

TRANSCRIPT OF PROCEEDINGS

O/N 2833

FEDERAL COURT OF AUSTRALIA

TASMANIA DISTRICT REGISTRY

MARSHALL J

No TAD 17 of 2005

ROBERT BROWN

and

FORESTRY TASMANIA and OTHERS

HOBART

10.37 AM, WEDNESDAY, 3 MAY 2006

Continued from 2.5.06

DAY NINETEEN

**MS D. MORTIMER SC appears for the applicant,
with MR P. TREE SC and MR T. MITCHELL
MR D. GUNSON SC appears for first respondent, Forestry Tasmania,
with MR A. ABBOTT and MR C. GUNSON
MR N. O'BRYAN SC appears for the Commonwealth,
with MR A. BROADFOOT
MR P. TURNER appears for the State of Tasmania,
with MR M. DIXON**

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MS MORTIMER: Your Honour, I understand there are a couple of matters to be dealt with before Dr Dickson gives evidence.

HIS HONOUR: Yes. Thank you. Mr Turner?

5

MR P. TURNER: Your Honour, if I could just announce an appearance today, together with my learned friend, MS K. GANLEY.

HIS HONOUR: Thank you. Mr O'Bryan?

10

MR O'BRYAN: Your Honour, in connection with Senator Brown's request to re-publish the transcript, the Commonwealth has no objection to that, your Honour. We do suggest that it would be wise for Senator Brown to make it clear that it is uncorrected transcript, because we do observe many unintended errors in it from time to time. We correct those that matter to us. Your Honour, we don't know what the other parties are doing in relation to things that may matter to them - - -

15

HIS HONOUR: Yes.

20

MR O'BRYAN: - - - but clearly it doesn't necessarily record every word spoken accurately.

HIS HONOUR: No. Ms Mortimer?

25

MS MORTIMER: Your Honour, we will, I think, be happy to put a statement to that effect.

HIS HONOUR: Yes, all right. Well, I will grant leave for the applicant to re-publish the transcript on his website, and in doing so particularly have regard to the agreement of the Commonwealth in whom the copyright vests.

30

MS MORTIMER: If your Honour pleases.

MR TURNER: Your Honour, if I might be heard briefly as to an order which the State seeks - - -

35

HIS HONOUR: Yes.

MR TURNER: - - - which in no small part follows from the examination that has just been made. I will hand to you the order which is sought. If I could just explain the background to it, your Honour, if you need to be persuaded to make the order.

40

HIS HONOUR: In every case where we have had an application under order 46, rule 6, I have announced that in open Court and given the parties and interveners an opportunity to comment. I don't see why I shouldn't continue to do that. I don't think this is necessary.

45

MR TURNER: The concern I have is this, your Honour. In the event that a person reads the transcript and seeks to have access to, particularly the materials which are currently in the affidavit of Mr Mooney, being the CD and maps, which information is not freely available, and which information is highly sensitive, and which information would, if sought in the ordinary course, doubtless be the subject of a direction made by the secretary of the relevant department under State legislation to make it confidential upon payment, which an offence is committed if it is disclosed.

The concern of the State is to ensure that at some future point - it might not be before your Honour - but at some future point, if some person made application, that the State might be left off the list, so to speak, and not be given notice, given that it is not a party to the proceeding, but is an intervener. One would hope and expect that the State would be given notice and therefore afforded an opportunity to resist any such application.

HIS HONOUR: So you are concerned about post-hearing?

MR TURNER: Yes. And the reason is that, as I said, the information about, particularly eagle nest sites, is not freely available and certainly the State has encountered previously the mischief and trauma caused by deliberate vandalism of nests, for example.

HIS HONOUR: Yes.

MR TURNER: And that which is on the CD and that which is on the maps is simply not available and would not be made available.

HIS HONOUR: Yes. Does anyone oppose that order?

MR O'BRYAN: No, your Honour.

MS MORTIMER: No, your Honour.

HIS HONOUR: No. Well, I make the order that in the event of any person making application pursuant to order 46, rule 6, to inspect any document in this proceeding, then notice of such application shall be given to the State of Tasmania.

MR TURNER: Thank you, your Honour.

HIS HONOUR: And I specifically will ensure that the making of that order is brought to the attention of the District Registrar, or my staff will. Thank you. Mr Gunson?

MR D. GUNSON: Yes, thank you, your Honour. Yes, I call Dr Rhonda Gaye Dickson.

<RHONDA GAYE DICKSON, SWORN

[10.06am]

<EXAMINATION-IN-CHIEF BY MR D. GUNSON

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HIS HONOUR: Mr Gunson?

MR D. GUNSON: Thank you, your Honour.

10

Dr Dickson, your full name is Rhonda Gaye Dickson?---That's correct.

Your work address is that of 3 National Circuit, Barton, ACT?---That's right.

15

And you are employed by the Department of Prime Minister and Cabinet as Assistant Secretary, Infrastructure and Regional Policy Branch; is that correct?---That's correct.

And that is a position you have held since May 2005?---That's right.

20

On 30 November of last year did you swear an affidavit in these proceedings?---I did.

Could the affidavit of Dr Dickson be shown to her, please? Perhaps also if the annexures are also passed to her as she may almost certainly require those.

25

And is that the affidavit that you swore, Dr Dickson?---That's correct.

And the contents of that affidavit are true and correct?---They are.

30

And perhaps that affidavit can be taken as read, your Honour.

HIS HONOUR: Yes.

35

MR D. GUNSON: Dr Dickson, for the purpose of cross-examination that is about to commence, I noticed earlier today that you are very soft of voice, could you try and keep your voice up, please?---Certainly.

Thank you. No further questions, your Honour.

40

HIS HONOUR: Thank you?---Is this microphone - - -

It is one which records but doesn't amplify as I understand?---Okay.

45

<CROSS-EXAMINATION BY MS MORTIMER

[10.08am]

MS MORTIMER: Now, Dr Dickson, have you got all the exhibits there with you?---I believe so. I haven't checked each one.

5 All right. Well, perhaps if you could just bring them down on to the witness
box with you so you can access them easily. If you want to take them out of
that folder, please do so. I will start just by asking you about that bundle of
exhibits. Can we take it, Dr Dickson, that what you have tried to assemble for
the purposes of your affidavit are all the documents that you considered were
relevant to the formulation of the Tasmanian Regional Forest
10 Agreement?---Yes, these documents are relevant to the Tasmanian Forest
Agreement and to the broader regional forest agreement process, the policy
behind that.

15 And all of the attachments to your statement can we take it that they contain
principles and policies and processes and commitments that the States and the
Commonwealth continue to adhere to?---Yes, that's correct.

20 So there is nothing in those documents of substance that has been revoked or
renounced by any of the States or the Commonwealth?---None has been
revoked, but some of these are developmental documents that have been
superseded, for example, such as the IGAE has been superseded by agreements
on the Commonwealth's roles and responsibility, but it's more building on
previous work.

25 Yes. And, for example, with the IGAE you will see in subsequent documents
reference to it and endorsement of it, that is correct, isn't it?---That's correct.

30 So it is fair to say then that none of the States nor the Commonwealth have
renounced any of the principles that are expressed in those documents?---That's
correct.

35 And can I take it from your curriculum vitae that in relation to your
background and experience most of it has been in forest policy at the
Commonwealth level?---I haven't actually done the calculations but I would
say that it's a pretty fair proportion of it in forest policy or related
environmental policy.

40 All right. Now, can I take you to your affidavit, please? Your Honour will
find that at Court book 2631. And can I ask you to go, please, to paragraph 28,
and I want to ask you some questions about the national forest policy statement
which is exhibit RGD4. So if you can take a copy of that, please. You have
that?---Yes.

45 Now, you say in paragraph 28 that the NFPS specifically envisaged that a
comprehensive, adequate, and representative network of reserves would be
created, and can I ask whether when you say it is specifically envisaged that
you are making a reference to what is said at section 4.1 on page 8? Just have
a look at that and refresh your memory about it and I just want to tie down

where you say it is specifically envisaged. If you look at the bottom of page 8 in the second column there is a passage that starts:

5 *The nature conservation objectives have been pursued in three ways.*
 First, parts of the public native forest estate will continue to be set
 aside -

10 and it goes over the page. And my question therefore is, is that one of the passages at least that you had in mind when you made that statement?---Yes, that is one of the passages and it goes on further in that section to expand on the values of the comprehensive, adequate, and representative network.

15 All right. And just also for clarification if you turn over a couple of pages to page 10 you will see there is a - well, perhaps if you start at page 9, there is a heading Nature Conservation and Wilderness Reserves, and over on page 10 there is then a series of dot points. One of which talks about the establishment of a committee or a council that is called the Australia and New Zealand Environment and Conservation Council and talks about what a committee of that council will do. And just for clarification that is the committee that was
20 responsible for the production of the JANIS criteria; is that right?---Yes, that's correct.

25 And the national forest policy statement also deals with the concept of ecologically sustainable forest management, doesn't it?---Yes, that's correct.

 And can I ask you to go to page 12, please, where there is a heading about ecologically sustainable forest management and codes of practice? Now, you will see the second major paragraph under that heading starts with this proposition:

30 *To ensure that nature conservation objectives are met in forests, the management of public native forests outside the reserve system will complement the objectives of nature conservation reserve management.*

35 Do you agree it is a fair summary of what that means, that what it is saying is that the same objectives will be pursued by management outside the reserve system as by management by the reserve system?---Can you expand a little on that? What do you mean by the same objectives?

40 The objectives that are spoken of in this forest policy statement as being required to be pursued by the reserve system, what that paragraph is saying is well, the same objectives ought to be pursued when you are managing public native forests outside the reserve system?---Right. The nature of the, sort of, complementary management outside reserves is to allow multiple-use activities
45 including logging and a whole range of other uses of forest but with the same, sort of, overarching objectives as are, sort of, put in the beginning of the national forest policy statement which is conservation and environmental sustainability.

5 So it is fair to say that you with that proposition, the objectives that are to be pursued are the same if you are managing within a reserve system or outside it?---The very broad objectives of conservation are, but there's, sort of, another level of objectives in relation to a reserve system which prevents certain activities and they would probably have, you know, generally a, sort of, more a restricted level of activities in a reserve system than in the forests outside but the overall objective in terms of conservation is the same across the forest.

10 All right. Now, if you continue on down that paragraph on page 12, the next major sentence talks about the forest management agencies continuing to assess forest areas. Now, I will just pause there. Forestry Tasmania would fall within the concept of one of those forest management agencies, wouldn't it?---Yes, that's correct.

15 And so what is envisaged is that agencies like that will continue to assess forest areas and then the next sentence is this:

20 *As a consequence of these forest assessments, areas that have important biological, cultural, archaeological, geological, recreational and landscape values will continue to be set aside and protected from harvesting operations or managed during those operations so as to safeguard those values.*

25 Am I correct in summarising what is envisaged there as that there will be a continual process of assessment which might have as one of its consequences that new areas are protected from harvesting because of for example biological values?---That would be a potential consequence of those continuing assessments, and that is what is envisaged.

30 And then in the next sentence that is started with a dot point, what is envisaged there to be undertaken according to this policy, by the State Government, is that the precautionary principle will apply to forest management. Do you agree with that?---I think the statement reads "accordingly and in keeping with the precautionary principle, the States will undertake continuing research". Is that what you are referring to?

40 That is right. And my proposition to you is that that is a recognition that the precautionary principle will apply to forest management?---I think that's - I think you could say that the precautionary principle is the sort of underlying principle that supports the adaptive management that is undertaken in forest management.

45 All right. So where this policy talks about undertaking continuing research and long term monitoring so that adverse impacts that may arise can be detected and addressed through revised codes of practice and management plans, you take that to be a reference to the concept of adaptive management, do you?---Adaptive management is where you do with new information and from

as a result of monitoring or other forest management activities, you find you need to change practices. That is what adaptive management is.

5 All right. And you say that what underlies that is an application for
precautionary principles?---Well, I guess there's two concepts there. There is a
precautionary principle which is needing to make sure you're aware of
continuing developments and new information, and that you can adapt in the
light of that information. So there are two concepts there, the precautionary
principle being one of them, but the action that is being talked about there
10 about continuing research and long term monitoring and addressed through
revised codes of practice and so on is that practice. That action is adaptive
management.

15 Dr Dickson, I had thought that was a slightly more simple question, because I
had thought I was just summarising your earlier evidence where I think you
had more or less said that it was the precautionary principle that underlying
adaptive management. Do you know - are you qualifying that a bit, are
you?---I think it's in keeping with the precautionary principle, which is how it's
expressed in the document, is the correct interpretation.

20 I mean, you are not suggesting that the Commonwealth has any difficulty
conceding that the precautionary principle applies to forest management, are
you?

25 MR O'BRYAN: I object, your Honour, to my learned friend characterising the
evidence of this witness as "the Commonwealth". She is a witness called by
Forestry Tasmania is actually not able to bind the Commonwealth, concede
anything on behalf of the Commonwealth or, and this is a metaphysical
concept, be the Commonwealth for the purpose of this proceeding.

30 MS MORTIMER: Well, I certainly agree with the last part of my learned
friend's - but I respectfully submit he is wrong about the rest. And your
Honour has just sat through an argument yesterday about how important it was
that the Commonwealth call Dr Dickson and how separate the Commonwealth
was from Forestry Tasmania, and how much the Commonwealth wanted to put
35 a particular position and that what Dr Dickson had to say in my submission
unarguable on behalf of the Commonwealth was something that this Court
needed to hear. Now, there are no other witnesses in this proceeding that are
called to talk about the Commonwealth's position, and that is in my submission
40 unambiguously what Dr Dickson is here to do.

45 And on behalf of the Commonwealth, this pile of material is said to be
something that your Honour should accept as the Commonwealth's evidence
about the history of the regional forest agreement. Now, either this lady is
talking on behalf of the Commonwealth or she is not. And if she is not, her
evidence may be completely irrelevant in my submission. So for those reasons
in my submission, I am entitled to ask her about what the Commonwealth's
position is on matters that go directly to the substance of her evidence.

MR O'BRYAN: I don't dispute that, your Honour. That is not the question she was asked. The question she was asked was does the Commonwealth have any difficulty with the particular proposition? That is not a question this
5 witness is capable of answering, even it were relevant, which it is submitted it is not.

HIS HONOUR: It may be more of a question of form than substance.

10 MS MORTIMER: Dr Dickson, when you are sitting here giving evidence on behalf of the Commonwealth, you are not suggesting to this Court in your evidence, are you, that the precautionary principle is not applicable to forest management?---No, I wasn't suggesting that. I apologise if I have made some
15 confusion here. I was really separating the precautionary principle is applied to forest management as it is clear in the National Forest Policy statement. But what I was trying to separate out was the issue of adaptive management, which is about learning from new information and adapting practices accordingly, and part of the it, the precautionary principle which is about, you know, ensuring that you take a precautionary approach to forest management is one of the
20 principles that underlies the adaptive management approach.

All right, thank you. And can you go to paragraph 33 of your affidavit, and that is where you start to talk about the JANIS criteria. Can I ask you to take out please exhibit RGB7, which is a copy of that document? Now, can I ask
25 you please to go to section 3 of that, that is the part that is headed CAR Principles on page 4 if you look down the bottom; have you got that?---Mm.

No doubt you are pretty familiar with these principles?---Yes, I am.

30 And am I correct to understand that what section 3 of the JANIS criteria does is to set out each of the three principles that make up this concept and define them; is that right?---That's correct.

