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could only be completed in accordance with a works approval granted by the CEO of DEC, and that the date for installing the equipment would fall after the expiration of the licence.¹

On 12 September 2011, Edelman J quashed this part of the minister's decision. The minister's power was to 'subject' the licence to conditions. Justice Edelman held that a condition on a licence must be 'fairly and reasonably related' to the licence. The condition in question did not meet this test, as it did not require Cockburn Cement to do anything within the time period of the licence. Further, the emissions which would be controlled by the condition would not be regulated by the licence, since from 30 March 2012 they would be controlled by a new licence. Therefore, the quashed decision was in excess of power and was a jurisdictional error.

Cockburn Cement's operations manager, Darrin Strange, has said that the technology is unproved, and that the company does not wish to add it to Kiln 5 until it had been demonstrated to be effective at Kiln 6.² The minister responded to residents' concerns by emphasising that

1 See *Cockburn Cement Ltd v Minister for Environment (WA)* [2011] WASC 260.

2 <<http://au.news.yahoo.com/thewest/business/a/-/wa/10245143/cockburn-cement-wins-appeal-over-licence/>>

the other conditions the minister imposed on the licence were upheld, and that the licence conditions were the 'toughest' to date.³

The Department is currently discussing the conditions which will apply to the new licence with Cockburn Cement.

WA's Southern Seawater desalination plant begins operations

On 2 September 2011, three months ahead of schedule, the WA Minister for Environment opened the Southern Seawater Desalination Plant, near Binningup in the Shire of Harvey. Current capacity of the plant is 50 GL per year, with plans to expand to 100 GL by the summer of 2012–13.

The Southern Seawater plant is the second reverse osmosis seawater desalination plant to provide drinking water in Western Australia. The Perth Seawater Desalination Plant in Kwinana, which has a capacity of 45GL per year, was completed in 2006, and was the first to begin operating in Australia.

3 <<http://www.mediastatements.wa.gov.au/Pages/WACabinetMinistersSearch.aspx?ItemId=144242>>

VICTORIA

Cattle grazing in alpine national parks ruled 'clearly unacceptable'

The Federal Environment Minister the Hon Tony Burke MP recently ruled that the Victorian Government's proposed alpine grazing trial would have a 'clearly unacceptable' impact on the national heritage values of the Alpine National Park, and would not receive approval under the EPBC Act 1999.

The Victorian Government had referred the trial to Minister Burke in late 2011, after failing to do so in relation to the first stage of the trial, January – April 2011, when the federal minister ordered the cattle out of the park.

The minister's decision, and his reasons, can be found in the EPBC Act website. The minister's decision that the alpine grazing trial is 'clearly unacceptable' is the strongest possible rejection that the minister can make under the Act, and is rarely exercised.

by Barnaby McIlrath

More frequently, the minister will conduct a more detailed assessment of the possible impacts of the proposal. In this case, however, the minister decided that there was clear scientific and historical literature to support the conclusion that alpine grazing has unacceptably damaging impacts on the ecology and species diversity of the park, and also on its aesthetic and recreational values. See also the Federal update on p7.

VCEC inquiry into a state-based reform agenda

The Victoria Competition and Efficiency Commission (VCEC) is conducting an inquiry into a State-based reform agenda for Victoria, and on 10 November 2011 released its draft report: *Securing Victoria's Future Prosperity: A Reform Agenda*.

Draft recommendation 16 is as follows:

- That the Victorian Government improve the overall business environment in Victoria by reforming major project approval processes to:

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- minimise the required number of project approvals and approvals bodies, and run approval processes concurrently
- reform the Environment Effects Statement (EES) process, having regard to the Commission's recommendations in *A Sustainable Future for Victoria* and the report of the Parliamentary Environment and Natural Resources Committee into the EES process
- integrate and streamline approvals for all major public and private projects by creating an inter-agency strategic project approvals committee with the authority to issue all relevant approvals.

The draft report also hints at the need to review the operation of landfill levies in Victoria. VCEC was required to deliver its final report to the Government on 27 January 2012. All documents relating to the inquiry can be found on the VCEC website.

A Government response to the Inquiry into the Environment Effects Statement Process is due to be finalised by 1 March 2012: see <http://www.parliament.vic.gov.au/enrc/article/1491>

Code of Practice for Timber Production 2007

Submissions on the Victorian Government's proposed changes to the Code of Practice for Timber Production 2007 were open until 1 February 2012. The Victorian Government proposes to alter the Code to give the Secretary of the Department of Sustainability and Environment the power to exempt certain logging practices from complying with Action Statements applicable to species listed as threatened under the *Flora and Fauna Guarantee Act 1988* (VIC). The requirement for VicForests to comply with Action Statements was one of the key factors that allowed Environment East Gippsland to protect threatened species habitat at Brown Mountain in its 2010 Supreme Court case.

Management of contaminated waste

The Victorian Auditor-General's report into the management of contaminated land in Victoria was tabled in Parliament on 7 December 2011: <http://www.audit.vic.gov.au/publications/20111207-Contaminated-Sites/20111207-Contaminated-Sites.html#s60>

Of note, the report made various findings:

The contaminated sites regulatory framework

The framework's regulatory instruments, established and updated over a 20-year period, have evolved separately and have been implemented on an ad hoc basis by the Environment Protection Authority (EPA) and the department of Planning and Community Development (DPCD) in response to specific issues and circumstances.

