

*photo Brendan Gogarty*





# *Defending nature*

*writer Jess Feehely*

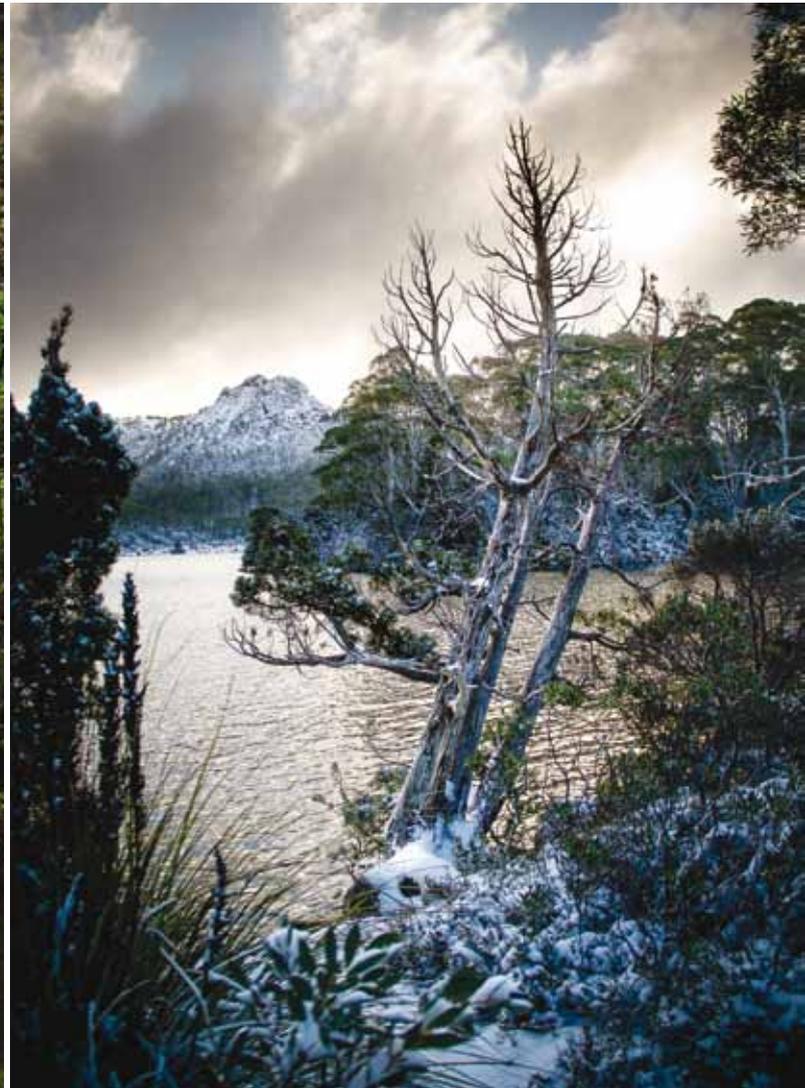
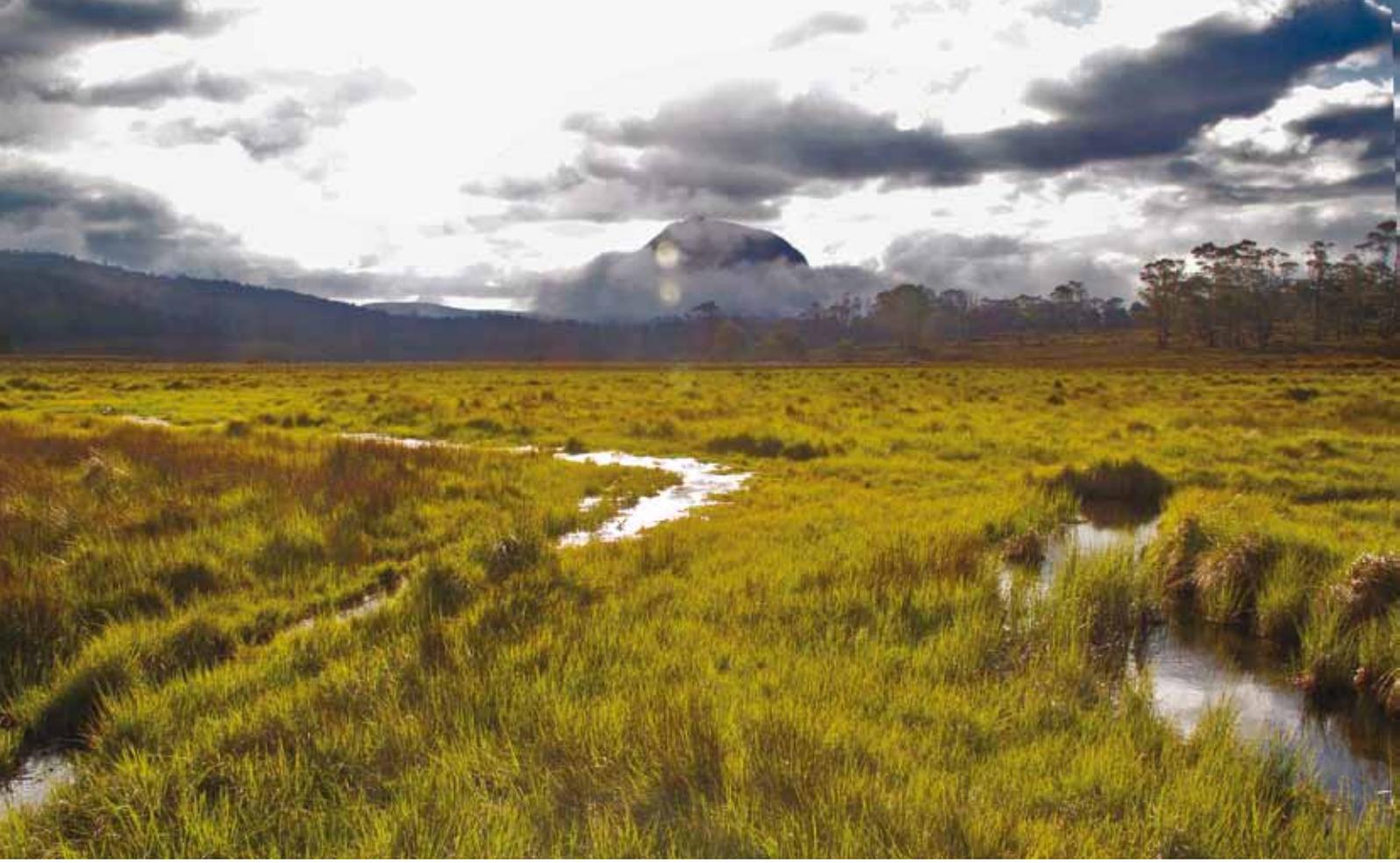
*photographers Kelly Slater and Brendan Gogarty*

