Pulp Mill Assessment Act 2007 (Tas) and revoke the pulp mill permit issued under that Act. The Bill will be debated when parliament resumes in May 2011. Pursuant to the conditions of the current permit, Gunns Limited must substantially commence the pulp mill by August 2011.

Moratorium advanced under the Forestry Statement of Principles

One of the principles in the historic agreement between conservation groups, unions and the forest industry signed in October 2010 (see NELR 2010:2–3) was a moratorium

on logging in high conservation value forests on public land. The conservation signatories, the Wilderness Society, Australian Conservation Foundation and Environment Tasmania, subsequently identified approximately 550 000ha of high conservation value forest to be subject to a moratorium, including the Tarkine, Styx and Weld forest areas. However, the apparent lack of government action towards implementing such a moratorium had threatened to derail the ongoing 'forest peace talks'.

On 11 March 2011 the facilitator appointed by the Federal government, Bill Kelty, released an interim agreement outlining the terms of the moratorium.[3] The agreed moratorium provides that no logging will occur in the identified high conservation value areas for a six month period, unless the logging is necessary to meet existing contracts or to assure wood supply for the existing industry. The interim agreement explicitly allows for a 'transition period' whilst arrangements for the moratorium are finalised with Forestry Tasmania, and recognises that negotiations are ongoing to lock in existing native wood supply agreements outside the high conservation values areas until at least 2027. Mr Kelty also emphasised the need for financial assistance from the Federal government to implement the moratorium.

Some conservation groups and the Tasmanian Greens have criticised the interim agreement, arguing that allowing logging where it is considered 'necessary' falls well short of a full moratorium. Several conservation groups have subsequently quit the peace talks.

Negotiations are continuing amongst remaining parties in relation to other aspects of the Forestry Statement of Principles.

Proposed ban on canal estates in Tasmania

The Canal Estates (Prohibition) Bill 2011 was introduced to parliament in March 2011.[4] Consistent with the position adopted in New South Wales and Victoria, the Bill prohibits the use or development of residential canal estates throughout Tasmania. Attorney-General and former Premier, the Hon David Bartlett, made a commitment to introduce a ban on canal estates when announcing his decision to refuse the canal estate development proposed by Walker Corporation in Ralphs Bay Conservation Area in June 2010.

Vexatious litigants

The Vexatious Proceedings Bill 2011 was tabled in March 2011.[5] The Bill aims to deter and curtail the activities of vexatious litigants in Tasmania, following the model legislation adopted in many other Australian jurisdictions. The Bill would allow for vexatious proceedings orders to be made against frequent vexatious litigants, or those who act 'in concert' with such litigants. Vexatious proceedings orders can prohibit a person from commencing proceedings in any court or Tribunal, including the Resource Management and Planning Appeal Tribunal, without the leave of the Supreme Court.

3 www.premier.tas.gov.au/hot_topics/bill_kelty_statement

4 www.parliament.tas.gov.au/bills/pdf/15_of_2011.pdf

5 seel www.parliament.tas.gov.au/bills/pdf/14_of_2011.pdf

VICTORIA by Barnaby McIlrath and Jake Dabscheck

New landscape for Victorian wind farms – local government powers reinstated

On 3 March 2011 the new Minister for Planning announced his intention to make local government the responsible authority for all wind energy facility applications in Victoria.

Amendment VC78, gazetted on 15 March 2011, amended all planning schemes in Victoria to remove the Minister's decision making powers regarding wind energy facilities of 30MW or greater. Amendment VC78 amended the Victoria Planning Provisions by amending cl 19.01 of the SPPF and cl 52.32 – wind energy facility to (among other things):

- include an additional application requirements
- replace the 1998 New Zealand Standard – NZS6808 with the new 2010 version.

Clause 61.01 will make the council the responsible authority for all planning permit applications for the use and development of land for the purpose of a wind energy facility.

Clause 81.01 will introduce the Policy and Planning Guidelines for Development of Wind Energy Facilities in Victoria, March 2011, as an incorporated document and reference the updated document in clauses 19.01 and 52.32.

Wind farm call-in power exercised

In February 2011 the Victorian Planning Minister, the Hon Matthew Guy MLC, called-in from the Victorian Civil and Administrative Tribunal (VCAT) a three-turbine wind farm permit application in Chepstowe, west of Ballarat. The proponent, Future Energy Pty Ltd, took the matter to VCAT after the Pyrenees Shire Council failed to determine the application within the required time frame.

This intervention will be an opportunity for the new Planning Minister to make his mark on how wind farm policy will be implemented in Victoria under the new Government. The Liberal policy on wind farms was released as part of the planning policy package prior to the election last year[1].

