

The Policy retains a clear objective method for assessment, but also includes a range of factors to be taken into account if those objective standards cannot be met. This provides flexibility to deal with a range of issues, by accounting for factors such as land use history (“I was there first”) and other practical considerations, such as the length of time and frequency of occurrence of the noise. It is in this area that environmental lawyers are expected to have the greatest role in the enforcement and use of the Policy.

The main features of the Policy are:

- Managing noise to standards and approaches that are consistent with the World Health Organisation guidelines.
- Providing a direct link with the *Development Act 1993* by using the relevant Development Plan to define the amenity of an area.
- Enabling a streamlined amendment process so that new issues can be efficiently integrated.

- Providing a dedicated section dealing with development applications so that the Policy is also a preventative legal mechanism.
- Introducing a larger penalty for common breaches of the Policy, such as those that occur in domestic situations.
- Providing clarity, consistency and transparency in decision making by clearly stating the issues that the Authority must consider in a noise investigation.
- Introducing the ability to issue an environment protection order against the installer of an air conditioning unit in addition to the owner or operator.

Jason Turner, who drafted the Policy in his role with the Environment Protection Authority, provided an overview of the Policy to the NELA (SA Division) April 2008 meeting. Jason is now an Associate with the acoustic consultancy, Sonus Pty Ltd, and can be contacted to discuss any aspect of the new legislation.

## **WESTERN AUSTRALIA**

### **Review of WA environmental approvals processes**

The Minister for the Environment, David Templeman, and the Environmental Protection Authority (EPA) have announced a detailed review of Western Australia’s environmental approvals processes. The Minister commented that WA’s unprecedented resources boom and the growing complexity in the scope, range and technical aspects of development projects made it important and timely to reassess the effectiveness and efficiency of the state’s environmental impact assessment process.

The review—to be conducted by a reference group with representatives from industry, government, environmental groups and academia—aims to identify:

### *James Sippe and Clara Bowman*

- ways to streamline the process and remove duplication;
- opportunities to better integrate environmental approvals with other approval processes; and
- innovations to better link developments with regional and sustainable environmental objectives.

The review is expected to take up to six months. The EPA has already sought public comment on its Environmental Impact Assessment Review.

### **Further Environmental Conditions set for Magellan Metals**

Environment Minister David Templeman has imposed further environmental conditions on Magellan Metals’ controversial plan to export lead through the Port of Fremantle.

The additional conditions include a \$5 million bond and completion of a

comprehensive health, hygiene and environmental management plan to the requirements of the Minister.

Magellan Metals will be required to carefully monitor any potential impacts by conducting baseline testing along the export chain prior to the first movement of lead and at regular intervals going forward. In addition, Magellan must appoint and pay the cost of an independent auditor approved by the Minister to inspect each bag and container at the mine and the port. The Minister warned Magellan Metals that the State Government will close down production and commence legal action against the company if it is found to have breached any of its environmental conditions.

### Creation of Low Emissions Energy Development Advisory Council

Environment and Climate Change Minister David Templeman announced in February the creation of a Low Emissions Energy Development (LEED) Advisory Council to provide guidance in funding for the first round of grants from the LEED Fund.

The Fund aims to assist in meeting the Government's target of a 60 per cent reduction in WA's greenhouse gas emissions by 2050 by focussing investment into low emissions industries such as geothermal, bioenergy and clean coal technologies and renewable energy. The Fund totals \$36.5 million and will provide \$8.5 million to businesses over 2008-09

## TASMANIA

Tom Baxter

### Gunns' Application for Security Against Lawyers For Forests Rejected

The challenge by Lawyers for Forests Inc (LFF) to the Federal Environment Minister's approval of Gunns Limited's pulp mill will proceed to trial after the Federal Court dismissed an application seeking security for costs from LFF.

As previously reported, on 4 October 2007 then Minister Turnbull approved construction and operation (until 31 December 2057) of Gunns' Tamar Valley pulp mill.

The Minister's approval decision under the EPBC Act imposed 48 conditions on the mill.

On **29 November 2007** LFF filed proceedings in the Federal Court against the (new)

Environment Minister and Gunns **seeking judicial review** of the pulp mill approval. LFF's application focused on the Minister's decision in respect of the proposed discharge of pulp mill effluent into Bass Strait from an outfall some 1.2km offshore.

In an application dated 24 January 2008 Gunns applied for an order requiring LFF to provide security for costs in the order of \$100,000. At hearing on 4 February 2008 Marshall J said that he was of the view that LFF should not pay security for costs. On 30 April 2008 Marshall J dismissed Gunns' application: *Lawyers for Forests Inc v Minister for the Environment, Heritage and the Arts* [2008] FCA 588.

Justice Marshall listed the following factors relied upon by LFF ([2008] FCA 588 at [28]): the special standing it has under the EPBC Act;

- the public interest nature of the litigation;
- the likelihood that the proceeding would not continue if security for costs was ordered;
- the relative insignificance of Gunns' costs in the proceeding when compared with the enormous costs associated with the construction and operation of the proposed pulp mill, estimated at \$2 billion; and
- the bona fide and arguable nature of LFF's case.