Many people conjure the iconic image of the Franklin River's Rock Island Bend when they think of Tasmania's natural beauty. The campaign to save the Franklin from damming pushed the state into the national consciousness in the 1980s.

What many people don't realise is that it was a legal case that ultimately saved the river. The Franklin Dam case is still studied by law students today as an example of federal powers trumping state powers. But for lovers of Tasmania's wild places, that legal case is also remembered for its impact in the campaign to save the river and the cultural heritage along its banks.

The law in its many applications has continued to preserve and protect Tasmania's most appealing places ever since. Much of what draws tourists to the island, and provides recreational, artistic and cultural fulfilment for those lucky enough to live here, has been won through committed people fighting to secure stronger laws, and to make sure that government decisions uphold the protections that those laws demand.

The inclusion of what is now known as the Tasmanian Wilderness World Heritage Area (TWWHA) in the World Heritage List in 1982 allowed the Federal Government to intervene to protect the Franklin River. The extension of the TWWHA in 2014 allowed



spectacular areas like Mt Field and the Styx Valley to enjoy the same protection.

Legal submissions to the World Heritage Committee in 2015 helped to prevent the Tasmanian government's efforts to reverse the extension. And legal advice will be critical in ensuring that tourism development within the TWWHA does not damage the outstanding universal value that warrants the area's ongoing inclusion in the World Heritage List.

When farmers in the Midlands, the productive agricultural area fuelling Tasmania's foodie revolution, found their land threatened by shale gas exploration in 2014, they sought advice about their legal options and managed to secure a five-year fracking moratorium (it expires in 2020) to protect the food bowl.

The state's burgeoning mountain bike tourism industry has raised concerns about proposed changes to forestry legislation that may allow logging near the world-class tracks at Derby, in Tasmania's north-east.

The image of fresh salmon from Tasmania's pristine waters is common in tourism magazines. Yet, concerns are increasingly being raised about the impact of salmon farming on our coastal environment. Legal action was started – by one of the salmon companies – in early 2017 to challenge the government's failure to protect Macquarie Harbour, the large, ecologically unique harbour where the Gordon River releases to the west coast.

