Application form for an enforcement order under the Traditional Owner Settlement Act 2010

VCAT victorian civil & administrative tribunal

Planning and Environment List
Phone: 1300 018 228
Email: admin@vcat.vic.gov.au

Privacy statement

A copy of VCAT's privacy policy is available on the VCAT website, go to www.vcat.vic.gov.au/privacy.

Getting started

Who can make this application?

Only a traditional owner group entity or an authorised representative of the traditional owner group entity can make this application about how activity involving the use of land may be in violation of a land use agreement under the *Traditional Owner Settlement Act 2010*.

You must pay a fee to apply. If you are experiencing financial hardship, you may apply to have the fee waived, reduced or postponed by completing our Application for fee relief form and attaching it to this application form. To find out more about fee relief, go to www.vcat.vic.gov.au/feerelief.

Information that must accompany your application

- Plans or other documents describing the land that is subject to the land use activity agreement
- A copy of any relevant land use agreement
- Facts relied on in support of the application including a description of how the traditional owner group considers the land use activity has or is likely to contravene the Act (attach a separate sheet if necessary)
- Details of order(s) you are seeking VCAT to make, attach a separate sheet if necessary
- List of the names and addresses of people notified of the application – see section 66A(2) of the Act, attach a separate sheet if necessary
- List of names and addresses of any other persons who the applicant considers may be adversely affected by the application for an enforcement order, attach a separate sheet if necessary

If your application is incomplete, you do not include all the material and information required or do not pay the application fee, your application may be rejected or struck out.

Information about enforcement orders

Please read VCAT's Practice Note PNPE10 – Enforcement Orders & Interim Enforcement Orders – Traditional Owner Settlement Act 2010 before completing this form.

VCAT Reference Number (Office Use Only) | P

Traditional owner group

Name of the traditional owner group	

Address and contact details of applicant

All correspondences will be sent to the applicant(s) at the address or email you have provided under the Applicant Details section, unless the Details of Representative section is completed, in which case all correspondence will be sent to the representative's address or email. Complete only one section. Do not complete both sections.

Applicant details

Name of contact(s) for the traditional owner group

Address			
Suburb		Post code	
Business phone		After hours phone	
Mobile		Fax number	
Email			

Details of representative (if applicable)

Name/Firm	
Reference number / Contact person	

Address			
Suburb		Post code	
Business phone		After hours phone	
Mobile		Fax number	
Email			

Details of people or bodies to be notified

List the names and addresses of the people or bodies you must notify about this application – see section 66A(2) of the Act.

Name of the responsible person in relation to the land use activity	

Address of the responsible person

Suburb		Post code	

Name of the decision maker in relation to the land use activity	

Address of the decision maker

Suburb		Post code	

Name of the Act under which the agreement land is managed	
Body responsible for managing the agreement land under that Act	

Address of the responsible body

Suburb		Post code	

Details of any other persons who may be affected by the enforcement order

Is there anyone else who may be adversely affected by the enforcement order?

Person 1 Person's name	

Address of Person 1

Suburb		Post code	

Person 2 Person's name	

Address of Person 2

Suburb		Post code	

Person 3 Person's name	

Address of Person 3

Suburb		Post code	

Attach a separate sheet with you need to list more people who may be affected.

Information about the land

If there is no conventional address (street number, street and locality) insert a land description:

- Certificate of Title volume and folio
- Lot and lodged plan number;
- Crown allotment; or
- Section number /Township/Parish.

Address or description of the land to which the enforcement order will apply

Details of the land use activity

Provide the following information and material to assist the Tribunal to process your application as quickly as possible.

☐ Copy of the relevant Recognition and Settlement Agreement

☐ Copy of the relevant Land Agreement or Land Use Activity Agreement

☐ Copy of any other relevant reports, correspondences or material

Describe how the land use activity is or will be in breach of the *Traditional Owner Settlement Act 2010*.

Attach a separate sheet if necessary.

Proposed orders

VCAT can make an order directing someone to do one or more of the following:

- to stop the land use activity within a specific period
- not to start the land use activity
- to cancel or suspend the land use activity
- to restore the land as much as practicable to the condition it was in before the land use activity started
- to do something that ensures the *Traditional Owner Settlement Act 2010* is followed.

You should be very specific about what you want VCAT to order, including any time limits for undertaking the actions you want in the enforcement order.

Specify in precise terms the enforcement order you propose

Attach a separate sheet if necessary.

Other proceedings affecting the land

Do you know of any other proceedings relating to or affecting the land, such as a planning permit application or an application for review? If so, give details including VCAT reference numbers, if possible.

Attachments

Attach the following documents to this application. Label the documents you are attaching to this application with a reference number (for example, 'Attachment A'). Tick each document you are providing on the table below and write the reference number you have given it.

☐ Title search of the land (not more than 14 days old) if available	Ref. No.	
☐ Copy of any plans or maps showing the area of the agreement land	Ref. No.	
☐ Copy of the relevant Recognition and Settlement Agreement	Ref. No.	
☐ Copy of the relevant Land Agreement or Land Use Activity Agreement	Ref. No.	

☐ Details of how the *Traditional Owner Settlement Act 2010* was – or is at risk of being – violated, and the facts on which this application is based, if a separate attachment is necessary	Ref. No.	
☐ Details of proposed order(s), if a separate attachment is necessary	Ref. No.	
☐ List of notified parties, if a separate attachment is necessary	Ref No.	
☐ List of adversely affected persons, if a separate attachment is necessary	Ref No.	
☐ Other attachments (if relevant)		
☐ _____	Ref. No.	

