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rejected without being determined. Sections 82C and 82D are also being inserted to provide further guidance on the management of review procedures under ss 82A and 82B, and to clarify the effect of decisions made by the reviewing body under these sections.

Review of application to modify a development consent

Sections 96(6)–(7) and 96AA(3)–(4) of the EP&A Act which deal with the deemed refusal period and appeals to the Court will be repealed and replaced. The deemed refusal period will be moved to the regulations.

Section 96AB is being inserted into the EP&A Act. This will allow for an applicant to seek Council's review of their own decision in relation to the modification of a development consent.

It should be noted that several determinations (for example, modification of a complying development certificate, designated developments and integrated developments) will not be subject to review by Council under s 96AB.

The Bill was introduced by the Government and was supported by the Opposition. It has recently just passed and is now awaiting assent.

Local Government Amendment (Environmental Upgrade Agreements) Bill 2010

by Ashleigh Egan, solicitor

The Local Government Amendment (Environmental Upgrade Agreements) Bill 2010 (EUA Bill) seeks to amend the *Local Government Act 1993* (NSW) to make provision for environmental upgrade agreements (EUAs).

The legislation is intended to allow businesses

to access capital to implement larger projects over a timeframe that may be longer than many businesses' usual investment timeframe. Longer term loans at lower interest rates can be provided because the loan becomes a charge fixed to the land, rather than to the building owners' businesses.

The scheme may provide a split incentive to landlords and tenants. Currently, in most circumstances, a building owner makes the decisions about implementing energy efficiency upgrades but the tenants often receive the most benefits through lower power bills etc.

EUAs can overcome this through lease provisions that provide for proportional pass-through of local council rates and changes. This will mean that tenants may pay a smaller power bill but also pay a contribution to repaying the costs of the upgrade works.

To protect the tenant, the EUA Bill provides that the amount recoverable by the lessor as a contribution must not exceed a reasonable estimate of the cost savings to be made by the lessee, as a consequence of the environmental upgrade works provided for by the EUA.

The scheme aims to complement Commonwealth measures such as measures under the *Building Energy Efficiency Disclosure Act 2010* (Cth) and the commencement of additional tax benefits for building owners who upgrade their building's environmental performance from 1 July 2011.

EUAs facilitate the funding of environmental upgrades of commercial buildings with the aim of improving energy efficiency in the building sector.

This Bill was passed on 29 November 2010 and is now awaiting assent.

VICTORIA

Barnaby McIlrath & Wayne Gumley

The Traditional Owner Settlement Act 2010 (Vic)

The *Traditional Owner Settlement Act 2010* was passed on 14 September 2010 and came into force 23 September. It introduces a process to resolve native title in respect of Crown land in Victoria under a mediation framework.

The first agreement signed under the Act brought to an end a 13-year native title court battle. The \$12m agreement between the Gunaikurnai people and the Victorian and federal governments was signed at Knob Reserve in Stratford. It formally recognises the Gunaikurnai as traditional owners

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in Gippsland, granting them land rights to an area extending from west Gippsland near Warragul, east to the Snowy River, and north to the Great Dividing Range. It also includes 200 metres of sea-country and provides for joint-management of 10 parks and reserves. Attorney-General Rob Hulls said the landmark agreement entitled the Gunaikurnai to a range of economic and other opportunities, and that the:

agreement goes some way to addressing the years of dispossession experienced by Victorian indigenous people over time and is a significant step in the delivery of land justice for traditional owners in Victoria.

See: <http://www.heraldsun.com.au/news/victoria/gunaikurnai-aboriginal-win-landmark-native-title-rights-in-gippsland/story-e6frf7kx-1225942381244>

Transport Integration Act 2010 (Vic)

The *Transport Integration Act 2010 (Vic)* was passed on 2 March 2010 and commenced 1 July 2010. It created a new framework for the provision of an integrated and sustainable transport system in Victoria to contribute to an inclusive, prosperous and environmentally responsible State. The Act introduces a suite of objectives and decision making based on the principles of ecologically sustainable development. 'Transport bodies' and 'interface bodies', as defined, must have regard to the objectives and principles of the Act where their decisions may have a material effect on the operation of the transport system.

See: <http://www.transport.vic.gov.au/legislation>

Environment Effects Act inquiry lapses

The Victorian Parliament's Environment and Natural Resources Committee – one of its Joint Investigatory Committees – was due to report on the effectiveness of Victoria's environmental impact assessment process by 5 October 2010. No public statement has been made as to why the report was not tabled before Parliament was prorogued for the state election, causing the inquiry reference to lapse.

See: <http://www.parliament.vic.gov.au/enrc/>

EPA regulatory matters

Following the events at the Cranbourne landfill which leaked landfill gas through the Brookland

Greens Estate, the Victorian EPA has published a revised policy on best practice management of landfills known as the Landfill Best Practice Environmental Management (BPEM) Guidelines.

