

TRANSCRIPT OF PROCEEDINGS

O/N 2848

FEDERAL COURT OF AUSTRALIA

TASMANIA DISTRICT REGISTRY

MARSHALL J

No TAD 17 of 2005

ROBERT BROWN

and

FORESTRY TASMANIA and OTHERS

HOBART

9.16 AM, FRIDAY, 5 MAY 2006

Continued from 4.5.06

DAY TWENTY ONE

**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: Yes, Mr Tree?

5 MR TREE: Your Honour, there is one matter which I should alert your Honour to, and that is that, for reasons which I do not need to go into, there is an unresolved issue in relation to the inspection of some documents by the applicant's solicitors, apparently held by the respondent's solicitors. As of the time that I stand at the moment, apparently that has not, or the inspection of those documents has not been able to be, I will use a neutral word, co-ordinated or achieved. Some of those documents do relate to who I understand to be the next witness, Mr Wilkinson, and I simply alert your Honour to the fact that if that inspection issue remains unresolved, then his cross-examination will not be able to be concluded.

15 HIS HONOUR: Yes, thank you. Mr Gunson?

MR D. GUNSON: I don't think it necessary for me to comment, your Honour. There have been some difficulties. As to the basis of who is responsible it is not appropriate now - there is no application before you and I am not here to "tell tales". I simply will call the next witness, your Honour.

20 HIS HONOUR: Yes, thank you.

MR D. GUNSON: Mr Graham Wilkinson, please.

25 <GRAHAM RICHARD WILKINSON, SWORN [9.18am]

30 <EXAMINATION-IN-CHIEF BY MR D. GUNSON

HIS HONOUR: Mr Gunson?

35 MR D. GUNSON: Thank you, your Honour.

You are Graham Richard Wilkinson?---Yes.

And you reside at 30 Patrick Street, Hobart?---That's my work address.

40 You state your work address as 30 Patrick Street, Hobart. You are a public servant in the employ of the State of Tasmania?---Yes.

You are employed by the Forest Practices Authority in the capacity as Chief Forest Practice Officer; is that correct?---Yes.

45 Could the witness be shown his affidavit, please, or a copy of it, which will be found in volume 5, page 2430?

Mr Wilkinson, could you have a look, please, at that affidavit, or more correctly the copy of the affidavit that appears at that page and tell me whether that appears to be a copy of the affidavit sworn by you on 18 November 2005?---Yes, it does.

5

Is that affidavit true and correct?---Yes, but I have some corrections I would like to make.

Yes, if you would, please. Would you identify those, please?---Certainly.
10 Clause 20 of my affidavit - I just have to find the appropriate page here.

2440?---Okay. I think it's line 7, the line commencing "Procedures", I think there is a word missing there that should say "for", f-o-r - "Procedures for Forest Practices Plans".

15

Yes?---And then paragraph 22, which is 002441 - I am sorry, it goes to paragraph (d) of 22, which is the next page, I think line 6, starting Practices Authority, which reads:

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...who are qualified forest practice officers and -

I would like to insert "are trained as" -

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environmental auditors under the RABQSA international certified environmental auditor program.

Yes?---And I would like to add one sentence, which reads:

30

The head auditor is accredited under that program and the assistant auditor is undergoing accreditation.

And they are the only additions or amendments you wish to make to your affidavit?---They are, yes.

35

Take the affidavit as read, if it please, your Honour.

HIS HONOUR: Thank you, Mr Gunson. Mr Tree? You will take the cross-examination as far as you can go now, and - - -

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MR TREE: Yes, I will, your Honour.

<CROSS-EXAMINATION BY MR TREE

[9.21am]

45

MR TREE: Mr Wilkinson, can you explain the process by which you have come to give evidence today, please, how it began and the milestones along the way?---My recollection is that I got a phone call from John McDonald

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sometime last year after this Court case had been initiated indicating that it was likely that the Forest Practices Authority would be required to provide evidence in respect of this matter. My recollection is that Mr McDonald indicated that I was likely to be subpoenaed to give evidence, and my response was that I was quite willing to be put in a position of giving evidence, and I was prepared to prepare an affidavit, which I duly did.

10
Now, who have you been dealing with at Forestry Tasmania in relation to the preparation of your affidavit?---My dealings have been primarily with Mr McDonald as the legal counsel. I have had some communications with Maree Yee as well.

15
I see. And what has been the nature of the communications that you have had with Mr McDonald.

MR D. GUNSON: I object to the question, your Honour, on the ground of legal professional privilege, or alternatively litigation privilege.

20
HIS HONOUR: Mr Tree?

MR TREE: I don't stay to debate the question of privilege. I will approach it from another way.

25
What has been the content of the communications that you have had with Dr Yee?---Mainly along the lines of the timing of the hearings, the likely witnesses that were going to be called, basically that sort of level of information.

30
I see. And have you had any contact with Dr Drielsma in relation to your evidence?---No.

35
Have you been formally retained in some way to give evidence? Have you been given a lever in which you were formally asked to give evidence about a particular area?---No, I don't think so.

40
In the course of preparing your evidence have you received written communications from Forestry Tasmania?---I may have received some email correspondence in relation to the requirements for submitting evidence under the Federal Court. I haven't had any other specific instructions, no.

45
I see. Were you supplied with a copy of this document? I hasten to say probably in electronic form, not in hard copy?---It doesn't look familiar. It may have been sent as an email. I don't recall having received this information. I have no recollection of having read it.

Well, let me approach it from another way. Were you aware of a timetable which was in place for the preparation of drafts of affidavits to be filed on behalf of the respondent?---I was aware that there was a meeting held and that

there was some advice given with respect to the preparation of affidavits. I prepared my affidavit back in September because I was overseas essentially for about six weeks from October. So I didn't immerse myself and saw no need to immerse myself in any arrangements that were put in place to co-ordinate evidence being provided according to a certain timeframe. I had my own timeframe, which was that I had to substantially prepare my evidence before I departed overseas, which I did in September.

And am I correct in saying that the document that you provide - sorry, it follows then that you provided Forestry with that document in September?---I provided Mr McDonald with my evidence prior to departing overseas with the intent that because I hadn't prepared a brief or an affidavit for the Federal Court that I - I sent it to him so that he could format it in the appropriate legal format, if you like, so the document I sent him was essentially a Word document and I asked that he would put that into the correct format for submission as an affidavit so that I could complete that affidavit and sign it upon my return from overseas.

So it was not in a sworn condition at the time that you forwarded it to Mr McDonald?---No.

And did Mr McDonald undertake some drafting changes to it in between when you forwarded it to him and your return to Tasmania?---Well, I didn't request that. I requested feedback on whether or not it was in an appropriate format to meet the requirements of the Court. When I returned from overseas I think Mr McDonald made some comments on changes that could be made to improve the evidence and that was, I think, specifically in relation to rather than citing the audit results that were contained in our annual report, to actually attach them so I remember having some discussion along those lines. But nothing in terms of the substance of the evidence that I provided.

Do you have a copy of your affidavit before you at the moment?---Yes, I do.

Thank you. Could you turn please to paragraph 20 of that and correct me if I am wrong, but there appears in that paragraph an extract from the then Minister's second reading speech in relation to Threatened Species Protection Act?---Yes.

Did that appear in your first draft that you forwarded to Mr McDonald in September?---You're testing my memory here. I think so. I think I also included the actual part of the Threatened Species Protection Act in my first draft which I subsequently took out because I felt that I - the purpose of my evidence was to talk about the intent of the change to the Act rather than just to repeat it as such, so - - -

Do you have available to you a copy of the document that you believe you forwarded to Mr McDonald in September last year?---I do, yes.

You do, and do you have that with you?---Yes, I do.

Might I see it please? I just want to compare it with the document that I have?---Yes.

5

MR ABBOTT: Objection is taken on the ground of privilege, if it please the Court. This witness is not an expert and he was sending the document to Mr McDonald for advice. There's been no waiver we would submit.

10 HIS HONOUR: Was it, is that the evidence?

MR TREE: Well, that is not his evidence with respect, your Honour.

MR ABBOTT: Well, advice about how it was to be put into - - -

15

HIS HONOUR: Well, I don't think you should go any further with that, it is dangerous.

MR ABBOTT: If it please.

20

HIS HONOUR: And certainly not in the presence of the witness.

MR ABBOTT: If it please.

25 HIS HONOUR: I don't think it was a proper objection at the moment, you can proceed, Mr Tree.

MR TREE: Thank you, your Honour.

30 HIS HONOUR: You can have the debate if you want to, Mr Abbott, just not in the presence of the witness.

MR ABBOTT: Well, in that case, your Honour, it is suggested to me that the debate needs to be had and I would ask the witness leave the Court.

35

HIS HONOUR: You can understand why I stopped you?

MR ABBOTT: I follow that, your Honour.

40 HIS HONOUR: Yes. Would you mine? I am sorry, Mr Wilkinson?---Sure, no worries.

Don't go far away and don't go next door.

45

<THE WITNESS WITHDREW

[9.31am]

MR ABBOTT: I see a shake of the head as he was leaving the Court, your Honour, I will take that to be the position.

HIS HONOUR: Yes.

5

MR ABBOTT: I take the point, your Honour, that the draft was sent to Mr McDonald expressly for the purpose of obtaining advice, not as to the content of it but as to the format of it. Nonetheless, you Honour, it has still been sent to Mr McDonald as a communication of evidence intended to be given and for the purpose of obtaining advice. Now, true it is that the - - -

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HIS HONOUR: Legal advice or formatting advice?

MR ABBOTT: Legal advice about format, your Honour. It was made out legal advice it is submitted. That is his evidence.

15

HIS HONOUR: As formatting legal advice?

MR ABBOTT: Well, yes, your Honour. I mean, there is a legal requirement that it take a particular form under our rules, that is to say under the Federal Court rules, and it is about that that the advice has been sought and it is about - there is no evidence about the advice that was given.

20

HIS HONOUR: Well, if Mr Tree doesn't ask him about formatting then there can be no objection.

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MR BROADFOOT: If we might assist, your Honour.

HIS HONOUR: I hadn't finished yet, Mr Broadfoot.

30

MR BROADFOOT: I am sorry, your Honour.

HIS HONOUR: So if Mr Tree doesn't ask him about formatting then there can be no objection because that is a matter in respect of which he took advice.

35

MR ABBOTT: And also, your Honour, he did give evidence that he had asked for advice - I am sorry. There had been a suggestion given by Mr McDonald to add some material which - - -

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HIS HONOUR: Material that he referred to in the body of the affidavit without setting out and is subsequently set out.

MR ABBOTT: It was subsequently set out, that's correct, your Honour.

45

HIS HONOUR: Is that all you want to say to me?

MR ABBOTT: That is all I wish to say at the moment, your Honour.

HIS HONOUR: Yes. Mr Broadfoot?

MR BROADFOOT: If we might assist, your Honour. From the Commonwealth's point of view we wouldn't like to see anything go in that ought not go in. It would appear, with respect to be a confidential communication between a client and a third party for the purposes of the client being provided with legal services directly relating to the proceeding and therefore subject potentially to privilege under section 119 and Mr Abbott is correct, we would submit, in submitting that the issue of imputed waiver in relation to instructions to experts and communications with expert witnesses does not arise where one is putting forward a witness of fact in which circumstance drafts of the affidavit and other material provided to witnesses of fact are ordinarily privileged in our submission.

HIS HONOUR: Does anyone else want to enter the debate? Mr Tree?

MR TREE: Thank you, your Honour. Your Honour, the simple position is that this witness compiled a document that was in, as his evidence would suggest, a form that was complete apart from formatting and he sent it for the act of formatting rather than advice as to formatting and on that basis it is not privilege from the call for production.

HIS HONOUR: That is all you want to do now is to call for production?

MR TREE: That is so, I am not tendering it, your Honour.

HIS HONOUR: All right. All right. Well, we might have Mr Wilkinson return.

<CROSS-EXAMINATION BY MR TREE

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HIS HONOUR: Mr Wilkinson, I just want to clarify a matter with you. Have a seat. What was the purpose for you sending the draft affidavit to Mr McDonald?---Well, as I said, the primary purpose was that I hadn't prepared an affidavit for the Federal Court before so I wrote what I thought was the evidence that I wanted to submit and my specific request to Mr McDonald was for him to put it into some standard format so it could be sworn as an affidavit. I didn't seek any comment on the substance of the affidavit or the evidence.

10
15 Yes, thank you. Anyone want to say anything else in light of that?

MR ABBOTT: No thank you, your Honour.

HIS HONOUR: Yes. I don't see why the material is privileged, it should be produced, it only goes to formatting?---Your Honour, can I just clarify with that version there, I printed that off my computer yesterday.

Yes?---It was the only copy that I had on my computer.

25 Yes?---Obviously when I was drafting the document it would have gone through a number of stages of being saved as different versions. That was the version that was saved back in September last year.

Thank you?---So there may have been an earlier version so I can't say unequivocally that that is the version that I sent to Mr McDonald, but that is the version I had back in September, I think 17 September.

30 Yes, that is the best you can do?---That's the best I can do. It's the only copy that I have.

35 Yes.

MR TREE: Now, I will press on to another matter. Now, do you have - I think you have still got it in front of you - a copy of your affidavit?---The one in the - - -

40 Yes, the one which you have sworn and is in the bound volume?---Yes.

45 Do you know whether, at the time that you swore that affidavit you had access to an affidavit, whether in final or draft form, of a Mr Wapstra?---I received a draft copy of Mr Wapstra's affidavit. He was a member of my staff and he had spoken to me about the preparation of his affidavit and he had discussed with me the evidence that he would be submitting.

When do you think he did that?---I can't recall. It would have been some time before my departure for overseas in October last year.

5 So it follows that the latest that it could have been was in September 2005?---Not necessarily. I returned from overseas I think in the first week of November and then left again and then came back so there was a period in November where - I am not sure when Mr Wapstra signed his affidavit so I am not sure at what stage I would have seen it.

10

You see I am just exploring with you whether your recollection is that you had seen a copy of Mr Wapstra's affidavit in draft or final form prior to concluding the draft of your affidavit?---My affidavit would have been completed before I would have seen anything that Mr Wapstra would have shown me. Whether or not my affidavit was sworn at that stage is another matter.

15

But it was in a close to final form even if it was not actually sworn?---Well, as I have indicated my affidavit was substantially completed by the middle of September last year.

20

Well, I think in the Court book that you have with you have also a copy of Mr Wapstra's affidavit and I wondered if we might just undertake some comparisons between his affidavit and yours?---Mm.

25 Could I get you please to turn to page 2434 of the Court book which is paragraph 8 of your affidavit and compare that with page 1939, paragraph 19 of Mr Wapstra's affidavit and we can see that paragraph of your affidavit reads:

30

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

?---I am sorry, which paragraph are you reading from?

35 I am sorry, I am reading from your paragraph 8 on page 2434?---Thank you.

40 But I was asking you to contrast or compare that with paragraph 19 of Mr Wapstra's affidavit on 1939. Do you understand the task I am asking you to do? I am asking you to compare sentences with sentences albeit in two documents?---Well, I think if you are trying to ascertain whether there is a degree of the same - - -

Well, no, please just listen to my question and answer it?---Okay, sure.

45 Do you see that that is what your paragraph 8 reads?---Yes.

And an identical sentence appears at the start of Mr Wapstra's paragraph 19?---Yes.

Absolutely, word for word identical?---Yes.

5

Can I direct your attention to page 2436 of your affidavit and particularly paragraphs 11 to 13. I will not stay to read them. I will just give you an opportunity to familiarise yourself with them?---Yes.

10 And could you compare that please with Mr Wapstra at page 1940, his paragraph 21 to 23. Sorry, I should have commenced at page 1939?---Yes.

They again seem to be absolutely identical, do they not?---Yes.

15 Word for word. Page 2437 of your affidavit, paragraph 15, and have a look at Mr Wapstra's affidavit, page 1941, paragraph 26. Again, with the exception of some formatting and some slight changes - - -?---Do you mean paragraph 27, I am sorry? You are comparing my paragraph 15 with Mr Wapstra's paragraph 27. Is that right?

20

Yes. It might be a mix of 26 and 27 I think you will find?---I accept that they are substantially very similar.

25 Page 2438, paragraph 16, in your affidavit, compare it with paragraph 28 of Mr Wapstra's affidavit. The first part of Mr Wapstra's paragraph 28 appears to have substantial similarity to your paragraph 16?---Yes.

Your paragraph 18, his paragraphs 42 to 43?---My 18 and Mr Wapstra's paragraph - sorry?

30

Paragraphs 42 and 43?---42 and 43?

35 Leaving aside the fact that you exhibited some documents and that there are some slight drafting errors there appears to be remarkable similarity between those two paragraphs?---On my observation that is correct.

40 Your paragraph 19 - sorry, I think I may have already done - your paragraph 19 and Mr Wapstra's paragraph 43, I think we have substantially dealt with that. Your paragraph 21, Mr Wapstra's paragraph 45, subparagraphs (a), (e), (f) and (g); again there seems to be remarkable similarity?---Yes.

Your paragraph 22, Mr Wapstra's paragraph 101?---No, completely different.

45 No, I do apologise. I withdraw that question. It was a different witness. Do you see at the conclusion of Mr Wapstra's affidavit - excuse me a moment, your Honour - at paragraph 208, page 1996, there is a list of references for

material that the witness has referred to in his affidavit. Do you see that?---Yes.

I can't see any reference there to your affidavit in draft or other form?---No.

5

You say - and similarly I should say I don't see any reference in your affidavit to a source of a draft affidavit of Mr Wapstra?---No, there was no need.

You say that you didn't copy his work, don't you?---That is quite correct.

10

Did you supply a copy of your draft or final affidavit to Mr Wapstra?---I did. I am not sure at what time I did, but I would have provided Mr Wapstra with my affidavit, yes.

15

And did you understand that that was prior to - I am sorry, I withdraw that. What version of your affidavit do you think you supplied him with? Was it the - - -?---I don't recall, I'm sorry.

