

## **Dr Bob Brown**

**MC:** Tell us a bit about your role in the Franklin Dam protests, and in the case later.

**BB:** Well in 1975, I was asked if I would go floating down the [Franklin River](#), which had not been rafted in these new inflatable rafts, by Paul Smith, who was a forester in Tasmania, and he'd asked lots of other people and no one had been silly enough to say yes, but I did. And in early '76 we floated down the river and I was stunned by the wild beauty of the place.

Paul had all the contour levels of where the dams were going to flood — four dams — and the series would flood the river end to end. It was the last great river in southern Australia which was untouched. So, the campaign began. We went back the next year with a Bolex wind-up movie camera and got that footage onto Tasmanian television.

By the end of the '70s, most Tasmanians were opposed to the dam. That was unprecedented because they had always been strongly pro-dam. But, the [Hydro \[Electric Commission\]](#) then moved in. We effectively released their plans in '79, but after that along came the campaign. We knew that would be tough. They'd absolutely overrun the campaigns to save [Lake Pedder](#) ten years earlier.

Two things had changed, however. Colour television had come in, and we knew that getting colour pictures of this wilderness to people's lounge rooms in Tasmania and around Australia was going to be pivotal, because nothing could speak stronger for the river than itself. And the second thing was that the Whitlam Government had signed the [World Heritage Convention](#) [see also [here](#)] which had then come into, you know, had been devised with Australia strongly behind it, so there was an external treaty power which didn't exist at the time of Lake Pedder. And we had that in mind, although the area wasn't world heritage.

The first world heritage areas were declared in Australia in 1982: the [Barrier Reef](#), the [Willandra Lakes](#) in New South Wales, and [Lord Howe Island](#), if I remember correctly. And the Franklin was hotly disputed and they wanted to build a dam there. In May 1982, Robin Gray, the whispering bulldozer Liberal premier of Tasmania came in, and within two months he had bulldozers, well in July of that year, he had bulldozers moving into the Franklin Valley.

It seemed hopeless. We had the three newspapers in Tasmania, the unions, except for the ETU [Electrical Trade Union], the business sector, both houses of Parliament, both political parties, all in the favour of the dam. We came to Canberra and the then Prime Minister, Mr Malcolm Fraser, said it was a state matter. We had one effort in the High Court, we tried to argue that the Commonwealth should not be lending money to Tasmania to damage a potential world heritage area, and that was thrown out on a Friday afternoon; got short shrift.

So it seemed that there was nowhere to go. But we kept planning for a peaceful protest. That was the difference from Lake Pedder. They had decided not to. After all, environmentalism is an

across-the-spectrum thing; it's good, law-abiding citizens who don't want to be crossing the line. But we did, and on the day the world heritage listing was accorded to the Franklin and Gordon river system as well as the rest of southwest Tasmania in Paris, the blockade began, 14 December 1982.

**MC:** Tell us a bit about your experience when the judgment was handed down by the High Court in Brisbane.

**BB:** We were very anxious. I had been told by a senior legal entity who had visited Canberra, that 'it was okay Bob, you'll be okay'. But, I wasn't of a mind to accept it. So it was high anxiety. The dam was being built. You have to remember that the Gray Government in those days had — in dollars of those days — had spent \$70 million on this dam: a huge investment. There were hundreds, if not thousands, of people working on these dams: bulldozing roads into the wilderness, pursuing the actual, moving towards the actual dam site. They had run into trouble with the geology, which slowed them up, and then the cold winter of 1982 slowed them up further.

But in those circumstances we flew to Brisbane where the High Court ruling was to be handed down on 1 July 1983. Our plane was struck with lightning as we took off from Melbourne, and rather than the deep freeze which Tasmania was experiencing, it was 26 degrees on that fateful day.

The High Court was packed, the High Court room in Brisbane. The judges read out their orders, and it took quite a long time, and we sort of had a running sheet on our laps and slowly it emerged that we were going to get a 4:3 judgment in favour of the Commonwealth power under the external affairs/treaties and corporations power to stop the dam. So there was a rising tide of excitement in the courtroom, and suddenly a man in yellow saffron robes got up and ran across the Court yelling 'No Dams!' and he was promptly evicted.

