

# Logging threatened species' habitat unlawful:

*Brown v Forestry Tasmania (No. 4) [2006] FCA 1729 (19 December 2006)*

By Vanessa Bleyer

**O**n 19 December 2006, the Federal Court handed down a decision that may bring an end to the native forest logging industry in Australia – an industry that thrives on logging threatened species' habitats.<sup>1</sup>

## THE APPLICATION

Senator Bob Brown made an application under s475 of the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (the Act) for an injunction to stop Forestry Tasmania logging in the Wielangta forest in Tasmania. It is home to the Tasmanian wedge-tailed eagle, broad-toothed stag beetle and swift parrot, all of which are threatened species listed in the endangered category under the Act. Senator Brown contended that logging their habitat is likely to have a 'significant impact' on those species, contravening s18(3) of the Act.

To succeed in his application, Senator Brown needed to convince the Court that the Act's exemption for logging in areas subject to Regional Forest Agreements did not apply in this case (s38 sets out the exemption). He sought declarations from the Court, including that Forestry Tasmania's logging in Wielangta had not been undertaken in accordance with Tasmania's Regional Forest Agreement (RFA), nor would it be if it continued. Tasmania and the Commonwealth are parties to the RFA, and intervened in the proceeding on that basis.

If the s38 exemption does not apply, Part 3 of the Act must be observed. Part 3 requires, among other things, that Forestry Tasmania seek approval from the Commonwealth to undertake the logging. The decision to approve follows an environmental impact assessment.

## THE DECISION

His Honour Justice Marshall found that all three threatened species were present in those parts of Wielangta that had been and were intended to be logged. His Honour also found that the logging did have a 'significant impact' on the threatened species as a result of habitat destruction, despite submissions by Forestry Tasmania and the interveners to the contrary. His Honour found that Forestry Tasmania's expert witness gave false evidence and changed matters of substance in his affidavit to remove parts helpful to Senator Brown and unhelpful to Forestry Tasmania.

His Honour found that the s38 exemption did not apply because the logging had not been undertaken 'in accordance with' the RFA, as Forestry Tasmania had breached a number

of its requirements. This included clause 68, in which the state 'agrees to protect' the threatened species through a reserve system or by applying relevant management prescriptions. The 'significant impact' was found to be inconsistent with the obligation 'to protect'. His Honour also found that future logging in Wielangta would not comply with clause 68, given Forestry Tasmania's previous logging practices. Forestry Tasmania was also found to be in breach of clause 70 of the RFA because there had never been a recovery plan for the beetle, and the plans for the eagle and the parrot had expired (nor had they ever been fully implemented).

His Honour ordered that logging cease in Wielangta, pending the granting of any approval under Part 3 of the Act or a further order. Forestry Tasmania was ordered to pay Senator Brown's costs of and incidental to the proceeding, including all costs reserved by prior orders.

## CONCLUSION

The decision requires that any logging must be in accordance with RFAs across Australia, otherwise it is unlawful. The RFA, in this case, required Forestry Tasmania to actively protect and take steps to promote the recovery of threatened species during logging. The idea that logging and recovery can exist together is fundamentally flawed and contradicts the vast majority of expert evidence before the Court in this case: logging destroys threatened species' habitat and causes extinction.

Forestry Tasmania has appealed the decision, with the support of the state of Tasmania and the Commonwealth. The appeal is yet to be heard. Since the decision, Tasmania and the Commonwealth have amended clause 68 in the RFA. Instead of an obligation to protect, the parties must now 'agree' that logging protects threatened species. In this case and their response to it, Tasmania and the Commonwealth have visibly demonstrated their support for the logging of threatened species' habitats. ■

**Note:** 1 See M Denholm, 'Law to block ruling protecting species', *The Australian* (6 January 2007), p10; M Denholm, 'Court ruling could stop Tassie logging', *The Australian* (10 February 2007), p10.

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