act 1958 (Vic).

**Who has Ultimate Land Management Obligations for Crown Reserve Land?**

DEECA is generally the government body primarily responsible for the control and management of reserved Crown land. However, a Committee of Management or private entity under lease or licence may also be responsible for the management of reserved Crown land.

**Leases and Licences**

Unreserved Crown land can be leased by government at its discretion. Government guidelines apply for the leasing of Crown land. The Leasing Policy for Victorian Crown Land 2018 aims to provide consistent principles for the leasing of Crown land and is discussed further below. Other useful resources can be found on DEECA’s website here. In practice, licences are far more common than leases.

If dealing with Crown land that is leased or licenced, it is important in the first instance to request a copy of that document to understand what, if any, obligations exist on the lessee.

Regarding the use or development of or within Crown land, careful consideration of the planning scheme is required. It is vitally important to understand all obligations within the planning system.
Obligations

Statutory Obligations

The Governor in Council may reserve Crown land for one or any combination of public purposes listed in section 4 of the CLR Act. Some examples set out in the CLR Act of public purposes for which land can be reserved include the following:

- protection of the beds or channels and the banks of waterways;
- drainage and sewerage works;
- camping grounds and watering places for travelling stock;
- propagation or management of wildlife or the preservation of wildlife habitat;
- growth preservation and supply of timber, including Government school forest plantations; and
- protection of the coastline.

DEECA, as the responsible body, must then act consistently with the purpose for which the land has been reserved.

In some circumstances, the Minister may approve a licence or agreement outside its reserved purpose under sections 17A and 17B of the CLR Act. However, the Minister cannot approve a licence or agreement where land has been reserved for the following specific purposes:

- preservation of areas of ecological significance;
- the conservation of areas of natural interest or beauty or scientific, historic, or archaeological interest;
- preservation of species of native plants;
- propagation or management of wildlife or the preservation of wildlife habitat;
- public parks, gardens, and ornamental plantations; and
- protection of the coastline.

With respect to the above types of land, they must be strictly managed in accordance with their reserved purpose.

DEECA must also act consistently with a land’s joint management plan if any part of the reserved Crown land constitutes appointed land of a Traditional Owner Land Management Board (section 20A CLR Act).

The Governor in Council may also make regulations relating to:

- days on which fallen or felled trees may be cut or taken away;
- the manner in which fallen or felled trees may be cut or taken away;
- use of vehicles and equipment in firewood collection areas;
- protection of the environment in firewood collection areas; and
- any matter relating to Part 3B of the CLR Act (i.e. ‘cutting or taking away fallen or felled trees for domestic use as firewood’) (section 32(1) CLR Act).
Further, DEECA has the power to vary firewood collection season dates. However, this variation should only be made where it is necessary because of a condition, or likely condition, of fire danger that poses a risk, or is likely to pose a risk, to public safety (section 21O CLR Act).

DEECA may appoint a Committee of Management under section 14 of the CLR Act to manage Crown reserved land.

A Committee of Management may consist of:

(a) any three or more persons;
(b) a Council;
(c) a metropolitan water corporation;
(ca) Melbourne Water Corporation;
(cb) Parks Victoria;
(d) the Great Ocean Road Coast and Parks Authority;
(e) any board, committee, commission, trust, or other body corporate or unincorporate established by or under any Act for any public purpose;
(f) a registered Victorian company; or
(g) any combination of such persons and bodies.

The powers of a Committee of Management are outlined in section 15 of the CLR Act. A Committee of Management:

- shall manage, improve, maintain, and control the land for the purposes for which it is reserved;
- may exercise all such powers, functions, and duties as are conferred or imposed on it by any regulations made pursuant to section 13, and shall have authority to do all such acts necessary for or incidental to carrying into effect and enforcing such regulations in respect of the land;
- may carry out works and improvements on the land, provided that they are being carried out solely to maintain the land; and
- may impound livestock trespassing on the land.