20

And when do you think you supplied it to him? Was it prior to him concluding his affidavit?---It's most likely that I provided him with a copy of my affidavit prior to my going overseas, but I have no recollection of when I did that, I'm sorry.

25

What was your purpose in supplying him with a copy of your affidavit?---Well, Mr Wapstra is a member of my staff. He was asked to provide evidence relating to the technical aspects of this case, whereas I deal more at the strategic policy level, so I wanted to be sure that my affidavit covered the strategic policy aspects, and Mr Wapstra was keen to make sure that his evidence picked that up, and dealt more specifically with the technical aspects of the operation of the system. So I guess he was interested in knowing that his - rather than duplicating evidence that he had additional evidence that he was required to produce. Which he has. He has provided a more fulsome affidavit, which goes into more technical detail.

30

35

So rather than duplicating your evidence, he just duplicated substantial portions of it?---It would appear as though he has repeated evidence that I put in my affidavit, yes.

40

Did you supply your affidavit in some form to him, to obtain the benefit of feed back from him?---No.

Did you supply it to anybody other than Mr McDonald?---No.

45

Sorry, other than Mr Wapstra, of course?---Well, I have answered your first question, which is, was I seeking feed back, and the answer to that was no.

Yes. I then asked you a question, did you supply it to anyone other than Mr McDonald, to which you answered, no. But of course we know that you in fact supplied it to Mr Wapstra?---Oh, I see what you are saying. Yes. Yes.

5 Did you supply it to anyone other than Mr McDonald and Mr Wapstra?---I don't think so. In providing it to Mr McDonald I may have actually sent it to Maree Yee, who was acting as an assistant for Mr McDonald, but I have no recollection. In fact I'm almost 100 per cent certain that I didn't send it to anybody else.

10 You may not have sent it to anybody else, but are you aware whether in fact Mr McDonald or Dr Yee have sent it to other people?---Well, I heard that yesterday in Court.

15 Yes. Did you understand, when you provided your draft to Mr McDonald for the purposes of formatting it that it was likely to be forwarded on to other potential witnesses?---I didn't expect that that would happen, but I also didn't expect that it wouldn't happen. I had no knowledge of how these things are used to assist other people in preparing evidence. I have no knowledge.

20 Did he consult with you - I withdraw that. You are aware now that a copy of your affidavit was provided to Dr Whittington at his request?---I'm aware of that from yesterday, yes.

25 And you may have heard the evidence yesterday - I think I am correct in saying you sat through substantially all of yesterday's evidence?---Yes, I did.

Are you aware that it was disseminated to him by Dr Yee?---I heard that yesterday.

30 Did she seek your permission prior to forwarding your draft affidavit to Dr Whittington?---I would have to answer that by saying I don't recall. I got a lot of - I get a lot of emails, I get a lot of correspondence. I have no recollection of being asked. If I had been asked I probably most likely would have said yes. I had no objection to that.

35 Sure. I am exploring with you whether or not she asked?---I don't recall. She may have done. I don't recall.

40 If she had asked it would ordinarily have been by way of email communication, wouldn't it?---Well, it could be by email, by telephone conversation. I don't know.

45 It is pretty likely that if she had asked you for permission to provide your affidavit to another witness, Dr Whittington, it is the sort of thing you would remember?---Well, I think I have answered the question. I have no recollection of whether I was asked to formally agree that my affidavit being

released to any specific parties. I have no recollection of that, and in preparing for this hearing I have checked my emails and documentation and I haven't - again, I have no record of specifically being asked whether my affidavit could be made available to other people.

5

Are you aware whether your affidavit has been made available to persons other than Mr McDonald, Mr Wapstra and Dr Whittington?---I have no knowledge of who received my affidavit.

10 Other than those names that I have just recited?---And that was only knowledge that I gained yesterday.

Thank you. In drafting your affidavit did you obtain assistance from anyone else in your office?---No.

15

A personal assistant or - - -?---No.

No. I see?---No.

20 Have you received copies of other person's draft affidavits?---Yes.

Who?---Initially my recollection is that when I received some advice from, I think, Maree Yee, saying that evidence was required, and it would be required in a certain format, I was sent two affidavits from a previous case not connected to this, to provide an example of the sorts of affidavits that - and the level of detail that people put into their affidavits.

25

You are quite right to correct me, that was too broad a question. Have you received drafts of affidavits of persons whom it is intended to give evidence in this case?---Yes, I have.

30

Who?---I received an affidavit that was prepared by a Professor Houghton.

Yes. In its sworn version, I am assuming?---Yes.

35

Yes?---And I can't off the top of my head recall having received or read any other affidavits.

Have you provided feed back, or commentary, or assistance to anyone else in drawing their affidavits in these proceedings?---No.

40

Now, do I understand that the Forest Practices Authority became that in the last, I think it is three years, I think. Was it 2002 that the Board became the Authority?---July 2005.

45

And five. I see. Thank you?---Very recent.

And do I understand that the Authority is governed by a board - - -?---Yes.

- - - who reflect a variety of - let us use one of those wonderful management terms - stakeholders in the forest industry?---No. No. Incorrect.

5

I see?---In fact the specific intent of parliament in creating the new board was to move away from a model which was representative stakeholder, to a model which was independent expertise, and the Act clearly specifies that.

10 All right. In any event the Act clearly specifies who is to be on the board of the agency?---It clearly specifies the skills and qualifications that are required
- - -

Yes?--- - - - to be appointed by the minister.

15

Yes. And you are the - effectively, and, again in generic management language, the CEO of the Authority?---In essence I am. My title is Chief Forest Practices Officer and section 4 of the Act requires me to be responsible for the day to day administration of the Forest Practices system.

20

Now, can I get you to explain a little bit about your Authority. What is its total budget?---The total budget is approximately \$2 million per year.

And how many staff do you supervise?---About 20.

25

And are they organised into groups with sub-managers, or is it a flat management?---It's flatter than I would like, but we have programs, yes, very distinctive programs.

30 And there are a number of specific designations to officer titles. For instance there is a chief zoologist, I think?---Yes.

A chief botanist?---Yes. Actually called senior botanist and senior zoologist.

35 Yes. You are quite right, thank you. And the senior zoologist is Dr Sara Munks?---Yes.

She has been in that position I think for a couple of years now?---Oh, it would be at least seven years, or eight years.

40

Was that a position that was perhaps occupied in an acting capacity by Mr Ray Brereton at some stage?---Sara has taken periods of leave. She's had two babies.

45 Yes?---And there have been officers appointed in an acting capacity.

I see. And Mr Brereton may have been one of those?---Mr Brereton was one, yes.

5 I see. Thank you. So if we see on occasions documents to and from the senior zoologist, and the email makes it clear it is Mr Brereton that is probably him in an acting capacity?---Yes.

10 Thank you. Now, correct me if I am wrong but Dr Munks in her role as senior zoologist for the Forest Practices Authority has had considerable hands-on roles in the development of prescriptions for the wedge-tailed eagle?---Yes.

The broad-toothed stag beetle?---Yes.

15 And the swift parrot?---Yes.

In fact you are aware that she was one of the co-authors of one of the leading papers in relation to the broad-toothed stag beetle?---Certainly.

20 With Mr Meggs?---Mm.

In fact she is the co-author of a draft report into the efficacy for prescriptions for broad-toothed stag beetles which was published as an interim report, I think it is described, in February of this year?---Yes.

25 She was also one of the contributors and co-authors of the population viability analysis conducted by the University of Melbourne in relation to the wedge-tailed eagle?---Mm.

30 She has also, correct me if I am wrong, had intimate hands-on involvement in relation to assessing natural and cultural values for the authority in relation to coupe 17E and 19D?---Mm.

Yes?---Yes.

35 Sorry, these proceedings are being - - -?---With other staff.

Yes?---Yes.

40 So that she has responsibility for the development and implementation of management prescriptions which relate to threatened fauna and more specifically the threatened fauna that this case involves?---Not ultimate responsibility. She co-ordinates a program but there are other specialists who contribute to that program.

45 But she is nonetheless, the senior zoologist?---Yes, but her role is primarily in terms of research and translating research into the planning tools that we use.

It is the role of the senior ecologist to translate that information to management prescriptions on the ground.

5 Thank you. For instance, are you aware that Dr Munks appears to have been the person completed the reply to cultural and natural values form on behalf of the authority in relation to coupe 17E?---She may have been at that time, yes.

Is she in ill-health?---No, not to my knowledge.

10 Is she present in the State?---Yes.

I see. Now, to obtain a Forest Practices Plan do I understand that it would ordinarily be drawn up by a certified Forest Practices Officer?---No.

15 It need not be drawn up by a Forest Practices Officer?---Not necessarily. Any person under the Act can draw up a Forest Practices Plan.

20 Sorry, I used the word, ordinarily. Are in fact most Forest Practices Plans prepared ordinarily by - - -?---In practice because of the requirements to get that plan certified, the vast majority of plans would be drawn up by a qualified Forest Practices Officer but there are also some very competent forest planners and consultants out there who also are aware of the planning procedures. They are not accredited. They can't certify plans but they are very competent at drawing up plans.

25 Thank you. So correct me if I am wrong but one of the roles of the Forest Practices Authority is to accredit Forest Practices Officers?---Yes.

30 And that accreditation is based upon the competence of the officer one assumes?---Yes. There are prerequisite requirements. There are training requirements and they have to pass all of the competency tests.

35 Was there a grandfather clause so that those that had been doing that role for years got in without having to pass the test or did everyone have to pass the test?---Everybody had to pass the test.

40 Okay. Thank you. Now, the certification of a Forest Practices Plan does need to be undertaken by a certified Forest Practices Officer?---Yes, specifically a Forest Practices Officer who has that delegation to certify plans. Not all Forest Practices Officer have that delegation.

No?---That requires a high level of training and a high level of accreditation.

45 Thank you. So that that is the process whereby the Forest Practices Plan comes into existence ordinarily a two stage step involving its drawing and its approval?---Well, the Act doesn't talk about plans being approved. The Act talks about plans being certified.

Being certified?---There is an important difference there and the officer at the completion of the planning process is certifying that that plan is in accordance with the requirements of the Forest Practices Code and the supporting
5 documents support the Forest Practices Code. If you like, the approval process is along the way in seeking advice on special values, whether it be threatened species or geomorphology or cultural heritage, officers cannot certify the plan unless they have approval for specific recommendations so in this particular -
10 relevant to this case, threatened species management prescriptions have to be approved by the relevant specialist within the authority before that plan can be certified.

Now, I think you were present yesterday when it became - or during the course of the evidence of Dr Whittington, it was suggested that a Forest Practices
15 Officer can be an employee of Forestry Tasmania or Gunns or anybody?---Certainly, yes.

And that is a deliberate process, I want to suggest, to make the industry effectively self-regulatory?---Yes. It is very clear in the objectives to the Act
20 that the Act is to be based on a decentralised and delegated decision making process.

So it is not too much to say, is it, that the drawing and certification of the plan is undertaken most frequently by an employee of one of the proponents of the
25 plan?---That would be the case but I would like to say that when people are appointed as officers under the Act, they have responsibilities under that Act. They take their responsibilities very, very seriously so they are functioning as officers under the Forest Practices Act.

30 But they are also functioning as employees as well, aren't they?---Sure, yes, and there is a conflict there.

So that you acknowledge there is an inherent conflict in having an employee of a proponent of a plan drawing it and certifying it. You acknowledge
35 that?---There is a potential conflict there that needs to be managed and I think we have very good process, very good checks and balances in place to make sure that that conflict is managed very, very appropriately.

All right. Well, we will talk about those processes in due course no doubt but the Forest Practices Officer then has other functions during the currency or
40 performance of the actions under the Forest Practices Plan, doesn't he or she?---What are you referring to specifically.

Well, am I correct in saying that there are a number of statutory requirements
45 for Forest Practices Officers. Section 25A of the Forest Practices Act requires a responsible person for a certified Forest Practices Plan to lodge an interim

compliance report with the authority in approved form within 30 days after the completion of each discrete operational phase?---Yes.

5 And in practice that is a certified Forest Practices Officer?---In practice it can only be a certified Forest Practices Officer.

10 Okay. there is then a similar requirement for a final compliance report to be lodged with the authority 30 days after the expiration of the period during which activity can be conducted under the plan?---Yes.

Normally some years. The plans are normally fairly generous in terms of time frames, aren't they?---Well, they are appropriate for the time frame involved in carrying out the activities.

15 What is the compliance percentage with the obligation to lodge interim compliance reports with the authority?---I don't understand your question.

20 To what extent in practice is section 25A(1) complied with?---Well, that requirement only came in in July last year so it only takes effect with respect to forest practices plans that were certified after that date so it is unlikely that there would be many discrete operational faces that have been completed since 1 July 2005. However, that is something that we will be monitored and reporting in our annual report but, you know, the answer to your question is this is a very recent requirement of the Act so we don't have any data. We may
25 well have received some certificates but until we collate those for our annual report I can't answer your question.

30 How will you know when there is an obligation to lodge an interim compliance report?---We have a data base. When plans are certified they are entered onto an electronic data base. That data base has a program that generates a report saying when the discrete operational phases are due for reporting and the officer who manages that program would be checking on a regular basis that those reports have been received. Under the changes to the Act that were made
35 last year, that took effect in July last year, we now have broader powers of requiring those certificates to be lodged and in fact if they are not lodged actually taking action to make sure that they are.

40 I see. Has any action yet been taken to make sure that section 25A(1) has been complied with in relation to any coupe?---Well, as I indicated in my earlier response the reporting against discrete operational phases is a very new part of the Act. There would not be very many certificates that would be due at this point in time but that is certainly something that we will be evaluating at the end of this financial year to see whether or not any fell due and whether or not they were received, and certainly if they haven't been received then we now
45 have powers to take action and they were powers that we didn't have prior to those amendments to the Act.

What is the percentage compliance with the obligation to lodge final compliance reports under section 25A(2)?---Well, that's all reported in our annual report. I have a copy of the annual report with me.

5 It is, quite so. Do you have it with you? Do you wish to access the statistic?---I can, I have it with me.

Thank you?---Sure.

10 Perhaps you could be so kind?---Okay. The annual report for 2004/2005, which are the most up-to-date statistics that we have are certificates of compliance lodged with the board as it was then for that financial year. It is broken down by broad categories of applicant. How would you like me to report the results?

15 Just a total please, would be fine?---The total - well, the total - certificates due are 2529, certificates lodged 1906 which is 75 per cent.

20 Do you have your annual reports for 2003/04 - no, 2003, '01, '02?---Not with me.

25 Let me put some competing or some figures for you for those years and ask you to comment upon them please. In 2001/2002 there were 755 certificates which were due and 84 per cent of those were lodged; does that sound about right?---Well, I'd have to check the statistics.

Sounds about right?---I'd have to check the statistics. I won't comment.

30 All right, well, perhaps you might do that over lunch but let me put some more to you. 2002/2003 1416 certificates, so a dramatic increase, some further 600-odd certificates that were due for lodgement, and 78 per cent of those were lodged in time?---Mm. I would say that that is a - well, if you are reading from our annual report I have no basis for disputing that. That seems to be about right.

35 But that is a worrying statistic, isn't it?---Certainly, certainly.

40 You had 16 per cent non compliance of 755 - just listen to the question please - but then the following year when you have had almost a doubling of the number of certificates that are due the certificates not lodged increased as a percentage, even though there has been a doubling, right, of the number of certificates due. That is a very worrying statistic, isn't it?---It certainly is and the board was very conscious of this, that their requirement to provide certificates wasn't being fully met across the full industry. The rate of lodgement from Forestry Tasmania was very, very good and the board reported that. In this particular year it is 96 per cent lodged on time.

'04/'05?---Yes, 96 per cent lodged on time. For other industries it ranged from 100 per cent. The worst sector was the small independent private property which is not well serviced by staff and the rate of return there was 50 per cent. The board raised this with parliament as an issue of concern.

5

In which year, sorry?---Raised - - -

10 In which year did the board raise this with parliament?---Well, I'd have to go back to the annual reports but the board had noted for a number of years that it was concerned about the low rate of return of certificates. It had recommended to the Minister that some requirements to the Act should be considered to give the board greater powers to have these certificates lodged and that advice was accepted by the Minister. It went through the cabinet process and parliament made amendments to the Act that took effect, as I have indicated, in July 2005, 15 which now give the board broader powers to require these certificates to be lodged.

20 Did your budget increase to cover the additional expense of that compliance action?---Well, this compliance action - - -

20

Well, just listen to the question. Did your budget increase?---In relation to what?

25 Well, have you got some additional cash as a result of that additional activity which you need to undertake?---Yes.

30 Thank you. In 2003/2004 the number of certificates which were due increased again to 2128 and the compliance remained at 78 per cent?---Well, when you say compliance what do you mean? Do you mean the rate of lodgement of certificates?

Yes?---Well, that statistic would probably be correct, yes.

35 And as you have already said, according to the annual report that you have got in front of you, the number of certificates due again increased to 2529 and the percentage of certificates lodged reduced to 75 per cent. That's correct?---Those are the statistics, yes.

40 Now, that is a clear statutory obligation on those who are performing forestry activities?---The statutory obligation is on the applicant to the forest practices plan which is generally the land owner.

Right?---They are not all that good at lodging pieces of paper.

45 Now, of course, that certificate, that certificate would flag to the authority that the forest practices plan had been completed and hence it would be appropriate to put it within the pool of potentially auditable plans?---No.

I see?---No. No, there is no connection between the rate of lodgments of certificates by land owners and the sample that we select from to audit activities.

5

Sorry, there is no connection - - -?---There's no connection.

I see?---They're two separate parts of the enforcement program.

10

Now, the audit process, correct me if I am wrong, is undertaken by the authority as one of its statutory functions I think. It is auditing of forest practices plans?---Yes, section 4 of the Act requires the board to report to parliament on an annual basis on the standards being achieved across a representative sample of forest practices plans.

