

TRANSCRIPT OF PROCEEDINGS

O/N 2839

FEDERAL COURT OF AUSTRALIA

TASMANIA DISTRICT REGISTRY

MARSHALL J

No TAD 17 of 2005

ROBERT BROWN

and

FORESTRY TASMANIA and OTHERS

HOBART

10.03 AM, THURSDAY, 4 MAY 2006

Continued from 3.5.06

DAY TWENTY

**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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HIS HONOUR: Mr Gunson?

MR D. GUNSON: Thank you, your Honour. Your Honour, for the purpose
of this witness your Honour will require Court book 5 and I would invite your
5 Honour to turn to page 2286, to the affidavit of Dr John Whittington.

HIS HONOUR: Yes, thank you.

MR D. GUNSON: And I call Dr Whittington. Dr Whittington, could you
10 come forward and go to the witness box, please?

<JOHN WHITTINGTON, SWORN [10.04am]

15

<EXAMINATION-IN-CHIEF BY MR D. GUNSON

HIS HONOUR: Yes, Mr Gunson.
20

MR D. GUNSON: Thank you, your Honour.

Dr Whittington, your full name is John Whittington, and you reside at 13 Glebe
Street, Glebe in Hobart?---Correct.

25

And you are a public servant?---Correct.

And you were born in the State of Tasmania; is that correct?---Correct.

30 And you are the General Manager, Resource Management and Conservation
Division of the Tasmanian Department of Primary Industries and Water, as it is
now known as a result of some ministerial directions of a few weeks
ago?---That's correct.

35 Formerly known as the Department of Primary Industries, Water and
Environment?---Correct.

Now, could I ask you, please, to have a look at this document which I am going
to hand to you? Do you recognise that document?---Yes.

40

Is it a document that you prepared at my request recently?---That's correct.

Thank you. Could you hand a copy of that to his Honour, please?

45 Is that document a compendium of changes that need to be made to your
affidavit following the changes in the title of the Department of Primary
Industries, Water and Environment, to the Department of Primary Industries

and Water? In other words, where your affidavit refers to DPIWE, it now will refer to, I suppose, DPIW?---Primary Industries and Water.

5 Yes?---That is correct, and also that also affects some of the reporting arrangements.

10 Yes. So if we look at paragraph 1, where you would need to change your affidavit from DPIWE to DPIW, you have set out all the relevant paragraphs that appear in your affidavit; is that correct?---Correct.

And if we then go to paragraph 2 on the following page, you have headed it Change Minister for Environment and Planning to Minister; is that correct?---Correct.

15 At paragraphs 7, 8, 15 and 24?---Correct.

20 And if we look at paragraph 3 it is headed As a Result of Changes to the Departments, Including the Environment Division Being Recently Moved to Another Agency, other relevant amendments to your affidavit flow; is that correct?---Correct.

25 And finally, if we go to paragraph 4, under the heading Typos and Formatting, I suppose it is self-evident, they are typographical errors and some formatting difficulties that you identified when you re-read your affidavit; is that correct?---Correct.

Now, I have had some discussions with my learned friend Mr Tree. He is quite content that I simply tender that, your Honour - - -

30 HIS HONOUR: Yes.

MR D. GUNSON: - - - as it were, a series of amendments and alterations to the affidavit of Dr Whittington as sworn in this matter.

35 HIS HONOUR: Exhibit 33.

40 **EXHIBIT #33 SERIES OF AMENDMENTS AND ALTERATIONS TO THE AFFIDAVIT OF DR WHITTINGTON AS SWORN IN THIS MATTER, RELATING TO CHANGE OF DEPARTMENT NAME FROM DPIWE TO DPIW**

45 MR D. GUNSON: Could I invite your Honour to take Dr Whittington's affidavit as read, duly amended?

HIS HONOUR: Thank you.

MR D. GUNSON: If your Honour pleases.

HIS HONOUR: Mr Tree?

5

MR TREE: Thank you, your Honour.

<CROSS-EXAMINATION BY MR TREE

[10.07am]

10

MR TREE: Dr Whittington, I wonder if I might ask you some questions about how it is that you came to be a witness in these proceedings and how it is that your affidavit came to be in the form that it is? Firstly, when were you first asked to provide assistance to Forestry Tasmania in relation to the giving of evidence in this case?---It was last year some time. I couldn't give you an exact date because I don't have my diary.

15

If I tell you that the date on which you swore your affidavit was 18 November 2005, does that enable you to be a little more specific?---It was well before 18 November.

20

Months before?---Yes.

I see. And who was it that asked you to become involved in the case?---I'm struggling to recall who specifically it was, but it would have been in discussion with Forestry Tasmania.

25

Do you remember the officer of Forestry Tasmania with whom you had the conversation?---Most of my conversations would have been with Mr McDonald.

30

I see. And I have been assuming it is a conversation - was it a conversation, or was the request in writing?---There were initial conversations and I had a request in writing as well for - not the request to provide an affidavit so much as - after verbal agreement I was given a framework of suggestions of the areas that should be covered or could be covered in an affidavit.

35

And that framework of suggestions, or perhaps suggested framework, was in writing?---That's correct.

40

And is that the framework which you have thereafter utilised in formulating your affidavit?---I used that as a guide, as my affidavit.

Did you produce a draft of the document that later became your affidavit?---I produced a draft, yes.

45

And did you provide that draft to anyone for comment?---The draft was provided to Maree Yee at Forestry Tasmania for comment.

5 Yes. And who do you understand Maree Yee to be?---An employee of Forestry Tasmania.

10 And what do you understand her expertise or background experience to be?---She was a - well, I presume she still is an employee of Forestry Tasmania who I was - to pass my affidavit on. I understand that she was co-ordinating a part of the documents, I suppose.

15 I see. But can I just focus on my question? Did you understand that she would be providing you comment in relation to your affidavit?---That is why I submitted it to Maree, yes.

20 Well, on what areas of your affidavit did you wish to obtain the benefit of her comment, please, Dr Whittington?---I wished to ensure that - because I had no knowledge of the breadth of other affidavits - that I was addressing those matters that were of importance to the case.

25 So was there any textual matter that you wished to have her assistance on?---I don't think I understand.

30 Was there any matter that was in that draft affidavit upon which you were seeking her expert input?---No, I wasn't seeking her expert input. I was wanting to ensure that the scope of my draft covered those matters that were important to the case.

35 I see. Were you concerned to make sure that there wasn't any conflict between your affidavit and those of others?---I didn't speak to others on the content of their affidavit.

40 Could you please now focus on my question? Were you concerned to ensure that there was no conflict between your affidavit and others?---No, that was not the purpose of submitting a draft to Forestry Tasmania. The purpose was to ensure that the scope of my affidavit covered those matters which were important to the case.

45 Did you obtain any comment from Dr Yee? She probably wasn't doctor at that time; I think her award has been subsequent. Did you obtain any comment from her?---There were some marks, changes in the draft, but the general comment was that it was a good affidavit.

And have you retained a copy of that marked draft?---I do have a copy of that draft.

Do you have it with you?---I don't have it on me but there are copies available I'm sure.

That is to say you have already given it to counsel for Forestry?---Yes.

When did you give it to counsel for Forestry?---This morning.

5

Thank you. I call for that document and I call for the letter of instruction from Mr McDonald.

MR ABBOTT: I might just take a moment to deal with this if it please, your Honour?

10

HIS HONOUR: Yes, Mr Abbott.

MR ABBOTT: I can indicate to the Court that what is being produced in response to the call that has just been made is an email dated 18 October 2005 from Dr Whittington to Maree Yee, and an email from Maree Yee in response to that which includes as an annexure a framework for John Whittington's affidavit. There then follows an email which deals with the changes about which Mr Tree has asked the witness. That email is dated 7 November 2005 and underneath that there is a draft affidavit so I produce those documents in response to the call made by Mr Tree.

15

20

HIS HONOUR: Does that cover the call in entirety?

MR ABBOTT: I believe so, your Honour. I thought I would read the documents out in that way so that Mr Tree might listen to me and to inform the Court and in our view that covers the call that has been made..

25

HIS HONOUR: Did it include a letter of instruction?

30

MR ABBOTT: The instruction, your Honour, is in the form of the framework attached to the email.

HIS HONOUR: Thank you.

35

MR ABBOTT: So it is not a letter of instruction per se. I am just using my words carefully, your Honour, because a call has been made. There isn't a letter of instruction as such, but in the spirit of answering the call what Mr Tree wants is this email together with the framework is our submission - - -

40

HIS HONOUR: Yes, thank you.

MR ABBOTT: - - - so I produce those documents to Mr Tree if I may, your Honour.

45

MR TREE: If your Honour will just bear with me I will see if I can deal with this quickly.

HIS HONOUR: Certainly.

MR TREE: Now, Dr Whittington, the documents which have been produced include an email from Maree Yee to you on 12 October 2005 which has a
5 paragraph in it which reads, the first sentence:

Details of FT -

10 which is an abbreviation for Forestry Tasmania, clearly -

species and non-species expert witness is in the document "information on evidence and Court dates for FT expert witnesses" -

15 does that ring any bells for you in relation to a document?---There are several emails exchanges on Court dates, when I was to appear, when the likely dates were to be and those sorts of matters there are several. I would have to go to my records to know specifically that email.

20 Well, let me show you the email and the passage to which I am directing your attention to is the first sentence in the second last paragraph on that page?---So you're asking because non-species expert evidence - sorry, that sentence?

I beg your pardon?---Which sentence were you talking to, sorry?

25 The first sentence of the second last paragraph. Perhaps you could just read it out to make sure that we're on the same wave length?---Details of FT species and non-species expert witness is in the document information on evidence and Court dates for FT expert witnesses. Also in this document is a time frame of when evidence is to be submitted to the Court and my response was there are a
30 series of emails about over - this is six months ago, about when Court dates were to sit, when evidence was due and I mean, I remember getting emails at that time, I don't know the specifics of what was in those.

35 But it seems likely that you received a document which answered that description which is in inverted commas?---It would seem that way, yes.

Yes, I call for that document.

40 MR ABBOTT: We don't have that document to hand now, your Honour. We will do something about it later in the morning, if it please.

MR TREE: Thank you, your Honour. Perhaps if the document could be returned to me.

45 Now, in addition to Dr Yee did you provide a draft of your affidavit to anyone else for comment?---The document was drafted with - I had assistance from one of my employees, a senior policy officer in my division to help with some of the more legal matters in the - - -

Is this Brooke?---Brooke, yes, Brooke Craven, yes.

5 Craven, thank you?---And that was the other name on the email that you are referring to.

Quite so?---I have discussed the draft affidavit with John McDonald verbally. What occurred to the document after I sent it to Maree Yee I can't answer for.

10 I don't want to be too intrusive but what parts of your affidavit did Brooke Craven draft?

15 MR D. GUNSON: I don't think the witness actually said with respect, that Brooke Craven - - -

MR ABBOTT: I will withdraw the question. I will ask it differently.

20 What was the nature of the assistance you derived from Brooke Craven?---She acted as a researcher to help me put together those aspects of - particularly to do with the legislation and the relationship between the Threatened Species Protection Act and the EPBC Act that was - we jointly worked as a research assistant team. She is my senior policy officer, I use her on almost every piece of work I do with my duty.

25 So is that restricted principally to the recital of legislation and a discussion of the framework of the legislation in your affidavit?---Brooke and I worked together on the content of my affidavit, that was the area that she would have taken the greater lead because that is her speciality but in pulling together the whole thing there were many discussions between Brooke and I on my
30 affidavit.

Now, I understand that you are the general manager of resource management and conservation, or the division of resource management and conservation in the relevant department?---That's correct.

35 One of the areas of responsibility I think you make it patent in your affidavit that goes with that position is a responsibility for the, what is known as the threatened species unit in the department?---That is correct.

40 And indeed I think it is at paragraph 57, page 2306, I am not sure whether you have got a copy of your affidavit in front of you. It is in volume 5?---Could you just repeat the page?

45 Sure, 2306?---I have that page.

There you set out the sum I suppose of the relevant responsibilities that you have in your present position as general manager of that division?---That is correct.

So that the threatened species unit is but one of those areas of responsibility?---That's correct.

5 And I am correct in saying that you have no background in threatened species work, at least in so far as it involve the threatened species unit prior to your appointment to your present position in 2005?---Correct.

10 In fact, I think you came up on the water or perhaps more importantly fresh water side of the department?---I have been in the public services in Tasmania for about three and a half years, and I was originally employed in water management area.

15 Thank you. And you have assumed the present position that you hold when? I know you say 2005 in your affidavit, but when in 2005?---I was in an acting position from late 2004. I was given a five-year contract in May I think of 2005.

20 But had in fact been undertaking the responsibilities in an acting role since 2004?---Since the very late 2004.

Thank you. Who was your predecessor in that role?---Alex Schaap.

25 Spelt with an "e" or without an "e", the Schaap bit?---S-c-h-a-a-p.

I see, thank you. Without an "e". And for how long had he been the incumbent of the position prior to you assuming an active role?---I don't know for certain. A number of years. I don't know the specific date that he was appointed.

30 Who is the present head of the threatened species unit?---Dr Sally Bryant.

35 And did you obtain any assistance from her in drafting this affidavit?---I did obtain some assistance from Dr Bryant, but it would only be in matters of provision of information on the numbers of recovery plans, those sorts of things.

40 I see. Now, do I understand that the threatened species unit employs a number of specialists who provide advice from time to time?---Yes.

45 And in relation to forestry activities, could you just summarise for his Honour please what you understand the role of the threatened species unit comprises?---Well, the agency - which is not your question I understand - the agency had responsibility for the Threatened Species Protection Act.

Yes?---And that section plays a large role in the implementation of that Act. The unit specifically with forestry activities provides a number of functions. A very important function is to work collaboratively with the Forest Practices

Authority to develop amongst other things prescriptions for threatened species in accord with the agreed procedures that are in place between the Forest Practices Authority and the agency. They supplement the part of the Threatened Species Protection Act, 51(3), that provides a delegation of the powers of the Threatened Species Act to - if you have a certified Forest Practices plan. So through those agreed procedures we worked very closely with the Forest Practices Authority. We also worked collaboratively with FT, Forestry Tasmania, with the university and others on research into threatened species matters. The threatened species group provides advice to my enforcement and compliance sections for breaches of the Act when that's relevant and appropriate. They develop recovery, undertake recovery actions, they co-ordinate recovery actions and develop recovery plans. There's a whole raft of works around that area.

Am I correct in saying that the Threatened Species Protection Act is one of the two principal pieces of legislation administered by effectively you?---That's correct, there's - well, in this area.

Yes?---But I mean, we have other legislation.

Yes?---But in this area, the Nature Conservation Act and the Threatened Species Protection Act are the two.

And am I correct in saying that you are aware that section 51(3) of the Threatened Species Act exempts application of that Act where there is an endorsed or a certified Forest Practices plan?---I am not sure if "exempt" is the correct word. The secretary retains the ability to make a call on any application, so - but there is a provision within the Act that delegates that power if you have a certified Forest Practices plan that's developed in accordance with agreed procedures.

So effectively so long as there is a certified Forest Practices plan, the Threatened Species Protection Act has limited application to activity undertaken pursuant to the plan?---No.

I see. Well, what do you understand to be the practical application of that Act to activity undertaken under a Forest Practices plan that has been certified?---The secretary retains the power to call in at any stage Forest Practices plan for threatened species - for - if it's not satisfied that it's not working - - -

Is that to say that the secretary has not wholly abandoned the power to require a permit under the Threatened Species Protection Act - - - ?---That's correct.

- - - in relation to forestry activity? Has the secretary to your knowledge ever exercised that power?---I don't know, not to my - I don't know.

Now, are you aware of any guidelines that have been published by the secretary for the exercise of that power?---The agreed procedures between the Forest Practices Authority and the agency outline the appropriate engagement between the two bodies.

5

Can I come back to my question though, because with respect I don't think you are answering it. Has the secretary published any guidelines for the exercise of that power?---Not specific guidelines. What I am saying, or trying to say, is that those agreed procedures provide the framework within which there's a dialogue between the FPA and my specialists. If my specialists felt that those guidelines were not working, they would come to me and I would speak to the secretary.

10

And how might you specialists form the view, or what information might they be likely to come across to form that view?---The prescriptions that are used are jointly developed between the Forest Practices Authority and my staff.

15

Yes?---So in the development of those prescriptions they're done by consensus, that's the operation the mode of operation. When those prescriptions are not appropriate or probably don't exist for a specific circumstance then there's agreed procedures directs a referral to my staff and my staff are then consulted. There are hundreds of referrals from the FPA to my staff per year. There's - in those discussions which are between the FPA and my staff, they can include the relevant land owner and other parties. they will come to some agreement on an appropriate prescription for that coupe on a coupe-by-coupe basis. If my staff are unhappy with the outcome they can talk to me about that and if I was convinced I would go to the Secretary. In my tenure which admittedly is short, there hasn't been a need to - things have resolved through consensus.

20

25

Well, let us just come down to the nuts and bolts. Your staff do not see each and every forest practices plan that is submitted?---The agreed procedures provide a - for a standard prescription to be developed. Where appropriate and practical and sensible that is developed. Under those circumstances my staff aren't blind emailed the application. They are available if we were to ask for them, there's no doubt about that. If the plan falls - if the issue falls outside of standard prescription then it will be referred to us. And as I said hundreds of those occur a year.

30

35

I don't want to be disrespectful but I think that was a long-winded agreement wasn't it, in fact they do not see each and every forest practices plan?---No, there's no need to because of the procedures set in place and the situation. It would be untenable for us to see every one.