But outside, great excitement. A journalist handed me a bottle of champagne and said 'shake this up, Bob', and I said no, I'd refuse, because I knew there'd be great anger among the pro-dam contingent back in Tasmania. But as we flew from Brisbane to Sydney to Melbourne to Hobart on the trip back that night, in Sydney Airport in the transit area there was more than a hundred people with 'No Dam' banners and singing Shane Howard's anthem 'Let the Franklin Flow', which was in the hit parade at the time, and, you know, it's just a pivotal expression of the excitement there was, right across Australia, because, remember, 6,000 people had gone to Strahan [in Tasmania], including, for example, 50 or 60 people from Western Australia, and a lot of people from the Northern Territory. Right across this country there had been training classes for people in non-violence, in every capital city and in provincial cities there were branches of the Wilderness Society. And 6,000 people in Strahan, and 1300 were arrested, 600 went to Risdon Prison. But millions had an opinion on this, and untold numbers had changed their vote at

the election on 5 March [1983] to bring in the Hawke Government, there were other issues, as there ever are, but the Dams issue was one of those pivotal issues.

So, great excitement across the country. And here in Sydney Airport a woman came up and said 'I've got a flat in Blacktown in the western suburbs in Sydney. I was doing my ironing at 11 o'clock this morning, and I heard screaming in the flat next door' and instead of ringing the police, she started screaming too, because she knew the news had come through that the Franklin had been saved. People were just jubilant about it.

It had been such a long, anxiety-ridden road through the campaigning days, through the election, a pivotal election, with a huge campaign with the combined environment groups of Australia: the Conservation Foundation, the Wilderness Society, the other conservation councils and groups right across the country campaigning in marginal seats. And then, this long way to the High Court hearings in May in 1983, and then the judgment on the first of July, so there it was 'No Dams', the headlines on the second of July, and right across the morning news with the exception of the Hobart *Mercury*. And the river flows free to the sea, and to the great employment, economic and environmental benefit of modern Tasmania.

**MC:** It was such an astonishing victory, but thinking about the conservation movement globally, do you think there have been other similar court cases?

**BB:** Well yes, I had justified anxiety about the High Court in Australia, because the year before in a 7:0 judgment of the High Court of Norway, in the matter of the Alta Dam, and a thousand people had been arrested in the far north of Norway trying to [stop a dam on the Alta River](#), their court had ruled seven to zero that the dam should proceed. And so we knew about that. There had been several court cases in the US. And of course Lake Pedder, and the wanton destruction of one of the most beautiful places on earth, in Lake Pedder was looming over us, so we could take nothing for granted. And nor did we.

**MC:** Bob Brown, thanks very much for talking with us.

**BB:** Thank you.

## **The Hon Michael Black AC QC**

**MC:** So to begin with, can you tell us about your personal experiences as counsel preparing the case for the [Tasmanian Wilderness Society](#)?

**MB:** Well it was very interesting, and certainly memorable. The brief presented very considerable challenges because, obviously, we weren't a party to the proceedings in the High Court, and had no right to be heard. So the only way that we could be heard, of course, was if the Court — the only way we *thought* we could be heard — was if the Court granted us leave to make a submission as an intervener. Now at that time the High Court was very reluctant to make orders granting leave to intervene. I'm not sure how many times it had happened, if at all. But it was certainly at best rare. It has changed somewhat these days.

So that was the challenge. And also of course there were lots of parties in the case, so the immediate question that arose, and indeed it did arise, was 'well, what can you add?' Then we had to work on the footing that if we *were* granted leave, what was there *distinctive* that we could say, as the Tasmanian Wilderness Society. Now plainly we couldn't just go and make a political speech; that was not something that I would even contemplate doing. So it had to be a distinctive argument, in this instance in favour of validity.

So on day one, I and my junior, [Bryan Keon-Cohen](#), we were in the Court, ready to do two things. One, to apply to intervene, with of course grounds. Secondly, either then or later — probably later — to make a distinctive contribution to the argument. So what happened was the Court opened, a very exciting moment in any case, but particularly in a big case like that. It was almost palpable- the sense of history and importance. There were eighteen counsel in the case, plus Bryan Keon-Cohen and myself, so twenty. The most eminent people, as of course you get in big High Court cases, but this was...

