

**MEDIA RELEASE: NSW PARLIAMENT IGNORES HUNDREDS OF YEARS OF LEGAL RIGHTS.
LISA STONE. 18.11.2012**

Conservation groups say, with the enactment of the new *Forestry Act 2012*, the NSW government has turned its back on the law. This is despite being advised by the Legislative Review Committee that it would be unlawful. Section 69ZA of the new Act bars all action by citizens against the government for damage to the environment from logging. Section 69ZA shows the government is attempting to shield themselves from liability altogether.

The Legislative Review Committee advised it is likely that the Act trespasses on personal rights and liberties under the *Legislation Review Act* and the NSW parliament were advised of this.^[1]

“It is important that the state be legally accountable for its unlawful conduct,” said Ms Lisa Stone, spokesperson for conservation group South East Forest Rescue. “Governments should be subject to the same law that governs every other person. The NSW Parliament and executive government are using the Court as a tool to give effect to the government’s decision to prevent Forests NSW from being taken to court.”

Forests NSW is the State run logging agency. S69ZA effectively leaves the decision on whether to bring action on the executive, to the executive. It takes away litigation by any other person other than the government. It takes away the power of the courts to hear a matter. It makes a determination about pre-existing legal rights and takes away those rights. It is imposing rights/duties for the future in that it takes away the review of exercises of executive powers. This is considered to be something only the courts can undertake.^[2]

“People are not given an opportunity to be heard before a court and cannot challenge the actions of Forests NSW. This is repugnant to the judicial process to a fundamental degree,” said Ms Stone. “No matter how much damage is caused by logging, what law they break no one can take Forests NSW to court for a breach of any Act or any law. Everyone in this country must answer to the law, even politicians such as disgraced ex-Forestry Minister Ian Macdonald, and judges, but not Forests NSW.”

Legislation such as the Constitution sets out the premise for representative and responsible government.^[3] Representative and responsible government includes the upholding of the law. A law which seeks to abrogate the right to justice in the absence of compelling justification is therefore invalid on two grounds. Firstly as an interference with the rights of common law, and secondly as a denial of the fundamental rule of law.

SEFR is calling on the Governor not to proclaim the Act until all NSW politicians have been fully informed of the ramifications of s 69ZA, and the provision is excised from the Act.

^[1] *Legislation Review Act 1987* (NSW) s 8A(1)(b)(i).

^[2] *R v Kirby; Ex parte Boilermakers’ Society of Australia* (1956) 94 CLR 254; *Kable v Director of Public Prosecutions (NSW)* (1996) 189 CLR 51;

^[3] Sir Maurice Byers in Gageler S, ‘Beyond the Text: A Vision of the Structure and Function of the Constitution’ (2009) 32 *Australian Bar Review* 138.