

# Historic biodiversity case outcome



Greens Senator Bob Brown speaks to the media after prevailing in the case that challenged Forestry Tasmania's protection of Wielangta's biodiversity. Brown used his own money topped up by supporters' contributions to fund the injunction. Adam Burley

On 19 December 2006, Greens Leader Senator Bob Brown won a Federal Court case that has been welcomed by environmentalists as an historic precedent for threatened-species conservation, but criticised by the Tasmanian forest industry as being a 'significant threat' to its future.

As reported in *Ecos 130*, in May 2005 Senator Brown sought an injunction against Forestry Tasmania to prevent it from logging in the Wielangta Forest, an old-growth native forest east of Hobart home to three nationally listed threatened species – the Wielangta stag beetle, Tasmanian wedge-tailed eagle and the swift parrot.

Brown alleged that Forestry Tasmania's Wielangta operations were likely to have a significant impact on the three species, were not in accordance with the Tasmanian Regional Forest Agreement (RFA), and were consequently prohibited.

Under the EPBC (Environment Protection Biodiversity Conservation) Act 1999 – which governs the protection of endangered species in Australia – any action likely to have a significant impact on a threatened species needs approval from the Commonwealth Environment Minister.

However, forestry operations don't

require approval if they are carried out in accordance with an RFA. This RFA exemption applies to forestry operations in Tasmania, and parts of Victoria, New South Wales and Western Australia.

Brown maintained that Forestry Tasmania was using the RFA to 'lose its exemption from federal environmental scrutiny', which would otherwise be required under the EPBC Act.

Jacqueline Peel, Senior Lecturer in Environmental Law at the University of Melbourne, says the Wielangta judgement is important in establishing that land covered by an RFA is not automatically exempt from national laws protecting biodiversity.

'The judge did find that Forestry Tasmania's forestry activities were having a significant impact on each of these three species,' says Peel.

'[He] effectively found that ... Forestry Tasmania still has to comply with its obligations under those RFA arrangements in order to get exemption from the environmental protection requirements of the federal legislation.'<sup>1</sup>

The most controversial aspect of the judgement is the broad interpretation of 'protect' in relation to nationally listed threatened species.

The judgement stated that '... "to protect" is seen as a duty not just to maintain population levels of threatened species but to restore the species'.

In relation to Forestry Tasmania's evidence for complying with RFA requirements, the judge concluded 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'.

In response to the ruling, Forestry Tasmania – with the support of the Tasmanian and Commonwealth Governments – has lodged an appeal to be heard by a full bench of the Federal Court.

Forestry Tasmania Managing Director, Bob Gordon, has asserted in a recent media release that the judgement has put the economic viability of the forest industry at risk, and that his decision to appeal was based on 'strong legal advice that an appeal would ultimately be successful'.

Referring to the new interpretation of 'protect' under the ruling, Gordon said, 'If the Federal Court decision stands, then no forestry, farming or land use development, such as subdivisions, is likely to meet the new text that the judge had prescribed.'

'Left unchallenged, the decision poses a significant threat to the viability of not only Forestry Tasmania, but timber and agricultural businesses throughout Australia.'

Brendan Snyder, Principal Solicitor with the Victorian Environmental Defenders' Office, says the Wielangta decision creates an important precedent for people taking legal action to protect threatened species.

In effect, he says, it has put to the test Australia's international obligation to prevent extinction and promote recovery of threatened species.

'I think one of the questions we need to be asking is not how much biodiversity can we retain while we proceed with economic development, but what does biodiversity require? What does seriously implementing our international obligations in respect of the preservation of biodiversity require?

'Then look at what sort of economic development is consistent with that.'<sup>2</sup>

● **Mary-Lou Considine**

## More information:

Wielangta campaign and trial:

[www.on-trial.info/index.htm](http://www.on-trial.info/index.htm)

Transcript 'Wielangta Forest Federal Court decision', 20/02/07, The Law Report, ABC Radio National: [www.abc.net.au/rn/lawreport/stories/2007/1850890.htm](http://www.abc.net.au/rn/lawreport/stories/2007/1850890.htm)

<sup>1</sup> Transcript of 'Wielangta Forest Federal Court decision', The Law Report, 20/02/07, ABC Radio National, [www.abc.net.au/rn/lawreport/stories/2007/1850890.htm](http://www.abc.net.au/rn/lawreport/stories/2007/1850890.htm)

<sup>2</sup> Ibid.