40

I understand that, but the reality is that your staff only see individual forest practices plan that may be referred to them by the Forest Practices Authority?---In accord with the agreed procedures.

45

So the extent to which members of the Threatened Species Unit have an opportunity to assess individual coupes is determined by referral by Forest Practices Authority?---That's correct.

5 And your point is, "And that is what we agreed to"?---That was agreed between yes the head of Parks at the time and the head of the FPA.

Thank you. So that where the expertise of members of the Threatened Species Unit is principally deployed is in two areas, am I correct in this context
10 anyway: firstly, in working collaboratively with officers of the Forest Practices Authority to develop management prescriptions?---And other specialists as appropriate, yes.

15 Sure. And secondly, to provide specific assistance on a coupe-by-coupe basis when asked to by the Forest Practices Authority?---Correct.

And that would occur pursuant to the protocol if it seemed as though the generic - I want to use a very loose word - the generic prescription obtained by
20 interrogation of the threatened fauna adviser seemed unsuitable?---Impractical or inappropriate.

All right, well can you just look please at the protocol that you have annexed to your affidavit, it commences at page 2426. I think the relevant provision in
25 relation to fauna is clause 3.1.6. Perhaps I should really start at 3.1.4:

The Forest Practices officers will consult a threatened fauna adviser to determine the appropriate endorsed management prescription and will seek further specialist advice from the senior zoologist of the FPB -

30 That should now be A, shouldn't it?---Correct.

"...where required by the provisions of the threatened fauna adviser." And skipping over to 3.1.6:

35 *Where a Forest Practices officer seeks further advice for a specific operational area in accordance with the threatened fauna adviser, or where endorsed prescriptions are not appropriate for an operation, the senior zoologist of the Forest Practices Authority will consult with DPIWE to determine an appropriate management prescription.*

40 That is right?---That's correct.

45 *This should involve consultation and negotiation among the specialist, the Forest Practices officer and the land owner and may involve field inspections and so forth. Advice will be provided within six weeks, otherwise the Forest Practices officer may proceed on the basis of best available information.*

?---That is what the agreed procedures say.

5 Right. Well, let us just analyse that a little closer please. Whose opinion as to the appropriateness of endorsed prescriptions activates the operation of clause 3.1.6?---The FPA.

The FPO?---FPA.

10 I see?---That's my understanding. This is an operational area of - that really is best directed at the FPA. That specific question.

I beg your pardon?---That specific question is best - my understanding is it's the FPA.

15 So that is a question I should ask Mr Wilkinson is it?---I've given you the best answer I can.

20 Could it be do you think that it is only the opinion of the forest practices officer that is needed?---I have given the best answer I can.

If that were the case and the forest practices officer received no response within six weeks, they just proceed on what they think is best; that is the way the protocol works isn't it?---The way the protocol works is from my perspective is that if the Threatened Species Unit section is to take longer than six weeks or there's a particularly complex issue we agree to an extension and they happen frequently. And so the time frame of six weeks is frequently extended considerably upon agreement with the FPA.

30 Now, let us just explore forest practices officers a little more closely. You are aware in broad terms of the process of their appointment are you not?---In broad terms.

35 Sure. They are not employees of the Forest Practices Authority necessarily are they?---No.

In fact by far and away the vast majority of them would not be employees of the Forest Practices Authority?---The processes for accreditation of forest practices officers are beyond the scope of my position and I only know in very broad terms how it works.

40 I am only asking you in very broad terms. The forest practices officers are frequently employees of a logging company, Gunns, or Forestry Tasmania?---That's correct.

45 And the process as you understand it is that they are endorsed by the - sorry, they are approved by the Forest Practices Authority, whatever be the relevant language, they are given a ticket in order to be an officer?---They're trained and

I presume on passing some sort of test are accredited, that's my understanding, but again in broad terms.

5 Sure. And again you are familiar that frequently they are in fact employees of for instance Forestry Tasmania?---Correct.

10 So that an employee of an organisation that is submitting the forest practices plan can be the relevant forest practices officer?---It's my understanding, again the operational detail is not an area of my jurisdiction. So you're asking me to step outside of the area that I know and manage.

15 Sure. It is a fairly important area though of responsibility that we are talking about here isn't it, the threatened species?---No, you're talking about something else, I think.

I see?---You're talking about the development of a forest practices plan I think. What I'm saying is my job is assessment of threatened species issues within those plans in accordance with the agreed procedures.

20 You are aware that the forest practices plan needs to be certified?---Yes.

25 That again needs to be undertaken by a forest practices officer, someone who didn't prepare the plan; that is correct?---It's my understanding. Again, in broad terms.

30 Again, that person can be an employee of Forestry Tasmania or whoever it is that is submitting the forest practices plan?---That is my understanding. I am really, as I said, this is not an area that I have intimate detail of. I have not worked specifically in that regulatory side of the forest industry.

35 So that your understanding at any rate is that a plan can be drawn up and certified by employees of the entity who is making the application?---I don't actually know the specific answer to that question.

Where the Forest Practices Authority has any input into that is on two levels; am I correct? Firstly in licensing the officer in the first place?---This is the FPA.

40 Yes?---Yes.

45 And secondly, by requiring that officer to consult the Threatened Fauna Adviser and other documents of course but relevantly for this case the Threatened Fauna Adviser in order to determine appropriate endorsed management prescriptions?---That's my understanding.

And it is then left to the individual ethics and competence of the Forest Practices Officer as to whether any individual contact is made with the Forest

Practices Authority?---That operational will really need to be directed to somebody who manages that system.

5 Can I ask you to look a little further down in clause 3.1.6 and you will see that there is a specific role given to DPIWE, that is the Threatened species Unit I assume?---Correct.

It then goes on to say:

10 *This should involve consultation and negotiation among the specialists, the Forest Practices Officer and the land owner.*

?---That's correct.

15 And you say that that is a process which in your time has always resolved by consensus?---I have not been a party to the specific negotiations but my understanding is that an arrangement is agreed. I mean maybe not every party thinks it is the best outcome but my understanding is that certainly my specialists, in consultation with the FPA arrive at things through negotiation to
20 an agreement which is consensus.

Now, can I get you to look at the protocol in clause 4 please. I think that encapsulates what we were discussing a little earlier. Once the Forest Practices Officer gets the endorsed prescriptions they apply to the plan and a permit
25 under section 51 is not required?---Where a Forest Practices Plan has been certified in accordance with these procedures, yes.

Yes?---But there is the provision within the Act for the secretary to over-ride that should he or she find necessary.

30

Yes. And clause 5, is this the protocol in relation to compliance with Forest Practices Plans so far as you are aware?---So far as I am aware but that is an operational detail that I don't manage. That's the FPA's responsibility.

35 But your understanding is that there is a further assessment by another Forest Practices Officer who could be an employer of the land owner and that person becomes the assessor of compliance and reports to the authority at the expiry of the plan?---My understanding is as it is set out in 5 there. I don't have operational detail of those activities undertaken by the Forest Practices
40 Authority so what I read in 5 is how I understand the situation to be.

Clause 7, can I just direct your attention to that please:

45 *Monitoring of efficacy of prescriptions. The Board in association with DPIWE will monitor the efficacy of management prescriptions through a co-ordinated approach to research.*

What does that mean in practice?---That means in practice that staff from the Threatened Species section and other staff that I have in other areas that are specialists - botanists and zoologists - work collaboratively and certainly in a co-ordinated way with the FPA, with Forestry Tasmania, with the university, with the CRC or various CRCs at different times, with CSIRO at different times and other universities other than the University of Tasmania, on a range of research projects that look to better understand the biology and ecology of threatened species and threatened communities. It is through that improved knowledge and its application that we are better able to understand the efficacy of management prescriptions. In addition I have a group that is specifically set up in a different part of my division that does monitor and evaluate the efficacy of prescriptions, particularly on covenanted land and we are doing research in that area as well so research on such things as grazing in understorey of grassy woodlands and its intensity of grazing and its effect on vegetative condition so I have a range of programs and there are many examples of those.

Can I ask you please whether you are aware of any co-ordinated research in relation to the efficacy of management prescriptions for the broad-toothed stag beetle?---Not specifically.

Can I ask you whether you are aware of any co-ordinated research into the efficacy of management prescriptions for the swift parrot?---There is quite a significant research into swift parrots undertaken by both staff in my division and with collaboration with others. Such things as understanding eucalypt flowering and its relationship to swift parrot, looking at nesting sites and those sort of matters, winter surveys, population surveys, all of those things are linked to land tenure, land use - those research programs so they are co-ordinated and they do provide information on the efficacy of management prescriptions for swift parrot.

Well, let me just explore that a little greater please. Do you say that that research is current or completed?---It's ongoing.

And do you say that this ongoing research has, as one of its aims, an assessment of the efficacy of management prescriptions applied under the threatened fauna adviser?---Well, I don't know the specific as in what is actually the written down aim of the program is. I don't have that in front of me but the general thrust of these programs is to better understand the ecology, the biology of the species and it is through that greater understanding that we can produce better prescriptions if - no, that is right, to look at prescriptions and to ensure that they are achieving what we are setting out to do.

That is a different aim to assessing efficacy, isn't it? Do you say that this research is being undertaken with a view to determining with the management prescriptions are efficacious or not?---The research improves the body of knowledge upon which we can make decisions. That is its purpose.

But it is not specifically an evaluation of the efficacy of the management prescriptions, is it?---I think that is a no point.

5 I see. Who do you say is presently in charge of that project?---That is co-ordinated out of the Threatened Species Unit. I wouldn't know. I have several hundred staff. I don't know the names of everyone but Sally Bryant is the head of the Threatened Species Unit so I would see her as being accountable for that work that we do at least.

10 Sure. She is not giving evidence so I am afraid you are the best chance I have got for finding out. Who do you think it is that is in charge of that research?---I would imagine that Sally Bryant carries responsibility for the management of that research. Whether there will be project officers in that group that will be contributing to that research and may do the bulk of the field
15 work but from my perspective for accountability for that research, it would rest with the head of the section.

I see. Are any of these people in your unit or in the Threatened Species Unit, Amy Kosh, Jamie Kirkpatrick, Chris Spencer?---Not to my knowledge.
20 Certainly, Jamie Kirkpatrick is not.

Are you aware of any co-ordinated research to monitor the efficacy of management prescriptions in relation to the wedge-tailed eagle?---Again, we have research projects which we do collaboratively with other institutions that
25 look at wedge-tailed eagles. We have a project officer currently employed on wedge-tailed eagles.

That is Mr Mooney?---No, Mr Mooney is also a part of my staff and he also contributes to the knowledge of eagles but his primary focus is elsewhere at the
30 moment. Bill Brown is the officer on my staff that spends the primary part of his time on raptors.

And that is, indeed, a specific research task - or a specific research project the title of which is wonderfully transparent, How Effective are the Current
35 Management Actions in Protecting Wedge-Tailed Eagle Nest Sites in Production Forests? Are you aware that that is the project title or you are unaware of that?---I'm aware that he's doing a range of activities and there may well be a specific topic that has that title.

40 And I want to suggest to you that that is the only specific co-ordinated research project into the efficacy of management prescriptions for the three species the subject of this litigation?---It's your opinion, yes.

45 And you are in a position to contradict it or you just simply don't know?---What I've said is that there is a body of research that we undertake into swift parrots that I believe is by improving the body of knowledge around those species that we are in a better position to understand the efficacy of prescriptions.

But not as focussed, I want to suggest to you, as the project in relation to the wedge-tailed eagle?---I might agree with that.

5 And nothing at all in relation to the broad-toothed stag beetle?---Not that I'm aware of by my staff, no. Other stag-beetle research has been undertaken, but I don't know the detail of that.

10 Are you aware of any research at all - ever - by anybody that monitors the efficacy of management prescriptions imposed in relation to the broad-toothed stag beetle?---I'm not aware of any, but that is - no, I'm not aware of any.

15 Absent that research there would be no way of knowing whether the management prescriptions work or not, would there?---Well, I don't think that's a fair conclusion. We have specialist zoologists that have a wealth of experience and that experience can be put to answering these sorts of questions without the need for necessarily a specific investigation into that specific question and that is how given that we live in a world of imperfect information we accumulate knowledge and that is applied to these things, that's why we
20 have expert panels and experts.

Now, can I just before I leave this document just remind you of the collaborative process that you have just given some evidence about in clause
25 3.1.6 where you have got a view that endorsed prescriptions are not appropriate, and then we go through to this negotiation stage. And I want to inquire of you whether you are familiar with any of the negotiations that led to prescriptions in this case?---No, I'm not familiar with the specifics of those negotiations.

30 And if they occurred prior to 2000 or the end of 2004 they wouldn't have been your direct responsibility?---That's correct.

They would have been the responsibility of Mr or Dr Schaap?---That's correct.

35 Well, I want to take you to some of those negotiations as evidenced in the material before this Court and ask you to comment upon the difference, if any, between present negotiation technique and that which was used in the past, and I wonder if for the purposes of this the witness might have before him volume -
40 just excuse me a moment, your Honour - 4 of the Court book? And I wonder if I might commence by taking you to, please, page 1510? Now, I don't want to be unfair to you, it is fair that you should have a little background. There was in 2001 proposals being mooted for logging in the Wielangta area and as a part of that, a habitat survey was undertaken in November 2001 by Mr David James, who I think you are probably familiar with. Do you know Mr
45 James?---No.

You don't. Right. Well, I can tell you - I think it is uncontroversial - that he was one of the species experts that was employed in the Threatened Species

Unit at that time. He was an expert in relation to the swift parrot. Now, can I direct your attention firstly to the top of page 1511 and you will see the heading Wielangta Hill:

5 *Primary coupes searched in the Wielangta Hill area were 17B, 17C, and 17E. A fair majority of 18C was covered en route to Wielangta Hill and a small proportion of 19E was covered also. Notably, coupe 17C appeared to have only very occasional parrot activity. Coupe 17B was similar.*

10

I won't read the end of sentence:

15 *This area was contiguous with areas of frequent activity adjacent to coupe 17E and 19E where juvenile birds were located also. Juveniles were also recorded just outside the eastern end of 17E. The juveniles were found encompassed by an area of frequent activity that covered the north-east corner of this coupe. Juveniles were also heard in coupe 18C and a nest located just outside the coupe at the eastern end.*

20 Then I want to take you to the summary paragraph:

25 *Surveys have revealed the Wielangta forests are extensively used by the swift parrot. These forests are perhaps the breeding stronghold for the species, a suggestion supported by Brown and Brereton. To some extent it appeared swift parrots would be found to be using any area if a long enough period of time were spent in waiting. Parrots are quieter around nest sites so any number of nests may have been walked past. For instance, at Mount Reuben, I sat for 20 minutes, 10 metres from a nest tree, without hearing any activity and only heard the adult when I resumed working and scared the bird from the nest tree. Furthermore, there is likely to be day-to-day variation in the use of any given area by the parrots depending on weather conditions or random factors.*

35 Etcetera. Now, you would agree with me that that is clearly one of the expert reports which you have given us - expert opinions which you have given evidence about officers of the Threatened Species Unit from time to time providing?---This is the first time I've seen this. I presume that that is what it is.

40

Sure?---Having said that, I don't know the context in which this was written or for whom it was written.

45 Sure You can see just from a perusal of the report that it appears to have been an investigation in relation to a number of coupes in the East Coast or proposed coupes in the East Coast, does it not, if you look at page 1510?---As I said, I've never seen this document before. It's well before my time. There's no author on it, there is nobody as to who it's for, or for the purpose. So all I can do is

comment on the words that are in front of me, I cannot put them in any context at the moment.

5 All right. Now, can I then get you to turn to page 1504, please? And firstly can I get you to note the date on that, please, it is 23 December 2001, and you will see that it is a reply form for natural and cultural values from the forest practices board's senior zoologist?---That's correct.

10 Now, that is a fairly standard form for the authority to return to the person who is formulating the forest practices plan, or submitting it; yes?---Yes.

15 Now, you will see that this deals with coupes 12F and 13D and you will see that there are recommended prescriptions provided on that day by Dr Munks. Do you see that? And you will see that she refers initially to a meeting held in December between Mick Miller, a lady whose name I won't torture by trying to pronounce it, Peter Brown and myself to discuss the outcomes of a survey completed by TSU consultant zoologist, Dave James:

20 *This survey assessed the extent of swift parrot nesting habitat in areas thought to have potential in the Wielangta Forest. Frequent swift parrot activity was recorded in parts of this coupe - see green areas marked on survey map -*

25 And I will show you that in a moment-

30 *including the presence of juvenile birds and actual nest trees. These juveniles and the location of a nest tree adjacent to a coupe and within the coupe boundary confirmed the presence of important nesting habitat in the area marked as green on the survey map. The following recommendations to protect this nesting habitat in accordance with recovery plan for the species were discussed and agreed in the meeting.*

First bullet point:

35 *The areas of high swift parrot breeding activity marked as green on the survey map in the adjacent coupes 13B, 12D and 12D are to be excluded from any future harvest operations. The two areas of high swift parrot breeding activity marked as green on the survey map on the northern boundary of 12F and 13D are also to be excluded from any future harvest operations. The area of the north-east boundary must include the next tree included on the survey map. All these areas will be protected from burning although a cool patchy burn is acceptable.*

45 *Provided the above areas are retained the areas of high swift parrot breeding activity marked as green on the survey map on the southern boundary of 12F and 13D may be selectively harvested provided the size of wildlife habitat clumps required in these areas is doubled, ie the*

clump should contain four to six mature trees with hollows - suitable swift parrot nesting trees. A field trap should be arranged with Ray Brereton to mark out the clumps.

