Inquiry into the operation of the *Environment and Biodiversity Conservation Act 1999*

The compilation of this inquiry is based on examining the relationship between the protection of threatened species in Tasmania and the ability of legislation to 'protect' Australia's biota – as protecting habitat is critical to preventing species extinction. This must be done without bias so justice is afforded threatened species in the same way that justice is afforded to human beings.

The recent Wielangta federal court case highlighted the conflict between environmental law and the bias of politicians in protecting the forest industry, ie, the logging of Tasmania's native forests is more important than protecting threatened species. Justice Marshall, for the first time, has afforded justice to threatened species in law by his decision. Politicians did not like it, so an amendment was made to the Regional Forest Agreement (RFA).

On 19th December 2006, Justice Marshall concluded that '…forestry operations in Wielangta have not been undertaken in accordance with the Tasmanian RFA and are therefore illegal.' This decision was overturned at appeal on the 30th November 2007 by the full bench of the federal court. This was only possible because the Prime Minister of Australia and the Premier of Tasmania amended the RFA in February 2007, after Justice Marshall's decision. It was a deliberate attempt, by both parties, on legal advice, to sure up the appeal, so that the full bench of the federal court could overturn Justice Marshall's original decision. It was done without the approval of parliament, even though parliament had to approve the original RFA.

It was done because the original decision by Justice Marshall not only stopped logging in Wielangta, but set a precedent that would affect all forestry operations in Tasmania. An issue both parties did not want to address. It is a matter of the public record that Premier Lennon of Tasmania and Primer Minister Howard of Australia were staunch pro-logging industry advocates and would maintain the status quo, even if it meant threatening species' survival. This amended clause 68 allowed the full bench of the federal court to state that, '…there was no guarantee that the environment, including the beetle, eagle and parrot, would not 'suffer' as a result of forestry operations ' (paragraph 64.) Yet, Justice Marshall's original decision (before the amended clause), in relation to forestry operations and clause 68 of the RFA found that 'there is no evidence that the State can or will protect the parrot, beetle and eagle through the CAR reserve system.' (paragraph 271.)

This deliberate changing of clause 68 of the agreement, without the approval of parliament, with the specific intent to overturn a federal court decision at appeal, is a clear misuse of political power. This results in the commonwealth and the state gaining advantage because they wanted to protect the forest industry. When a state and commonwealth power commit such an act, they throw away the democratic system of government that nations like Australia pride themselves on.

In fact, an independent judiciary is critical to democracy. It is at arms length of the political process. When the political process so blatantly interferes with the law by a Prime Minister and a Premier, without regard to due process, we are left with a corrupted system. The end result in this case is that all forest in Tasmania that is covered by an RFA has NO Protection in law for its threatened and endangered biota. A totally unacceptable situation.

The effectiveness of the Tasmanian RFA in protecting forest species and forest habitat is nil, as now the Environment Protection and Biodiversity Conservation (EPBC) Act itself does not apply to areas covered by an RFA. Justice Marshall summed it up well:

'…forestry operations in Wielangta have not been carried out 'in accordance with' the RFA because the species are not protected either through CAR reserves or management prescriptions as required by clause 68 of the RFA' (paragraph 293.)

Yet the full bench at appeal stated that '…the EPBC does not apply to forest operations in RFA regions and the regime applicable in those regions is found in the RFA's themselves.' This is the Howard/Lennon clause at work for the specific purpose of obtaining this result. The irony is that the full bench of the federal court did not dispute Justice Marshall's finding that the parrot, beetle and eagle were significantly threatened by these forestry operations. In fact, his original decision still stands.

It is in the end the word changing in clause 68 that allowed the full bench to overturn Justice Marshall's original decision. The facts in his decision, provided by and assessed by independent experts, was never in doubt.

So, what are we left with in Tasmania?

We are left with all state forest in Tasmania covered by an RFA, having no threatened and endangered biota protection in law. What protection afforded it in the RFA, through the CAR reserve system, is at the behest of Forestry Tasmania and the Forest Practices Authority (FPA) – one a government business enterprise, the other an authority controlled by a government (as they finance the authority.) There is no independent scrutiny in law that exists for threatened species. It is all prescription management with all the scientific experts on the payroll of the state government or the state government business enterprise. Yet when the EPBC Act was passed, it was the will of the parliament to 'protect' endangered species on its lists. It is the job of the scientific advisory committee to assess species and their threatened status, so only species threatened with extinction are covered.

Now parliament has been side-stepped by the Howard/Lennon deal, we are left with the real prospect that such species as the Tasmanian Wedgetail Eagle will become extinct. It is basically very simple, ie, if we bulldoze all the houses in Battery Point in Hobart all the people who live there would have to find somewhere else to live. The same applies in the forest.

If we fell the forest in which animals live, they have to find new homes. Forestry Tasmania says that within a coupe it protects threatened species habitat but when you continue logging as they do, the accumulative effect over time changes habitat and therefore will eventually push species to extinction, defeating the objective of the RFA and the EPBC act.