If I can just ask you so that his Honour can understand how this ties in with the RFA, if I can ask you to take out exhibit RGD9 which is a copy of the
35 Tasmanian RFA and go to the definition section on page 3; got that - I am sorry Dr Dickson, you can sit down, please sit down?---I'm sorry.

40 And just so if you look at section 3 of the JANIS criteria and then you look at the definition of the reserve - of the CAR reserve system in the RFA, the last sentence it says:

This reserve system is based on the principles of comprehensiveness, adequacy and representativeness as described in the JANIS criteria.

45 And when we look to see how those principles are described we look to section 3; is that your understanding?---That's correct.

Now, if you just pop the RFA down to one side for a moment please and go back to the exhibit RGD7, the JANIS criteria and if I can ask you to have a look at paragraph 34 of your affidavit; have you read it recently or would you like to perhaps just re-read paragraph 34 for a minute. Now, you start by
5 saying there that one of the aims of the CAR reserve criteria is to ensure that nature conservation efforts are focused on regional priorities. And do I take it that you got that from section 5.1 of this document if you have a look, the first sentence there, is that where that has come from?---That's correct.

10 Isn't it perhaps more correct if you are talking about what the aims of the CAR reserve criteria are to look at 2.1 where it says:

The objectives of biodiversity conservation for forests are -

15 Perhaps if I just make my question a little clearer. Would you not agree that it is those four objectives that are the real matters that underlie the CAR reserve system?---I wouldn't distinguish as one is real matters and one is not. The over-arching objectives under 2.1 are the over-arching objectives for
20 biodiversity conservation in section 5.1 that you - that counsel referred me to is the - talks about the underlying principles that need to be applied when you implement the reserve criteria, so they're probably a different level orders.

All right. And what 5.1 is therefore saying is that in terms of implementation you have to look at the issue on a region-by-region basis?---Region-by-region,
25 on a regional level as opposed to a small patch level.

Right. Now, can I just take you back to 2.1 for a moment and those four objectives. Do you agree with me that in relation to threatened species, the two most relevant objectives are the last two?---I think they are all - I'd say that all
30 these objectives are in a sense overlapping objectives in that for threatened species it's important to have - maintain ecological processes and forest dynamics and viable examples of forest ecosystems. They're probably complementary objectives. I don't know whether there is any one has a higher order or another in the particular circumstance.

35 Well, plainly, isn't the case Dr Dickson, the maintenance of viable populations of native forest species throughout their natural ranges, on its face, has more relevance to threatened species as an objective, doesn't it?---Look, I guess that's a question of interpretation. These objectives are, you know, designed to
40 cover the full suite of biodiversity conservation. Certainly maintaining viable populations of native forest species, plants and animals is a key objective and would be highly relevant to threatened species conservation.

All right. Now, you then go on in paragraph 34 to say that two key principles
45 underlying the criteria. Now that means as I understand it, two key principles underlying the three criteria of comprehensiveness, adequacy and representativeness; is that right?---The CAR criteria there is I guess the comprehensive, adequacy and representativeness are the principles, the criteria

comprise the - I'm just trying to remember, I'm sorry - the nine CAR criteria which cover for biodiversity and other criteria for old growth and wilderness.

5 I see?---So when we talk about the reserve criteria that's what's usually referred to, comprehensive, adequate and representative are the underlying principles.

All right. So I am just trying to understand what your statement means. So when you say two key principles underlying the criteria. "The criteria" refers to what we see in section 6 of the JANIS document does it?---Section 6 provides the criteria, correct.

All right. Well, the first matter that you point to is something that appears in section 3.3 where you say

15 *Species with known distributions should be adequately reserved at the regional level.*

That, as I followed this document, appears in paragraph 3.3?---Sorry, I'm a bit lost here?

20 In the second paragraph?--- Are you talking about 3.3 in the reserve criteria?

In the JANIS. What I understand you to have done is lifted part of 3.3 and put it into (a). I just want to make sure that that is what you have done. If you look at the second paragraph under representativeness you will see there is a sentence that says:

25 *All the species whose distributions are relatively well known are represented in the reserve system.*

30 And I am just trying to understand - do you see that?---Yes.

What I am trying to understand Dr Dickson is, is 3.3 your source in this document for your statement in 34(a)?---I guess 34(a) is actually probably a synthesis of a number of elements of the JANIS criteria. It talks about adequacy, which is the adequate reservation and it also refers to number 5 - criteria number 5, 6.1.2, number 5, where it is a reserve system seeks to maximise the area of high quality habitats for all known elements of biodiversity. The known elements of biodiversity being the species whose distributions are known and so it picks up the concept of picking up the representation of those species that are known and also are an adequate level of representation.

45 All right. And so the focus so far as that part of your evidence is concerned is that something that is a key principle of the JANIS criteria is that you reserve known distributions of species, that is, the ones you have found; is that right?---No, the key point is that where you have got known distributions you seek to have the distributions of those species adequately reserved.

Yes. And the focus is on, as I put to you, where you have found a species, so that there is an added level of certainty about the efficacy of the protection you are trying to secure, isn't there?---I guess it's an interpretation of adequate
5 which is that doesn't mean that every known occurrence of the species is included in the reserve system. It means that there is an adequate level of reservation for the species when you know its distribution.

I don't think that is quite what I asked you, Dr Dickson. My proposition to you
10 was that the reasoning behind reserving known distribution is that it gives you an additional level of security, you know you are protecting it because you found it there; isn't that right?---I don't think that's quite the, sort of, intent behind it, it's that where you know of a species, that's what the species of a known distribution means, where you know the species and you know its
15 distribution then you make a determination and assessment of what's an adequate level of representation in the reserve system for that species and that's the effect. I'm not sure if I answered your question?

All right. So you are saying the distinction that you make between (a) and (b)
20 is between species where there is enough information for you to know more or less where they are distributed and that species that you don't have enough information about to know where they are distributed; is that the distinction?---That's correct. If you know a species and you know its distribution then you can make an assessment of what's an adequate level of
25 reservation depending, you know - and there's a whole series of investigation that needs to be done to understand what the species needs for its continued viability, but there are a lot of species that aren't known or whose distributions aren't known and that is the distinction being made here because obviously for an unknown species you need to have a different mechanism which is referred
30 to in the affidavit as a, sort of, surrogate mechanism to pick up species that are yet unknown.

All right. Now, the point that you are making underneath 34(a) and (b) is, I
35 suggest, simply that you need not declare a reserve every time you find a species in a particular area; is that the point?---That's correct.

And you agree with me, don't you, that it is a question of how important - if
you are looking at it from a conservation value point of view, how important
40 any given habitat is to a particular species is the first issue?---The significance of the habitat is certainly one of the issues that you look at, also the level of reservation and the, sort of, relative sensitivity or robustness of the species.

All right. So the significance of the habitat to the species, whether it is
45 reserved at all or adequately in other areas?---Whether it's reserved, whether it's protected by other means, you know, through management prescription or in formal reserves or other mechanisms and how, as I said, sort of, robust the species is.

And of course therefore when you are looking at listed threatened species the significance of habitat to those species becomes particularly important; you agree with that?---The significance of habitat is certainly - well, habitat is a significant factor for a threatened species. There are a range of other factors as well.

Now, that statement, "It is not necessary that every species," that comes out of paragraph 3.3 in the JANIS criteria on page 5. You will see - I think it is just about - you see the sentence? It is about four paragraphs down, where in the JANIS criteria it says:

It is not necessary to ensure that every element of biodiversity that occurs within a forest eco system is reserved.

That is the same sense - no, I withdraw that. That is the same kind of proposition that you are intending to convey with your sentence, isn't it?---That is the same kind of proposition, yes.

All right. But if you go back, for example, to 3.2, and the principle about adequacy, if you look at the second paragraph there it starts:

No precise basis exists for determining criteria that provides for adequacy. However, the general rule is that chances of long term survival increase with increased proportions of populations or forest eco systems reserved and appropriately managed.

Now, that is a very important aspect of detecting listed threatened species, isn't it?---That's correct.

You didn't think that it might be a good idea to extract that bit in your affidavit?---There are - I mean, it's a fairly extensive criterion, and it was tendered as part of the affidavits, this - in the summary affidavit was really just picking up some of the points out of the criteria.

Perhaps Dr Dickson, picking up the points that would assist the respondent, rather than the applicant: fair statement?---No, I don't think that's a fair statement.

Nevertheless, you would agree with me that that sentence, "It is not necessary that every species," is a sentence that supports the respondent's position in this case; is that a fact?---Well, it's - I wouldn't - I don't want to - I think I would just like to re-state that it's a fairly fundamental point about the criteria which were designed to create a comprehensive and adequate representative reserve system within a forest that was continuing to be - remain as forest, some parts managed outside the reserve system in a complementary way, and the reserve system managed as a conservation reserve system. The intention was if you were to reserve every species, I mean the logical conclusion would be that you would reserve the entire forest. The purpose of the reserve criteria were to

determine what was needed for the long term conservation of forest species, and complementary management outside the reserve system. So that the concept of ensuring that - of not requiring every species to be reserved in the reserve system was fairly central to that, and that's why I have included it in the affidavit.

Now, go to paragraph 35, please. What you then say is:

Another principle underlying the CAR reserve system is that biodiversity, old growth forest conservation and wilderness should be provided for.

Isn't it really the case, Dr Dickson, that biodiversity, old growth forest, and wilderness are the three sets of criteria which this document requires to be applied in establishing the CAR reserve system?---That's correct.

And when you say that it is not always possible to apply those criteria, I suggest to you that what you mean is it is not always going to fit with Government priorities to apply those criteria?---No. The statement in paragraph 35 basically says that the principle is that the three criteria should be provided for, or the biodiversity, old growth conservation and wilderness should be provided for in the dedicated reserve system on public land. That was the intent of that paragraph, and that was the intent of the reserve criteria, and underlay all the RFAs. The purpose of this paragraph is to say that this isn't always possible for a whole range of reasons, and goes on to talk about the other methods of reserving, protecting and managing species for their long term conservation.

Well, Dr Dickson, my question asked you to focus on what you meant when you said, "However, this is not always possible," and what I had suggested to you was that what you mean by possible is that it doesn't always fit with Government priorities. And just to clarify the question, you don't mean possible as in contra-distinction to impossible physically, do you?---Sometimes there's a mixture of reasons why it's not possible. It's - and many of those are because of the values that are being protected don't exist on public land, and need to be protected on private land, through a range of voluntary measures. I think that's as is mentioned in the last one, and that is certainly a statement that it is not possible to protect it. Sometimes it is not possible to protect species that are distributed in a very fragmented way across the whole forest, to capture them adequately in a reserved system, without reserving the entire forest, and given that the intent was to have complementary management, there were occasions where it was needed to have management prescriptions to cater for those species that existed in that particular distribution, rather than only relying on reserves.

Now, when you describe what you then put out as A, B, and C as alternative approaches, do I understand what you are saying there is alternatives to placing land within the CAR reserve system; is that what you mean?---It's alternatives

to placing land within the dedicated reserve system. The Car reserve system is described as including dedicated reserves, informal reserves, values managed through prescriptions.

5 Yes. And that is what - - -?---So it does encompass all those things.

I see. And that is what we find at section 4 of this document; is that right?---Section 4 of the - - -

10 Do you just want to have a look? Of the JANIS criteria?--- - - - of the JANIS criteria. That's correct.

That is right, and you will see 4.1.1. dedicated reserves, 4.1.2 informal reserves, 4.1.3 values protected by prescription, that is what you are referring to in (a), (b) and (c)?---That's correct.

15 No, I withdraw that. That is what you are referring - what you are referring to in (a), (b) and (c) is 4.1.2 and 4.1.3?---I beg your pardon, yes.

20 And it is correct, isn't it, that they are a descending order of security insofar as the reservation system is concerned?---That's correct.

And what you have extracted in paragraph (b) is more or less, as I read it, identical to what is in 4.1.3, would that be right?---That's correct.

25 And if you look in particular at the part where you say in your (b), for example very rare values, values with fragmented distributions or values naturally occurring in linear form, that is a direct reproduction of what is in 4.1.3, correct?---That's correct.

30 And what the JANIS criteria say about protecting conservation values by prescription, that is by management prescription, is restricted to the circumstances set out in 4.1.3, agree with that?---The - sorry, I am not sure that I understand your question. The 4.1.3 gives examples of the nature of the values that need to be protected by prescription, it is not an exclusive list.

35 All right, but they are obviously given as indicative values. I mean, they are typical examples, agree with that?---They are examples, yes.

40 Do you have a problem with the word "typical"?---No, no problem.

45 And so this is - there are no other circumstances, and please feel free to look through the document before you answer this if you need to, there are no other circumstances in the JANIS criteria where management prescriptions are said to be adequate to protect threatened species, agree with that?---The JANIS criteria don't make any comment on the proposition along your lines, I don't think. I would have to check through to confirm that.

5 All right. And let me try the question from a different way then. I couldn't find, when I looked through this document, any other description in terms of the JANIS criteria about the circumstances in which conservation values, of which this document talks, could be protected by management prescription. 4.1.3 is all I could find about that and I am asking you whether I have missed something?---No, I think that is correct.

10 When you drafted this affidavit, Dr Dickson - well, first off perhaps I should ask you, you did draft this affidavit yourself?---Yes, I did.

15 Was there a reason that you lifted text straight out of the JANIS criteria without attributing it?---I tried as much as possible in the affidavit to use the language unless when trying to synthesise it that reflected the core documents that support the policy.

All right. So it was simply an effort to be as consistent with the JANIS criteria as you could, was it?---That's correct.

20 Can I ask you just to go to paragraph - section 6.2.2 of the JANIS criteria before we leave this document? Now 6.2 is the part that is talking about old-growth forest criteria, and perhaps I ought to just again to tie the two documents together to assist his Honour, if you just pull out again for me please the RFA, which is RGD9 and if you look at page 7 of that you will see there is a definition of old-growth forest and it says:

25 *Old-growth forest, as defined in the JANIS report.*

Do you see that?---Yes.

30 Now, I take that to be a reference to the part in the middle of this page that is in italics that says:

35 *Old-growth forest is ecologically mature forest where the effects of disturbance are now negligible.*

Do you understand that to be the cross reference?---I think the correct cross reference, well, it is the agreed - the one in italics further which says:

40 *The agreed national operational interpretation is now old-growth forests is ecologically -*

Sorry, was that the one you just quoted:

45 *...where the effects of disturbance are now negligible.*

HIS HONOUR: Yes?---Sorry, I beg your pardon.

MS MORTIMER: Yes, yes, that is the one I just quoted. That is what you understand to be the definition that is picked up by the RFA?---Yes, that's correct.

5 Thank you. Now, I am sorry, if you can just go back to 6.2.2. So what this part of the - as I understand it, what this part of the JANIS report is doing is that discussing, firstly in the section, old-growth forest and how you define it and what its attributes are and then under the heading 6.2.2 criteria the committee is putting forward propositions about how you approach protection
10 of forest that falls into that definition, is that right?---Under the criteria, yes, that's correct.

Right. And where it says - the sentence that starts:

15 *It is necessary to approach old-growth criteria in a flexible manner.*

Can I ask you to focus on the next sentence? Where it says:

20 *Wherever possible, areas of old-growth requiring protection should be included in the area identified to meet biodiversity criteria.*

What I understand that to mean is that if it is possible to protect areas of old-growth that are also important for particular species, that is where you have the two sets of criteria overlapping, that should be done?---That - I think I
25 understand it, it is correct to say that wherever possible we try to pick up as many values as possible, old-growth values and biodiversity values on the one piece of forest.