Attach a separate schedule of attachments if you have more documents.

Hearing time and complexity

Tell us how long it will take to present your complete case at the hearing (submissions plus witnesses) and the number of expert or lay witnesses you intend to call, if any.

Time to make submissions & present evidence: ☐ Hours ☐ Minutes

Number of witnesses: ☐ Expertise: ☐

See VCAT's Practice Note PNVCAT2 – Expert Evidence for information about the obligations of expert witnesses and what must be included in the report of an expert witness.

Are you seeking a compulsory conference?

◯ Yes ◯ No

A request for a compulsory conference does not always mean that VCAT will schedule one. However, VCAT may decide to schedule a compulsory conference even if parties do not request it.

Interim enforcement order

Do you intend to apply for an interim enforcement order under section 66E of the Act?

◯ Yes – go to Part B ◯ No – go to the Acknowledgement section

PART B – INTERIM ENFORCEMENT ORDER

Only complete Part B if you wish to apply for an interim enforcement order. You must pay an additional fee for an interim enforcement order, unless you have applied for a fee waiver.

Under Section 66E of the *Traditional Owner Settlement Act 2010*, you can apply for an interim enforcement order in urgent cases to prevent serious or irreversible damage, pending the hearing of an application for an enforcement order under section 66A of the Act.

If the situation is urgent and you wish to prevent serious or irreversible damage to the land or the interests of the traditional owner group, you can apply for an interim enforcement order. If VCAT makes an interim enforcement order, the order stays in effect for a limited time, usually until VCAT decides on the case.

An application for an interim enforcement order should be supported by an affidavit swearing to the truth of the contents of the application and of any other facts on which the application is based.

Why do you want an interim enforcement order?

State what harm you expect to happen if an order is not made. What would be the effect of not making the interim enforcement order? Attach a separate sheet if necessary.

You must usually serve (send) a copy of your application to:

- the people responsible for the land use activity
- the people who made the decision to conduct the land use activity
- the body responsible for managing the land
- any other person VCAT instructs you to notify.

Has notice of this application been given to the parties above?

◯ Yes ◯ No

If you answered **no above**, explain why the case is so urgent that an interim enforcement order should be made before notice is given to any other person that may be affected by this application. Attach a separate sheet if necessary.

Proposed interim enforcement order

VCAT may direct any person against whom an interim enforcement order is made to do one or more of the following:

- stop the land use activity immediately or within a specific period
- not to start the land use activity
- suspend the land use activity
- do something else that ensures the Act is followed.

What do you want included in the interim enforcement order?

Specify in precise terms the interim enforcement order you seek.

Acknowledgement

I acknowledge that:

- To the best of my knowledge, all information provided in this application is true and correct and that no details relevant to the application have been left out.
- I approve the information that has been provided.
- It is an offence under section 136 of the *Victorian Civil and Administrative Tribunal Act 1998* to knowingly give false or misleading information to VCAT.

Name of person completing this application	
Date	

About VCAT fees

VCAT fees are charged according to three levels:

- **corporate** fees for businesses and companies with a turnover of $300,000 or more in the previous financial year, corporate entities, schools and government agencies
- **standard** fees for individuals, not-for-profit organisations, and small businesses and companies with a turnover of less than $300,000 in the previous financial year. Companies must provide a statutory declaration to support this claim
- **concession** fees for people who hold an Australian health care card, pensioner concession card or a veteran gold card. You must provide a copy of your card with your application.

To find out if you need to pay an application fee and how much it costs, go to vcat.vic.gov.au/fees.

Checklist

Before you lodge this application, make sure you have:

☐ Completed all details and responded to all questions.
☐ Attached all documents regarding fees (e.g. fee waiver documents, or credit card form)
☐ Attached and properly referenced all of the attachments listed in this form.

How to lodge your application

Post it to:	**Deliver it in person to:**
VCAT Planning and Environment Division Environment and Resources List GPO Box 5408 Melbourne VIC 3001	You can submit your application in person at one of our venues. To find your closest venue, visit vcat.vic.gov.au/visit

Fee relief

We can reduce or not charge (waive) a VCAT fee in certain circumstances.

Some people are automatically entitled to a full fee waiver. You can also apply for fee relief if paying the fee would cause you financial hardship.

For more information, go to www.vcat.gov.au/feerelief.

Are you applying for fee relief?

○ No – complete **Fee payment** section

○ Yes – complete **Fee relief form** and attach it to this application form

Payment by credit card

Complete this section unless you are applying for fee relief or no fee is payable.

◯ Visa ◯ MasterCard

Choose the fee level:

◯ Standard ◯ Corporate ◯ Concession

Fee amount charged ($)

Cardholder name

Card number

Card expiry date

What will happen after you lodge your application?

After you lodge your application, VCAT will set a date for a practice day hearing to consider the application and its future conduct. VCAT will issue an initiating order setting out the date for the practice day hearing and giving directions about steps that you and other parties to the proceeding must follow. The initiating order will set dates by which each step must be completed. A date will be allocated once we receive all information we need for your application.

If you do not follow the VCAT's initiating order by the dates specified in the order, your application may be struck out without further notice. If you are unable to comply with any aspect of the initiating order, you must apply to VCAT in writing for an extension of time.