15

Now, the purpose of auditing is what?---To report to parliament on the standard - the effectiveness of the implementation of forest practices plans across a representative sample of forest practices plans.

20

And that is the only purpose of auditing, just to let parliament know what is going on?---Well, that is the statutory provision of the Act is to report on the, if you like in layman's terms, the general standards being achieved across a representative sample. The more important value of auditing in my view is that it provides important feedback to the authority, to forest practices officers, and to the industry generally on areas where good performance is being achieved and on areas where performance needs to be improved so that we direct training and education programs, we can improve our planning tools if the poor performance is related to inadequacy of planning tools, we can direct our attentions to improving performance.

25

30

In a nutshell it means monitoring compliance, isn't it?---Yes, it's one of the means of monitoring compliance but it is an important feedback mechanism on the overall performance being achieved and, as I have said, on areas that have been carried out very well and on areas where improvements are required.

35

The audit is of compliance with - the audit is of Forest Practices Plans, is it not?---Well, the audit is of the effectiveness of Forest Practices Plans and we do that in two ways. One is to actually audit the quality of the plan itself to make sure that it meets the planning requirements, that the approvals were done the correct way, that the prescriptions adequately reflect the advice that was given so, if you like, that is planning component to the audit and then there is a field implementation component as well where the auditors go out on the ground and actually monitor the performance on the ground.

40

45

Quite so. So there are two phases to it. One is a check of the paper work. One is a check of the reality?---Well, we call it a check of the planning and the other one is the field check of implementation.

Now, not every Forest Practices Plan is audited?---No, as I said the Act requires a representative sample to be assessed.

5 And that is undertaken, do I understand it, by approximately a 15 per cent random sample being - - -?---Yes.

- - - generated somehow - - -?---The number or the sample?

10 The sample is presumably - there is some means of randomly generating it. I don't want you to give away secrets as to whether it is alphabetical one year or numerical the next but presumably there is some means of randomly - - -?---It is a stratified random sample.

15 What do you mean by stratified?---Well, it's a common statistical sampling methodology where we identify the major groups that we want to sample across so, in this case, the major strata would be tenure, making sure that all of our sample doesn't inappropriately fall on private land or on public land. We want to get a representative range of audits on private land including large
20 free-holding by large companies compared to small private property owners. Obviously the sample has to extend onto public land as well. It is stratified by companies so that we are picking up the major players so that their operations can be audited. It's stratified also to a lower level by a Forest Practices Officer who certified the plan so that we are getting regular feedback on the work that
25 they are doing.

Right?---The fourth layer of stratification is by operation type, whether it's a plan to construct a road, build a quarry, do selective logging or plant trees on farmland so it is a complicated stratification process designed to deliver a
30 representative sample. We take the mean results of our assessment results and we try and put a standard deviation on that which is a measure, if you like, of the accuracy of the sample.

35 And what is in the prospective pool of Forest Practices Plans to be audited? Is it every extant Forest Practices Plan?---Yes, that's a good question. It tends to be most plans that are in the progress of being applied or have recently been applied. We do also sample some that may not have started, just to do the check on the planning, and we certainly audit plans that are expired.

40 So at any stage in the progress of the Forest Practices Plan it could be one of those selected for the random audit?---That's right. People could be expect to be audited at any time.

45 In reality is it mostly expired plans or plans that have had a certificate of final compliance that are the subject of actual audit?---Well, to get enough observations in practice we try and audit plans that are nearing completion or else you just don't have enough audit information.

Quite so. You might have nothing more than some blue tape in the bush?---That's right.

5 If even that?---But we do also specifically, as I said, target as part of the planning audit, which as you have said is essentially a desk top audit of the plan itself, many of those plans may not have commenced so they would be subject to that planning audit, perhaps well ahead of any operations happening on the ground.

10

Now, can I focus particularly upon threatened species in this audit process. Am I correct in saying that the response of the Forest Practices Officer in drawing the plan is determined by the detection of vegetation, land form or fauna on the land in question?---I am not sure I fully understand your question.

15

Sure. There is a step between going out to the bush and drawing the plan. The selection of management prescriptions are triggered by the detection of something, are they not?---Yes, there is an assessment process undertaken into a range of values using the planning tools that are available and the databases that are available. If you like they flag issues or potential issues. Those are then checked on the ground and checked through a notification of specialists.

20

So just walk me through this. If I am a Forest Practices Officer and somebody asks me to draw a Forest Practices Plan, the first thing I am likely to do I guess is to grab a map of it so that I know where it is located and the general land forms?---Yes.

25

At some stage or other I will go for a wander over the block, one assumes, to the extent that I can and try and ascertain for myself what type of vegetation communities are present?---Well, there is a step before that and that is that you would consult the planning tools.

30

Which planning tools would I consult?---Well, there is a range of them. there are databases that would provide information about the vegetation types for example, Tas Veg. There are databases such as Conserve used within Forestry Tasmania that would identify special values and there are many layers in that. Some of them are threatened species layers, Aboriginal sites, important geomorphic features. Anything that has been identified anywhere in inventory we try to put in those databases so that they flag potential issues.

40

How many databases are there that you are aware of that sort of material?---There is a large number of databases and there is a project within government to try and get better integration of those databases so that people are using the same information across government, not just in Forestry but across government.

45

What databases does an auditor of the Forest Practices Authority have access to?---We have instructions to Forest Practices Officers as to which databases they must consult.

5 Please listen to my question. I was asking about auditors?---Yes, well, I am coming to answer your question. The auditors work off the instructions that we provide to Forest Practices Officers. They are the standard operating instructions so they would use the same databases that we would be expecting Forest Practices Officers to be consulting when they are drawing up the plan.

10 Does a Forest Practices Authority auditor have access to the management decision classification database of Forestry Tasmania?---They would have that, yes. Yes, they would have access to that. Not necessarily on line but that information is available to them.

15 How?---Well, the reality is that if a Forest Practices Officer who is preparing a plan on State forest and the MDC system only applies to State forest then it is highly likely that that Forest Practices Officer is using the resources of Forestry Tasmania so they would have direct access to the MDC classification system.
20 If they were a consultant I would fully expect, and have no reason to doubt, that they were using the resources available to FT staff.

And what, if any, power of compulsion does an auditor have to an organisation who they are auditing to require hem to disclose the contents of a
25 database?---In a legal sense?

Yes?---I am not sure.

30 Well, they don't have any, do they, in a legal sense?---Well, it hasn't been an issue for us. I am not aware in my 10 years in this job of any auditor being denied important information relating to the planning of a coupe. That just simply has not been an issue for us.

35 Well, it isn't an academic question is it because there have been illustrations of Forest Practices Plans not accurately dealing with the vegetation types that are on the ground?---Can you be specific?

40 Sure. Do you not remember the pleasure of being interviewed for the Sunday Show some years ago?---How can I forget?

Then let us focus your mind upon some of the things that you were asked then. Does that assist you in - - ?---Well, it certainly does because what I would like is for the Court to be able to have access to the full two hour interview that I gave the journalist for that program.

45

No, I am not troubled about what you said. I am just using that as a tool to direct your mind to a particular illustration that might well - - -?---Well, I am very happy to talk about that particular example.

5 Well, I am not asking you to talk about the particular example. I am just asking you are there occasions when there has been a failure on the part of Forest Practice Officers to, in a Forest Practices Plan, pick up, or at least state, the existence of threatened vegetation communities?---The answer to that question is there had been some instances of information contained in forestry practices plans that, on review, was found to be not as accurate as it could have been. Whether or not that had consequences for that particular forest practices plan, and the example from the Sunday Program was that there was disagreement about the forest types that were shown on the plan. All of those forest types were in areas excluded from logging, so it was academic as to whether or not the forest types were correctly identified, because they weren't scheduled for logging. Now, many people made great mileage from saying that the plan was flawed, because these communities had not been correctly identified, but in that particular case the consequence of not correctly identifying those communities was of no effect.

20 So what guarantees are there that a forest practices officer will accurately identify the vegetation communities, or aren't there any?---The guarantee is that we have a very large commitment to training. Forest practices officers are trained specifically in forest botany in the identification of threatened forest communities. They are supported by excellent planning tools prepared by specialist botanists, in terms of being able to key out communities. They are further supported by forest botanists being available to go out and give advice on the ground if they are in any doubt. So there should be no reason why a forest practices officer, who may have difficulty in correctly identifying forest communities, and this is not a very precise science by the way. The boundaries can be very fuzzy, and two botanists may not necessarily come to the same decision, so it has to be a fairly practical, pragmatic approach to the identification of these biological communities. But there would be no reason why we would expect the forest practices officer to do this without support, and in fact the whole system is set up so that they can notify, and they can get support in making sure that the identification of these communities is as accurate as we would like them to be.

40 I tend to try and use tags. Have you identified two tags, training and available information?---Have I identified them?

45 Is that answer effectively saying two things in answer to my question, which was, what guarantees are there that a forest practices officer will correctly identify vegetation types?---Okay. If you like, that's - - -

Just listen to my question please. Do I understand you have said two things? One, training, two, available information?---And if I can complete the

question, the further thing is that we obviously check up on these things through our order process.

A 15 per cent chance of it?---Well, it's a statistical 15 per cent sample.

5

85 per cent chance of not getting picked up is pretty good odds, isn't it?---Well, if you apply statistical sampling theory 15 per cent is a very, very large sample. If you are reporting results with a mean and a standard deviation, which shows very little variation around the mean, then you can be reasonably assured that your 15 per cent sample is representative of the population.

10

And this of course if one of the illustrations, isn't it, of the risk of the conflict of interest which we have acknowledged, which you have acknowledged, forest practices officers who are employed by proponents of forest practices plans have; correct?---Yes. It's an element of that risk.

15

Yes. Because of course there are commercial consequences upon the detection of, for instance, threatened vegetation types or, alternatively, habitat of threatened species?---Very much so.

20

The practical consequences on the ground of the detection ought be, just leave aside for the moment what it is, ought be that that would be identified in the assessment, that would then lead to inquiry being made for appropriate prescriptions from the Forest Practices Authority, and would lead to management prescriptions being imposed designed to preserve intact that habitat or vegetation type, ie, can't chop it down, can't make dollars?---Yes. And that happens on a regular basis.

25

Sure. So there would be, would you agree, a financial interest for an employee - sorry, a financial interest for a proponent of a forest practices plan to have a malleable, or perhaps even wilfully blind forest practices officer certifying the plan?---Well, that's a risk that any professional is exposed to. The consequences are the same for a forest practices officer. If a forest practices officer was found to have not followed the proper procedures, and had made a decision that was influenced by commercial interests, to the detriment of the requirements that we have under the Forest Practices Code, that forest practices officer would be revoked as a forest practices officer. Now, in some cases that would mean they would lose their job, and would not practice as a forest practices officer in the industry. So the consequences are not slight.

35

40

Sure. So you try and counter the prospect of a forest practices officer being suborned to the commercial interests of the proponent by having an even bigger threat hanging over their head. Is that how we resolve the conflict?---No. No, not at all. We do, as we do with any professional out there, if you are motivating humans to do the right thing then you should work on giving them the right attitudes and the right skills to carry out their task, and

45

part of that is managing any commercial or other pressure that is brought to bear by them.

5 And one of the management tools is to say, if you are caught out you might lose your job, in practice?---If that is the ultimate deterrent that is the ultimate deterrent.

10 Sure. Now, the way in which they might get found out would principally be as a result of the audit process; correct?---No.

15 I see. How do you say that a forest practices officer who - let us take a silly example, saw a wedge-tailed eagle's nest in a tree and turned a blind eye to it, and put a plan that would say it could be chopped down, to take a silly example. How do you say that person's actions would be detected, other than by audit?---Well, if you look at our annual report you will find that most of our investigations, and we have about 140 per year, are reports provided by sources other than the audit. The audit certainly does detect some non-compliant behaviour, but in reality we have the majority of reports about breaches are provided by forest practices officers, obviously not against themselves but 20 against contractors, or other people, land owners who have not complied with the plan, members of the public, local activist groups who go out and do their own community based auditing, neighbours, local government. There is a variety of sources. I often say that the - you know, people say that Australians don't dob, but in my experience that's not the case.

25 Yes, wholesale dobbers. Perhaps they don't like to be found out that they are dobbing?---Quite often the information we receive is anonymous.

30 Thank you. So there are two mechanisms by which they could be found out. There could be a complaint, or it could be detected by audit?---Yes.

35 Would you agree with me that the audit results in part reflect upon the Forest Practices Authority itself?---To some extent it does reflect the adequacy of the planning process that we support.

Well, to a pretty major extent it reflects the adequacy of your planning and implementation process, doesn't it?---I would accept to a degree, yes.

40 So that the audit of the forest practices plans and compliance - or sorry, in conducting the audit of the forest practices plans and compliance with them would you agree with me that the Forest Practices Authority has an interest in a clean audit?---No.

45 But an audit that suggests poor planning or poor compliance is going to reflect adversely on the Authority?---Not necessarily. The mature interpretation is that we want to know where we can do better. We are aware that there are some areas for improvement out there, whether it's in the implementation of

plans on the ground, or whether it's in the planning tools that we have, whether it's in the training that we do, and it's important for us to understand where we are not getting acceptable performance, and for us to be able to pro-actively make improvements. So it's a very important feed back mechanism to the board, but the last thing that we would want would be an audit that didn't correctly identify the areas for improvement. And, you know, I think we have demonstrated that by inviting in third party auditors to look at our audit process, to look at the operation of our system. I refer to the Wells report from 2002 as an example of that, where we have exposed ourselves to external scrutiny, specifically to identify areas where we can improve our process.

What is your definition of third party auditor?---Well, just an independent party not directly associated with the main players.

And what is your definition of such a person, an accountant, for instance?---No. I - well, in that particular case my definition would be someone who has expertise, recognised expertise in auditing the implementation of codes of practice, and in carrying out forest audits on the ground.

What is the organisation Private Forests Tasmania?---It's a statutory organisation set up under the Private Forests Act 1994, I think, which has specific objectives to foster the management of private forests. Largely an advisory agency.

Am I correct in saying that in the last financial years - sorry, the last financial year, the two auditors that audited the forest practices plans and compliance with them were firstly an employee of what - the Forest Practices Authority itself - - -?---Mm hm.

- - - and secondly, an employee of Private Forests Tasmania?---That's correct, yes.

Why was no private consultant utilised last year?---We have a program of rotating auditors. We've used consultants in the past, we will probably use them in the future. In the last 12 months there has been a desire on our part to improve the training and accreditation of auditors. We've spent a lot of money getting our auditors through a very expensive training program. Consultants in Tasmania don't have that training, it would be very expensive for them to access that training so at the moment we are tending to use the people that we have invested in the training, if you like, and we are contemplating to what extent we will continue to use consultants and make a requirement that they should also have the training similar to the RABQSA training that we put our people through, so there hasn't been a definite decision to not use consultants. The reality is within Tasmania that many of the consultants who would be suitable for auditing also work as forest practices officers so - - -

Precisely. You have got forest practices officers auditing their mates or themselves?---Well, they are auditing against very defined protocols under our audit protocol. They have the expertise to do that.

5 Well, can I just take up one point that I understood your previous answer gave rise to. You said you have a policy of rotating auditors?---Yes.

10 Mr Lockwood has been an auditor for the last five years, hasn't he? He hasn't had the benefit of rotation?---No, he's - we also don't use him at a very high level, we tend to use him to supplement the audit team. He has other responsibilities that he does and he does a small number of audits for us. Has done very successfully for a number of years.

15 He is the employee of Private Forests Tasmania, is he not?---Yes, he is.

Is that to say that most of the audit activity last year was undertaken by a Forest Practices Authority employee?---I think that is the case, yes.

20 You don't see that that might be perceived as lacking independence that sort of audit?---Well, look, I am aware that that perception might exist but our auditor is employed to do audits, he is not employed to do forest practices plans, he doesn't have any other role. We have a very separate compliance program within the authority. He's trained to be an auditor, he has a code of ethics that governs how he can be an auditor and manage any conflict of interest. He has very, very good professional skills of accurately reporting against audit protocols.

25 Well, on that basis the ANZ Bank, I guess, could audit itself with its own employee?

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

MR TREE: Well, it is not an objection with respect, your Honour, it is a similar comparison.

35 HIS HONOUR: What is the basis of the objection, Mr Gunson?

40 MR D. GUNSON: Well, the ANZ Bank is a huge multi-national, your Honour, compared to a very small organisation such as the one under consideration here. My junior points out and subject to requirements under the Corporations Law, and particularly with respect to auditing, your Honour, which would not be the same requirement here.

45 HIS HONOUR: Mr Tree?

MR TREE: I will put the question a different way.

Do you agree that there is an inherent conflict in having an employee or an organisation auditing it?---Well, I don't think that the employee is being asked to audit the organisation. Most of the work in the audit is auditing the work done by other people. It's on private land by private contractors, it's on State forest by State forest personnel. That is the bulk of the audit. We spoke earlier about whether or not it was also an audit, if you like, of the efficacy of the board's own planning systems and that component is there and - - -

10 It is an audit of that?---Well, it is partly an audit of that.

MR D. GUNSON: The witness should be allowed to finish?---It is partly an audit of that, it is partly an audit of a large number of individuals who are operating under plans as to whether or not they are complying with those plans, so don't lose sight of that. I recognise that there is a potential conflict there. The Act requires the authority to carry out the assessment. Whether or not we outsource that is something that we have had under consideration. Our strategy at this stage is to use auditors who are specifically employed and trained as environmental auditors and accredited as such and meet the requirements for independence objectivity and credibility under that program. Now, if there is a way that we can improve the objectivity of our audit then we are and have shown, that we are very willing to look at further improvements. We engage Mr Wells to come down and give us some recommendations about how we could improve our process. He didn't recommend that we went to fully independent auditors. He recognised that there was a high level of objectivity, competence and professionalism within the people that we employ to do that task.

