

including coastal protection, koala conservation, and wetlands of high ecological significance. Also, it is unclear how the interim TSPP interacts with existing SPPs, as there are likely to be conflicts between them.

### ***Mines Legislation (Streamlining) Amendment Act 2012***

The *Mines Legislation (Streamlining) Amendment Act 2012* was introduced as a bill on 2 August 2012, and was passed, and given royal assent on 29 August 2012. The main objectives of the Act are to clarify the rules regarding compulsory acquisition of land in resource development situations, and to implement part of the Queensland government's Streamlining Approvals Project.

The Streamlining Approvals Project commenced in January 2009 under the Bligh government, with the objective of reducing the time taken to process resource development applications. The *Mines Legislation (Streamlining) Amendment Act 2012* implements some of the recommendations of the project, including measures to introduce common terminology and assessment processes for the key resource legislation in Queensland (the *Mineral Resources Act 1989* (Qld), *Petroleum and Gas (Production and Safety) Act 2004* (Qld), *Petroleum Act 1923*, *Greenhouse Gas Storage Act 2009* (Qld) and *Geothermal Energy Act 2010* (Qld)). It also introduces an online service delivery platform to allow industry to interact with Government.

## TASMANIA

### by Jessica Feehely and Tom Baxter

#### **Gunns loses legal challenge against pulp mill security for costs**

In April 2012, the Supreme Court dismissed an application by Gunns Limited (Gunns) for an order that the Tasmanian Conservation Trust (TCT) provide security for costs in its proceedings alleging that works at the site of the proposed pulp mill are unlawful.<sup>44</sup> Gunns appealed against the decision on a number of grounds, including:

- there was no evidence that TCT would have abandoned the litigation had security for costs been required, which ought to be a determining factor
- in considering the availability of funds to TCT (based on litigation pledges and an undertaking that their current

litigation fund would not be used for any other purpose until the matter was finalised) the judge had failed to consider whether there was any certainty that Gunns could recover those funds if successful

- the fact the TCT matter was determined to be a public interest litigation should not immunise the organisation from an obligation to provide security for costs
- the judge had taken an irrelevant matter into account in considering the proportionality of the anticipated costs against Gunns' anticipated profits from the pulp mill.

In August 2012, Blow J dismissed the appeal and awarded costs against Gunns: *Gunns Limited v Tasmanian Conservation Trust Inc* [2012] TASSC 51. His Honour was satisfied that Holt AJ had properly accepted evidence that the litigation fund would be available to meet an order for costs and was aware of the risk that the pledges would not be honoured when making his decision.

Justice Blow held that there was no rule that security for costs must be paid, or that proportionality was irrelevant, unless there is a risk that requiring security will result in discontinuance of the litigation. His Honour was satisfied that Holt AJ had properly considered the public interest nature of the case, along with the potential prejudice to Gunns if no security was given and the fact that the anticipated costs were 0.018% of the anticipated profits from the project, in the range of factors to be balanced in the exercise of his discretion.

#### **Forestry Tasmania to be restructured**

A strategic review of Forestry Tasmania commissioned by the Tasmanian Government was released in August 2012. An earlier report by consultants URS identified problems with Forestry Tasmania's financial sustainability and predicted ongoing losses of up to \$25m per year for the next five years.<sup>45</sup>

In its Stage 2 report, URS undertook a strategic assessment of three potential models for the government business entity:

- retaining the existing forest management structure (subject to minor procedural changes)
- separating Forestry Tasmania's commercial and non-commercial functions into two separate entities
- transferring Forestry Tasmania's functions to an existing government department.

44 See Associate Judge Holt's decision at <[www.austlii.edu.au/au/cases/tas/TASSC/2012/18.html](http://www.austlii.edu.au/au/cases/tas/TASSC/2012/18.html)>.

45 URS, *Strategic Review of Forestry Tasmania: Stage 1 Report*. February 2012 <[www.forestrytas.com.au](http://www.forestrytas.com.au)>.

