



## HIGH COURT CASE STUDY



## AUSTRALIAN CONSTITUTION CENTRE

# The Constitution saves the Franklin River

*The Commonwealth of Australia v  
Tasmania (1983)*

### Facts of the case

The Tasmanian Government established the Hydro Electric Commission (HEC) in the 1980s with the intent of building a dam on the Franklin River to generate electricity. The area was widely regarded as pristine wilderness, and was significant for Aboriginal cultural heritage.

Federal Opposition Labor leader Bob Hawke made an election promise to stop the construction of the dam. Once in Government Labor passed the *World Heritage Properties Conservation Act 1983* which heritage listed the area. This legislation prohibited the HEC from undertaking any construction of the dam. By this time, Australia was a signatory to the Convention for the Protection of the World Cultural and Natural Heritage.

The Tasmanian Government continued with construction of the dam. The Commonwealth Government sought an injunction (a court order to stop work) by filing a writ of summons in the High Court.

### Issues considered by the court

The High Court had to determine whether the Commonwealth Government could use the 'external affairs power' in section 51(xxix) of the Constitution to enact the World Heritage Properties Conservation Act.

The Court was asked whether the 'corporations power' in section 51(xx) was validly used to prohibit the HEC from undertaking work.

Another issue considered was whether the 'race power' in section 51(xxvi) applied, as a protection of Aboriginal heritage.

### Decision

The decision was split 4:3. The Court found that

The pristine Franklin River.  
Source: © Peter Dombrovskis,  
The National Library of Australia



the *World Heritage Properties Conservation Act 1983* (Cth) was supported by the external affairs power in part, and that the Commonwealth was able to list the Franklin dam area as a world heritage site.

The HEC was a trading corporation under the Constitution and could be prohibited from undertaking construction activities. Parts of the Act were also supported by the race power because it protected Aboriginal cultural heritage. The decision meant that the Tasmanian Government could not pursue its plans to dam the Franklin River.

## Background to the case

The first hydro system was built to provide electricity in Tasmania in the early 1900s. Hydro requires a dam to collect water. It is pumped through pipes back up the mountain and released to flow back down the river. Energy is created as the water passes through turbines.

The attempted Franklin River hydroelectricity scheme stirred up a movement of people passionate for preserving Australia's environment. Thousands marched in protests across the nation. About 1,400 people were arrested at the dam building site between 1982 and 1983. The Greens movement was also gaining political momentum.

*"Flooding the Franklin would be like putting a scratch across the Mona Lisa"*. Environmentalist, and later Senator and Australian Greens Party leader, Bob Brown delivered these famous words in the early 1980s. Brown had been elected as a member of the Tasmanian Parliament in 1982. At one stage he was arrested for protesting and jailed for nearly three weeks. Within 24 hours of his release he was back in Parliament.

There was public elation after the High Court ruling that the Franklin Dam would not go ahead. The Franklin dam was a politically charged issue, dividing people in Tasmania and around Australia. The Court, however, only decided the legal issues in the case, leaving ongoing policy issues for providing electricity to governments.

## Did you know?

- The Commonwealth only has limited power to make laws. The States have general law making powers. However, a State law will be invalid if it is inconsistent with a valid Commonwealth one.
- The Tasmanian Dams Case is often referred to as one of the peak cases on the protection of

the natural environment in Australia.

- Just because Australia enters into an international treaty does not mean that it becomes Australian law. The Parliament has to ratify an international agreement and make it into Australian law.
- The judgment for this case was handed down accompanied by a media release explaining the decision in lay terms. This press release was a historical first in an Australian court and is now commonplace.



Source: Tasmanian Electoral Commission



Chief Justice Gibbs bench.  
Source: The High Court of Australia