5 And there is then a prescription in relation to roading. You will see it concludes:

These retained nesting areas will be added to the TFM -

10 That is threatened fauna manual, I assume -

map sheets. Please add these retained areas to the Forestry Tasmania management -

15 The D presently escapes me, decision -

classification mapping system with the same protection status as wedge-tailed eagle nest reserves.

20 Now, that is an illustration, am I correct in saying, of an appropriate management prescription being determined by the senior zoologist of the Forest Practices Authority in consultation with officers of DPIWE as it then was. Do you agree with that?---It appears to be that, yes.

25 Yes. And it seems specific and not particularly controversial?---Yes.

Could I then get you please to look at page 1507. You will see that this is an email from Mr Miller to the lady whose name I am reluctant to attempt a pronunciation of.

30

HIS HONOUR: It is Gilliopoulus.

MR TREE: I am grateful to your Honour. And:

35 *Please find email from Sarah re our meeting on 20/12/01 -*

Fairly clearly a reference to the document I have just taken you to:

40 *As at close of business 24/12, the map had not arrived. In regard to her recommendation to add these areas to MDC protection, I don't think we want to do this. Reasons being that if further studies are undertaken and another habitat is discovered then it may emerge that some of these may be more important for reservation, besides I don't think we would want to reserve areas prior to any management agreement "process coming into being".*

45

However, we will, in the interim, stay out of these areas as per our discussion on the 20th. I suggest at this stage to show them within MDC is conditional instead with an SMZ for research.

5 Special management zone:

I have discussed the above with Steve -

It doesn't say who Steve is -

10

and he endorses this approach. Before you make any reply to Sara, and Steve and myself will not be there, I suggest you may like to liaise with Bruce Haywood for advice.

15 Is that an illustration of the negotiation process dealt with at clause 3.1.6 of the protocol?---I was not around at the time of this. I don't know the specifics of this. I don't know exactly the context in which that email is sent so I can't really answer your question. I mean there is - a negotiation is, you know, a communication. It can be through email, it can be face to face. Whether this is
20 part of that, associated with this, I can't really say.

You will appreciate of course - or perhaps you are unaware - coupes 12F and 15D are not the subject of this litigation. Are you aware of the coupes that are the subject of this litigation or not?---Not in any specific detail, no. I don't
25 engage in that level of detail with coupes that come across my - in fact they don't come across my desk. I manage a process.

Now, I wonder if the witness might be shown this document and for the purposes of following the cross-examination I hand up a copy for your Honour,
30 you will see that this appears to be a reply to natural and cultural values form in somewhat similar terms to that which applied to the coupes which I have just taken you to and you will see that it specifically, on its face, relates to coupe 17E. Do you see that?---Yes.

35 Again, and I won't read it all, the recommended prescription in relation to the swift parrot seems to be materially identical to that which prevailed in the document I just took you to a few moments ago?---Do you wish me to compare them?

40 No, I am happy for you to just familiarise yourself with what is in there and particularly I want you to focus on:

The prescriptions, areas of high swift parrot activity marked as green on the survey map are to be excluded from the harvest areas.

45

Do you see that?---Yes, the first dot point is quite similar but not the same.

Yes. Substantially the same though?---Mm.

I wonder if the witness might be shown one of the maps which is an exhibit to Mr Miller's affidavit, exhibit 20. It is not in the Court book, your Honour. Now, I want you to assume that this is the map with green shading that has
5 been referred to in the documents that I have just recently taken you to. Do you see that?---Yes.

And you can see areas of green shading that are patent on the face of the map?---Yes.
10

Can I direct your attention please to the area of green shading at the top of the map and you will see there is two blobs roughly next to each other?---Yes.

And you will see there is some coupe numbers there. The first one is 19E and underneath it 17E and the top left hand side, 19D?---Mm.
15

Do you see that? You don't have any difficulty in interpreting that map do you, in terms of identifying the area that is the subject of shading?---I can see the areas that are marked in green on the map. This is not an area that I have any
20 operational experience at all. I am a manager of a division that has this as one of its many functions, the Manager of the Threatened Species Unit. I am not an operational forester. I am not an underground species expert and I have no practical experience at interpreting maps in this context.

You would expect though, would you not, that the area on coupe 17E, which was not to be harvested in accordance with the specialist recommendation from a zoologist employed by the Threatened Species Unit, would be followed
25 though, wouldn't you, under the protocol?---Can you just repeat what you just said, sorry?

30 You would expect that the recommendation of a specialist zoologist from your threatened species unit in relation to areas to be harvested would be followed, wouldn't you?---I would expect that the Forest Practices plan that was accredited would be followed.

35 Yes. And you would expect that that plan would be prepared in accordance with the specialist prescription that has been arrived at by collaboration under the protocol, wouldn't you?---The plan that's accredited is what should be implemented on the ground. How that plan is arrived at, the agreed procedures
40 say that there should be a negotiation between specialists, the land owners, other parties and the Forest Practices Authority. In the end, the Forest Practices Authority is the regulator and the one that accredits the plan. That is done in a collaborative and in negotiation with my staff and others. So it's the plan that is in effect, not the specific piece of advice.

45 The plan is approved by a Forest Practices officer who can be an employee of Forestry Tasmania and in this case was, not the authority?---The regulation -

that is a matter for Forest Practices Authority. My point is that it's the plan as it stands that should be implemented.

5 And in formulating the plan, the specialist management prescription arrived at by consultation under the protocol is intended to form part of the prescriptions?---That's what the agreed procedures indicate, yes.

10 Yes?---The agreed procedures don't direct the FPA or any other people to adopt specifically what we say. They're arrived at through negotiation.

I beg your pardon, could you just repeat that? The agreed procedures don't - - -?---Don't direct that the plan has to follow our advice. It's arrived at through negotiation. So we could start with a position, through negotiation it can be refined as more knowledge comes to the table.

15 So does that mean that in substance the advice can just be ignored?---No, I didn't say that.

20 It just doesn't need to be followed?---I said that as information and advice comes to the table, the advice can better reflect better information, and it's a negotiated process. The agreed procedures are quite clear on that.

25 Do I understand that Forestry Tasmania is on your understanding not obliged to adopt a prescription which has been arrived at in consultation under clause 3.6.1 of the protocol?---Saying that the plan that is implemented is what needs to be followed. The processes of developing the plan are as the agreed procedures say, there is a negotiation - there is a discussion amongst specialists on the advice.

30 Is Forestry Tasmania free to ignore the specialist management prescription provided under the protocol, Dr Whittington?---I don't think I said that.

35 Well, I am asking you the question. Is it free to?---The plan has to be complied with.

I beg your pardon?---The accredited plan has to be complied with on the ground, is that what you're asking?

40 No, I am not asking you that. I am asking you what happens to one of these specialist management prescriptions that is generated under the protocol. I am asking you if Forestry Tasmania is free not to include it in any Forest Practices plan?---The - exactly how those plans are formulated needs to be asked to the FPA. I have explained the process as I understand it.

45 Not you, ask someone else, Dr Whittington; is that it? Have you examined, by any chance, the plan that was ultimately approved, certified in relation to coupe 17E?---No.

I wonder if the witness - excuse me a moment please, your Honour.

HIS HONOUR: Is this a matter that can be dealt with after a break?

5 MR TREE: Yes, it can, your Honour.

HIS HONOUR: We will adjourn now until 25 to 12.

10 **ADJOURNED** **[11.19am]**

RESUMED **[11.55am]**

15 HIS HONOUR: My associate asked me as I walked in whether I smelt something burning, and I thought I didn't just in the anteroom, but as I walked in I thought I did. I don't know if someone can make some inquiries about that.

20 MR ABBOTT: One small matter while that is being done, your Honour. I don't think it is me that is on fire, at least for the moment.

HIS HONOUR: I am sure it is not me.

25 MR ABBOTT: No, your Honour. Perhaps it is Mr Tree, your Honour. I have handed to Mr Tree in answer to the call a single page document headed FT versus Brown Evidence and Court Dates, which I understand to be the document called for by Mr Tree earlier in the day. I have indicated to Mr Tree that it has a print date on the bottom 4 May 2006 because it has been printed on
30 this day, your Honour. If it please.

HIS HONOUR: Yes. So that call is answered, is it, Mr Tree?

35 MR TREE: Yes, in relation to that document it is, your Honour.

HIS HONOUR: Yes. There are no outstanding calls, I don't think?

MR TREE: No, your Honour.

40 HIS HONOUR: I thought because of the extended break unless we had to evacuate, I intended to sit until 1.

45 MR TREE: Yes, I am certainly happy with that. I do apologise, I took a little longer but it was ultimately a saving. I wonder if the witness might have Court book 3 placed before him.

And could you turn please to page 902, Dr Whittington?---I don't believe this has 902 in it. It goes 900 to 918 in my copy.

HIS HONOUR: Sorry, this is 902?

MR TREE: Yes, your Honour.

5

Now, I want you to assume that that is the coupe plan for 17E. Do you see that?---Yes.

10 And particularly I want you to familiarise yourself with the co-ordinates that are on that map. And for instance if you look at the top of the map you will see that there is a figure of 6900 with a very small 5 in front of it. And then if you look along the page a little bit you will see 57, 570 with lots of other little zeroes after it?---Yes.

15 And if you look at the other co-ordinates, the latitudes, you will see again that there are numbers that are - prevail on there. Now, having familiarised yourself with that map, can I then get you please to direct your attention back to the larger map that I had before you before the break? Now, if you look at the two blobs that I was asking you to look at and look at the green blob that is
20 in coupe 17E, could you - and look at the bottom of the map, you will see that the same degrees of longitude are shown on the map. Do you see the 569 and 5700?---Yes.

25 And if you look at the left-hand edge of the map, you will see again that the latitude is plotted, and you can identify that the same grid square which is wholly shown on the coupe plan, coupe 17E, is shown on the larger map as well so that you can compare one grid square with another grid square. Do you understand what I am asking you to do?---Yes.

30 HIS HONOUR: Just a moment, Mr Tree. Apparently there is a problem with the power-board in the room next door that has a television link to this proceeding. So we must be exuding too much heat, but it is all under control.

MR TREE: I am much reassured by that, your Honour.

35

If you make a comparison between the green-shaded areas and the areas shown as protected forest on the coupe map even the most cursory examination makes it clear that the green-shaded area has not been reserved, has it?---The green-shaded area is not the same area as what's on the plan here.

40

Quite so. And in fact it is most unlikely that an area marked as sedge land is going to provide nesting habitat for the swift parrot?

45 MR D. GUNSON: I object to that question unless the witness can be shown to have some particular knowledge. It may depend, for instance, on whether or not there are suitable trees within the sedge land, your Honour.

MR D. GUNSON: I will withdraw - - -

MR D. GUNSON: The witness has said consistently he is not an expert on the swift parrot.

5 HIS HONOUR: The question has been withdrawn.

MR TREE: Now, this is, as you know, the larger plan, was a plan drawn by one of the specialists employed by the Threatened Species Unit and yet we can see that as translated into the coupe plan for coupe 17E it has been virtually
10 wholesaley ignored, has it not?---I just don't have the knowledge to answer that question. I don't know the context between this being constructed and the final plan. It's well before my time and it's an operational level of detail that I, frankly, never encounter in my day-to-day business.

15 Thank you. At the time all of this was taking place there was in fact in existence, wasn't there, a recovery plan for the swift parrot; correct?---The date of the swift parrot recovery plan is 2001, I think it was endorsed, the current plan.

20 Yes, 2000 to 2005?---2001.

And there was a preceding recovery plan as well?---It was published in 2002, I think.

25 Now, can I just remind you of the contents of that recovery plan. It is one of the annexures to your affidavit. You will need to be back in paragraph 5 and it commences at page 2386. You will see that that is the face cover of the recovery plan. Can I direct your attention, please, to page 2406, and do you see that this is in the section - if you look at the preceding page - Actions? In
30 fact I think the actions commence at page 2404, and you will see at page 2406:

*Action 2B, management and protection of habitat, aims to implement appropriate management regimes to protect and improve swift parrot habitat on public and private land. Justification. Habitat loss and
35 degradation has been identified as a major threatening process. This action aims to target those important habitats and sites identified in Action 1 for protection and enhancement using a range of administrative avenues and voluntary measures.*

40 Etcetera. Under the heading Methods:

The range of methods will be used to carry out this action -

including the third bullet point:

45

Target priority foraging, roosting, and nesting habitat on State forest and other Crown Land for addition to the reserve system through the

regional forest agreement process where they include swift parrot habitat.

?---Yes.

5

Now, you are responsible for the Threatened Species Unit in line-management sense, are you not?---It sits within a branch that I manage, yes.

10 And indeed if we look at the following page under the heading Responsibilities - this is at page 2407 - the responsibilities for administration rest with - relevantly in Tasmania - DPIWE; correct?---Responsibility in that context isn't in a statutory sense. The responsibility in that context is probably better defined as the lead - takes a lead in.

15 Well, whose task is it to implement, for instance, the third bullet point that I have just directed your attention to?---There's a range of bodies that do that depending very much on land tenure. So, for example, one of the programs that I'm responsible for is protected areas on private land and the private forest reserves program, they're two programs that aim to covenance - well, put
20 covenance over land so it's managed with conservation. One of the targets that those programs have identified is swift parrot habitat and there are a number of examples of land that's now being managed for conservation through those programs that have targeted swift parrot habitat. So that's an example of where we take a very direct role. In other land tenures, other land managers have a
25 role in implementing these actions.

Well, can I just get you to reflect upon what Mr James had said at page 1511? And I won't take you to it, I will just read it out again:

30 *Surveys have revealed the Wielangta forest are extensively used by the swift parrot. These forests are perhaps the breeding stronghold for the species.*

35 Would you agree with me that that sounds awfully like priority nesting habitat?---I'm not a specialist on swift parrots so I don't want to pass comment on that.

40 You, as the manager responsible for the management of the Threatened Species Unit, don't feel confident in expressing a view as to whether something that has been described as perhaps the breeding stronghold for the species might be priority nesting habitat?---Clearly, I have an opinion on that, but I'm not a specialist. It sounds, from my perspective, to be important, but I'm not a specialist.

45 And if it were indeed priority nesting habitat it had been identified by Mr James and there were recommendations made in relation to the reservation of it, were there not, by Dr Munks?---From what you've shown me that appears to be the case, yes.

And assuming that in fact what occurred was that which - what occurred on the ground was that as shown in the coupe plan that I showed you a few moments ago, that has not succeeded, has it, there has not been a reservation of priority nesting habitat?---Again, I don't have all of the information associated with that coupe, I'm not an expert, I haven't visited the site. I can't express an opinion with any confidence.

Who do you say - I withdraw that. Assuming that this was indeed priority nesting habitat who do you say under the swift parrot recovery plan had the responsibility for adding it to the reserve system?---The recovery plan in itself doesn't have any statutory authority, the regulation of the forest practices system is through the Forest Practices Authority, the land manager has a responsibility. The responsibility is shared. The recovery plan doesn't empower anyone - the agency in this sense or the other bodies mentioned there as having responsibility, NRE in Bendigo or Parks and Wildlife Service in Queanbeyan, it doesn't give them any power as such.

Does not, as we discussed this morning, the secretary of DPIWE, as it then was, retain a power to require a permit for action which would otherwise be in breach of the Threatened Species Protection Act?---Yes.

On the face of it this seems to have been a situation which screamed out for that, does it not?---I don't know, as I said, I don't have all of the details and I'm not a specialist on swift parrot.

And as you are no doubt aware, there has now been clearing in accordance - well, perhaps in accordance with - the coupe plan for coupe 17E and that habitat is now gone. Are you aware of that or not?---I'm aware of that, yes.

Well, whilst we are at the recovery plan can I ask you some more questions about it, please, because if you flip over the page - - -?---Which direction?

Sorry, page 2407, you will see there is another action that was to be undertaken in relation to the swift parrot, action 2C:

Develop a strategy to provide for continued supply of suitable nest hollows -

and you will see the justification -

action has been taken to protect existing nest sites and there are prescriptions for the protection of habitat trees in wildlife habitat clumps in 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 dependent species as this will be more effective than a species-by-species approach.

You will see that there are some methods in relation to the development of this strategy and you will see that the responsibilities rested with DPIWE. You will see that there was funding identified and you will see that the funding
5 anticipated that this task would be completed by year three of the plan so we could agree by 2004 at the latest?---The funding in the recovery plans is not committed, these are costings for actions should they be funded so the recovery plans are generally written with the aim of attracting funds to do certain tasks. Our Act requires that they are costed so because there is money identified
10 against an action does not mean it is forthcoming.

And hence it means that the action may not occur?---There is no statutory requirements to undertaking the actions. The recovery plans provide a range of activities and in this case DPIWE would attempt to undertake those recovery
15 actions but it would be prioritised with all our other actions. Whether or not this specific one has been undertaken I can't give you the answer to that without consulting with my staff.

So do I understand recovery plans are nothing more than a combination of wish lists and begging?---No, they also contain a lot of very important information about the species. They provide guidance on directions, they provide guidance on development of prescriptions, they are not in themselves prescriptions. They are very useful for putting in bids for funding, absolutely. As I said, they often contain a lot of information about the species so they cover a range of
20 tasks - a range of - they provide for a range of activities, support arrangements.

Do you know whether there was even a bid made for funding in relation to this action, action 2C?---This is two and a half, three years before I started with the agency, I have no idea.
30

Indeed, do you know whether there has been a bid for funding for any of the actions identified in this plan?---The swift parrot recovery action has taken place. My staff are part of those, and there has been funding for swift parrot activity that has occurred through the threatened species unit in collaboration
35 with others. The specific nature of that work is something that I can't give you details of off the top of my head.