The report recommended the separation option and outlined a process to achieve the restructure by June 2013.<sup>46</sup> The Tasmanian Government has accepted the recommendation and announced that:

- Forestry Tasmania will remain as a GBE responsible for commercial wood production
- most non-commercial functions, including management of reserves, will be transferred to separate Government agencies (principally, the Parks and Wildlife Service). The government will liaise with Forestry Tasmania to determine how and when these functions would be transferred.<sup>47</sup>

Senior executives within Forestry Tasmania were critical of the decision, with a leaked email to staff referring to the restructure as 'a public execution for Forestry Tasmania' and suggested that the Minister for Forests had been 'rolled' by the Greens.<sup>48</sup>

### Tasmanian Forests Agreement update

As outlined in the last edition, the Tasmanian Government introduced framework legislation to Parliament on 21 June 2012 to fulfil its commitment under the Tasmanian Forests Agreement to introduce legislation before the end of the financial year. The *Tasmanian Forests Agreement Bill 2012* (the Bill), does not directly create any new reserve areas. Instead, the Bill establishes a process for the proclamation of reserves to accommodate the variety of possible outcomes from the ongoing negotiations. The process established by the Bill involves:

- A Protection Order is to be introduced by the Minister within 6 months of the Act commencing, identifying reserve areas agreed as part of the negotiations. From the date that the Protection Order is passed by both Houses, no forest practices can occur on the land, the land may not be sold and no leases for more than 12 months can be granted without the consent of the Environment Minister. Other existing rights (such as mining leases) are not affected by the Protection Order.
- The Protection Order can be disallowed by either House of Parliament (and the Legislative Council has already indicated that it is unlikely to support the outcome of the forest negotiations).

- Within 12 months of the making of the Protection Order, the Minister may (but is not required to) introduce a Proposed Reserves Order identifying the final reserves proposal. Before introducing the Proposed Reserves Order, the Minister must prepare a 'durability report' assessing the proposed reservations in line with commercial commitments and obtain advice regarding the application of the Carbon Farming Initiative to the proposed reserves.
- If the Proposed Reserves Order is rejected by either House of Parliament, the Minister may introduce another Proposed Reserves Order within a further 12 months. If no further Proposed Reserves Order is made, or if the second Proposed Reserves Order is also rejected, the original Protection Order is revoked.
- If the Proposed Reserves Order is passed by both Houses, the Environment Minister is to determine the formal boundaries of the proposed reserves and the proposed status of the reserved areas under the *Nature Conservation Act 2002*. If the boundaries to be declared differ substantially from those identified in the Proposed Reserves Order, both Houses of Parliament must approve the changes.
- Once declared, the reserves will be managed under the *National Parks and Reserves Management Act 2002*.

The Bill amends the *Nature Conservation Act 2002* to include 'removal of carbon dioxide from the atmosphere and avoided emission of greenhouse gases' as an additional purpose for reserve areas.

The Bill also amends the minimum annual sawlog quota under the *Forestry Act 1920* to 155 000 cubic metres (as set out in the IGA), but provides for the quota to revert to 300 000 cubic metres in the event that the Protection Order or the Proposed Reserves Order fails to pass either House of Parliament.

The Bill is available at <[www.parliament.tas.gov.au/bills/pdf/30\\_of\\_2012.pdf](http://www.parliament.tas.gov.au/bills/pdf/30_of_2012.pdf)>.

The Reference Group of Signatories established under the IGA (including forestry and environmental interest groups) have yet to reach a final agreement. However, on 15 August 2012, the group released an *Interim Agreement*

46 URS, Strategic Review of Forestry Tasmania: Stage 2 Report. 10 August 2012 <[www.treasury.tas.gov.au](http://www.treasury.tas.gov.au)>.

47 Minister Bryan Green, press release, 29 August 2012. <[www.premier.tas.gov.au/media\\_room/media\\_releases/reforms\\_to\\_secure\\_forestry\\_tasmanias\\_future](http://www.premier.tas.gov.au/media_room/media_releases/reforms_to_secure_forestry_tasmanias_future)>.

