

COMMONWEALTH OF AUSTRALIA

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Source:

Aldous, J., Lapsanas, K., Blakston, V., & Shaw, G. (2013). *Making and breaking the law*. South Yarra: Macmillan Education Australia.

The Tasmanian Dam Case

The Commonwealth v. Tasmania (1983) 158 CLR 1; 46 ALR 625

This case is also known as the *Franklin Dam Case*. In this case the Tasmanian Government challenged the validity of the *World Heritage Properties Conservation Act 1983*. This Act was passed by the Commonwealth Parliament. The Act prohibited the clearing, excavation and building of a dam in protected areas, including an area on the Gordon River (below its junction with the Franklin River). The Gordon and Franklin rivers run through large areas of untouched wilderness. These wilderness areas contain many unique features. The flooding of the two rivers would have seriously damaged this significant area.

The area was nominated by the Commonwealth Government to be included in the World Heritage List. The World Heritage List was established by an international treaty, which Australia had signed, to protect the world's cultural and natural heritage. The High Court was asked to determine whether the Commonwealth Parliament had the power to ban the building of a dam in Tasmania.

The Commonwealth Parliament claimed that, under sections 51(xxix), 51(xx) and 51(xxvi), the Constitution implied that it could make laws on matters of national concern. The High Court decided that the external affairs power gave the Commonwealth Parliament the power to make laws that fulfil Australia's obligations under international treaties. Australia had signed a treaty to protect World Heritage areas; therefore the Commonwealth Parliament was able to make laws to protect Australia's heritage. For more information about this case see page 118.



High Court interpretation of external affairs expanded Commonwealth law-making powers.

Decisions in cases such as the *Koowarta Case* and the *Tasmanian Dam Case* were seen as greatly expanding the powers of Commonwealth Parliament. In the past 30 years, the Commonwealth Parliament has passed laws relating to the environment, racial discrimination and human rights, and has widened the Australian fishing zone—all based on its external affairs power. It has been speculated that, unless the High Court acts to limit the interpretation of this power, the external affairs powers of the Commonwealth Parliament are almost unlimited.