And that was in 2002?---Yes.

30 Now, can I just focus on one part of your answer though. To a very real extent the audit process reflects upon the adequacy of the processes of the authority itself?---Yes.

35 And do you agree that it is inappropriate for an organisation to have an employee auditing itself?---I didn't agree to that, did I?

No, I'm asking you, do you agree?---Well, I don't think there is a yes and no answer to that quite frankly. I think that if an auditor has a specific audit protocol, specific standards that they are auditing against and are doing that in a diligent and objective and professional manner, and reporting it in that way, then it allows them to manage any potential conflict of interest.

45 Do you agree that an audit is only of value if two criteria are met; firstly, that it is competent and secondly, that it is independent?---Well, I would add a range of other criteria to that and if you look at the published standards for auditing there are a number of other factors that are included there in terms of

objectivity and expertise, professionalism so I would partly agree with your answer, yes.

5 Well, there may be other things which contribute to competence but if an audit is neither competent - sorry, if an audit is not competent it will be of no value?---Yes.

If an audit is not independent it will be of no value?---Yes, I agree.

10 So insofar as you have an employee auditing the adequacy of processes of the authority itself, it is of no value?---Well, I have answered that question.

15 You have answered it by saying it is not independent and it is therefore of no value?---No, I haven't said that. They are your words. I've said that if an auditor meets all of the requirements of objectivity, competence and professionalism, is operating under a well recognised audit protocol, has been accredited as meeting the standards of being an auditor and meeting those requirements, then that audit will be of value.

20 Mr Rod Smith had been a private consultant auditor - - -

HIS HONOUR: We might come back to Mr Rob Smith at 11.05.

25 MR TREE: Certainly, your Honour.

HIS HONOUR: I have been waiting for you to complete a line of cross-examination but I have given up.

30 MR TREE: Quite so, your Honour.

ADJOURNED **[10.51am]**

35 **RESUMED** **[11.10am]**

HIS HONOUR: Yes, Mr Tree?

40 MR TREE: Thank you, your Honour.

45 I think, Mr Wilkinson, I was still on the thrilling topic of audits, and I was asking you whether Mr Rod Smith, a private consultant, had been an auditor for the financial years 01/02/03/04, in conjunction with others?---I would have to check our annual report to answer that question, but I would think that that would be about the period that we engaged him as an auditor.

You have given some - no, I withdraw that. Have you ever had occasion to remove an auditor from their position?---No.

5 What tenure do auditors have?---They are appointed for an audit season, and that's it.

10 So they have no tenure?---Well, they are appointed - they are given a contract to audit a particular season, and that may be a contract that is awarded again the next year, or it may not be.

15 Although I am assuming that your employee doesn't have a contract, or does he?---Not if they are an employee, no.

20 So Mr Wilkinson doesn't - in fact it is Mr Paul Wilkinson, no relation, I am assuming?---No relation.

25 Worth a question?---Not to my knowledge.

30 HIS HONOUR: It is a very good answer.

35 MR TREE: But Mr Wilkinson is the employee?---He is our main auditor, yes.

40 And Mr Lockwood, is he engaged formally by - - -?---Yes, under contract.

45 I see. So some money passes from you to Private Forests?---Very reluctantly, yes.

50 Okay. Now, have you ever had - I withdraw that. Is it simply the case that you have chosen not to, in the audit year 2004/05, re-appoint or re-engage Mr Rod Smith as an auditor?---Well, it depends on our capacity. We do about 150 audits per year. We have - having invested the training in Mr Wilkinson, and in our lead auditor, Mr Hawkins, that gives us greater capacity to carry out our audit using those resources. We have always used consultants to supplement the audit program, and I think last year there was adequate resources, in terms of Mr Wilkinson doing the audit, supplemented by some - by Mr Lockwood, and there wasn't a need to engage an external auditor that year.

55 Was that a yes?---I have forgotten your question. I think it's a yes.

60 You simply chose not to re-engage Mr Smith as an auditor?---Well, we didn't re-engage Mr Smith as an auditor for that year.

65 So it wasn't the case that he resigned, or refused to undertake a task that was asked of him?---No.

70 No. Ever had an auditor resign?---We have had auditors who have conducted an audit, and then indicated that they weren't available to do any further audits,

not a resignation per se, although one of our auditors, Mr Manning, voluntarily transferred to another part of Government, so in doing that I guess he resigned from the Authority to take up a position with another part of Government.

5 How long had he been an auditor for the board?---I think from memory Mr Manning commenced some time after 1998.

And he last audited in the financial year 2000/2001?---I think that's correct.

10 One of the years for which you have given audit figures in your evidence?---Yes.

Did he communicate with you any dissatisfaction with the audit process at the time that he transferred to another unit?---We had ongoing discussions - - -

15

Is that a yes?--- - - - with Mr Manning, that he had dissatisfaction with a number of things, including - I'm not specifically sure whether it was relating to the audit process. It was more related to, in his view of how the forest practices code should be constructed, what should be in the forest practices code, and his ideas on the deficiencies in the current code, I think was more the nature of the discussions that we had.

20

Was any disciplinary action taken in relation to Mr Manning during the course of his employment with the Authority, or the Board as it then was?---Regrettably there was. There was a long history of disciplinary action. Mr Manning had a return to work program, resulting from a workers compensation claim that was lodged in 1998. He was being counselled, he was under medical advice.

25

30 Well, can I just get you to confine yourself, please, to the disciplinary action that was taken against him, please?---Well, which specific disciplinary action would you refer to? There were quite a number of disciplinary actions taken against that person.

35 Well, would you agree that one of the disciplinary actions that was taken in relation to him was the withdrawal of his right to initiate prosecutions for breaches of the code?---I recall that that was one of the disciplinary actions, yes.

40 And that arose out of, did it not, what you considered to be his inappropriate involvement in an issue involving compliance with the Forest Practices Plan?---There were a number of reasons. One was that at the time Mr Manning was engaged as an auditor, and we saw very clearly that an auditor's role is to monitor and report, and not to get involved in the investigation of alleged breaches, or in fact to prosecute those alleged breaches. That was a very clear demarcation between the role of an auditor and the role of an inspector/enforcer. Mr Manning had also, in my - - -

45

Can I just stop you there for a moment?---Sure.

5 He did in fact though have the authority of the Board to initiate prosecutions
though?---That was a long term delegation that was given to him in a previous
capacity where he was employed as a forest inspector, with specific
responsibilities to investigate and to lay complaints under the Act. His work
10 program had been redesigned when he lodged a workers compensation claim, I
think in 1998, and that was related to a mental illness that he was suffering at
the time. He was receiving treatment for that illness, and he was put on a
return to work program. I was given instructions from his medical supervisors
that he required a total change in the nature of the work that he was doing.
15 Specifically he was to avoid conflict work or adversarial-type situations. He
had a natural tendency to be attracted to that style of work, and the medical
advice I had was that he was not to - he was to be minimised from exposure to
that sort of work. We used him in the audit role to remove him from the direct,
if you like, adversarial conflict situation. He unfortunately had difficulty
20 removing himself from pursuing a complex situation, which was one of the
reasons that we tried to make it very clear in the rehabilitation program that
was designed for him that his role was very specifically about auditing, which
is observing, monitoring and reporting. And that the - if you like, the
adversarial side of our compliance program, which is the investigation
program, and the prosecution of offences, is a completely different section, and
is done by other people.

25 Do I understand that what brought that conflict to a head, or what brought that
issue to a head was that he believed that he had detected a serious breach of a
Forest Practices Plan, and was attempting to remedy that breach by negotiation,
I use a neutral word, with the relevant operator?---There were a number of
30 instances. He certainly wasn't negotiating. He had in fact issued a notice
under the Act. In my view he had - - -

A notice to do what?

35 MR D. GUNSON: Well, the witness in fact should be permitted to finish the
question for my - the answer for my friend.

40 MR TREE: I accept that?---The notice that Mr Manning issued was issued
under section 41 of the Act, which put a requirement on a particular district
manager to undertake works that at that time were not required under the
Forest Practices Code. So that he had abused his powers by issuing a notice
that required things to be done that were not requirements under the Forest
Practices Code at that time. This was an example of Mr Manning pursuing his
45 own personal agenda. He had certain beliefs about what the code should or
should not do, and he attempted to delivery his particular agenda by using a
legal device under the Act, which was most inappropriate. I was put in the
position of having to withdraw that notice. It would have had no legal effect,

because, as I have said, it required a person to do something, for which there was no legal requirement under the Act or under the Code.

5 Well, what did the notice require that person to do?---Well, the notice specifically required in a case of retreat, which I think is the incident that resulted in me having to withdraw his power to issue notices, there was a coupe there that was being harvested and re-planted. He issued a notice preventing the forest owner from re-planting an area that was within 10 metres of what we call a class 4 stream. Now, it was Mr Manning's belief that that area should not be used for plantation purposes. The code at the time, which was the 1993 code, did not disallow that activity. It was quite a legitimate activity, that if areas were cleared and were being planted those areas were available for plantation. Mr Manning had a contrary view to the code, and sought to use the device of a section 41 notice to make requirements that were not those requirements under the code.

20 So it involved an incursion into an area which nowadays would be, under the present code, not available for legal incursion?---No, that's not the case. The issue was reviewed when the 1993 code went through a review process. The 2000 code now has more detail with respect to how that planting may be conducted. Some of those areas are still available in certain situations for planting. In the case of a clear paddock for example, there can be use of that land for planting of trees. If it is a native forest then that is not available for the planting of plantation trees.

25 Do you accept that it might be possible - I don't put it any higher than possible - that the actions of the board in relation to the disciplining of its employee auditor could be perceived as interfering with such independence as that employee had?---I would answer that question by saying that it has already been perceived by some as having that effect.

35 And would you agree with me that that might also have ongoing ramifications in relation to other employees of the authority or board that are the employee auditors?---Well, I think it has ramifications with respect to the fact that we expect our auditors to be competent, professional and objective and to work against the standards of the Forest Practices Code, not any other standard, that we want consistency in our audit protocol. Our audit protocol is set up to do that now. We have invested money in training auditors so that they know what the standards are. There can be very little discussion about what the standards are. They are drawn directly from the Forest Practices Code and we expect to have consistency. Our auditors understand that. When they accept the job they understand that there is a standard that they are working to. They are not there to pursue personal agenda.

45 Of course what it does do is underlines, does it not, the lack of desirability of having an employee susceptible to employer discipline as an auditor?---Well, I think I have answered that by saying that while ever the employee is operating

in accordance with the agreed reasonable protocol and is not stepping outside of that protocol, is not operating illegally or incorrectly, then there shouldn't be a problem.

5 But isn't one of the purposes of auditing the procedures of the authority to determine whether or not that is occurring?---You are right. The purpose of the audit is to ensure that everybody is complying with the required standards, standards that are delivered through the legislation and through the Forest Practices Code.

10

The auditor had one view in relation to an issue. You had another and you disciplined him?---Well, I didn't do that lightly. I did it very reluctantly because, if I can finish the question - - -

15 THE COMMISSIONER: Sorry, that is all you have been asked.

MR TREE: Now, you were personally involved last year in relation to an incursion into what was intended to be reserved forest in coupe 17E, reserved for the purposes of swift parrot habitat; correct?---Yes.

20

Seventeen trees were harvested and remain in their positions that they had on the ground when they were chopped down?---I understand that to be the case.

25 Have you yourself been out to the site?---No, I haven't. My investigating officer visited the site.

And who was your investigating officer?---My investigating officer was Chris Mitchell.

30 Do I understand - and please don't have any hesitation to cavilling with what I am about to put to you - do I understand that in substance what occurred was the road was put in the wrong spot and somebody chopped down the trees because they used the road as the point of reference to where they could chop down trees and because the road was in the wrong spot they chopped down the wrong trees?---I think very roughly that is the situation. They measured from a road. The location the field was different to the location shown on a map.

40 Now, you became personally involved in the senses that you ultimately recommended to your board that Forestry Tasmania be fined \$5000 and so long as that fine was paid that no prosecution action be taken against it; correct?---Yes.

45 And I think I am correct in saying that material has been - the authority has been subject to the coercion of a subpoena to produce material which relates to that event?---I think that is correct. I am not sure whether we provided it under FOI or subpoena but I do recall providing the information.

the top of my head, can't point to a piece of information that would provide that evidence.

5 And likewise, am I correct in saying you can't point to any clear articulation of the date of the of the harvest in that material?---I can't be specific about that without conducting further research into this documentation.

10 Do you find the letter from Forestry Tasmania advising the authority of the breach in that material. I think you will find it there. I can find it if you like. It might be quicker?---If you like.

The letter itself is significant in that it doesn't identify the date of the harvest, correct?---It would appear not to, yes.

15 Are you now able to say upon what material have you based your advice to the board that there had been reporting immediately?---Well, I can't point to any documentation here without doing further research as to the time that the trees may have been felled. It may be in the investigation report but I can't put my finger on it so I don't know.

20 Might it be the case that you simply assumed that that correspondence was an immediate reaction?---I may have made that assumption knowing that this coupe was a current coupe, it certainly wasn't an old coupe, so that if there had been an incident in that coupe associated with the felling it would have been in the recent past not something that would be 12 months ago or 18 months ago or whatever, so I guess I accepted that this was a recent event and had been reported fairly promptly.

25 Now, just put that bundle of material to one side for the moment. The development of management prescriptions in relation to the swift parrot would mandate that in the event of a nest being detected that there was to be a protection area a round it; am I correct in saying that?---That's my understanding, yes.

30 And that in fact would you agree with me that at the time that that incident occurred there was in force a recovery plan, or in place I should say, a recovery plan in relation to the swift parrot, which identified, amongst other things, that an appropriate action was to reserve priority habitat for the swift parrot; yes?--Yes.

35 And would you agree with me that to the extent that there may have been - I use a word that sounds pejorative but it is not intended to be, fiddling with the prescription by a Forest Practices Authority zoologist on the ground in relation to a specific management prescription for a specific coupe that should be informed by the recovery plan amongst other things?---Well, I take objection to your word fiddling. Certainly there was some planning and evaluation and

decision making on the ground that was informed by experts going out and making decisions.

5 Would you be surprised if the ideal habitat for swift parrots in the vicinity of
coupe 17E had not been wholly reserved?---I don't think that I can answer that
question, I think that question involves the context to be correctly stated with
respect to the broader area, what measures were taken within that broader area
to protect the swift parrot and what the consequences were for particular
10 coupes bearing in mind that decisions are made about protecting areas to meet
a whole range of constraints so I don't think I can answer that question. That is
a question that Mr Wapstra may be able to answer for you next week if he has -
as I don't have - he has more detailed technical knowledge of the more strategic
context of the decision making for those coupes.

15 Although it is not the first occasion that you have been asked in substance that
question, is it?---I don't understand your question.

Turn to the aspect of those papers where there is a pink flag; you will see it is
headed Bryant Letter?---Yes, I have it.

20 That is a letter which you received from the head of the threatened species
unit?---Yes.

I think it is Sally Bryant, is it not?---Yes.

25 I assume in the keeping of things it is probably Dr Sally Bryant?---It is indeed.

The date of that letter?---23 September '05.

30 And before I ask you to read a paragraph of it out please, do I understand that
the ameliorative measure which had been offered and accepted in addition to
the payment of a fine, was that some substitute parrot habitat would be
afforded to reservation close by the area of the incursion---That is as I
understand the advice I was given, yes.

35 Yes. Could you now read out the final paragraph of Dr Bryant's letter?---Sure:

40 *I would also like to discuss the issue of the adjacent forest now being
offered as replacement habitat for the breach. This forest appears to
contain excellent breeding habitat for the swift parrot and I am
confused as to why it was not previously zoned for protection and how
it has now been made available.*

45 Fair question, isn't it?---It was a fair question and we met with Sally and with
some ecologists and we answered the question.

Although I find no record of a written response in the material that you have provided, do I?---Well, we don't write everything down. We had a meeting to discuss this concern and at that meeting it became very evident to me that part of the reason that Dr Bryant was confused was that she didn't have the strategic
5 overview of what was happening in the Wielangta area and had made some assumptions. One of those assumptions was that many of these coupes were to be clear felled so she had concerns that the plan of operations was actually going to effectively remove and replace the nature of the forest there with a plantation.

10

Do you have minutes of this meeting that you have had with - - -?---I don't have those minutes, no.

15 Who does?---Well, I'm not sure that minutes were taken. It was a normal working meeting. We don't document everything. If there is any follow-up action that would be documented but we have regular meetings that are not minuted, they are discussions about issues and things that are going on, actions that need to be taken. It's a normal business meeting.

20 Is there any correspondence that confirms the amelioration of her concerns?---Not from me. I think that at that meeting also was a senior conservation planner from Forestry Tasmania who as a result of that confusion agreed to make available some maps which showed the planned operations for the Wielangta area which highlighted that in fact they weren't being cleared
25 and converted to plantation, they were being maintained as native forest. Now, I assume that those maps were provided. I haven't heard back from Dr Bryant so I assume that she has that information now.

30 But do I understand that necessarily by virtue of there being habitat sufficiently significant to have been reserved under the coupe plan for coupe 17E, and it having been thereafter substituted with other habitat, that you must have been satisfied that it was an equivalent quality?---I took advice from my ecologist who consulted with the experts within the threatened species unit, so I can't
35 give an independent point of view on that, that is not my area of expertise, I took expert advice.

Sure. And you were satisfied that it was of equivalent quality?---I accepted that advice.

40 Sure, and so let me ask you directly, why wasn't it previously reserved? If it was equivalent quality to that which had been harvested?---That's a question you should direct at an expert for the swift parrots, someone who has done some strategic planning in that area and can answer that question by saying
45 what the consequences were of allowing selective logging over certain parts of the forest and how much habitat should be retained in its undisturbed state, and that would very much depend upon the strategic context so I can't answer that question.

