

allow them to work with all managers and supervisors of activities related to the licence when completing the Annual Statement of Compliance. Any statements made in the Annual Statement of Compliance may be admissible in a prosecution for breach of licence condition, except where it is apparent that an honest error has been made.

Completed Annual Statements of Compliance are to be forwarded to the Licensing Policy Unit, Department of Environment Perth Office by 1 August each year. Annual Statements of Compliance will be publicly available.

The new requirement will be implemented in two stages. From May 2005, Conditions requiring Annual Statements of Compliance will initially be introduced to licences granted to putrescible landfill (Category 64) sites. From January 2006 the condition will be introduced to a broader range of reviewed licences.

For further information on the new requirements, contact Mark Cugley at the DoE.

State Emissions Trading Scheme

The Minister for Environment announced recently that Western Australia would join a State and Territory led greenhouse gas emission trading scheme. In the absence of the Federal Government taking leadership on greenhouse, the State and Territory Governments have established a working group to develop a multi-jurisdictional emissions-trading scheme. By forming a national emissions-trading scheme, Australian industry could, in the future, be linked to international carbon markets, such as that recently established in the European Union.

Currently, in Western Australia the *Carbon Rights Act 2003 (WA)* is established, enabling people to create carbon rights with the potential for trade. The Department of Environment is also setting up a WA greenhouse gas inventory to provide a profile of the State's emissions. This, coupled with the development of the State-Territory trading scheme and the development of consistent standards, may see Australian companies involved in emissions trading in the near future.

Features of the design and implementation of the State-Territory trading scheme, which are being investigated and discussed, include:

- a cap and trade approach
- national and sector-based— initially capturing the stationary energy sector
- monitoring reporting and trade of all six greenhouse gases recognised under the Kyoto Protocol
- initial permit allocation will be granted administratively and via auction
- penalties to encourage compliance and establish a price ceiling for the permit market
- mechanisms to address any adverse effect and structural adjustments – and to allow a transition for participants who have taken early action and new entrants.

TASMANIA

Editor: Tom Baxter

Environmentally Relevant Acts

Acts relevant to environmental law that have commenced since the last edition of NELR include the following. Pollution of Waters by Oil and Noxious Substances Amendment Act 2004 (Tas) (No. 47 of 2004)

Wellington Park Amendment Act 2004 (Tas) (No. 48 of 2004)

Resource Management and Planning Appeal Tribunal Amendment Act 2004 (Tas) (No. 69 of 2004)

The above Acts received Royal Assent and commenced on 17 December 2004.

Sullivans Cove Waterfront Authority Act 2004 (No. 60 of 2004)

This Act received Royal Assent on 17 December 2004 and commenced on 4 Apr 2005.

Living Marine Resources Management Amendment Act 2005 (No. 14 of 2005)

This Act received Royal Assent on 6 May 2005 and commenced on that day.

Environmentally Relevant Bills

Bills relevant to environmental law introduced in the Tasmanian Parliament since the last edition of *NELR* include the following (in chronological order).

State Policies and Projects Amendments Bill No. 8 of 2005 introduced by the Premier.

Protection of Public Participation Bill No. 14 of 2005 introduced by Mr McKim, Tasmanian Greens.

Forest Practices Amendment Bill No. 18 of 2005 introduced by the Minister for Infrastructure, Energy and Resources.

Water Efficiency Labelling and Standards Bill No. 11 of 2005 introduced by the Minister for Primary Industries and Water.

Public Consultation on Environmentally Relevant Legislation***Review of the Water Management Act 1999: submissions due 5 August 2005***

The Water Management Act 1999 (Tas) provides for the management of Tasmania's freshwater resources. Pursuant to section 301 of the Act the Minister for Primary Industries and Water has tabled in Parliament the "Report on the Operation of the Water Management Act 1999". The Report provides an overview of the key issues that led to the introduction of the Act in 2000. It also documents the activities undertaken over the past five years to support the objectives of the Act and the future activities planned to further those objectives.

In line with the recommendation of the Report, the Department of Primary Industries, Water and Environment (DPIWE) has invited comments from key stakeholders, water users and the broader community focussing on the identification of measures to improve the operation of the *Water Management Act 1999* (Tas) and mechanisms for ensuring the objectives of the Act continue to be met. This review will also cover other related legislation such as the *Irrigation Clauses Act 1973* (Tas) and the *Waterworks Clauses Act 1952* (Tas) to determine whether this legislation adequately meets contemporary needs.

Shortly the Department also intends to undertake a public review of the State Policy on Water Quality Management 1997 (Tas).

Documents regarding the review of the *Water Management Act 1999* and the State Policy on Water Quality Management 1997 can be downloaded from <http://www.dpiwe.tas.gov.au/inter.nsf/WebPages/LBUN-6CN966?open>

Written submissions are to be received by 5 August 2005.