Policy Obligations

Joint Management Plan with Traditional Owners

DEECA must act consistently with any Joint Management Plans. For example, various parks and reserves in the Gippsland region are subject to plans with the Gunaikurnai people. See the State Parks section for more details.

Leasing Policy for Victorian Crown Land


There are three principles that must be followed when leasing Crown land. These are:

- to provide benefits to the public through leasing;
- to ensure consistency and transparency in leasing; and
- to manage leased Crown land in an ecologically sustainable manner.

Relevant for our purposes is the third principle, which arguably creates an obligation on land managers to consider the potential impacts of climate change when developing a lease proposal, including measures to address or mitigate the potential impacts of climate change on land and buildings over the life of the lease.

Proposals to lease Crown land will need to:
- respond to the challenge of climate change;
- maintain and restore natural assets;
- provide opportunities for Victorians to connect with nature;
- use resources more efficiently; and
- reduce biodiversity and environmental impacts (see page 14 of the Leasing Policy).

The Policy provides guidance on what proponents will need to do to meet their obligation to maintain and restore natural assets. These include to:
- assess and then minimise the potential impacts on biodiversity;
- prevent degradation and loss of native vegetation by complying with native vegetation management regulations;
- manage pest plants and animals through pest control programs; and
- protect native flora and fauna by creating buffers (see page 14 of the Leasing Policy).

The Policy also provides guidance on what proponents will need to do to meet their obligation to use resources more efficiently and reduce environmental impacts. These include to:
- commit to improve the environmental efficiency of new and existing buildings on Crown land;
- commit to the use of an Ecologically Sustainable Development program or rating tool;
- use relevant Green Building Council of Australia Green Star Tools in major projects;
- improve the efficiency of water and energy use;
- reduce or minimise greenhouse gas emissions;
- reduce waste and the maximise use of renewable or recyclable materials; and
- implement best-practice stormwater management (see page 14 of the Leasing Policy).

Committee of Management Guidelines

Committees of Management are under an obligation to adhere to policy obligations created by DEECA. DEECA has created Committee of Management Guidelines to provide detailed guidance to voluntary committees of management of Crown land reserves.

Arrangements/Exceptions/Delegation
Exception

Section 18A of the *Forests Act* dictates that any land that is a forest park is under the control and management of Parks Victoria (section 18 CLR Act).

Delegation

Where Parks Victoria constitutes a Committee of Management, it may delegate its functions, powers and duties to a member, committee, secretary, chief executive officer or employee of Parks Victoria (section 15A CLR Act).

Where a Committee of Management is constituted by the Great Ocean Road Coast and Parks Authority, it may delegate its functions, powers and duties to a member, chief executive officer or employee of Great Ocean Road Coast and Parks Authority (section 15B CLR Act).

Riparian Land Rights

Riparian Land Rights will only attach to a natural watercourse with the definable qualities of a channel, bed and banks. This should be used to distinguish valleys or depressions where water simply gathers as there will be no riparian land rights for these areas. The seasonal flow of watercourses will not affect the rights attached to the now dry riparian land, though artificial channels and land where the water was draining off will not have rights attached.

Ongoing management of Riparian land is shared between a number of stakeholders including DEECA and registered proprietors. Much of the Crown Frontages are managed by adjacent landowners under agricultural licenses and riparian management licenses for the Crown water frontage.

DEECA are under an obligation to manage riparian land if it is not under a license, either agricultural or riparian management. Despite, the issuing of a license, the ownership of the land remains with the state.

Crown Water Frontage licence

A Crown Water Frontage licence is granted by the Minister for usage of the land under section 130 of the *Land Act*. That power has been delegated to DEECA by the Minister. In some circumstances, they can also be granted by Parks Victoria. Each licence is individual and will have its own terms specific to each CMA.

The obligations owed by each licence falls under either:

- those imposed by the specific licence and its conditions; or
- those imposed by the *Land Act* and [Land (Regulated Watercourse Land) Regulations 2021](https://www.delwp.vic.gov.au/sites/default/files/2021-05/Land%20(Regulated%20Watercourse%20Land)%20Regulations%202021.pdf); or
- those imposed by other legislation.

