

THE REGISTRY

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

AMENDED STATEMENT OF CLAIM

(Amended Pursuant to Order 29 Rule 2)

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.).

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 generations, and the duty to do all it can to that end to the utmost of its own resources.

11. Further, the protection or conservation of the property is a matter of international concern.

12. Further, in the premises, the protection or conservation of the property by Australia is necessary or desirable for the purpose of giving effect to the Convention.

13. Further, in the premises, the protection or conservation of the property by Australia is necessary or desirable for the purpose of obtaining for Australia advantages and benefits under the Convention including those to which Articles 11, 13 and Part V refer.

14. Further, 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.

15. 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.

16. 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.

17. 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 16 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.

18. The third area referred to in paragraph 16 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.

19. 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."

20. 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 16 above, the Gordon River Power Development, Stage 2, which will consist of a dam, a coffer dam and associated works.

21. 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.

22. 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 16 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.

23. 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.).

24. The defendants threaten and intend to continue to do acts referred to in paragraphs 20 and 21 above in contravention of regulation 5 of the said Regulations.

25. 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 20 and 21 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.

Delivered the 27<sup>th</sup> day of April 1983

*A.R. Castan*

A.R. Castan

*Peter Underwood*

Peter G. Underwood

*Susan Kenny* *SK*

Susan Kenny

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

---

AMENDED STATEMENT OF CLAIM

---

HIGH COURT OF AUSTRALIA	B. J. O'Donovan
FILED	Crown Solicitor for
27 APR 1983	the Commonwealth
No. <i>RB</i>	Administrative Building
THE REGISTRY CANBERRA	PARKES A.C.T. 2600
	Tel: 612776