

# **The Need for an Independent Anti Corruption/Investigation Body**

**Submission to the Joint Select Committee on Ethical Conduct**

**The Wilderness Society (Tasmania) inc**

**July 2008**

## **Terms of Reference**

To inquire into and report upon the issue of ethical conduct, standards and integrity of elected Parliamentary representatives and servants of the State in performing their duties with particular reference to—

( a ) a review of existing mechanisms currently available to support ethical and open Government in Tasmania and the capacity to conduct independent investigations;

( b ) an assessment of whether those mechanisms need to be augmented by the establishment of an Ethics Commission or by other means and if so by what means; and

( c ) any matters incidental hereto.”

## **The Wilderness Society**

The Wilderness Society is a community-based environmental advocacy organisation whose mission is protecting, promoting and restoring wilderness and natural processes across Australia for the survival and ongoing evolution of life on Earth.

The Wilderness Society (Tasmania) Inc has a 30-year history of campaigning to protect wilderness, wild areas and native wildlife in Tasmania. It has played a crucial role in achieving:

- The creation of the Tasmanian Wilderness World Heritage Area and the expansion of the numerous national parks contained within it;
- The creation of the Douglas-Apsley, South Bruny and Savage River National Parks;
- The creation and/or expansion of numerous other reserves around the state, from Mt Victoria in the north-east to the North Styx Forest Reserve in the south;
- The protection of Exit Cave from quarrying;
- The protection of Giant Trees in the Styx and other valleys;
- The protection of most of the rainforests of the Tarkine from logging and the creation of a number of reserves within the Tarkine;
- The protection from logging of the environs of previously threatened caves and eagles' nests that we have discovered;
- The management as wilderness of large tracts of Tasmania's World Heritage Area.

Our current environmental initiatives include campaigning to:

- Expand the Tasmanian Wilderness World Heritage Area to protect adjacent intact forests of documented World Heritage values;
- End the use of 1080 poisoning on native wildlife on private land (in accordance with the then Prime Minister's promise of October 2004);
- Protect upper parts of important water catchments from logging and conversion of native forests to plantations, particularly in the beleaguered valleys of north-east Tasmania;
- End the clearing of native forests for plantations and other non-forest uses.

Added to this is our current campaign to protect Tasmania's natural environment from Gunns' proposed pulp mill at Bell Bay which will pollute the air and sea, drain many of our catchments of water, and consume large tracts of the state's native forests.

The Wilderness Society (Tasmania) Inc has long had concerns about the behaviour of the state's elected representatives and its servants. Since the Rouse bribery scandal and crimes of 1989, there have been claims that corruption has occurred in the way in which forestry issues have been treated by Government. Many claims have not been investigated. Evidence to a Senate Committee by a former Forest Practices Officer that there was a culture of turning a blind eye to breaches of the code have been largely ignored by Government. There has been an aggressive pro-Gunns, pro-forestry, pro-pulpmill attitude exhibited by the former Premier, who allegedly had his house renovated by a subsidiary of Gunns. A retired Supreme Court judge said that he felt 'pressured' by attempts by the former Premier to persuade him to speed up the assessment of Gunns' proposed pulp mill. A Senior Counsel said it was 'reasonably arguable' that the application of such pressure was a breach of the RPDC Act. In addition, the Government prevailed upon the RPDC to delay sending a letter to Gunns detailing the problems with the company's pulp-mill Integrated Impact Statement until after the company had withdrawn from the process. Meanwhile, logging of high-conservation-value forests has continued with financial back-up from the taxpayer. A former state opposition Leader has described the way in which Gunns' CEO offered an inducement to maintain the Liberal Party's forest policy during the last election.

As a result, the Wilderness Society has had no confidence that due process can be carried out by Government and its servants in Tasmania.

### **Submission**

#### **Term of reference (a):**

**The Wilderness Society (Tasmania) Inc submits that Tasmania's current legal and investigative mechanisms are not adequate to deal with corruption or claims of corruption.**

The Department of Prosecutions cannot carry out investigations unless directed to do so by the Government. It lacks the ability to carry out a comprehensive investigation of what may be systemic corruption.

The office of the Ombudsman does not have the power or resources to carry out comprehensive investigations of allegations of corruption. When it comes to more straightforward issues such as compliance by government bodies with Freedom of Information laws, the directions of the Ombudsman have sometimes been ignored.

The Tasmanian Police force has responsibilities that relate to day-to-day law enforcement and criminal investigations. In most other jurisdictions in Australia and elsewhere, large-scale corruption has usually been uncovered not by the police but by authorities or commissions specifically tasked with investigating corruption.