Who could give me details of it?---The manager of the threatened species unit would have the specific details. I can get the specific details, I just don't have them in my head at the moment, and the project staff that have worked on the projects.
40

Well, in fact, I am correct in saying the recovery plan has now lapsed anyway, hasn't it?---This recovery plan was for five years and it has - the five years has expired. We are in the process of drafting a new recovery plan for swift parrot but because the plan has gone past the date doesn't mean that the actions still aren't important actions and that we won't continue working towards these goals which is what we are doing at the moment, we have ongoing swift parrot
45

recovery work as we do eagle work and as you know, that is also a plan that has expired.

5 So why has this recovery plan been permitted to lapse without renewal?---There is no statutory requirement for us to keep them current, we are working towards - we have 650 species on the list and we work towards prioritising our actions.

10 Are you aware of a statutory obligation on the Commonwealth to maintain current recovery plans in relation to listed species?---No, but then I don't administer the Commonwealth legislation.

15 Are you aware that recovery plans under the EPBC Act, section 270, must provide for the research and management actions necessary to stop the decline of and support the recovery of the listed threatened species so that it's chances of long term survival in nature are maximised?---In the broad sense, I don't know the specifics of that Act.

20 So do I understand that the reason why this has been permitted to lapse is because it doesn't make much difference whether it is current or lapsed?---No, we are working towards drafting a new plan.

25 Why, what does it change?---It will accumulate - well, consolidate the knowledge that we have on swift parrots and it will be a forward looking plan for going forward.

30 But surely the principal purpose of the recovery plan isn't as some sort of Encyclopaedia Britannica that you can go to and learn about parrots, its purpose is to stop the decline of and support the recovery of the species?---And that is based on information, yes.

And based upon recommendations and actions?---That's right.

35 So am I correct in saying that as we stand here today there is no recovery plan - sorry, I will withdraw that. There is no action specified in relation to the recovery of the swift parrot in a plan?---As I said we - in an operational sense, we continue to use the current - or the recovery plan that was produced in 2001/2002 and that guides our research activities and recovery actions that we undertake within the department.

40 What recovery actions are current in relation to the swift parrot?---The - I don't know the full extent of the work that is being undertaken by my staff but for example they are continuing doing winter surveys, they continue population surveys, they are doing some work on flowering of eucalypts and its
45 relationship to swift parrots. There may be many other things they are doing, I don't have those details but I can certainly find those out.

But what recovery actions, not research, what - - -?---The research is a very important part of recovery planning, understanding the species in its ecology is critical for making informed decisions about recovery actions. Many of the recovery actions in many plans are to do with increasing our knowledge base.

5

But knowledge alone isn't going to save the parrot, you need to do something with the knowledge, don't you?---And that knowledge feeds into prescriptions that are implemented by the regulator as well as into our other programs, our private land conservation programs and other works that we do.

10

We have just seen an illustration of threatened species research that was ignored in the formulation of a forest practices plan haven't we?---That's your view.

15

Did I hear you correctly a few moments ago where you said that there were winter surveys being undertaken by your office?---I understand that it is the case, but I don't have any detail - - -

20

Are you aware the parrot is migratory?---Sorry?

Are you aware that the parrot is migratory?---Yes.

25

And is on the mainland during winter?---Yes. But we co-ordinate our activities with other organisations.

30

So it is not being undertaken by your organisation?---We would be a party to the program that does those sorts of population surveys. I don't know the specifics or the detail. We have, for example, if we looked at the orange-bellied recovery program, I mean that is another migratory bird and we work across all of the jurisdictions in which the bird flies.

35

So I am correct in saying there is no recovery plan for the wedge-tailed eagle at the moment; there is no recovery plan for the swift parrot; and there is no recovery plan for the broad-toothed stag beetle?---That's correct.

40

Does that mean that there is no present funding bid in relation to any of those three species for a secure recovery action?---I have project officers employed that work on those species - well, certainly on the eagles and the parrots at the moment.

45

Is there any present funding bid for actions to recover those species?---Through the regional NRM process there are proposals in for which we have been successful in securing funds to do - undertake recovery actions for a range of species and my understanding is that that includes raptors and parrots. And that is considerable funding as well.

Not necessarily the wedge-tailed eagle and not necessarily the swift parrot?---I'd be extremely surprised if it didn't include wedge-tailed eagles and swift parrots.

5 Have you been made aware of a population viability analysis undertaken in relation to, amongst other species, the wedge-tailed eagle about two years ago by the University of Melbourne?---I'm aware that it exists, I have no knowledge of the detail.

10 Are you aware of the substance?---No, not in anything more than that I know that it exists. I have not looked at the science that underpins it, nor of the results of that modelling.

Are you aware that it predicts that within 90 years the wedge-tailed eagle is almost certain to be extinct?---No.

15

And having learnt of that - - -?---I will rephrase my no, because I think you've interpreted in a way - not in the way I intended. I understand that that is one of the predictions by that modelling approach in one of the scenarios, but again I don't know the science that underpins that, nor the assumptions of that research and I'm not a specialist in that area and I have not taken it upon myself to learn about that sort of stuff.

20

Are you aware of any conflicting viability analysis that has been undertaken in relation to the eagle?---No. As I said I'm not an expert in eagle biology, I don't pretend to be.

25

Is it not a cause for concern for you to learn that the University of Melbourne's modelling predicted that the wedge-tailed eagle, one of the icon species protected under the Threatened Species Protection Act, is going extinct?---I'm not quite sure what you're asking me. My response, if I understand your question, is that I would - well, no I'll put it in a different way. I rely on the specialists within my staff, on my staff to keep me informed of what is required and what is needed and what is known. I am not an expert in that area and I don't go and read that research.

30

35

Mr Mooney is one of the co-authors of the report, were you aware of that?---I know Mr Mooney is involved with that research, yes. He's not - yes, I'm not quite sure where - - -

40

Are you aware of any activity that has been undertaken by the Threatened Species Unit in response to that population viability analysis in the last two years?---As I said we have a project officer that works on recovery actions for raptors and I would presume that they are across all of the information that is in the literature on eagles. I would expect and hope that.

45

Well, it is not just a question of presuming it, it is a part of your responsibility to ensure that the Act is properly administered. Doesn't the buck for the Threatened Species Unit ultimately stop with you?---I'm responsible for the

Threatened Species Unit, yes. It does not mean I know the intimate detail of what every staff member does on a daily basis.

5 Now, can I just get you to cast your mind back to the questions I was asking a few minutes ago about coupe 17E and the removal of - or the harvesting of trees in the area that had been shaded green by Mr James. Can I ask you please whether but for the exemption under the Threatened Species Act - Preservation Act for actions undertaken pursuant to a certified forest practices plan, whether a permit would have issued to allow the destruction of that habitat?---If it was
10 for - you are saying if it was outside the forest practices system, so if it was for
- - -

15 Yes?---I couldn't give you the answer to that, we have a procedure for assessing for natural values and we would follow those procedures which are in accordance with our Act. The decision would ultimately rest with the Secretary.

20 It would be unlikely that a permit would be issued to do that which was contrary to an action recommended in a recovery plan which was then in force?---That is correct. In general that is correct.

25 So in general it would be fair to assume that the only reason why that habitat was able to be destroyed was because that destruction took place pursuant to a certified forest practices plan?---I can't answer that because again until I - until my staff did the assessment presuming it was not through the forest practices system, it's just mere speculation, I mean there's no fact in which to make an answer.

30 Of course, I suppose that is the sort of thing that you would expect someone to report on during the course of auditing that forest practices plan, wouldn't you?---The operational detail of how the Forest Practices Authority implements the forest practice system is best addressed to the people that regulate it, not me.

35 Now, I wanted to return for a moment, please, to the evidence that you gave initially this morning in relation to the preparation of your affidavit. Firstly, whose idea was it that your affidavit should be sent to Maree Yee, hers, yours or somebody else's?---I genuinely can't recall but what I normally do with documents is provide drafts to who and get feedback so it may well have been
40 requested or it might well have been at my instigation. I really don't know, you might tell me, I suppose, if you've got an email in front of you.

45 Am I correct in saying that prior to you even commencing upon the task of drafting your affidavit, you had been already supplied with a draft of Graham Wilkinson's affidavit?---One was supplied to me, yes.

How did that come to be? Did you ask for that or was it given to you gratuitously?---I honestly cannot recall.

Then look at this email if you don't mind. You will see that I've opened the email at the page where it commences "as requested"?---Well, this would indicate that I requested a copy of Graham Wilkinson's affidavit.

5

Why would you have done that, Dr Whittington?---In preparing my affidavits I wanted to ensure that its scope was appropriate, it was factually correct and so I went to a range of sources to get that information and Graham Wilkinson's affidavit would be one of those places.

10

Did you read his affidavit prior to commencing to draft yours?---I read the draft, yes.

Prior to commencing to draft your own affidavit?---

15

The sequence of events I couldn't swear to but I would have certainly had Graham's affidavit at around the time I was drafting, if not before I drafted my affidavit.

20

You see, you had been provided with, and correct me if I am wrong, the document which I think is - - -?---My eyes are not that good, sorry.

Well, perhaps the witness can be shown the document? You had already been supplied with that document which was an outline of evidence and Court dates, hadn't you?---That's correct.

25

So you knew that Mr Wilkinson was going to give evidence and you knew that his evidence was to be in relation to the forest practices system? Correct?---Correct.

30

And you knew from that document that your evidence was intended to relate to threatened species management in Tasmania?---Well, that was the title against my name, yes.

35

Well, they are quite - though there may be some overlap, they are quite separate things, are they not?---No.

I see?---They are not separate things.

40

I am not suggesting there is not overlap but they are quite different focuses?---No, there is a very strong overlap. The agreed procedures show that quite clearly.

45

Mr Wilkinson has, correct me if I am wrong, been present during all of your evidence thus far, has he not?---Yes.

Have you spoken with him about this case?---Today?

At all?---We have discussed a range of matters and this case would have come up in those.

5 What have you discussed with Mr Wilkinson about this case?---There hasn't been a lot of discussion specifically about the case but I have discussed with Graham questions about how the Forest Practices Authority works, how their system works, those sorts of issues we've discussed.

10 Generally, or in the context of this case?---We discuss those generally frequently a lot. In the context of this case there would have been some discussion on it but a reasonably small amount.

15 Have you discussed this case with anyone else who you understand to be a witness in the case?---Yes.

Who?---Andrew Blakesley.

20 Yes, and how many occasions do you think you have discussed this case with him?---Andrew and I work on many projects together so we see each other very frequently, many times a week. This case would have probably come up two, three, four times over the last - maybe a few more than that, over the last 10 months.

25 And what sort of things have you discussed with him about this case?---With Andrew, Andrew has a very strong history in the history of the RFA, I don't, I'm new here so I've discussed the RFA and its history.

30 And that is all?---That's all that I recall. We may have touched on other matters but that's the sort of substance of our discussion with him.

35 You will see that I've placed before you an email from Maree Yee to you and I think you have also produced an email from Maree Yee to you sending back your draft affidavit with some comments. Apart from those emails which you have identified, one from you to her - sorry, two from her to you and one from you to her, have you had other email correspondence with Maree Yee about this case or your evidence?---I've been copied into various emails. I can't remember whether I was the primary recipient or a copied to. There was one about inviting me to several meetings.

40 Meetings?---Yes.

45 Did you attend?---One of them was held in my office where Maree Yee and John McDonald came to my office. There was one held at Forestry Tasmania very early on in the piece to explain what the Federal Court process was which I attended.

Who was present at that meeting?---I don't have my diary with me with attendees. There was a number of people from my staff, Maree, I think John McDonald was present.

5 A number of people from your staff?---Yes.

Who?---I believe Sally Bryant would have been there.

Head of the threatened species unit?---Yes.

10

Who else?---I now - I cannot remember whether Brooke Craven came with me or not. She may well have, she may well not have. I do not recall.

15

What did you understand the purpose of the meeting to be?---To understand how the Federal Court process works.

20

And you understood the people at that meeting to be prospective witnesses?---I was invited by FT to discuss the Federal Court process so presumably we were there for the same purpose but that wasn't - didn't really come to my conscious functions.

And yet Sally Bryant is not to be called as a witness in this proceeding, are you aware of that?---I'm aware of that.

25

Were you aware that members of the Threatened Species Unit, for the first couple of days at least, were watching this case?---I was aware of that.

30

They haven't been back, why is that, Dr Whittington?---I actually saw two of my staff outside at morning tea. I didn't talk to them, but I saw them, so they have come back.

35

I see. Today. Did you actually prepare the first draft of your affidavit or did Brooke?---I prepared the first draft of my affidavit with Brooke, together we produced it.

40

And had you had email communication with her in relation to the contents of the affidavit?---We would - we work off the same server, so we have a document that we would work on. So there was probably some communication verbal, there may be communication by email, our offices are very close to one another and we work off effectively the same document.

45

Would you expect there to have been communication between Brooke and Maree Yee in relation to the preparation of the affidavit?---There may well have been.

Are you aware of it?---Only in so much as when I've CC'd into an email.

Well, are you aware of it?---Well, there was an email that you showed me before which was addressed to both myself and Brooke Craven, so there is at least some communication, yes.

5 Apart from that communication are you aware of any others?---Brooke was also present at the meeting which Maree and John McDonald came to my office.

I am talking about email communication I am sorry, Dr Whittington?---There may well have been, I don't know.

Had you been asked to provide feedback in relation to anyone else's affidavit?---No.

15 Have you had access to a shared file on Forestry Tasmania's database?---No.

What information does the Threatened Species Unit have available to it in terms of - and I don't want you to identify each and every fact - but what database access do you understand it has principal access to in relation to threatened species? Is there a database it maintains?---The Threatened Species Unit - well, more broadly my division maintains something called GT Spot which contains site data for threatened species across Tasmania.

GT Spot?---That's correct.

25

Is that database available to others?---It's available over the internet to anybody. Different people have different levels of access.

I dare say that some of it is more sensitive, for instance, the exact location of wedge-tailed eagle nests?---Correct.

30

But other of it presumably is less sensitive and is more generally available to the public?---That's correct. The way we generally manage that is through fuzzing the data, as in the polygon - - -

35

Deliberately skimming it?---Well, not being very specific with the data, put a cloud around an area.

Are you aware of what database the Forest Practices Authority uses?---Conserve.

40

Not GT Spot?---They'd also have access to that as well.

Because it is generally publicly available on the web?---Well, yes and they would have the access permissions required to access the data as they needed it.

45

Does the Threatened Species Unit have access to Conserve?---I don't know the answer to that.

5 What system does Forestry Tasmania use?---You would need to ask Forestry Tasmania that. My understanding is that they would use the information that was available which would include their Conserve plus any other information.

10 Well, I have taken you this morning to documents which referred to the MDC system, do you understand that to be the principal repository of information from Forestry's perspective?---I am not intimately familiar with how Forestry Tasmania manages its knowledge.

15 Does the Threatened Species Unit have access to MDC?---I don't know the answer to that question.

It would be desirable, would it not, that each of these three entities had access to each other's databases wouldn't it, in relation to threatened species?---In relation to threatened species it would be, yes.

20 I am sorry to jump about, but I have forgotten to ask you some questions about your draft affidavit. Perhaps if the witness could be shown this document?---Thank you.

25 In fact at this stage, your Honour, it might be convenient if I tender the document that I have just placed before the witness, hand up a copy for your Honour's working and I think I have got another copy that can make its way around the bar table.

30 HIS HONOUR: How should it be described for the transcript?

35 MR TREE: It should be described, your Honour, as comprising several things, firstly in the order that they appear in the document, an email from John Whittington to Maree Yee of 18 October 2005; secondly an email of Maree Yee to John Whittington of 12 October 2005, an annexure to that email comprising a framework; an email from Maree Yee to John Whittington dated 7 November 2005 with an annexure being draft proof of evidence with comments.

40 HIS HONOUR: Well, that bundle of documents with at the start the email of 18 October 2005 will be exhibit AN - sorry, AO but children can read it if they want to.

45 **EXHIBIT #AO BUNDLE OF DOCUMENTS COMPRISING EMAIL FROM JOHN WHITTINGTON TO MAREE YEE DATED 18/10/2005, EMAIL OF MAREE YEE TO JOHN WHITTINGTON DATED 12/10/2005, AN ANNEXURE TO THAT EMAIL COMPRISING A FRAMEWORK, EMAIL FROM MAREE YEE TO JOHN**

**WHITTINGTON DATED 7/11/2005 WITH ANNEXURE BEING DRAFT
PROOF OF EVIDENCE WITH COMMENTS**

5 HIS HONOUR: Thank you.

MR TREE: Now, I may as well work my way through this bundle of material
in the sequence that it is there. I think we have probably done to death the first
page of that document. But if I look at the second page of the document the
10 concluding four lines, you will see that there is reference to a number of
attachments which have been deleted. When were they deleted and why? You
will see it on the second page - - -?---Yes - no, I understand. I am presuming
that in replying because this email is a reply. My response to Maree is a reply
rather than clog up the internet with sending backwards and forwards
15 documents that are no longer relevant to the email, I would have deleted those
in response. But that's what it appears to me, I mean it's just a straight - - -

I see?--- - - - send without attachments I think is the function.

20 Now, do you have - or does it follow that you have a copy of the Wilkinson
draft affidavit that was provided to you?---I certainly did have Graham
Wilkinson's draft affidavit, whether or not I've put it on file, I can't recall, but I
would certainly have had a copy.

25 If you have it, are you prepared to produce it?---If I have it, yes, I'll produce
that.

Very well. Thank you. I wonder if I might ask you to attend to that?

30 MR D. GUNSON: I raise an issue. Do you wish the witness to return to
Court with it this afternoon? I am directing my question to my learned friend.
I might put it through, your Honour, I'm sorry.