Importantly that policy included:

- that the placement of turbines will be no less than two kilometres from the nearest home unless a contract between the resident and wind farm developer is agreed
- the reinstatement of local government as the planning authority for wind farm applications
- the establishment of a shared payment system for land owners whose properties are within 1km of the nearest turbine, as a compensation mechanism for adjacent landholders
- the establishment of no-go zones for wind farms at places such as Wilson's Promontory, the Mornington and Bellarine Peninsulas, Surf Coast and Great Ocean Road region and sections of the Bass Coast.

The policy is yet to be implemented by any planning scheme amendments. In particular, the Minister remains the responsible authority for the use and development of land for the purpose of a wind energy facility with a capacity of 30 MW or greater.

For several reasons, the Chepstowe proposal was a strange choice for making a mark. Firstly, the wind farm only has three turbines and therefore is likely to have limited impacts compared to larger proposals. Secondly, according to the VCAT witness statement of Christophe Delaire[2], the nearest non-stakeholder residential properties are located

approximately 1.1km and 2km from the nearest turbine and the closest property is derelict. The proposal therefore seems to meet the new government policy of providing a two-kilometre buffer from residences.

In his press release of 2 February 2011 the Minister said that 'the proposed wind farm raises significant issues about the placement of turbines close to dwellings, and in environmentally significant locations.'[3]

The call-in process appears to have taken the limited form of hearing or a meeting with the parties convened by staff from the Department of Planning and Community Development, chaired by a Priority Development Panel member. Information for the public about this process is unavailable. The parties were advised that no cross-examination of evidence was permitted. The basis of the Minister's recommendation to the Governor-in-Council for a decision appears to be departmental advice following the hearing. Such a process is relatively unprecedented and may raise natural justice concerns.

Meanwhile, the Sisters Windfarm near Terang, 220km west of Melbourne, has been sent back to VCAT by the Supreme Court[4] for a rehearing after an appeal on a question about which noise standard should be applied. In issue were the *New Zealand Standard NZ6808:1998 Acoustics - The Assessment and Measurement of Sound from Wind Turbine Generators* (*1998 Standard*), and the *NZS6808:2010 Acoustics: Wind Farm Noise* (*2010 Standard*). VCAT had applied the 2010 Standard, however the parties agreed and the Court ordered that VCAT erred by not keeping to the 1998 Standard as referred to in the Planning Scheme.

Unless the Minister also calls in the Sister's Windfarm case, the question for VCAT will arise at the new hearing as to whether or not the pre-election Liberal policy on wind

1 the Victorian Liberal Nationals Coalition Plan for Planning - http://www.vicnats.com/policies/CoalitionPlan/Planning.pdf

2 http://www.chepstowewindfarm.com.au/planning.html#vcat

3 http://www.premier.vic.gov.au/html/020211_001.html

4 The Sisters Wind Farm Pty Ltd v Moyne Shire Council & Ors [2010] VSC 607 (17 December 2010)

farms is a 'seriously entertained' planning policy that it needs to take into account. The Sisters proposal would put turbines within 500m of non-stakeholder residential premises. In speaking to *The Australian* Newspaper on 17 January 2011[5] the Minister stated that he 'would expect VCAT and any other responsible authority for wind farms to be very mindful of the new government's intentions on our setbacks policy before it is formally implemented.'

Living Victoria roadmap for urban water reform

On 11 March 2011 the Liberal-National Coalition Government released its Living Victoria Roadmap for urban water reform, following consideration of advice to the Minister for Water, the Hon Peter Walsh MLA, from a Ministerial Advisory Council. It identifies key areas where future reforms should be focused, including:

- an agreed vision for the contribution of water to urban liveability, through protection from flooding, improving the health of urban waterways and supporting green landscapes
- greater customer choice and innovation in water products on offer, the water charges they pay and their level of service
- improved integration of urban and water planning through planning and building regulations that facilitate integrated water cycle management
- optimised use of all available water sources, including fit-for-purpose alternative water supplies
- better environmental and public health outcomes supported by clear regulations to ensure both customers and the environment are protected
- a common approach to the economic evaluation of water projects to ensure broader benefits, such as downstream water quality and reduced risk of flooding, are recognised
- approaches to pricing that recognise the value of the water resource and reward customers for conserving water
- strengthened institutional and governance arrangements to hold service providers to account for their performance.

The Minister for Water has asked the Ministerial Advisory Council to develop an implementation plan to build upon the roadmap.