Riparian Management Licence

A riparian management licence is issued to recognise that the land is being managed by a licensee to protect and improve the riparian environment. They are generated through the conversion of an existing grazing licence as part of a CMA-landholder agreement for fencing and revegetation. Controlled grazing, if approved by the local CMA and DEECA, may be permitted.
RESOURCES


The registered proprietor of a parcel of land is the body responsible for bushfire land management.

After the Black Saturday bushfires, the Royal Commission recommended that the “state develop and implement a retreat and resettlement strategy for existing developments in areas of unacceptably high bushfire risk, including a scheme for non-compulsory acquisition by the state of land in these areas”.

A buy-back scheme was implemented in 2012, and approximately 116 properties were brought back by the Victorian Government.

Who has ultimate land management obligations for government-owned freehold land?

The registered proprietor of the land is responsible for fire management obligations.

Obligations

There are four key objectives found in the CFA policy, ‘On the Land: Agriculture Fire Management Guidelines’, that form the basis of fire management planning and activities on freehold land.

Objective 1: Consider Safety, Environmental and Legal Issues and Long-Term Sustainability

Protecting all assets from fire or having fire suppression services available may not be possible. Consultation and work with adjacent landowners, managers and land users should be undertaken to reach mutual benefits. Remove or reduce fire risks on property and consider recovery from fire.

Objective 2: Take Reasonable Steps to Prevent Unplanned Fires Starting and Planned Fires Escaping

Landowners have a responsibility to minimise the risk of starting an unplanned fire, particularly when operating machinery, vehicles and equipment or using fire on property.

Fire risk needs to be considered before harvesting, grinding, welding, slashing, and mowing, or driving vehicles and motorbikes through dry grass or crop. Landowners should avoid these activities on fire risk days.
Objective 3: Take Reasonable Steps to Limit the Spread of Unplanned Fire

Landowners have responsibility during the Fire Danger Period to extinguish unplanned fires on their property and to report the fire to Triple Zero (000) if they believe that they will be unable to extinguish it. The duty to report fire burning in the Fire Danger Period also applies to the general public.

Landowners should have strategic fuel breaks on their property and implement fire prevention works set out in their planning permits or fire prevention notices. Landowners operating machinery and equipment on rural properties should also have access to appropriate firefighting equipment (in addition to that required under legislation).

Objective 4: Take Reasonable Steps to Provide Access to Property, Assets and Water for Firefighting

Landowners must provide access to property, assets, and water for firefighting purposes if this is a requirement of a planning permit.

Arrangements/Exceptions/Delegation

There are no arrangements/delegations or exceptions.

RESOURCES

CONTACTING GOVERNMENT

The Guidebook is designed to help build a relationship between your organisation and government with the intention of securing a sensible outcome for all parties and resolving important issues that arise.

Often government departments are time- and resource-poor, which can slow matters down and create frustration. However, every effort should be made to build rapport and construct positive relationships with government officers. Government officers are often highly skilled, dedicated, and passionate people who are committed to their work and improving outcomes. The Guidebook aims to help practitioners find the right departmental officers to help resolve the matter. Moving to formal requests for action and FOIs should be carefully considered as part of a legal strategy. If possible, meetings and discussions should take place on country/on-site to foster collaboration and lend tangibility to the issues being resolved.

Once you have identified the type of land and the body that manages the land, you can begin the process of contacting the body.

This section outlines the general process for requesting action. Note that this section is not intended to be an exhaustive discussion of the available avenues for review of decisions.

Contact with Government - General Process
KEY CONTACT STEPS

I. Initial letter to the responsible body

- This letter is a request for action and should have a positive tone. Do not threaten or imply legal action in the initial letter.
- Include a date by which you anticipate a reply. The standard time frame allowed for a response is 14 days.
- Be specific as to the complaint/land management request that is being sought.
- See pro forma template in Annexure A.