**MC:** Exceptional ...

**MB:** It was exceptional. So the appearances were announced, commencing with Sir Maurice Byers, who appeared with Ron Castan QC, Peter Underwood, and Sue Kenny. Very familiar names of course. Castan — [who appeared in] *Mabo* — great silk. Peter Underwood became Chief Justice of Tasmania, and is now Governor [of Tasmania]. And Sue Kenny, Court of Appeal in Victoria and now Federal Court. And so the list goes on! The Hon Robert Ellicott QC announced his appearance leading five other eminent counsel including Murray Gleeson QC and Professor Leslie Zines. Jim Merralls announced his appearance with David Habersberger (later Justice Habersberger and the present judge in residence at the Melbourne Law School Mary Gaudron QC led one James Spigelman, David Jackson led Margaret White, P G Nash for Victoria intervening was last - and then me. So I announced my appearance with Bryan, and said 'We seek leave to intervene'. Well — bang! — 'On what grounds?' So we were prepared for that, but the grounds had to be stated very, very shortly. So the first argument in the Tasmanian Dam Case actually was our application for leave to intervene.

I was re-reading the argument, and for an unprecedented case it wasn't too bad! The first argument was that the [World Heritage Properties Conservation Act \[1983 \(Cth\)\]](#), which was under challenge, gave standing — a right — to seek an injunction to interested parties and I think, on any view, the Wilderness Society was an interested party. So the first argument was, well, we want to support validity because we have such a right. Now there are a few steps in the argument, but that was it. So those points were made.

The Chief Justice, Sir Harry Gibbs, asked quite a lot of questions, and said 'well, really, what have you got to add?' And certainly 'what do the facts have to do with this case?' And so at the end of the argument he said, 'well, thank you. The Court will reserve its decision on your application. If you are so minded, at the close of subsequent arguments you may renew your application and we can consider it then in the light of our fuller knowledge.' So there you are: eight days later.

**MC:** And in the end you were admitted as an *amicus curiae*.

**MB:** That's right — interesting; I see in the transcript that I said 'may it please the Court' — as barristers would say in those days — 'may we remain?' 'Of course!' said Sir Harry. 'If your Honour pleases'. And then eight days passed — one of the longest High Court hearings before a full bench ever to that time I think, certainly it was exceptionally long. And so that was it; and during the eighth and last day we were called upon and presented the main argument without the application for intervention having been ruled upon. At the end of that submission — which was deliberately very short and to the point — Sir Harry said, essentially, 'is it alright for your purposes if we treat you as having said what you have said, as an *amicus [curiae]*?' And I gave the barrister's equivalent of 'too right!' and said 'yes of course we just wanted to be heard'. And that was it!

**MC:** Those submissions totaled about ten minutes, is that right?

**MB:** Yes

**MC:** And can you take us through the content of them, what was your argument?

**MB:** I wanted to make it clear, and I did I think, from the very outset, that we would be short. [Laughs] I don't know, but I would have suspected that if the Court thought we were just going to go on and on, they wouldn't want to hear us, and we would have been very unproductive. It would have been very bad advocacy any way. So, yes, ten minutes. Now the important thing about them [the oral submissions] is that they ran in tandem with the written submissions. That was a time when the High Court had introduced procedures where you had to have your written outline of submissions of no more than three pages, with a series of propositions. Now I've discovered a yellowing two-page sheet of those submissions. I think they are the ones that actually went in ...

**MC:** That were handed up?

**MB:** They may not have been because I see that there are additions in hand-writing that refer to the particular passages in *Koowarta* — *Koowarta v Bjelke-Petersen* [[\[1982\] HCA 27](#)] in 1982. The point of the submission was essentially this: that, properly understood, the Act and the Regulations were supported as a valid exercise of the external affairs power, even on the narrower view of that power. There were four sub-submissions of that. First that the subject matter of the *Convention*, namely the protection of the world's cultural and natural heritage, was international in character; of its essence. The second was that the subject matter of the impugned legislation and regulations affected Australia's relations with other countries. And the third was that the manner in which the subject matter was treated involved a relationship with other countries, or with persons or things outside Australia.

Now those submissions were developed — that's all *Koowarta*, or nearly all *Koowarta* — and those submissions were developed in three further paragraphs, and they were handed up. And then there was the oral submission. If you read the transcript without the hand-up you don't get the full picture — in fact I don't think *Koowarta* is mentioned in the oral argument, but it was straight *Koowarta*.

The challenge was, bearing in mind it's 1983, a very different ambience, if you like, about what is an international matter. Of course there were international matters involving the environment, but it wasn't taken for granted then I don't think.

So the point of the submission, then, was to try and bring out all these matters and to put it straight within existing doctrine. Maybe extending it a little, but not really jurisprudentially extending it. That was the idea of it. So that's what happened.

