

NELR recent developments

been caused. The amendments aim to remove the need to first prove environmental harm. Officers must still provide five days written notice in advance, and will still need a warrant to access land on which there is a building.

Officers will also be able to require a person to attend a stated place at a stated time to answer questions. Not

TASMANIA

Proposed mining operations threaten Tarkine after emergency heritage listing lapses

The Tarkine Wilderness, an area of approximately 440 000ha in north west Tasmania, was nominated for inclusion in the National Heritage List under the EPBC Act a number of years ago. Despite its inclusion in the Priority Finalised Assessments list in 2007–08, the Australian Heritage Council's assessment of the area has yet to be completed.

In December 2009, then Federal Environment Minister, the Hon Peter Garrett AM MP was satisfied that a proposed tourist road posed an imminent threat to the heritage values of the area and granted emergency heritage listing to the Tarkine. During the following 12 months, the Australian Heritage Council consulted with relevant stakeholders and released its preliminary assessment, confirming that the Tarkine was likely to satisfy the criteria for a National Heritage place.

In December 2010, Environment Minister the Hon Tony Burke MP allowed the emergency heritage listing to lapse, noting that the tourist road proposal had been withdrawn and no longer posed an imminent threat to the heritage values of the area. He asked the Australian Heritage Council to continue its assessment of the Tarkine for possible permanent inclusion in the National Heritage List.

In February 2011, Shree Minerals referred its proposal for an open cut magnetite/haematite mine at Nelson Bay River within the Tarkine to the Minister under the EPBC Act. Minister Burke considered whether this mining proposal constituted a new 'imminent threat' to the heritage values of the Tarkine, but declined to reactivate the emergency heritage listing, noting that the likely impacts of the proposed mine 'would not pose a threat to national heritage values sufficient to meet the requirements for emergency listing of the Tarkine'.¹

¹ Australian Government Ministerial Brief, B11/343, Heritage Division, available at www.environment.gov.au/epbc/gunns/pubs/brief-b11-343.pdf

attending will be an offence.

It will be an offence to provide information that is false, misleading or incomplete where the person 'ought reasonably to know'. This broadens the existing offence which requires actual knowledge of false, misleading or incomplete information.

by Jess Feehely and Tom Baxter

The Australian Heritage Council expects to conduct further assessment of the Tarkine Wilderness Area in July 2011, with a view to making a recommendation to the Minister in September 2011 regarding the permanent inclusion of the area in the National Heritage List.

On 18 March 2011, the Minister determined that the Shree Minerals proposal was a controlled action on the basis of potential impacts on listed threatened species.

The proposal will not be assessed against the national heritage provisions, even if the Tarkine is subsequently included in the National Heritage List (s 158A of the EPBC Act).

Gunns' Bell Bay pulp mill approved

As noted above, on 10 March 2011, Environment Minister Burke approved the three remaining modules of the Environmental Impact Management Plan (EIMP) for Gunns Limited's controversial Bell Bay pulp mill.² The EIMP was required by the conditions imposed when the pulp mill was approved by former Minister, the Hon Malcolm Turnbull MP, in October 2007. In January 2009, then Minister Peter Garrett announced that any decision in relation to approval of the EIMP would be deferred until March 2011 to allow further modelling of impacts on the marine environment.

The final modules of the EIMP approved by Minister Burke outline allowable discharge levels and monitoring, reporting and response strategies in relation to discharges to the marine environment. At the request of Gunns Limited, Minister Burke also accepted amendments to the approved plans to restrict feedstock for the mill to plantation timber (rather than native forest), require the discharge pipeline to be buried and to introduce elemental chlorine-free technology to reduce the impacts of bleaching.

In early March 2011, the Tasmanian Greens introduced [a bill into Parliament](#) seeking to repeal the controversial
² www.environment.gov.au/epbc/gunns/index.html

NELR recent developments

Pulp Mill Assessment Act 2007 (Tas) and revoke the pulp mill permit issued under that Act. The Bill will be debated when parliament resumes in May 2011. Pursuant to the conditions of the current permit, Gunns Limited must substantially commence the pulp mill by August 2011.

Moratorium advanced under the Forestry Statement of Principles

One of the principles in the historic agreement between conservation groups, unions and the forest industry signed in October 2010 (see NELR 2010:2–3) was a moratorium

on logging in high conservation value forests on public land. The conservation signatories, the Wilderness Society, Australian Conservation Foundation and Environment Tasmania, subsequently identified approximately 550 000ha of high conservation value forest to be subject to a moratorium, including the Tarkine, Styx and Weld forest areas. However, the apparent lack of government action towards implementing such a moratorium had threatened to derail the ongoing ‘forest peace talks’.

On 11 March 2011 the facilitator appointed by the Federal government, Bill Kelty, released an interim agreement outlining the terms of the moratorium.³ The agreed moratorium provides that no logging will occur in the identified high conservation value areas for a six month period, unless the logging is necessary to meet existing contracts or to assure wood supply for the existing industry. The interim agreement explicitly allows for a ‘transition period’ whilst arrangements for the moratorium are finalised with Forestry Tasmania, and recognises that negotiations are ongoing to lock in existing native wood supply agreements outside the high conservation values areas until at least 2027. Mr Kelty also emphasised the need for financial assistance from the Federal government to implement the moratorium.

³ www.premier.tas.gov.au/hot_topics/bill_kelty_statement

VICTORIA

New landscape for Victorian wind farms – local government powers reinstated

On 3 March 2011 the new Minister for Planning announced his intention to make local government the responsible authority for all wind energy facility applications in Victoria.

Amendment VC78, gazetted on 15 March 2011, amended all planning schemes in Victoria to remove the Minister’s

Some conservation groups and the Tasmanian Greens have criticised the interim agreement, arguing that allowing logging where it is considered ‘necessary’ falls well short of a full moratorium. Several conservation groups have subsequently quit the peace talks.

Negotiations are continuing amongst remaining parties in relation to other aspects of the Forestry Statement of Principles.

Proposed ban on canal estates in Tasmania

The Canal Estates (Prohibition) Bill 2011 was introduced to parliament in March 2011.⁴ Consistent with the position adopted in New South Wales and Victoria, the Bill prohibits the use or development of residential canal estates throughout Tasmania. Attorney-General and former Premier, the Hon David Bartlett, made a commitment to introduce a ban on canal estates when announcing his decision to refuse the canal estate development proposed by Walker Corporation in Ralphs Bay Conservation Area in June 2010.

Vexatious litigants

The Vexatious Proceedings Bill 2011 was tabled in March 2011.⁵ The Bill aims to deter and curtail the activities of vexatious litigants in Tasmania, following the model legislation adopted in many other Australian jurisdictions. The Bill would allow for vexatious proceedings orders to be made against frequent vexatious litigants, or those who act ‘in concert’ with such litigants. Vexatious proceedings orders can prohibit a person from commencing proceedings in any court or Tribunal, including the Resource Management and Planning Appeal Tribunal, without the leave of the Supreme Court.

⁴ www.parliament.tas.gov.au/bills/pdf/15_of_2011.pdf

⁵ [see www.parliament.tas.gov.au/bills/pdf/14_of_2011.pdf](http://www.parliament.tas.gov.au/bills/pdf/14_of_2011.pdf)

by Barnaby McIlrath and Jake Dabscheck

decision making powers regarding wind energy facilities of 30MW or greater. Amendment VC78 amended the Victoria Planning Provisions by amending cl 19.01 of the SPPF and cl 52.32 – wind energy facility to (among other things):

- include an additional application requirements
- replace the 1998 New Zealand Standard – NZS6808 with the new 2010 version.