35 HIS HONOUR: Yes.

MR D. GUNSON: Perhaps through your Honour could I direct that question.
Do you wish him to return with it this afternoon or some other time?

40 MR TREE: Yes, no, I won't be finished by 1 with him.

MR D. GUNSON: Perhaps that could be made clear to the witness as to what
the request is.

45 HIS HONOUR: Yes. Is that a difficulty, Dr Whittington, having a look over
lunch time?---Yes, I will go back to my office and check with records.

Thank you.

MR D. GUNSON: Now, if I look at the fourth page of this exhibit, I will see, do I not, that there was some factual material furnished to you by Ms Yee. She says this:

5 *As far as I am aware a recovery plan exists for the swift parrot, a 2005 draft recovery plan exists for the wedge-tailed eagle, and a recovery plan for threatened stag beetles which includes the broad-toothed stag beetle has been prepared but at what stage is this at?*

10 Now, by then - correct me if I am wrong - you had supplied her a draft of your affidavit?---Yes, because this email is responding with that, it's attached.

Do I understand therefore that at the time that you had sent your draft affidavit to her for comment you were unaware of the status or existence of any
15 recovery plans in relation to the three species?---No.

Well, just have a look at page 8 of your draft affidavit and you will see there is a heading there, paragraph 6:

20 *Recovery plans have been endorsed for the following threatened species taxa in Tasmania; orange-bellied parrot, swift parrot, forty spotted pardalote, wedge-tailed eagle, and sea eagle.*

And then to be advised?---Yes.

25 Now, can I just get you to contrast that draft of your affidavit with what appears at page 2299 and following in your affidavit, Court book volume 5? And as is my invariable habit I will get you to direct your attention in fact to some pages preceding, 2298 is where I want you to first direct your attention
30 you will see there is a heading Strategies and Planning Tools and if we look at page 7 of the draft you will see there is a heading Strategies and Planning Tools. And if we compare paragraph 26 with paragraph 1 there appears to be similarity, perhaps they are identical. Paragraph 27, paragraph 2, the same. Paragraph 28 with paragraph 3. Paragraph 29 with paragraph 4. Paragraph 30
35 with paragraph 5. But then paragraph 31 seems to have no precursor in the draft that you sent to Ms Yee, and, please, take your time to check, although paragraph 32 appears to be related to what was paragraph 6, paragraphs 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, and 56 all seem to be new material?---Correct.

40 So was there some further draft of your affidavit that was prepared?---I don't believe so. Well, you mean, I think, by that question did I supply a further draft to FT?

45 Well, let us take it step by step. It is now patent that in fact changes were made to the affidavit other than in response to suggestions by Ms Yee?---This was a draft affidavit, even right at the beginning it doesn't have my CV in there, for example. This was a draft affidavit to see whether it covered the scope and

direction - sorry, the scope and the substance that was relevant to these matters. It was a living document to that stage, it wasn't a complete document. I didn't submit a final for comment, I submitted a rough draft.

5 Okay. That is a yes to my question, isn't it, yes, there was material added to my affidavit other than material suggested by Dr Yee?---Yes.

Thank you. When was that added? Was it added after consultation with another person?---It would have been developed again with Brooke, my senior
10 policy assistant. There was a meeting, as I mentioned previously, between John McDonald, Maree Yee, at which we discussed the draft affidavit.

Was it at that meeting that these additional paragraphs were drafted?---They weren't drafted at the meeting, they would have been drafted subsequent to the
15 meeting.

And were you asked at the meeting to draft these additional materials?---I was asked at that meeting - and this is my recollection of a meeting that occurred a long time ago - to further consider adaptive management and to further
20 consider the relationship between the EPBC Act and the Threatened Species Protection Act.

A lot of that additional material deals with recovery plans and draft recovery plans, does it not?---That's because that section was not completed in the draft, I had every intention of - I mean, clearly from what appears in the draft, it was
25 incomplete, I was working on that at the time of submission.

And can you now say whether it was you or Brooke who drafted those additional paragraphs?---I'll give the same answer as I did before in relation to the whole of my affidavit, we worked on this as a team, she's my research
30 assistant in this context, but I'm responsible for the draft - well, for the final as well as any draft that came along the way.

Who was responsible for the selection of annexures to your affidavit?---They were the responsibility of Brooke and myself.
35

In paragraph 28, page 2299, you refer to the threatened species strategy for Tasmania 2000 and yet, correct me if I am wrong, it is not annexed to your affidavit?---No, it's not annexed, no.
40

Is there a reason for that?---I didn't think it was a relevant annexure.

You didn't think that the overarching strategy for threatened species in Tasmania was a relevant document where there was litigation involving three
45 of those target species?---In the context of my affidavit I did not believe it was necessary to put it in.

Could the witness, please, be shown this document? And again I hand up a copy to your Honour and pass some around the bar table. The document which I have just handed you is that document referred to in your affidavit, the threatened species strategy for Tasmania, isn't it?---That's correct.

5

That is the most current version of it to be printed at 2003?---That's correct.

Would you agree with me that on what appears to be page 1 rather than Roman I in the executive summary it says this - left-hand column at about point 5:

10

There are many threatening processes which impact on Tasmania's native flora and fauna. In this strategy, six processes are identified as having the greatest impact and are considered in detail. First bullet point: Clearance of native vegetation.

15

?---Yes.

That correctly identifies, does it not, that that is the pre-eminent, in your view, threatening process to threatened species?---I don't think there's any implication there of ordering, it is one of those six dot points for sure.

20

The following page, left-hand column, under the heading Why a Threatened Species Strategy, the first bold heading says Extinction is Forever, which I suppose is self-evident, and the Magnitude of the Problem, bottom of the page, last line:

25

Most of the processes which have led to species becoming threatened are still operating and action is urgently needed to manage them.

30

That still represents the situation, does it not?---This was drafted in 2001, I believe, or thereabouts, 2000, and those were the words that were used at that time and the world is different to then, the prescriptions that we have in place are improved from that time, but as a general sentiment it's probably correct.

35

Do you say that the threatened species strategy for Tasmania has changed in the last two years, do you?---No, I said the world in which we operate has changed, we've improved information - - -

40

How has it changed in the last two years, please, Dr Whittington?---We have improved information.

What?---What specifically?

45

Well, in answering my question saying the world has changed what information were you intending to refer to?---It was a general statement to the state of knowledge. I have said previously that we have a number of research programs going on within my group, there are other institutions that do research as well.

HIS HONOUR: Mr Tree, I have got a slightly shortened break and the witness has to retrieve the document is it inconvenient to stop now?

5 MR TREE: No, it is convenient to break now.

HIS HONOUR: Right. We will adjourn till 2.15.

10 **ADJOURNED** [1.00pm]

RESUMED [2.15pm]

15

JOHN WHITTINGTON:

HIS HONOUR: Yes, Mr Tree?

20

MR TREE: Prior to the break I was asking you, Dr Whittington, to look at the threatened species strategy for Tasmania and I think I had taken you to page 2 - not Roman II, but page 2, in which we had identified the sentence there:

25

Most of the processes which have led to species becoming threatened are still operating and action is urgently needed to manage them.

And I think we had entered into something of a debate where you were of the view that more recent information perhaps may have abated that risk. Was I
30 misunderstanding the debate we were having?---I'd just accept that that situation can still exist.

35

HIS HONOUR: Sorry, I can't hear you?---Sorry. I said I would have to accept this document as it stands and so that whilst I argue - and I still believe this - that the world as knowledge improves it's a different place from when this document was drafted, those words can still be considered current.

40

Quite so. So that most of the processes which have led to species becoming threatened are, as at this minute, still operating and action is, as at this minute, still urgently needed to manage them?---That's correct.

Thank you. Page 3, you will see under the heading Causes of Endangerment:

45

Human actions represent the greatest threat to plant and animal survival and habitat.

That remains current too; yes?---That's correct.

And I won't take you to every morsel of agitation for urgency in the document, but if you look at page 7 you will see in the table on that page there are two columns, Key Threatening Processes and Examples of the Biota Most Affected, the key threatening process that is at the top of that column is native
5 vegetation clearance and we see that there are three types of species or biota which are affected, grassland and grassy woodland species, hollow-nesting birds, and the wedge-tailed eagle. Now, I daresay even though your background is not in threatened species you are aware that the nesting habit of the swift parrot is in tree hollows?---Yes, I'm aware of that.

10

So that native vegetation clearance is one of the key threatening processes for the swift parrot and the wedge-tailed eagle?---They're examples of biota most affected by that key threatening process.

15 Page 9, you will see that - this is part of the discussion of key threatening processes and you will see that the response to those key threatening processes includes drawing and introducing threat abatement plans, left-hand column on page 9. And you will see in actions that were identified in this overarching strategy document the first action was to prepare a threat abatement plan for
20 each of the key threatening processes identified in this strategy. Do you see that?---Yes.

That was the first action that was identified as needing to be undertaken as at 2000, wasn't it?---It was the first action listed against threat abatement plans,
25 yes.

And if we go back to page 7 we can see that the key threatening processes are in that table, aren't they, native vegetation clearance?---That is correct.

30 Can you produce to this Court the threat abatement plan for native vegetation clearance produced pursuant to the threatened species strategy for Tasmania, please, Dr Whittington?---No.

35 Why not?---I don't know if one has been produced, certainly not to my knowledge. One may have been produced prior to me being around, but I don't know of one.

If it existed you would know about it, Dr Whittington?---I'd hope so.

40 So let me understand this. The overarching strategy for species or threatened species protection in this State for the last six years has included the drawing of threat abatement plans for each of the key threatening processes including native vegetation clearance and that has not been done?---Not to my
45 knowledge.

Has there been a threat abatement plan to your knowledge drawn for any of the key threatening processes identified on page 7?---Not to my knowledge.

What was the purpose of this document?---Well, I think the title explains its purpose, it's a strategy for threatened species in Tasmania.

5 Which in that respect has been wholly - wholly - not followed by your predecessor and yourself?---I don't agree with the word "wholly" there are many actions in here which have come to fruition and I have said that I am not aware of a threat abatement plan being developed for those threatening activities, but there are many other actions in this strategy.

10 You don't think that preparing threat abatement plans for key threatening processes might be somewhere near the list of things we might have got around to doing in the last six years?---To my knowledge, we haven't done that.

15 And we should have, clearly?---That action would have to be prioritised against everything else that we do.

What took priority over that, Dr Whittington?---The implementation of the Threatened Species Protection Act. There are other activities.

20 Well, let me ask about the future. Is there any extant plan to comply with action number 1, preparing a threat abatement plan for each of the key threatening processes? Is that even on the drawing boards?---Not that I'm aware of.

25 No staff member has been allocated to preparing those plans?---Not at the moment.

And this remains, as you sit in this Court, the strategy for threatened species in this State?---Yes.

30 Is there really a strategy or is this just a pretty glossy?---As I said, there are many actions within the strategy that are being implemented.

35 Page 10, you will see there is a discussion of native vegetation clearance. I won't stay to read it all. Left-hand column, second-last paragraph commencing on that page:

The need to put in place effective measures to retain and manage native vegetation is urgent.

40 Do you see that?---Yes.

That remains the case, doesn't it, Dr Whittington?---I would argue that there are measures in place and it is urgent that we maintain those.

45 So do you say that the need to put them in place has abated, do you?---What I'm saying is that there are measures in place and it's important that we maintain those. We have programs that are ongoing. For example, I have

mentioned the private forest reserves program and others, its successor, which do these sorts of activities.

5 As at 2003 when this strategy was reprinted there was a need to put in place effective measures to retain and manage native vegetation that was urgent, wasn't there?---That's what this document says, yes.

Well, this is the policy - - -?---I'm agreeing with you.

10 Yes. Well, it is not just what it says, that was the fact, was it not?---And then I said yes, after I said this is what the document says, yes.

15 Thank you. And do you say that since 2003 that need has in some measure abated, do you?---What I said clearly, I thought, was that there are measures in place and it's urgent that we maintain those measures.

It is not a question of maintaining the measures, this document doesn't talk in that sentence about maintaining, they are needed to be put in place?---Yes.

20 Well, do you say that there is still a need to put them in place - not maintain them, put them in place?---It's important - I said, it's urgent and it's important that we continue to put in place those measures, yes.

25 So there are some measures which need to be put in place that are not presently in place?---Without having a semantic discussion, there are processes that apply on a case by case, coupe by coupe, or by application by application, it's important that we maintain issuing those measures each time one of these applications comes up, that is what I am trying to say.

30 And you will see the objectives on the next column. The objectives for controlling clearance of native vegetation are - second bullet point:

Retained critical habitat of any threatened species.

35 ?---Yes.

That remains a priority?---Yes.

40 It remained a priority from 2000 until today?---Absolutely.

45 At page 19 you will see that there is reference - again I apologise, I always do this - go back to page 18 and you will see there is a major heading Priority Threatened Species, then there is a subheading Setting Species Priorities, and then we come through to objectives and actions on page 19 and there are helpfully listed some performance indicators which enable assessment as to whether the actions have achieved the objectives. Do you say that those performance indicators have been met?---In part.

In what part?---There is a priority list of threatened species associated with the RFA.

5 We get a tick against the first bullet point?---Protection and recovery actions are developed for the highest priority species. That probably would get a tick against it in the context of things like threatened fauna adviser in the forest botany manual.

10 Well, hang on. The wedge-tailed eagle presumably is on the priority list of threatened species?---Yes.

Well, there is no recovery plan for it that is extant?---What I said was that there are prescriptions for its protection within the threatened fauna adviser.

15 Well, let me grasp this. There is no intersection at all, I ant to suggest to you, between recovery plans and management prescriptions, is there?---Recovery plans provide source material amongst other things, for the development of prescriptions by specialists in both DPIWE - sorry, Primary Industries and Water, FPA and other specialists.

20 But one does not look, it seems in practice for whatever reason, for any guidance in establishing a substance of the prescription in the recovery plan?---If there is a recovery plan available that would be a source document that would be used in the development of a prescription by the specialists.

25 Sure, but it doesn't identify the prescription?---The recovery plan doesn't?

Yes?---On the whole no, you are right.

30 No. And nor does it, I think I am correct in saying in relation to the three species here, speak about the development of management prescriptions as part of the recovery process?---I'm sure you are right. I don't know every word of all of those plans.

35 Is part of the reason for the deficiencies in complying with the strategy which I explored with you in cross-examination, a lack of funding?---No, it's not a lack of funding, it's a matter of prioritisation of the funds that we have.

40 How much would it cost - I am back at page 9 - to prepare a threat abatement plan for each of the key threatening processes identified in the strategy?---It would depend on the content of the plan of course. It would be in the tens of thousands of dollars but not too many of those I wouldn't have thought.

45 How much would it cost to prepare a threat abatement plan only in relation to the key threatening process of native vegetation clearance, Dr Whittington?---Well, my answer would be because it would build on everything else that we have available I am suggesting that it might take an

officer half a year or something to that effect to draft - get peer review and those sorts of things.

5 And the cost of that, 20 grand?---Yes, 20 to 30 grand, maybe 40. In that vicinity.

10 And do you say on your oath that there hasn't been that money available in budgets under your control to even start at the top of each of the two lists?---No.

It just didn't rank high enough on priorities?---Yes.

15 Of course there would be another consideration, wouldn't there, Dr Whittington, and that is preparing a threat abatement plan in relation to the key threatening process for native vegetation clearance. That would be an extraordinarily volatile political activity, wouldn't it?---It would be one that would need to be done carefully as all recovery plans would need to be - sorry threat abatement plans would need to be done carefully.

20 Well, it is not just any old threat abatement plan, it is a threat abatement plan for native vegetation clearance, the abatement of that and that is a substantial political issue in this State, is it not?---Yes.

25 Is perhaps one of the reasons why no threat abatement plan for native vegetation clearance - I will withdraw that. Is perhaps one of the reasons why there has been no threat abatement plan in respect of native vegetation clearance commenced, nor is it even planned to be commenced, because the department lacks the political will to implement its own threatened species strategy?---No.

30 You say that on you oath, do you, Dr Whittington?---Yes.

35 Are you familiar with the regional forests agreement?---I have a broad understanding of it, yes.

Have you ever seen a copy of it?---Yes.

Might the witness please have court book volume 1?

40 HIS HONOUR: Mr Tree, have you finished with threatened species strategy?

MR TREE: I have, and I should tender it, your Honour.

45 HIS HONOUR: Exhibit AP.

EXHIBIT #AP THREATENED SPECIES STRATEGY

MR TREE: Thank you, your Honour. And whilst I am in tendering mode I remember that I have neglected to tender the natural and cultural evaluation document in relation to coupe 17E, which I do not believe is otherwise in the court book, so I tender that also.

HIS HONOUR: It is a single piece of paper?

MR TREE: Yes, your Honour, yes.

HIS HONOUR: Headed replied from?

MR TREE: Yes.

HIS HONOUR: Exhibit AQ.

EXHIBIT #AQ THE NATURAL AND CULTURAL EVALUATION DOCUMENT IN RELATION TO COUPE 17E

20

MR TREE: If you look at page 138 of the volume that is before you you will see that that is the cover sheet for the Tasmanian Regional Forest Agreement dated November 1997.

25

HIS HONOUR: So what is being looked at?

MR TREE: I beg your pardon, your Honour?

HIS HONOUR: What volume?

MR TREE: Volume one, your Honour.

HIS HONOUR: Volume one. 138 did you say?

35

MR TREE: 138 is the first page but I wish to take the witness initially to clause 68, which is page 162.