30 Yes, thank you?---Yes.

Now, can I ask you - put exhibit RG7 back to one side now, please and can I ask you to go to paragraph 49 of this statement, please? You also need to have to hand, Dr Dickson, exhibit RGD6?---Yes.

35 All right. Now, in paragraphs 49 and 50 as I understand it of your affidavit, you are describing there the assessments that were undertaken before each RFA was finalised; is that a correct description?---I beg your pardon, can you repeat that? Are you talking about 49 and 50?

40 Yes?---Can you repeat the question, please, I think I've lost - - -

Look, I will rephrase it?---Yes.

45 In that part you are describing your understanding of compliance with then existing legal environmental requirements before the RFA was entered in to?---Yes, that's what paragraph 49 refers to the assessments that were done during the RFA through the comprehensive regional forest - regional

assessment process and that was done at the time against the EPBC Act and other environment heritage legislation before the EPBC Act came into force.

5 And just broadly to recap the EPBC Act had a set of procedures that was called, The Administrative Procedures; correct?---That's correct.

10 And if a particular piece of conduct fell within the scope of those procedures then a particular kind of environmental approvals process had to be undertaken; correct?---Yes, an environmental assessment.

15 And there was some discretion in the Minister to decide what level of assessment needed to be undertaken; correct?---That's right. That's correct.

20 Once the Minister had decided that the proponent then had to undertake that kind of assessment; that is right isn't it?---Yes, that's right.

25 Then the assessment was submitted to the Minister for approval - I withdraw that. Then the assessment was submitted to the Minister?---That's correct.

30 And then the Minister had a power either to approve the conduct or not?---The - sorry, this legislation is a bit old, I'm just trying to remember the exact process.

35 Yes, you and me both, Dr Dickson?---The action - the Commonwealth action to which this applied to, the Minister - the deciding Minister on the Commonwealth action, the action Minister wasn't the environment Minister who under the administrative procedures asked for the - may or may not ask for the assessment and he provided - he or she provided their advice to the action Minister before and it was the action Minister's decision; different from the EPBC Act.

40 But nevertheless the process was that there was to be an environmental assessment of a level set by a Minister and then based on that assessment there was a power in a different Minister to either approve the conduct or not?---That's correct.

45 So the bottom line that I am just trying to see whether you agree with me about, is that at the end of that whole process and based on the information there was a decision about whether something would or would not go ahead?---Yes, that's correct. I'd like the opportunity to double check on that old legislation if I may at some point to correct my statements, I'm just a little bit hazy.

50 Sure, of course, well you will have that opportunity, don't be under any doubt about that. You are not, as I take it Dr Dickson, suggesting in paragraphs 49 and 50 that the precise - that each and every precise legal step required by the administrative procedures and the EPBC Act was undertaken in relation to the regional forest agreements?---No. I'm not implying that. From memory and

again I apologise if I'm a little bit hazy on this, but the regional forest agreements I think were taken to be an environmental assessment under the EPBC Act at the time. That was - - -

5 Is it the case broadly that the process that the regional forest agreements, the assessment process that they went through was designed broadly to reflect the kind of process the EPBC Act required?---That's right. The assessments were comprehensive and thorough and met all the requirements that was required under the EPBC Act for assessments.

10

Except there was one fundamental difference, Dr Dickson, wasn't there because at the end of that process there was no choice to be exercised because the decision had already been made that the RFAs would be implemented; isn't that right?---The assessments were done and they were - and the Commonwealth as a negotiating party under the RFA, the action essentially in assigning the RFA was agreeing - was the Commonwealth action in agreeing to those assessments and the action taken in response to them which was the outcomes of the RFA.

15

20 My point is that the decisions to create and enter into regional forest agreements were made before the assessment process was undertaken?---The decision to enter into regional forest agreements was made, but the final signing of the regional forest agreements was made after all the assessments, well after the assessments were done.

25

Now, if you look at paragraph 50 of your affidavit and you say there that the assessments took into account the agreed framework on ecologically sustainable forest management contained in each RFA. And again I just want to understand what you had in mind when you made that statement. So if you look at exhibit RGD9, the RFA again, I understand that to be a reference to clause 62; can you tell me whether that is right, please?---Sorry. Can you rephrase that question? Are you saying that the - - -

30

35 Yes, of course. I will start again. It is not an easy question.?---Can you repeat it, thank you?

40

Your statement in evidence is that the assessments took into account the agreed framework on ecologically sustainable forest management contained in each RFA. What I am trying to understand is where do we find the agreed framework on ESFM in the RFA?---Okay. There were - not included here, but there are a number of other documents that accompany to the RFAs, and one of them was the ecological sustainable forest management agreed approach, which was conducted through each RFA, and the sections in the Tasmanian RFA that refer to that assessment is section 62, 63. There is probably other ones there, but they do include the clause that you did mention.

45

Right. Okay. That is what I wanted to be clear about. So when we are trying to understand what you say is the agreed framework on ecologically

sustainable forest management that is in the RFA we go to clauses 62, 63 and 64?---And there's a few other clauses. 65. There's probably other clauses in the RFA that refer to it as well, as well as a number of attachments.

5 All right. Now, can I then take you to paragraphs 57 and 58 of your statement? That is the part that starts actually at paragraph 51, when you are talking the 2002 review of the RFA?---Paragraphs 57, did you say?

10 57 and 58. I just want to ask you in particular about paragraph 58, and you will need therefore to have to hand exhibit RGD11. Now, what I understand you to be doing in this part of your affidavit is summarising the - what you have described there as the principal conclusions of the report. That is what you are doing?---Yes, that's correct.

15 And in paragraph 58 what you have taken is - the second dot point is what appears on page 2 of the executive summary, at the end of that first paragraph, under ESFM. That is the paragraph that you have extracted?---Are you talking about the last paragraph on page 2?

20 No. Page 2, under the heading Ecologically Sustainable Forest Management, the first paragraph. The last sentence there is the same as your second dot point?---Oh, yes.

25 You agree with that, yes?---I beg your pardon. I thought you were referring to the last paragraph. No, that's correct.

Can I ask you, Dr Dickson, in the context of this case, when you are giving evidence, why you didn't characterise as a principal conclusion the statement about a paragraph further on on page 2, where it says:

30 *Further development of the process surrounding threatened species and communities needs to be undertaken. The Commission considers the parties should complete the recovery plan process, and develop additional processes supported in a legislative framework.*

35 Surely in the context of this case, Dr Dickson, that was a more important principal conclusion than the one you have referred to?---Can you tell me where that sentence is, please?

40 Yes. On the third paragraph on the same page?---The reason I included that statement is it was a simple summary statement that was probably more over-arching than that specific statement, and the purpose of including that in the affidavit is that the affidavit is - talks principally about the broad RFA process, and that was the intention, rather than anything - any specific issues. But was
45 in a sense giving the background, the history, and the basis for the RFA policy generally. This statement is a summary statement about that ESFM management has met the terms of the RFA and is a sort of a pretty clear general statement about the whole process.

Well, you don't disagree with me, do you, that that is also a principal conclusion in this part of the report?---That's an important conclusion, and there were in fact a number of recommendations obviously that came out of this report.

Yes. And those are the recommendations that you find at page 47 to 48 of - under Documents, and I ask you to turn to those. They are recommendations 4.4, 4.5, 4.6, 4.7. Is it the case, Dr Dickson, that the Commonwealth has any role in ensuring that these recommendations are acted on by the State?---The Commonwealth works co-operatively with the State in the preparation of recovery plans, and for species that are listed under the EPBC Act. And the Commonwealth contributes funding to Tasmania for the development of those recovery plans, and adopts State plans under the EPBC Act, where they meet the requirements for Commonwealth listed species. That's the process you are referring to.

All right. So that is what you describe as the Commonwealth's role in, for example, trying to ensure that these recommendations are implemented?---That's correct.

It principally is one of funding, is that what I take out of your statement?---It's - the Commonwealth funds, not entirely contributes funds to recovery plans. The - Tasmania, the States, need to do their own plans for their own purposes. We contribute funds to try and accelerate the preparation of these plans. There's hundreds and hundreds of threatened - in fact there's - I think it's, can't remember the exact number, but there's over 1500, so it's a very large piece of work. So the Commonwealth contributes funds to that. And the Commonwealth also assesses those plans as meeting the EPBC Act requirements.

You say there is hundreds and hundreds, but you are not suggesting that under the Tasmanian RFA there is hundreds and hundreds of listed threatened species, are you?---I'm sorry I don't know the number of Commonwealth listed threatened species in Tasmania. I don't have that on the top of my head.

All right. Well, if you look - if you go back, for example, to exhibit RGD9, which is the RFA - where is that? Look, I might come back to that question when I can just put my finger on the attachment I had in mind. So sorry, Dr Dickson, just put that to one side - attachment 2, thank you. Sorry, I am just finding the page for you.

HIS HONOUR: Page 49.

MS MORTIMER: Page 49.

So Dr Dickson, if you look in terms of fauna species you have got just over a page that are EPBC Act listed?---Yes, the ones that are listed, they are listed -

they're not EPBC Act listed species, they're Endangered Species Protection Act listed species. The Act that preceded the EPBC Act and I can't comment on how many of these have been - - -

5 All right, no, I am sorry?--- - - - now listed under EPBC.

Can I take it really when you are talking about hundreds what you are meaning is that the Commonwealth has got to look at this for each and every State and then you are certainly going to get into the hundreds?---That's right, I was
10 talking about the overall list and I think it is over about 1500 species listed currently.

Dr Dickson, have you had any involvement in the making of recovery plans under the EPBC Act?---I've been responsible for the section that manages
15 recovery plans for, I think it would have been over a couple of years.

All right. So you would be fairly familiar then with the requirements of the EPBC Act about recovery plans?---Yes.

20 Can Dr Dickson be shown a copy of the EPBC Act, please, if there is a spare one there, otherwise we have probably got one?

HIS HONOUR: I have got one but it is flagged at certain sections, I don't know whether that matters.
25

MS MORTIMER: Very grateful to I think someone who might be here assisting Dr Dickson.

Could you have a look at section 269A, as I understand 269A(1) that that
30 requires that once there is a recovery plan for a species, then thereafter the Minister is obliged to ensure there is always one in force. Now, just assume for a moment that is the meaning of section 269A, are you aware of the status of the recovery plans for the three species with which this proceeding is concerned?---I've sought advice on that before I came here. I understand that
35 the wedge-tailed eagle and the swift parrot have completed recovery plans, but the - I think there is, sorry I don't know the details but I think, because I haven't been responsible for this area for a year - that the beetles, the joint beetle recovery plan hasn't been concluded. This is just - I don't have any personal knowledge of this, just checking on the status.
40

Well, the evidence before the Court, Dr Dickson, so far is about to the effect that you have described. That is that there is no and never has been a recovery plan in force for the beetle, that there has been until 2005 a recovery plan in force for the swift parrot, it has now expired and there is not currently a
45 recovery plan in force for the wedge-tailed eagle. Now, I want you to assume that is the state of the evidence. That would appear to be inconsistent with section 269A; would you agree with that?---I'd agree that if that is the case as you stated.

And again from your position on behalf of the Commonwealth that is obviously highly undesirable that two out of the three species with which this proceeding is concerned don't even have recovery plans in force as the EPBC Act requires?---I'd agree that's the EPBC requirement and if the situation is as you state, and I'm sorry I can't - don't have any personal knowledge of it, that doesn't meet that requirement.

And you would agree with me that it is highly undesirable?---It doesn't meet the requirements of the Act. I guess the key issue for recovery - for managing threatened species is that the practical actions of conservation are undertaken.

You would agree that it is desirable that the requirements of the Act be met, surely Dr Dickson?---It is desirable the Act is met.

And therefore it is undesirable when they are not; isn't that obvious?---It's not desirable when they're not, that's correct.

Thank you. Now, what mechanisms are in place Dr Dickson so far as you know for the State of Tasmania to report to the Commonwealth about any new scientific information that may affect the management of a listed threatened species under the EPBC Act?---Usually that information is provided through - in the development of a recovery plan if one isn't there or in future revisions of the recovery plan.

All right. So that is the mechanism as you understand it that is designed to permit - I will withdraw that and start with a more basic question. Principally it is the State that is responsible for the development and formulation of the recovery plans?---For all the recovery plans for species that are predominantly in the State jurisdictions. There are on Commonwealth land there are a number of species and in Commonwealth waters there are a number of species that are solely the responsibility of the Commonwealth.

For example should southern blue fin tuna be listed as a threatened species because that occurs in the Australian fishing zone, that would be something that the Commonwealth would be responsible for developing a recovery plan about?---That's correct.

But where that is not the case then the principal responsibility lies with the State; is that right?---The responsibility for developing the recovery plan lies with the State for a Commonwealth listed species, the Commonwealth has a responsibility to ensure that a recovery plan is developed.

So if in the - well, I will withdraw that. Developed and in force if there has already been one?---Yes.

So if in the process of - no, I withdraw that. And is a process by which drafts are sent to sections within the Department of Environment and Heritage are

there, for comment or evaluation?---There are. There is a process for ones in early stages of development. Many - at the time the Act came into force there were quite a number of recovery plans already developed either under the Endangered Species Protection Act and that have been developed under State
5 Acts, and I recall in those cases there wasn't much additional work to be done, so they were pretty much sent as they were. But in early - in some of the earlier developments they would be sent to the Commonwealth for discussion to ensure that they met the requirements for the Commonwealth for the EPBC Act.

10

So do I understand from your evidence that it is fair to say that conveying new scientific information that might affect the management for the list of threatened species if the Commonwealth is to receive and be alerted to that kind of information it is going to occur principally through the recovery plan
15 process?---That's correct in relation to recovery plans, yes.

And are you aware of any reports to the Commonwealth by the State of Tasmania or Forestry Tasmania about new scientific information relating to any of the three listed threatened species the subject of this proceeding?---No,
20 I'm not.

Did you make inquiries about that before you came to give evidence?---No, I didn't.

25 And therefore you are not aware of the results of a population viability analysis undertaken by the University of Melbourne in relation to 10 flora and fauna species in Tasmania, including the wedge-tailed eagle?---No, I'm not.

30 And as far as you know that population viability analysis and its results about the wedge-tailed eagle have not been drawn to the attention of anybody within the Department of Environment and Heritage - so far as you know?---I don't know about the report, it could well have been, I haven't been involved in the area for at least a year. So I really can't comment on whether it has or hasn't.

35 But as I understood your evidence that you have given so far the mechanism through which you would expect that information to be conveyed, if it had, would be in the development of the recovery plan?---That's right, but the information may not necessarily be conveyed the moment it's produced, it would be incorporated in the development or the revision of the recovery plan
40 and it would be that product that the Commonwealth would see.

45 Right. This, you can assume, Dr Dickson, is information that has been available for about two years to the State of Tasmania and Forestry Tasmania and you can assume, please, for the purposes of answering this question that it predicts extinction for the wedge-tailed eagle within about 90 years and attributes as one of the two principal causes to that, forestry operations. Now, is that the kind of information that you would expect to have been conveyed to the Commonwealth about a list of threatened species?---I would have expected

the State to have used that information in developing the recovery plan. It's not necessary they would have conveyed that information to the Commonwealth.