Standards for buffer distances, landfill design, construction, gas management, rehabilitation and community engagement have been updated. EPA is currently developing guidance on landfill gas monitoring for release in 2011 and continues to work with wider Victorian government on buffer issues.

See: <http://epayoursay.com.au/lfbpem>

In June 2010 Victoria's Environment Protection Authority (EPA) cancelled Mobil Refining Australia Pty Ltd's accredited licence for its Altona plant. This means that Mobil will no longer be entitled to a reduced licence fee and will be required to apply for works approvals in certain circumstances.

See: www.epa.vic.gov.au/publications/epanews/news_briefs.asp

The Auditor-General's Report into EPA Management of Hazardous Waste: the EPA website records the release of this report, which is highly critical of the EPA's performance in managing hazardous waste. The EPA states that it is implementing most of the recommendations in the report and is changing the way it works.

See: www.epa.vic.gov.au/publications/epanews/news_briefs.asp

Former Government's Climate Change White Paper Implementation Plan

The Implementation Plan for the Bracks Government's White Paper was released in October 2010. The *Climate Change Act 2010* has not yet been proclaimed. The Baillieu-led opposition did not oppose the legislation.

Under the plan, the EPA's expanded regulatory powers were to be used to introduce an emissions intensity standard for new power stations of 0.8 tonnes of carbon dioxide equivalent per megawatt hour. This would effectively prevent the construction of any new power stations based on conventional brown coal technologies. Emissions from existing brown coal-fired electricity generators may be regulated if agreement on a phase-down cannot be negotiated and a national carbon price is not in place. Other policy options addressed include the

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setting of a greenhouse gas 'trigger' for large emitters, enabling the regulation of greenhouse gases as part of licensing and works approvals. This investigative process was to be led by the Department of Premier and Cabinet.

Amendments to the *Environment Protection Act 1970* (Vic) do not in themselves introduce any new requirements for business and industry. Any proposed changes to regulations or statutory policies under the EPA's new head of power are required by law to be subject to a full public consultation and impact assessment process and be independently examined by the Victorian Competition and Efficiency Commission.

The Government will also engage stakeholders in developing any regulations to ensure they are effective and targeted. The Government will establish an Industry Advisory Group under the Premier's Leadership Forum to advise on appropriate models to drive best practice approaches and technology in Victoria's highest emitting general industry and commercial sites. The Advisory Group will be chaired by an eminent businessperson or high level advisor to business, and members will include peak bodies and leading industry organisations.

See: <http://www.premier.vic.gov.au/climate-change/12499-the-implementation-plan.html>

TASMANIA

Jess Feehely

Tasmanian Charter of Rights may include a right to environmental sustainability

In October 2010 the Tasmanian Government released a directions paper on a proposed model for a legislated charter of rights, following the examples set by Victoria and the ACT. The proposed charter goes beyond the civil and political rights adopted in other Australian charters and includes a range of social, cultural and economic rights.

In 2006–07 the Tasmanian Law Reform Institute undertook an extensive research and consultation project regarding the need for a Tasmanian charter of rights. Over 350 submissions were received and the resulting report, *A Charter of Rights for Tasmania*, included strong recommendations in favour of a Charter of Rights. The Law Reform Institute specifically recommended that the charter include 'the right to a safe environment and to the protection of the environment from pollution and ecological degradation.'

The discussion paper also seeks feedback from the public regarding a number of the rights being considered, including the right to have the environment protected for present and future generations through reasonable legislative and other measures. Such a right would be consistent with the current objectives of the relevant planning and environmental legislation in Tasmania and the rights advanced by charters in other jurisdictions

such as South Africa and Norway.

The government proposes to replace the Office of the Anti-Discrimination Commissioner with a Human Rights Commission to conduct education activities, receive complaints, enquire into whether programme and service delivery is consistent with the Charter and ask the Supreme Court to determine whether legislation meets standards set by the Charter.

Comments can be made on the directions paper until 14 January 2011.

See: www.justice.tas.gov.au/corporateinfo/projects/human_rights_charter.

Forests Statement of Principles signed

On 14 October 2010, a number of conservation and forest industry groups in Tasmania signed an historic statement of principles aimed at resolving the conflict over forests, protecting native forests and developing a strong, sustainable timber industry. Signatories include Timber Communities Australia, the Construction, Forestry, Mining and Energy Union (CFMEU), Forest Industries Association of Tasmania, Environment Tasmania, Australian Conservation foundation (ACF) and the Wilderness Society.

The 'Tasmanian Forests Statement of Principles' is an in-principle agreement on a range of issues, including: