



# Submission

to the

## Environment and Planning References Committee Inquiry into Environmental Design and Public Health

prepared by

**Environment Defenders Office (Victoria) Ltd**

**29 June 2011**

## **About the Environment Defenders Office (Victoria) Ltd**

The Environment Defenders Office (Victoria) Ltd (**EDO**) is a Community Legal Centre specialising in public interest environmental law. Our mission is to support, empower and advocate for individuals and groups in Victoria who want to use the law and legal system to protect the environment. We are dedicated to a community that values and protects a healthy environment and support this vision through the provision of information, advocacy and advice. In addition to Victorian-based activities, the EDO is a member of a national network of EDOs working to protect Australia's environment through environmental law.

### **For further information on this submission, please contact:**

Nicola Rivers, Law Reform Director, Environment Defenders Office (Victoria) Ltd

T: 03 8341 3100

E: [nicola.rivers@edo.org.au](mailto:nicola.rivers@edo.org.au)

### **Submitted to:**

[Keir.delaney@parliament.vic.gov.au](mailto:Keir.delaney@parliament.vic.gov.au)

The Secretary  
Legislative Council Environment and Planning Committee  
Parliament House  
Spring Street  
Melbourne VIC 3002

**29 June 2011**

## SUMMARY OF RECOMMENDATIONS

The EDO recommends:

### **1 Integrate the health and planning law regimes**

- Include public health and wellbeing promotion in the objectives of planning.
- Amend the SPPF to give greater emphasis to public health and wellbeing.
- Amend the VPPs to include the SPHWP and MPHWP, and require responsible authorities to have regard to them in making permit decisions.
- Amend the *Planning and Environment Act* to require planning and responsible authorities to have regard to public health and wellbeing.
- Amend the *Planning and Environment Act* to make key decisions (like making or amending a planning scheme) subject to a health impact assessment.

### **2 Create an open, transparent, inclusive planning system**

- Protect and strengthen the public's right to be notified of and consulted on proposed developments.
- Restrict the Minister's power to 'call in' development proposals under s 97B with legislative criteria that limit its use to genuinely extraordinary circumstances.
- Remove the Minister's power to exempt planning authorities from the normal process for planning scheme amendments, or introduce legislative criteria restricting its use to genuine emergencies.
- Require the Minister to give reasons to Parliament for any such intervention.

### **3 Promote healthy transport**

- Repeal the *Major Transport Projects Facilitation Act 2010 (Vic)*.
- Complement the *Transport Integration Act 2010 (Vic)* with a planning framework that reduces urban sprawl.

### **4 Reduce urban sprawl**

- Require planning authorities to act consistently with ecological sustainability in making or amending planning schemes, and to take all reasonable steps to limit urban sprawl.
- Support and strengthen the Strategic Impact Assessment of the Urban Growth Boundary (UGB) expansion under the *Environment Protection and Biodiversity Conservation Act 1999 (Cth)*.
- Amend the Terms of Reference for the Logical Inclusions Advisory Committee to allow contraction in the UGB, and require the Committee to consider ecological sustainability and public health and wellbeing in making their recommendations.

**5 Prevent harmful pollution**

- Support the EPA and other environmental regulators to be strong and effective in preventing harmful pollution. Implement the recommendations that the Ombudsman, the Auditor-General, the Compliance and Enforcement Review and the EDO have made in this regard.
- Improve the environmental regulations that aim to prevent pollution. In particular, improve the patchwork of laws and regulations that apply to contaminated land.

**6 Protect the natural environment**

- Maintain and strengthen Victoria's native vegetation laws.
- Reform the *Environment Effects Act*.

**7 Address the threat of climate change**

- Support and implement the *Climate Change Act*.
- Include decisions under the *Planning and Environment Act* in Schedule 1 of the *Climate Change Act*, requiring them to consider climate change.

## INTRODUCTION

The EDO welcomes the opportunity to comment on the contribution of environmental design to public health. Although the need to integrate public health and public planning has been recognised for many years, there has always been a gap in converting that recognition into actual legal and policy outcomes. We therefore support the Government's commitment to exploring this area further.

Our interest in this area comes from two sources. One is our experience and expertise in planning and environment law. As the only community legal centre with expertise in planning and environment law, the EDO has been helping members of the public understand and use the Victorian planning system for the last 20 years. Our experience in working with Victorian planning laws has taught us how they work, how they don't work, and how they need to be reformed. The other source of interest is the considerable synergies that exist between a healthy environment and healthy people. Many of the measures discussed below allow government to make Victoria a more sustainable place, and make Victorians a healthier group of people, at the same time and at low cost.