In several instances, the instruments and their interplay have made the framework unnecessarily complex and unclear. This is particularly so for the Environmental Audit Overlay, Ministerial Direction No 1 for Potentially Contaminated Land and Potentially Contaminated Land: General Practice Note in relation to the requirements for, and guidance around, environmental audits and assessments.

In addition, there are many gaps in the framework — most of which have been known to DPCD and the EPA since at least 2000—that have affected the operation of the framework. These gaps relate primarily to the coverage of the regulatory framework, and the lack of any requirement to report contaminated sites to regulatory agencies; even if risks to human health and the environment are known. Actions to address these gaps only commenced in late 2010.

Governance of the contaminated sites system

Oversight and accountability

With around 100 entities involved in regulating and managing contaminated sites, clear accountability for the development, operation and effectiveness of the overall system is critical. Single point accountability, where one entity oversees the system and processes, and is accountable for its performance, is an effective approach to good governance.

There is, however, no single entity responsible for oversight of the planning and management of potentially contaminated and contaminated sites, or for assessing the effectiveness of the system or framework. The contaminated sites regulatory system operates instead in an uncoordinated way, with each entity managing contamination issues in isolation from the others. As a consequence, there is not a cohesive state-wide

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strategic approach to the planning and management issues associated with potentially contaminated and contaminated sites.

Roles and responsibilities

Clear roles and responsibilities minimise the risk of overlap and duplicated effort. They also establish accountability and attribute responsibility for the success or failure of initiatives. While roles have been established under legislation and the contaminated sites framework, these are not clearly understood or agreed by all stakeholders. In addition, there are gaps in the roles where no agency is accountable or responsible.

The EPA is responsible for regulating contaminated sites where the contamination poses an imminent danger to human health or the environment, and it has issued either a pollution abatement notice or clean-up notice. It also regulates contaminated sites owned or managed by entities that it licenses.

However, there is no agency responsible for oversight of the system in relation to sites that are known to be contaminated and where the risks to human health and the environment may be long-term rather than imminent. Nor does any one entity have oversight of the management of orphan sites.

Issues around the management of orphan sites have been known for at least 11 years, particularly in relation to the lack of responsibility and gaps in the legislation, and there has been a range of recommendations made to address them. Very little action has been taken and many of the issues remain, especially the ongoing risks to human health and the environment.

Risk management

Risk management is fundamental to effective public sector administration. It enables entities to systematically identify and manage risks and opportunities, and also to prioritise actions. Risks can apply at an organisation or state-wide level.

For the management of potentially contaminated and contaminated sites, key inputs into managing risks include knowing where these sites are, whether they are contaminated, the extent and type of contamination and the potential impact on human health, the environment or amenity.

There is no systematic approach within the three councils audited, the EPA and across the state public sector generally, to identify and assess the risks from potentially contaminated and contaminated land. Risk management activities are limited and do not take a state-wide perspective—even though this is a state-wide issue.

An absence of information about contamination across Victoria means that risk management activities are not adequately informed. As a consequence, there is no assurance that the current regulatory approach is the appropriate approach to manage risks associated with site contamination.

The report made the following recommendations:

1. The Department of Planning and Community Development, assisted by the Environment Protection Authority and in consultation with councils, should:
 - undertake a systematic and coordinated review of the entire regulatory framework for the management of potentially contaminated and contaminated sites to improve clarity and address gaps, including:
 - the wording, application and use of the Environmental Audit Overlay
 - the application of the framework for planning permits and planning scheme amendments, and the types of use to which it applies the use, content, guidance material and peer review of environmental site assessments establishing mandatory reporting requirements
 - establish processes to capture information about framework and system issues, and processes to address issues in a timely way
 - establish a performance framework to assess the efficiency and effectiveness of the contaminated sites framework and system.
2. The Department of Planning and Community Development should:
 - assume responsibility and accountability for the leadership, coordination and oversight of the contaminated sites framework
 - establish mechanisms and processes to improve the leadership, coordination,

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oversight and accountability of, and for, the contaminated sites framework and system

- clarify and communicate responsibilities within the framework so that they are clear and understood.

3. The Environment Protection Authority should:

- develop mechanisms and processes that enable the identification and recording of contaminated land
- assess the risks of these sites
- prioritise high-risk sites and actions to manage the associated risks.

4. Councils, with the support of the Department of Planning and Community Development, should:

- develop systems to capture ongoing site conditions to inform their compliance monitoring activities around the development, management and clean-up of contaminated sites
- develop compliance monitoring programs and enforcement processes, consistent with better practice, and perform these activities on a routine basis

- assess the level of expertise and financial resources required to accurately manage and clean up high-risk sites.

PCL Advisory Committee issues and options paper

An issues and options Paper prepared by the Potentially Contaminated Land Advisory Committee appointed by the Minister for Planning was open for comment between September and November 2001. The paper outlines some potential options for reform. A draft revised Environmental Audit Overlay was included as an attachment, which, notably, introduces a planning permit requirement for sensitive land uses within the overlay area. If adopted, this approach would represent a marked shift in the application of the Environmental Audit Overlay in Victoria: <http://www.dpcd.vic.gov.au/planning/panelsandcommittees/current#Contaminated>

The final report of the Advisory Committee was due to be received by the Minister for Planning in December 2011 but is yet to be made public.