**MC:** That description reflects how the case is often thought about as a clarification, or an important application of principles that were already perhaps ...

**MB:** Yes.

**MC:** ... on the road but hadn't yet ...

**MB:** I think that's right.

**MC:** And that's how you think of the case as a turning point?

**MB:** I do, well, yes, that's a very interesting question, whether it was a turning point. I've been thinking about this since, and with the benefit of hindsight I would regard it, I think, as a continuation of a path already — further steps along the projection of an existing path — so in that sense hardly a turning point.

**MC:** No.

**MB:** But if you, on the other hand, something came up in that path — it was a pretty big something!

**MC:** Maybe a landmark rather than a turning point?

**MB:** I think that's right. I mean there were certainly things put across the path. If you read Mr Ellicott's submission, there's a chasm about to open up for the Federation. So not a turning point. For those looking for a narrower view of the Federation, or they would say a more classical view I suppose, it was a turning point not taken.

**MC:** One of the other aspects of the submissions was the Wilderness Society's encouragement for you to tender photographs of the area, as relevant to your arguments. That didn't quite go down so well with Sir Harry.

**MB:** Well [laughs] he certainly didn't want us to do it! I had enormous respect for Sir Harry. Yes, he wasn't going to have the photographs put in. And I can understand. There are two views on this. I wondered how you can really grasp the significance of something as profound as the Tasmanian Wilderness without at least knowing what it is in a more than purely intellectual way... you need to see it! Obviously we couldn't take the Court down there. I mean that's why you do take courts and tribunals to see things, so that they can really know what it's all about. Name your most precious thing. If you want to save, say, the paintings in the first four or five salons in [The Uffizi](#), how would you go about it, if you don't know them? How would you save Westminster Abbey if you don't know it? So as an advocate I wanted to get some idea of what this was about, for the- as far as I was concerned- legitimate purpose of showing that a loss of this thing in Australia was a loss of an international character.

Sir Harry said well 'it's irrelevant — we can assume it's wonderful', and of course I can understand that point too. And then of course he said that the photos' could do no more than inflame our minds with irrelevancies'. I responded — certainly not intending to be cheeky, and least of all to Sir Harry — that they certainly weren't that sort of photograph. My original notes of argument which I found showed that I was going to seek to tender the photographs at the end of the submission, and on my feet I must have decided that it was more honest to be upfront, and to seek to put them in right at the beginning. There was probably a forensic reason for it too, in terms of advocacy. Anyway, there we are. In terms of the perception of course, as an advocate you don't want your success in being heard at all sullied in the general mind by having lost an application. But something for the classes on advocacy I suppose.

**MC:** One other comment you made commending the Court was its ability to deal with the rest of its own business, in the midst of this eight day hearing.

**MB:** Yes, I'd like to talk for a moment about that — that is very, very important. Today's seminar on the thirtieth anniversary of the case has reminded one of how bitterly divisive the issue was. There was someone in the seminar from Tasmania, and she made the point, and it

really captures the whole thing: she said there were Sunday lunches in Tasmania that ended in tears. Families would get up and walk out on a Sunday lunch. I mean there were hundreds of people arrested, some went to jail, some saw the end of the Federation ... it was deeply divisive stuff, and of course there had been an election fought on it. Very passionate and understandable passions, on both sides. So the High Court obviously had a very important role. It was a role that it didn't ask for — in all these cases, it's often pointed out that the High Court does not decide what is brought before it, it doesn't choose in that sense. So the other aspect of it was that the Commonwealth wanted an injunction to stop the works going on, in contravention, they said, of the provisions of the Act and Regulations which were challenged. Now, an injunction: very difficult issues arise in those circumstances. Difficult enough if you just stop some minor works being ...

**MC:** Done on a house, for example ...

**MB:** Yes, that's serious, but it can be overcome with a reasonably speedy trial and undertakings as to damages and so forth. And indeed the injunction application was still on foot whilst the *Dams* case was being heard. The answer to it, and it's always a good answer for courts, nearly always: just get on with it. If you are sitting as a judge and people want an injunction, the best answer to that is 'well, why can't we have the final hearing next week?' If you can, it's terrific. So what the High Court did is it brought on the hearing within a matter of weeks after the commencement of proceedings. Having done that the Court then set aside two weeks to hear the case. Not only that, but then it had the judgment out three or four weeks later, and a major judgment. I mean there are seven individual judgments. I forget how many pages ...