Accordingly, our submission will focus on how the legal framework could be improved to facilitate better outcomes for the environment and public health. We will therefore only address the following Terms of Reference:

- (4) determine opportunities to influence environmental planning and design for health, including consideration of the role of legislation, guidelines, and public-private partnerships, and the costs and benefits of various options; and
- (5)
  - (a) the effectiveness of the Environments for Health Municipal Public Health Planning Framework;
  - (b) the State *Public Health and Wellbeing Act 2008*, the *Transport Integration Act 2010* and the *Planning and Environment Act 1987*.

## 1 INTEGRATE THE HEALTH AND PLANNING LAW REGIMES

At present, Victoria's planning laws are not designed to foster physical environments that support public health. Although there are a number of important laws that encourage and even mandate the promotion of public health, these laws are not integrated into the planning framework. The *Public Health and Wellbeing Act 2008* (Vic), for example, requires local councils to prepare Municipal Public Health and Wellbeing Plans (**MPHWPs**),<sup>1</sup> requires the Minister for Health to prepare a State Public Health and Wellbeing Plan (**SPHWP**),<sup>2</sup> and empowers the Minister to order Health Impact Assessments.<sup>3</sup> But neither of these instruments are a part of the planning framework established under the *Planning and Environment Act 1987* (Vic) (***Planning and Environment Act***). The health and planning regimes are siloed. They do not talk to each other.

Similar comments could be made about planning and environment laws — although Victoria has plenty of both, they are often conceived as separate regimes. Yet a healthy environment and healthy people are closely related — co-dependent even. If the legal system is to promote a built

---

<sup>1</sup> *Public Health and Wellbeing Act 2008* (Vic) s 26.

<sup>2</sup> *Public Health and Wellbeing Act 2008* (Vic) s 49

<sup>3</sup> *Public Health and Wellbeing Act 2008* (Vic) s 53.

environment that is ecologically sustainable and conducive to public health, it needs to be overhauled to put these imperatives at the front and centre of the planning law framework.

This should be achieved by amending the objectives of planning.<sup>4</sup> The objectives of planning are mandatory considerations in most key planning decisions and processes under the Act: the making and amendment of planning schemes, the grant or refusal of permits, and the conduct of planning authorities and responsible authorities.<sup>5</sup> The objectives of planning should be amended to include “the promotion of environments that protect and encourage public health and wellbeing”. At the very least, the existing objective in section 4(1)(c) should be amended to refer to the need “to secure a pleasant, efficient, *healthy* and safe working, living and recreational environment for all Victorians and visitors to Victoria.”

The State Planning Policy Framework (**SPPF**) should also be amended to reflect a similar change in emphasis. The existing provisions relating to open space and transport should be bolstered, and complemented by a section explicitly devoted to public health. This would be a useful way to draw together the existing provisions relating to open spaces, public transport, social inclusion and a clean environment, and conceptualise them as public health policies.

The Victorian Planning Provisions (**VPPs**) should be amended to include the SPHWP as an incorporated document, and require the responsible authority to consider it when making permit decisions. Individual planning schemes should be amended to include the relevant MPHWP as an incorporated document, and require the responsible authority to consider it when making permit decisions.

The *Planning and Environment Act* itself should be amended to require planning authorities and responsible authorities to have regard to the promotion of public health and wellbeing. Section 12 of the Act should be amended to include s 12(2)(ba), “must have regard to the need to create an environment which promotes public health and wellbeing”. Section 60 should be amended to include s 60(1)(f), “the need to create an environment that promotes public health and wellbeing”.

Finally, the *Planning and Environment Act* should be amended to make key decisions (like the decision to make or amend a planning scheme) subject to a health impact assessment. The best way to do this is to require the decision-maker to consider the impact of the amendment on public health and wellbeing (for example, by amending s 12 to require the planning authority to consider that). This will allow the decision-maker the flexibility to make the health impact assessment proportionate to the proposed change, and avoid causing undue delay or inefficiency.

#### **Recommendations:**

- Include public health and wellbeing promotion in the objectives of planning.
- Amend the SPPF to give greater emphasis to public health and wellbeing.
- Amend the VPPs to include the SPHWP and MPHWP, and require responsible authorities to have regard to them in making permit decisions.
- Amend the *Planning and Environment Act* to require planning and responsible authorities to have regard to public health and wellbeing.

