

Part 6 Divisions 1, 2, 3, 4 and 5 describe particular noise sources that attract 'Special noise control provisions'. These include construction noise, domestic noise, rubbish collection/street sweeping, building intruder alarm systems and frost fans. The Policy sets out specific provisions to control each of these noise sources.

Part 7 directs provides reference to other policy documents and legislation controlling particular noise sources such as bird scaring devices and wind farms.

Schedule 1 of the Policy lists noise sources that are outside the ambit of the policy. Examples include noise from educational facilities, aircraft noise and noise that may be the subject of proceedings under certain legislation including the *Liquor Licensing Act 1997* and the *Residential Tenancies Act 1995*.

TASMANIA

Tom Baxter

Lawyers For Forests' Challenge to Pulp Mill Approval

As previously reported, in *The Wilderness Society Inc v Hon Malcolm Turnbull, Minister for the Environment and Water Resources* [2007] FCAFC 175, the Full Court of the Federal Court (Branson, Tamberlin and Finn JJ), by majority (Tamberlin J dissenting), dismissed The Wilderness Society's application for judicial review of various decisions by the (then) Minister regarding the Commonwealth assessment process for Gunns' bleached Kraft pulp mill at Bell Bay in the Tamar Valley, north of Launceston.

The Minister's decisions followed Gunns' withdrawal from, and the subsequent cancellation (through the *Pulp Mill Assessment Act 2007* (Tas)) of, the integrated assessment being undertaken by Tasmania's Resource Planning and Development Commission – a bilaterally accredited assessment process under the EPBC Act.

As the Full Court stated, *inter alia*, in its summary of its reasons for judgment of 22 November 2007:

"At the time of the judgment the subject of this appeal the Minister had not given approval for the construction and operation of the pulp mill. The legality of that decision was therefore not directly challenged on this appeal. However, had the Full Court upheld the challenges made by the Wilderness Society to the Minister's decisions, it would have found that the assessment process required by the EPBC Act was not conducted as required by law.

It is necessary to stress that the Federal Court has no jurisdiction to consider the merit or wisdom of any decision of the Minister. The sole concern of the Federal Court in this matter, both before the primary judge and on appeal, was the legality of the decisions made by the Minister that were the subject of the proceeding before the primary judge."

Meanwhile, on 4 October 2007, Minister Turnbull approved construction and operation of Gunns' pulp mill until 31 December 2057. The Minister's approval decision imposed 48 conditions on the mill.

Lawyers for Forests Inc (LFF) subsequently filed proceedings in the Federal Court against the Environment Minister and Gunns Limited regarding the pulp mill approval of 4 October 2007 (as distinct from the earlier assessment decisions challenged by The Wilderness Society).

The following is extracted from LFF's "Case Summary", 4 December 2007, at: <http://lawyersforforests.asn.au>

LFF is concerned about the significant impact that the mill will have on the environment, including on the marine environment, native forests and the species that rely on those habitats.

LFF is also concerned to ensure that the decision to approve the mill complies with the law. LFF is challenging the legal basis of the decision by seeking judicial review of it, on the following grounds:

1. The Act does not allow the Minister to impose the conditions that he did, as the conditions create a scheme that is outside that allowed by the Act.
2. The Minister used lack of scientific certainty as a reason for postponing a measure to prevent degradation of the environment when there are threats of serious or irreversible environmental damage, which is inconsistent with the Act.
3. The Minister did not have enough information to make an informed decision as to whether to approve the mill, when the Act requires that he have enough information.
4. The Minister did not seek further information before making his decision, when the Act requires that he seek further information before making the decision.
5. The Minister made the decision before assessing all of the relevant impacts in circumstances where information about those impacts was available, which is inconsistent with the Act.
6. The Minister improperly exercised his powers under the Act because no reasonable person could have made the decision that was made by the Minister in the circumstances in which he made it.

The grounds all relate to the fact that the Minister approved the mill but attached conditions which require further scientific testing to determine the impact of the mill's toxic effluent (dioxins and furans), which are the most toxic known to science.

The conditions allow the mill to produce a volume of toxic effluent that is set by Gunns, which is absent any proper scientific measurement.

There have been previous proceedings brought by The Wilderness Society and The Investors for the Future of Tasmania on related decisions made by the Minister before the approval decision. This is the only proceeding challenging the approval decision.

4 December 2007

This summary is intended as general information for the public. It does not constitute legal opinion or a view as to the merits of the case. For further information, go to www.lawyersforforest.asn.au

Costs orders in challenges to pulp mill assessment

See Chris McGrath's article, "Costs in public interest cases in the Federal Court", later in this edition as to the decisions awarding costs against the applicants in the Gunns Pulp Mill Assessment Cases:

- *The Wilderness Society v Turnbull, Minister for the Environment and Water Resources* [2007] FCA 1863 (Marshall J);
- *The Investors for the Future of Tasmania Inc v Turnbull, Minister for the Environment and Water Resources* [2007] FCA 1864 (Marshall J); and
- *The Wilderness Society Inc v Turnbull, Minister for the Environment and Water Resources* [2008] FCAFC 19 (Branson, Tamberlin, and Finn JJ).

The decision of the Full Court, a focus of Dr McGrath's article, is of particular interest.

Wielangta Application for Special Leave to the High Court

As reported in the previous edition, following his loss in the Full Court of the Federal Court in *Forestry Tasmania v Brown* [2007] FCAFC 186 (30 November 2007), Senator Brown said he intended to apply to the High Court for special leave to appeal the Full Court's decision.

Senator Brown has since lodged his application for special leave and Forestry Tasmania has lodged written arguments in reply.

This is the first special leave application to ask the High Court to examine the construction of the EPBC Act. The High Court is expected to hold a short hearing later in 2008 before it decides whether to take on the appeal.

Written arguments so far put to the High Court by Senator Brown and Forestry Tasmania are available, with other information regarding the case, at: <http://www.on-trial.info>