

## **THE TASMANIAN PULP MILL—BELL BAY INDUSTRIAL ESTATE, TAMAR VALLEY**

### **Democracy and the Pulp Mill**

A rally in August 2008 opposing the value adding pulp mill for the Bell Bay industrial estate is being promoted to “Restore Democracy” and to “repeal Section 11”.

With classic irony the rally relates to Pulp Mill Assessment Act 2007, a Tasmanian law passed by both houses of its democratically elected parliament. A law that was fully debated, a law that saw the Members of Parliament receive briefings from special interest groups and the public service as well as receive a flood of correspondence seeking to influence their vote<sup>i</sup>.

The Bill introduced by Executive Government was subject to detailed scrutiny by the Parliament and its Section 11 subject to debate, amendment and the advice of the Solicitor General.

More than any other Bill passed by State Parliament in 2007, this Act was subject to the blow torch of media investigation and public scrutiny.

The Law and its Section 11 is the result of DEMOCRACY – some would argue that it was ‘Democracy at its best’ as the proposed law by Executive Government was scrutinized by parliament and amended to maintain common law the rights of ordinary citizens. The vote on the bill was by representatives of the people elected in free and fair elections.

In fact soon after the amendment to Section 11 was agreed to by Parliament and the Pulp Mill Assessment Act became law, the mover of the amendment faced re-election.

He was opposed by a candidate of the Greens Party, with a policy to oppose the pulp mill. The mover of the amendment, the Member for Nelson - Jim Wilkinson, a Barrister and Solicitor, was returned to office with a massive 62% majority.

Thus demands to repeal this section of this law will not restore democracy, but have the opposite affect to undermine democracy and due lawful process.

Whilst Section 11 restricted appeal rights against the approval of the proposal and its permits, according to the Solicitor General’s advice as stated and recorded in our democratic Parliament<sup>ii</sup> the Act **does not prevent** a person who suffers loss or damage as a result of the operation of the project or activities conducted in connection with the project from bringing an action at common law.

Yet the rally organizers have claimed that under Section 11 says no one is entitled to appeal for compensation from damages to their business, property values or health caused by Gunns’ planned pulp mill<sup>iii</sup>.

The opponents also claim “The legislation deliberately and thoroughly removes any opportunity for people to seek redress through the courts if they are adversely affected in any way.”

The organizers also claim that Section 11 prevents legal redress for harm to any:

- person if their health, or the health of their children, is affected by emissions that can be traced back to the mill.
- business enterprise eg. farming, fishing, tourism and service industries, if that business is jeopardised or destroyed due to adverse impacts from the mill.
- resident or land owner for loss of value or damage to property, if land and property near or perceived to be near the pulp mill, loses value due to its location.
- farmer for damage to farmlands used for the pipelines including leakage or rupture, lost income, or weed and pest infestation from poor hygiene by construction and inspection crews.

The facts behind the Act and its passage through Parliament can be seen from the following extracts from Hansard of the Legislative Council debates and a comparison of the proposed Bill to the Act that became the democratically framed law:

## **THE TASMANIAN PULP MILL—BELL BAY INDUSTRIAL ESTATE, TAMAR VALLEY**

Legislative Council in Committee examining the Bill:

**Clause 11** -(Limitation of rights of appeal)

**Mr WILKINSON** - Mr Deputy Chairman, I move -

That clause 11 subclause (1) be amended after 'relating to' by inserting 'any assessment or approval of the project under'.

This is the first amendment, which is under the heading of 'Leader of the Government' and it arose - and please tell me if I am wrong - as a result of some conversations that I had about a proper clause to put in place to ensure that people who may suffer loss or damage as a result of something arising out of the process are not in any way stopped from making a claim against the person who is the negligent party.

The original amendment that I gave to the Government said this:

'That nothing in this Act prevents a person who suffers loss or damage as a result of the operation of the project or activities conducted in connection with the project from bringing an action at common law.'

I understand that that amendment went back to the draftsman and to the Solicitor-General. The Solicitor-General believed, along with the draftsman and the advisers, that that intent was encompassed in the amendment that you see before you.

I also move -

That clause 11 be amended after subclause (1) by inserting the following subclause -

'(1A) For the purposes of subsection (1), "any action, decision, process, matter or thing arising out of or relating to any assessment or approval of the project under this Act" includes any action, decision, process, matter or thing arising out of or relating to a condition of the Pulp Mill Permit requiring that the person proposing the project apply for such other permits, licences or other approvals as may be necessary for the project.'