<sup>4</sup> *Planning and Environment Act 1987* (Vic) s 4.

<sup>5</sup> *Planning and Environment Act 1987* (Vic) ss 6(1)(a), 12(1)(a), 14(b), 60(1)(b), 84B(2)(b).

- Amend the *Planning and Environment Act* to make key decisions (like making or amending a planning scheme) subject to a health impact assessment.

## 2 CREATE AN OPEN, INCLUSIVE, TRANSPARENT PLANNING SYSTEM

Maximising community involvement in planning can improve the built environment's contribution to public health outcomes. A growing body of evidence suggests that community participation is itself an important contributor to public health and wellbeing. Giving people the chance to become actively and genuinely involved in decisions that affect them can promote health and wellbeing — particularly mental health and wellbeing.<sup>6</sup> It is also good planning practice. A system that allows people to decide how their community is organised and developed is more likely to produce a built environment appropriate to that particular community. For the same reasons, it is equally important that the planning system is transparent and accountable.

We commend the Government's election promise to ensure transparency and accountability, not just in planning but across government. We welcome the Liberal National Coalition's election commitment to "honest and genuine community engagement and consultation" and "restoring integrity, transparency and certainty to the planning system".<sup>7</sup>

The public's right to be notified and consulted on proposed developments must be protected and strengthened. This is a key way to deliver on the Government's commitment to improve community participation in a transparent, open and accountable planning system. Specific recommendations on how to do this can be found in our earlier submissions on the *Planning and Environment Act*, available on our website.<sup>8</sup> However, there are two particularly important specific recommendations that bear mentioning here.

The Minister's power to 'call in' development proposals must be restricted. We recognise that the Government has made some moves in this direction by committing to new guidelines for Ministerial intervention on the basis of state significance, to improve reporting to Parliament on the Minister's intervention in the planning process, and to require the Minister to give 48 hours notice to any council when calling in a development application.<sup>9</sup> However, these are first steps only. To truly ensure that this power is exercised democratically and transparently, and ensure that the planning process does not fall victim to political caprice or backdoor lobbying, the *Planning and Environment Act* should include binding criteria which limit the Minister's power to call in developments under s 97B. Those criteria should make it clear that the power is only to be used in exceptional circumstances where there is an unusual need (beyond mere inconvenience) to waive the ordinary planning process. The *Planning and Environment Act* should explicitly require the Minister to table reasons for that decision in Parliament.

The Minister's power to exempt a planning authority (including him or herself) from the ordinary process for planning scheme amendments must also be strictly curtailed.<sup>10</sup> The *Planning and Environment Act* currently allows the Minister to exempt planning authorities from the public notice and consultation requirements, and key planning objectives, for certain planning scheme amendments. This power is inconsistent with the Government's commitment to respecting and

---

<sup>6</sup> *Environments for Health: Municipal Public Health Planning Framework* (2001) p 7.

<sup>7</sup> The Liberal Nationals Plan for Planning p 11.

<sup>8</sup> The EDO made three submissions to the modernising Victoria's Planning Act review which can be found here <http://www.edo.org.au/edovic/policy.html#pe>

<sup>9</sup> The Liberal Nationals Plan for Planning pp 9-10.

<sup>10</sup> *Planning and Environment Act 1987* (Vic) s 20(4).

engaging communities in the planning process. The power should be removed, or limited (by legislative criteria) to situations where the amendment is required by a genuine emergency. For example, where heritage areas or high value native vegetation is being cleared in anticipation of a forthcoming planning scheme amendment, there may be a good case for expediting the amendment.

**Recommendations:**

- Protect and strengthen the public's right to be notified of and consulted on proposed developments.
- Restrict the Minister's power to 'call in' development proposals under s 97B with legislative criteria that limit its use to genuinely extraordinary circumstances.
- Remove the Minister's power to exempt planning authorities from the normal process for planning scheme amendments, or introduce legislative criteria restricting its use to genuine emergencies.
- Require the Minister to give reasons to Parliament for any such intervention.