Along Tasmania's east coast, communities, tourist operators and yacht clubs are gearing up to challenge a salmon farm expansion at Okehampton Bay, and to fight to ensure that the industry operates sustainably into the future.

On Tasmania's west coast, takayna / the Tarkine boasts Australia's largest tract of temperate rainforest, wild rivers, buttongrass moorlands, a stronghold for disease-free populations of the

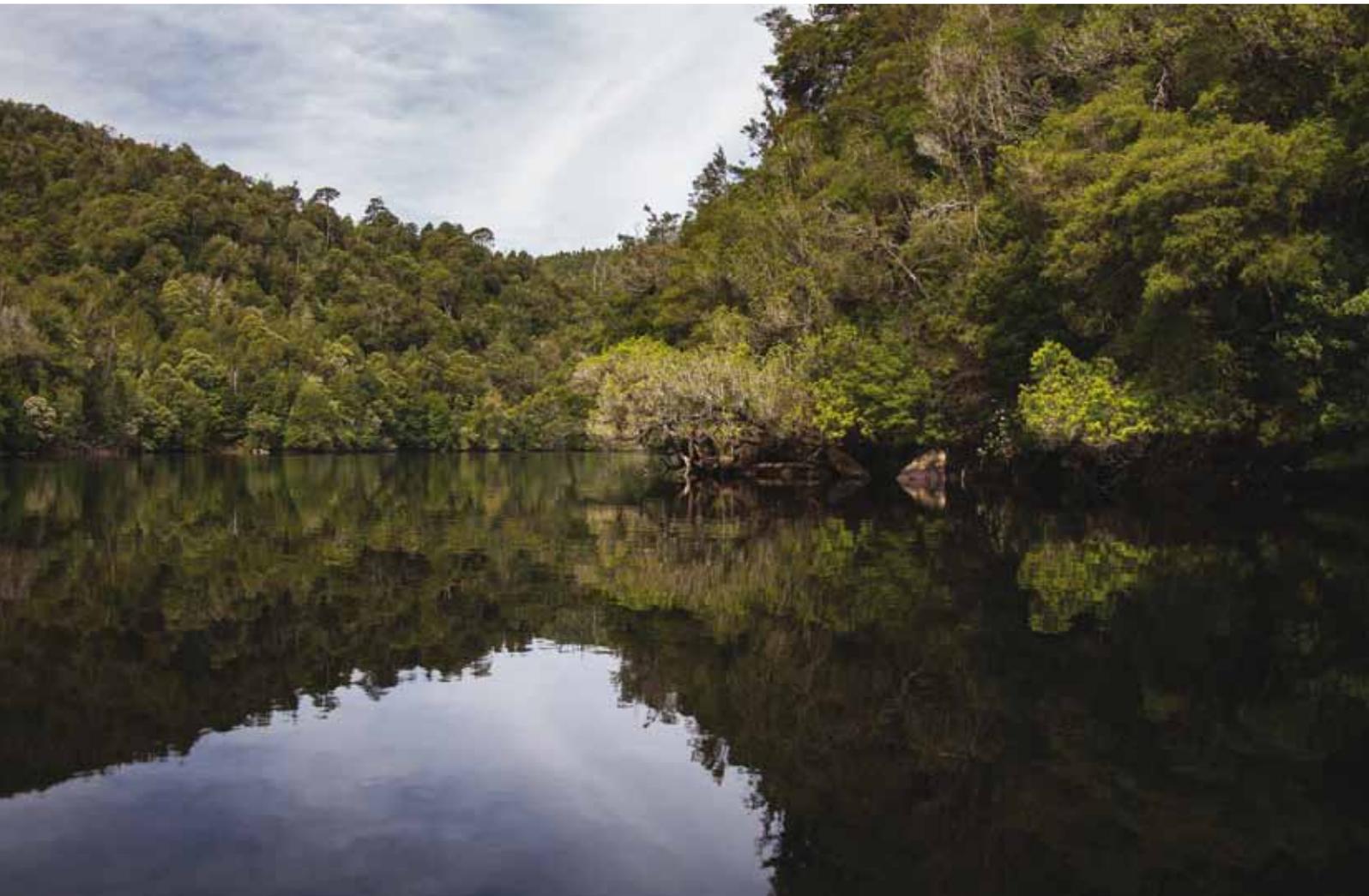
threatened Tasmanian devil, and a rugged coastline of deep cultural significance to Tasmanian Aborigines. A series of legal actions have sought to protect takayna / the Tarkine against mining, against roads that threaten devil habitat, and against logging of ancient forests.