As a result of Tasmania's inability to investigate claims of corruption, a cloud has hung over governance and government procedures in this state, particularly with respect to forestry and the pulp mill. Claims and/or situations that have not been resolved include:

- Whether there was anything untoward by the Premier having his house renovated by Hinman, a subsidiary of Gunns Ltd. Hinman's website says that it specialises in 'larger construction work' with examples of its work being civic buildings, education buildings, industrial buildings and commercial buildings. Home renovations do not seem to be part of the company's standard work. Gunns, of course, was seeking approval for its pulp-mill proposal as well as government support for ongoing large-scale logging in Tasmania's native forests.
- Whether the then Premier breached the RPDC Act in early 2007 by allegedly 'pressuring' the chair of the pulp-mill assessment panel to accelerate the assessment.
- Whether there has been a culture of turning a blind eye to forest-practices breaches, as alleged by former Forest Practices officer Bill Manning to a Senate committee in 2003, and

whether whistle-blowers such as Mr Manning have been unfairly attacked, undermined or ostracised by Government as a result of their revelations.

- Whether it was true that Gunns Limited's CEO John Gay offered an extra \$10,000 to the Liberal Party (via its leader Bob Cheek) as an inducement for retaining its then forest policy, and if it is true whether there was anything improper or illegal in this offer.

**Term of reference (b):**

**The Wilderness Society (Tasmania) Inc submits that Tasmania's existing institutional arrangements for dealing with crime and corruption should be augmented by an anti-corruption watchdog with the power to investigate allegations of past crimes.**

An 'Ethics Commission' alone would be insufficient. Tasmania must have an anti-corruption watchdog with the power to investigate allegations of past crimes.

Some in the Government have said that the powers of such a Commission should not be 'retrospective'. This is disingenuous and wrong-headed.

It is generally acknowledged that retrospectivity is to be avoided when changing the law. That is, it is undesirable to retrospectively make an offence of an action that was legal at the time it was carried out.

This situation is different. There is a need for the Commission to investigate whether certain people broke the law **at the time that the relevant actions were carried out**. Because such actions occurred in the past does not mean that they should not be investigated. No one is talking about changing the law so that actions that were legal would now become crimes. Rather, we need to ensure that crimes that have been committed are investigated and the offenders prosecuted.

If crimes can't be investigated just because they occurred in the past, then our whole criminal-justice system would become a mockery.

**Term of reference (c):**

**The Wilderness Society (Tasmania) Inc submits that there should be an investigation whether corruption (including bribery, attempted bribery, and breaches of the Criminal Code, RPDC Act or Police Act) have occurred by members of the government or participants in Tasmania's forest industry.**

For some time, a cloud has hung over the determination of public policy with respect to Tasmania's forests and the pulp mill.

The former Leader of the Opposition, Bob Cheek, said in his autobiographical book *Cheeky* that, during the 2002 state-election campaign, Gunns boss John Gay offered an extra \$10,000 to the Liberal Party on the condition that it not change its forest policy. A request to the police by the Wilderness Society (Tasmania) Inc for this to be investigated was rejected. This episode has created the perception that party policies on the environment can potentially be bought and sold.

In March 2007, Gunns pulled out of the RPDC's assessment of its proposed pulp mill in very controversial circumstances. The head of the RPDC's assessment panel, former Supreme Court judge Christopher Wright, said that he had earlier felt 'pressured' by the Premier, Paul Lennon, to speed up the assessment process. A Senior Counsel, David Porter QC, produced advice that was later released to the public saying that it was 'reasonably arguable' that such pressure may have been in breach of the RPDC Act.

Later in the year, it was revealed that the head of the Department of Premier and Cabinet had prevailed upon the head of the RPDC not to send a letter to Gunns outlining the deficiencies in

Gunns' Impact Statement just a matter of days before Gunns withdrew from the process.

The fast-track pulp-mill assessment that resulted from the Government's facilitation of Gunns' withdrawal has ignored environmental impacts on the state's forests, fresh water and forest-based wildlife. The assessment carried out by the federal government focused on a very narrow range of environmental impacts.

Gunns' proposed pulp mill has therefore received approvals based on a fatally flawed assessment process. Massive environmental impacts of the mill have been ignored due to failures of governance in Tasmania.

In addition, logging of high-conservation-value and oldgrowth forests has continued in Tasmania – backed up by taxpayer funds through the so-called Tasmanian Community Forest Agreement – because of government backing for timber companies such as Gunns. Given the statements by Mr Cheek in his book, the public needs to be assured by a comprehensive, independent investigation that other parties were also not the recipient of offers of donations with strings attached.

Meanwhile, there is doubt over the integrity with which the state's forest practices are administered, given the claims of Bill Manning in 2003 and the findings of fact by Federal Court judge Marshall J. in the Wielangta case (these were not overturned by the successful appeal). Forestry Tasmania's vetting of the statements of expert witnesses to the Federal Court was also an example of unethical unaccountability.

(See a legal summary at

[http://www.ontrial.info/Wielangta%20legal%20summary%2018%2001%2007\\_.pdf](http://www.ontrial.info/Wielangta%20legal%20summary%2018%2001%2007_.pdf))