



PRIME MINISTER

JOINT STATEMENT BY THE PRIME MINISTER AND THE ATTORNEY-GENERAL

The Commonwealth Government issued a writ in the High Court today seeking a permanent injunction against the Tasmanian Government, the Hydro-Electric Commission and the Premier of Tasmania restraining them from continuing the work connected with the building of the Gordon-below-Franklin dam.

The basis of the Commonwealth's claim is that the State legislation authorising the Hydro-Electric Commission to build the dam is now invalid because it is inconsistent with a Commonwealth law (the Regulations under the National Parks and Wildlife Act gazetted last week) which forbids the building of the dam and work connected with it.

The Commonwealth also seeks an order that the Premier give a written direction to the Hydro-Electric Commission that it stop the work on the dam. This power is given to the Premier by the Hydro-Electric Commission Act of Tasmania.

The Commonwealth's statement of claim points out that the Tasmanian Premier of the day, Mr Lowe, requested the Fraser Government to place the area comprising the Cradle Mountain - Lake St. Clair National Park, the Franklin-below-Gordon Wild Rivers National Park and the Southwest National Park on the World Heritage List and that the Commonwealth did so in accordance with that State request.

The site was placed on the World Heritage List by the Commonwealth at Tasmania's request:

- . because it contained unique examples of Ice Age Aboriginal occupation of riverine areas;
- . because it contains rare and imperilled trees, plant life and animal life; and
- . because it is one of the rare world examples of a glaciated area of outstanding national beauty.

We reject claims made by the Tasmanian and Queensland Premiers that the Commonwealth's action amounts to an unjustified interference with States rights.

This case raises legal and political issues not just of concern to Tasmania but of real national and international significance.

The Commonwealth has a responsibility to the nation as a whole, and a clear international obligation, to protect from destruction this outstanding part of Australia's and the world's natural and cultural heritage.

The Labor Government will always be sensitive to claims of States rights, and will always attempt to resolve problems by negotiation in the first instance.

But to say that the dam issue is for Tasmania alone to resolve is as nonsensical as to claim that oil drilling on the Great Barrier Reef is a matter for Queensland alone.

The Constitution does not, and never has, identified two mutually exclusive "boxes" of powers - one labelled "Commonwealth" and the other "State".

The balance between Commonwealth and State legislative power has been changing and evolving ever since Federation as new situations unforeseen by the founding fathers - for example, aviation and broadcasting - have emerged.

By virtue of the international significance of the Tasmanian wilderness and the treaty obligations the Commonwealth has entered into at Tasmania's request, the Commonwealth has clear constitutional power to act in the way it has.

We believe that the Commonwealth has the clear duty to so act in the interests of all Australians and the world community.

The Commonwealth's legal team will be headed by the Solicitor-General, Sir Maurice Byers Q.C., Mr. A. R. Castan Q.C. and Ms. Susan Kenny of the Victorian Bar, and Mr. Peter Underwood of the Tasmanian Bar.

In the preparation of its case, the Commonwealth Government has also had the assistance of archaeologists, anthropologists and geologists of world standing who have verified the site's outstanding universal value.

No clear timetable has yet been resolved for the hearing of this case by the High Court, but it is the Commonwealth's intention to have this matter (and any other matter that may arise as a result of the further legislation the Government will seek to enact early in the May session) resolved as soon as possible and practicable.

We hope that - now that the matter is clearly headed for the High Court - the Tasmanian Government will at least agree in the meantime to proceed no further with any work that could cause irreparable damage to the World Heritage listed area, and the Prime Minister has written to Mr Gray today seeking his co-operation in this respect.

Attached: Copy of Statement of Claim issued with the Writ.

Conv letter Prime Minister to Mr Gray 6 April 1983.

IN THE HIGH COURT OF AUSTRALIA
REGISTRY

No. *C6* of 1983

BETWEEN:

THE COMMONWEALTH OF AUSTRALIA
AND THE ATTORNEY-GENERAL OF
THE COMMONWEALTH

Plaintiffs

AND:

THE STATE OF TASMANIA

First Defendant

THE HONOURABLE ROBIN GRAY

Second Defendant

HYDRO-ELECTRIC COMMISSION

Third Defendant

STATEMENT OF CLAIM

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REGISTRY

BETWEEN THE COMMONWEALTH OF AUSTRALIA AND
THE ATTORNEY-GENERAL OF THE
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Plaintiffs

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First Defendant

THE HONOURABLE ROBIN GRAY

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HYDRO-ELECTRIC COMMISSION

Third Defendant

STATEMENT OF CLAIM

The second defendant is the Premier of the State of Tasmania and the Minister responsible for the administration of the Hydro-Electric Commission Act 1944 of that State and as such is empowered after consultation with the third defendant to give to it any written direction that he considers to be in the public interest with respect to the performance or exercise by it of its functions, duties or powers under the Hydro-Electric Commission Act 1944 or any other Act.

