

Dam judgment reserved

From VERGE BLUNDEN

CANBERRA. — The area where the proposed Gordon-below-Franklin dam was to be built in south-west Tasmania contained an enormous reservoir of potential knowledge for mankind, Mr M. Black, QC, told the High Court yesterday.

Mr Black was making submissions on behalf of the Tasmanian Wilderness Society on the eighth and final day of the hearing of the legal dispute between the Federal Government and Tasmania over the dam.

The judges did not allow the society, which has 11,000 members,

to formally intervene in the hearing but took note of its submissions.

During the hearing the Commonwealth asked the High Court for orders which would prevent construction of the dam.

In a counter action Tasmania challenged the constitutional validity of Federal regulations gazetted last March and the Commonwealth World Heritage Properties Conservation Act, 1983, both of which prevent construction of the dam.

Mr Black said the wilderness area contained a storehouse of knowledge, especially in the areas of archeology and botany.

The wilderness and its natural beauty existed for the benefit of the whole world as a living and enduring resource.

"There will be new painters and

new artists and architects but only nature can create what is part of the world's natural heritage," Mr Black said.

Mr Black said the judges would be aware of the many matters concerning nature that had aroused international concern in recent times such as protection of whales, the destruction of rainforests and the dangers inherent in atmospheric nuclear tests.

Mr Black submitted that any loss of part of the world heritage within Australia could affect Australia's relations with other nations.

In his final submissions Mr R. J. Ellicott, QC, leading a team of eight lawyers for Tasmania, said the World Heritage convention was not about preservation and conservation at all costs.

Mr Ellicott said if the Government

submitted to the court that it believed the matter was one of concern and it had received notes and representations about it these would have to be taken into account.

But the present case could not be likened to the Koowarta case last year when the court upheld the validity of the Federal Racial Discrimination Act which implemented an international convention prohibiting race discrimination.

Mr Ellicott said race discrimination was a matter that related to the peace and security of mankind and could arouse serious tensions between nations.

The High Court reserved its judgment in the case.

The judges hope to be able to hand down their judgment between June 27 and July 1.

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enlarge its authority so as to prevent the building of the dam by carrying a referendum of the people. Instead, it relied on an international convention to which it was a party to gain a power not endowed upon it by the people. Its legal victory has saved a river but has sacrificed one of the safeguards of our democratic system.

Most public interest is still concentrated on what will now happen to those workers who could be unemployed as a result of the High Court decision and the amount of compensation to be paid by the Commonwealth to Tasmania.

These matters are certainly of great importance. But they must not cause us to overlook the fundamental change to Australia's constitutional system and the

means whereby we govern our country, which has been brought about by the outcome of the Franklin River case.

Few Australians seem to have yet realised the magnitude of what has happened. Four judges out of seven have brought about a massive change to our Constitution. A group of men - appointed, not elected - has radically changed the principles whereby our country is governed without the people as a whole being given any voice whatsoever.

In the past, constitutional alterations have been brought about only by the vote of a majority of the electors in a majority of the States and by a majority in the Commonwealth as a whole. This has often been found frustrating by impatient reformers. But it has ensured that no change

could be made without the consent of those they are supposed to represent.

The Australian Constitution rightly belongs to the Australian people, and until now it has been fundamental to our system that only the people could change it.

Our democracy will be poorer and weaker if we accept that the people are to be deprived of the right to decide their form of government and allow that right to be the possession of an appointed few.

Already much of the discussion about appointments to the High Court had begun to centre on the political philosophy of prospective appointees rather than their ability as jurists.

It is inevitable that in future any federal government will face an overpowering temptation to stack the Court with those who agree with its political objectives.

How the people vote in a referendum will

no longer be important. What will now matter is how seven judges vote on the High Court.

Our federal system has given Australia, a vast country most of whose citizens live far from Canberra, a division of powers which has allowed many of the vital decisions affecting the daily lives of its citizens to be made at a relatively local level. It has prevented a concentration of power in the hands of any one government.

This system is now in acute danger of being destroyed.

One of the most urgent tasks facing this nation is to repair the damage. We cannot allow the very structure of our democratic processes to remain in the confusion into which last week's decision has cast it.

Once we recover from the excitement of saving the Franklin River, those Australians who believe in democracy must work to restore to the people that right to govern themselves which has been taken from them.

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Once we recover from the excitement of saving the Franklin River, those Australians who believe in democracy must restore to the people that right to decide themselves which has been taken from

ROL over the basic principles of a system of government has been taken out of the hands of the people and put into the hands of judges not answerable to any one.

In the long run, will prove to be the significant result of the campaign to save the Franklin River.

As not the intention of most of those who set out to preserve what they regard as an invaluable area of the wilderness. The attention of most was concentrated on a wild and beautiful area under threat and on the political reminders of man's earliest which appeared to be in danger.

The course of the emotional, and bitter, argument nearly all of us followed was based on the fact that there was more at stake in the conservation of the national park than the Government did not seek to

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