II. Internal Review

- This is the start of the complaint process. The process may be different for each body.
- The reply to your initial letter will usually indicate if a body for internal review within the department exists.
- If applicable, copy in the director/CEO of the body, as this may expedite a resolution.
- See pro forma template in Annexure B.

III. Request for reasons

If your request for action has been refused, it is beneficial to ask for reasons for the refusal to be given.

If the issue relates to the decision of a government department, a request for reasons should be considered before embarking on a formal internal review.

While government bodies, officials and departments are under no statutory or common law obligation to provide reasons behind a decision made, it will often be appropriate to request reasons as a matter of fairness. Departments will often provide reasons as a matter of good practice. This should be considered if a decision adversely affects your client.

For instance, when a government body, official or department makes a decision that affects an individual, it is bound by certain procedures set out in the Administrative Law Act 1978 (Vic) (ALA). Pursuant to section 8(1) of the ALA, a tribunal shall, if requested to do so by any person affected by a decision made or to be made by it, provide the person affected with a statement of its reasons for the decision.

The pro forma template in Annexure C refers to this statutory obligation in requesting reasons. While the applicable body may not be considered a ‘tribunal’ under the ALA, they may nonetheless provide reasons which will assist you in considering your complaint avenues.

Under section 8 of the ALA, a request for reasons must be made:

- before the giving or notification of the decision; or
- within 30 days of the decision coming to the knowledge of the person affected by the decision and in any event no later than 90 days of the giving or notification of the decision.
IV.  FOI Request

To obtain further information, you can make a Freedom of Information (FOI) request to the relevant agency.

An FOI request is made when a person wants access to specific documents not already publicly available. If you are unsure whether a document is already publicly available, it is suggested that you contact the responsible agency prior to lodging an FOI request to find out, as it does cost money to lodge an FOI request.

Under section 13 of the Freedom of Information Act 1982 (Vic) (FOI Act), members of the public have the right to obtain access to documents held by Victorian public sector agencies. This right is subject to limited exceptions and exemptions as outlined in Part IV of the FOI Act. The system is designed for ease-of-use and clients can often navigate lodging FOIs themselves.

‘Document’ is broadly defined under section 5 of the FOI Act. It includes files, emails, text messages, case notes, draft material, handwritten notes, discs, photographs, and maps. Essentially, anything in the possession of an agency that is capable of conveying information or meaning is considered a document. However, the document must be in existence at the date a valid request is received. A request cannot seek access to documents that were received by the agency or came into existence after receipt of a valid request.

Under section 17 of the FOI Act, a FOI request must meet the following requirements:

1. The request must be in writing:
   - See pro forma template in Annexure D.

2. The request must provide sufficient information as is reasonably necessary to identify the documents requested; and
   - be clear and specifically list the documents that are sought.

3. The request must include the application fee, unless the agency has agreed to reduce or waive the fee on hardship grounds.
   - The assessment of ‘hardship’ is a discretionary decision to be made by the agency or the Information Commissioner on review.

Once a valid request is received, an agency has 30 calendar days to process the request and provide a decision to the applicant about whether the documents will be released. Note that an FOI request is now typically slow to achieve results and may not be effective if it is the only strategy adopted to obtain information. Be aware that statutory timelines apply and consider that in the context of managing a particular issue. A helpful summary of the timeframes and extensions of time can be found at the Office of Victorian Information Commissioner’s website.

V.  Consider further review process

At this stage, you may wish to consider an application to a tribunal for merits review (if applicable), an application to a court for judicial review of the decision or a complaint to a body such as the Victorian Ombudsman or IBAC (details for both are listed above).
Annexure A – Template letter requesting action

Date

Name of relevant person/body
Address
Suburb STATE postcode

Dear [insert name/position]

Request for action regarding [insert action required]

I/We write to request action regarding [insert description of relevant land].

I/We seek to bring to your attention [insert description of the issue including details around key dates, surrounding circumstance, previous communication with the body].

Under [insert authority] you have the responsibility to [insert obligation]. I/We request that you [insert the measures you want the authority to take].