2. The third defendant is a body corporate incorporated by and under the provisions of the Hydro-Electric Commission Act 1944 (Tas.).

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3. By that Act the third defendant is empowered within the State of Tasmania to construct any works, to operate, manage, control, and generally carry on and conduct any business whatsoever relating to, or connected with, the generation, reception, transmission, distribution, supply and sale of electrical energy and to carry out in relation thereto any purpose which it may deem desirable in the interests of that State including, with the authority of Parliament, the construction of any new power development.

4. On 16 November 1972 the General Conference of the United Nations Educational, Scientific and Cultural Organization (the Organization) adopted a multilateral Convention entitled "Convention for the Protection of the World Cultural and Natural Heritage" (hereinafter called "the Convention").

5. On 22 August 1974 Australia deposited its instrument of ratification of the Convention with the Secretary-General of the Organization and on 17 December 1975 the Convention entered into force pursuant to the provisions of Article 33 thereof. As at 16 March 1983, seventy-two countries from all regions of the world had become parties to the Convention.

6. On 22 September 1981 the then Premier of the State of Tasmania requested the Prime Minister to submit to the World Heritage Committee established under the Convention the nomination of an area described as the Western Tasmania Wilderness National Parks. The area referred to in the nomination comprised the Cradle Mountain - Lake St Clair National Park; the Franklin - Lower Gordon Wild Rivers National

Park and the Southwest National Park each of which was a State reserve within the meaning of the National Parks and Wildlife Act 1970 (Tas.).

7. On 13 November 1981 the Australian Government submitted a nomination substantially in accordance with the request by the said Premier to the Secretariat of the World Heritage Committee in accordance with paragraph 1 of Article 11 of the Convention.

8. By submitting the said nomination to the World Heritage Committee the Commonwealth identified the said area (hereinafter called "the property") as property forming part of the cultural heritage and natural heritage for the purposes and within the meaning of the Convention.

9. The property:

- (a) contains natural features consisting of physical and biological formations, and groups of such formations, which are of outstanding universal value from the aesthetic and scientific points of view;
- (b) contains geological and physiographical formations which constitute, and is itself an area which constitutes, the habitat of threatened species of animals and plants of outstanding universal value from the points of view of science and conservation;
- (c) contains natural sites, and is itself a natural area, of outstanding universal value from the points of view of science, conservation and natural beauty;

(d) contains archaeological sites which are of outstanding universal value from the historical, aesthetic, ethnological and anthropological points of view.

10. Under the Convention, Australia has the duty of ensuring the identification, protection, conservation and presentation of the property and its transmission to future generations, and the duty to do all it can to that end to the utmost of its own resources.

11. By reason of the Convention, and in the circumstances hereinafter alleged, Australia is bound to take appropriate legal measures necessary for the protection and conservation of the property.

12. By the Gordon River Hydro-Electric Power Development Act 1982 (Tas.) which commenced on 12 July 1982 the third defendant was authorized to construct a new power development on land within the property.

13. On 17 August 1982 in pursuance of section 16(1) of the National Parks and Wildlife Act 1970 (Tas.) the Lieutenant-Governor declared inter alia that the areas of Crown land therein specified which included parts of the property ceased to form part of the State reserve known as the Franklin - Lower Gordon Wild Rivers National Park. In relation to two areas forming part of the property the proclamation took effect on 3 September 1982 and as to a third area forming part of the property, the proclamation will take effect on 1 July 1990.

14. Pursuant to section 35 of the Hydro-Electric Commission Act 1944 (Tas.) and a proclamation dated 7 September 1982, the ownership of the first two areas referred to in paragraph 13 above vested in the third defendant on 16 September 1982 and the ownership of the third area referred to in that paragraph will vest in the third defendant upon the said proclamation taking effect on 2 July 1990.

15. The third area referred to in paragraph 13 above contains a number of the archaeological sites on the property which are of outstanding universal value from the historical, aesthetic, ethnological and anthropological points of view.