### **3 PROMOTE HEALTHY TRANSPORT**

Victoria's dependency on private motor vehicle transport is a serious problem for public health. Car dependency encourages increasingly sedentary lifestyles, which contribute to obesity, heart disease and diabetes. It creates traffic congestion, which reduces free time and puts extra burdens on mental wellbeing. It creates air pollution, which increases the incidence of respiratory disorders like asthma, bronchitis and lung disease. It creates noise, which leads to sleep deprivation. It increases social isolation and exclusion (which is strongly associated with ill-health) by reducing the opportunities to interact with others while in transit. It carries an inherent risk of accidents which often cause serious injury or death.<sup>11</sup>

These public health problems are on top of the huge problems that car dependency poses for the environment (due to their greenhouse gas and other air emissions) for productivity (because traffic congestion wastes valuable economic resources) and for household budgets (which are highly exposed to ever-rising fuel costs, particularly if they have to drive long distances).<sup>12</sup> Clearly then, the legal system needs to discourage private car dependency and promote public transport (trains, trams, buses) and active transport (cycling and walking). There are a few ways to do that.

One is to ensure that the health (and environment, and cost-of-living) consequences of transport projects are adequately assessed under our planning and environment laws. Laws like the *Major Transport Projects Facilitation Act 2010* (Vic) are therefore highly concerning. In the interests of fast-tracking major public projects, the normal processes of assessment and community consultation are swept aside. The Act puts a suite of environmental approvals in the hands of the Planning Minister, makes all statutory considerations discretionary and reduces the opportunity for review of decisions, and removes any opportunity for meaningful public comment.<sup>13</sup> If the Government truly wants to ensure that the public health and wellbeing impacts of transport

---

<sup>11</sup> Peter Tisato and Heath Newberry, 'Transport and Public Health' (2007) *Public Health Bulletin* 14.

<sup>12</sup> Australian Government, *Our Cities: Background and Research Paper* (2010).

<sup>13</sup> For more information see the Issues and Concerns Paper on the Act published by the EDO in 2009, available here: <http://www.edo.org.au/edovic/policy.html>.

projects are fully and fairly assessed, and deliver on its promise to restore fairness and accountability to the planning system, it will repeal or significantly modify this law.

Another way is to make sure our planning and environment laws discourage the sprawling, low-density model of urban development that creates that private car dependency. The provisions of the *Transport Integration Act 2010* (Vic) are an important step in the right direction in this regard, in requiring transport agencies and other decision-makers (including planning authorities under the *Planning and Environment Act*) to consider the transport system objectives (including environmental sustainability, and safety, health and wellbeing) in performing their functions as they impact the transport system. To further integrate transport, planning and health, the Government should implement the recommendations set out in **section 4**, below.

**Recommendations:**

- Repeal the *Major Transport Projects Facilitation Act 2010* (Vic).
- Complement the *Transport Integration Act 2010* (Vic) with a planning framework that reduces urban sprawl.

#### **4 REDUCE URBAN SPRAWL**

The sprawling low-density development that has characterised urban growth in Victoria for the last 50 years or more is a serious problem for sustainability *and* public health. It perpetuates our dependency on private motor vehicle transport, extending the time and distance that Victorians must spend in cars. It also reduces the green wedges and open spaces on the urban fringe, which are important for their biodiversity values and the contribution they can make to public health (see **section 6** below). Our legal framework needs to recognise the public health consequences of urban sprawl. It needs to discourage further extensions to the Urban Growth Boundary (**UGB**), and encourage urban renewal and polycentric development.

The Government has already taken some important steps in the right direction. The EDO commends the Government on introducing the Victorian Urban Development Authority Amendment (Urban Renewal Authority Victoria) Bill 2011 (Vic), which replaces VicUrban with the Urban Renewal Authority Victoria (**URA**). This is an important change of emphasis, which recognises the environment and public health benefits of encouraging 'brownfield' rather than 'greenfield' development. We note with some concern, though, the lack of consultation on this Bill — something which the Government will have to change in future if it is going to live up to its commitment to genuine community engagement.

We also commend the Government's commitment to bring more public involvement and transparency to the process of reviewing the Urban Growth Boundary — an important legal mechanism for curtailing urban sprawl and protecting the environment and public health.

But more is needed to ensure that the planning system secures sustainability and public health. To further ensure that environment protection and public health promotion are key considerations for the URA, we recommend that the legislation be amended to require the URA to carry out all its functions in a manner consistent with ecological sustainability and public health. We further recommend that decisions of the URA made under the Act be included in Schedule 1 of the *Climate Change Act 2010* (Vic) (**Climate Change Act**), thereby requiring the URA to consider climate change in its decisions.