**MC:** Something like 324 in the CLR's [*Commonwealth Law Reports*].

**MB:** Yes, 324 pages, all closely reasoned and, as I said, separate judgments, and done in three or four weeks. I don't think the Court sat in the meantime, I'm not sure, it certainly got ready for the Brisbane sittings — it had a list in Brisbane, and other judgments had to be got out. So it was an amazing effort by the Court, which people don't appreciate, but it was a terrific effort.

The other interesting aspect of it is that when the Court delivered its judgment — and alas I wasn't there; I had promised to write a paper [laughs] and the paper hadn't been finished ...

**MC:** It took priority?

**MB:** It had to, it had to — they didn't need me there, but I would have liked to have been there. Bryan [Keon-Cohen] went up. Anyway, the Court delivered separate judgments, but they weren't read out. They answered questions and published reasons. So in the absence of any indication you wouldn't know what the result was until you had done quite a bit of work on the paper. What the Court did — and I'm not sure if this was after everyone had worked out the result — it made a statement about the result, emphasising that it was purely based on the law, and wasn't anything to do with the merits of the case, and essentially what the reasons were. And

that I think was the first time that an Australian court had done that. A very important thing to do.

The big error that people make these days is to think that because that something is accessible on the internet, and all important judgments are, that you're communicating with the public. As far as the general public is concerned, most of these judgments might as well be written in French.

**MC:** Exactly.

**MB:** However wonderful they are as jurisprudence, they're not ...

**MC:** Publicly accessible.

**MB:** Publicly accessibly in a practical sense.

**MC:** But of course now it's a common practice at the High Court.

**MB:** Exactly, I think it's all ...

**MC:** All of them, every judgment of the Full Court

**MB:** Yes, and they're very good and you can work out what the Court has done, and essentially why it's done it. I think the next time, after the High Court did that [in the *Tasmanian Dam* case], was when I was Chief Justice of the Federal Court, we took this view that it was very important and that was in the *Hindmarsh Bridge* case [*Chapman v Luminis Pty Ltd (No 5)* [\[2001\] FCA 1106](#)] and another notable one was *Ruddock v Vadarlis* [[\[2001\] FCA 1329](#)], the *Tampa* case, where it was also very important to explain to the public in, I think, one or two pages, the reasons for the Court's judgment, including, I must say, the reasons for my dissent. And it's now commonplace. Not all courts do it. The High Court does it superbly, the Supreme Court of the United Kingdom does it vigorously and very, very well of course, [the Supreme Court of] Victoria does it, the Federal Court does it. They don't do it as routinely as I would argue they should. That was the beginning of it. So it was a great case.

**MC:** And just finally, to take you back to the case, there was quite a lot of camaraderie amongst counsel?

**MB:** Yes, it was a hotly contested case. One hopes, and usually one finds, that the battle between the parties doesn't sour the courtesies, indeed the friendship between counsel. And if you're there in a long case, apart from being good from a professional point of view, it's good from every point of view: a harmonious relationship with the people you were battling. That's my recollection of the *Tasmanian Dam* case.

Believe it or not, there was one incident where someone produced a football during lunchtime, Australian Rules of course, and the ball was kicked and one of the senior counsel soared to take a mark and was out of practice, and lost his spectacles! The ball broke them. The colour drained

out of the faces of his instructing solicitors — their precious leader was going to be disabled. But he had a spare pair of spectacles and had suffered no serious injury. He recovered quickly and with great dignity. I don't think he had then made his submission ...

**MC:** But he was unaffected by it ...

**MB:** Absolutely unaffected; it was a very dignified, very quick recovery.

**MC:** Fantastic, Michael Black thanks very much for speaking with us.

**MB:** It's been a pleasure.

## **The Hon Sir Anthony Mason AC KBE GBM QC**

**MC:** Very quickly for our listeners who may not be so familiar with the case, could you summarise the important contours of the majority and minority positions?

**Sir Anthony:** Well the important issue was the scope of the external affairs power, and whether the external affairs power, as it were, validated the legislation that was passed to give effect to the *World Heritage Convention* [see also [here](#)] and protect the sites that had been proclaimed under the *Convention*, and that of course involved the validity of legislation that affected a substantial part of the geographical area of Tasmania. That was the most important issue. There were other issues that related to the scope of the corporations power, and there was a third issue that related to the race power under the *Constitution*. They were the three main issues.