Now, Dr Whittington, I appreciate that this is a complex document and you may not be hugely familiar with it, but I want to ask you some questions in relation to what appear to be some reasonably straightforward clauses. Clause 68 on page 162 is where I wish to initially direct your attention. Do you see clause 68 provides:

45 *The State agrees to protect the priority species listed in attachment 2 part A through the CAR reserve system or by applying relevant management prescriptions.*

And can I immediately direct your attention, please, to page 190 where you will see attachment 2 part A appears and you will see the swift parrot, number 2 on the page, broad-toothed stag beetle, at about the middle of the page and the wedge-tailed eagle about point 7 down the page all appear in that list. But
5 you will see also that there are a large number of other species contained. Now, of course you would appreciate the notion of the State doing something is difficult, it always falls to an instrumentality rather than Her Majesty personally. The obligation there seems reasonably clear, the obligation is to protect. Whose responsibility, what agencies' responsibility do you think it is
10 to achieve that protection?---Well, there's two actions for a start and I will talk to the two actions separately. So the first action is about the CAR reserve system and that responsibility falls to a range of agencies and that's really directed by the tenure who is the land manager. So for example I am responsible or my division is responsible for a number of programs that seek to
15 work with land owners, private land owners through voluntary conservation agreements to add to the CAR reserve system. And for example the private forest reserves program has got something in excess of 33,000 hectares added to the CAR reserve system since its inception. I have other programs that operate in slightly different ways but are also contributing to the CAR reserve
20 system. So given the case of State forests, Forestry Tasmania has a responsibility to add to, you know, to help achieve that objective. And it does that through forestry reserves and informal reserves. The Parks and Wildlife Service which is part of the Department of Tourism, Arts - sorry, yes, Tourism, Arts and the Environment now - manages land for the State that's reserved
25 under the Nature Conservation Act which accounts for most of the Crown's estate that's managed for conservation. So you can see you know the responsibility lies across governments - - -

Multi-agencies?--- - - - and also with private land owners who enter into
30 various conservation agreements. When it comes to by applying relevant management prescriptions, again that is the responsibility of a number. Clearly, all have to abide by the Threatened Species Protection Act. There are relevant management prescriptions developed for the forest practices system and they're delivered through various planning tools which include the
35 threatened fauna adviser and the Forest Botany Manual. We develop management prescriptions for those lands that are managed for conservation on private lands and those prescriptions are usually placed within either a management plan that's attached to a covenant or directly into a covenant. The Parks and Wildlife Service has its management - I don't know that they would
40 use the word prescriptions, but its management protocols for its lands. So my answer then again is there are a range of planning tools that provide management prescriptions and they're implemented according to land tenure by the relevant land manager.

45 Again, multiple agencies?---Yes.

And not necessarily the same agencies as had responsibility under the CAR reserve system?---There's a fair overlap there.

Sure, but it is not necessarily exactly the same agencies is it?---It's fairly close - sorry, I'm trying to think of where they're not the same.

5 All right. Well, whether they be exactly the same or not, what co-ordination are you aware of between those disparate agencies with a view to some collective strategy towards protection?---There are several forums that cross agencies where these matters would be discussed - - -

10 But those are what?--- - - - at different levels. For example, the RFA implementation group which would consider these matters and then at a more operational level, the steering committees, the various programs, for example the private forest reserves program has representatives from multiple land management agencies. The development of management prescriptions as
15 we've discussed previously is done in collaboration between the agency that I'm a part of and the Forest Practices Authority. So there is collaboration at different levels, both at a policy level and at an operational level.

20 So can you point to any individual or agency who has the overall responsibility for co-ordinating the protection of priority species by either system?---As I said it's a whole of Government approach through co-ordination through the agencies and I've just mentioned how that's achieved.

25 But ultimately whose responsibility is it to ensure that that works?---The Government's.

30 And can you put a face to that, the Premier?---Well, there are cross-agency as I said, for example the RFA implementation group. There are other administrative groups, vegetation management policy advisory group would be another that are responsible for aspects of this, but it is in the end a whole of Government responsibility.

Were you present during Mr Blakesley's evidence yesterday?---No.

35 Have you read a copy of the transcript of it?---I've not read much of the transcript, so I'm vaguely aware of the questions, but not the detail.

40 What part of the transcript of his evidence have you read?---It wasn't that I read his transcript I have talked to Andrew about part of the questions, so I'm aware of the sort of general questions.

When did you talk to him?---Last night.

45 What did you talk to him about?---About his experience here.

And about the sorts of questions that you might be asked by me today?---He talked about the questions that he got.

Did he contact you or did you contact him?---I phoned him yesterday evening.

And the purpose of that, I want to suggest to you, in part was to enable you to anticipate the sorts of questions you might get asked today?---Well, yes.

5

And he told you the sorts of questions that you might be asked today?---We discussed the questions that he was asked and I made that inference of course.

And did he tell you what his answers to those questions were?---He gave me a summary of those answers, yes. His answers I should say.

10

Why were you curious about his answers to the questions, Dr Whittington?---This is a very unusual - I have never appeared in the Federal Court before, I am very nervous, I want to know how the process works and what his experiences were. I mean that's - - -

15

Fine, that doesn't answer my question though, Dr Whittington, why did you want to know what his answers to those questions were?---I wanted to know what the questions were asked, so I might have some inkling of the sorts of evidence I should do my homework upon.

20

And no doubt Mr Blakesley told you that he was asked questions about clause 68, 69, 70, 71 of the RFA?---That is correct.

And last night you scurried through and gave us the answer in relation - sorry, and prepared the answer in relation to questions on clause 68 that you have just given us a few minutes ago?---My answer wouldn't have been very different had I not talked to Andrew.

25

Was part of the reason why you wanted to know his answers to those questions so that there wasn't any conflict between you?---Well, I wanted to know what the questions were so that I could ensure that I give the Court the best answer. I mean, and the most - - -

30

Now, answer my question please, Dr Whittington?---Ask your question again then please, I will.

35

Is one of the reasons why you wanted to know his answers to the questions so that there would be no conflict between you?---Not so much that there be no conflict but to make sure that I had the right answer - the correct answer to questions should I be asked them.

40

And you thought that knowing what his answers were might assist you in giving the correct answer, did you?---Well, these are questions you are asking me are facts, so the facts are the important thing so had he got the question and answer wrong then that would not have been that I would have - I am trying to give a correct answer to the question, and that is - - -

45

HIS HONOUR: Mr Tree, can you ask that question again?

Dr Whittington, I know it is difficult but can you try to concentrate on the precise question asked and answer it as directly as possible.

5

MR TREE: I regret I have managed to, in the moment, lose that question from my consciousness, your Honour. Other counsel may be able to assist me.

10 Did you think that knowing what Mr Blakesley's answers were might assist you in giving the correct answer?---Yes.

Is that to say that you do not in fact independently of speaking to him, know the answer to the questions in relation to the RFA clauses?---No.

15 So that what I am really getting is just an echo of Mr Blakesley's evidence from you?---No, I don't believe so. You again - yes.

How long did you speak with Mr Blakesley for?---Fifteen minutes or thereabouts.

20

Have you asked to be shown transcript of his evidence?---No.

Have you been shown transcript of his evidence?---No.

25 But, correct me if I am wrong, you have now, after your conversation with him, scurried away - I withdraw that. Looked at the RFA and prepared some answers in relation to potential questions that you believe you might be asked?---Yes.

30 Well, do you want to give me your answer to clause 70, please? What is the prepared spiel we have got there.

MR D. GUNSON: I object to that question, your Honour.

35 MR TREE: I will withdraw it, your Honour.

What observations did you wish to make in respect of clause 70 that you cogitated about last night?---I'm unsure of what you're asking me to say. I mean, the - - -

40

45 HIS HONOUR: I think you have been asked for your view on the meaning of clause 70?---My - the meaning of clause 70, the parties agree that management prescriptions or actions identified in jointly prepared and agreed recovery plans or threat abatement plans will be implemented as a matter of priority. That clause is straightforward in what is requested to be done. If there is a plan that has been jointly prepared then those actions in it should be implemented as a matter of priority. There are recovery plans that have been prepared and agreed and they are actions - management prescriptions within those and some

have been implemented and some haven't and it has been a matter of prioritisation as to those that have been implemented and those that haven't.

5 MR TREE: Well, let us just take the swift parrot. I don't want to go back through the cross-examination this morning but would you agree with me that in respect of the actions identified in that recovery plan a considerable number have not been implemented, whether as a matter of priority or at all?---I believe that a number of the recovery actions in the swift parrot plan have been commenced or are undertaken. Not all, I agree, but certainly some of them
10 have.

Whose responsibility is it to ensure compliance with clause 70, assuming that compliance is something that needs to be had?---Well, this is a joint agreement between the governments and there was a - it has to be reviewed on a regular
15 basis, on a five yearly basis. There was a review of the RFA that was undertaken by the RPDC, which is an independent body, that is at its first five year review, and that review outlined performance against each of those sort of actionable criteria or clauses and that was then submitted to governments.

20 Sure, but insofar as there is an obligation on the State of Tasmania to implement as a matter of priority actions in jointly prepared recovery plans, what agency has the responsibility to so implement it?---Well, the recovery plans themselves identify leads or responsibilities as we discussed earlier so the actual actions are identified as to who is should take responsibility for those
25 and it is the responsibility of government to meet that criteria.

Well, let's be specific. In relation to the swift parrot recovery plan for the reserving of priority nesting habitat which was one of the actions I took you to today which that plan required, whose obligation was it to implement that
30 action as a matter of priority?---Again, as I think I said earlier, it is dependent upon land tenure as to who the responsible land manager would be so on private land there are various mechanisms on private land, on land managed State forests there are the appropriate land manager and on we go.

35 But it is not Forestry Tasmania's task to implement actions from a recovery plan, is it?---It could be, yes.

40 Could it?---Recovery plans identify a whole range of players in the recovery actions, from community groups, regional NRM, State agencies, there's a whole range of people identified for different actions.

Well, sorry, I was referring specifically to the action that you have been speaking about before. I will refresh your memory as to it if you would prefer. The - - ?---Sorry, I thought you were talking more generally about actions
45 from recovery plans.

No, I am talking about in the context of one specific action in the swift parrot plan, namely the reservation of priority nesting habitat?---And again it would

depend on the land tenure but if there was - yes, it would depend on the land tenure as I think my argument - - -

5 And if it were on State forest or Crown land?---If it was on State forest then it is the responsibility of the land manager, but they would be acting in accordance with the management prescriptions that are within those planning tools that are used for you know, the threatened fauna adviser and the forest botany manual.

10 And whose responsibility is it to ensure that they are in fact implemented? Who is overseeing it?---Overseeing the recovery actions?

15 No, the implementation of actions?---Well, that specific one on forest land would be the responsibility of - well, the responsibility for managing those management prescriptions would be the Forest Practices Authority. Is your question who is watching?

Yes, who is watching?---The Forest Practices Authority.

20 Right, so - - -?---Who is watching - sorry, I am trying to understand the question.

25 You say the Forest Practices Authority is watching Forestry Tasmania, is that who is doing the policing there?---The FPA is the regulator, yes.

And it then becomes responsible for ensuring that Forestry Tasmania implements as a matter of priority, the action identified namely the reservation of priority nesting habitat?---Yes, in those - in areas subject to forestry operations, yes.

30 Did Mr Blakesley by any chance tell you what his answer to this line of questioning was?---He may have.

35 Well, let me read from page 1570 of the transcript. Actually, I will start again, 1569. Let me read this to you. It is the third bullet point I need to direct your attention to?---I don't have it in front of me, I'm sorry.

40 I am read it to you. Perhaps if there is a spare copy it might be placed before the witness? I am at 1569. About line 13, you will see half-way through a question. It is the third bullet point I need to direct your attention to:

45 *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.*

You might remember the bullet point that I took you to a few moments ago?---Yes.

Thank you. I asked him:

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

He was then taken to the justification for that, and I will leave you to read that to yourself:

10 *Again a fairly clear action that is contemplated by the recovery plan?---Yes. 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. Whose responsibility would it have been to ensure that the RFA was complied with by the implementation of those*
15 *actions?---As it indicates on the bottom of this - or that last action you talked about, it had a responsibility the administration would be to DPIWE. Yes. In relation to both of those actions?---It appears so.*

Then there is a bit of an exchange. Line 6 on the following page:

20 *But it is the swift parrot recovery plan?---Yes, it's a national one. And do you see - sorry, I withdraw that. How does one ensure that those actions take place?---How do I?*

25 Line 11:

Well, how does anybody? How does the State of Tasmania ensure that they take place or you don't know?---I don't know. Who do I ask to find out?---I believe Dr Whittington has got responsibility for that is a
30 *witness.*

So it is not you, you say, you say it is the Forest Practices Authority?---In the specific instances where they are managing an activity it is their responsibility, FPA's responsibility to ensure that those management prescriptions are
35 implemented. What Andrew Blakesley here is alluding to is I think by reading this is that in a reporting sense whose responsibility it is to, sort of, pull together all of the different activities that are undertaken by different agencies in a reporting sense and then he is correct and that it would be DPIWE or Primary Industries and Water now.

40 You, not to put too fine a point on it?---Well, yes, in a reporting sense, yes.

Yes. And in a reporting sense how have you informed yourself as to the implementation of actions in recovery plans?---I haven't specifically audited
45 actions and recovery plans or anything like that. So I am generally aware of the activities that are going on, but only at a broad level.

Is this the case in relation to clauses 68 and 70 that there are multiple agencies who seem to have some role to play but there is no clear or cogent co-ordination of them to ensure, or to even embark upon the process of successfully complying with the obligations?---The range of actions are, as I said, across multiple agencies and also outside of Government, they are pulled together in the five-yearly reviews as occurred, you know, in the 2002 review by the RPDC. There are administrative structures within Government across agencies to ensure the co-ordination of activities and the reporting into those, sort of, processes, and I mentioned, for example, the RFA implementation group is one of those committees.

Well, I can assure you Mr Blakesley didn't want to take responsibility for compliance with clause 68 or 70?---Yes, because the compliance with those things is a matter for, as I have said, those responsible for the management of that land tenure.

And there is no overall co-ordination between the independent agencies, is there?---I believe there is, there are cross-agency committees, like the RFA and plantation group, where the, you know, different responsible entities meet.

Well, then what inter-agency committee is responsible for compliance with clause 90 - sorry 70? Give me the name of it?---The responsibility rests with the different agencies.

Yes. And you were just talking about inter-agency committees?---Yes, that co-ordinate the - - -

Well, what is the inter-agency committee that co-ordinates compliance with clause 70, or isn't there one?---To my knowledge - and I don't profess to know everything about this, to my knowledge there is no - sorry, I'm confused with your - I've confused myself. The responsibility for implementing prescriptions rests in various places, that is co-ordinated but the responsibility rests back with those agencies, but there is a co-ordinating function and for different things - for different activities, it might be different groups. So, for example, in a reporting sense, the RFA implementation group has a function. For other areas, the vegetation management policy advisory group would have a function. Other areas, the heads of agency when they meet would have responsibility. So there is no single one co-ordinating body with absolute responsibility, in my view.

Doesn't that raise the spectre that absent there being any overall co-ordinating authority that compliance might just fall through the cracks?---At each land tenure if it's done appropriately that shouldn't be a risk.

If it is done appropriately, which is to say that if for instance all actions identified in the swift parrot plan have been implemented, that would be an illustration of things being done appropriately wouldn't it?---Yes.

And it wasn't done. The swift parrot plan even thought it's not extant even when it last lapsed was substantially unimplemented in actions?---Yes, there was a number of actions that weren't completed in that plan.

5 Are you aware of anybody who has been chasing you or anyone else in your department as to why it is that actions identified in that plan have not been implemented?---Has anybody been chasing me?

Yes?---Asking me questions about it?

10

Yes, asking, "Well, look hang on, there is a whole raft of actions in the swift parrot plan that haven't been implemented, why not and what are you going to do about it," or am I the first person who has ever raised it with you?---You are the first person that's ever raised it with me in that way, yes.

15

Which tends to tell, does it not, that there is no-one who assumes responsibility for ensuring that the actions are in fact implemented?---At the five year reviews those sorts of matters are brought out. The last five year review occurred before I came along, but I understand that they were the types of questions that were asked by the RPDC and I would expect the next five year review will be the same.

20

Of course at the moment your task is a little easier in relation to the three species here because there is no recovery plan, so there is nothing to implement; correct?---That is technically correct, yes.

25

Might that be one of the reasons why there little if any concern about their lapse?---I and my staff are certainly working on a new eagle plan which has actually been out for public comment and they're drafting a new swift parrot plan, so we are certainly working towards releasing new plans.

30

Can you look then please at clause 96 and 97. Clause 96 signifies relevantly for this case, that any changes including new or altered management prescriptions developed over the term of the RFA - which is 20 years I can tell you will:

35

(a) be adequate to maintain the species identified; (b) have a sound scientific basis; (c) be endorsed by the Tasmanian Threatened Species Scientific Advisory Committee where relevant; and (d) take note of public comment.

40

I want to take you initially then to clause 97:

A management prescriptions database and response to disturbance database have been prepared as part of the comprehensive regional assessment for species identified as priority protection by reservation and/or management prescriptions. The State agrees to maintain these databases and to update them as necessary, and also confirms that they

45

5 *will be used as a basis for updating relevant State management documents including the threatened species database, listing statements, management decision classification system, the forestry botany manuals, the threatened fauna manual. Updated hard copies of the database contents will be made available periodically for public comment.*

10 Now, do I understand that the management prescriptions database in its present emanation is the threatened fauna adviser?---I am not absolutely aware which database is which in these names and how they might have evolved since this document was written in 1997. My understanding is that the threatened fauna adviser and the forestry botany manual are the place where you find the current prescriptions for species. Exactly how they fit to the names in here I'm not the person to ask.