Damning Auditor-General report– marine environments

On 2 March 2011 the Victorian Auditor-General tabled a report into *Environmental Management of Victoria's Marine Protected Areas*, concluding that Parks Victoria could not show that marine biodiversity was being protected or that resources were being appropriately allocated. Little environmental management activity was evident within marine protected areas.

The statewide management strategy has neither been fully implemented nor evaluated before expiring in 2010. An absence of regular risk assessment review, detailed action plans and a lack of evaluation—both of management plans and activities—undermine planning at the park level. There were also gaps identified in the Department of Sustainability and Environments lead role in marine environmental policy and marine pest biosecurity.

The report identifies a number of systematic failures in Parks Victoria's planning, management and assessment of its own performance. The Auditor-General also criticised the Department of Sustainability and Environment's failure to develop a comprehensive policy to direct management of the marine environment.

EPA planning and compliance review

The Brookland Greens landfill gas leak emerged publicly in late 2008. The matter is currently the subject of a group proceeding before the Supreme Court of Victoria.

In response to critical findings of recent reviews of the Victorian EPA conducted by the Ombudsman and the Auditor General, commissioned as a result of that incident, the EPA commissioned a review of its compliance and enforcement activities (the Review). The Review was prepared by Stan Krpan, the former director of legal services and investigations at WorkSafe Victoria. In essence, the Review assesses:

- how the EPA educates and supports those with a duty to protect the environment to achieve compliance with the *Environment Protection Act* 1970 (Act) and associated Regulations; and
- how it enforces the law when the Act and Regulations are not complied with.

The Review was delivered to the EPA's chairman and CEO on 31 December 2010. The Review contains 119

5 http://www.theaustralian.com.au/news/nation/test-looms-on-wind-farm-turbine-sites/story-e6frg6nf-1225989024733

recommendations, which address (amongst other things) the EPA's regulatory approach to compliance, monitoring, prosecutions and enforcement matters.

In formulating these recommendations, the Review highlighted a number of deficiencies regarding the EPA's approach to discharging its statutory responsibilities, including that:

- the organisation has become more client focused, with a perception in the community of a lack of independence from business
- there are ambiguities in the standards expected for compliance with the Act, policies and EPA guidelines
- a concern that the EPA has lacked a consistent approach to compliance, and
- a widespread perception that the technical capability of the EPA had diminished.

In order to address these (and other) deficiencies, the Review made a number of recommendations, including:

- that the EPA provide guidance to licensed businesses about the type and frequency of monitoring which should occur in common industries
- a revised enforcement and compliance policy which implements a risk-based model of compliance
- significantly increase the number of prosecutions to ensure there are fair and appropriate consequences for serious offences under the Act
- increase the number of environment protection officers to ensure the EPA effectively discharges its compliance, monitoring and assurance functions and to facilitate a more proactive role in managing environmental incidents
- that the EPA draft a policy position which outlines its preference for restorative orders under s 67AC of the Act and the criteria it will apply to the use of this section
- that the EPA adopt the prosecution guidelines of the DPP and Victoria's Model Litigant Guidelines
- that the EPA prepare an annual compliance plan regarding its priorities for compliance and monitoring
- in issuing an abatement notice, the EPA clearly states one way of achieving compliance or recommending other sources of guidance or advice to achieve compliance, and
- the EPA consider alternatives modes of managing funds, including adopting an 'arms length' approach such as placing management of these funds in another government agency.

It will be interesting to see how the changes are implemented and whether they are matched by appropriate resourcing.

WESTERN AUSTRALIA by Ainsley Reid and Joe Freeman

Conservation Legislation Amendment Bill 2010

If enacted, the Conservation Legislation Amendment Bill 2010 (Bill) will enable the joint management of public and private land and marine protected areas in WA through joint management agreements entered into by the Chief Executive Officer under the Act. The Act will apply to protected areas vested in the Conservation Commission or Marine Parks and Reserves Authority, private land, pastoral lease land and other Crown land. Agreements already committed to under the 2003 Burrup and Maitland Industrial Estates Agreement, the 2005 Ord final agreement and the 2010 Yawuru agreement for Broome will be covered by the Act.

The Act will also provide formal recognition of the importance of land and waters to the culture and heritage of Aboriginal people through a new management planning objective that will apply to all lands subject to the *Conservation and Land Management Act 1984* (WA) and the *Wildlife Conservation Act 1950* (WA).

The Bill passed the Legislative Council in 2010 and was introduced to the Legislative Assembly on 6 April 2011.

Magellan Metals – suspension of lead exports through Fremantle Port

On 7 January 2011, the Western Australian government ordered Magellan Metals to suspend lead exports through Fremantle Port, prompting the company to halt operations