I questioned that this morning - I found it hard to understand last night. I thought it might have been the time of the day but I still had some problems this morning. However, I was assured that that is the best way of encompassing what I originally stated in relation to my request to make sure that there was certainly no way people who may have suffered loss or damage as a result of negligence or other similar legal activity which was found to be wrong are going to be in any way stopped from making a claim.

**Mr WILKINSON** - It is a limiting clause, limiting it to the actual matters that are set out in sub clause (1A).

So if that is the case and that is the assurance that I have, I am happy with that. I can indicate to members that I was, at one stage, considering obliterating clause 11 completely. I understand that was going to cause problems. I understand that that was not going to get up in this House as well, after taking a bit of a straw poll, and, as a result of that, I thought that I -

**Mr Parkinson** - Do you do that too?

**Mr WILKINSON** - I had a bit of a straw poll, yes, because I thought to myself that I do not want to waste anybody's time in putting forward matters which obviously have no chance of success, and because of matters that were raised by a number of members I did not do that. I believe, as they say, politics is the art of the achievable and this is what has been achievable. I thank the Government for their assistance in relation to drafting this amendment and I believe it is going to be a good one.

**Mr PARKINSON** - The Government supports the amendment and I support the comments made by the honourable member.

**Amendments agreed to.**

**Mr WILKINSON** - Mr Deputy Chairman, I move -

That clause 11 subclause (2) be amended by leaving out 'prevent a review of' and inserting 'apply to'.

I believe that is better wording.. It certainly makes the reading of the clause easier and better understood and that is why I move it. I do not believe there is any opposition from the Government.

**Mr PARKINSON** - The Government supports the amendment.

**Amendment agreed to. Clause 11 as amended agreed to.**

## THE TASMANIAN PULP MILL—BELL BAY INDUSTRIAL ESTATE, TAMAR VALLEY

### Original proposed law

#### 11. Limitation of rights of appeal<sup>iv</sup>

(1) Subject to subsection (2) and notwithstanding the provisions of any other Act –

- (a) a person is not entitled to appeal to a body or other person, court or tribunal; or
- (b) no order or review may be made under the *Judicial Review Act 2000*; or
- (c) no declaratory judgment may be given; or
- (d) no other action or proceeding may be brought –

in respect of any action, decision, process, matter or thing arising out of or relating to this Act.

(2) Subsection (1) does not prevent a review of any action, decision, process, matter or thing which has involved or has been affected by criminal conduct.

(3) No review under subsection (2) operates to delay the issue of the Pulp Mill Permit or any action authorised by that permit.

### The law as approved by Parliament

#### 11. Limitation of rights of appeal<sup>v</sup>

(1) Subject to subsection (3) and notwithstanding the provisions of any other Act–

- (a) a person is not entitled to appeal to a body or other person, court or tribunal; or
- (b) no order or review may be made under the *Judicial Review Act 2000*; or
- (c) no declaratory judgment may be given; or
- (d) no other action or proceeding may be brought–

in respect of any action, decision, process, matter or thing arising out of or relating to any assessment or approval of the project under this Act.

(2) For the purposes of subsection(1), "any action, decision, process, matter or thing arising out of or relating to any assessment or approval of the project under this Act" includes any action, decision, process, matter or thing arising out of or relating to a condition of the Pulp Mill Permit requiring that the person proposing the project apply for such other permits, licences or other approvals as may be necessary for the project.

(3) Subsection (1) does not apply to any action, decision, process, matter or thing which has involved or has been affected by criminal conduct.

(4) No review under subsection (3) operates to delay the issue of the Pulp Mill Permit or any action authorised by that permit.

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<sup>i</sup> Hon. D Wing MLC President of the Legislative Council, Radio Interview 7ZR ABC 26 March 2007 Transcript MT033-07 Tasmanian Parliamentary Library

<sup>ii</sup> Hansard, Legislative Council Thursday 29 March 2007 - Part 2 – P102

<sup>iii</sup> Flyer Section 11 Action, Tapvision , 2008 2 page flyer accessed from <http://tapvision.info/files/Flyer%20Section%2011%20of%20the%20Pulp%20Mill%20Assessment%20Act%20v010%20b+w.pdf>

<sup>iv</sup> Pulp Mill Assessment Bill 2007

<sup>v</sup> Pulp Mill Assessment Act 2007 (No. 4 of 2007) from <http://www.thelaw.tas.gov.au/>