

Legal Update: Changes to native vegetation protection laws

A legal perspective on recent reform of
environmental & planning laws in VIC and NSW

Legal update: Changes to native vegetation & biodiversity conservation laws

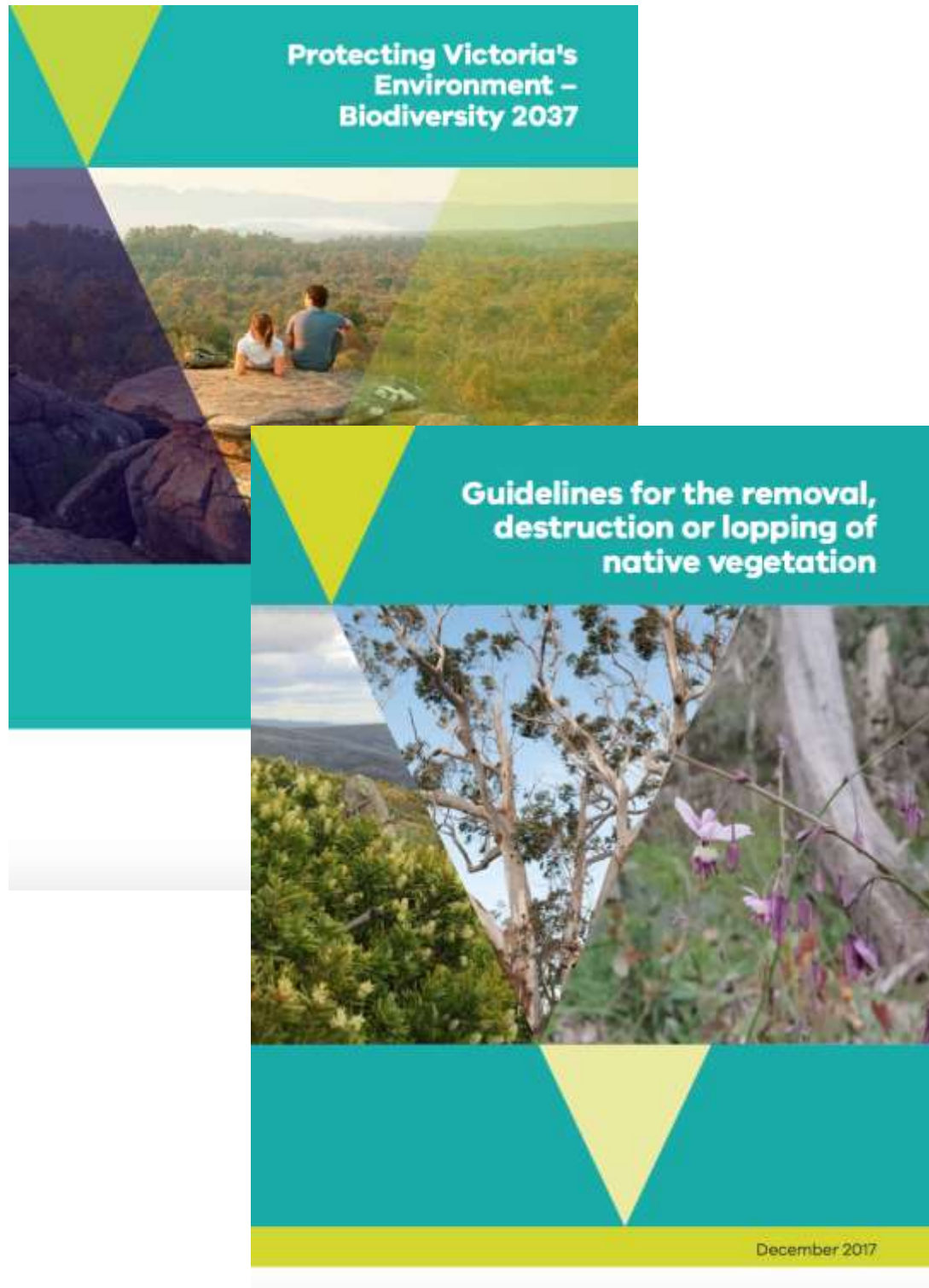
VIC: Key
changes:
what,
when

NSW: Key
changes:
what,
when

Implications

Legal risk
and
compliance

VIC: Legal update



Planning scheme amendment VC138 December 2017

- Affects future land use and development
- There are existing exemptions to ensure that the transport system can continue to operate - note exemptions have been updated recently