In 2012, the National Heritage Council recommended that the whole takayna / Tarkine be listed as a national heritage place in recognition of its outstanding natural and cultural heritage values. The federal Environment Minister rejected the recommendation, noting the adverse impact it would have on proposed mines. The minister did, however, list a narrow strip of the takayna coastline on the grounds of its Aboriginal heritage. This listing of the Western Tasmania Aboriginal Cultural Landscape would prove pivotal to recent efforts to protect Aboriginal heritage values in the area. (According to the National Heritage Listing statement, "The Western Tasmania Aboriginal Cultural Landscape includes some of the best evidence of the lifestyle of Aboriginal people in this region of Tasmania. Dotted along the wind-swept coastline are the remains of numerous hut depressions found in Aboriginal middens. These huts and middens are the remnants of an unusual, specialised and more sedentary Aboriginal way of life that began almost 2,000 years ago and continued up to the 1830s, based on the hunting of seals and land mammals, and the gathering of shellfish.")

In 2014, the newly-elected Tasmanian government announced a plan to re-open off-road vehicle tracks that had been closed by the previous government to protect evidence of thousands of years of Aboriginal occupation of the area in the form of middens, hut depressions, fish traps and rock carvings. The Tasmanian Aboriginal Centre challenged that decision, arguing that the Western Tasmania Aboriginal Cultural Landscape invoked the protection of national environmental laws. The Federal Court agreed that allowing four-wheel drives to access the coastline could have a significant impact on protected indigenous heritage

*photos opposite above and right Brendan Gogarty*

*photo opposite left Kelly Slater*



values and the state government could not proceed with its plans without federal government approval. For now, the spectacular, rugged coastline, imbued with history and cultural significance, is off-limits to damaging vehicles.

The Tasmanian government remains committed to seeking federal approval, but the Tasmanian Aboriginal Centre remains determined to use the law to fight for protection of the area.

One of the difficulties people often face in defending the environment is establishing “standing” – the legal right to commence proceedings. The Tasmanian government has challenged the standing of groups such as the Tarkine National Coalition and the Tasmanian Conservation Trust. The courts have recognised that these groups have a legitimate public interest in protecting significant places, but establishing this right has often come at great expense.

When a community group successfully overturned the initial approval of the Adani Carmichael mine in Queensland, the federal government criticised the group for engaging in “lawfare” and threatened to tighten standing rules to prevent future challenges. On August 18, 2015, less than two weeks after the conclusion of the case, the Attorney-General announced proposed changes to standing laws in August, 2015, and made it clear the changes were a direct response to the case. The threats have not yet been realised, but it is a clear message that the law can be a tool to support protection or to facilitate destruction, depending on who wields it.

The Gunns 20 case, started in December 2004, in which 20 community members were sued for various actions opposing forestry and woodchip export operations around Tasmania, is another example of legal efforts to silence voices speaking out against environmental harm.

Bringing Tasmania’s environmental battles full circle, Bob Brown, who was at the forefront

*photos opposite Kelly Slater*

of the campaign to save the Franklin River, is as we write challenging the Tasmanian government’s anti-protest laws in the High Court. The case will test the extent to which the law protects those working to protect Tasmania’s environment.

Many of the campaigns to save Tasmania’s special places are founded on legal advice – whether in support of legal proceedings, defending the defenders, or advocating for stronger laws.

One Tasmanian community legal centre, the Environmental Defenders Office (EDO Tasmania), has been providing this advice for more than 20 years. EDO Tasmania has been in the background, providing legal support for the actions that have helped to preserve the natural and cultural values which Tasmania’s tourism industry trades on. The loss of all federal funding for this service in 2014 means that such advice may no longer be available in future.

Access to affordable advice is critical to ensuring that passionate community members, conservation groups and small businesses can work to protect places that they love from immediate threats, and to secure their long-term protection.

Tasmania will only keep its unique identity if people continue the tradition of standing up for the places they love, and have access to legal advice to help them do that. **40**

*Jess Feebely is Principal Lawyer at EDO Tasmania.*

*To find out more about EDO Tasmania’s work, visit [www.edotas.org.au](http://www.edotas.org.au)*

*Kelly Slater is a former press photographer living in north-west Tasmania, with a particular interest in Tasmania’s natural and cultural landscapes. More of her work can be seen at [www.reflectimaging.com](http://www.reflectimaging.com)*

*Brendan Gogarty is based in Hobart. His cover image for this issue shows Tasmanian environmental consultant Laura Smith in the Styx Valley Tall Tree Reserve.*