To curtail urban sprawl and the risks that it poses to the environment and public health, we recommend that the *Planning and Environment Act* be amended to require planning authorities to act consistently with public health promotion (see **section 1** above). Amending the legislation to require planning authorities to act consistently with ecological sustainability, and to take all reasonable steps to prevent urban sprawl, would also help. We further recommend that these decisions be included in Schedule 1 of the *Climate Change Act*, thereby requiring the Minister to consider climate change when making decisions (see **section 7** below).

It is particularly important that changes to the UGB are consistent with ecological sustainability and public health promotion. We therefore strongly recommend that the Government maintain its commitment to the Strategic Impact Assessment (**SIA**) process under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth). Whilst we have concerns with the conduct of the SIA, the process still offers the opportunity to strategically balance the pressure of development with the need to protect matters of national environmental significance. It is even more important to maintain a commitment to this process now, after so much work has already been put towards it.

We recognise that the Government has appointed a Logical Inclusions Advisory Committee to advise on further changes to the UGB.<sup>14</sup> Whilst we welcome the Government's commitment to more transparency and public participation in the process of changing the UGB, we stress the importance of limiting any further expansions in the UGB for the reasons set out above. We therefore recommend that the Committee's Terms of Reference and/or the 'standards and decision criteria' according to which the Committee assesses the suitability of proposed properties for inclusion in the UGB explicitly requires the Committee to act consistently with the requirements of ecological sustainability and public health. We further recommend that the Terms of Reference of the Committee not pre-judge the question of whether the UGB should be expanded or contracted, and be amended to allow the Committee to consider whether properties currently in the UGB should be excluded where that is appropriate.

#### **Recommendations:**

- Require planning authorities to act consistently with ecological sustainability in making or amending planning schemes, and to take all reasonable steps to limit urban sprawl.
- Support and strengthen the Strategic Impact Assessment of the Urban Growth Boundary (**UGB**) expansion under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth).
- Amend the Terms of Reference for the Logical Inclusions Advisory Committee to allow contraction in the UGB, and require the Committee to consider ecological sustainability and public health and wellbeing in making their recommendations.

## **5 PREVENT HARMFUL POLLUTION**

Pollution poses a significant risk to the environment and public health. Air pollution, water pollution and land pollution all lead to poor health, disease and, in extreme cases, debilitation or death. It is vitally important to the health of the environment and the public that Victoria's environmental laws prevent harmful pollution.

---

<sup>14</sup> See <http://www.dpcd.vic.gov.au/planning/panelsandcommittees/current-planning-panels-and-committees/logical-inclusions>.

At the moment, they are widely recognised to have failed in that task. Incidents like the methane leak at the former Cranbourne landfill site have led the Auditor-General, the Ombudsman and the EDO to criticise the performance of Victoria's environmental laws and the Victorian Environment Protection Authority (EPA).<sup>15</sup> If pollution incidences like this one are to be avoided in future, and the environmental value and public health of communities like that at Cranbourne is to be maintained, then Victoria's environmental laws and law enforcement agencies must be strengthened.

The Government needs to support strong and effective environmental regulators. The EPA is taking steps to become an effective and modern regulator and the government must support them in this in the interest of the whole community. The EPA's implementation of the recommendations made by the Auditor-General, the Ombudsman, and the EPA's Compliance and Enforcement Review should be encouraged.<sup>16</sup>

The environmental regulations themselves could also be strengthened and improved. Policy and law must put the public interest in environmental protection and pollution prevention front and centre. The *Environment Protection Act* would benefit from being modernised to ensure it is able to properly address with modern environmental hazards. The upcoming review of statutory policies under the *Environment Protection Act* will provide a valuable opportunity to assist with that. EDO will be making a submission to that review.

The regulatory framework that applies to contaminated land is in particular need of reform. This will be crucial if the Government's policy of urban renewal in places like Fisherman's Bend and E-Gate is to remain safe and successful. At present, the laws that regulate development on potentially contaminated land are complex and fragmented, making it difficult for councils to know with confidence that they are not permitting development on contaminated land. The standards of assessment and remediation that previous industrial land must meet before they can be approved for development must be significantly strengthened, such that councils cannot fail to heed them.

EDO is happy to provide further detailed recommendations on how to strengthen and improve environmental regulations on request or on an ongoing basis.

