



Lawyers for Forests Inc v Federal Environment Minister & Gunns Ltd

Federal Court Proceeding VID 1112-07

Lawyers for Forests is an association of legal professionals working to promote the conservation and better management of Australia's remaining native forests.

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Lawyers for Forests is seeking funds to assist its work and to challenge the approval of the Tamar Valley pulp mill.

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www.lawyersforforests.asn.au

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Case Summary

On 4 October 2007, the then Federal Environment Minister, Malcolm Turnbull, approved the construction and operation of Gunns' pulp mill in the Tamar Valley, Tasmania, under the *Environment Protection and Biodiversity Conservation Act 1999* ("the Act"). The decision imposed 48 conditions on the approval of the mill.

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 Minister's decision on 9 grounds, many of which relate to the Minister approving the mill without knowing its environmental impacts. The conditions attached to the decision 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). LFF believes that this testing should have been part of the assessment before the approval decision was made.

The conditions allow the mill to produce a volume of toxic effluent that is simply that 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 relating to the Minister's earlier decision about the assessment process for the mill. *The case brought by LFF is the only case challenging the approval decision.*

If the LFF challenge is successful, the approval decision will be set aside. Gunns' pulp mill would not have Federal government approval and Minister Garrett would need to consider and decide the issue again.

After LFF launched its case in December last year, Gunns Ltd applied for an order that LFF pay "security for costs" (estimated to be in the order of \$100,000) before the case be allowed to proceed. If Gunns had been successful in that application, LFF would have been forced to discontinue the case as it did not have the money. On 30 April 2008, Justice Marshall ruled against Gunns, deciding that, in the circumstances, to make the order for security for costs:

"would stifle the litigation and prevent an applicant ... from agitating a matter which it considers to involve questions of public importance and which seems, on the material currently before the Court, to be made bona fide and raises arguable questions of law."

This was a welcome precedent for public interest cases, and for access to justice. Gunns was ordered to pay LFF's costs for that hearing.

Gunns and the Minister also sought to prevent LFF from introducing expert evidence from Professor Andrew Wadsley. On 4 June 2008, Justice Tracey ruled against introducing evidence by affidavit, allowing instead some of the evidence to be put by way of submissions from LFF, avoiding the need for Professor Wadsley to attend Court to give evidence.

The trial begins on 18 June before Justice Tracey in the Federal Court in Melbourne.

The goals of Lawyers for Forests include:

- promoting conservation of Australia's native forests;
- increasing accountability of government and business for their forest management policies;
- stimulating public interest in the protection of native forests and related environmental issues; and
- providing pro bono legal advice and undertaking law reform and policy development activities for the protection of native forests.

Summary of Grounds

Lawyers for Forests is seeking judicial review of the Federal Environment Minister's decision to approve Gunns' Tamar Valley pulp mill 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 did not take account of the "precautionary principle" in that he 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.
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.
7. The Minister improperly exercised his powers under the Act because the result of the decision was uncertain.
8. There was no evidence before the Minister to justify using a Canadian guideline to set maximum limits for the concentration of toxic chemicals in sediments (Condition 42).
9. The imposition of Condition 42 setting a maximum limit for toxic chemicals in ocean sediments based on a Canadian freshwater guideline was irrational.

The judicial review process challenges the way the Minister made the decision to approve the pulp mill. It reviews whether or not the decision was made lawfully. It does not review the merits of the decision.

16 June 2008

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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