Key changes

- Amended Clause 52.17 and Clause 52.16
- Updated State Planning Policy Framework Clause 12
- New “*Guidelines for the removal, destruction or lopping of native vegetation*” which replace the former guidelines “*Permitted clearing of native vegetation - Biodiversity Assessment Guidelines*”;

Key implications

- The changes introduce a greater degree of rigour for the assessment of native vegetation removal applications (particularly those at the lower end of the risk spectrum). There is a renewed expectation that vegetation removal should be avoided where possible.
- Avoid and minimisation statement and offset strategy required for all assessment pathways
- 3 re-cast assessment pathways:
 - Basic - limited impacts on biodiversity.
 - Intermediate - could impact on large trees, endangered EVCs, and sensitive wetlands and coastal areas.

Detailed - could impact on large trees, endangered EVCs, sensitive wetlands and coastal areas, and could significantly impact on habitat for rare or threatened species.

- Biodiversity value of native vegetation now considers:
 - Habitat for rare or threatened species
 - Large trees
 - Endangered Ecological Vegetation Classes - Sensitive wetlands and coastal areas

In addition to the 4 pre-existing criteria

- Extent
- Condition
- Strategic biodiversity value
- Habitat for rare or threatened species

VIC

NSW: Legal update

New Land Management Framework - August 2017

- repeal of the *Native Vegetation Act 2013*
- repeal of the *Threatened Species Conservation Act 1995*
- replacement of those regimes with a new *Biodiversity Conservation Act 2016*;
- new provisions of the *Local Land Services Act 2013*
- a new State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017 (Vegetation SEPP)

NSW

NSW: Legal update

Any land (principally rural land) **other than:**

(a) urban areas of the State to which [State Environmental Planning Policy \(Vegetation in Non-Rural Areas\) 2017](#) applies. Thus urban areas to which the SEPP doesn't apply are relevant

(b) national park estate and other conservation areas, namely:

i. a wilderness area declared under the [Wilderness Act 1987](#), or

ii. land reserved under the [National Parks and Wildlife Act 1974](#) or acquired by the Minister administering that Act under Part 11 of that Act, or

iii. land dedicated or set apart as a flora reserve under the [Forestry Act 2012](#) (or any Act repealed by that Act), or

iv. land to which an interim heritage order or listing on the State Heritage Register under the [Heritage Act 1977](#) applies, or

v. a declared area of outstanding biodiversity value under the [Biodiversity Conservation Act 2016](#), or

vi. an area declared to be critical habitat under Division 3 of Part 7A of the [Fisheries Management Act 1994](#), or

vii. a declared World Heritage property within the meaning of the [Environment Protection and Biodiversity Conservation Act 1999 of the Commonwealth](#), or

viii. land dedicated or reserved under the [Crown Lands Act 1989](#) for similar public purposes for which land is reserved, declared or listed under the other Acts referred to in this paragraph, or

ix. land to which an interim protection order under Part 11 (Regulatory compliance mechanisms) of the [Biodiversity Conservation Act 2016](#) applies, or

x. Lord Howe Island,

(c) State forestry land, namely:

(i) land that is a State forest or timber reserve under the [Forestry Act 2012](#), or

(ii) land acquired under Division 4 of Part 3 of the [Forestry Act 2012](#) for the purposes of a State forest (not being any such land acquired for the purposes of a timber plantation).

Local Land Services Act 2013 applies

Environmental Planning and Assessment Act 1979 and State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017 apply

Urban areas of the State to which *State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017* applies. The Vegetation SEPP applies to the Sydney and Newcastle metropolitan areas, and to all other land in NSW that is zoned for urban purposes or for environmental conservation/ management under the Standard Instrument - Principal Environmental Plan (see Clause 5 for a list of land to which the policy applies)