Well, perhaps we would look at the report that was prepared by the threatened species unit specialist in 2001 as to the areas of habitat which should be reserved. Would that be a good starting point?---Well, it might be but again I think that the question is better put to an expert in that area. Mr Wapstra I'm sure would be able to respond to this question much better than I can. I'm happy to persist with this if I can but I - - -

Thank you. Could the witness please be shown exhibit 20, Mr Miller's affidavit and let me try and orientate you on this map, please? I think you are probably aware that this litigation principally involves coupe 17E and 19D and you will find that those are covered by, in part, the two green blobs that are at the top of the page?---Yes.

And do you see that those blobs, the left-hand blob, covers I think a part of coupe 17E, part of 19E, part of coupe 19D and perhaps other coupes also?---I've just lost 17E, can you assist me?

Yes, 17E in the numbers and letters is written between the two green blobs?---Oh, there it is, yes, yes. Yes.

So that blob which I want to suggest to you was suggested by the relevant Threatened Species Unit specialist as to be reserved in the same was as an eagle's nest should be reserved, encompasses a part of coupe 17E as does the right hand blob?---Yes.

Are you aware that in fact in the Forest Practices Plan as certified by a Forest Practices Officer that that degree of reservation was not in fact undertaken in relation to coupe 17E?---Well, I would have to check the documentation but I will accept that that could be the case, yes.

And do I understand that there are two reasons as to why that might be the case, one of which may be unpalatable for you but it would be, would it not, that a Forest Practices Officer has deliberately failed to abide by a recommendation which they were obliged to adopt?---That is technically possible, yes.

I said it would be unpalatable for you but it is a possibility, isn't it? And the second option is that somehow or other, by negotiation, whether pursuant to a protocol or otherwise, the green area was eroded?---I would agree that there could have been, not an erosion, but an adjustment to those areas and this is a strategic level plan. There may well have been a refinement of this strategic level plan that then translated into an operational document. That happens all the time.

Just excuse me a moment, your Honour. Can the witness be shown exhibit AQ, your Honour?---So have we finished with this map?

Not just yet?---Not yet?

5 You are very familiar with forms of that character because that form emanated from your authority, or perhaps at the time, board?---Yes.

It is under the hand of whom?---This is signed by Sara Munks.

10 Yes. And do you see that there is a prescription imposed?---Yes.

Do you see that?---Yes.

15 And do you agree that that prescription - I will just give you a moment to read it - in substance requires that the areas of high swift parrot activity marked as green on the survey map and I ask you to accept that that is the map I have just shown you, are to be excluded from the harvest areas and - final sentence, I won't stay to read it all - are to be given the same protection status as are wedge-tailed eagle nests?---Yes, I concur with that.

20 So can I just come back to your explanation as to why there may have been some strategic, I think was your word, recasting of the areas to be reserved in the light of that seemingly unambiguous management prescription?---Well, this is one piece of documentation that I have been provided with. I don't have the full context of other advice or other notifications. It is quite common that these
25 forms are sent out and there is a response from the Forest Practices Officer which results in amended advice being given based on new information so I don't know whether this is the final advice or whether or not this is the only advice that was given by Sara Munks.

30 So somebody receiving a form like this shouldn't regard it as being a management prescription, just merely an invitation to enter into negotiations about what the management prescription might be?---Well, this form is dated 2001. Our current form actually has a statement on the end of it which says that this is interim advice that must be incorporated into the FPP. If any
35 changes are sought then the specialist is to be renotified. In other words they can only operate on the basis of the final advice given by the specialist. Those particular words were inserted after this form, which is now, you know, to some extent out of date. It's five years old.

40 So in 2001 somebody receiving a form like that which contained a management prescription, should have regarded it as an opportunity to enter into negotiation about an appropriate prescription, should they?---If there were issues that they wanted to bring to the attention of the specialist and provide new information that perhaps hadn't been considered by the specialist and quite
45 often that is the case, a specialist may give advice recommending that an area be burnt for some reason. The FPA may get advice from another specialist saying that that particular area shouldn't be burnt for a particular reason.

Presented with that sort of conflicting advice they are duty bound to go back to the two specialists and say on the one hand I have been given this advice to manage this value. There may be a conflict with managing this particular value over here - fire protection or whatever - and how can we resolve. Then
5 there is a negotiation on whether or not the advice has to be amended in some way.

So what would be the competing negotiation factor in the reduction of the green area shown on the map that I have shown you? What would be the big
10 pro quo to de-greening some bits of the map?---Well, I can't answer that question. It's not my area of expertise. That is a question that would be best answered by Mr Wapstra who would have more understanding of the strategic level planning for this and how that was translated into an operational plan.

15 Mr Wapstra is not an employee of the Forest Practices Authority, is he?---He was.

He is not now?---He is not an employee now, no.

20 You are the only person presently in the employment of the authority who is giving evidence in this trial?---Mm hm.

You did not think that it may have been prudent for you to familiarise yourself with the authority's file in relation to one or both of the coupes that was the
25 subject of this litigation prior to giving your evidence?---I have - it is not appropriate for me to involve myself in a technical area that I don't have expertise in. I take advice on that. At that time I took advice on this coupe from the specialists that were employed within the authority at that time and I take advice from the current specialists who are within the authority. The
30 advice that Mr Wapstra gave with respect to this coupe when he was employed by the FPA is contained in his affidavit.

Have you even looked at the file maintained by the authority in relation to coupe 17E?---I have looked at the file but it is not my responsibility to review
35 those files in terms of technical information which is done by highly competent professional staff that I employ.

How does an auditor audit this negotiation process to ensure that it is undertaken in conformity with the code?---The auditor in checking the
40 provisions that are contained within a Forest Practices Plan goes to the FPP file to check the final advice that was provided by a specialist to make sure that that final advice has been incorporated into the FPP. What may have preceded that in terms of the history of planning that may have happened over several
45 years is not necessarily audited. It is the final advice handed out by the specialist.

Would you expect on the authority's file if this prescription had altered that there would be a clear articulation of the prescription perhaps in another reply form in relation to natural and cultural values?---There should be, yes.

5 Do you know if there is?---Not off the top of my head, no.

But there ought to be, oughtn't there?---If this is the prescription that was regarded by the senior zoologist as the final advice, if this is the final advice then I would expect that this is the advice that would be incorporated into the Forest Practices Plan.

10

Well, with respect, my question was a little different. You would expect there to be, if there was a change in this prescription, another one of these forms?---There should be. good business management would indicate that if there was agreement to vary this advice that that would be well documented and it would be documented through a later dated version of this reply.

15

Let us say that there was a subsequent meeting, and that no reply form was generated as a result of that meeting. Let us just say that. But let us say that the certifying forest practices officer believed that they had agreement to an amended prescription. The process that would ensue is this, isn't it? They would certify the plan with that prescription that they believed they had the authority to endorse it with?---In good faith, if they thought that was the agreed management prescription, they would then in good faith certify the plan, yes.

20

25 And then it would be harvested?---Yes.

And it would not come to the attention of the Authority that there had been a misunderstanding, if that be what it was, in relation to - just let me finish the question - in relation to the management prescription until harvest had occurred?---That could be the outcome, yes.

30

And it may never be detected upon audit?---Well, one would hope that if it was audited it would be detected. One would also hope that under the compliance certificate the forest practices officer checking compliance against the plan would check that off as well.

35

All after the event?---That could be the case, yes.

40 That is the problem with negotiated management prescriptions, isn't it?---What's the problem? I am sorry, I don't understand your question?

That they are susceptible to mis-interpretation unless they are clearly articulated in of the Authority's standard performance - - -?---I agree that that is a problem, and I think, as I have indicated since 2001, we have a far more rigorous and systematic system of documentation. So that the files should show very clearly any correspondence, any reply, any advice given by

45

specialists, and if there is any amendment to that it should be clearly documented. That, I believe, is where we are at now.

5 And the way in which I test the accuracy of that generality that you have just given is to read your audit report, where no doubt the auditors have reported to that effect?---That would be correct, yes. That would be one source of you satisfying yourself that - - -

10 Except it is not there, is it?---It's not where?

No statement to that effect is in your audit reports in the last five years, is it?---Well, our audit reports to Parliament are the results of the audit, not the methodology or any other detail. All you have seen is a summary of the results as presented to Parliament.

15 Yes. I hate to return to this riveting topic of audit, but that is another deficiency in your audit process, isn't it? The actual audit report is never given to Parliament. You interpret it and give Parliament your interpretation of the audit report?---No, we don't interpret it. The auditors present their results.
20 Those results are tabulated, and presented in summary form to make it - there's still a fair bit of detail in our annual report, but it is summarised in tabular form for the purposes of the annual report to Parliament.

25 By whom? Who does the summary?---The lead auditor.

The protocol which you have annexed to your affidavit positively encourages negotiation in relation to management prescriptions, does it not?---It does encourage an interactive process between the land owners, the forest practices officer, the specialists involved in putting together advice.

30 See if I look at clause - this is page 2452 of your affidavit - the preceding page you will see a heading Endorsed Management Prescriptions, 3.1 Fauna, and then 3.1.6 on 2452 says:

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 -*

40 so there are two opportunities here. Either you are seeking advice, or there is a view that endorsed prescriptions are not appropriate. That is a correct interpretation of the document, isn't it? Yes:

45 *...the senior zoologist of the FPB will consult with DPIWE to determine an appropriate management prescription. This should involve consultation and negotiation amongst the specialists, the forest practices officer, and the land owner, and may involve field inspections or surveys. Advice will be provided within six weeks, otherwise the*

forest practices officer may proceed on the basis of best available information.

5 So do I understand this to be the case? To enliven this limb of the procedure or protocol all that needs to occur is for a forest practices officer to seek further advice for a specific area?---I'm sorry, I don't see your question?

Well, I am just reading the clause:

10 *Where a forest practices officer seeks further advice for a specific operational area in accordance with the threatened fauna adviser -*

and then we go into negotiation mode?---Well, the forest practices officer is clearly seeking further advice.

15 And then we go on to negotiation mode?---Well, if you like there may be a negotiation. It may be just simply be a request for further advice.

20 Well, the policy specifically requires negotiation?---Where appropriate, where there's a need for consultation that would occur, yes.

Including consultation with the land owner?---Where that's appropriate, yes.

25 No:

This should involve consultation and negotiation amongst the specialists, the forest practices officer and the land owner.

30 ?---Should, yes, where appropriate.

So to enliven clause 3.1.6 all that needs to happen is a forest practices officer asks for further advice, and suddenly the land owner is involved in negotiations?---Which is quite proper.

35 I see. And hence the actual management prescription that is imposed in relation to a specific coupe becomes not the product of an endorsed prescription under the threatened fauna adviser, but a prescription, the result of negotiation?---Well, the answer to that is that the specialist will continue to give scientific advice in terms of what would be a reasonable outcome for the species. The land owner has to look at what is practical and achievable. Those
40 two things have to brought together to result in very good practical pragmatic outcomes on the ground. There's usually no conflict in that. One of the outcomes of this negotiation may well be that there can be no agreement, that the requirements of the land owner are different to the requirements placed by
45 the specialist. That's quite a common outcome. But at least there has to be a negotiation on whether or not there is any ground to find a reasonable outcome. Now, if that's the case the forest practices officer is advised that the

management prescription is one that's not acceptable to the land owner, so that that particular Forest Practices Plan would be amended, or would be refused, and that is something that happens quite commonly. And before we go to that fairly major step of refusing a Forest Practices Plan, or putting what the land
5 owner might regard as very onerous conditions on that Forest Practices Plan, and by doing so, seek to appeal through the Tribunal process, it's quite proper that there is a negotiation on the ground.

10 But if everyone is sweet with a particular prescription in she goes and off we harvest?---Ultimately the senior zoologist in this case is satisfied that the advice can be such that the scientific requirements for the species are being delivered, then she would, or he would give that advice to the forest practices officer.

15 And the protocol is clear, it is the senior zoologist that needs to be involved, not some other officer of the Authority?---Well, it depends on the value. When these prescriptions were written we had a loan management system within the Forest Practices Board, as it was at the time, that had a responsibility for operational decision making vested in the senior zoologist and the senior
20 botanist. Since then we have had a restructure, and the operational level advice is now put out by a new person, who has assumed the responsibilities of the senior zoologist and senior botanist, and they have responsibilities for more strategic level and research kind of functions. So where you read senior zoologist there you can read senior ecologist.

25 With effect from what date?---I would have to check my records but that line management decision changed I would think two or three years ago, but I'm sorry, I can't be more precise.

30 Might the witness please be shown volume 1 of the Court book?

HIS HONOUR: Just before he is, have the procedures which start at 2451 been altered to reflect that change?---No, your Honour, they haven't. They do contain references in a number of places to bodies that have changed, such as
35 DPIWE and in other areas, so it would be a fair point that at some stage we should up date them to reflect the new titles, and new institutions.

Sorry, Mr Tree. You are going to volume 1 there?

40 MR TREE: I was, your Honour, yes.

Could I firstly direct your attention please, to page 138, where you will see the front sheet for the Tasmanian Regional Forest Agreement?---Yes.

45 A document which no doubt you are familiar with?---Yes.

In fact, I think you have the distinction of having been chief forest practices officer from even before the commencement of the RFA?---I have that honour.

5 And can I get you please, to turn to page 173 and look at clause 97 and you will see clause 97 commences:

A Management Prescriptions Database and a response to disturbance database have been prepared as part of the comprehensive regional assessment -

10

etcetera?---Yes.

15 Can I remind you that there is a definition of Management Prescriptions Database at page 147 which is a description in fairly woolly terms. I won't stay to read it out loud, I will just give you an opportunity to familiarise yourself?---Yes.

20 Can you identify a database that existed at the time of the entry into the RFA that that was intended to encompass?---No.

20

Is that to say there wasn't one?---No, I can't identify it.

25 Is that to say that it wasn't in the custody of the Forest Practices Board?---It may have been and it - I would expect that my senior zoologist and senior botanist at the time would have been familiar with that. I'm not familiar with it.

30 Well, it is a fairly important starting point, you see, because can I take you to clause 96:

30

The State agrees that any changes -

skip over a few words -

35 *including new or altered management prescriptions developed over the term of the agreement, will -*

40 and then there are four criteria. So it might be overly simplistic but in order to determine what management prescriptions are new or altered it would be really helpful to know what was in the Management Prescriptions Database at the commencement of the agreement?---Yes.

45 Any hints as to where I might find it?---No, I'm sorry. I think it has been superseded by other data bases that have been developed subsequent to the RFA so I think that that is now an artefact of information that was compiled for the RFA and we have moved on in terms of more sophisticated databases since then.

But see in order to determine whether or not clause 96 has been complied with we need to determine what was there at the start, don't we?---Yes.

5 Well, any hints as to how I start doing that?---I can't give you any advice on that I'm sorry.

10 But just correct me if I am wrong, is not one of the specific responsibilities of the entity of which you are the chief executive officer, tasked with the development of management prescriptions?---Yes, and I believe we've done that, although I can't refer you to where that original database sits and its current status I can tell you that it was used - I can tell you that it was used by the senior botanist and the senior zoologist in liaison with other specialists from the Threatened Species Unit, universities and other groups in terms of
15 developing the databases that we now have and that are now in use, such as the threatened fauna manual, Threatened Fauna Adviser and the botany manuals so I think there is a very good change over from what was the database used by those specialists prior to the RFA which have now been translated and updated into the new documents.

20 Well, let me just give you an example. If I look at recommendation five, whatever it be, for the broad-toothed stag beetle under the Threatened Fauna Adviser, how do I know whether that was a pre-existing management prescription or a new or altered management prescription that needed to
25 comply with clause 96, how do I know?---Well, without comparing it against what may have existed back in 1996, that would be the only way that you could do that.

30 And hence the fundamental problem is finding out what was in 1996?---Which, you know, could be - as I said, I can't help you in where that information is. No doubt it exists, it existed at the time but I can't specifically answer that question.

35 Well, if we look at the balance of clause 96 we will see that there was a requirement - last sentence - that updated hard copies of the database contents will be made available periodically for public comment and that refers back to the Management Prescriptions Database in response to disturbance
40 database?---Well, again, I think that the intent of that clause is to update the databases. It does at this time recognise other relevant databases including the forest botany manuals and the Threatened Fauna Adviser, and then it talks about updating those databases and making them periodically available for public comment so I read into that that the intent is that the databases need to be updated. I'm not sure that it has to be in the form that it was in 1996 or can be in some other form and in reality we have taken the databases and improved
45 them and put them into more sophisticated databases.

The principal database that contains management prescriptions is the Threatened Fauna Adviser?---That is the principal device at an operational level. There are also management prescriptions at a more strategic level in the threatened fauna manual.

5

I see?---And the RFA is not specific about whether or not we are talking about high level management prescriptions which are the sorts of prescriptions that you will find in the threatened fauna manual, or whether we are talking about more specific operational management prescriptions which are tailored for a coupe-by-coupe basis. Now, I am sure the RFA wasn't intending that the management prescription for every coupe, which is 1000 per year, so 10,000 since the RFA, would be on some sort of you know, major database, so I think we're looking at here, at the higher level management prescriptions for the species.

10

Well, let's just take it block by block. There never has been a hard copy of the Management Prescriptions Database made available?---I don't know.

15

There has never been a paper copy of the entirety of the Threatened Fauna Adviser made publicly available?---No, that would be very, very difficult. I'm not aware that it's been done.

20

There has never been an electronic copy of the Threatened Fauna Adviser made publicly available?---It has been made available to a wide variety of people but it hasn't been published in a form accessible to the public. It is not unavailable to the public. If the public requests it it can be made available but it hasn't been promoted and made accessible and there are some reasons for that. One is the cost of the program, there are licenses regarding the software and there was some intellectual property issues which have been the main reasons why it hasn't been easy to make it available but certainly any request for information contained in that database is freely provided to members of the public.