5 You wouldn't expect something as, on its face, significant as that to be conveyed in any way, shape or form?---Without knowing the document and the nature of the science it's very hard to make that assessment if it was all the stages of development of the recovery plan, but usually the Commonwealth assesses the recovery plan which take into account, you know, the latest most up-to-date scientific information and information such as that and presumably
10 other information that relate to it would have been included in that recovery plan.

HIS HONOUR: Ms Mortimer, do you expect to be much longer?

15 MS MORTIMER: I will be a little longer, your Honour, but this is a convenient time if it is convenient to your Honour?

HIS HONOUR: All right. We will adjourn for 15 minutes.

20 **ADJOURNED** **[11.31am]**

RESUMED **[11.50am]**

25

THIRTY SECONDS OF SOUND MISSED DUE TO COURT OFFICER FAILING TO REACTIVATE MICROPHONES

30

HIS HONOUR: ...some confusion about which hard drive was tendered and which wasn't, so my associate will sort it out and we will issue a corrigendum. It will not affect the sense of the judgment.

35 MR ABBOTT: I am content with that, if it please, your Honour. I should indicate that that was all a surprise to me, your Honour, but I am content, if it please.

40 HIS HONOUR: Yes, it was just something that my associate communicated with me about now and he has assured me that he will delete the offending sentence or alter it and issue a corrigendum.

MR ABBOTT: That would be appropriate, if it please the Court.

45 HIS HONOUR: Yes, there was some confusion, I think, in respect of a hard drive that related to the evidence of Mr Kennedy.

MR ABBOTT: Yes, I was anxious about that, your Honour, and had discussed it with Mr McDonald and the view between us was that we ought to be sure that the reason - - -

5 HIS HONOUR: Yes, it is better that the record is corrected and I thank Mr McDonald for that.

MR ABBOTT: Yes, your Honour, I will indeed. If it please.

10 HIS HONOUR: Ms Mortimer?

MS MORTIMER: If your Honour pleases. Pardon me, your Honour.

15 HIS HONOUR: Dr Dickson, you are already bound by your former oath - you continue to be bound by your former oath, I should say. Thank you.

MS MORTIMER: Pardon me, your Honour. Your Honour, I will come back to that question in a moment.

20 Dr Dickson, I want to ask you some questions based on some matters I am going to ask you to assume about the evidence that is before this Court. The evidence before this Court in relation to the broad-toothed stag beetle - no, I withdraw that and just start again. You are aware, aren't you, Dr Dickson, that each of the broad-toothed stag beetle, the swift parrot, and the wedge-tailed
25 eagle are listed threatened species in the endangered category under the EPBC Act?---Yes, I'm aware of that.

The evidence before this Court is that the broad-toothed stag beetle has been found in only two areas of habitat in Australia, one is Maria Island and one is
30 the Wielangta forest block, all right, that is in summary part of the evidence. Now, take that, and then I will ask you to assume that the evidence will show that logging significantly damages the habitat of this beetle as well as killing numbers of individual specimens. Now, in your position giving evidence on behalf of the Commonwealth do you say that it is an intended consequence of
35 the Tasmanian RFA that one of two known areas of habitat for a listed threatened species can be in fact significantly damaged?---Can I ask you to repeat that? Are you saying that it is an intended consequence of the - - -

40 That is right. And perhaps I will go back. I will ask that question again having perhaps laid a little more ground work. You see, as I understand the Commonwealth's argument in this case, it is that the exemption in the EPBC Act for forestry operations conducted in accordance with an RFA means that it doesn't really matter what happens, in fact nothing can be done under the EPBC Act about it because there is an exemption?---No, that's not correct.
45 Forestry operations need to be undertaken in accordance with the RFA and the exemption is for such forestry operations. If it was found that forestry operations weren't taken in accordance with an RFA - working through the procedures under the RFA through the dispute resolution processes and so on

which are quite extensive and set out in the RFA, that there would in fact - if it was proven and it was such a breach then there is the potential for an RFA to be terminated and in that case normal EPBC provisions would apply, but there are a series of processes that are set out in the RFA that go through that and in fact the very first thing there needs to be a concern and a dispute between the parties over whether an action is taken in accordance or not with an RFA.

Well, what you have just described there is a process that might occur if the Commonwealth took a particular view and decided to exercise what rights it might have under the regional forest agreement itself, that is what you have just described, isn't it?---Yes, if there was an issue that the Commonwealth disputed.

So what I am suggesting to you is, do you say that it is an intended consequence of the Tasmanian RFA that one of two known areas of habitat for a listed threatened species can be significantly damaged and that be an expected outcome within an RFA?---That is not an intended outcome of an RFA, the RFA establishes the broad framework for the development of management prescriptions and in formal reserves to protect endangered species and so it wouldn't - the destruction of an endangered species is not an intended outcome.

Well, nor of its habitat, Dr Dickson, if that habitat is very important?---Yes. I guess the question then arises on the efficiency and the effectiveness of the management prescriptions and the known impacts of which I have no knowledge.

Of course and that is why I am asking you in a hypothetical sense. But indeed that kind of consequence the destruction or damage to one of two known areas of habitat for a listed threatened species ought to be entirely contradictory to what this RFA is supposed to do about threatened species, isn't that right?---Well again it is very hard to draw from a hypothetical example. The end outcome of the destruction of the endangered species is certainly not an intended outcome. The details of how - of what is known of the species, it is the impacts of various activities, the efficiency of the prescriptions; all those sorts of things would come into play in terms of whether that outcome is happening and I can't comment on those.

Well, let me give you an example from another species. Mr Peter Brown, who is a recognised expert on swift parrots, I will ask you to assume, has given evidence in this proceeding that in his opinion the mature eucalypt forest in one of the coupes in Wielangta, which is the subject of this proceeding, and in the coupes that surround it is some of the best swift parrot breeding habitat he has ever seen. Now, I want you to assume that is the evidence that he has given in this case. Do you say that it is an intended consequence of the Tasmanian RFA that prime breeding habitat of a listed threatened species such as the swift parrot be logged?---The intention of the RFA is that the swift parrot is conserved and viable populations are retained through a whole range

of processes. I don't know the intimate details of the swift parrot: I am sure you have got the information on that, but there are a number of reservations, some of which I am familiar with through the Private Forest Reserve Program, where habitat for swift parrots has been reserved and the assessment is always
5 of the adequacy of the regional reservation for the conservation of the species.

But what my question focused on was prime breeding habit for a listed threatened species that is categorised as endangered. Now, the logging of that kind of habitat is not intended to be a consequence of the RFAs?---Again it is a
10 bit hard to speak without knowledge of the details, but it depends how much other prime habitat is reserved for the swift parrot and I have confidence in those existing mechanisms for the conservation of the species to determine whether or not that is going to put the swift parrot at - have a significant impact on the parrot.

15 And then just to bring it back to more fundamental principles, Dr Dickson, the picture you are trying to present, I suggest, through your evidence is that the protection that is delivered to threatened species under the Regional Forest Agreement is supposed to be at least as good as what they get under the EPBC Act?---The Regional Forest Agreement is a sort of a high level agreement between Governments and provides for the protection of species and the assessments that were done under the Regional Forest Agreement to -
20 including species assessments as well as forest - a whole range of other assessments that were done, and the assessment of the Tasmanian systems were designed for the Commonwealth to be satisfied that those systems were in
25 place to protect threatened species. At the same time the ongoing work of recovery planning would continue between the Commonwealth and the State.

And you accept, don't you Dr Dickson, that the concept of protection really has
30 two components, it is not just about - when you are talking about threatened species, it is not just about maintaining present population levels it is about recovering them so that they move out of the categories that they have been put into, agree with that?---That's the intention of recovery plans.

35 All right. And fundamental to that process is that you improve particularly breeding outcomes and successful breeding outcomes for the species you are dealing with, agree with that?---That's correct, yes.

And you can't do that if you destroy prime breeding habitat, don't you agree
40 with that?---On this specific example, and I am not familiar with the recovery plans for this species, but you would need to be confident that the reservation of the species elsewhere and the development of habitat elsewhere was sufficient to recover the species and ensure its ongoing viability. And if that was the case then the logging would not necessarily affect it, so conservation -
45 but I, as I have said I don't know the details of this case at all.

All right. Now, can I ask that you be shown exhibit AG, please? That was one of the ones that I tendered on Monday. It is the Commonwealth management

prescriptions for swift parrots. Sorry, it is not in a court book, it is a separate -
it is on a CD, I have just been reminded. I will show you, Dr Dickson, the first
two pages of my copy. And what I have shown you, Dr Dickson, is just the
introductory pages to the document which describe what it is and I just have a
5 short question for you again to tie it in to what you refer to in your affidavit.
As I understand it, that document is an example of one of the assessments that
was undertaken and of which you talk in your affidavit prior to the finding of
the Tasmanian Regional Forest Agreement. Is that your
understanding?---Sorry, I don't know the details of this, but I take it as read
10 that that is where the document comes from.

Yes. And that is what it says on those pages, isn't it?---Yes.

15 So what happened was that certain species were selected and an assessment of
them was undertaken and that was part of the species specific assessment
process and this is an example, is that right?---Yes, there are a number of
species specific processes.

20 Thank you. All right. Perhaps I could just have those back, please? Now, just
going back to some of these general questions I have been asking you about
what can and can't be done if there is a forestry operation allegedly undertaken
in accordance with an RFA, it is the case, isn't it Dr Dickson, that the principal
difference between the way that forestry operations are regulated and other
activities - let us take wind farmers as an example, are regulated is that there is
25 no provision in relation to specific actions for the Commonwealth Minister any
more to say no, that is right, isn't it?---The decision - the Commonwealth
decisions were made through the RFA in relation to Forestry operations, that's
correct, yes.

30 So that we have seen happen recently in Victoria with the orange-bellied
parrot, you are familiar with that example?---Only from what I've read in the
papers.

35 Well, that will do I think for the purpose of my question. And you know that
what happened is that Senator Campbell made a decision under the EPBC Act
about a wind farm in Victoria not being able to proceed because of its effect on
the orange-bellied parrot; you know that don't you?---Yes.

40 And that was because the Minister assessed and decided that numerically a
very small loss of one orange-bellied parrot over a given period was sufficient
impact for that species that a wind farm ought not to proceed; correct?---I'm
not familiar with the details at all I've only read newspaper reports.

45 And it is right isn't it that that process, that is ultimately of an action being
stopped by the Minister, can't occur in relation to a Forestry operation?---For a
Forestry operation under the RFA there isn't the same process because of the
exemption under the EPBC Act, that's correct.

HIS HONOUR: Ms Mortimer, you referred to exhibit AG before and the fact it was on CD. There is Book 5 CD Material, is the CD contained in book 5?

5 MS MORTIMER: Yes, thank you, your Honour, that is right. I have no further questions for Dr Dickson.

HIS HONOUR: Yes, thank you. Re-examination, Mr Gunson?

10 MR D. GUNSON: No, your Honour.

HIS HONOUR: Yes, would you like Dr Dickson excused?

MR D. GUNSON: May Dr Dickson be relieved, your Honour?

15 HIS HONOUR: Dr Dickson, thanks for your evidence you may be excused from further attendance, but if you wish you may remain in Court?---Thanks.

<THE WITNESS WITHDREW

[12.09pm]

HIS HONOUR: Mr Gunson?

5 MR D. GUNSON: Your Honour, we had some discussions during the break about the order of witnesses. There are the witnesses Mr Jarick and Mr Neyland yet to be completed of which there are arrangements for them to be here at 2.15.

10 HIS HONOUR: Yes.

MR D. GUNSON: Notice has been given to cross-examine Mr Andrew Blakesley, my learned friend Ms Mortimer is going to be some time with him in cross-examination and we had thought that it may be a more
15 desirable process if we were to adjourn now, subject to your Honour's convenience, have the witnesses Jarick and Neyland at 2.15 and then move on to Mr Blakesley, rather than interrupting Mr Blakesley.

20 HIS HONOUR: Certainly, I think the bench here looks like it needs a bit of a clean up by staff.

MR D. GUNSON: That will suit your Honour's convenience then, 2.15?

25 HIS HONOUR: Certainly, we will adjourn until then.

ADJOURNED

[12.10pm]

RESUMED

[2.16pm]

HIS HONOUR: Thank you.

5

<STEPHEN ARTHUR JARICK, ON FORMER OATH

[2.16pm]

10 **<FURTHER EXAMINATION BY MR D. GUNSON**

MR D. GUNSON: Yes, Mr Jarick, you were asked yesterday by my learned friend to produce other documents, are you in a position to do so now?---Yes.

15

And what have you brought to Court?---I've brought the breakdown of the 2004/2005 financial year harvesting from the Wielangta coupe.

Thank you. Yes, I have no further questions of the witness, your Honour.

20

HIS HONOUR: Mr Mitchell?

<FURTHER CROSS-EXAMINATION BY MR MITCHELL

[2.17pm]

25

MR MITCHELL: Mr Jarick, do you have that document in front of you now?---Yes.

30

Could I ask you to have in front of you both the, what I will refer to as the summary page which has the actual harvest of 2004/'05 just in summary form that you brought to Court yesterday?---Yes.

And if you could turn please to the coupe 17E page of the document you have produced now to the Court?---Yes.

35

Now, if we look at the more detailed version of that we can see that there is a grand total of 3195 units of timber being produced from coupe 17E?---Yes.

40

Of that 2872 units are pulpwood?---Yes.

And if we compare that to the summary form, the scheduled 2004/'05 figures, we saw that the scheduled figures were a total of 8.3 or 8300 if we convert it?---Sorry, what are you looking at there?

45

Coupe 17E scheduled 2004/'05?---Scheduled, okay. Yes, 8.3 yes.

And pulpwood at 6.9?---Yes.

And I think you accepted yesterday that that was a percentage something in the order of about 82 or 83 per cent of that total is pulpwood?---It looks about 80 per cent, yes.

5

And if we look at what was actually produced from coupe 17E, not only was the actual total timber production markedly lower being 3195, but it was almost 90 per cent of that, that was produced, was pulpwood; is that a yes?---Yes, if you've done the calculations.

10

Thank you. Yesterday you were asked a question by my friend, Mr Gunson, before I commenced my cross-examination and you were asked whether you had had a look at the figures in your affidavit with a view of being able to assist the Court by telling his Honour what Wielangta's contribution to the value of forest product industry was for the years 2002/'03, '03/'04 and '04/'05 do you recall that question?---Not the detail, no. I mean I'm not saying it wasn't asked.

15

Could the witness please be shown page 1475 of the transcript? At about line 34?---Yes, I recall that.

20

You recall being asked the question?---Yes.

And the evidence that you gave in answer to that question was based on the calculations which we find on the 2002/2003 sheet that you have produced in pursuant to my call? That is the basis of the answer to that question, isn't it?---Well, there are three years in question, yes.

25

Yes?---So it is not just 2000 - - -

30

Sorry, if I could ask you to look at that sheet, it has handwritten calculations on it?---It has a summary on it, yes.

Yes?---Yes, okay.

35

And it has an equation at the bottom - - -?---That is right.

1884 - sorry, 18,884, divided by 5.46 million, times 1.2713 billion, equals 4.4 million per annum?---Yes, yes.

40

That equation contains a series of assumptions, doesn't it?---Yes.

It is not, in fact, an accurate - - -?---Well, sorry - all of those figures are derived from some published data somewhere - - -

45

Yes?--- - - - by independent sources, most likely.

And the figure of 5.46 million, that relates to data from the 1999/2000 year?---Yes.