National park estate and other conservation areas

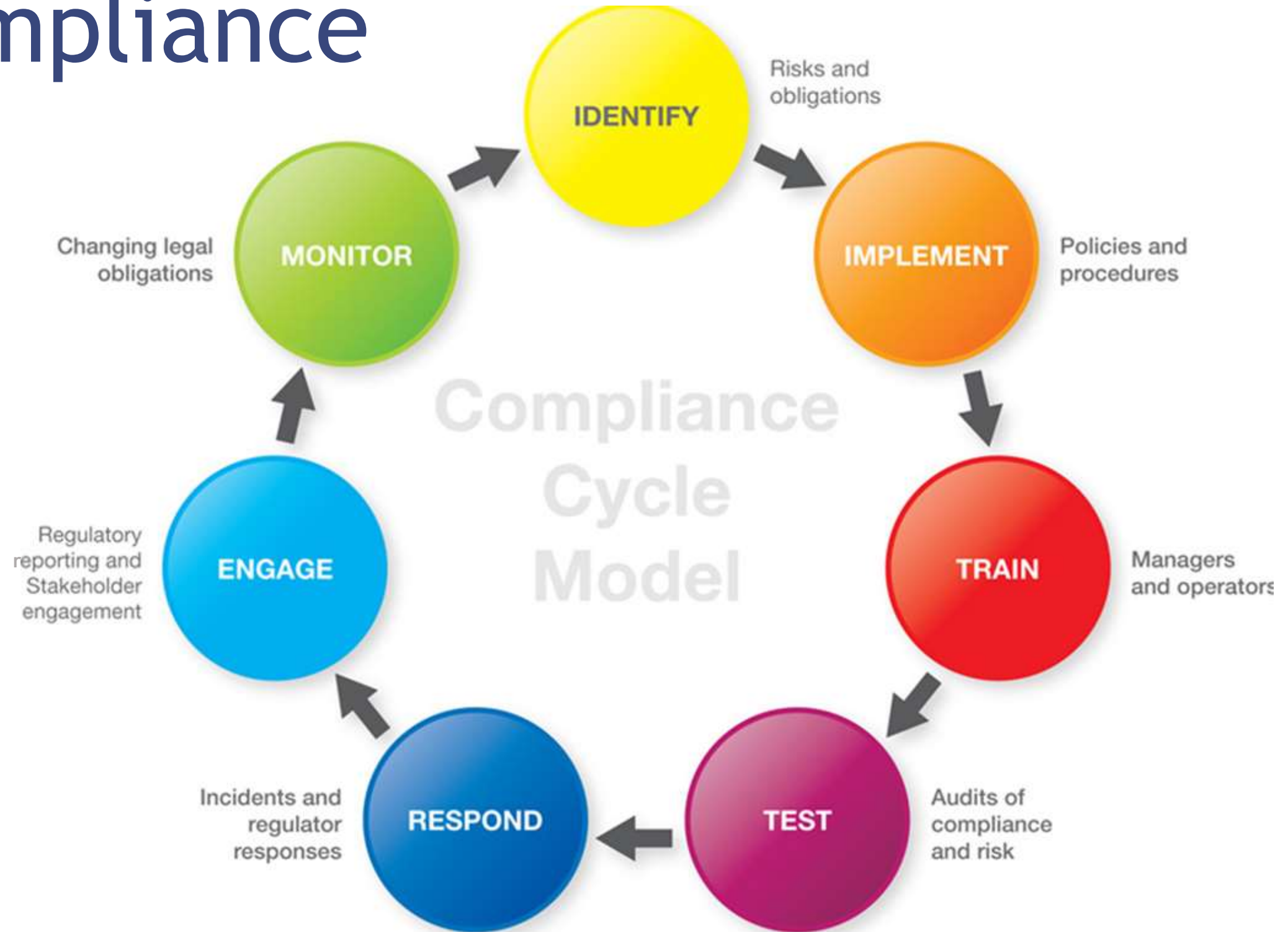
Environmental Planning and Assessment Act 1979 and Biodiversity Conservation Act 2016

Key implications

NSW

- Regime established to provide clarity to land managers, but hasn't properly addressed impacts on other industries and land uses, e.g. linear infrastructure for utilities.
- Approvals pathway now generally depends on land type
- For larger linear infrastructure - may be traversing numerous different land types with different approvals pathways
- New requirements for biodiversity reports - *Environmental Planning and Assessment Act* has effect subject to the provisions of Part 7 of the *Biodiversity Conservation Act 2016* (Section 5AA of the EP&A Act). In effect, this means that the *Biodiversity Conservation Act* contains additional requirements to the assessments, consents and approvals under the EP&A Act. If a proposed development is likely to significantly affect threatened species, an application for development consent is to be accompanied by a biodiversity development assessment report
- New offset requirements
- Lack of clarity on clearing of re-growth vegetation

Legal risk and compliance



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