There were particular issues of detail, such as whether or not the *Convention* imposed obligations on Australia. That question arose because the language of the *Convention* was somewhat vague in its terms, and the suggestion was that it had left a lot to the discretion of Australia as a signatory and ratifying party under the treaty as to what it would do in response to the provisions of the *Convention*. But, the Court decided by majority that there were obligations, subject to a qualification that related to the judgment of Justice Brennan. And the Court also decided on the external affairs power that the existence of a matter of ‘international concern’ was not an essential element that, conditioned the exercise of the law-making power under the external affairs power.

**MC:** One of the concerns at the time was that the judgment of the Court would somehow be ‘destructive’ of the federal system, and you responded to those concerns in your judgment as well, but I wonder if you could address — you made the earlier point which I think kept with Professor Sawyer’s observation that it was a very natural or logical judgment in light of earlier decisions like *Burgess* and *Koowarta*.

**Sir Anthony:** Yes, my own view was that the result in the case on the external affairs power at issue, was very much dictated by two earlier High Court decisions, first of all *Burgess’s Case* [*R v Burgess; Ex parte Henry* [\[1936\] HCA 52](#)] on the *Air Navigation Regulations* decided much earlier, and the more recent case of *Koowarta* [*Koowarta v Bjelke-Petersen* [\[1982\] HCA 27](#)]. I thought that the logical conclusion to be deduced from those two decisions would result in the acceptance of the validity of the legislation, as indeed it did.

There are various arguments that were deployed by the majority to respond to the broad submission that somehow or other the outcome that had occurred would be destructive of federalism. Some of those arguments related to traditional interpretation of Commonwealth legislative powers — broad and liberal interpretations going back to the early days of the High Court; *literal* interpretation of Commonwealth powers, stemming from the decision in the *Engineers’ Case* [*Amalgamated Society of Engineers v Adelaide Steamship Co Ltd* [\[1920\] HCA 54](#)]; and then the *rejection* in the *Engineers’ Case* of the reserved powers doctrine. And I was

inclined to take the view that in *Koowarta* and in *Tasmanian Dams*, the way in which the arguments were put were either disguised or warmed-up versions of the old reserved powers doctrine.

The minority endeavoured to improve on the old version of the doctrine by saying that it was inherent in the *Constitution* that the exercise of federal powers would nonetheless leave the states with an area of power that was exclusive to them, and that the adoption of a broad interpretation of the external affairs power would deny them, *potentially*, any area of exclusive, legitimate power because the Commonwealth could enter into a treaty, on any subject whatsoever, and that meant that the Commonwealth would be able to legislate on that topic. There were answers to that argument, which I won't go into now.

And then there were what I call the consequentialist arguments, namely that if you didn't accept the broad interpretation of the external affairs power, the Commonwealth would be in a position, in which, having entered into a convention or treaty, it wouldn't have the legislative power to implement that treaty, and it would be dependent on the co-operation of the states to legislate in order to implement the treaty. And that seemed to me to be entirely inconsistent with the notion that you had an executive government with a clear idea of what its legislature might do, before it entered into an international treaty.

**MC:** Do you consider the legacy of the case to be something like a clarification of those sorts of issues?

**Sir Anthony:** I think so. I think that, as a result, it is clear enough, not only from *Tasmanian Dams*, but also from the *Industrial Relations Case* [*Victoria v Commonwealth* [\[1996\] HCA 56](#)], that the external affairs power is an extensive power that extends beyond implementation of provisions in an international treaty to implementation of other provisions in the treaty.

For example, in the subsequent case to which I refer [the *Industrial Relations Case*], the Court endorsed legislation that gave effect to ILO [International Labour Organization] Recommendations, which certainly didn't impose obligations on Australia. So, I think the broad interpretation of the external affairs power was endorsed in *Tasmanian Dams* and if anything, taken further, in the later case.

In terms of the corporations power and the races power, I don't think the decision took the scope of those powers much further. You could say that there were three judges in the *Tasmanian Dams Case* who made their view on the corporations power part of the ratio of their decisions, and their view was that the power is not limited to, as it were, passing a law that was connected with the financial activities of a financial corporation, the trading activities of a trading corporation, which was an argument that appealed to, I think, at least two members of the minority. On the races power, I don't really think the case took that power further than it had been taken in *Koowarta*. They are basically the propositions which come out of *Tasmanian Dams*.

**MC:** Sir Anthony, thanks very much for speaking with us.

**Sir Anthony:** It's a pleasure to talk to you.