16. The World Heritage Committee at its meeting in Paris between 13 December 1982 and 17 December 1982 included the property in the World Heritage List pursuant to the provisions of the Convention and in relation to that inclusion made the following statement:

"The Committee is seriously concerned at the likely effect of dam construction in the area on those natural and cultural characteristics which make the property of outstanding universal value.

In particular it considers that flooding of parts of the river valleys would destroy a number of cultural and natural features of great significance as identified in the ICOMOS and IUCN Reports.

The Committee therefore recommends that the Australian Authorities take all possible measures to protect the integrity of the property.

The Committee suggests that the Australian authorities should ask the Committee to place the property on the List of World Heritage in Danger until the question of dam construction is resolved."

17. The defendants have commenced to construct and intend to continue to construct, and to procure the construction, upon the first two areas referred to in paragraph 13 above, the Gordon River Power Development, Stage 2, which will consist of a dam, a coffer dam and associated works.

18. In particular, the third defendant has, in the course of the said construction, done or procured the following acts:

- (a) excavation works;
- (b) the erection of buildings and other substantial structures;
- (c) the killing, cutting down, damaging and/or removal of trees; and
- (d) the construction and establishment of roads and vehicular tracks.

19. The works that have been carried out, and are proposed to be carried out, have already caused irreparable damage to the property and will cause further irreparable damage to the property. The erection of a coffer dam will cause the flooding and destruction of archaeological sites including those which are located in the third area referred to in paragraph 13 above which are of outstanding universal value from the historical, aesthetic, ethnological and anthropological points of view. The erection of the coffer dam and the principal dam will each result in the permanent flooding of a

substantial portion of the whole of the property thereby destroying many of the features set forth in paragraph 9 above.

20. On 30 March 1983 the Governor-General of the Commonwealth, acting with the advice of the Federal Executive Council, made the regulations set out in the Schedule hereto pursuant to section 69 of the National Parks and Wildlife Conservation Act 1975 (Cth.).

21. The defendants threaten and intend to continue to do acts referred to in paragraphs 17 and 18 above in contravention of regulation 5 of the said Regulations.

22. This action is within the original jurisdiction of the High Court because the Commonwealth is a party and also because it is a matter arising under, or involving the interpretation of the Constitution.

AND THE PLAINTIFFS CLAIM:

- (a) an injunction restraining the defendants from causing or permitting the carrying out of the works referred to in paragraphs 17 and 18 above;
- (b) a mandatory injunction requiring the second defendant to take all steps necessary to give a written direction to the third defendant pursuant to section 15B of the Hydro-Electric Commission Act 1944 (Tas.) to refrain from continuing the said works;

- (c) a declaration that, in so far as the Hydro-Electric Commission Act 1944 (Tas.) and the Gordon River Hydro-Electric Power Development Act 1982 (Tas.) purport to authorise the third defendant to carry out the said works, they are inconsistent with the National Parks and Wildlife Conservation Act 1975 (Cth.) and the Regulations made thereunder, and are invalid.
- (d) such further or other relief as the Court may deem meet.

A.R. Castan
Peter G. Underwood
Susan Kenny

A.R. Castan

Peter G. Underwood

Susan Kenny



PRIME MINISTER

CANBERRA

- 6 APR 1983

My dear Premier

I refer to the actions shortly to be taken by both our Governments to have legal issues relating to the Gordon-below-Franklin Dam referred to the High Court of Australia.

The Commonwealth will be seeking to expedite the resolution of all the legal issues, but having regard to the matters involved and to what is proposed it could be some time before the final outcome is known.

The Commonwealth would prefer these issues to be resolved without any unnecessary confrontation, while preserving the rights and interests of both Governments in the meantime. Of course you will appreciate that unless and until the matter is resolved otherwise by processes now under way, the law as it stands is being breached by your proceeding with the construction of the dam project.

In all the circumstances, I seek your assurance that, pending the final outcome of legal proceedings, construction on the Dam site and associated works will be suspended in order to ensure that irreparable damage will not be caused to any area placed on the World Heritage List.

May I make clear my Government's willingness to assist those directly affected by the suspension of work on the project by the transfer of employment from the various contentious work sites to other appropriate projects identified in consultation with your Government.

I would be grateful for your early response.

Yours sincerely

R.J.L. Hawke

Hon Robin Gray, MHA
Premier of Tasmania
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