The figure of 1.2713 billion also relates to the 1999/2000 year?---Yes.

5

The figure of 18,884 is an average of the '02/'03, '03/'04 and '04/'05 years wood production?---That is correct, yes.

10 It is comparing apples with oranges, isn't it?---It is the most - it was the only way to get the most recent published data that is publicly available in terms of using the 1.27 and the 5.46 and it is expected that the actual production in those years - the actual dollar sort of pro rata calculation wouldn't have varied very much, so I would say that those figures are fairly representative of today.

15 And that would also assume that the grades of wood that are produced within Wielangta are exactly proportionate to the grades that are produced across Tasmania for that to be accurate?---I have got no idea of that. I mean, I am not - that is not my business. Grades of wood produced - - -

20 You didn't consider that in that equation?---I took figures from internal sources and also from external independent sources.

25 Yes, you have told us where the figures come from. I am asking whether you considered that in whether or not that figure you gave the Court was accurate, whether that might require you to consider that the grades of wood within Wielangta might be different to the grades of wood and the proportions of the grades of wood that are produced throughout Tasmania?---I consider that an irrelevant question because we are dealing with quantum amounts of wood, we are not looking at individual breakdown of pulp wood versus saw log and so on, so the 2000 figures are all wood, not broken down - - -

30

Yes?--- - - - between pulp wood and so is the Wielangta production.

35 But you have produced a ratio; for that ratio to be applicable to Wielangta, the price per unit of wood must also be obtained?---Well, Wielangta - I am assuming that Wielangta is representative of, you know, the entire state in terms of - - -

40 Yes. So you have assumed that Wielangta is representative of the entire state, do you have any basis for making that assumption?---No.

45 And you didn't indicate to the Court yesterday that your answer was an estimate and was based on some assumptions which you have no basis to make?---Well, I thought my assumptions are logical in terms of what I have used and where I have drawn the figures from and I think it is a representative situation in terms of the result.

But it is an estimate?---No. They are actual figures that have come out of the Wielangta coupes for those years.

5 The wood total is, but the dollar figure that you have attributed to Wielangta is an estimate and it is based on a series of assumptions?---That is based on a series of assumptions; the actual how I have applied the wood and the volumes, yes.

10 Yes?---But I think are reasonable assumptions.

15 Yes, but as you have said you had no basis for assuming that the wood proportions were the same throughout the state?---Well, you know, as I have just said I think it is the total wood that, you know, - the 5.46 - the 18 - the 5.46 million is, you know, all wood, it is not specifically broken down and the same with Wielangta wood, it is all wood, yes.

20 Your Honour, I tender the documents produced by the witness, being 2002/2003 wood production in Wielangta coupes, the 2000 - sorry, the 2002/2003, 2003/2004, 2004/2005 financial year wood production in Wielangta coupes and the three year wood production plan summary wood production.

HIS HONOUR: Do you want them as a single exhibit?

25 MR MITCHELL: As a single exhibit, it is probably convenient, your Honour.

HIS HONOUR: Exhibit AK.

30 **EXHIBIT #AK 2002/2003, 2003/2004, 2004/2005 FINANCIAL YEAR WOOD PRODUCTION IN WIELANGTA COUPES AND THE THREE-YEAR WOOD PRODUCTION PLAN SUMMARY**

35 MR MITCHELL: I have no further questions for the moment, your Honour.

HIS HONOUR: Yes. Mr Gunson.

40 MR D. GUNSON: I have no questions. Mr Jarick may be relieved, your Honour.

HIS HONOUR: Yes, Mr Jarick, you may be excused but if you want to remain in Court you are free to do so?---Thank you.

45

<THE WITNESS WITHDREW

[2.26pm]

MR D. GUNSON: The next witness is Mr Neyland, your Honour.

HIS HONOUR: Yes. Mr Neyland, I remind you, you are still bound by your previous affirmation.

5

<MARK NEYLAND, ON FORMER AFFIRMATION [2.27pm]

10 **<FURTHER EXAMINATION BY MR D. GUNSON**

MR D. GUNSON: Mr Neyland, yesterday you were asked to - - -

15 MR TREE: I am not sure if my friend is re-examining if he is - - -

MR D. GUNSON: I was, to produce the documents you had asked for.

MR TREE: I see.

20

MR D. GUNSON: That was the intention, I thought we had made that clear. Assuming my friend still wants it, if he doesn't he can tell me.

25 Mr Neyland, yesterday you were asked to locate a further document, I think, in relation to input into your affidavit; is that right?---Correct.

Can the witness be shown that document, please? You located that document?---I have.

30 And there is a name on the top, Bruce H, it appears to be. Is that in your handwriting?---No.

Do you know whose handwriting it is?---No, but I assume it's Bruce's.

35 And you believe that is what came from Bruce Haywood to you?---I do.

Yes. I have no further questions, your Honour.

40 HIS HONOUR: Yes. Thank you. Mr Tree?

<FURTHER CROSS-EXAMINATION BY MR TREE [2.28pm]

45 MR TREE: Thank you. I tender that document, your Honour.

HIS HONOUR: Exhibit AL.

**EXHIBIT #AL DOCUMENT IN BRUCE HAYWOOD'S
HANDWRITING PRODUCED IN ADDITION TO MR NEYLAND'S
AFFIDAVIT**

5

MR TREE: Your Honour, I wonder if the witness might have volume 9 of the Court book before him, please, and I wonder if you could turn to page 2713, please? That is the photograph, I think, which you took of the coupe at Snowhill, is it not, after a low-intensity regeneration burn?---Yes.

10
15
Now, do I understand your evidence in relation to that photograph to be that unfortunately it appears as though the burn perhaps was a little higher in intensity than might have been desirable because there is some scorching of tree trunks?---Fire has run up some of the trunks, I don't necessarily regard - we use the word "scorched" generally to refer to the canopy or the crowns of the trees.

20
To the canopy or crown?---Yes.

And scorching of a canopy or crown would visually appear as what?---Light brown leaves which is a little difficult to see in the black and white reproductions here.

25
I see, you have only got black and white reproductions. Well, perhaps the witness could be shown this document? And does that assist you in identifying whether there has been scorching of the crowns of the tree or not?---It does a little, Peter, I have to inform you at this point that I'm colour blind.

30
Right?---So of all the people in the room who perhaps find it harder to see than anybody else - - -

35
Okay?---But I'm also happy to say that that is part of the reason why we were there, was to consider whether there had been any scorch of the canopy.

40
And scorching of the canopy is something that is detrimental?---At an extreme level, yes, and particularly to eucalyptus regnans which is known to be highly sensitive to the effects of fire. The species that are present here. We prefer it not to happen, we manage a quality standard in fact to set a yardstick for it where we like it to be kept below that level. Certainly, if you reduce the canopy area you have a short term possible effect on their growth, but the scorch that was observed in this coupe was at a very low level.

45
I see. Now, I wonder if the witness might be shown these photographs, please? And for the ease of convenience I might pass another copy to your Honour so your Honour can follow the cross-examination and pass one set unfortunately around the bar table. Now, can I give you a few moments, please, to consider those photographs?---Yes.

Are you able to say from those photographs whether what is evidenced is likely to have been a high-intensity burn or a low-intensity burn, or is it impossible to say?---I can say by the level of retention of standing trees within the apparently harvested area that this should have been a low-intensity burn.

And in saying the words "should have" of course you are acknowledging, are you not, perhaps tacitly that it is not proceeded in that manner it appears?---The fire was too hot.

It was. And we can observe that because there is substantial charring of trunks?---Yes.

And there is - I am not sure whether your vision allows you to differentiate but there is - - -?---At that level, yes.

You can see that there has been scorching of the canopy?---I can see that, yes.

And moreover we can see in several of the photographs that there appears to have been extensive burning of logs that are on the ground?---The logs are charred, yes.

And it would appear - it is a little difficult to tell, but it would appear as though in fact some of the charred logs are in fact remnants of logs which have burnt and the charred portion is all that remains now?---That's a reasonable assumption, yes.

So it would be safe to assume based on your examination of these photographs that in fact not merely have some of the ground-based logs been charred but in fact they have ignited, burnt to some extent, and what is left is what we see in the photographs?---That's correct.

Thank you. Now, could I get you, please, to look at the last photograph, and you will see that - I hope your vision enables you to see - there is what appears to be a vapour or a smoke?---Yes.

You can identify that?---Yes.

That is a good indication as to when the fire is likely to have occurred, isn't it, in relation to the taking of the photograph?---Indeed, yes.

Although it is possible for fires to smoulder even for some days, some weeks perhaps even - - -?---Potentially some months.

Yes. It is most unlikely that a fire would smoulder for four or five months, isn't it?---We have a program of checking our landings in early spring in order to make sure that there are no enduring smoulders that have persisted through the winter.

Thank you. And another indicator as to the timing of the fire in relation to the taking of the photographs - and an important indicator - is that the scorched leaves have not yet - I think the proper term is abscission, but have not yet
5 fallen to the ground on the trees?---True.

And you would ordinarily expect that to occur shortly in a matter of days or weeks after the fire?---You would.

10 You wouldn't expect those to hang around for months?---No.

So that one can be fairly certain in looking at those photographs that they are photographs of a recent fire?---Indeed.

15 Now, can I get you , please, assuming you haven't changed the order of the photographs, to look at the second photograph in the bundle? And we - the photographer is apparently looking up the hill in taking this photograph?---Yes.

20 Or up a hill, and we can see that there are aggregations of trees which appear in the photograph?---Correct.

They are consistent with those areas having been some form of reserve, are they not?---They are.

25

It is most unlikely that that would be consistent, or that level of aggregation of trees would be consistent with an advanced growth seed tree retention forest harvesters plan - forest practices plan?---It's like - the wording of your question is critical here, Peter. It's likely to have been consistent with a forest practices
30 plan because where there's areas of extremely shallow soil we don't harvest. Where we have no confidence in our ability to regenerate, and shallow bare rock, and this is obviously a very rocky site, where it's very shallow soil, or lots of exposed rock we don't harvest. And that would have been excluded from the harvest area.

35

And that would be apparent from the Forest Practices Plan coupe map?---Yes, it should have been.

Yes?---Yes.

40

But would you agree with me that those areas left unharvested are likely to have been in a forest practices plan, regarded as some form of reserve?---Yes.

45 Now, we can see that if those areas that are depicted are some form of reserve, that the fire has entered them?---That's right.

And indeed it appears as though there is little difference in the fire regime that has prevailed in those areas from the harvested areas?---That's right.

Effectively the same fire has gone across all of the coupe?---To all intents and purposes, yes.

5 Now, firstly would you agree with me that this is a very poor example of a low intensity burn?---Yes.

10 Because clearly the fire has gone well beyond that which would ordinarily have been expected from - would have been planned in a low intensity burn?---Yes.

And it has done that in two principal ways. Firstly, the first apparently has been at a far greater intensity than would have been expected?---Yes.

15 And secondly it has extended to areas which would ideally have not been burnt?---Yes.

20 You don't recognise by any chance any of the landscape features there, do you?---No.

25 Would your Honour just bear with me for a moment? There is something which I just need to consider briefly. Your Honour, I tender those photographs.

MR D. GUNSON: I object to the tender, your Honour. Well, perhaps I should ask my friend, via your Honour, on what basis are they tendered? Are they tendered merely as photographs of a burnt area of ground, or are they tendered as being photographs of State forest that has been burnt in Tasmania somewhere as yet unknown, or are they photographs of private forest that have been burnt we know nothing about?

HIS HONOUR: Mr Tree?

35 MR D. GUNSON: They can be approved in the usual manner.

40 MR TREE: Your Honour, they are admissible as evidence of what this witness has interpreted them as, namely, evidence of what appears to be a low intensity burn that has gone wrong. Now, I accept this witness has been unable to identify the location of them, but that is not a pre-requisite to their admission. They are admissible as the evidence of what this witness has interpreted them as being.

HIS HONOUR: Mr Gunson?

45 MR D. GUNSON: On that basis, your Honour, we have no submissions to make, other than to say that is all they depict, namely, a low intensity burn that became somewhat excessive.

HIS HONOUR: Yes. Exhibit AM.

5 **EXHIBIT #AM PHOTOGRAPHS OF BURN AREAS AS EVIDENCED
BY MR NEYLAND**

MR TREE: Thank you, your Honour.

10

I wonder if the witness might be shown this document, please. What I have placed before you is a document you may not have seen previously. It is a Forest Practices Plan for coupe WT008A. You have not seen that document before?---No. It would serve my memory well if I could see - you had a planning map for the forest there a minute ago.

15

Certainly?---That would put me in context.

I can indicate that the map which I am about to show the witness is exhibit 20 to Michael Miller's affidavit?---Thank you.

20

I might be able to approach the witness, and it might save some time, your Honour?---Found it.

25

You have found it?---Of course.

The threat of approaching the witness?---Yes, it scared me too much. Bottom left. Come up from 566.

30

If your Honour is looking at the Court book unfortunately it is one of those exhibits which was not photocopied into the Court book.

HIS HONOUR: I see.

35

MR TREE: It is a separate exhibit which has been tendered with the original, but not otherwise reproduced.

HIS HONOUR: Yes.

40

MR TREE: And I wonder, to assist his Honour, Mr Neyland, whether you might hold your map up and point to the area where you have identified coupe 8A as being?---If you find line 566.

HIS HONOUR: I see it, thank you.

45

MR TREE: Now, if you look at the contours on the map you will see that coupe 8A, as you go from east to west, goes downhill, does it not?---Sorry.

That would depend where in the coupe - oh, I see, it's been re-couped. As I go from east to west I'm going to be climbing up the hill.

Sorry, you are quite right, coupe 8A you go uphill, do you not?---Yes.

5

On the other hand, if you were to look at the coupe of the other side of the hill, coupe 8E?---Yes.

One would be going downhill from east to west?---That's correct, yes.

10

What divides those two coupes is some form of informal reserve. It appears to be a wildlife habitat strip, or some other reserve?---That's correct, and in fact it is the wildlife habitat strip that we looked at on the view from the spur road into Wielangta 7A.

15

I see, where we were looking - - -?---We stood up on the road there and looked south.

Yes?---And we could see a coupe, a strip, and we weren't sure whether we could see a coupe on the left.

20

Yes?---And the coupe on the left would be the Wielangta 8A.

Now, thank you very much for that. I wonder if the witness might have the photographs back before him, please, the most recent exhibit. Oh, you have still got them? Thank you. Could I ask you please to carefully consider those - - -?---Yes.

25

- - - and based upon your own recollection of the site, are you able to say whether you can identify those photographs as being of coupe 8A, coupe 8E, or you cannot say?---No. The nearest I have ever been is the spur road where we stood on the view, so I have no local knowledge of the coupe.

30

And it is unfortunate that the second photograph in the bundle is simply looking up a hill. We don't know whether it is looking up east or west, do we?---No. In fact there's not even a clear shadow on the photo that I can use.

35

Quite so. All right. I want you to assume, for the purposes of the following questions, that in fact the photographs are of coupe 8A?---Mm.

40

If we look at the Forest Practices Plan for the coupe, and particularly the conservation of natural and cultural values component of it, where the relevant management prescriptions apply, we see that there are prescriptions which prevail in relation to the wedge-tailed eagle - - -?---Yes.

45

- - - the eastern and spotted tail quoll?---Yes.

There are then two prescriptions which deal with habitat clumps and strips?---Yes.

5 And there is then a prescription which deals with the broad-toothed stag beetle?---Yes.

You are familiar with the Forest Practices Plan for coupe 17E, are you not?---Yes.