25

30

So do you say on your oath that if I went into your office this afternoon and asked for a copy of the Threatened Fauna Adviser it would be provided to me?---I would answer that by saying that I believe it can be made available. I would have to check with the licence conditions that we have. There would certainly be a cost involved. I would have to check that we were not in breach of any intellectual property issues but in principle, it would be made available to you, as it has been made available to other people who have come in and made a similar request.

35

40

Is that to say that you have explored in the past these intellectual property issues that you are troubled by in relation to my request?---yes, we have, we've taken advice specifically where particularly researchers have wanted to use the program for a certain purpose. We've taken advice in terms of how we can make the program available to people who have to use it, how many licenses

they have to pay for, those sorts of issues to make sure that we are not in breach of any legal requirements.

5 Is that to say that there has never been Joe Blow off the street just wander in and say, "Hey mate, I want a copy"?---Oh, look, I think probably people in the past have made that request and we've probably answered it by saying it's extremely difficult, what is it you want to know and can we help you in some other way.

10 I don't want to be too cynical in this but hence avoiding public comment?---Well, that's not the intent. It's an extremely complex program. It is very, very difficult to make it available in a format that lends itself to, you know, public release. It's something that we are very conscious of. It's something that we would like to look at some way that we can make it
15 available in a more transparent manner. There is also the issue that it is a live document. It gets updated on a regular basis so we would want to make sure that people had access to perhaps an interactive web based version that was the current version at the time so there is a whole series of issues there and quite frankly there hasn't been enough of a demand for us to progress that. We have
20 got other things to do and we just haven't allocated any resources to making that available in that format. If the resources were available then we would certainly look at it.

25 So you would agree that public comment has not been able to be had in relation to it. You would just discourage me from my cynicism?---I don't think there is a yes or no answer to that. I think that the prescriptions are available to the public. How we make those available is a fair question.

30 Well, the difficulty with it not being freely publicly available is that - or perhaps it is a simplicity rather than a difficulty - compliance with clause 96D of the RFA in relation to new or altered management prescriptions is simply is a tick in the box because there will not be any public comment?---Well, you are again making an assumption that the management prescriptions referred to in clause 96 are only those in the Threatened Fauna Adviser and that is not the
35 case of course.

40 Well, for those that are in the Threatened Fauna Adviser that is the case though?---I would accept that it has been difficult making those prescriptions available in a form suitable to take broad public support but I would also say that the prescriptions have been made very readily available to people who request that information and particularly to specialists and researchers in that area.

45 There is no requirement in your protocol that there be any public consultation in relation to proposed ad hoc changes to management prescriptions is there?---No.

And hence we can be certain that in relation to that process, whenever it has occurred, no account has been taken of public comment in determining a new or altered management prescription?---Not at the operational level, no.

5 Moreover at an operational level we can be almost 100 per cent confident that
ad hoc negotiated management prescriptions will not have been endorsed by
the Scientific Advisory Committee?---Well, I don't think it's the role of the
Scientific Advisory Committee to review and endorse operational prescriptions
10 that are being made. It's not set up to do that. It's set up to look at the high
level policy and the high level management recommendations. Again, as I said
earlier, the sorts of high level management recommendations that are in the
threatened fauna manual are the sorts of recommendations that should be quite
properly endorsed by scientific committee. The on the ground operational
15 Fauna Adviser for which, I repeat, we make 1000 decisions per year, there is a
process for having scientific scrutiny involving specialists within the Forest
Practices Authority and the Threatened Species Unit at that operational level.
We wouldn't take every operational prescription to the Scientific Advisory
Committee to say exactly where a habitat clump is to be located on a particular
20 coupe. It's not appropriate.

Well, let us just take the generic prescriptions that are in the Threatened Fauna
Adviser. Am I correct in saying that those generic prescriptions have not been
endorsed by the Scientific Advisory Committee either?---No, that's incorrect.
25 They have been endorsed by the Scientific Advisory Committee.

In respect of each and every one of them?---Yes. The whole program was
submitted to the Scientific Advisory Committee and it was endorsed.

30 And do you say that each change that is made to the Threatened Fauna
Adviser's recommendations is placed before, for endorsement, the Scientific
Advisory Committee?---Any substantive changes, that would certainly be the
intent. It is only fairly recently that the Scientific Advisory Committee last
looked at the Threatened Fauna Adviser. We haven't had substantial changes
35 to it since then. Most of the changes have come from the listing of new species
so we have incorporated those into the adviser but it would certainly be our
intent, and this is in the agreed procedures, that we would take any new or
substantially amended management prescription back to the Scientific
Advisory Committee and the Forest Practices Advisory Council for
40 endorsement.

I am not talking about strategic prescriptions under the threatened fauna
manual here. I am talking about the Threatened Fauna Adviser?---Yes, I
understand the question.
45

So on your oath that recommendation 5 in relation to the broad-toothed stag
beetle, whatever it be, under the Threatened Fauna Adviser, has been endorsed

by the Tasmanian Threatened Species Scientific Advisory Committee?---My understanding is that the Threatened Fauna Adviser, in its entirety, was submitted to the Scientific Advisory Committee and it was endorsed.

5 And the individual amendments thereafter you are unaware of?---I'm not sure whether there have been any amendments since it was endorsed by the Scientific Advisory Committee.

10 When was it endorsed by the Scientific Advisory Committee?---I am not sure of the date. I would have to check that date.

15 Well, give me a hint. Was it this year? Last year? A few years ago?---Maybe two years ago, I don't know. It wasn't this year. It wasn't last year I don't think. It may have been 2004.

20 And prior to then am I correct in saying that new or altered management prescriptions - new or altered in the sense of variations to that which existed prior to the RFA - had not been submitted to the Scientific Advisory Committee?---I don't know. I don't know what the protocol was. There was a great deal of liaison with the Scientific Advisory Committee. Certainly some of the members of that Committee were involved in getting advice with respect to their species specialty so there has certainly been a high level of engagement of specialists in endorsing those management prescriptions. Whether they were formally taken through a SAC endorsement process, I don't know.

25 And I suppose to a certain extent it is probably irrelevant whether they were or not because in fact irrespective of what is in the Threatened Fauna Adviser, so long as a forest practice officer wants some advice, the protocol requires there to be negotiation in relation to the management prescription?---Well, the agreement recognises the time and a Threatened Fauna Adviser itself recognises this that it doesn't always deliver a definitive prescription. It may deliver a range of options so those options have to be negotiated on the ground and sometimes if a particular management prescription cannot be achieved the manager may then make a fundamental change to the management, for example, it may decide not to clear the forest and convert it but to manage it under a selected logging regime in which case a different management prescription would apply so that is the basis for the negotiation. There is no suggestion that the negotiation would lead to a management prescription that was contrary to the sorts of guidelines and prescriptions that are contained in the Threatened Fauna Adviser so for example there would be no latitude for a negotiation on reducing a wedge-tailed eagle nest from 10 hectares which is the standard prescribed in the Threatened Fauna Adviser down to one hectare. That would not be the sort of outcome that would be delivered through that negotiation.

45 Why? Why not?---Because we have got specialists from the Forest Practices Authority and the Threatened Species Unit who understand very clearly what

the standard requirements are, that the agreed management prescriptions that have been delivered through the Threatened Fauna Adviser so they are not up for negotiation. The negotiation is about whether or not different prescriptions would apply. Not changing the fundamental form of the prescription.

5

Where do I see that minimum bottom line guarantee in the protocol?---You see it in the professionalism and diligence of the people who are employed to deliver these planning tools within the authority and within the Threatened Species Unit.

10

HIS HONOUR: Ask the question again, Mr Tree.

MR TREE: Where do I see the minimum bottom line guarantee in the protocol?---Well, if it is not there, it's not there.

15

And it is not there?---I you would like it there we can probably put it there because that is clearly the intent.

20

And it is not there?---Well, your reading of it, it's not there. To me it was always one of those operating instructions that didn't need to be necessarily spelt out but if you are saying that is a deficiency of the - - -

25

HIS HONOUR: Mr Wilkinson, we are going to be here for about three weeks with your evidence alone unless you very carefully concentrate precisely on what you have been asked. Answer as directly as possible. Any difficulties or any expansion can be cured by Mr Gunson in re-examination?---Thank you, your Honour.

30

MR TREE: In the last financial year, where there has been reporting by the Forest Practices Authority, so 2004/05 I understand you would work in financial years, do you know the total area of native forest harvested in Tasmania?---The statistic is in our annual report, so I can refer to my annual report and give you the exact figure.

35

Please?---Sure.

HIS HONOUR: We might to that at 1.30.

40

MR TREE: Yes. Thank you, your Honour.

HIS HONOUR: The Court will now adjourn.

45

ADJOURNED

[12.30pm]

RESUMED

[1.32pm]

GRAHAM RICHARD WILKINSON:

5

HIS HONOUR: Yes, Mr Tree?

MR TREE: Thank you, your Honour.

10

Mr Wilkinson, prior to the break I was asking you about the amount of native forest that had been cleared in Tasmania in the last financial year for which you have statistics, and I think you were going to look at the annual report for the last financial year?---Yes. Are you asking for the exact hectares of native forest that was cleared and not returned to native forest?

15

Well, there is a range of different options, aren't there?---Yes.

But let us just start with the biggest number, with dramatic effect no doubt. The total amount of native forest?---The total amount of native forest that was covered by a Forest Practices Plan that was certified during the financial year was 34,328 hectares.

20

And is it safe to conclude that the majority of that would have in fact thereafter been harvested either by clear fell or by selective logging?---By one of those, yes.

25

Thank you. So that that encompasses, if you like, the harvestable areas of the coupes?---Not necessarily. The area contained in the Forest Practices Plan may be a gross area, so it wouldn't necessarily have discounts for stream side reserves, habitat clumps, those sorts of things.

30

All right. So it would be at the upper edge of the likely range, if you like?---Yes, it would be.

35

Right. And there are several components that go to make that figure up. Some is intended to be regenerated to native forest, some to plantation, and some to no forestry purpose at all I assume?---That's non-forest use?

40

Yes. So let us start with the amount that is intended thereafter to be non-forest use?---1538 hectares.

Of plantation?---Non-forest use. Plantation is forest use.

45

Yes. But is - - ?---Oh, sorry, you are asking a second question?

Yes?---Sorry. I thought you were seeking clarification.

No, no?---The amount converted to eucalypt plantation 6225 hectares, the amount converted to pine plantation 234 hectares.

5 And it follows then that the balance is intended to be regenerated to native forest?---Yes.

But not in a plantation context?---In a native forest context.

10 Yes. Now, has that figure in the last five years, let us say, been constant, the total amount of native forest that has been cleared?---When you say cleared, do you mean cleared and converted to something other than native forest?

15 Well, let us just start with the larger figure first of all, the total amount that is subject to Forest Practices Plans for clearing?---The total amount subjected to Forest Practices Plans for native forest, the statistics for six years, the last six years, are in the annual report presented as a histogram - - -

20 Yes?--- - - - and I'm just trying to read the cut off for native forest, but it has been variable between 30,000 hectares and maybe 40,000 hectares, but I'm looking at this figure very quickly.

25 Sure. So would it be safe to say that the harvesting of native forest - let us use the term harvesting, and let us ignore for the moment the intended use to which the forest is thereafter to be put - that the harvesting of native forest for the last six years has been at a rate of between 30 and 40,000 hectares per annum?---That would appear to be - yes, correct.

30 And can you say whether that is, in your experience, indicative of this year's figures? We are almost at the end of another financial year, you see?---It would be indicative.

There is, correct me if I am wrong, an intention to restrict native forest clearing after 2010?---I think you are referring to the Permanent Forest Estate Policy?

35 Yes?---That restricts the conversion of native forest, and I differentiate between clearing and conversion. Forest can be cleared and returned to native forest. Conversion is where it's returned to non-native forest.

40 So either to plantation or non-forest use at all?---Some other form of land use, yes.

45 Yes. And it is intended that by 2010 the conversion of native forest to anything other than native forest, ie, plantation or grazing or whatever, will abate, cease, reduce, what?---Will cease on public land.

And on private land will continue?---By 2015.

I see. Has that - I dare say that is widely known within the forest community?---I would think so.

5 And that has led, has it not, to an acceleration of plans for conversion of native forest to plantation since it was announced?---We haven't got the definitive data for that, but I think that I could confirm there has been a trend of more applications being brought forward for conversion.

10 And you would not expect that trend to abate between now and 2010 in relation to public land?---I - well, I - that would be speculation. I don't know what the plans of Forestry Tasmania are in relation to their conversion program. It could cease at any time.

15 Although you do have a statutory right to require - in fact there is a statutory obligation on those who harvest more than 100,000 tonnes of wood a year to give you a three year wood production plan?---That's correct.

20 That doesn't enable you to determine, in relation to Forestry Tasmania, their intentions in relation to coupes in the next three years?---It gives an indication, yes.

25 As to whether there is an intention to increase the use of - change to plantation?---It gives an indication of what they are proposing to do. The plan for one year tends to be more precise than a plan for three years in three years time. They are indicative plans at that stage, but it gives an indication, yes.

30 Do you have a current wood production plan for Forestry Tasmania?---The plan for this year is normally submitted to us I think around about May. Whether we physically have it as I speak I don't know, but I would expect that we would have it at about this time.

35 I am sure you are more familiar with the legislation than I, but I thought that there was a statutory obligation on those who harvest more than 100,000 tonnes of wood to give you three years in advance their three year wood production plan?---Yes, that's right.

40 Do you have one for Forestry Tasmania?---Well, we have - we have - every year we receive a three year plan from Forestry Tasmania, so we have their latest plan, yes.

And for what years?---Well, the plan that was submitted last year was for the next three years on a financial year basis. The plan that we expect to get this month, or thereabouts, would be for the next three financial years.

45 So it is a - - -?---It's a rolling three year plan.

Quite so. And there is no obligation to have conformity between the three year plan submitted last year, and the three year plan submitted this year?---No.

5 No. And am I correct in saying that you are aware that Forestry has been experiencing some difficulties in preparing the current three year plan?---I'm aware that they have had some difficulties in meeting the provisional time frame that we have set, but I'm not aware that they are not going to be providing a plan as required under the legislation. I'm not aware that there are any major constraints with respect to that, no.

10 It is not a provisional time frame. It is a statutory time frame?---No. There's a provisional time frame, in terms of sending advice out to industries to start preparing a plan, to start consulting with local government, to start letting people know that there will be briefings. That's the provisional nature of the
15 initial planning. The submissions is a statutory requirement.

And can you say, based upon the three year plans that you have seen in relation to Forestry Tasmania, whether you interpret those as demonstrating an
20 increased conversion of native forest to plantation?---My response is that there appears to be a short period where there will be a focus on conversion, and that that short period will then abate, and it will return to a greater proportion of those coupes being scheduled for native forestry operations.

25 HIS HONOUR: By focussed, do you mean increase?---I'm sorry, your Honour?

The question was in terms of increase in conversion, and you have used the language of focus?---Yes. Yes. I'll clarify. There appears to be an increase in the proportion of coupes that will be converted in the short term.

30 Yes. Thank you.

35 MR TREE: And that is now one year old, that perception?---For the current trend, yes.

And exactly what the next three years are planned as at today to be you presently don't know, because you are expecting a report shortly?---Shortly, yes.

40 What about in relation to private land owners - or firstly, can I ensure that there are no other public land owners other than Forestry Tasmania that you receive wood production plans from?---That's correct.

45 Or is Private Forests Tasmania - does it co-ordinate the production of wood?---No.

No?---They don't meet the requirements of the Act.

Thank you. Do you receive three year plans from private land owners?---We receive them from those who met the requirements of the Act which is any person harvesting or expecting to harvest more than 100,000 tonnes per annum.

5

And can you say whether your observation of those production plans demonstrates an acceleration of conversion of native forest to plantation?---Yes, I would say that is a trend.

10 In what order of magnitude?---I would be speculating.

Well, it is a hundred times?---No.

15 Ten times?---No, no, certainly not. I think the level of conversion has been somewhere between about 7000 and 11 or 12,000 hectares per year since the RFA was signed. I think over the next 12 months we could see that on current trends, certainly exceed 12,000 hectares. It may exceed 15,000 hectares. I would not expect it to exceed 20,000 hectares.

20 So you would expect it to do no more than double effectively, on what it's present - - -?---That would be correct.

25 And of course, the conversion of that native forest to plantation carries with it say, for some substantial rehabilitation action, an impossibility of reverting it thereafter to native forest?---It doesn't preclude converting it back to native forest but it would be more difficult obviously than having the forest regenerated to native forest straight after harvesting.

30 Well, it is pretty tricky to revert a blue gum forest to native forest because most of the understorey species have no longer got viable seed in the soil, for instance?---That's right, yes.

35 So it would be a colossal rehabilitation effort to convert that which has been plantation back to native forest?---Well, I think there is no simple answer to that. On some sites some plantations could be rehabilitated back to native forest without major input. On other sites it would be far more difficult.

40 One of your - sorry, can I ask this? This trend is state wide, is it not?---Do you mean whether it is evenly occurring throughout the State?

Yes, well, I don't mean perfectly even but generally?---I think it's across the State but concentrated in certain areas.

45 You are no doubt aware of a population viability analysis that was undertaken about two years ago by the University of Melbourne?---In relation to the wedge-tailed eagle?

Yes?---I've heard of it.

Heard of it. You have not seen it?---No.

5 Were you aware that Dr Munks was one of the co-authors of the - or co-researchers of the study and co-author of the almost published paper that it gave rise to?---I was aware that Sara was involved, yes.

10 And are you aware of the outcomes that it predicts?---I'm broadly aware of the outcomes, yes.

And you are aware, are you, that it was postulated upon a range of scenarios?---As models are, yes.

15 Scenarios which you are aware were given to the researchers by Forestry Tasmania?---I understand that to be the case.

20 Do you know whether the trends of conversion which you have described from native forest to plantation, the increasing trends, do you know whether that was one of the bases for a scenario of the Bass district?---I don't know.