48 ABC. 28 August 2012. 'Leaked email reveals Forestry Tas Split'. <[www.abc.net.au/news/2012-08-28/leaked-email-reveals-forestry-tas-split/4227572](http://www.abc.net.au/news/2012-08-28/leaked-email-reveals-forestry-tas-split/4227572)>.

## RECENT DEVELOPMENTS

on *Tasmanian Forests Wood Supply and Conservation (the Interim Agreement)*<sup>49</sup>, affirming their commitment to the negotiations, outlining an agreed vision for management of Tasmania's forests and identifying shared objectives and those areas where agreement was yet to be reached.

Under the Interim Agreement, the Signatories agreed to a detailed work program to be undertaken before the consideration of the final legislation by the Tasmania Parliament in late September 2012. The program included:

- implementation of a Voluntary Industry Restructure program (including support for voluntary exit by sawmillers and buyback of contracts)
- ongoing detailed modelling and rescheduling work by Forestry Tasmania and independent experts
- finalisation of additional durability mechanisms and exploration of options for utilisation of forest residues.

Despite this commitment, the Forest Industries Association of Tasmania suspended its involvement in the negotiations in protest over the announcement of plans to restructure Forestry Tasmania (discussed above), and has yet to rejoin the talks. The Tasmanian Aboriginal Centre has also opposed moves to transfer management responsibility for forest reserve areas to government agencies.

### Amendments proposed to streamline heritage works approvals

Legislation was introduced to parliament in late August to clarify the criteria for entry of places into the Tasmanian Heritage Register, and to introduce a more integrated process for the assessment of developments affecting heritage places.<sup>50</sup>

Currently heritage works require both a planning approval from the local council, and a works approval from the Tasmanian Heritage Council. The proposed legislation provides for one heritage works permit to be granted by the planning authority, following consultation with the Tasmanian Heritage Council. A planning authority is bound to refuse an application if the Heritage Council recommends refusal.

The proposed legislation also imposes significantly higher fines for breaches of permit conditions relating to heritage works.

### Interim Aboriginal Heritage Council to be established

Efforts to update Tasmanian Aboriginal heritage legislation have been ongoing for over six years, but appear to be close to finalization with a discussion paper expected to be released before the end of 2012. In preparation for the new Aboriginal heritage legislation, the Heritage Minister announced the establishment of an interim Aboriginal Heritage Council to provide him with advice and recommendations on Aboriginal heritage matters.

The Interim Council is expected to be a trial to determine the best structure for such an advisory body to facilitate a stronger role for the Aboriginal community in the protection and management of Aboriginal heritage.

Expressions of interest for the Chairperson and members of the interim council closed in September, and appointments are likely to be made soon.<sup>51</sup>

### Forest Carbon Study released

The Tasmanian Forest Carbon Study final report was released on 6 September 2012. The report, commissioned by the Tasmanian Government, provides a comprehensive analysis of carbon stocks in Tasmania's forests. Using a custom-built 'Forest Carbon Modelling Framework' the report estimates carbon stocks to be between 3 000 and 4 400Mt CO<sub>2</sub>e across all forest types and land tenures. Over 95% of the carbon is stored in native forests, including live vegetation, debris and in soil.

The Study is intended to assist landowners and the Tasmanian and local governments to evaluate the impacts of changes in forest and land management practices. The report compared a business-as-usual baseline with a number of scenarios, including complete cessation of native forest harvesting, reservation in accordance with the IGA commitments, regenerating native forest areas, increased conversion to plantations and introducing longer rotation lengths for existing plantations. The Study took into account a range of bushfire and climate change scenarios.

49 Available at <[www.forestsagreement.tas.gov.au/wpcontent/uploads/2012/08/Signatory\\_Interim\\_Agreement\\_2012\\_08\\_15-Final1.pdf](http://www.forestsagreement.tas.gov.au/wpcontent/uploads/2012/08/Signatory_Interim_Agreement_2012_08_15-Final1.pdf)>.