15 Now, you are aware I presume that hard copies of the threatened fauna adviser are not and never have been available?---As an electronic program?

20 Yes, a bit tricky to print it out?---It's an electronic medium.

 Yes. It effectively responds to interrogation does it not?---I have never actually used the threatened fauna adviser, but that's how I understand it works.

25 All right. Is it available in its entirety for scrutiny by the public?---I do not know the answer to that. The custodian of those planning tools is the Forest Practices Authority.

30 On the other hand you are no doubt more familiar with clause 96 because that does squarely fit within the area of responsibility of the Threatened Species Unit doesn't it, the development of management prescriptions, or new or altered management prescriptions?---In consultation with others, yes.

35 Sure. Now, there are a number of factual conditions which need to be met before these management prescriptions conform with clause 96. Can I deal with A, first of all? Do I understand that the process by which new or altered management prescriptions are developed is pursuant to the protocol that we have had regard to during the course of your cross-examination already?---For those areas that are as - you know whereas part of the forest practices system, yes.

40 Yes, so that these management prescriptions which are developed in that way should be informed by these four criteria?---That's correct.

45 Now, it follows therefore that the research which underpins them should demonstrate that the prescription is adequate to maintain the species in question?---Yes.

 That is a pretty big ask, isn't it?---It is an ask, yes.

5 You see, can I ask you this, if the population viability analysis in relation to the wedge-tailed eagle is correct, and extinction is likely within 90 years, the management prescriptions in relation to it cannot be adequate to maintain the species, can they?

10 MR D. GUNSON: Well, your Honour, I think at this stage it is appropriate I object to the way in which my learned friend is putting the population viability analysis to the witness because your Honour will recall the evidence as to that relates solely to the Bass district, not to the State as a whole and it would be made clear to the witness when the PVA is being the subject of questions it relates to Bass only. At this stage my friend is basically - and earlier this morning I think, putting it to the witness as if it applied to the whole of the State.

15 HIS HONOUR: Mr Tree?

MR TREE: Yes, I will rephrase the question.

20 If this Court were to conclude that it is likely that within 90 years the wedge-tailed eagle will be extinct in Tasmania and that is endemic to the State, so it
- - -

25 MR D. GUNSON: That is the very point I was making, your Honour, that that is not the state of the evidence from Dr Blakesley, it relates solely - Bekessy, I am sorry - to the Bass district which is north-east Tasmania.

30 HIS HONOUR: I think the witness has been asked to assume, Mr Gunson, a state of affairs for the purpose of the question.

MR TREE: That is so.

35 MR D. GUNSON: Well, if that is the question, if it is based on that basis there is no evidence as to that. That is the point I was making.

MR TREE: There is but we don't need to have the debate. I am asking the witness to assume that as a factual precondition

40 MR D. GUNSON: I am content with that form.

HIS HONOUR: Yes, thank you.

45 MR TREE: If this Court were to conclude that it is likely that within 90 years the wedge-tailed eagle will be extinct it would follow, would it not, that the management prescriptions in relation to that species are not adequate to maintain it?---Yes, that's correct.

Similarly - - -?---The threatening process is what those management prescriptions are directed at, but yes.

5 I beg your pardon?---In your hypothetical the assumption was that it was the threatening process to which the management prescription was applying was what was causing the extinction. If it was a disease, for example, that caused the extinction the management prescription may have been absolutely adequate but it was another threatening process that caused the extinction.

10 Where do I see that fine distinction in clause 96 please?---It was in the way you put the question to me, it's the way I interpreted it.

15 Well, if we were looking at prescriptions as developed having a sound scientific basis, we would no doubt expect to see them underpinned by research?---Best available knowledge, absolutely.

Thank you. The endorsement by the Threatened Species Scientific Advisory Committee is fairly self evident, it either has or it hasn't?---Correct.

20 And in D, take note of public comment. Can I go back to C though? Do you remember I asked you some questions about the protocol?---Yes.

25 The protocol is one of the annexures to your affidavit. Excuse me a moment, please, your Honour. Can I direct your attention, please, to page 2426? And there, I am sorry it is a fairly convoluted clause, it is under the heading Endorsed Management Prescriptions. The first subheading is Fauna, 3.1.2:

30 *The threatened fauna manual for production forests in Tasmania and the threatened fauna adviser program will be updated on a regular basis as new information becomes available. In addition, the manual and program should be reviewed at least every five years to coincide with five-yearly reviews under the RFA. The development and review of the manual and program and any updates will be subject to consultation amongst specialists within FBP and DPIWE, landowners and forest practices office. The manual and program and any changes will be subject to formal endorsement by the following bodies; the Director of National Parks and Wildlife Service, the scientific advisory committee established under the Threatened Species Protection Act, and the forest practices advisory council established under the Forest Practices Act. Any proposed changes will be taken as endorsed by a body where that body has not responded within three months to a request for endorsement of a change. New site data that become available to the FBP will be added to the threatened fauna manual web version as soon as practical after the site is received.*

45 Does it follow that under the protocol a change to the threatened fauna adviser in the form of a change to a management prescription can be taken to be endorsed by the scientific advisory committee if it doesn't get around to

responding within three months?---If it is submitted and they don't respond according to this, yes.

5 Would you agree with me that that seems to be in conflict with clause 96C of the RFA because it requires in fact endorsement by the scientific advisory committee?---Yes.

10 Sorry. Just excuse me a moment, please, your Honour. Now, there are a couple of housekeeping matters, if I might ask you some general questions. Firstly, do you have Mr Wilkinson's draft affidavit as provided to you?---Yes.

And is that the only other document that you have managed to retrieve over lunch?---It's the only document - I brought these copies, it's in the envelope.

15 Very well. Thank you. I wonder if I might have that, please? Now, incidentally, before I depart from the RFA and clause 96, the reference to sound scientific basis of course would encompass reference to the precautionary principle, wouldn't it?---Yes.

20 And you are aware, are you not, that in fact in relation to recovery plans under the EPBC Act the Commonwealth is obliged to apply the precautionary principle?---Yes.

25 So that it follows that to comply with clause 96 you would agree that the precautionary principle should be adhered to in ensuring that management prescriptions have a sound scientific basis?---Yes.

30 What do you understand the precautionary principle to, in substance, state?---That absolute knowledge or information - not having absolute knowledge should not be a basis for proceeding or not proceeding, depending on which way you look at it.

35 Yes. So that it is better to act with an overabundance of caution than to be wilfully blind to - - -?---Well, the precautionary principle in my understanding is directed at saying that you don't use no information as an excuse for not taking action.

40 Yes. Your Honour, I wonder if I might ask your Honour to break just for a few moments. There is a matter which other counsel have been assisting me in preparing for the cross-examination of this witness which I need to be briefed on.

HIS HONOUR: Yes. How much time do you need?

45 MR TREE: It will be brief I am told. Five or 10 minutes at the most, your Honour.

HIS HONOUR: All right. Perhaps if you can just let my associate know when you are ready to return.

5 **ADJOURNED** **[3.24pm]**

RESUMED **[3.36pm]**

10

HIS HONOUR: Yes, Mr Tree?

MR TREE: Thank you, your Honour.

15

Dr Whittington, you have given evidence that you had prior to commencing to draw your affidavit being provided with a copy of Mr Wilkinson's draft affidavit, but you were unsure whether you had read it or not, I think that is a fair summary of your evidence?---That's correct. Now, that I have printed it, I realised I have actually read it pretty well. I remember seeing it now.

20

I see?---Refreshing my memory after seeing it.

So we can now be sure that you had read it prior to commencing to draw your affidavit?---Yes.

25

And the purpose of reading it again was, sorry?---It was two-fold, one was to understand how to layout an affidavit and the second was because I was interested in the content.

30

I wonder if the witness might - if you don't already have your affidavit in front of you, it is Court book 5 and could I get you to turn to page 2318 please. Again as is my irritating habit, can I get you to flip back to page 2317 and the commencement of paragraph 101, you will see that paragraph 101(a) reads relevantly as follows:

35

The following is a brief overview of the role of the Forest Practices Authority in monitoring compliance with agreed procedures based on advice from that authority: (a) notifications for forest practices plans are submitted by forest practices officers to the Forest Practices Authority and reviewed by specialists within the Authority.

40

Are they your words?---They would be - that sentence would have been drafted by Brooke Craven my assistant.

45

I wonder if the witness might have the affidavit of Graham Wilkinson in front of him, please?

HIS HONOUR: It is in the same volume.

MR TREE: Sorry, your Honour is quite correct.

HIS HONOUR: 2430.

5

MR TREE: Yes.

And the relevant page is 2441, you can see paragraph 22 of Mr Wilkinson's affidavit commences:

10

The Forest Practices Authority monitors compliance with the agreed procedures in the following ways.

It has an awfully similar ring to the commencement to paragraph 101 and then:

15

(a) notifications of forest practices plans submitted by forest practices officer are reviewed by specialists within the Forest Practices Authority.

20 Is the similarity in drafting just coincidence do you think?---It's not coincidence, no, I wouldn't have thought. It's pertaining to exactly the same subject.

25 And the similarity in phrasing?---This - my affidavit says that this is based on advice from that Authority, so the advice from the Authority has been interpreted very literally - reproduced literally I should say.

30 I beg your pardon?---It appears that it's been reproduced fairly literally, the advice from the Authority and it's probably the same advice that was used in construction of Graham Wilkinson's affidavit.

35 I see, "following advice" means we pick up his drafting and whack it in your affidavit. If there is any doubt about it look at (b), 101(b), you may read that yourself and compare it with Mr Wilkinson's 22(b), straight crib isn't it?---I - clause 101 says that this is the advice of the Authority on how it undertakes its matters and is the same as Graham Wilkinson's brief, so yes.

40 What happened was whoever prepared this affidavit you or your assistant just simply grabbed bits out of the draft, wasn't it?---Well, that's the advice of the Forest Practices Authority that has been reproduced there.

Mr Wilkinson's draft affidavit you took as advice from the authority, did you?---He is the chief forest practices officer of the authority.

45 He is a straight - sorry, I withdraw that. Look at your D and look at Mr Wilkinson's D and E and I want to suggest to you that your D is a combination of his D and E and in fact is a straight crib from the draft that you were working from of his at the time. Accept that?---I accept that this is consistent

with - well, it is for all intents and purposes the same as the draft of Graham Wilkinson's affidavit.

5 Did you have access to Mr Wapstra's affidavit in draft form prior to preparing your affidavit?---I didn't, no.

10 Do you know if Mr Wapstra has had access to your affidavit?---He's not got it from me and I don't know that he has at all, so the answer is two parts, he didn't get it from me and I don't know that he's got it and I don't think Brooke would have given it to him either.

Did she have access to his affidavit?---Not that I know of but I don't know. I can find that out.

15 If you flip forward in - - -

HIS HONOUR: 1925.

20 MR TREE: Thank you, your Honour.

In the same volume with D, 1925. Can I get you to have open your affidavit at page 2312 and Mr Wapstra's affidavit at 1947? You see your paragraph 76 commences:

25 *This paragraph was endorsed by the Tasmanian Parliament through the amendment of the TSP Act in 2001 to include the following additional clause, 51(3) -*

30 and if I look at paragraph 43 of Mr Wapstra's affidavit we will see some similarities in drafting in the final sentence in that paragraph:

35 *This intent supported by FBP and DPIWE was endorsed by the Tasmanian Parliament through the amendment of section 51(3) of the Threatened Species Protection Act in 2001.*

Is it possible that you may have had access to Mr Wapstra's draft affidavit?---I did not have access to Mr Wapstra's draft affidavit. I cannot speak on behalf of Ms Craven.

40 Page 2306 of your affidavit, paragraph 55, and page 1956 you will see that those two - sorry, paragraph 69 in Mr Wapstra's affidavit, you will see that your paragraph 55 and his paragraph 69 seem to deal with technical notes and use similar language, do they not? You describe them as a set of advisory guidelines for forest practices officers. Mr Wapstra says it is intended as a set
45 of advisory guidelines only used by forestry practices officers and again paragraph 65 of your affidavit, page 2309, Mr Wapstra at page 1939, your paragraph 65, if I could just get you to compare that with his paragraphs 19 and 21 and particularly in paragraph 19 the words in his affidavit:

*The determination and implementation of management prescriptions
has been primarily undertaken through the forest practice system
established under the Forest Practices Act 1985 -*

5

to the extent that there are similarities, you say that they weren't deliberate on your part. Yes?---They weren't deliberate on my part, no. Yes, no, whatever, they're not deliberate on my part.

10 Thank you, your Honour.

HIS HONOUR: Thank you, Mr Tree. Mr Gunson?

15 <RE-EXAMINATION BY MR D. GUNSON

[3.48pm]

MR D. GUNSON: Just dealing with these matters that were addressed by Mr Tree concerning the topic of the comparison of the affidavits between yourself
20 and Mr Wapstra, is this is the first time it has been drawn to your attention?---Yes.

Could I take you please, to the page 2429. Have you got that open, Dr Whittington?---Yes.

25

And can I ask you again if you would just read to yourself please, clause 7 of the protocol headed Monitoring of Efficiency of Prescriptions. You were asked a number of questions by Mr Tree concerning the threatened species strategy for Tasmania and you said in response to his questions about that,
30 several times, and I quote and I hope I can quote you correctly:

There are many other strategies or actions in the plan that have been implemented.

35 Do you recall saying that?---The threatened species strategy, yes.

Could you take a few minutes, please, and look at the strategy and identify, if you can, which strategies or actions in that plan have been implemented? I am not interested in the minutiae, but if you would look generally, please. Just
40 take your time, don't rush it, please?---Could I just come to them as I turn through the pages?

Certainly?---If we come to - - -

45 HIS HONOUR: This is exhibit AP; is that correct?

MR D. GUNSON: Exhibit AP, your Honour. Your Honour is correct. I am sorry, I should have identified it.

Just take your time if you would, please, and go through exhibit AP and as you come to them identify those which have been implemented?---If we come to page 10 on native vegetation clearance, the action is to develop in conjunction with other State instrumentalities which have an interest in land-use regulation a policy on the retention and management of native vegetation which achieves a series of dot pots. The State has a policy of maintaining - then we cross to State policy which deals with those matters and that policy has been recently revised following the community forest agreement and was released in November of last year. The next action is to monitor the rates and distribution of native vegetation clearance across Tasmania and publish results of this monitoring every five years. There are several ways that that is being addressed, both through the reports of the Forest Practices Authority but also within my staff we have a project using satellite data to determine the area of native vegetation in this State and we are developing techniques for measuring change using that.

Yes?---The next action is to educate land-holders about the values of native vegetation areas for threatened species conservation and provide values of maintaining understorey vegetation cover. My staff work through various processes to engage with the community whether it's through events such as Agfest, threatened species day, the manager of the unit has a fortnightly spot on local radio, for example, all of these are about community awareness and education.

And just for his Honour's benefit, what is Agfest?---It's the largest agricultural festival in the State, it's on as we speak. They have about 80,000 people going through the gates.

HIS HONOUR: Causing an accommodation crisis in Launceston.

MR D. GUNSON: I think that is the media contingent from Beaconsfield actually, your Honour?---It is one of the largest agricultural shows in the southern hemisphere and we have a large presence at the site. Develop and implement community involvement programs to encourage the retention and restoration of native vegetation. Well, through nature conservation covenance I have described the success of the private forest reserves program through that and other programs that we have. Stewardship and management agreements. We have management agreements over large areas of Tasmania with private landowners. Voluntary off-reserve conservation through programs such as land for wildlife. Land for wildlife currently has something like 45,000 hectares under agreement with over 500 landowners. Encourage Local Government to develop and implement programs for the protection and retention of native vegetation. We work closely with Local Government in providing information and advice.

Yes?---I have just talked through that one. Do you want me to keep going through each of the other actions?

Yes, I want you to go right through the document, please, if you would?---The next set of actions deal with pests, weeds, and diseases.

5 HIS HONOUR: Sorry, you missed 6. Does that mean that you don't do
that?---We do that in different - I mean, under different land tenures through
different mechanisms. I mentioned before about the - through those lands that
we have formal covenant over, we have a monitoring and an evaluation team
that work to ensure that the management prescriptions within the covenant
10 are achieving the outcomes that we seek. We have very outcome orientated
goals in those plans, or prescriptions, I should say, and so we - mostly about
the retention of the condition of the vegetation. We have already spent quite a
lot of time today talking about the ongoing consultation with the Forest
Practices Authority about management prescriptions within the system that is
15 regulated by the FPA.

All right. Now, if you would move on from there, I think you were about to
start on an area - - -?---On pest weeds and diseases?

20 Yes. If you could just tell us the page numbers as we go, please?---Okay. I'll
move straight to page 12.

Still on page 11?---Sorry, yes, it starts on page 11, but the actions are on page
12.

25 Yes?---Identify and prioritise the threats from pests, weeds, and diseases. If I
just look at weeds, there are over 100 weeds declared for which management
plans either have been prepared or in the preparation of being prepared. Over
80 of those are prepared. With diseases, for example, the devil-facial-tumour
30 disease, the State has invested - I'm trying to do the maths, but many millions
of dollars into research into devil-facial-tumour disease, but it also has - we
also work on various other animal diseases, including Chytrid fungus, frog
fungus, and the disease on platypus. Pests. And we could take, for example,
the fox program, the fox-free task force, it's been a \$5 million program aimed
35 at maintaining Tasmania's fox-free status, that program has been critical - well,
the success of that program is critical in ensuring the biodiversity of the State is
protected.