I/We look forward to your response within 14 days of the date of this letter and appreciate appropriate action being taken to rectify this.

Based on LASSI and title searches [if applicable], we understand that you are the relevant manager of this piece of land. However, if this is incorrect, please advise us to whom this request ought to be sent.

Yours faithfully,

…..
Annexure B – Template letter for internal review

[Note: Only use this letter if the relevant body has a mechanism for internal review. This will likely be stated in the reply letter.]

Date

Name of relevant person/body
Address
Suburb  STATE  postcode

CC: [CEO or Director to expedite resolution]

Dear [insert name/position]

Request for action regarding [insert action required]

I/We write to request action regarding [insert description of relevant land].
I/We seek to bring to your attention [insert description of the issue including details around key dates, surrounding circumstance, previous communication with the body].

Under [insert authority] you have the responsibility to [insert obligation]. I/We request that you [insert the measures you want the authority to take].

I/We look forward to your response within 14 days of the date of this letter and appreciate appropriate action being taken to rectify this.

Based on LASSI and title searches [if applicable], we understand that you are the relevant manager of this piece of land. However, if this is incorrect, please advise us to whom this request ought to be sent.

Yours faithfully,

…..
Annexure C – Template letter requesting reasons

Date

Name of relevant person/body

Address
Suburb STATE postcode

Dear [insert name/position]

Request for reasons

I/We refer to our letter dated [insert] concerning [outline issue].

I/We received a reply from [body/name person if applicable] on [date]. This reply lacked sufficient detail as to why action is not being taken by [relevant body] to rectify [issue].

I am/we are a person affected by the decision due to [state how you were affected]. Accordingly, I/we request reasons for the decision under section 8 of the Administrative Law Act 1978 (Vic) as a matter of procedural fairness.

I/We look forward to your prompt response within 14 days of the date of this letter.

Yours faithfully,

…..
Annexure D – Template FOI Letter

Date

Name of FOI officer

Address
Suburb STATE postcode

Dear FOI Officer

Freedom of Information Request

I am/We are writing to request information under section 13 of the Freedom of Information Act 1982 (Vic) (‘the Act’). To assist you with this request, I/we enclose an FOI form outlining the documents that I am/we are seeking. [Note: A copy of the FOI form produced by the Office of Victorian Information Commissioner is available here]

If this information is not available from your organisation, please forward this request to the appropriate agency.

[Before submitting a FOI, check how to pay the relevant FOI fee by contacting the relevant agency or visiting the website of the Office of Victorian Information Commissioner here. Include one of these alternative statements in relation to payment of the fee in this letter]

I/we enclose the relevant FOI fee OR I/we have paid the relevant FOI fee by [insert payment method as directed by the agency] OR Please also indicate how I/we may pay the relevant FOI fee to access these documents OR I/we request that the payment of the FOI fee be waived on the basis of financial hardship due to [provide basis for and evidence of hardship]

If my/our request is denied in whole or in part, I/we ask that you justify the basis for the denial by reference to specific exemptions under the Act.

I/We would be grateful if you could confirm in writing that you have received this request.

I/We otherwise look forward to receipt of the documents within 30 days from the receipt of this letter.

Yours faithfully,

... Encl.
1. FOI Form

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2 CAVEAT: As a matter of principle, timing is critical, and lawyers should be mindful of the requests and clarifications received from the department that ‘stop time running’, as well as the appeals process for FOIs. The drafting of the request for information needs to strike a balance between being too narrow so as to rule out potentially relevant information; and too broad, which will create an information overload.
The ‘Connections Between Land Management Bodies’ and linked ‘Mind Map’ below set out some key legislative links and interconnections between Authorities associated with Public Land Management.