#### **Recommendations:**

- Support the EPA and other environmental regulators to be strong and effective in preventing harmful pollution. Implement the recommendations that the Ombudsman, the Auditor-General, the Compliance and Enforcement Review and the EDO have made in this regard.
- Improve the environmental regulations that aim to prevent pollution. In particular, improve the patchwork of laws and regulations that apply to contaminated land.

---

<sup>15</sup> See Victorian Auditor General's Office, *Hazardous Waste Management; Victorian Auditor-General's Report*, June 2010 [http://www.audit.vic.gov.au/reports\\_publications/reports\\_by\\_year/2009-10/20100906\\_hazardous\\_waste.aspx](http://www.audit.vic.gov.au/reports_publications/reports_by_year/2009-10/20100906_hazardous_waste.aspx) at 7 October 2010; Ombudsman Victoria, *Brookland Greens Estate — Investigation Into Methane Gas Leaks*, October 2009 [http://www.ombudsman.vic.gov.au/resources/documents/Brookland\\_Greens\\_Estate1.pdf](http://www.ombudsman.vic.gov.au/resources/documents/Brookland_Greens_Estate1.pdf) at 7 October 2010; EDO, *Implementation and enforcement of the Environment Protection Act 1970: Monitoring Victoria's Environmental Laws Report No 1* (2011).

<sup>16</sup> See Stan Krpan, *Compliance and Enforcement Review: A Review of EPA's Approach*, February 2011.

## 6 PROTECT THE NATURAL ENVIRONMENT

A well-preserved natural environment is an important part of a healthy community. Maintaining and improving open space in urban and rural environments encourages more active lifestyles, encouraging walking, cycling, running, sport and other outdoor recreation. It can also be restorative, reducing mental fatigue and improving overall wellbeing, and can foster a greater sense of social inclusion and community.<sup>17</sup> To unlock these benefits and maintain a high standard of environmental and public health, the laws that maintain the natural environment need to be maintained and improved.

Victoria's native vegetation laws are central to doing that. It is vitally important that Victoria has strong laws to protect what native vegetation we have left from being cleared. Around 53.7% of Victoria's original native vegetation cover has already been cleared since white settlement, including 80% of native vegetation on private land.<sup>18</sup> To prevent this situation worsening, the *Native Vegetation Management — A Framework for Action* and associated planning laws need to be maintained and improved, not undermined. Greater emphasis should be placed on the requirement to 'avoid' native vegetation clearing. The habitat hectares system of calculating native vegetation offsets should give fewer credits for prior actions or 'security' gains, and only allow offsets where the quality or quantity of native vegetation is actually improved. Native vegetation protection laws should be taken out of the non-binding policy of the NVMF, and moved into the binding legislative framework of planning scheme or the *Planning and Environment Act* itself. And the requirements of the native vegetation laws that we already have need to be made a reality with consistent and energetic enforcement.

The need to maintain and improve open spaces and green wedges in urban areas could also be met through amendments to the planning framework. Recommendations for how to do this are set out in **section 1** above. The VPPs could be amended to give greater emphasis to the need to maintain natural open spaces in urban, peri-urban and rural environments. The planning law framework could also be amended to limit urban sprawl, as set out in **section 4** above. Any move to increase the amount or types of development that are permitted in green wedge zones would be a step backward in this regard.

One of the most important ways to protect the natural environment is to improve Victoria's environmental impact assessment legislation. Environmental impact assessment laws in other Australian jurisdictions are centrally important to the overall effort to protect the environment from unsustainable development. But the Victorian *Environment Effects Act 1978* is utterly moribund.<sup>19</sup> It creates uncertainties and inefficiencies for business, without imposing any enforceable environmental protection requirements to speak of. It engenders large, inefficient and expensive processes of assessment and public inquiries, but gives the public very few hard or enforceable ways to protect their environment. It is miles away from best practice environmental regulation,

---

<sup>17</sup> Billie Giles-Corti, 'The impact of urban form on public health' (2007) *Public Health Bulletin* 8, 9.

<sup>18</sup> DSE, *Native Vegetation net gain accounting: first approximation* (2008) (DSE 2008) i; Victorian Environment Assessment Council, *Remnant Native Vegetation Investigation Discussion Paper* (2010) 5, 10.