10 The prescription in relation to the broad-toothed stag beetle in coupe 8A is identical to that which prevailed in relation to coupe 17E?---I'll take that as read.

15 That is, it simply says:

To maintain the habitat for the broad-toothed stag beetle the operation should not be available as post harvest firewood collection.

20 ?---Yes.

And that is the only prescription in relation to the broad-toothed stag beetle in that Forest Practices Plan, I want to suggest to you?---Yes.

25 The prescription in relation to habitat clumps requires a total of 10 wildlife habitat clumps?---Yes.

And they are identified on the couple plan, if you look at the back of it, with what appears to be dots?---Yes.

30 They also provide that the trees - that those clumps will contain at least two mature trees with hollows in each clump?---Yes.

35 And there is an attempt in those prescriptions to ensure that there is no interference by machinery or man with those retained areas?---Yes.

Similarly, in relation to the wildlife habitat strip?---Yes.

40 We see at the bottom of that page prescriptions in relation to reforestation, particularly burning?---Mm.

We see that the prescription for burning is:

A top disposal burn carried out following completion of harvesting.

45 ?---Yes.

And it is prescribed that:

The top disposal burn should be cool and patchy, and avoid patches of dense under storey.

?---Yes.

5

Assuming - sorry, again, assuming that in fact the photographs are of coupe 8A, would you agree with me that that burning prescription has been certainly not followed?---Given your assumption, yes.

10

And in relation to it being a top disposal burn, that is the same type of burn as is contemplated for coupe 17E?---That's correct.

Could the witness please be shown this document and I regret I only have one copy of this document.

15

Again it is perhaps not a Forest Practices plan that you are familiar with, but it appears to be the Forest Practices plan for coupe 8E does it not?---That's correct.

20

That is the coupe on the other side of the hill from 8A?---Yes.

You will appreciate that I don't have a copy of that in front of me, but I have some limited recollection of what is in it. There is a series of management prescriptions in that plan in relation to fauna?---For the wedge-tailed eagle, yes and the masked owl. Yes.

25

But there is no prescription in relation to the broad-toothed stag beetle is there?---That's correct.

30

Incidentally, do you find that surprising considering that it is just on the other side of the hill and only separated by a wildlife habitat strip from coupe 8A?---I'm not familiar with the known range of the broad-toothed stag beetle, so I can't comment on that.

35

There is however a prescription in relation to burning is there not?---There is.

And could you read out please the prescription that prevailed in relation to that coupe for burning?---For this coupe it prescribes, "A low intensity burn should be carried out following completion of harvesting in accordance with management prescriptions in technical bulletin number 11."

40

Probably in reality not much different to the burn that was described in relation to the other coupe, coupe 8A?---No, the burn for 8A was a top disposal burn which the definition is the low intensity end of low intensity burning if you like.

45

But in any event if the photographs which I have shown you are of coupe 8E rather than coupe 8A you would agree that the low intensity burn has not proceeded as one would have hoped?---Erred on the side of high, in fact.

5 Quite so?---Yes.

From an examination of the photographs and the maps associated with the plans, are you able to assist as to whether it is likely that the photographs are of 8A, 8E or you can't say?---I can't say.

10

Just excuse me a moment, please. Your Honour, I tender the two Forest Practices Plans 8A and 8e.

HIS HONOUR: Exhibit AN.

15

EXHIBIT #AN FOREST PRACTICES PLAN 8A AND 8E

20 MR TREE: I have an additional copy for your Honour's purposes of 8A, but I regret I do not have a copy of 8E either for my friend or for your Honour and I have no further questions for the witness.

HIS HONOUR: We can get copies made at the break if that would assist at
25 the conclusion of today's proceeding.

MR TREE: Thank you, your Honour.

MR D. GUNSON: I have no re-examination for the witness, your Honour and
30 may he be relieved?

HIS HONOUR: Mr Neyland, thanks for your attendance, you may be excused from further attendance, but if you like you may remain in Court.

35

<THE WITNESS WITHDREW

[3.55pm]

MR D. GUNSON: I call Mr Andrew Blakesley, your Honour.

40

MR TREE: Whilst he is coming I wonder if I might take back the photograph that I handed the witness, the coloured photograph of the Snow Hill coupe?

MR D. GUNSON: I think there is also some other material there. Now, your
45 Honour will need volume 3 for the purpose of this witness. The relevant page is 747, your Honour.

HIS HONOUR: Just a moment, when the oath is being taken I would like everyone to be still and quiet.

<ANDREW JOHN BLAKESLEY, SWORN

[3.57pm]

<EXAMINATION-IN-CHIEF BY MR D. GUNSON

5

MR D. GUNSON: Thank you, your Honour.

Mr Blakesley, you are Andrew John Blakesley?---I am.

10

Your business address is level 9, 10 Murray Street, Hobart?---That's correct.

You are a public servant in the State Public Service of Tasmania?---That's correct.

15

And you are the Director Forest Policy of the Tasmanian Government Department of Infrastructure Energy and Resources; is that correct?---That's right.

20

You swore an affidavit in these proceedings?---I did.

Could the witness be shown his affidavit please?

25

Could you have a look at that document, please, which is now given to you, do you recognise that as a copy of the affidavit which you swore in these proceedings?---Yes, I do.

And is your affidavit true and correct?---Yes.

30

Could you take it as read, your Honour.

HIS HONOUR: Thank you.

MR D. GUNSON: I have no further questions of Mr Blakesley.

35

HIS HONOUR: Yes, Mr Tree?

<CROSS-EXAMINATION BY MR TREE

[3.58pm]

40

MR TREE: Thank you, your Honour.

45

Mr Blakesley, do you have a copy of your affidavit still in front of you?--- Yes, I do.

I will start with a very trifling question, I noticed in your employment history you say that you worked for the then Forestry Commission between 1977 and 1994?---That's correct.

5 You then between 1994 and 2000 worked for Forestry Tasmania during which time you were on secondment for a year or two to DPAC, Department of Premier and Cabinet?---That's correct.

10 But it doesn't say what you did after 2000. Am I correct in assuming that you have been in your present position since 2000?---That's correct.

Right, thank you. Which is to say that you have a long history of employment with Forestry Tasmania, for some 23 years?---That's right.

15 Now, could I just ask you two things. Firstly, as at 2000 compared to today, was the management structure of Forestry, not by reference to personnel, but by reference to positions, roughly the same?---You mean Forestry Tasmania?

20 Yes?---Roughly the same, yes.

25 Then my second question is as at 2000 you were the Assistant Chief of Division of Forest Management Projects and the Manager of Planning; I am assuming that is a combined job is it?---No, no, it wasn't it was two separate jobs in that year. I was the Assistant Manager Projects and then I was asked to take on the role of Manager Planning and that's the position I held when I applied for and was appointed to my current position.

30 Okay. Can you just give us some overview of where in the Forestry management structure you were in those positions?---Well, I was in what was called then, I think correctly, the Forest Management position and I reported directly to the General Manager, Forest Management who was Dr Hans Drielsma.

35 I see. And Dr Drielsma, so far as you are aware, still has that position that he had in 2000?---I think his title has changed in the last year or two but he roughly has the same responsibility.

40 Yes, he has that responsibility. Thank you. Now, is there a title to describe the area responsibility that he had in 2000?---Well, his title was, I think, general manager, forest management.

And who does he answer to?---The executive director of Forestry Tasmania, Evan Rolley.

45 Mr Rolley, I see. And are there other managers - I am assuming Forestry has essentially a pyramidal management structure?---Well, I haven't worked there for five years - - -

Sure, but as at 2000?--- - - - but essentially it did, yes.

Right. And there are other, if you like, peer managers with Dr Drielsma who are in charge of other divisions?---Other general managers, yes.

5

Other general managers. I see. So that there is a - if you like, at the top of it there is Mr Rolley, and underneath him there are a series of general managers or senior managers who are in charge of divisions?---Well, areas of responsibilities and some of them are called divisions and some of them had other names.

10

And am I correct in saying that Dr Drielsma's responsibilities in 2000 included both projects and the planning?---Well projects was - projects related to the title that I had; it was projects related to that area that Dr Drielsma was generally responsible for but, yes, he was in charge of the planning resources functions - there are quite a number of others, the research and development functions, yes.

15

I see, that he was responsible for as well?---Yes.

20

Thank you. Now you, if I read your affidavit correctly, have had two principal involvements with the Regional Forest Agreement? You were the - well, during the time you were on secondment, you were the manager of the team that undertook the assessments which were a pre-requisite to the RFA?---That's correct. From a Tasmanian perspective I had a counterpart in the Australian Government as well.

25

Right. And I think amongst those whom you supervised was the witness who has just left the witness box, Mr Neyland?---That's correct.

30

But you were the general - you had the overall responsibility for the compiling of the technical assessments?---Yes and I didn't obviously write it all myself.

No, no?---No, but I was responsible for the management of the team that put together those in conjunction with the Australian Government.

35

I see. Thank you. The second role that you have had is post RFA and that has been to be the chair of the RFA Implementation Group?---That's correct.

40

Have you had that role since 1997?---No, I didn't. I took on that role when I came to my current position because it is like more of a whole of Government so I chair a committee which has representatives of lots of different departments who have an input into the implementation of the RFA.

45

I see. And you have held that since 2000?---Yes, it is not a formal position, it is just, you know, an internal position.

I see. But because there is no agency that is exclusively responsible for implementation it is a multi-agency responsibility?---Yes, different agencies have different areas of responsibility. What role that my department takes is to co-ordinate that from the whole of Government perspective.

5

Yes. And amongst those - I won't try and be exhaustive, but amongst those Government agencies that are involved with implementation are the Department of Primary Industries Water and Environment?---Yes, except it has got a new name now.

10

Has it? All right, okay, what is it now?---Department of Primary Industries and Water.

15

I see?---Environment part of the portfolio has gone to a different department now.

20

It has gone to another Minister, I see. And also would be, am I correct in saying the Department of Infrastructure, Energy and Resources, assuming it still exists?---It does.

And it is one of the agencies that is involved in implementation?---That's correct.

25

Now, for the purposes of this case there are three particular agencies that are important; that the first is Forestry Tasmania itself?---Yes.

The second is the Threatened Species Unit, which is I understand it forms part of the Department of Primary Industries and Water?---That's correct.

30

Also having responsibility is the Forest Practices Authority?---Yes.

35

And am I correct in saying that it forms part of the Ministerial responsibility under the Department of Infrastructure, Energy and Resources?---Yes, it reports to the same Minister.

40

I see, thank you. And am I correct in saying that there has been, if you like, a protocol developed to enable those three agencies to work through overlapping areas of interest or concern or responsibility?---In what - in the area of threatened species management are you talking about?

Yes?---I am aware there is a protocol between the Department and the Forest Practices Authority; I am not sure that it is Forestry Tasmania, a part of that protocol.

45

I wonder if the witness might be shown volume 5 of the Court book, please? And could you turn, please, to page 2426, 2-4-2-6, and that was what I was loosely referring to as the protocol. Were we talking about the same

document?---I believe so. It has been quite a while since I have actually seen the document.

5 I see. But it is headed Agreed Procedures for Threatened Species under the Forest Practices System and it deals, if I may in broad terms describe it, of the interaction between Forest Practices offices and the Threatened Species Unit, particularly in relation to the descriptions for flora and fauna?---That's correct.

10 Thank you. And you might just put that to one side, please. Now, I wonder if the witness might have volume 1 of the Court book placed before him. And I wonder if you might turn, please, to page 138. And you will see that that is the front sheet of the Tasmanian RFA, no doubt a document you are very familiar with?---Yes.

15 Now, you are aware, are you not, that the agreement is in three parts and it is expressed that Part III creates - I will use broad terms - legal obligations, but Part II doesn't?---That's correct.

20 Would I be correct that in saying that notwithstanding the fact that on its face Part II of the Act does not create legal relations there is a serious attempt to implement the RFA of those parts?---You said Part II of the Act, do you mean Part II of the agreement?

25 Part II of the RFA, I am sorry?---Yes.

It is not the case that the State of Tasmania has said look, it can't be legally enforced or it isn't intended to create legally binding relations, we will just ignore it?---No, ever since I've been involved in this process it's certainly been everyone's intention in the RFA we're committed to the spirit of the agreement.

30 Irrespective of whether the obligation falls in Part II or Part III?---That's correct.

35 Thank you. Now, could I direct your attention, please, to some of the clauses of the RFA which I think you will be reasonably familiar with. Can I commence at page 162?---Yes.

And clause 68?---Yes.

40 And I think we can agree that clause 68 and indeed 69, 70, and 71 are all in Part II of the agreement?---Yes, they are, yes.

45 And you will see that clause 68 contains an agreement on the part of the State to protect the species in attachment 2, Part A, by CAR Reserve or relevant management prescription?---Correct.

Now, in fact if we look at Part A of attachment 2, that is at page 190 of the Court book, we can see that all three fauna species the subject of this litigation

are indeed in Part A of attachment 2?---Yes, that's right, species listed in the schedules of the Acts that were in force at the time.

5 Yes. So at least from the point of view of these three species the following clause on page 163, clause 69, doesn't apply because clause 69 on its terms only applies to the species in Part B?---Part B, correct.

10 Which were species which were identified as requiring further investigation?---That's correct.

15 Notwithstanding that, can you say from your own knowledge whether in fact clause 69 has been complied with?---It's testing the memory a bit, but how I might respond to that is that in 2002 both Governments issued a report on every one of these clauses and from memory we did review - we, being Tasmania, the Tasmanian Government did review the species in Part B and a lot of those have - well, I stand to be corrected, but most of those species have management requirements - management prescriptions in place now.

20 I see. Thank you. Clause 70 potentially applies to the three species the subject of this litigation, though, does it not?

The parties agree that -

25 and I will just interpolate a little here:

firstly, management prescriptions or, secondly, actions identified in jointly prepared and agreed recovery plans or threat abatement plans will be implemented as a matter of priority.

30 Now, firstly, there are management prescriptions which apply to all three of the species under consideration?---I believe so, yes.

35 Are you familiar with recovery plans in relation to any of the three species the subject of this litigation?---Not, personally. It's not an area that my department deals with - with those. So I couldn't tell you whether there were or not, although I was in Court this morning and heard Dr Dickson's response to that, yes.

40 Okay. So you read ahead. Now, of course you no doubt heard that in fact in relation to none of the three species is there a present recovery plan in existence?---That's what I heard this morning.

45 Yes. I dare say that makes it difficult for them to be today implemented as a matter of priority because they don't exist?---My understanding was that at the time this was signed there were recovery plans in place for at least two of the species, the eagle and the swift parrot. It was news to me this morning that they had expired, I think that was what the - - -

News and concern considering your role as chair of the implementation?---Well, I will be interested in finding if there was a reason for that. I'm not sure what the reason might be.

5 And can I then direct your attention to clause 71, please:

The parties recognise that priority species -

10 which include the three species the subject of this litigation -

may change and that new or altered management prescriptions may be needed during the term of this agreement to take account of changes in the status of species, additional information and evolving forest management practices. Alterations in prescriptions will be in accordance with processes described in clause 96.

?---Yes.

20 Now, again that potentially applies to these three species because of the presence of management prescriptions?---Yes.

25 Thank you. Can I then direct your attention, please, to clause 96 which is at page 173? You will see that clause 96 encompasses in its ambit new or altered management prescriptions during the terms of the agreement, which is 20 years, is it not?---It is.