25 Would you agree with me that on any view the increased conversion of native forest to plantation is unlikely to assist the population viability of the wedge-tailed eagle?---I would agree with that, yes.

The real question is the extent to which it would further impede the viability of the eagle population?---Yes.

30 And that will depend substantially, you would agree, upon the type of native forest that is being converted?---Amongst other things, yes.

35 Do your reports, your annual reports, in relation to these aggregates of clearance of native forest allow an assessment of the conversion of old growth forest?---Can you clarify your question for me please?

40 Yes. Can I look at your annual reports and find in relation to the published statistics for clearance of native forests, any subset which pertains to old growth forest?---There is some information in the appendix to the annual report that identifies communities, particular communities, where there are old growth reasons for not allowing conversion. We don't produce a set of statistics relating to the conversion of old growth in the annual report.

Why not?---We haven't been asked to.

45 You don't think it might be of interest to those who read your annual report?---It might be.

HIS HONOUR: You and who else, Mr Tree?

MR TREE: There are pictures, your Honour?---I would say that it would be people who would be interested in that. It is not in our annual report.

5

Do you know in relation to the last financial year the percentage of native forest, let us leave aside for the moment whether it is for plantation of regeneration, that had old growth components to it that was cleared?---Not off the top of my head, no.

10

It would be a substantial proportion though, wouldn't it?---I can't answer that question.

15

You are the head of the regulatory body that oversees forestry operations in this State and you do not even know the proportion of land that was cleared last year that was old growth?---No one has asked me for that information. If somebody asked me for that information then I could probably access it.

20

You are the head of the agency that has responsibility for determining management prescriptions for, amongst other things, the wedge-tailed eagle?---In co-operation with other agencies, yes.

25

The primary responsibility under the protocol is yours?---Not under the protocol, no, it is a shared responsibility.

The primary cause of - sorry, the second most important cause of decreasing viability - sorry, second most significant threat to the wedge-tailed eagle is the clearance of native vegetation, you are aware of that?---Yes.

30

Hence it follows that the prescriptions in relation to it, the wedge-tailed eagle, must be directed towards maintaining such habitat as remains for it?---Yes.

35

That is principally old growth forest?---Within the range of the eagle where it's - yes, that's correct.

Are you familiar with clause 68 of the RFA?---May I check it.

By all means, volume 2, I think, if it is still in front of you. Sorry, volume 1.

40

HIS HONOUR: Volume 1, 162.

MR TREE: Thank you, your Honour?---Yes, I am familiar.

45

Whose obligation is it to protect the priority species?---Well, again there are two components protecting the priority species, one is the CAR Reserve system and that is a responsibility of various land owners and various conservation programs and I think Dr Whittington provided information with

respect to those programs yesterday. With respect to the second requirement applying relevant management prescriptions, in relation to forest practices that are conducted and required under the Forest Practices Act, then it is a requirement of the Forest Practices Authority to ensure that those practices are conducted in accordance with the relevant management prescriptions.

But the obligation according to the clause is to protect the priority species by applying the relevant management prescriptions?---That's correct.

How would I determine whether your agency has protected a priority species by applying relevant management prescriptions? How would I test it?---How you would test the implementation would be through the audit process primarily and through other investigations that are conducted. Testing the efficacy of the management prescriptions is through some of our research programs and they are detailed in our annual report.

Let us deal with the audit first of all. Would you agree with me that the Forest Practices Board has undertaken fauna audits from time to time?---Yes.

I want to read to you a file note prepared by an officer of Forestry Tasmania, Vanessa Thompson, which has been produced by Forestry Tasmania to the applicant's solicitors which in part reads:

The required Forest Practices Board fauna audit 2000 outcomes for the Derwent district are unable to be provided as of 29 august 2005. A request has been made to the Forest Practices Authority requesting this information on two previous occasions over several years and is yet to be provided. This information is believed to be available however the responsible authority for this documentation is the Forest Practices Authority and they should be contacted regarding the supply of this information.

Is there any reason, assuming this is correct and accurately reflects the stated facts, that you would have supplied Forestry Tasmania with the relevant fauna audit when it had been requested of you?---Yes, there is a reason. We don't have that data.

I beg your pardon?---We don't have the data.

Who does?---It's a very good question. The officer who collected that data was Bill Manning. He did not provide that data to us. We have repeatedly asked him to provide that data. This is an important research project. He has not to date provided that data.

Do you say that somehow or other he caused it to disappear from your system?---Mr Manning was in possession of the data. As I understand it he did

those surveys. He was requested to provide those to the supervising scientist and for some reason he has not provided those data.

5 When did he leave the employ of the authority?---I think it was 2002 about September.

Then let me read you another one of Ms Thompson's file notes in relation - - -

10 HIS HONOUR: Just before you do, was he terminated or did he resign?---He voluntarily transferred to another government agency.

I see. Thank you.

15 MR TREE: Let me read you another one of Ms Thompson's file notes:

20 *The required Forest Practices Board audit outcomes for the period 2003/2004 for Derwent district unable to be located as of 29 August 2005. A request has been made to the Forest Practices Authority requesting this information on Friday, 26 August 2005. The absence of the individual response for the management of the annual audit program has meant that this information is unable to be prepared for the deadline of 29 August 2005.*

25 And I want you to assume that that remains the state of play as at today. Is there any reason why a request by Forestry Tasmania for fauna audits for the year 2003/2004 for the Derwent district has not been answered?---I am not aware. If we have the data, we will provide it.

30 Do you have the data?---For those particular coupes I don't know. I would have to check. I know that we have about 30 large lever arch folders that relate to those studies. Whether those particular surveys are part of that set of information I would have to check.

35 And that is a fauna audit for the Derwent district for the year 2003/2004?---If that was done. That is an audit which is currently in progress, it's not completed, it may well be that those audits haven't been done or they have been partially done or they have been fully done. I don't know. I would have to check the information.

40 These are thematic audits, are they not? They are not part of the random audit process?---No, they are thematic.

And this is a second type of audit. I hate to return to audits - - -

45 HIS HONOUR: It is an audit day.

MR TREE: It is a second type of audit that the authority undertakes?---Yes.

Thematic audits. You have referred in your affidavit, have you not, to some of the thematic audits, page 2442. You will see it says:

5 *In addition to the general audit the Forest Practices Authority also conducts thematic audits on a regular basis to provide more specialist information on performance standards in specific aspects of the Forest Practices Code. In 2004/05 the Forest Practices Authority conducted a thematic audit of native forests, silviculture and private land.*

10

?---Yes.

15 *In 2000/01 the senior zoologist initiated a benchmarking survey to assess the way that the fauna provisions of the code were being implemented prior to the introduction of the relevant planning tools and training programs. The objective of this survey was to provide the benchmark standard against which the efficacy of planning tools and training programs could be assessed on a continuing basis.*

20 ?---Yes.

Do the thematic audits include, to your knowledge, a fauna audit?---Yes.

25 For what years?---As I understand it in 2000 the senior zoologist initiated a benchmarking audit of coupes that were active in 1997/1998 and more recently the audit has been of coupes that were active I think in 2002/2003 but I am going on memory here.

30 Who was the zoologist in 2000?---Sara Munks.

And who was the zoologist or who is the zoologist who is undertaking the present project?---Sara is still in charge of that project.

35 Have you seen or do you know of the results of either of those two activities that she has or is undertaking?---There are no results as yet. She is still compiling data, lots and lots of data, so there is no publication, there is no analysis of that data at this stage.

40 When it is anticipated that it will conclude?---Well, she is currently doing the second survey which is the current survey into the 2002/2003 coupes. Once that field collection is completed she then hopes to analyse the total data set and write it up for publication.

45 And in broad terms can you tell us your understanding of that audit?---In broad terms we are looking at the effectiveness of the application on the ground of the provisions of the Forest Practices Plan that relate to the general fauna provisions of the code so in other words the placement of wildlife habitat

clumps, wildlife habitat strips, any conditions that elate to threatened species, how they were implemented on the ground.

5 So it is assessing actual implementation of things that are on a paper plan?---Yes. But also checking that that plan is consistent with the planning tools that were available at that time.

10 But not whether or not the prescriptions achieved that which it was hoped that they would?---Efficacy monitoring is a separate project. We have a separate project specifically looking at efficacy of the prescriptions. There is a wildlife habitat clump project and some other related projects which are detailed in the annual report.

15 Would you agree with the comment that wildlife habitat clumps seemed to be used as the panacea of all fauna woes? We just throw a couple more clumps in and - - -?---No.

You don't?---No.

20 The reason why this thematic fauna audit is necessary, perhaps desirable, is because the audit, the general random audit in relation to fauna is - I won't say hopeless, but it doesn't exactly give a wide range of statistics which can be analysed and efficacy of prescriptions can be determined, does it?---Well, I would answer your question by saying we assess about 140 audit factors so by
25 its nature we focus on some key indicators as part of that audit and the reason that we have thematic audits is to drill down more closely in certain strategic priority areas.

30 Look at page 2490 which I think is one of the last pages of your affidavit, second last page. Just use this as an illustration. We see there the questions which form the basis of the fauna component of this audit; correct?---Correct.

And we can see, for instance, question 101:

35 *Have prescriptions for threatened species been implemented*

?---Yes.

40 And we can see that on the basis of this there were 74 plans that had prescriptions for threatened species?---Yes.

Ninety-one per cent of those had implementation of the prescriptions?---Yes.

45 And then we go to some further analysis based upon tenure?---Yes.

We have no idea as to the significance of the particular prescription in relation to those 9 per cent that was not implemented?---No, not here.

It could range from chopping down a wedge-tailed eagle's nest to having too small a wildlife habitat clump?---Yes.

5 HIS HONOUR: I take it sate forest is State forest?

MR TREE: Yes.

10 And am I correct in saying that for instance, the weighting, the overall weighting, which is given to question 101, is no different to the weighting that is given, for instance, to the existence of sediment entering landings. For instance, question 43?---The way the results are presented, that is correct, there is no weighting applied, they are raw summary data.

15 So a failure to prevent sediment from entering the landing is statistically treated no differently from chopping down a wedge-tailed eagle's nest for the purposes of the audit?---In this analysis any major breach of course is reported separately in the annual report under investigations into serious breaches.

20 Which means at the end of the day the aggregate scores that are obtained by the massaging of these figures are nigh meaningless in terms of the importance of any non compliance?---It's an average.

25 HIS HONOUR: An average of what?---An average of all of the observations have equal - in terms of arriving at a mean they are all given equal weighting for the presentation of the summary results in the annual report.

30 MR TREE: And I am literally correct in saying that for the purposes of this audit it is as significant to have sediment on a landing as to chop down a wedge-tailed eagle nest?---No, I don't know how you could come to that conclusion.

35 But for the purposes of this audit that's how - they are treated identically in terms the weight that is given to the breach?---All factors are assessed, yes.

Equally?---Well, that's right.

40 Which means that the use that can be made of individual scores for fauna in any of the audits is about zero?---No, I would not agree with that, I would expect that any informed person wanting to know the performance with respect to the flora and fauna provisions would go specifically to that part of the annual report. They wouldn't look at the summary data in that section of the report, they would go specifically to the published actual results.

45 I see. I daresay though that the purpose of conducting a specific fauna report - sorry, fauna audit, is in some way in recognition of the deficiencies in the overall random audit in relation to fauna?---Well, as I've indicated where we

have certain priorities we endeavour to drill down more deeply by conducting thematic audits.

5 At what level of specificity will the thematic audit, in relation to fauna descend? Will we, for instance, be able to know whether prescriptions in relation to, for instance, stream side reserves of 10 metres on a class 4 stream, have been observed and the extent to which they have not been observed?---Well, those results are in this report here as well, of course, but that level of detail would come out in that thematic audit. It's very important
10 for us to identify the components that contribute to good outcomes and where performance has been good in some and not so good in others.

And this is an audit that involves on the ground field assessment?---Certainly.

15 Do you have even a hint for us as to whether, for instance, in relation to adherence to broad-toothed stag beetle prescriptions that we have scored well?---The best I can say is that the advice I have from my zoologist is that they haven't come into my office saying we have got some major problems. They are out there assessing conducting the audits themselves, obviously they
20 have to analyse the data but I would expect that if they were seeing major problems that they would be coming in to advise me of that, that we need some urgent attention.

25 And the best person to ask in relation to that is the senior zoologist who is conducting the audit?---There's a number of project officers including Mark Wapstra, who have been involved in that audit.

And the best person to ask in relation to the overall audit would be Dr Munks?---If you wanted technical detail about that audit Dr Munks would
30 be the best person to ask.

Now, I think it is correct to say the agency has no role in the formulation of recovery plans for threatened fauna?---That's not strictly correct. Where we have specialists engaged on staff they tend to sit on the recovery plan teams
35 and certain scientists from the FBA have acknowledged expertise for a particular species so they do play a part in the team that writes the recovery plan.

40 There is, I think it is fair to say, a degree of co-operation between agencies that work in the threatened species area?---Yes.

I daresay the degree of co-operation depends upon a whole range of factors including personalities and politics?---Yes.

45 And would you expect that the recovery plan ought in form the - again I am going to use the pejorative term but I don't intend it to be pejorative - the ad

hoc development of management prescriptions under the protocol?--- Yes, it should inform, yes.

5 So that you would be dismayed if there were ad hoc management prescriptions that did not conform to actions in a recovery plan?--- Yes.

10 Could I go so far as to say that those ad hoc prescriptions ought always conform to actions identified in a recovery plan?---As a principle, bearing in mind the recovery plans are very broad strategic documents, that they should be consistent with those broad strategic priorities, yes.

15 Well, I am sure it is me and not you, but the word strategic, what does that mean?---Well, I use strategic in this sense in terms of looking at the species as a whole within Tasmania, all of the components of its habitat, all of the risks involved to that particular species as opposed to the operational management prescriptions which are very tailored for a specified activity on a certain piece of land.

20 Would I be correct in saying that the Scientific Advisory Committee had some difficulty with the use of the word, strategic, back when it was considering the approval of the Threatened Fauna Adviser in, I think, 2001?---I don't know. They may have done. I would have expect they would have raised it as an issue.

25 Well, could I show the witness please this document?

30 Would I be correct in saying that the concerns of the advisory committee were sufficient in relation to the term strategic that it almost saw its approval of the adviser, if not defeated then certainly delayed?---Well, that is not my reading of this. My reading of this is that one member of that Scientific Advisory Committee advised there may be some reluctance to sign off prescriptions unless the SAC knew the scope of the strategic planning so they are essentially seeking more information about the adequacy of the strategic planning which is a very reasonable question to ask.

35 I am sure again it is me but what does that mean, "They had difficulty with the scope of the strategic planning." What does that mean?---In a practical sense and it comes down to the discussion we had about high level management prescriptions and very detailed operational prescriptions delivered by the
40 Threatened Fauna Adviser. The Scientific Advisory Committee can look at prescriptions that are very much focussed to the operational level. In other words whether or not in the range of the stag beetle the retention of a certain amount of rotting log resource is going to be adequate for that particular local area but they need the strategic context in knowing how much within the range
45 of the species is going to be disturbed at any point in time. If it is only one coupe then it probably is not that critical about how much rotting log resource is left within that small area. If a very large component of the range was

affected by a number of disturbance activities then it could become more critical to know what the safeguards are at the operational level in terms of making sure that at the strategic level the species is being adequately protected.

5 And so how was that potential impasse resolved?---I think there were discussions between the experts about the status of strategic planning. There are strategic planning initiatives for a range of species and there would have been some discussions about the status of those particular species, how much we knew about the broader habitat requirements, levels of disturbance and then
10 arriving at some sort of rule sets about how much the habitat could be treated under operational management prescriptions and how much should be in more formal reserves.

The committee wasn't the only entity that had concerns about the revised
15 Threatened Fauna Adviser, were they?---I don't recall. I suspect that there were other stakeholders who had concerns particularly the landowners would have been concerned about to what extent the prescriptions may have impacted on their businesses.

20 Right. Can I just go back a step please. Does it follow then that to apply, what, a formulate in fact, a management prescription at an operational level, a whole of species disturbance prediction would be needed?---Yes.

And do you say that those overviews in relation to threatened species
25 exist?---They exist in one form or another. Some are better documented than others. Some are better informed than others.

For instance a recovery plan would be a pretty good place to find a whole of species analysis?---Not necessarily. I am not sure that recovery plans
30 necessarily contain that degree of analysis.

You say they still might be a bit too general?---Well, they may not be up to date. They may be five years out of date by the time somebody reads a
35 recovery plan. If you are doing the strategic planning properly you would be using GIS based techniques to look at the current state of the species at that point in time.

What is your explanation for why it is that none of the three species, the subject of this litigation, have an extant recovery plan?---I can't answer that
40 question.

Does it trouble you?---I would like to see up-to-date recovery plans for all of the priority species.

45 I daresay it is a matter of prioritisation of resources, is it?---I daresay it is.

5 You are aware, aren't you, that during the course of this trial even your own resources have been used to prepare a report in relation to the efficacy of broad-toothed stag beetle prescriptions?---That has been an ongoing project, my understanding is, and there has been some work done during the course of this trial.

10 And there was, correct me if I am wrong, field trips undertaken in December of last year and January of this year in relation to that project?---I couldn't confirm the dates but I understand my staff have done some field trips roughly during that period, yes.

And we are to understand, are we, that that is unconnected with this litigation?---I wouldn't say it is unconnected with this litigation.

15 Then tell me this please, why have you committed resources of your department, or your authority, to be used in connection with tasks associated with this litigation?---Well, the question relates to the adequacy of our knowledge about that particular species. Questions have been asked and continue to be asked about the state of knowledge and we saw some value in bringing forward some of the work that we do to improve our knowledge with respect to the species.

20 What was the value?---Well, there is probably a number of bits of value. One is the fact that we have some increased knowledge in a priority species - that is probably the main value - which will inform this process no doubt.

