



Client Newsletter

Reforms to Native Vegetation Regulation July 2013

Policy and regulatory reforms

1. The Victorian Government is reforming the regulation of Victoria's native vegetation. These reforms will come into effect in September 2013.
2. The reforms centre on the new Victorian Government policy: *Permitted Clearing of Native Vegetation - Biodiversity Assessment Guidelines* (2013) (**New Policy**).
3. The New Policy will replace *Victoria's Native Vegetation Management - A Framework for Action* (2002) (**Old Policy**).

How will the reforms be implemented?

4. As with the existing regulation of native vegetation, the New Policy will primarily be implemented through Victoria's planning schemes.
5. In September 2013 the New Policy will be incorporated into the Victoria Planning Provisions (**VPPs**) and all planning schemes, replacing the Old Policy. Strategic planning and site specific decision making about native vegetation will then be guided by the New Policy.
6. There will also be associated changes to the following clauses of all planning schemes:¹
 - Clause 12 Environmental and Landscape Values (part of the State Planning Policy Framework);
 - Clause 52.16 Native Vegetation Precinct Plan; and
 - Clause 52.17 Native Vegetation.

Summary

- The Victorian Government has released a new policy: *Permitted Clearing of Native Vegetation - Biodiversity Assessment Guidelines* (2013).
- The new policy replaces *Victoria's Native Vegetation Management - A Framework for Action* (2002) and seeks to ensure that clearing of native vegetation results in no net loss to Victoria's biodiversity. This is a policy shift from the previous requirement for 'net gain'.
- In September 2013, the new policy will be incorporated into all planning schemes in Victoria. There will also be associated reforms to the State Planning Policy Framework, and planning controls concerning the removal of native vegetation.
- The reforms will introduce new risk-based pathways for permit applications to remove native vegetation. Most applications will fall in the low risk pathway, which has fewer application requirements than other pathways.

What has changed?

Native Vegetation Policy

7. This reform represents a significant shift in native vegetation policy. The New Policy seeks to ensure that permitted clearing of native vegetation results in no net loss in the contribution made by native vegetation to Victoria's biodiversity. This is in contrast to current policy,² which seeks to achieve a net gain in the extent and quality of native vegetation.

State Planning Policy

8. State planning policies in relation to biodiversity and native vegetation management³ will be amended to reflect and incorporate the New Policy.

Amongst other things, strategic planning must more specifically consider the impacts of land use and development on Victoria's biodiversity (particularly high value biodiversity), and permitted clearing must result in 'no net loss' to the contribution made by native vegetation to Victoria's biodiversity.

9. Biodiversity remains broadly defined, and thus any proposed clearing of native vegetation will need to carefully consider any impact that clearing might have on any flora, fauna and the ecosystem.

Permit applications

10. Planning permits will still be required under clause 52.17 of Victoria's planning schemes to remove native vegetation.⁴ Permit requirements for native vegetation precinct plans will also continue to apply. However, there will be extensive changes to the permit application requirements and processes.
11. Permit applications will now be categorised into low, moderate and high risk-based pathways. The risk categories are defined in the New Policy.
12. Applications in the moderate and high risk-based pathways have additional application requirements compared to the low risk pathway. These include a habitat hectares assessment and information about steps taken to minimise the impacts of native vegetation removal on biodiversity, as well as an offset strategy. There are also additional decision guidelines for moderate and high risk-based pathway applications.
13. Most permit applications will fall into the low risk pathway. The low risk pathway has a more streamlined process, and fewer requirements. Low risk applications will, therefore, be simpler to make and deal with.
14. The familiar three-step approach of 'avoid, minimise, offset' will remain, but is intended to apply differently across the three risk-based pathways.⁵ For example, applications in the low risk pathway are not intended to be required to demonstrate avoidance or minimisation of removal of native vegetation.

Biodiversity management in Melbourne's growth corridors

15. Areas of biodiversity value within Melbourne's growth areas will be managed according to the Biodiversity Conservation Strategy for Melbourne's Growth Corridors (**BCS**) released in May 2013. The BCS provides a different approach to the management of matters of national environmental significance⁶ and for meeting State requirements in relation to native vegetation in Melbourne's growth corridors. It sets out required conservation measures which aim to streamline the approval process.

What hasn't changed?

16. None of the exemptions from the permit requirement to remove native vegetation are to be changed in this package of reforms. Accordingly, the existing exemptions for timber production, fire protection and road safety, amongst others, will be unaffected.

For further information or legal advice, please contact:

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The information contained in this newsletter is provided for general information only and should not be relied upon as legal advice for a particular matter.

¹ Amongst others.

² Set out in clause 12.01-2 and the Old Policy.

³ Clauses 12.01-1 and 12.01-2 of the VPPs, respectively.

⁴ Unless an exemption applies under clauses 52.17-7 or 62.

⁵ *Permitted Clearing of Native Vegetation - Biodiversity Assessment Guidelines* (May 2013) at [2.1].

⁶ Under the Commonwealth's *Environment Protection and Biodiversity Conservation Act 1999*.