40 And was that program developed in response to a threat that suddenly arose
when some persons are believed to have released a litter or more of fox cubs in
the State?---That's correct, that program was in response to strong evidence
that there was a threat of foxes establishing and that was the route by which
- - -

45 Yes and I think you said \$5 million or thereabouts has been spent so far?---By
the end of this financial year about \$5.2 million or thereabouts plus about 1.6
million of Commonwealth money as well. The Commonwealth has also
contributed to that program.

What about the devil facial tumour disease that is rampant amongst Tasmanian devils?---There's been several million, approximately \$2 million of State funds to date have been expended. The Commonwealth Government has committed
5 through the Community Forest Agreement \$2 million to that disease and in the last election the Labor Government as part of its election campaign said it would provide \$3 million over the next two years to continue that effort and the budget process is still in train, so that's where that is at the moment.

10 All right?---Assist development of and implement the national threat abatement plan for phytophthora cinnamomi, I have a personal - - -

What is that?---It's a fungal disease which affects some native plants.

15 And is it fatal to them?---Yes. And we have an officer whose on my staff whose job it is to work on developing actions to support the management of phytophthora and there are various protocols that have been created and they're used throughout our land use planning processes. Develop and implement
20 integrated weed control techniques for major weed problems threatening species - we have - that's addressed through a range of processes both within my - on my staff we have a weeds management group that work both in agricultural weeds, but we also provide advice to land managers on weeds affecting natural values in places like world heritage area and other areas. We
25 have a State strategy called Weed Plan that co-ordinates that work. We work with regional NRM in developing weed strategies for each of the regions and then those strategies are being funded now through the NHT and that process and whilst I don't know the exact quantum going to weeds, it's a fair proportion of the more than \$20 million that's been invested through regional NRM.

30 Yes?---Support the preparation of national threat abatement plans for feral goats and feral cats and adopt policies to manage these and other feral fauna - well, I've mentioned foxes, cats, feral cats are very - almost intractable
35 problem. On islands such as Macquarie Island we've been successful at eradicating cats so we have done that - in where we believe eradication is feasible. Where we don't believe eradication is feasible then we will do - we have done to protect natural assets such as specific penguin or shearwater rookeries, we've implemented cat control process and baiting programs in those areas. I am unsure of any work on feral goats, but there is certainly - if deer,
40 for example, go outside of the deer range we will remove those through shooting. Prepare emergency plan to deal with the introduction of foxes. Well, we have a plan, but we've also invested very heavily in implementing that plan as I've already mentioned.

45 And was that plan in existence for some years before the foxes were actually discovered here?---That is well before my time, I don't know what plan existed prior, but certainly once the threat was recognised then a works plan was rapidly developed and that's been reviewed by international as well as national experts, twice now. Promote responsible management to control domestic pets

from livestock. That is mostly through public education campaigns where we work through those processes that I've mentioned before.

5 On the subject of feral creatures, did you include within that the carp
infestation that took place as a result of introduced carp into Lake Crescent and
such - - -?---No, I didn't mention that, but that is another example. That was
co-ordinated by the Inland Fishery Service. I don't know the quantum of
investment in that, but that has certainly been a - there's a long term
10 commitment to eradicating carp from the lakes and also seeing that they don't
spread into the Clyde and then into the Derwent system.

Right. If we look at item 6 then?---As I said they're promoting responsible
management and control of domestic pets and livestock, that is - much of that
15 is the responsibility of Local Government for domestic pets of course, but we
support through our more general community education activities, you know,
the need for responsible pet ownership and livestock ownership. Review
quarantine measures to prevent further introductions of - sorry, of exotic flora
and fauna, particularly to offshore islands in the sub-Antarctic - I am not - I
20 don't have knowledge of what we do in the sub-Antarctic, but certainly on
mainland Australia there was the Gorrie Report that was undertaken several
years ago which has led to a dramatic increase in investment in the barrier, in
the quarantine barrier for the States and we're developing a State biosecurity
strategy as we speak.

25 Right?---Manage exotic species in accordance with threatened species recovery
plans and threat abatement plans - I'm not - I don't know of any specific
activities in that area, however, there are certainly recovery actions that have
been undertaken by my staff and through regional NRM where weed control
has been an important part of that recovery action and there's some examples of
30 that in the Midlands - my brain, sorry, I think it's a hardenbergia violacia, but I
could be wrong. Prevent rabbits reaching offshore islands currently rabbit-free
- I don't know what specific actions have been done in those areas, but I do
know that for example on Tasman Island we do rabbit control activities to try
and reduce rabbits. And we're currently - we've been developing a plan for
35 rabbit eradication in conjunction with the Parks and Wildlife Service on
Macquarie Island and we're currently finalising that plan and trying to seek
funding. If that is successful it will be something like three times larger than
any other island that's ever been eradicated of rabbits, so it's a very ambitious
plan that we're considering at the moment. Integrate the conservation of
40 threatened species into regional weed management strategies and State weed
control strategies, I am not - I am unsure of the detail in the State weed
management strategy when it comes to threatened species so I - there is a weed
management strategy or weed plan and I am fairly confident addresses
threatened species but I don't know the detail so - - -

45

We then move on at page 13 to degradation of water systems and the
objectives are set out there and the actions so that there are some nine set out
on page 14 and I am conscious of the time. Perhaps if you would just read

through those nine identified actions for me, please, and then tell me whether or not any action is being taken with respect to them?---What if I deal with the first two in the - through several mechanisms they are working to develop catchment management plans as the regional NRM have their regional
5 strategies which also have sub-catchment or sub-regional or catchment level plans. There is, as I said, close to - it's over \$26 million has been invested through regional NRM in Tasmania between 2004 and 2008 addressing catchment management issues. There are also catchment water management plans that are being developed across the State which do consider threatened
10 species. The Little Swanport catchment water management plan considers - which is currently before the RPDC as a draft considers the swan gull access. These are things I absolutely know, I suppose, and the one that was developed for the great forest considered as to cospes goodeii, a threatened species, so threatened species are integral to catchment water plans that are being
15 developed around the State. The State does not have a good cultural code of practice, which is point 3?

The Southern three?---Yes, we have developed a State wetlands policy. Through regional NRM there has been significant or there is ongoing
20 investment into management of wetlands. All applications for dams have to be - are assessed also for their impact on threatened species. The assessment community on dam construction refers those to the threatened species unit for assessment or certainly to the division for assessment, so that all dam proposals are assessed for threatened species. That is part 6. Seven, is to manage aquatic and riparian environments to protect certain species. Well, there are a range of
25 procedures in place for different land tenures but within the forest practices system there are prescriptions such as - well, there are planning requirements such as stream side reserves as well as specific prescriptions for individual species on a species by species nature. The State has an environmental flows
30 policy and the procedures it uses for developing environmental flows very much rely on information and build on - sorry, the system they use is based on the water requirements of species within the river system, the IFIM method, and that includes threatened species.

35 Right?---Identified priority areas that could be protected is freshwater river reserves for threatened aquatic species. The conservation and freshwater ecosystem values project is a flagship project of the State and that is its explicit purpose and that is recognised now I believe, nationally, as a leading example of that.

40 The next item commences at the bottom of that page under the heading Inappropriate Use of Fire and if you would turn over you will find some eight actions set out there. Are you familiar with those?---I'm not familiar with fire management in the State.

45 All right, thank you. If we then look at the next item which is inappropriate or illegal harvesting, are you familiar with that?---In part, yes.

5 Yes. When you say in part, can you indicate your area of familiarity?---My staff are - I have the compliance enforcement officers for the Nature Conservation Act which includes the wildlife regulations as well as the Threatened Species Protection Act so in a general sense I understand the scope of their activities but I am not an enforcement of compliance officer.

10 If you look through the actions are you - there are some seven identified, are you able to make any comment about them from your own knowledge?---Certainly management plans for sustainable harvesting of native flora and fauna where harvesting is appropriate the State has done a number of actions in those areas. Those specifically that I am responsible for are, and the most recent, would be all of the wildlife tried management plans for King and Flinders Islands for the taking of wallaby, sustainable harvesting of wallaby and they are submitted under the EPBC Act so that we can export wallaby products. We are in the process of developing possum - similar plans for possums for mainland Tasmania and for - wallaby for the mainland Tasmania. The actions to do with fishing are outside of my area of knowledge so for example, the gill netting.

20 Yes. Would you go to item 2?---Sorry, item 2, implement management plans for sustainable harvesting?

25 Native flora and fauna?---Sorry, native flora. Yes, I have mentioned some fauna. For flora I am not - sorry, yes, I am reading that too literally, I am thinking of flowers. Sorry. The management plans for sustainable harvesting of native flora, I mean, the sort of the timber harvesting in its broader sense. I mean, there's a highly regulated system that we have discussed through the forest practices system and there are various things within that.

30 All right. What about item 3, I imagine it is not an area you are familiar with?---That's correct. I really don't know specifically anything about kelp harvesting.

35 All right, 5?---Well, I mean, again it would come back to the forest practices system, that goes to the heart of that.

40 And 6?---Again depending on what the species is and the tenure, the forest practices system encourages that plus I have power enforcement officers that manage the game seasons, for example, for mutton bird or whatever.

And I suppose that follows with item 7 as well?---That's correct. We focus where we see both a risk of illegal harvesting.

45 Can I take you then to the next one on page 17, which is the impact of stock. Is that an area with which you have a degree of familiarity?---I have some familiarity, yes.

I wonder if you would look at the actions in respect of the impact of stock and just go through them and tell me what you can about those as to whether or not steps are being taken in accordance with the required actions?---The approach to working with private landowners is to work in a co-operative fashion and to working in close consultation and collaboration with regional NRM and through that we are involved in various extension activities to demonstrate good practices and a number of programs that are funded through regional NRM which we are a partner in are aimed at property management planning which is very much about improving the practices for extensive agriculture as well as more intensive agriculture. And that is the sort of approach that we take in the broad to 1 and 2, but - - -

HIS HONOUR: Are any of those eight items not taking place?---They're all occurring to differing degrees in different land tenures.

MR D. GUNSON: If we then go to page 18 under Priority Threatened Species, and if you then look at the actions that are set out at page 19, are there any actions that are identified there that you are not actively engaged in, that is, that the actions are not being performed?---Each of those actions to some extent has been implemented and we've - - -

Thank you. Would you go to page 20, and you will see there under the heading Listing Statements the objectives and then the actions. Are they being carried out?---We are preparing listing statements for species listed under the Threatened Species Protection Act.

Yes?---We have approximately 50 listing statements of the 650 species on the schedule. The Act says that we are to do it as promptly as we can.

Yes. And what about items 2 and 3 that are listed there?---The RFA and the priority listing there is directing - gives us direction in those areas and we've talked about the progress already, and use listing statements in place of recovery plans where the recovery actions do not warrant preparation of a full recovery plan, that's also what we do.

If you would then look at the next page under the heading Critical Habitat. Just refresh your memory about that. And then move across, please, to the paragraph opposite headed Actions and if we just look at the four items there?---I'm not aware of the identification of any critical habitat since I've been in this position.

What about item 2, the preparation of maps in accordance with the Threatened Species Protection Act?---In the context of critical habitat, I don't know of any work in that area; in the context of critical habitat, and that is defined.

And what about items 3 and 4?---Ever since I have been in this role I don't know of any examples of critical habitat being determined by the director and nor therefore the fourth would imply that that hasn't happened.

Right. Well, I think we dealt with this this morning, the recovery plans. If we go to the actions on the next page at page 22, there is a requirement as was identified this morning to prepare a recovery plan for all national priority species. I think my learned friend dwelt mainly on the swift parrot, are you able to say to his Honour what other priority species have been identified and have recovery plans prepared for them?---Those plans would be - are in my affidavit, a list of those plans.

10 And as to the funding for implementation of the priority plans?---Comes from a variety of sources, principally through the National Heritage Trust is our main source of funding.

15 Thank you. Could I take you to the land management plans, which are opposite, and to the actions there. Can you make any comment about the five actions that are listed?---The State has generally not - well, has not used land management plans as a vehicle. The State's approach is to be working in a more co-operative way and to use voluntary agreements and to promote the use of voluntary agreements rather than land management plans for private land.
20 For public lands the State has - sorry, we have developed public authority management agreements with several agencies. A good example of that is with the Department of Infrastructure, Energy and Resources for managing threatened species, particularly grasses along roadsides and so when they do slashing works, the fire reduction, that type of thing, there is quite
25 comprehensive plans in place for those works so we use PAMAs or public authority management agreements for those purposes.

Thank you. Your Honour, I am going to be a little time yet with - - -

30 HIS HONOUR: I think we can keep going for the moment.

MR D. GUNSON: I can. I am conscious the witness has been in the witness box all day, your Honour, and - - -

35 HIS HONOUR: Well, we had a break during the afternoon.

MR D. GUNSON: We did indeed.

40 HIS HONOUR: And I at least propose to sit till 4.30 unless there was some difficulty.

MR D. GUNSON: Yes, I have got no problems at all, I am just - - -

45 HIS HONOUR: Have you any difficulty, Dr Whittington?---No.

I have regard to the fact that you are a very busy man and I wouldn't want to bring you back here tomorrow unless it was absolutely necessary. From my point of view I don't want to tell Mr Gunson what to do but I would have

thought it would be sufficient for me to know in respect of each of the matters you are being directed to, what you are not doing and I can assume that you are doing the rest, and I think that could be done in 10 minutes.

5 MR D. GUNSON: It probably can, your Honour, though there are other matters I want to take the witness to.

HIS HONOUR: Well, we will see how we go at 4.30.

10 MR D. GUNSON: Yes, certainly, your Honour.

Perhaps if we address it that way, if you just take your time, go through the document, look at the actions under each of the heads and tell us what you are not doing. That might save a little time as his Honour suggests?

15

HIS HONOUR: Just as you come to something you are not doing record it and move on?---Yes, okay. All of the actions on page 24 we are doing something towards so that's not quite what you asked. Sorry, all of those to do with threatened communities.

20

I am assuming that what you don't mention, you are doing?---I am unaware - I don't know that - if the unit developed back in 2000 or 2002 an implementation plan for strategy.

25

HIS HONOUR: What page number?---Sorry, this is page 30, action 1, but I am not aware that that's been done or a budget for that, which is action 2. Action 4, there is a threatened species trust fund, but we don't have an active fund-raising campaign associated with that. We don't - action 6, raise finance through the provision of a threatened species management consultancy service; that is not something that is a priority for us. Action 10, which is to seek financial or other resource contributions from those making financial gain from threatened species; there is not an action that has a much lot of effort to my knowledge.

30

35

I take it 11 would be in the same category?---There are examples of where we have done that through offsets, so if as part of a package of offsets, examples specifically would be, for example, approvals for wind farms where part of the offset is funding for research into recovery actions, for example, the orange bellied parrot. And then the last two actions on page 30, establish a program to monitor and evaluate the implementation of the strategy is not being done in a formal way.

40

MR D. GUNSON: And does that conclude the document?---That concludes the document.

45

Thank you. So with those exceptions that you have identified, I think from page 24 onwards to about page 30, all of those actions identified have been performed?---That's right and in some instances to a degree.

5 You were asked some questions this morning by Mr Tree about the threat abatement plans and you suggested they could cost into the tens of thousands of dollars and I think you went on to say that perhaps six months of one of your officer's time would be involved. Can you tell his Honour briefly what is involved in the preparation of a threat abatement plan for any particular species? What steps are taken?---I am afraid that I would be winging that and I don't really know. I would like to refer to legislation to know how to do that.

10 All right. Thank you. If you are not familiar, I won't ask you to add any further. You were asked some questions about your conversation with Mr Blakesley last evening. Initially you were asked whether you had seen or read a transcript. I think your answer was yes and later, following some further questions, you said you hadn't read a transcript. I just want to clarify this issue.
15 Did you see a document that looks like this? Could you pass this to the witness? In other words, a written verbatim transcript of Mr Blakesley's evidence?---No.

20 Thank you. And that can be returned to me, please. Am I right in thinking that your contact with him was limited to a telephone conversation?---Yes.

25 Thank you. You were asked some questions - just bear with me one moment, please. With respect to the monitoring of the efficacy of prescriptions about the broad-toothed stage beetle - do you remember those? It probably seems a long time ago. Are you familiar with a report - well, perhaps I should ask first of all, can the witness be shown exhibit 12, please?---Is directed at monitoring the efficacy of the management prescription.

30 If you go to page 6, please, under the heading Acknowledgments, do you read - if you see the last sentence there, the study was undertaken under threatened species permit number TFA05232?---Yes.

35 And are you of course responsible for the operations of the Threatened Species Unit?---Yes.

Could the witness be shown volume 9 of the Court book, please? And if you can turn to page 2858, please? You should have before you a copy of permit number TFA05232, do you have that?---Yes.

40 That is a permit addressed to Dr Sara Munks of the Forest Practices Authority in Hobart?---Yes.

45 And does clause 8 or condition 8 require that there be a report of all animals recorded, etcetera and details provided to the TSU concerning the research into that broad-toothed stag beetle?---Yes.

Thank you. I have no further questions.

HIS HONOUR: Thank you, Mr Gunson. Would you like Dr Whittington excused?

MR D. GUNSON: Indeed, your Honour.

5

HIS HONOUR: Dr Whittington, thanks for your attendance, you may be excused from further attendance, but if you wish you may come back; I trust you have better things to do?---Thank you.

10

<THE WITNESS WITHDREW

[4.32pm]

15

HIS HONOUR: The Court will now adjourn until 9.15 tomorrow morning.

MATTER ADJOURNED at 4.34 pm UNTIL FRIDAY, 5 MAY 2006

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NONE REQUESTED