

# The Wilderness Society v Malcolm Turnbull & Gunns Ltd

Federal Court of Australia—Tasmania Registry: TAD15 of 2007



The Wilderness Society (TWS) has applied to the Federal Court for a judicial review of two decisions of the Federal Minister for the Environment and Water Resources, Malcolm Turnbull. The decisions made under the Commonwealth *Environment Protection and Conservation Act* 1999 (EPBC) establish a process to assess Gunns' proposed pulp mill at Bell Bay in Tasmania.

The Wilderness Society is challenging the assessment process, not the environmental impacts of the mill itself. After The Wilderness Society launched its case, another group, Investors for the Future of Tasmania Inc, brought a similar action and the cases have now been joined.

There are 8 grounds for the TWS application:

1. Gunns' referral of the project for assessment in April 2007 was not valid in that the EPBC does not allow a company to withdraw and resubmit essentially the same proposal.
2. The Minister's decision was invalid because either the referral was invalid, or alternatively, the previous decisions about the assessment process continued to apply.
3. The Minister did not properly take account of the impact on nationally significant forests of the mill's sourcing of wood.
- 5\*. The assessment approach could not reasonably allow the Minister to make an informed decision on the mill.
6. The Minister's decision on the assessment approach was not procedurally fair in that the public was not afforded a reasonable opportunity to comment on the proposal mill.
7. The Minister's decision was invalid because it was effected by apprehended bias evident in the choice of assessment approaches and in the public statements and financial support for the mill from the government.
8. The Minister's decision to assess on the basis of preliminary documentation was not open to him under the EPBC.
9. The Minister failed to consider possible impacts of the mill on Commonwealth land.

\* The original 4th ground has been withdrawn.

If TWS's application is successful, either a new assessment approach could be developed or the proposal would need to be assessed under the process mandated in October 2005.

## Timeline

**15 December 2004:** Gunns refer the pulp mill proposal to the Minister for Environment including two alternative locations and technologies.

**24 January 2005:** The Minister determines that the pulp mill is a "controlled action" meaning that it comes under the EPBC Act.

**23 March 2005:** The Minister decides that the mill proposal will be assessed through an Integrated Impact Assessment conducted by the Tasmanian Resource Planning and Development Commission (RPDC).

**May 2005:** RPDC halts the assessment process after Gunns change scope of proposal. Gunns withdraw the referral sometime before 15 August.

**11 August 2005:** Gunns refer a new pulp mill proposal to the Minister for Environment.

**5 October 2005:** The Minister determines that the pulp mill is a "controlled action".

**26 October 2005:** The Minister establishes a process to assess the pulp mill via an Integrated Impact Assessment by the RPDC.

**28 March 2007:** Gunns withdraws the August 2005 referral.

**2 April 2007:** Gunns makes a new referral to the Minister for what TWS says is essentially the same project.

**4 May 2007:** The Minister accepts this new referral and establishes a different assessment process based on preliminary documentation.

This information sheet is a lay person's summary of the application brought by The Wilderness Society. It is intended as general information for the public and does not constitute legal opinion or a view as to the merits of the case. For further information, contact The Wilderness Society Inc, National Campaign Office: 02 6249 6491.