The colours given to bodies and labels are used to help navigate the Mind Map. This provides visual summary of the complexity of this area of law.
# Connections Between Land Management Bodies

<table>
<thead>
<tr>
<th>Label</th>
<th>Bodies</th>
<th>Sections</th>
<th>Legislative connection in responsibilities for land management</th>
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<tbody>
<tr>
<td>A</td>
<td>DEECA Melbourne Water</td>
<td>s. 77 of Forest Act</td>
<td>Municipal council;</td>
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<tr>
<td>B</td>
<td>DEECA FFMVic</td>
<td>s. 20, 62C of Forest Act</td>
<td>FFMVic</td>
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<td>C</td>
<td>DEECA GLWAC</td>
<td>s. 74A of Aboriginal Heritage Act; S. 20A of forest act; s. 18A of Wildlife Act</td>
<td>s. 74A of Aboriginal Heritage Act: Agreement with GLWAC; s. 20A of forest act: GLWAC</td>
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<td>D</td>
<td>DEECA Parks Victoria</td>
<td>s. 67A (1) of CFL Act; s. 8, s. 11 of PV Act; S. 16A, S.17(2)(b), 17F(b) of NP Act; S. 18AA of Forest Act; s. 69 of CFL Act</td>
<td>s. 67A (1) of CFL Act: Parks Victoria; s. s. 11 of PV Act: Parks Victoria; S. 16A, S.17(2)(b), 17F(b) of NP Act: parks Victoria does not have power to manage land; Traditional Owner Land Management Board manage land; Parks Victoria only consult relevant plan; s. 69 of CFL Act: Parks Victoria</td>
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<td>E</td>
<td>DEECA EMV</td>
<td>s. 61A, 61D of Forest Act; S. 55 of EM Act</td>
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<td>VicForest operate DELWP lands; s. 11 of CFL Act</td>
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<td>H</td>
<td>Parks Victoria GLWAC</td>
<td>s. 58, 40, 44, 48, 51 of PV Act; s. 74A of Aboriginal Heritage Act, s. 69 and s. 82PA of the CFL Act, s. 16A of NP Act</td>
<td>s. 58, 40, 44, 48, 51 of PV Act: Parks Victoria consult from GLWAC s. 69 and s. 82PA of the CFL Act: GLWAC – plan for Parks Victoria’s land s. 16A of NP Act: parks Victoria does not have power to manage land; Traditional Owner Land Management Board manage land</td>
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<td>s. 37A of NP Act</td>
<td>Parks Victoria do the land management in construction under the Head, Transport for Victoria’s consent</td>
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<td>s. 20 and s. 62C of Forest Act</td>
<td>Both</td>
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<td>VicForest operate Parks Victoria’s lands</td>
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### DEFINITIONS

<table>
<thead>
<tr>
<th>Term</th>
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<tr>
<td>Arterial Road</td>
<td>A high-capacity urban road that sits below freeways/motorways on the road hierarchy in terms of traffic flow and speed</td>
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<td>Crown Land</td>
<td>Land that is owned by the government</td>
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<td>Crown Land Reserve</td>
<td>Public land that has been set aside for public purposes for the enjoyment and benefit of the people of Victoria</td>
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<td>Freehold Land</td>
<td>Privately owned land</td>
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<tr>
<td>Government Owned Freehold</td>
<td>Freehold land that has been purchased by the Crown, thereby making the Crown the registered proprietor</td>
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<tr>
<td>Land Management</td>
<td>The process of managing the use and nature of land and land resources</td>
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<tr>
<td>Native Title Land</td>
<td>The recognition that Indigenous people have rights and interests to land and waters according to their traditional law and customs as set out in Australian law</td>
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<td>Non-Arterial Road</td>
<td>A State road which is not a freeway or an arterial road</td>
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<td>Riparian Land</td>
<td>Riparian land is the land that runs along rivers, creeks, estuaries, lakes, and wetlands. Riparian land can vary in width from a narrow strip to a wide corridor.</td>
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<tr>
<td>Water Catchment</td>
<td>Areas where water is collected by the natural landscape. Catchments include rivers, lakes, reservoirs etc.</td>
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3 These definitions are working guides for ease of use of this Guidebook. They are not legal definitions.