And there are four requirements:

30 *That they will be adequate to maintain the species identified; have a sound scientific basis; be endorsed by the Tasmanian Threatened Species Scientific Advisory Committee where relevant; and take note of public comment.*

35 Now, am I correct in saying that there have been to your knowledge alterations in the management prescriptions in relation to priority species during the current expired part of the term of the agreement?---I would expect there had been. I mean, it's not an area I directly deal with, but as new information comes in it's part of the adaptive management process that alterations get revised and endorsed.

40

And then clause 97:

45 *Management prescriptions database in a response to disturbance database have been prepared as part of the comprehensive regional assessment for species identified as priority for protection by reservation and or management prescription. The State agrees to maintain these databases and to update them as necessary and also confirms that they will be used as a basis for updating relevant State*

5 *management documents including threatened species database, listing statements, management decision classification system, forest botany manuals, and the threatened fauna manuals. Updated hard copies of the database contents will be made available periodically for public comment.*

10 Now, can I deal with that bit by bit? Can I just remind you that the agreement in fact has a definition of management prescriptions database at page 147? And it is a somewhat woolly definition. It might mean more to you than me:

15 *It means the data base described in the Tasmanian Commonwealth Regional Forest Agreement Supplement to Environment and Heritage Report volume 6, processes and guidelines for determining the conservation requirements for priority flora and fauna species in Tasmanian comprehensive regional assessment, Tasmanian Public Land Use Commission, April 1997.*

 Is that one of the reports that you had responsibility for preparing?---Yes.

20 And can you identify from a document, that I had a few seconds ago - that this is indeed that document?---Yes. That is the document referred to in definition there.

25 Now, I don't want to take undue time, nor do I wish to unduly take you down memory lane, but can you identify in that document where the data base defined as Management Prescriptions Data Base is in fact described?---I haven't looked at this document for a very long time, so I couldn't immediately answer your question. Well, I have immediately picked up on page 1 in there, the second paragraph under 2.1, it refers to a data base there which contains
30 information on species population distribution data, and disturbance, and adverse reservation management, etcetera.

35 But of course it doesn't actually talk about management prescription though, does it?---It doesn't there.

40 No. I should indicate, your Honour, that this is in volume 7. This document is in volume 7, but can I remind your Honour that volume 7 is not paginated. Where the document appears is behind the last yellow divider in volume 7. I think I am correct in saying that is the same document.

HIS HONOUR: It is April 1997?

45 MR TREE: Yes, your Honour. Yes?---Could I just make an additional comment about that? From memory there was one of the other background reports, environment and heritage background reports which was published at the time, which did have all that information actually published.

5 All what information, I am sorry?---That's referred to there about all the - what are termed rare and threatened species there. It is not a term we use now, but disturbance - there was some information compiled on everything that everybody had ever suggested about how they ought to be managed as well, and that was the data base that was put together at the time, for the purposes of the RFA.

10 And that was a data base, you say, of management prescriptions?---It did have - as part of that data base there was a list of all the available scientific information, which people had suggested what was - might be needed to manage the species.

15 Well, do you say that that was a management prescriptions data base for the purposes of the RFA, or - - -?---It was the document that was referred to at the time, because the group that I was responsible for, people in that put that particular data base together. It was done within the then - I don't know what the department was called then, but essentially the Parks and Wildlife Service people. And they put together a data base which, as I said, contained all this information about the species, and responses to disturbance, and what people had suggested about management. But it wasn't - it wasn't - from memory it didn't contain the management prescription for that species in the data base. It was more a compilation of a list of things.

25 Well, I suppose in an indirect way what I am trying to establish is where do I find the contents of the management prescriptions data base that was referred to in the RFA?---Currently today?

30 Well, no, as at 1997?---I believe it's in one of the published background reports from the Public Land Use Commission at the time.

35 I see. And there will be, you say, a set of management prescriptions for each of the priority species listed in Part A to attachment to the RFAs?---As I said, it's a long time since I looked at it, but I believe - I have a memory that that particular data base was - the contents of it was published at the time.

40 Well, it would have been a very important document, given the terms of the clauses that I have taken you to a few moments ago, because the State had agreed to implement those as a matter of priority. If you look, I think, at clause 70 at page 163 you will see the parties agree that:

The management prescriptions -

I will skip over the verbiage - - -?---Yes.

45 *will be implemented as a matter of priority.*

?---Yes. But it doesn't say the management prescriptions in that data base. It says:

The management prescriptions in jointly prepared and agreed recovery plans, or threat abatement plans.

5 Well - - -?---Which are different documents.

Do you say that recovery plans extend to management prescriptions, or that threat abatement plans extend to management prescriptions?---They usually contain management prescriptions, yes.

10

I see?---But what I'm saying is that the response is to disturbance data base and management prescription data base is a lot more comprehensive than what the species that do have recovery plans, or threat abatement plans.

15

Well, let us - are you in a position to be able to find the document that you think was one of the technical assessments which contains this management data base in hard copy form?---Yes, I should be able to.

It will be archived somewhere one assumes?---Yes.

20

Thank you?---And it's on the web as well. All those documents are still on the web.

25

I see, thank you. Now, if you look back at page 174 though, you will see that updated hard copies of the database contents will be made available periodically for comment; did that ever occur?---No, it didn't.

30

Why not?---There's a fairly full description in the Government's report on implementation of the RFA, the 2002 one that I talked about. What happened at the time is that the - after the RFA people said well, "How are we going to implement this?" And that document was very, you might say clunky, there was - it was put together for a specific purpose in the comprehensive regional assessment process, a compilation of information. What was decided at the time, and this was remember at a time when the web-based stuff was, you know, becoming more and more part of mainstream information providing, that that particular database was - the old database was just a database, it didn't have in terms of relevance for current - what the current prescriptions are, I don't think they were actually identified in that database. As I said before it was just a collection of information. So what the Tasmanian Government did in consultation with all the scientists involved was to develop the concept of the electronic management prescriptions database which today is known as the Fauna Adviser - - -

35

40

Threatened Fauna Adviser?--- - - - and I think they're also developing a similar Flora Adviser which effectively has superseded that old paper copy database if you like.

45

And am I correct in saying that you are reasonably familiar with the Threatened Fauna Adviser?---No, I've - - -

5 You are not?---It's mainly for forest practices officers and I'm not a practising forest practices officer.

So that the, if you like, encyclopaedia of management prescriptions for the priority species is the Threatened Fauna Adviser?---That's my understanding.

10 And it is intended to, or those prescriptions are intended to inform the other documents that are referred to in clause 97, page 174, I am sorry to flip around?---Yes.

15 Thank you. Now, can I take you back to clause 68 at page 162 please?---This is in the Court book?

Yes, in Court book volume 1?---And clause 68?

20 Yes?---Yes.

You will see that the obligation there is to protect priority species by two means which are expressed alternatively. The CAR reserve system or relevant management prescriptions?---Yes.

25 I think you make the point in your affidavit that the CAR reserve system in fact can include informal reserves by prescription that preserve CAR values?---That's correct. That comes directly out of the JANIS criteria document, yes.

30 Yes. So that in fact clause 68 is perhaps a little, according to your interpretation anyway, a little ungainly expressed because the CAR reserve system can indeed incorporate or include management prescriptions?---That's right, although management prescriptions don't always mean setting aside of areas.

35 Quite so?---I mean doing things in different ways.

40 Nor do management prescriptions necessarily preserve CAR values?---Well, it depends what the prescriptions are.

Sure. The prescriptions can, coincidentally preserve CAR values, but may also be primarily directed towards threatened fauna for instance?---Yes.

45 Now, do I understand from your evidence a few moments ago that the obligation under clause 68 has been assumed by several agencies?---Yes, that's correct. I guess the CAR reserve system is - some parts of that are the responsibility of the department which manages the parks, the national parks system and Forestry Tasmania on State forest has managed parts of the CAR

5 reserve system and of course individual private land owners do as well. It's not the direct responsibility of any particular Government department. And the same with relevant management prescriptions, I mean the relevant management prescriptions can apply equally to a national park as to a State forest or a private forest.

10 You will appreciate of course that the word "The State" is a fairly ungainly person to be pointing a finger at to say it is their fault if something doesn't occur. In fact whose responsibility is, in an agency perspective, clause 68?---Not one particular agency, it's a shared responsibility as we've just discussed across a number of agencies wherever it is applicable.

15 And is there any person whose task it is to ensure that those differing agencies in their collective efforts comply with clause 68, or is that you?---No, it's not - I'm not going around every operation - - -

20 It is not you?--- - - - in the State, no. I guess it's a bit difficult to answer that precisely. I mean ultimately through - whenever there's a forest practice involved the Forest Practices Authority has got some responsibility, but the people implementing the plan, that includes the land owner and timber processors, they all have responsibilities and there are consequences if they don't do that. So there are lots of systems of bits of checks and balances right throughout the forest management system in place. So I guess my role is more to ensure that agencies are responsible for being aware of their responsibilities and they each take up their own responsibilities.

30 That would have to be would it not - I don't want to be unpleasant about this - but that would have to be one of the responsibilities of the RFA implementation group wouldn't it?---Well, we don't have an on ground role, our role is to co-ordinate and report where there's reporting requirements and assist with budgetary things and report to ministers, and so it is - that RFA implementation group is very much - has an administrative role, it doesn't have an on ground implementation role as I just described it. Each individual agency, the operational bits of the agency takes on that responsibility and if something goes wrong, you know, it's their responsibility.

Whose?---The agency that had the legal responsibility.

40 You don't think there is a risk that they will duck-shove it to the other agency saying it is not our responsibility or it is private land owner's responsibility or it is the Forest Practices Authority responsibility?---No, as I said there are various parts of the forest management system that this requirement is implemented through various Acts and regulations, mainly the forest practices system and they have their own system of ensuring those responsibilities are actually undertaken.

Isn't there a risk that if it is everybody's responsibility to ensure compliance with clause 68 it becomes nobody's responsibility in fact?---Well, that's not

how it's worked. You might say it's a risk, but it's actually a shared responsibility as I said.

5 But who makes sure that that responsibility is burdened - is shouldered?---Who makes sure? Well, as I said if it's a matter to deal with - that's implemented through the forest practices system then ultimately it's the Forest Practices Authority that has the legal responsibility to ensure those management prescriptions are met.

10 So the buck stops with them you say?---In terms of forest practices.

So the responsibility - - -?---So if it was an issue of proper management of a species in a national park it would be the agency responsible for that national park.

15 But it is whole of species, it isn't specific to those species in areas, it is the whole of species that is required to be - it is the species that is required to be protected?---Yes.

20 So do I understand your evidence that it is National Park's responsibility in national parks; it is Forest Practices Authority in forest blocks - - -?---In terms of the operational implementation of that. I'm struggling a bit because it's a bit of a hypothetical I suppose really.

25 It is not hypothetical is it, it is clause 68, it says that is what the State will do?---Yes, and the State does it.

30 How - - -?---We have a system, a whole variety of systems, or a system in place that has a number of components to ensure that particular obligation is met. And mostly what we are talking about here, about protection of species through management prescriptions is mostly talking about forest operations in the context of the RFA.

35 Sure?---And that particular one is well within the forest practices system.

So you would say that the preponderance of that responsibility rests with the Forest Practices Authority?---Applying relevant management prescriptions, yes.

40 Now, can I then direct your attention to clause 70 and ask you whose responsibility was it to ensure compliance with that from the perspective of the State?---Well, recovery plans and threat abatement plans are the responsibility of the Department of Primary Industries and Water currently.

45 By virtue of the Threatened Species Act?---Yes.

Threatened Species Protection Act, I think it is?---Yes.

So you would say compliance with clause 70 is the Minister for Primary Industries and Water's responsibility?---Well, it's certainly the department, yes. The Threatened Species Unit that's one of their primary roles is to develop those recovery plans through processes.

5

Do I understand that you personally read clause 70 as having, if you like, as the source of the obligations a plan, be it a recovery plan or a threat abatement plan?---Could you repeat the question again?

10 Yes. You see, I think our interpretation of clause 70 may differ. Can I suggest to you that there are two ways of interpreting clause 70. Firstly, that management prescriptions are one of the things that needs to be implemented as a matter of priority; and secondly, that actions identified in recovery or abatement plans need to be implemented as a matter of priority?---I see.

15

Do I understand that is not the way that you have been interpreting it, you have been looking for management prescriptions in recovery or abatement plans?---I read that as the latter, yes.

20 You see the alternative construction though?---I could see how you might construct that alternative.

If my construction were correct, whose responsibility is it to ensure the implementation as a matter of priority of management prescriptions?---Well, I think it's exactly the same discussion we had about clause 68. If I'm reading you right, you are talking about those management prescriptions.

25

Yes?---So it's exactly the same discussion we just had.

30 Forest Practices Authority really?---Where it relates to forestry operations.

I see. If your construction is correct then you would say it is purely Threatened Species Unit?---I guess I couldn't answer that precisely because in my view it would depend on what those prescriptions were, because my understanding - and I'm certainly not an expert in this area of recovery plans - is that they contain a list of things that are to be done and they may well, those plans themselves, allocate out responsibility for various things. So often my understanding is that the recovery plans are done with a group - with input from a group of people who have knowledge and experience about that particular species and also with input from all the departments that are involved with the management of the species and they may - the plans themselves are sort of are jointly agreed whole Government documents. So they may very well identify whose responsible for doing what and when. And the Threatened Species Unit would have the overall responsibility for co-ordinating that.

45

And irrespective of whose construction is correct, you would read clause 70 as identifying that actions in recovery plans are to be implemented as a matter of priority?---That's what it says.

5 And it hasn't occurred, has it?---I can't answer that. I'm not aware that it has or hasn't occurred, without going to the specifics of - you know, as I referred you previously to the Government report that was put together there would be a clause in that that would specifically identify what the Government has done in that, I'm sure - well, the Government has - the Tasmanian Government I'm sure
10 would have implemented many parts of the recovery plans since this document was signed.

Have you ever seen a recovery plan for a threatened species?---Yes.

15 You have?---Yes.

Have you ever seen the one for the swift parrot?---Well, I saw it at the time that it was put together back 10 years ago, but I have had no occasion to re-visit it since.

20 And you are aware that it was in reasonably imperative terms, was it not?---What was in imperative terms?

25 The swift parrot recovery plan?---Yes. What - I don't understand your question.

All right. Well, perhaps the witness could be shown book 5. Now, can I direct your attention, please, to page 2387? You will see that is the cover page of the swift parrot recovery plan?---Yes.

30 And you will see that the plan appears to have been prepared in 2000 or 2001?---I was actually just looking for a date, and I couldn't see it.

35 Well, you will see that there is a citation on page 2388 that says - - -?---Oh, yes.

The swift parrot recovery team 2001.

40 ?---Got that, yes.

Let us leave aside for the moment as to whether it is 2000 or 2001, that is a recovery plan that came into existence during the time that you were the chair of the implementation committee?---Yes.

45 If you look at page 2406, and perhaps in fairness to you I should direct your attention to the preceding page initially. You will see Action 2?---Yes.

Action 2 is, Managed Swift Parrot Habitat at a Landscape Scale. You will see the first sub-action is:

5 *Mapping of foraging and breeding habitat.*

Action 2B:

Management and protection of habitat.

10 ?---Yes.