25 Another value might have been that some data might have been obtained which may be of benefit to Forestry Tasmania's litigation too, mightn't it?---I can't speculate on that. The information may have produced results that was not to the liking of a particular landowner. This was a scientific study that sought to improve our information.

30 Do you accept that you have used resources under your control to assist Forestry Tasmania in the conduct of this litigation?---Well, as I understand it the State of Tasmania has also been joined to this litigation so we see collectively that the Court needs to be informed and if we can assist in informing the Court then we will do that.

40 HIS HONOUR: Put the question again, Mr Tree.

MR TREE: Do you accept that resources under your control have been deployed to assist Forestry Tasmania in the conduct of this litigation?---Well, I think Forestry Tasmania has some benefit from the deployment of those resources, yes.

45 Were those resources offered to the applicant?---I am not sure that the applicant asked for those resources.

Were they offered to the applicant?---They weren't offered and they weren't offered to Forestry Tasmania is my understanding.

5 But they were asked by Forestry Tasmania and you said, yes?---There was a request I think to improve level of knowledge to which we have responded.

10 You don't think, do you, that by so conducting yourself you may have allowed the impression of a lack of impartiality to arise, do you?---I don't think so.

You don't think that the impression of partisanship on the part of the forest regulator in favour of Forestry Tasmania may have arisen?---I think that that may be the perception by some, but it's not a perception that I hold.

15 Because of course if this Court were to conclude that there has been a significant impact, or there would be a significant impact in relation to the three species, by virtue of forestry operations at Wielangta, that would not be a ringing endorsement for the Forest Practices Authority, would it?---No.

20 You have an interest, indeed a personal interest in the result of this litigation, do you not?---I would think so, yes.

25 Particularly because for the entire time of the operation of the RFA in this State you, you personally have had the responsibility in relation to forest regulation, have you not?---I have had responsibility for the day to day administration of the Forest Practices system, yes.

30 You don't think that that may have played some part in motivating you to make resources available to Forestry Tasmania to resist this application?---I think I have answered the question. I'm not sure that I can - - -

Well, humour me. Answer it again?---Well, I think my answer that there is a common interest in providing information that will inform this Court.

35 And this Court is to understand that you are an independent regulator of the forest industry, independent of Forestry Tasmania?---That's correct.

40 One final matter, Mr Wilkinson. Your former employee, Mr Wapstra, who you have indicated is the person we should be asking more specific questions of in relation to some species is no longer an employee of the Authority, is he?---No, he's not.

45 A request for documents referred to in his affidavit has been made of Forestry Tasmania, and in part the response has been that he does not have those documents, they are in the possession of the Forest Practices Authority. Are you unaware of that?---I am unaware of that, yes.

You would not wish to impede the applicant access to those documents if they are necessary for properly evaluating Mr Wapstra's evidence, would you?---If this Court determines that that information should be provided, I would be very happy to provide it.

5

HIS HONOUR: That's a different question.

MR TREE: Do you require a determination, or are you prepared to proffer that information without - those documents without order?---Can you tell me what the documents are that you are seeking?

10

I can provide you with some species of list. It may not mean particularly much to you. Just excuse me for a moment. Well, it may be a little difficult to be specific, but in general terms, let us not enter into anything specific just yet, in general terms you would not wish to impede the applicant's access to material to evaluate his evidence?---Certainly not.

15

And you would not require a Court order for making that available to the parties to this litigation?---Well, without knowing the nature of your request I can't answer that fully, but assuming that there are no breaches of confidence or whatever, if it's just information that's routine planning information I have no objection to releasing that information.

20

HIS HONOUR: Is it confined to documents referred to in Mr Wapstra's affidavit?

25

MR TREE: Yes, your Honour. And, sorry, and some additional material that has emanated from him. For instance, his field notes?---I think that those could be made available, unless Mr Wapstra has a personal reason why the field notes are privileged in some way. I'm not aware of that, but I think I will, to the best of my endeavours, try and respond to your request.

30

HIS HONOUR: Ultimately he could subpoena them to me.

MR TREE: That is so. Yes, that is right. I am just trying to avoid confetti subpoenas?---If you could let me know the nature of your request I can give you some advice.

35

HIS HONOUR: Now, there are some matters that, Mr Tree, that you said you needed - you raised this morning that couldn't - - -

40

MR TREE: Those matters have resolved themselves.

HIS HONOUR: I see. Thank you. Mr Gunson?

45

MR D. GUNSON: Before I start my re-examination and I am very conscious of the time, I do need about four or five minutes with the witness, as to one

document that has been raised by my friend in the course of cross-examination.
Could I have a brief adjournment to discuss that document with him?

HIS HONOUR: Is there any difficulty about that occurring at all?

5

MR D. GUNSON: Look, could I perhaps add to that. It is a document that I was not provided with at any stage prior to today, something that has come up from the witness in the course of cross-examination, and the document was provided to me by my instructors during the course of the day.

10

MR TREE: I have no difficulty with that course.

HIS HONOUR: Certainly. Just let me know when you are ready, Mr Gunson.

15

MR D. GUNSON: I will, your Honour. I estimate about four minutes.

HIS HONOUR: I will just be in the ante-room. My associate can retrieve me.

20

ADJOURNED

[2.31pm]

RESUMED

[2.36pm]

25

HIS HONOUR: Yes, Mr Gunson?

MR D. GUNSON: Thank you, your Honour.

30

<RE-EXAMINATION BY MR D. GUNSON

[2.36pm]

35

MR D. GUNSON: Mr Wilkinson, earlier this morning - it may seem quite some hours ago, I am sure it was - Mr Tree was asking you some questions about the audit procedures that are adopted by your authority. You have mentioned a report in 2002 which you referred to as the Wells report, do you recall mentioning it?---Yes.

40

And do you recall the name of that particular report?---Not verbatim but it was a report done by Clint Wells to look at the audit process that we had and to comment on the - to review the audit process.

45

All right. And it was to review your audit procedures and reporting system?---Yes.

Right, and who did you understand Mr Wells to be?---Mr Wells is a consulting forester who is also a qualified environmental auditor and he has been involved in national and international audits for a number of bodies, including the United Nations conducting reviews of their auditing process.

5

Yes. I would like you to have a look at this document, please?

MR ABBOTT: Well, we might as well cut to the chase. My friend is intending to tender this in re-examination. In my respectful submission, it is sufficient basis for it, it doesn't arise out of the cross-examination. The fact that this witness refers to a report during the course of his evidence in a non-responsive answer to the particular question does not thereafter give my friend a right simply to tender the document through this witness.

10
15 MR D. GUNSON: It arises this way. During the course of cross-examination of the witness he was asked a lot of questions, a significant number of questions, about the audit processes and whether or not they could be improved upon, whether they were adequate for the purposes and so forth. He responded by saying that they had commissioned the Wells report - these are my words, I don't have the transcript, my notes are quite brief - that the Wells report had been prepared and that basically dealt with a complete review of their audit procedures. Now, my submission is that the answer was a responsive answer and the issue fairly arises.

20
25 HIS HONOUR: Perhaps the issue could be best determined in this way, when we all have the transcript. Would there be any difficulty about marking it for identification now and resolving this on Monday?

MR D. GUNSON: Not at all but it would mean the witness would have to come back as I wish to take him to the report.

30

HIS HONOUR: I see.

MR TREE: Well, I am happy if your Honour takes the evidence de bene esse and we resolve it by reference to the transcript on Monday.

35

HIS HONOUR: So mark it for identification but allow the witness to be taken to the report?

40 MR TREE: Yes, but receive that evidence de bene esse.

HIS HONOUR: Yes.

MR D. GUNSON: Yes, I am content with that course, your Honour.

45

HIS HONOUR: All right, so MFI 18.

MFI #18 REPORT RE AUDIT PROCESSES

5 MR D. GUNSON: You have that report in front of you?---Yes, I do.

And could I take you please to the executive summary of that report and would you please read the second sentence of the executive summary and the bullet points that are referred to therein?---Yes:

10

The review has found that in terms of credibility, transparency and reliability of the audit process the Forest Practices Board has -

and then a series of dot points -

15

a comprehensive system for managing self regulation, audit procedures that follow the normally accepted protocols for an environmental audit, a sampling percentage that exceeds the level commonly accepted for general audits, a need for special or appropriately stratified audits to reliably assess special issues, a sample, a sample selection process that is consistent with accepted standards, audit procedures consistent with the normally expected standards of objectivity and accuracy, auditors with a high inherent competence and extensive experience but who lack formal auditing qualifications and certification, procedures which fully record and report audit data in an accountable manner, processes that use audit data to focus management and improve the code.

20

25

Thank you. And then without going through them by bullet or dot point, did Mr Wells comment on some opportunities that may exist for improving the system?---Yes, he did.

30

Thank you. Could I come back to the dot point which is auditors with a high inherent competence and extensive experience but who lack formal auditing qualifications and certification. Has this issue been addressed by the board of the authority as it now is, since then?---Yes, it has, yes it has. Both of our auditors have attended a comprehensive training course run by an international environmental audit training organisation, referred to as RABQSA.

35

Thank you. And what do you understand that to be, RABQSA?---It's an international organisation formed by an amalgamation of Quality Standards Association of Australia and a northern hemisphere counterpart which operates primarily through North America, Australia and other parts of the world providing training and accreditation processes for audits in quality assurance, environmental management and other related auditing type processes.

45

Thank you. You gave some evidence this morning about a Mr Manning, a Bill Manning, and some questions were addressed to you by my learned friend, Mr Tree, concerning his role as an auditor.

5 MR TREE: Can I assume my friend has now left the de bene esse point.

MR D. GUNSON: Yes, I am sorry, I have left that, you can hand that back to his Honour's associate if you would, please. Thank you, Mr Tree.

10 You were asked some questions this morning about Mr Bill Manning and his role as an auditor and you spoke of disciplinary actions against Mr Manning and you identified at least one of those disciplinary issues relating to what you described as an abuse of his powers under section 41 of the Act; do you recall that?---Yes, I do.

15 Are you able to say to his Honour how many other disciplinary actions or proceedings were taken against Mr Manning?---All I can say, and I think I said it previously, that there were a number of instances where Mr Manning was disciplined by myself for a range of activities.

20 Can you identify the range of activities or some of them that resulted in discipline by you?---I am somewhat reluctant to do so but some of them were of a form where he was making claims for expenses and using private vehicles and private telephones in an unauthorised manner.

25 Yes, are there any other matters?---In relation to disciplinary action?

30 Yes?---I - the only other matter that was of concern was that at the time of leaving the Forest Practices Authority without approval and without authority he took a large number of files and information from the authority which was then tendered to a Senate inquiry under privilege.

35 Yes, and the fauna audit data that you have referred to you said that you had asked him for that information as that had been part of his task to prepare that information. Did you get a response from him as to whether he was in possession of the information?---No.

40 And in what form did you make your requests to him; were they in writing or oral?---I think he was requested verbally to provide that information.

Thank you. And it wasn't forthcoming?---No.

45 And was he the only person charged with the responsibility of doing that thematic audit?---I'm sorry.

Was he the only person responsible for the preparation of that particular thematic audit?---My recollection is that the particular audits that he did were the audits that were absent from the data, sir.

5 Thank you. You gave evidence earlier today - in fact, this afternoon, about the clearing of native vegetation and the conversation of areas where native vegetation exists; do you recall those questions?---Yes.

10 And are you familiar with the supplementary Tasmanian Regional Forest Agreement that was entered into last year?---Yes.

Could the witness be shown please, book 1?---Do I have book 1?

15 If you could turn to page 284 please?---284?

284. Now, if you turn to page 284, do you see paragraph 45 there?---Yes.

Just read paragraph 45 to yourself please, refresh your memory about it?---Yes.

20 Dot point 2 says:

There is to be an overall cap on clearing or conversion of native forests on both public and private land. It will be established to retain 95 per cent of the 1996 area of native forest.

25 ?---Yes.

Now, there is an overall cap. Is that correct?---Yes.

30 So that cap could be reached, when?---It depends on the current rate of clearing but my estimate is that at current rates of clearing that cap could be reached between four and seven years at the current rates of clearing. If those rates of clearing were to diminish then clearly it would be longer than that.

35 But in any event by 2010, regardless of the rate of clearing, it will stop on public land?---Yes.

And within five years thereafter on private land?---Yes.

40 Mr Tree took you to exhibit 12 which is the report in February this year entitled A Progress Report with Respect to the Monitoring and Effectiveness of the Conservation Measures of the Broad-Toothed Stag Beetle and I asked you a number of questions about that. Have you actually read that report?---Yes.

45 And could the witness be shown please, exhibit 12?---I am sorry, this is not the report that I have read.

What report were you referring to?---I am sorry, I think I may have seen an earlier draft of this but this one is dated February 2006 - I am not sure that I have read this particular report.

5 All right?---I am aware of it but I am not sure that I have read it.

Thank you for that. And insofar as the report that was prepared by Mr Grove is concerned, have you read that? That is the Grove's report earlier of February this year relating to further research in Wielangta with respect to the
10 broad-toothed stag beetle in dry forest?---I am aware of that report but I have no recollection that I have read that report.

All right. Thank you for that. You said in response to a question from Mr Tree this morning that Parliament had given Forest Practices Authority extended
15 powers from July of last year. Do you recall that question?---Yes.

In what manner were your powers extended?---In a number of areas. In the area of section 25A which was the line of questioning at the time, the authority was given the power to use the issue of a notice to require a certificate to be
20 lodged. It also enables the authority, if a certificate is not completed to go onto the land and undertake that audit itself and then seek recovery of costs from the landowner so in other words the intent was that we didn't just merely prosecute someone not submitting a certificate but we actually made sure that the compliance check was done. The Parliament also increased the level of
25 penalties under the Act from \$15,000 per offence to \$100,000 per offence and I would have to check the other amendments. There were substantial amendments to the Act. I think they are the two main ones.

Thank you for that. Yes, I have no further questions of Mr Wilkinson,
30

HIS HONOUR: Yes, thank you, Mr Gunson. Would you like Mr Wilkinson excused?

MR D. GUNSON: Yes, I would like him released, your Honour.
35

HIS HONOUR: Mr Wilkinson, thanks for your evidence. You may be excused from further attendance but if you wish you may remain in Court?---Thank you, your Honour.

40

<THE WITNESS WITHDREW

[2.51pm]

MR D. GUNSON: We have nothing else today, your Honour.
45

HIS HONOUR: Mr Wapstra will give evidence on Monday and I gather the debate about MFI18 whether it turns into an exhibit or not will essentially depend upon a review of the transcript to see if the answer was responsive.

5 MR D. GUNSON: Yes, your Honour.

HIS HONOUR: Is that the confines of the debate?

10 MR TREE: Yes, that is my - - -

HIS HONOUR: And if the parties reach an agreement about that you can just tell me. If there is a contest it should be something that is capable of quick resolution.

15 MR TREE: Well, once I have had a look at it there may be more damage for my friend's case than profit so I may well let it go in anyway.

HIS HONOUR: You just never know. Is there any other - - -

20 MR TREE: Your Honour, there is one other matter that I wanted to address and that was in relation to a notice to produce dated 3 May 2006 which was served on my friends in relation to documents in relation to regeneration burns or proposed regeneration burns on coupes 8A, 8E, 8F and I formally call on that notice.

25 MR D. GUNSON: The first observation I should make, your Honour is that the notice of 3 May was, according to the header, faxed to Forestry Tasmania at six minutes past six on 3 May. It would be no surprise for your Honour to know that it wasn't received by Mr McDonald let alone anybody else until the
30 next morning. My instructions are Mr McDonald put in train the necessary steps to inquire of the personnel who could produce the documents if they exist and I think the person was not there yesterday, was away in the bush. Mr McDonald has been here all day. We can do nothing about it at the moment.

35 HIS HONOUR: But it is in train?

MR D. GUNSON: It is in train, your Honour. We have taken care of it. We will comply with it if we can.

40 HIS HONOUR: Yes, Mr Tree, does that satisfy you?

MR TREE: Yes, thank you, your Honour.

45 HIS HONOUR: Is there any other issue any one wants to raise?

MR TREE: No.

HIS HONOUR: Could I inquire how we are going with the timetable?

MR TREE: Pretty much on plan. In fact perhaps even a little faster than we had anticipated.

5 HIS HONOUR: All right. Is it increasingly unlikely that the fifth week will be required?

MR TREE: I would think so, your Honour, yes.

10 HIS HONOUR: Yes, and is it possible that the fourth week may not be required.

MR TREE: I wouldn't be that courageous, your Honour, but - - -

15 MR D. GUNSON: I think we will be in a better position this time next week to answer that, your Honour. There are 20 witnesses and we have got through six, but that doesn't necessarily indicate how it is going to go.

20 HIS HONOUR: No. One witness doesn't necessarily equate to another witness. It is a bit like someone in Melbourne counting this as one matter in my docket, as well as a half-day migration case that I will count as one matter in my docket.

MR D. GUNSON: I think they are called bean counters, aren't they?

25

HIS HONOUR: That is right. It is bizarre but I will say no more.

MR D. GUNSON: Do a Sackville J, he appears to have shown one case for the year.

30

HIS HONOUR: It has been very unproductive this year. If there is nothing else that we should be running for the weekend?

MR D. GUNSON: No, your Honour.

35

HIS HONOUR: May your team win unless it is Carlton. The Court will now adjourn.

40 **MATTER ADJOURNED at 2.54 pm UNTIL MONDAY, 8 MAY 2006**

INDEX

LIST OF WITNESSES	Page
--------------------------	-------------

<GRAHAM RICHARD WILKINSON, SWORN.....1659
< WITNESS WITHDREW1663
<GRAHAM RICHARD WILKINSON, RECALLED.....1666
< WITNESS WITHDREW1736

EXHIBITS/MFIs	Page
----------------------	-------------

MFI #18 REPORT RE AUDIT PROCESSES
.....1733

KEY WORDS	Page
------------------	-------------

NONE REQUESTED