Submissions should be marked to the attention of:

Christina Jackson
Water Resources Division
DPIWE

GPO Box 44
Hobart 7001
Fax: 03 6233 6055
Email: Christina.Jackson@dpiwe.tas.gov.au

Other

Various other documents posted by the Department of Primary Industries, Water and Environment (DPIWE) and invitations for public comment are available via: <http://www.dpiwe.tas.gov.au>

Gunns Limited Sues 20

Cases regarding the forest industry dominate recent Tasmanian litigation news. On 14 December 2004, Gunns Limited issued a writ in the Supreme Court of Victoria against 20 parties, including The Wilderness Society Inc and several members of its staff, the Huon Valley Environment Centre Inc, Doctors for Native Forests Inc, Australian Greens Senator Bob Brown, Tasmanian Greens leader Peg Putt MP, two independent film makers and various environmental campaigners.

The writ seeks \$6.36 million in damages plus costs for what Gunns Limited alleges was a conspiracy against it. Some of Gunns' claims include that the defendants were involved in "publicly denigrating, vilifying and criticising" Gunns, encouraging others to boycott or protest against Gunns and conspiring to unlawfully interfere with Gunns' business.

The writ, which is over 200 pages, relates to four main campaigns in which various of the defendants were allegedly involved:

- Disruption of logging operations in the Styx River Valley, at Lucaston in the Huon Valley, Hampshire and Triabunna.
- "Corporate vilification" campaigns relating to statements made by a representative of Doctors for Native Forests Inc alleging health risks presented by the woodchip pile at Burnie, and lobbying by some of the defendants to have Gunns withdrawn as a finalist the Banksia Awards.
- Campaigns against overseas customers of Gunns including customers in Japan and Belgium.
- Corporate campaigns targeting shareholders, investors and banks.

More information about the case is available at: www.gunns20.org or http://www.bobbrown.org.au/300_campaigns.php The latter site includes a copy of the writ

Update:

An amended Statement of Claim (of 360 pages) was struck out in interlocutory proceedings that were heard by the Supreme Court from 4-7 July 2005. See Case Notes below for more details.

Gunns Limited Refers Pulp Mill Under EPBC Act

On 21 December 2004, Gunns Limited referred its proposal for a bleached kraft pulp mill in northern Tasmania to the Commonwealth Minister for the Environment under the EPBC Act. Gunns had initially flagged two possible sites for the pulp mill, Hampshire in northwest Tasmania or Long Reach in the northeast. On 24 February 2005, Gunns announced its intention to proceed at Long Reach.

What is proposed?

- The mill will use "eucalypt wood resources from public and private landholdings... over a period of at least 30 years".
- The wood will be pulped using the Kraft process, then a bleaching process applied.
- The proposed pulp mill will produce 500,000-1,300,000 air dried tonnes of pulp annually.
- A new dam will be constructed on Pipers River from which water will be pumped to the mill.
- A discharge pipeline will be constructed to Five Mile Bluff from which the mill will discharge up to 30GL per annum of treated effluent to an ocean outfall.

The State assessment process

The Tasmanian government has declared the Gunns Limited pulp mill proposal to be a project of State significance under the *State Policies and Projects Act 1993* (Tas). This takes the proposal outside the planning process established under the *Land Use Planning and Approvals Act 1993*.

The Resource Planning and Development Commission (RPDC) is responsible for making recommendations on whether a project of State significance should proceed, and if so, on what conditions. Although the RPDC makes recommendations to government about a project of State significance, it is the government of the day that makes the final decisions.

More information about the proposed pulp mill is available at www.rpdc.tas.gov.au

Wilderness Society Challenges Federal Government Decision Limiting EPBC Assessment of Pulp Mill

In January 2005, the Commonwealth Minister for the Environment announced that Gunns' proposed pulp mill would be assessed under the EPBC Act for impacts on the marine environment and protected species. The Wilderness Society had lobbied for the Minister to also consider the impact of the pulp mill on Tasmanian forests, however the Minister decided against doing so. The Wilderness Society is now challenging the Minister's decision in the Federal Court using the *Administrative Decision Judicial Review Act 1977*.

Section 38 of the EPBC Act exempts from Part 3 of the Act an RFA (Regional Forest Agreement) forestry operation that is undertaken in accordance with an RFA. The Wilderness Society has applied for judicial review of the Minister's decision in so far as it failed to take into account the impacts of the pulp mill on Tasmanian forests beyond the life of the current RFA, which expires in 2017. The 30 year lifespan of the pulp mill extends beyond 2017. Therefore, the Society argues, the Minister must have regard to the impacts of forestry activities associated with the pulp mill beyond 2017, including impacts on world heritage areas, Ramsar wetlands and threatened species such as the wedge-tailed eagle.