And you will see that the methods include a number of bullet points, including:

15 *Strategic targeting of priority foraging and nesting sites on private land*
 -

sorry, it is the third bullet point I need to direct your attention to:

20 *Targeting of priority foraging, roosting and nesting habitat on State forest and other crown land for additions to the reserve system through the Regional Forest Agreement process, where they include swift parrot habitat.*

25 Well, that is fairly clearly an action that was specified in the recovery plan?---Yes.

Look at page 2407, please, action 2C, you will see under the heading Justification:

30 *Action has been taken to protect existing nesting sites, and there are prescriptions for the protection of habitat trees in wildlife habitat clumps and production forest. However, there has been no assessment as to whether there will be a continued supply of suitable nest hollows into the future. A strategy for the recruitment of hollow bearing trees should be developed, which caters for all hollow dependant species, as this will be more effective than a species by species approach.*

35

Again a fairly clear action that is contemplated by the recovery plan?---Yes.

40 Well, are you aware whether there has been in fact implementation of those two actions?---I'm not personally aware, no, whether there has or hasn't.

45 Whose responsibility would it have been to ensure that the RFA was complied with, by the implementation of those actions?---As it indicates on the bottom of this - or that last action you talked about, it had a responsibility the administration would be DPIWE.

Yes. In relation to both of those actions?---It appears so.

And - - -?---Although - sorry. The previous one was 2A, wasn't it?

5 Yes. 2B, I am sorry?---Sorry, oh, 2B. Well, I notice this - this must be a national swift parrot recovery plan, because it's got references to - - -

Other States?--- - - - other States, yes.

10 But it is the swift parrot recovery plan?---Yes. So it's a national one.

Yes. And do you see - sorry, I withdraw that. How does one ensure that those actions take place?---How do I?

15 Well, how does anybody? How does the State of Tasmania ensure that they take place or don't you know?---I don't know.

Who do I ask to find out?---I believe Dr Whittington who has got responsibility for that is a witness.

20 The next witness?---Yes. I suggest that he would be much better qualified than me to answer that.

25 Have you seen any of the affidavit in this proceeding in relation to the swift parrot?---No, no, I have - - -

I wonder if the witness may be shown the affidavit of Simon Kennedy which I think is in volume 1 or 2. Unfortunately I have amalgamated both of mine and it is in about the middle. It is page 376.

30 HIS HONOUR: Volume 1?

MR TREE: There is no shortage of paper here?---Sorry, what was the page?

35 Page 377 is where the affidavit commences, but I wanted to direct your attention, please, to page 395?---Sorry, what was the reference at 395?

395 is where I wanted to focus your attention initially?---Page 395?

40 Page 395, yes?---Yes, I have got 395 open.

And you will see question 17, about a third of the way down the page:

45 *Do you consider forestry operations in Wielangta are likely to have any impact on the swift parrot population? In answering this question, please take into account the materials with which you have been supplied, mainly Forestry Tasmania's planning for harvest production and roading in Wielangta over the next 10 years. If so, please explain why and what you consider to be the level of that likely impact?*

You will see the answer:

5 *Yes, the Wielangta operations are likely to impact on the swift parrot population. Large numbers of mature trees will be removed from areas of swift parrot nesting habitat and reducing habitat quality across broad areas. The reasons why this impact on the swift parrot population and the level of impact are detailed in answer to question 18.*

10

So we then need to go to question 18.

15 *If yes to 17, do you consider that impact can be characterised as significant. In answering this you should assume that a significant impact means an impact that is important and notable a consequence having regard to its context of intensity and include an impact that is not confined to direct physical effects, but extends to effects which are sufficiently close to be to allow it to be said that they are consequences of forestry operations. If your opinion is that there is likely to be a significant impact on the swift parrot, please explain in detail why you hold that opinion?*

20

You will see that Mr Kennedy says this:

25 *The impact of the operations can be characterised as significant given that Wielangta is the site of more than 20 per cent of all recorded swift parrot nests. An estimated 80 per cent of potential swift parrot nesting trees will be removed in each coupe. This is based on the assumption that the operations will be similar to those conducted in 17E. It will take 100 years or more for the clear felled areas to develop into nesting habitat - - -*

30

And it goes on with a number of other bullet points which I won't state to read. If you compare that material, which I have just directed your attention to, with the recovery plan that I had most recently taken you to in Court book 5, page 35 2406, and assume that what Mr Kennedy says is correct, would you agree with me that the action of targeting priority foraging, roosting and nesting habitat on State forests for addition to the reserves system has not been met?---I am certainly not a swift parrot expert and - - -

40

But you are the man who is the chair of the implementation group, aren't you?---But it doesn't make a swift parrot expert.

45

No?---So I mean, I really find it difficult to comment given that any opinion that has any, you know, validity from my experience and knowledge about the swift parrot, it is not an area - - -

It is fairly blindingly the obvious, isn't it? If what Mr Kennedy says is correct then that action has not been performed, has it?---Which is the action you are referring to?

5 Page 2406, third bullet point?---Well, as a layman I don't think - I think there are actually different from a superficial look at what Mr Kennedy has said and what this dot point 3 you are referring to, target priority foraging.

10 Yes. Well, it is not just foraging, it is roosting and nesting habitat?---Roosting and nesting, yes. Well, I mean, I don't know that - I haven't heard of seen any evidence in what Mr Kennedy wrote that foraging, roosting and nesting habitat on State forests or other Crown lands has not been targeted for additions to the reserve system. I believe that there has been additions to the reserve system for all of those things.

15 Look, just look again at what is at page 395?---395?

20 20 per cent of all recorded swift parrot nests are in Wielangta and 80 per cent of the potential nesting trees will be removed?---In each coupe. That doesn't mean that they haven't been additions to the reserve systems, targeting priority foraging, roosting and nesting habitats on other areas other than those coupes. It doesn't say, look, they should all be in, it just says target - the action is to target - this is my understanding of the first time I read it, - - -

25 Sure?--- - - - my interpretation is the action is to target those sorts of habitats for additions to the reserve system. It doesn't say put them all into the reserve system. It just means where you, you know, you actually try to increase those sorts of habitats in those areas, so I don't - I still believe that they are not inconsistent.

30 I see. And either way it would be Mr Whittington's responsibility to ensure compliance?---With the recover plan?

35 Yes?---The Threatened Species Unit has a role to play but again I notice this is a - - -

40 And he is the line manager over the Threatened Species Unit?---For Tasmania and this is a national - I believe it to be a national recovery plan so I imagine that the overall responsibility might be also shared with the Commonwealth.

45 Sure. But in Tasmania it is fairly clear, isn't it, that the responsibility, you say, rests with DPIWE and particularly the Threatened Species Unit?---For development and implementation of recovery plans, that is my understanding of it.

Yes. And are you aware that there is in fact no officer of the Threatened Species Unit to be called by Forestry Tasmania in this case?---I wasn't aware, no.

HIS HONOUR: Insofar as it affected breeding it can only concern Tasmania, couldn't it?---I'm not even aware of that, I'm not an expert in swift parrots.

5 MR TREE: Now, if it is the Threatened Species Unit's responsibility to ensure that the actions in recovery plans are implemented and that that was an obligation of Tasmania under the regional forests agreement, firstly, can I ask you how would the communication of that responsibility have been made to the Threatened Species Unit? It is a fairly clumsy question, but how would the
10 Threatened Species Unit know that the priority implementation of actions in recovery plans was an obligation of the State under clause 97 of the RFA?---I don't think I can answer that because that unit is in another department and

- - -

15 All right. And whose responsibility would it be to ensure that the Threatened Species Unit did that which you say it was obliged to do?---I presume the Head of the Threatened Species Unit does that.

And I guess it is that person's boss' responsibility to make sure that those under
20 their management perform their statutory functions?---As I say, that's another department, you would expect so.

Yes. Now, a few moments ago - in fact an hour ago, I took you to the
25 agreement that has been struck between the two relevant Government agencies in relation to the prescriptions?---The protocol you referred to?

Yes. And that is in Court book volume 5 at page 2426. And can I put this in a
30 little bit of context, please? As part of the implementation of the RFA we have seen in the trawl through the clauses that we have undertaken that there were four requirements for alterations to management prescriptions. Do you remember the clause I took you to in relation to that?---Yes.

And the only person whose input was required by that clause was the scientific
35 committee under the Threatened Species Protection Act. So would I be correct in saying that this agreed procedure - this document outlines the understanding between two responsible agencies for in effect how that clause of the RFA will be complied with?---This protocol is about how the statutory responsibilities of the forest practices - well, it was the forest practices board at the time and the statutory responsibilities of the Director of the Parks and Wildlife Service
40 under what was the Act at the time, how they are to be met so that, you know, they both have responsibilities for the management of threatened species and it's about how they - the protocol is all about how they efficiently without duplication - - -

45 Or conflict?---Well, I think it also deals when there is conflict - deal with those particular statutory responsibilities, that's the purpose of the protocol and it's just one part of the system for managing the requirement - the commitments under the RFA for managing threatened species.

5 In fact what has occurred is this, is it not, the obligation for formulating management prescriptions in relation to threatened species has been assumed by the Forest Practices Authority?---I don't believe that they've assumed it, they have a role in it, and they have a - it's a very good working relationship they have with the Threatened Species Unit as well, but I don't think they've assumed the role.

10 Yes. Sorry?---I don't think they've assumed the role.

Threatened species is given an opportunity to have input into the formulation of management prescriptions; correct?---Yes.

15 But the ultimate responsibility for formulating them and maintaining them as a database rests with the Forest Practices Authority?---I couldn't be certain about that, but you're probably right, but I couldn't be certain.

20 All right. Whose responsibility is it to make sure that the management prescriptions work?---Work?

Yes?---This again is my understanding, it's not my direct operational responsibility, it's probably again a question you could direct to - - -

25 Mr Whittington?---Mr Whittington and Mr Wilkinson.

Yes?---I think you're going to see him later.

HIS HONOUR: You mean Dr Whittington?

30 MR TREE: Sorry, Dr Whittington, your Honour?---They certainly would be far better placed to answer that, but my broad understanding is that there is a process, again a collaborative process, that identifies priorities for review of the implementation of management prescriptions. There is - in Tasmania a very close community of scientists that are, you know, talk to each other.
35 Doesn't matter what sort of agency that they work for, there is a limited number of specialists in particular species and they have a, you might say, an informal process of making sure that where there is a problem or an issue that it's brought to the attention of the people and money is found where it's a priority to put more work into developing improved prescriptions or monitoring. And a
40 lot of the - there's a number of priority species which where there's work going on all the time in terms of improving the knowledge base about those species.

45 Can I just remind you of my question which was whose responsibility is it to ensure that the management prescriptions work; I think that was a fairly long-winded answer, was there a person who you identified as being - - -?---I couldn't identify one particular person, it's not - - -

Or an agency?---I'm not aware of a statutory responsibility, there might be - again I would just say a better - a question you should ask Dr Whittington or Mr Wilkinson, that's the area they work in.

5 If you look at page 2429 you will see clause 7 of this protocol has an italicised heading, Monitoring of Efficacy of Prescriptions, "The Board" for which we should read the authority - "in association with DPIWE" for which we should not get rid of the E on DPIWE - "will monitor the efficacy of management prescriptions through a co-ordinated approach to research"?---It's pointed out
10 that particular agreement that's under here, yes. So as it says it's the Forest Practices Authority who will monitor that and they have a research program that does work in that area.

15 The monitoring of the efficacy of the management prescriptions?---That's what it says.

20 You think they have an area or a unit whose responsibility it is to monitor the efficacy of management prescriptions?---The Authority employs scientists who have specialist knowledge in the management of threatened species and they help to improve the knowledge and the management prescriptions that are appropriate for each species.

25 Are you aware that two years ago a population viability analysis for 10 species including the wedge-tailed eagle was undertaken by the University of Melbourne?---I'm aware that Forestry Tasmania commissioned some work and I think it was that project you're referring to.

30 Are you aware that it predicted that there was a 100 per cent chance of extinction of the wedge-tailed eagle within 90 years?---I haven't read the report, but I've - I sort of heard that was one of the outcomes on a particular scenario. As I understand it there were a number of scenarios that were looked at and none of them may be what will actually happen in reality, but that could - the report indicated that could be the outcome of a particular scenario.

35 And insofar as we try and ascertain whose responsibility it might be to try and ensure compliance with clause 68, which you would agree reads protect priority species, it is that person or that entity's responsibility to react to that PVA is it not?---If it was real, if it was actually reflected what has happened, but as I understand it that's not an outcome that anybody desires, so there
40 would be work undertaken collaboratively, again between Forestry Tasmania, the Forest Practices Authority and Department of Primary Industries and Water to ensure that isn't the result.

45 So that work will have no doubt been commenced in the last two years will it?---I don't know whether it has or it hasn't.

It should have, shouldn't it?---Well, I don't know the status of that report and how it's being dealt with.

It should have, shouldn't it?---If it had validity you'd expect some action, but as my understanding it was described to me as the outcome of a scenario that would never happen.

5

I see. Are you aware of the source of the information which was provided to the University of Melbourne?---No.

10 You are unaware then that it was Forestry Tasmania who provided the scenarios for evaluation?---Sorry, I knew that Forestry Tasmania had commissioned the University of Melbourne to do some work on that analysis.

15 And had identified scenarios that they wished to have considered?---I haven't read the report or seen it, so I don't know the terms of reference of the report.

Would your Honour just bear with me a moment, please?

HIS HONOUR: Certainly.

20 MR TREE: Thank you, your Honour.

HIS HONOUR: Yes, Mr Gunson?

25 MR D. GUNSON: There is no re-examination of the witness, your Honour, may he be relieved?

30 HIS HONOUR: Yes. Mr Blakesley, thanks for your attendance, you may be excused from further attendance, but you are free to remain if you wish?---Thank you.

35 MR TREE: Your Honour, I did neglect to remind the witness that he had said he was going to look for the hard copy set of prescriptions which existed at the time of the implementation of the RFA. I doubt that I would require him for cross-examination, in fact I can be fairly confident I would not require him for cross-examination, but perhaps if he can be reminded that that is one of the tasks he has agreed to undertake and my friend can perhaps - - -

40 MR D. GUNSON: I thought he added after that it was on the internet and freely available. The witness is nodding?---Would you like me to, sort of, give you the address where you can find it?

MR TREE: If it is specific to that document?

45 MR D. GUNSON: We will ask the witness to provide it to us and we will provide it to my friend and that should relieve the witness of any obligation, your Honour.

HIS HONOUR: Yes. Thank you. Certainly.

MR D. GUNSON: It is freely available in the public arena.

HIS HONOUR: Yes.

5

<THE WITNESS WITHDREW

[4.11pm]

10 MR D. GUNSON: Your Honour, we have no other witnesses for the day and have we earned that early mark?

HIS HONOUR: The next witness will be - - -

15 MR D. GUNSON: Dr Whittington, your Honour, tomorrow.

HIS HONOUR: Dr Whittington and his evidence is at Court book 5 at 2286; is that correct?

20 MR D. GUNSON: Yes.

HIS HONOUR: I just want to make sure I take the right bed-time reading.

MR D. GUNSON: Yes, your Honour.

25

MR TREE: Indeed, we all do that, it induces sleep, your Honour.

MR D. GUNSON: It is 228, volume 5, your Honour.

30 HIS HONOUR: I must confess I did fall asleep at 9 o'clock on Monday. I think that was because of the pace of the day. The Court will now adjourn till 10 o'clock tomorrow morning.

35 **MATTER ADJOURNED at 4.12 pm UNTIL THURSDAY, 4 MAY 2006**

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NONE REQUESTED