The RFA has been manipulated and used as a tool by the government business enterprise, Forestry Tasmania, to log native forest, simply because cutting down trees pays their wages and the government has used the RFA and its substantial commonwealth subsidies to prop up the forest industry. It has made no attempt to honour the intent of the RFA or the EPBC act to protect threatened species. Justice Marshall summed it up well in the Wielangta case when he stated that, '…an agreement to 'protect' means exactly what it says. It is not an agreement to attempt to protect, or to consider the possibility of protecting a threatened species.' (paragraph 240.)

Personal experience has borne out the difficulties in protecting threatened species.

In September 2003, a conservation covenant was placed on approximately 50 hectares of our 77 hectare property to protect Bornemisszas stag beetle and E. ovata forest through the private forest reserve program. Forestry Tasmania, to their credit, set aside approximately 73 hectares in an informal reserve adjoining the PFR (private forest reserve) specifically to protect habitat for the Bornemisszas stag beetle, as its known habitat is highly restricted. The reserved land in total is approximately 123 hectares, this constitutes 10% of Bornemissza stag beetle habitat.

Dr. George Bornemissza, who discovered the stag beetle and had it described in 1995/96, wrote to me. He highlighted the extremely restricted known habitat of the species and that this protection was no guarantee of the species long-term survival. Since the PFR was declared and Forestry Tasmania put in place an informal reserve, Forestry Tasmania has logged 2 coupes, GC150A and GC148A, both in stag beetle habitat.

In attachment 2 of the RFA, Simsons stag beetle, a related threatened species, required recovery action. Bornemisszas stag beetle is not listed in the RFA because it was only listed as a threatened species in 1997 and those involved in formulating the RFA would not have been aware of it. Simsons stag beetle is more widespread than Bornemisszas stag beetle. Simsons status is threatened, whilst Bornemissza is endangered.

It is a simple fact that you cannot recover a species while you keep logging its habitat. In the case of coupe GC148A, a highly significant area, as it is only one of 2 known locations where both stag beetles occur. Forestry Tasmania, having put in place an informal reserve, seem to think the species is protected and they can carry on with business as usual. More worryingly, Forestry Tasmania appear to ignore independent scientific opinions: two eminent scientists, Dr. Peter McQuillan and Dr. George Bornemissza's representations to not log GC148A, were ignored.

Intelligent people are morally corrupted by a system of self regulation that is open to manipulation and is wrong. That is what Justice Marshall discovered in the Wielangta case, and it is what I have personally experienced, that the RFA cannot, does not, and those in charge, will not, in good faith, honour the fundamental hope that this agreement had for protecting forest species. When a judge recognises this in his judgement and orders that 3 species be protected by outlawing logging, the response of the authorities is to challenge the judgement with an amended clause, with the specific intent of changing the outcome, instead of recognising the legitimacy of the Marshall decision and setting about implementing changes that protect threatened species.

The PFR on our property is an agreement between the landowners and state and federal governments. External threats such as logging stag beetle habitat, threaten the long-term survival of the beetle and therefore threatens the reason for the reserve's creation. Independent experts will tell you this because habitat loss is one of the big factors in species extinction.

Forestry Tasmania's experts will tell you otherwise. In this case, they say stag beetles will recolonise the logged areas even though they have no idea how many are lost in the operation or how this affects the species long-term. This is based on assumptions because there is no scientific evidence that has been peer reviewed that backs this statement up. Bornemisszas stag beetle has been known to science for approximately 14 years, a species that has Gondwana links (hundreds of millions of years old.) To assume that logging in forest that is its heartland and won't threaten the species is a very dangerous assumption, yet this is exactly how the species is managed through the RFA – prescription management. Justice Marshall found in the Wielangta case that 'the RFA was really an agreement to attempt to protect or to consider the possibility of protecting threatened species.' (paragraph 240.)

If any of the senators sitting on this inquiry have had any dealings with threatened species in Tasmania and the government authorities charged with their protection, they will soon realise that it is nearly impossible to get anyone to take responsibility for their protection. That is why Mr. Bob Brown took the case of the Swift parrot, Wedgetail Eagle and the Wielangta Stag Beetle to the federal court, and although the original decision by Justice Marshall was overturned at appeal and the high court refused to hear the case – senators – read all the judgements and you will find that the original decision which was clear, that these species were threatened – still stands. The appeal did not change this.

And so senators, these forest species, and all threatened species in Tasmania's forests have absolutely no protection either through the EPBC act or the RFA and if things don't change soon,then one thing is certain, more of Australia's biota will become extinct.

The irony is that Tasmania's carbon rich forests will be worth far more in economic and environmental terms in the future standing than cut down. As climate change kicks in and a price is put on carbon, the value of these forests will be so great that future generations will undo what we so foolishly have done. They will try to restore these

forests from what remains, to absorb carbon and hopefully, restore habitat, so species on the brink of extinction, may be rescued.

The environmental question is the burning issue of our time. Reform is required to both the EPBC act and the RFA so we don't have the Wedgetail Eagle and other fellow creatures going the way of the Thylacine. Extinction is forever. Since European settlement of Australia, over 54 species of animals and over 50 species of plants have become extinct – a national disgrace.

I would like the opportunity to speak with the committee or its representatives at any public hearings that are conducted as part of this inquiry. I would also appreciate confirmation of this submission in writing.

Thank you.

Ian C. Matthews
1st September 2008