<sup>19</sup> Robyn Leeson, 'EIA and the Politics of Avoidance' (1994) February, *Environment and Planning Law Journal* 71; Murray Raff, 'The Renewed Prominence of Environmental Impact Assessment: "A Tale of Two Cities"' (1995) August, *Environment and Planning Law Journal* 241, Roger Eade, 'Issues in Environmental Impact Assessment in Victoria: What Has Scoresby Taught Us?' (2000) 18(4) *Urban Policy and Research* 515; Brad Jessup, 'Victoria and the Channel Deepening Project' in Tim Bonyhady and Andrew Macintosh (eds), *Mills, Mines and other Controversies* (2010) 105; Samitha Rao, 'Reforming the Environment Assessment Process in Victoria' (2010) 1 *National Environmental Law Review* 34

and it needs to be changed. Specific recommendations for how to do this are set out in the submission that EDO made to the Parliamentary Inquiry into the Act last year.<sup>20</sup>

The EDO is pleased that the Government has allowed the Parliamentary Inquiry into the EES process to be completed. If the Government is serious about protecting the natural environment that the Victorian public needs to stay healthy and thrive, they will begin the task of reforming the Act.

**Recommendations:**

- Maintain and strengthen Victoria's native vegetation laws.
- Reform the *Environment Effects Act*.

## **7 ADDRESS THE THREAT OF CLIMATE CHANGE**

Climate change is a big risk to public health. Unmitigated climate change causes heatwaves that place a strain on public health, particularly amongst the elderly. It causes drought and threatens food production, jeopardising Victorians' access to fresh, healthy food. It increases the incidence of wild weather events like storms and floods, which pose a catastrophic risk to human health and property, the effects of which have already been felt in many parts of Victoria. It increases the incidence and severity of bushfires which, as every Victoria knows, threaten the lives and livelihood of Victorians in bush fire prone areas. The aftermath of the Black Saturday bushfires continues to pose a significant mental health burden on many Victorians.

The Government needs to recognise climate change as a public health issue. The legal framework needs to recognise this threat, and take action to mitigate its causes and adapt to its unavoidable effects.

Maintaining and implementing the *Climate Change Act* is an important commitment to maintaining a safe and healthy environment that supports public health. We welcome the Government's support for the *Climate Change Act 2010 (Vic)* when it passed through Parliament. The Government should continue to work towards the achievement of the target of a 20% reduction in greenhouse gas emissions from 2000 levels by 2020. Directing the EPA to use their powers to regulate greenhouse gas emissions as a 'waste' under the *Environment Protection Act* is another important step toward securing a climate that supports public health.

It is also important that the Victorian planning framework is brought within the auspices of the *Climate Change Act*, such that it factors in climate change and the threat it poses to public health. Key decisions under the *Planning and Environment Act* should be included in Schedule 1 of the *Climate Change Act*, thereby requiring the decision-maker to consider climate change when making these decisions. Decisions which would be appropriate for inclusion in this Schedule include the decision to grant or refuse a permit,<sup>21</sup> and the decision to amend a planning scheme.<sup>22</sup>

These amendments are especially necessary in the case of the *Planning and Environment Act* because they are unlikely to be addressed by the carbon price. Carbon pricing has its greatest

---

<sup>20</sup> Submission to the ENRC Inquiry into the Environment Effects Statement Process in Victoria, 8 April 2010, available at <http://www.edo.org.au/edovic/policy.html>

<sup>21</sup> *Planning and Environment Act 1987 (Vic)* s 61.

<sup>22</sup> *Planning and Environment Act 1987 (Vic)* ss 29, 35.

effect when the price signal is imposed on the person who makes the ultimate decision — but decision-makers under the *Planning and Environment Act* do not feel the impact of the carbon price on the proposals that they consider. Individual proponents can factor the carbon price into their individual proposals, but at the broad strategic planning level which is so important to ensuring that our cities and regions are consistent with the challenges of climate change, the key planning decision-makers are insulated from the carbon price. This is a recognised market failure under a Federal carbon price and should be addressed at the State level. A legal analysis of this is included in the EDO's submission to the Climate Change green paper.<sup>23</sup> If the *Planning and Environment Act* does not require decision makers to consider climate change, then they will be insulated from these considerations altogether. That outcome would not promote public health in the built environment.

**Recommendations:**

- Support and implement the *Climate Change Act*.
- Include decisions under the *Planning and Environment Act* in Schedule 1 of the *Climate Change Act*, requiring them to consider climate change.

---

<sup>23</sup> See *Submission in response to the State Government's Climate Change Green Paper (30 September 2009)*  
EDO website <http://www.edo.org.au/edovic/policy.html#charter>