50 The *Historic Cultural Heritage Amendment Bill 2012* and the *Land Use Planning and Approval (Historic Cultural Heritage) Amendment Bill 2012* are available at <[www.parliament.tas.gov.au/bills/pdf/33\\_of\\_2012.pdf](http://www.parliament.tas.gov.au/bills/pdf/33_of_2012.pdf)> and <[www.parliament.tas.gov.au/bills/pdf/34\\_of\\_2012.pdf](http://www.parliament.tas.gov.au/bills/pdf/34_of_2012.pdf)>.

51 See <[www.aboriginalheritage.tas.gov.au/Pages/Interim-Aboriginal-Heritage-Council.aspx](http://www.aboriginalheritage.tas.gov.au/Pages/Interim-Aboriginal-Heritage-Council.aspx)> for more information.

Having regard to current and predicted carbon stocks, the Study outlines potential market opportunities for carbon sequestration and avoided emissions. The report estimates the current value of Tasmania's carbon stocks under voluntary markets as \$3b, but noted that this did not take into account opportunity costs of reduced forestry activities. The report also noted that the estimated value could increase by a factor of 10 if commitments were made under Kyoto Protocol Article 3.4 to recognise carbon credits generated by activities relating to agricultural soil, land use changes and forest practices. The Tasmanian Forest Carbon Study is available at <[www.dpac.tas.gov.au](http://www.dpac.tas.gov.au)>.

### Opposition to hazardous waste dump

Community opposition is mounting after Tasmania's first hazardous waste facility received approval in July 2012. Currently, there is no approved facility for hazardous waste in the state, with materials being transported interstate for disposal. The Category C facility, proposed by joint council authority, Southern Waste Solutions, was intended to receive hazardous materials and address legacy waste issues, including lead paint residues, contaminated soil and jarosite (a by-product of zinc production comprising various heavy metals).

The proposal received approval from the Environment Protection Authority and Sorell Council under the statutory approval process, having received only two representations during the public comment period. However, wider awareness of the proposal came when an article appeared in the *Mercury* newspaper after approval was granted. Local community members have since mobilized active opposition to the proposal.

Zinc producer, Nyrstar, has indicated that it no longer intends to dump its jarosite waste at the site, and Southern Waste Solutions has stated that Nyrstar's decision could jeopardise the business case for the proposal.

Southern Waste Solutions has conceded that more public consultation could have been done, and has announced that it will suspend work on the facility for one month to give the community an opportunity to raise concerns regarding the proposal. However, the authority has resisted calls from the community to relinquish the permit, stating that it is hopeful that community concerns can be addressed through amendments to management conditions.

### Animal Welfare Act to be reviewed

A discussion paper on the review of the Animal Welfare Act 1993 is available for public comment until 16 November 2012. The discussion paper outlines a range of possible amendments to enhance investigation and enforcement powers of authorised officers and to clarify offence provisions. The discussion paper also proposes imposing significantly higher penalties for cruelty offences as a deterrent measure and to reflect the seriousness of such crimes. The discussion paper is available at <[www.dpipwe.tas.gov.au](http://www.dpipwe.tas.gov.au)>.

### Whale Watching Guidelines to be applied in Tasmania

Earlier in 2012, deficiencies in Tasmania's *Whale Protection Act 1988* were identified when two people who had driven jet skis around a pod of dolphins were unable to be successfully prosecuted. Minor amendments to the legislation passed in August 2012 will allow regulations to be made to manage human interactions with whales and dolphins. The amendments create the legislative capacity needed to implement the National Guidelines on Whale and Dolphin Watching in Tasmania.

## VICTORIA

### by Barnaby McIlrath and Felicity Millner

#### Review of Native Vegetation Management Framework

The Department of Sustainability and Environment released a consultation paper in September 2012 entitled *Future directions for native vegetation in Victoria*, proposing reform of Victoria's Native Vegetation Management Framework (NVMF). The NVMF was introduced in 2002 as the principal policy for managing Victoria's native vegetation, including the removal of native vegetation.

In recognition that the NVMF has not led to a 'net gain' in the extent of vegetation, and that losses are still occurring across the landscape, one of the paper's key recommendations is that the state clarify the 'no net loss' objective for permitted clearing.