In a media release of 14 April 2005, National Forest Campaigner for The Wilderness Society, Sean Cadman, stated:

"The proposed pulpmill will consume more than three million tonnes of Tasmanian wood each year. Yet the Government has chosen not to assess the impacts of the mill on the forests or taken account of the fact that woodchip production is set to rise to a massive 7 million tonnes."

"The proposed pulpmill will have a lifetime of about 30 years. Yet the current Regional Forest Agreement expires in 2017. Therefore the impacts of the mill beyond 2017 can't be assessed."

Mr Cadman said that Gunns' decision to locate the mill at Bell Bay rather than at the alternative site at Hampshire had aroused massive concerns about the impact of the mill on the state's forests, particularly in the north. Hampshire is on the doorstep of over 60,000 hectares of Gunns' hardwood plantations. Bell Bay, however, is on the doorstep of large tracts of native forest.

"An independent report carried out by scientists at Melbourne University and Forestry Tasmania has found there is a 97% chance that the Tasmanian wedge-tailed eagle will be driven to extinction in north-east Tasmania if proposed forestry and land-clearing operations proceed. It is unacceptable that the Federal Government is not looking at this possible impact of the mill on the habitat of this and other endangered species," Mr Cadman said.

"We are not opposed to a pulp mill in Tasmania, but we are opposed to this one. Bell Bay is the wrong place; it will use massive amounts of native forest; and as result, it will require chlorine bleaching, which produces organochlorines and a range of other toxic compounds."

The Wilderness Society's application asks the Federal Court to:

- set aside the Minister's decision in so far as it fails to refer to impacts on Tasmanian forests; and
- direct the Minister to re-designate the pulp mill proposal as a controlled action on the existing grounds with the addition of the impacts of logging of the forests to feed the pulp mill after 2017.

More information about this case is available at http://www.wilderness.org.au/campaigns/forests/tasmania/gunns'_proposed_pulp_mill/

Fighting to Save South Sister

Reproduced from Environmental Defenders Office (Tas) Inc, *EDO Bulletin*, Edition 21, May 2005

South Sister, near St Marys, is one of two volcanic plugs forming part of the Nicholas Range on Tasmania's east coast (the other is North Sister). The mountain is a local icon, tourist destination, recreational area and the source of springs feeding local domestic and agricultural water supplies. In January 2005, Forestry Tasmania [the government business enterprise that is responsible for managing Tasmania's forestry operations] certified a forest practices plan for selective harvesting on the South Sister coupe.

In late February 2005, a group of concerned residents made an application to the Resource Management and Planning Appeal Tribunal, assisted by EDO (Tas).

The application alleges that the proposed forestry operations will cause environmental harm by reducing water supplies and increasing the risk of land slides in the area. The applicants have obtained evidence to suggest that:

- In the short term, the proposed forestry operations will lead to increased water yields, significantly reducing land stability in an area of landslide risk.
- Increased run off from the coupe will lead to increased turbidity in local water supplies.
- In the longer term, the impact of the proposed forestry operations on the groundwater recharge area may significantly reduce the quantity of water available to local residents, and to the town of St Marys.

The Tribunal found that there was a *prima facie* case and a hearing date has been set to determine whether the forestry operations can proceed.

The applicants sought a temporary order to restrain road works and harvesting operations until the issue was resolved, however the Tribunal was not prepared to grant a temporary order unless the applicants were willing to give an undertaking to cover any losses suffered by Forestry Tasmania if the applicants did not succeed at the final hearing. Forestry Tasmania estimated that this could be as much as \$50,000 per week, so the applicants were not able to give the undertaking.

However, Forestry Tasmania later announced a voluntary suspension of operations until after the final Tribunal hearing [scheduled for October 2005].

Thanks to the Environmental Defenders Office (Tas) Inc.

SOUTH AUSTRALIA

Editor: Will Webster and Rebecca McAulay

Changes to the Native Vegetation Act to Assist Environment and Farmers

SA Minister for Environment and Conservation, John Hill, recently claimed that changes to the *Native Vegetation Act* (1991), expected to be enforced by late June this year, will assist both landholders and the environment. One change will allow landholders to clear native vegetation on the condition they replant, or manage other vegetation that will result in a better outcome for the environment. Amendments to the Act, allowing such changes, came into force on 2 September 2004. These allow the Native Vegetation Council ("the Council") to consent to clearance that is otherwise seriously at variance with the principles of clearance of native vegetation. The Council must have adopted guidelines for the region, and be satisfied that a significant environmental benefit (which outweighs the value of retaining the vegetation) can be achieved, and that the particular circumstances justify the giving of consent. This may be facilitated by the imposition of conditions and the taking of other action by the applicant.

Draft guidelines have already been developed in consultation with the South Australian Farmers Federation and the Conservation Council of South Australia and should soon be released for public consultation.