

- The commencement of laws against roadside littering in February 2008, with high penalties; and
- New nature conservation laws restricting the methods of driving away flying-foxes from roosting sites, and restricting the removal of protected plants.

SOUTH AUSTRALIA

Tom Ivey & Rebecca McAulay

Environment Protection (Site Contamination) Amendment Act 2007 (No 44 of 2007)

On 10 December 2007 several provisions of the Environment Protection (*Site Contamination*) Amendment Act 2007 No 44 of 2007 came into operation.

Of these provisions the following definitions under Section 4 are now operational:

- background concentrations
- chemical substance
- site
- site contamination
- site contamination auditor
- site contamination consultant
- environmental harm caused by chemical substances

The provisions at Part 10A Division 5 that pertain to reports by site contamination auditors and consultants also came into operation. The remaining provisions will become operational at a time fixed by subsequent proclamations.

Environment Procedures (Noise) Policy 2007

The *Environment Procedures (Noise) Policy 2007* (“the Policy”) is a policy document under the *Environmental Protection Act 1993* (“the Act”) that will become operational on 31 March 2008.

It is a comprehensive policy pertaining to various causes of noise, measurement procedures, and the consideration of noise in relation to Development Applications, and compliance and enforcement issues.

The objects of the Policy, set out in Part 2 Section 9, are to standardise noise goals for particular noise sources, set out procedures to determine compliance with goals, and to develop a standard approach regarding compliance and enforcement issues relating to noise.

Part 3 Section 11 sets out the requirements for instrumentation to be used for measuring noise levels under the Policy. It provides that measurements must be taken by a sound level meter that meets *Australian Standard AS 1259-1990 Acoustics—Sound Level Meters* and that has met rigorous testing requirements.

Part 3 Section 13 describes the general procedures that must be adopted when measuring a source noise level, an ambient noise level or a background noise level as defined by Part 1 Section 3. This is reinforced by more specific procedural guidelines in Sections 14, 15 and 16.

Part 4 Sections 18 and 19 deal with compliance with “noise goals” as defined in the Policy and the steps to be taken in a situation of non-compliance.

Part 5 Section 20 provides guidance for the Environment Protection Authority (“the Authority”) in terms of responding to a referral pursuant to the Development Act 1993 in relation to a Development Application. This section seeks to standardise the use of technical terminology as well as formulating guidelines as to what levels of noise are appropriate for particular noise sources.

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: